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OREGON
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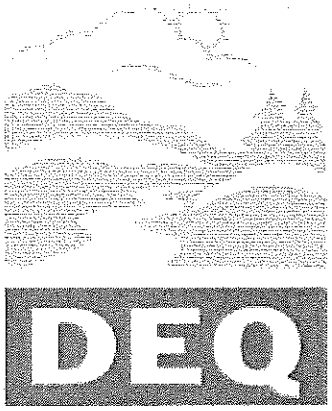
MATERIALS



State of Oregon
Department of Environmental Quality

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. G, April 7, 1983, EQC Meeting

Request for Adoption of Rules for the North Florence Dunal Aquifer in Lane County that would:
(1) Modify Geographic Area Rule OAR 340-71-400(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 Management Plan, OAR 340-41-270 and Establish a Moratorium on New On-Site Waste Disposal Systems, OAR 340-71-460(6)(f).

Background

On December 3, 1982, the Commission authorized the Department to conduct a public hearing in the Florence area on whether to adopt proposed rules to (1) modify the present geographic area rule for on-site sewage disposal facilities in the area north of Florence and (2) establish new rules for the Clear Lake watershed to protect the quality of Clear Lake for use as an unfiltered drinking water supply.

Notice was given by publication in the Secretary of State's bulletin on January 1, 1983, and by direct mailing to the Department's rule-making mailing list for water quality. The hearing was held on February 16, 1983, in Florence. The hearings officer's summary of testimony is included as Attachment E.

Attachment D to this report is the December 3, 1982 agenda item which presents background information for the proposed rules.

Evaluation of Testimony

Rules were proposed for protection of two distinct hydrologic units of the North Florence Dunal Aquifer. These are referred to as (1) the Clear Lake Watershed, and (2) the General North Florence Aquifer.

Clear Lake Watershed

The proposed rules would (a) add a new rule (OAR 340-41-270) to the Water Quality Management Plan for the Mid-Coast Basin to recognize the value of Clear Lake for use as an unfiltered public water supply and establish a policy and initial requirements for protecting the quality of the lake, and (b) enact a moratorium on installation of new on-site sewage disposal systems within the Clear Lake Watershed (OAR 340-71-460(6)(f)).

The proposed rules will stop the increase of nitrate-nitrogen loading to the Clear Lake watershed and hence to Clear Lake. Nitrate-nitrogen is the pollutant that has the greatest adverse impact on the quality of the lake. The primary source of nitrate-nitrogen is septic tank effluent. Stopping the increase in loading is not sufficient however. Study has shown that maintenance of current lake quality will require reduction of total watershed nitrate loading to 170 pounds per year or less. Current loadings exceed this rate by a factor of almost four.

Lane County has committed to conducting a further study to evaluate options for reducing the present loading to meet the 170 pound per year loading rate. Upon completion of this study the proposed rules should be modified to incorporate the specific implementation plan developed and adopted by the County. Thus, the proposed rules establish a management goal and measures to prevent a worsening of the problem pending development of a final plan for abatement.

Testimony both supported and opposed the adoption of the proposed rules. Opposition was largely based on the inability of property owners within the watershed to develop their land. Development options and compensation issues raised will have to be addressed by Lane County as they conduct their study over the next two years.

Lane County submitted a revised legal description of the watershed boundary which reduced the area included by approximately one acre. The legal description in the proposed rule has been changed to reflect the corrected boundary. The Department has not proposed any other changes in the rules as a result of the testimony.

General North Florence Aquifer (Excluding the Clear Lake Watershed)

The proposed rule for this area would in essence modify the existing geographic area rule for the North Florence Dunal Aquifer (OAR 340-71-400(2)) by changing the boundaries of the area to exclude the Clear Lake Watershed and establish a nitrate nitrogen loading rate of 58 pounds per acre per year and eliminate restrictions on land partitionings and subdivisions. The effect of these changes is to relax the development restrictions in effect under the current geographic area rule.

Testimony at the hearing generally supported the recommended modification of the geographic area rule.

Summation and Findings

1. The 208 Study shows that the North Florence Dunal Aquifer can be separated into two (2) distinct hydrologic units, the General North Florence Aquifer and the Clear Lake Watershed which recharges Clear Lake.

2. The highest beneficial use being made of each of these aquifer units is development of drinking water supply. The primary contaminant of impact to this use is nitrate-nitrogen (NO_3-N) primarily derived from use of on-site waste disposal systems.

3. Separate and significantly different protective measures are needed to protect the drinking water resources (highest beneficial use) of each hydrologic unit.

4. Clear Lake is currently used as a major source of public drinking water supply for the Florence Area. Currently its water quality is so pristine that only chlorination is required prior to distribution. The study predicts that Clear Lake will continue to degrade and cannot be relied upon as a future source of unfiltered public water supply unless significant controls are placed on land use within the Clear Lake Watershed. The controls needed are currently not addressed in any existing rules. To maintain and preserve Clear Lake as a future source of unfiltered public water supply, NO_3-N loadings to the entire Clear Lake Watershed must be reduced to a maximum of 170 pounds per year. This loading rate is currently being exceeded by a factor of almost four.

5. The Lane County Board of Commissioners in response to this finding petitioned the Commission to take actions as necessary to maintain or improve the current water quality of Clear Lake. All local Lane County governmental bodies have endorsed the County Commissioners' actions.

6. The highest beneficial use being made of the General North Florence Aquifer is the development of groundwater drinking supply. To maintain and preserve this portion of the aquifer for future drinking water supplies, the study found that NO_3-N loadings could not be applied at rates greater than 58 pounds per acre per year. If this rate is not exceeded, the NO_3-N level concentrations in the aquifer will not, on the average, exceed the 5.0 mg/l NO_3-N planning target specified in the Groundwater Protection Policy. The 58 pound NO_3-N annual loading rate per acre equates to approximately 2.8 dwelling units per acre.

7. The Lane County Board of Commissioners, in response to this finding also filed a petition with the Environmental Quality Commission to amend the current geographic area rule, OAR 340-71-400(2) so that it would reflect the technical findings of the study.

8. The Lane County Board of Commissioners adopted an order on October 27, 1982 which established a moratorium on all requests for plan amendments, zone changes, land divisions, new construction permits and new mobile home permits within the Clear Lake Watershed.

9. Upon review of the resolutions and petitions adopted by Lane County government, the Department presented several alternative methods to protect ground and surface water quality to the Commission at the December 3, 1982 meeting. At this meeting the Commission authorized a public rule making hearing to be conducted in Florence to take testimony on:

   a. Establishing a special water quality protection for Clear Lake and its watershed by adding a special protection clause to the Mid-Coast Basin Water Quality Management Plan, OAR 340-41-270 and establishing an on-site sewage disposal moratorium area rule, OAR 340-71-460(6)(f) for those lands within the Clear Lake Watershed.

   b. Modifying the current geographic area rule, OAR 340-71-400(2) for those lands overlaying the North Florence Dunal Aquifer that are located outside the Clear Lake Watershed boundaries.

10. On February 16, 1983 the Commission hearings officer conducted a public rule-making hearing in Florence to receive testimony on the above proposals. Testimony was divided regarding establishment of new special water quality rules OAR 340-41-270 and OAR 340-70-460(6)(f) specific to protecting Clear Lake. Those opposing these proposed rules felt they would be losing the right to develop their property. The legal description of the Clear Lake Watershed moratorium boundary was modified in response to testimony. Testimony generally supported modification of the current geographic area rule, OAR 340-71-400(2) for those lands outside the Clear Lake Watershed.

11. The proposed rules for the Clear Lake Watershed establish a management goal and measures to prevent a worsening of the problem pending development of a final plan for abatement. Lane County has committed to conducting a further study within 2 years to develop and evaluate options for further reducing nitrate-nitrogen loading in the watershed. Upon completion of the County's study, the Department will review the solutions developed and implemented locally to decide whether the rules need to be modified.

12. In enacting a moratorium on construction of on-site sewage disposal systems, ORS 454.685(2) requires the Commission to specifically consider a number of factors. These factors were addressed in detail in the 208 study and in findings adopted by the Lane County Board of Commissioner. Findings are summarized as follows:

a. Present and projected density of population
b. Size of building lots.

The proposed moratorium area contains 850 acres of public and private land with an estimated population of 25 permanent residents with an additional 50 seasonal residents.

The maximum build out population projection for the year 2000 based on current zoning, multiplied by 2.6 persons per residence, is 756.

There are approximately 138 existing lots contained in part or in total within the watershed ranging in size from one fourth an acre to 120 acres. Thirty lots have been developed with 10 permanent and the 20 seasonal residences.

Lands are available outside the boundaries of the Clear Lake Watershed to accommodate the housing and development needs for the area during the period of time required to conduct the County study.

New development may occur within the Clear Lake Watershed subject to a demonstration of removal of sewage through transport outside the defined boundaries.

c. Topography
d. Porosity and absorbency of soil
e. Any geological formations which may adversely affect the disposal of sewage effluent by subsurface means
f. Ground and surface water conditions and variations therein from time to time
g. Climatic conditions.

The Clear Lake Watershed is a relatively flat dunal sheet of wind blown sand over an ancient wave cut terrace. The sand is of medium grain size with high porosity and absorbency, as illustrated by the lack of surface drainage features. The homogeneous dunal aquifer is highly permeable with a permeability constant ranging from 250 - 700 gallons per day.

Annual aquifer recharge is 4.36 feet per year. Clear Lake is the aquifer discharge zone. The rapidly draining nature of the dunal aquifer make it likely that any discharges on or in the aquifer will eventually percolate down to the water table and be discharged to Clear Lake.

The watershed is located in a temporate marine climate zone and receives an average annual precipitation of 69 inches with ranges in average monthly temperature from 61°F. to 44.5°.

h. Present and projected availability of water from unpolluted sources
i. Type of and proximity to existing domestic water supply sources
j. Type of and proximity to existing surface waters.

The moratorium area contains two surface water bodies, Collard Lake and Clear Lake with 190 acres of lake surface. Residents of the proposed moratorium area are provided domestic water from Clear Lake by the Heceta Water District. The District provides water to improved properties within its boundaries and also supplies 30 percent of the water needs for the City of Florence.

Existing treatment facilities for water provided by the Heceta Water District do not include filtration due to the existence of a unique source of high quality raw water source currently available from Clear Lake.

Existing land development in the Clear Lake Watershed has brought this area to the point that new land development would exceed the carrying capacity of the Clear Lake Watershed. If this area were left to develop without restrictions at this time, improvements to Heceta Water District's facilities beyond their capability would be required.

A period of time is required to evaluate filtration alternatives, sewerage alternatives and land use control measures within the Clear Lake Watershed to properly protect the water supply needs for existing and future residents of the North Florence area.

k. Capacity of existing subsurface sewage disposal systems.

There are currently 30 units in the watershed on septic systems, 10 of which are permanently occupied. The data indicates that conventional systems contribute 20-23 pounds of nitrate-nitrogen per dwelling unit.

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 Moratoriam Area Rule, OAR 340-71-460(6)(f), (Attachment C).

Bill

William H. Young

Attachments:

A. Proposed Geographic Rule, OAR 340-71-400(2).
B. Proposed Mid-Coast Basin Water Quality Management Plan Revision, OAR 340-41-270.
C. Proposed Clear Lake Moratorium Rule, OAR 340-71-460(6)(f).
D. Staff Report and Attachments for Agenda Item No. E, December 3, 1982 Commission Meeting.
E. Hearings Officer's Report

Gary W. Messer/Neil J. Mullane:g
TG2170
229-6065
March 24, 1983

ATTACHMENT A

All the current language in OAR 340-71-400(2) is hereby deleted and the following is adopted in lieu thereof:

OAR 340-71-400 (Geographic Area Special Considerations)

(2) General North Florence Aquifer, North Florence Dunal Aquifer area, Lane County

(a) Within the area set forth in subsection 340-71-400(2)(b), the agent may issue construction permits for new on-site sewage disposal systems or favorable reports of evaluation of site suitability to construct individual or community on-site sewage disposal systems under the following circumstances:

(A) The lot and proposed system shall comply with all rules in effect at the time the permit or favorable report of site suitability is issued; or

(B) The lot and proposed system complies with paragraph 2(a)(A) of this rule, except for the projected daily sewage loading rates, and the system in combination with all other previously approved systems owned or legally controlled by the applicant shall be projected by the Department to contribute to the local groundwater not more than fifty-eight (58) pounds nitrate-nitrogen NO_3-N per year per acre owned or controlled by the applicant.

b. Subsection (2)(a) of this rule shall apply to all of the following area hereby known as the General North Florence Aquifer of the North Florence Dunal Area and is defined by the hydrologic boundaries identified in the June 1982, 208 North Florence Dunal Aquifer Study, which is the area bounded on the west by the Pacific Ocean; on the southwest and south by the Siuslaw River; on the east by the North Fork of the Siuslaw River and the ridge line at the approximate elevation of four hundred (400) feet above mean sea level directly east of Munsel Lake, Clear Lake and Collard Lake; and on the north by Mercer Lake, Mercer Creek, Sutton Lake and Sutton Creek; and containing all or portions of T17S, R12W, Sections 27, 28, 33, 34, 35, 36, and T18S, T12 W, Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27; W.M., Lane County, except that portion defined as the Clear Lake Watershed more particularly described by OAR 340-71-460(6)(f).

TL2109

ATTACHMENT B

Add the following rule to the Mid Coast Basin Water Quality Management Plan:

Special Policies and Guidelines

340-41-270 In order to preserve the existing high quality water in Clear Lake north of Florence for use as an unfiltered public water supply source, it is the policy of the Environmental Quality Commission to protect the Clear Lake Watershed including both surface and ground waters, from existing and potential contamination sources by:

a. Prohibiting new waste discharges into the lakes, streams, or groundwater within the watershed.

b. Establishing a management goal of limiting the cumulative total quantity of NO_3-N discharged to the Watershed of a maximum of 170 lbs NO_3-N per year from man-controlled sources, including but not limited to On-Site Sewage Disposal systems, managed forest areas, residential areas and public facilities.

c. Requiring that land and animal management activities be conducted utilizing state of the art best management practices to minimize nutrient, suspended solids or other pollutants from contaminating the ground and surface waters.

TL2113

ATTACHMENT C

A new moratorium area rule, OAR 340-71-460(6)(f), is hereby adopted as follows:

(6) Specific moratorium areas. Pursuant to ORS 454.685, the agent shall not issue sewage system construction installation permits or approved site evaluation reports within the boundaries of the following areas of the State:

(f) Lane County - Clear Lake Watershed of the North Florence Dunal Aquifer Area, as follows: The area hereby known as the Clear Lake Watershed of the North Florence Dunal Aquifer Area defined by the hydrologic boundaries identified in the June 1982, 208 North Florence Dunal Aquifer Study which is the area beginning at a point known as Tank One, located in Section One, Township 18 South, Range 12 West, of the Willamette Meridian, Lane County, Oregon:

Run thence S. 67º 50' 51.5" E. 97.80 ft. to the True Point of Beginning;

Run thence S. 05º 40' 43.0" W.	1960.62 ft. to a point,
Run thence S. 04º 58' 45.4" W.	1301.91 ft. to a point,
Run thence S. 52º 44' 01.0" W.	231.21 ft. to a point,
Run thence S. 15º 20' 45.4" W.	774.62 ft. to a point,
Run thence S. 31º 44' 14.0" W.	520.89 ft. to a point,
Run thence S. 00º 24' 43.9" W.	834.02 ft. to a point,
Run thence S. 07º 49' 01.8" W.	1191.07 ft. to a point,
Run thence S. 50º 26' 06.3" W.	731.61 ft. to a point,
Run thence S. 02º 51' 10.5" W.	301.37 ft. to a point,
Run thence S. 36º 37' 58.2" W.	918.41 ft. to a point,
Run thence S. 47º 12' 26.3" W.	1321.86 ft. to a point,
Run thence S. 72º 58' 54.2" W.	498.84 ft. to a point,
Run thence S. 85º 44' 21.3" W.	955.64 ft. to a point,

Which is N. 11º 39' 16.9" W. 5434.90 ft. from a point known as Green Two (located in Section 13 in said Township and Range);

Run thence N. 58º 09' 44.1" W.	1630.28 ft. to a point,
Run thence N. 25º 23' 10.1" W.	1978.00 ft. to a point,
Run thence N. 16º 34' 21.0" W.	1731.95 ft. to a point,
Run thence N. 06º 13' 18.0" W.	747.40 ft. to a point,
Run thence N. 03º 50' 32.8" E.	671.51 ft. to a point,
Run thence N. 59º 33' 18.9" E.	1117.02 ft. to a point,
Run thence N. 59º 50' 06.0" E.	2894.56 ft. to a point,
Run thence N. 48º 28' 40.0" E.	897.56 ft. to a point,
Run thence N. 31º 29' 50.7" E.	920.64 ft. to a point,
Run thence N. 19º 46' 39.6" E.	1524.95 ft. to a point,
Run thence S. 76º 05' 37.1" E.	748.95 ft. to a point,
Run thence S. 57º 33' 30.2" E.	445.53 ft. to a point,
Run thence S. 78º 27' 44.9" E.	394.98 ft. to a point.

Run thence S. 61º 55' 39.0" E. 323.00 ft. to a point,
Run thence N. 89º 04' 46.8" E. 249.03 ft. to a point,
Run thence S. 67º 43' 17.4" E. 245.31 ft. to a point,
Run thence S. 79º 55' 09.8" E. 45.71 ft. to a point,
Run thence S. 83º 59' 27.6" E. 95.52 ft. to a point,
Run thence N. 42º 02' 57.2" E. 68.68 ft. to a point,
Run thence S. 80º 41' 24.2" E. 61.81 ft. to a point,
Run thence S. 10º 47' 03.5" E. 128.27 ft. to the True Point of Beginning; and containing all or portions of T17S, R12W, Section 35 and 36, and T18S, R12W, Sections 1, 2, 11 and 12; W.M., Lane County.

TG2177

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207
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MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. E, December 3, 1982, EQC Meeting

Request for Authorization to Conduct A Public Rulemaking Hearing for:

(1) Modifying Geographic Regional Rule OAR 340-71-400(2) for the General North Florence Aquifer, and

(2) Establishing Special Water Quality Protection for Clear Lake and its Watershed by Adding a Special Protection Clause to the Mid Coast Basin Water Quality Management Plan [(OAR 340-41-270)(1)] and establishing a Moratorium on New On-Site Waste Disposal Systems [(OAR 340-71460(6)(f)].

Background and Problem Statement

In July 1979, DEQ supported a Lane County request for funding to undertake a Section 208 planning study on the North Florence Dunal Aquifer (208 Study). The purpose of the project was to determine the existing and potential sources of contaminants affecting the aquifer's beneficial uses and develop an aquifer protection plan to provide for these uses.

By September 1980, sufficient preliminary data had been gathered to indicate that development pressures were posing a threat to both groundwater and Clear Lake, the Heceta Water District's source of supply. Based on the EQC's Interim Groundwater Protection Policy adopted April 18, 1980, the Department provided Lane County with a policy guidance statement restricting development. Upon review of these actions, the EQC felt a more permanent control program should be implemented to protect the aquifer.

On December 19, 1980, the EQC adopted a Geographic Area Rule [OAR 340-71-400(2)] restricting septic tank development over the North Florence Dunal Aquifer. The primary purpose for enacting this Rule was to provide interim protective measures pending completion of the 208 Study.

In June 1982, the 208 Study was completed. Attachment J contains the analysis and findings of the study. In summary, it showed that:

1. The North Florence Dunal Aquifer contains two hydrologically distinct units; the General North Florence Aquifer, and the Clear Lake Watershed.

2. The primary contaminant of impact to drinking water quality in the North Florence Dunal Aquifer is nitrate-nitrogen (NO_3-N). The primary source of this contaminant is septic tank effluent.

3. Separate control strategies are required to protect the two hydrologically distinct aquifer units:

   a. The General North Florence Aquifer can accommodate loadings of 58 pounds of NO_3-N per acre per year without increasing the NO_3-N concentrations in the underlying aquifer beyond the 5.0 mg/l NO_3-N planning guideline specified in the EQC Groundwater Quality Protection Policy. The 208 Study determined that on the average 20 lbs NO_3-N per dwelling unit is contributed annually to the aquifer. The loading rate of 58 lbs is therefore equivalent to 2.8 single family dwelling units per acre. The area is not up to its saturation density.

   b. The Clear Lake Watershed, which provides recharge to Clear Lake, can accommodate an average loading of 170 pounds of NO_3-N per year within the <u>entire</u> watershed without impacting the quality of Clear Lake. The Clear Lake Watershed is comprised of approximately 1040 acres and has 79 parcels of land, ranging in size from large holding acreages to urban sized lots in the Collard Lake Heights Subdivision. Twenty-nine of the 79 parcels have been improved. At full occupancy, these generate a NO_3-N loading in excess of the 170 pounds maximum recommended in the 208 Study. Clear Lake is still pristine but it is marginally oligotrophic. This means it is near the threshold upon which nutrient levels will support additional algal and aquatic vegetative growth.

4. Clear Lake is the sole source of potable water for the Heceta Water District. The District also, by contract sales, provides about 30 percent of Florence's water. Clear Lake has the potential to supply upwards of 2,000,000 gallons of water per day. Currently <u>only</u> chlorination is provided after withdrawal from the Lake.

5. There are several nutrient factors affecting algal production in lakes, including the major nutrients phosphorus, nitrogen and carbon. Unlike most lakes which are phosphorus limited, pristine lakes are often nitrogen limited. Clear Lake has adequate phosphorus and carbon for algal growth, but insufficient nitrogen. In the event NO_3-N levels in Clear Lake should increase to a point where they would

support increased algal growth, either water treatment facilities or new well fields would have to be developed to accommodate domestic water supplies. Current NO_3-N levels in Clear Lake average 0.05 mg/l. *

6. The 208 Study listed two alternatives for the Clear Lake Watershed; (A) the first would retain Clear Lake as a pristine domestic water supply by not allowing any new NO_3-N sources and reducing existing NO_3-N sources within the Clear Lake Watershed Boundaries; and (B) the second called for applying the EQC Groundwater Protection Policy of 5.0 mg/L NO_3-N guideline (58 lbs. NO_3-N per acre per year) to protect the aquifer in recognition that Clear Lake would be allowed to degrade and drinking water treatment facilities or alternate waters supplies would have to be developed.

The 208 Study was presented at numerous public hearings conducted by the Florence Planning Commission, the Florence City Council, and the West Lane Planning Commission. The City of Florence and the West Lane Planning Commission subsequently sent resolutions (Attachment F) to the Lane County Board of Commissioners requesting that actions be taken to protect the North Florence Dunal Aquifer, with special emphasis on the Clear Lake Watershed. The Lane County Board of Commissioners conducted a public hearing on October 27, 1982, regarding the resolutions and the recommendations of the 208 Study. Upon completion of the hearing, the Commissioners unanimously adopted an Order (Attachment F) which:

a. Established a moratorium on local jurisdiction dealing with land division and construction within the Clear Lake Watershed;

b. Petitioned the Environmental Quality Commission to amend OAR 340-71-400(2) in accordance with the findings and recommendations of the 208 Study.

A public hearing was conducted by the Board of Directors of the Lane Council of Governments on October 28, 1982. The Board accepted the 208 Study and endorsed the actions taken by the Board of County Commissioners on October 27, 1982.

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* Nitrate levels were tested using the EPA approved "Cadmium Reduction Method" with azo dye formation and colorimetric reading. Standard procedures were supplemented with Bausch and Lomb test kit determinations (also a cadmium reduction method) following calibration of the test kits. Nitrate concentrations were recorded to $\pm$ 0.005 mg/L with an accuracy of $\pm$ 0.01 mg/L.

Based on the above, it appears that the current Geographic Area Rule, OAR 340-71-400(2), may not be adequate to protect the pristine quality of Clear Lake; and may be overly restrictive for those areas outside the Clear Lake Watershed Boundaries. To address this matter, the Department is requesting authorization to conduct a public rulemaking hearing to (1) modify the existing Geographic Area Rule; (2) establish special water quality protection for Clear Lake and its watershed; and (3) establish a moratorium on new On-Site Sewage Disposal Systems for those lands located within the Clear Lake Watershed Boundaries.

The Commission has statutory authority to act on rules under the provisions of ORS 454.625, which authorizes the EQC to adopt rules it considers necessary for the purpose of regulating subsurface sewage disposal; ORS 454.685, which authorizes the Commission to issue orders limiting or prohibiting subsurface sewage and alternative disposal systems; and ORS 468.020 which authorizes the Commission to enact such rules as are necessary to perform the functions vested by law to the Commission.

Alternatives and Evaluation

A. Clear Lake Watershed

The existing Water Quality Management Plan for the Mid Coast Basin generally recognizes public water supply as a beneficial use to be protected. Water quality standards were established to protect the fresh waters for use as a drinking water supply after normal drinking water treatment by filtration and disinfection. The 208 Study proposes to protect Clear Lake for use as a drinking water source with only disinfection for treatment. To avoid the need for filtration, strict control of nutrient levels to prevent algal growth is necessary.

In essence, the request from the local governments is to recognize the extraordinary use of "unfiltered public water supply." The alternatives are to (1) continue the existing level of protection, which will allow some deterioration in water quality of the lake, or (2) establish the extraordinary protection level requested. These alternatives are discussed further below.

Alternative 1

Continue to rely upon existing water quality rules, local land use regulations and DEQ on-site sewage disposal rules to adequately protect the beneficial uses of the Clear Lake Watershed.

Evaluation

Current land use regulations and DEQ on-site sewage disposal rules are adequate to protect the direct beneficial uses of groundwater within the Clear Lake Watershed. There are, however, many unregulated and generally uncontrollable pollution sources that simply are associated

with man's activities and/or development practices that affect lake water quality. Examples of these types of activities that can result in "indirect", but significant pollution sources to the lake include: landscaping and fertilization practices, land clearing and natural vegetation removal, forestry practices, agricultural practices, and recreational activities.

The 208 Study showed that if Clear Lake is to be maintained as a pristine source where only chlorination is required prior to its use as a public water supply, then these "indirect" pollution sources must also be addressed and controlled. Since current land use regulations and DEQ on-site sewage disposal rules, cannot in themselves attain this level of control, the Department does not recommend this alternative.

Alternative 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 Management Plan and establish a Moratorium on new on-site sewerage systems within the Clear Lake Watershed.

Evaluation

The protection of the Clear Lake Watershed as a pristine source of domestic water supply requires that a comprehensive management approach be implemented. The adoption of a special protection clause for the Mid Coast Basin WQMP (OAR 340-41-270) affords the Department the opportunity to specify policy and program directions needed to provide adequate protection.

Lane County local government entities have held numerous public hearings on the 208 Study, and have unanimously supported adoption of a policy that will protect Clear Lake as a pristine source of domestic water supply. Current land use regulations and DEQ on-site sewage disposal rules can only take actions to limit new developments or activities which could impact Clear Lake. They are inadequate to resolve past actions or activities which are currently overloading the Clear Lake watershed with nutrients which, over time, will adversely impact the quality of Clear Lake.

In regard to enactment of a moratorium rule, the local and county governments of Lane County are on record as to their intent to maintain Clear Lake as a pristine domestic water supply source. In addition, they have petitioned the EQC to take action to pass a moratorium rule.

Review of ORS 454.685 also shows that the 208 Study and the Lane Board of Commissions' Findings of Fact satisfactorily address all factors required under ORS 454.685(2)(a thru k) for the Commission to issue a moratorium order. If the Commission should authorize this alternative, it should be

recognized that this action by itself is only part of the final solution. The primary result of a moratorium would be to delay further degradation of Clear Lake. Lane County staff acknowledges this and have committed to continuing work to identify methods to reduce the annual loading of NO_3-N to the Clear Lake Watershed to the 170 pounds annual loading rate recommended in the 208 Study. Their commitment is supported by the land use resolutions passed by the Florence City Council; the West Lane Planning Commission; and the land use restrictions ordered by the Lane County Board of Commissioners in the Clear Lake Watershed.

Based on the local government requests, evaluation of the 208 Study, and the stated intent to maintain and preserve the quality of Clear Lake, the Department supports this alternative because it provides a comprehensive method for protecting Clear Lake.

B. General North Florence Dunal Aquifer (Excluding the Clear Lake Watershed)

Alternative 1

Repeal the current Geographic Area Rule, OAR 340-71-400(2), and in the future rely upon the "standard rules" pertaining to subsurface sewage and alternative disposal systems contained in OAR 340-71-100 through 71-600, to adequately protect the beneficial uses of the General North Florence Dunal Aquifer (Excluding the Clear Lake Watershed).

Alternative 2

Retain the current Geographic Area Rule, OAR 340-71-400(2), as a means to protect the beneficial uses of the General North Florence Dunal Aquifer (excluding the Clear Lake Watershed).

Evaluation of Alternative 1 and 2

If enacted, either of these alternatives would be adequate to protect the beneficial uses of the General North Florence Aquifer, as NO_3-N concentrations in the underlaying aquifer would not be impacted beyond the 5.0 mg/L NO_3-N Planning Guideline specified in the EQC Groundwater Protection Policy. Alternative 1 basically would limit development densities to a 2.0 dwelling unit equivalent per acre over the entire General North Florence Aquifer. Alternative 2 would continue to restrict development even further, as it currently varies from not allowing any new land partitions or subdivisions in some areas, to allowing development densities of 2.0 dwelling unit equivalents per acre in others. The 208 Study showed that as long as

NO_3-N loadings were limited to a loading rate of 58 pounds of NO_3-N per acre per year, the underlaying aquifer on the average would not exceed a NO_3-N concentration of 5.0 mg/L. The 58 pound NO_3-N annual loading rate per acre is approximately equivalent to a development density of 2.8 dwelling unit equivalents per acre.

The Department does not recommended either of these alternatives as the 208 Study indicates they are overly restrictive.

Alternative 3

Modify the existing Geographic Area Rule, OAR 340--71-400(2), for those lands outside the Clear Lake Watershed Boundaries to recognize the results of the 208 Study.

Evaluation

This alternative is based primarily on the technical findings of the 208 North Florence Dunal Aquifer Study. By modifying the existing Geographic regional Rule in accordance with the technical findings of the 208 Study, current restrictions on development and development densities would be significantly relaxed with no adverse impacts to the aquifer. The 208 Study indicates that these areas could be developed by using on-site sewage disposal systems with a loading rate of 58 pounds of NO_3-N per acre per year and the aquifer will not be impacted beyond a 5.0 mg/L NO_3-N concentration. If a modified rule were enacted, it would provide a significant conservation of available land resources for future developments by allowing greater densities in most areas and by eliminating the current restrictions on no new land partitionings and subdivisions in others. Based on review of the 208 Study, the Department recommends this alternative.

Summation

1. In July 1979, DEQ provided funding to Lane County to undertake a comprehensive Section 208 Planning Study on the North Florence Dunal Aquifer.

2. On December 19, 1980, the EQC adopted a Geographic Area Rule for the lands overlaying the North Florence Dunal Aquifer to provide interim protective measures until the 208 Study was completed.

3. The 208 Study was completed in June 1982, and shows that:

   a. The North Florence Dunal Aquifer contains two hydrologically distinct units; the General North Florence Aquifer, and the Clear Lake Watershed.

b. The primary contaminant impacting drinking water quality in the North Florence Dunal Aquifer is NO_3-N. The chief source is septic tank effluent.

c. Separate control strategies are needed to protect the two hydrologically distinct aquifer units.

d. The General North Florence Aquifer can be protected by modifying the existing Geographic Area Rule to allow developments which do not exceed loading rates of 58 pounds of NO_3-N per acre per year.

e. Clear Lake can be maintained as a pristine domestic water supply source provided current loadings of NO_3-N to the Clear Lake Watershed from all sources above background are reduced to a maximum of 170 pounds of NO_3-N per year.

4. The findings and recommendations of the 208 Study were presented at public hearings held by the Florence Planning Commission and City Council; and the West Lane Planning Commission. In September 1982, the City of Florence and West Lane Planning Commission adopted resolutions requesting modification of the existing Geographic Area Rule in accordance with the 208 Study recommendations, and actions taken to preserve and maintain Clear Lake as a pristine domestic water supply source.

5. The Lane County Board of Commissioners conducted a public hearing on October 27, 1982, regarding the findings and recommendations of the 208 Study; the resolutions from the City of Florence; and the recommendations from the West Lane Planning Commission. Upon completion of the hearing, they unanimously adopted an order which established a moratorium on new development within the Clear Lake Watershed and petitioned the EQC to amend the existing Geographic Area Rule in accordance with the 208 Study recommendations.

6. The Lane Council of Governments Board of Directors, at its October 28, 1982 meeting, reviewed the North Florence Dunal Aquifer Study. The Board formally accepted the June 1982 Final Report and endorsed the actions taken by the Lane County Commissioners on October 27, 1982, to protect the aquifer.

7. Department review of the 208 Study and the resolutions and petitions from Lane County governmental bodies indicate the Commission should act on separate alternatives for the Clear Lake Watershed and the General North Florence Aquifer.

A. Clear Lake Watershed Alternatives:

(1) Continue to rely on existing Water Quality Rules, local land use and DEQ On-Site Sewage Disposal Rules to protect beneficial uses of the Clear Lake Watershed.

(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 Management Plan; and establish a moratorium rule on new on-site waste disposal systems.

B. General North Florence Aquifer Alternatives:

(1) Repeal the current Geographic Area Rule, and in the future rely on the "standard" On-Site Sewage Disposal Rules to adequately protect the drinking water supplies of the North Florence Area.

(2) Maintain the current Geographic Area Rule to protect the drinking water supplies of the North Florence Area.

(3) Modify the current Geographic Area Rule for those lands outside the Clear Lake Watershed Boundaries to recognize the results of the 208 Study.

8. The Department recommends alternatives 7.A.(2) and 7 B.(3) above as they are based on the technical findings of the 208 Study and support local government's intent to maintain and preserve Clear Lake as a pristine domestic water supply. Specific rule language to implement these alternatives is contained in Attachments C., D. and E.

Director's Recommendation

Based on the Summation, it is recommended that the Commission authorize the Department to conduct a public rulemaking hearing to take testimony on:

1. Whether to establish special water quality protection for Clear Lake and its watershed by adding a special protection clause to the Mid Coast Basin Water Quality Management Plan (OAR 340-41-270) as set forth in Attachment D, and establish an on-site sewage disposal moratorium area (OAR 340-71-460(6)(f) for those lands within the Clear Lake Watershed Boundaries of the North Florence Dunal Aquifer as set forth in Attachment E.

2. Whether to modify the current Geographic Regional Rule 340-71-400(2), for those lands overlaying the North Florence Dunal Aquifer that are located outside of the Clear Lake Watershed Boundaries as set forth in Attachment C.

William H. Young

Attachments: 10

ATTACHMENT A	Draft Statement of Need for Rulemaking
ATTACHMENT B	Draft Hearing Notice
ATTACHMENT C	Proposed New Geographic Rule, OAR 340-71-400(2)
ATTACHMENT D	Proposed Water Quality Management Plan Rule, OAR 340-41-270
ATTACHMENT E	Proposed Moratorium Area Rule, OAR 340-71-460(6)(f)
ATTACHMENT F	Lane County Board of commissioners Order 81-10-27-10 dated 10/27/82, including but not limited to the following exhibits: - North Florence Dunal Aquifer Study, June 1982, Exhibit A (copy not attached - available in DEQ Portland and Salem offices). - City of Florence Resolution #108, Exhibit B - West Lane Planning Commission Resolution WLPC 82-8, Exhibit C - A tax lot map depicting the Clear Lake Watershed and Findings of Fact in support of Order 81-10-27-10, Exhibit D
ATTACHMENT G	EPA review letter of the North Florence Dunal Aquifer Stud of 10/12/82
ATTACHMENT H	Lane County Council of Governments review letter of 11/4/81
ATTACHMENT I	State Department of Water Resources review letter of 8/4/82
ATTACHMENT J	208 Study Findings.

John E. Borden:l
378-8240
November 17, 1982
TL2106

(Revised 12/8/82)

ATTACHMENT A

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.

LEGAL AUTHORITY

ORS 454.625, ORS 454.685 and ORS 468.020

NEED FOR THE RULES

Septic tank development on lands overlaying the North Florence Dunal Aquifer in Lane County, is currently regulated by Geographic Regional Rule OAR 340-71-400(2). In June 1982, a comprehensive 208 North Florence Dunal Aquifer study was completed, and the recommendations and findings were adopted by Lane County. The study showed the current regional rule appears overly restrictive on those portions of land outside the Clear Lake Watershed Boundaries of the North Florence Dunal Aquifer. The study also showed the current rule is not adequate to protect the drinking water quality of Clear Lake, and additional protective measures (restrictions) are needed on those lands within the Clear Lake Watershed Boundaries of the North Florence Dunal Aquifer if Clear Lake is to be maintained as a pristine source of domestic water supply.

PRINCIPAL DOCUMENTS RELIED UPON IN THIS RULEMAKING

1. North Florence Dunal Aquifer Study, Final Report, June 1982

2. Lane County Board of Commissioners Order No. 82-10-27-10, dated October 27, 1982

3. West Lane Planning Commission Resolution No. WLPC 82-8, dated September 22, 1982

4. Florence City Council Resolution No. 108, dated September 14, 1982

5. U.S. Environmental Protection Agency Review Letter on the North Florence Dunal Aquifer Study dated October 12, 1982

6. State of Oregon, Department of Water Resources Review Letter on the North Florence Dunal Aquifer Study dated August 4, 1982

7. Lane Council of Governments Review Letter on the North Florence Dunal Aquifer Study dated November 4, 1982

FISCAL AND ECONOMIC IMPACT

The proposed modification of the current Geographic Regional OAR 340-71-400(2) for those lands outside the Boundaries of the Clear Lake Watershed of the North Florence Dunal Aquifer should clearly result in a positive fiscal and economic impact as development restrictions in these areas will be significantly relaxed. Thus, small business should be benefited.

The proposed Water Quality Management Plan Rule, OAR 340-41-270; and Moratorium Rule OAR 340-71-460(6)(f), for those lands within the Boundaries of the Clear Lake Watershed of the North Florence Dunal Aquifer would result in both positive and negative fiscal and economic impacts. On the positive side, the rules are being proposed to stop degradation of Clear Lake, a major domestic water supply source for the Florence area of Lane County. If degradation continues, either costly water treatment facilities or alternative sources of water supplies will have to be developed. As such, the rules have a positive impact, in that Clear Lake can continue to support and supply current and future development needs with a dependable, relatively low-cost source of domestic water supplies. On the negative side, landowners within the Clear Lake Watershed could no longer rely on development of individual septic tank systems for sewage disposal. Their alternatives may involve obtaining easements for disposal of their sewage outside the Clear Lake Watershed Boundaries by either individual or community systems. The cost for this alternative compared to development of an individual on-site sewage disposal system can be expected to be significantly higher. Other activities such as land clearing, forest practices, agricultural practices, and recreational activities may also be affected by additional controls. The proposed rules for the Clear Lake Watershed should have no significant impact on small businesses.

LAND USE CONSISTENCY

The proposed rules appear to affect land use and to be consistent with statewide planning goals.

The proposed rules relate primarily to Goals 5, 6, 10, 11, and 18.

With regard to Goal 6 (air, water, and land resource quality), the purpose of the proposed rules is to establish guidance for the protection of the quality of the North Florence Dunal Aquifer and Clear Lake for current and future drinking water supplies by preventing and controlling pollution from waste disposal activities.

With regard to Goal 11 (public facilities), the proposed rules may necessitate construction of community sewers on those lands within the Boundaries of the Clear Lake Watershed of the North Florence Dunal Aquifer to accommodate planned densities and protect the quality of Clear Lake for future drinking water supplies.

The rules does not appear to conflict with other goals.

Public comment on any land use issue involved is welcome and testimony may be submitted in the same manner as indicated in the public notice of hearing.

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 appropriate conflicts brought to our attention by local, state, or federal authorities.

JEB:1
TL2107

DRAFT

NOTICE OF PUBLIC HEARING

#(Date)

WHO IS AFFECTED:

Residents of Lane County in or near Florence, Oregon especially those which reside or own property north of Florence or near Clear Lake.

WHAT IS PROPOSED:

The Department of Environmental Quality is proposing to change the present rules which restrict subsurface sewage disposal along with Florence Dunal Aquifer and the general water quality rules for the Mid-Coast Basin. The proposed rules relax the septic tank installation restrictions directly north of Florence, Oregon, but would prohibit septic tank installation and require low polluting land and water management practices in the Clear Lake Watershed.

WHAT ARE THE HIGHLIGHTS:

#

SPECIAL CONDITIONS:

#

HOW TO COMMENT:

PUBLIC HEARING

The DEQ will hold a public hearing on the proposed rules at:

#(TIME)
#(DATE)
#(PLACE)

Both oral and written comments will be accepted. Written comments can also be sent to the Department of Environmental Quality, ATTN: Florence Dunal Rules, 895 Summer Street NE, Salem, Oregon 97310. Written comments must be postmarked by _____ to be included in the hearing record.

WHAT IS THE NEXT STEP:

#

JAG:k
11/18/82

PUBN.H (8/82)
FK1461

WHERE TO OBTAIN ADDITIONAL INFORMATION: Copies of the proposed rule changes for the Florence Dunal area may be obtained from:

Department of Environmental Quality
895 Summer Street NE
Salem, Oregon, 97310
(503) 378-8240

(or)

Department of Environmental Quality
Water Quality Division
P. O. Box 1760
522 SW Fifth Avenue
Portland, OR 97207
(503) 229-6065

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 CONSISTENCE: The Lane County Board of Commissioners have taken formal action to request the proposed rule chang

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, 895 Summer Street NE, Salem, Oregon 97310.

Proposed Rule Amendment to Geographic Areas Considerations Rule, OAR 340-71-400(2)

All the current language in OAR 340-71-400(2) is hereby deleted and an amended OAR 340-71-400(2) is adopted as follows:

OAR 340-71-400 (Geographic Area Special Considerations)

(2) General North Florence Aquifer, North Florence Dunal Aquifer area, Lane County

(a) Within the area set forth in subsection 340-71-400(2)(b), the agent may issue construction permits for new on-site sewage disposal systems or favorable reports of evaluation of site suitability to construct individual or community on-site sewage disposal systems under the following circumstances:

(A) The lot and proposed system shall comply with all rules in effect at the time the permit or favorable report of site suitability is issued; or

(B) The lot and proposed system complies with paragraph 2(a)(A) of this rule, except for the projected daily sewage loading rates, and the system in combination with all other previously approved systems owned or legally controlled by the applicant shall be projected by the Department to contribute to the local groundwater not more than fifty-eight (58) pounds nitrate-nitrogen (NO_3-N) per year per acre owned or controlled by the applicant.

b. Subsection (2)(a) of this rule shall apply to all of the following area hereby known as the General North Florence Aquifer of the North Florence Dunal Area and is defined by the hydrologic boundaries identified in the June 1982, 208 North Florence Dunal Aquifer Study, which is the area bounded on the west by the Pacific Ocean; on the southwest and south by the Siuslaw River; on the east by the North Fork of the Siuslaw River and the ridge line at the approximate elevation of four hundred (400) feet above mean sea level directly east of Munsel Lake, Clear Lake and Collard Lake; and on the north by Mercer Lake, Mercer Creek, Sutton Lake and Sutton Creek; and containing all or portions of T17S, R12W, Sections 27, 28, 33, 34, 35, 36, and T18S, T12 W, Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27; W.M., Lane County, except that portion defined as the Clear Lake Watershed more particularly described by OAR 340-71-460(6)(f).

TL2109

ATTACHMENT D

Special Policies and Guidelines

340-41-270 In order to preserve the existing high quality water in Clear Lake north of Florence for use as an unfiltered public water supply source, it is the policy of the EQC to protect the Clear Lake Watershed including both surface and ground waters, from existing and potential contamination sources by:

a. Prohibiting new waste discharges into the lakes, streams, or groundwater within the watershed.

b. Establishing a management goal of limiting the cumulation total quantity of NO_3-N discharged to the Watershed of a maximum of 170 lbs NO_3-N per year from man-controlled sources, including but not limited to On-Site Sewage Disposal systems, managed forest areas, residential areas and public facilities.

c. Requiring that land and animal management activities be conducted utilizing state of the art best management practices to minimize nutrient, suspended solids or other pollutants from contaminating the ground and surface waters.

TL2113

Proposed New Moratorium Areas Rule, OAR 340-71-460(6)(f).

A new moratorium areas rule, OAR 340-71-460(6)(f), is hereby adopted as follows:

OAR 340-71-460 Moratorium Areas

(6) Specific moratorium areas. Pursuant to ORS 454.685, the agent shall not issue sewage system construction installation permits or approved site evaluation reports within the boundaries of the following areas of the State:

(f) Lane County--Clear Lake watershed of the North Florence Dunal Aquifer Area, as follows: The area hereby known as the Clear Lake Watershed of the North Florence Dunal Aquifer Area defined by the hydrologic boundaries identified in the June, 1982, 208 North Florence Dunal Aquifer Study which is the area beginning at point known as Tank One, located in Section one, Township 18 south, Range 12 west, of the Willamette Meridian, Lane County, Oregon;

Run thence north 52° 51' 44" east 203.95 ft. to the True Point of beginning;
Run thence south 07° 09' 30.36" west 2126.57 ft. to a point,
Run thence south 05° 00' 55.50" east 1303.99 ft. to a point,
Run thence south 52° 44' 00.95" west 231.20 ft. to a point,
Run thence south 15° 20' 45.38" east 774.61 ft. to a point,
Run thence south 31° 46' 22.10" west 522.26 ft. to a point,
Run thence south 00° 24' 45.67" west 833.02 ft. to a point,
Run thence south 07° 49' 25.35" west 1190.07 ft. to a point,
Run thence south 50° 23' 06.52" west 730.83 ft. to a point,
Run thence south 03° 01' 21.76" west 303.42 ft. to a point,
Run thence south 36° 39' 26.19' west 916.20 ft. to a point,
Run thence south 47° 15' 49.38' west 1324.72 ft. to a point,
Run thence south 72° 58' 54.17" west 498.04 ft. to a point,
Which is north 01° 32' 59" west 5394.86 ft from a point known as Green Two (located in Section 13 in said Township and Range);

Run thence south 85° 47' 40.71" west 954.57 ft. to a point,
Run thence north 58° 09' 44.12" west 1630.28 ft. to a point,
Run thence north 25° 25' 29.02" west 1977.52 ft. to a point,
Run thence north 16° 31' 52.93" west 1732.61 ft. to a point,
Run thence north 06° 14' 17.99" west 745.41 ft. to a point,
Run thence north 03° 45' 06.22" east 672.44 ft. to a point,
Run thence north 59° 28' 00.83" east 1118.03 ft. to a point,
Run thence north 59° 51' 00.64" east 1895.42 ft. to a point,
Run thence north 48° 26' 07.56" east 896.00 ft. to a point,
Run thence north 31° 29' 50.71" east 920.64 ft. to a point,
Run thence north 37° 07' 15.45" east 1506.21 ft. to a point,
Run thence north 80° 52' 11.36" east 340.31 ft. to a point,
Run thence south 57° 48' 15.35" east 446.68 ft. to a point,
Run thence south 79° 54' 07.14 east 1511.41 ft. to the True Point of Beginning; and containing all or portions of T17S, R12W, Sections 35 and 36, and T18S, R12W, Sections 1, 2, 11, and 12; W.M., Lane County.

November 12, 1982
Neil J. Mullane/ak

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 82-10-27-10	IN THE MATTER OF: 1. ESTABLISHING A MORATORIUM ON NEW DEVELOPMENT WITHIN THE CLEAR LAKE WATERSHED, 2. PETITIONING THE ENVIRONMENTAL QUALITY COMMISSION FOR AMENDMENT OF OAR 340-71-400(2), AND 3. ADOPTING FINDINGS OF FACT IN SUPPORT THEREOF.

WHEREAS, during June of 1982, the Lane Council of Governments and Lane County completed the North Florence Dunal Aquifer Study, see attached Exhibit "A", and forwarded the same to the City of Florence and the West Lane Planning Commission, and

WHEREAS, the City of Florence reviewed the report and, by and through Resolution #108, see attached Exhibit "B", now request Lane County to take action protect the Clear Lake Watershed for municipal water supply purposes, and

WHEREAS, the West Lane Planning Commission received the report and held public hearings thereon and, by and through West Lane Planning Commission Resolution #82-8, see attached Exhibit "C", now request Lane County to take action protect the Clear Lake Watershed for municipal water supply purposes, and

WHEREAS, the Board, after reviewing the report and conducting public hearings on the requested action, recognizes that a safe and economical supply of water from Clear Lake is a key facility needed for citizens of the coastal area in and near Florence, now, therefore, be it

ORDERED:

1. No applications shall be approved for the following land development actions:
   a. Plan Amendments,
   b. Zone Changes,
   c. Land Divisions,
   d. New Construction Permits, and
   e. New Mobile Home Permits,

if they would have the effect of contributing to the nitrate-nitrogen content to the Clear Lake Watershed as depicted on the attached Exhibit "D". This restriction does not prevent improvements to existing structures or currently placed mobile homes.

2. Persons denied approval based upon this Order may appeal this decision pursuant to LC 10.317 (Hearings Official), and be it

RESOLVED that the Board of County Commissioners hereby petitions the Environmental Quality Commission to amend OAR 340-71-400(2) to conform to the restrictions set forth above, and be it further

ORDERED that in support of these actions, Lane County adopts the Findings set forth on attached Exhibit "E".

Adopted this 27th day of October , 1982.

Scott Fiorello

Chairman, Lane County Board of Commissioners

In the Matter of:

1. Establishing a Moratorium on New Development Within the Clear Lake Watersh
2. Petitioning the Environmental Quality Commission for Amendment of OAR 340-71-400(2), and
3. Adopting Findings of Fact in Support Thereof.

APPROVED AS TO FORM
DATE 10/22/82
OFFICE OF LEGAL COUNSEL

ATTACHMENT F

Exhibit A

North Florence Dunal Aquifer Study

June 1982

(Copy available in DEQ Portland and Salem Offices)

RESOLUTION NO. 108

A RESOLUTION ADOPTING THE NORTH FLORENCE DUNAL AQUIFER STUDY SPECIFIC RECOMMENDATIONS.

WHEREAS, Lane County recommends modifications of Oregon Administrative Rule OAR 340-71-400 (2) to conform to the technical results of the North Florence Dunal Aquifer Study concerning geographic areas and nitrate loading considerations, as defined by said study, and

WHEREAS, it has been recommended by Lane County and Lane Council of Governments that the City of Florence review and adopt the North Florence Dunal Aquifer Study, and that the City recommend a specific policy concerning protection of Clear Lake Watershed and the General North Florence Watershed, and

WHEREAS, the Florence Planning Commission reviewed the results of the study and after conducting a Public Hearing adopted Resolution 82-9-7-50, together with the Findings of Fact (Exhibit A), recommending City Council adoption of the North Florence Dunal Aquifer Study and their findings.

NOW THEREFORE, BE IT RESOLVED by the Common Council of the City of Florence that the North Florence Dunal Aquifer Study including: General Recommendations 1 through 6, General North Florence Recommendations 29 through 33, Clear Lake Watershed Recommendation 7A, and Specific Recommendations 8 through 16, and that the Planning Commission Findings of Fact attached as Exhibit "A" are adopted in support of this decision and are incorporated herein by reference.

PASSED BY THE COMMON COUNCIL, this 14th day of September 1982

APPROVED BY THE MAYOR, this 14th day of September 1982.

Roger W. McCorkle

Roger W. McCorkle, MAYOR

ATTEST:

Alice M. Hunt

Alice M. Hunt, CITY RECORDER

PLANNING COMMISSION RESOLUTION 82-9-7-50

IN THE MATTER OF FORWARDING A RECOMMENDATION FOR ADOPTION OF NORTH FLORENCE DUNAL AQUIFER STUDY SUMMARY SPECIFIC RECOMMENDATIONS	)))))	Proposal: Adoption of Specific Recommendations Contained in North Florence Dunal Aquifer Study Summary, June, 1982 Draft Impact: Affects General Florence and Heceta Water District Area Proponent: Study Prepared by Lane County and Lane Council of Governments

WHEREAS, Lane County recommends modification of Oregon Administrative Rule OAR 340-71-400 (2) to conform to the technical results of the North Florence Dunal Aquifer Study concerning geographic areas and nitrate loading consideration, as defined by said study, and

WHEREAS, it has been recommended by Lane County and the Lane Council of Governments that the City of Florence review and adopt the North Florence Dunal Aquifer Study, and that the City recommend a specific policy concerning protection of Clear Lake Watershed and the General North Florence Watershed, and

WHEREAS, the Florence Planning Commission, after having reviewed the results of the study in meetings conducted on June 1, 1982 and August 17, 1982, and having conducted a public hearing on September 7, 1982, after giving all notice as required by law, to consider adoption of a specific policy, and specific recommendations, and after review of all evidence in the record and testimony presented, determined that it is in the public's best interest to protect the Clear Lake Watershed as the main source of domestic water for the City and the General North Florence Area,

NOW THEREFORE BE IT RESOLVED, that the Florence Planning Commission recommends adoption by the City Council of Policy A of said study; that policy being a commitment to retain Clear Lake as a pristine water supply, and to protect and improve its water quality, and

BE IT FURTHER RESOLVED, that the Planning Commission also recommends adoption by the City Council of the North Florence Dunal Aquifer Study including: General Recommendations 1 through 6, General North Florence Recommendations 29 through 33, Clear Lake Watershed Recommendation 7A, and Specific Recommendations 8 through 16, and that the Findings of Fact attached as Exhibit "A" are adopted in support of this decision and are incorporated herein by reference.

* See modification to Exhibit "A".

PASSED BY THE CITY OF FLORENCE PLANNING COMMISSION, this 7th day of September, 1982.

CHAIR OF THE FLORENCE PLANNING COMMISSION

EXHIBIT "A"

PLANNING COMMISSION RESOLUTION 82-9-7-50

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROPOSAL:

This is a recommendation by Lane County to modify Oregon Administrative Rule OAR 340-71-400 (2) to conform to the technical results of the North Florence Dunal Aquifer Study concerning geographic areas and nitrate loading consideration as defined by this study.

The Study defines Clear Lake Aquifer boundaries, determines the quality and quantity of water available within this aquifer, indicates the Nitrate-Nitrogen loading limits necessary to maintain the quality of water needed without additional treatment and/or alternative sources.

It has been recommended by Lane County and the Lane Council of Governments that this jurisdiction review and adopt the North Florence Dunal Aquifer Study, and that the City of Florence recommend a specific policy concerning protection of Clear Lake Watershed and the General North Florence Watershed.

They strongly recommend that the City adopt one of the following policies:

POLICY A: A commitment will be made to retain Clear Lake as a pristine domestic water supply and to protect and improve its water quality.

POLICY B: A commitment will be made to develop alternate water supplies and/or additional treatment facilities and Clear Lake will be allowed to degrade in quality.

APPLICABLE LEGAL CRITERIA:

Legal criteria applicable to this review are the City of Florence Comprehensive Plan and Statewide Planning Goals.

CONCLUSIONS OF STUDY:

The North Florence Dunal Aquifer Study indicates that Clear Lake is ideally situated to remain the main water supply for the Florence and Heceta area for many years if adequate safeguards are taken to protect the quality of this water supply.

WATER QUANTITY:

The Study further indicates this is an ideal aquifer in that it is uniform in nature and quickly recharges itself. The area tributary to Clear Lake is approximately 1040 acres with 518 to 570 acres of dunal sands. Only minor fluctuations in water levels in times of drought conditions and of heavy rainfall indicate an extremely stable quantity of water is available. The amount of water available for use has been estimated to be as high as 200,000 cubic feet per acre per year.

CONCLUSIONS OF STUDY: (Cont.)

WATER QUALITY:

The groundwater quality of Clear Lake Watershed is very good. Some iron and sulphur are present but in very low concentrates. Low nitrate levels indicate this entire watershed is relatively unpolluted at this time.

This study indicates there are sufficient phosphorus concentrations present in Clear Lake to support growth of algae and only the low concentration of nitrogen limits this growth. Any increase in nitrate levels entering the aquifer will threaten the quality of lake water.

If development is allowed to continue with on-site disposal systems, substantial quantities of effluent and other nitrates could enter the aquifer before a sufficient density of development is reached to form a sewer district.

It is estimated that pollution at the surface from septic systems will spread through the entire aquifer within 30 years and would take 30 years to flush out through natural movement of water.

Accidental discharge of any contaminant within the aquifer would result in eventual diluted contamination of a large area of the aquifer due to subsurface horizontal spread. This horizontal flow would lead to costly and ineffective contaminant cleanup.

DEVELOPMENT WITHIN THE CLEAR LAKE WATERSHED:

At this time there are 24 housing units in subdivisions north and east of Collard Lake; 7 of which are permanently occupied. There are 3 housing units; all permanently occupied, on the dunal aquifer portion of the Clear Lake Watershed. The subdivisions in the Collard Lake area contain approximately 80 undeveloped sites.

ALTERNATIVES:

Policy A would result in development within the Clear Lake Watershed only if an alternative waste disposal system could be developed outside the boundaries of the watershed.

Policy B would result in gradual degradation of Clear Lake, thus expensive treatment including filtration systems will be needed to maintain an adequate domestic supply of water. The alternative would be to locate new wells either on the western side of Clear Lake or expand the Florence Well Field. Either choice would mean expensive iron removal treatment.

COMPREHENSIVE PLAN, PART I:

Based on statistics from the City of Florence Water Department, over 30% of the City's net consumption of water comes from Clear Lake.

The importance of safeguarding the quality of water from this source is reflected in the City's Comprehensive Plan in the form of Policies and Recommendations.

With respect to water quality, Plan Policies state that land use decisions that affect the quality of water supply for residential use must be carefully reviewed.

COMPREHENSIVE PLAN, PART I: (Cont.)

SECTION IX A. Public Facilities - Recommendations:

The Plan recommendations concerning public facilities provide:

1. Adequate water storage should be provided.
2. The City should support the County's effort to determine the capacity of the aquifer north of the Siuslaw to supply long-range water needs for municipal use. The results of this hydrologic study should determine whether future water supplies will be produced by deep wells and/or surface sources.

SECTION X B. Air, Water and Land Quality - Policies:

This section of the Plan provides policies in decisions such as this, as follows:

1. Water recharge areas, lakes, and streams which have a direct bearing on the quality of the water resources shall be protected to insure the continuous quality and quantity of public water supplies.
2. Solid, liquid, gaseous and industrial waste discharges and/or disposal from septic tanks and/or sewers must not contaminate land, air, and water resources.
3. The City must also insure that its drinking water supply continues to conform with the Safe Drinking Water Act.
4. Federal and State standards shall be considered in all matters relating to air quality, water quality and noise pollution.

This section of the Plan further recommends that the County should be encouraged to maintain domestic water quality standards for Clear Lake.

STATEWIDE PLANNING GOALS:

The following Statewide Planning Goals are applicable to this matter. This proposal conforms to the Plan in all respects regarding these Goals:

Goal 1. Citizen Involvement
Goal 2. Land Use Planning
Goal 5. Open Spaces, Scenic and Historic Areas, and Natural Resources
Goal 6. Air, Water and Land Quality
Goal 9. Economy of the State
Goal 13. Energy Conservation
Goal 17. Coastal Shorelands
Goal 18. Beaches and Dunes

CONCLUSION:

The Planning Commission hereby concludes that, based on the Findings of Fact presented in this document, as well as material presented at public hearings concerning this matter, that it is in the public's interest to protect this source of domestic water.

RECOMMENDATION:

The Planning Commission hereby recommends that the City of Florence adopt the North Florence Dunal Aquifer Study including: General Recommendations numbered 1 through 6, General North Florence Recommendations numbered 29 through 33, Clear Lake Watershed Recommendation 7A, and Specific Recommendations numbered 8 through 18; all of which are contained in the North Florence Dunal Aquifer Study Summary, June, 1982 draft. *

* See modification below.

ACCEPTED AND ADOPTED BY THE CITY OF FLORENCE PLANNING COMMISSION

____ without modifications.

__x__ with the following modifications:

- Inclusion of the Planning Commission's acknowledgement of existing inequities inherent in the creation of a watershed through down-zoning, and the recommendation that this concern be addressed prior to implementation by the County of a specific policy.
- Exclusion of recommendation of Specific Recommendations numbered 17 and 18 until technical data supporting the need for their implementation can be included in the North Florence Dunal Aquifer Study.

CHAIR OF THE FLORENCE PLANNING COMMISSION

IN THE WEST LANE PLANNING COMMISSION OF LANE COUNTY, OREGON

IN THE MATTER OF RECOMMENDING)
AND REPORTING ON THE NORTH) R E S O L U T I O N WLPC 82-8
FLORENCE DUNAL AQUIFER REPORT)

WHEREAS, the West Lane Planning Commission evaluated the North Florence Dunal Aquifer Study, conducted public hearings on August 11, 1982, August 25, 1982 and September 8, 1982, considered public and agency testimony regarding the North Florence Dunal Aquifer, and otherwise performing its duties; AND

WHEREAS, the Lane County Board of Commissioners has requested our recommendation on the North Florence Dunal Aquifer Study; AND

WHEREAS, the West Lane Planning Commission finds a special need exists in the watershed areas which contribute to Clear Lake, Oregon as identified in the report;

IT IS HEREBY RESOLVED that the North Florence Dunal Aquifer Technical Report be accepted and forwarded to the Board of County Commissioners with a recommendation for action:

Appendix "A": Adoption of general recommendations North Florence Dunal Aquifer Report 1 - 6, pg. 1 and 29-33 pg. 4.

Appendix "B": Adoption of policy committment to protect Clear Lake for domestic water supply purposes; and establish a moratorium.

Appendix "C": Initiate a study of appropriate alternatives to achieve protection of Clear Lake.

FURTHER, the secretary of West Lane Planning Commission is hereby directed to prepare a report of our proceedings to accompany this Resolution and to deliver the Resolution and the prepared report to the Board of County Commissioners forthwith.

Meeting of September 22, 1982

Ayes: Clifford Hughes, Fred Jensen, Steve May, Ken Miller, Donna Shelton, Chairperson
Nayes: Edith Laverdiere
Abstaining: NA
Absent: Si Ellingson
Not Voting: NA

Donna L. Shelton
V. Chairman, West Lane Planning Commission

In the Matter of Recommending and Reporting on the North Florence Dunal Aquifer Report.

APPENDIX "A"

North Florence Dunal Aquifer Report

RECOMMENDATIONS

General

1. The existing Oregon Administrative Rule OAR 340-71-400(2) North Florence Dunal Aquifer Area, Lane County should be modified so as to conform to the technical results concerning geographical areas and nitrate loading considerations of the North Florence Dunal Aquifer Study.

2. The Aquifer Study predicts loadings for nitrate-nitrogen to the aquifer such that Oregon DEQ Planning Standards (5.0 mg/L nitrate-nitrogen average) are met. The Regional Rule as well as regional plans should be modified to reflect the Aquifer Study results.

3. It is recommended that the two identified portions of the North Florence Dunal Aquifer (the "Clear Lake Watershed" and the "General North Florence Aquifer") be recognized and so designated by the West Lane Planning Commission, the Lane County Board of Commissioners and the Environmental Quality Commission.

4. The Regional Rule should recognize and legally define the "Clear Lake Watershed" and the Rule should be modified to protect this resource according to the findings of the Aquifer Study.

5. It is recommended that the Aquifer Study be reviewed and formally accepted by the following jurisdictions and agencies.

   Oregon Health Division
   Water Resources Department
   Lane COG Board of Directors
   Coastal Ad Hoc Advisory

6. It is further recommended that the North Florence Aquifer Study be reviewed and adopted for planning and policy guidance by the following jurisdictions:

   Heceta Water District
   City of Florence
   West Lane Planning Commission
   Lane County Board of Commissioners
   Environmental Quality Comission

General North Florence Recommendations

1. Measures should be taken to protect the General North Florence Aquifer from nutrient loadings from individual waste systems such that the State Planning standard of 5.0 mg/L nitrate-nitrogen is not exceeded generally in the aquifer.

2. A nutrient waste loading of 58 lb/acre nitrate-nitrogen per year is predicted by the study as being acceptable and not result in groundwater concentrations in excess of 5.0 mg/L. This waste loading should be adopted as a general standard for the dunal aquifer. This loading is

predicted to be adequate to protect water quality in the Florence well field.

3. The current sanitary landfill site is found to be located in an area of discharge with little measurable impact to beneficial uses of ground or surface water. The landfill site should be designated as the accepted long term landfill location to serve coastal area solid waste disposal needs. Requirements should be established such that no well development be allowed between the landfill site and the estuary.

4. It is recommended that no development be allowed that would increase the annual nitrogen loading to an amount greater than the adopted loading.

5. It is recommended that dune stablization for the protection of lakes, improvements or other valid purposes be permitted only if it can be achieved with an application of fertilizer not to exceed 58 lb/acre nitrate-nitrogen on an annual basis.

APPENDIX "B"

Clear Lake Watershed Protective Standards

Policy Statement

A commitment will be made to retain Clear Lake as a pristine domestic water supply and to protect and improve its water quality.

Requested Actions

1) The Board establish a moratorium on all partitions of land within the Clear Lake Watershed; and

2) The Board direct County Counsel to draft an order preventing acceptance of any zone change applications for lands within the Clear Lake Watershed; and

3) The Board direct County Counsel to draft an order preventing acceptance of any building permits for new residences, commercial or industrial structures or for the placement of mobile homes within the Clear Lake Watershed using any on-site systems which would contribute nitrate-nitrogen to the watershed; and

4) The Lane County Board of Commissioners petition the Environmental Quality Commission to prohibit on-site feasibility approvals and new construction permits for subsurface sewage disposal and further evaluate reduction or limit existing on-site systems, within the Clear Lake Watershed; and

5) These actions should remain in effect for a maximum period of two years to provide Lane County adequate time to study and evaluate alternatives for managing the Clear Lake Watershed.

The West Lane Planning Commission believes the above actions are necessary and prudent measures within the Clear Lake Watershed based upon a need to:

1) Limit additional development that increases the complexity of the problem; and

2) Prevent overloading of limited water resources until solutions are found; and

3) Prioritize this geographical area for problem solving by the County and other local jurisdictions; and

4) Prevent increased population in an area that has potential risk to degrade a pristine water source for Florence and the North Florence area; and

5) Provide a reasonable period of time to address appropriate strategies that balance the needs of the people served by water from Clear Lake and the property owners in the Clear Lake Watershed. In order to evaluate progress a formal status report shall be presented every six (6) months to the West Lane Planning Commission.

APPENDIX "C"

Exhibit C

Task Description Study Proposal Clear Lake Watershed

Introduction:

The study will need to involve employees of the County, City of Florence, and Heceta Water District as a technical group assigned to the development of structural and non-structural components of alternative strategies. Preliminary proposals include designation of the County Public Health Engineer, Planning and Community Development Department as the technical coordinator on the study. A second group of representatives from the Florence Planning Commission, Heceta Water District Board, West Lane Planning Commission and two or more citizens with ownership within the Clear Lake Watershed is recommended as a study task force. A seperate staff person from Planning and Community Development would be assigned to facilitate the study task force.

The study will evaluate structural alternatives such as sewage collection, on-site alternatives which reduce nitrogenous waste contributions, water treatment facilities (drinking) and related capitol improvement options along with non-structural alternatives such as Land Use Density controls, conservation easements, best management practices for erosion control, road construction, landscaping, logging, recreation use and associated use controls regulating development.

Additional areas of consideration which will need to be developed such as the identification of lake nutrient limitations in Clear Lake which may control algae production in addition to nitrogen will be evaluated for inclusion.

This preliminary study design is not meant to be complete and will be refined and supplemented should the proposal be acceptable.

Task	Explanation
1) Alternative Description:	Development, description and definitions of all imaginable types of options for protecting water quality within the defined watershed by appointed members of the technical study team and task force.
2) Evaluation of Options:	Review of alternatives for legal, management and fiscal capabilities by affected individuals, agencies, technical study team and task force.
3) Alternative Screening:	Selection of specific alternatives. Ratification by the Board subsequent to recommendations from W.L.P.C., Florence Heceta Water District.
4) Evaluation of Selected Alternatives:	Refine selected alternatives with intensive technical evaluation.
5) Select Alternative:	Prioritization of alternative(s) for recommended action by the Board. Consensus approval by W.L.P.C., Florence Planning Commission, Heceta Water District.

6) Review of Alternatives:	Public agency and citizen presentation and comment.
7) Draft Strategy Proposal:	Modify, amend and incorporate changes based on public and agency comment. W.L.P.C., Florence, Heceta Water District review draft strategy and recommend public hearing(s) by the Board of Commissioners.
8) Public Presentation and Hearing:	Conduct public hearing(s) in the affected area.
9) Adopt Study	Board action
10) Implementation:	Local ordinance activities as required.

MEMORANDUM

TO: Lane County Board of County Commissioners

FROM: Margaret Mahoney
Planning & Community Development

SUBJECT: Work Session/North Florence Dunal Aquifer

DATE: October 5, 1982

RECOMMENDED ACTION:

1) Evaluate recommendations resulting from actions taken by the City of Florence on September 14, 1982 (Resolution 108) and the West Lane Planning Commission on September 22, 1982 (Resolution WLPC 82-8).

2) Conduct a public hearing and take action on October 27, 1982 to:

   a. Adopt the North Florence Dunal Aquifer Report adoption.

   b. Recommend actions to the Environmental Quality Commission.

   c. Act on Resolution WLPC 82-8.

ISSUES:

The key issues to be resolved with respect to the North Florence Study area are:

1) Level of development suitable for the North Florence Dunal Aquifer.

2) Commitment to protection of Clear Lake as a source of domestic water for the City of Florence and Heceta Water District patrons.

3) Appropriate balance between the needs of existing and future citizens in the North Florence area utilizing water from Clear Lake versus the development rights of owners of property within the Clear Lake Watershed.

RESOLUTION PRESENTATION:

See Resolution 108 attached. See Resolution WLPC 82-8.

BACKGROUND:

In our last presentation to the Board in May, 1982 we presented a preliminary report which optimistically projected being able to complete actions prior to this date. Due to the nature of the issues involved more public hearings were conducted by the West Lane Planning Commission and Florence Planning Commission. The issues in this matter were such that extensive dleiberations were necessary to arrive at the actions being recommended to the Board.

In addition to review by the West Lane Planning Commission and the City of Florence, the Heceta Water District also considered the study. A letter from the District encouraged action by Lane County and is included in the attachments.

The Board will recall that the North Florence Dunal Aquifer Study was a technical study established to provide detailed analysis of the hydrogeology and development impacts on a shallow, sensitive aquifer.

Initiation of the study was a result of citizens and elected officials recognizing that both surface and ground waters of this region are the existing source of drinking water for residents and will in the future be a water source necessary to meet development and growth demands in and near Florence. A study grant was obtained through the Environmental Protection Agency and Department of Environmental Quality in July of 1979.

During April of 1980 the Environmental Quality Commission adopted groundwater protection policies for the State of Oregon and subsequently imposed a Geographical Regional Rule: OAR 340-71-030(11) governing on-site sewage disposal systems on those lands overlying the North Florence Dunal Aquifer. The initial rule was recognized as an interim measure that required more detailed study for future modification of the rule.

The North Forence Dunal Aquifer Report was done according to professionally acceptable standards and methods. Data collection was done accurately and in a timely manner. All analysis was carefully checked for accuracy. Lab tests were done in Lane County's EPA certified laboratory where quality control was assured. The analysis of data and interpretation of all results was done with care and consultation among County staff and L-COG personnel to insure thoroughness, and to insure that supportable conclusions were drawn from the data. Care was taken that no erroneous assumptions clouded the interpretation, testing, data collection or analysis associated with this report so that it will stand as a useful planning document for the concerned agencies. The recommendations of this report are based on the data and facts developed in the report document. Specifically, the study was designed to address the potential impact of sewage disposal on the nitrate-nitrogen levels in the aquifer and subsequently Clear Lake as well.

ADDITIONAL INFORMATION EVALUATED AS REQUESTED: WLPC

Introduction:

At the request of the West Lane Planning Commission staff examined the potential costs of water treatment and waste collection and treatment. Staff were relucant to present dollar figures for water purification of Clear Lake or for waste water collection, transport, and treatment since no formal facilities planning had been undertaken for this specific proposal. Since the issue appeared of major concern to WLPC, we prepared information from existing reports. In analyzing and attempting to use the cost information we developed, the following qualifications must be considered:

1) The dollar figures are not absolute and represent accuracy of -30% to +50% of actual costs that may occur if a facility is constructed.

2) No administrative or land use suitability analysis was performed.

3) You may confidently compare options such as one select facility is twice as expensive as another. As an example water treatment serving 7,000 people as compared to serving 30,000 people is over twice as costly.

Before addressing specific issues staff wishes to clarify a significant misunderstanding that was not specifically stated, but appeared to be central to a number of questions that were raised. The North Florence Dunal Aquifer Study does not recommend that NO development occur even in the Clear Lake Watershed. The most restrictive recommendation as contained in Policy A addresses specific controls on development and access that would impact both existing uses and future uses. We would be less than candid if we did not

state that POlicy A would severly restrict and change development in the watershed.

ISSUES I & II: COST COMPARISON WATER TREATMENT AND SEWERAGE

A cost comparison between conventional treatment of the water source and collection and pumpage of sewage effluent out of the Clear Lake Watershed, to maintain the water quality of Clear Lake, gives insight into a possible course of action.

The cost figures for the water treatment facility come directly from the Lane County 1979 Coastal Domestic Water Supply Study. The study gave capital costs for water treatement facilities capable of meeting the needs of 7000 and 30,000 people. The report gives the figures in 1978 dollars and our analysis has updated them to 1982 dollars by a 1.4 factor using Engineering News Report Record factors. Also enclosed are yearly O & M costs.

For the sewage collection and disposal cost estimate, data from the 1982 Dexter Wastewater Facility Project was used. Designed for 155 connections, it incorporated septic tanks, collection facilities, pumping stations, a recirculating sand filter and a low head disposal field system. Because the size of the collection system and number of pumping stations may vary, line items were added and estimates made for those necessary components to be used in the Collard Lake area. O & M costs are also estimated from the Dexter data. If a recirculating sand filter is not necessary and a simple low head disposal field is used the capital cost could drop significantly.

Water Treatment Plant	Capital Cost	O & M Per Year
7000 person capacity	$1,600,000.	$ 66,000.
30,000 person capacity	$3,400,000.	$286,000.

Wastewater Collection, Transport & Treatment		
155 household capacity	$ 700,000.	$ 28,000.

Line Items		
	$ 443,000.	recirculating sand filter & disposal field.
	50,000.	(2) pump stations
	72,000.	8000 ft. of gravity collection line at $9./ft
	32,000.	4000 ft. of pressure line at $8./ft.
	$ 103,000.	Peripherals cost (manholes, clean-outs, lateral lines hoodups, septic tank replacements, etc.)
	$ 700,000	

The total cost of the Dexter Project is $1,086,000. due mainly to a much larger collection system than would probably be necessary in this case. The recirculating sand filter and disposal field is a set cost item and would not change. Installation of more or less manholes, cleanouts, septic tanks & hook-up lines could change the cost significiantly. Not building the recirculating sand filter portion could reduce cost significantly if feasible.

ISSUE III: ACCESS LIMITATION "BOATS"

Boat traffic on Clear Lake would cause human activities in the vicinity to increase. This activity would result in an increase in pollution related to litter, sewage and the general human activities in addition to oil and gas from motorized craft.

From a technical point of view, the decision to limit boat traffic and human activities related thereto is compatible with a decision to protect the watershed and minimize treatment in lieu of extensive treatment of water which has been allowed to become contaminated.

ISSUE IV: NATURAL RESOURCE DESIGNATION AND STRATEGIES NECESSARY TO PROTECT THE CLEAR LAKE WATERSHED

Under Goal 5 the Clear Lake Watershed should be inventoried Natural Resource Area. The Goal 5 planning guidelines require that natural resources should be conserved and protected. Strategies for the protection may include the following:

1. Building or lot alteration would be prohibited within specified distances from any surface water in the watershed dependent on physical site characteristics.

2. Transport of all sewage effluent from human activity to an acceptable location outside the natural resource conservation area would be mandated.

3. Restrictions on application of fertilizers, pesticides and other potentially damaging materials within the natural resource conservation area would be established.

4. Access to watershed and associated facilities would be limited within the natural resource conservation area.

5. Specific limitations and restrictions for the use of alternate sewage treatment and disposal systems such that current nitrate impact will be diminished or eliminated would be developed.

6. Develop a plan to restrict/eliminate boat activity on Clear Lake and Collard Lake.

7. Restrict vegetation removal in the watershed such that erosion and subsequent water quality degradation are reduced. Logging may be permitted under circumstances which do not adversely impact the primary goal of the natural resource conservation area. Vegetation removal within specified distances from surface water would be prohibited in the watershed dependent on physical site characteristics.

8. Minimize road construction in all future development and design roads to

reduce runoff to surface waters within the natural resource conservation area.

9. Commercial development that might adversely affect the natural resource conservation area goals will be prohibited if potential for hazardous material spills or associated impacts are inherent in the business operations, such as service stations, marinas, auto/truck repairs facilities, or other similar proposals.

10. Control animal populations which might adversely affect the quality of the water sources within the natural resources conservation area, such as a limit on beaver populations, especially near Clear Lake.

ISSUE V: INDIVIDUAL SEWAGE TRANSPORT

The cost associated with a pumped effluent system for a single residence would be based on the following assumptions:

1. Housing in the watershed is currently required to use a pumped, low head effluent disposal system.

2. Additional costs associated with transport to disposal would be:

   a. Cost of additional length of piping to disposal site;
   b. Possible cost of larger diameter piping to reduce friction loss;
   c. Possible cost of larger pump for longer pumping distances or elevation changes;
   d. Possible cost associated with access to disposal area outside of watershed by purchase or easement agreement.

   Because of the highly variable nature of the problem no set cost could be estimated.

3. Other alternatives that are possible, such as composting toilets, in some specific instances.

ATTACHMENTS:

1) WLPC Resolution - WLPC 82-8
2) City of Florence Resolution 108
3) Correspondence:
   a. Heceta Water District
   b. State Water Resource Department
   c. State Health
4) Summary Report North Florence Dunal Aquifer Report

FINDINGS OF FACT

Pursuant to ORS 197.520(2), the Board finds as follows:

1. The Clear Lake Watershed provides domestic water supply through the Heceta Water District for improved property within the district boundaries and 30% of the water supply needs for the City of Florence.

2. Existing treatment facilities for water provided by the Heceta Water District do not include filtration due to the existence of a unique source of high quality raw water source currently available from Clear Lake.

3. Existing land development in the Clear Lake Watershed has brought this area to the point that new land development would exceed the carrying capacity of the Clear Lake Watershed. If this area were left to develop without restrictions at this time, improvements to Heceta Water District's facilities beyond their capability would be required. See memo of Margaret Mahoney to Board of County Commissioners of 10/5/82, additional information issue 1 and 11.

4. A period of time is required to evaluate filtration alternatives, sewerage alternatives and land use control measures within the Clear Lake Watershed to properly protect the water supply needs for existing and future residents of the North Florence area.

5. The Environmental Quality Commission has been asked to limit the area of restriction to those areas directly impacted by the limited public facility

6. Lands are available outside the boundaries of the Clear Lake Watershed to accommodate the housing and development needs for the area during the period of time required.

7. New development may occur within the Clear Lake Watershed subject to a demonstration of removal of sewage through transport outside the defined boundaries.

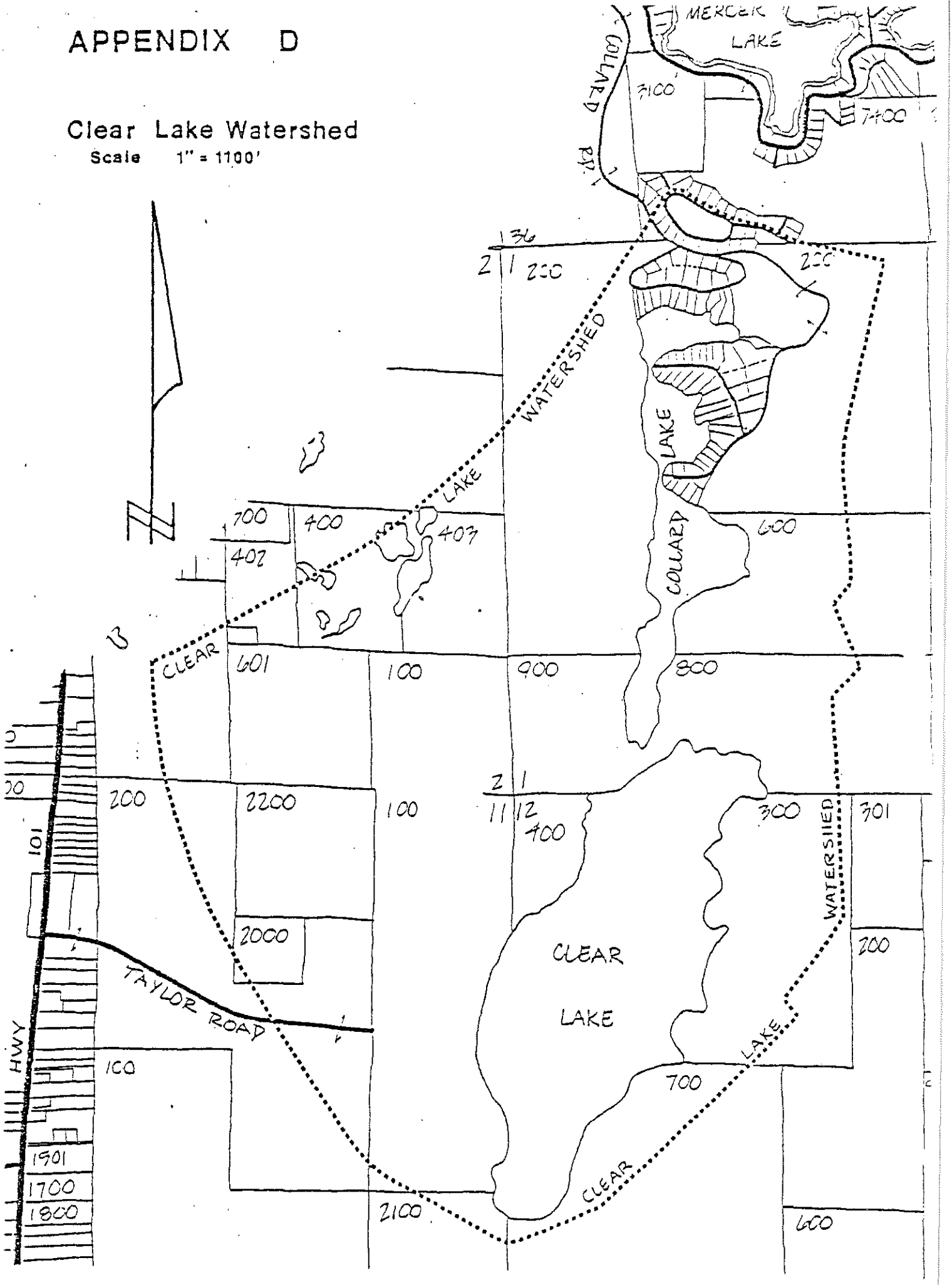
8. A status report on progress towards solution of the facilities alternatives and development control strategies will be reviewed by the West Lane Planning Commission every six months during the period of time the moratorium remains in effect and the review and comments will be submitted to the Board.

9. The reports, resolutions and recommendations of the City of Florence and the West Lane Planning Commission, already Exhibits to this Order, are incorporated as Findings in support of this decision, as if fully set forth herein.

APPENDIX D

Clear Lake Watershed

Scale 1" = 1100'



U.S. ENVIRONMENTAL PROTECTION AGENCY ATTACHMENT G

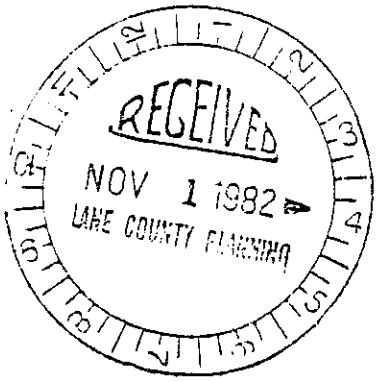
REGION X

1200 SIXTH AVENUE

SEATTLE, WASHINGTON 98101

OCT 1 2 1982

REPLY TO ATTN OF: M/S 433



Neil J. Mullane
208 Contract Administrator
Department of Environmental Quality
PO Box 1760
Portland, OR 97207

Dear Neil:

EPA has completed its review of the final report on the North Florence Dunal Aquifer Study prepared under EPA grant #P000166. The final report recommends adequate measures for protection of the aquifer and is hereby approved. For the record, the report incorrectly references (on page 67) EPA's turbidity standards for drinking water. The correct standards are enclosed and should be forwarded to Lane COG.

Our review of this project indicates that all work plan commitments have been met except for adoption of the aquifer protection alternatives by the Lane County Board of Commissioners and the Environmental Quality Commission (EQC). EPA hereby authorizes final payment of this project on the understanding that County adoption will take place by December. In addition, the North Florence Aquifer Study supplement (Task E., Analysis-Monitoring) funded under grant P000182, is also approved and final payment on this task is also authorized.

We look forward to County and EQC adoption of the North Florence Dunal Aquifer Study and the Governor's certification in December. Formal EPA approval of this project as part of the Oregon Statewide Water Quality Management Plan will take place after certification.

Should you have any questions, do not hesitate to call me or Debbi Yamamoto at (206) 442-1217.

Sincerely,

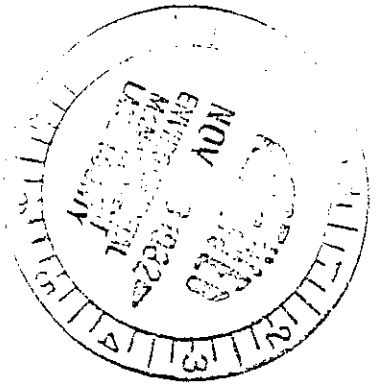
Lisa Corbyn

Lisa Corbyn
Chief, Water Quality Branch

Enclosure

ATTACHMENT H

LCOG Lane Council of Governments
NORTH PLAZA LEVEL PSB 125 EAST EIGHTH AVENUE EUGENE, OREGON 97401 / TELEPHONE (503) 687-4283



November 4, 1982

Mr. Roy Burns
Manager
Lane County Building
and Sanitation Division
125 East 8th Avenue
Eugene, Oregon 97401

Dear Roy:

The Lane Council of Governments Board of Directors, at its October 28, 1982 meeting, reviewed the North Florence Dunal Aquifer Study. The Board formally accepted the June, 1982 Final Report and endorsed the actions taken by the Lane County Commissioners on October 27, 1982 to protect the aquifer.

Sincerely,

Oliver P. Snowden, P.E.
Division Manager, Transportation,
Energy and Environmental Quality

OPS:bp/DB

ATTACHMENT I

VICTOR ATIYEH
GOVERNOR

Water Resources Department

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310 PHONE 378-8455
or
1-800-452-7813
(message line)

August 4, 1982

Roy Burns, John Stoner,
and Gerritt Rosenthal
Lane County and
Lane County Council of Governments
125 East 8th Avenue
Eugene, OR 97401

Gentlemen:

Thank you for the opportunity to review the recently completed dunal aquifer study in North Florence, Oregon.

The report recognizes the sensitive nature of porous dunal aquifer sheets located along the Oregon coast and provides excellent data for control and management of land and water uses within the study area. The report is a valuable addition to the technical literature and will be of great assistance to future investigations of coastal aquifers in Oregon.

The hydrology modeling of the area was a significant part of the study and provides rate of recharge and subsequent loading rates for waste discharge to the aquifer.

Protecting the pristine nature and drinking water quality of the Clear Lake Watershed will be an important accomplishment for all levels of city, county, and state government. The Water Resources Department will support a positive plan of sewage collection, treatment, and local controls to reduce loading of waste water to the sensitive dunal aquifers at Florence. Protection of the coastal sand dune aquifers is necessary to insure long term public water supplies for the future.

The technical report is excellent and all participants should be congratulated.

Sincerely,

William S. Bartholomew

WILLIAM S. BARTHOLOMEW
Hydrogeologist

WSB:wpc
1965B

ANALYSIS AND FINDINGS

General Findings

1. The Florence dunal sand aquifer is of a generally uniform nature and is approximately 100 feet thick. It is an unconfined aquifer.

2. The North Florence Dunal Aquifer contains only two hydrologically distinct units; the CLear Lake Watershed; and the general North Florence Aquifer.

3. Flow in the aquifer tends to move radially away from a recharge zone about one mile west of Collard Lake. Most flow is toward the Pacific Ocean. The Siuslaw River and Sutton Creek are also boundaries.

4. Annual recharge averages 4.36 feet per year over the aquifer. Recharge water in the dunal sands tends to stack in layers and move vertically, as well as horizontally up to a depth of 100-130 feet. The water from each recharge season is largely unmixed with water from the previous recharge season.

5. The Major controlling factors of the aquifer hydrology are the uniformity of the sands and variations in recharge. Recharge is dependent primarily on rainfall variations and differences in evapotranspiration between vegetation, open sand and water areas.

6. Modeling was useful in predicting the boundaries between the Clear Lake watershed and the general North Florence Aquifer and necessary to predict changes in those boundaries between normal and drought conditions. These watershed boundaries do not change dramatically between normal and drought or increased pumpage conditions.

Water Quality

7. The dunal sand aquifer is a generally uncontaminated aquifer that shows sensitivity to human development.

8. Average nitrate-nitrogen levels range between 0.03 and 0.06 mg/L throughout the aquifer except where influenced by fertilization, on-site sewage and solid waste disposal.

9. Indicators of bacterial contamination are uncommon throughout the aquifer except near sources of local contamination. Most positive tests were at surface sites.

10. Iron concentrations are low (.05-.15 mg/L) in the shallow recharge portions of the aquifer. Discharge area concentrations are in the 0.2 to 0.7 mg/L range. Iron concentrations greater than 0.3 mg/L generally require treatment.

11. Analysis of water from deeper levels of the aquifer (below the top 30 feet) showed iron concentrations in excess of 5.0 mg/L.

12. The water quality of surface waters in the area is generally good but shows some indication of bacterial contamination. Clear Lake is generally least contaminated (<1/100 ml). The lakes and streams also show significant seasonal variation in nutrient levels. Clear Lake is the lowest in nitrate and Sutton Lake (Sutton Creek outflow) is the highest. Reduction in water quality appears to be directly related to the increase in human activity on or near those waters.

13. Generally, vegetation appears to contribute only a small portion of the nitrate-nitrogen found in ground or surface waters compared to human waste disposal. Shore pine forests appear to reduce nitrate-nitrogen below background levels.

14. Subsurface disposal of sewage waste is the primary human caused source of nitrate-nitrogen. Except for the landfill, the school district and the golf course, there are no other significant human caused nitrate sources within the North Florence watershed.

Clear Lake

15. Water flows southeastward into Clear Lake from an aquifer recharge zone one mile west of Collard and Clear Lakes, as well as from the north through the Collard Lake drainage and from runoff on the hills to the east.

16. The Clear Lake Watershed (dunal aquifer plus uplands) comprises approximately 1040 acres with 190 acres of lake area and 850 acres of land area. The Dunal Aquifer portion is 518 acres and the uplands 332 acres in size.

17. Current nitrate-nitrogen levels in Clear Lake average 0.05 mg/L which is 67% greater than the concentrations in the dunal aquifer to the west (.03 mg/L). Indications are that the Collard Lake area and the uplands presently contribute one-half to two-thirds of the nutrient loadings to Clear Lake.

18. Clear Lake is currently marginally "oligiotrophic," meaning that it is on the threshold at which increased nutrient levels will stimulate increased algal growth. Clear Lake is nitrate-limited and has sufficient phosphorous for such increased growth. Best estimates indicate that any nitrate-nitrogen increases beyond the current average of 0.05 mg/L will lead to algal growth.
19. In order to prevent increases to Clear Lake nitrate-nitrogen levels, increases in nitrate-nitrogen concentration in the dunal aquifer or upland watersheds must be less than 0.01 mg/L.

20. Based on a policy of no degradation of Clear Lake a total of 8.7 dwelling units should be allowed on the entire 1040 acre watershed.

(850 acres of land surface). There are currently 30 units in the watershed on septic systems, 10 of which are permanently occupied. The impact from the current systems on nitrate-nitrogen levels in Collard Lake may be only partially seen at this time.

General North Florence Aquifer

21. Throughout much of the remainder of the aquifer, nitrate-nitrogen levels are near background levels of 0.03 mg/L. This level assumes contributions only from rainfall and is represented by the open dune areas.

22. Based on the planning standard of 5.0 mg/L nitrate-nitrogen calculations indicate an additional loading of 58 lbs. per acre per year nitrate-nitrogen will not exceed this value using a stirred tank model. This translates to 2.9 d.u. per acre with on-site systems using loading rates of 20 lbs. per d.u. per year.

23. Nitrate-Nitrogen loading considerations for the Florence Well Field are identical with those for the general North Florence Aquifer.

Landfill

24. Flows in the area of the Florence landfill show that the site is a discharge zone with rapid outlet to the Siuslaw Estuary.

25. Ground water quality downgradient of the landfill shows noticable aquifer degradation from organic materials, ammonia and minerals.

26. There are no current or predicted uses of the groundwater downgradient from the landfill, based on the model prediction of flow channels. The concentration of landfill materials in the ground water does not appear to have a significant impact on the estuary.

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: Request for Adoption of Rules for the North Florence Dunal Aquifer in Lane County that would:
(1) Modify Geographic Area Rule OAR 340-71-400(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 Management Plan, OAR 340-41-270(1) and Establish a Moratorium on New On-Site Waste Disposal Systems, OAR 340-71-460(6)(f).

DATE: March 16, 1983

Summary of Procedure

Pursuant to public notice, a hearing was conducted at the City Council Chambers in Florence, Oregon, at 7:00 p.m. on February 16, 1983. The purpose was to receive public comment on draft rules intended to regulate the Clear Lake watershed and the North Florence Aquifer.

Summary of Testimony

Shirley Merz asked whether the proposed moratorium on DEQ permits for new construction of septic systems would lapse on expiration of the two-year county-imposed building moratorium. Informed that the rule did not contain a stated expiration date, she expressed opposition to the proposed rule.

Written testimony submitted by her attorney reviewed some of the history of the community effort toward devising a "middle ground" "equitable solution" for preserving the quality of the Clear Lake watershed. According to her attorney, support for a moratorium was predicated on the moratorium being time-specific. The Commission is urged to include a two-year time limitation as proposed by the community groups and included in the Lane County building moratorium. Mrs. Merz could then strongly support the proposed action.

Dave Clark, an attorney practicing in Florence, objected to DEQ's failure to provide individual notice of the rule proposal to the 150 or so landowners whose property is within the moratorium area. He asked a number of questions designed to help him understand the effect of the rule proposals. He learned that Lane County septic tank records (rather than a physical investigation) were used to provide an inventory of current systems in developing the moratorium recommendation. Mr. Clark noted that calls to him from property owners indicated that property in the subdivision around Collard Lake is most severely affected by the proposal.

Shirlee Gardinier supports adoption of the proposed rule because it places the burden of sewage disposal costs on landowners who benefit directly from development, rather than requiring taxpayers of the local water district to subsidize development.

Ray Bishop does not object to the idea of a moratorium but believes compensation should be provided to landowners whose use of their property is being restricted. He fears that implementation of the proposed DEQ moratorium may work as a disincentive to the county to develop a sound proposal for solution of the area's water supply and disposal problems. Absent such a solution, Mr. Bishop opposes the rule as proposed.

Laura Gillispie, a City of Florence Building Inspector, stated the city's support of Department's recommended Alternative 7.A.(2) of the Clear Lake Watershed Alternative and Alternative 7.B.(3) of the General North Florence Aquifer Alternatives.

Gary Parks, a local landowner, views government activity involving the aquifer as a communist conspiracy. His ability to develop his property has been frustrated first by local land use requirements and later by moratoria generated by groundwater studies. He believes that government land use regulation is tantamount to condemnation of his property entitling him to compensation.

Donnie Parks shares in his brother's demand to be compensated because of restrictions imposed on his use of land within the proposed moratorium area.

Roy Burns, Lane County Planning & Community Development Manager, states that Lane County believes the proposed rule to be consistent with actions taken by the West Lane Planning Commission, the City of Florence, and the Board of County Commissioners. He expressed Lane County's support of the proposed modifications to the Geographic Regional Rule and, further, the establishment of special area designation for the Mid-Coast Basin Water Quality Management Plan. He reports that Lane County has initiated action within the county to protect the Clear Lake watershed portion of North Florence by placing both building and land division moratoria on the watershed. He reports that Lane County believes it appropriate to place Clear Lake within a special protection category that will, for the first

time within the state, recognize a demonstrated exchange and relationship between surface and ground waters. In addition, Lane County recognizes the commitment the state and Lane County has made to the people of North Florence affected by this action and the need to assess, evaluate and compare alternatives to protect the water supply needs and further the aesthetic qualities of Clear Lake while balancing individual and public ownership questions. It is apparent that the North Florence Dunal Aquifer study warrants a lifting of restrictions on a significant portion of the North Florence Dunal Aquifer in terms of permitting additional disposal systems in the area. The study supports the Geographical Regional Rule to ease the sewage load rates for the remaining portion. He sees adoption of the proposed rules as a starting point. Since the Lane County Board of Commissioners took action in December, they have been awaiting action by the state before proceeding with an alternatives assessment.

Subsequent to the hearing, Roy Burns provided a new map of the watershed boundary and a new description of the boundary based on field verification for lands in the north-northeast portion of the watershed. The new map and description more accurately follow the ridge line. Three parcels which have been legally divided may now be developed to the extent that they are outside the moratorium boundary.

Dean Spencer owns property which is divided so that half of it is within and half outside the moratorium area. He is reforesting portions of the property and finds it incongruous that he is permitted to use nitrogen-based fertilizer in amounts that exceed any nitrogen that would normally be produced by a subsurface septic disposal system.

Randall S. Hledik, writing for Thomas E. Wildish and Florence Land Company, informs the Commission that the property owners of Tax Lot 1200, Section 2-3, T. 18 S., R. 12 W., and Tax Lot 200, Section 11, T. 18, S., R. 12 W., offer no objection to the modifications outlined in the memorandum provided the metes and bounds description of the Clear Lake watershed as written in Attachment E does not expand the boundary which is generally depicted in Attachment F (entitled "Appendix D Clear Lake Watershed").

Judy and Walt Fleagle seek assurance they will be able to build a house on their property located on the upper edge of the Clear and Collard Lake watershed. The property is within the building moratorium area established by Lane County. (NOTE: Included in their recounting of the difficulties encountered in the development of their property is the information that they have already installed a septic system. Consequently, they are unaffected by the proposed rules which do not restrict building on property for which septic tank approval is already obtained.)

The Fleagles suggest filtration of Clear Lake water as preferable to a building ban. The cost of filtration should be shared by all Heceta water users.

An alternative would be mandatory pumping of newly constructed septic tanks with pumping costs paid by individual property owners.

Gerritt Rosenthal supports the proposed recommended rule changes, noting that it is a luxury to be able to prevent the degradation of a resource rather than working at remedial measures. In his view, significant recent changes in state policy on ground and surface waters, as well as a significant shift in the role of the federal government in such matters, make it timely to update basin plans for implementing state groundwater policy as well as providing special protection where needed.

LZK:k
HK1694

DIRECTOR'S STATEMENT

Agenda Item H, April 8, 1983, EQC Meeting

Proposed Repeal of Mid-Willamette Area Nuisance Rule, OAR 340-29-020, In Response to Comments by Legislative Council.

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.

Peter Bosserman of the Air Quality Division is present to answer any questions you might have.

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. H, April 8, 1983, EQC Meeting

Proposed Repeal of Mid-Willamette Area Nuisance Rule, OAR 340-29-020, In Response to Comments by Legislative Counsel

Background and Problem Statement

Background

OAR 340-29-020, Nuisance Rule, Attachment 1, was originally adopted by the now defunct Mid-Willamette Valley Air Pollution Authority (MWVAPA). When MWVAPA was dissolved in July, 1975, DEQ re-assumed air quality control responsibility in the MWVAPA region and the MWVAPA rules, standards and orders continued in effect until superseded by action of the Commission (pursuant to ORS 468.560).

On June 11, 1982, the EQC took action to repeal the MWVAPA rules and re-adopt those, including OAR 340-29-020, which were not duplicative of existing DEQ rules and which were deemed to be useful. Since OAR 340-20-020 had been an effective rule of MWVAPA (and later the Department) since its original adoption (last revised in May, 1970), the Department staff did not question its legality or constitutionality.

On October 22, 1982, the State of Oregon's Legislative Counsel Committee sent a letter and report ARR 4229, Attachment 2, stating that the rule did not appear to be within the intent and scope of the enabling legislation, and stating that the rule violated the vagueness doctrine.

On January 14, 1983, the Commission authorized a hearing to consider repeal of OAR 340-29-020. A hearing was held in Salem on February 16, 1983. No one came to the hearing or has offered testimony on the proposed repeal of the "Nuisance" rule.

Problem Statement

The Mid-Willamette area "Nuisance" rule is now before the Commission for possible repeal, in response to concerns of the State of Oregon's Legislative Counsel Committee.

Rulemaking Statement

A "Rulemaking Statement" is Attachment 3 of this memorandum. The Commission's authority to act is cited, among other things, in the Rulemaking Statement.

Alternatives and Evaluation

The Commission could direct the staff to draft out the vagueness in the rule's language, and to research better statutory support for the rule. However, since the rule has had so little use, it seems the least amount of effort to deal with this problem would be to repeal the rule.

Rulemaking Procedure

The Department staff has carried out due process for preparing to repeal the rule. The hearing on February 16, 1983 was advertised, and over 300 notices of the subject of the hearing were mailed out. One party phoned in for, and was sent, the complete Agenda Item from the January 14, 1983 EQC meeting on this subject. No other interest has been shown to the Department in this matter by anyone.

Discussion

The DEQ Willamette Valley Regional staff reports that the subject rule has seen fairly limited use in the past and almost none in recent times, and they do not foresee a future need for this rule. Only one person recalled only one case where the rule was used; see Attachment 4.

The staff, upon review, believes that adequate authority is available under ORS 468.115 (see Attachment 1) to deal with possible releases of air pollutants which are not specifically limited by DEQ standards, but which might present an imminent and substantial endangerment to health.

Summation

1. OAR 340-29-020, an old Mid-Willamette Valley Air Pollution Authority rule, was adopted as an OAR by the Commission on June 11, 1982. The rule is aimed at abating miscellaneous air pollution "nuisances".

2. The 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.

3. Further staff review reached a concensus that the Department's air program could be effectively administered without OAR 340-29-020, since only one case of its actual use in recent times can be cited. Other remedies are available to deal with conditions that might present a health hazard, not addressed by specific Department rules.

4. The hearing on February 16, 1983 did not receive any testimony on this matter.

5. After evaluating the arguments for repealing, repairing, or retaining the rule, the Department believes repealing the rule is the most cost-effective solution to the problem cited by the Legislative Counsel.

Director's Recommendation

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

Bill

William H. Young

Attachments:
1. Rule 340-29-020 with ORS 368.115
2. Legislative Counsel letter October 22, 1982 and staff report ARR 4229
3. Rulemaking Statements
4. DEQ Interoffice Memo, St. Louis to Weathersbee, November 2, 1982, concerning proposed repeal of 340-29-020

P.B. Bosserman:a
AA3089
229-6278
March 10, 1983

"Nuisance Rule" Proposed for Repeal

[Other Emissions

340-29-020 It shall be unlawful for any person to cause or permit the emission of an air contaminant including an air contaminant or emission that is not otherwise covered by these regulations, if the air contaminant causes or tends to cause injury, detriment, nuisance or annoyance to any considerable number of people or to the public or which causes or has a natural tendency to cause injury or damage to business or property so as to constitute a public nuisance.]

Oregon Revised Statute (ORS) WHich Remains in Force to Deal With Pollutants Not Covered by Specific Standard, But Which Could Present a Health Hazard.

468.115 Enforcement in cases of emergency. (1) Whenever it appears to the Department that water pollution or air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons, at the direction of the Governor the Department shall, without the necessity of prior administrative procedures or hearing, enter an order against the person or persons responsible for the pollution contamination requiring the person or persons to cease and desist from the action causing the pollution or contamination. Such order shall be effective for a period not to exceed 10 days and may be renewed thereafter by order of the Governor.

(2) The state and local police shall cooperate in the enforcement of any order issued pursuant to subsection (1) of this section and shall require no further authority or warrant in executing and enforcing such an order.

(3) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the source of water pollution or air pollution or air contamination is located shall compel compliance with the order in the same manner as with an order of that court. (Formerly 449.980)

ATTACHMENT 2

THOMAS G. CLIFFORD
LEGISLATIVE COUNSEL

S101 STATE CAPITOL
SALEM, OREGON 97310
AREA CODE 503
378-8148

STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

October 22, 1982

To: Office of the Director
Department of Environmental Quality
P.O. Box 1760
Portland, Oregon 97207

From: Robert W. Lundy
Chief Deputy Legislative Counsel

Enclosed is a copy of our staff report ARR 4229, reflecting our review of rules of the Environmental Quality Commission relating to air pollution control in the Mid-Willamette Valley area

The staff report includes a negative determination under Question 1 in respect to one of the rules, and also a determination that the same rule raises a constitutional issue.

The Legislative Counsel Committee requests your response to those determinations. The Committee wishes to consider that response when it considers the report at its next meeting.

We would appreciate receiving that response by November 12, 1982.

Encl.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 26 1982
AIR QUALITY CONTROL

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 25 1982
OFFICE OF THE DIRECTOR

LEGISLATIVE COUNSEL
S101 State Capitol
Salem, Oregon 97310

ARR Number: 4229

October 20, 1982

Administrative Rule Review
REPORT
to the
Legislative Counsel Committee
(Pursuant to ORS 183.720)

State Agency: Environmental Quality Commission

Rule: Air pollution control in Mid-Willamette Valley area

These rules were filed with the Secretary of State on June 18, 1982, and became effective on that date.

The rules consist of new rules (OAR 340-29-011, 29-020 and 29-030), amendments of existing rules (OAR 340-29-001 and 29-005) and repeal of an existing rule (OAR 340-29-010). The rules include a description of purposes and application, definitions of terms and restrictions on the emission of odorous matter, other air contaminants and large particulate matter.

The rules replace previous air pollution control rules for Benton, Linn, Marion, Polk and Yamhill Counties. The previous rules adopted by reference the rules and regulations of the former Mid-Willamette Valley Air Pollution Authority.

The stated need for the rules is as follows:

> Most of the Mid-Willamette Valley APA rules are duplicated in the OARs and only a few unique Mid-Willamette rules are needed and useful. As a housekeeping measure, most of the Mid-Willamette rules need to be repealed and only those parts of the rules which are needed in the Mid-Willamette counties above and beyond the generally applicable OARs should be integrated into the OAR. This was done in the past when the Columbia-Willamette Air Pollution Authority ceased to exist.

DETERMINATIONS
(Questions 1 and 2 pursuant to ORS 183.720(3))
(Question 3 pursuant to request of Committee)

1. Does the rule appear to be within the intent and scope of the enabling legislation purporting to authorize its adoption? No, in part. The enabling legislation is ORS 468.020 and 468.295.

2. Does the rule raise any constitutional issue other than described in Question 1? Yes.

3. Does violation of the rule subject the violator to a criminal or civil penalty? Yes. A civil penalty is imposed by ORS 468.140(1).

LEGISLATIVE COUNSEL
S101 State Capitol
Salem, Oregon 97310

ARR Number: 4229

October 20, 1982

Administrative Rule Review
REPORT
to the
Legislative Counsel Committee
(Pursuant to ORS 183.720)

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DISCUSSION AND COMMENT

Intent and scope of enabling legislation

One of the new rules of the Environmental Quality Commission (Commission) relating to air pollution control in the Mid-Willamette Valley area does not appear to carry out a pertinent statutory directive and, for that reason, to be within the intent and scope of the enabling legislation.

The rule in question (OAR 340-29-020) reads:

> It shall be unlawful for any person to cause or permit the emission of an air contaminant including an air contaminant or emission that is not otherwise covered by these regulations, if the air contaminant causes or tends to cause injury, detriment, nuisance or annoyance to any considerable number of people or to the public or which causes or has a natural tendency to cause injury or damage to business or property so as to constitute a public nuisance.

ORS 468.020(1) sets forth the general authority of the Commission to "adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission." The Commission cites ORS 468.295(3) as the statutory authority for the rule in question. ORS 468.295(3) reads:

> (3) The commission may establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air contaminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof. (Emphasis added)

We do not perceive that the rule in question establishes any meaningful maximum levels for air contaminant emissions in the Mid-Willamette Valley area. Without those maximum levels, we believe the rule fails to comply with the directive found in the second sentence of ORS 468.295(3), and thus does not appear to be within the intent and scope of the enabling legislation.

Constitutional issue

OAR 340-29-020 also raises a constitutional due process issue because the vague langauage used in the rule fails to give adequate notice of prohibited conduct and makes the rule susceptible to selective enforcement. The issue is raised by the looseness of the rule phrases "tends to cause injury, detriment, nuisance or annoyance" and "considerable number of people." (Emphasis added)

Oregon case law states that a criminal statute or ordinance is void for vagueness "if language describing elements of the offense is so elastic that men of common intelligence must necessarily guess at its meaning." State v. Sanderson, 33 Or App 173, 176, 575 P2d 1025 (1978), citing City of Portland v. White, 9 Or App 239, 242, 495 P2d 778 (1972) Sup Ct review denied. A criminal statute will fail if it does not "provide any standard by which police, judges and juries can distinguish between innocuous and criminal acts." Id. at 177.

As indicated above, the rule in question does not establish any meaningful maximum levels for air contaminant emissions. Rather, a person causing or permitting an air contaminant emission is compelled to guess whether other people will react to the emission in a manner that will be considered "annoyance" and thus give rise to a violation of the rule. The rules do not define "annoyance." In State v. Sanderson the court analyzed the phrase "alarms or seriously annoys" in Oregon's harassment statute (ORS 166.065(1)(d) prior to amendment in 1981) and found the statute unconstitutional because "the phrase...gives no basis to distinguish between anti-social conduct which was intended to be prohibited and socially tolerable conduct which could not reasonably have been intended to be subject to criminal sanction." State v. Sanderson, 33 Or App 173, 176-177, 575 P2d 1025 (1978). In the same way, the rule phrase "tends to cause...annoyance" gives no basis to distinguish between tolerable air contaminant emission levels and those that will be unlawful.

Also, a person is not told by the rule in question what will constitute a "considerable number" of people who may be caused injury, detriment, nuisance or annoyance by an air contaminant emission. "Considerable" is defined in Webster's Third New International Dictionary as "rather large in extent or degree." That definition fails to add any certainty to the rule by providing a definite number of people that must be caused injury, detriment, nuisance or annoyance before a violation of the rule can be said to occur.

We are informed by a representative of the Commission that the rule in question was intended to be a "catch-all" rule that would allow the taking of action against an air polluter if enough complaints were received. That characterization of the rule makes it very much like the type of unconstitutional ad hoc legislation by enforcers described by the court in State v. Hodges, 254 Or 21, 457 P2d 491 (1969). In that case the court held unconstitutional a statute (ORS 167.210, repealed in 1972) that imposed a criminal penalty on a person for conduct that "manifestly tends to cause any child to become a delinquent child." As in the statute dealt with in State v. Hodges, the looseness of the language in the rule offends due process by providing a catch-all phrase that is an instrument of potential abuse.

We point out that the vagueness doctrine appears to be applied by courts in situations involving criminal conduct. Violation of the rule in question subjects the violator to a civil penalty; i.e., a monetary fine. The nature of the sanction for violation of the rule may, or may not, be such as to preclude application of the vagueness doctrine.

As indicated above, the rule in question does not establish any meaningful maximum levels for air contaminant emissions. Rather, a person causing or permitting an air contaminant emission is compelled to guess whether other people will react to the emission in a manner that will be considered "annoyance" and thus give rise to a violation of the rule. The rules do not define "annoyance." In State v. Sanderson the court analyzed the phrase "alarms or seriously annoys" in Oregon's harassment statute (ORS 166.065(1)(d) prior to amendment in 1981) and found the statute unconstitutional because "the phrase...gives no basis to distinguish between anti-social conduct which was intended to be prohibited and socially tolerable conduct which could not reasonably have been intended to be subject to criminal sanction." State v. Sanderson, 33 Or App 173, 176-177, 575 P2d 1025 (1978). In the same way, the rule phrase "tends to cause...annoyance" gives no basis to distinguish between tolerable air contaminant emission levels and those that will be unlawful.

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RULEMAKING STATEMENTS

for
Repealing Nuisance Rule Affecting Mid-Willamette Counties

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

STATEMENT OF NEED:

Legal Authority

This proposal repeals OAR 340-29-020. It is proposed under authority of the Environmental Quality Commission to repeal what it adopted.

Need for the Rule

The Legislative Counsel Committee has challenged the rule's:

a) basis from cited enabling legislation, saying it does not set a limit on a pollution source.
b) clarity, saying that the rule is unconstitutionally vague in several areas.

Principal Documents Relied Upon

1. Legislative Counsel letter October 22, 1982 to DEQ and staff report ARR 4229.
2. DEQ Interoffice Memo, St. Louis to Weathersbee, November 2, 1982, concerning proposed repeal of 340-29-020.
3. Oregon Environmental Quality Commission Agenda Item No. D, January 14, 1983, EQC Meeting, "Authorization for a Hearing to Consider Repeal of Mid-Willamette Area Nuisance Rule, OAR 340-29-020, In Response to Comments by Legislative Counsel".

FISCAL, ECONOMIC AND SMALL BUSINESS IMPACT STATEMENT:

Since the rule was only used once in a decade to relocate one smoke house, it can be estimated that the fiscal and economic impact of the rule and its repeal is negligible. No impact on small business is anticipated.

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 because rule use is so rare.

AA2875.3

ATTACHMENT 4

STATE OF OREGON

INTEROFFICE MEMO

TO: E.J. Weathersbee, AQD

DATE: Nov. 2, 1982

FROM: D. St Louis through John Borden

SUBJECT: AQ - MWVAPA Rule 29-020, "Other Emissions"
Willamette Valley Region

We concur with Legislative Counsel's comments and your proposal to repeal the above regulation.

The "Other Emission" regulation has seen fairly limited use in the past and almost none in more recent times. During better economic times, the Region was able to respond to nearly every citizen complaint and may have used the rule to:

1. Address emissions from welding, auto repair and other small shops in residential areas where scentometer standards weren't violated and only one party was impacted.

2. Control fallout on residential property that wasn't over 250 microns.

I recall only one instance of specific use. A residential smoke house annoyed a nearby neighbor in Mt Angel. I believe we used the rule to convince the responsible party to relocate the smoke house.

In summary, I don't forsee a lot of use for this rule.

D. St Louis

Young ETW Downs

AGENDA ITEM H - April 8 EQC meeting--
Proposed repeal of Mid-Willamette Area Nuisance Rule, OAR 340-29-020, in response to comments by Legislative Counsel.

PETERSEN — I guess my motion would be that we adopt the Director's Recommendation and direct the staff to do as Mr. Weathersbee said--to look into the possibility of adopting another rule that would not be unconstitutional but would cover this area which I feel we should have some rules on because I can envision a situation in which we might want to be able to regulate where it would not necessarily endanger public health but it would be a public nuisance.

WEATHERSBEE — I would agree.

PETERSON — OK. That's a motion.

BURGESS — I'll second that.

[The vote was unanimous.]

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: Amendment to Agenda Item No. I, April 8, 1983, EQC Meeting

Proposed Adoption of Amendments to Veneer Dryer Emission Limitations (OAR 340-30-020) and Revised Particulate Non-attainment Area Boundaries Within the Medford-Ashland AQMA.

Purpose of Amendment

A recommendation regarding the proposed amendments to the Medford veneer dryer emission limitations has been received from the Jackson County Air Quality Advisory Committee since the publication of the staff report. On March 28, 1983, the Advisory Committee reviewed the two alternatives identified by the Department in the staff report and unanimously recommended that the Commission adopt the second alternative outlined on page 4 of the staff report. This alternative, as recommended by the Advisory Committee, is that the Commission:

> "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)."

Evaluation

As outlined in the staff report, it is the Department's opinion that the first alternative is the most appropriate. The first alternative would outline specific potential future veneer dryer limits in a rule now as a notice condition, with adoption of either the potential limits or alternative control measures (either industrial or non-industrial) considered at a hearing by April 1, 1988. It is the Department's opinion that this is the more appropriate alternative since it would provide a specific secondary control plan and give notice of potential veneer dryer limits to those considering new or replacement control equipment for veneer dryers in the Medford-Ashland AQMA.

After reviewing the staff report, the Advisory Committee felt that the second, more general alternative would provide for the most informed and most objective decision to be made in 1988. The Advisory Committee apparently felt that the benefits of the more general and flexible alternative would outweigh the benefits of outlining specific potential veneer dryer limits in a rule now. Their reasons were:

- The new veneer dryer controls would be substantially more expensive than the other measures recommended in the Medford particulate strategy.

- Outlining potential future veneer dryer limits in the rule now could influence which measures are adopted in 1988. A more objective decision could be made in 1988 if potential future veneer dryer limits are not outlined in the rule now.

The Department still believes that there is some advantage to the first alternative, but the Department is not opposed to the second alternative supported by the Advisory Committee. As indicated in the staff report, either of the alternatives would probably be acceptable to EPA as a Medford secondary standard attainment strategy and either alternative would provide for an evaluation of progress and reevaluation of available control measures in 1988.

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.

Bill

William H. Young

AA3183
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229-6459
March 31, 1983

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Environmental Quality Commission

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MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. I, April 8, 1983, EQC Meeting

Proposed Adoption of Amendments to Veneer Dryer Emission Limitations (OAR 340-30-020) and Revised Particulate Nonattainment Area Boundaries within the Medford-Ashland AQMA.

BACKGROUND

The Environmental Quality Commission held a public hearing on the Medford particulate control strategy at its February 25, 1983 meeting. Following public testimony, the Commission adopted most of the particulate strategy. The adopted portions were:

1. Primary standard attainment strategy;
2. Secondary standard attainment strategy (except the requirement for upgraded veneer dryer controls);
3. New OAR 340-30-043 (Control of Fugitive Emissions);
4. New OAR 340-30-044 (Requirement for Operation and Maintenance Plan); and
5. Revised OAR 340-30-045 (Compliance Schedules).

Substantial testimony was received on two portions of the Medford particulate strategy and the Commission deferred action on these two items until the April 8, 1983 EQC meeting. These items were:

1. Revision of the particulate nonattainment area boundaries for the Medford-Ashland Air Quality Maintenance Area (AQMA); and

2. Revision of OAR 340-30-020 (Veneer Dryer Emission Limitations).

These two items were reviewed with the Jackson County Air Quality Advisory Committee (JCAQAC) on March 14, 1983. The JCAQAC comments are included in the following discussion of alternatives.

ALTERNATIVES AND EVALUATION

Item No. 1: Nonattainment Area Boundaries

When the Medford-Ashland area was designated as an AQMA in 1974, the entire AQMA was considered to be the particulate nonattainment area. Since that time, the Department has used a computer model, called the Climatological Dispersion Model, to simulate particulate concentrations within the Medford-Ashland AQMA. Recent ambient air monitoring data and the results of the Medford Aerosol Characterization Study were used to calibrate this model. The calibrated model has allowed the Department to define more precisely the geographical area exceeding the particulate standards.

The projected primary and secondary nonattainment areas within the Medford-Ashland AQMA are outlined in Attachment 1. EPA has indicated that growth sanctions apply to actual nonattainment areas and EPA has allowed States to redesignate boundaries to actual nonattainment areas to avoid any overly restrictive regulation of growth and development. As part of the Medford Particulate Plan, the Department proposed to revise the boundaries of the particulate nonattainment area to include only those portions of the AQMA projected to exceed particulate standards. The projected nonattainment area includes the Medford, White City and Central Point areas. It does not include the Eagle Point, Jacksonville, Talent and Ashland areas.

At the February 25, 1983 EQC meeting, there was some testimony in opposition to the reduced nonattainment area as proposed by the Department. There was considerable concern about the implications of reducing the boundaries. Attachment 2 compares the emission offset requirements for various sizes of new or modified industrial sources, from 5 to 100 or more tons per year (TPY), in the nonattainment area (NAA) versus the rest of the AQMA if the nonattainment area boundaries were reduced. An EPA sanction prohibits the construction of major new sources (greater than 100 TPY) or modified existing sources (greater than 25 TPY) in the designated nonattainment area until the primary particulate standard is attained.

The Department reviewed this issue with the JCAQAC on March 14, 1983. JCAQAC unanimously recommended that the particulate nonattainment area boundaries not be reduced at this time. These concerns were noted during the discussion:

- Revision of the boundaries might hinder the areawide cooperative and regulatory effort to reduce residential woodburning and other emissions.

- Precise modeling of emissions from new sources locating in the southern end of the valley might be difficult due to differences in meteorology from the Medford airport weather station.

- Revision of the boundaries might encourage industrial development in other areas of the valley which are not currently zoned for industrial development due to other land use concerns.

The Department initially proposed the reduced nonattainment area boundaries since the proposed boundaries would be a more precise description of the actual violation area and would not be more restrictive of economic growth and development than required by federal rules. But the Department is not opposed to keeping the AQMA boundaries as the particulate nonattainment area since the AQMA boundaries are supported by the local advisory committee.

Issue No. 2: Veneer Dryer Rule

In its June 1981 recommendations for the Medford particulate strategy, JCAQAC recommended that currently uncontrolled veneer dryers should be required to meet an emission limit of 0.3 pounds per thousand square feet of veneer dried (lb/Msf) as an annual average, and 10% maximum opacity by January 1984. JCAQAC also recommended that if the Medford AQMA remains in noncompliance with the primary particulate standard, then the existing controlled dryers should be required to meet an emission limit of 0.3 lb/Msf as an annual average, and 10% maximum opacity upon replacement of existing control devices or January 1992, whichever occurs first.

In the draft of the Medford Particulate Plan, the Department proposed a rule requiring veneer dryers in the Medford area to meet an emission limit of 0.25 to 0.40 lb/Msf (depending on dryer type) by July 1990 as part of the secondary standard attainment strategy. The Department modified the JCAQAC proposal from a primary standard contingency measure to a secondary standard attainment measure since the proposed time frame (1990 or 1992) was too long to be included in the primary strategy. In addition, the new veneer dryer controls appear to be necessary to attain the secondary standard. The Southern Oregon Timber Industries Association (SOTIA) testified at the February 25, 1983 EQC meeting that it opposed the rule as proposed by the Department. SOTIA requested that the proposed veneer dryer rule be modified to more closely agree with the JCAQAC recommendation.

Most of the discussion on the Medford veneer dryer rule has focused on these three elements: the trigger mechanism, the emission limits, and the compliance schedule. The original JCAQAC recommendation, the initial DEQ proposal, the SOTIA testimony, and the Department's recommended response are outlined below:

Subject	Initial JCAQAC Recommendation	Initial DEQ Proposal	SOTIA Testimony	DEQ Response Recommendation
Trigger Mechanism	Primary Standard	Secondary Standard	Primary Standard	Secondary Standard*
Mass Emission Limits (lb/Msf)	0.3	0.25 to 0.40**	0.30 to 0.45**	0.30 to 0.45**
Compliance Schedule	1984 or 1992***	1990	1992	1990*

* With public hearing in 1988 to reevaluate need.
** Depending on the dryer type.
*** Depending on whether existing dryers are uncontrolled or controlled.

The Department discussed the proposed veneer dryer rule with JCAQAC on March 14, 1983. The Department presented a further revised rule which was written with a specific trigger date (Attachment 3). There was not a clear consensus of JCAQAC on this issue: A motion to reaffirm the original JCAQAC recommendation died for lack of a second; a vote to modify the DEQ proposed rule to include a primary standard trigger mechanism failed; and a motion to approve the DEQ proposed rule ended in a tie vote. JCAQAC will continue the discussion on this issue at its March 28, 1983 meeting.

After reviewing the various comments, the Department has identified two alternatives for resolving the veneer dryer issue and thus completing the secondary standard attainment strategy. These alternatives are:

1. Adopt the proposed revisions of the veneer dryer rule which would require that a hearing be held no later than April 1, 1988 to determine if specific veneer dryer emission limits should be adopted (with limits as proposed by SOTIA) after June 30, 1990 or if other alternative strategies should be substituted in order to attain and maintain compliance with the State ambient particulate standards (Attachment 3); or

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).

Either of the above alternatives would result in implementation of new veneer dryer controls only if it was determined in 1988 that new veneer dryer controls were both necessary and the preferred control measure to attain and maintain the State ambient particulate standard. The 1988 decision date would allow the Department, JCAQAC, SOTIA and others to evaluate the most current ambient air monitoring data, airshed impacts by various source categories, and residential wood burning trends. Detailed chemical analyses of particulate samples, using the chemical mass balance techniques as done in the Medford Aerosol Characterization Study, are scheduled for 1983 and 1985. Updated residential woodburning surveys are scheduled for the 1982-83 and 1984-85 heating seasons.

The Department believes that the first alternative identified above is reasonable and the most appropriate alternative for resolving the veneer dryer issue. The Department's reasons are as follows:

- Secondary standard attainment strategies adopted by the Commission and approved by EPA for the Portland and Eugene areas outlined specific control actions that could be implemented to achieve compliance.

- Veneer dryer emissions contribute to the fine particulate and visibility problems in the Medford area.

- The proposed rule would identify the specific potential emission limits and provide notice to those considering new or replacement control equipment for veneer dryers in the Medford-Ashland AQMA that they should seriously consider state-of-the-art control equipment.

- The potential emission limits are based on proven and available technology.

- Over half of the veneer dryers in the Medford-Ashland AQMA already meet the potential emission limits.

- The Medford veneer dryer rule adopted in 1978 required that the control equipment be upgradable. The dryers potentially affected by the new rule are those dryers which were equipped with non-upgradable control equipment that marginally meets the existing rule.

- While the veneer controls would be more expensive than the other measures recommended in the Medford particulate strategy, the cost-effectiveness of the new Medford veneer controls are similar to the cost-effectiveness of other industrial controls required as part of the Portland and Eugene secondary standard attainment strategies.

- The new veneer dryer controls would only be required if determined in 1988 that the new veneer dryer controls were necessary and the preferred control measure.

Either of the alternatives identified above would probably be acceptable to EPA as a Medford secondary standard attainment strategy. Either alternative would provide for an evaluation of progress and a reevaluation of available control measures in 1988.

SUMMATION

1. The Environmental Quality Commission adopted most of the Medford particulate strategy at its February 25, 1983 meeting.

2. At the February 25, 1983 EQC meeting, the Commission deferred action on these two items:

   a. Revision of the particulate nonattainment area boundaries for the Medford-Ashland Air Quality Maintenance Area (AQMA); and

   b. Revision of OAR 340-30-020 (Veneer Dryer Emission Limitations).

3. The Department of Environmental Quality reviewed these two items with the Jackson County Air Quality Advisory Committee on March 14, 1983. At this meeting:

a. The Committee recommended that the particulate nonattainment area boundaries not be revised, but that the entire AQMA continue to be identified as the particulate nonattainment area; and

b. The Committee was split regarding the veneer dryer issue and scheduled another meeting on the veneer dryer issue for March 28, 1983.

4. The Department initially recommended that the nonattainment boundaries be reduced to the actual area projected to exceed particulate standards (i.e., the Medford-Central Point-White City area). But the Department is not opposed to retaining the AQMA as the nonattainment area boundaries since the local advisory committee supports it. Retention of the AQMA as the nonattainment area boundaries would be somewhat more protective of air quality than the reduced area, but could be more restrictive to industrial growth and development in the area.

5. There are two options available for addressing the proposed revision to the veneer dryer rule:

a. The specific potential future veneer dryer limits could be outlined in a rule now as a notice condition, with adoption of either the potential limits or alternative control measures (either industrial or non-industrial) considered at a hearing by April 1, 1988; or

b. A general requirement could be included in the Medford particulate strategy to reevaluate all available control measures and adopt by April 1, 1988 the necessary additional control measures to attain and maintain the State ambient particulate standard.

6. The Department believes that Option 5a is the most appropriate alternative since it would provide a specific secondary control plan and give notice of potential veneer dryer limits to those considering new or replacement control equipment for veneer dryers in the Medford-Ashland AQMA.

DIRECTOR'S RECOMMENDATION

Based on the Summation, the Director recommends that the EQC retain the boundaries of the Medford-Ashland AQMA as the particulate nonattainment area and adopt the proposed revision of OAR 340-30-020 (Veneer Dryer Emission Limitations) as outlined in Attachment 3.

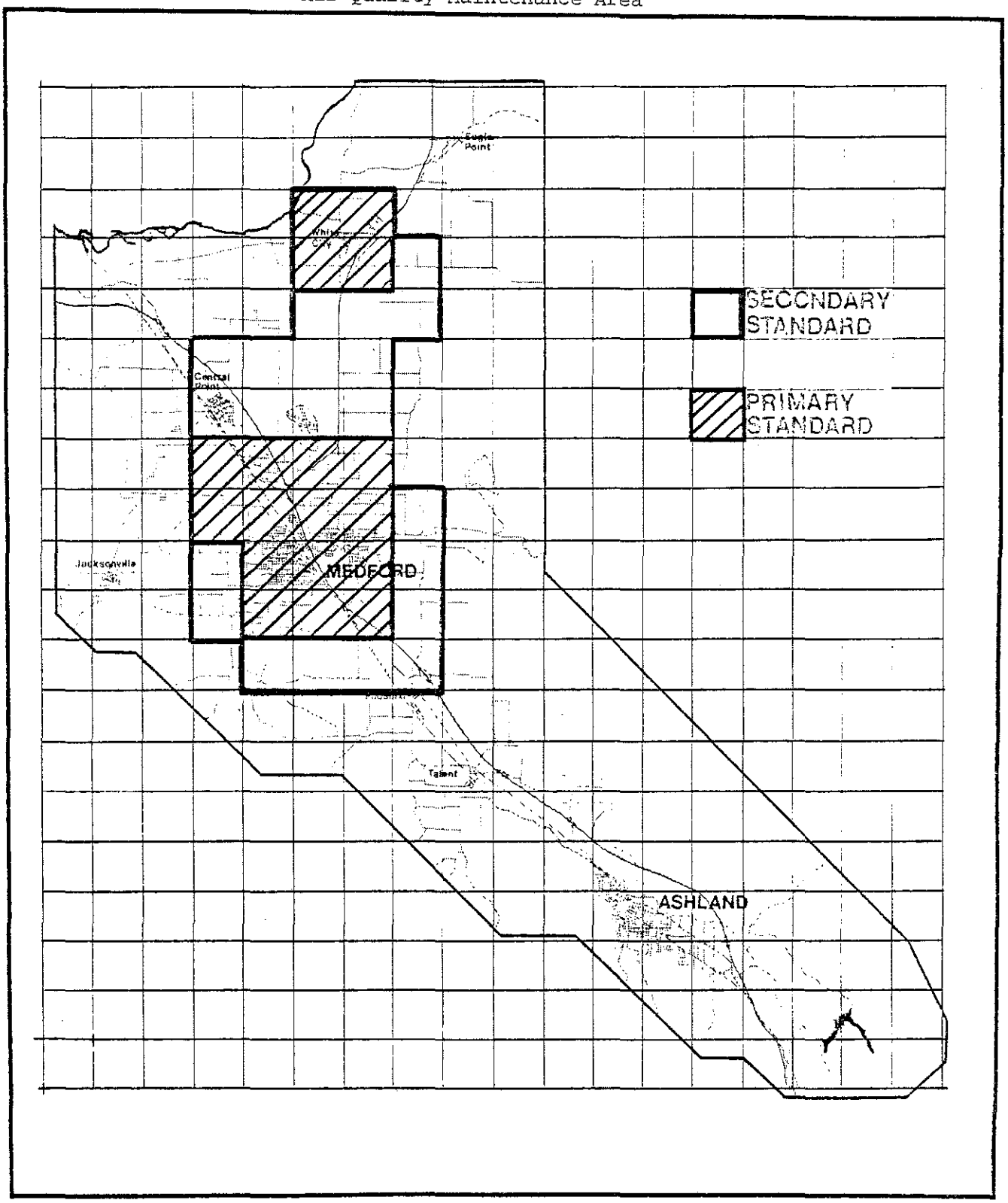
William H. Young

Attachments:
1. Projected Particulate Nonattainment Area Within the Medford-Ashland Air Quality Maintenance Area.
2. Comparison of Offset Requirements for the Nonattainment versus Attainment Areas of the Medford-Ashland AQMA.
3. Proposed Revision of OAR 340-30-020 (Veneer Dryer Emission Limitations).
4. Potential Amendment to the Medford Particulate Plan.

J.F. Kowalczyk:a
AA3095
229-6459
March 17, 1983

Figure 4.10-4

Particulate Nonattainment Area
Within the Medford-Ashland
Air Quality Maintenance Area



COMPARISON FOR OFFSET REQUIREMENTS FOR THE NONATTAINMENT vs. ATTAINMENT AREAS OF THE MEDFORD-ASHLAND AQMA

Particulate Sources Size	Type	Offset Requirements NAA	Offset Requirements Rest of AQMA
Very Small (less than 5 TPY)	New or Modified	Not Required	Not Required
Small (5-25 TPY)	New or Modified	Automatically Required	Required if Needed to Prevent Significant Impact
Medium (25-100 TPY)	New Sources	Automatically Required	Required if Needed to Prevent Significant Impact
	Modification	Prohibited by EPA	Required if Needed to Prevent Significant Impact
Large (100 + TPY)	New or Modified	Prohibited by EPA	Required if Needed to Prevent Significant Impact

AA3098

Attachment 3

PROPOSED REVISED MEDFORD VENEER DRYER RULE

Veneer Dryer Emission Limitations

340-30-020 (1) No person shall operate any veneer dryer such that visible air contaminants emitted from any dryer stack or emission point exceed:

(a) A design opacity of 10%.

(b) An average operating opacity of 10%.

(c) A maximum opacity of 20%.

Where the presence of uncombined water is the only reason for the failure to meet the above requirements, said requirements shall not apply.

(2) No person shall operate a veneer dryer unless:

(a) The owner or operator has submitted a program and time schedule for installing an emission control system which has been approved in writing by the Department as being capable of complying with subsections (1)(a), (b), and (c).

(b) The veneer dryer is equipped with an emission control system which has been approved in writing by the Department and is capable of complying with subsections (1)(b) and (c), or

(c) The owner or operator has demonstrated and the Department has

agreed in writing that the dryer is capable of being operated and is operated in continuous compliance with subsections (1)(b) and (c).

(3) A hearing shall be held no later than April 1, 1988 to determine if veneer dryers should be required to meet the following particulate emission limits after June 30, 1990 or if other alternative control measures should be substituted in order to attain and maintain compliance with State ambient particulate standards:

(a) 0.30 pounds per 1,000 square feet of veneer dried (3/8" basis) for direct natural gas or propane fired veneer dryers;

(b) 0.30 pounds per 1,000 square feet of veneer dried (3/8" basis) for steam heated veneer dryers;

(c) 0.40 pounds per 1,000 square feet of veneer dried (3/8" basis) for direct wood fired veneer dryers using fuel which has a moisture content by weight of 20% or less;

(d) 0.45 pounds per 1,000 square feet of veneer dried (3/8" basis) for direct wood fired veneer dryers using fuel which has a moisture content by weight of greater than 20%;

(e) A maximum opacity of 10%;

(f) In addition to paragraphs (3)(c) and (d) of this section, 0.20 pounds per 1,000 pounds of steam generated.

The heat source for direct wood fired veneer dryers is exempted from rule 340-21-030.

[(3)] (4) Each veneer dryer shall be maintained and operated at all times such that air contaminant generating processes and all contaminant control

equipment shall be at full efficiency and effectiveness so that the emission of air contaminants are kept at the lowest practicable levels.

[(4)] (5) No person shall willfully cause or permit the installation or use of any means, such as dilution, which, without resulting in a reduction in the total amount of air contaminants emitted, conceals an emission which would otherwise violate this rule.

[(5)] (6) Where effective measures are not taken to minimize fugitive emissions, the Department may require that the equipment or structures in which processing, handling, and storage are done, be tightly closed, modified, or operated in such a way that air contaminants are minimized, controlled, or removed before discharge to the open air.

[(6)] (7) Air pollution control equipment installed to meet the opacity requirements of section (1) of this rule shall be designed such that the particulate collection efficiency can be practicably upgraded.

[(7)] (8) Compliance with the emission limits in subsection (1) shall be determined in accordance with the Department's Method 9 on file with the Department as of November 16, 1979.

MLH:z
AZ181
03/17/83

Attachment 4

POTENTIAL AMENDMENT TO MEDFORD PARTICULATE PLAN

Additions are underlined and deletions are enclosed in [brackets].

The Medford-Ashland Air Quality Maintenance Area State Implementation Plan for Particulate Matter, page 31, paragraph 2, would be replaced with:

> Rules for new industrial or non-industrial controls will be adopted by April 1, 1988 and implemented by July 1, 1990. The new rules would be expected to reduce annual particulate concentrations in Medford by about one ug/m^3.

Table 4.10.5-3 on page 42 would be modified as follows:

[Upgraded veneer dryer controls]		Rules to be
New industrial or non-industrial controls and compliance schedules.	1990	adopted by April 1, 1988.

MLH:z
AZ182
03/21/83

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MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. J, April 8, 1983, EQC Meeting

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.

Background

Mt. Mazama Plywood Company has been under variance from veneer dryer emission limit rule OAR 340-25-315(1)(b) since March 21, 1980. The Environmental Quality Commission granted an interim time extension to the variance on February 3, 1982 subject to the following conditions:

1. By March 1, 1983, submit a final control strategy in the form of detailed plans and specifications which are acceptable for construction approval by the Department.

2. By March 1, 1983, the Company shall submit a financial statement which documents the current profit and loss position of Mt. Mazama Plywood Company.

3. A Department report be made at the April, 1983 Commission meeting for the Commission to consider appropriate further scheduling of progress and a final compliance date.

The Company has submitted the required final control strategy plans and an updated report on the current financial status.

This Memorandum contains a review of the variance circumstances and presents additional facts for the Commission to consider in the granting of a variance extension.

Evaluations and Alternatives

A detailed overview of the variance history up to the December 3, 1982 EQC meeting is outlined in the staff report prepared for that meeting and is included herewith as Attachment 1.

Mt. Mazama Plywood Company has now submitted detailed control strategy plans (Attachment 2). The plan is to connect the exhaust stacks of each of three veneer dryers to a wet packed tower and filter system manufactured by Coe Manufacturing Company. The Department considers the basic equipment to be acceptable as an emission control system. However, the ability of the system, as proposed, to include control of the high volume of emissions from the wood-fired number 3 dryer cooling section remains uncertain at this time. A specific engineering solution for this problem must be developed and submitted for review. The Department has apprised the Company of its concern on this technical detail. The estimated cost of the project is approximately $450,000.

A review of the financial statements show that Mt. Mazama Plywood Company realized a profit of $380,047 during the first seven months of the current tax year. This is in contrast to a minor loss of $4,647 which occurred in fiscal year ending June 30, 1982.

Mt. Mazama Plywood Company is a subsidary of Mazama Timber Products, Inc., a Consolidated Corporation made up of both wood product and non-wood related businesses. The financial picture of the consolidated corporation is bleak and continues in a loss position. However, the loss was significantly less than experienced during the seven month period one year earlier. A brief financial history is presented in Attachment 3.

Lane Regional Air Pollution Authority (LRAPA) has advised the Department (Attachment 4) that other plywood plant operators have expressed concern about the continued variance granted to Mt. Mazama Plywood Company. The general perception of the operators is that, special circumstances notwithstanding, it is basically unfair that Mt. Mazama has not been required to comply with the rule in a timely fashion, and has had the benefit of operating for two years without the burden of initial capital outlay or the operating costs associated with a control system. LRAPA has attempted to quantify the economic disadvantage to veneer drying operators who have expended funds to install pollution control equipment. They also outlined non-compliance mitigation remedies which they implement on sources in their jurisdiction.

The quantitative economic disadvantage to a facility which has installed effective emission control equipment was roughly estimated by LRAPA, from their survey of local operators, to be in the range of $500,000 for the first year and $20,000 to $40,000 each year thereafter.

To mitigate economic advantages by facilities which have been closed and now wish to restart but have not yet installed necessary emission control hardware, LRAPA typically will impose operating restrictions on the source. This might be in the form of temporarily limiting operation to lower drying temperatures or to processing only low emitting veneer species to achieve compliance with visible emission standards until emission control hardware is installed and operating. They also require that emission control equipment be procurred or at least that signed purchase orders are issued before restart of the production facility.

Methods of reducing emissions from the Mt. Mazama Plywood Company dryers by process or production flow changes for an interim period were considered. The operation of the mill is somewhat unique in that it primarily processes "random" Douglas fir veneer. Wintertime plywood production is maintained using about 80% "inplant" dried veneer and 20% purchased as pre-dried. To lower the temperatures of the two steam heated dryers would probably be impractical since they already operate at depressed temperatures dictated by heating equipment limitations.

Three variance alternatives are identified:

1. Grant the variance with increments of progress and a final compliance date of August 31, 1984 as requested by the Company. The submittal of control strategy plans by March 1, 1983, a compliance increment of progress of the proposed schedule, has been achieved. This long lead time to final compliance may leave the Company with an extended continuing market advantage.

2. Advance the Company proposed final compliance by four months to May 1, 1984, advance the purchase order issue to July 1, 1983, and begin construction date to by December 1, 1983. This would reduce the period of any unequal market advantage and bring about uniform application of the veneer dryer emission control rule statewide. The July 1, 1983 date for purchase order issuance allows time for control system design refinements prior to final DEQ engineering plan review approval.

3. Implement the schedule of Alternative 2 and require the Company to initiate process operating controls to reduce visible emissions to compliance with the rule until final controls are operational. The Department feels that this alternative is impractical and that a permanent resolution to controlling dryer emissions is being implemented with reasonable rapidity.

The staff concludes that Alternative 2, the accelerated schedule, should be implemented which will provide demonstrated compliance of the veneer dryer rule by Mt. Mazama Plywood Company by no later than May 1, 1984. The time frame of the accelerated schedule is believed to be reasonable based on the

bid commitment of the major equipment supplier and experience of a similar installation. The plywood market has shown evidence of recovery in recent months. Mt. Mazama Plywood Company, an operating entity, has realized significant income improvements. The Department believes that Mt. Mazama Plywood Company has enjoyed an economic advantage over competitors for several months as a result of not incurring capital and maintenance costs of pollution control equipment. Controls should therefore be installed as soon as possible.

The Commission is authorized by ORS 468.345 to grant variances from Department rules if it finds that strict compliance would result in substantial curtailment or closing down of a business, plant, or operation.

Summation

1. All three veneer dryers at Mt. Mazama Plywood Company are in violation of State air emission standards.

2. The Company has been under a succession of variances and extensions from compliance with the emission standards.

3. The Company is now subject to an interim variance which was granted on December 3, 1982 to allow for the submittal of control system engineering plans and current financial statements.

4. Mt. Mazama Plywood Company has submitted the plans and financial data as required by the December 3, 1982 interim variance.

5. Mt. Mazama Plywood Company's operating profits have increased significantly in recent months. These revenues are shared with a Consolidated Corporation which appears to be in a bleak overall financial condition.

6. Specific economic advantages and mitigations to minimize operational inequities are suggested by Lane Regional Air Pollution Authority.

7. Three alternatives have been identified:

   - Grant the variance extension as requested by the Company which would result in compliance demonstration by August 31, 1984.

   - Grant a variance with a compressed compliance time schedule resulting in demonstration of compliance by May 1, 1984.

   - Grant the compressed variance time schedule and require interim process limitations to accomplish immediate compliance.

8. As a result of a recently improved operating profit it appears that the Company should be able to order control equipment by July 1, 1983, begin construction by December 1, 1983, and complete construction and demonstrate compliance by May 1, 1984.

9. It is believed that the imposition of mitigating variance conditions such as limiting temperatures or veneer thruput or restricting drying to only low-emission species such as white fir would greatly complicate and perhaps jeopardize the Company's ability to resolve the problem in accordance with the accelerated implementation schedule.

10. The Commission is authorized by ORS 468.345 to grant variances from Department rules if it finds that strict compliance would result in substantial curtailment or closing down of a business, plant, or operation.

11. The Commission should find that strict compliance would result in substantial curtailment or closing down of the Mt. Mazama Plywood plant at Sutherlin.

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.

Bill

William H. Young

Attachments 1. Director's Memorandum, Agenda Item I, December 3, 1982, EQC Meeting; Request for an Additional Extension of Variance by Mt. Mazama Plywood Company.

2. Transmittal Letter for Plans and Current Financial Statements submitted by Mt. Mazama Plywood Company dated February 23, 1983.

3. Interoffice memo, Mazama Timber Products, Inc. Financial Status review by Judy Hatton, DEQ Business Office, March 14, 1983.

4. Letter from Lane Regional Air Pollution Authority regarding Variance Request of Mt. Mazama Plywood Company, dated March 1, 1983.

5. Letter from Wiswall, Svoboda, Thore & Dennett, P.C. dated July 19, 1982, on behalf of Mt. Mazama Plywood Company requesting a variance extension.

AZ170
D.Neff:ahe
(503) 229-6480
March 14, 1983

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GOVERNOR

Environmental Quality Commission

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MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. I , December 3, 1982, EQC Meeting

Request for an Additional Extension of a Variance from OAR 340-25-315(1)(b), Dryer Emission Limits, by Mt. Mazama Plywood Company

Background

Mt. Mazama Plywood Company has requested an additional time extension for compliance with the veneer dryer emission limit rule, OAR 340-25-315(1)(b). The request was received on July 26, 1982 and additional supporting information was submitted on November 9, 1982. The variance conditions proposed by the Company are:

1. That by March 1, 1983, the Company submit a control strategy for all veneer dryers.

2. That by August 31, 1983, they issue purchase orders for all necessary equipment.

3. That by January 31, 1984, they begin construction of the veneer dryer control equipment.

4. That by August 31, 1984, they complete equipment installation and demonstration of compliance.

Mt. Mazama proposed that they be required to submit quarterly financial statements and that the variance may be revoked in the event dryer emissions would cause any adverse impact on the community or airshed.

The Company claims the "current (plywood) market conditions make it economically unreasonable and burdensome to undertake the expenditure at this time to bring the dryers into full compliance with the opacity limits." More specifically, they state that cash flow does not generate sufficient funds to pay for such a unit nor does the Company currently have the borrowing capacity for the required capital expenditure.

The initial variance was granted on March 21, 1980. Two subsequent variance modifications were approved, one of which included an extended final compliance date. Each variance had intermediate increments of progress dates. The final compliance dates included for each variance are summarized as follows:

	Action Date	Final Compliance
Permit Issued	February 10, 1978	June 1, 1979
Variance Approval	March 21, 1980	November 30, 1981
Variance Approval	July 17, 1981	July 1, 1983
Variance Approval	April 16, 1982	July 1, 1983
Variance Request	December 3, 1982	August 31, 1984*

* Submitted by Company as part of the current variance request to be considered by the Commission.

The Company has provided audited financial statements for the consolidated corporation, Mazama Timber Products, Inc. Mazama Timber Products, Inc., includes Mt. Mazama Plywood Company, Mazama Timber (a mill in Creswell), and Emerald Valley Forest Inn and Golf Course.

The Company has also submitted a review of measures taken during the period of the variances which are stated to have reduced emissions. Their current position on a selected control strategy was presented.

The Commission is authorized by ORS 468.345 to grant variances from Department rules if it finds that strict compliance would result in substantial curtailment or closing down of a business, plant or operation.

Evaluation and Alternatives

All three veneer dryers at Mt. Mazama Plywood Company are out of compliance with State air emission standards. The Company took positive action to bring their dryers into compliance by installing a new heat source which included an emission control system on one dryer in 1979. This system failed to achieve visible compliance as evidenced by excessive emissions from the cooling section exhaust point. Several control devices which would control emissions from the two steam heated dryers have been investigated by the Company. However, plans have never been submitted to the Department for final approval. Approved deadlines for purchases and installations of control devices occurred at a time when the plywood market had already begun to decline. By this time, many other companies were either in compliance or were proceeding with control strategies. The plant was shut down for three months in early 1980 for economic based reasons. In 1980 the Company opted to request a variance from the veneer dryer emission rule, expecting the market downturn to be only temporary.

The Commission granted the initial variance and each subsequent variance extension upon finding that because of the adverse financial condition of the Company, strict compliance with Department rules could result in substantial curtailment or closing down of the plant. The Company has kept the Department informed of their progress or any inability to proceed and requested variances from mandated compliance steps in a timely manner in most cases.

The Company has failed to meet the variance conditions of the incremental progress compliance dates granted on July 17, 1981 and revised on April 16, 1982: 1.) By July 1, 1982, submit to the Department approvable detailed plans and specifications for the control of the veneer dryer emissions. 2.) By September 1, 1982, issue purchase orders for the necessary control equipment and affirm maintenance of schedule increments 3, 4, and 5 (begin construction, complete construction and demonstrate compliance, submit quarterly corporate financial reports) of the July 17, 1981 variance.

	Action Date	Final Compliance
Permit Issued	February 10, 1978	June 1, 1979
Variance Approval	March 21, 1980	November 30, 1981
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This is the only veneer drying facility subject to DEQ rules which has not either demonstrated compliance or received Department approval to implement a process change as a control strategy (temperature control, specie separation, etc.) or add control devices to achieve compliance. Any market advantage that would be attributed to cost savings by not implementing veneer dryer controls is unknown to the Department.

Mt. Mazama Plywood Company is the largest employer in the small town of Sutherlin. Douglas County remains an area of high unemployment due to the depressed timber products market. The Company reports that any requirements to make expenditures for controls for veneer dryer air emission compliance at this time would necessitate the closing of the mill, resulting in the layoff of a large number of citizens of the community and a loss of income to the allied and supportive businesses. Analysis by the Company's auditors, Coopers and Lybrand, pointed out that the Company's current liabilities exceed its current assets and that these factors, among others, indicate that the Company may be unable to continue in existence.

Mt. Mazama Plywood Company has shown some profit during the period of the variances. A review of the financial sheets for specific but limited months indicate that there has been a change from net profit to increasing losses during calendar year 1981. The present profit or loss position of the plywood operation is not known to the Department. The revenues from the plywood operation were shared with the parent corporation, which has incurred a net loss consistently for more than two years. Audited statements of the consolidated operation show a loss of $3,162,883 for year 1981 and $6,352,641 for year 1982. Although requested by letter of October 25, 1982, sufficient information has not been received by the Department to allow a detailed study of actual cash which would may have been available for pollution control, had it not been routed to offset losses in subsidiaries of the parent corporation. The consolidated financial statements received on November 10, 1982 were incomplete in that they did not include the notes referred to on the statement sheets.

The Company indicates that they are not in a position to commit to the selection of a specific control strategy at this time. The partial reason for this appears to be that they are uncertain about Department acceptability of Burley scrubbers or Georgia-Pacific packed tower scrubbers as now operating on other veneer dryer facilities. The Department has certified specific models of these units as being capable of satisfactorily controlling emissions.

The nature of the pollution from the facility includes the characteristic visible blue haze, usually generated by drying veneer. The opacity level was observed at more than 50% opacity in June, 1982 (the standard is 10% average and 20% maximum opacity). There is no other identified significant nuisance condition or violation of the ambient air quality standard in the vicinity of the source at this time.

The Company has expended more than $77,000 on modifications to the dryers which, in part, are alleged to have reduced emissions from the plant. The Department's observations or records do not quantify these reductions. Several different pieces of point emission control equipment have been considered by the Company.

The Department has identified four alternatives:

1. Grant the variance with increments of progress and a final compliance date of August 31, 1984 as requested by the Company. Considering that essentially all other veneer dryer facilities

have implemented some type of compliance control, Mt. Mazama Plywood may have an advantage in the plywood market. Also, there is the risk that the Company will still not be in a significantly better cash flow position on August 31, 1983, when purchase orders must be issued.

2. Grant the portion of the variance extension request through the incremental step of submitting a control strategy. The control strategy must be submitted by March 1, 1983, and in the form of detailed plans and specifications which are acceptable for construction approval by the Department. A staff report will be made at the April 1983 Commission meeting for consideration of an appropriate schedule for further progress and a final compliance date.

3. Deny the variance extension request and require a revised increment of progress schedule with a final compliance date of July 1, 1983 (the current variance final compliance date). However, this final date cannot likely be met even if purchase orders were placed now. This alternative does not seem appropriate based on the adverse financial status claimed by the Company as presented in statements made available to the Department up to this time.

4. Deny the request until the additional information as requested in the Department's October 28, 1982 letter is received and evaluated. The Commission could then consider the time extension requested in light of the additional facts at their January 14, 1982 meeting.

The staff concludes that progress toward final compliance could be demonstrated by a firm adoption of a control strategy and the submittal of detailed plans and specifications to the Department for review and approval by March 1, 1983. Such action would not require a large capital expenditure. With a better understanding of the selected technical aspects and cost factors, coupled with a more complete assessment of the Company's exact economic position at that time, the Department and Commission may then be in a better position to evaluate an appropriate further compliance time table.

The letter requesting the variance and supplementary information is attached.

Summation

1. All three veneer dryers at Mt. Mazama Plywood Company are in violation of State air emission standards.

2. The Company has unsuccessfully installed an emission control system on one dryer. Control efforts on other dryers have not gone beyond the technical evaluation stage by the Company.

3. The Commission has granted a variance and subsequent variance time extensions from an initial compliance target of June 1, 1979 to the current approved date of July 1, 1983 for reasons that Company financial conditions would render strict compliance with the rules unreasonable to cause substantial curtailment or closing down of the plant.

have implemented some type of compliance control, Mt. Mazama Plywood may have an advantage in the plywood market. Also, there is the risk that the Company will still not be in a significantly better cash flow position on August 31, 1983, when purchase orders must be issued.

2. Grant the portion of the variance extension request through the incremental step of submitting a control strategy. The control strategy must be submitted by March 1, 1983, and in the form of detailed plans and specifications which are acceptable for construction approval by the Department. A staff report will be made at the April 1983 Commission meeting for consideration of an appropriate schedule for further progress and a final compliance date.

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4. Deny the request until the additional information as requested in the Department's October 28, 1982 letter is received and evaluated. The Commission could then consider the time extension requested in light of the additional facts at their January 14, 1982 meeting.

The staff concludes that progress toward final compliance could be demonstrated by a firm adoption of a control strategy and the submittal of detailed plans and specifications to the Department for review and approval by March 1, 1983. Such action would not require a large capital expenditure. With a better understanding of the selected technical aspects and cost factors, coupled with a more complete assessment of the Company's exact economic position at that time, the Department and Commission may then be in a better position to evaluate an appropriate further compliance time table.

The letter requesting the variance and supplementary information is attached.

Summation

1. All three veneer dryers at Mt. Mazama Plywood Company are in violation of State air emission standards.

2. The Company has unsuccessfully installed an emission control system on one dryer. Control efforts on other dryers have not gone beyond the technical evaluation stage by the Company.

3. The Commission has granted a variance and subsequent variance time extensions from an initial compliance target of June 1, 1979 to the current approved date of July 1, 1983 for reasons that Company financial conditions would render strict compliance with the rules unreasonable to cause substantial curtailment or closing down of the plant.

4. The Company has failed to meet the conditions of variance granted on April 16, 1982 requiring 1) submittal of approvable detailed plans and specifications by July 1, 1982, and 2) issuance of purchase orders and affirm maintenance for other increments of progress and final compliance by September 1, 1982.

5. This is the only veneer drying facility subject to DEQ rules which has not demonstrated compliance or obtained a Department-approved strategy. Cost savings through failure to comply may provide a product market advantage to the Company.

6. The requirement to expend money for emission control devices at this time may result in closing of the mill which would have a significant effect on the social and economic position of the community.

7. Revenues generated by Mt. Mazama Plywood Company have been shared with subsidararies of the parent corporation. Audited statements of the consolidated operation show losses of more than three million dollars in 1981 and more than six million dollars in 1982.

8. The Department has been unable to completely evaluate the ability of Mt. Mazama Plywood Company to provide funds for emission control equipment because all requested financial information has not yet been received.

9. The Company has not adopted a final control strategy for Department review.

10. Four alternatives have been identified:

    - o Grant the variance extension as requested.
    - o Grant the variance extension for submittal of a control strategy by no later than March 1, 1983. Delay further compliance scheduling until after that date.
    - o Deny the variance extension request.
    - o Deny the variance extension request until information requested is received.

11. The Commission is authorized by ORS 468.345 to grant variances from Department rules if it finds that strict compliance would result in substantial curtailment or closing down of a business, plant or operation.

12. The Commission should find that strict compliance would result in substantial curtailment or closing down of the Mt. Mazama Company plant in Sutherlin.

Director's Recommendation

Based on the Summation, it is recommended that the Commission grant an extension to the incremental progress step which requires submitting a control strategy subject to the following conditions:

1. By March 1, 1983, submit a final control stragtegy in the form of detailed plans and specifications which are acceptable for construction approval by the Department.

2. By March 1, 1983, the Company shall submit a financial statement which documents the current profit and loss position of Mt. Mazama Plywood Company.

3. A Department report be made at the April 1983 Commission meeting for the Commission to consider appropriate further scheduling of progress and a final compliance date.

Bill

William H. Young

Attachments

I - Mt. Mazama's submittal of additional information
Letter dated November 9, 1982
II - DEQ request for additional information
Letter dated October 28, 1982
III - Variance extension request - Letter dated July 19, 1982
IV - Copy of Director's Memorandum re variance extension request for April 16, 1982 EQC meeting (with attachments)

D.K. Neff:a
229-6480
November 15, 1982
AA2774

Mt. Mazama Plywood Co.

POST OFFICE BOX 738 • SUTHERLIN, OREGON 97479 • TELEPHONE 503/459-9555

February 23, 1983

Mr. H.M. Patterson, Manager
Program Operations
Air Quality Division
Department of Environmental Quality
P.O. Box 1760
Portland, Oregon 97207

Re: EQC Variance Action and ACDP Addendum - File 10-0022

Dear Mr. Patterson:

In response to your request dated December 7, 1982 I am submitting the following:

1. Year to date financial statement for Mt. Mazama Plywood and Mazama Timber Products.

2. Audited statements for year ending June 30, 1982.

3. Proposal and general layout by Coe Manufacturing Company as a control strategy for all three dryers.

Please let me know if further information is required.

Sincerely,

J.W. Kline
General Manager

JWK:mk
Encl.

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY — INTEROFFICE MEMO

TO: Don Neff
Air Quality

DATE: March 14, 1983

FROM: Judy Hatton
Business Office

SUBJECT: Mazama Timber Products, Inc.

Summarizing our discussion this afternoon, I would make the following comments and observations regarding the audited financial statements for Mazama Timber Products, Inc. and Subsidiaries for the fiscal years ended June 30, 1982 and 1981.

These statements were prepared using the accrual method of accounting and are in conformity with generally accepted accounting principles. In all instances when I refer to the Company, I am speaking of the consolidated group.

I agree with the auditors that in consolidation it appears that the Company may be unable to continue in existence.

For example, the following brief summary paints a fairly bleak financial picture of the Company:

	7 mos. Ended 1/31/83	12 mos. Ended 6/30/82	12 mos. Ended 6/30/81
Net Income (Loss):	($1,608,195)	($6,352,223)	($2,847,085)
Excess of Current Liabilities Over Current Assets:	$14,510,053	$18,763,841	$11,788,425
Stockholders' Equity (Deficit)	($3,445,511)	($2,210,233)	$4,141,990

Viewed separately, however, Mt. Mazama Plywood Co. does not appear to be in such severe economic straits:

	7 mos. Ended 1/31/83	12 mos. Ended 6/30/82	12 mos. Ended 6/30/81
Net Income (Loss):	$380,047	($4,647)	Not Available
Excess of Current Liabilities Over Current Assets:	$400,123	$606,379	Not Available
Stockholders' Equity (Deficit)	$2,053,926	$1,673,879	$1,678,526

In addition, several specific items should be considered:

1. At June 30, 1982, the consolidated statements show advances to the stockholders of this closely held company totalling $2,130,327, ($1,972,491 in 1981).

2. In 1982 the Company received real property in settlement of a note receivable and accrued interest. The property was recorded at its fair market value resulting in a one-time loss of approximately $667,000 included in general and administrative expenses. Such a loss would not be expected to recur.

3. At June 30, 1982, Timber contracts payable include $13,126,416 to the Bureau of Land Management which the Company is seeking to renegotiate. If successful, long-term payables should decrease.

4. The Company has fully utilized the carryback provisions of its net operating loss, which resulted in a federal income tax refund of $1,372,611. However, the Company has approximately a $6,000,000 NOL carryforward and investment and jobs tax credit carryovers aggregating $558,600 to offset future income tax. (The company is currently under IRS audit and is contesting an additional $490,000 tax adjustment).

5. The Oregon Bank has reduced its line of credit to the Company from $6,500,000 in 1981 to $1,750,000 subsequent to June 30, 1982. Also, short-term demand notes increased from $144,000 in 1981 to $7,735,522 in 1982.

If you wish to discuss this matter further, please give me a call.

JLH:k
BK1762

Attachment 4

LANE REGIONAL

AIR POLLUTION AUTHORITY

(503) 686-7618
1244 Walnut Street, Eugene, Oregon 97403

Donald R. Arkell, Director

March 1, 1983

E. J. Weathersbee
Air Quality Division
Dept. of Environmental Quality
P. O. Box 1760
Portland, OR 97207

Re: Variance Request
Mt. Mazama Plywood Co.

Dear Jack:

We have surveyed a number of veneer dryer operators in Lane County, in response to your request for information regarding effects on their competitive position because of the variance for Mt. Mazama Plywood Company.

The following is a synthesis of comments made by industry operators regarding enforcement of veneer dryer rules and the disadvantages caused by this variance:

- Operators are extremely concerned about the uniform application of the veneer dryer rule. The requirement to install emission control systems on veneer dryers was instrumental in their financial planning decisions two or three years ago. They knew that their permits would be conditioned upon compliance with the rule, and that they risked closure if they did not install controls. They took the requirement seriously, and are disturbed by what appears to them to be "special treatment" for Mt. Mazama.

- The specific competitive disadvantage most often cited was that, required veneer dryer controls have caused affected operators to each make initial capital expenditures ranging from $300,000 to $500,000. These funds had to either be borrowed from lenders at comparatively high interest rates (approximately 19-20% annualized), or be taken from internal capital improvement funds that might have otherwise been used to keep facilities upgraded and competitive, and ready to respond to improved markets. We note that there are a few exceptions, where production controls alone are sufficient, but most of our veneer dryer operations require scrubbers. Among the operators we talked to the general perception is that, special circumstances notwithstanding, it is basically unfair that Mt. Mazama has not been required to comply with the rule in timely fashion, and has had the benefit of operating for two years without the burden of initial capital outlay or the operating costs associated with a control system.

- As one might guess, the incremental effect on wholesale prices of plywood, due to capital costs and the operation of veneer dryer controls, on any one plant is difficult to assess on a by-sheet or square foot basis. We found that the annual operating costs of controls are usually not itemized as separate expenses, but are typically spread throughout the total annual costs for labor, maintenance, energy, and overhead. Veneer dryer controls are estimated, however, to add tens of thousands of dollars to the annual operating costs of each facility.

- It was also pointed out that veneer dryer operators who installed controls one or two years ago did so during a much rougher market than currently exists. Several were unable to obtain the most benefit from the state pollution control tax credits because profits have been minimal or non-existent since controls have been installed. Operators feel that they did what they had to, to keep operating during the poorest market conditions, and that a lengthy variance extension now to Mt. Mazama, at a time when the market is picking up, is unfair.

We plotted the composite plywood prices for 15 months, starting October 1981, using data from the publication, Random Lengths. This time period includes the calendar quarter preceding our compliance date of December 1981 and continues through all of calendar year 1982. This data shows, and Figure 1 illustrates, that plywood prices are in fact on the rise. A second measure of market viability is the reduction of production capacity throughout the region (i.e, how much the industry is curtailed - either closed or operating at a reduced capacity). This is shown as percent reduction of capacity throughout the State of Oregon, in Figure 2. This data was abstracted from the weekly reports of the American Plywood Association. It appears that more production capacity is being utilized later within the same 15-month period, indicating a slightly better market.

In summary, based on our interviews, the issue of equal application of rules is uppermost. Apart from that, it appears that the Mt. Mazama variance has caused some competitive disadvantage to industries which have applied veneer dryer controls, largely because of initial expenditures which range from $300,000 to $500,000, plus approximately 19% annual interest rate, if these funds were obtained through a lender; or, the initial capital plus some undetermined amount for lost production capacity because capital funds were expended for required control equipment, rather than some other project which would improve or maintain productive capabilities. These costs would be discounted by whatever was actually not paid in State income, or ad valorem taxes. Also, there are the additional annual costs in the tens of thousands for operation and maintenance of the control equipment. Based on these assumptions, a quantitative estimate of disadvantage to any single company is the extent to which these extra costs affect net profits or losses each year. A reasonable guess might be in range of $500,000 the first year, and $20,000 to $40,000 thereafter for each company.

We are attempting to mitigate similar potential inequities as much as possible to maintain the integrity of the rule, while still responding to an over-all community need to get local industry restarted and increase employment in this area. I would offer, as an example of the forms and magnitude of appropriate mitigation, some requirements we have established for

operators of uncontrolled veneer dryers in Lane County that have been closed, and who now want to resume production:

1. A schedule of installation and operation of an approved control system is a required condition prior to initial operation;

2. The purchase of major capital equipment for the control system is imminent or completed prior to initial operation; and,

3. Emission standards are met and maintained by temporary process limitations throughout the construction schedule.

We accomplish this by:

A. Negotiating, before initial startup, a construction schedule of a few months' duration, including engineering review and approval of a specific control system.

B. Requiring signed purchase orders be issued to the vendor for the specific major equipment items, or procurement of the control system itself before initial startup.

C. Requiring full repair of each dryer prior to startup. Then there is initial startup, if necessary, for a period of time (usually 2-3 weeks) to establish operating limits for each dryer which will achieve compliance with visible emission standards. Typically, these include limits on temperature, redry, species, etc. Once they are established, they remain in effect until the approved emission control system is installed and operating. This commits the Authority to frequent active surveillance.

These procedures are tailored to our circumstances, and certainly Mt. Mazama's situation has some differences. The startup requirements represent a compromise policy which, to us, seems reasonable and seems to be working. We are now applying the requirements and procedures to two plants being restarted in Eugene.

I hope this information is helpful to DEQ staff and the Commission during review of Mt. Mazama's variance in April. If you need more information, please let me know.

Sincerely,

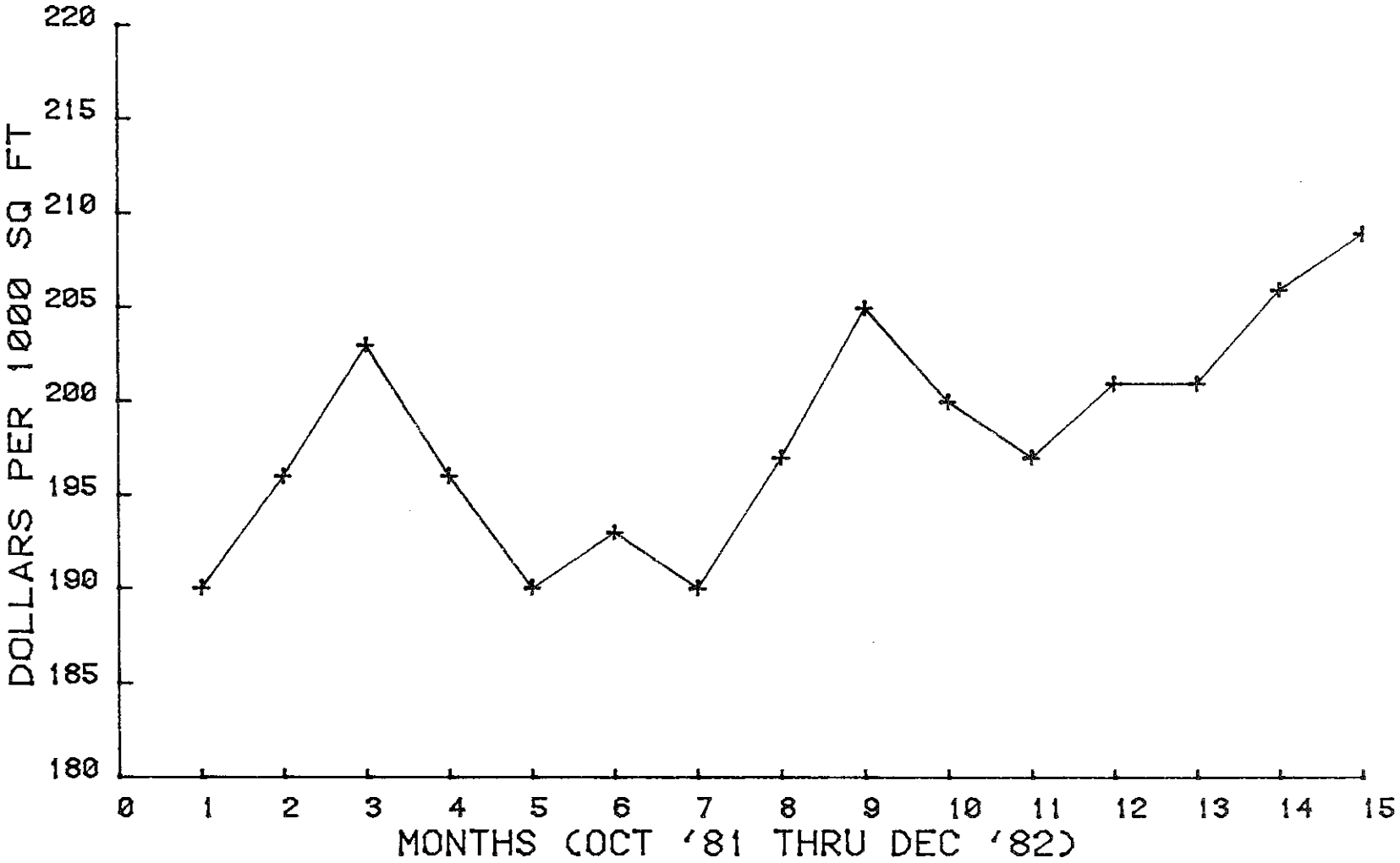
Donald R. Arkell
Director

DRA/mjd

Enclosures

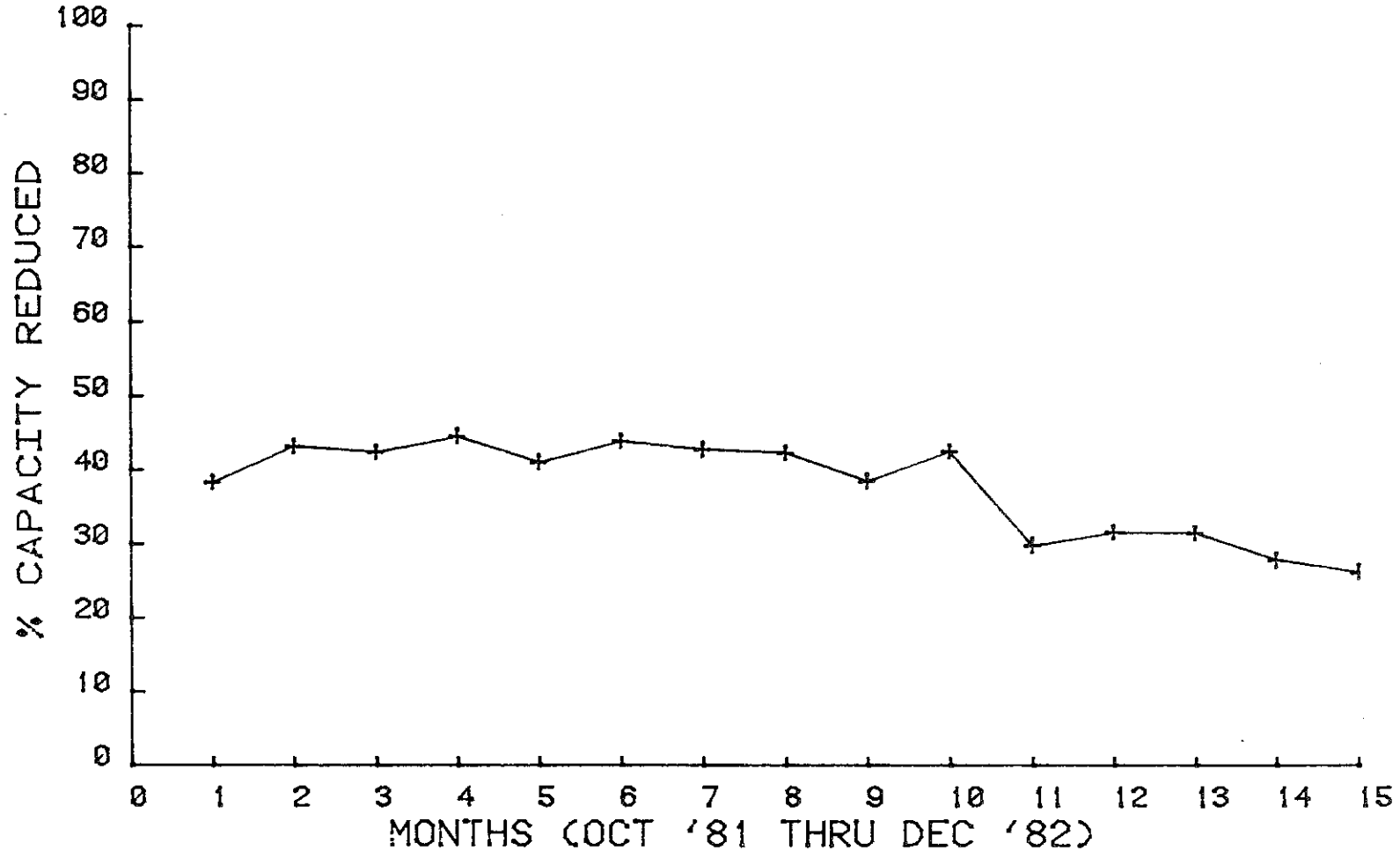
cc: Joe Richards, EQC
S.W. Regional Office, DEQ

FIGURE 1
COMPOSITE PRICES
PLYWOOD



FROM RANDOM LENGTHS 1982 SUMMARY REPORT, PAGE 165

FIGURE 2
% CAPACITY CURTAILED PLYWOOD MILLS
STATE OF OREGON



AMERICAN PLYWOOD ASSOCIATION - SUMMARY OF WEEKLY REPORTS

ATTACHMENT 5

WISWALL, SVOBODA, THORP & DENNETT, P.C.
LAW OFFICES
644 North A Street
Springfield, Oregon 97477
(503) 747-3354

William Wiswall
John L. Svoboda
Laurence E. Thorp
Douglas J. Dennett
Dwight G. Purdy
Jill E. Golden
Robert A. Miller
Scott M. Galenbeck

G. David Jewett
Robert A. Thrall
James M. O'Kief
Karen Hendricks
Jeffrey D. Herman

Marvin O. Sanders
(1912-1977)
Jack B. Lively
(1923-1979)

July 19, 1982

Department of Environmental Quality
Air Quality Control Division
522 Southwest 5th Avenue
P. O. Box 1760
Portland, OR 97202

Attn: Mr. Ed Woods
Re: Mt. Mazama Plywood Air Contaminant Discharge Permit and Variance Granted by Commission on July 17, 1981

Gentlemen:

On behalf of Mt. Mazama Plywood Company and pursuant to ORS 468.345, the following should be considered as a request for variance from air contamination rules and standards and OAR 340-25-315(1)(b) veneer dryer emission limits.

Factual Background

Enclosed is a copy of a March 11, 1981 letter submitted in request for a variance which was subsequently granted. That letter sets forth in part the factual background. It will be supplemented by the following.

Mt. Mazama has continued sporadic operation due totally to the decline and lack of recovery of the plywood market. Mt. Mazama as a plywood producing plant has generated some revenues, those revenues have been shared with the parent company and when combined with the financial picture of the parent company and all subsidiaries, has resulted in a net loss consistently for in excess of the past two years.

The cost factor of installing the Burley Scrubbers and associated equipment is at this time not feasible for the company. The cash flow does not generate sufficient funds to pay for such a unit, nor does Mt. Mazama currently have the borrowing capacity for such a capital expenditure.

Mt. Mazama has continued to seek out other possibilities in terms of emission particulate reduction apparatus. In that regard, we have previously forwarded by my letter of June 29, 1982, some proposed but previously unproven equipment as a stop-gap measure. Mt. Mazama in talking with those people was of the belief that this equipment could be manufacturer financed to make its installation feasible. Based on the latest contact with this company, it would appear that the company financing is not available. As a result, once again for economic reasons, Mt. Mazama is unable to pursue this alternative.

It appears that currently, as in the past, the particulate emissions are not having a significant impact on air quality.

Summary of Request for Variance

Mt. Mazama requests a variance from OAR 340-25-315(1)(b) veneer dryer emission limits on the following grounds:

1. Current market conditions make it economically unreasonable and burdensome to undertake the expenditure at this time to bring the dryers in full compliance with the opacity limits. The market condition has been depressed for quite some time. The company has consistently lost money during its sporadic operation and it appears that no major change in market condition is foreseeable. The requirement to make such expenditures or failing that be denied a variance from the existing permit would result in the necessity of closing the plant in Sutherlin, Oregon, resulting in the layoff of a large number of the citizens of that community and a loss of income to other allied and supportive businesses.

2. The company has in the past made expenditures for installation of equipment which proved non-effective. Litigation was considered against the manufacturer and installer, but again because of cost factors that litigation was not pursued. The company continued to pursue other means and methods of meeting the standards, but have found to date all of those to be prohibitive by cost. The efforts to seek out alternative methods, either by alternative equipment or continued search for financing is on-going.

It is submitted therefore, that a variance as above

requested be granted on the following time table.

(1) That by March 1, 1983 the company submit a control strategy for all veneer dryers.

(2) That by August, 1983 they issue purchase orders for all necessary equipment.

(3) That by January, 1984 they begin construction of the veneer dryer control equipment.

(4) That by August, 1984 they complete equipment and demonstrate compliance.

Mt. Mazama should require to submit quarterly financial statements. It would further be understood that in the event the variance is granted, it may be revoked in the event dryer emissions would cause an adverse impact on the community or air shed.

Respectfully submitted,

WISWALL, SVOBODA, THORP
& DENNETT, P.C.

John Svoboda

JS/ls

cc: Jim Kline

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 , April 8, 1983, EQC Meeting

Request for a Variance from OAR 340-21-015(2)(b), Visual Emission Limits, OAR 340-21-030(2), Particulate Emission Limits and OAR 340-21-060(2), Fugitive Emissions for Oregon Sun Ranch, Inc., Prineville

Background and Problem Statement

Oregon Sun Ranch owns and operates a cat litter packaging plant in the Prineville Industrial Park about one mile north of the city limits. Oregon Sun Ranch moved its facility to Prineville late in 1980 after operating for several years in Redmond. The company employs about 15 people, including truck drivers and mining personnel.

The company's operations include unloading bulk cat litter (dried, crushed, and screened bentonite) from trucks and transferring it to the storage silos, then removing the litter from the silos and packaging it. In 1981 the company unloaded two or three trucks per week. Recently the company has been unloading as many as ten trucks per week. It takes about an hour to unload each truck. In 1981 the company packaged cat litter about 20 hours per week but in the last year, the packaging has grown to a 40 hour per week operation. Emissions from truck unloading have increased and are now creating conditions which have resulted in numerous citizen complaints.

The Department's staff first visited the facility in January of 1981 at the request of Crook County Building and Planning Department officials. After observing the operation, the Department notified Lee Gritten, President of the company, that emissions were excessive and Mr. Gritten promised in-house modifications to correct the problem. Follow-up inspections were conducted in February and May of 1981 and the company was told that emissions, while improved, still exceeded the 20 percent opacity limitation required by Department rules.

Although no formal inspections were conducted from May 1981 to August 1982 at Oregon Sun Ranch, Central Region personnel did visit Prineville at least

monthly during that period. At that time, emissions from Oregon Sun Ranch were not considered significant and the company was not required to obtain an Air Contaminant Discharge Permit.

In August 1982, the Bend office again received complaints concerning Oregon Sun Ranch and the complaints have been numerous since then. Attachment I lists the Department's contacts with Oregon Sun Ranch since August, 1982. During inspections of the facility, staff found dust from packaging to be in marginal compliance with Department rules. However, when the company unloaded a truck at the request of the staff, emissions were observed to be well above allowable limits and capable of creating a nuisance in the surrounding neighborhoods. Mr. Gritten again promised to make changes to reduce emissions, but staff concluded that more than in-house adjustments were needed. The Department accordingly began an enforcement action to obtain compliance by sending a Notice of Violation to the company in September 1982. The company was required to apply for and obtain an Air Contaminant Discharge Permit because it was a problem source. After inadequate verbal and written responses by the company, the Department sent a Notice of Intent to Assess Civil Penalties (Attachment II) in October 1982.

The Department received a completed permit application from the company in November 1982 and a Notice of Construction for installation of pollution control equipment in December 1982. The company's equipment supplier estimated the cost of pollution control equipment at $8,000 if Oregon Sun Ranch would do the installation. This proposal did not address all dust emission points but staff believed it would control those emissions that were most objectionable to neighbors.

Construction approval for the pollution control equipment and a proposed permit were issued to the company on January 20, 1983 with the requirement that controls be installed by March 1, 1983. The company had previously informed the Department by letter that it could meet the March 1 date.

By late January, the company was expressing doubts about achieving compliance by March 1 due to its poor economic condition. The Department advised the company that a variance request would be required if the company was not going to be able to install control equipment. The company subsequently applied for a variance on January 27 (Attachment III). The variance request contained a change in direction in solving the problem, as well as complex financial information.

During the public comment period for the company's Air Contaminant Discharge Permit, the Department received five letters of comment (Attachment IV), all supporting strong action by the Department. The permit was issued on March 3, 1983, with the requirement that control equipment be in place prior to operation after that date. The company has continued to operate in violation of its permit and State air pollution rules after March 3, 1983.

The company was assessed a $500 civil penalty and was given a Notice of Intent to Assess Additional Civil Penalties on March 16, 1983, (Attachment V). The company was also notified of the intention by the Department to review progress toward compliance on April 1, 1983, and assess whatever additional civil penalty may be warranted. The size of this additional penalty would depend on the progress made by the company in achieving compliance.

The variance request submitted by Oregon Sun Ranch requests postponement of the installation of pollution controls for an undefined period of time. The financial information accompanying the variance request shows that the company has suffered net losses every year since it incorporated in 1977. The losses in 1982 were greater than in previous years. In its January 27, 1983 letter, the company states that "... we believe that we will be in a position to purchase the (pollution control) equipment in the future, but for the time being, would like to make a formal variance request."

The Commission is authorized by ORS 468.345 to grant variances from Department rules if it finds strict compliance is inappropriate for one of the reasons specified in the statute, including "... strict compliance would result in substantial curtailment or closing down of a business, plant or operation."

Alternatives and Evaluation

The company submitted detailed financial information with its variance request. The Department's business office staff contacted the company's accountant several times so that an adequate summation could be made of the company's financial condition. Attachment VI outlines the staff analysis. The staff feels that there is a serious question whether or not the company can continue to stay in business with or without the additional $10,000 to $15,000 expense for pollution control equipment.

Given the company's apparent financial problems and the assurances that progress was being made in addressing the pollution problems, Central Region staff moved slowly through the enforcement process while allowing the company every chance to voluntarily comply. Neighbors of the plant-site feel strongly that the Department has moved too slowly in gaining compliance.

The following options are available to the Commission based on the information availble at the time this report was prepared.

Option 1

The Commission could grant the company a short-term variance, perhaps as long as 60 days, to give the company one more chance to comply. A longer variance might be justified by the company's poor economic condition , if the company's emissions were not creating a serious nuisance to neighbors. In this situation, however, the Department feels it has given the company adequate time to comply and even a 60 day variance would not be appropriate. The company's financial condition is not expected to improve in the near future and emissions cannot be tolerated by the neighbors any longer.

Option 2

The Commission could deny the variance and the Department could continue to assess penalties for each day the company operates in violation of its permit and Department rules. It is important that the company not benefit monetarily from its non-compliance. Regular penalties would assure that it would be cheaper for the company to comply with air pollution requirements, rather than to continue to operate in violation.

Option 3

The Commission could deny the variance and the authorize the Department to seek an injunction to stop the company from operating in violation. Obviously, every other alternative should be exhausted before beginning this process. However, the poor financial condition of the company limits its ability to pay penalties and an injunction may be necessary to ultimately eliminate the nuisance conditions for neighbors of the facility.

At this time, staff favors a combination of Options 2 and 3. Staff requests that the Commission endorse a strategy of assessing daily penalties with the amount of each penalty dependent upon the company's progress toward compliance. In this manner, the company will be penalized for delay. If acceptable progress is being made, the daily penalties could be the minimum allowed.

In addition, the Department should be authorized to prepare an injunction to be filed in Court to stop the Company from operating in violation of its permit and air quality regulations. Staff believes about three weeks are needed to prepare to file the injunction. If the daily penalties have not moved the company to comply, additional penalties likely will serve no purpose. At that time, an injunction should be filed. Staff believes it is important to have the injunction available on short notice if acceptable progress toward compliance is not maintained.

Summation

1. Oregon Sun Ranch, Inc. has requested a variance from OAR 340-21-015(2)(b), Visual Emission Limits, OAR 340-21-030(2), Particulate Emission Limits and OAR 340-21-060(2), Fugitive Emissions for dust emissions at its Prineville facility.

2. The Commission has the authority under ORS 468.345 to grant a variance from a rule if "... strict compliance would result in substantial curtailment or closing down of a business, plant or operation."

3. Oregon Sun Ranch has presented information that shows the company has posted net losses each year since its incorporation in 1977. The information does not indicate a substantial improvement in the company's financial position in the near future.

4. Dust emitted from the company's operations regularly violates emission limits and is capable of causing a severe nuisance to neighbors of the plantsite. Neighbors have strongly complained about the dust for the past six months. The heaviest dust is created by truck unloadings which occur for one or two hours each day. Dust from these unloadings may persist in the neighborhood for longer periods depending on wind conditions.

5. The company has been assessed a $500 civil penalty for emissions violations. The company has submitted a general outline of a strategy which, if followed, could lead to compliance at the facility in the near future.

6. Oregon Sun Ranch has requested a variance for an undefined period of time.

7. The Department recommends that the Commission deny the variance request because of 1) the severity of the emissions and the impact on neighbors, 2) the length of time the company has already been given to comply, and 3) the lack of a specific compliance proposal and date.

8. The Department recommends that the Commission endorse a strategy in dealing with Oregon Sun Ranch, including: 1) Daily civil penalties with the size of each penalty being based upon the progress the company is making toward compliance; and 2) Preparation of an injunction to be filed in court to prohibit the company from operating in violation, if acceptable progress is not being made toward compliance.

Director's Recommendation

Based upon the findings in the Summation, it is recommended that the Commission deny the variance from OAR 340-21-015(b), OAR 340-21-030(2) and OAR 340-21-060(2) as requested by Oregon Sun Ranch, Inc. and direct the Department to continue a strategy of enforcement actions directed at achieving compliance at the Prineville facility.

Bill

William H. Young

Attachments:

I. Department Contacts with Oregon Sun Ranch since August 1982.
II. Notice of Intent to Assess Civil Penalties, October, 1982
III. Request for Variance
IV. Letters of Comment from Concerned Citizens
V. Civil Penalty Assessment and Notice of Intent to Assess Additional Civil Penalty, March 16, 1983.
VI. Staff Analysis of Financial Statement

R. Danko:a
229-5186
March 16, 1983
AA3113

Attachment 1

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: File DATE: March 15, 1983

FROM: Van A. Kollias, Enforcement Section, DEQ

SUBJECT: Oregon Sun Ranch, Inc.

VIOLATION: OAR 340-21-015(2)(b) - Emissions exceeded 20 percent opacity for a period aggregating more than three (3) minutes in one hour.

LIMITS OF PENALTY: $50 to $10,000

PROPOSED PENALTY: $500

HISTORY: (Summary of Correspondence in the Enforcement Section's Files)

August 25, 1982 - Bob Danko visited the plant and observed emissions (10%) during packaging. Leon Gritten, president of Oregon Sun Ranch (company) claimed he wants to comply with our rules and control the dust.

August 30, 1982 - Letter from Fred Skirvin to company transmitting air contaminant discharge (ACD) permit application.

August 31, 1982 - Bob Danko inspected the plant and documented 8 minutes of opacity violation (40%) during 8 minutes of observing the truck unloading operations.

September 3, 1982 - Richard Nichols sent a Notice of Violation letter regarding the 8-31-82 violation and asked the company to submit a plan and time schedule for correcting the problem and the ACD permit application by 9-17-82.

September 17, 1982 - Letter from company to Bob Danko stating they have contacted Archer Blower and Pipe Co. (Portland) and Medford Blow Pipe and Fabrication who are sending representatives to visit the plant within the next two weeks. Company expected to have a course of action planned as soon as the experts visited the plant.

September 20, 1982	-	Letter from Bob Danko to company in reference to company's 9-17-82 progress report. Letter extended the date for submitting Notice of Construction, plans, time schedule and ACD permit application to 10-1-82 or enforcement action will be initiated.
October 14, 1982	-	Memo from Bob Danko to Van Kollias reviewing company's compliance history to date and requested formal enforcement action.
October 21, 1982	-	Notice of Violation and Intent to Assess Civil Penalty No. AQ-CR-82-99 was issued by Fred Bolton to company citing two violations: (1) the 8-31-82 opacity violation, (2) Operating a problem source without an ACD permit. The letter accompanying the notice requested immediate submittal of plan, time schedule, ACD permit application and fee.
October 24, 1982	-	The company received the Notice of Violation and Intent to Assess Civil Penalty.
October 24, 1982	-	Letter from company to Bob Danko describing Mr. Archer's 10-22-82 visit and recommendations. Company stated the system should be complete in about 8 weeks.
November 18, 1982	-	Letter from Bob Danko to company to immediately submit ACD permit application or the matter will be referred to Enforcement Section.
November 22, 1982	-	ACD permit application submitted by company.
December 9, 1982	-	Notice of Construction and plans received by Air Quality Division.
December 10, 1982	-	Letter from Hal Patterson to company indicating that the plans were being referred to the Central Region for review.
December 16, 1982	-	Letter from Dick Nichols to company approving plans subject to certain conditions, and giving preliminary tax credit certification. Letter also stated that ACD permit is being drafted and listed the installation schedule that would be included in the permit.

December 20, 1982	-	Letter from Fred Bolton to Marie Christ regarding 12-19-82 phone conversation and transmitting copy of Nichol's 12-16-82 letter.
January 1, 1983	-	Letter from Bob Danko to company reminding company that the compliance schedule requires company to issue a purchase order by 1-3-83 and to submit evidence of such.
January 5, 1983	-	Letter from company to Bob Danko regarding 1-1-83 letter and misunderstanding and that the company was waiting for plan approval before continuing.
January 6, 1983	-	Danko visited the company. The Grittens' claimed they did not receive DEQ's 12-16-82 plan approval letter and Danko gave them a copy. The Grittens made note of Oil-Dri's variance as reported in the Oregonian, and asked about the Department's variance procedure. The Grittens told Danko they hoped to put a financial deal together with the Archer Company but if they could not, they would apply for a variance.
January 11, 1983	-	Letter from Leon Gritten to Bob Danko "we expect to put in a purchase order by 3-1-83. Thank you."
January 18, 1983	-	Letter from Bob Danko to company outlining options of either submitting a variance request by 1-28-83 or purchase pollution control equipment by 3-1-83 or face civil penalties after 3-1-83. The 1-28-83 deadline for submittal of a variance request was stated to be very important in order to have the request considered at the EQC 2-25-83 meeting.
January 31, 1983	-	The Department received company's variance request submitted by letter of 1-27-83. The request was received too late to be on the 2-25-83 EQC meeting agenda. The company stated that it was anxious to comply with the standards and will submit a plan of resolution within the next 45 days. The company also said they are currently working with an engineering firm in Spokane, Washington and asked for all DEQ rules, regulations and specifications.

February 8, 1983 - Letter from Fred Bolton to company summarizing past history, company's continuous delays, and the Department's intent to recommend denial of the variance at the EQC April 8, 1983 meeting. The letter also stated that staff has been directed to send in violations for civil penalty consideration and recommends the company send in a new compliance plan as soon as possible.

February 15, 1983 - Memo from Fred Bolton to Bob Danko and Dick Nichols regarding Bolton's phone conversation with Al Kvarme on 2-14-83 who took pictures of the plant and will send them in. Mr. Kvarme reported the plant has been a problem for two years, but on 2-14-83 it was as bad as it has ever been. Memo reviews Department's current strategy with this company.

February 18, 1983 - Letter from Chester Christ to William Young enclosing several DEQ past letters to company and newspaper articles, and states that after two years DEQ has been negligent in enforcing the state's emission laws, and that the time has come for more drastic action.

February 18, 1983 - Letter to E. J. Weathersbee from John and Julia Sill complaining of the dust from the plant and stating that it is affecting their mother's health.

February 18, 1983 - Letter to E. J. Weathersbee from Chester and Marie Christ requesting that the company not be issued a permit without a public hearing and reiterates that the plant is operating in noncompliance and DEQ has not made the company comply with DEQ's emission laws.

February 22, 1983 - Memo from E. J. Weathersbee to Lloyd Kostow regarding the above two letters and requesting determination on whether or not to issue the permit, etc.

February 23, 1983 - Letter from Bill Zelenka, director of Crook County and City of Prineville Planning Department, to E. J. Weathersbee, on Department's plans to issue a ACD permit to

company. The letter describes the history with the plant from planning's perspective and requests DEQ to ensure the control of company's dust emissions.

February 25, 1983 - Memo from Bob Danko to Van Kollias updating history and includes a log of phone calls made to the company by Danko in December and January which showed that many calls were not returned. Danko's history update indicates that he has had numerous discussions with the company since Bolton's 2-8-83 letter. The company professes a desire to install control equipment but no concrete move has been taken. Danko recommends enforcement action following permit issuance.

March 1, 1983 - Memo from Bob Danko to file relating contacts he made to find out the feasibility for funding of control equipment at Oregon Sun Ranch.

March 2, 1983 - Memo from Judy Hatton to Fred Bolton analyzing company's financial status from information submitted in support of company's variance request.

March 3, 1983 - Department issued ACD Permit No. 07-0020 to company. Condition 6a and 6b requires company to install control equipment and demonstrate compliance with certain permit conditions prior to future operation after 3-3-83.

March 4, 1983 - Memo from Bob Danko to Van Kollias transmitting observation of opacity readings made on 3-1-83 and recommends civil penalty assessment greater than the minimum for emission violations plus issuance of a Notice of Violation and Intent to Assess Civil Penalty for violation of the ACD permit compliance schedule.

March 4, 1983 - Letter to Fred Bolton from James Minturn, attorney for Mr. and Mrs. Chester Christ and Mr. Allen Kvarme. Letter states that DEQ has done nothing but make threats and expects the DEQ to act or they will bring a mandamus action against all the government agencies

involved including DEQ. The attorney wants to be informed of DEQ's plans for enforcing the Clean Air Act as it applies to Oregon Sun Ranch's Prineville operation.

March 7, 1983 - Central Region received a memo from D. C. Bacon Central Oregon Economic Development Council, setting up a meeting on 3-8-83 with the company and various agencies to review the problem and see if there is a financial solution.

March 9, 1983 - Memo from Bob Danko to file reviewing the 3-8-83 meeting.

March 9, 1983 - Memo from Bob Danko to file outlining his recommended broad enforcement strategy over the next several weeks.

March 9, 1983 - Memo from Bob Danko to file regarding phone conversation with Sharon Gritten. Mrs. Gritten said Clarke Sheet Metal of Eugene has been retained to design a control system and will begin work on 3-14-83.

March 11, 1983 - Letter from company to Clark Equipment stating that company has the necessary financial resources to meet the costs to construct an adequate dust collection system. Letter outlines the scope of the work and issues involved and requests Clark Equipment to respond in writing to the issues as soon as possible so that company can undertake the necessary financial planning.

March 14, 1983 - Letter from company to Bob Danko transmitting copy of company's 3-11-83 letter to Clark Equipment. Company states Clark Equipment has committed to a comprehensive program of engineering and construction of a system to bring company into compliance. Company states preliminary data was gathered last weekend by Clark Equipment and company will submit detail plans for DEQ review as soon as available from Clark Equipment. Company still wished to pursue the variance.

VICTOR ATIYEH
GOVERNOR

Attachment 2

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

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

Rec'd 10/25/82

October 21, 1982

CERTIFIED MAIL NO. P 297 306 364

Oregon Sun Ranch, Inc.
c/o Sharon Lee Gritten, Registered Agent
Lamonta Road
P.O. Box 770
Prineville, OR 97754

Re: Notice of Violation and Intent to Assess Civil Penalty, AQ-CR-82-99, Crook County

On September 3, 1982, our Central Region office sent you a notice of violation. That notice followed a series of visits to your facility by Mr. Robert Danko where he found violations of Oregon Administrative Rule 340-21-015(2)(b), visible air contaminant limitations. The notice requested that by September 17, 1982, you submit: (1) a plan and time schedule for correcting the emission problems, and (2) an air contaminant discharge application. The September 17th deadline was later extended to October 1, 1982.

The Department is still awaiting your submittals. Your failure to timely submit a plan, time schedule, and permit application does not show good faith on your part in addressing your pollution problems. The Department remains willing to work with you but we need your cooperation and your commitment to correct the problems at the earliest possible date.

Because you continue to operate a source of air contaminants without a permit, and you are exceeding the Department's visible air contaminant regulations, I have enclosed a legal notice warning of our intent to assess civil penalties should the violations cited within continue or similar violations occur. The air quality schedule of civil penalties provides for the assessment of penalties from a minimum of $50 to a maximum of $10,000 for each day of each violation. This warning notice remains in effect indefinitely.

In order to avoid the assessment of civil penalties, you must immediately submit a plan and time schedule for correcting your emission problems, a completed air contaminant discharge permit application and a permit application fee.

Questions regarding this letter or notice should be directed to Mr. Danko at 388-6146.

Sincerely,

Fred M. Bolton
Administrator
Regional Operations Division

VAK:b
GB1456.L
Enclosure(s)
cc: Air Quality Division, DEQ
Central Region, DEQ
Department of Justice
Environmental Protection Agency
Crook County Court

Attachment III

January 27, 1983

Mr. Robert Danko
Department of Environmental Quality
Central Region
2150 N.E. Studio Road
Bend, Oregon 97701

Dear Mr. Danko:

Pursuant to your letter of January 18, 1983, please be advised that we wish the corporation was in a financial position to purchase the pollution control equipment to bring us in full compliance, however, our current financial position will not allow us a capital expenditure of this magnitude without jeopardizing the loss of the entire business.

We believe that we will be in a position to purchase the equipment in the future, but for the time being, would like to make a formal request for variance as outlined in your January 18 letter.

This formal request for variance is based on Oregon Revised Statute 468.346, Section (c).

We have enclosed an unaudited financial balance sheet as of October 31, 1982. As I am sure you can appreciate, being a privately held family company and being in a difficult financial position, we have not needed an audited statement nor could we afford to expend capital for an item we consider unnecessary.

Due to several factors, we are requesting that this confidential financial information not be made public and that its use be confined strictly to the use of the Department of Environmental Quality, State of Oregon.

On behalf of the corporation, I want to assure you that we are anxious to comply with the standards and will submit a plan of resolution

within the next forty-five days. We are currently working with an engineering firm in Spokane, Washington. Prior to purchasing any equipment, we would like to have a series of meetings with your engineer to ascertain if the equipment and dust control system chosen will bring us into full compliance. Making a capital investment of this size must be precise; we cannot afford the luxury of a mistake or worse, purchase a system that does not solve the problem.

In order that our consulting engineer fully understand all the perimeters, please forward to us all the rules, regulations and specifications so we can predetermine the objective and accomplish all of the goals on the first round. We need to know exactly what we will be responsible for.

We greatly appreciate your kind consideration and understanding concerning our current financial dilemma and again, we want to assure you that we will do everything within our power to cooperate and resolve our problem.

Most sincerely yours,

LEON GRITTEN
President

LG:lm
Enclosure

Prineville Oregon
Feb 18

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
FEB 22 1983
AIR QUALITY CONTROL

DEQ Weathersbee
East office box 1760
Portland, Oregon 97207

Reply sent 3/4/83

Dear Mr Weathersbe

My husband and I live about ¼ mile N.W. of the Kittie Letts Plant in Prineville. We had hoped that the DEQ would settle this problem for us, but since they aren't doing any thing to make Mr Litten, — comply to air pollution standards, we join our neighbors in the fight to force the D.E.Q to act on this matter.

How would you like to live where your home is in a fog of this dust, with a shift of the wind?

My 79 year old mother lives in a mobil home on our property. She constantly complains of a cough, due to this dust. The fine talcum powder like substance, can not be kept out of our homes

We urge you to consider the many neighbors of this plant who are suffering enough now, from this dust, without any added emissions.

The mills have all had to clean up the emissions from their businesses, why should we have to suffer from a more irritating substance?

RT 1 BOX 983
97754

Sincerly
John + Julia Sill

Mother - Pearl C. Telfer

Reply Sent
3/4/83

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
FEB 22 1983
AIR QUALITY CONTROL

February 18, 1983

Mr. E. J. Weathersbee
Air Quality Division
P.O. Box 1760
Portland, Oregon 97207

Re: Oregon Sun Ranch

Dear Sir:

We do not feel the above operation, located at Prineville, Oregon on Lamonta Road, should be issued an air contaminant discharge permit without a public hearing.

The plant was built new two years ago and has never had an air contaminant discharge permit. The plant in the two years it has been in operation has never been in compliance with any federal, state, county, or city laws for operating said plant.

The people living here have complained constantly to the Department of Environmental Quality office in Bend for the past two years concerning the dust from this plant that pollutesthe entire area. The office in Bend has not done one single thing to make this plant comply with the emission laws except threaten the plant with what they could do.

Everyone is sick and tired of the run-a-round we have been given concerning this plant.

Sincerely,

Chester Christ Marie Christ

Chester and Marie Christ

Enclosed photo shows typical every day operation.

February 23, 1983

Reply sent 3/4/83

Paul Ritches
Prineville, Oregon 97754

Dear Sirs;

I am writing in regard to Oregon Sun Ranches application for a permit increasing the contaminate discharge.

There is no way we can stand what they are putting out now, let alone an increase. They are putting out about double what they were to start with now. We have put up with this for 2 years and I feel that is long enough. I have every intention of seeing that something is done.

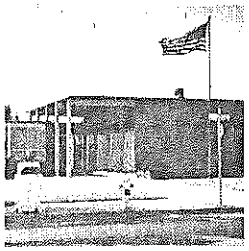
Paul A Ritches

3/4/83 2 PM NOT HOME

RT 1 BOX 1003
97754

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
FEB 28 1983
AIR QUALITY CONTROL

cc - Central Region



CITY-COUNTY PLANNING DEPARTMENT

Crook County & City of Prineville

Bill Zelenka - Director
Courthouse
Prineville, Oregon 97754
(503)-447-3211

February 23, 1983

Department of Environmental Quality
Air Quality Division
P.O. Box 1760
Portland , Oregon 97207

Attn: E.J. Weathersbee

RE: Air Contaminant Discharge Permit 07-0020
for Oregon Sun Ranch

Upon receiving the Notice for Issuance of Air Contaminant Discharge Permit for Oregon Sun Ranch outside of Prineville, Oregon, this office offers the following comments:

1) Oregon Sun Ranch received Crook County Planning Commission approval for a Cat Litter packaging plant on October 8, 1980 with conditions.

2) On January 14, 1981, the Crook County Court authorized a Temporary Occupancy Permit for operation of the Plant with certain conditions that the sewage disposal unit be brought up to code requirements and that they comply with State requirements for air pollution control. A permanent occupancy permit was to be issued upon the requirements of DEQ being satisfied.

3) Permanent Occupancy Permit issued by County Building Official on February 24, 1981 based upon the Central Region Office letter dated January 13, 1981 giving interim approval and with the knowledge that DEQ and Oregon Sun Ranch were working together on compliance.

4) This office has received complaints from neighbors since the plant went into operation. They were encouraged to call DEQ directly, as well as this office calling the Central Region office.

5) Over two years is long enough to provide for correction measures to reduce the dust emissions of the bentonite processing. There are residences in close enough proximity which are affected. In addition, the property upon which Oregon Sun Ranch is located was purchased from the City of Prineville and is part of a future 54 acre industrial park the City is trying to develop. Reducing the dust emissions is viewed as necessary in order to attract other business which will be in close proximity.

6) Crook County is anxious to resolve this matter and feels that various types of businesses can co-exist with the property considerations and controls.

Sincerely,

William P. Zelenka

William P. Zelenka
Planning Director

WPZ/dam
cc:file

3/4/83

BILL SAID THE DIDN'T NEED A WRITTEN RESPONSE

MINTURN, VAN VOORHEES, LARSON & DIXON
ATTORNEYS AT LAW

JAMES B. MINTURN
J.C. VAN VOORHEES
JAMES F. LARSON
STEPHEN D. DIXON

P.O. BOX 10 - 298 W. 3RD
PRINEVILLE, OREGON 97754
(503) 447-1830

March 4, 1983

Department of Environmental
Quality
522 SW Fifth Avenue
Box 1760
Portland, Oregon 97207

Attention: Fred M. Bolton
Administrator
Regional Operations Division

Re: Oregon Sun Ranch, Inc.
Crook County
Your File No. 07-0020

Dear Mr. Bolton:

My office has been contacted by Mr. and Mrs. Chester Christ and by Mr. Alan Kvarme regarding the operations of Oregon Sun Ranch, Inc. As you probably know, Oregon Sun Ranch, Inc., operates a kitty litter plant just north of Prineville. Both Mr. and Mrs. Christ and Mr. Kvarme own real property in the same general neighborhood.

Ever since the Oregon Sun Ranch Kitty Litter Plant commenced operations more than two years ago, the dust poured into the air by said operation has and continues to far exceed the legal limits permitted by law and your regulations.

Despite numerous protests, neither your department nor any other governmental agency has taken any action to stop this air pollution other than to write letters to Oregon Sun Ranch, Inc., and threaten action. My clients feel that the time is long since past when positive affirmative action should have been taken. This constant violation of the Clean Air Act by Oregon Sun Ranch poses not only a health hazard for the residents of the area, but, in my opinion, substantially diminishes property values.

The City of Prineville has a development agreement with Oregon Sun Ranch, wherein Oregon Sun Ranch agrees to comply with all rules and regulations of all applicable governmental agencies. The city is given the option of terminating the agreement for violation thereof. The city, however, for reasons unknown to us, has refused to enforce the agreement.

In reviewing the various documents, it appears to me that Oregon Sun Ranch has been operating this plant all this time without any discharge permit whatsoever. I have just read in yesterday's paper where the discharge permit has now been granted. We hope and expect that your department will strictly enforce the terms and conditions of that permit and will not grant any variance of the terms thereof.

My clients are not seeking to terminate the plant operation unless it is necessary to do so to stop the air pollution. It is believed that air filter systems exist which, if installed, would solve the problem.

I believe my clients have a cause of action against Oregon Sun Ranch for damages and for abatement of the nuisance. I also believe they have the right to bring a mandamus action against all the governmental agencies involved, including the DEQ, to require each agency to enforce all applicable laws and regulations.

My clients are determined to do whatever is necessary to stop this pollution. They are prepared to furnish their results of their investigation to you and all other public agencies involved.

Please let us hear from you as to your plans for enforcing the Clean Air Act as it applies to the Oregon Sun Ranch operation here in Prineville.

Sincerely,

James B. Minturn
JBM:gs
cc: Robert Danko
Dr. Richard J. Nichols
City of Prineville
Mr. Bill Zelinka, Crook County Planning Department
Mr. Dave Riggs, Crook County Health Department
Mr. Herb Post, Crook County Planning Department
Mr. Al Kvarme
Mr. and Mrs. Chester Christ

Attachment V

VICTOR ATIYEH
Governor

Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE: (503) 229-5696

March 16, 1983

CERTIFIED MAIL NO. P 297 307 191

Oregon Sun Ranch, Inc.
c/o Sharon Lee Gritten, Registered Agent
140 E. Second Street
Prineville, OR 97754

Re: Notice of Violation and Intent to Assess Civil Penalty No. AQ-CR-83-32 and Notice of Assessment of Civil Penalty No. AQ-CR-83-33, Crook County

Since early September, 1982, this Department has been encouraging your company to expeditiously install control equipment to prevent the emissions of dust into the atmosphere from your cat litter packaging plant located in the Prineville Industrial Park. To date, such equipment has not been installed. During the past six months, you have proposed various plans and schedules to control the emissions but have failed to meet them. You still do not have any firm plan and time schedule to eliminate the dust emissions from your operation.

On October 21, 1982, this Department issued you Notice of Violation and Intent to Assess Civil Penalty No. AQ-CR-82-99. The notice informed you that you were discharging dust into the atmosphere in excess of the Department's regulations and any similar violation would result in a civil penalty. On March 1, 1983, you again discharged dust in excess of the Department's visible emissions limitation.

Therefore, I have enclosed Notice of Civil Penalty Assessment No. AQ-CR-83-33 assessing a $500 civil penalty against your company. In determining the amount of your penalty, I have considered Oregon Administrative Rule 340-12-045. The penalty is due and payable immediately. It should be forwarded to the Department's Fiscal office at the address shown on this letterhead. Appeal procedures are outlined in Paragraph VIII of the enclosed assessment notice. If you fail to either pay the penalty or appeal this action within twenty (20) days, a Default Order and Judgment will be entered against you.

On March 3, 1983, this Department issued Air Contaminant Discharge Permit No. 07-0020 to your company. You have not complied with the compliance schedule set forth in Condition 6a and 6b of that permit, in violation of that permit. Therefore, I have enclosed Notice of Violation and Intent to Assess Civil Penalty No. AQ-CR-83-32. The notice warns you that you are liable for civil penalties each day you remain in non-compliance with those permit conditions beginning five (5) days from receipt of this notice.

I wish to remind you that the civil penalty range for each day of violation of a permit condition or emission limitation is a minimum of $50 to a

maximum of $10,000 for each violation. On April 1, 1983, I plan to again review this matter and assess additional civil penalties for the days you remain in non-compliance following the warning period. I have instructed Robert Danko to forward to me any information you present to him concerning your progress in complying with Condition 6a and 6b of your permit. The progress you make between now and April 1, 1983, will be considered in my determination of the size of your next civil penalty.

Questions regarding the enclosed notices should be directed to Van Kollias, Enforcement Section, at 229-6232 in Portland or toll-free at 1-800-452-7813. Technical questions should be directed to Mr. Robert Danko, Central Region, at 388-6146 in Bend.

Sincerely,

William H. Young

William H. Young
Director

VAK:b
GB1880.L
Enclosure(s)
cc: Central Region, Bend, DEQ
Air Quality Division, DEQ
City of Prineville
Department of Justice
Environmental Protection Agency

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Fred Bolton DATE: March 16, 1983

FROM: Judy Hatton

SUBJECT: Oregon Sun Ranch, Inc.

At your request, I have reviewed the following financial documents which were forwarded to our office from the company accountant, Frankie Knight of Spokane, Washington. All documents are being returned to the applicant today.

Oregon Sun Ranch, Inc.

Unaudited balance sheet and statement of operations for:

FYE 6/30/81;
FYE 6/30/82;
Five month period from 7/1/82 - 11/30/82.

Corporate federal tax returns for: FYE 6/30/81;
FYE 6/30/82.

My review has revealed a trend of increasing annual losses for the Company, ranging from less than $40,000 to more than $200,000 over the last five years. In addition, current liabilities continue to far exceed current assets. This is true for total liabilities and total assets as well.

Based on the information provided, it is my opinion that Oregon Sun Ranch clearly is in serious financial difficulty. As such, there appears to be a very real question as to whether or not the company can continue to stay in business with or without the additional expense for pollution control equipment. This being the case, it seems unlikely that an additional $10,000 to $15,000 for pollution control equipment would be the expenditure which finally puts the company out of business.

It should also be noted that the Company has a number of creditors. It may be possible that, in order to protect its investment, one might conclude that it would be in its own best interest to channel additional funds to the Company for the specific purpose of helping it get into compliance to avoid any penalties or plant closure.

If you would like to discuss this matter further, please give me a call.

JLH:h
BH895

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: Amendment No. 1, Agenda Item K, April 8, 1983, EQC Meeting

Request for a Variance from OAR 340-21-015(2)(b), Visual Emission Limits, OAR 340-21-030(2), Particulate Emission Limits and OAR 340-21--60(2), Fugitive Emissions for Oregon Sun Ranch, Inc., Prineville

Background

On March 29, 1983, Oregon Sun Ranch, Inc. submitted a Notice of Intent to Construct and background information prepared by Clarke's Sheet Metal, Inc. of Eugene for installation of a $34,000 pollution control system at the Prineville cat litter packaging facility. On March 29, the Department also received a copy of a check from Oregon Sun Ranch to Clarke's for $10,200 which was the down payment required by Clarke's for supplying and installing the system. The Department reviewed the proposal and approved construction on April 1 (Attachment A-I). With this tangible progress, the Director chose not to assess additional civil penalties when he reviewed this matter on April 1.

Oregon Sun Ranch, Inc. will likely modify its variance at the April 8th Commission meeting by requesting a short-term variance until pollution control equipment is installed. The company believes that equipment can be installed and operating satisfactorily by May 15, 1983.

Based upon this information, the following options are available to the Commission:

Option 1

The Commission could grant the company's short-term variance request, subject to the company meeting the following compliance schedule:

a. By no later than May 2, 1983, the permittee shall submit final design and construction drawings to the Department.

b. By no later than May 9, 1983, the permittee shall begin construction.

c. By no later than May 16, 1983, the permittee shall complete construction.

d. By no later than May 20, 1983, the permittee shall demonstrate compliance.

Option 2

The Commission could deny the variance request and endorse a strategy of assessing daily penalties with the amount of each penalty dependent upon the company's progress toward compliance. If acceptable progress is being made, penalties need not be assessed. In addition, the Commission could authorize the Department to prepare an injunction to be filed in court to stop the company from operating in violation, if the company does not meet its latest compliance schedule.

Since the company appears to be on an acceptable schedule which will result in compliance in mid to late May, the staff favors Option 2. This would allow the Director to use prosecutorial discretion and not assess penalties if the company keeps to its tight schedule. However, staff feels in this case the Department does need the flexibility to immediately assess penalties and proceed with plant closure if the company falls behind this schedule. Because the company has failed to meet several compliance dates already, staff believes that a Commission variance for this short-term period is inappropriate.

Summation (Additions to original staff report)

6. The Department recommends that the Commission deny the original variance request because of: 1) the severity of the emissions impact on neighbors, 2) the length of time the company has already been given to comply, 3) the short period until compliance should be achieved, and 4) the need for a quick enforcement response by the Department if the company falls behind its latest compliance schedule.

7. Oregon Sun Ranch intends to ask at the EQC meeting that its variance request be amended to include a specific schedule resulting in compliance by May 30, 1983. The company also has submitted a Notice of Construction, which the Department has approved and made a down payment for supplying and installing the pollution control system.

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 revoked. 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.

Bill

William H. Young

Attachments A-I Department letter approving installation of controls at Oregon Sun Ranch
A-II Letter from Crook County Planning Commission

Robert Danko:b
388-6146
April 6, 1983
GB2050

ATTACHMENT A-I

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

CENTRAL REGION

2150 N.E. STUDIO ROAD, BEND, OREGON 97701 PHONE (503) 388-6146

April 1, 1983

Mr. Lee Gritten, President
Oregon Sun Ranch, Inc.
140 East Second Street
Prineville, OR 97754

Dear Mr. Gritten:

The Department has reviewed the Notice of Construction and accompanying information submitted on March 29, 1983. Submittal included a preliminary drawing and background information supplied by Clarke Sheet Metal (Proposal No. WEF 3-2583), in addition to the Notice of Intent to Construct from your company. The proposed construction addresses the excessive dust emissions from your Prineville cat litter packaging facility.

The Department hereby approves the installation of this pollution control equipment, subject to the following conditions:

1. The construction of the project shall be in strict conformance to approved plans and specifications which you submitted on March 29, 1983. No changes or deviations, except those discussed below, shall be made without prior written approval of the Department of Environmental Quality.

2. Granting approval does not relieve the owner of the obligation to obtain required local, state and other permits and to comply with appropriate statutes, administrative rules and standards.

3. Final design drawings shall be submitted to the Department prior to installation of the major components of the pollution control system.

4. Final design drawings shall show and construction shall ensure that draft air can be pulled equally from both sides of the truck unloading pit. Refer to Area #8 of Clarke's March 25, 1983 letter to Oregon Sun Ranch.

5. An adequate level of maintenance of both existing and proposed equipment is necessary to ensure an acceptable emission rate and compliance with the company's air contaminant discharge permit.

6. Disposing of the screen discharge and the dust collected by the filters must be done in a nonoffensive manner so that a nuisance condition is not created. You are required to use water and/or a soil or rock cover to control blowing dust at the disposal area.

Upon completion of the project, it will be necessary for the Department to evaluate compliance with visible emission limits. This demonstration of compliance will constitute acceptance by the Department of the completion of the project. Compliance certification, however, is contingent upon continued satisfactory operation. No source test will be required if visible emissions after construction are satisfactory.

Preliminary certification for tax credit was requested and is hereby given for this installation. This preliminary certification does not ensure that the entire pollution control facility will be issued a tax credit certificate.

If we can provide further assistance or if you have questions, please contact Bob Danko in this office.

Sincerely,

Richard J. Nichols
Regional Manager

cc:William Firneisz, Eugene
:Bill Zelenka, Crook County Planning Department
:F. Skirvin, Air Quality Division,
:Air Quality Division,
:Regional Operations,
DEQ Portland

AP - Oregon Sun Ranch
Crook Co.

April 1, 1983

Department of Environmental Quality
Air Quality Division
P.O. Box 1760
Portland, Oregon 97207

Attn: Fred Bolton

RE: Variance Request of Air Contaminant Discharge Permit 07-0020 for Oregon Sun Ranch

The Crook County Planning Commission would like to offer the following comments for your April 8, 1983 hearing on whether to grant a variance from air quality standards to Oregon Sun Ranch at their bentonite packaging plant.

First of all, the Planning Commission is opposed to the granting of a variance for the packaging operation. This opposition is based upon the following:

1) The Commission granted an approval for the operation of the plant in October, 1980 to be consistent with all applicable rules and regulations.

2) A Temporary Occupancy Permit was given in January, 1981, based upon the interim approval of the plant by the Bend Regional Office. This approval was conditional upon correcting the dust problem with an improvement time schedule. A permanent occupancy permit was given in February, 1981, based upon the fact there was an oral agreement between Oregon Sun Ranch and the Bend office that improvements were to be done.

3) The dust problem has continued from that time until the present, with the neighboring residences and businesses being subject to the inconvenience.

4) The Planning Commission held a hearing on March 23, 1983, to review the situation. The Commission decision was to revoke the site plan approval on April 5, 1983, unless two conditions were met, and secondly to oppose any variance and to insist that the Environmental Quality Commission impose a strict deadline for compliance. (See attachments)

5) There needs to be some form of constant pressure upon the applicant. After reviewing our files and those of the Department of Environmental Quality, it is obvious the schedules and deadlines have been stretched out and broken with no consequence to the operator. Fines and the continual threat of fines is an appropriate method it seems to spur some results.

To conclude, the Crook County Planning Commission for the aforementioned reasons opposes the granting of the variance for Oregon Sun Ranch and insists that the penaltys of fines process be continued. The Commissions' hope is for a business that can be a part of our community in a compatible way. Our purpose is not to put a business out of operation.

On Behalf of the Commission--

Milt Rogers

MILT ROGERS, CHAIRMAN

cc: Bob Danko
Steve Dixon
Barbara Haslinger
District Attorney
file

ADDITIONAL INFORMATION on
AGENDA ITEM K

April 1, 1983

Department of Environmental Quality
Air Quality Division
P.O. Box 1760
Portland, Oregon 97207

Attn: Fred Bolton

RE: Variance Request of Air Contaminant Discharge Permit 07-0020 for Oregon Sun Ranch

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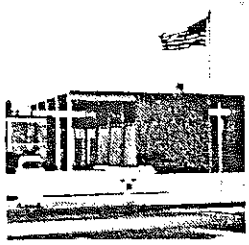
On Behalf of the Commission--

Milt Rogers

MILT ROGERS, CHAIRMAN

cc: Bob Danko
Steve Dixon
Barbara Haslinger
District Attorney
file

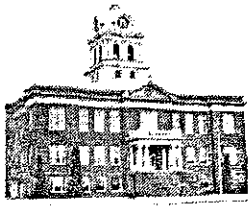


CITY-COUNTY PLANNING DEPARTMENT

Crook County & City of Prineville

Bill Zelenka - Director
Courthouse
Prineville, Oregon 97754

(503)-447-3211



March 25, 1983

Oregon Sun Ranch, Inc.
140 East Second Street
Prineville, OR 97754

Gentlemen:

At its public hearing on Wednesday, March 23, 1983, the Crook County Planning Commission revoked the site plan approval for your bentonite processing plant on Lamonta Road (commonly known as the kitty litter plant) effective April 5, 1983, unless you submit the following to the Crook County Planning Department by 5:00 p.m. on April 4, 1983:

1) A Department of Environmental Quality (DEQ) approved plan for a pollution (dust emissions) control device, and

2) A copy of your purchase order for the approved equipment.

Two other items were discussed and agreed to by your attorney, Barbara Haslinger. These are:

1) An accurate site plan to be submitted to the Planning Department reflecting existing structures and future development; and

2) Records for the pumping of the holding tank to be periodically sent to the County Sanitarian.

Additionally, the Commission continued the hearing to its April 13, 1983 meeting at which time a final construction deadline will be established and a performance bond will be considered.

You have the right to appeal this decision to the Crook County Court. If you decide to appeal, written notice must be filed with the Planning Department within 15 days (5:00 p.m., April 7, 1983). This notice shall state the nature of the decision or requirement and set forth the specific grounds for the appeal and the basis of the error to be reviewed. The appeal fee is $75.00 plus costs. We would require a $50.00 deposit for a transcript of the hearing; therefore, $125.00 would have to accompany the appeal notice.

If you have any questions, please contact us.

Sincerely,

William P. Zelenka

William P. Zelenka
Planning Director

WPZ/dam
cc: Barb Haslinger
Steve Dixon
Herb Post, Building Official
Dave Riggs, Sanitarian
DEQ
file

MINUTES

COUNTY PLANNING COMMISSION

MARCH 23, 1983

The meeting was called to order at 7:35 p.m. by Chairman Milt Rogers. Other Commission members present included John Shelk, Lawrence Weberg, Dean Dodson, Tom Broadwater, and Carol Davis. Ex-officio members present were Bill Zelenka, Jacquie Bushong, and Steve Ensor. Public attendance was 35+. It was moved by Dean Dodson and seconded by Lawrence Weberg to accept the minutes as mailed. The motion passed unanimously.

PUBLIC HEARING BUSINESS

1) Review of compliance with conditions of Site Plan approved October 8, 1980 for the operation of Oregon Sun Ranch bentonite processing plant. Property is zoned Heavy Industrial, H-M, and is located 2 miles northwest of Prineville on Lamonta Road (T14, R15, Sec.25, Tax Lot 2302).

Milt Rogers, Chairman, announced that because of the large number of people who had come, testimony was to be limited to 10 minutes each, if possible.

Bill Zelenka reviewed the staff report dated March 18, 1983, which included a copy of the minutes of the October 8, 1980, Commission meeting; copies of correspondence to Oregon Sun Ranch (January 9, 1981, letter from DEQ; January 13, 1981, letter from the Crook County Planning, Building, and Sanitation Departments; January 13, 1981, letter from DEQ; September 3, 1982, letter from DEQ; January 13, 1983, letter from DEQ; and March 16, 1983, letter from DEQ); copies of letters from Oregon Sun Ranch, Inc. (January 27, 1983, letter to DEQ; March 11, 1983, letter to Clarke Equipment Company; and March 14, 1983, letter to DEQ); and a copy of a letter dated March 4, 1983, from a lawyer to DEQ complaining about the plant and threatening legal action against both Oregon Sun Ranch and the State of Oregon. Zelenka also pointed out that setting before each Commission Member was material submitted that day by the applicant--a letter dated March 22, 1983, from Clarke's Sheet Metal, Inc. with a packet to Oregon Sun Ranch and a copy of the presentation to be made by the applicant's attorney (History of Oregon Sun Ranch, Inc.).

Bill Zelenka gave a brief history of Oregon Sun Ranch's encounter with Crook County departments, e.g., erroneous site plan submitted to Planning Department, sewage disposal problems at the site, and the problems with the Building Department (e.g., non-compliance with sewage disposal, complaints of dust emissions, building without a permit, and a stop work order being posted on premises).

He detailed the complaints that have been made to both the Planning and Building Departments about the dust emissions since January 1981.

Zelenka briefly told of DEQ's involvement and indicated that a DEQ representative would be testifying.

Zelenka stated that Oregon Sun Ranch has no approved dust emission control system functioning nor is there an approved development program for installation; therefore, the firm has not met one of the conditions imposed by the County over two years ago. He said that the dumping of raw material behind the plant causes a dust problem.

Zelenka pointed out that the neighbors have endured more than two years of heavy dust emissions and altendant problems. This must be balanced with the fact that the plant provides several jobs in the area. He said the problem is not clearcut, and he offered several options: 1) the Commission could do nothing; 2) the Commission could impose a strict time schedule for the plant to be in compliance; or 3) the Commission could revoke the previous approvals because of the lack of compliance to the applicable rules.

Zelenka told the Commission he had several pictures of the plant and dust emissions; however, he would not pass them around unless the neighbors testifying had not brought some.

Milt Rogers solicited DEQ's testimony at this time in the proceedings.

Bob Danko, DEQ representative from the Bend office, said he had come to the meeting to respond to any questions about what DEQ is doing with the plant to obtain compliance. When no Commission member asked any questions, he proceeded to give a background on DEQ's involvement with the kitty litter plant. Last week DEQ's Director imposed a penalty against the company for failure to meet certain environmental standards. The Director will assess the matter on April 1, 1983, and additional penalties may be imposed for the days of non-compliance between the penalty of last week and April 1. The Environmental Quality Commission, the Board that sits over the Department of Environmental Quality, has a meeting on April 8, 1983. Oregon Sun Ranch has requested a variance of the environmental standards for economic reasons, and the request will be heard by the Commission on April 1.

Danko said DEQ is taking enforcement measures day-by-day because Oregon Sun Ranch has not followed through on promises and numerous delays have occurred.

Zelenka asked Danko to explain what a DEQ variance was. Danko said that the Environmental Quality Commission had the power under State law to grant an exemption to meeting certain environmental quality laws for a specific length of time. The Commission seldom

grants a variance permanently. The variance, if granted, is a short-term ecemption and it has to be based on one of four items as defined in State law. Economic grounds are the basis for the Oregon Sun Ranch variance request; however, the DEQ Staff is recommending no variance be granted because the firm has already had a two year de facto variance.

Milt Rogers asked Danko to relate what had happened between January 1981 and Fall of 1982. Danko said he was not the first DEQ staffer to contact. Oregon Sun Ranch Records indicate that in January or February 1981, DEQ was told that in-house corrections would remedy the dust problem. Danko related that there are two types of activities at the firm: packaging of cat litter and unloading of cat litter. Today, the emissions during "packaging" meet DEQ standards, but during the "unloading" process which occurs an hour or two a day, emissions are much more severe and cause a nuisance which concerns DEQ. Dank said that DEQ did not start getting complaints from the public about the dust until the summer of 1982 when the Crook County Planning Department quit fielding complaint calls and directed complaintants to DEQ. At that time (Aug. 82), "the roof fell in" on DEQ with a deluge of complaints. Consequently, Danko went to Oregon Sun Ranch and watch an "unloading". At that time, DEQ realized that there was a real air pollution problem, and DEQ started their efforts to secure voluntary compliance from Oregon Sun Ranch. DEQ tries to work with the industry and get them to voluntarily clean up rather than fine them. Ninety five percent of firms comply; however, it hasn't worked with Oregon Sun Ranch.

John Shelk asked what exactly takes place during "unloading". Danko said bulk cat litter (ready to be bagged) is trucked by belly-dump from the mining site to the plant. The trucks pull in and dump into an open dump pit which holds half a belly-dump load. The dust problem occurs when the kitty litter is transferred from the dump pit to the silo. The company currently blows the material, when the better way would probably be to convey it.

Dean Dodson asked how long it took to transfer the load from the pit to the silo, and Danko said it takes about one hour.

John Shelk asked what kind of a permit Oregon Sun Ranch had, and Danko said DEQ had forced Oregon Sun Ranch to get a permit because conditions can be attached to it. The permit has a compliance date of March 3, 1983, so every day the company operates without the pollution control devices installed, the company is in violation and DEQ can assess penalties. DEQ's goal is to get the pollution control devices installed.

In response to an inquiry from John Shelk, Danko said the company has told DEQ they would do things and they haven't been able to follow through on them.

PROPONENT TESTIMONY:

Barb Haslinger, attorney for Oregon Sun Ranch, said she lived in Gladys Logsdon's house which is across the creek from the plant. She referred the Commission members to a packet entitled "History of Oregon Sun Ranch, Inc.," and then proceeded to paraphrase parts of the material and present information on Oregon Sun Ranch's operations in Prineville.

Haslinger admitted she didn't know why an approved dust collection (pollution control) system has not gone into the plant. She said that Oregon Sun Ranch had put in a system originally which didn't work, and they (the Grittens) had been reluctant to invest money with no guarantee that the device would work. However, she said the Grittens have realized that they must put in a dust collection system so they won't be shut down.

Haslinger stated that it is estimated a dust collection system will cost $10,000 to $20,000 with no guarantees that it will work. She said the company is thinking of buying a bagging system from Clarke Equipment Company in Eugene. Further, she said DEQ has tentatively approved the bag collection system even though it's a draft concept, although DEQ wishes to review the plans of the system. She said that DEQ had given the company a deadline of April 1 to have the detailed plans and asked the Planning Commission to wait until that date to give the Grittens a chance.

John Shelk asked about the duration of the contracts for kitty litter supplies and Haslinger said she wasn't certain, but believed they were long-term. She also pointed out that Oregon Sun Ranch is a fledging business and needed no economic sanctions imposed.

Haslinger further, stated that Gritten is not "thumbing his nose" at the requirements; he is not in a position to gamble money on untried devices. The company is up against the wall.

Dean Dodson asked Bob Danko, DEQ, about the compliance of the Christmas Valley kitty litter plant. Danko said that DEQ had given the Christmas Valley plant a variance and additional time to bring it into compliance. The firm was not exempted from the requirements.

John Shelk questioned Danko about the proposed bag filtration system. Probable cost of the system was discussed. Danko explained the bag system, and then gave an example of a successful bag house system.

Bill Zelenka asked Danko if the DEQ-approved plans in December are the same as is being proposed at this time, and Danko replied that the December plans were not comprehensive enough. DEQ wants a system which will take care of all the dust.

Bill Zelenka asked Barb Haslinger if Oregon Sun Ranch was willing to have conditions (restrictions on plant operations) imposed by the Commission or a performance bond posted by the Grittens. Haslinger said that Oregon Sun Ranch was amenable to conditions (such as, hours to unload the kitty litter), however, they did not have any money for a bond. She asked that the Commission instead set a specific deadline for compliance, then shut them down if the plant doesn't meet it.

Milt Rogers questioned that Oregon Sun Ranch would comply with any schedule based upon their past record of failure to meet deadlines. Haslinger responded that the DEQ fine and the threats from everyone else were good incentives.

Lawrence Weberg talked about the unloading process.

OPPONENT TESTIMONY:

Steve Dixon, attorney representing Mr. and Mrs. Christ and Mr. Kvarme, gave a concise presentation. He said the dust problems had been continuous since 1981 with the unloading times the most severe. The unloading process takes 11/2-2 hours, twice a day, 5-6 days per week. He stated that the kitty litter (bentonite) dusts the homes, mars the view, and may pose a health hazard. He presented three photos to the Commission showing what was purported to be "daily" dust, not an extreme.

Dixon stated that 1) Oregon Sun Ranch has had time to comply; 2) There has been no good fiath effort put forth by Oregon Sun Ranch; and 3) Oregon Sun Ranch is asking for another delay. He, also, responded to many of the points raised by Haslinger.

Dixon said that industry should be controlled and pointed out that the $20,000 dust collection system was less than 1.5 percent of the firm's annual operating costs.

Dixon concluded by asking for a performance bond, at the minimum, and the occupancy permit until the plant complied. He asked the Commission to shut the plant down.

Al Kvarme, owner/operator of a body shop in the plant vicinity, testified that the dust causes problems in his business and detailed the problems with grit in the paint, et cetera. He said the problem is worst at 5-7 am; and when it's windy, more dust seems to come from the plant. Kvarme gave 15 photos to the Commission.

Chuck Christ, neighbor, said his residence is the closest one to the plant; it's approximately 750 feet. He said he has a heart condition and emphysema, and his doctor has insisted he walk three miles each day. He said he cannot walk in the area because of the dust.

Christ pointed out that the DEQ enforcement process is lenghty and could go on indefinitely. He concluded by stating that the plant

has never been in compliance with the Clarn Air Act, i.e., it has operated illegally, and he asked the Commission to please shut the plant down because the neighbors have suffered enough.

Don Smith, owner of D & E Wood Products, said he owns land next to the plant and lumber is air-drying on his property. He expects the dusting of bentonite on the lumber to add cost to processing of materials.

He said his employees are concerned about the amount of dust present because the area is not livable at the present. He stated that Oregon Sun Ranch has had enough time to comply. Further, he said the dust could keep out many prospective industrial plants. In fact, the dust could put D & E out of business.

In response to a question, Smith said his property line is 150 feet from the plant and his new building would be located approximately 300-400 fee from the plant.

Eric Cross, Madras Highway resident, said his home is located north of the plant. He said that his wife had complained that day as she hung clothes outside to dry because dust from the plant was coming their way. He concluded by saying that two years was enough time for the plant to comply.

Steve Lieser, resident in area, testified that during the summer-time, with the windows open, dust covers everything in his home. He said his family has had to breathe dust.

REBUTTAL TESTIMONY:

Barb Haslinger, Attorney for Oregon Sun Ranch, repeated that she lives behind Oregon Sun Ranch and her animals do not have emphysema and she has no dust problems. However, she doesn't contest that a problem exists, and she assured the Commission that the firm will comply. She said that Oregon Sun Ranch will get a construction schedule and will comply with it. She stated that Clark Equipment Company is projected to finish work on the dust collection system by mid-May, because five weeks is all the time that is required to manufacture and install the system. However, a shut-down of five weeks would cripple Oregon Sun Ranch. Again, Haslinger asked for the Commission to set a schedule and deadlines; then if the company doesn't meet any of the deadlines, close them down. She said that a performance bond would be an unnecessary cost to Oregon Sun Ranch.

Bill Zelenka asked Fred Bolton, DEQ's administrator of Regional Operations and Chief Enforcement Officer, to explain what DEQ planned to do. Bolton said that DEQ could get an injunction to shut down Oregon Sun Ranch if they don't meet the projected May 15, 1983, installation deadline. He emphasized that it was DEQ's intent to enforce this deadline. He pointed out that Oregon Sun Ranch has a variance request before DEQ which will be heard April 8, 1983, in Salem.

John Shelk asked Bolton what percent of DEQ's permits are not in compliance. Bolton said there were 1,700 permits in existence with 98 percent in compliance, i.e., 2 percent are not in compliance. Shelk characterized pollution control as a cost of doing business.

The public hearing was closed on this item.

Milt Rogers wanted the Commission to wait to act until after the April 8, 1983 meeting on the requested variance. John Shelk pointed out that the Planning Commission is separate from DEQ; it can operate independently. He stated that everyone in the business community has to obey the law. Shelk further felt that the Commission should not acquiesce to the threat of job losses.

Milt Rogers suggested the Commission's probable action as a two-step procedure: 1) time schedule, and 2) performance bond required. He also felt that a letter from the Commission, drafted by the Planning Department, should be sent to the DEQ Commission for the April 8th meeting asking for a strict time schedule and enforcement of it.

Bob Danko, DEQ, explained DEQ's probable response in any enforcement procedure.

Bill Zelenka made a recommendation that two deadlines be set: 1) April 4, 1983, DEQ approval of construction plan, and 2) April 13, 1983 Crook County Planning Commission's next meeting, final approval deadline by EPA and DEQ. Failure to meet any deadline would mean automatic revocation of Oregon Sun Ranch's county approval.

Milt Rogers said he wanted to see the Oregon Sun Ranch purchase order when it was issued and a performance bond to force the firm to follow through.

Dean Dodson said he wanted deadlines, but he saw no need for a performance bond. A discussion ensued among Commission members in regards to the disirability of requiring a performance bond.

Steve Ensor, Assistant D.A. said he thought deadlines would work.

Milt Rogers pointed out that Oregon Sun Ranch has a bad track record for compliance. He outlined various decisions the Planning Commission could make.

Dean Dodson, again, stated he felt there should be no performance bond required because of the additional expense to the company. He said the Commission had sufficient power without the bond.

Steve Ensor detailed legal remedies available to the County.

Another lengthy discussion followed, about the various options including deadlines, performance bond, and DEQ variance hearing.

It was moved by John Shelk and seconded by Carol Davis that Oregon

Sun Ranch's permit be revoked on April 5, 1983, unless the firm has submitted to the Planning Department by 5:00 p.m. on April 4, 1983, the following: 1) a DEQ-approved plan for a dust pollution control device, and 2) a copy of the Oregon Sun Ranch purchase order for purchase of the device. Additionally, the Commission will continue the hearing to the April 13, 1983, meeting in order to establish a final construction deadline and discuss the necessity of requiring a performance bond. The motion passed unanimously with all members voting.

It was moved by John Shelk and seconded by Dean Dodson that the Commission send a letter (drafted by the Planning Department) to the DEQ variance hearing on April 8, 1983, recommending denial of a variance and asking for imposition of strict time schedules. The motion passed unanimously.

2) Land Partitioning Application No. C-LP-400-83 by Richard Hanrahan to split a 19.5 acre parcel into three parcels of 3, 4, and 12.5 acres each. Property is zoned Suburban Residential, SR-1, and is located 2 miles north of Prineville at the end of Rawhide Lane (T14, R16, Sec. 29CA, Tax Lots 100 and 200).

Jacquie Bushong presented the staff report as photos of the property and road were given to the Commission.

PROPONENT TESTIMONY:

Dick Hanrahan, applicant, said he had purchased two parcels separately and didn't realize the properties would merge. He had nothing to add to the staff report.

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: Agenda Item No. L, April 8, 1983, EQC Meeting

Appeal of Gailen Adams From Hearings Officer's Decision in Case No. 31-SS-NWR-82-51

Background

Respondent has appealed the hearings officer's decision affirming a $100 civil penalty for installation of a portion of an on-site sewage disposal system without first obtaining a permit.

Enclosed for the Commission's review are: Respondent's letter of appeal dated December 21, 1982; Department's memo in response to that letter; and, a copy of the hearings officer's decision. I have also included a letter from Ronald Cook, owner of the property.

Enclosures

LKZ:k
229-5383
March 14, 1983

HK1758

EQC
Hearing Section

DEC 27 1982

Dec 21, 82

D.E.Q.

In reply to letter received that you wrote Dec 16 1982. 31-55-NWR-82-57

I disagree with your decision 100%. Due to the fact I was informed there was a septic permit for the job. I also informed our cook I was not installing a system for him. He said he would do it.

Lets suppose you were going to install a system for your self on your property, got a permit as (thought so) and started to do it yourself then maybe hurt your back or it was just to much work. So you hired a neighbor kid to come over and dig some ditches or holes. Does this make the neighbor kid responsible for your system. Even if he doesn't finish it? Thats my position (the neighbor kid) It makes no difference if I use a hand shovel or the neighbor kid does or a backhoe.

There are still hard times down our way. And we don't have no steady income. And no way of drawing unemployment.

I hope this finds the DEQ more Understanding.

Gaylen Adams

STATE OF OREGON

INTEROFFICE MEMO

TO: Linda K. Zucker
EQC Hearings Officer

DATE: January 18, 1983

FROM: Van A. Kollias
Enforcement Section

SUBJECT: DEQ vs. Adams, Gailen
Case No. 31-SS-NWR-82-51

The Department believes the Hearings Officer's Findings of Fact, Conclusions of Law and Final Order in Case No. 31-SS-NWR-82-51 were correct and should remain unchanged.

I do not intend to file any further response to Mr. Adams' letters.

I will be present at the Commissioner's meeting to respond to any questions they might have.

VAK:ts

EQC
Hearing Section

JAN 18 1983

Contains Recycled Materials

81-125-1387

SP*75683.125

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON,	)	
	)	HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER No. 31-SS-NWR-82-51
Department,	)	
v.	)	
GAILEN ADAMS,	)	
Respondent.	)	

BACKGROUND

This matter was initiated by Department's notice of assessment of civil penalty which alleged that on or about May 19 or 20, 1982, Respondent installed an on-site sewage disposal system, or part thereof, without first obtaining a permit, in violation of ORS 454.655(1) and OAR 340-71-160(1). Department levied a civil penalty of $100.00, the minimum penalty established by law for the alleged violation. Respondent appeals imposition of the penalty.

FINDINGS OF FACT

Respondent is licensed by the state of Oregon to perform sewage disposal services.

Sometime prior to May 19 or 20, 1982, Respondent was asked by Ron Cook to dig some trenches on property owned by Cook and located in Lincoln County, Oregon. Cook told Respondent that he had a permit to construct an on-site subsurface sewage disposal system. Respondent knew Cook and attended the same church as the Cook family. Respondent did not attempt to verify that Cook had a permit. Respondent agreed to perform a portion of the necessary work. Respondent did not consider his efforts

to constitute installation of a system, although he excavated disposal trenches and set in the ground a metal tank which, though it lacked septic tank certification and was of unorthodox design, was nonetheless known to Respondent to be intended for adaptation and use as a septic tank, and which Respondent acknowledged knowing "was probably going to be a septic system."

Respondent believed that Cook had the necessary construction permit. What Cook actually had was preliminary site approval in the form of a statement of feasibility. A statement of feasibility addresses only the general suitability of a site for permit eligibility. A construction permit is more specific, requiring a detailed proposal showing the precise proposed location on the property of the tank and the drainlines, and displaying appropriate setback requirements and other prerequisites to qualifications under Department's rules for system construction. A permit cannot be issued without zoning approval and payment of a permit fee. While the feasibility statement contains a caveat that it does not constitute a permit, this disclaimer is submerged in the text of the document and does not always succeed in effectively informing the document recipient of its limitations. Respondent has had previous experience with property owners confusing feasibility statements with actual construction permits.

ULTIMATE FACTS

Respondent is a licensed sewer disposal service worker.

The work performed by Respondent constituted installation of a septic tank system.

The work was performed without first obtaining a construction permit.

CONCLUSIONS OF LAW

The Commission has personal and subject jurisdiction.

Oregon law forbids construction of sewage disposal systems or parts thereof without a permit from the Department. ORS 454.655(1).

In May, 1982, Respondent installed a part of a septic system without first obtaining the necessary permit in violation of ORS 454.655(1).

Respondent, a licensed sewer disposal service worker, had a duty to confirm the existence of a construction permit before performing sewage disposal system construction.

Respondent is liable for a civil penalty of $100.00, the minimum penalty provided by law. ORS 468.140(1)(c); OAR 340-12-060(2)(h).

ORDER

Therefore, IT IS ORDERED THAT Respondent is liable for a civil penalty of $100.00 and that the State of Oregon have judgment therefore.

Dated this 4th day of November, 1982.

Respectfully submitted,

Linda K. Zucker
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.

August 31,1982

Judge Linda Zucker
Environmental Quality Commission
522 S.W. Fifth Av.
Portland,Oregon. 97207

Judge Zucker:

My name is Ronald Cook. I Should have been to the hearing case #31SSNWR-82-51 that was held for Gaylon Adams, but my memory let me down.

I find it hard to believe, living in a free country that a fine would be given Gaylon for trying to make a honest living for his family. He was not doing anything that he though was dishonest, as I had told him that I had a permit. (Which I though I had). Ken Kensey (septic inspector) told me that my test holes were good but that I would have to put in a holding tank on the other side of the septic tank,where the drain fields were to go and to make sure there were no cut banks. Not once did he say anything more about a permit. At this time I had paid $115.00 or $125.00 (not sure) to this department.

Everything I just said, I told to Gaylon and he also thought after what cat work he did, I would have to have Ken Kensey come and check our work. No pipe was, is, or has been laid.

Anyone would have to be a fool th think we were trying to do this job on the sly. A fine in a case like this would serve no justise at all, and would only add to hard feelings about public employees.

Gaylon told me he may turn in his license because its not worth it. Is this what you people have in mind for this Nation?

Ronald Cook
Star Rt. Box 802
Lincoln City, Oregon
97367

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: 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.

RINGO, WALTON AND EVES, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

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,

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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 14, 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

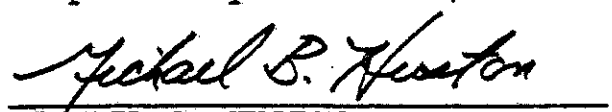
Again, the Department's arguments in support of the hearing officer's findings that underlie this conclusion are offered above.

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
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Michael B. Huston

MICHAEL B. HUSTON
Assistant Attorney General
of Attorneys for Department

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. N, April 8, 1983, EQC Meeting

Request for Reconsideration or Rehearing on
Dale Moore On-Site Sewage System Variance Appeal

Background

This matter, deferred from a prior meeting, is before the Commission on Respondent's request for rehearing or reconsideration of a variance denial previously affirmed by the Commission.

Included for Commission review are: (1) Respondent's March 3, 1983 letter and attachment supplementing its previously submitted argument in support of reconsideration; and (2) Department's January 14, 1983 staff report and attachments.

Bill

William H. Young

Attachments 2

Linda K. Zucker:k
229-5383
March 16, 1983

HK1765

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March 3, 1983

Mr. William H. Young
Department of Environmental Quality
P.O. Box 1760
Portland, Oregon 97207

Re: Dale Moore - Petition for
Reconsideration of Variance Denial

Dear Mr. Young:

This matter is scheduled to come before the Commission on April 8, 1983. In further support of our position, I am enclosing a copy of a recent decision by the Land Use Board of Appeals, Weyerhaeuser Real Estate Company v. Lane County, decided November 24, 1982. While a decision by LUBA obviously is not binding upon the Environmental Quality Commission, I respectfully submit that the analysis, both by the majority and dissent, correctly states the applicable rule of administrative review under Oregon law. Although an agency has broad discretion in denying requests for a variance or exemption on the merits, it is still required to make findings of fact, supported by substantial evidence in the record. Conclusory findings are insufficient. The Board noted that while findings need not be "lengthy or detailed",

> If the local government's denial is because it was not persuaded or, in the case of an exception under Goal II, not compelled to grant the request, its duty is to explain why. . . In other words, in the denial of a land use request, the reason for denial is the key. Findings of fact qua facts may well take on lesser importance, except as they are necessary to set the stage for the reasons. . . . Id. at 7.

While the dissent disagreed with the majority as to whether the findings in that particular case were adequate, the dissent agreed that Oregon law requires the agency to set forth findings with sufficient detail to permit review of the reasons for the agency's decision. Id. at 28-29. Of particular interest

is the following quotation from the Oregon Court of Appeals:

> '[a]n applicant * * * should be able to know the standards by which his application will be judged before going to the expense in time, investment and legal fees necessary to make application * * * Sun Ray Dairy v. OLCC, 16 Or App 63, 71, 517 P2d 289 (1973)' Quoted in Commonwealth Properties v. Washington County, 35 Or App 387, 582 P2d 1384 (1978). Id. at 28.

As previously pointed out, neither the administrative rules nor the variance officer's decision defines the standards by which Mr. Moore's application was judged. Therefore, it is impossible for him to determine what, if anything, he can do in order to satisfy DEQ's concerns.

I hope the foregoing information may be of assistance. I look forward to meeting with the Commission on April 8. Thank you for your cooperation.

Very truly yours,

Jonathan M. Hoffman

JMH/jb
Enc.

cc: Dale Moore

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

WEYERHAEUSER REAL ESTATE COMPANY, a Washington corporation, Petitioner, v. LANE COUNTY, et al, Respondents, and LOWER McKENZIE COMMUNITY COUNCIL, GORDAN VANCE and GORDON CARLSON, Respondents.	LUBA No. 82-014 FINAL OPINION AND ORDER

Appeal from Lane County.

Michael E. Farthing, Eugene, filed the Petition for Review and argued the cause on behalf of Petitioner. With him on the brief were Husk, Gleaves, Swearingen, Larsen & Potter.

William A. Van Vactor, Eugene, filed the brief and argued the cause on behalf of Respondent Lane County.

Robert E. Stacey, Jr., Portland, filed the brief and argued the cause on behalf of Respondents Lower McKenzie Community Council, et al.

REYNOLDS, Chief Referee; BAGG, Referee; participated in the decision; COX, Referee; dissents.

AFFIRMED 11/24/82

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of Oregon Laws 1979, ch 772, sec 6(a).

In an earlier proposed opinion in this case (8/02/82, unpublished) a majority of the Board, Referee Cox dissenting, proposed that denial of a Goal 2, Part II exception was to be evaluated against the arbitrary and capricious standard. LCDC, in its determination, decided that a denial, like an approval of an exception, must be accompanied by findings. This opinion reflects that determination.

REYNOLDS, Chief Referee.

INTRODUCTION

Petitioner Weyerhauser Real Estate Company (WRECO) applied to Lane County for a comprehensive plan amendment and zone change as step 2 in the process of obtaining approval for its "new development center" (NDC) proposal pursuant to Lane County Comprehensive Plan goals and policies. Petitioner received approval for step 1 of its proposal in July of 1978. This approval enabled petitioner to proceed to step 2.

Step 2 of WRECO's proposal, the request for a comprehensive plan amendment and zone change, involved 1,070 acres bordering the McKenzie River, 17 miles east of Springfield. Petitioner's NDC proposal would permit, if approved, the construction of 800 dwelling units, a restaurant, a 30-room lodge, a general store, a 6-office commercial complex and a recreational center and facilities. Two hundred of the dwelling units were proposed to be vacation homes, 360 units family primary homes and 240 units primary retirement homes. These units would be clustered on 260 acres with the remainder of the property left in its natural state. The planning commission for Lane County, following public hearings, voted to recommend approval of the application. The Board of Commissioners, however, voted to deny WRECO's application for the plan amendment and adopted a 13 page order setting forth its reasons for denial. The Board of Commissioners concluded that WRECO had failed to meet its burden of proof justifying an exception to Goal 4 pursuant to

Goal 2. The Board of Commissioners also concluded that petitioner had not demonstrated that Goal 12 would be met if the plan amendment and zone change were allowed.

Petitioner challenges the Board of Commissioners' denial as follows:

1. "The findings adopted by Lane County are inadequate because they are conclusory [sic], lack specificity, are internally inconsistent, irrelevant, and not supported by substantial evidence in the record."

2. "Lane County erred by improperly construing the Goal 2, Part II exceptions criteria and finding petitioner failed to show a need for the uses proposed. Lane County further erred because such finding was not supported by substantial evidence in the record."

3. "Lane County erred by improperly construing Goal 12 and finding that petitioner failed to prove that present street and bridge systems are sufficient to serve the development and are affordable by affected governments. Lane County further erred because such finding was not supported by substantial evidence in the record."

4. "Lane County erred by failing to follow its own procedures, which failure prejudiced the substantial rights of the petitioner."

OPINION

A. Standard of Review

Our review of a local governments' land use decision is governed by 1979 Or Laws, ch 772, sec 5(4)(a), as amended by 1981 Or Laws, ch 748. That statute provides:

"The board shall reverse or remand the land use decision under review only if:

"(a) The board finds that the local government or special district governing body:

"(A) Exceeded its jurisdiction;

"(B) Failed to follow the procedure applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

"(C) Made a decision that was not supported by substantial evidence in the whole record;

"(D) Improperly construed the applicable law; or

"(E) Made a decision that was unconstitutional;..."

"(b) After review in the manner provided in section 6, chapter 772, Oregon Laws 1979, the commission has determined that the local government or special district governing body or state agency violated the goals."

Judicial precedent in the area of administrative law generally and land use law specifically has further enlarged upon our scope of review. We are also required to review the adequacy of findings in support of quasi-judicial decisions and may remand a decision if the findings do not set forth the facts, reasons and conclusions which form the basis for the decision. See Hoffman v DuPont, 49 Or App 699, 621 P2d 63 (1980).

Review of a land use decision granting a requested land use change is typically more involved than review of a denial of a land use change, at least where the local government's decision is sustained. In order for a reviewing body to affirm an approval of a land use change, it must be determined that each of the applicable standards was properly applied. This means

there must be findings of fact sufficient to support conclusions that each of the applicable standards has been met, and substantial evidence in the record for each of the findings of fact. See generally: Green v Hayward, 274 Or 693, 552 P2d 815 (1976); Sunnyside Neighborhood v Clackamas County Commissioners, 280 Or 1, 569 P2d 1063 (1977).

In order for a denial of a requested land use change to be affirmed, however, the findings of fact need only support the conclusion that one of the applicable criteria has not been met, so long as the findings of fact are supported by substantial evidence. See generally: Heilman v City of Roseburg, 39 Or App 71, 591 P2d 390 (1979); Marracci v City of Scappoose, 26 Or App 131, 552 P2d 552 (1976), rev den.

Because our review in this case is of a denial of a requested land use change, we must decide whether any of the county's findings of fact and conclusions are adequate to show at least one of the applicable criterion has not been met, and, if so, whether the findings of fact and conclusions are supported by substantial evidence in the record.

B. Burden of Proof

The proponent of a land use change has a heavy burden to prove the findings of fact and conclusions in support of denial of the change were not supported by substantial evidence. In a typical denial case, the proponent must prove the denial was erroneous as a matter of law. Jurgensen v Union County Court, 42 Or App 505, 600 P2d 1241 (1979). In other words, the

proponent's evidence must be so strong and so convincing that the county's findings of fact, reasons and conclusions for denying the requested change cannot be upheld. There need not be evidence in the record supporting the county's findings so long as there is some reasonable basis by which the county could find the proponent's evidence was not convincing. Jurgenson, supra. It is not enough for the proponent to introduce evidence supporting affirmative findings of fact and conclusions on all applicable legal criteria. The evidence must be such that a reasonable trier of fact could only say the evidence should be believed.

The burden on the proponent of a land use change to prove his entitlement to a requested land use change increases as the applicable criteria become more subjective. For example, it would be less burdensome for a proponent who had to prove the land was not agricultural land within the meaning of Goal 3 to prove as a matter of law the land was not soil class I-IV than to prove, as a matter of law, the land was not suitable for the production of farm crops and livestock. The former is capable of objective proof - what is the soil classification of the property. Testing soil is a fairly standard, scientific procedure. However, whether soil is suitable for the production of farm crops and livestock involves more subjective analysis and opinion both on the part of those testifying and those who comprise the trier of fact.

In the present case, the criteria which must be addressed

by the proponent and with which he must prove conformance as a matter of law are those set forth in Goal II, Part II Exceptions.[1] These criteria are not objective criteria but involve the exercise of judgment on the part of the trier of fact. Thus, it is difficult, to say the least, for one to prove as a matter of law that a particular use "should be provided for," or that the use "will be compatible with other adjacent land uses."

C. Adequacy of Findings

Findings sufficient to support denial of a land use request as a general rule need not be lengthy or detailed. Marracci v City of Scappoose, supra; Heilman v City of Roseburg, supra. If the local government's denial is because it was not persuaded or, in the case of an exception under Goal II, not compelled to grant the request, its duty is to explain why. If there is conflicting evidence in the record and the local government believes the opponent's witnesses instead of the applicant's witnesses, it should explain in its findings why. See, e.g., Advance Health Systems v Washington County, 4 Or LUBA 20 (1981). In other words, in the denial of a land use request, the reason for denial is the key. Findings of fact qua facts may well take on lesser importance, except as they are necessary to set the stage for the reasons. If, for example, a particular standard may be applicable only if certain property characteristics exist, and the governing body does not believe the applicant's evidence is persuasive to show

the standard has been met, the local government must set forth the facts which establish the applicability of the standard before it can deny the request on the basis the standard was not met.

D. Analysis of Findings

With the foregoing as background we can begin to review the county's denial of petitioner's request for a comprehensive plan amendment and zone change. As previously stated, the county denied petitioner's request for the reason that petitioner had failed to show the request satisfied Goal 12 and the exceptions criteria of Goal 2. There is no dispute that the petitioner had to satisfy the Goal 2 exceptions criteria because the subject property is forest land and the proposed use is not one allowed on forest land under Goal 4. We are precluded by time and space from responding to petitioner's arguments contained in its first two assignments of error point by point. The thrust of petitioner's arguments is that the county's findings addressing the "need" and "alternative lands" criteria for an exception to Goal 2 were impermissibly conclusional and lacking in substantial evidentiary support. After reviewing the county's order in this case, we conclude the order contains an adequate explanation of why the county denied petitioner's request for a plan amendment and zone change, and that the order is supported by substantial evidence in the record.

A primary reason for denial expressed by the county is that

petitioner failed to present compelling reasons and facts showing why this use should be provided for, as required by Goal 2, Part II Exceptions (1). The petitioner sought to satisfy this requirement in different ways. The petitioner tried to show this use should be provided:

1. To satisfy the psychological needs of some people for rurally located housing;

2. To satisfy the housing needs of the McKenzie Valley to the year 2000;

3. To satisfy the need for increased employment and an increased tax base; and

4. To satisfy the need for a diversified economy which would be assisted by a rurally located destination resort.

After listing the foregoing "need" justifications advanced by the petitioner, the county said:

> "Before dissecting these justifications, it is important to determine the overall character of the proposal. The applicant proposes a combination of a 200 unit recreational destination resort with a 600 unit housing development. It may very well be that a site-specific recreational resort of this type is justifiable under the need criterion. However, that is not the entire proposal. Where, as here, a recreational development is tied to a planned housing project, and such linkage is not necessary to the economic viability of the resort, the applicant must separately justify the resort and the housing development under Goal 2; Part II."

The county does not appear to have based its denial on a lack of justification for the 200 unit recreational destination resort, but only upon lack of justification for the 600 units of primary residential housing. We will review the county's

order only to determine whether the county properly found a lack of justification for the 600 units of primary residential housing.

1. Psychological need

The county believed that WRECO's psychological need justification for why the plan amendment and zone change should be allowed raised more questions than it answered. The county questioned, first, whether people who might have a psychological need for freedom of choice, territoriality, freedom from health threatening urban living, housing satisfaction, and lack of "stimulus overload" would choose to live, let alone demand to live, in what is essentially an urban density planned community. Second, the county questioned whether psychological need such as had been shown by petitioner really existed for residents of cities in the area of the development. Third, the county questioned how many people who lived within the market area for WRECO's proposed development had the psychological need to live in a such a development. That is, the county wondered whether the demand which may exist was for 10, 50 or 500 persons in the market area. The county stated:

> "It may be that existing rural housing sites not only in this subarea but in other areas of the county, may be sufficient to fulfill this need."

Finally, the county was not persuaded that for people who may live within the market area and may have the psychological

needs which petitioner described, that need could not be satisfied by living many other places in the county. Thus the county stated:

> "Much housing in our county has access to recreational areas within a reasonable travel time. It is not necessary to locate housing adjacent to recreational areas solely to save travel time, particularly for upper income persons who can readily afford whatever minimal travel expense that is occasioned by any more distant starting point."

What the above findings indicate is that the county was not persuaded petitioner had established a psychological need for rurally located housing, that this housing type met the need which may exist or that the need which may exist was for 600 units. We have reviewed the evidence and cannot say the county's lack of conviction is unreasonable. Petitioner says there is a "total dearth of factual evidence contradicting the documentation of psychological need." The documentation of psychological need to which petitioner refers consists largely of a market analysis performed by Richard L. Ragatz Associates, Inc. of Eugene.[2] The Ragatz Market Analysis, as petitioner points out, indicates higher income households, more highly educated households and the occupational category of professionals are expected to increase over the next 20 years in Lane County, and these people would be the primary consumers, along with retired persons, "for a high amenity, high quality project and for home ownership." Petition for Review at 36. Petitioner argues that the best indicator of

psychological need for rurally located primary housing is the market demand for that housing:

> "***Market demand is a far better and more efficient measure of need since it builds in a balancing of needs based on the unique requirements and resources of each individual. The fact that demand continues to be strong in the McKenzie Valley in the face of current economic conditions is ample evidence of need, and demographic trends support this preference for rural living." Record, Attachment 5, Document 9, p. 19.

Thus, the applicant attempted to prove the existence of psychological need by proving there is a market demand for rurally located housing. That there would be some market demand for WRECO's 360 primary family housing units is probably not in dispute in this case, although the quantity of that demand is. But the Court of Appeals in Still v Marion County, 42 Or App 115, 600 P2d 433 (1979) said the existence of market demand for rural housing is not an adequate reason under Goal 2 for locating housing on rural resource land. Therefore, even without any evidence refuting petitioner's evidence, the county was clearly entitled and in fact required under Still to say no psychological need had been shown for 360 primary family housing units.[3]

Petitioner addresses the needs of retired persons for rurally located housing in close proximity to recreational opportunities. Petitioner's evidence indicated the retirement age population in Lane County is increasing and that

> "***Leisure is a way of life for these 22,364 people [by the year 1990]...For those whose recreational

> preferences require proximity to a high quality natural environment, locating within a UGB decreases recreational opportunities, deprives the elderly of privacy and safety needs and requires long commutes to preferred recreational environments." Record, Attachment 5, Document 9, p. 18.

The county was not persuaded by this and other evidence of similar ilk that WRECO's development should be allowed so that retired persons' psychological needs would be fulfilled. The county did not dispute that petitioner's evidence may be true, at least as a general proposition. But the county was not convinced that retired people in Lane County would feel the same urgency for a rural living environment as might retired people in the nation's more populous cities. The county was not convinced that this development, a planned development of some 800 units clustered on 260 acres, would provide the environment that people desiring space and having feelings of territoriality would want, let alone require.

Moreover, with both primary family and retirement housing, the county was not persuaded that even if urgent desires may exist for rurally located housing, and even if this development might be just what these people were looking for, the demand was equal to the supply offered by WRECO. We have been directed to no evidence, save evidence of population generally to be discussed next, which would provide a basis, let alone a compelling demonstration, for saying 600 units of primary family and retirement housing should be provided to meet the psychological needs of families and retired people.

2. Housing needs of the subarea in general

The county address WRECO's contention that the plan amendment and zone change would fulfill the need for housing generally within the subarea (McKenzie Valley). The county recognized this argument as perhaps WRECO's strongest, because the plan amendment and zone change would avoid "random, lineal strip development as has occurred in the past." The county also recognized for this justification to be persuasive there would have to be some demonstration of a market demand for the housing. Market demand, in turn, depended upon population projections for the subarea. The county made the following finding about population:

> "In this case, there are several different projections by the Lane Council of Governments for the housing demand for the subarea, ranging from a projected decrease of 578 units to a projected increase of 1,615 units with a middle projection of 465 units. We find the latter figure to be more representative of assumable need in view of the uncertain ability of the county, given its fiscal problems, to service any particular level of population increase and the uncertainity of both short range and long term population increase extrapulation given recent evidence in the record of possible population stagnation or even decrease due to declining employment base.
>
> "Whether one chooses the 1,615 or 465 unit figure, there is a further problem in the applicant's satisfaction of its burden of proof on need. Even if one assumes a need for 1,615 units, if 600 of those units are at a high price range in one location, at one density and of only two types, such allowance may violate the dictates of Goal 10 mentioned above. That is to say that it was the applicant's burden to show not a need for 600 unspecified units but a need for 600 high priced units at an urban type density and of the type contemplated here. This the applicant has not done. Nor do we see any indication in this record

based on a survey of the income distribution in the subarea that approximately 37% (600 units of a 1,615 unit need) of future housing needs for the subarea will be those of upper middle to high income residents."

The basis of petitioner's attack on the finding that WRECO's development is not needed to meet the McKenzie Valley's housing needs to the year 2000 lies with the population projection relied upon by the county. In order for petitioner to successfully argue here that its development should be provided to meet the subarea's housing needs,[4] the record would need to conclusively show, at a bare minimum, that the population of the subarea to the year 2000 would be such as to require at least the 600 housing units proposed by WRECO plus the 376 units which petitioner itself concedes can already be developed through infill on existing lots in the subarea. The evidence, however, in the record shows wide variations in terms of the future population for the McKenzie River Valley. The Lane Council of Governments (L-COG) conducted its population projections for Lane County as a whole and concluded, with a zero percent tolerance level, that there would be a net migration into urban growth boundaries from rural areas of approximately 18,000 people. That is, by the year 2000, the rural population of Lane County would decrease from its present 58,000 to approximately 39,000 people. This decrease would result in a negative housing need in the subarea to the year 2000. L-COG recognized a net decrease in rural population was

probably unrealistic so it developed population projections based upon 5% and 10% tolerance levels. Applying these tolerance levels to the McKenzie Valley subarea, L-COG concluded that there would be a total population of 6,262 at a 5% tolerance level and 8,819 at a 10% level. The present population of the McKenzie River Valley, according to L-COG, is 5,381. Using L-COG's low 5% tolerance figure, there would be a total of new housing units in the subarea (assuming, as does L-COG, a 2.42 persons per unit occupancy) of 491 units. Petitioner estimates that 376 units can be provided through infilling on existing lots. Thus, given the 600 additional units which petitioner's proposal would provide, there would be an over supply of 475 units if L-COG's population estimate with a 5% tolerance level were valid. Using L-COG's high, or 10%, tolerance level, an additional 1,547 housing units would be required in the McKenzie River Valley. Subtracting from that figure the units to be provided by petitioner's proposal as well as units which could be provided through infilling, would leave a need for an additional 577 units. Thus, at a 5% tolerance level, WRECO's proposal would provide an oversupply of 475 units; at a 10% tolerance level, there would remain a need for 577 units.

Petitioner concluded the average between the 5% and 10% tolerance figures was most representative of the projected population in the McKenzie River Valley. It said this was "reasonable" because L-COG had implied that the population for

the subarea would fall somewhere between the 5% and 10% tolerance levels. Based upon this assumption, petitioner concluded that there would be a need for 1,019 additional housing units in the valley. Subtracting from this figure the 600 units to be furnished by petitioner's proposal, and the 376 units which could be accommodated through infilling, petitioner concluded there would be an additional need for 43 units in the McKenzie River Valley until the year 2000.

The county did not accept petitioner's population estimate. The county, instead, found that the several different L-COG population projections resulted in a range of housing needed within the subarea from a low of a minus 578 units to a projected increase of 1,615 units. The county believed a middle projection (465 units) was

> "more representative of assumable need in view of the uncertain ability of the county, given its fiscal problems, to service any particular level of population increase and the uncertainity of both short range and long-term population increase extrapulation given recent evidence in the record of possible population stagnation or even decrease due to a declining employment base."

The county's selection of the midpoint in the range of population projections cannot be said to be lacking in substantial evidentiary support. Petitioner attacks the 465 unit figure as wrong mathematically. Our arithmetic causes us to agree with petitioner that the midpoint between a minus 578 and a plus 1,615 is not 465 but is 518. We believe this does not change, however, the validity of the county's findings.

Remember deference if reason for findings is clear.

The intent of the county's findings was to select the midpoint in the range. That its arithmetic was off by some 53 units does not change matters. The figure of 518 units, which is the figure we believe the county intended, is supported by substantial evidence because it falls within the 5% to 10% tolerance level which L-COG estimated would be the more likely range for Lane County's rural population. While it is very close to the 5% tolerance level which L-COG said represented the likely low end of the range, the 5% projection was supported by the Lane County League of Women Voters as the more probable estimate. Petitioner cannot say that it conclusively proved its population projection was the only reasonable projection. It is not our job to judge whether petitioner's projection is more reasonable or the county's is more reasonable. That job is the county's. The county's population figure is supported by substantial evidence in the record and an explanation of why it was chosen.

Given petitioner's figure that there are 376 units which can be provided through infilling, there is only a need, given the county's finding of a need for 518 units, for an additional 142 dwelling units in the McKenzie River Valley to the year 2000. Petitioner's proposal for 600 units would, therefore, provide 458 unneeded housing units.

Even if the county had erred in its estimate of housing need based on projected population, the county still was not persuaded this development would satisfy whatever housing need

might exist within the subarea. If we assume that petitioner's estimate of needed housing units were the only reasonable estimate (1,016 units), petitioner's proposal would provide almost 60% of that housing. The county was concerned, however, that allowing anywhere near such a percentage of housing by this development would not satisfy the county's responsibility under Goal 10 to encourage "housing units at price ranges...which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density." The county believed that even if 1,615 housing units were needed in the subarea by the year 2000 (i.e., 10% tolerance level), to have 600 (37%) of those units be high priced, of two types and of uniform density, would do violence to Goal 10. The county saw no indication from the record that 37%, let alone 60%, of the housing need within the subarea would be "those of upper middle to high income residents."

Petitioner says there is no evidence to support the county's finding that these units are "high income units" and that, in any event, the county did not define "high income." Petitioner argues it "repeatedly has stated that it will be for middle to upper middle income buyers." Petition for Review at 36.

The Ragatz Market Analysis submitted by petitioner supports the county's findings these units could be considered "high income units." The Ragatz analysis examined the projected

population increase in the county as a whole in terms of income, occupation, and education. The report found that the category of upper middle income (persons with incomes 30% above the median income) and high income persons are expected to increase from 78,840 in 1975 to 113,850 by 2000. The report found similar increases in the category of "professional" workers and persons with college educations. Based upon these findings the report stated:

> "In summary, the proceeding projections appear very positive for the proposed McKenzie River project. As will be discussed in the concluding chapter, the project will be oriented toward the upper moderate to high cost range due to the inherent quality of the site and the expense required to develop it." Ragatz Market Analysis, p. 12.

The Ragatz report also notes at page 9 that persons over 65 are an important age group to consider in terms of their ability to purchase units in WRECO's development:

> "While most people in this sector have limited incomes, a sizable proportion have sufficient wealth to retire in relatively expensive housing and environments due to the availability of an existing house which has probably been paid off but has also escalated in value in recent years.***"

The foregoing from the Ragatz Market Analysis provides a sufficient basis for the county to characterize the units in this development as "high income." While not necessarily an exact term and while not defined by the county, the meaning of "high income" is relatively clear - these units are intended for persons with upper middle to high incomes and retired

persons who can afford "relatively expensive housing."

Petitioner takes issue with the county's statement that a survey must be done to determine if there is a need for 600 "high income" units. Petitioner says a survey of residents would have little bearing on the housing needs 17 years from now. Petitioner states:

> "What is essential, given population projections which indicate that the population in the area is going to increase...is to identify the likely nature of that increase by identifying the demographic characteristics of the projected population increase in the identified market area." Petition for Review at 35-36.

The Ragatz Market Analysis, while discussing demographic characteristics of the Lane County population as a whole, both now and in the future, is too general for us to be able to say the demographic characteristics identified in the Ragatz report would be possessed by the future population in the McKenzie subarea. That is, the report does not say whether the high income and professional people who are expected to comprise a significant part of the increase in Lane County's population as a whole will want to live in rural Lane County, will need to live in rural Lane County for their work, or, more specifically, would want to live or need to live in a planned development of some 800 housing units such as WRECO proposes. The report does not compel the conclusion 60% of the McKenzie Valley subarea's population increase will consist of high income persons, professional workers and retired people.[5]

3. Economic and employment benefits

The county found that WRECO's proposed development was not needed to satisfy the county's economic and employment problems:

> "The economic needs of the county, severe as they may be, do not justify in themselves, this site for a housing development. Such economic return to the county in enhanced tax revenues would occur no matter where the development is located. Standing alone, such factors do not show a compelling need to use this site as opposed to other locations for this type of housing development."

The county's analysis of petitioner's economic justification, in effect, concedes there is a need to improve the county's economy, but disagrees that a justification has been made to do it at this location. This analysis, therefore, is really under the second criterion of Goal 2, Part II, which requires an analysis of alternative locations within the area. The county's findings addressed this issue in greater detail later in the order:

> "***In its discussion of alternative sites, the applicant details that no other large tract exists to allow development of this type in the county. To the extent that the housing needs to justify this development can be subcatagorized into retirement housing versus primary family housing or subarea housing needs versus metropolitan housing needs, the alternative lands evaluation can be more particular. Absent a showing that it is necessary to package retirement and primary family housing together, or to serve metropolitan and rural needs at one location, an examination of alternatives includes the alternative of meeting the housing need at different locations in combination. On this perusal, the applicant has also failed to meet its burden of proof.
>
> "This combination alternative is, in fact, called for by the existing subarea comprehensive plan which mandates a 'community growth concept.' In other

words, growth is to be channeled into a variety of existing communities rather than one location. The growth pattern that is an alternative here, is not lineal and random but nodal and planned, under the subarea plan. This is not only to avoid duplication of public services provision but also to foster community spirit in growing in active towns."

Before discussing petitioner's economic need argument, it is important first to point out a distinction made by the findings. The county's findings that economic and employment benefits to the county from WRECO's proposal were not an adequate basis to say the use should be provided only related to the 600 units of primary family/retirement housing, not to the 200 unit destination resort portion of the development proposal. This is significant because much of petitioner's argument about economic and employment benefits to the county relate only to the destination resort portion of the proposal. Those arguments will not be addressed here.

Petitioner contends the county "ignored the substantial evidence submitted by petitioner concerning the economic benefits" of its proposal in terms of tax base expansion, employment opportunities and new income to the county. Petitioner states the facts show the economic and employment benefits resulting from conversion of 260 of the 1,070 acres to residential use are more positive than if the 260 acres were retained for commercial timber production.

Petitioner seems to be arguing that one may justify designating resource land for a use determined to be needed to

provide additional economic benefits to the county, by showing development of the property has better economic and employment benefits than retaining the property for its resource use, particularly in the short run. If this argument were to hold, there would be little protection for resource lands. This is particularly true for forest land at a time when the state's wood products industry is experiencing hard times. It takes more to justify directly removing 260 acres from resource production and indirectly impacting an additional 800 acres of prime timberland: what is required is proof that non-resource land is not available for the use to be provided. 1000 Friends of Oregon v Douglas County, 4 Or LUBA 148 (1981). The county found that development of residential housing elsewhere in the subarea and in the county as a whole would provide to the county the same economic and employment benefits, without taking significant commercial timberland out of production. Petitioner attacks this finding by stating:

> "The NDC (New Development Center) has numerous self-contained services such as sewage treatment, fire protection, water and security. If these units were built in an urban area the cost of providing these services would be born by all citizens. In this case, the costs are born only by the residents of NDC. That is why the revenue impacts are more positive with the NDC as proposed. The ability to provide these on-site services is due to the scale economies of combining a number of uses into an NDC. The capitol costs of providing these services are prohibitive for a small number of units. Hence, the economic benefits from one part cannot be realistically separated from the whole.
>
> "It is seldom that a developer is willing to put up $55 million to develop a quality project. It is

> extremely unlikely that petitioner, if denied here, would try again in Lane County at another location, so the substantial revenue and employment benefits from this project would not accrue to the county." Petition for Review at 52-53.

Petitioner's first reason assumes that new development within urban areas will entail significant increased service costs and that these costs would reduce the economic benefit to the county. This may or may not be true and may or may not have been believed by the county. Although the petitioner expressed this view before the county (see Record, Attachment 1 at p. 47), the findings do not tell us what the county thought about the argument. But even if true, petitioner's argument does not provide a compelling basis for saying this use should be allowed to help solve the county's economic problems. If the county can partially provide for a need on non-resource land, the fact that it may fulfill the need to a slightly greater extent by allowing the use on resource land is not compelling justification for using the resource land and foregoing the present or future economic benefit to be derived by preserving the resource land for resource uses.

Petitioner's second reason appears to assume there are no other housing developers in Lane County. It is true that if WRECO is not allowed to develop the project, there will be no economic and employment benefits to the county from this project. But it does not follow, based on this record, that economic and employment benefits would not result from other

development or that other development projects would not be undertaken.

Thus, while the county agreed the construction of new housing units in Lane County would assist the county's economic and employment difficulties, the county did not believe it had been shown to be necessary to use this site compared to other sites, at least for the 600 permanent housing units. We conclude the county's finding was adequate to explain why petitioner failed to satisfy its burden with respect to the alternative lands criteria in Goal 2, Part II, Exceptions.

CONCLUSION

In order to be entitled to its plan amendment and zone change, petitioner was required to persuade the county by compelling reasons and facts that an exception to Goal 4 should be granted. Petitioner failed to do this. The county's order sets forth reasons why the county was not persuaded an exception should be granted. These reasons are rational and supported by substantial evidence in the record. The county's denial of petitioner's request for a plan amendment and zone change is affirmed.

COX, Dissenting.

I respectfully dissent.

The majority opinion takes pains to explain how it is the applicants' burden to convince the local government of the reasonableness of its proposal. The Court of Appeals in Jurgenson v. Union County Court, supra, interpreted the burden on an applicant to be analogous to the burden on a plaintiff in a personal injury case. The majority opinion, however, takes the Jurgenson holding into new territory, by applying it to the extremely subjective Goal 2 exceptions process. The Jurgenson case dealt with application of the definition of agricultural land, a standard infinitely more specific and subject to objective measurement than the Goal 2, Part II standard in this case. To say the least, the use of the four questions posed by Goal 2, Part II as objective standards is an exercise in mental stimulation. The extent the appellate process has gone to make some sense out of the exceptions process is evidenced not only by the trouble this Board has had with the test but by the court in Still v. Marion County, 42 Or App 115, 600 P2d 433 (1979), dubbing Goal 2's instruction to local governments to answer the subjective question "why these other uses should be provided for" as the hopefully more objective standard of "need." Of course, the court did not mention what "need" meant except that it wasn't to be measured by "demand." See DLCD v. Tillamook, 3 Or LUBA 138 (1981) concurring opinion.

The majority opinion attempts to make allowances for the

lack of objectiveness of the Goal 2 exceptions standard by stating that as the standard to be met becomes more subjective the reasons for denial must become more specific. All the majority creates, however, is more confusion when it doesn't even apply its "rule" to the findings in this case.

The order and findings in this case are insufficient by any standard heretofore recognized by the appellate courts in this state. The court in Sunnyside v. Clackamas County, 280 Or 3, 569 P2d 1063 (1977), stated what findings must accomplish to be acceptable. As the court stated:

> "[w]hat is needed for adequate judicial review is a clear statement of what, specifically, the decision-making body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based. Conclusions are not sufficient." 280 Or at 21.

The court in Commonwealth Properties v. Washington County, 35 Or App 387, 582 P2d 1384 (1978), stated the test in another manner; one which is appropriately applied to this case considering the initial green light given to the applicant and the interpretation the county gave to the exceptions procedure. The court stated:

> "While it is true that we have held that statutory law allows an agency to utilize a broadly worded general standard in making decisions, we have also stressed that:
>
> "'[a]n applicant * * * should be able to know the standards by which his application will be judged before going to the expense in time, investment and legal fees necessary to make application * * * Sun Ray Dairy v. OLCC, 16 Or App 63, 71, 517 P2d 289 (1973)'"

The court summarized its feeling in the Commonwealth case by

stating:

> "An applicant, be he seeking a liquor license or a subdivision, should not be put in a position of having his success or failure determined by guessing under which shell lies the pea." 35 Or App at 387.

In my reading of the findings in this case, they are exactly what the Sunnyside and Commonwealth courts cautioned against. They are vague, misapply the language of Goal 2, Part II, are unresponsive to the application and conclusional. They are, for the most part, merely rhetorical questions and generalized statements of beliefs unsupported by any reference to facts.

The findings are defective in several manners. First, they indicate the county viewed the applicants' request as divisable into two parts, a destination resort and rural residential housing development. The application was more appropriately viewed as a request for a multi-use destination type resort in the flavor of a Black Butte Ranch or Bowmans Resort. The applicant submitted its plans for an entity or complete package, not something to be divided so as to enhance the likelihood of conquer. Second, the order appears to be nothing more than a sophomoric evaluation of "need" measurements when the standard (albeit an evasive one) to be applied by the local government is "why these other uses should be provided for." Third, the order applies goal 10 to a request for what apparently should have been viewed as a tourist or recreational development. The order does not adequately explain how it is

that Goal 10 applies to such a request. Fourth, the local government apparently has based part of its decision on its disagreement with statistical analyses used by the applicant in deciding the market price, structure, design, etc. of the product it would offer to the public. The county appears to have compared projections of demand for the proposed development with projections for urban housing requirements of people already living in the area. This could be likened to comparing apples with oranges because they are both fruit.

The order as a whole evidences a misunderstanding of the purpose the exceptions process should serve and therefore has made the applicant "guess under which shell lies the pea." The standard is not, as the order seems to indicate, an objective test which results in yes or no answers to each of its parts. It does not require an objective showing of "need;" it does not require that there be no alternative site for the proposed project; it does not require a showing of absolute compatibility with the surrounding land, and it does not require a showing that there will be no economic environmental, social or energy consequences.

I would remand for proper findings.

FOOTNOTES

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[1] Goal 2, Part II Exceptions provides:

> "When, during the application of statewide goals to plans, it appears that it is not possible to apply the appropriate goal to specific properties or situations, then each proposed exception to a goal shall be set forth during the plan preparation phases and also specifically noted in the notices of public hearing. The notices of hearing shall summarize the issues in an understandable and meaningful manner.
>
> "If the exception to the goal is adopted, then the compelling reasons and facts for that conclusion shall be completely set forth in the plan and shall include:
>
> > "(a) Why these other uses should be provided for;
> >
> > "(b) What alternative locations within the area could be used for the proposed uses;
> >
> > "(c) What are the long term environmental, economic, social and energy consequences to the locality, the region or the state from not applying the goal or permitting the alternative use;
> >
> > "(d) A finding that the proposed uses will be compatible with other adjacent uses."

---

[2] The cover letter to WRECO from Ragatz shows this market analysis was apparently prepared for WRECO to assist it in deciding whether to proceed with plans for development. It states:

> "Enclosed please find a copy of 'A Market Analysis for the McKenzie River Property: A Proposed New Community Development by the Weyerhaeuser Real Estate Company.' Based upon material contained herein, it appears that a high potential demand exists for this proposed project. It is therefore recommended that your

company proceed with the undertaking. We enjoyed working on the project and hope you find the contents useful."

---

[3] At what point psychological need may become more than simply market demand and may become a basis for the county to say, "yes, this use should be provided," is certainly not clear and may not, as petitioner suggests, even be susceptible of proof. What we do know, and are bound by, given the holding in Still, is that market demand cannot be used as the yardstick by which psychological need can be measured.

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[4] It is assumed here that need to supply housing for a rural subarea could, if proven, be a basis for allowing an exception to the forest lands goal. Such an assumption has shakey underpinnings at least absent a showing non-resource land is unavailable to supply the subarea's housing need. See 1000 Friends of Oregon v Douglas County, 4 Or LUBA 164 (1981).

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[5] This development could probably be filled with people who would move to Lane County from out of state big city environments solely because of the attraction of this development. But it is not in furtherance of Goal 10 to provide housing for people who would not be likely to move to this state but for the housing. Goal 10 speaks to providing housing for Oregonians. It does not speak to providing housing which will then be marketed in Los Angeles, Chicago or New York. We are not suggesting that is the intent, here; only that the applicant's duty, if justification for housing is to be based on Goal 10, is to show the housing is geared to the needs of people who will be needing housing in Lane County.

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

WEYERHAEUSER REAL ESTATE COMPANY, a Washington Corporation Petitioner, v. LANE COUNTY, et al., Respondents, and LOWER McKENZIE COMMUNITY COUNCIL, GORDAN VANCE and GORDON CARLSON, Respondents.	LUBA NO. 82-014 LCDC Determination

The Land Conservation and Development Commission hereby approves the recommendation of the Land Use Board of Appeals in LUBA Case No. 82-014.

Dated this 22 day of November, 1982.

For the Commission:

James F. Ross, Director
Department of Land Conservation
and Development

JFR:DB:af
2005B-4/7B

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, January 14, 1983, EQC Meeting

Request for Rehearing and Reconsideration in the Dale Moore Variance Denial Appeal

Background and Problem Statement

At its October 15, 1982 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, the applicant, has petitioned the Commission to reconsider its denial. Specifically, the applicant asks the Commission to refer the matter back to the variance officer with instructions to:

1. Articulate his technical concerns over the proposed design, and

2. Give the applicant an opportunity to attempt to satisfy the reservations of the variance officer. The applicant does not suggest that the Commission "second guess" the technical decision of the variance officer.

Department opposes the applicant's request and asks that the Commission let stand its prior decision.

Evaluation

OAR 454.657(1) provides:

> Variance; conditions; hearing.
>
> (1) After hearing the Environmental Quality Commission may grant to applicants for permits required under ORS 454.655 specific variances from the particular requirements of any rule or standard pertaining to subsurface sewage disposal systems for such period of time and upon such conditions as it may consider necessary to protect the public health and welfare and to protect the waters of the state, as defined in ORS 468.700. The (c)ommission shall grant such specific variance only when after hearing it finds that strict compliance with the rule or standard is inappropriate for cause or because special physical conditions render strict compliance unreasonable, burdensome or impractical.

ORS.454.660 provides that the Commission shall delegate the power to grant variances to specially trained variance officers. The statute further provides that decisions of the variance officers to grant variances may be appealed to the Environmental Quality Commission. There is no statutory requirement that the agency provide a mode of appeal for decisions to deny variances. However, the Commission has established a practice supported by rule, OAR 340-71-440, of reviewing variance officers' denials of requested variances.

Department's counsel advises that the variance review process is not a contested case as defined by ORS 183.310(2)(a). Consequently, neither the variance officer nor the Commission is required to provide a hearing with the formality of procedure attendant to contested cases. If an applicant is dissatisfied with a decision rendered by the agency either through its variance officer or the Commission, the applicant has a right of review in the circuit court. ORS 183.484.

The overall issue of the proper mode and procedure in evaluating variance requests is currently the subject of staff analysis and may result in recommendations for changes to the current process. When it is completed, a summary of the analysis will be presented to the Commission for its consideration. However, the current system appears to have been applied appropriately and staff review does not suggest that further examination of the site or alternative system deployment or development will result in a changed recommendation.

Summation

Reconsideration is not a necessary part of the Commission's review process. Site limitations suggest that further staff review will not result in a changed recommendation. Staff is satisfied that the action of the agency will withstand court scrutiny. The established vehicle for review of the Commission's October 15, 1982 action is the circuit court.

Director's Recommendation

Based upon the findings in the summation, it is recommended that the Commission not accept this matter for rehearing or reconsideration.

William H. Young

Attachments: (2)
December 3, 1982 Request for Rehearing or Reconsideration
October 15, 1982 Staff Report
Linda K. Zucker:h
229-5383
December 27, 1982
HH723

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December 3, 1982

Environmental Quality Commission
Of the State of Oregon
c/o William H. Young, Director
Department of Environmental Quality
P.O. Box 1760
Portland, OR 97207

RE: Request for Rehearing or Reconsideration of subsurface variance denial

Dear Mr. Young:

This office has been retained to represent Mr. Dale Moore. On October 15, 1982, the Commission denied his request for a variance. The only ground stated for their denial was that the hearings officer did not think Mr. Moore's proposed sewage disposal system would work.

Mr. Moore has been using the services of a professional consultant, Mr. Steven Wilson. They are convinced that, if either the Commission or the hearings officer can identify specific objections to a current proposal, Mr. Wilson will be able to satisfy such objections and furnish the system that will pose no greater risk to public health and safety than a standard system.

As matters presently stand, however, Mr. Moore is deprived of the beneficial use of his property without ever having the opportunity to meet the Commission's objections to the proposed development. It is one thing to make findings demonstrating the inadequacy of a proposal on health or safety grounds. It is quite another to reject a proposal without disclosing a reason for doing so. While the Commission should not grant a variance without "cause" [OAR 340-71-415(3)(a)], it has an affirmative duty to articulate the criteria which an applicant must meet to establish good cause for issuance of a variance. See, Springfield Education Association vs. Springfield School District No. 19, 290 Or 217, ___ P.2d ___ (1980). In this case, Mr. Moore had been unable to ascertain what criteria will be used in evaluating any proposal for a system on his property.

We are considering the option of pursuing a formal appeal based upon the Commission's failure either to make findings of fact or conclusions of law. Obviously, however, an informal

resolution of this matter would be less costly and time consuming for all concerned, and would permit the agency as well as Mr. Moore to concentrate their efforts on the merits of a substantive proposal, rather than over the procedural aspects of the Commission's work.

Therefore, Mr. Moore respectfully petitions the Commission to reconsider its October 15, 1982, denial, pursuant to ORS 183.482(1) and 183.484(1). Inasmuch as your rules do not prescribe a format for such a petition, please let me know immediately if a petition in the form of this letter is not sufficient.

In requesting reconsideration, I do not suggest that the Commission should second-guess the decision of its hearings officer. Rather, I request the Commission simply to refer the matter back to the hearings officer with instructions to: 1) articulate his technical concerns about the proposed design, and 2) give Messrs. Moore and Wilson an opportunity to attempt to satisfy those concerns. We feel confident that, given such an opportunity, the parties stand an excellent chance of reaching a consensus acceptable to all concerned and which will meet the Commission's vital water quality and public health objectives.

The appeal time for review of the Commission's final order runs on December 15, 1982. We believe, proceedurally, that the filing of this petition for reconsideration tolls the appeal deadline until 60 days after the action is taken on the petition. Thereafter, we may obtain review of both the Commission's initial decision and its ruling on the Petition for Reconsideration. Mr. Robert Haskins of Oregon's Department of Justice has indicated that he believes this analysis is correct. If for any reason you do not concur, please let us know immediately so that a protective notice of appeal can be filed in a timely fashion.

Very truly yours,

Jonathan M. Hoffman

cc: Dale Moore
Steven Wilson
Robert L. Haskins, Assistant Attorney General,
Department of Justice State of Oregon

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, October 15, 1982, EQC Meeting

Mr. Dale Moore - Appeal of Subsurface Variance Denial

Background

The pertinent legal authorities are summarized in Attachment A.

Mr. Moore owns a 72 foot by 100 foot lot in Tillamook County, identified as Tax Lot 3400, in Section 12 DB, Township 5 South, Range 11 West, also known as Lot 21, Block 2, Horizon View Hills Subdivision. The lot was evaluated for on-site sewage disposal by Mr. James L. Seabrandt, the Supervising Sanitarian for Tillamook County, on November 12, 1979. Mr. Seabrandt issued a Certificate of Favorable Site Evaluation on December 14, 1979, with the following conditions:

1. 180 square feet (90 linear feet) of drainfield per bedroom.
2. Limited to a 2 bedroom structure.
3. Use serial system in drainfield.

On March 2, 1980, the Environmental Quality Commission adopted a temporary rule that voided all Certificates of Favorable Site Evaluation issued in Tillamook County from January 1, 1974 through December 31, 1979. The temporary rule provided that each property owner may request the property be re-evaluated without fee.

Mr. Moore submitted a request for re-evaluation to the Department's North Coast Branch Office. Department staff examined the property on two separate occasions and determined the lot did not comply with the Department's minimum standards for installation of either a standard or alternative sewage disposal system. Because of the small lot size and setback requirements there was not sufficient area to install a system, with room for future replacement. Mr. Moore was notified of the re-evaluation denial by letter dated February 17, 1982.

An application for a variance from the on-site sewage disposal rules was received by the Department, and was assigned to Mr. Sherman Olson, Variance Officer. On June 15, 1982, Mr. Olson examined the site and held a public information gathering hearing. After closing the hearing, Mr. Olson evaluated the information gathered. He found the property to be severely limited with respect to development of an on-site sewage disposal system. The lot is small, with an escarpment that falls within the western side of the property. Effective soil depth varies. The deepest soils are found along the eastern portion of the property, extending an estimated forty (40) feet into the property from Horizon View Avenue. Beyond that distance the depth to rock becomes very shallow. This lot is also within a drainage channel that receives the seasonal runoff from the concave land area upgradient to the east. In the past a seasonal stream flowed through the lot. The stream is now intercepted in the northeast along the lot line and piped along the east and south lot lines to where it discharges. Surface erosion has occurred along the south line, indicating that the piping may not be able to carry all of the water flow from above. The system proposed to overcome the site limitations was composed of a septic tank, dosing tank and sand filter, with discharge into a seepage trench disposal field. Topsoil fill would need to be placed as deep as thirty (30) inches in an area proposed for future replacement because the natural soil is too shallow. Mr. Olson was not convinced that the proposed system could be physically installed on the lot, or that the seepage trenches would function properly. A failure of this system would likely result in a discharge of treated effluent into the intermittent stream channel. Mr. Moore was notified of the variance denial by letter dated August 6, 1982 (Attachment "B").

On August 17, 1982, the Department received a letter from Mr. Moore's consultant, Mr. Steven Wilson, appealing the variance officer's decision (Attachment "C"). Mr. Wilson states the concern about soil fills is with respect to the potential settlement and possible disruption of disposal trenches installed therein. He feels a two (2) year period after fill placement should alleviate this potential hazard. The need to install a replacement disposal trench would not likely occur in this short time. The Department's On-Site Experimental Program has findings to conclude that disposal trenches may last longer when receiving treated effluent from a sand filter. Mr. Wilson feels a twenty five (25) foot setback from the escarpment is reasonable because drainage from the disposal field would not be towards the escarpment. Also, the sand filter unit performs primary effluent treatment with intermittent dosing, thus it is unlikely to be a nuisance or threat to public health. The fifty (50) foot setback from the seasonal drainage is also unreasonable from the standpoint of public health or nuisance concerns. Drainage flows through a buried pipe. DEQ experimental studies indicate that a ten (10) foot horizontal setback was adequate to prevent movement of septic tank effluent constituents into perforated drain tile. A sand filter unit removes a high percentage of constituents before discharge into the disposal field. Since the drainage piping is non-perforated, the potential for contamination of the drainage waste is very remote. Mr. Wilson believes that by using seepage trenches, the linear footage requirement for the initial system is sixty seven (67)

feet, plus an equal amount for the future replacement. A total of one hundred forty (140) linear feet of trench were staked out on the property and shown on a scaled plan (Exhibit "D").

Evaluation

Pursuant to ORS 454.660, decisions of the variance officer may be appealed to the Environmental Quality Commission. Such an appeal was made. The Commission must determine if strict compliance with the rules or standards is inappropriate for cause, or that special physical conditions render strict compliance to be unreasonable, burdensome, or impractical.

After evaluating the site and after holding a public information gathering hearing to gather testimony relevant to the requested variance, Mr. Olson was not convinced that the property was large enough to install a functional system, or that the proposed system would function satisfactorily even if it could be installed. He was unable to make a favorable finding.

Summation

1. The pertinent legal authorities are summarized in Attachment "A".

2. On November 12, 1979, Mr. James Seabrandt evaluated Mr. Moore's property to determine if an on-site system could be installed. Mr. Seabrandt issued a Certificate of Favorable Site Evaluation, subject to three (3) conditions.

3. The Environmental Quality Commission adopted a temporary rule on March 21, 1980, that voided all Certificates of Favorable Site Evaluation issued in Tillamook County from January 1, 1974 through December 31, 1979.

4. The property was re-evaluated by Department staff on two (2) occasions. It was determined the property did not meet the Department's minimum standards to install an on-site system.

5. Mr. Moore submitted a variance application to the Department. It was assigned to Mr. Olson.

6. Mr. Olson examined the property and conducted an information gathering hearing. After closing the hearing Mr. Olson reviewed and evaluated the variance record. He found the testimony provided did not support a favorable decision, and therefore denied the variance request.

7. Mr. Moore filed for appeal of the variance denial.

Directors Recommendation

Based upon the findings in the Summation, it is recommended that the Commission adopt the findings of the variance officer as the Commission's findings and uphold the decision to deny the variance.

Bill

William H. Young

Attachments: (4)

Attachment "A"	Pertinent Legal Authorities
Attachment "B"	Variance Denial Letter
Attachment "C"	Letter of Appeal
Attachment "D"	Proposed Plan

Sherman O. Olson, Jr.;g
229-6443
September 20, 1982

XG1576

ATTACHMENT "A"

1. Administrative rules governing subsurface sewage disposal are provided for by Statute: ORS 454.625.

2. The Environmental Quality Commission has been given statutory authority to grant variances from the particular requirements of any rule or standard pertaining to subsurface sewage disposal systems if after hearing, it finds that strict compliance with the rule or standard is inappropriate for cause or because special physical conditions render strict compliance unreasonable, burdensome or impractical: ORS 454.657.

3. The Commission has been given statutory authority to delegate the power to grant variances to special variance officers appointed by the Director of the Department of Environmental Quality: ORS 454.660.

4. Mr. Olson was appointed as a variance officer pursuant to the Oregon Administrative Rules: OAR 340-71-425.

5. Decisions of the variance officers to grant variances may be appealed to the Commission: ORS 454.660.

XVAD.1 (6/82)
XG1576.A

ATTACHMENT "B"

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

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

August 6, 1982

Mr. Dale H. Moore
2319 N.W. 88th Street
Vancouver, WA 98665

Re: WQ-SSS-Variance Denial
T.L. 3400; Sec. 12 DB;
T. 5 S.; R. 11 W., W.M.;
Jackson County

Dear Mr. Moore:

This correspondence will serve to verify that your requested variance hearing, as provided for in OAR 340-71-430, was held beginning at approximately 11:50 a.m. on June 15, 1982, at the proposed site. The property was originally evaluated for on-site sewage disposal by Tillamook County staff on November 12, 1979. A Certificate of Favorable Site Evaluation was issued on December 14, 1979. The Certificate limited the dwelling to two (2) bedrooms. Action by the Environmental Quality Commission in March of 1980 caused your Certificate and others within Tillamook County to be voided. Subsequently, the property was re-evaluated by DEQ staff and was found unsuitable for installation of either a standard system or a more complex alternative system. The major limitations concerned the small size of the lot and location of an escarpment downslope. Insufficient area exists on the property to install a system, with room for a full replacement, while maintaining required setbacks from property lines, etc.

With the assistance of C.E.S., Ltd., you have proposed to overcome the site limitations through use of a sand filter-seepage trench system. The seepage trenches would have twenty-four (24) inches of gravel depth. A topsoil fill (twelve (12) to thirty (30) inches deep) would be placed over that part of the proposed replacement area where the existing soil depth is shallow.

The system you propose would require variance from the following rules:

1. OAR 340-71-220(2)(a), which requires the soils through the site have an effective soil depth that extends at least six (6) inches below the trench bottom. Portions of the site will not meet this requirement with the installation of seepage trenches.

2. OAR 340-71-220(2)(e), which prohibits the placement of fill. With the placement of up to thirty (30) inches of fill in the future repair area, a seepage trench could be installed to meet the requirement of OAR 340-71-220(2)(a), while the effective sidewall of the trench would be in the fill.

3. OAR 340-71-220(2)(i)(Table 1)(5), which requires the soil absorption system maintain a fifty (50) foot setback from intermittent streams. This property is in a drainage channel that receives the seasonal runoff from the lots upgradient. To alleviate this problem, drainage piping along the east and south property lines has been installed. It appears this drainage system does not intercept all of the seasonal flow as surface erosion is apparent along the south property line.

4. OAR 340-71-220(2)(i)(Table 1)(10), which requires a minimum fifty (50) foot setback be maintained between an escarpment and the soil absorption system. As proposed, not less than a twenty five (25) foot setback would be maintained. Drainage from the absorption system would not be toward the escarpment.

Variance from particular requirements of the rules or standards pertaining to on-site sewage disposal systems may be granted if a finding can be made that strict compliance with the rule or standard is inappropriate for cause, or that special physical conditions render strict compliance unreasonable, burdensome or impractical. I am not convinced that the property has sufficient area available to install a functional system, or that the proposed system will function satisfactorily even if it could be installed. Based upon my review of the verbal and written testimony contained in the record, I am unable to make a favorable finding. Your variance request is regretfully denied.

Pursuant to OAR 340-71-440, my decision to deny your variance request may be appealed to the Environmental Quality Commission. Requests for appeal must be made by letter, stating the grounds for appeal, and addressed to the Environmental Quality Commission, in care of Mr. William H. Young, Director, Department of Environmental Quality, Box 1760, Portland, Oregon 97207, within twenty (20) days of the date of the certified mailing of this letter.

Please feel free to contact me at 229-6443 if you have questions regarding this decision.

Sincerely,

Sherman O. Olson, Jr.

Sherman O. Olson, Jr.
Assistant Supervisor
On-Site Sewage Systems Section
Water Quality Division

SOO:g
XG1445

cc: Steve Wilson
Tillamook County
North Coast Branch Office
Northwest Region Office, DEQ

ATTACHMENT "C"

P. O. Box 137 • Corbett, Oregon 97019-0137
Telephone (503)695-5760

255 E. Queen, Suite A • Albany, Oregon 97321-3393
Telephone (503)926-7737

ces, LTD.

Soil & Waste Management Consultants

August 16, 1982

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

RE: Variance denial appeal for Mr. Dale H. Moore—T.L. 3400, Sec 12DB-T5S-R11W, Tillamook Co.

Dear Mr. Young,

An application for variance approval of an on-site sewage disposal system on the above referenced lot was denied pursuant to OAR 340-71-440. The decision was based on an opinion that the proposed system would not function in a satisfactory manner. This conclusion is not acceptable to Mr. Moore and an appeal to the Environmental Quality Commission is therefore requested.

The proposed on-site sewage disposal system required a variance from the following rules:

1) OAR 340-71-220(2)(a), requiring an effective soil depth to extend at least six inches below the disposal trench bottom.

2) OAR 340-71-220(2)(e), which requires that the site has not been filled or modified in a way that would adversely affect system function.

3) OAR 340-71-220(2)(i), requiring disposal fields to be setback 50 feet from intermittent streams.

4) OAR 340-71-220(2)(i), which requires a 50 foot setback from escarpments.

To minimize area requirements for the system, a sand filter followed by seepage trenches was proposed. Seepage trenches (OAR 340-71-280) allow for greater depth of filter material than standard disposal tenches and are commonly used on older lots of record where area limitations are present. Soil characteristics in the proposed initial seepage trench locations are adequate for this purpose. Soil effective depth in the replacement disposal field is inadequate. For this reason, placement of topsoil fill was recommended in the variance proposal. Fill would be inspected for quality and depth prior to issuance of a certificate of satisfactory completion on the sand filter and initial disposal field.

Concerns regarding the use of soil fills in a disposal field area stem from potential settlement and disruption of disposal or seepage trenches. As much as two years should be allowed for natural settlement in a soil fill to alleviate this potential hazard. Results of the extensive experimental program for on-site sewage disposal systems conducted by the Oregon DEQ indicate that the life of disposal trenches is prolonged where sand filter treatment systems are used. For this reason, it is unlikely that the filled replacement area would be used before natural settlement could take place. With design specifications for fill quality and placement and subsequent field inspection, I cannot agree with conclusions that this site modification will have an adverse affect on the functioning of the system.

Fill placement as described addresses the first two rules from which variance was requested. The third and fourth rules at issue regard setbacks from an escarpment and a seasonal drainage way. Setbacks from escarpments are intended to prevent downslope migration and surfacing of sewage effluent. In this case, as noted in the variance denial letter, drainage from the disposal field would not flow in the direction of the escarpment. Further, since the proposed system utilizes a sand filter unit to obtain primary effluent treatment with intermittent dosing, downslope movement or surfacing of effluent which would create a nuisance or threat to public health is unlikely. For these reasons, a 25 foot setback appears justified. As staked out on the lot for the variance hearing, the initial disposal field would be at least 40 feet from the escarpment.

Similarly, a 50 foot setback from the seasonal drainage way is unreasonable from the standpoint of public health or nuisance concerns. As noted in the denial letter, drainage flows through a buried, sealed pipe along the south boundary line. Although minor evidence of surface erosion was noted near the lower end of the line, this was likely caused by brief periods of intensive rainfall. An "intermittent stream" (OAR 340-71-100 (50)) flows continuously for a period of greater than two months in a given year. No evidence of surface water was noted in the February 10, 1981, re-evaluation by a DEQ representative.

Studies conducted under the DEQ experimental program (unpublished report) indicated that a 10 foot horizontal setback was adequate to prevent movement of septic tank effluent constitutents into perforated drain tile. Again, the proposed system includes a sand filter pre-treatment unit which removes a high percentage of constituents such as BOD, NO_3-N, and fecal organisms before discharge into the disposal field. Since the drainage piping in this case is nonperforated, the potential for contamination of drainage water is very remote.

Using a seepage trench disposal field as proposed, the lineal footage requirement is 67 feet for the initial system plus 67 feet for future replacement. A total of 140 lineal feet of seepage trench were staked out on the property and shown on a scaled plot plan submitted with the variance application. Fifty lineal feet were laid out in the proposed fill area. Based on the above, the property does, indeed, have sufficient area to install a functional system.

The purpose of the Oregon on-site sewage disposal rules is to maintain the quality of public waters and to protect public health. Although the rules provide valuable guidance for the determination of site feasibility, the standards are not essential for their intended purpose in all cases. The system proposed for Mr. Moore's lot addresses all limitations cited in previous denial letters. Please assist him in resolving this matter by scheduling his appeal on the EQC agenda as soon as possible.

Thank you for your cooperation.

Sincerely,

Steven A. Wilson

Steven A. Wilson, C.P.S.S.

cc: Dale Moore

CES
255 E. Queen Ave. Suite A
ALBANY, OREGON 97321
(503) 926-7737

JOB DALE MOORE

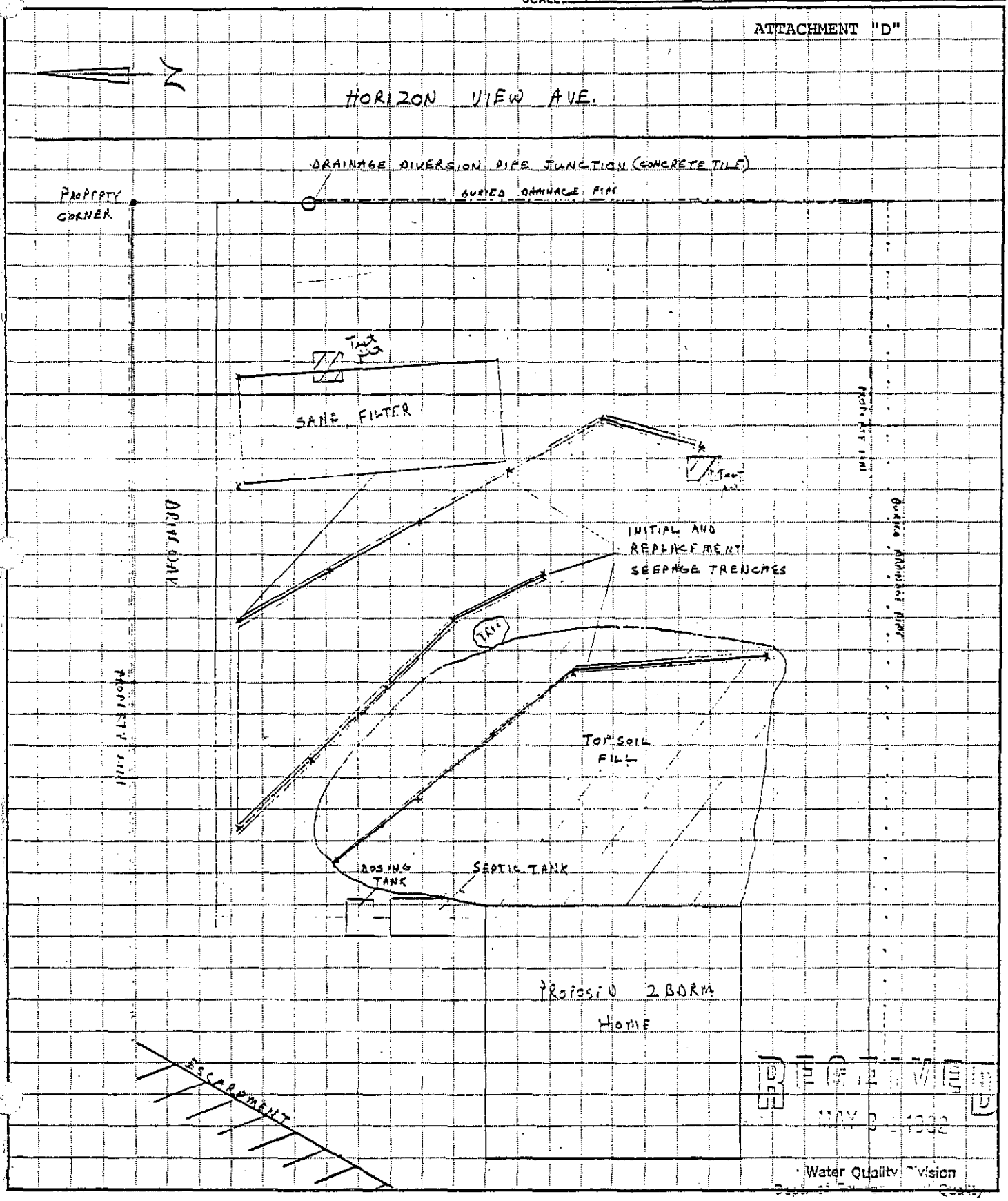
SHEET NO. 1 OF 2

CALCULATED BY S. Wilson DATE 5/12/82

CHECKED BY _____ DATE _____

SCALE 1" = 12.5'

ATTACHMENT "D"



RECEIVED
NOV 0 1982
Water Quality Division

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, April 8, 1983, EQC Meeting

Petition by Oregon Environmental Council for Declaratory Ruling Regarding DEQ Jurisdiction Over Spraying of the Pesticide Sevin into Tillamook Bay.

Issue for Consideration

Oregon Environmental Council has by letter and petition dated January 26, 1983 asked the Commission to issue a declaratory ruling to the effect that the provisions of ORS 468.035(j), 468.045(c), 468.700, 468.710, 468.715, and 468.740(4), and OAR Chapter 340, sections 41-202, 41-205(2)(i), and 41-205(j), 45-010(23), 45-015(1)(a), 41-015(1)(d), and 45-015(2) require DEQ to assume jurisdiction of and require persons to obtain permits from DEQ for the spraying of commercial oyster beds in Tillamook Bay for pest control.

DEQ has exercised its administrative authority (prosecutorial discretion) to not require a permit from the Department because the activities in question are directly under the control of the Oregon Department of Agriculture relative to pesticide labeling and licensing of applicators, and the Oregon State Fish and Wildlife Commission for issuance of a permit for the specific activity pursuant to ORS 509.140. DEQ has provided its input to the permit issuance process of the Fish and Wildlife Commision.

Attached are the following documents relative to this matter:

1. Petition for Declaratory Ruling dated January 26, 1983.
2. July 8, 1982 letter from OEC to the Department requesting clarification of the Department's position on the matter of jurisdiction over application of Sevin in Tillamook Bay.
3. July 15, 1982 letter from the Department to OEC responding to the July 8, 1982 letter.

4. Stipulation dated March 18, 1983 which supplements the allegations in OEC's petition and extends the date by which the EQC must initially act from March 2, 1983 to April 8, 1983.

5. February 22, 1983 letter from Senator Mike Thorne, Chairman of the Natural Resources/Economic Development Subcommittee of the Joint Ways and Means Committee.

6. March 8, 1983 letter to Senator Thorne from Chairman Richards.

It should be noted that the action of the Fish and Wildlife Commission to issue a permit has been challenged in several actions as follows:

- A direct appeal of the permit issuance to the Court of Appeals has been heard, but no decision has been handed down.

- The Land Use Board of Appeals (LUBA) has ruled that this permit is invalid because land use matters were not adequately considered. LCDC adopted the LUBA decision.

- The Fish and Wildlife Commission has appealed the LCDC decision to the Court of Appeals. Briefing and arguments have not yet occurred.

Discussion

The issue raised is an appropriate one for the EQC to consider and issue a ruling.

The statutory authority of the Department is extremely broad. The Department believes that it is so broad that a permit could be required from the Department for almost any activity that industry or people undertake. Even the fisherman who wades into the stream in hip boots tracks some dirt or "pollutants" into the water -- a point source discharge of waste into the waters. As a very practical matter, the Department must use its administrative authority to limit the range of its activities and to prioritize the use of its resources to address the most significant potential problems that are not addressed by other agencies.

A closely related question which the Commission may want to consider is whether the rules of the Commission are adequate to guide the Department in the exercise of its administrative authority (prosecutorial discretion).

Alternatives for Action on the Petition

Three courses of action are available to the Commission:

1. Deny the petition outright. As indicated, this is not recommended.

2. Accept the petition, and assign it to the Commission's Hearings Officer to schedule and hear the matter and prepare a proposed declaratory ruling for consideration by the Commission at a subsequent meeting.

3. Accept the petition, and schedule it for consideration directly by the Commission on the following basis:

   a. Notice to affected parties by April 12, 1983.

   b. Briefs to be submitted by the Department, the Petitioner and interested parties by May 6, 1983.

   c. Oral arguments to be presented before the Commission at its May 20, 1983 meeting.

   d. Final briefs to be submitted by Department and Petitioner by June 3, 1983.

   e. Final action to issue a ruling to be at the July 8, 1983 meeting.

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.

Bill

William H. Young

Attachments:

1. Petition for Declaratory Ruling dated January 26, 1983.
2. OEC July 8, 1982 Letter to DEQ.
3. DEQ July 15, 1982 response letter to OEC.
4. March 18, 1983 Stipulation.
5. February 22, 1983 Letter from Senator Thorne.
6. March 8, 1983 Letter to Senator Thorne.

Harold L. Sawyer:g
WG2184
229-5324
March 23, 1983

Before the Environmental Quality Commission

of the

State of Oregon

In the matter of the application of Oregon Environmental Council for a declaratory ruling as to the applicability of OAR Chapter 340, sections 41-202, 41-205(2)(i and j), 45-015(1)(a and d), 45-010(23), 45-015(2), and ORS 468.035(j), 468.045(c), 468.740(4), 468.715, 468.710, and 468.700 to Department of Environmental Quality jurisdiction over the spraying of the pesticide Sevin into Tillamook Bay

PETITION FOR DECLARATORY RULING

1. Petitioner is a non-profit organization comprised of private citizens and numerous environmental groups, regularly involved in environmental issues of various types, including water quality.
2. Petitioner is an appellant in a suit against Oregon Fish and Wildlife Dept. regarding the spraying of the pesticide Sevin by oyster growers into Tillamook Bay.
3. The rules and statutes as to which petitioner requests a declaratory ruling are:
   a. OAR Chapter 340, setting forth DEQ regulations and permit standards:
      (i) 41-202, stating that water quality in the North

Coast-Lower Columbia River Basin shall be managed to protect recognized uses, including fish passage, salmonid fish rearing and spawning, and resident fish and aquatic life,

(ii) 41-205(2), disallowing wastes to be discharged or activities to be conducted which will lead to a violation of the following standards:

(i) the creation of tastes or odors or toxic or other conditions deleterious to fish and other aquatic life

(j) formation of appreciable bottom or sludge deposits or formation of organic or inorganic deposits deleterious to fish or other aquatic life

(iii) 45-015(1) requiring a permit to

(a) discharge any waste from any industrial or commercial establishment or activity

(d) operate activities causing an increase of wastes into water which will alter its physical, chemical, or biologicl properties in any manner not already lawfully authorized

(iv) 45-010(23) defining "wastes" as "sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substance which will or may cause pollution or tend to cause pollution of any waters of the state".

(v) 45-015(2) requiring a permit to discharge pollutants from a point source into any navigable water.

b. Oregon Revised Statutes setting forth DEQ responsibilities:

(i) 468.035(j) requiring DEQ to seek enforcement of air and water pollution laws of the state,

(ii) 468.045(c) requiring the Director of DEQ to administer laws of the state concerning environmental quality,

(iii) 468.740(4) requiring a permit from DEQ to operate any commercial activity increasing wastes into the waters of the state which will alter the physical, chemical or biological properties of the water in a manner not already lawfully authorized,

(iv) 468.715 requiring DEQ to take such action as is necessary for the prevention of new pollution and the abatement of existing pollution, requiring the use of all available and reasonble methods necessary to achieve the purposes of the water pollution policy of the state,

(v) 468.710, the state water policy, is to "protect, maintain, and improve the quality of the water of the state ...for the propagation of wildlife, fish and aquatic life."

(vi) 468.700, the definition of "pollution" is the "alteration of the physical, chemical or biological properties of water including change in temperature, taste, color, turbidity, silt, odor, or discharge of any liquid solid, gas, radioactive or other substance into water which will or tends to (by itself or with other substances)

create a public nuisance or which will or tend to render such water harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof."

4. Petitioner contends that the above administrative rules and statutes require DEQ jurisdiction over the spraying of the pesticide Sevin into Tillamook Bay because:

a. under 340-41-202 DEQ is to protect certain recognized uses which would be harmed by the spraying of pesticides,

b. the pesticide would create a toxic condition and appreciable deposits harmful to aquatic life, prohibited by OAR 340-41-205(2)(i and j),

c. the pesticide is a "waste" as defined by OAR 340-45-010 (23) because it is a substance which will or may cause pollution in waters of the state, and OAR 340-45-015(1) (a and d) and ORS 468.740(4) require a DEQ permit to discharge such wastes from a commercial activity or to operate an activity causing such to be added to the water which will alter its chemical properties,

d. under OAR 340-45-015(2), one must get a permit from DEQ to discharge pollutants from a point source; the spraying of pesticides is a discharge from a point source,

e. DEQ is required to enforce and administer the water quality laws of the state under ORS 468.035(j) and

468.045(c), and therefore must protect such waters for the propagation of fish and aquatic life as set forth in the state water policy, ORS 468.710,

f. pesticides alter the chemical properties of water and are a discharge of a substance which will or tend to render such water harmful, detrimental or injurious to wildlife, fish and aquatic life and their habitats, and are therefore pollutants as defined by ORS 468.700, and DEQ is therefore required to take such action as is necessary to prevent the spraying of the pesticides, by requiring the use of all available and reasonable methods necessary to achieve the purposes of the water quality policy of the state, as required by ORS 468.715.

5. The question presented for declaratory ruling is whether the aforementioned rules and statutes require DEQ to assume jurisdiction of and require permits for the spraying of the pesticide Sevin into Tillamook Bay.

6. Petitioner requests that the Commission rule that DEQ's permit requirements apply to the spraying of the pesticide in Tillamook Bay and that DEQ must assume jurisdiction over this spraying activity.

7. Petitioner is Oregon Environmental Council, 2637 S.W. Water Ave., Portland, Oregon 97201.

Dated January 26, 1983

John A. Charles
Executive Director

ATTACHMENT 2

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. WATER AVENUE, PORTLAND, OREGON 97201 / PHONE: 503/222-1963

July 8, 1982

Harold Sawyer
Water Quality Administrator
Department of Environmental Quality
Yeon Building
PO Box 1760
Portland, Oregon 97207

Re: Application of Sevin in Tillamook Bay

Dear Mr. Sawyer,

As you are aware, 3 oyster farmers in Tillamook have recently applied for permits to spray Sevin in Tillamook Bay for purposes of controlling mud and ghost shrimp. Several state and federal agencies are involved in the permit process, including; the Environmental Protection Agency, Oregon Department of Agriculture and the Oregon Department of Fish and Wildlife. It is our understanding that DEQ has declined to assert jurisdictional responsibilities in this case, and thus is not involved in the current permit process.

Please consider this a formal request for clarification of DEQ's position in this matter. OEC requests a written statement explaining DEQ's position, including specific references to relevant ORS, OAR or EQC policy statements which support the department's jurisdictional ruling in this matter.

We also request that you respond no later than July 16, 1982.

Yours very truly,

John A. Charles
Executive Director

JAC/jah

JUL 19 1982

ATTACHMENT 3

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

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

July 15, 1982

John A. Charles
Executive Director
Oregon Environmental Council
2637 Water St.
Portland, OR 97102

Dear Mr. Charles:

This is a reply to your letter of July 8, 1982, regarding DEQ's position with respect to a proposal to use the product SEVIN for ghost and mud shrimp control on commercial oyster beds in Tillamook Bay. Some background is important to clarify the issue.

Oyster culture is a statutorily recognized beneficial use in Oregon estuaries. It is recognized in local land and estuary use management plans. Primary authority for public shellfish management rests with the Fish and Wildlife Department. Oyster beds leases and the state level of pesticide regulation are under Oregon Department of Agriculture authority.

The U.S. Bureau of Commercial Fisheries (now National Marine Fisheries Service) recognized the need for methods to control oyster predators and competitors more than 30 years ago. They extensively researched chemical controls as a means of preserving the troubled oyster industry. They brought their expertise and knowledge to Pacific Coast oystermen and resource management agencies in the early 1960s. As part of this program, experimental applications of SEVIN were made in Oregon and Washington estuaries. The predecessor of this agency, Oregon State Sanitary Authority, along with other state and federal resource management agencies, were observers and visual evaluators of those Oregon applications. Like other participants, the Oregon observers concluded that the chemical tool was excellent for its intended purpose and had almost no visual side effects. Our staff saw no evidence that it interfered with other beneficial uses of the estuary outside the area of application.

More recently Union Carbide product SEVIN 80 Sprayable has been granted U.S. Environmental Protection Agency Registration Number 264-316 for the control of ghost and mud shrimps in Oregon oyster beds. A condition of this registration is that the Oregon Department of Fish and Wildlife must issue a special permit for each application and oversee the operation in all of its detail.

The State of Washington implemented a SEVIN/Oyster program early in the 1960s. Annual applications of SEVIN have been made since then and the state determines the program to be a success. A good reference to their early work is: Ghost Shrimp Experiments With SEVIN, 1960 through 1968; Washington Department of Fisheries, 1970, Technical Report No. 1.

DEQ does not have the resources to conduct independent studies on the chemical properties of pesticides. We therefore rely on information developed by EPA, the State Agriculture Department, and other agencies who have the statutory authority, technical capability, and responsibility to evaluate such chemicals and their use.

Based on the above background and our review of available information we have concluded as follows:

1. SEVIN, in its authorized use, is a specific substance, applied in a controlled manner, for a specific purpose, i.e. namely to promote a mono-culture of oysters on certain estuarine lands in compliance with state law and land use plans. We do not view this practice any differently than the common use of chemicals under controlled conditions to eradicate "trash" fish in order to establish a mono-culture of sport and commercial fish species. In general, proper application of any pesticide which is registered for use in a water environment to achieve a beneficial purpose that does not unacceptably impair other beneficial uses is a recognized resource management practice.

2. State law and the conditions of the EPA Registration clearly place primary responsibility for the control of the use of SEVIN in oyster beds with the State Agriculture Department and Department of Fish and Wildlife. DEQ's role is similar to that of other interested parties--one of input to the responsible agencies through their approval process. In a number of instances, the legislature has recognized the potential overlapping interest and jurisdiction of various agencies and assigned primary responsibility to one agency as a means of reducing the "bureaucratic harassment" of multiple permits and approvals. DEQ regularly inputs water quality information to the Division of State Lands, Department of Forestry, Department of Geology and Mineral Industries, Department of Energy, and other state and federal agencies that have been legislatively assigned primary responsibility for granting permits or approvals consistent with broader state interest. We believe the Departments of Agriculture and Fish and Wildlife can properly protect the public interest in this matter.

Sincerely,

Harold L. Sawyer
Administrator
Water Quality Division

HLS:l
TL1773

cc: Department of Fish and Wildlife
Department of Agriculture
State Health Division
Department of Land Conservation and Development
Robert L. Haskins, Legal Counsel

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

In the Matter of the Petition of OREGON ENVIRONMENTAL COUNCIL for a Declaratory Ruling Regarding the Applicability of OAR 340-41-202, etc., to DEQ Jurisdiction Over Spraying the Pesticide Sevin into Tillamook Bay.	STIPULATION

The Department of Environmental Quality (DEQ) and petitioner Oregon Environmental Council (OEC) stipulate and agree as follows:

1. OEC filed its petition for declaratory ruling with the Environmental Quality Commission (Commission) on February 1, 1983.

2. OAR 340-11-062(5) required the DEQ to inform petitioner OEC, on or before March 2, 1983, whether or not the Commission intends to issue a declaratory ruling on petitioner's petition. In late February petitioner OEC and the Department agreed that in lieu of meeting that schedule petitioner OEC would amend its petition to more clearly state its case and allow the Commission, through April 8, 1983, to state whether or not it intends to issue a declaratory ruling. It is understood that if the Commission intends to issue a ruling it would do so after notice and hearing, pursuant to OAR 340-11-062(5) et seq.

3. Therefore petitioner OEC hereby amends and supplements its petition for declaratory ruling by adding the following allegations:

A. Sevin is a carbaryl pesticide which is toxic to target organisms (mud and ghost shrimp) and others. It is registered by the United States Environmental Protection Agency (Registration

No. 264-316) under Section 3 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), PL 92-516 as amended, 7 USC sec 136a and for use in Oregon by the Oregon Department of Agriculture (ODOA) (EPA SLN No. OR800051) under FIFRA Section 24(c) and ORS _____ to control mud and ghost shrimp in estuaries.

B. The Sevin label, for use in Oregon, provides as follows:

"CARBARYL INSECTICIDE
"For control of Ghost and Mud Shrimp in Oyster Beds
"EPA Reg. No. 264-316

"FOR DISTRIBUTION AND USE ONLY IN THE STATE OF OREGON

"DIRECTIONS FOR USE

"It is a violation of Federal Law to use this product in a manner inconsistent with its labeling. [7 USC sec 136j(b)(2)(G)]

"Oyster beds: For control of ghost shrimp and mud shrimp in beds to be seeded with oysters. Treatment is allowed only on ground with no marketable oysters on it, and a 200 ft. buffer zone is required between the treatment area and the nearest marketable shell-fish [sic] when treatment is by aerial spray, and a 50 ft. buffer zone is required if treatment is by ground spray.

"Treatment must be timed seasonally to avoid major concentration of Dungeness crabs. Treatment is not allowed until the ground becomes bare at ebb tide, and must be completed one-half hour after low tide to prevent direct contamination of the water. A 200 ft. buffer zone must be maintained between the treatment area and all sloughs and water channels. Treatment must be made at a rate of 10 lbs. active carbaryl per acre by ground or by air equipment. Rates of less than 10 lbs. active carbaryl may be made only on the specific recommendation of a Oregon State Department of Fish & Wildlife Biologist. Constant agitation must be maintained to prevent settling.

"A special permit must be obtained from the Oregon Department of Fish & Wildlife prior to the application. All permits must be screened by the Department of Fish & Wildlife with a physical inspection prior to issuance to determine that treatment would be worthwhile and

effective, that the ground is bare of oysters, that the ground is properly staked and flagged, and to protect adjacent shellfish and water areas. The actual treatment must be conducted under the direct supervision of a staff member of the Oregon Department of Fish & Wildlife.

"The staff member of the Oregon Department of Fish & Wildlife who is supervising the treatment of ground may suspend or cancel the treatment operations at any time when the conditions for use are violated or environmental conditions change immediately prior to or during treatment.

"ALL APPLICABLE DIRECTIONS, RESTRICTIONS AND PRECAUTIONS "ON THE EPA REGISTERED LABEL ARE TO BE FOLLOWED.

"This labeling must be in the possession of the user at the time of application. Usage of this product is strictly prohibited with out [sic] the approval by the Oregon Department of Fish & Wildlife.

"EPA SLN NO. OR 800051"

C. Sevin pesticide has been authorized by EPA since 1976 for limited use in the State of Wasington for control of ghost and mud shrimp infesting oyster beds. In 1979, Oregon oyster growers requested similar authorization.

D. Sevin is toxic at low concentrations to arthropods, and at somewhat higher levels to molluscs and fish. The inability to use Sevin might prevent some oyster growers from utilizing formerly productive bed areas.

E. Oyster culture in Washington and Oregon began in the early 1900s after the serious depletion of the native Olympia or Yaquina Oysters (Ostrea lurida) by overharvest. A search for a hardy and fast-growing oyster which could be cultured profitably resulted in the importation from Japan of the Pacific Oyster (Crassostrea gigas). By 1930, production of the Pacific Oyster

was widespread in the northwest. Much of the oyster production is done using the simple ground or bottom culture method, where seed oysters are spread on the bottom of a suitable intertidal area of an estuary. Adults are harvested from the same area two or three years later. Willapa Bay and Tillamook Bay are two areas which have historically had productive oyster beds for bottom culture of C. gigas.

F. The mid-1950s was a period of warmer than usual water temperatures in coastal waters of the northwest. Concurrently, there was an increase in ghost shrimp (Callianassa californiensis) and mud shrimp (Upogebia pugettensis) populations in Willapa Bay and Tillamook Bay. Both species occupy intertidal zones that are also suitable oyster habitat. The increase was particularly noted in oyster growing areas as both shrimp species excavate and live in U-shaped burrows in the mud. The burrows are 2-4 cm. in diameter and can be as deep as 1 meter, and ghost shrimp population densities can be up to 0.5-3 million per acre. The result of burrowing may be that the bottom mud is softened so that adult oysters tend to sink into the mud and suffocate, rather than remaining on the surface. In addition, young oysters can be silted over and smothered by castings from the burrows. Thus the infestation of oyster beds by ghost and mud shrimp may in some cases render them unsuitable for oyster culture.

G. The problem became serious enough by 1960 that Washington Department of Fisheries (WDF) began to look for ways to control the ghost and mud shrimp. WDF estimated 15,000 acres

of intertidal land suitable for oyster culture to have some infestation of ghost or mud shrimp. Control by using harrows or rollers on top of the substrate to destroy the burrows or by covering the beds with plastic to kill the shrimp before the oysters were planted on the beds was rejected as being too expensive.

H. The insecticide carbaryl (1-Naphthyl N-methylcarbamate, or Sevin) was found to be very effective at killing ghost shrimp and mud shrimp, thus improving bed stability significantly in some cases. WDF undertook a series of investigations in 1960 on the toxicity of carbaryl to ghost and mud shrimp and other organisms of the habitat. Commercial use application of carbaryl began in 1966. In 1976 on the basis of the studies they applied under Section 24(c) of FIFRA, for a 24(c) registration for the use of Union Carbide's Sevin 80 sprayable carbaryl to control mud and ghost shrimp in estuaries. They have continued to use carbaryl under this authorization to the present date.

I. The 24(c) label issued in Washington allowed treatment of 400 acres a year in an estuary in parcels of 50 acres at one time. Actual use has been closer to 160 acres a year, nearly all in Willapa Bay. Between 1976 and 1980, 171 tracts ranging in size from 1 to 2 acres to 50 acres were treated. The surface area of Willapa Bay, including intertidal areas, is approximately 42,000 acres. The mud shrimp infested sites have required only a single treatment thus far, but ghost shrimp are being treated every 3 to 4 years.

J. Oregon oyster growers requested in 1979 that a carbaryl label be acquired for ghost and mud shrimp control in Oregon. The main area of use would be Tillamook Bay, as Coos Bay and Yaquina Bay use alternative culture methods. A survey of oystermen by the Oregon Department of Fish & Wildlife (ODFW) in 1980 reported that there are 450 acres in Tillamook Bay currently leased as commercial oyster beds that could potentially be treated. The surface area of Tillamook Bay is 8,700 acres. In addition, one grower indicated interest in treating 30 acres in South Slough, Coos Bay.

K. Under ORS 509.140, the Oregon Fish & Wildlife Commission has authority to issue or deny permits to discharge into waters of the state substances which are toxic to fish. On May 7, 1980 ODFW requested ODOA to provide registration under FIFRA sec 24(c) for Sevin 80 sprayable carbaryl for ghost shrimp and mud shrimp control as an extension of Oregon's label for Sevin (carbaryl) use in agriculture. ODOA authorized issuance of a 24(c) label on May 12, 1980.

L. Since that time the authority for regulation of oyster culture was transferred from the Oregon Fish & Wildlife Commission to ODOA by the 1981 Oregon legislature. Or Laws 1981, ch 638. The Oregon Fish & Wildlife Commission maintains exclusive jurisdiction over all fish, shellfish, and all other animals living intertidally in the bottom, within the waters of the state. ORS 506.036. There are three exceptions to this authority: (1) fishing rights of treaty Indians, (2) federal fish culture

operations and scientific investigations, and (3) commercial cultivation of oysters. The provision of the statute exempting the Commission from jurisdiction over commercial cultivation of oysters (ORS 506.036(3)) specifically states that ". . . nothing in this subsection is intended to affect the authority of the commission under ORS 509.140."

M. Three oyster growers applied to the Oregon Department of Fish & Wildlife on May 28, 1982 for a permit to apply Sevin to the commercial oyster beds in Tillamook Bay, waters of the state, pursuant to ORS 509.140. Under that statute, the permit may be granted if it is found that the use of the substance is necessary. In issuing a permit the Fish & Wildlife Commission is required to prescribe such precautions as will save fish from injury.

N. A contested case hearing was held on July 24, 1982 to consider the permit application. Intervenors Oregon Shores Conservation Coalition, Audubon Society of Portland and OEC argued that the permits should not be issued because, among other things, the pesticide was not "necessary" as required by ORS 509.140 and there is a more specific controlling statute, ORS 509.505, which prohibits anyone from allowing substances to be deposited into any state waters which will injuriously affect the life, growth or flavor of shellfish. On August 20, 1982 the Commission granted the permit, ruling that the word "necessary" means "reasonably necessary" and that the use of Sevin was necessary within this definition for the applicants to carry on

their business.

O. The intervenors successfully appealed to the Oregon Land Use Board of Appeals (LUBA) on February 2, 1983. LUBA remanded the decision back to the Fish & Wildlife Commission, holding that under Goal 16 (Estuary Goal) the Commission (1) failed to properly address the enumerated priorities of the Goal, (2) failed to properly inventory life forms in Tillamook Bay, and (3) failed to balance the economic impact of its decision. The Oregon Land Conservation and Development Commission (LCDC) adopted LUBA's order. The Fish & Wildlife Commission filed an appeal of the LCDC decision with the Oregon Court of Appeals. Briefing and argument have not yet occurred.

P. In addition to the LUBA case described in paragraph O above, Oregon Shores Conservation Coalition, OEC, Audubon Society of Portland and several individuals have directly appealed to the Oregon Court of Appeals the Fish & Wildlife Commission's August 20 order, alleging (1) a violation of ODOA special local need registration and labeling requirements, (2) error in the finding as to the meaning of the word "necessary" in ORS 509.140, (3) failure to consider the public trust doctrine, and (4) failure to comply with or find as a pertinent statute ORS 509.505. Briefing and oral arguments have been completed, but no decision has been handed down.

Q. Some of the members of OEC and its component organizations reside in Tillamook County. They and other members use the Bay for crabbing, fishing and recreational purposes.

R. Petitioner requests that the Commission rule the DEQ's responsibilities and permit requirements apply to the spraying of the pesticide Sevin in Tillamook Bay, and that DEQ must therefore assume jurisdiction and undertake review of such pesticide application under its NPDES water quality permit process.

S. Oregon Shores Conservation Coalition, P.O. Box 488, Portland, Oregon 97202, and Audubon Society of Portland, 5151 N.W. Cornell Road, Portland, Oregon 97210, which are Oregon non-profit corporations and co-petitioners in the contested case appeal; Bob Olson, Olson Oyster Co., 14955 Miami Foley Road, Bay City, Oregon 97107; Cecil Harris, Tillamook Oyster Co., 1985 Bayocean Road, N.W., Tillamook, Oregon 97141; and Sam Hayes, Hayes Oyster Co., P.O. Box 324, Bay City, Oregon 97107, who are oyster growers and intervenor-respondents in the contested case appeal; would also be affected by the Commission's ruling in this matter.

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4. The DEQ and OEC shall have and retain the right to present evidence with regard to any fact in issue at the hearing, if any is held.

IT IS SO STIPULATED AND AGREED:

OREGON ENVIRONMENTAL COUNCIL

Dated: March 21, 1983

By John A. Charles
John A. Charles
Executive Director

DEPARTMENT OF ENVIRONMENTAL QUALITY

Dated: March 22, 1983

By William H. Young
William H. Young
Director

ATTACHMENT 5

JOINT WAYS AND MEANS COMMITTEE
Room H178, State Capitol
SALEM, OREGON 97310

February 22, 1983

Joe B. Richards
Chairman, Environmental Quality Commission
522 SW 5th
Portland, OR 97204

Dear Joe,

The Natural Resources/Economic Development Subcommittee of the Joint Committee on Ways and Means requested and received a status report from the Fish and Wildlife Department on the issue of spraying Sevin on the Tillamook Bay oyster beds. The Subcommittee concluded that the Department of Fish and Wildlife is appropriately designated by law to determine this issue and is adequately staffed to conduct a professional biological review. The Subcommittee is further of the opinion that the existing review process involving both the Fish and Wildlife Commission and the Land Conservation and Development Commission has afforded ample opportunity for input from both proponents and opponents of the spraying. Therefore, the Subcommittee would urge the Environmental Quality Commission to deny the Oregon Environmental Council's request to involve yet another agency in this issue and further delay its resolution.

Sincerely,

Senator Mike Thorne

ATTACHMENT 6

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

March 8, 1983

The Honorable Mike Thorne
Joint Ways and Means Committee
Chairman, Natural Resources/Economic
Development Subcommittee
H-176 State Capitol
Salem, OR 97310

Dear Senator Thorne:

I appreciate your letter regarding the Oregon Environmental Council petition on the spraying of Sevin in Tillamook Bay. Our Department has kept us advised of their coordination with the Department of Fish & Wildlife. We have also reviewed previous correspondence with the Oregon Environmental Council.

The O.E.C. petition has not been heard by the Commission. It was not on the agenda for our most recent meeting, February 25 in Medford, because our attorney could not come to an agreement with O.E.C. on a statement of facts. The petition will likely be before the Commission at its April 8, 1983 meeting at Willamette University in Salem. If the petition is ready for consideration at our April meeting, I will be sure that the staff gets you a copy of the staff report prior to the meeting so you and your subcommittee would have time to discuss with us or Bill Young any additional views you might have.

Sincerely,

Joe B. Richards
Chairman

JAG:h
FH850

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: John Borden, Manager Bill
Willamette Valley Region

SUBJECT: Agenda Item P, April 8, 1983, EQC Meeting.

SIGNIFICANT WILLAMETTE VALLEY REGION ACTIVITIES

Attached is a summary by county of significant environmental activities in the Willamette Valley Region. I would be glad to discuss these or other items of interest to you.

The Commission was last in Salem on March 13, 1981. As you can see from the attachment, considerable environmental progress has been made, and several activities are planned for the immediate future.

BENTON COUNTY

Alsea Community

In response to a request from the Benton County Board of Commissioners, DEQ and County staff conducted a house-to-house survey in Alsea during January, 1983. An area-wide sewage disposal problem was found, and we are working together to develop remedies. All parties are participating in the solution, and the County has even offered to consider forming a County Service District to help.

Benton County Municipal Sewerage Projects

Since 1981, the following sewerage construction projects have been completed or are about to begin:

Monroe Health Hazard	Health hazard area and existing system upgrade should be complete by summer, 1983.
North Albany	See "North Albany/Riverview Heights" below.

Coffin Butte Landfill

Coffin Butte is the major regional landfill for Benton, Linn and Polk Counties. Upon receipt of the Lebanon Landfill's waste stream beginning July, 1983, volumes will average between 400 and 500 tons per day. The solid waste permit is up for renewal this year, and most upgrading will be toward development of a long-term leachate management program. The site is undergoing a rezoning request to accommodate landfilling activities for the next 30 years or more.

North Albany/Riverview Heights

Benton County and the City of Albany have been coordinating efforts to solve North Albany's sewage problems. They formed the Albany-Benton County Intergovernmental Advisory (ABC) Committee. North Albany's low density and hilly terrain places long-term solutions decades away (i.e., sewer service to the City of Albany). Interim solutions are recognized as being essential and are under review.

Riverview Heights, a subdivision in the midst of North Albany, has its own package sewage treatment plant. Because of the plant's poor operating history, WVR staff in 1981 pressed for transfer of ownership to a more responsible party. Thanks to the active support of homeowners on the system, the sewerage facilities are now owned and operated by the County Service District. The District is actively moving to upgrade the plant and sewage collection system. The Riverview Heights plant may play an important role as "interim solution" to the neighboring North Albany septic tank problems. WVR, City and County staff are working to that end.

Oregon State University - Animal Waste Management

Oregon State University has had a series of fish kills and other environmental problems associated with manure management at the OSU dairy. Since OSU is an example to the agricultural community, they have taken steps to remedy this situation and develop guidelines for proper practices elsewhere in Oregon. DEQ staff welcomes their effort, and wants to assist OSU in getting the information to others.

United Chrome - Corvallis Airport Industrial Park

The most extensive WVR review of a potential Superfund candidate has been to determine residual environmental effects from past unregulated discharges of chrome plating waste water by United Chrome of Corvallis. From about 1960 through 1977, United Chrome discharged chrome plating waste water into a dry well. DEQ monitoring has shown no ground water impacts. However, we have found chrome in surface water above basin standards. The Department is concerned about past leaching of chrome into Brownsville Slough, located on the Willamette River just south of Corvallis. We are monitoring sediment near the dry well to determine whether it needs to be removed. Discussions with United Chrome management have been positive. They indicate their Company will voluntarily act to stop further leaching of chrome. We anticipate this problem will be resolved by fall, 1983.

LANE COUNTY

Creswell and Cottage Grove Solid Waste Sites

There is a staff report on the May 20 Commission agenda covering these sites in detail.

Florence - North Florence Dunal Aquifer

There is a staff report on the Commission's agenda which covers this in detail. The project is characterized by extensive local support for the Commission to take extraordinary regulatory steps to protect the pristine waters of Clear Lake.

Lane County Municipal Sewerage Projects

Since 1981, the following sewage construction projects have been completed or are about to begin:

Creswell	Major collection system improvements without EPA Grants now underway.
Cottage Grove	Major facilities upgrade under construction. Project had been ready to proceed in phases without EPA grant assistance, but grants became available.

Dexter	Large community sand filter under construction, and should be ready for start-up in 1983.
Oakridge	Improvements to treatment facility completed in 1982 without EPA grant assistance.
MWMC Project	See separate paragraph on MWMC Project.

Lane Regional Air Pollution Authority (LRAPA)

LRAPA is responsible for the air quality program in Lane County. DEQ had reserved air jurisdiction for Weyerhaeuser, Springfield. In 1982, DEQ transferred the mill to LRAPA.

Metropolitan Wastewater Management Commission (MWMC) Project

As of February, 1983, grants totaling $59.7 million had been awarded for construction of the MWMC regional sewerage project. Total project costs may reach $95 million. Facilities status:

Regional sewage treatment plant	About 85% complete. Prolonged start-up and shakedown will begin in 1983 and continue into late 1984.
Seasonal Industrial Waste -- Agripac	Permits obtained; should be ready beginning of 1984 canning season.
East Bank Interceptor	Complete.
Willakenzie Pump Station	Estimate completion summer, 1984.
Eugene and Springfield sewer rehabilitation	Phase I essentially complete.
West Irwin Pump Station	Estimate completion in 1984.
Sludge Program	Phase I involves dewatering and summer agricultural use/winter disposal at Short Mountain Landfill. Proposal under review. Phase II may involve lagoon storage, air drying, then agricultural use, depending on the results of an ongoing EPA Environmental Impact Study (EIS).

Beyond the above projects, septic tank induced ground water pollution in the River Road/Santa Clara area (population about 30,000) needs to be solved. Some progress pursuant to the 1980 Lane Board of Commissioners/EQC Consent Agreement has been made.

Short Mountain Landfill

Short Mountain is the major regional landfill serving Lane County and reportedly receives over 1000 tons per day. A major project scheduled for 1983-84 is to use this site for the Phase I MWMC sludge program. In order to accommodate these wastes, the existing leachate pond volume will be increased by 30 acre feet, and 6 new monitoring wells will be installed. Additional odor controls, such as gas collection and flaring and lagoon aerators, are also being considered.

LINN COUNTY

Crown Zellerbach, Lebanon

Crown Zellerbach, ceased operation of its Lebanon pulp mill in 1980. Since then, Regional and Division staff have been closely involved with several aspects of mill demolition and facilities removal and with waste treatment system closure. Disposal of several transformers containing PCB's and asbestos removal were major projects, and cost the Company over $85,000.

Waste treatment facilities were drained and filled with inert materials. A ground water study north of the plant was conducted in 1982 to attempt to identify source(s) of contamination in the shallow aquifer. A likely source was an old log pond filled with 44,000 cubic yards of pulp fiber. In an effort to reduce leachate from the fiber, Crown Zellerbach has windrowed the material, and hopes composting will occur, thereby producing a usable product. Some additional post-closure monitoring of the site will be necessary.

Duraflake - Millersburg

Willamette Industries, Duraflake Division, Albany, was the subject of a controversial variance obtained from the EQC in September, 1977. The variance allowed operation of a large "pre-dryer" in violation of opacity limits, if dryer controls were researched and effective control installed. Other requirements pertained to reducing fugitive wood dust from the plant site. Since then, Duraflake has fulfilled the original requirements. Some work remains to further reduce process upsets and fugitive emissions, but overall Duraflake deserves notice for their efforts.

Lebanon Landfill

Lebanon Landfill is the only remaining municipal landfill in Linn County. Due to its flood plain location, staff is working with the operator to convert it to a major transfer station by July so that all wastes will be diverted to the regional Coffin Butte Landfill in adjacent Benton County.

Linn County Municipal Sewerage Projects

Since 1981, the following sewerage construction projects have been completed or are about to begin:

Brownsville	Completed major upgrade in 1982.
Draperville/Century Drive Health Hazard	Connected to City of Albany sewerage system in 1982.
Millersburg	Connected to City of Albany sewerage system in 1981.
Scio	Plan to begin upgrade of existing facilities in 1983 without EPA grant assistance.

Madera Products, Albany

In April, 1982, WVR staff became aware that the pilot project approved at Madera Products was unsuccessful, and that approximately 250 drums of unidentified waste were on the site. WVR staff inventoried the waste and supervised segregation of wastes found to be hazardous. The Region was successful in obtaining the voluntary cooperation of Madera Products to comply with the State hazardous waste rules. All hazardous wastes were shipped to Arlington.

Millersburg Special Air Study

The Millersburg area has often been described as the most heavily industrialized landscape in Oregon, having such plants asTWCA, Western Kraft, Duraflake, Georgia-Pacific Resin, Simpson Timber, and others in close proximity. Odors and characteristic "Millersburg haze" have been common complaints from residents. In 1981, $6,600 from EPA became available for a very limited special study to attempt to characterize the haze. Sampling for fine particulates at three sites was carried out for 14 months. Selected samples will soon be analyzed for chemical species. Several of the industries have been operating at severely curtailed production levels and emission rates are lower than normal. If it turns out that further study is needed, costs should be reasonable as a result of the initial sampling.

National Fruit Canning Company

National Fruit Canning Company purchased Seabrook Foods in Albany. National, on their own initiative, substantially upgraded Seabrook's waste water management facilities. Over $750,000 were spent purchasing 116 acres of land, building 2 miles of transmission line, and constructing an irrigation project. Still, the Company was not satisfied, and is now planning to improve facilities to control site runoff.

Oregon Metallurgical Corporation - Chlorination Plant Restart

OreMet, a major producer of titanium metal products, has proposed to restart their Chlorination Plant. WVR staff have worked closely with OreMet in review of the proposed air pollution control equipment so they will be able to start up without delay.

Tangent

In 1982, staff completed a sanitary survey of the City of Tangent with the Linn County Environmental Health Department. We found a severe area-wide failure of septic tanks, creating both health concerns and stream pollution. Staff is currently working with the City and County to develop sewerage plans and research funding options to correct the problem.

Teledyne Wah Chang Albany (TWCA)

Energy Facilities Siting Council (EFSC):

WVR staff played an active role in the EFSC review of TWCA's application to permanently store radioactive sludges at their plant site. Our chief interests were environmental impacts and compatibility with the Commission's ground water policy for the potential chemical (non-radioactive) hazards.

Hazardous Waste and Superfund:

Department staff are working with TWCA to upgrade their hazardous waste management program per federal regulations. EPA and DEQ will jointly review TWCA's hazardous waste treatment, storage and disposal license needs.

EPA's list of 418 sites eligible for Superfund cleanup monies includes TWCA. We have actively assisted EPA by providing information about TWCA's hazardous waste efforts and by recommending appropriate activities.

Air Quality Control:

TWCA recently invested about $500,000 in a wet electrostatic precipitator for more effective control of particulate and SO_2 emissions from their Separations Plant. WVR is currently reviewing their Air Contaminant Discharge Permit renewal application.

Water Quality Control:

TWCA recently improved water quality control facilities by adding a programmable automated control system and an upgraded dechlorination facility.

Sorghum to Energy Project

Bio-Solar Research, Inc., has been working on an innovative potential supply of electrical and liquid fuel energy for the northwest. This past year, the Company contracted with Linn County farmers to grow 1100 acres of sorghum (similar to sugar cane) for processing into alcohol and pelletized fuel. The pilot plant is near Brownsville. Although plagued with financial and

technical problems, the Company has now signed power contracts with Pacific Power and Light and plans to construct two full scale projects. Each will feature a 25 megawatt electrical generating facility. Juices squeezed from the mature sorghum will be distilled to fuel grade alcohol while the waste sorghum pulp (bagasse) will be pelletized for use as boiler fuel to drive steam powered electrical generators.

If successful, these projects could result in thousands of acres of Willamette Valley farm land being coverted from grass seed to sorghum. WVR staff recognizes the potential for reducing the amount of grass straw which must be field burned each summer, and is giving technical assistance in an effort to streamline the permit issuance process.

Grass Seed Straw Utilization

Willamette Industries, Inc., in conjunction with Linn County grass seed growers, is working on a project to convert waste straw to boiler fuel. Several methods of straw preparation and burning are being investigated (e.g., grinding vs. pelletizing; pile vs. suspension burning). Initial Company tests submitted for Department review indicate that the straw can be mixed and burned with hogged fuel without adverse particulate emission impacts, while providing energy to a fuel-starved industry. WVR staff is encouraging continued experimentation by Willamette Industries.

MARION COUNTY

Boise Cascade, Salem

Boise Cascade's Salem pump and paper mill closed in June, 1982, laying off 341 employees. The plant was an environmental focal point for Salem residents and the DEQ staff for many years. Biting SO_2 odor, blue haze downtown, wood fines on cars, and the "black band" in the Willamette River were issues. In conjunction with a plant expansion, the Commission imposed strict SO_2 limits and other conditions in response to demand from the community. A mist eliminator and additional controls were installed, and the plant markedly improved its image in that time.

Staff worked closely with Boise on the phase-down of treatment facilities. Boise leaves behind them a large waste water treatment facility which is being eyed by others for many possible uses. We have recommended that adjacent agricultural land be looked at for effluent disposal in the event the facilities are used again for waste treatment. Others have suggested discharges to the Willamette River. The Commission may have to consider this matter, depending on the nature of future proposals.

Marion County Municipal Sewerage Projects

Since 1981, the following sewerage construction projects have been completed or are about to begin:

Donald	Scheduled to begin construction in summer, 1983, of small diameter pressure sewer system to replace drainfields.
Hubbard	Passed bond issue in 1982. Plan to proceed without EPA construction grants to upgrade existing facilities.
St. Paul	New sewerage system replaced septic tanks in 1982.
Silverton	New treatment plant, interceptors and health hazard annexation under construction---completion in 1984. Silverton was recognized by the Commission for their efforts to proceed without federal grants.
Woodburn	New sewage treatment plant replaced two old facilities in 1981.

Marion County Solid Waste Program

Marion County has been working overtime to find alternatives to the Brown's Island regional landfill. Currently, a replacement landfill site has been selected (I-5 site near the North Jefferson exit from I-5) and an energy facility site has been selected (northeast corner of the intersection of I-5 and Chemawa Road). Both sites are before the Court of Appeals on land use issues. The Commission will be considering Marion County's request to extend Brown's Island at their April 8, 1983 meeting. Staff recommends approval.

Oregon State Fair, Salem

The Oregon State Fair received considerable attention in 1982 from discharges of manure into Salem's storm sewers. The Fair had difficulty raising money to make the repairs, so the problem took some time to solve. And individuals stabling horses did not all share the same interest in helping. Manure collection facilities have been built, but horse washdown water remains a problem. Pretreatment and disposal to Salem's sanitary sewer may be needed.

City of Salem--Inflow/Infiltration Reduction Program

It's well known that most projects to reduce infiltration and thus reduce sewage bypassing, flooded treatment facilities, etc., have not been effective. No one knows this better than the City of Salem, since they have spent large sums of money attempting to solve infiltration problems with little or no measurable improvement.

The City deserves special recognition for their second look at this problem. Among other things, they and their consulting engineers have pioneered methods to examine and repair small diameter service lateral sewers without digging them up. Although it is too early to be certain, if Salem's research and modified construction proves out as well as preliminary findings suggest, there could be major benefits for municipalities in western Oregon and probably much of the United States. Several Willamette Valley communities have already modified their I/I programs to take advantage of some of the early findings.

City of Salem--Progress Regarding Consent Agreement

In 1981, the City of Salem and the Department agreed on major sewerage improvement activities. These agreements were then stated in two NPDES Permits and a Consent Agreement signed in June, 1981, by the mayor.

The task at that time looked enormous. In light of what has been accomplished since then, the task now looks manageable. Among the most important objectives:

Wallace Road sewage treatment plant upgrade	Plant will be phased out in 1983.
Eliminate sewage bypasses	See City of Salem Infiltration Reduction item above. In addition, the "Salem Relief Sewer" project is under construction to reduce bypassing in south and east Salem. $13 million local finance: no EPA grants.
Pretreatment	Program adopted by City Council.
Improve sludge management (Biogro)	Request for Proposal to be advertised in April, 1983.
Analyze sewerage system capacity	Facilities Plan nearing completion. Draft projects and system improvements already under study.

POLK COUNTY

Falls City

Serious surfacing sewage problems in Falls City have been well known to local residents and documented for years. There has been genuine local desire to solve the problems, but project cost estimates are higher than average. In addition, the EPA construction grants program and others such as HUD and FmHA require standard steps (planning, design and construction) in order to receive grant or loan assistance. Each step requires costly analysis and paperwork. Falls City has not even been able to afford the standard steps. Thus, the project has been stalled for years.

Falls City and WVR staff decided to end the frustration by taking an extraordinary step. Using holiday, weekend and after-hours volunteer time, WVR staff and local residents conducted the surveys, mapping and preliminary engineering work to provide sufficient data to complete the initial grants applications.

Falls City is at last in the grant/loan process, and is now preparing for a local bond election. We believe this "pump priming" will have been well worth the effort.

Polk County Municipal Sewerage Projects

Since 1981, the following sewerage construction projects have been completed or are about to begin:

Dallas	Fir Grove health hazard may be under construction in 1983.
Grand Ronde	Construction of new sewerage system to replace failing septic tanks may begin in late 1983.
Independence	Completed major facilities upgrade in 1981.
Monmouth	Completed major facilities upgrade in 1982.
West Salem	Wallace Road sewage treatment plant to be phased out and connected to Willow Lake system in Salem in 1983.

YAMHILL COUNTY

Publishers Paper, Newberg

Publishers Paper pulp mill in Newberg has rebounded from their large spill in 1981 by completing phase 1 of a two-phase upgrade of their waste water treatment facility. Phase 2 will be completed after federal BCT effluent guidelines become final. This project is necessary for Publishers to consistently meet effluent limits and to allow abandonment of one structurally unsound pond next to the Willamette River.

Yamhill County Municipal Sewerage Projects

Since 1981, the following sewerage construction projects have been completed or are about to begin:

Amity	Facilities upgrade completed in 1981 except for a new outfall pipe.
Dayton	Facilities upgrade completed in 1982. During the winter floods of 82-83, the sewerage system was severely damaged. Emergency repairs are underway.
Dundee	Facilities upgrade was completed in 1981.
Sheridan	Health hazard area to be completed in 1983.

OTHER SIGNIFICANT ACTIVITIES

Confined Animal Feeding and Holding Operations

In accordance with a recent agreement between the Department of Agriculture and DEQ, animal waste management complaints are now referred to the State Soil and Water Conservation Districts (SWCD's). Thus far, the federal Soil Conservation Service (SCS) staff have been contacting farmers with technical assistance. If unsuccessful in obtaining voluntary compliance, the violations are referred back to WVR for follow-up.

It's too soon to call it a success, but we are optimistic about activities in the Bashaw Creek drainage basin in southwestern Marion County, where several large dairies are located. Manure and silage runoff has caused major fish kills there. Marion County SWCD and the SCS are assisting the dairies. A very productive activity has been their community meetings. The problem is spelled out for all, rather than individually. WVR has long maintained that working on a stream basin approach is more effective than responding to individual complaints. We are planning a monitoring program on Bashaw Creek to assess current pollution levels and success of the cleanup effort.

Fuel Switching

Timber plant closures have made hogged fuel scarce for steam generating boilers at wood products plants. As a result, alternative fuels such as tire chips, chipped plastic bottles, straw, magazine paper, coal and others to supplement hogged wood have been suggested by the industries. The Region has worked closely with Air Quality Division and the industries to assure that any use of alternative fuels will not contribute to air quality degradation or public health impacts. In some cases, use of alternative fuels solves or reduces other environmental problems.

Municipal Sewage Sludge Management

This winter, WVR revised its approach to municipal sludge management to reduce effort and increase effectiveness. We are promoting practices which use the resource value of sludge (i.e., agriculture) while insuring environmental protection. In our approach, we emphasize initial approval and understanding, and de-emphasize surveillance. The key elements:

1. Comprehensive field review, similar to septic tank evaluations, of proposed use or disposal sites.

2. A sewage sludge fact sheet. All farmers who wish to use sludge must read, discuss and sign the sheet.

3. The municipal sludge generator must complete a sludge use application form for each site. It includes:

a. Property legal description, zoning and maps.

b. Sludge application rate calculations based on analysis of sludge nutrients and crop needs.

c. Sludge site life calculations to prevent excessive soil accumulations of metals.

Municipal Financing

In the spirit of the Commission's October, 1981, municipal financing policy, Regional staff have placed importance on activities to help local jurisdictions develop financing plans for sewage facilities based on local funds rather than federal grants. A few communities have charged ahead, passed local bond issues and are constructing facilities on their own. They are positive examples, and are noted in county entries elsewhere in this report.

NESHAPS - Asbestos

Several incidents of public exposure to dangerous asbestos dust levels in both Willamette Valley and Northwest Regions prompted a critical review of the agency's NESHAPS (asbestos demolition) rules and program. Task force members from the two Regions, Air Quality Division, and Public Affairs concluded there is inadequate awareness on the part of agency staff, industry, and the general public on asbestos dangers. Steps are currently being taken to improve the program and reduce the likelihood of public asbestos exposure.

On-Site Sewage Disposal Program (OSSD)

Last year, the Willamette Valley Region renewed OSSD contracts with Linn, Lane, Marion, Benton, Polk and Yamhill Counties. Staff also completed audits for all counties. No significant deficiencies were noted. WVR works closely with the counties to identify and resolve known or suspected area-wide septic tank problems. The Region meets annually with all counties to update a prioritized sewage problem list developed several years ago as a means to orderly and continuous resolution of problems. A number of the solved "problems" are listed under county headings in this report. These activities have also resulted in the passage of significant geographic rules, such as for the River Road/Santa Clara area, the North Florence Dunal Aquifer, and hopefully the proposed Clear Lake moratorium rule.

In addition, WVR writes Water Pollution Control Facilities Permits for all OSSD systems having flows in excess of 5,000 gallons per day. We are responsible for 14 such systems, the largest being the new community sand filter at Dexter. It has a sewage flow of 62,000 gallons per day.

Receiving Stream Dilution Factor

Cities pursuing sewerage facilities construction without federal grants

commonly phase their projects. We are finding that phasing frequently conflicts with the Department's stream dilution factor rule. The rule requires that there be sufficient flow in a receiving stream to fully accommodate treated waste water discharges.

Cities are willing to comply with this rule, but some are requesting variances until later phases of construction. We have made case-by-case evaluations and are comfortable with that approach. The Commission may want to consider this policy matter in the future.

Wood Fired Veneer Dryer Compliance

The final date for achieving compliance with the direct wood fired veneer dryer limits has passed. All WVR mills have installed control equipment or modified their dryer operations in an effort to meet both particulate and opacity limits.

These actions have improved compliance levels from previous years. But there are a number of mills still experiencing difficulties in continuously meeting the 10% average, 20% maximum opacity limits (particulate emissions have been met in nearly all cases). WVR mills represent a cross-section of control technology, each type having some problems with maintaining continuous compliance under all conditions. Staff is working with the industry to solve these problems, and is hopeful that solutions will be found in the near future.

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 Q, April 8, 1983 Environmental Quality Commission Meeting.
Status Of Marion County Solid Waste Program and Request For Extension On Closure Of Brown's Island Landfill.

Marion County has requested a time extension for closure of the Brown's Island Landfill. The issue before you is whether to extend the closure date beyond July 1, 1983, and if so:

1. For how long?
2. For what types of waste?
3. Subject to what conditions?

The Background section of the report provides historical information regarding the County's solid waste management program. Additional facts are introduced and analyzed in the Alternatives and Evaluation section.

Background

The Brown's Island Sanitary Landfill is the major regional site serving the waste disposal needs of most Marion County residents, eastern Polk County, and some portions of Linn County. The permittee is Brown's Island, Inc., of Salem, Oregon.

Marion County has been on notice to locate a new regional landfill since January, 1974, when portions of Brown's Island washed out and when monitoring data started to show ground water degradation was occurring beyond the fill boundaries. At that time, Marion County had already commenced an engineering study which proposed to burn refuse and sell steam to Salem industries. In order to allow for completion of the study, authorization to expand Brown's Island onto 21 acres of adjacent county-owned land was granted.

While the study looked promising during the planning stages, it later failed to identify a steam plant location, and no one expressed an interest in contracting for steam purchase. When these findings came to light, the Marion County Commissioners immediately launched an active program to site a new

landfill. In 1976, they appointed a special "Site Search Committee" comprised of representatives from USDA Soil Conservation Service, State Water Resources Department, private landfill operators, Marion County, and DEQ Solid Waste staff.

Based on soil, geology, and groundwater maps of the county, this Committee field reviewed over 30 potential disposal sites. The "Site Search Committee" list was screened by the County Solid Waste Committee, and the top three sites were listed for the County Commissioners. The Commissioners directed a public meeting be held on these sites to assist them in making a final selection. Public turnout was heavy, with estimates ranging from 900-1200 persons. Strong opposition was voiced because in-depth studies were not completed on each site, the land owners in question (and their neighbors) were strongly opposed to forced condemnation of property, and alternative methods for handling solid waste in Marion County had not been adequately researched.

In the face of such strong opposition, local interest in siting a new landfill died, and the matter was brought before the Environmental Quality Commission at their May, 1978, meeting. Marion County initially wanted authorization for a 10 year expansion area at Brown's Island.

The EQC authorized a 5 year expansion instead of the requested 10 years, since Army Corps of Engineers river models predicted upstream flooding impacts and landfill site erosion from any filling activities in the floodway approaching the size of the 10 year expansion. The Commission's reasoning for allowing the 5 year extension was:

1. To provide Marion County ample time to phase out Brown's Island and find a replacement landfill in an orderly way, and

2. To allow time to plan for and implement a long-range solid waste management program.

As a condition for granting the 5 year extension, the Commission directed Marion County to submit annual reports to the Department so progress could be monitored.

Subsequent to the Commission's action, Brown's Island was inventoried in accordance with criteria pursuant to the federal Resource Conservation and Recovery Act of 1976 (RCRA). The site was found unsuitable for continued operation as a sanitary landfill based on monitoring well data which confirmed ground water degradation was occurring beyond the fill boundaries. Accordingly, the site was classified as an "open dump", and a July 1, 1983 closure date was established to complement previous Commission action.

On May 29, 1981, Brown's Island was listed in the Federal Register, Volume 46, No. 103, page 29117 as an "open dump". Section 4005 of RCRA establishes

time periods for upgrading "open dumps" (including closure as an acceptable upgrade action). Said time periods can be as much as 5 years after listing in the Federal Register. If applied to Brown's Island, the legal extension for accepting municipal waste could be until May 29, 1986. Even if this had been known during the previous Commission deliberations, staff would not have recommended an expansion this large for reasons stated above.

Following the 1978 Commission action, Marion County took significant steps to change and upgrade their solid waste program. These included:

1. Hiring a full time Solid Waste Director, Larry Trumbull.

2. Creating a Solid Waste Department and staffing it with four full time positions.

3. Formation of the Marion County Solid Waste Advisory Council (SWAC) in June, 1979.

4. Hiring qualified consulting firms (4) to develop programs and plans recommended by SWAC.

5. Appointment of a Technical Advisory Group (TAG) to review and assist in development of proposals submitted by SWAC.

The above groups were very active, and citizen participation involved over 250 persons during various planning stages. By September, 1980, SWAC published their first report, "Putting The Pieces Together".

This document recommended goals for Marion County and suggested methods for attaining them. After acceptance of this report, Marion County spent the remainder of 1980 and the first half of 1981 working with engineering and consulting firms to develop implementation plans that would reflect SWAC's recommendations.

As recommended by SWAC, considerable time and emphasis were placed on development of a densified refuse derived fuel (dRDF) facility that would produce pelletized fuel for sale to State institutions in Salem. During negotiations with the State and private industry, many technical and administrative problems arose. To partially address these, Oregon legislative action was required.

Accordingly, Marion County authored and obtained passage of SB479, in the 1981 regular session of the legislature. This law basically sets the framework for Marion County to:

1. Enter into longterm contracts with the State for sales of alternative fuels. (The state can contract with anyone for this purpose.)

2. Maintain and direct solid waste flow control.

3. Establish franchises and control fees.

After passage of SB479, the consulting firms of Merrill Lynch (finance) and Brown and Caldwell (engineering) completed their research to determine if the proposed dRDF project would be feasible and cost effective for Marion County.

Their final report concluded the project would not be economically competitive with conventional landfilling operations for at least another eight to ten years. As such, they recommended postponing the project until the economic climate is more favorable and additional fuel markets are developed. In the interim, they advised Marion County to obtain a new landfill as soon as possible. As it happens, another energy project was pursued, but that will be discussed immediately following the New Landfill Site section below.

New Landfill Site

Though disappointed with the findings on the energy recovery option, Marion County had completed sufficient planning by this time to implement siting of a new landfill.

Unlike the 1976 "Site Search Committee" effort, the 1979-80 effort had extensive public involvement through the SWAC efforts. Of twenty potential sites evaluated by SWAC and the Marion County Solid Waste Department, the selection process finally narrowed to one site located south of Salem known as the I-5 Site. This selection process was characterized by a unique feature known as "willing seller" --i.e., unwilling sellers were screened from further consideration.

The I-5 Site is a 467 acre parcel, and private industry (Brown's Island, Inc.) has obtained a long-term lease-option for it. The site received extensive review by DEQ:

1. Preliminary approval granted by DEQ December 29, 1980 (Attachment B).

2. Solid Waste Permit Application received but judged incomplete and put on pending status January 28, 1982 (Attachment C).

In December, 1982, the Marion County Board of Commissioners granted a franchise to Brown's Island, Inc., for construction and operation of the I-5 Site. The I-5 Site is currently before the Court of Appeals on land use issues. Whether and when construction might begin and the site placed into operation will depend on the Court of Appeals decision and whether that decision is appealed to the Oregon State Supreme Court.

In conjunction with the landfill option, SWAC recommended establishment

of a central receiving facility so only large transfer vehicles would be allowed access to the new landfill. Private industry does not concur with this recommendation. Their proposal calls for establishment of a smaller transfer station to serve the public, while private and commercial haulers would be allowed direct access to the landfill. Locations have been identified for these facilities; however, the County has not committed to either recommendation at this time. Of the possible combinations, DEQ staff is on record in support of limiting public access to either a regional landfill or energy facility.

Garbage-To-Energy Project

Shortly after the demise of the pelletized garbage or dRDF project, passage of the federal "Pacific Northwest Electric Power Planning and Conservation Act", more commonly known as the Northwest Power Bill, rekindled interest in energy production.

The SWAC work was re-examined, and Marion County concluded that a more favorable environment for energy markets had been created by the Northwest Power Bill. About that time, Marion County hired a new Solid Waste Director, Walt Kluver.

The process moved quickly. Mass burning (as contrasted to refuse processing a la dRDF) was determined to be the most appropriate technology to pursue. Requests for proposals were advertised, and three responders were interviewed by the County. Of the three, Trans Energy Systems of Bellevue, Washington, was selected. Trans Energy had been the consultant on the abandoned dRDF study for Marion County.

Several sites were screened for the mass burn facility. A 10 acre parcel north of Chemawa Road and east of I-5 was selected and approved by Marion County. At this writing, however, the site is before the Court of Appeals regarding land use issues. As a backup, Marion County and Brooks community are discussing an alternative location in the Brooks area in the event the Chemawa site becomes unavailable due to pending litigation.

In February, 1983, Trans Energy and Marion County signed a contract to design, construct and operate the mass burn plant. In addition to the land use issues, the chief item of business outstanding is an energy contract between Portland General Electric and Trans Energy, which may be available by the April 8, 1983 EQC meeting. A draft energy contract is included in the March 11, 1983 Marion County Annual Progress Report (Attachment A).

The County's best estimates of schedules for energy and landfill development activities are shown in their March 11, 1983 Annual Progress Report (Attachment A).

Other Developments

1. On July 22, 1981, SWAC presented their final report and recommendations to the Marion County Board of Commissioners and indicated they had completed all of their assigned tasks. As such, SWAC recommended the Board accept their report and officially disbanded SWAC. All actions toward implementation of SWAC's recommendations are now vested with the Board.

2. The Woodburn Landfill operation was approved in 1974 and consisted of four modules. The site is currently completing module #2. Excavation of module #3 has begun, and will be complete in summer, 1983. Based on current waste volumes, site life through module #4 might be as much as 8 to 10 years. If the entire Marion County waste flow (i.e., including that currently directed to Brown's Island) were directed to Woodburn, the site life (without expansion) would be reduced to about 2 years.

   Preliminary evaluations have been made for a potential major expansion at Woodburn between the old site, which was closed in 1974, and the current operational area. There is insufficient data to estimate what capacity or site life the expansion would represent, but it would be long-term.

3. The Brown's Island expansion area authorized at the May, 1978, EQC hearing will not be full by July 1, 1983. The expansion was approved with a five year estimate in mind, but a sizable hole remains for one or more of the following reasons:

   a. Reduced waste volumes due to current economic conditions;
   b. Inaccurate waste volume data upon which to base the five year projection;
   c. An "over design" safety factor.

4. Some serious flood erosion problems have shown up at Brown's Island. The County and Brown's Island, Inc., have arranged to make the critical repairs as early in the construction season (summer 1983) as possible in order to get a vegetive cover established before next flood season. The nature of the erosion is such that it will need to be monitored for several years to come.

Marion County Requests The EQC To Extend Closure of Brown's Island

On March 11, 1983, Marion County requested an extension for use of Brown's Island beyond the scheduled July 1, 1983 closure date. They propose, once the I-5 landfill becomes operational, that Brown's Island be converted to a demolition site until the present excavated area is full.

For details and specific wording, see Attachment A.

Alternatives and Evaluation

As a matter of policy, the Department does not encourage development of landfills in flood plains for obvious reasons. But the decision to allow the five year expansion was made for reasons described in the Background section of this report. Because of the flood plain location, it was necessary to construct the diking for the entire 5 year expansion at the beginning. In other words, the entire five year "hole" was created the first season. This allowed year-round disposal by keeping flood waters away from the garbage activities.

At current waste volumes, staff estimates the Brown's Island Landfill could last well into 1986. Since this would involve filling an existing hole, there would be no further encroachment in the floodway than now exists.

Given the preceding information and assuming it is undesirable to leave an open "hole" remaining at Brown's Island, the Commission has at least the following possible alternatives:

Alternative 1: Close Brown's Island on July 1, 1983 as currently scheduled.

This would involve covering the refuse as it would exist by July, 1983, tearing down the dikes remaining around the unfilled areas, riprapping unprotected surfaces exposed to the river, and grading and seeding a final surface.

There are major disadvantages with this option:

1. The flood plain flow regime would be significantly altered. Currently, the dikes are constructed in such a way to allow "streamline" flow of flood waters. An irregular shape in the dike system could generate potentially damaging eddies which could in turn erode the site and adversely impact downstream properties.

2. Neither the I-5 Landfill nor the energy facility is ready to receive waste due to pending land use litigation. Woodburn Landfill is available, but diversion of the total County waste stream there would rapidly consume the remaining space, and such use was not intended.

3. The least costly option (filling the existing hole) would be eliminated, thus costs to the users would be proportionately increased.

In addition, this alternative is not responsive to Marion County's request.

Alternative 2: Convert Brown's Island from municipal waste to demolition only once the I-5 landfill becomes operational.

Marion County projects the I-5 Landfill may be accepting solid waste as early as October 1, 1984 (Attachment A). Assuming this is possible, the proposal would involve continued filling of municipal solid waste until October, 1984, then use as a demolition site until the hole was filled. Since demolition rates are very low, Brown's Island could be open for demolition well into the 1990's.

Factors to consider if the scheduled closure is extended to October 1, 1984:

1. The I-5 site is currently before the Court of Appeals on land use issues. It is not possible to predict when a decision will be made or what the decision will be. Even if the decision is favorable to Marion County, it may still be further appealed, effectively making the site unavailable.

   Accordingly, the Commission might be confronted with either another extension request (based on similar facts as this request) or with a SB 925 (ORS 459.047 -.057) siting request to meet the October 1984 date.

2. Conversely, the federal Resource Conservation and Recovery Act (RCRA) of 1976 will not permit continued use of Brown's Island because of its flood plain location and ground water contamination after May 29, 1986, for municipal solid waste. Therefore, it does not appear that litigation or any other reason could justify an indefinite extension of Brown's Island for municipal solid waste.

Alternative 3: Allow municipal solid waste until May 29, 1986 and only demolition and other approved materials after May 29, 1986 until Brown's Island is full.

This would allow use of Brown's Island for municipal solid waste until the I-5 site or energy facility was operational or May 29, 1986, whichever comes first. After May 29, 1986, demolition and possibly ash wastes could be accepted until the hole was filled.

This action would:

1. Eliminate connecting Commission site closure schedules with unpredictable court decisions, while at the same time giving Marion County some flexibility to make appropriate timing decisions.

2. Reduce the likelihood of having to confront the SB 925 siting process in Marion County.

3. Allow filling of the remaining hole at Brown's Island.

4. Comply with the RCRA mandate to terminate acceptance of municipal solid waste by no later than May 29, 1986.

5. Be responsive to Marion County's request for extension.

Conditions are needed for approval of this option, including:

1. Engineering plans by September, 1983, for continuing protection against flood and erosion hazards.

2. A modified operational and site closure plan no later than six months before municipal solid waste is delivered to location(s) other than Brown's Island.

Summation

1. Marion County has been on notice to locate a new regional landfill to replace Brown's Island since January, 1974.

2. The Environmental Quality Commission at its May 26, 1978 meeting ordered a closure by no later than July 1, 1983, and required annual reports to monitor progress.

3. The Marion County reports reflect considerable effort and progress. While the outcome is not yet certain, staff is satisfied that remedies can now be identified, and that Marion County is moving as rapidly as possible.

4. Strict compliance with the July, 1983 closure mandate for Brown's Island would actually injure Marion County's solid waste management program, with no accompanying environmental gain. There are no apparent increased environmental problems from filling the hole as originally planned. An extension would provide time for the solid waste program to come together.

5. Concurrence with Marion County's request to extend the life of Brown's Island exactly as stated by the County could cause certain timing and legal difficulties.

6. Listing Brown's Island as an "open dump" in the Federal Register as of May 29, 1981, permits the Commission to extend the closure date for municipal waste until May 29, 1986.

7. Accordingly, the Commission should approve a modified version of their request to allow municipal solid waste at Brown's Island until the I-5 landfill is available or the energy facility is available or May 29,

1986, whichever comes first. After May 29, 1986, allow only demolition and possibly burner ash until Brown's Island is full.

8. The Commission should condition the approval to require that engineering plans for protection against erosion and for modified site operation and closure be submitted to the Department for review and approval.

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 obtained.

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.

Bill

William H. Young,
Director

Attachments:

"A" March 11, 1983 Annual Progress Report from Marion County to Bill Young (This report contains extensive attachments--- copies have been included for the EQC only and are available for inspection).

"B" December 29, 1980 Department approval of I-5 Landfill.

"C" January 28, 1982 Department letter placing I-5 permit application on pending status.

John E. Borden:wr
378-8240
March 14, 1983

ATTACHMENT "A"

MARION COUNTY
BOARD OF COMMISSIONERS

Courthouse, Salem, Oregon 97301-3670

503-588-5212

March 11, 1983

Bill Young, Director
Department of Environmental Quality
522 S.W. 5th
Portland, OR 97204

Dear Bill:

The attached documents provide a status report regarding Marion County's endeavor to provide adequate method(s) of solid waste disposal for the citizens of Marion County. As you are aware, we have been attempting to gain final site approval on both a regional landfill (I-5), and a resource project (mass burn facility by T.E.O.). It appears that we are very close to a satisfactory conclusion in both endeavors.

It is hoped that after reviewing the attached status report and proposed future activities, you will be able to support us in our quest for an extension of the operation and use of Brown's Island Landfill. It is the express desire of this Board that the landfilling of raw waste at Brown's Island cease as soon as possible. We have instructed County staff to use all means at hand to expedite the discontinuance of raw waste filling at Brown's Island.

If there is any further information that you need, please let us know.

Sincerely,

BOARD OF COMMISSIONERS

Chairman

Commissioner

Commissioner

BOC/lcb

cc: W. Kluver

STATUS REPORT

1. 1-3-83 Franchise for solid waste disposal granted to Brown's Island, Inc. Disposal method to be landfill (proposed I-5 landfill).

2. Franchise for solid waste reduction granted to Trans Energy of Oregon. Reduction method is mass incineration in resource recovery.

3. 1-26-83 Contract negotiations with Brown's Island, Inc. for continued operation of Brown's Island landfill, and construction and operation of proposed I-5 landfill.

4. 1-28-83 Oral arguments at Court of Appeals regarding proposed I-5 landfill.

5. 2-2-83 Contract with Trans Energy of Oregon signed by Marion County Board of Commissioners and Trans Energy of Oregon.

6. 2-22-83 Opponents' brief due at Court of Appeals on proposed mass burn facility. Actual appeal filed on 2-28-83, after request for 15-day extension of filing date by opponents.

7. 3-3-83 Proponents' reply brief to be filed at Court of Appeals. An expedited hearing schedule will be requested by proponents due to public health and safety concerns.

8. May 1983 Oral arguments at Court of Appeals on mass burn facility.

9. 3-25-83 Final contract between T.E.O. and P.G.E. approved.

10. June 1983 Decision from Court of Appeals regarding mass burn land use case.

11. 5-01-83 Begin construction on proposed I-5 landfill, if Court of Appeals ruling allows. If ruling expected at this date is appealed to Supreme Court, a new schedule would be developed.

12. 10-01-83 Construction begins on mass burn facility (assume that all D.E.Q. permits obtained by this date).

*** 13. 10-01-83 Acceptance of raw solid waste begins at proposed I-5 landfill, Brown's Island continues to receive demolition waste only, until remaining excavated area is filled and final cover placed.

14. 6-01-86 Full commercial operation begins at proposed mass burn facility.

REQUESTS

1. That an extension be granted on the proposed closure of the present Brown's Island landfill.

2. That when the proposed I-5 landfill is approved to accept solid waste, Brown's Island be allowed to remain open to receive demolition waste only. That Brown's Island be allowed to remain a fill area for demo waste until the present excavated area is full and final closure is approved by D.E.Q.

3. If Court rulings permit, that the final closure date of Brown's Island Landfill be set at 1-1-85 or the commercial start-up of the proposed Resource Recovery Facility, whichever comes first.

*** 10-01-83 should be 10-01-84 based on phone call from Walt Kluver to John Borden March 14, 1983.

The appendices to Attachment "A" are too bulky for reproducing. They are on file in the DEQ offices.

APPENDIX 1, ATTACHMENT "A"

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

JAN 3 11 33 AM '83
EDWIN P. MORGAN
MARION COUNTY CLERK
BY _____ DEPUTY

Application of Brown's Island, Inc., for a disposal franchise.

ORDER GRANTING FRANCHISE

This matter came before the Marion County Board of Commissioners for public hearing following the application of Brown's Island, Inc., for a disposal franchise.

The Board of Commissioners held a public hearing on December 13, 1982, to consider the application for a disposal franchise of the applicant. Following the public hearing and the closing of the public record, the Board of Commissioners on December 22, 1982, during their regularly scheduled public meeting granted to the applicant a disposal franchise.

The Board makes the following findings:

(1) The applicant has obtained available land, known as the I-5 site, which is located northeast of the Interstate-5/Jefferson Interchange, several miles south of Salem. The applicant has submitted an earnest money agreement for the property in question with an attached legal description. A letter from the landowner, Mr. Willard Friesen, indicates the option (earnest money agreement) of January 10, 1980, is still in full force and effect.

(2) The land is appropriate for the use of a sanitary landfill. The applicants, with the consent of the option seller, Mr. Willard Friesen, filed a conditional use application and said application was granted by the Board of Commissioners. Subse-

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quently, the case was appealed to the Land Use Board of Appeals, and LUBA upheld the conditional use permit. This case is presently pending in the Oregon Court of Appeals.

(3) There is adequate access for continued and uninterupted egress and ingress to the I-5 landfill site. The landfill site adjoins a public highway at the Jefferson/I-5 Interchange.

(4) Brown's Island, Inc., has operated the Brown's Island Landfill just west of the city of Salem along the eastern bank of the Willamette River since 1966. The applicant has shown an adequate ability to operate a sanitary landfill under the requirements of Marion County Solid Waste Management Ordinances, state statutes, and the rules and regulations established and adopted by the Environmental Quality Commission and Department of Environmental Quality.

(5) The applicant, as part of Exhibit 42, submitted the list of names and equipment inventory which meets the minimum requirements of operating a sanitary landfill at the I-5 site.

(6) The applicant has not obtained a permit from the Department of Environmental Quality relating to the operation, construction or installation of a sanitary landfill at the I-5 site. This franchise will be conditioned upon obtaining such permit from the Department of Environmental Quality.

(7) The applicant has submitted a corporate surety bond of $25,000.

(8) The applicant has submitted proof of insurability of a general insurance liability policy of not less than $300,000 and a property damage policy of not less than $500,000 and evidence

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(testimony) that Marion County will be designated as an additional named insured.

(9) The applicant has not obtained pollution insurance. The applicant's representative testified the applicant would obtain pollution insurance in an amount of not less than than $10,000,000 when such pollution insurance becomes available.

(10) All necessary notices were published at least 20 days before the hearing, and said written notices were provided to the Planning Department, Building Inspection Department, Department of Public Works, Road Department, and Legal Counsel.

(11) Notice of the application and date of the hearing was forwarded to all persons who hold disposal franchises, and said notices were posted in the Marion County Courthouse and Senator Building. The Board, during the hearing, received testimony from the applicant and his representatives; the Salem Area Collectors Association, by and through their representative; Bill Weber representing Valley Landfill, Inc., and the Woodburn Landfill; staff, members of the general public in favor of the franchise; members of the general public opposed to the franchise, and general comments.

THE BOARD FURTHER FINDS that the application by Trans Energy of Oregon is not a competing application for a disposal franchise. The application by Trans Energy of Oregon is for a resource recovery facility and is part of a coordinated program of collection and disposal of solid waste in Marion County. The resource

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recovery facility will provide for an economically feasible resource recovery facility by the release of energy through a burning process. The resource recovery facility will not dispose of waste or solid waste, but merely reduce the volume of solid waste. A sanitary landfill is an ultimate disposal of solid waste. Both are part of the coordinated program for collection and disposal of waste and solid waste under the Marion County Solid Waste Management Ordinance and program.

Conditions of Franchise.

(1) This franchise shall be conditioned upon the applicant obtaining a valid permit from the Department of Environmental Quality.

(2) This franchise shall be conditioned upon the applicant complying with all of the conditions set forth in the conditional use permit which approved the I-5 site for a sanitary landfill.

(3) The franchise shall be conditioned upon the applicant obtaining pollution insurance in an amount not less than $10,000,000. The County shall notify the applicant when such pollution insurance is available, and the applicant shall thereafter obtain the pollution insurance within 90 days of said notice of availability.

(4) Pursuant to Section VII (6)(c)(1) of the Marion County Solid Waste Management Ordinance, this franchise shall be conditioned upon Marion County having ownership of the property no later than the first day of operation of the I-5 site as a sanitary landfill.

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(5) The franchise is conditioned upon the conditional use and major partitioning order, Case No. 81-100, being affirmed, in all respects, by the Land Use Board of Appeals, the Oregon Court of Appeals, and/or the Oregon Supreme Court.

(6) The franchise is conditioned upon the provisions of Section VIII(3), i.e., the franchisee agrees as a condition of the franchise and subsequent contract implementing the franchise that whenever the Board determines that the failure of the landfill or the threatened failure of the landfill would result in the creation of an immediate, serious health hazard or serious public nuisance, the Board may, after written notice to the applicant, authorize County personnel and/or designated person or persons to temporarily provide the necessary service at the sanitary landfill, operate the landfill, facilities or equipment of the applicant or the applicant's subcontractors. The Board may authorize whatever expenses are necessary to operate such sanitary landfill facilities or equipment. The Board shall return the operation of the franchise to the franchisee/applicant upon the abatement of the actual or threatened hazard.

(7) The franchise is conditioned upon the applicant entering into a contract with the County setting forth said terms and conditions of the parties, and said contract shall state the disposal rate(s) and franchise fee(s) for the operation of the sanitary landfill at the I-5 site.

(8) This franchise is subject to the condition that the

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applicant shall charge disposal rates and franchise fees established by the Board of Commissioners.

(9) This franchise shall have a term which expires January 1, 1988.

Based upon the above findings and conclusions of the Marion County Board of Commissioners, the following is the order of the Board:

IT IS HEREBY ORDERED that Brown's Island, Inc., be and is granted a disposal franchise under the requirements set forth in Marion County Ordinance 615 (Solid Waste Management Ordinance), the rules and regulations established by the Environmental Quality Commission or the Department of Environmental Quality, any subsequent ordinances enacted by Marion County or amendments to the Marion County Solid Waste Management Ordinance, and the terms and conditions set forth above.

Dated at Salem, Oregon, this 29 day of December, 1982.

MARION COUNTY BOARD OF COMMISSIONERS

Gary Hoss
Chairman

Randall Franke
Commissioner

Tracy Carson Jr.
Commissioner

ROBERT C. CANNON
Marion County Legal Counsel
Marion County Courthouse
Salem, Oregon 97301
Telephone 588-5220

APPENDIX 2, ATTACHMENT "A"

BEFORE THE BOARD OF COMMISSIONERS

FOR MARION COUNTY, OREGON

JAN 3 11 33 AM '83
EDWIN P. MORGAN
MARION COUNTY CLERK
BY ____ DEPUTY

Application of Trans Energy of Oregon, Inc., for a Disposal Franchise.)

ORDER GRANTING FRANCHISE

This matter came before the Marion County Board of Commissioners for public hearing following the application of Trans Energy of Oregon for a disposal franchise.

The Board of Commissioners held a public hearing on December 7, 1982, to consider the application for a disposal franchise of the applicant. Following the public hearing and the closing of the public record, the Board of Commissioners on December 22, 1982, during their regularly scheduled public meeting granted to the applicant a disposal franchise.

The Board makes the following findings:

(1) The applicant has obtained available land, known as the Chemawa site, which is located northeast of the Chemawa Interstate-5 Interchange, just north of the Salem city limits and within the Salem urban Growth Boundary. The applicant has submitted an option to purchase the property from Gene and Carolyn Biggins, with an attached letter indicating the option was in full force and effect.

(2) The land is presently zoned for a resource recovery facility and is land upon which a resource recovery facility can be built.

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Salem, Oregon 97301
Telephone 588-5220

cc: list attached

(3) There is adequate access for continued and uninterupted egress and ingress to the Chemawa site. The Chemawa site adjoins a public highway, i.e., Chemawa Road.

(4) The applicant is owned by Rockcor, Inc., a Washington Corporation, and Compagnie Generale de Chauffe, a foreign corporation with its principal place of business in Lille, France. The applicant has shown an adequate ability to operate resource recovery facilities identified by the applicant as the type of resource recovery facility proposed for the Chemawa site. Compagnie General de Chauffe has built and presently operates over twenty such facilities of the same or similar design to the resource recovery facility proposed by the applicant at the Chemawa site, and has the present ability to build such a resource recovery facility. The applicant, by and through Compagnie Generale de Chauffe, has the personnel to build, maintain and operate a resource recovery facility as described in the application.

(5) The applicant has not obtained a permit from the Department of Environmental Quality relating to the operation, maintenance, construction or installation of a resource recovery facility at the Chemawa site. This franchise will be conditioned upon obtaining such permit(s) from the Department of Environmental Quality.

(6) The applicant has submitted a corporate surety bond of $25,000.

(7) The applicant has submitted proof of insurability of a general insurance liability policy of not less than $300,000 an

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Salem, Oregon 97301
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property damage policy of not less than $500,000 and evidence (testimony) that Marion County will be designated as an additional named insured.

(8) The applicant has not obtained pollution insurance. The applicant's representative testified the applicant would obtain pollution insurance in an amount of not less than than $10,000,000 when such pollution insurance becomes available.

(9) All necessary notices were published at least 20 days before the hearing, and said written notices were provided to the Planning Department, Building Inspection Department, Department of Public Works, Road Department, and Legal Counsel.

(10) Notice of the application and date of the hearing was forwarded to all persons who hold disposal franchises, and said notices were posted in the Marion County Courthouse and Senator Building. The Board, during the public hearing, received testimony from the applicant's representatives; the Salem Area Collectors Association, by and through their representative; a representative from Valley Landfill, Inc., and the Valley Landfill; staff; members of the general public in favor of the franchise; members of the general public opposed to the franchise; and general comments.

THE BOARD FURTHER FINDS that the application by Brown's Island Landfill, Inc., of Oregon is not a competing application for a disposal franchise. The application by Brown's Island, Inc., of Oregon is for a sanitary landfill facility and is part of a

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coordinated program of collection and disposal of solid waste in Marion County. A sanitary landfill will provide for an economically feasible and final disposal of solid waste. A resource recovery facility will provide for an economically feasible resource recovery facility for the release of energy through a burning process. The resource recovery facility will not dispose of waste or solid waste, but merely reduce the volume of solid waste. A sanitary landfill is an ultimate disposal of solid waste. Both are part of a coordinated program for collection and disposal of waste and solid waste under the Marion County Solid Waste Management Ordinance and program.

Conditions of Franchise.

(1) This franchise shall be conditioned upon the applicant obtaining valid permit(s) from the Department of Environmental Quality necessary for the operation of a resource recovery facility. The permit(s) may include air, water quality, and/or discharge permits (if applicable).

(2) This franchise shall be conditioned upon the applicant complying with all of the conditions set forth in the conditional use permit which approved the Chemawa site for a resource recovery facility.

(3) The franchise shall be conditioned upon the applicant obtaining pollution insurance in an amount not less than $10,000,000. The County shall notify the applicant when such pollution insurance is available, and the applicant shall thereafter obtain the pollution insurance within 90 days of said notice of availability.

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(4) Pursuant to Section VII (6)(c)(1) of the Marion County Solid Waste Management Ordinance, this franchise shall be conditioned upon the applicant obtaining ownership in fee simple of the property, and should the applicant be unable to obtain ownership of the property, the County will have ownership of the property no later than the applicant's Notice of Intent to Proceed with the proposed project at the Chemawa site or other site mutually agreed to by the parties.

(5) The franchise is conditioned upon the Comprehensive Plan Amendment/Zone Change/Conditional Use/Variance in Case No. CP/ZC/CU/V 82-1, being affirmed, in all respects, by the Land Use Board of Appeals, the Oregon Court of Appeals, and/or the Oregon Supreme Court.

(6) The franchise is conditioned upon the applicant entering into a contract with the County setting forth the terms and conditions of the parties, and said contract shall state the disposal rate(s) and the franchise fee(s) for the operation of the resource recovery facility at the Chemawa site.

(7) This franchise is subject to the condition that the applicant shall charge disposal rates and franchise fees established by the Board of Commissioners.

(8) This franchise shall have a term which expires January 1, 1988.

Based upon the above findings and conclusions of the Marion County Board of Commissioners, the following is the order of the Board:

ROBERT C. CANNON
Marion County Legal Counsel
Marion County Courthouse
Salem, Oregon 97301
Telephone 588-5220

IT IS HEREBY ORDERED that Trans Energy of Oregon be and is granted a disposal franchise under the requirements set forth in Marion County Ordinance 615 (Solid Waste Management Ordinance), the rules and regulations established by the Environmental Quality Commission or the Department of Environmental Quality, any subsequent ordinances enacted by Marion County or amendments to the Marion County Solid Waste Management Ordinance, and the terms and conditions set forth above.

Dated at Salem, Oregon, this 29 day of December, 1982.

MARION COUNTY BOARD OF COMMISSIONERS

Gary Kerr
Chairman

Randall Franke
Commissioner

Harry Cohen Jr.
Commissioner

ROBERT C. CANNON
Marion County Legal Counsel
Marion County Courthouse
Salem, Oregon 97301
Telephone 588-5220

12-30-82

Bob Cannon says to send copies of the Orders to:

Brown's Island, Inc.
C/o Sanitary Service Co.
433 Ferry St. SE
Salem, OR 97301

Bill Webber, Gen. Mgr.
Valley Landfills
P.O. Box 807
Corvallis, OR 97330

Ed Sullivan
Attorney at Law
1727 N.W. Hoyt
Portland, OR 97209

Doug Huxtable
Trans Energy Systems
14711 N.E. 29th Place, Suite 101
Bellevue, WA 98007

Mailed to above, January 3, 1982 (jw)

In addition:

copies to:

Walt Kluver - Bldg. Insp.
Legal
file

Original filed with Marion County Clerk

(jw)

A) Order Granting Franchise:
Application of Brown's Island, Inc., for a disposal franchise

B) Order Granting Franchise:
Application of Trans Energy of Oregon, Inc., for a disposal franchise

from Board Session, December 29, 1982

POWER PURCHASE AGREEMENT

Between

TRANS ENERGY-OREGON, INC.

and

PORTLAND GENERAL ELECTRIC COMPANY

TABLE OF CONTENTS

APPENDICES

POWER PURCHASE AGREEMENT
Between
TRANS ENERGY-OREGON, INC.
and
PORTLAND GENERAL ELECTRIC COMPANY

THIS AGREEMENT, entered into on _____, 1983, is made between TRANS ENERGY-OREGON, INC., an Oregon corporation, hereinafter referred to as "Seller", which is owned by ROCKCOR, Inc., hereinafter referred to as "Rockcor" and COMPAGNIE GENERALE DE CHAUFFE, hereinafter referred to as "CGC", with its principal office at 14711 NE 29th Place, Suite 101, Bellevue, Washington 98007, and PORTLAND GENERAL ELECTRIC COMPANY, an Oregon corporation, hereinafter referred to as "PGE".

RECITALS:

WHEREAS, Seller will construct and operate a Qualifying Facility as defined in Section 16 for the generation of electric power at the Facility more particularly described in the First Appendix; and

WHEREAS, Seller desires to sell, and PGE desires to purchase, the Net Metered Output from the Facility, and

WHEREAS, since the parties wish to specifically provide for the return of advanced levelized payment of fixed costs in the event of breach, default, termination or circumstances of poor performance by Seller as provided for in the Fifth Appendix they have created a Levelized Payment Return Liability (LPRL), and

WHEREAS, the parties recognize that the LPRL is not a

liquidated damages provision and the provisions for its administration exist in addition to all other remedies available for breach, termination or default,

NOW, THEREFORE, the parties hereto mutually agree as follows:

SECTION I

DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1.1 "Agreement" means this Power Purchase Agreement together with the attached appendices which are incorporated into and otherwise made a part of this Agreement.

1.2 "Commercial Operation Date" is that day after January 1, 1985 the Facility generates at or over 750 mWh during a 250 hour continuous period. During such test period the Facility shall utilize all solid waste delivered to it in accordance with the Agreement entered into between Seller and Marion County, Oregon on February 18, 1983. The electrical output of the Facility is to be not less than 3 mW at any time during the test period, provided however, the Facility can be shut down for maintenance for a cumulative total of nor more than twelve hours during the test period. During the test period the equivalent input of fossil fuel measured in BTUs used by the Facility shall not exceed 10% of the total electrical output measured in BTUs utilizing a conversion efficiency of 30%.

1.3 "Confidential Information" means all data and

information now or hereafter disclosed by or on behalf of the Seller to PGE and identified in advance in writing as being confidential or proprietary (including without limitation, inventions, trade secrets, know-how, techniques, data, specifications, drawings, blueprints, flow sheets, designs, engineering information, construction information, operating criteria and other information designated by the Seller as confidential or proprietary whether or not patented or copyrighted). Confidential Information does not include data relevant to past or future Net Metered Output or payments by PGE to Seller, or information in the possession of PGE prior to disclosure by Seller.

1.4 "Contract Year" is a calendar year commencing at 00:00 hrs. on July 1 and ending at 24:00 hrs. on the following June 30;

1.5 "National Holidays" are those days defined in 5 U.S.C.A. §6103(a), as amended, which are, as of the time of signing, January 1, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, and December 25.

1.6 "Net Metered Output" is all electric energy produced by the Facility, less Station Service, as determined at the Point of Delivery;

1.7 "Off-peak" is all times other than On-peak;

1.8 "On-peak" is that period of time from 07:00 hrs to

22:00 hrs, Monday through Friday, excluding National Holidays.

1.9 "Point of Delivery" is the location where PGE's and Seller's electrical facilities are connected, as specified in the Second Appendix;

1.10 "Prudent Utility Practice" means either (i) any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, or (ii) any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expeditious action. Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts. Prudent Utility Practice shall also include those practices, methods and acts that are required by applicable laws and final orders or regulations of regulatory agencies having jurisdiction over the subject action.

1.11 "Scheduled Deliveries" is the Seller's forecast of Net Metered Output from the Facility as provided in accordance with the Twelfth Appendix.

1.12 "Scheduled Maintenance Periods" are those times during which the Facility is shut down for maintenance with the advanced written approval of PGE or with one hundred and eighty

days prior written notice to PGE.

1.13 "Station Service" is all electric energy consumed by the Facility.

SECTION 2

TERM

Except as provided for in Section 22 and in the Fifth Appendix. This Agreement shall become effective when executed by both parties hereto and unless earlier terminated in accordance with this Agreement shall end at 24:00 hrs on June 30, 2014.

SECTION 3

DELIVERY OF POWER

3.1 Obligation_to_Deliver. Seller shall deliver and PGE shall purchase the Net Metered Output of the Facility in accordance with the terms of this Agreement. PGE shall make payment to Seller for Net Metered Output at prices set out in Section 4.

3.2 Notification_of_Scheduled_Deliveries. Seller shall notify PGE of Scheduled Deliveries in accordance with the Twelfth Appendix.

3.3 Maximum_Purchase_Obligation. PGE is not obligated to purchase Net Metered Output in excess of 67,100 mWh during any Contract Year unless PGE is notified by Seller before the January 1 prior to such Contract Year that the Facility will generate Net Metered Output in excess of 67,100 mWh.

SECTION 4

PRICE

The price PGE pays to Seller for Net Metered Output shall be determined pursuant to the Third Appendix. The price shall be adjusted in accordance with the Fourth Appendix.

SECTION 5

LEVELIZED PAYMENT RETURN PROVISION

Provisions for the return of the pre-1992 levelized fixed cost component of the purchase price in the event of breach, default, termination or circumstances of poor performance of the Facility are set forth in the Fifth Appendix. In the event a circumstance occurs which requires Seller to return to PGE some amount of such levelized payment, the parties acknowledge that all other remedies available. The fact that this Agreement specifically calls for the return of pre-1992 levelized payments under certain circumstances does not serve to limit any other remedy or measure of damages for breach. Such provisions are not liquidated damage provisions.

SECTION 6

PURCHASE PAYMENTS

PGE shall provide Seller with notice of Net Metered Output and PGE shall make payments to the Seller in accordance with the Sixth Appendix.

SECTION 7

NOTICES

Any notice, consent, or other communication (except those

required by subsection 12.1 and 12.2 under this Agreement given by either party to the other party shall be in writing and shall be delivered in person or deposited in a United States Mail Depository, first class postage prepaid, to the persons at the addresses as follows:

To Seller: Vice President
Trans Energy-Oregon, Inc.
Suite 101
14711 NE 29th Place
Bellevue, Washington 98007

To PGE: Vice President, Power Operations
Portland General Electric Company
121 S.W. Salmon St.
Portland, Oregon 97204

Either party may from time to time change such address by giving the other party notice of such change in accordance with the provisions of this paragraph.

SECTION 8

FACILITY DESIGN AND CONSTRUCTION

8.1 Seller to Provide Facility Data. Seller shall provide PGE with all data concerning its Facility germane to electrical stability, safety and protection. All affecting and changes in specifications having an impact on electrical stability, safety and protection of PGE's electrical system shall be subject to PGE's review and acceptance, which review and acceptance shall not be unreasonably withheld or delayed. PGE's acceptance of Seller's specifications shall not be construed as confirming or endorsing the design, or as a warranty of safety, durability or reliability of the Facility.

8.2 Professional Engineer Certificate. At the request of PGE, Seller shall provide PGE, prior to the initial delivery of Net Metered Output, with a statement from a licensed Professional Engineer certifying that the Facility can reasonably be expected to generate electricity in the amounts set forth in the Twelfth Appendix.

SECTION 9

INTERCONNECTION AND PROTECTION DEVICES

9.1 Interconnection Equipment. Seller shall install all necessary interconnection equipment as required by Prudent Utility Practice. Seller shall allow PGE to review the adequacy of all protective devices, and to establish reasonable requirements for settings and periodic testing; provided, however, that neither action nor inaction by PGE shall be construed as warranting the safety or adequacy of such equipment and devices. Seller shall notify PGE of such periodic testing and PGE shall have the right to observe such testing. All such equipment installed hereunder shall conform to the Electric Service Requirements established in the Seventh Appendix. Seller shall reimburse PGE for its reasonable cost associated with such periodic testing performed by PGE at Seller's request.

9.2 At Sellers Expense. Connection of Seller's interconnection equipment to PGE's system shall be by or under the direction of PGE at Seller's expense.

9.3 New Facilities and Equipment. In the event that it is

necessary, in accordance with Prudent Utility Practice, for PGE to install any facilities and equipment on PGE's system to accomodate Seller's deliveries, or to reinforce PGE's system, for purposes of this Agreement, Seller shall reimburse PGE for all of PGE's costs reasonably and necessarily incurred, in accordance with subsection 9.4. Seller shall also reimburse PGE, in accordance with the Thirteenth Appendix, for its operation and maintenance costs reasonably and necessarily incurred resulting from PGE's installation of facilities and equipment pursuant to this subsection. All costs referred to in this subsection shall include reasonable overhead expenses. If equipment installed under this subsection is increased in size to enable PGE to serve additional customers, PGE shall pay the incremental cost of such increased-sized equipment.

9.4 Payment for Interconnection. Seller shall pay to PGE 30 days prior to estimated construction date such funds as PGE estimates are required to perform engineering, design and construction as required to provide facilities sufficient to allow interconnection of the Facility with PGE's system. Such estimate shall include reasonable overhead associated with engineering, design and construction. Such funds shall be held by PGE until completion of all related engineering, design and construction. Within 30 days of completion of all engineering, design and construction PGE shall provide Seller an accounting of PGE's actual expenses including overhead, and shall refund any unexpended funds or invoice Seller for any additional funds

owed PGE in excess of such estimated amount. Seller shall make payment for such additional work within 30 days of receipt of the invoice. The estimates required by this subsection shall be provided when requested by Seller.

9.5 Telemetering Equipment. Telemetering equipment shall be purchased, installed and maintained by PGE. The cost of purchasing, installing and maintaining such equipment shall be paid to PGE by Seller and such cost shall include reasonable engineering and other overhead costs. The initial installation and purchase of such telemetering equipment shall be paid for in accordance with subsection 9.4. Any payments other than for initial installation and purchase expenses including subsequent purchases, replacements, modification and maintenance shallb e paid for in accordance with the Thirteenth Appendix.

SECTION 10

METERING

PGE shall provide, install and maintain meters at a mutually agreed upon location to record and measure power to and from the PGE system. The costs associated with all meter equipment, installation, ownership, administration, inspection and testing thereof shall be borne by the Seller. Payment shall be in accordance with the Thirteenth Appendix. Metering configurations shall be governed by the guidelines set forth in the Eighth Appendix.

SECTION 11

CONSTRUCTION, OPERATION AND CONTROL

11.1 Requirements of Seller. Seller shall construct, operate and maintain the Facility in a manner required by Prudent Utility Practice and in accordance with the National Electric Safety Code and any applicable Oregon or local electrical statutes, codes or ordinances, as amended, from time to time.

11.2 Parallel Operation. Seller may operate the Facility in parallel with PGE's system, but subject at all times to PGE's operating instructions and any and all other reasonable conditions established by PGE in its sole discretion for the protection, stability and safety of personnel and PGE's system.

11.3 Reactive Power, Telemetry. Seller agrees to assure that the voltage level and flow of reactive power accompanying or resulting from deliveries of electric energy hereunder will not adversely affect the electrical system of PGE. Hourly generation information shall be provided to PGE via telemetering equipment installed at or near the generation site and relayed to the PGE load control center. PGE shall have the right to inspect and test such equipment at all times.

11.4 Permitted Voltage Changes. PGE may, upon one hundred eighty (180) days notice to Seller change the nominal operating voltage level at the Point of Delivery from 57 kV to 115 kV, in which case Seller shall modify its interconnection equipment as necessary to accommodate the modified nominal

operating voltage level. Such modifications shall be at Seller's expense.

11.5 Harmonic Distortions. If PGE demonstrates that the Facility is causing harmonic distortions on PGE system, PGE shall so notify Seller. If such harmonic distortions do not pose immediate threat to personnel or the PGE system, Seller shall have 30 days to correct such harmonic distortions. Such threats include degradation of service to PGE's other customers such that the harmonics may cause substantial damage to their equipment or personnel. After such 30 day period and the Seller has not corrected such harmonic distortions, PGE may disconnect the Facility. During such period of disconnection, PGE's obligation to take and pay for deliveries for Net Metered Output from Seller shall be suspended.

11.6 Periods of Shortage. Seller agrees that in the event of and during a period of a shortage of energy or capacity on PGE's system as declared by PGE in its sole discretion, Seller shall, at PGE's request and within the limits of reasonable safety requirements as determined by Seller, use its best efforts to provide requested energy or capacity, and shall, if possible, delay any Scheduled Maintenance Periods.

11.7 Disconnect Switch. Seller shall furnish and install on the Seller's side of the Point of Delivery a disconnect switch which shall be capable of fully disconnecting the Facility from PGE's system. The disconnect switch which can be secured by a padlock shall be of the visible-break type and

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shall be accessible to PGE's personnel at all times. PGE shall have the right to disconnect the Facility from PGE's system at the disconnect switch when necessary, in PGE's sole judgment, to maintain safe electrical operating conditions.

11.8 System Emergency. In the event of a System Emergency, as defined in 18 CFR 292, 307(b) on the date of the signing of this Agreement, PGE may require Seller to curtail its consumption of electricity from PGE in the same manner and to the same degree as Schedule 89 customers.

11.9 Curtailment of Deliveries. PGE may require Seller to curtail, interrupt, or reduce deliveries of energy in order to construct, install, maintain, repair, replace, remove, investigate or inspect any of PGE's equipment or any part of its system or if PGE determnes that curtailment, interruption, or reduction is necessary because of emergencies, operating conditions on its system, or as otherwise required by Prudent Utiilty Practice. In such circumstances, PGE shall not be obligated to accept deliveries of Net Metered Output hereunder. To the extent possible PGE shall coordinate such curtailment or interruptions with Seller.

11.10 PGE agrees to operate its system in accordance with Prudent Utility Practice and in accordance with the Nationl Electric Safety Code and any applicable Oregon or local electrical statutes, codes or ordinances, as amended, from time to time.

SECTION 12

DRAFT

PROCEDURES FOR REPORTING FACILITY OPERATION

12.1 Scheduled Production. Seller will contact PGE schedulers by 12:00 hrs. of each work-day (Monday through Friday, excluding legal holidays) and provide the projected schedule for the amount of energy expected to be generated at the Facility from midnight to midnight through the next work day.

12.2 Unscheduled Occurrences. Seller shall notify PGE of Significant Changes in the production schedule within 30 minutes of the occurrence of each Significant Change. Significant Changes include (1) unit trips, and (2) generation changes of 3 mWs or more. Seller shall provide an estimate of the duration of each Significant Changeas soon as is reasonably possible.

12.3 Generation Reporting Requirement. Seller shall notify PGE in writing on the first day of each calendar quarter of its best estimate of the next four quarters of generation. Furthermore, Seller shall provide its planned maintenance schedules for those four quarters. Such estimates shall be for the planning purposes only and shall be the best estimates currently available.

12.4 Damages Provision. In the event that Seller fails to comply with the reporting procedures required by subsections 12.1, 12.2 and 12.3 within the times prescribed, Seller shall, on demand within 30 days of the incident, pay PGE the sum of One Hundred Dollars ($100.00). This sum shall be paid within

seven days of the date of demand.

12.5 Contacts. Seller will have telephone service within the immediate vicinity of its generation facilities. Contacts with PGE are to be made as follows:

Scheduling:	System Scheduler 226-8392 Mondays through Fridays, between 08:00 and 17:00 hrs
Significant Changes:	Generation Dispatcher 226-8348 (This is a 24-hour number)

SECTION 13

LIABILITY, INSURANCE AND INDEMNIFICATION

13.1 Indemnification. Seller agrees to protect, indemnify, and hold harmless PGE, its directors, officers, employees, agents, and representatives, against and from any and all loss, claims, actions, or suits, including costs and attorneys' fees, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction of property belonging to PGE or others, resulting from, or arising out of or in any way connected with the facilities on Seller's side of the Point of Delivery, or Seller's operation and/or maintenance, excepting only such injury or harm as may be caused solely by the fault or negligence of PGE, its directors, officers, employees, agents, or representatives. Additional liability provisions, if any,

shall appear in the Eleventh Appendix.

13.2 Liability Insurance. Prior to connection of Facility to PGE's system, Seller shall secure and continuously carry, with an insurance company or companies acceptable to PGE, insurance policies for bodily injury and property damage liability. Such insurance shall include: provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; cross-liability or severability of insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. A copy of each such insurance policy, certified to be a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE, in lieu thereof, a certificate in a form satisfactory to PGE certifying to the issuance of such insurance, shall be furnished to PGE within 90 days of the signing of this Agreement. Initial limits of liability for all requirements under this subsection shall be $1,000,000 single limit, which limit may be required by PGE to be increased at a rate not to exceed fifteen percent (15%) per year.

13.3 Property Damage Insurance. Seller shall obtain insurance acceptable to PGE against property damage or

destruction in an amount not less than the cost of replacement of the Facility prior to the Commercial Operation Date. Seller shall provide PGE with copies of such policies within 90 days of the Commercial Operation Date. Seller shall promptly notify PGE of any loss or damage to the Facility.

13.4 Hold Harmless from Taxes. Seller shall pay and hold PGE harmless from any and all taxes assessed on the Facility, and any and all taxes due as a result of Seller's sale of Net Metered Output.

SECTION 14

LAND RIGHTS

Seller hereby grants to PGE for the term of this Agreement all necessary rights of way and easements to install, operate, maintain, replace, and remove PGE's metering and other facilities necessary or useful to this Agreement, including adequate and continuing access rights on property of Seller. Seller agrees to execute such other grants, deeds or documents as PGE may require to enable it to record such rights of way and easements. If any part of PGE's facilities is installed on property owed by other than Seller, Seller shall, if PGE is unable to do so without cost to PGE, procure from the owners thereof all necessary permanent rights of way and easements for the construction, operation, maintenance, and replacement of PGE's facilities upon such property in a form satisfactory to PGE. At Seller's request and expense, PGE shall, to the extent it is legally able, acquire such rights of way.

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SECTION 15

MAINTENANCE

15.1 Scheduled Maintenance. Seller may shut down the Facility for Scheduled Maintenance Periods.

15.2 Forced Outage. In the event the Facility must be shut down for other than Scheduled Maintenance Periods, Seller shall notify PGE in accordance with subsection 12.2 of the necessity of such shutdown, the time when such shutdown has occurred, or will occur, and the anticipated duration of such shutdown. Seller shall take all reasonable measures and exercise its best efforts to avoid and to limit the duration of such shutdowns.

15.3 Does not Change Scheduled Delivery. No subsection 15.1 or 15.2 shutdown shall be considered as changing the requirement that Scheduled Deliveries pursuant to the Twelfth Appendix must equal 61,000 mWh during each Contract Year.

SECTION 16

QUALIFYING FACILITY STATUS

Seller covenants that the Facility is a Qualifying Facility, as that term is used and defined in 18 CFR 292 as of the date of the signing this Agreement and that it will provide certification by the Federal Energy Regulatory Commission of such qualifying status pursuant to 18 CFR 292.207(b) by the Commercial Operation Date. Seller covenants that it will do nothing nor permit the doing of anything which would cause the Facility to lose qualifying status on the basis of the

requirements for such status as of the effective date of this Agreement.

SECTION 17

FORCE MAJEURE

17.1 Definition of Force Majeure. Except as provided in subsection 17.2, neither party to this Agreement shall be liable for, or be considered to be in breach of or default under this Agreement on account of any inability to perform its obligations under this Agreement because of causes or conditions beyond the Party's reasonable control including but not limited to: fire, explosions, earthquakes, storms, flood, wind, drought and acts of God or the elements; court orders and acts, delays and failures to act by civil, military or other governmental authority; strikes, labor disputes, riots, insurrections, sabotage and war; destruction of, or damage or casualty to, any equipment, facilities or other property; interruption, suspension, curtailment or other disruption of utilities; and acts or omissions of Persons other than the Seller. (hereinafter, Force Majeure)

provided that:

(A) the nonperforming party, within two weeks after the occurrence of the Force Majeure, gives the other party written notice describing the particulars of the occurrence;

(B) the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure;

(C) no obligation of either party which arose before the occurrence causing the suspension of performance be excused as a result of the occurrence, and

(D) the nonperforming party use its best efforts to remedy its inability to perform.

17.2 Force Majeure Not Applicable To. The provisions of subsection 17.1 do not apply to:

a) obligations to make payment of money

b) the provisions of subparagraph 5.4 of the Fifth Appendix

c) purchase price levels paid pursuant to Section 4 and the Third and Fourth Appendix.

17.3 3-Year Limit on Force Majeure for subsection 26.4 Default Test. In the event Force Majeure is declared in accordance with subsection 17.1 such declaration may be used to toll the provisions of subsection 26.4 for an aggregate period of time not to exceed 36 months at any time or times before June 30, 2014. If the aggregate months during which Force Majeure is in effect exceeds 36 months, the number of months used as the divisor in that calculation shall accrue notwithstanding the fact that Force Majeure is in effect.

SECTION 18

LIABILITY AND DEDICATION

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Agreement. No undertaking by one party to the other under any provision of

this Agreement shall constitute the dedication of that party's system or any portion thereof to the other party or to the public, nor affect the status of PGE as an independent public utility corporation, or Seller as an independent individual or entity.

SECTION 19

SEVERAL OBLIGATIONS

Except where specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership, or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to either party. Each party shall be individually and severally liable for its own obligations under this Agreement.

SECTION 20

WAIVER

Any waiver at any time by either party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.

SECTION 21

CHOICE OF LAWS

This Agreement shall be construed and interpreted in

accordance with the laws of the State of Oregon. The parties agree that, subject to Section 25, the courts and administrative agencies within the State of Oregon shall have the sole power to resolve disputes among the parties except to the extent that a federal issue is adjudicated by the United States District Court for the District of Oregon or a higher federal court.

SECTION 22

GOVERNMENTAL JURISDICTION AND AUTHORIZATION

22.1 Jurisdiction. This Agreement is subject to the jurisdiction of those governmental agencies having control over either party or this Agreement.

22.2 Public Utility Commissioner Approval. This Agreement shall not become effective until the Public Utility Commissioner of the State of Oregon approves all terms and provisions hereof without change or condition and declares that all payments to be made hereunder shall be allowed as prudently incurred expenses for ratemaking purposes. Both PGE and Seller shall offer this agreement to the Public Utility Commissioner of the State of Oregon and advocate its approval as written.

SECTION 23

SUCCESSORS AND ASSIGNS

This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. Excepting assignments by PGE to Bonneville Power Administration

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("BPA"), no assignment hereof by either party hereto shall become effective without the written consent of the other party being first obtained and such consent shall not be unreasonably withheld. Nothing in this Agreement shall be construed as limiting or restricing PGE's right to enter into arrangements with BPA whereby BPA acquires the output of the Facility or PGE takes a billing or energy credit therefrom. Nothing in this Section shall be construed as limiting or restricting Seller's right to assign this Agreement for financing purposes without PGE's consent.

SECTION 24

MODIFICATION

No amendment or modification of any of the provisions of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both parties.

SECTION 25

ARBITRATION

Questions regarding the selection of replacement indices should the indices referred to in the Fourth Appendix cease to exist shall be subject to arbitration. Other questions of fact under this Agreement may be submitted to arbitration upon written mutual agreement of the parties. The party calling for arbitration shall serve notice in writing upon the other party setting forth in detail the question or questions to be arbitrated and the arbitrator appointed by such party. The other party shall, within 10 working days after the receipt of

such notice, appoint a second arbitrator, and the two so appointed shall choose and appoint a third. In case such other party fails to appoint an arbitrator within said 10 working days, or in case the two so appointed fail for 10 working days to agree upon and appoint a third, the party calling for the arbitration, upon 5 working days' written notice delivered to the other party, shall apply to the person who at the time shall be the presiding judge of the United State District Court for the District of Oregon for appointment of the second and third arbitrator, as the case may be. No finding of such arbitration panel shall in any way change the price equations as set forth in the Third Appendix. Unless otherwise agreed the costs of Arbitration, excluding counsel fees for each party, shall be divided equally between the parties.

SECTION 26

DEFAULT AND TERMINATION

26.1 Prior to July 1, 1986, the Seller may, subject to PGE's right to buy any Net Metered Output from the Facility prior to June 30, 2014, as provided for in subparagraph 26.2 at its option, terminate this Agreement by giving thirty (30) days written notice thereof to PGE.

26.2 Notwithstanding the provisions of subsection 26.1, PGE is entitled to purchase any Net Metered Output at the purchase prices contained in this Agreement if any Net Metered Output is generated by the Facility at any time before June 30,

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2014.

26.3 If the Commercial Operation Date has not been achieved by July 1, 1989, Seller shall be in default under this Agreement. In addition to other remedies available at law, the LPRL as of July 1, 1989 shall be paid to PGE within 30 days.

26.4 Seller shall be in default under this Agreement if at any time the cumulative Facility Net Metered Output since Commercial Operation Date plus 30,500 mWh divided by months since Commercial Operation Date falls below 2541.7. In the event Seller fails to comply with this subsection, the entire LPRL as of the date on whichthe default occurs shall be paid to PGE within 30 days. Such payment shall be in addition to any other remedies available at law.

SECTION 27

CONFIDENTIAL INFORMATION

PGE shall not copy, disclose or use any Confidential Information other than for the purpose for which it is disclosed to PGE, except with the written consent of the Seller and subject to compliance with such directions and conditions as the Seller shall specify in any such consent (e.g., in restricting further copying, disclosure or use), except as otherwise required by court order or State or Federal Statute.

SECTION 28

HEADINGS

The headings of sections and subsections of this Agreement are for convenience of reference only and are not intended to

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restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

SECTION 29

NO PARTNERSHIP

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the parties or to impose any partnership obligation or liability upon either party. Neither party shall have any right, power or authority to enter into any agreement or undertakinng for or on behalf of, to act as or be an agent, or representative of, or to otherwise bind the other party.

SECTION 30

ENTIRE AGREEMENT

This Agreement sets forth the entire agreement of the parties, and supersedes any and all prior agreements, with respect to the Project. This Agreement shall be construed as a whole. All provisions of this Agreement are intended to be correlative and complementary. The rights and remedies set forth in any provision of this Agreement are in addition to any other rights or remedies afforded by any other provision of this Agreement or by law.

SECTION 31

GUARANTEE OF OBLIGATIONS

The obligations of Seller under this Agreement are guaranteed by ROCKCOR, Inc. and CGC. The specific form of guarantee is found in the Fourteenth Appendix.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

TRANS ENERGY-OREGON, INC.	PORTLAND GENERAL ELECTRIC COMPANY
_____	_____
Douglas D. Huxtable, President	Glen E. Bredemeier, Vice President
Date signed:_____	Date signed: _____
	Approved as to form:
	_____
Approved by: ROCKCOR, Inc.	Approved by: Compagnie Generale de Chauffe
_____	_____
Title:_____	Title: _____
Date signed: _____	Date signed: _____

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FIRST APPENDIX

FACILITY DESCRIPTION

1.1 The Facility is a mass burning solid waste incineration/electric generation plant to be located on Chemawa Road (i.e., Biggins property) or alternate site within PGE's service territory in Marion County, Oregon. The Facility will have a nominal Net Metered Output of 61,000 mWh annually.

1.2 The Facility will use two solid waste fired boilers and will have a condensing cycle turbine-generator with a 15 mw nameplate rating.

1.3 To enable the Facility to operate (i.e., dispose of solid waste) during periods when the turbine generator is not in operation, the Facility will be equipped with an auxillary condenser capable of handling the maximum steam output of Facility boilers.

1.4 The Facility's air pollution control system will be built to minimize emission of particulates from the facility and to assure adequate dispersion of trace gaseous pollutants in the flue gas. The pollution-control system shall be designed to keep the facilities operating as required by applicable statute.

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SECOND APPENDIX

POINT OF DELIVERY

The "Point of Delivery" of power between Seller and PGE shall be at the first structure encountered by the transmission line inside the Seller's substation. The delivery of such power shall be at the nominal operating voltage of such transmission line (57kv or 115kv).

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THIRD APPENDIX

PURCHASE PRICES

The following prices are established for all Net Metered Output.

3.1 Price Prior to Commercial Operation Date

Prior to the Commercial Operation Date the purchase price shall be the then current PGE Nonfirm Energy Price (NFP).

NFP is PGE's then current quarterly estimated avoided energy cost as filed with the Public Utility Commissioner of Oregon. The quarterly estimated avoided energy cost is PGE's estimated decremental operating costs. As an example, the Electric Utility System Cost Data which reflects PGE's estimated decremental operating costs, filed on June 30, 1982 by PGE shows an NFP of $0.01322 per kWh for the third quarter of 1982. The quarterly NFP price shall become effective on the first day of each quarter (January 1, April 1, July 1, and October 1) and remain in effect for the three calendar months of each quarter.

3.2 Prices Commencing On The Commercial Operation Date

Effective 00:00 Hrs. on the Commercial Operation Date PGE shall pay for Net Metered Output at the applicable prices (dollars/kilowatt-hour) described below:

3.2.1 The Firm Price (FP) is the sum of two components; the fixed price component and the variable price component. The fixed price component is $0.029 per kWh. The variable price (VP) component is $0.03019 per kWh as of July 1, 1982. The variable price shall be subject to periodic adjustment as set forth in the Fourth Appendix.

3.2.2 For Net Metered Output which is no greater than 110 percent of the quarterly Scheduled Delivery, as provided for in the Twelfth Appendix, the purchase price is:

$$S \times \left[\left(\frac{EP - NEP}{0.7} \times P\right) + NFP\right]$$

Where:

P is the Net Metered Output divided by Scheduled Deliveries. If P is computed to be in excess of 0.7, then P is deemed to be 0.7.

S is the seasonal price adjustment factor which for purchases during the second and third calendar quarters is 0.952 and for the fourth and first calendar quarters is 1.047. Calendar quarters are as specified in the Twelfth Appendix.

3.2.3 For Net Metered Output in excess of 110 percent of the quarterly Scheduled Delivery, the purchase rate shall be the NFP as set forth in Paragraph 3.1.

3.2.4 For Net Metered Output delivered during any On-peak hour in excess of 9,500 kWh per hour, PGE shall pay an additional $0.005 per kWh.

3.2.5 Notwithstanding the provisions of subsection 3.2.1, no payment shall be made for the fixed price component ($0.029/kWh) for Net Metered Output purchased during any calendar quarter in which Seller defaults.

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FOURTH APPENDIX

INDICES

The variable price component of the Firm Price (FP) as described in the Third Appendix shall be periodically adjusted.

4.1 From the Commercial Operation Date through 24:00 hrs on June 30, 1992, the variable price component shall be adjusted quarterly according to the following formula:

$$\$0.03019/kWh \times (0.44I + 0.56)$$

where I is the current Index Factor as computed in subsection 4.3.

4.2 From July 1, 1992, for the remainder of the contract term, the variable price component shall be computed as follows:

$$I \times 0.0187.$$

where I is the current Index Factor as computed in Section 4.3.

4.3 The Index Factor (I) shall be based on the following indices:

4.3.1 I shall be computed according to the following formula:

$$\left(\frac{PPI\text{-}C}{PPI\text{-}Base} + \frac{RCR\text{-}C}{RCR\text{-}Base}\right) \times 0.5$$

where:

a) PPI is the Producer Price Index (PPI) for Bituminous Coal, Prepared, West; Product Code 1211-214C07 as published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS).

b) PPI-Base is _____, as of July, 1982.

c) RCR is the Association of American Railroads, Railroad Cost Recovery Index, Western District (RCR).

d) RCR-Base is 167.7, for the 2nd quarter of 1982.

e) PPI-C is the applicable PPI determined

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according to the following table:

Calendar Quarter purchases by PGE	PPI-C is based on PPI for:
1 (Jan-Mar)	December
2 (Apr-June)	March
3 (July-Sept)	June
4 (Oct-Dec)	September

RCR-C is the applicable RCR determined from the then current index described below:

Calendar Quarter purchases by PGE	RCR-C is based on RCR for
1 (Jan-Mar)	4th calendar quarter
2 (Apr-June)	1st calendar quarter
3 (July-Sept)	2nd calendar quarter
4 (Oct-Dec)	3rd calendar quarter

4.4 If PPI or RCR cease to be maintained by the publishinng authorities the parties shall agree on appropriate substitute indices. The indices has been designed to track the delivered price of coal to a hypothetical PGE coal-fired generation plant located in Eastern Oregon. To the extent that the parties cannot agree on appropriate substitute indices the matter may be referred to arbitration in accordance with Section 2x5. The arbitrators are to select new indices in keeping with the parties' herein-expressed statement of the purpose for the selection of PPI and RCR.

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FIFTH APPENDIX

LEVELIZED PAYMENT RETURN LIABILITY

Trans Energy-Oregon, Inc. (Seller) shall incur a continuing Levelized Payment Return Liability (LPRL) according to the provisions of this Appendix. The specific method or device used by Seller to provide the fund for satisfaction of the LPRL is subject to PGE's written approval. The approval shall be in PGE's sole discretion. This Agreement is not effective until such written approval is given and appended hereto.

5.1 Prior to Commercial Operation Date If by July 1, 1986 the Commercial Operation Date has not occurred the LPRL shall increase by $147,417 (being [61,000 mWh x $29 per mWh] divided by 12 months) on the first of each month or part thereof until the Commercial Operation Date has been achieved.

5.2 After Commercial Operation Date On the first day of the first month following the Commercial Operation Date, LPRL shall not be less than $500,000. If it is less than $500,000 the LPRL shall be increased to this level. If the LPRL is increased to $500,000, the difference between $500,000 and LPRL created by operation of subsection 5.1 shall be deemed to be a credit against the LPRL additions referred to in this Subsection. On the last day of each calendar quarter following the Commercial Operation Date, the LPRL shall increase in accordance with the following formula:

LPRL Addition = Net Metered Output x $0.029/kWh x A

$$\text{Where } A = \frac{\text{Net Metered Output}}{0.70 \times \text{Scheduled Deliveries}} \quad \text{and}$$

A shall not exceed one (1.0).

5.3 The LPRL as of July 1, 1992 shall be divided by 22 years and the resulting amount is the LPRL Reduction.

The LPRL shall be reduced on July 1, 1993 and annually thereafter by the LPRL Reduction.

5.4 Seller shall pay to PGE an amount as computed below if Adjusted Output (defined below) for any Contract Year after June 30, 1992 is less than 61,000 mWh.

Seller's payment to PGE shall be:

$$\text{LPRL Reduction less (LPRL Reduction} \times \frac{\text{Adjusted Output}}{61{,}000 \text{ mWh}}$$

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For purposes of this section, Adjusted Output for the Contract Year shall be the Net Metered Output for the Contract Year plus an unscheduled outage mWh adjustment as provided below. The cumulative unscheduled outage mWh adjustment shall not exceed 30,500 mWh for the term of the Agreement. Use of the unscheduled outage mWh adjustment is at the Seller's option. Adjusted Output shall not exceed 61,000 mWh.

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SIXTH APPENDIX

PAYMENT PROVISIONS

PGE will make purchase payments to Seller in accordance with the following provisions:

6.1 There shall be four payment periods per year. The billing periods shall correspond to calendar quarters and shall be comprised of the months indicated below:

3rd Quarter - July, August, September
4th Quarter - October, November, December
1st Quarter - January, February, March
2nd Quarter - April, May, June

6.2 PGE shall make scheduled meter readings at the Facility in intervals approximating the end of each payment quarter. In the event of meter malfunction or failure or error, PGE will use its best efforts to estimate the Facility's Net Metered Output during the payment period from other available data. Such other available data may include but is not limited to scheduling information, mechanical meter readings, the facility's historical performance, and records of the Seller. The parties shall agree on the estimated amount of Net Metered Output, or failing to agree, shall submit the question for determination by the Public Utility Commissioner of Oregon.

6.3 PGE shall prepare a quarterly statement that computes payments for power delivered by Seller to PGE under this Agreement. The statement will contain the Facility's Net Metered Output delineating On-peak and Off-peak deliveries for the designated billing period and supporting calculations for identified payments. Estimated values of Net Metered Output will be used when, for whatever reason, data detailing the Facility's actual Net Metered Output is unavailable.

6.4 On or before the 30th day after the end of each payment period, PGE shall send the statement and the payment to the Seller. Where the 30th day falls on a Saturday, Sunday or National Holiday, the payment shall be due on the next business day. In the event of disagreement over payments contained in the statement, both parties will use their best efforts to resolve the dispute.

6.5 PGE's payments for Net Metered Output shall be adjusted to include deductions for PGE costs as provided for in the Thirteenth Appendix and a deduction as provided in subsection 6.6. If the resulting payment by PGe is negative, Seller shall pay PGE within 30 days of receipt invoice.

6.6 If Net Metered Outut for a calendar quarter is negative, that is, the Facility consumes more electric power than is produced, Seller shall pay PGE for such electrical power at the Schedule 32 _____ Level I rate or its successor.

SEVENTH APPENDIX

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ELECTRIC SERVICE REQUIREMENTS FOR
THREE-PHASE PARALLEL GENERATION

This document states the minimum requirements for operation of seller's generator that will be connected in parallel with the PGE system, provided that if there is a conflict between this Appendix and the body of the Agreement the provisions of the body of the Agreement shall be controlling.

7.1 General Requirements for Single- and Three-Phase Installations

7.1.1 Installation and operation shall be in compliance with the National Electrical Code, National Electrical Safety Code, and PGE Electric Service Requirements as applicable.

7.1.2 The Facility shall be designed to automatically disconnect when the interconnection with PGE is interrupted.

7.1.3 The interconnection of the Seller's generation equipment with PGE's system shall not cause any reduction in the quality or reliability of service provided to PGE's customers. This includes, but is not limited to, the following: there shall be no objectionable generation of abnormal voltages or voltage fluctuations and the harmonic content of the generator output must be below that level which would cause undue interference with customer loads or PGE equipment.

7.1.4 An accessible, lockable, visible break disconnect switch is to be provided for the Facility. This switch may be locked in the open position by PGE operating personnel:

a. If it is necessary for the protection of line crew personnel when working on de-energized circuits during a system emergency.

b. If the Seller's generating equipment interferes with other Seller or with the operation of the PGE system.

7.2 Requirements for Three-Phase Generators

7.2.1 It is the sole responsibility of the customer to provide for the safe and effective operation of his generator.

7.2.2 The Seller is fully responsible for the protection of the generator and all of its associated equipment. Protection shall be provided for the Seller's own equipment failures and for faults and other disturbances on the PGE system.

7.2.3 The Facility protection arrangements and design drawings must be reviewed by the PGE System Planning and Protection Department and approved prior to installation. The completed installation is subjected to a final inspection and test by PGE Electrical Maintenance and Construction personnel before commencement of parallel generation is permitted.

7.3.4 The Seller will provide suitable automatic equipment to disconnect the Seller's generators from the PGE system in the event of a power outage or a fault on the Seller's supply circuit. The relays used to control the automatic disconnecting device should be so selected, designed, and set such that they can detect a loss of voltage or fault occurring on the PGE circuit.

7.2.5 The protective relays will include but not be limited to over/undervoltage and over/underfrequency for sensing a loss of voltage and system disturbances.

7.2.6 The Seller is advised that a phase unbalance disturbance on the PGE system can result in overheating of the Seller's generator. A negative sequence-type relay (current or voltage) could be necessary to initiate tripping underphase unbalance conditions and may also be used to block closing of the automatic disconnecting devise if the PGE system is single-phased.

7.2.7 Maintenance records for the protection equipment shall be available to PGE for inspection at all times.

7.2.8 The Seller is responsible for the protection of

his equipment from transient surges initiated by lightening, switching, or other system disturbances.

7.2.9 Any future modification or expansion of the Seller's equipment will require an engineering review and approval from the PGE System Planning and Protection Department.

7.2.10 PGE reserves the right to require the Seller, at Seller's expense, to provide corrections or additions to existing protective equipment in the event of modification of government or industry regulations and standards.

7.3 Specific Requirements for Synchronous Generators: Seller must provide either automatic synchronizing or manual synchronizing, supervised by a synchronism check relay. No unsupervised manual synchronizing is permitted.

7.4 Operation of Seller's generator shall not adversely affect the voltage regulation of PGE's system. Voltage control shall be provided by Seller to minimize voltage regulation upon PGE's system caused by changing generator loading conditions. For the syunchronous generators, sufficient generator reactive power shall be provided to withstand normal voltrage changes on PGE's system. Seller will generate its own VAR requiresments to minimize power factor variation and to enhance generator stability, except that during PGE system emergency, Seller shall, upon request, attempt to supply or absorb reactive power to the extent possible without significant adverse affects to Seller.

EIGHTH APPENDIX

METERING

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8.1 Metering for power flow through the Point of Delivery shall be on the nominal 12 KV substation bus with factors to adjust for losses to the Point of Delivery. Maintenance and operation of the 57/115 KV connection between PGE's transmission facilities on the south side of the old Chemawa Road and Seller's 57/115 KV dead-end tower (in Seller's substation) shall be performed by PGE at Seller's expense. Maintenance and operation of the 57/115 KV connection on the Seller's side of the Seller's dead-end tower shall be by the Seller at Seller's expense.

8.2 Prior to the Commercial Operation Date Seller shall purchase electric power from PGE at the rate schedule appropriate for such a facility. Meters for power generated and consumed at the Facility shall be of a type designed to show all such generation and consumption separately.

8.3 PGE shall provide, install, own, and maintain meters to record the consumption and generation of power. Such meters shall be located at a mutually agreed upon designated location(s) and shall record and indicate the integrated demand for each sixty (60)-minute period, and shall also measure kWh. PGE shall also provide, install, own, and maintain meters for measurement of reactive volt-ampere hours.

8.4 All meter and metering equipment shall be sealed by PGE. The seal shall be broken only upon occasions when the meters are to be inspected, tested, or adjusted and representatives of both PGE and Seller shall be present upon such occasions. The metering equipment shall be inspected and tested periodically by PGE and at other reasonable times upon request by Seller.

8.5 If any of the inspections or tests provided for herein disclose an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the period of three (3) months immediately preceding the removal of such meter from service for test, or from the time the meter was in service since last tested, but not exceeding three (3) months, in the amount the meter shall have been shown to be in error by such test. Any correction in billing resulting from a correction in the meter records shall be made in the next payment rendered, and such correction, when made, shall constitute full adjustment of any claim between Seller and PGE arising out of such inaccuracy of metering equipment. Provided, however, if such inaccuracy is

in excess of plus or minus 5% adjustments will be made pursuant to subsection 6.2 of the Sixth Appendix.

ELEVENTH APPENDIX

ADDITIONAL LIABILITY PROVISIONS

PGE releases and shall defend, indemnify and hold harmless the Seller, their respective successors and assigns, and the directors, officers, employees, agents and representatives of each of the foregoing from any and all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorney fees) arising out of or in connection with any bodily injury and property damage that may occur in connection with any other activity on the Site by PGE, its employees, agents or representatives, excepting only such injury or harm as may be caused solely by the fault of negligence of Seller, its directors, officers, employees, agents or representatives.

TWELFTH APPENDIX

SCHEDULED DELIVERIES

DRAFT

Seller shall notify PGE by January 1 of each year of Scheduled Deliveries for each of the four consecutive calendar quarters beginning with the third calendar quarter of the year. Scheduled Deliveries shall be provided to PGE in a form similar to that described below.

Scheduled Deliveries is the forecasted Net Metered Output of the Facility expressed in mWh for each calendar quarter for the Contract Year. The total quarterly Scheduled Deliveries for all full Contract Year's occurring after the Commercial Operation Date must equal 61,000 mWh.

SCHEDULED DELIVERIES
SELLER: TRANSENERGY-OREGON, INC.
DATE: _____

Calendar Quarter	Year	Scheduled Deliveries
3 (July-Sept)	_____	_____ kwh
4 (Oct-Dec)	_____	_____ kwh
1 (Jan-Mar)	_____	_____ kwh
2 (Ap-June)	_____	_____ kwh

Submitted by:

_____
Authorized Representative

THIRTEENTH APPENDIX

PGE OPERATION AND MAINTENANCE EXPENSES

DRAFT

Seller shall pay PGE for PGE's costs associated with interconnection facility operation, maintenance and replacement including overheads as follows:

13.1 All operation and maintenance expenses and all interconnection facility replacements in the amounts specified in 13.2 shall be deducted from PGE's payments to Seller for Net Metered Output.

13.2 If PGE's interconnection and facility replacement costs in any quarter exceed the dollar amount specified in subsection 13.3, PGE shall deduct from the required number of consecutive payments for Net Metered Output the higher of either the applicable subsection 13.3 dollar amount or the cost divided by eight, plus interest, until the Seller has reimbursed PGE for all costs. Interest shall be computed using PGE's average cost for short-term borrowing for the payment period.

13.3 For use in 13.3 the dollar amount shall be $5,000 as of July 1, 1983 and shall increase by 6% on each subsequent July 1 for the term of the Agreement.

13.4 PGE shall provide Seller with an itemization of the costs deducted from quarterly payments.

FOURTEENTH APPENDIX

GUARANTEES

DRAFT

These guarantees made as of the ____ day of _____, 19___, by Compagnie Generale de Chauffe ("Guarantor"), and by ROCCOR, Inc., ("Guarantor"), having their principal places of business in Lille,, France and Redmond, Washington respectively, to and for the benefit of Portland General Electric Company (PGE), being an Oregon corporation:

WITNESSETH:

WHEREAS, TRANS ENERGY-OREGON, INC. (the "Operator") owned by the Guarantors is desirous of entering into an Agreement with PGE for the sale of electrical energy (the "Agreement"); and

WHEREAS, PGE is not willing to enter into this Agreement on the terms therein included with the Operator unless performance of the Operator's obligations thereunder are guaranteed by the Guarantors; and

WHEREAS, Guarantors are willing to guarantee performance of the obligations of the Operator under the Agreement;

NOW, THEREFORE, to induce PGE into entering into the Agreement in consideration of the foregoing and other good and valuable consideration and provide these guarantees shall be effective only upon execution of the Agreement by the parties thereto and written approval of the Agreement by the Guarantors, the Guarantors agree as follows:

(1) The Guarantors guarantee the performance of the Operator's obligations under the Agreement, subject to the terms and conditions thereof.

(2) The Guarantors shall provide letter of credit or other guarantees required in connection with assuring repayment of the pre-1992 levelized payment of fixed costs in the event such repayment is called for in the Agreement.

(3) These guarantees may be enforced by PGE without resorting to any action against the Operator or exhausting any other remedies that PGE may have provided that PGE has first requested in writing specific compliance from the Operator and PGE has not, in a reasonable time, received satisfactory actionn from the Operator.

(4) These guarantees shall be governed by the laws of the State of Oregon and the Guarantors agree to submit to service of process in the State of Oregon for any claim or controversy

arising out of this guarantee or relating to any breach hereof or, if the Federal courts shall have jurisdiction thereof, to the jurisdiction of the United States District Court of the District of Oregon. Guarantor's registered agent in Oregon for purposes of these Guarantees shall be David R. Rhoten, Pioneer Trust Building, Salem, Oregon 97301 or, after written notice to PGE, his successor in Oregon.

(5) These guarantees shall be binding upon and enforceable against the Guarantors, their successors and assigns and is for the benefit of PGE.

IN WITNESS WHEREOF the Guarantors have executed this instrument the day and year first above written.

Compagnie Generale de Chaffe

Attest: _____ By: _____

ROCKCOR, Inc.

Attest: _____ By: _____

1161/C/bw

ATTACHMENT "B"

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

Willamette Valley Region
1095 25th Street, SE
Salem, Oregon 97310

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

December 29, 1980

Mr. Charles C. Kemper
R. A. Wright Engineering
1305 SW Bertha Boulevard
Portland, Oregon 97219

Dear Mr. Kemper:

We have reviewed the Feasibility Study Report for the proposed I-5 landfill site prepared by Sweet, Edwards and Associates and R. A. Wright Engineering. Your November 5, 1980 transmittal letter requests written preliminary approval of the site.

Preliminary approval is hereby granted subject to the following conditions and agreements:

1. The concept of preliminary approval is not adequately addressed in our current Administrative Rules. But basically it means that the Department believes the site is feasible within the general design parameters proposed, and that the degree of environmental risk appears sufficiently low that the Department is willing to allow further consideration of the site.

2. Obtaining such preliminary approval is <u>not</u> a guarantee the site will receive a permit, as unforeseen conditions may be discovered during your further investigation or during the Department of Environmental Quality's final review process.

3. Our review process thus far has only considered the technical merits of the I-5 site. No comparison is made to the other candidate landfill sites or energy/ landfill systems currently under consideration by Marion County.

4. Besides obtaining Marion County Solid Waste Department and Local Planning and Zoning approvals, the final design plans and specifications ~~most~~ satisfactorily address all concerns listed on the attached Preliminary Plan Review Report.

ATTACHMENT "C"

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

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

January 28, 1982

Mr. Bruce Bailey, Manager
Brown's Island, Inc.
433 Ferry St. S.E.
Salem, OR 97301

RE: SW-Permit Application
Proposed I-5 Landfill
Marion County

Dear Bruce:

We have received your January 11, 1982 application for a permit to operate a new landfill at the proposed I-5 sanitary landfill site in Marion County.

We are unable to process your application until you provide the following required exhibits:

1. Detailed plans and specifications for final construction and operation of the site.

2. A statement from the Marion County Planning Department acknowledging the site is compatible with local and State land use regulations. Since the December 23, 1981 major partitioning/conditional use permit approval by Marion County has been appealed to the Land Use Board of Appeals, the land use approval is not currently in effect.

3. A recommendation from the Marion County Solid Waste Department.

Upon receipt of the above exhibits, we will begin processing your application.

Sincerely,

Gary Messer, R.S.
Assistant Regional Manager

GWM/wr
Attachments:
1. Brown's Island, Inc., letter dated 1/12/82.
2. I-5 Sanitary Landfill Application dated 1/11/82.
cc: Marion County Solid Waste Department w/att
cc: DEQ Solid Waste Division w/att

Appendix 4 to Attachment "A" is too bulky for reproducing. It is on file in the DEQ offices in Portland.

Appendix 4 to Attachment "A" is too bulky for reproducing. It is on file in the DEQ offices in Portland.

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. S , April 8, 1983, EQC Meeting

Informational Report On The Motor Vehicle Emission Inspection Program 1981-1982

Background

ORS 481.190 provides that motor vehicles registered within the boundaries of the Metropolitan Service District, which includes the City of Portland, meet emission standards established by the Environmental Quality Commission prior to vehicle registration or re-registration. The Department of Environmental Quality operates this motor vehicle emission inspection program. The program began operation in July 1975. Since that time, the Department has prepared periodic update reports on the inspection program operation. The first of these informational update reports was presented to the Commission at its January 18, 1977 meeting. Subsequent reports were submitted in February 1979 and 1981.

Evaluation

Attached is a new informational report prepared by the Department for your consideration. The purpose of the report is to provide the Commission a summary and an update on the motor vehicle emission inspection program during 1981 and 1982. The report contains an overview summary followed by various appendices. These appendices describe the Legislative history, program operations, emission characteristics of vehicles, air quality benefits, and other support documentation about the program.

Among the highlights of this report are the following:

1) During 1981 and 1982, over 850,000 emission tests have been conducted and over 520,000 Certificates of Compliance issued.

2) Overall average idle carbon monoxide emission reductions of 46% and idle hydrocarbon emission reductions of 41% have been achieved.

3) Two new inspection stations have been brought on-line, replacing less efficient stations.

4) Continued operation of the motor vehicle emission inspection program is included in both the carbon monoxide and ozone control strategies adopted by the Commission during 1982, and

5) Compliance with ambient air carbon monoxide standards is projeced to be achieved by 1985. Compliance with the federal ozone standard is projected to be achieved by 1987 with all of the existing and recently adopted control measures.

Director's Recommendation

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

Bill

William H. Young

Attachment: 1. Report on Motor Vehicle Emission Inspection Program 1981-1982

VA3067
W.P. Jasper:a
229-5081
February 28, 1983

State of Oregon
Environmental Quality Commission

Report on Motor Vehicle Emission Inspection Program 1981-1982

Prepared for Presentation at the
April 8, 1983 Environmental
Quality Commission Meeting

February, 1983

Prepared by
Department of Environmental Quality
Vehicle Inspection Program

REPORT ON MOTOR VEHICLE EMISSION INSPECTION PROGRAM 1981-1982

Table of Contents

Page

E. Population Growth and Traffic Trends

REPORT ON MOTOR VEHICLE EMISSION INSPECTION PROGRAM 1981-1982

Summary

The Clean Air Act and its amendments established a national air quality control program for specific goals and objectives and time schedules. Oregon's Clean Air Act Implementation Plan includes a Transportation Control Strategy geared to achieve these goals for the Portland metropolitan area. The inspection/maintenance program is an important element of that plan. Revised ozone and carbon monoxide control strategies were adopted during 1982. Continuation of the inspection/maintenance program is a key element in each of these plans. The inspection/maintenance program is projected to achieve the EPA's minimum requirement of a 25% reduction in both hydrocarbons and carbon monoxide emissions from motor vehicles by 1987. These reductions are forecast to be met with Oregon's current inspection program and other elements of the control strategies.

Average idle carbon monoxide emission reductions of 46% and idle hydrocarbon emission reductions of 41% have been achieved. These represent fleet average emission reductions. Heavy duty gasoline powered trucks indicate good emission performance. Past studies, such as EPA's Portland Study, indicate that good emission control is maintained for over a year after passing inspection.

With the biennial inspection program operating and with the other ongoing control strategies, compliance with ambient air carbon monoxide standards is projected to be achieved by 1985. Compliance with the federal ozone standard is projected to be achieved by 1987 with all of the existing and recently adopted control measures.

Oregon's inspection and maintenance program has been demonstrated to be effective in reducing emissions from motor vehicles. It is effective in maintaining those emission reductions. The program contributes to the overall effort of meeting the area's clean air goals.

Background and Legislative History

Motor vehicles are a source of air pollution in the United States, as well as in many other industrialized countries of the world. As a result, new car emission control standards are applied to about 90% of all passenger cars manufactured throughout the world. The major air pollutants produced by motor vehicles are carbon monoxide, hydrocarbon gases, and oxides of nitrogen. Particulate matter, including lead compounds, and sulfur oxides are also produced. In many urban areas, the buildup in the

concentrations, and the reaction in the atmosphere of these motor vehicle produced air pollutants, have given rise to public health concerns.

In recognition of a national motor vehicle pollution problem, Congress enacted the 1965 Clean Air Act Amendments. This action initiated a federal motor vehicle pollution control program which applied the 1966 California auto emission standards nationally in 1968. This 1965 Act did not produce the results Congress intended. Subsequently, the Clean Air Act Amendments of 1970 were enacted.

The Clean Air Act Amendments of 1970 established a national air quality control program with specified goals, objectives, and time tables. New motor vehicle emission standards were promulgated. The states were required to submit implementation plans that outlined how these national goals and objectives were to be met within the state and within the specified time schedule.

Oregon's Implementation Plan was originally submitted by the Governor in 1972. This was followed in 1973 by the Transportation Control Strategy which specified in greater detail the methodology chosen by the State to control automotive caused air pollutants. The State's plan relied on a combination of control measures at various governmental levels to obtain compliance with the national standards. These control measures included traffic flow improvements in the city, a parking/traffic circulation plan, significant mass transit improvements, an annual motor vehicle emission control inspection program, and the federal new vehicle emission control program. The State's plan, however, did not meet its objective due to delays in the federal new vehicle program and enactment by the State legislature of a biennial inspection program rather than the projected annual program.

The Clean Air Act Amendments of 1977 extended the time schedule for compliance with national ambient air standards to 1982. If a State implements all reasonable control measures -- including a legally enforceable plan for a motor vehicle inspection/maintenance program -- and still is unable to project compliance with the national standards, then an extension of the time schedule until as late as 1987 is possible. States which do not implement a reasonable schedule are liable under the terms of the Act to have sanctions applied. Sanctions can include the denial of federal funds for state air program grants, funds for highway or sewer projects, or the appliction of a moratorium for further industrial growth.

During 1982, the Environmental Quality Commission adopted revised control strategies for both carbon monoxide and ozone. In both of these control plans, continuation of the motor vehicle inspection program was a key element. Other elements of the plan will rely on new transit improvements, and other transportation controls. Additional ozone control is achieved by increased industrial controls on vapor losses. A summary of federal and state motor vehicle emission control legislative and administrative action is contained in Appendix A.

Operation of the Portland Area Vehicle Inspection Program

Since July 1, 1975, the Department of Environmental Quality has operated a motor vehicle emission inspection program within the boundaries of the

Metropolitan Service District which includes the City of Portland. The program boundaries are legislatively set. By State law, vehicles registered within these boundaries must comply with the emission control standards and obtain a certificate of compliance prior to motor vehicle registration renewal.

The certificates are available only from the Department-operated inspection centers. A seven dollar fee ($7), which totally supports the program, is charged for the issuance of a certificate. Table I summarizes the testing activity during 1981 and 1982. Figure 1 shows the testing volume on a monthly basis. Six test centers are currently operated in the Portland metropolitan area. A map of the test area is shown in Figure 2.

The Department's inspection program is part of Oregon's Clean Air Act State Implementation Plan and the revised carbon monoxide and ozone control strategies. The purpose of the inspection program is to reduce carbon monoxide and oxidant pollution through improved and proper vehicle maintenance. The emission reductions obtained help meet ambient air standards.

The general discussion of the State's inspection/maintenance (I/M) program is contained in Appendix B. During this period over 520,000 certificates of compliance were issued. This is a 2.7% increase over the last two years. Inspector staff size during the past two years ranged between 52 and 32. The change in inspector staff size and the large year to year testing volume variations are due to the way biennial vehicle licensing was implemented in 1974. During the previous biennium, staff size ranged between 56 and 30. In addition to the State's inspection program, private motor vehicle fleets of 100 or more vehicles and publicly-owned fleets of 50 or more can qualify for self-inspection status. The 47 licensed fleets account for approximately 2% of the area's motor vehicles.

Changes in the inspection centers are among the operating highlights of the past two years. The Powell Boulevard testing facility was closed due to the widening of Powell Boulevard. A new inspection station in Beaverton, built by the Department, replaces the mobile unit operation inside the drive-in theatre at Tigard. The new inspection station in Gresham replaces the operation in Rockwood.

Training for employees and for the private fleet inspectors has been maintained during these past two years. Additional effort has been applied in the area of educational activities. Extensive modifications have been made in the powertrain demonstration unit. Over 2,000 service technicians and students have attended emission control seminars, where the powertrain demonstration unit was used to show the effects of maintenance and proper repair on emissions and fuel economy. A guide for auto emission equipment identification has been developed, as a result of discussions with representatives of the Oregon Automobile Dealers Association regarding problems that their members were encountering with emission controlled vehicles obtained during trade-ins.

Emission Reduction from Motor Vehicles

The purpose of conducting an inspection/maintenance program is to improve ambient air quality by achieving emission reductions from motor vehicles.

Various studies have been made on the effectiveness of inspection/maintenance programs nationwide, and several different analyses have reviewed the Portland program. In terms of EPA's official review of the Oregon inspection program, it was projected to be sufficient to achieve the EPA minimum requirement of a 25% reduction in both HC and CO emissions by December 31, 1987. These are emissions reductions based upon data obtained from vehicles measured with the federal test procedure. If the program were on an annual rather than a biennial basis, emission reductions would be greater.

The projection of emission reductions are calculated by computer modeling techniques and projected over many years of program operation. Recent updates on these models indicate that carbon monoxide emissions during 1982 were 24% less than if there were no operating program. In 1987, this model projects that carbon monoxide emissions will be 30% less than if there were no operating program.

During these past two years, the EPA ended their Portland Study Test program. During the period from 1977 into 1982, almost 8,500 special emission test sequences were conducted. An initial purpose of the study was to contrast a non-I/M area (Eugene) with an I/M area (Portland). During that portion of the study, mass emission reductions between the two test fleets of 34% carbon monoxide and 24% hydrocarbon were documented. Over a year's period of time, the lower emission rates of Portland-area vehicles compared to the Eugene vehicles were maintained. During these past two years, the EPA Portland Study conducted a variety of special projects and tasks not related to the Portland-Eugene comparison, but to the national emission factors program.

Tailpipe measurements obtained from the area's motor vehicles are a helpful tool used to measure the day-to-day compliance with the inspection program standards. When a vehicle is initially manufactured, it generally complies with the new vehicle standard. As the vehicle ages, emissions increase. This deterioration is due to many factors. Parts within the vehicle wear and lose their effectiveness and require replacement. Some repairs that are made do not adequately address the required maintenance. Often, preventative maintenance practices are ignored leading to rapid degeneration of the vehicle and in some instances, pollution control equipment is removed. The test is an effective tool to identify high emitting vehicles. When repaired, these failed vehicles alone show a median emission reduction of 90% for carbon monoxide and 85% for hydrocarbons. When these failed vehicles are repaired and included back into the fleet population, idle carbon monoxide and hydrocarbon emission reductions of 46% and 41%, respectively, are achieved. The general discussion of emission characterics of cars and trucks is contained in Appendix C.

The above describe four different methods of evaluating the effectiveness of the inspection program. All view the data from different perspectives. Two different computer modeling techniques, a field study of mass emissions between the I/M area and a non-I/M area, and the idle emission measurements from the inspection program all indicate significant benefits from the inspection program.

Reported costs for these repairs remain low. In a recent survey of repair costs, overall average repair costs were reported at $26.92. In reviewing this data, several repair categories were studied. The simple non-complex repair, which can include the quick fix, was the least expensive. Repairs which indicated more complete maintenance were higher. Complex repair, indicative of major parts replacement or engine repair were the highest. Approximately 8% of those responding reported repair costs in excess of $100.

Newer motor vehicles have substantial advances incorporated in their emission control systems. Examples of this type of vehicle are the 1981 and newer vehicles which use on board computers to optimize engine functions. Initial studies on these vehicles indicate that they maintain good emission control. Emission control failure, however, results in levels of emission equal or exceeding those of non-emission controlled vehicles. The inspection program test is also effective in identifying high emissions from these newer vehicles. 1981 and newer vehicles have emission warranty protection if they are less than two years of age, and have less than 24,000 miles. This warranty provides that vehicles which fail a short test, such as the test conducted by the Department, will receive repairs necessary to pass inspection at no cost to the customer.

As new vehicles replace older vehicles, the overall fleet emissions decrease. The current economic conditions have affected motor vehicle sales in the past few years. 1980 through 1982 vehicles represent only about 12% of the total vehicle registrations. Normally, market conditions should have provided for about a 25% penetration of new vehicles. This lower penetration may affect the overall impact of the federal new car program.

Heavy duty gasoline powered trucks are included in the inspection program and amount to 3.5% of the test volume. Emission reductions achieved for this group are being maintained. Heavy duty gasoline trucks tend to operate in congested urban areas, which have the potential for high localized carbon monoxide levels. Maintaining good emission control on this vehicle class contributes to the overall effort and is especially important in the localized areas.

Air Quality

The motor vehicle inspection program is an important element in the Portland area's overall transportation control strategy. Revised ozone and carbon monoxide control strategies were adopted during 1982. In each of these documents the key element was maintaining the current inspection/maintenance program. Carbon monoxide violation days have decreased from 120 days in 1972 to only 2 days in 1982 at the Downtown Continous Air Monitoring Station (CAMS). The relative portion of carbon monoxide emissions attributable to motor vehicles has decreased from 95% to 85% through 1982. It is projected to drop to about 78% by 1987. Compliance with the carbon monoxide standard is still projected for 1985. Early compliance provides a growth cushion for industrial expansion.

A study of Oregon's carbon monoxide air quality by University of Wisconsin statisticians under contract to EPA was completed during the last two years. This study indicated that a significant reduction of up to 15% CO

during calendar years 1975 through 1979 occurred. This reduction was due specifically to the inspection program. The effect of variables such as meteorology and traffic were included in this study.

Ozone concentrations have not shown any consistent trends in the past two years. In 1981, poor meteorology contributed high concentrations of ozone. Hydrocarbons and oxides of nitrogen are precursors to ozone formation. About 90% of the motor vehicle hydrocarbon emissions are from vehicle classes subject to the I/M program. Compliance with the national health standard for ozone is currently projected by December 31, 1987. Without the inspection program in operation, compliance with the ozone standard is projected not to be achieved. A more detailed discussion on air quality is contained in Appendix D.

Population and Traffic Trends

In previous reports, population and traffic discussions were made. Traffic trend analysis has been reviewed and updated, and is presented in more detail in Appendix E. Traffic volumes increased through 1978, then a major decrease occurred in 1979. 1981 traffic is about 4% heavier than in 1978. Bus ridership increased significantly since the early 1970's, but since 1980 has fallen off about 6%. Generally, other traffic patterns have not changed significantly. With the opening of the new Glenn Jackson Bridge, major changes in traffic patterns is expected during 1983.

Status of Other Inspection/Maintenance Programs

Appendix F lists the status of the ongoing and proposed inspection/ maintenance programs in the United States. Currently there are inspection/ maintenance programs operating or planned to start in 28 states. The State of Washington's program started mandatory operation in January, 1982 for the greater Seattle area. In the Washington program, annual inspections at contractor operated stations are required. The inspection fee in Washington is $10. The California Assembly passed legislation providing for mandatory inspection/maintenance in six air quality regions in 1984.

VZ67

TABLE 1

DEPARTMENT OF ENVIRONMENTAL QUALITY
VEHICLE INSPECTION PROGRAM

Activity Summary for 1981 and 1982

	1981	1982	Total	Percent
Total Inspection Tests	339748	523915	863663	
Light Duty Vehicle Inspection Tests	325701	508706	834407	96.5
Heavy Duty Vehicle Inspection Tests	15047	15209	30256	3.5
Total Certificates Issued	202533	321091	523624	
Light Duty Motor Vehicles				
Pass Inspection	196634	314374	510748	61
Fail Carbon Monoxide (CO)	77055	53830	130885	16
Fail Hydrocarbons (HC)	25375	44477	69852	8
Fail Both CO and HC	22001	28499	50500	6
Fail for Either HC or CO at 2500 RPM	33	291	324	-
Fail for Emission Equipment Disconnects	22326	33457	55783	7
Fail Other Causes	18803	33777	52580	6
Pre-catalyst Emission Tests	127382	289317	416699	50
Pass	64631	168196	232827	50
1975 and Newer Tests	197319	219389	416708	50
Pass	132003	146176	278179	67
INSPECTION STATION TEST VOLUME				
Tigard	68635	87366	156001	18
Northwest	33644	52845	86489	10
Rockwood	58511	92714	151225	17
Milwaukie	53077	100493	153570	18
Hillsboro	37795	54092	91887	11
Northeast	55047	97075	152122	18
Beaverton	-	18331	18331	2
Powell	33039	-	33039	4
Gresham	-	21004	21004	2

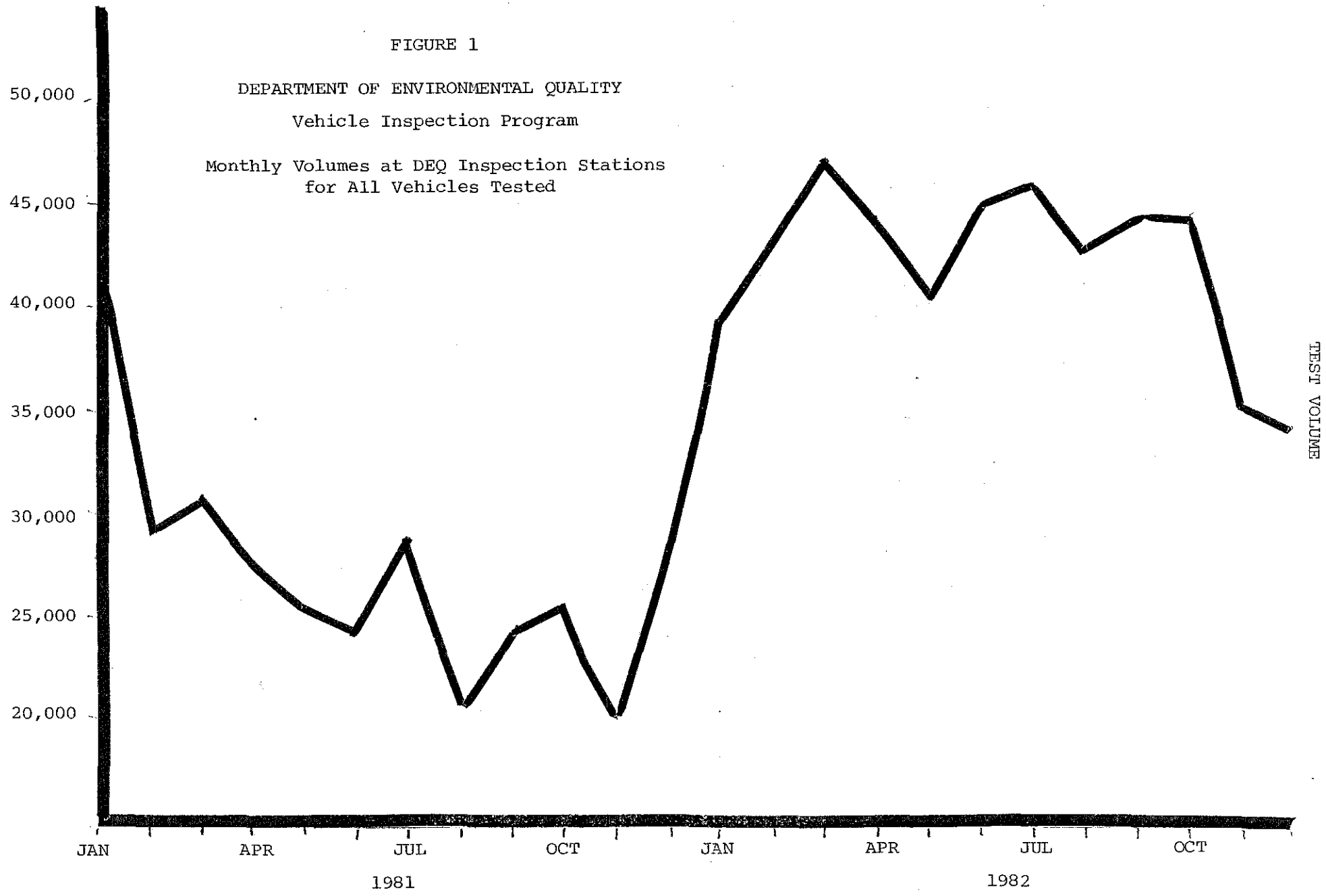
VQLD (8/82)
VA2993

FIGURE 1

DEPARTMENT OF ENVIRONMENTAL QUALITY

Vehicle Inspection Program

Monthly Volumes at DEQ Inspection Stations
for All Vehicles Tested



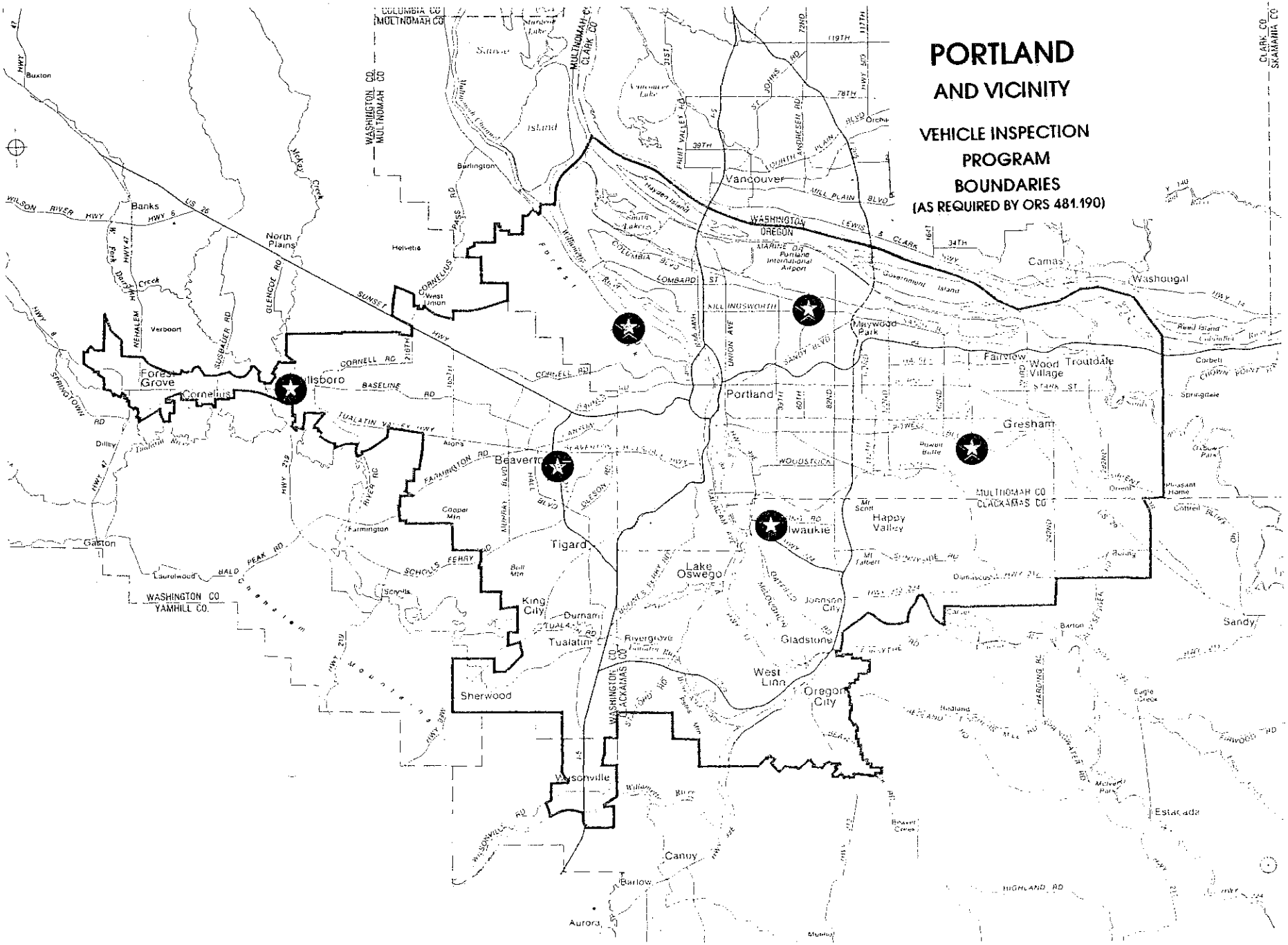

PORTLAND
AND VICINITY
VEHICLE INSPECTION
PROGRAM
BOUNDARIES
(AS REQUIRED BY ORS 481.190)
Vancouver
Camas
Washougal
Portland
Gresham
Beaverton
Tigard
Lake Oswego
Tualatin
Sherwood
West Linn
Oregon City
Wilsonville
Canby
Estacada
Sandy
Forest Grove
Hillsboro
Cornelius
North Plains
Banks
Gaston
Aurora
Barlow
Milwaukie
Happy Valley
Gladstone
Johnson City
King City
Durham
Rivergrove
Wood Village
Fairview
Troutdale
Maywood Park
Multnomah Co
Clackamas Co
Washington Co
Yamhill Co
Columbia Co
Clark Co
Skamania Co

FIGURE 2

APPENDIX A

A SUMMARY OF LEGISLATIVE AND ADMINISTRATIVE ACTIONS

FEDERAL LEGISLATION

CLEAN AIR ACT OF 1965	Title II ("Motor Vehicle Air Pollution Control Act") empowered HEW to establish emission standards for sales in California beginning with model year 1968.
CLEAN AIR ACT OF 1967	Established emission standards for pollutants from new motor vehicles manufactured for sale in remaining 49 states beginning with model year 1968. Emissions regulated by HEW were crankcase emissions (HC), fuel evaporative emission (HC), and exhaust emissions (CO and HC).
CLEAN AIR ACT OF 1970	Directed EPA to manage the national control of air pollution by developing Interstate Air Quality Agencies or Commissions, Air Quality Control Regions, establishing national primary and secondary air quality standards and requiring each state to submit implementation plans. Specifies 90% reduction in exhaust emissions of CO and HC from allowable 1970 levels by the 1975 model year and 90% reduction in NO_x emissions from average measured 1971 levels by the 1976 model year. Required manufacturers to warrant emission control equipment for 5 years or 50,000 miles; subjects certain persons to a civil penalty of not more than $10,000 for tampering.
CLEAN AIR ACT OF 1970, AS AMENDED, JUNE 1974	Required EPA to comply with provisions of Energy Supply and Environmental Coordination Act of 1974.
CLEAN AIR ACT AS AMENDED, AUG. 1977	Required states to rewrite State Implementation Plans. Ties compliance with National Clean Air Goals to federal monies. Modifies compliance schedule for automobile exhaust emissions. Modifies mandated manufacturers emissions performance warranty to 2 years, 24,000 miles. Requires states to implement all practicable control strategies. Allows states, under certain circumstances, to adopt California's emission standards for new cars.
1982	Various drafts of legislation proposed. No changes have been made to date.

SUMMARY
FEDERAL GOVERNMENT AGENCIES' ACTIVITIES

March 30, 1966	The initial Federal motor vehicle emission standards became applicable with the 1968 models. The standards and procedures were similar to those which had been employed by California and required specified control of exhaust hydrocarbons and carbon monoxide from light-duty vehicles and one hundred percent control of crankcase emissions from gasoline-fueled cars, buses, and trucks. The term light-duty vehicle refers to self-propelled vehicles designed for street or highway use, which weigh less than 6,000 pounds and carry no more than twelve passengers.
June 4, 1968	Revised federal standards were published which require more stringent control of hydrocarbons and carbon monoxide for light-duty vehicles, or evaporative emissions from fuel tanks and carburetors of light-duty vehicles, of exhaust hydrocarbons, and carbon monoxide emissions from gasoline-fueled engines for heavy-duty vehicles, and of smoke emissions from diesel engines for heavy-duty vehicles. The fuel evaporative emission standards became fully effective with model year 1971. The other standards applied to 1970 model year vehicles and engines.
July, 1970	The Federal Government adopted a Constant Volume Sample or CVS procedure, during which the vehicle is run through a test cycle designed to simulate urban driving. The characteristics of the standard test drive were based on an elaborate study of Los Angeles traffic patterns in 1965. All emissions from ignition key-on after a 12-hour storage period to the end of the test cycle are collected and analyzed. EPA further refined the test procedure by later including both a cold start (after a 10-minute wait) and the computation of a weight average as a basis for 1975 and 1976 numerical standards. These changes, as well as certain minor modifications in analytical techniques, were intended to make test results more representative of emissions from in-use vehicles.

November 10, 1970	Standards were published applicable to 1972 model light and heavy-duty vehicles and heavy-duty engines.
April 30, 1971	National primary and secondary ambient air quality standards were published in final rulemaking, including standards for hydrocarbons, carbon monoxide and oxides of nitrogen. Also, the State of California was granted the first of several waivers of Federal preemption for motor vehicle emission standards more stringemt than those currently in effect by Federal regulations.
May, 1971	Three contracts were awarded to provide prototype cars for government testing and evaluation under the Federal Clean Car Incentive Program.
June 18, 1971	The Low-Emission Vehicle Certification Board held its initial meeting and approved procedural regulations concerning preferential purchasing of low-emission vehicles for use in government fleets.
June 29, 1971	The first Federal standards were issued requiring control of oxides of nitrogen emissions and prescribing measurement techniques for this pollutant applicable to 1973 model light-duty motor vehicles. Also, standards were promulgated to prescribe the 1975 exhaust hydrocarbon and carbon monoxide emission requirements and 1976 oxides of nitrogen emission requirement applicable to light-duty vehicles. In addition, modifications in test and analytical procedures were included.
December 15, 1972	EPA ordered six motor vehicle manufacturers to eliminate certain emission control system disabling devices from their 1973 automobiles produced after specified dates.
January 10, 1973	Fuel regulations were promlulgated to insure that lead-free gasoline would be available by July 1, 1974 to owners of automobiles equipped with catalytic converters. Also, regulations were promulgated requiring the amount of lead in gasoline to be reduced to an average of 1.25 grams per gallon by January 1, 1978.

April 11, 1973	EPA suspended for 1 year the statutory 1975 model year light-duty vehicle emission standards for hydrocarbons (HC) and carbon monoxide (C)) and established interim standards.
July 20, 1973	EPA suspended for 1 year the statutory 1976 model year emission standards for nitrogen oxides (NO_x) and established interim standards. The 1976 standards are applicable to light-duty vehicles and engines manufactured during or after model year 1976.
August 7, 1973	Regulations for the control of exhaust pollutants from diesel-powered light-duty passenger vehicles to be effective with the 1975 model year were promulgated. These vehicles were now required to meet the same emission standards that were applicable to gasoline-fueled light-duty vehicles. Also, regulations for the control of emissions from light-duty gasoline-fueled trucks, effective with the 1975 model year were promulgated. (A light-duty truck is defined as any motor vehicle weighing 6,000 pounds or less, which is designed primarily for transporting property, or is a derivative of such a vehicle, or has special features enabling off-street operation). This action was in response to the U.S. Court of Appeals' decision regarding emission standards for 1975 model year light-duty vehicles (International Harvester Company vs. Ruckelshaus, D.C. Cir. No. 72-1517, February 10, 1973) in which the court ordered EPA to remove light-duty trucks from the light-duty vehicle category. The new emission standards for light-duty trucks were significantly more stringent than the 1974 standards, but were slightly less stringent than the interim 1975 standards for light-duty vehicles.
January, 1974	EPA published the first of yearly fuel consumption results in a booklet for consumer use.
January 27, 1974	EPA promulgated regulations designed to accomplish three main purposes: (1) to clarify certain requirements pertaining to

	vehicle emissions certification, and provide that certification may be denied (or revoked) on account of a failure to comply with such requirements; (2) to clarify that the Administrator would not certify any vehicle employing Auxiliary Emission Control Devices which have been determined by the Administrator to be "defeat devices;" and (3) to provide that once the regulations are in effect, production vehicles which do not conform in all material respects to the same design specifications that applied to a certification vehicle would not be covered by the Certification of Conformity.
June 25, 1974	Under the Recall Program, EPA tested in-use vehicles and announced that four manufacturers of certain 1972 model year vehicles appeared to be in violation of Federal air pollution emission standards.
September 4, 1974	Regulations were promulgated which provided for the exclusion and exemption from emission standards for certain motor vehicles and motor vehicle engines.
October 15, 1974	EPA and the Federal Energy Administration (FEA) published a notice of Voluntary Fuel Economy Labeling for 1975 model year vehicles.
October 22, 1974	EPA published the final rulemaking concerning the control of emissions from light-duty trucks.
November 18, 1974	EPA promulgated regulations which required manufacturers to certify new motor vehicles designed for initial sale at high altitude to comply with emission standards at those altitudes. These amendments are applicable to light-duty gasoline-fueled vehicles, light-duty diesel vehicles, and light-duty trucks beginning with the 1977 model year.
November 21, 1974	EPA promulgated regulations for the emissions control of 1976 and later model year light-duty diesel powered trucks.
December 23, 1974	EPA promulgated regulations governing the recall of motor vehicles and motor vehicle engines which failed to conform to emission standards for their useful life.

May 30, 1975	EPA promulgated regulations to establish the certification procedures for 1977 model year light-duty diesel powered trucks offered for sale in high altitude regions.
June 5, 1975	EPA promulgated regulations to deny importation, except as a bonded entry, to all vehicles certified with a catalyst which were driven outside the United States, Canada, and Mexico unless the vehicles were included in an internal control program.
February 6, 1976	EPA announced it was considering amendments to increase in the upper weight limit for 1978 and later model year light-duty trucks from 6,000 to 8,500 pounds gross vehicle weight (GVWR). Also proposed was a reduction of the current light-duty truck emission standards of 10% from the present limits, and more than a 67% reduction for vehicles to be added to the class.
May 11, 1976	EPA published proposed revised regulations for 1979 and later model year heavy-duty gasoline-fueled and diesel engines.
July 20, 1976	EPA promulgated regulations establishing a testing program for new automobiles coming off the assembly line in order to insure that these vehicles conform to the pollution control requirements of the Clean Air Act.
November 3, 1976	EPA published an advance notice that it was considering the development and promulgation of regulations to provide general clarification concerning the coverage of Section 207(a) of the Clean Air Act (the emission control production warranty) for light-duty vehicles and light-duty trucks. In EPA's view, this was necessary because the Section 207(a) warranty has not developed into an effective remedy for the consumer, despite its presence since the 1972 model year.
November 10, 1976	EPA promulgated regulations which require manufacturers of 1977 and later model year automobiles and light-duty trucks to label each vehicle with fuel economy information.

November 16, 1976	EPA issued advanced notice of rulemaking regarding the Emission Control warranties for light-duty cars and trucks.
December 28, 1976	EPA issued the revised light-duty truck regulations for 1979 and later model year vehicles. The revisions increase the weight on light-duty trucks from 6,000 to 8,500 lbs gross.
January 5, 1977	EPA issued regulation for the emission certification and test procedures for new motorcycles.
April 20, 1977	EPA issued final rule on the sale of the high altitude vehicles.
May 2, 1977	Proposed EPA estimates of emission reduction achievable through inspection and maintenance of light-duty vehicles, motorcycles, and light-duty trucks were made. (Appendix N)
May 19, 1977	EPA issued final rule on regulation of fuels and fuel additives. The rule clarifies EPA's regulation for phased reduction of lead additives in motor gasoline and does not preempt state or local governments from controlling other aspects of fuel and additivies used in motor gasolines.
May 25, 1977	EPA issued emission control system performance regulations and proposed rule for the short test cycle establishment. Issues the procedures and tests that will invoke Section 207(b) of CAA.
June 6, 1977	EPA issued fuel economy and emission testing procedures for 1978 and later model vehicles. The EPA proposes several changes to its fuel economy labeling regulations.
June 8, 1977	EPA issued certification test results for 1977 model year.
June 28, 1977	Republication of the 1977, 1978, and 1979 model year vehicle certification regulations. One aspect of this publication was the inclusion of the motorcycle test procedure.
August 10, 1977	EPA issued notice of interim final rulemaking on regulations which established evaluation criteria and test procedures for evaluating fuel economy improvement claims for retrofit devices.

August 11, 1977	EPA issued final light-duty vehicle exhaust emission standards for 1978 model year.
August 25, 1977	EPA issued notice of availability that procedures for measuring exhaust sulfuric acid content are available.
August 29, 1977	EPA issued notice to the public that emission control system performance warranty regulation public workshops are available and sets dates. One of the meetings held September 30, was in Portland.
October 21, 1977	EPA issued notice of proposed rulemaking changes to the emission test procedures. Such revisions to the testing procedures would allow for certification testing within any range of engine adjustment available.
January 6, 1978	EPA issued a notice of intent to propose regulation to include new motorcycles and in the selective enforcement auditing procedures.
February 2, 1978	EPA issued rulemaking for the selective enforcement auditing procedures.
June 7, 1978	EPA issued notice of hearing for the MMT waiver request. The outcome of this hearing was that MMT the fuel additive methylcyclopentadienyl manganesetricarbonyl was banned.
June 22, 1978	EPA issued correction notice on a final rule-making early in the year requiring fuel economy labeling procedures for 1979 and later model year vehicles.
July 20, 1978	EPA issued some miscellaneous amendments and corrections regarding the fuel economy regulations.
August 24, 1978	EPA issued a final rule for the evaporated emission regulation for light-duty vehicles and trucks, applicable with the 1981 model year.
August 29, 1978	EPA issued notice of proposed rulemaking which announces a set of regulations for testing fuels and fuel additives.

September 5, 1978	EPA issued the final rule on the fuel economy calculation and test procedures for 1979 and later model light trucks.
January 29, 1979	EPA issued a change in the ambient oxidant health standard from 0.08 ppm to 0.12 ppm.
January 21, 1980	EPA issued final rule increasing the stringency of hydrocarbon and carbon monoxide emissions limits and revising the certification test procedures for heavy-duty gasoline-fueled and diesel engines.
March 3, 1980	EPA issued final rule extending the privilege of making engine modifications for research purposes to individuals other than vehicle manufacturers.
March 5, 1980	EPA issued final rule establishing a particulate standard for light duty vehicles and light duty trucks. Effective date set for 1982 model year. 0.60 grams per mile established as first standard.
April 17, 1980	EPA issued notice of decision denying fuel additive waiver request by Beker Industries, Inc. for use of 0-15 percent methanol in unleaded gasoline.
June 22, 1980	EPA issued final rule establishing emissions "short tests" which will be used to enforce the pollution control equipment warranty for 1981 and newer vehicles. On a two speed idle test, if emissions exceeded 1 percent CO or 200 ppm HC, a vehicle owner will be entitled to pollution control equipment repairs at the manufacturer's expense during the effective time of the warranty.
August 13, 1980	EPA issued decision to deny a fuel additive waiver request by Conservation Consultants of New England Inc. for use of specific methanol/ethanol mixtures at 10 percent in unleaded gasoline.
August 27, 1980	EPA issued results of certification tests for 1980 new motor vehicles.
September 25, 1980	EPA issued the final gaseous emissions regulations for 1984 and later model year light-duty trucks.

October 8, 1980	EPA issued the final high altitude emissions standards for 1982 and 1983 model year light-duty motor vehicles.
November 25, 1980	EPA issued the final regulations governing aftermarket parts certification. Under these regulations aftermarket manufacturers may serve notice that their part is equivalent to the original equipment part with respect to its impact on emissions.
January 6, 1981	EPA established carbon monoxide standards for 1982, granting the CO waiver to several manufacturers.
January 7, 1981	EPA proposes standards for particulate emissions for heavy-duty diesel engines.
January 27, 1981	EPA proposes regulations that would define the prohibition against emission equipment tampering. These draft regulations would clarify policy for manufacturers, importers, dealers, fleet operations, independent repair shops, consumers, and others.
March 9, 1981	Additional CO emission waiver application notice from various manufacturers.
March 12, 1981	EPA granted nitrogen oxide waiver for Volkswagen diesel light-duty vehicles and others.
April 7 1981	EPA published procedures for CO emission waivers for 1982 model year.
April 15, 1981	EPA denied Volvo's request to appeal California's enforcement of different NO_x emission values.
April 23, 1981	EPA issued final rule for 1982 and 1983 high altitude (above 4000 ft) emission compliance procedures.
May 12, 1981	EPA granted a waiver of federal preemption to California for exhaust emission standards, test procedures, and other procedural allowances.

May 26, 1981	EPA issued final rule for 1982 light-duty vehicles which have received a CO waiver.
July 20, 1981	EPA issued final rule on nitrogen oxides for light-duty diesel vehicles for 1982 model year.
August 18, 1981	1981 Motor Vehicle Emission Certification Test results available.
October 13, 1981	Revisions to certification procedures for motor vehicles and motor vehicle engines to reduce cost and administrative burden.
November 18, 1981	General Motors applied for retroactive waiver for the variable displacement Cadillac engine.
December 8, 1981	EPA approved Oregon SIP for Total Suspended Particulate (TSP), ozone, reivisions to VIP program, and boundry of Portland's secondary TSP area.
December 23, 1981	Notice of proposed rulemaking for establishing procedures for non-methane hydrocarbon standards for motor vehicles.
January 13, 1982	Notice of proposed rulemaking to establish revised regulations for 1984 and later model year light-duty trucks and heavy-duty engines.
February 16, 1982	Established the NO_x emission standards for 1981 through 1984 model year light-duty vehicles belonging to 18 diesel engine families which have received waivers.
February 22, 1982	EPA proposed rule to consider relaxation of the 0.5 gpg lead content for motor gasoline.
April 15, 1982	EPA issued final regulations to establish higher carbon monoxide standards for vehicles for 1982 model year.
June 11, 1982	EPA published emission certification test results for 1982 model year.

August 27, 1982	EPA withdrew proposed regulation which would have relaxed the 0.5 gpg lead standard for gasoline. The agency proposed initially to allow a higher average for some refiners.
October 6, 1982	EPA issued final rule, grants CO emission waiver for 1981 and 1982 model year vehicles. Eleven different manufacturers received waivers from the 3.4 gpm standard.
October 26, 1982	EPA issued proposed amendments to high altitude.
October 28, 1982	EPA issued a rule establishing interim NO_x emission standards on light duty diesel engines for the 1984 model year.
October 29, 1982	EPA issued final rule concerning the lead content of gasoline, with new definitions for small refiners.
November 2, 1982	EPA issued final rule amending certification procedures. Revisions reduce cost and burden for EPA and manufacturers.
November 10, 1982	EPA issued notice of proposed rule making which would exclude areas in some states, including Oregon, currently designated as "high-altitude" areas.
December 1, 1982	EPA issued a notice of proposed rule making which, if adopted, would delay the particulate standard of 0.20 gpm for diesel passenger cars and 0.26 gpm for diesel light trucks for two years. The scheduled date would shift from 1985 too 1987.
December 20, 1982	EPA issued a notice of public hearing on the proposed rule which would revise the designation of high-altitude locations to exclude high-altitude countries which do not have an air pollution problem.

SUMMARY
OREGON LEGISLATIVE ACTION

1969	Adopted legislation which prohibited the removal or rendering inoperative of factory-installed pollution control equipment.
1971	Legislation was adopted which directed the Department of Environmental Quality to develop a periodic Motor Vehicle Emission Inspection Program.
1973	Assembly reviewed Motor Vehicle Emission Control Inspection proposals, but adjourned without providing budget for a mandatory program. Emergency Board authorized the Department to implement a voluntary pilot program using $1,000,000 in funds appropriated during the regular session.
1974	During the Special Session, action was taken to provide for an increase of inspection fees to $5.00; restricted the program to within the Metropolitan Service District; required annual emission control inspection; and set the start-up date as July 1, 1975.
1975	Legislative Assembly again reviewed the implementation of the program and at the end of the session changed the laws so that an inspection would be required only every other year with vehicle license renewal as of July 1, 1975. Emergency Board approved a revised budget reflecting the reduced fee income resulting from bi-annual inspection of vehicles.
1976	Speaker of House of Representatives assigned a five member task force on Auto Emission Control to review the program and forward recommendations.
1977	Legislation was adopted requiring publicly owned vehicles to comply with emission inspection regulations; exempted "fix load" vehicles and vehicles operating in interstate commerce from inspection requirements; direc-

	ted EQC to determine most cost effective method of conducting inspection; and enacted legislation prohibiting visible emissions from motor vehicles operating on the public roads, setting limitations and establishing penalty.
1979	Legislation was adopted that amended ORS 481.190 updating the DEQ vehicle inspection boundaries to be identical with the current boundaries of the Metropolitan Service District.
	Legislation amended ORS 483.825 to specifically allow the use of turbochargers on motor vehicles provided their installation does not significantly affect the control of air pollution.
1981	Legislation adopted amends ORS 468.405 to provide that the certification fee be based upon cost of administering the program. This fee not to exceed $10.

SUMMARY
ENVIRONMENTAL QUALITY COMMISSION ACTION

March 30, 1970	Adopted motor vehicle visible emission regulation.
October 25, 1972	Approved the projected inspection/maintenance program after reviewing a comprehensive staff report.
March 3, 1973	Held public hearings to designate those Oregon counties in which the vehicle inspection program would be instituted.
March 21, 1973	Designated Clackamas, Columbia, Multnomah and Washington Counties and set an effective starting date for the program of January 1, 1974.
May 29, 1973	Adopted the Portland Transportation Control Strategy as an Amendment to Oregon's Implementation Plan (Clean Air Act).
November 26, 1973	Commission authorized the deletion of Columbia County from the inspection program requirements and to extend the effective date of the program to May 31, 1974.
January 25, 1974	Adopted criteria for Certification of Motor Vehicle Control Systems which precluded the use of retrofit devices.
December 20, 1974	Gave authorization for Public Hearings to adopt Motor Vehicle Inspection Program Criteria.
March 28, 1975	Adopted proposed Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards.
June 25, 1976	Adopted Emergency Rules Extending Enforcement Tolerance for the Motor Vehicle Inspection Program through June 30, 1977.
August 27, 1976	Repealed the Emergency Rules adopted June 25, 1976 and adopted Revisions to OAR Chapter 340, Sections 24-320 through 24-330 pertaining to Motor Vehicle Inspection Standards.

January 14, 1977	Transmitted report to Legislature on Motor Vehicle Emission Inspection Program.
February 25, 1977	Authorization for Public Hearing for proposed revisions to heavy-duty truck inspection criteria.
April 1, 1977	Authorization for Public Hearing for proposed revisions to light-duty inspection criteria.
May 27, 1977	Adopted inspection criteria for heavy-duty trucks.
June 24, 1977	Adopted inspection criteria revisions for light-duty vehicles.
November 18, 1978	Authorized Public Hearing for testing procedures for publicly owned vehicles.
February 24, 1978	Adopted procedures for testing publicly owned vehicles.
April 28, 1978	Authorized Public Hearing for revisions to inspection criteria.
June 30, 1978	Adopted revisions to motor vehicle inspection criteria.
September 22, 1978	Conducted Public Hearing and adopted minor revision to inspection criteria.
September 22, 1978	Received status report on contractor vs. state operation of inspection program and issued finding.
February 23, 1979	Accepted "Report on Motor Vehicle Emission Inspection 1977-1978".
April 27, 1979	Gave authorization for Public Hearing to update vehicle emission standards for 1979 model year vehicles and others.
June 29, 1979	Adopted updates to vehicle emissions standards for 1979 model year vehicles and others, also adopted cewrtain clarifications in the tampering portion of the inspection.
November 16, 1979	Gave authorization for Public Hearing to make housekeeping regulation changes and regulations to clarify the allowable engine changes.

January 18, 1980	Adopted housekeeping regulations and regulations to clarify allowable engine changes.
April 18, 1980	Gave authorization for Public Hearing to update vehicle emission standards for 1980 model year vehicles and others.
June 20, 1980	Adopted update to vehicle emission standards for 1980 model year vehicles and others.
April 24, 1981	Gave authorization for Public Hearing to update emission standards for 1981 model year vehicles, change standards format, and other changes.
June 5, 1981	Gave authorization for Public Hearing to consider fee increase for inspection certification.
July 17, 1981	Adopted revised and streamlined inspection program standards, revised test procedure for 1981 and newer vehicles to provide emission warranty protection, definition changes, and established new fee structure for certification.
April 16, 1982	Gave authorization to hold a Public Hearing regarding changes to definitions, test procedure and other items.
July 16, 1982	Adopted housekeeping changes to procedures, definitions, and clarified engine change policy.

Appendix B

Inspection Program Operations

ORS 481.190 provides that motor vehicles registered within the boundaries of the Metropolitan Service District, which includes the City of Portland, comply with the emission criteria established by the Environmental Quality Commission. Compliance is required in order to register or reregister a motor vehicle. Passenger cars and light duty trucks, which constitute the bulk of the inspection workload, are on a biennial registration renewal system and are tested every two years. Heavy duty trucks and government owned vehicles are tested on an annual basis. Exempt vehicles include farm vehicles, first response emergency vehicles, and vehicles licensed under reciprocity agreements.

The primary goal of the inspection program is to reduce air pollution from the area's motor vehicles by promoting proper maintenance. To efficiently do this, an acceptable level of service for the public at the inspection facilities is required. Service levels are maintained by providing sufficient and convenient facilities, by maintaining reasonable customer waiting time, by maintaining a trained and helpful staff, and by maintaining the test equipment in good condition. The Department of Environmental Quality currently operates six motor vehicle inspection centers in the greater Portland metropolitan area.

The direct service at the inspection station is supported by administrative and engineering efforts. Administrative and engineering staff work on a variety of related tasks and projects aimed at providing efficient program operations and educational and support efforts for the automotive service industry. Efforts in these areas are important, since individuals who repair motor vehicles, must be aware of what is expected and why.

With the biennial licensing cycle for passenger car and light truck registrations, the emission inspections are not spread evenly throughout the two years. This has been a problem in the past years but an evening or dampening out of the test load peaks from year to year has been occurring. The year to year variations now are within 15% of each other. Figure B-1 shows the plot of monthly testing activities during 1981 and 1982. Figure B-2 shows daily testing activity for 1982. During the first six months of 1981, testing volume remained at about the anticipated level at our stations. In late 1981, testing volume began to increase as expected and vacant inspector positions were filled. Testing hours through this two year period was 10 a.m. to 6 p.m. Tuesday through Saturday. During this period, approximately 850,00 light-duty vehicle inspections were conducted at the Department's facilities and over 500,000 certificates of compliance were issued. An activity summary is shown in Table B-1.

Fleet Operations

To compliment the day-to-day inspection activities, the Department also manages a licensed fleet inspection program. There are currently 47

licensed fleet inspection operations. To qualify as a fleet, a company or governmental agency must have a fleet of 100 vehicles (50 for a government agency) and have an approved exhaust gas analyzer. Fleet employes must complete a Department training session to be licensed as a fleet inspector. During 1981-82, licensed fleets issued approximately 10,000 certificates of compliance. This represents about 2% of the total certificates of compliance issued during the biennium. A listing of licensed fleets is shown in Table B-2.

Facilities Operation

All Department test facilities operate on a Tuesday through Saturday, 10:00 a.m. to 6:00 p.m. schedule.

The program's first specifically designed inspection center was built on Highway Division property in the Mt. Hood freeway corridor. This station opened in March of 1975. This test station repeatedly had the highest testing volume of all of the locations. However, in June 1981, the station was closed and demolished, the result of the widening of Powell Boulevard between S.E. 82nd and 92nd Avenue in Portland. Because of budgetary restraints, a replacement location in the Southeast Portland area has not been acquired.

Finding property owners who have vacant facilities that were accessible and suitable, or could be modified to program's needs, has been a major obstacle. One such leased facility, located at 18345 S.E. Stark Street in Portland, has been in operation since November 1975. This testing center served the eastern Multnomah County and northern Clackamas County areas of the inspection program. During the past year-and-a-half, it has absorbed the majority of the additional testing workload created by the elimination of the Powell Boulevard testing center.

At the beginning of 1982, the lessor of the Stark Street facility notified program staff that he wished to change its use at the end of the State's lease agreement in June 1982. The lessor, however, proposed a suitable replacement site with a build-to-suit four lane testing facility at 1100 S.W. Highland Avenue in Gresham. As part of that proposal, it was agreed that the existing location would continue in operation until the completion of the new facility. Construction began in August and was sufficiently complete to allow testing to start October 12, 1982. This site is approximately one-and-a-half miles south of the Stark Street location and has proven to be easily accessible to area motorists.

In September 1977, a mobile unit was permanently assigned inside the Family Drive-In Theater, Tigard. This arrangement was implemented through a short term land-use only lease agreement with the theater's owners. It soon became evident that an acceptable level of service could not regularly be provided. Consequently, the Department continued to seek a suitable site.

Discussions with City of Beaverton personnel occurred in late 1980 and early 1981, regarding a vacant site in an urban renewal area. Authorization for the Department to initiate planning to construct a building was obtained. An architect was hired. Because of various budget impasses and economic problems, the discussion, planning, and reviewing stages extended for a long period of time. Plans for the testing center in

Beaverton were reviewed and approved by the Legislative Emergency Board. They agreed that adequate service was not being provided to the residents of eastern Washington County area. A redevelopment agreement with the Beaverton Urban Renewal Agency allowed the Department to lease that parcel of land for ten years at $1.00 per year.

Because of the location of the property adjacent to Highway 217, and the need to provide adequate ventilation, the architect selected an unusual and striking building design. The building contractor, selected through the bidding process conducted by the Department of General Services, began construction in January 1982. The bid, at $174,000.00, was paid from monies accrued from the inspection certification fees. The new center, located at 11170 S.W. 5th, in Beaverton, opened three testing lanes on October 26, 1982.

The remaining inspection stations have not changed. Those facilities are located at 6737 N.E. Portland Highway in N.E. Portland, 5885 N.W. St. Helens Road in N.W. Portland, 3136 S.E. Harrison Street in Milwaukie, and 395 S.W. Baseline Road in Hillsboro.

The storage and maintenance of the program's vehicles and equipment (mobile testing units, maintenance van, demonstration unit and support equipment, and testing equipment) has been, at best, an awkward situation. For the past several years, this was undertaken at the N.W. St. Helens Road testing station. However, this created many operational problems. A major drawback was the lack of usable space suitable for conducting preventative maintenance or repairs on the testing equipment plus the lack of storage for the tools and supplies to conduct the general maintenance operations.

In September 1981, Portland Public School District was contacted regarding the feasibility of leasing the vacant Washington/Monroe High School auto shop building. Their staff was receptive to the conceptual idea and agreed to bring it before the Portland School District Board for review. The program's interest in this particular site was contingent upon City of Portland approval of the location. After receiving the necessary approvals from various agencies, committees and associations, the Department occupied the former high school building, located at 714 S.E. 12th, in August 1982. The use of this facility includes program staff office space, program training area, equipment and facilities maintenance center, and an engineering and diagnostic evaluation center.

Employe Training

Because of the somewhat cyclic test volume, due largely to the implementation of the biennial registrations, some of the inspection program staff are hired on a seasonal and part time basis. During this past 2 years, inspector staff size ranged from 52 to 32. As a result, training of inspection program personnel is an ongoing task. Training provides these new inspectors with the necessary background of the proper inspection skills. New program personnel receive forty hours of classroom training, followed by a month of on-the-job training. Similar types of training are provided for the inspectors of the licensed fleets. All inspectors, whether they be employed by the Department or licensed fleet, must pass a written examination. Passage of an annual written test is a requirement for continued employment as a Department vehicle inspector.

Calibration and Maintenance

To assure correct reading of the vehicle's exhaust, a rigorous program of equipment calibration is maintained. The Department's exhaust gas analyzers are calibrated with a gas of known concentration every three hours during the day. A quick electronic calibration is done hourly to check the analyzer drift. The calibration gas used at the stations is checked with a "primary standard" gas. In turn, the "primary standard" gas is routinely compared with gas bottles whose concentrations are named by an independent gas manufacturer.

The exhaust gas analyzers used in the program were manufactured and purchased in 1974. To maintain the accuracies required from these analyzers, both for various changing operational needs and because of the equipment age, additional maintenance procedures have been implemented during this past two year period. Quality control has been tightened. Preventative maintenance has been increased. Equipment repair response time has decreased. This effort necessitated the purchase of electronic testing equipment and the reallocation of staff resources.

Review of Operating Rules and Procedures

The inspection program standards and procedures are reviewed every year. This process, including public hearings, follows the administrative rule changing procedures. The 1981 hearing streamlined the standard format and incorporated a test procedure which provides emission warranty protection for some motorists. This warranty applies to 1981 and newer vehicles which are less than 2 years old or have accumulated less than 24,000 miles. The 1981 Legislature raised the limit on the certification fee from $5 to $10. This change was required because of inflationary pressures and increasing operating costs and expenses. Following public hearing, the fee structure was revised. On August 1, 1981 the certification fee was raised to $7.

Educational Activities

Powertrain Demonstration Unit - A powertrain demonstration unit has been developed to demonstrate the effects of improper maintenance, misadjustments, and tampering upon vehicle emission characteristics, driveability, and fuel economy. A damaged 1980 Dodge pickup truck was donated to the program by Chrysler Corporation. Extensive modifications were made by the staff and the vehicle was first demonstrated in January 1981. Funding for this project was provided by EPA to augment the Jackson County Emission Systems Diagnosis Course that was being conducted at the time.

During these past two years, additional modifications to the powertrain demonstration unit have been made and necessary support equipment obtained. These have been funded by EPA Supplemental 105 grant funds. The vehicle has been equipped with a dynamometer power absorption unit so that driving conditions can be simulated. Various engine loads can be applied and effects on emissions and fuel economy can be demonstrated. Additional modifications and improvements are planned. During the past two years the unit has been shown to over 50 interested groups throughout the state, totalling over 2,000 individuals. An artist's rendition of the vehicle is shown in Figure B-3.

Emission Control Systems Application Guide - An additional portion of the 105 Supplemental funds were designated for a pollution control equipment guide. This guide was an outgrowth of discussions with representatives of the Oregon Automobile Dealers Association (OADA) regarding problems their members were encountering with emission controlled vehicles obtained during trade-in.

Specifically, dealership used car appraisers were having difficulty determining whether or not a trade-in vehicle's emission control equipment was partially or entirely missing. This problem has come back to haunt several dealers throughout the state, especially, if at a later date the vehicle is required to go through the inspection program. Under Oregon law, vehicles must retain all elements of the factory installed motor vehicles pollution control system. Under the program operating rules, 1970 and newer vehicles are visually inspected for the equipment in order to meet the emission control test criteria. Additionally, while no specific statute exists, ORS 483.825 has been interpreted by the Department of Justice, Consumer Protection Division attorneys to prohibit any dealer from selling, exchanging, leasing or offering for sale any motor vehicle which operates without the required air pollution control systems.

The OADA suggested the possibility that the Vehicle Inspection Program provide, specific emission control application data in a small book format for quick reference by dealer personnel. The majority of this information had already been compiled for program use. Reformating and updating the emission equipment information resulted in a useful guide. The scope of this booklet makes it useful for inspection program inspectors, field/enforcement personnel, used vehicle appraisers, auto service

technicians, parts counter personnel, and automotive technology or industrial mechanic instructors.

Over 2,000 copies have been published in two initial printings and a third printing is underway. Fifteen seminars for OADA members were scheduled throughout the state. These seminars were attended by employees of over 50 dealerships. This has resulted in requests for additional copies of the pamphlet from both the Oregon Automobile Dealers Association and the Oregon Independent Automobile Dealers Association. Also as a result of these efforts, additional distribution of booklets was made. Booklets were distributed through a Department of Education instructor network. Booklets were distributed at a Portland Police Department Task Force Seminar. Booklets have been distributed to other state inspection personnel and to EPA personnel.

The United States Environmental Protection Agency, in conjunction with the National Center for Vehicle Emission Control, is planning to publish a slightly revised edition of the pamphlet for national distribution.

Idle Adjustment Specification Manual - As a part of the service industry training effort, a contract was received from the National Center for Vehicle Emission Control and Safety. The purpose of the project was to establish a manual containing the various idle adjustment specifications of late model motor vehicles sold in this country. This manual provides reference material to those engaged in the automotive repair business via a single publication. Included are engine size applications, timing specifications, throttle speed and idle mixture adjustments. This data was gathered for all 1972 through 1980 domestic and imported passenger vehicles and light-duty trucks, and then forwarded to the National Center which has published and distributed these booklets throughout the nation.

Miscellaneous Projects

During these past two years, several other special projects and activities have been conducted. Program staff arranged for the loan of two state-of-the-art exhaust gas analyzers that are used in an inspection program in another state. Tests were conducted on these units in order to determine the technological improvements that had been made. This is described in the program Report 81-01. Consequently, it was decided that improvements in maintenance procedures would provide better short term utilization of the program's existing equipment.

As an adjunct to the powertrain demonstration unit assembly, an operating manual was prepared, Report 81-02. The program staff was approached by an inventor of a carburetion modification device. Report 81-03 describes how emissions increased with the device in place. No effect on fuel economy could be attributed to the device. The program staff was approached by a local parts distributor with a request to test an aftermarket turbocharger kit. Report 81-04 describes the test results, including increased nitrogen oxide (NO_x) emissions. The program staff was again approached by a local parts distributor with a request to test an aftermarket carburetor

modification. The results listed in Report 82-01 indicated that there were no adverse effects by using this limited application product.

The program staff worked on another turbocharger evaluation project. In this instance, a local resident was importing a turbocharged European configuration vehicle into the United States. Modifications made were not sufficient to obtain adequate performance or emission control, and the project died. Program staff initiated a trial program to monitor lead contamination of fuel. A test procedure for a quick field check for lead content of gasoline was obtained. A small program was conducted, and procedures for fuel handling was also developed.

TABLE B-1

DEPARTMENT OF ENVIRONMENTAL QUALITY
VEHICLE INSPECTION PROGRAM

Activity Summary for 1981 and 1982

	1981	1982	Total	Percent
Total Inspection Tests	339748	523915	863663	
Light Duty Vehicle Inspection Tests	325701	508706	834407	96.5
Heavy Duty Vehicle Inspection Tests	15047	15209	30256	3.5
Total Certificates Issued	202533	321091	523624	
Light Duty Motor Vehicles				
Pass Inspection	196634	314374	510748	61
Fail Carbon Monoxide (CO)	77055	53830	130885	16
Fail Hydrocarbons (HC)	25375	44477	69852	8
Fail Both CO and HC	22001	28499	50500	6
Fail for Either HC or CO at 2500 RPM	33	291	324	-
Fail for Emission Equipment Disconnects	22326	33457	55783	7
Fail Other Causes	18803	33777	52580	6
Pre-catalyst Emission Tests	127382	289317	416699	50
Pass	64631	168196	232827	50
1975 and Newer Tests	197319	219389	416708	50
Pass	132003	146176	278179	67
INSPECTION STATION TEST VOLUME				
Tigard	68635	87366	156001	18
Northwest	33644	52845	86489	10
Rockwood	58511	92714	151225	17
Milwaukie	53077	100493	153570	18
Hillsboro	37795	54092	91887	11
Northeast	55047	97075	152122	18
Beaverton	-	18331	18331	2
Powell	33039	-	33039	4
Gresham	-	21004	21004	2

VQLD (8/82)
VA2993

TABLE B-2

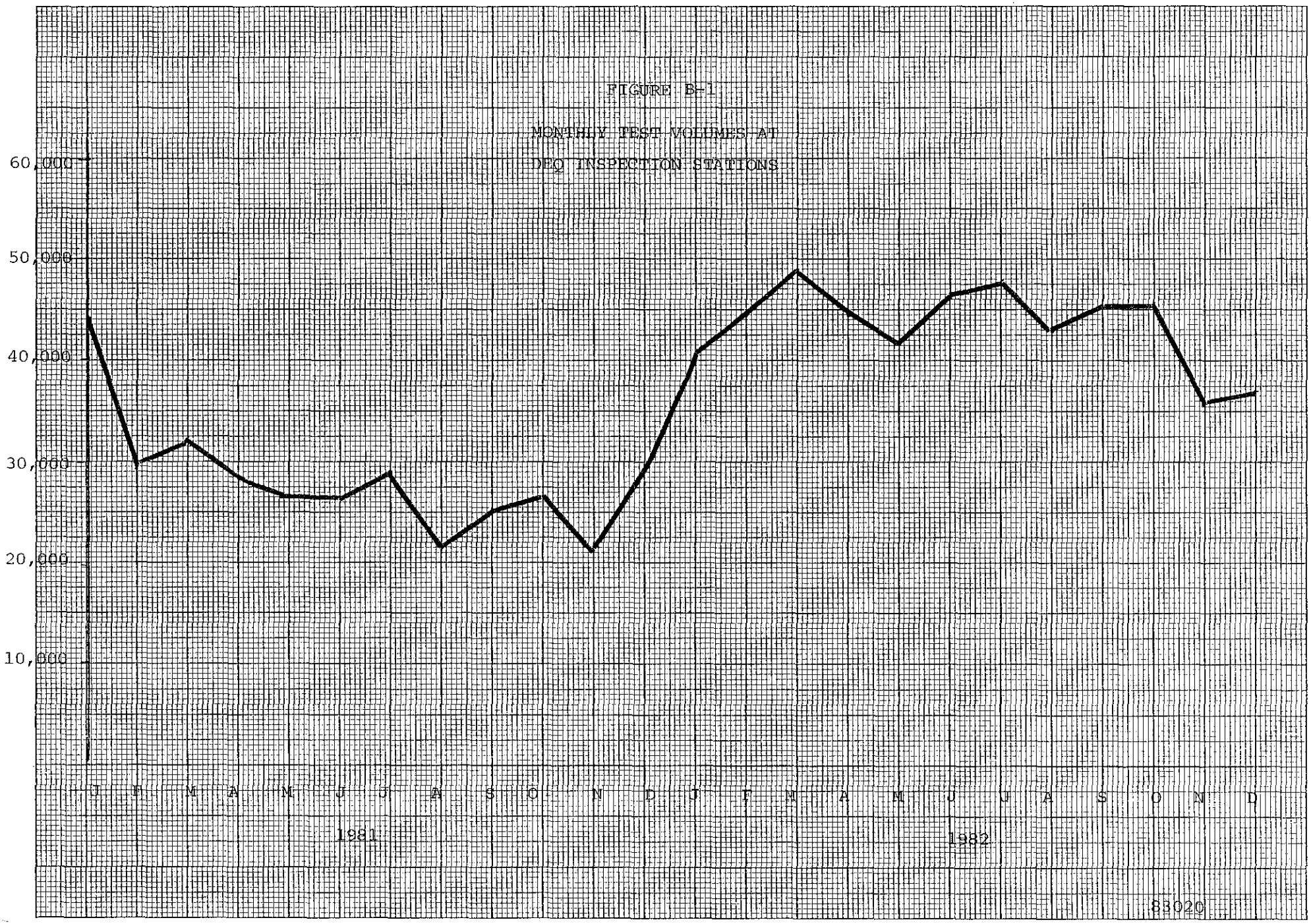
DEPARTMENT OF ENVIRONMENTAL QUALITY
Vehile Inspection Program

Licensed Fleet Operations
as of December 31, 1982

Fleet No.	Fleet
001	Oregon State Motor Pool
002	Mobile Chef, Inc.
003	City of Portland
004	U.S. Postal Service
005	Oregon Highway Division
006	Washington County Public Works
007	General Telephone Co.
008	G.S.A., U.S. Government
009	N.W. Natural Gas Co.
010	Portland General Electric Co.
011	Pacific N.W. Bell Telephone Co.
012	Clackamas County
013	Multnomah County
014	United Parcel Service
015	Port of Portland
016	Portland Public Schools
017	Pacific Power & Light Co.
018	Beaverton School District #48
019	Sunset Fuel
020	Carnation Company
021	ARA Transportation
022	City of West Linn
023	Power Rents
024	Tri-Met Transportation
025	N.W. Marine Iron Works
026	City of Lake Oswego
027	North Clackamas School District #12
028	Washington County Fire District #1
029	Lake Oswego School District #7
030	Consolidated Freightways
031	City of Oregon City
032	Oregon City School District #62
033	City of Milwaukie
034	Portland Bottling Company
035	Unified Sewerage Agency
036	Parkrose School District
037	Tektronix, Inc.
038	David Douglas School District
039	City of Forest Grove
040	U.S. National Bank
041	Reynolds School District #7
042	City of Beaverton
043	Hillsboro School District
044	Oregon Air National Guard
045	Tualatin Fire District
046	City of Hillsboro
047	City of Tualatin

FIGURE B-1

MONTHLY TEST VOLUMES AT
DEQ INSPECTION STATIONS



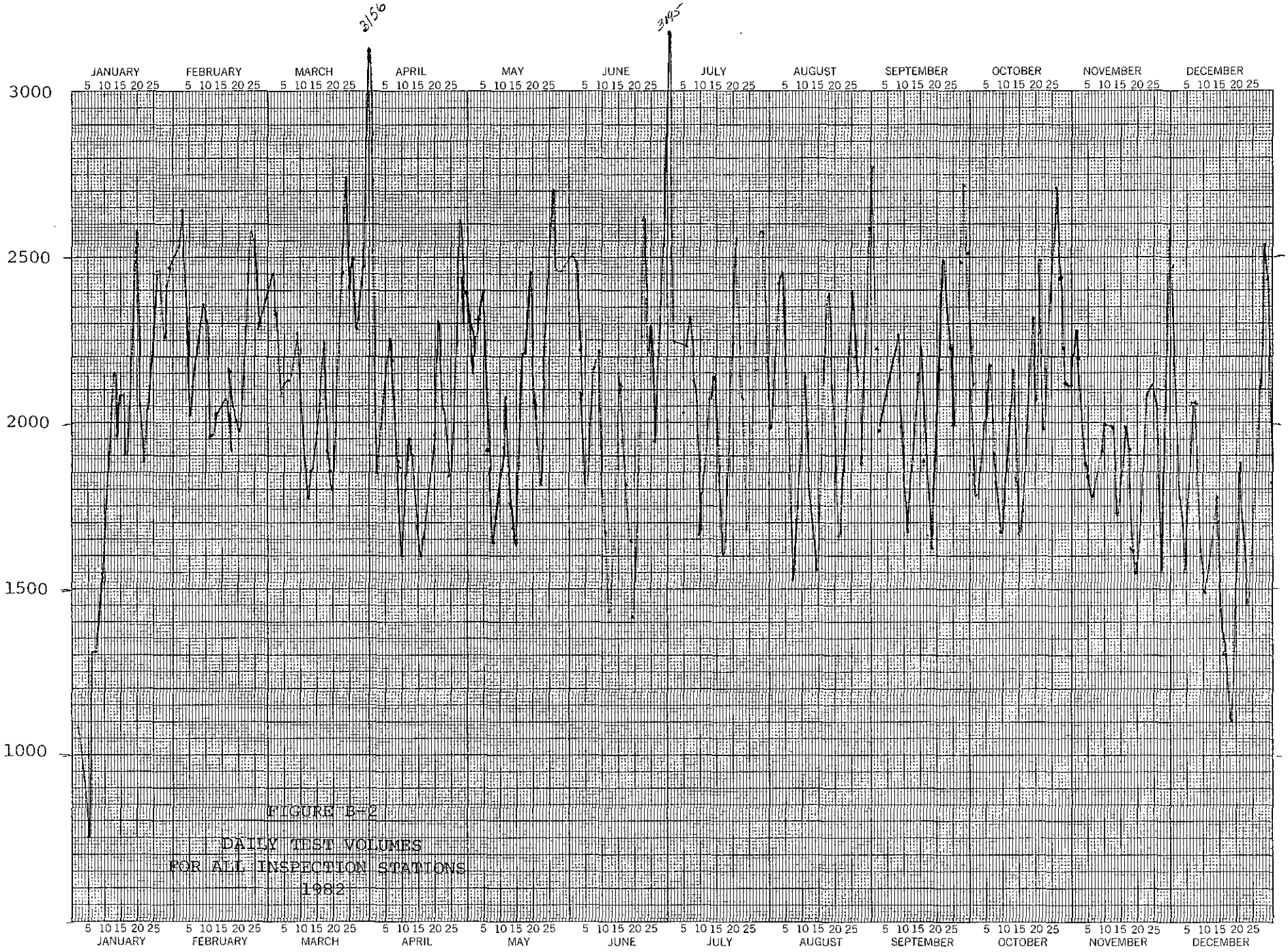
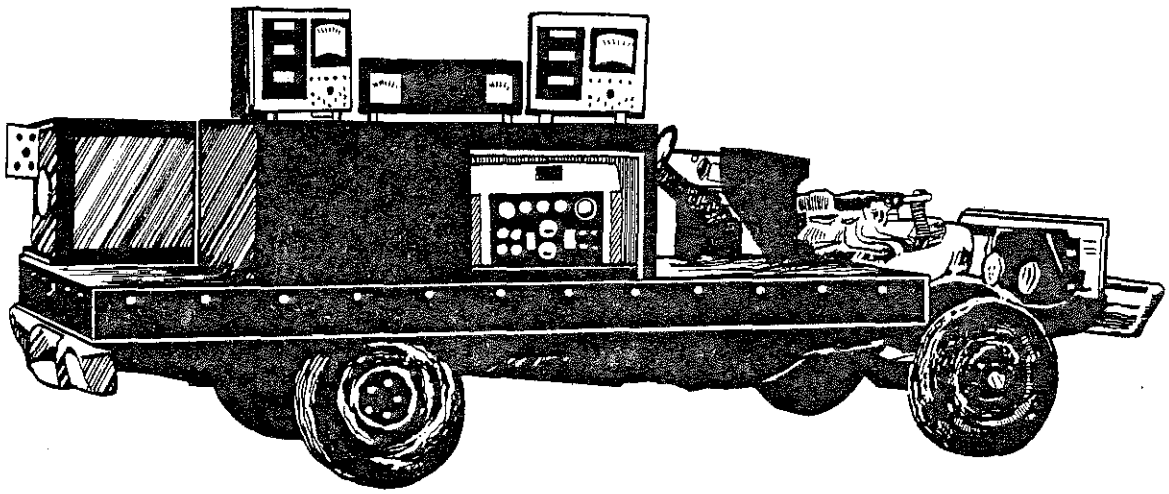


FIGURE E-2

DAILY TEST VOLUMES
FOR ALL INSPECTION STATIONS
1982

Figure B-3

Powertrain Demonstration Unit



The power-train unit was built from a 1980 Dodge pickup donated by Chrysler Corporation. The pickup had suffered body damage during shipping. Modifications made to the vehicle by the DEQ staff were funded by the U.S. Environmental Protection Agency.

The unit measures engine emissions and fuel mileage as various engine adjustments are made from the control panel.

What engine adjustments can be made?

- *Adjust ignition timing*
- *Adjust carburetor air/fuel ratio*
- *Introduce intake manifold leak*
- *Short out a spark plug*
- *Deactivate the exhaust gas recirculation system*
- *Deactivate the air injection reactor pump*
- *Change engine speed*
- *Apply load to the engine*
- *Deactivate the idle solenoid*

The power-train unit is used to demonstrate the effect of proper engine maintenance on reducing exhaust emissions and increasing fuel mileage. These demonstrations are made to auto repair technicians, community college and high school automotive students and other interested public groups.

Presentations may be made upon request.

Appendix C

Emission Characteristics of Cars and Trucks

The purpose of an inspection/maintenance program is to reduce the amount of air pollution contributed by motor vehicles. The Department of Environmental Quality operates the motor vehicle emission inspection program. By identifying vehicles with high emissions, and obtaining emission reductions from repaired vehicles, the overall vehicle fleet emissions are reduced. This contributes to the goal of achieving national ambient health standards for the area. Motor vehicles are responsible for the generation of over 85% of the total carbon monoxide and 47% of the total hydrocarbons. State statutes require that vehicles registered within the boundaries of the Metropolitan Service District, which includes the City of Portland, must pass the emission inspection in order to obtain registration.

Oregon vehicle registrations for passenger vehicles are staggered on a biennial basis. Motor Vehicles Division notifies the vehicle owner by mail that the vehicle license will expire within 3 months. In that period of time the vehicle owner must obtain a certificate of compliance from the Department of Environmental Quality. This certificate is issued when the vehicle passes the inspection test and payment of the required fees is made. The vehicle owner completes the MVD forms and forwards forms, insurance information, the DEQ Certificate, and the required fees to the Motor Vehicles Division. A new registration is then issued.

At a DEQ inspection station, vehicles are inspected to determine that the required air pollution control equipment is, in fact, installed and functioning, and that the vehicle's exhaust emissions (in an idle mode) are not in excess of State standards. The vehicle test results are recorded and used to assess overall program effectiveness and determine emission characteristics of various classes of motor vehicles and their year to year variations.

Cars and Light Trucks

The bulk of the vehicle inspection program workload consists of the inspection of in-use passenger cars and light trucks. Over 850,000 vehicles, both light and heavy duty, were inspected during calendar year 1981-82, and over 520,000 certificates of compliance were issued. Table C-1 presents the 81-82 testing summary. Compared to the 1979-1980 time period, there has been a 2.5% increase in testing volume, and a 2.7% increase in certificates issued. Also, the overall pass rate increased over 1 percentage point.

Figure C-1 is a plot of vehicle pass rate against model year. Looking at the sales weighted average, the poorest pass rate is among the 1973 model year vehicles. New vehicles have a much higher pass rate. Vehicles older than 1973, also show a higher vehicle pass rate. Further, the vehicles can be divided into four general groups: pre-1970, 1970-1974, 1975-1979, and 1980 and newer. These year categories represent major changes in the Federal new car standards, and, as such, represent catagories of similiar emission control technology.

Pre-1970 vehicles represent the class of vehicles which have limited or no exhaust emission control incorporated into their original design. These vehicles represent about 21% of the local vehicle population. State idle emission standards for these vehicles have the highest values of any category. The standards are based upon the general characteristics of non-emission control vehicles. In general, these vehicles when set for optimum fuel economy have idle CO settings of about 3%; and when set for optimum performance have idle CO settings of about 5%. The inspection program standard for non-emission controlled vehicles is over 6% CO and 1200 ppm HC. This class of vehicles typically has mean emissions levels at approximately 3-4% CO and 400-600 ppm HC. Since there is little or no emission equipment installed on these vehicles, common causes of failure would be for normal wear and tear, lack of maintenance, inadequate or improper maintenance, or component malfunction.

Vehicles in this pre-1970 age category often have mileage accumulations in excess of 130,000 miles. Their general condition can best be divided into three general categories: (1) Major maintenance or restoration, has or is about to be performed returning the vehicle to sound condition. (2) There was an ongoing program of maintenance by the vehicle owner(s) insuring a reliable vehicle. (3) Or it is a vehicle with an extremely poor drivetrain, engine, or body (though most likely a combination) and should, or will shortly, be removed from service.

The 1970-1974 category of vehicles have the first major stage of exhaust emission control incorporated in their design. This vehicle class encompasses over 30% of the vehicles in the Portland metro area. State idle emission standards for this class of vehicle are related to the technology designed into the individual makes of cars and trucks. The values selected were based, in part, on the particular design criteria and the emission levels that could be expected from a properly maintained vehicle. During this last two years, the vehicle standards for this class were consolidated and eased. It is in this class that the poorest performance on the emission test is seen. The 1973 model year had the lowest average pass rate of any model year. Reviewing the data's various failure modes, shows that in this class, failure for malfunctioning or disconnection of pollution control equipment is about 15%. This is higher than for newer vehicles. Reviewing emission data indicates that the overall pass rate would approximate the pre-1970 grouping of cars, if anti-tampering regulations and statutes were not enforced. This vehicle class's emission performance has degenerated so that the overall failure rate, at higher cutpoints, is up about 10 percentage points compared to 1976 data.

This class of vehicles has accumulated mileage in the 80,000-130,000 mile range. Care and maintenance on the vehicle tends to become less rigorous at this age. These vehicles are usually into their second or third owner. It is at this point in their life that extreme component failure due to long term operation without adequate maintenance will often take its toll. Vehicle body and driveline components often have deteriorated, contributing to loss of vehicle desirability and value. The causes of emission failure are similar to the older group of vehicles: normal wear and tear of the

engine system, inadequate or improper maintenance, component failure, and, for this class, disconnection or malfunction of the vehicle's pollution control system. Owners of vehicles in this class often have to decide if the value of the vehicle warrants repair.

The 1975-1979 class of vehicle has major improvements in emission control technology over the last group. This group was the first to utilize the catalytic convertor as a major element of the pollution control system. This vehicle class includes about 40% of the vehicles in the Portland metropolitan area. In Figure C-1, sales weighted average pass rates range from a high of 72% for 1979 vehicles to a low of 55% for 1975 vehicles. Average mileage accumulation for this vehicle class are 40-80,000 miles. This group encompasses vehicles which are fairly new, through those which have been traded off to the second or third owner. Nationally, the average age of all cars is 7 years old - the 1976 model year. These were new vehicles when the inspection program started. Over the years these vehicles have been monitored for emission deterioration. Figures C-2 and C-3 compare the emission distribution for the same make vehicle since 1979. For carbon monoxide the emissions have shown increases in the 50 and 75 particulate points. The 90 percentile has also changed. 1979 and later model year vehicles have not shown as high a deterioration, as the earlier model years. This may be due, in part, to the fact that in 1979, carburetors incorporated sealed idle adjusting screws. Hydrocarbons have also shown increases in the 50 and 75 percentile points, as well as the 90 percentile point. Two factors may be contributing to this: vehicle timing may be advanced in an effort to maximize fuel economy potential resulting in high HC emissions; or vehicle maintenance, especially related to the engine electrical system, may be postponed to such an extent that emission performance is impaired.

For 1975 and 1976 model year vehicles, emission performance has slipped every year to current levels. The causes appear to be the same for the earlier vehicles: normal wear and tear, lack of maintenance or misadjustments. Emission equipment tampering and failures appear at about the 6% level, increasing slightly with each passing year. There is also the possibility that loss of catalyst performance due to vehicle age may be occuring. Long term studies, however, indicate that catalysts have the potential to last well over 100,000 miles. Emission failures on these vehicles are due to carburetor malfunctions, ignition system failures, general engine malfunctions, or failure of auxiliary support equipment (i.e., switches, hoses, solenoids, etc.).

Other examples of different vehicles' performance in the emission test can be seen in Figures C-4 and C-5. These figures show idle emission distributions for 1977 through 1980 model year General Motors vehicles. In these curves the newer vehicle has better emission performance than the older vehicle. There was a large drop in the CO distribution curve for 1979 model year vehicles. This again, gives weight to the positive effect on emissions that sealing the carburetor idle adjustment circuits may have. For 1980 model year and later vehicles, there was a Federal emission standards change.

In reviewing the data in Figure C-1, one of the vehicles which appeared to have a lower pass rate than expected was the 1977 Ford. As an example, further analysis was made on that particular vehicle class. Table C-2 and Figures C-6 and C-7 show the data for this set. The emission distribution curves indicate substantial numbers of vehicles had emissions well above the emission limits. This vehicle class, now 6 years old, should not have any particularly major problems. However, V8 and 6 cyclinder engines in this series used an aluminum spacer plate to deliver exhaust gas recirculation. There has been a number of instances where this spacer plate has warped or eroded, leading to vacuum leaks and high emissions. This may be contributing to the high failure rate observed.

Table C-3 shows the pass rate for various 1979 model year vehicles. These vehicles have the highest market penetration in this area. Reviewing this data, a wide variation can be seen among makes, and within makes. Some of the variation is probably due the degree and quality of maintenance. This would tend to explain differences between car makes which share the same engines.

1980 and newer vehicles have the newest level of controls installed. The Federal standards for these vehicles are much more stringent than previous standards. The Federal government allowed waivers for certain pollutants, provided certain criteria could be met. Vehicles in this class amount to about 10% of the total area fleet. This class of vehicle has a high level of electronic and computer technology incorporated into its design. 1981 and newer vehicles also have an additional emission warranty. This protection provides the owner with protection if the vehicle fails a short test, such as the vehicle inspection test, within its first two years or 24,000 miles. Studies indicate that these vehicles have the potential for excellent emission control. However, small component failures, especially if the on-board computer is involved, can send emissions to levels associated with non-emission controlled vehicles. The 1980 vehicle average pass rate is 82%, for 1981 it is approximately 87%, and for 1982 vehicles it is approximately 90%. These values are about twice what the manufacturers predicted. Couple the poorer than predicted performance with poor sales due to the economic conditions, and the emission impact this segment of the car population is supposed to have on the overall fleet is diluted. Data on 1981 and newer vehicles is limited, since under the biennial licensing, 1981 vehicles will not be tested in any volume until 1983. There will be still fewer number of 1982 and 1983 vehicles due to poor sales. Overall, 1981 and 1982 vehicles have about 90% pass rate. About 2% of the total tested to date have emission equipment disconnected and 7% have high emissions. One of the major items of concern is the high rate of emission equipment disconnected observed. Past data and experience would indicate that these vehicles will have increased emissions as they age. The vehicles diagnostic system and on-board computer are designed to alert the driver to malfunctions. Defects can, however, go unnoticed by the driver or may simply be stored in the computer awaiting scheduled maintenance. If the maintenance people neglect to check the computer, a defect might not be repaired. The inspection test is effective in detecting emission system malfunctions.

Overall, the data shows a decrease in carbon monoxide of 46% and 41% for hydrocarbons. This reduction is obtained by combining the emission reductions from initially failed vehicles with the vehicles that passed the inspection test. Failed vehicles alone, median emission reductions are 90% carbon monoxide and 86% hydrocarbons.

Repair Costs

The types of repairs and costs associated with those repairs are periodically monitored. In a recent survey, motorists were asked a variety of questions about repairs and costs of those repairs. Figure C-8 shows the average cost for various model year groupings. Costs are higher for the newer vehicles than for older vehicles. 1975 through 1982 costs averaged over $35. The types of repairs reported included electrical system repair, including spark plug replacement, and general tune-ups plus carburetor repair. The older vehicles reported more carburetor repair and adjustments, without other major work and also reported lower expenses. Overall, for the entire sample, the average cost of repair was $26.92.

The survey indicated that the type of repair performed and the selected repair outlet varied with the type of failure. Carbon monoxide only failures primarily received carburetor work and adjustment; more often by service stations. Hydrocarbon failures, also as expected, received more electrical repair work, usually at garages and dealerships. 1978 model year was new car dealership's median age of cars repaired in this survey. For service stations, it was the 1973 model year. Self-repair and service stations were reported doing the simpler, less costly repairs. Independent garages and new car dealers were reported doing more complex repairs. Failures for easily corrected emission defects were repaired for less expense than failures for emission defects which required more work to remedy. Approximately 50% of those responding indicated carburetor repair work. The average cost for this repair, after deleting the $0 responses, was $24.26. About 40% of those responding indicated electrical related repair work. The average cost for that category after deleting $0 responses was $59.78. The remaining repairs were in the general category, with major engine work or pollution control equipment repair. The average cost after deleting $0 responses for this category was $123.07. Overall, only 8% of those responding reported repair costs in excess of $100.

Pollution Control Equipment Tampering

ORS 483.825 requires that automotive air pollution control equipment be maintained. A portion of the inspection test includes checking the vehicle for that equipment. The inspection test only checks the vehicle's emission performance in an idle mode. The check for pollution control equipment is important because the equipment is designed to reduce emissions during all driving modes. Some pollution control systems installed on vehicles do not offset the vehicles' idle emissions performance. About 6% of the tests result in identifying vehicles which have missing or malfunctioning pollution control equipment. Of these, over 14% have more than one equipment defect. The following is a list of the types of defects or disconnections noted.

Observed Pollution Control Equipment at DEQ Inspection Stations

Disconnected Equipment Observed	%
Positive Crankcase Ventilation	8.6
Air Pump	11.9
Exhaust Gas Recirculation	10.7
Catalytic Convertor	4.6
Thermal Air Cleaner	39.5
Distributor	6.3
Fuel Evaporative Control System	13.7
Fuel Filler Restrictor (Unleaded Fuel)	2.8
Other	1.5

The observed frequency is below that obtained in various national surveys. Some motorists have raised the issue of parts availability, especially for some of the early '70's vehicles. A survey was conducted in mid-'82 to determine availability of emission related parts. Eighteen vehicle manufacturers, both foreign and domestic, were surveyed through their respective dealer parts network. A variety of equipment was requested, including air pumps, EGR valves, thermal air cleaner valves, and catalysts. While only 27% of the requested parts were at the individual dealers parts counters, all of the requested equipment was listed as available on the manufacturer's inventory.

Heavy Duty Trucks

Gasoline powered heavy duty vehicles are tested. The inspection test is similar to the light duty vehicle test. In the heavy duty test procedure, the vehicle must pass idle and raised rpm checkpoints. Table C-6 lists the pass rate information for the heavy duty truck tests this last year. Overall, heavy duty trucks have as stringent vehicle standards, yet have higher overall pass rates compared to passenger vehicles. This may be a measure of the quality and degree of maintenance that commercial vehicles undergo compared to regular passenger cars.

Figures C-9 through C-14 show the emission distributions of heavy duty gasoline powered trucks. Heavy trucks account for 3.5% of the test volume. Two specific makes are shown, those manufactured by Ford Motor Company and those manufactured by General Motors. These trucks account for over 80% of heavy duty gasoline powered trucks tested. The emission reductions achieved from these heavy duty gasoline powered trucks contribute to the effort to meet vehicle related emission standards. These trucks generally operated in the congested urban areas, so maintaining proper emission control is very important. From the data in Figure C-9 through C-14, one can calculate the improvement in emissions for each level for Federal

emission standard. The following model year groupings roughly conform to each increase in emission control: Pre-1970-No Control; 1970-1973-First Level; 1974-1978-Second Level; and 1979 and Later-Current.

AVERAGE EMISSION REDUCTION BY POLLUTION CONTROL STAGES GROUPING FOR HEAVY DUTY TRUCKS

Model Year	CO, Percent Reduction	HC, Percent Reduction
Pre-pollution Control to First Stage (Pre 1970-1970-73)	10	26
First Stage Pollution Control to Second Stage (1970-73-1974-78)	42	18
Second Stage Pollution Control to Present (1974-78-1979 and later)	50	44

TABLE C-1

DEPARTMENT OF ENVIRONMENTAL QUALITY
VEHICLE INSPECTION PROGRAM

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Fail Hydrocarbons (HC)	25375	44477	69852	8
Fail Both CO and HC	22001	28499	50500	6
Fail for Either HC or CO at 2500 RPM	33	291	324	-
Fail for Emission Equipment Disconnects	22326	33457	55783	7
Fail Other Causes	18803	33777	52580	6
Pre-catalyst Emission Tests	127382	289317	416699	50
Pass	64631	168196	232827	50
1975 and Newer Tests	197319	219389	416708	50
Pass	132003	146176	278179	67

VA2963

Table C-2

DEPARTMENT OF ENVIRONMENTAL QUALITY
VEHICLE INSPECTION PROGRAM

ANALYSIS OF 1977 FORD PASSENGER CAR FAILURES - SUMMER 1982

Sample Size	357
Repeat Vehicles in Sample	2
Percentage Pass	46%
Percentage Failed (overall)	54%
Percentage Failed CO	12.6
Percentage Failed HC	13.7
Percentage Failed CO & HC	15.4
Percentage Excess rpm	1.0
Percentage Vehicle Smoke	2.7
Percentage Disconnected Pollution Control Equip.	8.8

Emission Equipment Disconnections by Category:

3% Evaporative Emission Control
18% Exhaust Gas Recirculation
18% Air Injection (air pumps)
32% Thermal Air Cleaner Systems
6% Catalytic Convertors
12% Positive Crankcase Ventilation
12% Spark Control Systems

VA2963

Table C-3

DEPARTMENT OF ENVIRONMENTAL QUALITY
VEHICLE INSPECTION PROGRAM

SUMMARY OF 1979 MODEL YEAR
VEHICLE PASS RATES (Sample Winter '81)

Vehicle Make	Engine, cid	Percent of Vehicles Below Emission Standard for CO	Percent of Vehicles Below Emission Standard for HC
Datsun	1400 cc	92	92
	2000 cc	94	95
	2400 cc	75	100
	2800 cc	76	93
Toyota	2T-C	95	97
	20-R	95	95
Ford	1600 cc	82	82
	2300 cc	85	72
	2800 cc	65	99
	200 cid	80	96
	250 cid	78	89
Chevrolet	1600 cc	46	90
	200	80	90
	231	93	90
	305	80	82
	350	84	91
Volkswagen	1600	73	96
	Bus	56	92
Mazda	1100 cc	98	82
	1400 cc	87	95
	Rotary	85	85
Subaru	1600 cc 2WD	69	95
	1600 cc 4WD	82	88
Honda	1238 cc	99	92
	1488 cc	99	94
	1751 cc	99	97
Plymouth	1600 cc	63	83
	105	75	79
	225	48	71
	318	69	69
Dodge	Colt	70	72
	105	56	59
	225	67	60
	318	81	72
	360	94	94

Table C-3 (Continued)

DEPARTMENT OF ENVIRONMENTAL QUALITY
VEHICLE INSPECTION PROGRAM

SUMMARY OF 1979 MODEL YEAR
VEHICLE PASS RATES (Sample Winter '81)

Vehicle Make	Engine, cid	Percent of Vehicles Below Emission Standard for CO	Percent of Vehicles Below Emission Standard for HC
Mercury	2300	85	72
	351	75	79
Lincoln	400	100	85
Pontiac	231	85	95
	250	100	88
	305	83	72
	350	90	81
	400	90	81
Buick	231	90	92
	305	100	86
	350	100	86
Oldsmobile	231	91	86
	305	81	79
	350	92	78
Cadillac	350	100	95
	425	82	77
Audi	131	70	90
Porsche	All	70	100
Chevrolet GMC Pickup & Vans	250	83	70
	350	90	82
Ford Pickup & Vans	110	62	80
	300	87	82
	302	75	86
	351	85	89
	360	92	89

VA2963

TABLE C-4

DEPARTMENT OF ENVIRONMENTAL QUALITY
VEHICLE INSPECTION PROGRAM

Heavy-Duty Gasoline Vehicle Test Summary

EMISSION INSPECTION TESTS	15209
OVERALL PERCENTAGE PASS	64%
Pre-1970 Trucks (3040)	
Pass Emission Test	63%
Tests Failed for Carbon Monoxide (CO)	6%
Tests Failed for Hydrocarbons (HC)	13%
Tests Failed for Both HC & CO	3%
Tests Failed for CO @ 2500 rpm	7%
Tests Failed for Other Causes	6%
1970-1973 Trucks (3502)	
Pass Emission Test	62%
Tests Failed for Carbon Monoxide (CO)	9%
Tests Failed for Hydrocarbons (HC)	12%
Tests Failed for Both HC and CO	4%
Tests Failed for CO @ 2500 rpm	6%
Tests Failed for Emission Equipment Disconnects	4%
Tests Failed for Other Causes	5%
1974-1978 Trucks (5938)	
Pass Emission Test	64%
Tests Failed for Carbon Monoxide (CO)	9%
Tests Failed for Hydrocarbons (HC)	12%
Tests Failed for Both HC and CO	4%
Tests Failed for CO @ 2500 rpm	4%
Tests Failed for Emission Equipment Disconnects	4%
Tests Failed for Other Causes	3%
1979 and Later Trucks (2724)	
Pass Emission Test	73%
Tests Failed for Carbon Monoxide (CO)	4%
Tests Failed for Hydrocarbons (HC)	12%
Tests Failed for Both HC and CO	2%
Tests Failed for CO @ 2500 rpm	1%
Tests Failed for Emission Equipment Disconnects	6%
Tests Failed for Other Causes	3%

VMHD (2/80)--VA2669

FIGURE C-1

VEHICLE PASS RATE FOR VARIOUS MODEL YEARS

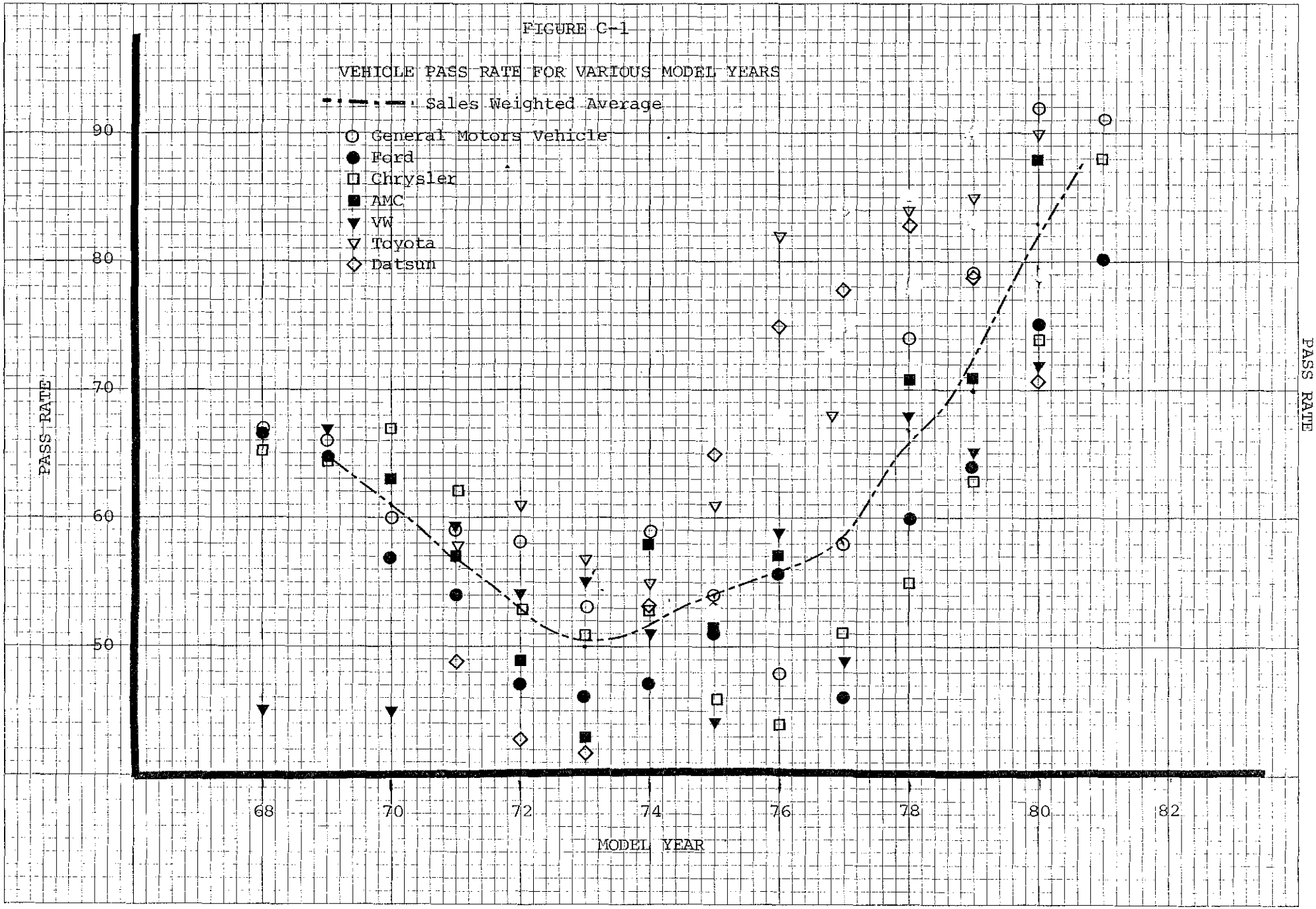

FIGURE C-2

DEPARTMENT OF ENVIRONMENTAL QUALITY

Vehicle Inspection Program

Carbon Monoxide Idle Emission Distribution for a Popular Vehicle Make

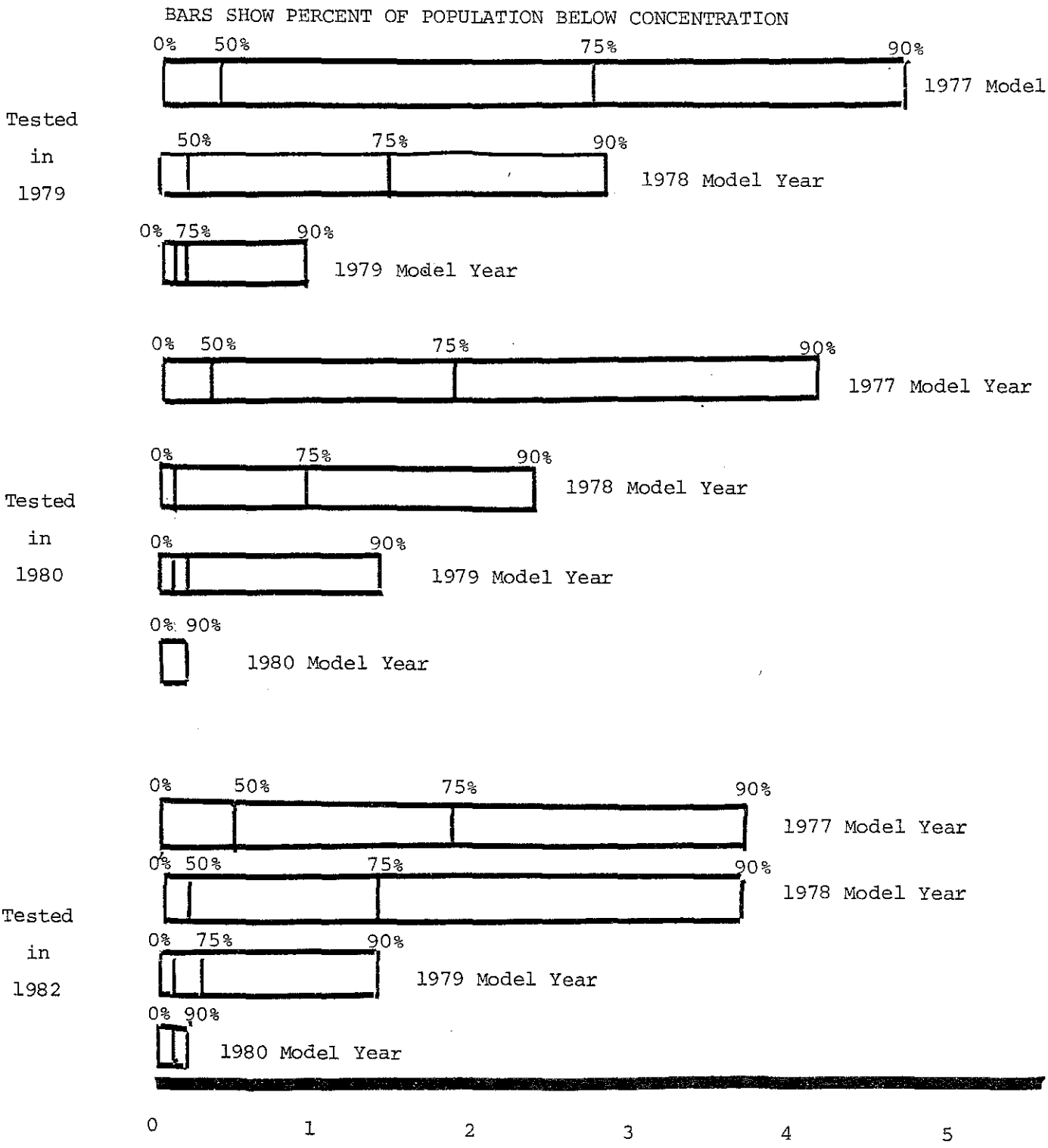

FIGURE C-3

DEPARTMENT OF ENVIRONMENTAL QUALITY

Vehicle Inspection Program

Hydrocarbon Idle Emission Distribution for a

Popular Vehicle Make

BARS SHOW PERCENT OF POPULATION BELOW CONCENTRATION

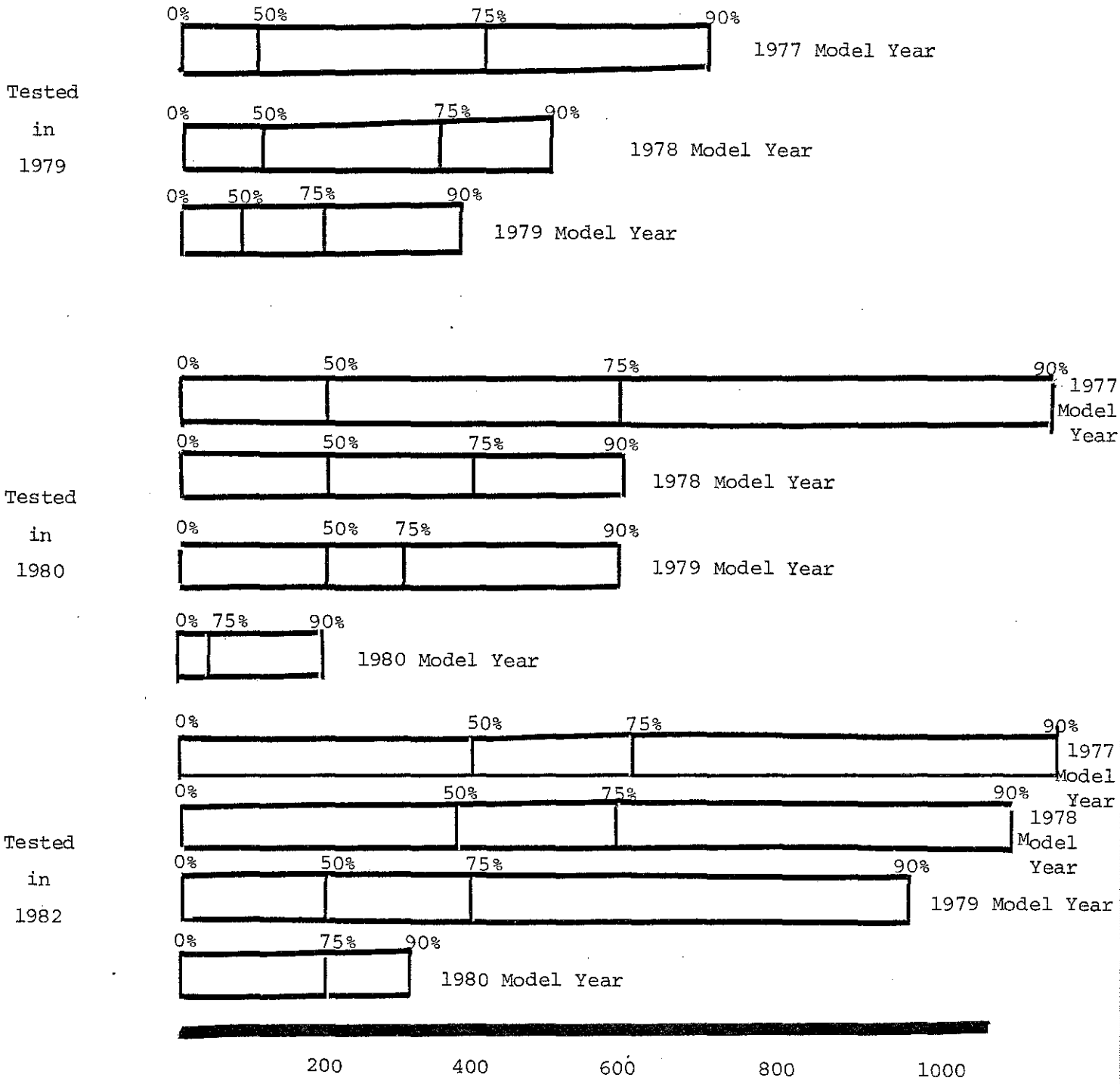

FIGURE C-4

EMISSION DISTRIBUTION FOR CARBON MONOXIDE
at Idle for General Motors Vehicles
at DEQ Inspection Stations

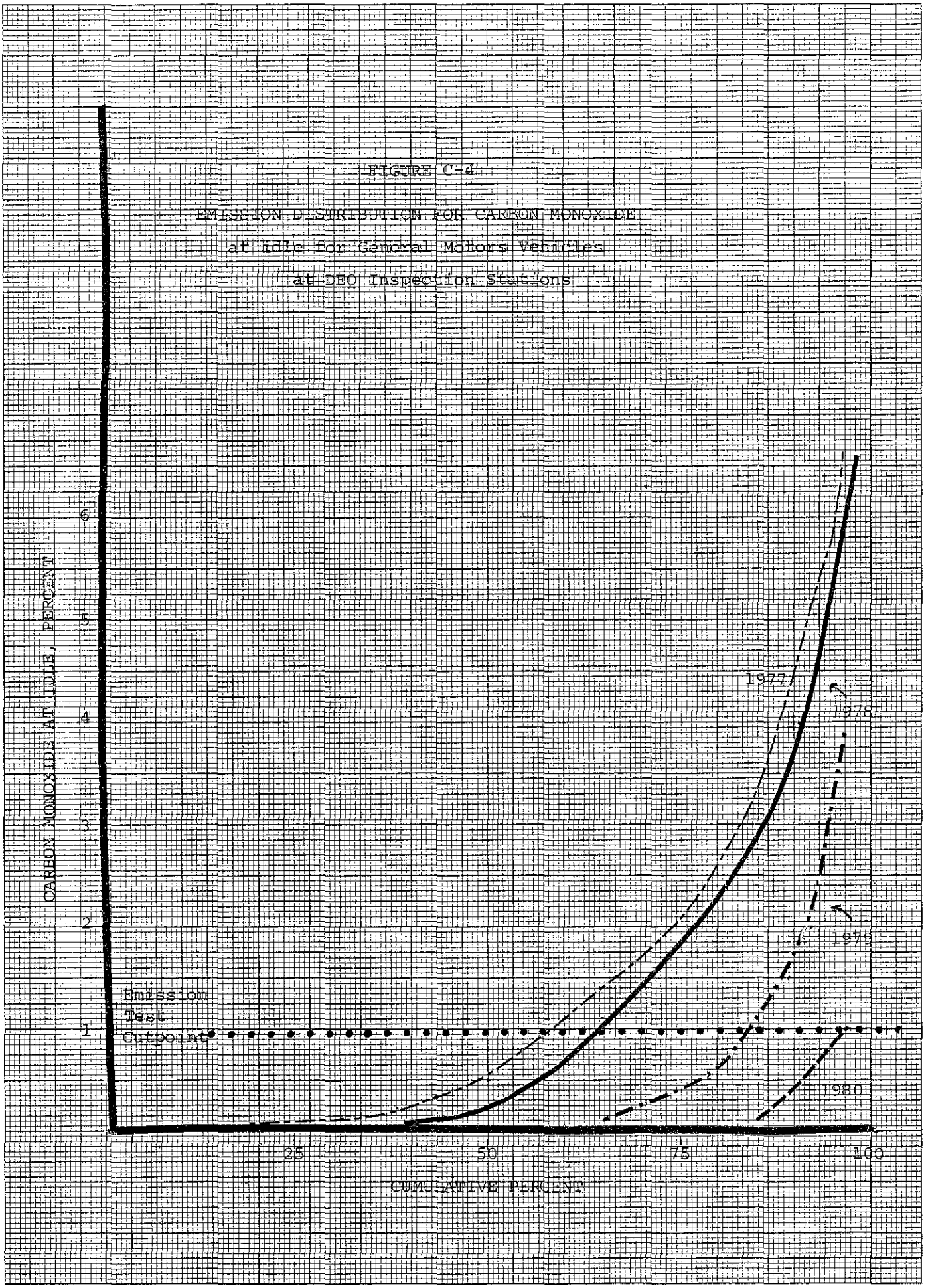

FIGURE C-5

EMISSION DISTRIBUTION FOR HYDROCARBON GASES
at Idle for General Motors Vehicles
at DEQ Inspection Stations

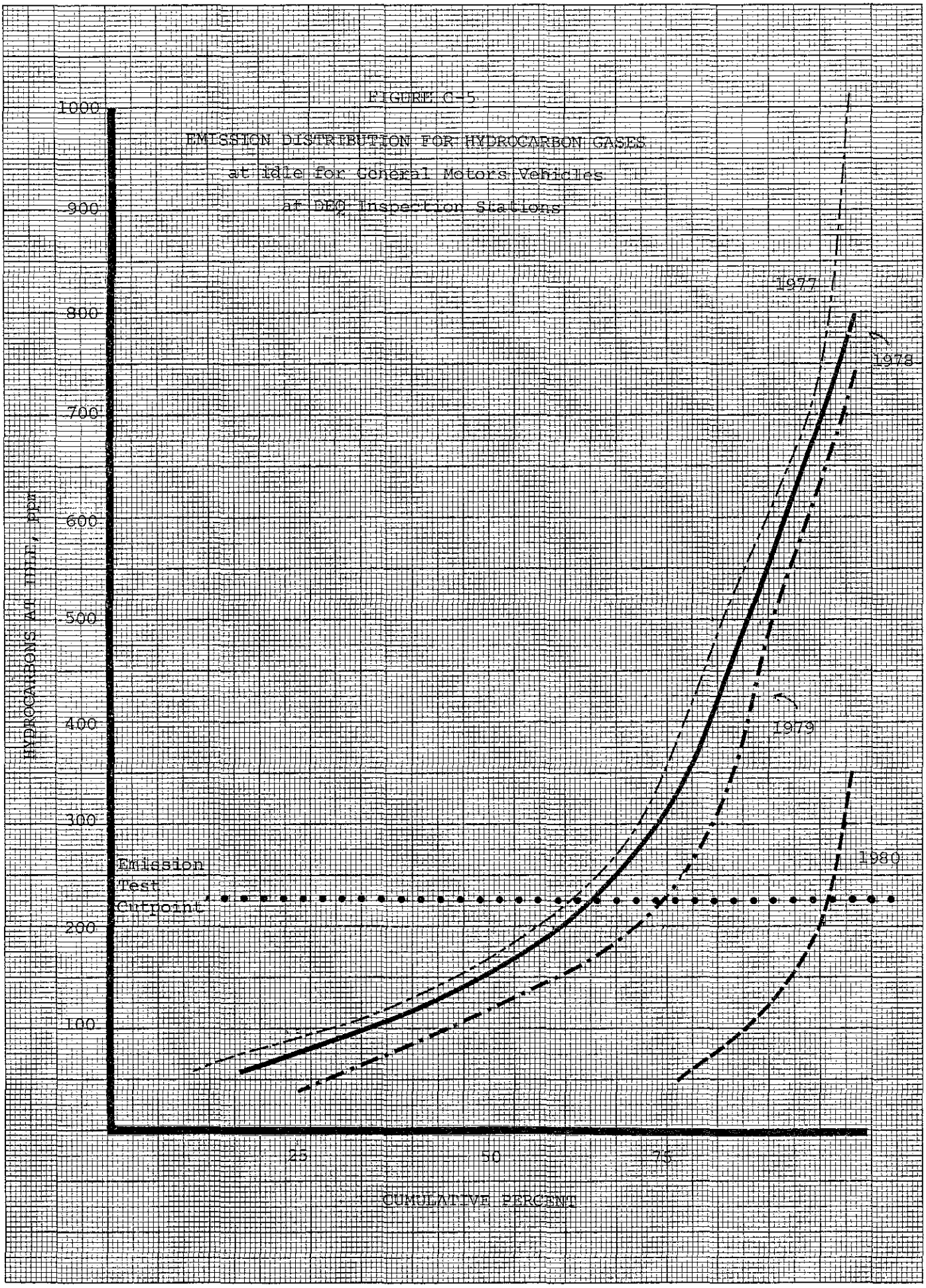

FIGURE C-6

Carbon Monoxide Emission Distribution

for 1977 Ford Vehicles

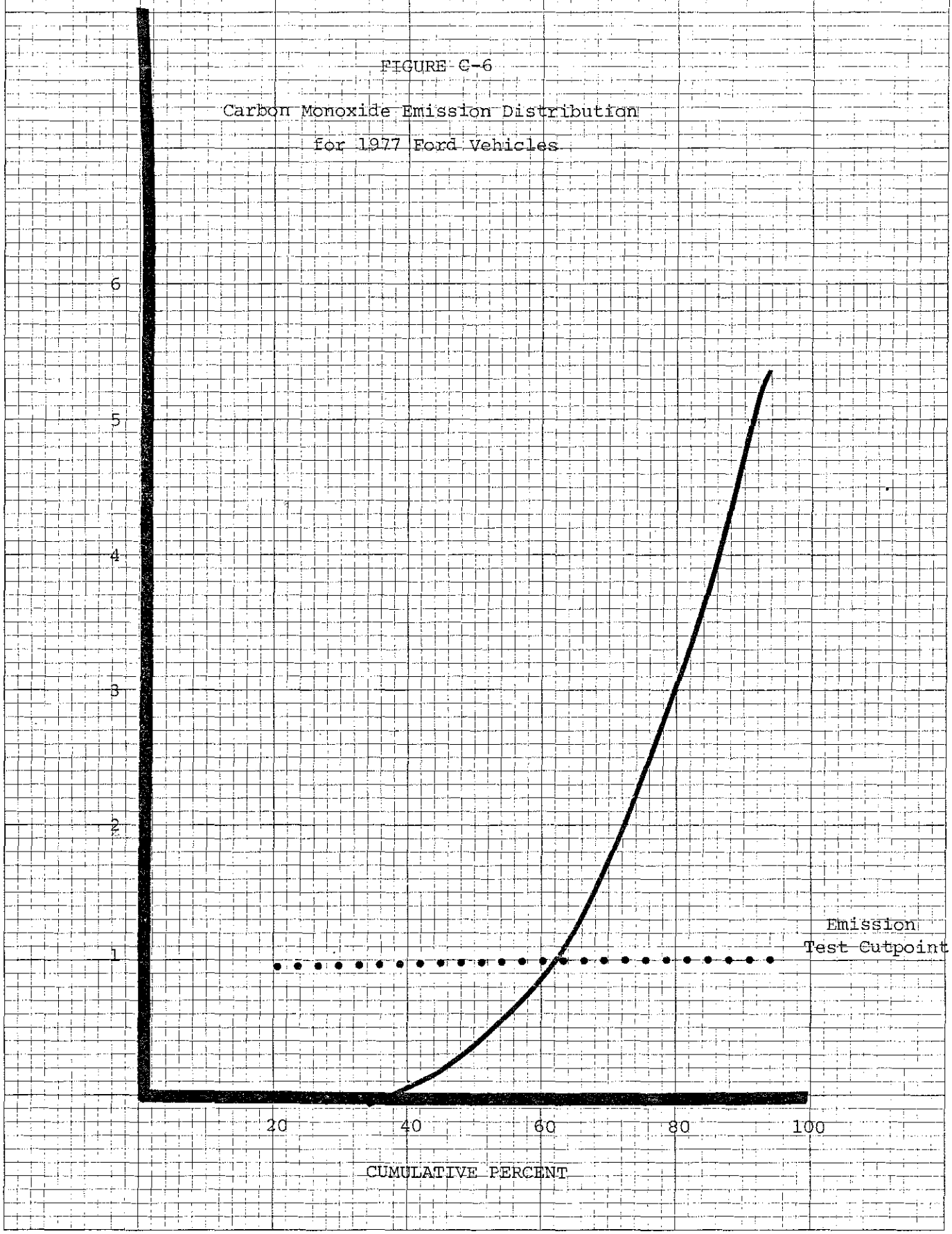

FIGURE C-7

HYDROCARBON EMISSION DISTRIBUTION

for 1977 Ford Vehicles

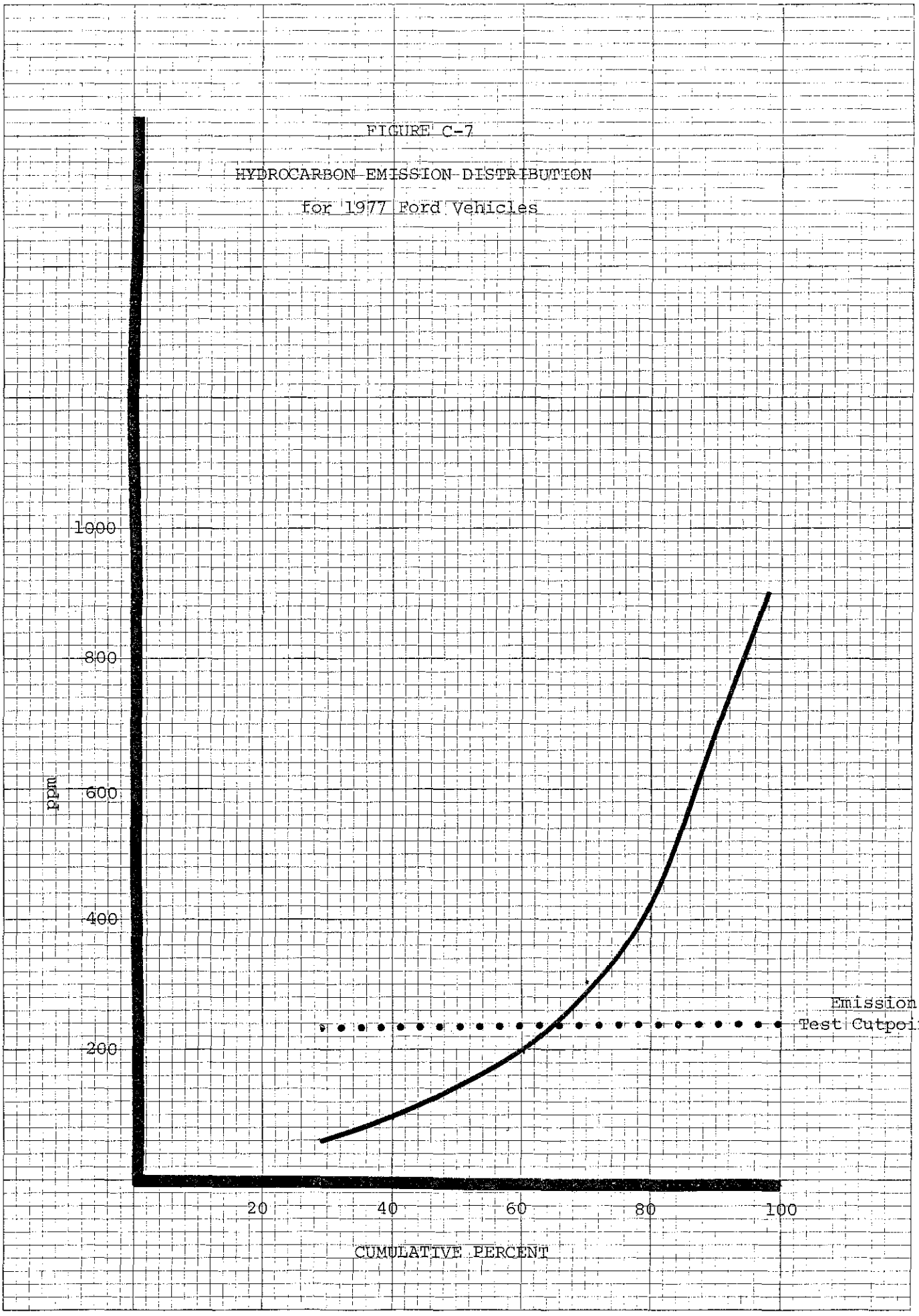

FIGURE C-8

DEPARTMENT OF ENVIRONMENTAL QUALITY

COST OF REPAIR SURVEY

Average Cost for
Model Year Groups

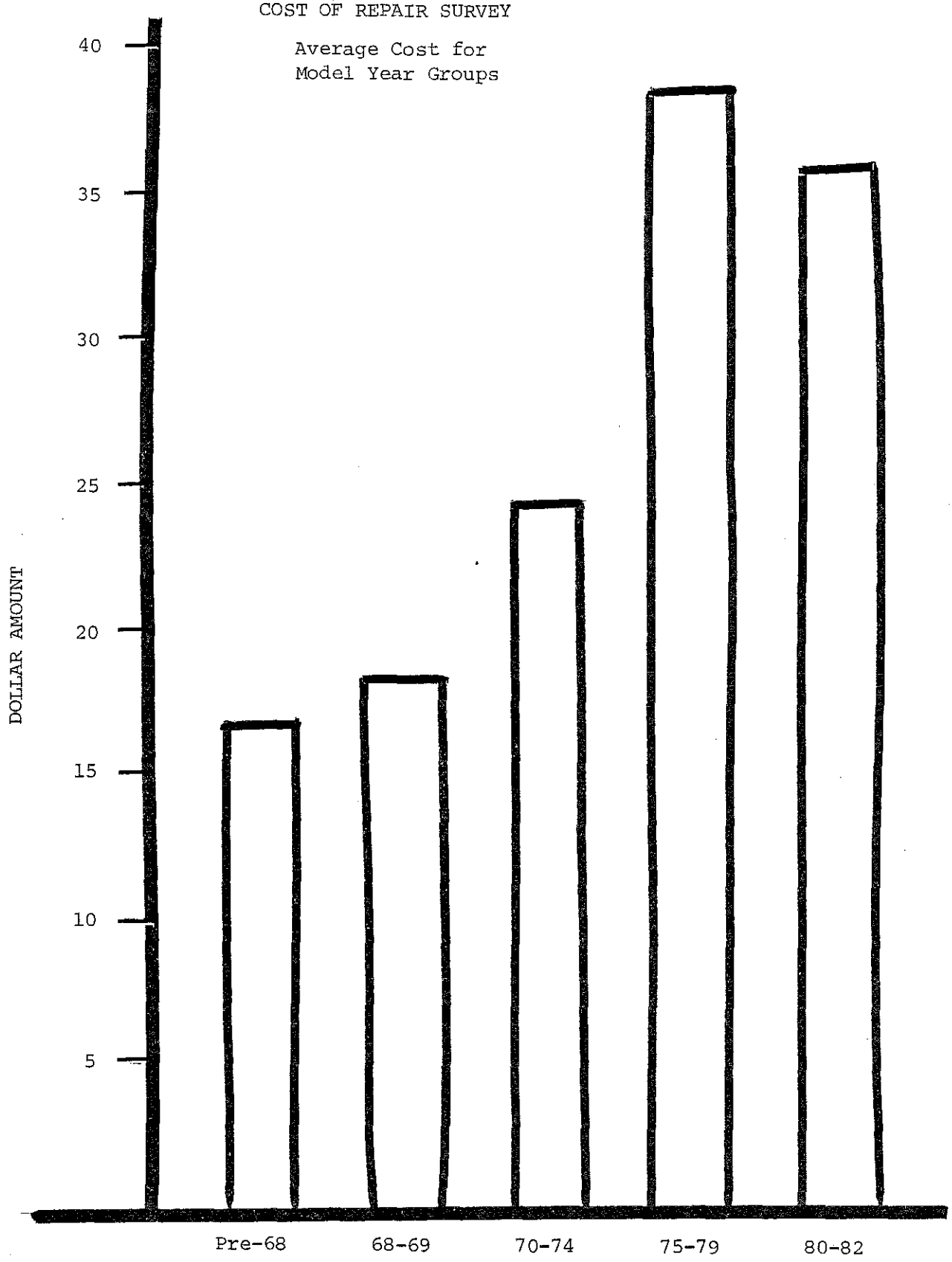

FIGURE C-9

A plot of idle carbon monoxide for Heavy Duty Trucks inspected at Oregon DEQ Inspection Stations during 1982.

Pre 1970 model years

Vehicles manufactured by Ford Motor Company

Vehicles manufactured by General Motors

VIP82349

Form No. 620 : 20 Squares to Inch

FIGURE C-10

A plot of idle hydrocarbons for Heavy Duty Trucks inspected at Oregon DEQ Inspection Stations during 1982.

Pre 1970 model years

Vehicles manufactured by Ford Motor Company

Vehicles manufactured by General Motors

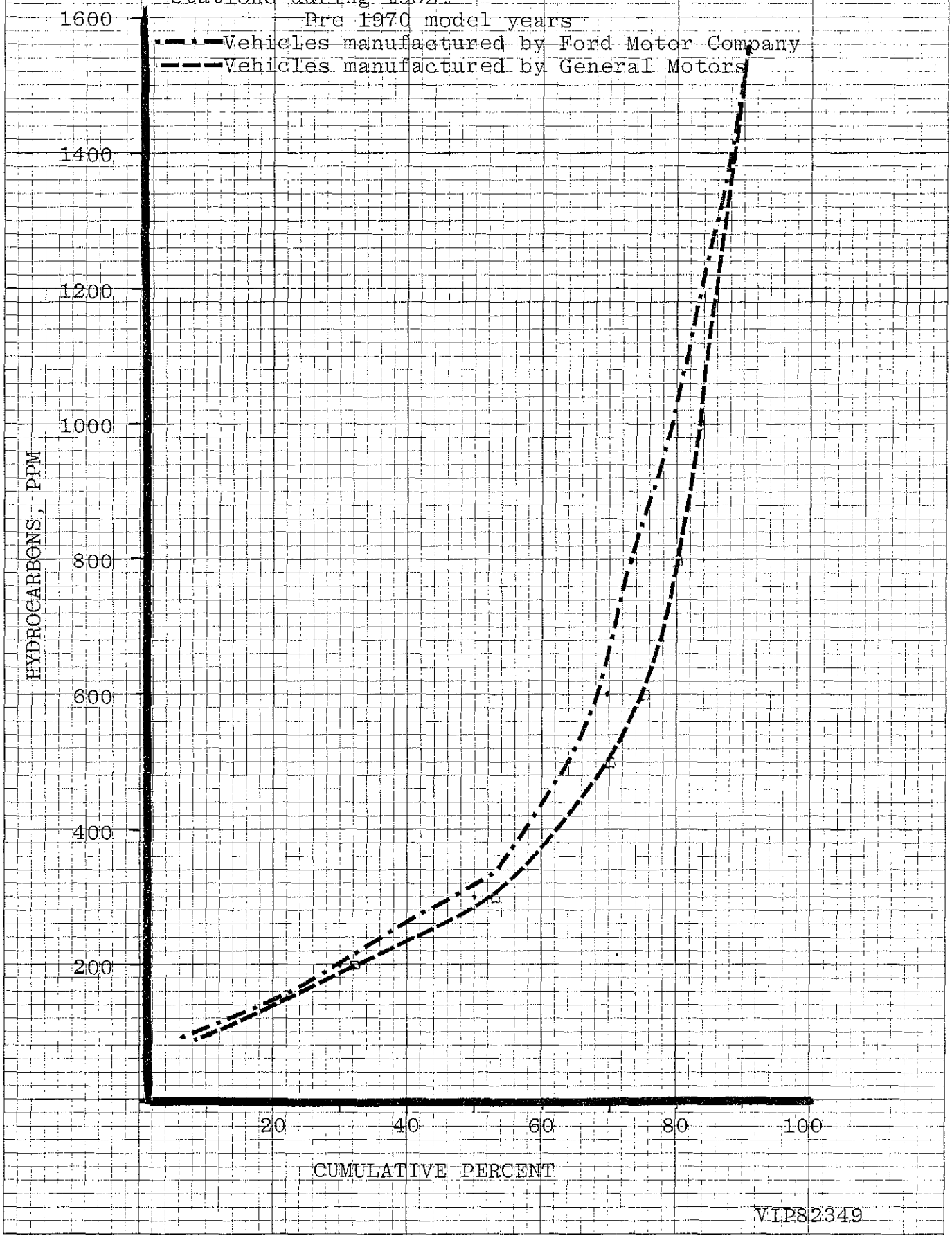

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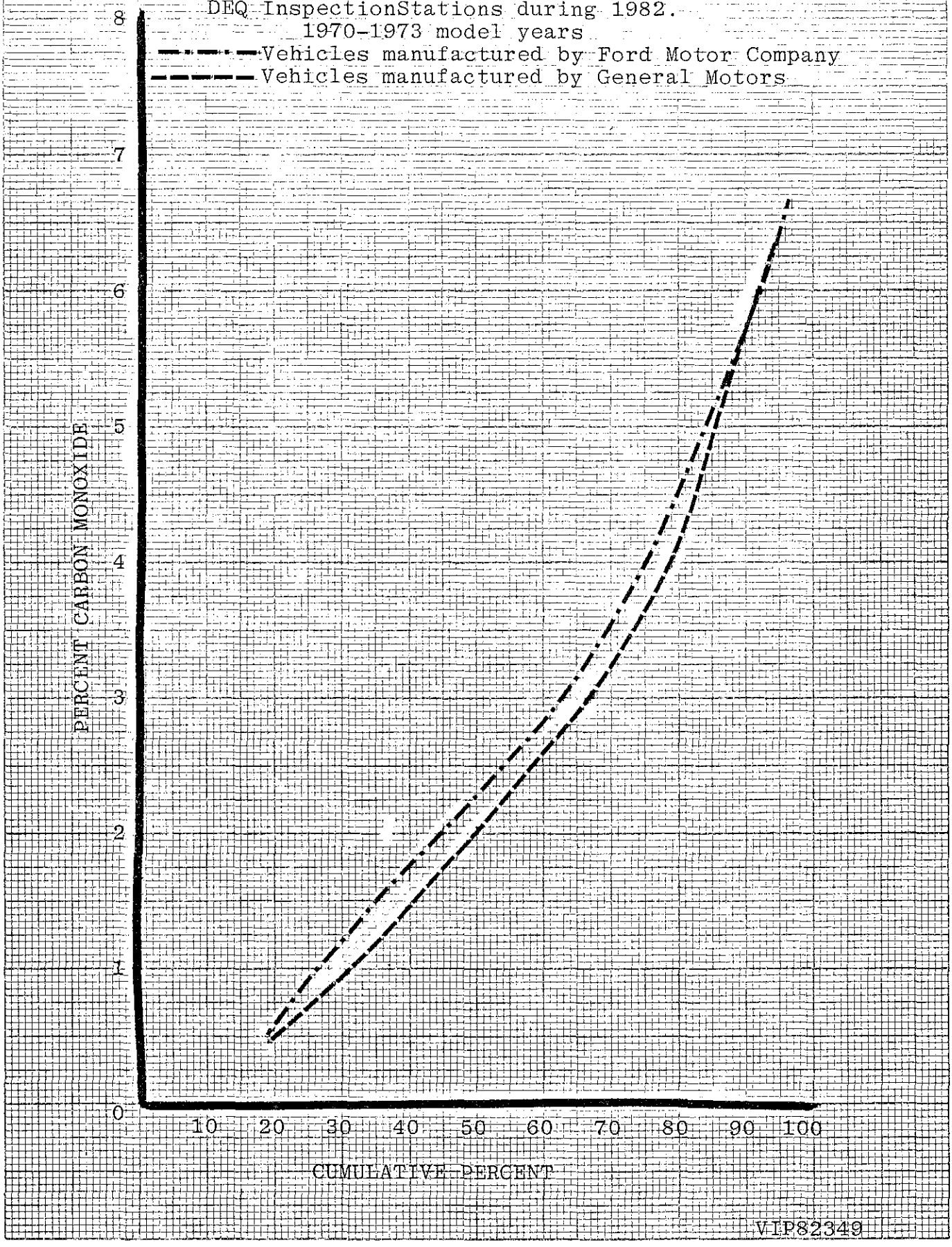
FIGURE C-11

A plot of idle carbon monoxide for Heavy Duty Trucks inspected at Oregon DEQ InspectionStations during 1982.
1970-1973 model years
Vehicles manufactured by Ford Motor Company
Vehicles manufactured by General Motors



VIP82349

Form No. 620 : 20 Squares to Inch

FIGURE C-12

A plot of idle hydrocarbons for Heavy Duty Trucks inspected at Oregon DEQ Inspection Stations during 1982.
1970-1973 model years

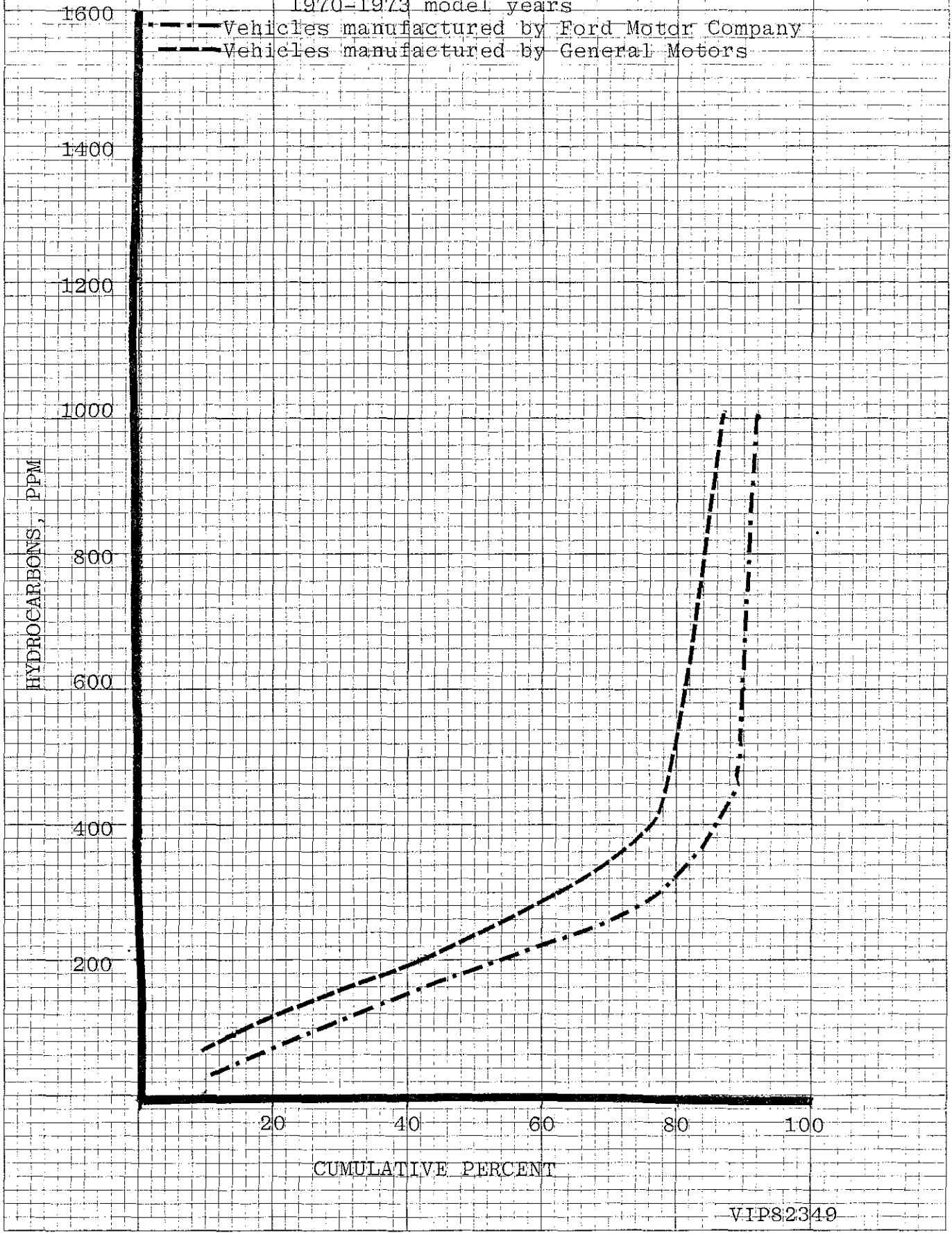


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FIGURE C-13

A plot of idle carbon monoxide for Heavy Duty Trucks inspected at Oregon DEQ Inspection Stations during 1982.

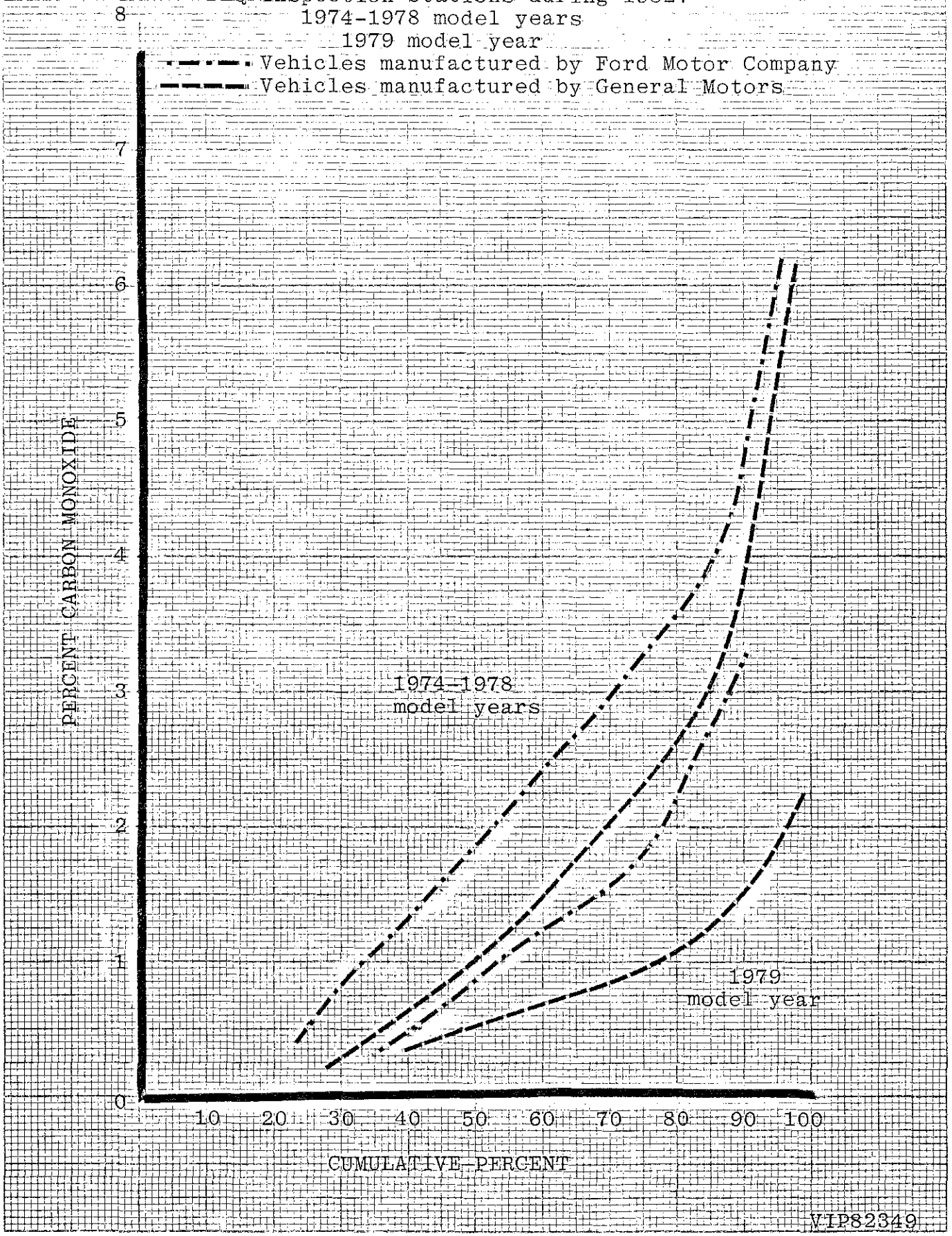

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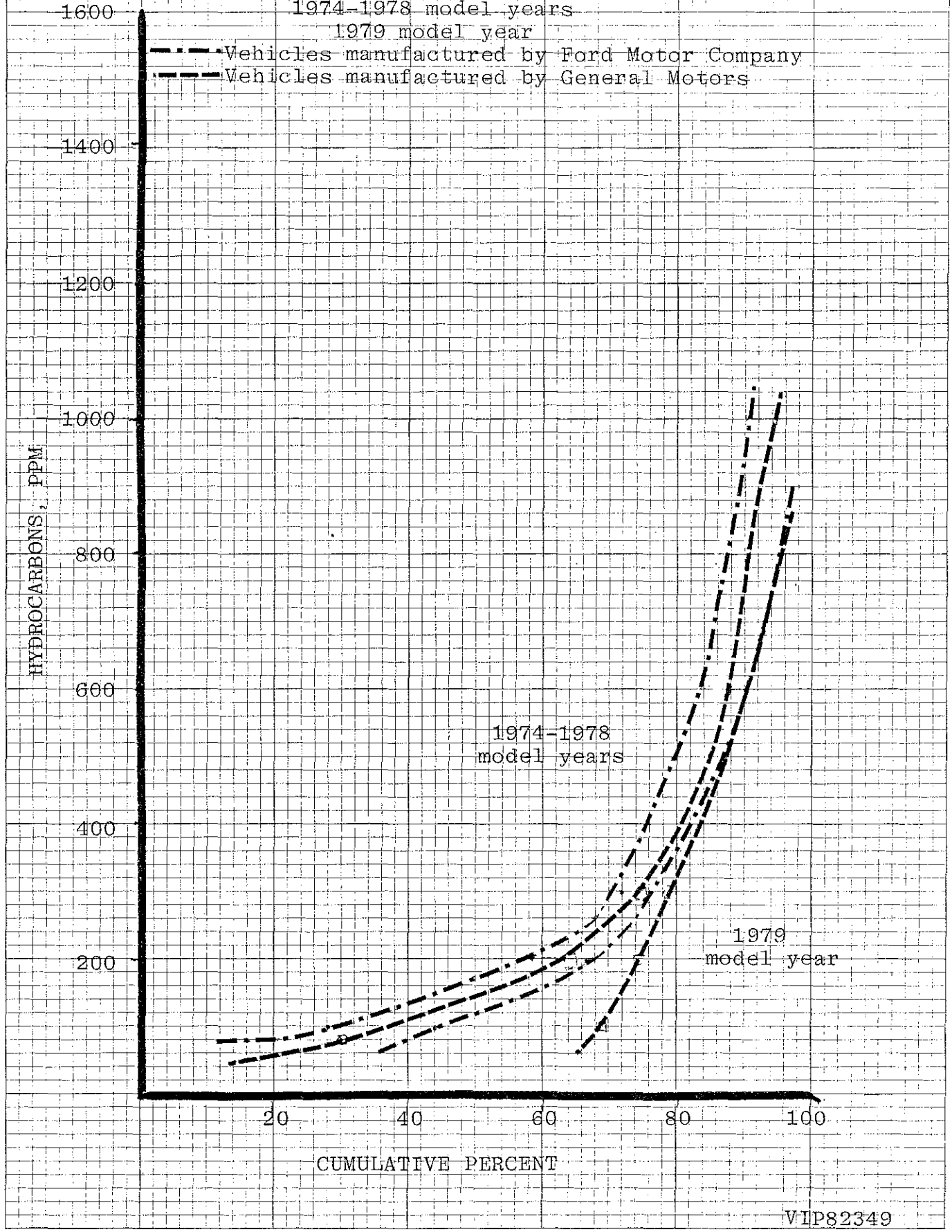
FIGURE C-14

A plot of idle hydrocarbons for Heavy Duty Trucks inspected at Oregon DEQ Inspection Stations during 1982.



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Appendix D

Air Quality

BACKGROUND

Air pollution is a problem for many urban areas. The United States Congress recognized the implications of unhealthy air in the establishment of the Clean Air Act and its amendments. The problems of air pollution have been recognized here in the Portland area. There are two specific pollutant problems, carbon monoxide and photochemical oxidants, that are identified directly related to motor vehicle emissions. Motor vehicles are the predominant source of carbon monoxide emissions, today contributing about 85% of the total carbon monoxide in the Portland metropolitan area.

The Federal and State carbon monoxide health standard of 10 milligrams per cubic meter (8-hour average) was exceeded 120 days in 1972 at the Burnside Continuous Air Monitoring Station (CAMS) in downtown Portland. The worst day recorded that year had an average 8-hour reading of 28.9 milligrams per cubic meter. In 1981, the 8-hour average was exceeded only 16 times and in 1980 only 2 times. Figure D-1 shows the annual carbon monoxide violation days since 1972 at the CAMS station. Also shown is the number of carbon monoxide violation days at the Sandy Boulevard station in Portland. Figure D-2 shows the annual monthly average CO concentrations for these stations.

In contrast to carbon monoxide, which usually shows health standard violations close to high emission areas, oxidants measured as ozone are more of a regional problem. The ozone health standard is 0.12 ppm. Health standard violations are usually more wide spread and often occur away from the main emission sources. In 1975 a monitoring station was placed south of Oregon City at Carus which drew attention to the extent of that problem. Between that time and 1978, hourly oxidant concentrations as high as 0.23 ppm have been measured. After 1978, however, ozone violations have dropped drastically. There appear to be three major reasons for this decline: meteorology, monitoring method changes and reductions in precursor emissions. Then, in 1981, oxidant concentrations as high as 0.21 ppm were measured during 5 days of violation. This indicates the need to maintain a strong oxidant control program.

During 1982, the Environmental Quality Commission adopted carbon monoxide and ozone control strategies for the Oregon portion of the Portland-Vancouver Interstate Air Quality Maintenance Area (AQMA). The vehicle inspection/maintenance program is credited with significant emission reductions, and shown as necessary for attaining the Clean Air standards by 1987 for both pollutants.

CARBON MONOXIDE

Carbon monoxide is a colorless, odorless gas that is highly toxic. It is formed by the incomplete combustion of fossil fuel. It offsets the blood's ability to carry oxygen, causing difficulties in those with heart and other chronic diseases. It will reduce lung capacity and can impair mental abilities. In extremely high concentrations, it can cause death.

The State of Oregon Revised Implementation Plan and Carbon Monoxide Control Strategy adopted in 1982 aims to reduce carbon monoxide emissions and achieve compliance with the federal carbon monoxide 8-hour standard by December 31, 1985. The key elements of that plan are:

1. Continue the Biennial Auto Inspection/Maintenance program.
2. Operate Downtown Transit Mall and purchase 77 new articulated buses and 75 standard coaches.
3. Restore Fareless Square to all hours of the day.
4. Expand bus service on I-5 freeway corridor.
5. Operate Rideshare Programs: a) continue City Carpool permit program for 6-hour parking meters; b) implement McLoughlin Corridor Rideshare program; c) pursue State legislation that would remove institutional barriers to ridesharing.
6. Maintain and manage downtown parking inventory of 40,855 spaces, implemented through the services of a full-time parking manager.

These elements have contributed to significant reductions in the number of carbon monoxide health standard violation days, and will be necessary to achieve compliance by the deadline date.

This plan replaces the original transportation control strategy. The original plan, adopted in 1973, included the following elements:

1. New Motor Vehicle program - Federal responsibility.
2. Inspection/Maintenance program - State responsibility.
3. Mass Transit improvements - Tri-Met responsibility.
4. Traffic plan and circulation improvements - local government responsibility.

The sources of carbon monoxide within the Oregon portion of the AQMA are shown in Table D-1. The major source has been the motor vehicle. Recently, with the reductions achieved by motor vehicle pollutant control, and the increased use of woodstoves, the overall relative contribution by motor vehicles has been reduced from 95% to 85% and is projected to go to 78% by 1987. Even so, the motor vehicle remains the most significant source of carbon monoxide in the area. Industrial sources accounted for only 2-1/2% of the total emissions. Obtaining additional reductions from industrial sources would have little impact on the area's carbon monoxide emissions.

Table D-1

Summary of Carbon Monoxide Emissions (Tons per year)
Within the Oregon Portion of the Portland-Vancouver Interstate AQMA

Source	1977	1982	1987
Industrial and other Area Sources	12,763	14,084	14,857
Motor Vehicles	764,727	429,592	342,361
Woodstoves	27,705	62,044	79,000
Total	805,195	505,720	436,218

The effectiveness of controlling ambient carbon monoxide levels is studied in several ways. Computer models like Mobile II evaluate populations, motor vehicle usage, vehicle miles travelled, average speeds and traffic

densities in order to project what will happen in the future as well as to credit the various strategies in use today. Figure D-3 is the result of such work. Figure D-3 shows that in 1982 carbon monoxide emissions are 24% less than they would be without an I/M program. In 1987, two years beyond the expected compliance date, carbon monoxide emissions would be 30% less than they would be if there was no inspection program. The effects of other strategies are also shown.

Air quality data is analyzed for trend analysis and to measure program effectiveness. The trend data, presented in Figure D-2 shows how ambient levels have changed over the years. Figure D-1 is the plot of number of violation days of CO in the urban area. Violation days have decreased significantly.

An additional methodology of studying the effect of the inspection program was completed during the past two years. A statistical study of ambient CO data from Portland and Eugene was made. This study (by University of Wisconsin statisticians under contract to the EPA) indicated a significant reduction of up to 15% CO during the years 1975 through 1979 due specifically to the inspection program. Eugene was chosen as the control (non-inspection program) area to compare to the Portland area. This study, like the computer models used for projecting future emissions, correlates meteorology, traffic increases, population changes, and other factors.

Ambient carbon monoxide emission reductions have been achieved over the past several years. Many factors have contributed to these reductions. Improvements in new motor vehicles, traffic improvements, transit alternatives, and the inspection program have all contributed to this effort. The significance of these programs has been reinforced with the recently adopted carbon monoxide control strategy.

OZONE (OXIDANTS)

Ozone is the chemical that is measured to track all photochemical oxidants. Ozone is a colorless gas with a pungent, metallic odor in high concentrations. It causes damage to the lungs and also to plants. Ozone affects the durability of materials such as rubber and nylon. It is formed during the photochemical reactions in the atmosphere between oxides of nitrogen and hydrocarbons. Nitrogen dioxide, a major component of NO_x, is a toxic, reddish-brown gas. It is formed during combustion process such as in the automobile engine, boilers, and from various industrial sources. Hydrocarbons are compounds resulting from unburned fuel, evaporative fuel losses, and industrial and commerical applications.

The ozone control strategy adopted for the State's Clean Air Act Implementation Plan revision contains the following provisions:

1. Maintain the Inspection/Maintenance program.
2. Improve traffic flow via ramp metering.
3. Improve public transit service.
4. Priority parking for carpools.
5. Improve attitude acceptability for carpooling and alternative forms of travel.
6. Reduce Volatile Organic Compounds from stationary sources.

The purpose of this strategy is to limit the hydrocarbon ozone precursors, While motor vehicles are responsible for a large percentage of these reactive hydrocarbons, significant reductions in the other industrial sources of these pollutants are being pursued. Significant resources are being expended on the control of volatile organic compounds from stationary sources. These controls include primary vapor recovery from fuel storage tanks for fleet and retail gasoline storage. Controls on shipment of fuel and other petroleum products have also been incorporated. Transportation improvements such as speeding traffic flow continue to be added. The completion of the Banfield Light Rail project and associated highway improvements will also accrue emission reductions of the chemicals which mix to form ozone.

Table D-2 lists the relative contribution for hydrocarbon emissions between mobile and stationary sources for the Portland metropolitan area. Table D-3 lists the relative contributions for hydrocarbons among vehicle catagories. Approximately 90% of the motor vehicle hydrocarbon emissions are from vehicle classes subject to the emission inspection program. The ozone control strategy projects that the I/M program and other control methods will result in a 27% reduction by 1987. Compliance with the national health standard is projected by December 31, 1987. Without the inspection program in operation, compliance with the ozone standard is projected not to be achieved.

Table D-2

Summary of Hydrocarbon Emissions (kg/per day) Within the Oregon Portion of the Portland-Vancouver Interstate AQMA

Emission Source	1980	1987
Industrial and Area Stationary Sources	87,033	75,548
Mobile Sources	80,163	46,539
Total	167,196	122,087

Table D-3

Relative Contributions of Hydrocarbon Emissions Among Mobile Sources Within the Oregon Portion of the Portland-Vancouver AQMA

	% Hydrocarbon Emissions
Passenger Cars and Pickup Trucks	85
Heavy Duty Gas Trucks	9
Heavy Duty Diesel Trucks	2
Off Highway Vehicles	4

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FIGURE D-1

CARBON MONOXIDE VIOLATION DAYS

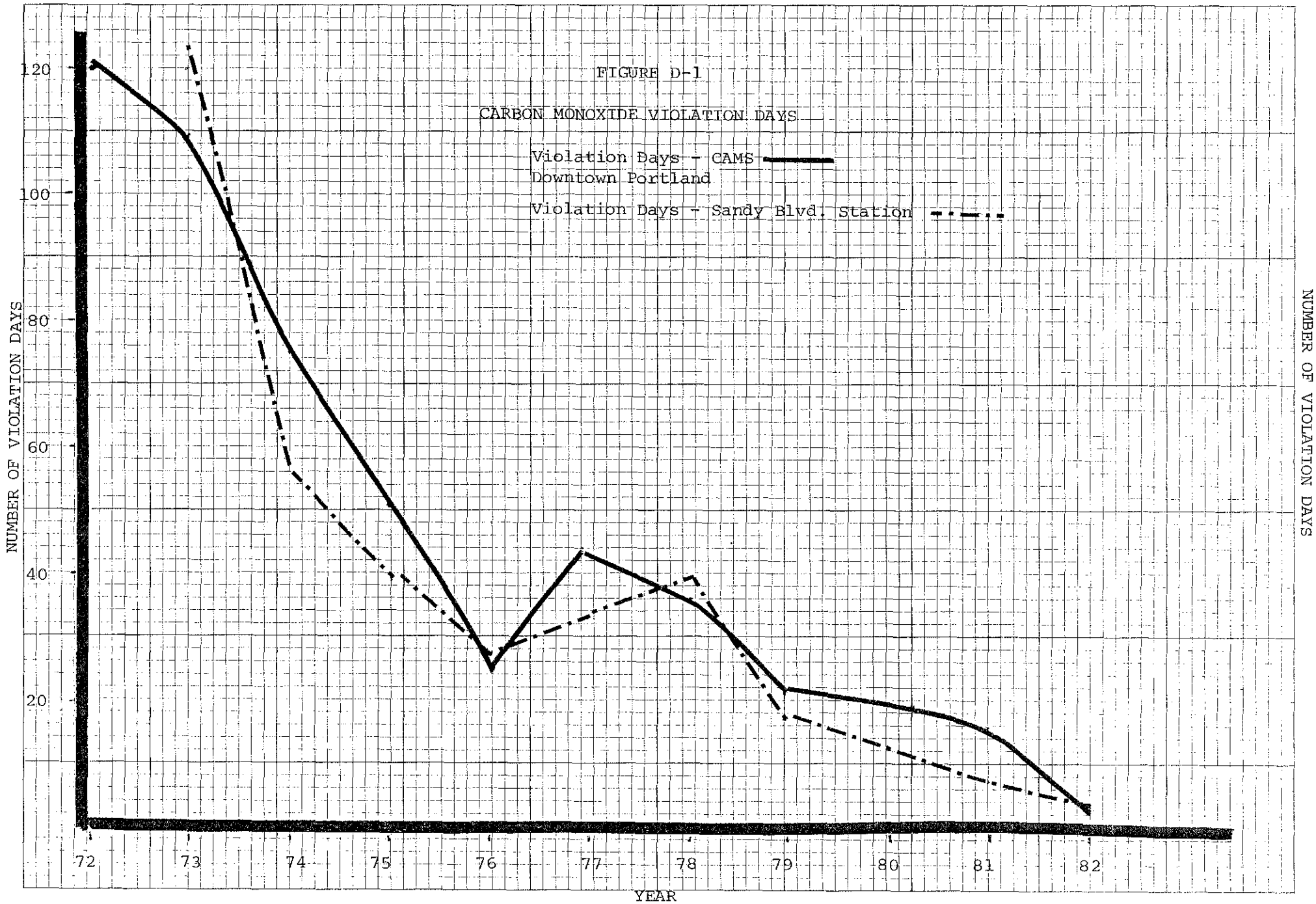

FIGURE D-2

ANNUAL AVERAGE MONTHLY MEAN EMISSIONS

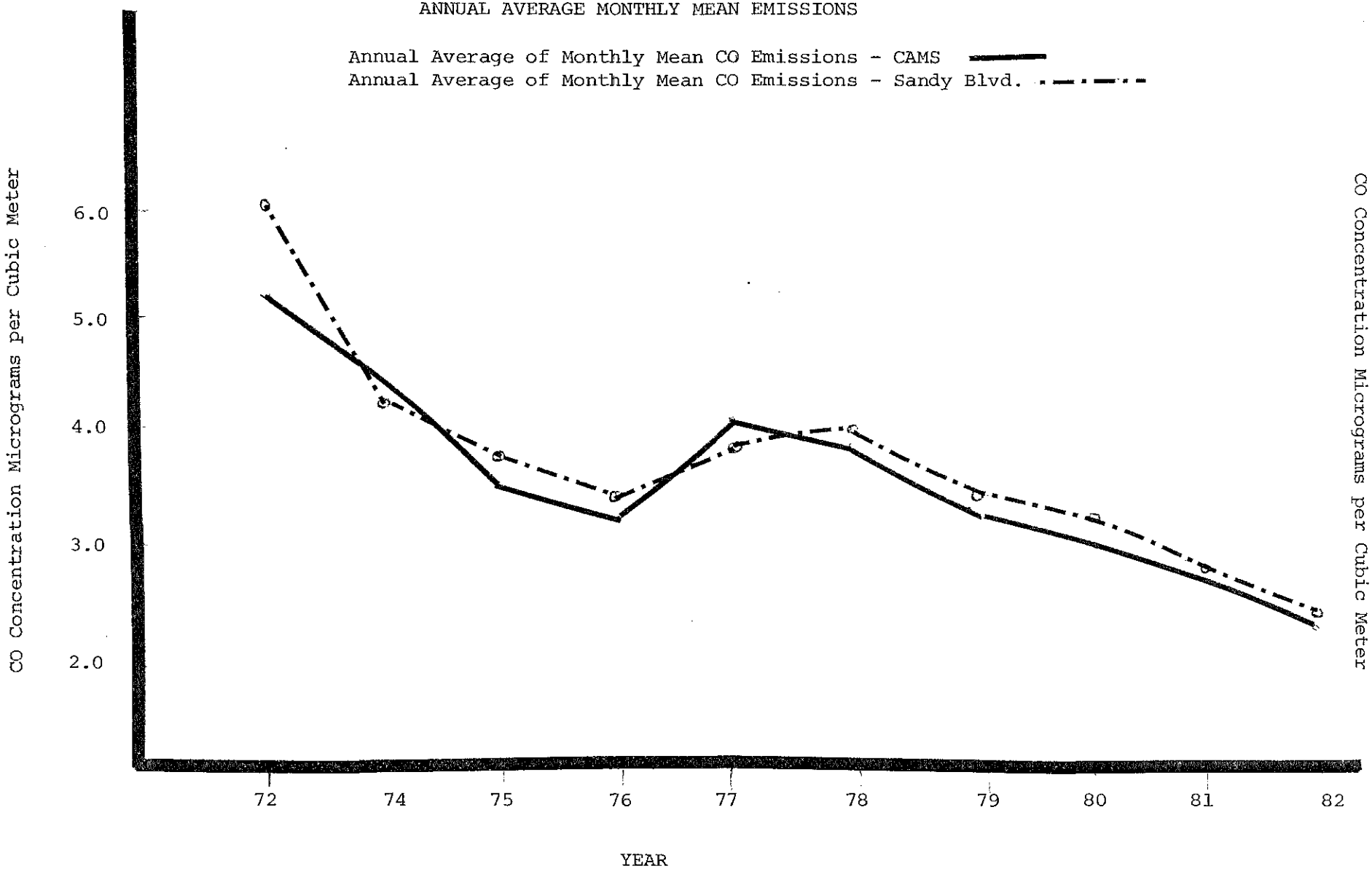

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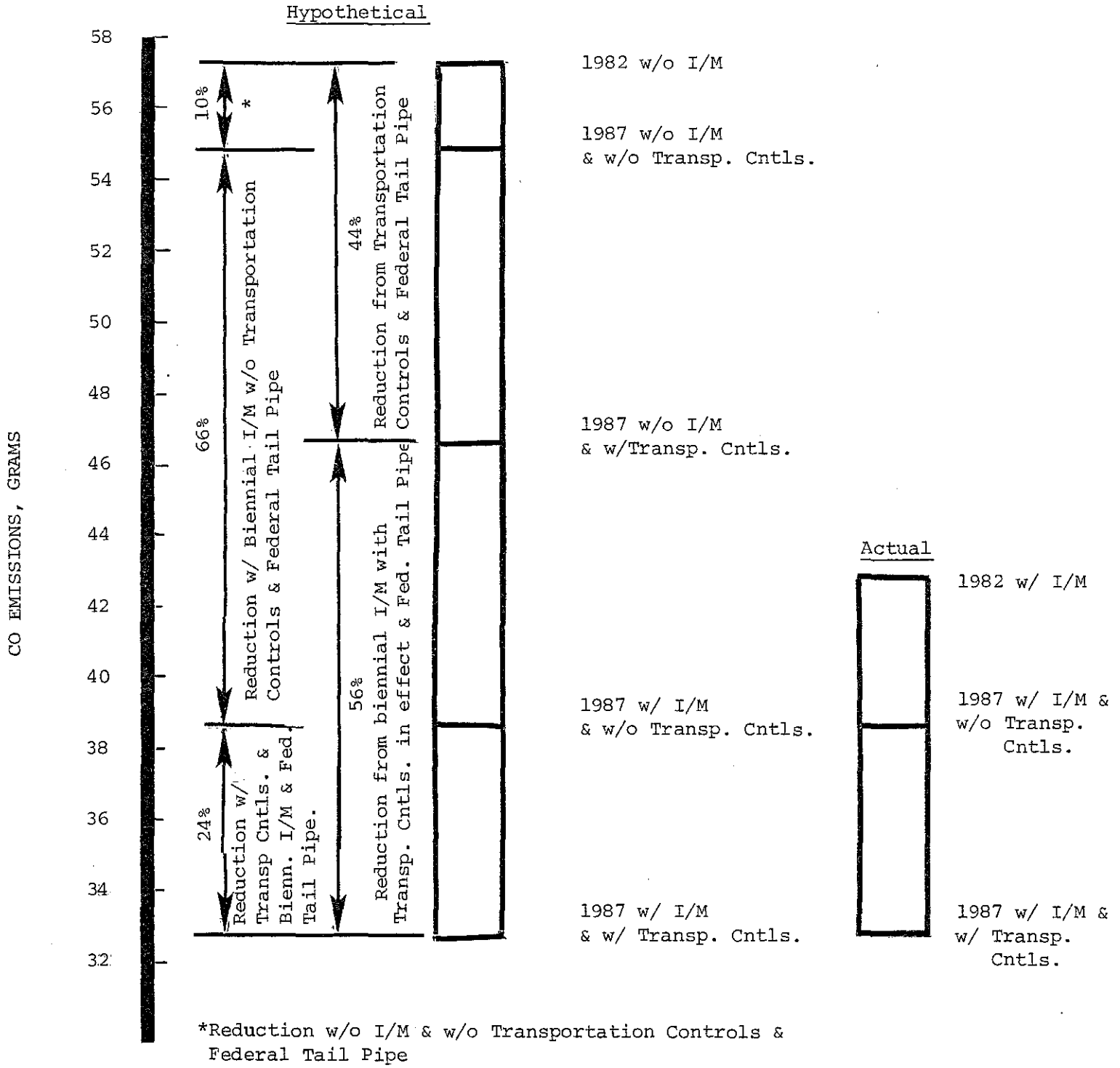
FIGURE D-3

Downtown Portland CO Emissions
at CAMS for 1 Unit of VMT
from MOBILE II



*Reduction w/o I/M & w/o Transportation Controls & Federal Tail Pipe

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Appendix E

Population Growth and Traffic Pattern Trends

In 1974, the Oregon Legislature established the boundaries for the Vehicle Inspection Program as being identical to the existing Metropolitan Service District (MSD) boundaries, covering portions of Multnomah, Clackamas and Washington Counties. Vehicles registered within the MSD are required to pass the inspection prior to vehicle registration. Following a vote during the May 1978 primary election, the MSD was reorganized to include a smaller segment of Washington County and a larger part of Clackamas County. The Legislature adopted the new MSD boundaries as the boundaries for the Vehicle Inspection Program, effective Janaury 1, 1980. This section reviews trends in population and traffic patterns associated with the MSD boundaries.

Population

The MSD covers portions of Multnomah, Washington and Clackamas Counties. The Metropolitan Service District estimates the MSD population in 1981 at 947,890. Since the MSD boundary was altered on January 1, 1979, only three years of comparable population data is available (Table E-1). Growth is seen between 1978-80 and 1980-81, but a trend toward reduced growth is shown.

Table E-1

MSD Population Since 1979

Year	Population	Growth
1979	906,800	----
1980	938,571	31,771
1981	947,890	9,319

To get a more complete view of MSD population trends, the tri-county (Multnomah, Clackamas and Washington) population can be examined. Table E-2 provides a good estimate of the MSD population growth rate since 89% of the tri-county residents live within the MSD.

Table E-2

Population Distribution*
in the Portland Metropolitan Area

Year	Multnomah	Washington	Clackamas	Clark Co, WA	Total of 3 Oregon Counties	Grand Total
1970	554,668(55%)	157,920(15%)	166,088(16%)	128,454(13%)	878,676	1,007,130
1971	559,700(54%)	169,660(16%)	174,900(17%)	130,100(12%)	904,260	1,034,360
1972	560,000(53%)	178,300(16%)	178,400(17%)	132,800(13%)	916,700	1,049,500
1973	556,000(52%)	182,500(17%)	185,600(17%)	135,200(13%)	924,100	1,059,300
1974	544,900(51%)	189,400(18%)	196,900(18%)	140,300(13%)	931,200	1,071,500
1975	547,900(51%)	190,900(18%)	202,900(19%)	149,000(14%)	941,700	1,090,700
1976	553,000(50%)	196,000(18%)	205,800(19%)	154,300(14%)	954,800	1,109,100
1977	556,400(49%)	200,800(18%)	211,000(19%)	164,000(14%)	968,200	1,132,200
1978	549,000(48%)	217,000(19%)	220,000(19%)	169,400(15%)	986,000	1,155,900
1979	556,600(47%)	225,100(19%)	231,000(19%)	178,900(15%)	1,012,700	1,191,600
1980	562,300(45%)	247,800(20%)	243,000(19%)	192,227(15%)	1,053,100	1,245,327
1981	561,400(45%)	253,800(20%)	246,100(19%)	195,800(15%)	1,061,300	1,257,100
Average Growth Year (1970-79)	0.03%	3.9%	3.6%	3.6%	1.6%	1.9%
Growth Year (1979-80)	1.0%	9.6%	5.0%	7.2%	3.9%	4.4%
Growth Year (1980-81)	-0.16%	2.4%	1.2%	1.8%	0.8%	0.9%
Average Growth Year (1970-1981)	0.11%	4.2%	3.5%	3.8%	1.7%	2.0%

* Data from Portland State University Center for Population Research and Census

The Multnomah County population has remained essentially the same since 1970, while Clackamas and Washington Counties have had population increases of 48% and 61%, respectively. Clark County has also shown a substantial growth of 52% since 1970. As compared to the greater Portland metropolitan area, the Multnomah County portion of population has decreased from 55% in 1970 to the current portion of 45%. Thus the population of the metropolitan area is increasing, but not evenly throughout the area. The fastest growth is occurring in the suburbs.

Overall, population growth in the tri-counties since 1970 has been at an average rate of 1.7% per year. The growth rate was much higher between 1977-80, averaging 2.8% per year. However, between 1980-81 the tri-county

population grew at a much reduced rate of 0.8% per year. This likely represents a temporary growth reduction due to current economic conditions.

A look at working population will give some insight into traffic trends during week day rush hours. Probably the best indicator of working population is income tax filings by county, from the Oregon Department of Revenue. This is summarized in Table E-3 for the metropolitan area. The numbers in parentheses show the fraction of total population that is paying Oregon income tax.

Table E-3

Oregon State Income Tax Filings

County	1970 Returns	1976 Returns	1978 Returns	1979 Returns	1980 Returns	(1970-80) Growth/Yr
Multnomah	204,500(37%)	229,500(41%)	247,171(45%)	250,546(45%)	249,414(44%)	2.0%
Washington	61,987(39%)	81,700(41%)	95,045(44%)	101,599(45%)	105,431(42%)	5.2%
Clackamas	53,150(32%)	81,500(39%)	92,570(42%)	95,180(41%)	97,881(40%)	5.9%
Clark Co., WA	12,700(10%)	19,600(13%)	23,560(14%)	25,270(14%)	25,306(13%)	6.6%
Total of 3 Oregon Counties	319,637(36%)	392,700(39%)	434,786(44%)	447,325(44%)	452,726(43%)	3.4%
Grand Total	332,337	412,300	458,346	472,595	478,032	3.6%

Overall, the growth in working population (Table E-3) in the metropolitan area is almost double the growth of the total population (Table E-2) between 1970-81. However, in the last two years 1979-80, this trend was reversed in all four counties, probably as a result of high Portland area unemployment. Table E-4 shows the annual average unemployment rates for the Portland metropolitan area for the last ten years, and the latest available monthly unemployment rate (October, 1982).

Table E-4

Unemployment Rates
Portland Metropolitan Area

Period	Rate
1970	6.3
1971	7.1
1972	6.1
1973	5.4
1974	6.2
1975	9.5
1976	8.7
1977	6.8
1978	5.2
1979	5.4
1980	6.3
1981	8.0
October 1982	9.9

Vehicle Registration

Table E-5 shows passenger car registration and population figures for the ten Oregon counties with the largest number of passenger vehicle registrations. Overall, since 1970, increases have occurred in both vehicle registrations and in population. The data shows that vehicle registration in almost all counties has been growing at a rate of over twice that of the population. The highest growth rates both in population and in vehicle registrations are occurring in Deschutes, Clackamas and Washington Counties. Multnomah County, the state's most populous, had a minimal population increase but still shows significant growth in vehicle registration.

Generally, between 1979-81, the population and vehicle registrations both continued to rise but at a reduced rate compared to the years 1970-79. Registrations took a sharper rate drop than population. For those 3 years, population growth rate was over three times the registration growth rate, a complete reversal in the 1970-79 trend. Three counties, Coos, Lane, and Multnomah Counties, showed a reduction in registered vehicles for 1979-81.

The 1979-81 Portland area (tri-county) vehicle registration growth rate was 0.4% per year compared to a population increase of 2.4% per year and a working population growth of 0.6% per year (Table E-3). For 1970-79 growth rates for vehicle registration, total population and working population were 6.3%, 2.5% and 4.4%, respectively.

Morning Traffic Trends

Morning traffic trends can provide a feel for the business development throughout the tri-county area. Vehicles travelling between 6-11 a.m. generally represent morning business traffic.

Figure E-1 gives the average morning week day traffic into and out of downtown Portland for June, 1982. Besides displaying the total vehicle counts, the figure shows the growth in traffic count which has occurred since 1970, and the growth in this count in the last two years.

Morning traffic counts have substantially increased over the past twelve years. The largest increase by far occurred at the Vista Ridge Tunnel (Highway 26), reflecting the population and business activity increases in Washington County. Data for 1980-82 show this traffic volume continuing to be the fastest growing of the six Portland arterials indicated in Figure E-1.

Figure E-1 shows that the twelve year growth (%) in traffic leaving the downtown Portland area has in almost all of the reported cases out-distanced the growth in incoming traffic. The most dramatic example of this is at the Banfield Freeway. This appears to represent a relative growth in business activities in the areas adjacent to downtown. However, a closer look at the more recent traffic trends, especially the Banfield Freeway data, shows that this trend appears to be reversing itself.

Table E-5

Vehicle Registration and Population by County

County	Estimated 1979 Passenger Car Registrations	Estimated 1981 Passenger Car Registrations	Registration Growth Rate/Year 1970-1979	Registration Growth Rate/Year 1979-1981	Estimated 1979 Population	Estimated 1981 Population	Population Growth Rate/Year 1970-79	Population Growth Rate/Year 1979-80
1. Multnomah	383,933	377,304	1.8%	-0.9%	556,600	561,400	0.04%	0.4%
2. Lane (Eugene)	210,757	210,496	7.1%	-0.1%	269,300	275,000	2.87%	1.0%
3. Clackamas (Portland/ Oregon City)	183,803	189,013	11.7%	1.4%	231,000	246,100	4.3%	3.3%
4. Washington (Portland/ Beaverton)	173,741	180,969	10.8%	2.1%	225,100	253,800	6.7%	6.4%
5. Marion (Salem)	152,818	157,861	7.7%	1.7%	194,100	209,730	3.1%	4.0%
6. Jackson (Medford)	108,832	112,544	9.2%	1.7%	128,500	133,700	4.0%	2.0%
7. Douglas (Roseburg)	75,249	76,253	7.7%	0.7%	89,300	92,300	2.7%	1.7%
8. Linn (Albany)	71,164	71,367	7.1%	0.1%	87,200	90,500	2.4%	1.9%
9. Coos (Coos Bay)	51,200	49,387	5.7%	-1.8%	63,500	63,300	1.4%	-0.1%
10. Deschutes (Bend)	51,078	54,989	16.9%	3.8%	57,000	63,650	9.7%	5.8%

Of some concern to Oregonians is the influx of vehicles from Vancouver, Washington, where cars are not currently required to pass an air pollution emissions test. The morning southbound traffic counts at the Interstate bridge give a qualitative view of the number of people residing in Washington that work in Oregon. This traffic count data compares very well with the Oregon income tax filings for Clark County residents shown in Table E-3.

Figure E-1 shows that a great share of the morning traffic entering Oregon from Washington stops in Portland. Each morning, about 20,000 vehicles enter Oregon over the Interstate Bridge. The shopping centers and industrial areas along the Columbia River attract a large portion of these vehicles. Traffic volumes decrease shortly after entering Oregon. Within a few miles, however, traffic increases approaching the center of town.

Interstate Bridge traffic counts show approximately a 63% increase in southbound traffic over the past twelve years. This growth in bridge traffic is of the same magnitude as the growth rate in vehicle population in the Portland tri-county area (57%). This indicates that bridge traffic has not inordinately increased in the last twelve years. The actual out-of-state influx of approximately 20,000 vehicles each morning is less than 3% of the vehicle population in the Portland tri-county area. This does not represent a major impact in terms of pollution or traffic, to the Portland area. The 20,000 vehicles represent 20% of the registered vehicles in Clark County Washington.*

Vehicles From Outside the Vehicle Inspection Boundaries

The vehicle inspection boundaries have been legislatively established as the Metropolitan Service District (MSD) boundaries. This area is shown in Figure E-2, along with the average daily traffic (ADT) across those boundaries for major thoroughfares. During 1981, there was a total of 230,000 ADT on these main roads. Assuming a worst case, that all of the traffic on these roads is registered outside the MSD, then 15% of the passenger vehicles operating within the MSD would not have been tested.

The Department did an additional study of Oregon license plates observed in parking lots within the Portland area to gauge out-of-area impact. This study shows that about 12% of those Oregon licensed vehicles were from outside the MSD area.

Of those vehicles which cross into the MSD boundary, most cross while travelling on I-5. Approximately 50% cross the boundary at the Interstate Bridge; another 21% cross on I-5 at Wilsonville.

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* Data from Department of Licensing, Olympia, Washington.

Vehicle Usage

Pollution emitted into the Portland airshed from vehicles is a function of the amount of pollution emitted per mile and the total miles travelled. Table E-6 shows the trend of vehicle usage in the Portland area in the last five years. The table gives the estimated miles travelled per year on the primary and secondary streets in the tri-county area. There has been an overall increase of 24% in traffic in the last six years. Note in the years 1979-80 there was little change in traffic volume, but in 1981 volumes again began to show substantial increases. Many factors, including economic outlook could have caused such a reaction. One of the stronger factors may have been the increased fuel prices in 1979-80 with the subsequent leveling off of prices in 1981.

Table E-6

Annual Vehicle Miles
Portland Metropolitan Area

	Miles				
Year	Multnomah	Clackamas	Washington	Total	Change in Total Miles
1975	1,518,000,000	597,000,000	686,000,000	2,801,000,000	- - - - - - -
1976	1,619,000,000	659,000,000	751,000,000	3,029,000,000	+228,000,000
1977	1,682,000,000	708,000,000	796,000,000	3,186,000,000	+157,000,000
1978	1,724,000,000	782,000,000	870,000,000	3,376,000,000	+190,000,000
1979	1,713,000,000	792,000,000	855,000,000	3,362,000,000	- 14,000,000
1980	1,678,000,000	776,000,000	911,000,000	3,365,000,000	3,000,000
1981	1,731,000,000	806,000,000	941,000,000	3,478,000,000	113,000,000

Another of the factors affecting vehicle usage in the Portland metropolitan area is bus ridership. Table E-7 shows the number of boarding passengers in each of the last twelve fiscal years.

Table E-7

Tri-Met Bus Ridership

Fiscal Year	Number of Boarding Passengers	Increase in Number of Passengers
1970-71	20,730,000	-------
1971-72	21,350,000	620,000
1972-73	22,170,000	820,000
1973-74	25,480,000	3,310,000
1974-75	28,360,000	2,880,000
1975-76	35,210,000	6,850,000
1976-77	38,080,000	2,870,000
1977-78	41,570,000	3,490,000
1978-79	42,250,000	680,000
1979-80	50,670,000	8,420,000
1980-81	48,090,000	-2,580,000
1981-82	47,090,000	-1,000,000

Bus ridership increased every year between 1970-80, however, between 1980-82 a drop in ridership was shown. Douglas Wentworth, Director of Management Information for Tri-Met, suggested several reasons why such a drop occurred: 1) fuel prices have stabilized since February 1981, 2) a Tri-Met fare increase was initiated in October 1980 and 3) a decrease in employment in the Portland area. Table E-7 shows that while bus ridership decreased during the last two years and the use of private vehicles increased. This indicates a trade-off in mode of transportation has occurred rather than an overall reduction in people-miles travelled.

Summary

The population of the MSD (also the Vehicle Inspection Program boundaries) is estimated at 947,890. The annual growth rate over the last eleven years was 1.7% per year. In the last several years the population has increased at a faster rate than average, but in the last year the growth rate dropped to only 0.8% per year. This growth is mainly occurring in the suburban areas. In fact, Multnomah County has shown no significant net population gain in the last eleven years.

Between 1970-80 working population in the metropolitan area has grown at a rate of about double that of the total population (3.4% per year). Working population growth correlates closely to increases in vehicle registration. Vehicle registration in the metropolitan area increased at a rate of 6.3% per year between 1970-79. However, between 1979-81, while the total population continued to grow at about 2.4% per year, the increase in vehicle registrations dropped to 0.4% per year. A similar rate drop was seen in working population.

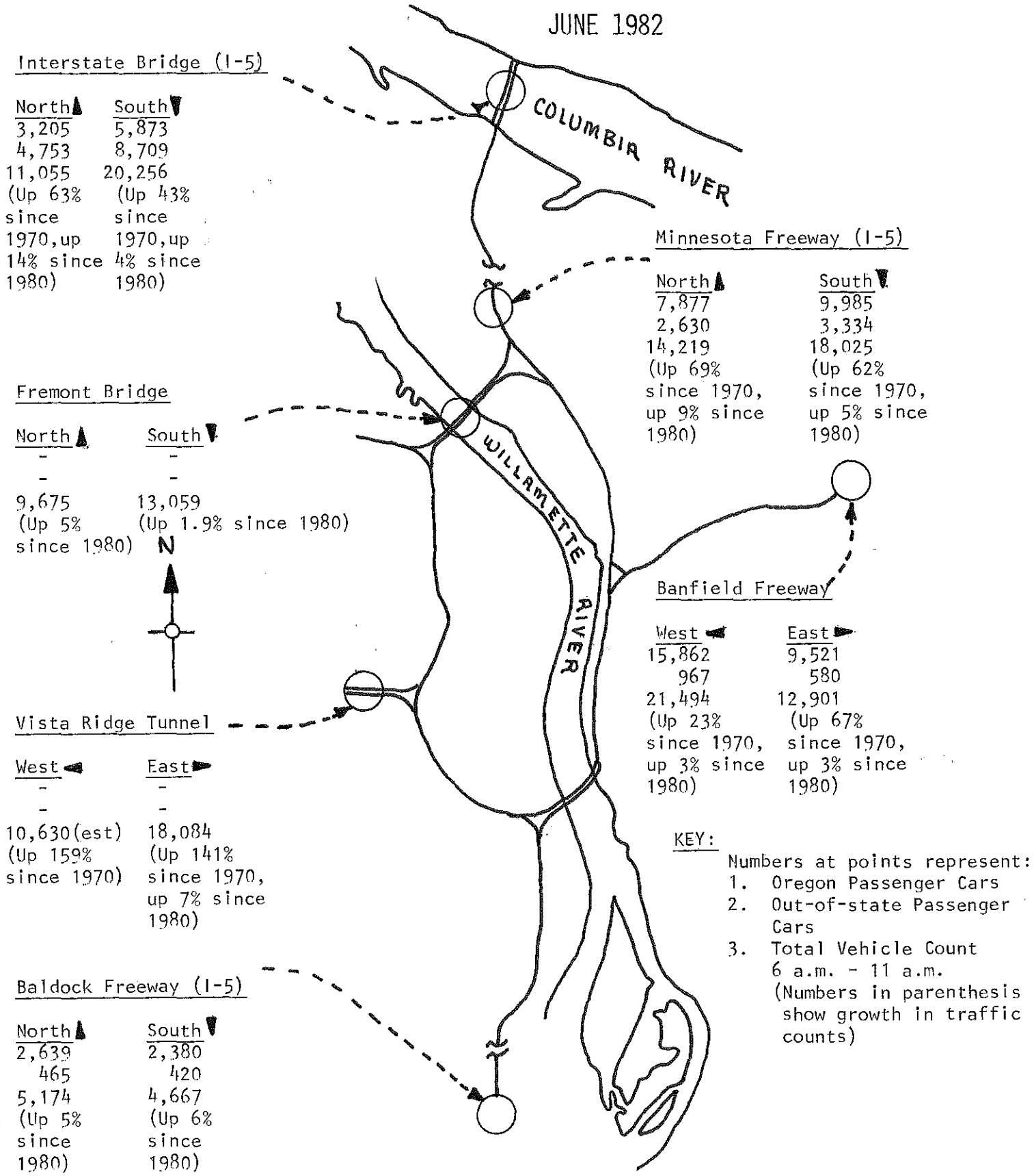
Morning traffic (6 a.m. - 11 a.m.) on major roads in the metropolitan area over the last 12 years has increased, and has indicated a trend of greater growth in the suburbs relative to downtown. Data for the last two years, however, shows that this trend may be changing, indicating a movement in jobs back to downtown. Every week day morning approximately 20,000 vehicles enter Oregon across the Interstate Bridge. Morning traffic across the bridge has increased at the moderate rate of 5% per year over the past twelve years. Changes in driving habits are anticipated with the opening of the new Glenn Jackson Bridge.

Currently it is estimated that 12-15% of the vehicles operating within the MSD come from outside the area. This ratio has not changed significantly in the past few years. Overall, the vehicle usage (vehicle miles travelled) in the metropolitan area has increased by an average of 4% per year in the last six years. Between 1979-80 there was little change in traffic volume, but in 1981 a significant increase was again seen.

Figure E-1

AVERAGE WEEK-DAY FLOW OF VEHICLES ON THE PORTLAND FREEWAY SYSTEM FROM 6 AM - 11 AM

JUNE 1982



Interstate Bridge (I-5)

North ▲	South ▼
3,205	5,873
4,753	8,709
11,055 (Up 63% since 1970, up 14% since 1980)	20,256 (Up 43% since 1970, up 4% since 1980)

Minnesota Freeway (I-5)

North ▲	South ▼
7,877	9,985
2,630	3,334
14,219 (Up 69% since 1970, up 9% since 1980)	18,025 (Up 62% since 1970, up 5% since 1980)

Fremont Bridge

North ▲	South ▼
-	-
-	-
9,675 (Up 5% since 1980)	13,059 (Up 1.9% since 1980)

Banfield Freeway

West ◄	East ►
15,862	9,521
967	580
21,494 (Up 23% since 1970, up 3% since 1980)	12,901 (Up 67% since 1970, up 3% since 1980)

Vista Ridge Tunnel

West ◄	East ►
-	-
-	-
10,630(est) (Up 159% since 1970)	18,084 (Up 141% since 1970, up 7% since 1980)

Baldock Freeway (I-5)

North ▲	South ▼
2,639	2,380
465	420
5,174 (Up 5% since 1980)	4,667 (Up 6% since 1980)

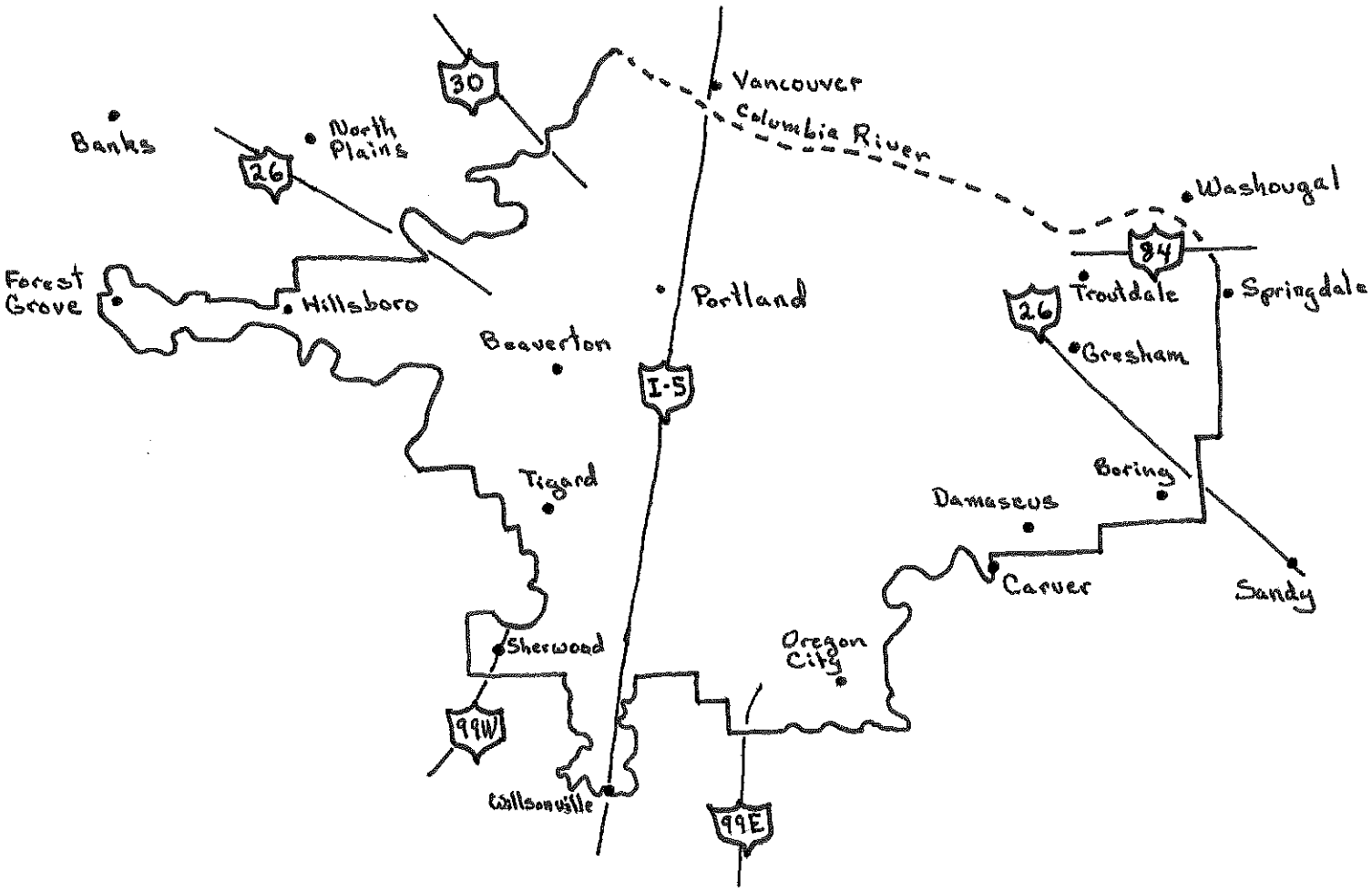
KEY:

Numbers at points represent:

1. Oregon Passenger Cars
2. Out-of-state Passenger Cars
3. Total Vehicle Count 6 a.m. - 11 a.m. (Numbers in parenthesis show growth in traffic counts)

Figure E-2

AVERAGE DAILY TRAFFIC (ADT) ACROSS CURRENT VEHICLE INSPECTION BOUNDARIES



	AVERAGE DAILY TRAFFIC AT MSD BOUNDARIES				
	1977	1979	1981	1977-79 Difference	1979-81 Difference
I-5/Interstate Bridge (North Boundary)	97,300	100,800	103,400	3,500	2,600
I-84N/Jordan Interchange (East Boundary)	13,300	13,700	13,700	400	0
U.S. 26/Kelso Road (East Boundary)	12,500	13,100	13,700	600	600
U.S. 99E/South End Road (South Boundary)	9,200	9,300	9,000	100	-300
I-5/Wilsonville Interchange (South Boundary)	43,400	48,100	48,500	600	400
U.S. 99W/Kruger Road (South Boundary)	14,200	14,700	14,600	500	-100
U.S. 26/Cornelius Pass Road (West Boundary)	11,600	12,300	14,000	700	1700
U.S. 30/Portland City Limits (North Boundary)	14,200	14,800	14,700	600	-100
	215,700	226,800	231,600	11,100	4,800

APPENDIX F

INSPECTION/MAINTENANCE PROGRAM IMPLEMENTATION SUMMARY
January 1983

Region/State/Areas	Program Start	Program Type	Test Mode	Cost Waiver $	Test Fee $	Vehicles Included	Exempt-ions	Cutpoints Years	CO %	HC ppm
I										
CT statewide	1/83	CC/SE	I	70	10	1968+ to 10,000 lbs.	M D	1968-1969	9.5	950
								1969-1970	9.0	800
								1971	7.5	800
								1972	7.5	725
								1973-1974	7.5	525
								1975-1979	4.0	375
								1980	3.0	350
								1981+	1.5	275
MA statewide	4/83	D/SE	R	100 or 10% of value	10°	Last 15 years to 8000 lbs.	M D	Pre 1970	8.5	800
								1970-1974	7.0	700
								1975-1980	4.0	400
								1981+	1.5	250
RI statewide	1/79	D/SE	I	none	4°	1967+ to 8000 lbs.	M D	before 1968	10.0	1600
								1968-1969	8.0	800
								1970-1974	6.0	600
								1975+	3.0	300
II										
NJ statewide	2/74	CS/RS	I	none	2.50°	All LDV's to 6000 pounds	M D	before 1968	8.5	1400
								1968-1969	7.0	700
								1970-1974	5.0	500
								1975+	3.0	300
NY NYC and metro area: Nassau Co. Rockland Co. Suffolk Co. Westchester Co.	1/82	D/RS	I	certain repairs required	6.50	All LDV's to 8500 pounds	M D	before 1975	9.9	1990
								1975-1977	7.5	1500
								1978	6.0	870
								1979	4.5	630
								1980	2.7	330
								1981+	1.2	220
III										
D.C. city-wide	1/83	CL/SE	I	none	5°	All LDV's to 6000 lbs.		pre-1968	12.5	2000
								1968-1970	11.0	1250
								1971-1974	9.0	1200
								1975-1979	6.5	600
								1980+	1.5	300
DE Wilmington: New Castle Co.	1/83	CS/RE	I	75		All LDV's to 8500 pounds, VM for pre-66	M D	pre-1968		1600
								1969-1971		1100
								1972-1974		800
								1975-1979		600
								1980+		235

Program Type Key
D = decentralized
CL = central local-run
CC = central contractor
CS = central state-run

Program Type Key
RE = registration-enforced
SE = sticker-enforced
RS = registration & sticker

Test Mode
R = idle and RPM
I = idle
L = loaded

Exemptions Key
M = motorcycles
D = diesels

°Includes safety inspection fee.

INSPECTION/MAINTENANCE PROGRAM IMPLEMENTATION SUMMARY
January 1983

Region/State/Areas III	Program Start	Program Type	Test Mode	Cost Waiver $	Test Fee $	Vehicles Included	Exempt-ions	Cutpoints Years	CO %	HC ppm
MD Baltimore and metro area:	1/83*	CC/RS	I	75	9	Last 12 years to 10,000 lbs.	M D	Proposed		
Anne Arundel Co.										
Baltimore Co.										
Carroll Co.										
Harford Co.										
Howard Co.										
D.C. suburbs:										
Montgomery Co.										
Prince Georges Co.										
PA Philadelphia:	5/82*	D/SE	I	150-250		Last 25 years to 11,000 lbs.	M D	Proposed		
Bucks Co.										
Chester Co.										
Delaware Co.										
Montgomery Co.										
Philadelphia Co.										
Pittsburgh:										
Allegheny Co.										
Armstrong Co.										
Beaver Co.										
Butler Co.										
Washington Co.										
Westmoreland Co.										
Allentown/Bethlehem/Easton:										
Lehigh Co.										
Northhampton Co.										
VA D.C. Suburbs:	1/82	D/RS	I	75 or low emission tune-up	3.50	Last 9 years to 6000 lbs.	M D	1975-1979	6.0	600
								1980	4.0	400
								1981+	3.0	300
Arlington Co.										
Fairfax Co.										
Prince William Co.										
Alexander										
Falls Church										
Monassas Park										

Program Type Key	Program Type Key	Test Mode	Exemptions Key
D = decentralized	RE = registration-enforced	R = idle and RPM	M = motorcycles
CL = central local-run	SE = sticker-enforced	I = idle	D = diesels
CC = central contractor	RS = registration & sticker	L = loaded	
CS = central state-run			

* Start up date missed.

INSPECTION/MAINTENANCE PROGRAM IMPLEMENTATION SUMMARY
January 1983

Region/State/Areas	Program Start	Program Type	Test Mode	Cost Waiver $	Test Fee $	Vehicles Included	Exempt-ions	Cutpoints Years	CO %	HC ppm
IV										
GA Atlanta:	4/82	D/SE	I	50	3	Last 10	M	1972-1974	6.0	600
Cobb Co.						years to	D	1975-1979	4.0	400
DeKalb Co.						6000 lbs.		1980+	2.5	250
Fulton Co.										
KY Louisville:	12/82*	CC/DL	I	15:CO	6.90	All models	M	Proposed		
Jefferson Co.				35:HC		to 10000 lbs.				
Cincinnati area proposed attainment				50:HC & CO failures						
NC Charlotte:	12/81*	D/SE	R	50	8.50	Last 13	D	1971-1974	7.0	
Mecklenburg Co.						years, all		1975-1978	5.0	
						vehicles		1979-1980	3.0	
								1981+	1.5	
TN Nashville:	12/82*	C/SE	I					Proposed		
Davidson Co.										
Memphis:	12/82*	CL/SE	I			All LDV's	M	Proposed		
Shelby Co.							D			
V										
IL Chicago area:	1/83*	CC								
Cook Co.	Du Page Co.									
Kane Co.	Lake Co.									
McHenry Co.	Will Co.									
St. Louis area:										
Madison Co.										
St. Clair Co.										
IN Chicago subs:	1/83*	CC	I	75	10	1971+, all	M			
Lake Co.					max	vehicles				
Porter Co.										
Louisville subs:										
Clark Co.	Floyd Co.									
MI Detroit area:	10/81*	D/RE	I	50	10	1972+ to	M			
Macomb Co.					max	8500 lbs.	D			
Oakland Co.										
Wayne Co.										
OH Cleveland and Cincinnati proposed attainment										
WI Milwaukee:	1/83*	CC/RE	L	55	None	Last 15	M	Proposed		
Kenosha Co.						years to	D			
Milwaukee Co.						8000 lbs.				
Ozaukee Co.										
Racine Co.										
Washington Co.										
Waukesha Co.										

Program Type Key	Program Type Key	Test Mode	Exemptions Key
D = decentralized	RE = registration-enforced	R = idle and RPM	M = motorcycles
CL = central local-run	SE = sticker-enforced	I = idle	D = diesels
CC = central contractor	RS = registration & sticker	L = loaded	
CS = central state-run			

* Start up date missed.

INSPECTION/MAINTENANCE PROGRAM IMPLEMENTATION SUMMARY
January 1983

Region/State/Areas	Program Start	Program Type	Test Mode	Cost Waiver $	Test Fee $	Vehicles Included	Exempt-ions	Cutpoints Years	CO %	HC ppm
VI										
NM Albuquerque:	1/83	CC/SE	I/L	75	9.25	1968+ to	M	1968-1971	9.5	950
Bernalillo Co.				or low		8000 lbs.	D	1972-1974	8.5	850
				emissions			O	1975-1979	7.0	700
				tune up				1980	4.5	450
								1981+	1.2	220
TX Houston:	1/83*									
Harris Co.										
VII										
MO St. Louis area:	12/81*	D/RE	I		4.50	1968+ to		1968-1974	7.0	700
Jefferson Co.					max	6000 lbs.		1975-1979	6.0	600
St. Charles Co.								1980+	1.2	220
St. Louis Co.										
St. Louis City										
VIII										
CO Denver area:	1/82	D/SE	I/R	15/100	10	1968+ to	M	1968-1971	7.0	1200
Adams Co.					max	8500 lbs.	D	1972-1974	6.0	1200
Arapaho Co.							O	1975-1976	5.5	800
Boulder Co.								1977-1978	3.5	500
Denver Co.								1979-1981	2.0	400
Douglas Co.										
Jefferson Co.										
Colorado Springs:										
El Paso Co.										
Fort Collins:										
Larimer Co.										
UT Salt Lake City										
Salt Lake Co.	12/82*	CC	I			All LDV's	M			
						last 12 yrs.	D			
Davis Co.	12/81*	D	I			All LDV's	M			
						1975+	D			

Program Type Key	Program Type Key	Test Mode	Exemptions Key
D = decentralized	RE = registration-enforced	R = idle and RPM	M = motorcycles
CL = central local-run	SE = sticker-enforced	I = idle	D = diesels
CC = central contractor	RS = registration & sticker	L = loaded	O = other fuels
CS = central state-run			

* Start up date missed.

INSPECTION/MAINTENANCE PROGRAM IMPLEMENTATION SUMMARY
January 1983

Region/State/Areas	Program Start	Program Type	Test Mode	Cost Waiver $	Test Fee $	Vehicles Included	Exempt-ions	Cutpts Years	4cyl CO %	4cyl HC ppm	6-8 cyl CO %	6-8 cyl HC ppm
IX												
AZ Phoenix: Maricopa Co. Tucson: Pima Co.	1/77	CC/RE	I	75	5.75	Last 13 years, all vehicles	D	1969-1971	6.5	800	6.5	750
								1972-1974	6.0	450	5.5	400
								1975-1980	2.5	250	2.2	250
								1981+	1.5	250	1.5	250
NV Las Vegas: Clark Co. Reno: Washoe Co.	7/81*	D/RE	R	25 parts, 75 parts and labor	18-21	Last 14 years, all vehicles	M D			4-8 cyl		
								1968-1969	5.0	600		
								1970-1974	4.0	400		
								1975+	3.0	300		
CA South Coast Ventura-Oxnard-Thousand Oaks San Francisco San Diego Sacramento Fresno	4/84	D/RE	I	50		LDVs last 20 years, weight limit undecided	M D					
X												
ID Boise Ada Co.	8/83	CC/SE	I	75		1970+ to 8000 lbs.	M D					
OR Portland area: Multnomah Co. Clackamas Co. Washington Co.	7/75	CS/RE	R	none	7	All vehicles 1942+		Cutpoints established for each model year and make. Detailed list available.				
WA Seattle area: King Co. Snohomish Co.	1/82	CC/RE	I	50	10	All LDV 1969+	M D	1970-1971	7.0	600	6.0	600
								1972-1974	6.0	500	5.0	400
								75+no cat	4.0	300	4.0	300
								75+ w cat	3.0	250	3.0	250

Program Type Key	Program Type Key	Test Mode	Exemptions Key
D = decentralized	RE = registration-enforced	R = idle and RPM	M = motorcycles
CL = central local-run	SE = sticker-enforced	I = idle	D = diesels
CC = central contractor	RS = registration & sticker	L = loaded	
CS = central state-run			

* Start up date missed.

This document summarizes essential characteristics of every required I/M program in the country. These characteristics have been derived from statutes and/or rules and regulations promulgated by the state or locality. The list includes the names of states, cities and counties implementing I/M; however, in some areas only part of the county listed is involved not the entire county. The date listed under "Program Start" is the SIP-approved implementation date. The "Program Type" column indicates whether the program is centralized or decentralized and what type of enforcement mechanism is planned or being used. A key to the abbreviations is provided at the bottom of the page. Test fees sometimes include a safety inspection which is indicated by a degree symbol. Where possible the emission inspection fee has been separated from the safety inspection fee. The cutpoints listed are for light duty vehicles only.

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: Agenda Item No. U, April 8, 1983, EQC Meeting

Informational Report: Contested Case Status

Background

A number of contested cases have been awaiting final agency action for over a year. The status of these cases is as follows:

Teledyne Industries, Inc. dba/Teledyne Wah-Chang Albany
Contest of Conditions of Modification to NPDES Permit No. 2012-J
Addendum No. 2
Case No. 03-P-WQ-WVR-78-2012-J

Teledyne Industries, Inc. dba/Teledyne Wah-Chang Albany
Contest of Conditions of NPDES Renewal Permit No. 2849-J
Case No. 16-P-WQ-WVR-78-2849-J

These two cases involve the same regulated activity. Teledyne Wah-Chang Albany (TWCA) requested modification of the ammonia discharge limit contained in its National Pollutant Discharge Elimination System (NPDES) permit. In evaluating the request, Department solicited the assistance of the United States Environmental Protection Agency (EPA) in determining appropriate limits. Department used information provided by EPA in developing the terms of a permit addendum. On March 3, 1978, Department issued that permit addendum increasing the ammonia limit, but to a level below that requested by TWCA. TWCA disagreed with aspects of the methodology employed by EPA and contested the permit addendum. Thereafter, the permit was renewed. The permit renewal incorporated the ammonia discharge limits of the permit addendum. TWCA challenged the renewal permit.

Despite the challenges, TWCA is currently bound by the permit terms which remain in force pending completion of the permit challenge process. Both TWCA and the Department wish to continue the cases in inactive status until EPA promulgates final guidelines for Best Available Technology (BAT) which will apply to TWCA. It is not known when the necessary EPA effort will be completed, but portions of the guidelines have been distributed in draft form, and it is hoped that the process will be concluded within a year.

Because relief from the current permit terms will be prospective only, the public interest is not compromised by continuing the cases in inactive status.

See Attachment A.

M/V Toyota Maru #10
Case No. 17-WQ-NWR-79-127

Department and Toyota Maru have filed motions for partial summary judgment. The hearings officer's order has been prepared in draft form but requires fairly extensive revision. The order will be issued by May 6, 1983 and may be dispositive.

John W. Hayworth, dba/Hayworth Farms, Inc.
Case No. 33-AQ-WVR-80-187

This case is currently before the Commission on appeal of the hearings officer's decision and will be reviewed at the April 8, 1983 meeting.

Arthur W. Pullen, dba/Foley Lakes Mobile Home Park
Case No. 16-WQ-CR-81-60,
Case No. 28-WQ-CR-82-16

The current civil penalty cases follow an earlier $1,600 civil penalty mitigated by the Commission to $500 and paid. Department requested a delay in scheduling of contested case hearings to allow informal resolution of the underlying environmental problem.

Respondent has been instrumental in the formation of a local improvement district with the goal of providing sewer service to affected mobile home park units. It is anticipated that all units will be connected to the City of The Dalles sewerage system by June 1, 1983. After the problem units are connected, staff intends to recommend withdrawal of the current civil penalty assessments as they have served their intended purpose of inducing elimination of the environmental problem.

See Attachment B.

Victor Frank
Case No. 19-AQ-FB-81-05

A contested case hearing was conducted and a hearings officer's decision affirming the $1,000 civil penalty was issued March 25, 1983. Respondent has until April 25, 1983 to appeal that decision to the Commission.

Clifford Gates
Case No. 21-SS-SWR-81-90

This Grants Pass case has been scheduled for hearing on May 3, 1983.

Wendell Sperling, dba/Sperling Farms
Case No. 23-AQ-FB-81-15

A contested case hearing was conducted on March 3, 1983 and continued to March 17, 1983. Preparation of a decision has not been begun.

Leo Nofziger
Case No. 26-AQ-FB-81-18

A final order in this case should be issued by May 20, 1983.

Attachments 2

LKZ:k
229-5383
April 7, 1983
HK1815

DAVE FROHNMAYER
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

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

April 1, 1983

Linda Zucker
Hearings Officer
Environmental Quality Commission
522 S.W. Fifth Avenue
Portland, OR 97204

Re: Teledyne Industries, Inc. dba Teledyne Wah Chang Albany; Contest of Conditions of NPDES Renewal Permit No. 2849-J; Before the EQC Hearings Section No. 16-P-WQ-WVR-2849-J

Teledyne Industries, Inc. dba Teledyne Wah Chang Albany; Contest of Conditions of Modification to NPDES Permit No. 2012-J, Addendum No. 2; Before the EQC Hearings Section No. 03-P-WQ-WVR-78-2012-J

Dear Mrs. Zucker:

In response to your recent request for a status report regarding the subject cases, I telephoned Richard Williams of attorneys for Teledyne Industries, Inc. dba Teledyne Wah Chang Albany in the subject cases.

With the consent of the Environmental Quality Commission and its Hearings Section the subject cases have been inactive at the request of the parties for the reasons stated in my August 25, 1980 letter to you.

The permit was scheduled to expire on July 31, 1981. However, the permittee made a timely application for renewal which had the effect of automatically extending the permit. The Department of Environmental Quality has not taken action on the permit. It is withholding action until it obtains guidance from the United States Environmental Protection Agency to establish effluent limitations based on best available technology (BAT). We do not know when to expect EPA to complete their analysis.

I am authorized by Mr. Williams to advise you that his client desires to continue the subject cases in the inactive status as in the past for the reasons previously stated. It is also in the best interests of the DEQ to continue the status quo. Therefore, on behalf of the parties I respectfully request that the subject cases remain inactive indefinitely unless and until either party should subsequently change its mind and pro-

vide reasonable notice thereof and opportunity thereafter to prepare for a hearing.

Thank you for your consideration in this matter.

Sincerley,

Robert L. Haskins
Assistant Attorney General
Natural Resources Section

RLH/bc
cc: William H. Young
Fred Bolton
Richard H. Williams

July 6, 1981

Joe B. Richards, Chairman
Environmental Quality Commission
P.O. Box 10747
Eugene, Oregon 97401

Ronald M. Somers
Environmental Quality Comm.
106 East Fourth Street
The Dalles, Oregon 97058

Fred J. Burgess
Environmental Quality Commission
Dean's Office, Engineering
Oregon State University
Corvallis, Oregon 97331

Mary V. Bishop
Environmental Quality Comm.
01520 S.W. Mary Failing Dr.
Portland, Oregon 97219

Re: Teledyne Industries, Inc., dba Teledyne Wah Chang Albany; Contest of Conditions of NPDES Renewal Permit No. 2849-J; Before the EQC Hearings Section, No. 16-P-WQ-WVR-2849-J

Teledyne Industries, Inc., dba Wah Chang Albany, Contest of Conditions of Modification to NPDES Permit No. 2012-J, Addendum No. 2; Before the EQC Hearings Section, No. 03-P-WQ-WVR-78-2012-J.

Discussion of terms for renewal of Teledyne Wah Chang Albany's NPDES permits has continued for some time. It was previously decided that a hearing date not be set until July 1, 1981. Absent informal resolution, the matter would then be set for hearing or dismissed.

The enclosed letter from Department's counsel explains that the applicant has agreed to incorporation of best available treatment (BAT) effluent limitations in its permits. However, EPA has not yet established a BAT measurement standard. The parties ask that the cases be continued on the contested case docket but not actively prosecuted until a standard is established or one of the parties requests a hearing.

Because a delay of this length is unusual, the Commission may wish to consider the parties' proposal when it acts on activity reports at the July 17, 1981 meeting.

Very truly yours,

Linda K. Zucker
Hearings Section

LKZ:pc
Enclosure

cc: William H. Young, DEQ
Michael J. Downs, DEQ
Robert L. Haskins, Assistant Attorney General
Richard H. Williams, Spears, Lubersky, Campbell & Bledsoe

AVE FROHNMAYER
ITORNEY GENERAL

DEPARTMENT OF JUSTICE

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

June 18, 1981

Linda K. Zucker
Hearings Officer
Environmental Quality Commission
522 S.W. Fifth Avenue
Portland, Oregon 97204

Re: Teledyne Industries, Inc., dba Teledyne Wah Chang Albany; Contest of Conditions of NPDES Renewal Permit No. 2849-J; Before the EQC Hearings Section, No. 16-P-WQ-WVR-2849-J

Teledyne Industries, Inc., dba Wah Chang Albany, Contest of Conditions of Modification to NPDES Permit No. 2012-J, Addendum No. 2; Before the EQC Hearings Section, No. 03-P-WQ-WVR-78-2012-J.

Dear Mrs. Zucker:

By letter dated August 25, 1980, on behalf of the Department and Teledyne Industries, dba Teledyne Wah Chang Albany, I requested that the subject cases remain on the Commission's contested case docket but not be actively prosecuted unless and until one of the parties so requested. By letter dated September 10, 1980, you agreed that the parties' agreement seemed "sensible" but rather than indefinitely delay the hearing, you set July 1, 1981, as the date by which the parties should be prepared to try the case or dismiss it.

We are fast approaching July 1, 1981. Neither of the parties is prepared for hearing. The permittee has applied to renew its permit again. The renewal permit will incorporate best available treatment (BAT) effluent limitations in accordance with the Federal Clean Water Act. The U.S. Environmental Protection Agency has been requested to indicate what BAT will be for permittee's plant. They do not expect to complete that task for at least another year.

Neither of the parties presently desires to unnecessarily litigate the validity of the existing permits. Permittee does not find that it is presently necessary to obtain a final decision regarding the

permits in question. Neither does the Department. Therefore it would serve no useful purpose to hold a hearing in July of this year. Consequently both of the parties renew our request made in my August 25, 1980, letter. Unless and until either party should subsequently change its mind, we request that no hearings be scheduled in the subject cases until a reasonable period following the expiration date of the opportunity to contest the terms and conditions of the future renewal of permittee's permit.

Thank you for your consideration.

Sincerely,

Robert L. Haskins

Robert L. Haskins
Assistant Attorney General

bc
cc: Richard H. Williams
William H. Young
Fred Bolton

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commiss.

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

SEP 02 1980

August 26, 1980

Joe B. Richards, Chairman
Environmental Quality Commission
Post Office Box 10747
Eugene, OR 97401

Re: DEQ v. TELEDYNE INDUSTRIES, INC.
dba TELEDYNE WAH CHANG ALBANY
Case No. 03-P-WQ-WVR-78-2012-J
Case No. 16-P-WQ-EVR-2849-J

Dear Chairman Richards:

Enclosed is a letter from Department's counsel requesting that hearings in the above cases be delayed indefinitely. The request seems sensible under the circumstances described.

Unless you object, I intend to honor the request to the extent of delaying further action for six months. If I do not hear from you, I shall so advise the parties.

Sincerely,

Linda K. Zucker
Hearings Officer

LKZ:ahe
Enclosure (1)

I agree; until 7-1-81*
Joe Richards

At that time I would recommend it be prosecuted to conclusion or dismissed.

Contains Recycled Materials

DEQ-46

JAMES M. BROWN
Attorney General

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

August 25, 1980

Linda K. Zucker
Hearings Officer
Environmental Quality Commission
522 S. W. 5th Avenue
Yeon Building
Portland, OR 97204

Re: Teledyne Industries, Inc. dba Teledyne Wah Chang Albany
Contest of Conditions of NPDES Renewal Permit (No.2849-J)
Before the Hearings Section of the
Environmental Quality Commission
No. 16-P-WQ-WVR-2849-J

Teledyne Industries, Inc., dba Teledyne Wah Chang Albany
Contest of Conditions of Modification to NPDES Permit No. 2012-J
by Addendum No. 2
Before the Hearings Section of the
Environmental Quality Commission
No. 03-P-WQ-WVR-78-2012-J

Dear Ms. Zucker:

Please excuse my delay in responding to your July 24, 1980 letter to me and Richard H. Williams, of attorneys for Teledyne Industries, Inc. dba Teledyne Wah Chang Albany ("Wah Chang"). I signed an earlier version of this letter on August 13, 1980. Apparently it never got into the mails.

On July 29, 1980, Mr. Williams and I had two telephone conversations in which we discussed the subject cases. The last time which I had talked to Mr. Williams about the subject cases was on January 7, 1980, at which time he informed me that he had been instructed by his client not to push them. On July 29, 1980, Mr. Williams confirmed that his client continues its desire to indefinitely postpone hearings in the subject cases.

Wah Chang has been able to comply with the contested effluent limitations of its permits and therefore finds

that it is not necessary to seek a final order denying the validity of those limitations at this time. On the other hand, Wah Chang does not wish to abandon those objections which it has raised in the subject procedings. Wah Chang does not want to be considered in any possible future procedings as having conceded to the validity of the effluent limitations contained in the contested permits. Therefore, Wah Chang wishes to keep the subject cases open, yet not actively prosecute them unless, and until, it finds that those limits are putting a pinch on its operations.

Therefore, the Department and Wah Chang, through its attorneys, have agreed to keep the subject cases on the Environmental Quality Commission's contested case docket but not actively prosecute them unless and until, one of the parties so requests. We further agreed to put discovery in abeyance. Should one of the parties request to re-activate the cases then the parties would be provided a reasonable opportunity to complete discovery. We also agreed that, unless and until the renewal permit were revised by final order of the Commission, after hearing, that the renewal permit in its present form would be enforceable.

On behalf of Wah Chang and the Department we respectfully request that the following agreement, be recognized and followed by the Hearings Section.

Sincerely,

Robert L. Haskins
Assistant Attorney General

RLH/aa

cc/ William H. Young, DEQ Director
Richard Williams, Esq.

STATE OF OREGON

INT

TO: Linda Zucker

DATE: March 18, 1983

FROM: Van Kollias

SUBJECT: Background and Status of Wes Pullen dba/Foley Lakes Mobile Home Parks

The two civil penalties currently on the Commission's contested case hearing log were assessed against Respondent because he was not expeditiously working to correct the failing subsurface sewage systems at his trailer park. An earlier $1,600 penalty had been assessed, mitigated by the Commission to $500, on March 31, 1981, and paid.

Respondent's effort resulted in the formation of a local improvement district. An interceptor sewer has been constructed through the trailer park and to the City of The Dalles sewerage system. Respondent is constructing laterals and is connecting the approximately 80 units to the main sewer. That work should be completed in about one month.

After the problem units are connected, staff intend to recommend to the Director that he withdraw the civil penalty assessments, as the assessment actions fulfilled the intended purpose of getting resolution of an on-going environmental problem.

VAK:ts

cc: Rob Haskins
Dick Nichols

Bill —

Re: Agenda Item E

The Motorcycle Industry Council has sent a telegram to the ECE with some last minute testimony. They don't like our proposal for Table 4 (off-road motorcycles). They are now proposing a compromise to their original recommendation.

MIC sent the attached telegram to me because they didn't think one would arrive for the ECE on time. I can comment on the MIC proposal if the Commission is interested.

John Hecht

Western Union Telegram

WU AGENT BEAV

Item E

WU INFOMASTER 1-024519M097 04/07/83

ICS IPMPTON PIL

ZCZC 06832 04-07 0509P PST PIUM

TLX 151250 WU AGENT BEAV

BT

4-055341450Z97 04/07/83

ICS IPMRNCZ CSP

7147527633 TDRN-IRVINE CA 156 04-07 0703P EST

PMS JOHN HECTOR RPT DLR MGMR DLR ASAP, DLR

675 SOUTHWEST 83

PORTLAND OR 97225 RTE BEAVERTON OR

RE AGENDA ITEM E

THE MOTORCYCLE INDUSTRY COUNCIL WISHES TO EXPRESS ITS APPRECIATION FOR THE DEPARTMENTS SERIOUS CONSIDERATION AND INCORPORATION OF MANY OF ITS RECENT SUGGESTIONS INTO OREGONS PROPOSED NOISE CONTROL REGULATIONS. AT THE ENC HEARING ON APRIL 6 WE WOULD LIKE YOUR FURTHER CONSIDERATION OF TABLE 4'S MOVING TEST LIMITS FOR OFF ROAD RECREATIONAL VEHICLES.

ADDRESSING THE DEQ IN ITS RESPONSE TO PREVIOUS COMMENTS THAT PRE-1983

APR 7 PM 5:33

MODELS SHOULD CONTINUE TO MEET ORIGINAL SOUND EMISSION LIMITS APPLICABLE TO THEM UNDER OREGON LAW, WE PROPOSE THE FOLLOWING:

VEHICLE TYPE	MODEL YEAR	STATIONARY TEST 20"	MOVING TEST AT 50 FEET
MOTOR CYCLES	BEFORE 1976	102	86
	1976	99	85
	1977-1982	99	83
	1983-1985	99	86
	AFTER 1985	99	82

SUCH MOVING TESTS LIMIT ARE CONSISTENT WITH NEW VEHICLE ACCELERATION TEST LIMITS.

MIC THANKS YOU FOR CONSIDERATION OF EACH OF THE POINTS IT HAS MADE ON THIS ISSUE AND IS AVAILABLE TO FURTHER CLARIFY ANY QUESTIONS YOU MAY HAVE.

SINCERELY YOURS

ERIC ANDERSON TECHNICAL ANALYST
2400 NICHOLSON DR
IRVINE CA 92715

1905 EST

MOTORCYCLE INDUSTRY COUNCIL
2400 Michelson Drive Suite 110
Irvine, California 92715
(714) 752-7833

April 7, 1983

Chairman Joe Richards
Environmental Quality Commission
Autzen Senate Chamber
George Putnam University Center
Willamette, University
Salem, Oregon

Dear Chairman Richards; re: Agenda Item E

The Motorcycle Industry Council wishes to express its appreciation for the department's serious consideration and incorporation of many of its recent suggestions into Oregon's proposed Noise Control Regulations. At the EQC hearing on April 8, we would like your further consideration of table 4's moving test limits for off-road recreational vehicles.

Addressing the DEQ in its response to previous comments that pre-1983 models should continue to meet original sound emmission limits applicable to them under Oregon law, we propose the following:

Vehicle Type	Model Year	Stationary Test 20"	Moving Test 50'
Motorcycles	before 1976	182	88
	1976	99	85
	1977-1982	99	83
	1983-1985	99	86
	after 1985	99	82

Such moving test limits are consistent with new vehicle acceleration test limits.

MIC thanks you for consideration of each of the points it has made on this issue and is available to further clarify any questions you may have.

Sincerely yours,

Eric Anderson
Technical Analyst MIC

Item I

OFFICE OF THE MAYOR

CITY OF MEDFORD

MEDFORD, OREGON 97501

MEDFORD'S SISTER CITY:
ALBA, ITALY

April 7, 1983

Environmental Quality Commission

Subject: Amendment to Agenda Item #1, April 8, 1983

As you know, the Jackson County Air Quality Advisory Committee has recommended the following revision to the Medford Particulate Plan:

> "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."

We understand that your staff recommendation continues to support their more structural requirements but do not strongly oppose the recommendation of our local committee.

We would like to indicate that the Jackson County Air Quality Advisory Committee spent considerable time and effort in studying this issue, and that our recommendation has the unanimous support of all members present of both the subcommittee and the full committee.

It is our belief that the 1988 hearing offers sufficient protection and provides for a review of developments that may occur during this time period.

We hope that you will support our recommendation.

Very truly yours,

Lou Hannum

Lou Hannum
Mayor, City of Medford
Chairman, Jackson County Air Quality
Advisory Committee

LH:dm

Item I

TRANSCRIPT OF AGENDA ITEM "I" OF DECEMBER EQC MEETING

RICHARDS Agenda Item I is a request for an additional extension of a variance from the administrative rules for veneer dryer emission limits initially granted to Mount Mazama Plywood Company on March 21, 1980; Mr. Young:

YOUNG Yes, Mr. Chairman, this variance that is requested applies to the company, the plant of Mount Mazama's in Sutherlin. The company recites, as is indicated in the material distributed to the Commission, the unfavorable financial climate and the position that they've been in and that that has not improved since the initial variance was granted in July of '81. They indicate in the material that was submitted to us that expenditures for dryer pollution control equipment at this time would likely result in the shutdown of the mill. Now, based on that information that we've received and our analysis of it, the Department has identified and tried to analyze for the Commission four alternatives that appear to be available with this variance request, and are recommending one of those four. Don Neff, from our Air Quality Division is here, if you have any questions; I think the company is represented. I would call to your attention the fact that there has been some correspondence directed toward the Commission dealing with the question of variances, generally, and this variance in particular.

RICHARDS We'd not had anyone sign up. I was not certain if the company wishes to be represented, or wishes to make a statement, or...

KLEIN, James We have no statement, unless there are questions that we can answer for the Commission.

RICHARDS I'd like to know if you have seen Mr. Arkell's letter--the Director of the Lane Regional Air Pollution Authority. Have you seen that letter?

KLEIN No, sir.

RICHARDS I guess I'd like you to look at that letter. Each of us received a copy of that today. It was just received by the Commission and it states a concern, and I think we ought to pause a minute, and, possibly, Bill, I'd like the staff (to the extent that that letter requires analysis or comment from your staff), I guess I would like to know whether or not that expresses some of the concerns of your staff as well. But, I thought maybe the way to do this is, we'll let Mazama present that response first.

YOUNG Alright.

* * * LONG PAUSE * * *

KLEIN Did you want me to comment on this letter; was that it?

RICHARDS Would you please? Just come forward for a moment. I don't want to give you the impression I'm putting you on the hot seat or something, but he raises a question about competitive disadvantage. You know we're required to consider economic matters, and generally, that's been held to consider economic matters in a way that would, in effect, give relief to the industry. This is kind of a, in fact, a particular plant. This is almost a reverse English on that though, the way we've used it before. Here is a Director of a Regional Authority saying that if you grant this variance in exactly the terms requested, the effect is to have an adverse economic impact on those who have complied. And I'm frank to tell you I'm not yet sure what the last lines mean about "granting a variance on terms that include conditions to mitigate the economic disadvantage"--I thought maybe our staff could discuss that, but ... I think it's only fair, and if you think you've had time to react, I'd like your reaction to that.

KLEIN Alright. For the record, my name is James Klein. I'm Manager of Mount Mazama Plywood in Sutherlin, Oregon. I don't really feel that there is much that I can comment on. The letter was written on the twenty-ninth; we received no notice of it. Certainly, I can see some aspects in here that are going to raise questions, as far as the Commission is concerned, but I don't really see that there are aspects that I have any answers to, because I'm not even that knowledgeable as to the foundation of what you have, in the way of judgment to register here. From the company's point of view, I think we have clearly established the facts that we are not in compliance and that we are not able to be in compliance economically at this time. I don't think there's any question about that. And, in the case of Douglas County, it has a very high level of unemployment, and this would, <u>without question,</u> I can assure you, cause the plant to close. Because there are no economic alternatives that I am aware of, or that the company is aware of, or the company's bankers are aware of that would enable us to be in compliance. We are <u>not</u> dragging our feet. We have not drug our feet. It's merely a matter of the economics of the situation.

RICHARDS Well, review with me just one more time (I'm sure it's in the report, but I've not looked at it for maybe 10 days or so; but, as I recall, beginning with the first variance in March of 1980, there have been some compliance schedules. That is, where you plan and design and then order equipment, install equipment, put it on line, test it, so on. I gather at just about every stage before you get to the ordering you've decided that the economics of the situation don't justify at that time, or don't allow the company to place an order that would contractually obligate the company to go ahead. Is that what's happened each time?

KLEIN Well, it's a little more complicated than that. In the first place we have two different kinds of dryers, one of which is relatively simple to contain, as far as pollution is concerned, and the other one, which is more complex (it's a direct-fired wood waste dryer; in other words, we pulverize wood and burn it just like you would coal dust). The second one, up until very recently, has been a very difficult process for attainment of quality standards. When we bought that wood-waste burner, it was guaranteed by the suppliers to meet your requirements. It did not, and we have not been able to bring it into compliance. Now, within the last few months, there are two dryers that have put equipment on and have been able to meet the standards. So, as far as the third dryer is concerned, at least it's my understanding that we've been struggling with proper technique to contain the dryer. The other two, as I said, are reasonably simple. They're just steam-fired dryers, and it's a matter of containing the blue haze. Since this period of time in 1980, it's not been a matter of the company's economic decision that we felt we shouldn't; it's been a matter of we have not had the borrowing capacity. The company, like many others, overextended itself, found itself with activities that created a significant drain, because the economic climate changed, and the money is just not there. It's just not there. We recognize our obligation at the earliest possible point in time where the money can be borrowed and the equipment ordered, we will do so. The absolute details, as far as the first item that is on the recommendation there for March, relating to a control strategy, would be reasonably easy today, but would have been much more difficult to achieve six months ago, because, as far as I know, there was no adequate control strategy for that dryer that was burning plywood end trims. And now there is, so that part of it is no difficulty. The only part of it that presents any difficulty whatsoever is down the line when somebody has to say, "Yes, here's the so many thousand dollars downpayment, and here are the people who are going to (in essence) extend credit to us for the $400,000 - $500,000 that it's going to cost."

RICHARDS One thing I wasn't clear about is that in the last variance it required that by July 1 there would be a submittal of approved detailed plans and specs; and, I think you've explained why on one of the units it was not. I'm not clear why on the others you didn't have plans and specs.

KLEIN Well, because, I think that we felt at that time, and still do, that from our point of view, as well as from yours, the problem does not consist of two or three parts, it consists of a violation total, and it is necessary for us to find the total answer to the thing. And, for us to come up with a control strategy that would work for two out of the three and not for the third, and still not be able, in any event, to implement it, it seemed wiser to wait until there was a time when we could find a control strategy. And we do have, today, a major manufacturer who has guaranteed to us a control strategy that could be implemented for all three dryers at

this point.

PETERSEN You say the cost of that, you're estimating at $400,000 to $500,000?

KLEIN Yes, sir.

PETERSEN That's based on the manufacturer's estimates to you?

KLEIN Yes. There are several aspects. There are the scrubbers that are necessary, the installation, and then the other attendant containment items that would be required to control the transient escape from the dryers themselves.

PETERSEN Mr. Chairman?
Mr. Young, your Item 8 on the staff report says that the Department has been "unable to completely evaluate the ability of Mount Mazama Plywood Company to provide funds for emission control equipment because all requested financial information has not yet been received..."

YOUNG That's correct.

PETERSEN Is that still the case?

YOUNG That is still the case, and the difficulty that we've had, as I understand it, is that the information we've received has tended to be for the corporation as a whole, and one of the requirements that we have, Item 2 of the recommendation that we have before the Commission, if you were to move forward with this variance, would be that by that March 1 date, when the control strategy was expected to be developed, we would also want to see a separated financial statement for the plywood company, itself. We're interested in knowing, for instance, whether or not the inability to move forward here is, in fact, the necessity to support other ventures out of that plywood organization. And that's the area where we've been unable to adequately review the financial information.

Mr. Klein, is there some reason why the Company has been unable to furnish that information that's been requested?

KLEIN Well, first, I represent the plywood department. The Solomon family owns Mazama Timber which owns Mount Mazama Plywood. I can't answer completely for them, but, in essence, the bank has had increasing pressure on them to liquidate or sell off some of their other divisions, and there is no pressure that this Commission could bring to bear on them that's greater than the bank has brought to bear on them. At the earliest possible moment, (and they are exploring alternatives of their other activities), at the earliest possible moment they <u>will</u> liquidate those. And, at that point, then, will find themselves in better financial positions. They have presently under active negotiation two possibilities of selling a very substantial piece of property which would put us in a position,

within a very short period of time, if they can be brought to fruition.

PETERSEN I guess I'm concerned, Mr. Chairman, that, what I'm trying to get at is that we're being asked to make a real important decision based on economics, and, if we've requested information in a timely way, bearing on that economic aspect of the decision, I want to know why we have to wait 'til March to get it. If they're either claiming some kind of privilege, or it's unavailable, it bothers me that we haven't received what we've requested. Because it's difficult to make a decision based on even your recommendation without that kind of information.

YOUNG I understand. I don't know; Jack, do you have anything to add to the nature of the information we have gotten that would be helpful to the Commission?

WEATHERSBEE I think Mr. Neff might be able to answer more specifically, but we have requested this specific information. They have submitted information; we deemed it inadequate. For example, they submitted some papers lacking the auditor's notes, and so we've requested additional information. And, I don't know for sure whether they've had time to give us that or not.

PETERSEN Um Hm.

WEATHERSBEE And, Mr. Neff could maybe give you some more specific dates.

PETERSEN Mr. Neff?

NEFF Okay, I'm Don Neff. And I believe the question is... well, you might rephrase the question, and then I'll be sure I understand it.

PETERSEN At what point in time was this additional information requested of the company?

NEFF We requested it about three months ago, maybe two months ago.

PETERSEN And, what specific information did we request?

NEFF Okay. We asked for auditor's statements from the consolidated corporation, Mr. Klein has referred to, which was received. We asked for specific information on Mount Mazama Plywood Company as an entity, and we did receive the auditor's statements on the consolidated operation; we did not receive information on the plywood operation, which our pollution control equipment concerns itself with.

PETERSEN Was there any explanation, when they submitted the other materials, as to why they weren't submitting the other materials you requested on the Mazama operation?

NEFF I don't believe so, no.

PETERSEN And you've not received any additional information pursuant to your request?

NEFF No, we haven't received anything since that time.

PETERSEN I see. Thank you. Mr. Klein, you've made the statement that, "without question" this would force the shutdown of the plant...

KLEIN Yes, sir.

PETERSEN Are you on the Board of Directors of the company?

KLEIN No.

PETERSEN Do you know if the Board of Directors has ever had a meeting to discuss that specific issue?

KLEIN Well, this is a small, closely-held family corporation, and I cannot answer directly. I do not know positively either way. I know that the two principals in the corporation and I have had extensive discussions, and their statements would bear out what I have conveyed to you. And there are no other significant stockholders. So, in essence, I'm saying they must have had discussions whether they were such as to be formally recognized as the Board of Directors, and such, would be rather moot, I believe. ... And, if I may also respond a little bit to your point. I wasn't aware of the information that was requested until I saw the agenda come down and the staff's recommendation a few days ago. I don't know what's in the audited statement, as it relates to "notes"; but there certainly can't be any reason that I can imagine why those notes couldn't be made available. But, from a standpoint of a separation of the two, there is no possibility of a separation of the two, because the overall corporation is the one that is in financial difficulties. Mazama Timber Corporation is the one that's in financial difficulties, and there's no way that Mount Mazama Plywood would be able to borrow money on its own, because it's a totally subsidiary corporation, and it's merely a (if you will) a fiction of accounting and tax that there are two companies.

PETERSEN But it is a separately organized Oregon corporation, is it not?

KLEIN Yes sir.

PETERSEN ... That happens to account on a consolidated basis with its parent and it's a brother-sister type arrangement?

KLEIN Yes.

PETERSEN Look, could staff respond to the time lines here? I was looking at what happened on several of the other variance approvals, and one of them, the time line from the action to

final compliance was eight months; but the most recent one was fourteen months. And, I wonder, from the technical standpoint, the staff would comment on two things. One is the attorney's letter that this is still strictly an experimental operation, and that they can't really be comfortable with involving themselves in an experiment, and the other is that if we agree to the March 1, 1983 control strategy, what would the staff recommend if we went right ahead and set down guidelines for purchase orders, construction, and completion of the installation?

YOUNG Alright. The comments on the technical nature of the time frames are best addressed, probably, by someone from Air Quality, Don Neff, or someone else.

RICHARDS Alright.

YOUNG As to the policy issue of how the Commission should deal with that, I think I've got some comments on that that I'd like to offer after.

NEFF Okay, regarding the experimental nature that was probably referred to in the variance request, since that time that type of control equipment that will control the woodfire dryer is now--has demonstrated compliance, has been on some facilities for possibly a year. There has been some problems with it; however, it's certified now.

RICHARDS Alright. And what about the other matter of what a reasonable time schedule would be if one were to be set? I mean, there may be good reasons; I think Mr. Young's going to address that, but if, concerning the kind of equipment, what would be reasonable for the four stages that we usually adopt for compliance?

NEFF I don't recall exactly what our time frame was that we had recommended in the other variances, and it's there. The one that we've laid out here is that by March 1, 1983 that they would submit detailed plans. And that's--that's reasonable. Probably sixty to ninety days after that we should have approval and the company should be able to proceed with purchase orders. The availability of that equipment and the position to start installation would have to be maybe two months to four months after purchase orders are placed, depending upon the nature of the exact equipment selected.

RICHARDS Thank you very much. And Bill, did you want to address that further?

YOUNG (several words lost through overlay with Commissioner)...on the very first page of the staff report is the schedule recommended by the company, a schedule that stretches from this point in time out some twenty months, or so. I don't know, and I don't think the staff has really evaluated whether or not the schedule the company proposed there would be a

necessary schedule in terms of time, or whether we'd recommend something shorter than that. As a matter of a way to try and deal with this, I think the staff has been mindful, as I'm sure the Commission is, of the equity questions that were raised by Mr. Arkell's letter. One of the concerns that we had, and one of the reasons we framed our recommendations the way we did, we think this matter should be receiving full attention and that the better way to approach it, we think, is the alternative we recommended to you. That is, by the very first of those dates when we would expect performance that we would be preparing a staff report to come to the Commission at your following meeting. Reflecting on that information that the company had prepared, and knowing then the nature of the controls that they're proposing, be able to recommend then as swift a schedule as we think reasonably could be met by the firm. And that, I suppose in some sense, is the response that we've tried to make to the equity question that, as I say, I think is on everyone's mind when one looks at one of these variances. Now, the company has had variances in the past, and the schedules, for a variety of reasons, have not been met. I might say parenthetically that while we haven't received the kind of divided financial information we've been interested in, we've asked Fergus O'Donnell and others in our business section to look at the combined statement, and I think we don't quarrel with the assessment that the company has made about the capability of at least the combined corporation. So, we would recommend to you that, if you're prepared to offer a variance, that you follow the approach that we've proposed, and that is that we have this matter back to the Commission after the very first of those compliance dates--March 1 seems a reasonable one--and that our subsequent report to you in April would then proposed the kind of a schedule that we think can be maintained and I think we'll be looking for a schedule that is as swift as one can physically accomplish the work.

(END SIDE ONE HERE--SIDE TWO BEGINS IN MIDDLE OF SENTENCE)

YOUNG ...Other than having received a letter earlier this week.

BURGESS I did have a question on that. Has the Department received any letters of concern from other manufacturers in that area, or is this just the feeling of a Lane County Regional Air Pollution Authority?

WEATHERSBEE Precisely that. That's all we've had is the contact with Don Arkell, and Mr. Grimes, our Regional Manager in Medford, has indicated some of the same symptoms coming from that.

BURGESS I guess I would be impressed if other manufacturers said, "Look, this is causing us problems that will result in unemployment problems," I would be impressed by that. I'm not too impressed by an agency head making this allegation without supporting documentation from the industry.

PETERSEN Yea, this is pretty strong stuff. "By the same token, we may not wish for additional curtailment of veneer production in Lane County as an indirect result." What this means to me is that if we grant this variance, give them a competitive advantage, thereby, perhaps harming one of their competitors, and causing them to shut down...you don't know what he means. It's...

WEATHERSBEE We've had absolutely no specifics to go on. So, the staff has had no way to really get at this issue of how much competitive disadvantage another company might have.

BURGESS This is why I put no weight on the letter.

WEATHERSBEE Well, we've been concerned about the general problems. This is the only situation where I think you could make a legitimate complaint that there may be this problem. Because all of our other variances that we've issued, I don't think you could involve the industry basis like this.

BISHOP You wouldn't have any idea what they're talking about ... "conditions to mitigate" the economic disadvantage? I mean, what could we possibly do?

WEATHERSBEE The only thing I think you could do there is...

PETERSEN Give relief to the other companies.

WEATHERSBEE ... or is to invoke a fine, a penalty, a non-compliance type avoidance of cost type thing on the company, which I think in their case, might be too helpful.

BISHOP It ... can't be done.

WEATHERSBEE The other thing I think is the only thing you could do would be to accelerate the schedule, as much as you could.

YOUNG I think, Mr. Chairman, what we're proposing in our recommendation, although it was prepared, obviously, long before we saw the letter from Mr. Arkell, is to try and put the Commission and the Department in a position to advance that schedule just as much as we can and to focus Commission attention on these intervening dates that we have, more so perhaps than we have in some other variances where those dates have all been described in the initial approval that the Commission has given. We are, by the way, Mr. Chairman, (since you've got three or four variances on the agenda before you), we are looking at the question of how those variances have operated in the Department. I have a memo I've just received from the Air Quality Division and will certainly share that, and any conclusions that we would draw from that with the Commission as we've had a chance to review it here; but, we're anxious and concerned about the same kind of issue, I think, that's raised by Mr. Arkell, or, as Jack indicated, by one of our Regional Managers, and, frankly, my suspicion is that those

concerns are raised, not as inventions of theirs but as the result of discussion, I suspect, with people with whom they've dealt, although that is, obviously, supposition.

RICHARDS Well, Bill, I give this letter of Don Arkell's quite a bit of weight. I do think though, it's only fair to other Commission members that he be requested (to identify) what he means by "other conditions," but also that he furnish, if he has anything in writing, or if he wishes to ask the companies who've made verbal statements to reduce something to writing. I would like to know precisely what that is, and if you could mail copies to us as soon as you receive those, ... um, I'm going to support the motion, Mr. Klein, and I'm going to do so because we have a general policy of conciliation and cooperation with industry in this state. I think that's a legislative directive. We don't try to accomplish things by financial penalties and lawsuits. We've been very successful over many, many years of avoiding those, because we've used every effort to work with industry. And we do give a lot of consideration to economic matters. But we don't do it at the expense of either the environment or at other economic segments of an industry. So, I know this, that when it comes back for our consideration again in April, I'm going to want to be very convinced that the time lines here are not somewhere in the range of eight to fourteen months from the time the action could have been taken, like, if we had taken that action today, and I'm not so sure that that wouldn't be a reasonable alternative, to just simply put on time lines that would require it to be in compliance by a year from now. I'm going to be looking at that, in April. I'm not going to be looking at another fourteen months from April, and I'm not really very interested, and I have not at all been persuaded that you would need until August of '84. So, I think you're going to have to give that a lot of attention, and I think I'm going to be pretty resistant to any further variances, or any lengthy extension of the one that will probably be given, and I say probably. I think the mood here is to grant a variance, continue a variance in April, but it will be quite restrictive.

PETERSEN I'd like to add comments. I think I could support the recommendation on a short-term basis, because I don't think we have sufficient economic information to make that kind of a decision on a long-range basis. And, I would expect by April that we would have--that these items that we've raised today, as the Chairman has said would be expanded upon, the requested financial information would be provided, Mr. Arkell's economic analysis or conditions, if you will, would be expanded upon, and only at that time would I be prepared to extend it beyond that point in time.

RICHARDS Is there further discussion? We have a motion pending. Call the roll.

YOUNG Commissioners Petersen?

PETERSEN Yes.

YOUNG Bishop?

BISHOP Aye.

YOUNG Brill?

BRILL Yes.

YOUNG Burgess?

BURGESS Yes.

YOUNG Chairman Richards?

RICHARDS Aye, the motion is adopted. Thank you very much.

KLEIN Thank you, gentlemen.

Item K

D & E Wood Products, Inc.

Specialty Items in Ponderosa Pine

Wholesaling
Remanufacturing

P.O. Box 327
Prineville, OR 97754
(503) 447-7275

4-7-83

Department of Environmental Quality
Air Quality Division
P. O. Box 1760
Portland, OR 97207

Dear Sir:

In regards to your consideration of a varience for the Oregon Sun Ranch, April 8, 1983, for the dust polution, I would like to state my position.

We own tax lots #1500 and 2200 next to the Oregon Sun Ranch cat litter plant. We owned this property when thier plant was built and planned on relocating and expanding our plant on this property in the near future.

We presently have 167,000 Bd. Ft. of lumber stacked for air drying on this property. I would invite you to inspect this lumber as it is very dusty and will cost us an untold amount for knife sharpening and wear on equipment.

We were discussing the move to this property with our employees. They were concerned for thier health with the conditions that exist. We now have 10 people working for us and will probably have 20-25 employees when we expand to our new plant on this property.

Also, it would be impossible for us to keep our products clean enough to be saleable if these conditions are allowed to continue.

I feel they have had adequate time to correct these problems. Thier polution caused many people to suffer both financially and physically and I urge you not to grant a varience for OAR 340-21-015 (2) (b), OAR 340-21-030 (2), & OAR 340-21-060 (2).

Sincerely,

Donald C. Smith

Donald C. Smith, Pres.

DCS/es

PETITION

TO: OREGON STATE DEPARTMENT OF ENVIRONMENTAL QUALITY

Each of the undersigned hereby states:

I live (at/near) in the vicinity of a kitty litter plant operated by Oregon Sun Ranch, Inc. The plant is constructed on a small tract of land lying north of Prineville, Oregon

It is my understanding that the Department of Environmental Quality has granted a discharge permit to Oregon Sun Ranch, Inc., permitting them to discharge pollutants into the air. It is further our understanding that Oregon Sun Ranch has requested a variance under the provisions of which they would not be required to provide filtering equipment heretofore demanded by the D.E.Q.

I, the undersigned, hereby strongly object to any variance being granted whatsoever and further request that the laws and regulations of the State of Oregon concerning atmospheric pollution be strictly enforced as to Oregon Sun Ranch, Inc. for the following reasons:

1. Since the plant commenced to operate more than two years ago there has been a constantly reoccurring pollution of the air in the vicinity of my home, which, in my opinion constitutes a health hazard and substantially decreases property values in the area.

2. Oregon Sun Ranch has consistently neglected and refused to comply with the orders of the DEQ regarding such pollution and should not now be rewarded for such failure by being granted a variance.

	DATE:	Name:	Address:
	3-23-83	L. Brock	Rt#3 Box 145
(w)	3-24-83	M K Wlm [illegible]	1110 Lookout
	3-25-83	Mr. & Mrs. Darrell Jones	20 Buckboard Lane
	3-30-83	Al & Carole Kvarme	RT3 Box 145
	4-5-83	Lorin & Kathy Close	16 Studebaker DR
	4-5-83	[illegible]	Green Acres Mobile Park Sp 2
	4-5-83	Jimmy Mitchell	Green Acres Mobile PARK
(w)	4/5/83	Vicki Duncan	280 S. Court Prineville
	4/5/83	[illegible]	RT 3 Box 149
	4/6/83	[illegible]	Rt 3 Box [illegible] Prineville
	4/6/85	John Cain	1000 E 3rd Prineville
	4/6/85	Margaret A Cross	Rt #3 Box 135 Prineville
	4/6/83	H. Eric Cross	Rt#3 Box 135 " AK
	4/6/83	O. W. Phillips	Rt # 3 Box 141

I hereby acknowledge that I circulated the foregoing petition and that the above signatures were affixed in my presence.

Dated: 4-6-83, 1983.

Allen B. Kvarme

PETITION

TO: OREGON STATE DEPARTMENT OF ENVIRONMENTAL QUALITY

Each of the undersigned hereby states:

I live in the vicinity of a kitty litter plant operated by Oregon Sun Ranch, Inc. The plant is constructed on a small tract of land lying north of Prineville, Oregon

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1. Since the plant commenced to operate more than two years ago there has been a constantly reoccurring pollution of the air in the vicinity of my home, which, in my opinion constitutes a health hazard and substantially decreases property values in the area.

2. Oregon Sun Ranch has consistently neglected and refused to comply with the orders of the DEQ regarding such pollution and should not now be rewarded for such failure by being granted a variance.

DATE:	Name:	Address:
3-23-83	Mary Alderson	Rt 1, Box 1006 Prineville, Ore
3-23-83	John E Alderson	" " " "
3-23-83	Linda G. Bird	Rt 1 Box 1006 Prineville, OR
4-2-83	Mr. & Mrs. W. H. Woodenbough	Rt 1 Box 1005 Prineville Ore.
4-7-83	Bob Flowers	Rt 1, Box 1006 H Prineville
4-7-83	Roger Hess	R.T. 1, Box 1010
4-7-83	Thelma Hill	Rt. 1 Box 1010 - Prineville

I hereby acknowledge that I circulated the foregoing petition and that the above signatures were affixed in my presence.

Dated: 4-7-83, 1983.

Roger Hess

PETITION

TO: OREGON STATE DEPARTMENT OF ENVIRONMENTAL QUALITY

Each of the undersigned hereby states:

I live in the vicinity of a kitty litter plant operated by Oregon Sun Ranch, Inc. The plant is constructed on a small tract of land lying north of Prineville, Oregon

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1. Since the plant commenced to operate more than two years ago there has been a constantly reoccurring pollution of the air in the vicinity of my home, which, in my opinion constitutes a health hazard and substantially decreases property values in the area.

2. Oregon Sun Ranch has consistently neglected and refused to comply with the orders of the DEQ regarding such pollution and should not now be rewarded for such failure by being granted a variance.

DATE:	Name:	Address:
Dec 11-83	Paul G. Ritchie	RT 1 Box 1003 Prineville
Dec 11-83	Kathleen E. Chapin	R.T. Box 1008 Prineville
Dec 11-83	Sue Tomhave	Rte 1 Box 1008 Prineville
Dec 11-83	Raymond Tomhave	R.T. Box 1008 Prineville Ore.
Dec 11-83	Dessa Umhaver	R.T. Box 1008 Prineville OR

I hereby acknowledge that I circulated the foregoing petition and that the above signatures were affixed in my presence.

Dated: Nov 6, 1983

Paul G. Ritchie

PETITION

TO: OREGON STATE DEPARTMENT OF ENVIRONMENTAL QUALITY

Each of the undersigned hereby states:

I live in the vicinity of a kitty litter plant operated OR work by Oregon Sun Ranch, Inc. The plant is constructed on a small tract of land lying north of Prineville, Oregon

It is my understanding that the Department of Environmental Quality has granted a discharge permit to Oregon Sun Ranch, Inc., permitting them to discharge pollutants into the air. It is further our understanding that Oregon Sun Ranch has requested a variance under the provisions of which they would not be required to provide filtering equipment heretofore demanded by the D.E.Q.

I, the undersigned, hereby strongly object to any variance being granted whatsoever and further request that the laws and regulations of the State of Oregon concerning atmospheric pollution be strictly enforced as to Oregon Sun Ranch, Inc. for the following reasons:

1. Since the plant commenced to operate more than two years ago there has been a constantly reoccurring pollution of the air in the vicinity of my home, which, in my opinion constitutes a health hazard and substantially decreases property values in the area.

2. Oregon Sun Ranch has consistently neglected and refused to comply with the orders of the DEQ regarding such pollution and should not now be rewarded for such failure by being granted a variance.

DATE:	Name:	Address:
3-12-83	Chesta Christ	RT. 1 Box 984 Prineville, Ore
3-12-83	Marcus Christ	Rt. 1, Box 984, "
3-12-83	Don Smith	Rte Box 600 Prineville
3-15-83	Pat Robertson	RT 1 Box 980 Prineville
3-15-83	Jerry Roberts	RT 1 Box 980 Prineville OR
3-16-83	Jack Hodges	RT 1 Box 1016 "
3-16-83	James L Smith	RT 1 Box 1016 A " "
(W) 3-16-83	Robert Reuter	346 NE 7th Prineville OR
3-16-83	Hazel Workman	P.O. Box 453 Prineville Or
3-16-83	Rita Evans	RT 3 Box 230 Prineville Or.
3-16-83	W. M. Parker	RT-3 Box B-60 Prineville Ore
3-16-83	Lynn M. Fudeker	RT 3 Box 233, Prineville, OR
3-16-83	Charles Fudeker	RT 3 Box 233 Prineville Or

I hereby acknowledge that I circulated the foregoing petition and that the above signatures were affixed in my presence.

Dated: 3-16-83, 1983.

Jerry Roberts

PETITION

TO: OREGON STATE DEPARTMENT OF ENVIRONMENTAL QUALITY

Each of the undersigned hereby states:

I live OR WORK in the vicinity of a kitty litter plant operated by Oregon Sun Ranch, Inc. The plant is constructed on a small tract of land lying north of Prineville, Oregon

It is my understanding that the Department of Environmental Quality has granted a discharge permit to Oregon Sun Ranch, Inc., permitting them to discharge pollutants into the air. It is further our understanding that Oregon Sun Ranch has requested a variance under the provisions of which they would not be required to provide filtering equipment heretofore demanded by the D.E.Q.

I, the undersigned, hereby strongly object to any variance being granted whatsoever and further request that the laws and regulations of the State of Oregon concerning atmospheric pollution be strictly enforced as to Oregon Sun Ranch, Inc. for the following reasons:

1. Since the plant commenced to operate more than two years ago there has been a constantly reoccurring pollution of the air in the vicinity of my home, which, in my opinion constitutes a health hazard and substantially decreases property values in the area.

2. Oregon Sun Ranch has consistently neglected and refused to comply with the orders of the DEQ regarding such pollution and should not now be rewarded for such failure by being granted a variance.

DATE:	Name:	Address:
3/16/83	Betty Dodson	PO Box 1453, Prineville
3/17/83	Steven H Lieser	Rt 1 Box 982, Prineville, Or 97754
3/17/83	Kathleen A Lieser	Rt 1 Box 982, Prineville, Or 97754
3/17/83	Judy Gill	Rt 1 Box 983 Prineville - 97754
3/17/83	John W Gill	Rt 1 Box 983 Prineville, Ore 97754
3/17/83	Pearl Telfer	RT 1 - Box 983 - Prineville - Ore 97754
3/17/83	Lorraine Rhoden	RT 1 - Box 1016 Prineville, Ore 97754
3/18/83	Edward Orr	Rt 1 - Box 1016C Prineville Or
3/19/83	Lynda Smith	Rt 1 Box 1016A Prineville, Or 97754
(W) 4/2/83	Gyle Lyall	P.O. Box 88 Prineville, Or 97754
4/2/83	Jas. L. Gibson	1223 W Sechels Prineville Ore 97754

I hereby acknowledge that I circulated the foregoing petition and that the above signatures were affixed in my presence.

Dated: 4-2-83, 1983.

Chris Chrisk

Item O

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201
Phone: 503/222-1963

January 26, 1983

Mr. Joe Richards
Chairman, Environmental Quality
Commission
PO Box 1760
Portland, OR 97207

Dear Mr. Richards,

During the past 6 months the Oregon Environmental Council has exchanged correspondence with the Department of Environmental Quality regarding the matter of pesticide spraying in Tillamook Bay. Copies of the relevant letters are attached.

We believe the Department has incorrectly interpreted their statutory responsibilities in this matter. We are therefore requesting that the Environmental Quality Commission issue a declatory ruling. A petition to that effect is attached, as required under your administrative rules.

Thank you for your consideration of this petition.

Yours very truly,

John A. Charles
Executive Director

Enclosures: (3)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
FEB 1 1983
OFFICE OF THE DIRECTOR

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. WATER AVENUE, PORTLAND, OREGON 97201 / PHONE: 503/222-1963

July 8, 1982

Harold Sawyer
Water Quality Administrator
Department of Environmental Quality
Yeon Building
PO Box 1760
Portland, Oregon 97207

Re: Application of Sevin in Tillamook Bay

Dear Mr. Sawyer,

As you are aware, 3 oyster farmers in Tillamook have recently applied for permits to spray Sevin in Tillamook Bay for purposes of controlling mud and ghost shrimp. Several state and federal agencies are involved in the permit process, including; the Environmental Protection Agency, Oregon Department of Agriculture and the Oregon Department of Fish and Wildlife. It is our understanding that DEQ has declined to assert jurisdictional responsibilities in this case, and thus is not involved in the current permit process.

Please consider this a formal request for clarification of DEQ's position in this matter. OEC requests a written statement explaining DEQ's position, including specific references to relevant ORS, OAR or EQC policy statements which support the department's jurisdictional ruling in this matter.

We also request that you respond no later than July 16, 1982.

Yours very truly,

John A. Charles
Executive Director

JAC/jah

VICTOR ATIYEH
GOVERNOR

JUL 19 1982

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

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

July 15, 1982

John A. Charles
Executive Director
Oregon Environmental Council
2637 Water St.
Portland, OR 97102

Dear Mr. Charles:

This is a reply to your letter of July 8, 1982, regarding DEQ's position with respect to a proposal to use the product SEVIN for ghost and mud shrimp control on commercial oyster beds in Tillamook Bay. Some background is important to clarify the issue.

Oyster culture is a statutorily recognized beneficial use in Oregon estuaries. It is recognized in local land and estuary use management plans. Primary authority for public shellfish management rests with the Fish and Wildlife Department. Oyster beds leases and the state level of pesticide regulation are under Oregon Department of Agriculture authority.

The U.S. Bureau of Commercial Fisheries (now National Marine Fisheries Service) recognized the need for methods to control oyster predators and competitors more than 30 years ago. They extensively researched chemical controls as a means of preserving the troubled oyster industry. They brought their expertise and knowledge to Pacific Coast oystermen and resource management agencies in the early 1960s. As part of this program, experimental applications of SEVIN were made in Oregon and Washington estuaries. The predecessor of this agency, Oregon State Sanitary Authority, along with other state and federal resource management agencies, were observers and visual evaluators of those Oregon applications. Like other participants, the Oregon observers concluded that the chemical tool was excellent for its intended purpose and had almost no visual side effects. Our staff saw no evidence that it interfered with other beneficial uses of the estuary outside the area of application.

More recently Union Carbide product SEVIN 80 Sprayable has been granted U.S. Environmental Protection Agency Registration Number 264-316 for the control of ghost and mud shrimps in Oregon oyster beds. A condition of this registration is that the Oregon Department of Fish and Wildlife must issue a special permit for each application and oversee the operation in all of its detail.

The State of Washington implemented a SEVIN/Oyster program early in the 1960s. Annual applications of SEVIN have been made since then and the state determines the program to be a success. A good reference to their early work is: Ghost Shrimp Experiments With SEVIN, 1960 through 1968; Washington Department of Fisheries, 1970, Technical Report No. 1.

DEQ does not have the resources to conduct independent studies on the chemical properties of pesticides. We therefore rely on information developed by EPA, the State Agriculture Department, and other agencies who have the statutory authority, technical capability, and responsibility to evaluate such chemicals and their use.

Based on the above background and our review of available information we have concluded as follows:

1. SEVIN, in its authorized use, is a specific substance, applied in a controlled manner, for a specific purpose, i.e. namely to promote a mono-culture of oysters on certain estuarine lands in compliance with state law and land use plans. We do not view this practice any differently than the common use of chemicals under controlled conditions to eradicate "trash" fish in order to establish a mono-culture of sport and commercial fish species. In general, proper application of any pesticide which is registered for use in a water environment to achieve a beneficial purpose that does not unacceptably impair other beneficial uses is a recognized resource management practice.

2. State law and the conditions of the EPA Registration clearly place primary responsibility for the control of the use of SEVIN in oyster beds with the State Agriculture Department and Department of Fish and Wildlife. DEQ's role is similar to that of other interested parties--one of input to the responsible agencies through their approval process. In a number of instances, the legislature has recognized the potential overlapping interest and jurisdiction of various agencies and assigned primary responsibility to one agency as a means of reducing the "bureaucratic harassment" of multiple permits and approvals. DEQ regularly inputs water quality information to the Division of State Lands, Department of Forestry, Department of Geology and Mineral Industries, Department of Energy, and other state and federal agencies that have been legislatively assigned primary responsibility for granting permits or approvals consistent with broader state interest. We believe the Departments of Agriculture and Fish and Wildlife can properly protect the public interest in this matter.

Sincerely,

Harold L. Sawyer
Administrator
Water Quality Division

HLS:1
TL1773

cc: Department of Fish and Wildlife
Department of Agriculture
State Health Division
Department of Land Conservation and Development
Robert L. Haskins, Legal Counsel

Before the Environmental Quality Commission

of the

State of Oregon

In the matter of the application of Oregon Environmental Council for a declaratory ruling as to the applicability of OAR Chapter 340, sections 41-202, 41-205(2)(i and j), 45-015(1)(a and d), 45-010(23), 45-015(2), and ORS 468.035(j), 468.045(c), 468.740(4), 468.715, 468.710, and 468.700 to Department of Environmental Quality jurisdiction over the spraying of the pesticide Sevin into Tillamook Bay

PETITION FOR DECLARATORY RULING

1. Petitioner is a non-profit organization comprised of private citizens and numerous environmental groups, regularly involved in environmental issues of various types, including water quality.
2. Petitioner is an appellant in a suit against Oregon Fish and Wildlife Dept. regarding the spraying of the pesticide Sevin by oyster growers into Tillamook Bay.
3. The rules and statutes as to which petitioner requests a declaratory ruling are:
   a. OAR Chapter 340, setting forth DEQ regulations and permit standards:
      (i) 41-202, stating that water quality in the North

Coast-Lower Columbia River Basin shall be managed to protect recognized uses, including fish passage, salmonid fish rearing and spawning, and resident fish and aquatic life;

(ii) 41-205(2), disallowing wastes to be discharged or activities to be conducted which will lead to a violation of the following standards:

(i) the creation of tastes or odors or toxic or other conditions deleterious to fish and other aquatic life

(j) formation of appreciable bottom or sludge deposits or formation of organic or inorganic deposits deleterious to fish or other aquatic life

(iii) 45-015(1) requiring a permit to

(a) discharge any waste from any industrial or commercial establishment or activity

(d) operate activities causing an increase of wastes into water which will alter its physical, chemical, or biologicl properties in any manner not already lawfully authorized

(iv) 45-010(23) defining "wastes" as "sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substance which will or may cause pollution or tend to cause pollution of any waters of the state".

(v) 45-015(2) requiring a permit to discharge pollutants from a point source into any navigable water.

b.Oregon Revised Statutes setting forth DEQ responsibilities:

(i) 468.035(j) requiring DEQ to seek enforcement of air and water pollution laws of the state,

(ii) 468.045(c) requiring the Director of DEQ to administer laws of the state concerning environmental quality,

(iii) 468.740(4) requiring a permit from DEQ to operate any commercial activity increasing wastes into the waters of the state which will alter the physical, chemical or biological properties of the water in a manner not already lawfully authorized,

(iv) 468.715 requiring DEQ to take such action as is necessary for the prevention of new pollution and the abatement of existing pollution, requiring the use of all available and reasonble methods necessary to achieve the purposes of the water pollution policy of the state,

(v) 468.710,the state water policy, is to "protect, maintain, and improve the quality of the water of the state ...for the propagation of wildlife, fish and aquatic life."

(vi) 468.700, the definition of "pollution" is the "alteration of the physical, chemical or biological properties of water including change in temperature, taste, color, turbidity, silt, odor, or discharge of any liquid solid, gas, radioactive or other substance into water which will or tends to (by itself or with other substances)

create a public nuisance or which will or tend to render such water harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof."

4. Petitioner contends that the above administrative rules and statutes require DEQ jurisdiction over the spraying of the pesticide Sevin into Tillamook Bay because:

a. under 340-41-202 DEQ is to protect certain recognized uses which would be harmed by the spraying of pesticides,

b. the pesticide would create a toxic condition and appreciable deposits harmful to aquatic life, prohibited by OAR 340-41-205(2)(i and j),

c. the pesticide is a "waste" as defined by OAR 340-45-010 (23) because it is a substance which will or may cause pollution in waters of the state, and OAR 340-45-015(1) (a and d) and ORS 468.740(4) require a DEQ permit to discharge such wastes from a commercial activity or to operate an activity causing such to be added to the water which will alter its chemical properties,

d. under OAR 340-45-015(2), one must get a permit from DEQ to discharge pollutants from a point source; the spraying of pesticides is a discharge from a point source,

e. DEQ is required to enforce and administer the water quality laws of the state under ORS 468.035(j) and

468.045(c), and therefore must protect such waters for the propagation of fish and aquatic life as set forth in the state water policy, ORS 468.710,

f. pesticides alter the chemical properties of water and are a discharge of a substance which will or tend to render such water harmful, detrimental or injurious to wildlife, fish and aquatic life and their habitats, and are therefore pollutants as defined by ORS 468.700, and DEQ is therefore required to take such action as is necessary to prevent the spraying of the pesticides, by requiring the use of all available and reasonable methods necessary to achieve the purposes of the water quality policy of the state, as required by ORS 468.715.

5. The question presented for declaratory ruling is whether the aforementioned rules and statutes require DEQ to assume jurisdiction of and require permits for the spraying of the pesticide Sevin into Tillamook Bay.

6. Petitioner requests that the Commission rule that DEQ's permit requirements apply to the spraying of the pesticide in Tillamook Bay and that DEQ must assume jurisdiction over this spraying activity.

7. Petitioner is Oregon Environmental Council, 2637 S.W. Water Ave., Portland, Oregon 97201.

Dated January 26, 1983

John A. Charles
Executive Director

VICTOR ATIYEH
Governor

Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE: (503) 229-5696

MEMORANDUM

TO: Environmental Quality Commission DATE: April 7, 1983

FROM: William H. Young

SUBJECT: Elsie Disposal Site - Status Report

One of the items on the agenda for the March 8, 1983 EQC meeting was a hearing on the revocation of the open burning variance for the Elsie Dump which had previously been granted to Clatsop County. The Department had recommended the revocation because the county had failed to meet the conditions attached to the variance. Specifically, they had not pursued an acceptable alternative and submitted progress reports within the time frame specified in the variance. The hearing was removed from the agenda because the County received the hearing notice only 3 days before the hearing (U.S. Postal Service took 11 days to get it to Astoria) and because the County had indicated a willingness to discontinue burning.

Since the last EQC meeting, the Department's staff have met twice with the chairman of the Clatsop County Board of Commissioners. Those discussions centered on the closure of the Elsie Dump and either replacing it with a mini-transfer station or converting it to a small sanitary landfill. The County, the Department and the Vernonia collector (who would operate the transfer station) preferred the transfer station option; however, the City of Vernonia refused to allow any "foreign" garbage to be taken to their landfill.

The County has now submitted a draft plan to convert the burning dump to a landfill. They propose to eliminate all burning by May 1, 1983. The site would be operated by the County Road Department. As soon as the final details can be worked out, the Department intends to issue a new solid waste permit for operation of a landfill at Elsie.

No further Commission action is required.

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