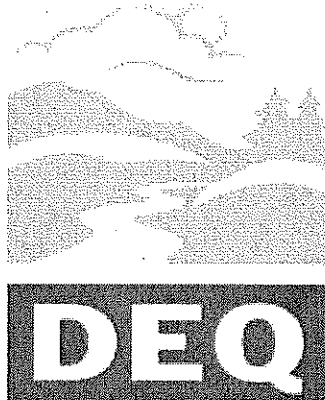


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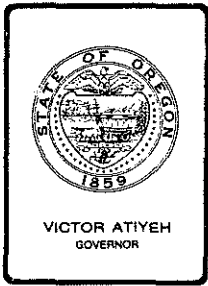
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS



State of Oregon
Department of
Environmental
Quality

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Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207

522 SOUTHWEST 5th AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

SPECIAL MEETING

The Environmental Quality Commission (EQC) will hold a special meeting by conference telephone call at 7:45 am, Friday, April 20, 1984 to consider adoption of proposed hazardous waste management rules (OAR Chapter 340, Divisions 100 to 110), and other business.

The public and press will be able to listen to the conference call meeting in room 1400 of the DEQ offices at 522 S. W. Fifth Avenue, Portland.

This meeting is scheduled pursuant to the Public Meetings Law, ORS 192.640.

#

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF A SPECIAL MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

April 20, 1984

On Friday, April 20, 1984, the Oregon Environmental Quality Commission convened a special conference call meeting at 7:45 a.m. Connected by conference call telephone were Chairman James Petersen in Bend, Vice-Chairman Fred Burgess in Corvallis, Commissioner Mary Bishop in Portland, and Commissioner Wallace Brill in Medford. Commissioner Arno Denecke was absent. Present by conference telephone call on behalf of the Department were its Director, Fred Hansen, and several members of the Department staff.

The topic of this meeting was a request by the Department for the Commission to consider adoption of proposed hazardous waste management rules (OAR Chapter 340, Divisions 100 to 110), and other business. This was an item on which action had been postponed at the Commission's April 6, 1984 meeting.

Director Hansen outlined for the Commission the staff evaluations and recommendations to issues raised during the April 6, 1984 EQC Meeting. Richard Reiter and Fred Bromfeld of the Department's Hazardous Waste Section answered questions from the Commission.

Robert Haskins, Department of Justice, presented to the Commission the following language he wished inserted in the rules:

Division 104, page 5, line 21

Delete - "extent they are required by 40 CFR 144.14;"

Add - "following extent: rules 340-104-011 (identification number), -016 (personnel training), -071 (manifest system), -072 (manifest discrepancies), -073(1), (2) (a) and (2) (b) (operating record), -075 (periodic report), and -076 (unmanifested waste report). When abandonment is completed, the owner or operator must submit to the Department certification by the owner or operator and by an independent registered professional engineer that the facility has been closed in a manner that will ensure that plugging and abandonment of the well will not allow the movement of fluids either into an underground source of drinking water or from one underground source of drinking water to another."

Division 104, page 123, line 11

Delete - "one or more states"

Add - "Oregon"

Director Hansen told the Commission for the record of a letter from Senator John Kitzhaber, District 23, to the Commission urging placing of nerve gas on the list as a hazardous waste. Senator Kitzhaber wrote he was much more comfortable with the Department of Environmental Quality and the Environmental Quality Commission overseeing the destruction of these substances than he was with the U. S. Army.

Director's Recommendations

Based upon the Department's analysis of the testimony at the March 30, 1984 public hearing, and at the April 6, 1984 EQC meeting, it is recommended that the Commission repeal Divisions 62 and 63 of OAR Chapter 340, and adopt Attachment XIII: Proposed Modifications to Divisions 100 to 110 (Revised April 20, 1984), in addition to Attachment VII: Proposed OAR Chapter 340, Divisions 100 to 110.

Commissioner Brill MOVED and Commissioner Burgess seconded, that the proposed Hazardous Waste Management Rules (Attachments VII and XIII) including proposed amendments made by Robert Haskins, be approved with the modification that the reference to regulating nerve gas be deleted. The motion failed with Chairman Petersen and Commissioner Bishop voting no.

It was MOVED by Commissioner Bishop and seconded by Commissioner Burgess that the proposed Hazardous Waste Management Rules (Attachments VII and XIII) including proposed amendments made by Robert Haskins, be approved with the proviso that the inclusion of nerve gas be studied and staff report back to the Commission after the rules are in effect. The motion passed unanimously.

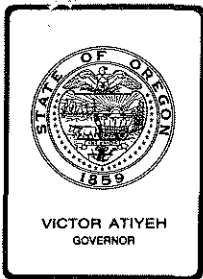
Under other business the Commission discussed how to conduct the part of their May 18, 1984 meeting concerning adoption of rules for backyard burning. The Commission decided to limit testimony only to those issues which had changed from the initial staff rule package that was the subject of five well attended public hearings. Staff agreed to furnish the Commission with a list of those issues and indicate on the agenda the limited scope of acceptable public testimony. Staff will also have available extra copies of a list of points made in previous testimony.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Carol A. Spletstaszer
EQC Assistant

CAS:d



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 Item No. H, April 6, 1984, EQC Meeting
(Considered April 20, 1984)

Proposed Adoption of Hazardous Waste Management Rules,
OAR Chapter 340, Divisions 100-110.

The following are staff evaluations and recommendations to issues raised during the April 6, 1984 EQC meeting pertaining to the adoption of hazardous waste management rules.

ISSUE: Should waste solvent recyclers be subject to the hazardous waste management rules? Wesco Parts Cleaners believes that, since neither the EPA nor Washington DOE would regulate his operation, the Department should forego regulations. The proposed regulations would "either put him out of business or force him to move to another state."

Staff Evaluation: As stated in earlier comments, staff feels that some regulation of this type of activity is necessary. However, immediately prior to and after the April 6 meeting, we received comments from auto battery recyclers suggesting that they would also be regulated. As this was a result which was not intended, we have concern that there may be other impacted groups that have not been identified. Thus, in keeping with the state commitment to small business and the recycling ethic, we feel that a more thorough evaluation of the recycling and recovery issue is needed to better define who is to be regulated, the extent of regulation, and the environmental risks involved. We foresee accomplishing this more detailed review over the next year.

Staff Recommendation: That proposed rule 340-101-006 be adopted in a form more nearly equivalent to the EPA version with regard to characteristic wastes. See PROPOSED MODIFICATIONS, Revised April 20, 1984, Division 101, Addition at Page 18/Line 15, and deletions from earlier proposed modifications at Page 17/Line 18 and Page 19/Following line 7.



Contains
Recycled
Materials

ISSUE: Should waste nerve agents be managed as hazardous wastes? The Army contends that the Public Health Service and the Center for Disease Control (of the federal Department of Health and Human Services) provide, with the exception of chemical munition storage, oversight that is as thorough, rigorous, and effective as would be exercised by the Department. We have received a rather voluminous submission to this effect but have not had sufficient time to review it. However, we did contact a Dr. Lisella of the Center for Disease Control in Atlanta, GA (404) 329-3883, who said that CDC did not simply propose environmental standards for the Army but had independent authority to enforce those standards to the extent of shutting down the operation (Refer also to statement by Lt. Co. Van Prooyen of April 6, 1984).

Staff Evaluation: Staff agrees with the Army that a careful and full review of the impact of the proposed regulation of nerve agents needs to be conducted. However, we have heard nothing in the April 6 testimony that would cause us to alter our view as expressed in Attachment IX: Response to Comments. Indeed, the stated exemption of nerve agents storage from CDC oversight reinforces our conviction that Department regulation is necessary.

Where feasible, we do not intend to impose an additional oversight layer, but will make every effort to incorporate our requirements into the existing regulatory system.

We also reiterate our intention to completely review the written submission including any other related information we may obtain. Should we then concur that waste nerve agents are being regulated to the extent that we are proposing, including a regular monitoring and inspection program, we will take this issue back through the public hearing process.

Staff Recommendation: That nerve agents remain on the listing in proposed rule 340-101-033(6).

ISSUE: Definition of "parent corporation." AOI expressed concern that the use of the term "parent corporation" in rules 340-104-143(6) and -145(6) might preclude certain legitimate uses of the financial test and corporate guarantee closure and post-closure options; for instance, when a corporation consists of a simple entity in which the parent and the owner/operator are the same.

Staff Evaluation: This was not intended in the rule. Based on further discussions with AOI, staff has reworded the rule in a manner satisfactory to both parties.

Staff Recommendation: That rules 340-104-143(6) and -145(6) be revised as indicated in PROPOSED MODIFICATIONS, Revised April 20, 1984, Division 104, Page 93/Line 8, Page 96/Line 10, Page 114/Line 24 and Page 118/Line 2. (Original MODIFICATIONS extensively changed at Pages 93 to 97 and 114 to 118).

ISSUE: Should owners and operators of hazardous waste management facilities be allowed to self-insure? AOI stated that staff's recommendation to disallow self-insurance was preemptory and did not allow sufficient time for adequate review by the regulated community.

Staff Evaluation: In view of the complexity of the issue and staff's limited capability with regard to financial matters, we agree with commenter. Further public hearings are proposed within the next six months.

Staff Recommendation: That self-insurance be allowed in the manner and to the extent permitted by federal law. See PROPOSED MODIFICATIONS, Revised April 20, 1984, Divisions 101. No modifications are proposed at Pages 121 to 127 and 152 to 157. (Original MODIFICATIONS proposed extensive changes at Pages 121 to 127 and 152 to 157.)

(Editorial note: Comments by AOI on financial assurance and the landfill ban were inadvertently omitted from Attachment VIII: Hearing Officer's Report, and are included herein as Attachment XI.)

ISSUE: Comments on trust fund form of financial assurance. Chem-Security had two concerns. The first is that they not be forced by the wording of rules 340-104-143(1)(c) and -145(1)(c) to make unusually large payments into their existing closure and post-closure trust fund. Secondly, they requested that the wording of the trust agreement, rule 340-104-151(1)(a) be modified.

Staff Comment: We have inserted language into rules 340-104-143(1)(c) and -145(1)(c) which we believe clarifies that unusually large payments into the trust fund were not intended. See PROPOSED MODIFICATIONS, Revised April 11, 1984, Division 104, Page 79/Line 23 and Page 100/Line 24 (Also appeared in original MODIFICATIONS sheet).

On the other hand, the trust agreement is an EPA document which we are reluctant to modify without EPA approval. We are, however, open to considering changes based on future resolution between Chem-Security and EPA.

Chem-Security did point out some recent EPA modifications to the trust agreement which we have modified accordingly. See PROPOSED MODIFICATIONS, Revised, April 20, 1984, Division 104, Pages 130 to 134.

ISSUE: Should the ban on landfill disposal of certain liquid organic wastes be implemented on January 1, 1985 or January 1, 1986? The Department had proposed 1985, but AOI strongly recommended a delay until 1986 to give Chem-Security time "to know the rules and evaluate the financial feasibility of constructing an incinerator."

If the ban is implemented without an incinerator being locally available, banned wastes will likely be disposed:

- (1) In a California or Idaho landfill,
- (2) In an Arkansas or Texas incinerator, or
- (3) For ignitable wastes, recycled or used as fuel. (Editorial note: It is estimated that this option may be feasible for 25-50% of the banned wastes.)

Staff Evaluation: The testimony before the Commission has added nothing to the comments covered on pages 1 and 2 in Appendix IX: Response to Comments. We must thus reaffirm our original proposal.

Staff Recommendation: That the ban implementation date remain January 1, 1985.

ISSUE: Requirements for management facilities that have not yet been permitted. By telephone to staff, EPA indicated that the requirement at proposed rule 340-105-110(5)(c) (See original MODIFICATIONS sheet at Division 105, Page 8/Following Line 1) was deficient in that it did not require groundwater monitoring by management facilities that have not yet been permitted.

Staff Evaluation: Staff agrees, in that any groundwater monitoring required by Division 104 requires the Department to first issue a permit indicating the specific monitoring required. Conversely, EPA requires the owner or operator of an existing non-permitted facility to monitor for general pollution indicators.

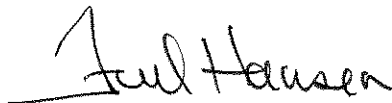
Staff Recommendation: That rule 340-105-010(5)(c) and (d) be modified to also require compliance with 40 CFR Part 265, Subpart F. See PROPOSED MODIFICATIONS, Revised April 20, 1984, Division 105, Page 8/Following Line 1.

ISSUE: Comments by Department of Justice including a better delineation of the responsibilities of the Commission vs. that of the Department. See Attachment XII. The comment on Page 4 regarding ORS 459.517(9) and .590(2)(f) presents a somewhat complex codification problem and will be investigated during the next six months.

Staff Recommendation: That modification be made as recommended in Attachment XII.

Director's Recommendation

Based on staff's analysis of the testimony at the March 30, 1984 public hearing and at the April 6, 1984, EQC meeting, it is recommended that the Commission adopt Attachment XIII: Proposed Modifications to Divisions 100 to 110 (Revised April 20, 1984), in addition to Attachment VII: Proposed OAR Chapter 340, Divisions 100 to 110.



Fred Hansen

Attachments: XI. Comments by Associated Oregon Industries
XII. Comments by Department of Justice
XIII. Proposed Modifications to Divisions 100 to 110 (Revised April 20, 1984)

Fred S. Bromfeld:b
229-6210
April 11, 1984
ZB3268



ASSOCIATED OREGON INDUSTRIES

P.O. Box 1006

Tualatin, Oregon 97062

(503) 620-4407

Ivan Congleton, president

TESTIMONY

of

ASSOCIATED OREGON INDUSTRIES
relating to the

Proposed Hazardous Waste Regulations
at the
Public Hearing held March 30, 1984

Associated Oregon Industries is an association of some 2,400 Oregon employers, a significant number of whom will be affected by the proposed regulations.

As an opening comment we would like to note that the proposed hazardous waste regulations embody a regulatory scheme that is considerably more complex than the more historic environmental programs relating to air and water pollution. Not only are the regulations more encompassing in that they relate to environmental controls, but they relate more closely to operations of industrial processes than the other two programs. Additionally it appears that more sources are covered than are covered by the other two programs, including many small businesses that have some utilization of hazardous materials which at some point become converted in part to hazardous wastes. In large part this is due to the very tight rein on exemptions.

We are constrained today with regard to the issues on which we will offer comments. The constraint is the very limited period that we and our Hazardous Waste Committee have had to review this voluminous document. With more time we would have more comments, particularly with regard to those provisions which are more stringent than the federal regulations which are the substantial part of what is being proposed for adoption.

Our comments today relate entirely to Division 104 - Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities.

First, relating to Subdivision H: Financial Requirements. Our review suggests that while the regulations as proposed are adequate to provide the essential costs of closure, post-closure and liability insurance coverage of hazardous waste management facilities, they can be strengthened to provide greater assurance of protection for the state. We assure you that it would be a serious mistake to delete any provisions relating to the ability of a firm to meet the financial requirements of these rules.

continued...

Deletion of the financial test would create:

1. Problems for firms with multistate activities who may be using the financial test as permitted by federal rules to assure financial responsibility for closure and post-closure activities in all states in which they operate but which would be denied them in Oregon.
2. At least the appearance if not the reality of a greater burden for Oregon location for some new businesses.
3. A lack of consistency with other states which have adopted the federal rules on this point, such as Washington and California.

We suggest that the following amendments could be made to the closure, post-closure and insurance liability sections, which will affect only the small number of firms that will hold permits (not to exceed 35 we understand). Such amendments, being stricter than federal regulation, should be acceptable to EPA, without unduly burdening the affected permittees, and at the same time providing greater assurance to Oregon of compliance.

Page 93. Amend 340-104-143 (6)(a)(A)(iii) to read:

"Tangible net worth of at least \$10 million, unless subsection (6)(j) of this rule applies, then tangible net worth of at least \$20 million;"

Page 94. Amend 340-104-143 (6)(a)(B)(iii) to read:

"Tangible net worth of at least \$10 million, unless subsection (6)(j) of this rule applies, then tangible net worth of at least \$20 million;"

Page 96. Amend 340-104-143 (6)(j) to read:

TD/FB
4/9
section

"An owner or operator ^{has a parent corp.} that is a wholly-owned subsidiary of a parent corporation may only meet the requirements of this rule by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (6)(a) through (6)(h) of this rule and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in rule 340-104-151(8). The corporate guarantee must accompany the items sent to the Department as specified in subsection (6)(c) of this rule. The terms of the corporate guarantee must provide that:"

continued...

Page 115. Amend 340-104-145 (6)(a)(A)(iii) to read:

"Tangible net worth of at least \$10 million, unless subsection (6)(j) of this rule applies, then tangible net worth of at least \$20 million;"

Page 115. Amend 340-104-145 (6)(a)(B)(iii) to read:

"Tangible net worth of at least \$10 million, unless subsection (6)(j) of this rule applies, then tangible net worth of at least \$20 million;"

Page 118. Amend 340-104-145 (6)(k) to read:

Section TD/FB 4/9
 "An owner or operator that is a wholly owned subsidiary of a parent corporation may only meet the requirements of this rule by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in subsections (6)(a) through (6)(h) of this rule and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in rule 340-104-151(8). The corporate guarantee must accompany the items sent to the Department as specified in subsection (6)(c) of this rule. The terms of the corporate guarantee must provide that:"

Page 125. Amend 340-104-147 (6)(a)(A)(ii) to read:

"Tangible net worth of at least \$10 million, unless the owner or operator is a wholly owned subsidiary of a parent corporation, then tangible net worth of at least \$20 million;"

Page 125. Amend 340-104-147 (6)(a)(B)(ii) to read:

"Tangible net worth of at least \$10 million, unless the owner or operator is a wholly owned subsidiary of a parent corporation, then tangible net worth of at least \$20 million;"

Second, we are concerned with Section 340-104-317 (page 216) which bans landfilling of liquid hazardous wastes. While we agree that this activity should cease, we will repeat our testimony at the January 5, 1984 hearing on the previous set of proposed hazardous waste rules.

"Comment on 340-116-210: We believe that utilizing the date of January 1, 1985, as the cutoff date for the wastes described in 340-116-210 and elsewhere in the rules will cause Oregon generators to export such wastes out of state, due to their inability to dispose of the waste in Oregon. We think this is the wrong approach and that Oregon, which has a safe disposal site, should take care of its own hazardous waste. We recommend that the date be extended to January 1, 1986, which would be

continued...

consistent with the State of California approach, and would allow adequate time for the installation of alternative technology to deal with the waste."

The Department response deserves some further analysis before acceptance because there are other issues involved than just that there are other places to dispose of such materials.

The letter from the Sales Department of Rollins Environmental Services of Deer Park, Texas, fails to answer whether they can accept wastes in a timely manner. We understand they were unable to handle all PCB wastes offered last winter. But of more importance are other issues such as the long transportation required with the ever greater possibility of accidents and spills. There is no easy way to Texas year round and during the winter there will be even greater potential for accidents. Some routes will go through highly populated areas, with increased risks of traffic accidents. Why should Oregon industry be faced with such a prospect when we have a site at Arlington?

The year and a half extension is essential to allow Chem Security Systems, the site operator, to know the rules, and evaluate the financial feasibility of constructing an incinerator. We suggest that a rational decision of this nature can't be made until these proposed rules are adopted and by January 1, 1986 such an incinerator should be underway or complete if it is ever to be built. If the decision is no, then Oregon industry will be faced again with increased disposal costs, increased transportation costs and greater exposure to highway accidents.

In conclusion, Associated Oregon Industries believes that it is essential that the Department of Environmental Quality establish a sound working relationship with the Environmental Protection Agency. Such a relationship is essential not only to the two agencies involved but is equally important to the public and the industries which are involved. Such a cooperative effort between the DEQ and EPA would bring to bear the combined knowledge of both agencies at a time when more knowledge and information are sorely needed by all parties affected by these proposed rules.

We suggest that one way that this cooperation between DEQ and EPA could manifest itself at an early date would be a series of jointly sponsored workshops in various areas of the state to provide a better understanding of the roles each agency will play and clarification of both the federal and state rules as they apply to all subject activities in this state.

Associated Oregon Industries would participate fully in such a program which would greatly assist Oregon companies who are generators or who are otherwise involved in meeting the requirements of the proposed regulations. If such meetings are to be held we strongly suggest that particular emphasis be placed on reaching the small to medium size generators, and not just on the larger and better identified companies. The smaller companies with their smaller headquarter staffs badly need to understand

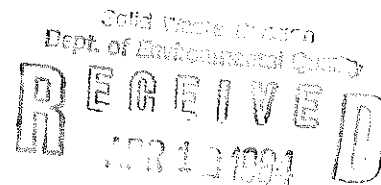
continued...

the broad implications of the Hazardous Waste Laws and the proposed regulations to implement those laws, and they have the least resources to meet that obligation. What would also be of great assistance to such companies would be some serious attempt by DEQ-EPA to make the rules more meaningful. This could be accomplished by providing examples of acceptable and unacceptable conduct together with some helpful checklists of things which must be done and not be done in order to comply with the proposed regulations. In other words, really make an effort to make it as easy as possible to understand how to achieve compliance -- and between DEQ and EPA you have the knowledge and ability to allow this to happen -- A law and rules, as complex as they are, in which government makes the effort to assist, to make it understandable, and to be a friend.



DEPARTMENT OF JUSTICE

PORTLAND OFFICE
500 Pacific Building
520 S.W. Yamhill
Portland, Oregon 97204
Telephone: (503) 229-5725
April 11, 1984



Fred Bromfeld
Department of Environmental Quality
522 S. W. Fifth Avenue
Portland, Oregon 97207

Re: Proposed Hazardous Waste Management Rules

Dear Fred:

I have reviewed the proposed rules which were presented to the Environmental Quality Commission at its April 6, 1984 meeting and the 22 page "errata" sheet which you provided me Thursday afternoon, April 5.

The following are my comments:

Division 100

(1) p. 3, ln. 4. (340-100-002(1))

Citation to "ORS 192-500" should be changed to "ORS 192.500."

(2) p. 5, ln. 3. (340-100-100 Definitions)

The definition of "Department" should be amended to read as follows (new material is underlined):

"'Department' means the Department of Environmental Quality except it means the Commission when the context relates to a matter solely within the authority of the Commission such as: the adoption of rules and issuance of orders thereon pursuant to ORS 459.440, 459.445 and 468.903; the making of findings to support declassification of hazardous wastes pursuant to ORS 459.430(3); the issuance of exemptions pursuant to ORS 459.505(2); the issuance of disposal site permits pursuant to ORS 459.580(2); and the holding of hearings pursuant to ORS 459.560, 459.580(2), 459.620, 459.650, and 459.660."

Comment

The "4-6-84" draft of the rules used the term "Department" in almost all places where EPA used the term "Regional Administrator." However, state law divides those functions between the Department and Commission. The lack of time available to make corrections would appear to prevent the preferable approach: that is, a comprehensive review of each reference and the substitution or addition of "Commission", as appropriate. Therefore, the above amendment is offered to guide a correct interpretation of the rules, consistent with state statutes.

Division 101

- (3) p. 53, ln. 13 (340-101; Appendix II) "Stap 8" appears to be a typographical error.

Division 104

- (4) p. 5., ln. 21 (340-104-001(4))

The reference to "40 CFR 122.45" appears to be incorrect. My copy of that regulation deals with "calculating NPDES permit conditions", not hazardous wastes. Therefore, nothing in Division 104 would apply to UIC permittes because nothing in 40 CFR 122.45 is "required."

- (5) p. 90, ln. 16 (340-104-143(5))
p. 111, ln. 28 (340-104-145(5))
p. 121, lns. 25-26 (340-104-147(1)(b))

The insurance issuers must be licensed or eligible to provide insurance "in Oregon", not just any "one or more states."

- (6) p. 157, ln. 13 (340-104-151(8))

The guarantors should not be limited to "Oregon" corporations. The form should read: " * * * a business corporation organized under the laws of the state of
* * * ."

- (7) p. 194, ln. 6 (340-104-272(3)(a)(C))

It appears that "typography" is a typographical error!! (should be "topography").

Fred Bromfeld
April 11, 1984
Page Three

Division 105

(8) p. 55, lns. 3-5 (340-101-061(d))

Subsection (d) should be amended to read as follows
(additions are underlined, deletions are [bracketed]):

"(d) May be [terminated] suspended or renewal refused by the Department at any time without [process] prior hearing if it [determines] finds [that termination is appropriate to protect human] a serious danger to the public health [and the environment] or safety and sets forth specific reasons for such findings.

Comment:

ORS 183.430(2) allows an immediate suspension or refusal to renew a license without a prior hearing. Immediate "termination" is not authorized. Neither can it be "without process." Rather, instead of a hearing or a notice of intent to revoke, the licensee is entitled to a prompt hearing after the revocation if requested within 90 days. Furthermore, "findings" must be made to the effect that the violation constitutes a "serious danger to public health or safety" not merely that it "is appropriate to protect human health and the environment." Your rule could also include the above referred to hearing rights.

(9) p. 61, ln. 3 (340-105-062(3))

Typographical error "oepration."

Division 106

(10) p. 4, lns. 15-17 (340-105-001(2))

The language which you proposed to delete (page 19 of the errata sheet) should remain in the rules. ("The appeal shall be considered denied if the Commission takes no action on the letter within 60 days after receiving it.")

Comment:

After reconsidering the matter, I have concluded that the proposed appeal to the Commission would not be a contested case and therefore would be entirely discretionary review: the appellant would have no right to have the Commission review it. Therefore, whatever reasonable procedures the Commission should choose to follow would be authorized. The proposal is an expedient way to deal with such appeals.

Fred Bromfeld
April 11, 1984
Page Four

(11) p. 9, ln. 1 (340-106-010(2)(a)(D)(iii))

Delete extra "may."

Division 109

(12) p. 7, ln. 9 (340-109-020(2)(a))

Should be "Decontamination consists," not "consist."

I suggest that you also add rules to deal with the ORS 459.517(9) and 459.590(2)(f) financial assurance requirements (concerning performance of the license requirements and remedial action) and the ORS 459.600 fees as discussed in my March 29, 1984 letter to Rich Reiter regarding the Chem-Security Services, Inc., trust agreement.

Those are all the problems which I have discovered in the available time. I am sure that more will arise in those approximately 500 pages in the future. I would also suggest that, as soon as practicable, each reference to "Department" be reviewed and amended to substitute or add "Commission" as appropriate.

Please call me if you have any questions.

Sincerely,



Robert L. Haskins
Assistant Attorney General
Natural Resources Section

aa

PROPOSED MODIFICATIONS TO DIVISIONS 100 to 110
 (Revised April 20, 1984)

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
<u>DIVISION 100</u>			
1	"Subdivision C"	"Rulemaking"	
2	Line 17	"101 to 106"	"100 to 106 and 110"
2	Line 18	"regulations"	"regulations and correspond as follows: Division 100 (40 CFR Part 260), 101 (261), 102 (262), 103 (263), 104 (264), 105 (270), 106 (124) and 110 (761)."
3	Line 4	"192-500"	"192.500"
3	Lines 12 & 13	Both lines	
4	Following "Active portion"		"'Aquatic LC ₅₀ ' (median aquatic lethal concentration) means that concentration of a substance which is expected in a specific time to kill 50% of an indigenous aquatic test population (i.e., fish, insects or other aquatic organisms). Aquatic LC ₅₀ is expressed in milligrams of the substance per liter of water."
4	"Beneficiation"		Bold printing
4	"Beneficial use"		Bold printing
4	Following "Beneficial use"		"'Certification' means a statement of professional opinion based upon knowledge and belief."

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
4	"Collection"		Bold printing
4	"Commission"		Bold printing
5	"Department"	".."	"except it means the Commission when the context relates to a matter solely within the authority of the Commission such as: the adoption of rules and issuance of orders thereon pursuant to ORS 459.440, 459.445 and 468.903; the making of findings to support declassification of hazardous wastes pursuant to ORS 459.430(3); the issuance of exemptions pursuant to ORS 459.505(2); the issuance of disposal site permits pursuant to ORS 459.580(2); and the holding of hearings pursuant to ORS 459.560, 459.580(2), 459.620, 459.650, and 459.660."
5	"Dermal LD ₅₀ "		Bold printing
6	"Discharge"	Entire definition	"'Discharge.' See 'spill.'"
7	Following line 8		"'Existing portion' means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit."
9	"Inhalation LC ₅₀ "		Bold printing
10	"License"		Bold printing
10	"Management facility"		Bold printing
11	"Off-site"		Bold printing
11	"Oral LD ₅₀ "		Bold printing
11	"Oxidizer"		Bold printing
12	Line 8	"issued to implement"	"that contains"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
12	Line 18	"work,"	"work"
13	"Reclamation"		Bold printing
13	"Recycle"		Bold printing
13	"Reuse"		Bold printing
14	"Spill"	Entire definition	"'Spill' means unauthorized disposal."
17	Line 3	"340-101-011"	"340-100-011"
18	Line 1	"Rulemaking"	
18	Line 3	"modify or revoke any provision in Divisions 100 to 110."	"approve an equivalent testing or analytical method or to exclude a waste produced at a particular facility."
18	Line 7	"100"	"101"
18	Line 16	"regulatory"	
19	Lines 2 and 3	Delete	
19	Line 9	"100 or 104 may petition for a regulatory amendment"	"100 or 104 shall petition"
19	Line 13	"100"	"101"
19	Line 23	"100"	"101"
20	Line 5	"amends the regulations to permit use of a new testing method"	"permits use of a new testing or analytical method"
20	Following Line 7		"(Comment: In most instances, the Department will not consider approving a testing or analytical method until it has been approved by EPA.)"
20	Line 11	"may petition for a regulatory amendment"	"shall petition"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
20	Line 22	340-101-003(1)(b)(B) or (3)	340-101-003(2)(b) or (4)
23	Line 20	"020(4)"	"020(5)"
<u>DIVISION 101</u>			
1	In Subdivision A	"340-101-107"	"340-101-007"
1	In Subdivision C	"340-101-025 Characteristics of pesticides"	
1	In Subdivision D		"340-101-034 Pesticides"
2	Line 5	"110"	"108"
4	Line 27	"or"	
5	Line 6	"components"	"constituents"
5	Line 13	"if it meets"	"if it is not excluded from regulation under rule 340-101-004 and it meets"
6	Lines 4 & 11	"solvents listed"	"solvents, or mixtures of those solvents, listed"
6	Line 24	"340-101-033"	"340-101-033 or pesticide listed in rule 340-101-034"
6	Line 27	"subparagraph"	"paragraph"
7	Line 12	"wastes,"	"wastes"
11	Following line 27		"(j) Intermediate manufacturing or mining products which result from one of the steps in a manufacturing or mining process that are typically processed through the next step of the process within a short time."
12	Line 5	"102 to 106"	"100 to 108"
12	Line 6	"impoundment, or"	"impoundment or a waste pile, or"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
12	Line 14	"102 to 106"	"100 to 108"
13	Line 26	"102 to 106"	"100 to 108"
14	Line 19	"102 to 106"	"100 to 108"
15	Line 11	"102 to 106"	"100 to 108"
15	Line 24	"quantity"	"quantity disposal"
16	Line 5	"quantity"	"quantity disposal"
16	Line 20	"; and"	."
16	Rule -005(7)(d)(B)		Bold printing
16	Line 23	"waste from other than household use"	"hazardous waste"
17	Line 11	"more"	"hazardous waste obtained only from small quantity generators in amounts greater"
17	Line 11	"of hazardous waste"	
17	Line 15	"102 to 106"	"100 to 108"
17	Line 20	"102"	"100"
17	Line 22	"on-site or off-site"	
17	Line 23	"on-site"	
17	Line 25	"on-site or off-site"	
17	Line 26	"on-site"	
18	Line 14	"102 to 106"	"100 to 108"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
18	Line 15	"rules 340-101-031 or -032, or contains one or more hazardous wastes listed in rules 340-101-031 or -032;"	"Subdivision D, excluding those listed in rule 340-101-033 solely because they meet a characteristic identified in Subdivision C, or contains one or more hazardous wastes listed in Subdivision D, excluding those listed in rule 340-101-033 solely because they meet a characteristic identified in Subdivision C;"
19	Line 12	"101 to 106"	"100 to 108"
19	Line 15	"101 to 106"	"100 to 108"
19	Line 19	"rule 340-101-025 and -033(4)"	"rule 340-101-033(4) and -034"
19	Following line 24		"(C)(i) No more than 3% by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size; or (ii) No more than 0.3% by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size."
20	Line 2	"rule 340-101-025 and -033(4)"	"rule 340-101-033(4) and -034"
21	Line 11	"of"	"or"
22	Line 9	"Acute"	"Acutely"
23	Lines 12 & 13	"Wastes"	"Waste"
25	Line 9	"Comment: The"	"Comment: In most instances, the"
25	Line 23	"quantity"	"quantity disposal"
26	Line 6	"as Method 5.2"	
26	Line 20	"quantity"	"quantity disposal"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
27	Following line 9		"(Comments: (1) In most instances, the Department will consider waste containing greater than 100 ppm cyanide to be a reactive waste. (2) Pulping liquor is not normally considered reactive.)"
27	Line 20	"quantity"	"quantity disposal"
27	Line 25	"or the"	"or"
28	Line 4	"percent"	"%"
28	Line 10	"quantity"	"quantity disposal"
29	Line 13	"as a hazardous waste"	"elsewhere"
29	Line 14	"quantity"	"quantity disposal"
29	Rule 340-101-025		Recodified as rule 340-101-034: "Pesticides"
30	Line 13	"Acute"	"Acutely"
30	Line 16	"an EP Toxic Waste (E) or"	"a"
30	Line 22	"quantity"	"quantity disposal"
31	F001 to F005		Bold printing of "or mixtures of solvents"
35	Waste No. K088	"R"	"R,T"
35	Line 6 following table	"in (a)"	"in either: (a)"
35	Line 7 following table	"(7)"	"(7),"
36	Line 7	"in (a)"	"in either: (a)"
36	Line 7	"(7)"	"(7),"
36	Line 13	"quantity"	"quantity disposal"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
36	Line 21	"and"	"or"
37	Line 18	"intermediates"	"intermediates,"
37	Line 19	"through"	"to"
37	Line 19	"acute"	"acutely"
37	Line 20	"rule 340-101-005(5)."	"rules 340-101-005(5) and -033(3)(b) (small quantity disposal exemption of 2 pounds per month of product or intermediate, 200 pounds per month of spill clean-up, or 10 pounds per month of process waste)."
42	Line 6 following table	"(6)."	"(6) and a small quantity disposal exemption of 10 pounds per month."
52	Footnote	Footnote	Add to (6) and (7)
52	Following (7)		"(Comment: The above standards and reports are available for inspection at the Department of Environmental Quality, 522 SW Fifth Ave., Portland, OR 97204.)"
53	Line 13	"stap"	"step"
55	Line 27	"-140"	"-024"
<u>DIVISION 102</u>			
2	Line 6	"of this Division"	
2	Rule 340-102-010(5)	Rule	"(5) A person who generates a hazardous waste as defined by Division 101 must comply with the requirements of this Division. Failure to comply will subject a person to the compliance requirements and penalties prescribed by ORS 459.650 to .690, .992 and .995, and OAR Chapter 340, Division 12."

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
3	Line 2)"	
3	Line 5	"104 and 105"	"100 to 108"
4	Line 14	"EPA's"	"a modified EPA"
5	Rule -020(5)		Bold printing
9	Line 17	;"	;" or"
<u>DIVISION 103</u>			
2	Line 5	"within the United States"	
2	Following line 14		"(4) Rail and highway transporters must comply with the regulations of the Public Utility Commissioner."
7	Line 14	"air and water"	
7	Line 22	"OARS;"	
8	Line 5	"environment."	"environment. See Division 108 for further requirements"
<u>DIVISION 104</u>			
5	Line 21	"122.45"	"144.14"
6	Line 21	Delete entire subsection (h)	"(h)(A) Except as provided in paragraph (B) of this subsection, a person engaged in treatment or containment activities during immediate response to any of the following situations: (i) A discharge of a hazardous waste; (ii) An imminent and substantial threat of a discharge of hazardous waste; (iii) A discharge of a material which, when discharged, becomes a hazardous waste."

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
			(B) An owner or operator of a facility otherwise regulated by this Division must comply with all applicable requirements of Subdivisions C and D.
			(C) Any person who is covered by paragraph (A) of this subsection and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of Divisions 100 to 108 for those activities."
10	Line 9	"movement"	"shipment"
11	Line 9	"movement"	"shipment"
11	Line 14	"movement"	"shipment"
12	Line 24	"(1)(a) or (1)(b)"	"(2)(a) or (b)"
16	Line 2	"the effective date of these regulations or six months after"	
18	Line 9	"Reserved"	<p>"(1) Seismic considerations. (a) Portions of new facilities where treatment, storage or disposal of hazardous waste will be conducted must not be located within 200 feet of a fault which has had displacement in Holocene time.</p> <p>(b) As used in subsection (a) of this section:</p> <p>(A) "Fault" means a fracture along which rocks on one side have been displaced with respect to those on the other side.</p> <p>(B) "Displacement" means the relative movement of any two sides of a fault measured in any direction.</p> <p>(C) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene to the present.</p> <p>"(Comment: Facilities in Oregon are assumed to be in compliance with this requirement. See 40 CRF 264.18)"</p>

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
19	Line 7	"EPA, or"	"EPA, permitted by EPA under 40 CFR 264 and 270, or"
19	Lines 16. to 22	Delete 7 lines	
29	Line 19	"102, 103 and 104"	"100 to 108"
36	Following line 18		"(Comment: The state program is more stringent than the federal program in that it requires monthly or quarterly operating reports whereas the federal program requires a biennial report.)"
36	Line 24	"340-101-005, then"	"340-101-005 or -006, then"
37	Line 13	"quantities of hazardous waste"	"quantities and certain beneficially used hazardous wastes"
37	Line 17	"Otherwise, the Department suggests that the owner or operator file an unmanifested waste report for the hazardous waste movement.)"	
43	Line 13	"144.8"	"144.7"
46	Line 7	"144.8"	"144.7"
54	Line 2	"Appendix VIII"	"Appendix VIII of Division 101"
54	Line 17	"Appendix VIII"	"Appendix VIII of Division 101"
74	Line 18	"102 to 106"	"100 to 108"
78	Line 26	"through"	"to"
79	Line 3	"section"	"rule"
79	Lines 4 to 8		Bold printing starting with "However"
79	Line 23	"permitted or"	"permitted under these rules or"
81	Line 2	"have if"	"have contained if"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
82	Line 22	"Section"	"rule"
85	Line 19	"Unless"	"Until"
88	Line 7	"Unless"	"Until"
90	Line 16	"one or more States"	"Oregon"
92	Line 16	"U.S. district"	"circuit"
93	Line 8	"(a) An"	"(a) Except as may be required by subsection (j) of this section, an"
93	Line 11	"(6)(a)(A) or (6)(a)(B) of this rule"	"(A) or (B) of this subsection"
96	Line 10	"may meet the requirements of this rule"	"that has a parent corporation may only meet the requirements of this section"
100	Line 2	"through"	"to"
100	Lines 5 to 9		Bold printing starting with "However"
100	Line 24	"permitted or"	"permitted under these rules or"
102	Line 3	"have if"	"have contained if"
106	Line 21	"Unless"	"Until"
109	Line 15	"Unless"	"Until"
111	Line 28	"one or more States"	"Oregon"
113	Line 24	"U.S. district"	"circuit"
114	Line 24	"(a) An"	"(a) Except as may be required by subsection (k) of this section, an"
114	Line 27	"(6)(a)(A) or (6)(a)(B) of this rule"	"(A) or (B) of this subsection"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
118	Line 2	"may meet the requirements of this rule"	"that has a parent corporation may only meet the requirements of this section"
121	Line 25	"one or more states"	"Oregon"
129	Line 7	"provide"	"provide all or part of"
129	Line 19	"to (for each facility insert the EPA"	"to the facilities and cost estimates identified on attached Schedule A (on Schedule A list the"
130	Line 9	"such"	
133	Line 11	"the end of the month coincident with or preceding"	"least 30 days prior to"
134	Line 12	"and"	"shall specify"
134	Line 13	"he"	"it"
134	Line 13	"shall be specified in writing and"	"in a writing"
134	Line 14	"present and successor trustees"	"present Trustee"
153	Line 25	"operated"	"operated by"
157	Line 13	"Oregon"	"_____"
158	Line 9	"license"	"permit"
159	Line 9	"license"	"permit"
160	Line 4	"license(s)"	"permit(s)"
167	Line 19	"102 to 104"	"100 to 108"
169	Line 15	"102 to 104"	"100 to 108"
170	Line 6 to 8	Delete 3 lines	"(2) The regulations in this Subdivision do not apply to facilities that treat or store hazardous waste in covered underground tanks that cannot be entered for inspection."

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
173	Line 18	"102 to 104"	"100 to 108"
174	Line 11	"260.11"	"rule 340-100-011"
181	Line 7	"does not permit the closure of surface impoundments with"	"requires the removal of all wastes, etc., at closure whereas the federal program gives the option of closing with"
190	Line 2	"impoundment"	"waste pile"
193	Following line 8		"(Comment: The Department believes the primary aim of land treatment to be the complete degradation of hazardous constituents.)"
194	Line 6	"typography"	"topography"
198	Line 2	"and"	"if done"
198	Line 20	"at at"	"at"
204	Line 24	"paragraph"	"section"
209	Lines 5 & 13	"pile"	"landfill"
210	Line 7	"pile"	"landfill"
210	Line 24	"(c)"	"(3)"
216	Line 24	"not landfill"	"not place in a landfill"
216	Line 25	"containing"	"if such mixture contains"
217	Line 2	"Wastes"	"Organic wastes"
217	Line 2	"(3);"	"(3) as acutely hazardous (H) or toxic (T);"
217	Line 4	"rule 340-101-025(1)(a)"	"rule 340-101-034(1)(a)"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
217	Line 6	"and contain no Appendix VIII of Division 101 constituent which would reasonably be expected to be present"	
226	Line 9	"102 to 104"	"100 to 108"
<u>DIVISION 105</u>			
3	Line 8	"110"	"108"
5	Lines 21, 22 & 24	"discharge"	"spill"
5	Line 24	"discharged"	"spilled"
7	Line 23	"HWM"	"management"
7	Line 23	"Owners"	"(a) Owners"
7	Line 24	"facilities must immediately submit both"	"facilities that do not have a permit must submit"
7	Line 25	"and Part B"	
7	Line 25	"Department. The Department may allow an owner or operator until November 1, 1984, to complete the Part B submission."	"Department by June 1, 1984"
8	Following line 1		"(b) The Department may at any time require the owner or operator of an existing management facility to submit Part B of their permit application. The owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing management facility may voluntarily submit Part B of the application at any time."

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
			(c) An owner or operator of an existing management facility that has not yet been issued a management facility permit shall comply with the regulations of Division 104 and 40 CFR Part 265, Subpart F, until such permit has been issued.
			(d) An owner or operator that has not submitted an acceptable Part A permit application, or an acceptable Part B permit application when required to do so, or does not operate in compliance with the regulations of Division 104 and 40 CFR Part 265, Subpart F, as required by subsections (a) to (c) of this section, shall be subject to Department enforcement action including termination of the facility's operation."
8	Lines 2, 3, 6 & 11	"HWM"	"management"
11	Following line 10		"(Comment: Any information stamped confidential must be accompanied by an explanation as to why it should be so considered under the criteria of ORS 192.500 and 459.460. The Department believes that very little, if any, information in an application will meet the criteria.)"
12	Following line 7		"(Comment: Applications for permits on Indian lands shall be forwarded to EPA Region X.)"
13	Line 7	"permits"	"permits such as a water quality NPDES or WPCF permit, an air quality ACD or NESHAPS permit, or a State Lands' Removal or Fill Permit."
17	Line 7	"104 to 106"	"100 to 108"
22	Line 19	"(3)(f)"	"(3)(g)"
23	Line 24	"and"	"for"
30	Line 2		"(see rule 340-100-011)."
31	Line 26	"paragraph"	"section"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
37	Following line 7		"(10) A detailed report with supporting information justifying the need for the landfill as proposed. (11) An explanation of how the requirements of rule 340-104-317 will be complied with after January 1, 1985."
38	Line 12	"459 and"	"459 and OAR Chapter 340 and"
43	Line 12	"it"	"he"
46	Lines 20-23	Delete	"(1) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:"
48	Lines 17-19	Delete	
48	Line 20	"(a)"	"(f) Alternative to termination."
48	Line 23	"(3)"	"(2)"
55	Lines 3-5	Delete 3 lines	"(d) May be suspended or renewal refused by the Department at any time without prior hearing if it finds a serious danger to the public health or safety and sets forth specific reasons for such findings."
55	Line 7	"-011(2)"	"-010"
55	Line 17	"106"	"104"
57	Line 9		"(see rule 340-100-011)."
61	Line 3	"oepration"	"operation"
62	Line 8	"with"	"within"
63	Lines 1 & 13	"Subdivision M"	"Subdivision M of Division 104"
63	Line 19	"-015(2)"	"-015"
64	Line 5	"ot"	"or"

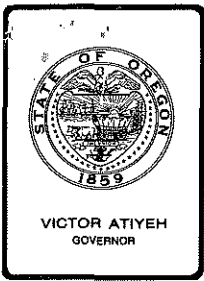
<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
64	Line 16	"request"	"requested"
64	Line 18	"-015(2)"	"-015"
<u>DIVISION 106</u>			
3	Line 7	"30"	"45"
8	Following line 5		"(b) Public notice of a public hearing shall be given at least 30 days before the hearing."
9	Line 1	"may may"	"may"
11	Line 8	"hearing within"	"hearing under rule 340-106-011 within"
<u>DIVISION 108</u>			
2	Line 9	"occurring"	"occurring on the site of a generator who accumulates hazardous waste or"
2	Line 11	"procedures set forth in"	"contingency plan prepared in accordance with Subdivision D of"
2	Line 13	"with OAR"	"with ORS Chapter 468 and OAR"
3	Line 7	"discharge of"	"disposal"
3	Line 13	"spill" definition	"'Spill' means unauthorized disposal."
4	Line 12	"110"	"108"
6	Lines 8 to 10	Delete 3 lines	
6	Table	"Pesticide, rule 340-101-025"	"Pesticide, rule 340-101-034"
7	Line 1	"(1)"	
7	Lines 3 to 5	Delete Comment (2)	
7	Line 6	"must"	"must report spills of any quantity that occur during transportation. Transporters must"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
7	Line 7	"1-"	
7	Line 11	"and"	
7	Line 12	". "	"; and"
7	Following line 12		"(iii) It is completely cleaned up without further incident." "(Comment: For reporting purposes, quantity calculation involving hazardous waste shall be made independent of the concentrations of the hazardous components. For example, the table in this rule requires reporting a 10 pound spill of acrolein (a rule 340-101-033(3)(a) waste). This shall be interpreted as requiring reporting a 10 pound spill of a waste containing acrolein whether the concentration of acrolein is 3, 30 or 100%.)"
7	Line 21	"within 15 days"	"within 15 days of the spill or other incident"
<u>DIVISION 109</u>			
2	Line 10	"102 to 106"	"100 to 108"
7	Line 9	"consist"	"consists"
7	Line 28	"55"	"30"
<u>DIVISION 110</u>			
1	Subdivision D		"340-110-077 Permits"
13	Line 15	"approval"	"a permit"
13	Line 16	"such approval"	"a permit"
14	Line 19	"approve"	"permit"
15	Line 24	"approved"	"permitted"
16	Line 5	"Any approval by the Department shall be in writing and"	"The permit"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
16	Line 6	"approved"	
16	Line 11	"approval"	"permit"
16	Line 12	"approval"	"permit"
19	Line 27	"disposal of PCBs."	"disposal of PCBs and shall be reported and managed in accordance with Division 108."
31	Lines 23 & 24	Both lines	
31	Line 25	"(h)"	"(g)"
34	Line 2	"an approval provided in"	"the permit required by"
35	Line 4	"7/82."	"7/82 (see rule 340-100-011)."
37	Line 12	"-78."	"-78 (see rule 340-100-011)."
37	Line 26	"Approval"	"Permitting"
39	Lines 24 & 25	Both lines	
39	Line 26	"(g)"	"(f)"
40	Following line 7		<p>"340-110-077 (1) The procedures of Division 106 will be followed in issuing permits required by this Division.</p> <p>(2) The treatment facility fee schedule set forth in Subdivision G of Division 105 shall apply to permits required by this Division.</p> <p>(3) Persons currently holding valid management facility permits issued under OAR Chapter 340, Divisions 62 and 63, when those Divisions were in effect, shall be deemed to have a PCB permit until such time as the permit expires, is modified, revoked and reissued, or terminated pursuant to Division 106."</p>

ADDITIONAL PROPOSED MODIFICATIONS TO DIVISION 104
(April 20, 1984)

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
5	Line 21	"only to the extent they are required by 40 CFR 144.14;"	"to the following extent: rules 340-104-011 (identification number), -016 (personnel training), -071 (manifest system), -072 (manifest discrepancies), -073(1), (2)(a) and (2)(b) (operating record), -075 (periodic report), and -076 (unmanifested waste report). When abandonment is completed, the owner or operator must submit to the Department certification by the owner or operator and by an independent registered professional engineer that the facility has been closed in a manner that will ensure that plugging and abandonment of the well will not allow the movement of fluids either into an underground source of drinking water or from one underground source of drinking water to another."
123	Line 11	"one or more states"	"Oregon"



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 6, 1984, EQC Meeting

Addendum to Proposed Adoption of Hazardous Waste Management Rules, OAR Chapter 340, Divisions 100-110

Enclosed are:

- (1) Attachment VIII: Hearing Officer's Report, March 30, 1984
Public Hearing
- (2) Attachment IX: Response to Comments, March 30, 1984
Public Hearing
- (3) Attachment X: Proposed Modifications to Divisions 100 to 110

The bulk of Attachment X was proposed by the Department at the March 30, 1984 public hearing, and, in its present form, includes comments made at that hearing.

Director's Recommendation

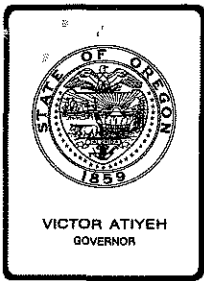
Based upon the Department's analysis of the testimony at a March 30, 1984 public hearing, it is recommended that the Commission adopt Attachment X: Proposed Modifications to Divisions 100 to 110, in addition to Attachment VII: Proposed OAR Chapter 340, Divisions 100 to 110.

Fred Hansen

Fred S. Bromfeld:b
229-6210
April 4, 1984
ZB3226



Contains
Recycled
Materials



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, ^{LKZ}Hearings Officer
Subject: Agenda Item No. H, April 6, 1984, EQC Meeting

SUMMARY OF PUBLIC TESTIMONY ON PROPOSED ADOPTION OF
HAZARDOUS WASTE MANAGEMENT RULES, OAR CHAPTER 340, DIVISIONS
100 THROUGH 110 (MARCH 30, 1984 HEARING)

Pursuant to notice a hearing was conducted on March 30, 1984 in the offices of DEQ in Portland, Oregon to receive testimony on rules proposed by the Department for hazardous waste management.

This was the second formal hearing on the extensive rule proposal. While the hearing was well attended by the regulated community, only four persons offered testimony. Each of them--Bob Westcott of Wesco Parts Cleaners, Tom Donaca of Associated Oregon Industries (AOI), Bill VanDyke of Chem Security Systems, and Lt. Colonel Jan A. VanProoyen of the United States Army--provided a written copy of his testimony and those copies are attached rather than summarized. Gregory E. Carr of Wacker Siltronic Corporation inquired about the provision dealing with point of use accumulation for small generators (OAR 340-102-034). He was informed that the provision had been deleted in order to satisfy Environmental Protection Agency requirements.

Tom Donaca supplemented his written testimony by urging the Commission to adopt without amendment the financial assurance requirements contained in the draft rule packet. In his view, neither the Department nor the regulated community had sufficient time for consideration and comment on the amendments now proposed. Because of the short time available for review and comment, the testimony provided by AOI is not exhaustive in addressing the ramifications of the changes or in listing affected groups. If the Commission agrees that a thorough review is desirable, it could adopt the draft rule, and then schedule a rule-making hearing on the debated sections. The aim of the AOI recommendations is to treat companies operating in Oregon the same whether they are wholly owned subsidiaries of foreign corporations or foreign owned corporations operating under a different business mechanism.

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Jack Johnston of VanWaters and Rodgers offered a correction to the January 5, 1984 hearings officer's summary of testimony. It should state that national labeling laws do not require labeling of combustibles in containers of 100 gallons or less.

Bob Westcott informed the Commission that his proposal has the support of AOI.

Previously submitted written testimony from Terry Boner is also attached.

LKZucker:d
HD665
229-5383
April 3, 1984

MARCH 30, 1984

To: Environmental Quality Commission, Hearings Officer

From: Wesco Parts Cleaners, Canby, Oregon

Subject: Amendment to Proposed Hazardous Waste Rules

I would like to begin by pointing out that ours is a small "family" operation, with my wife and I constituting the whole business. Our company and its service are only as viable as the cost-effectiveness of our service to our customers. Our gross annual sales total less than \$100,000. Hence as you can surmise, our budgets are limited and any costs we incur must be passed on to our customers.

As I am sure you realize, I am not a professional lobbyist or someone who spends all of his time making presentations to bodies such as yours. I am here because this subject is of critical importance to me and to my business. My wife and I have built our operation ourselves over the past 11 years and now fear that we will be put out of business, or face licensing requirements that are so costly that we will be unable to continue in Oregon. It is not our intention to do anything to degrade the environment. We love Oregon and we conduct our business in the same community where we live (Canby). In this time of statewide emphasis on "economic development" it seems hard to imagine anyone proposing rules that could force a company such as ours to move to another state, especially when that state has looked at operations such as ours and given us the "green light".

After 11 years in business my customers, such as service stations and mechanic's shops, have come to depend on me as I depend on them. The rules as proposed could force us from business because of economic overload.

At the January 5 hearing I proposed an amendment to the rules, as proposed then, that would create a very narrow exemption (see copy of that testimony attached) so that a business such as ours could continue to operate without a special license. Our testimony was supported by Associated Oregon Industries (AOI) at that hearing.

I have also offered similar wording to the Department of Ecology in the state of Washington (DOE). I have confirmed that their staff is offering and recommending my amendment to be heard by the DOE the first part of June. However, since DOE is following the EPA hazardous waste storage and treatment rules, my amendment is just to further clarify rules that don't require licensing of an operation such as ours even now (see DEQ letter of 10/25/83 attached).

These new proposed rules have been available only two (2) weeks, and then only at the DEQ office, so that I have been unable, due to the shear volume of the document, to absorb and thereby propose exact codification of our amendment to this set as proposed here today. However if the commission agrees with the concept as formerly proposed I would be happy to assist the staff with that codification.

CONCLUSION

We of course love Oregon and don't want to move out of state, but will, if forced to.

I have offered a reasonable alternative which you the EQC can adopt and include within the total package of rules without disrupting the rest of the process.

I realize the commission has an overwhelming task to review and adopt the staff's proposal however---

SIMPLE CHANGES...should not be lost in the shuffle of trying to do so much too quickly.

January 5, 1984

To: Environmental Quality Commission, Hearings Officer

From: Wesco Parts Cleaners, Canby, Oregon

Subject: Amendment to Proposed Hazardous Waste Rules,
Division 106

Our business is the rental of parts cleaning machines (see enclosed brochure) where we provide not only the machines but the cleaning solvent as well. Our rental pricing is predicated on the concept of our recycling the spent solvent for reuse.

While our recycling system is small it solves an environmental concern i.e. how to encourage recycling of small quantities (7 gallons) of waste solvent by unregulated generators.

The rules as written don't anticipate (in my opinion) a service such as ours, where the solvent is owned by the recycler and rented to the generator.

I have attached a proposed amendment (exhibit A) that is designed to adjust the proposed rules (Division 106) to better fit a company such as ours.

I would offer the following as an explanation of our proposed amendment:

- (a) designates the exception to be a waste hazardous by the characteristic of ignitability and precludes listed wastes from the exception.
- (b) is designed to keep the solvent in an easily identified loop.
- (c) is intended to clearly designate the ownership of the solvent so as to keep the exception limited in scope.
- (d) further limits the exception.
- (e) limits by time the storage of a hazardous waste by our customers.

I would like to note in closing that our spent solvents make good boiler fuel. If something were to happen to me or my company this spent solvent would be an asset rather than a liability upon the decommission of our facility.

EXHIBIT A

PROPOSED AMENDMENT TO DIVISION 106 PROPOSED RULES:

340-106-040

- (10) Persons who treat a hazardous waste where:
- (a) The solid waste is a solvent, which in its virgin state is hazardous by the characteristic of ignitability only;
 - (b) The solvent is recycled for its original use;
 - (c) The solvent is owned by the recycler;
 - (d) The solvent is supplied and returned to the recycler in the same or similar container;
other solvents;
 - (e) Within a period of ninety (90) days after the date on which the quantity of waste solvent exceeds 200 lbs, possession of the waste solvent is transferred to the recycler.



Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE: (503) 229-5696

October 25, 1983

• Mr. Robert D. Westcott
Wesco Parts Cleaners
P.O. Box 426
Canby, OR 97013

Re: Meeting of October 14, 1983
HW License Procedure

Dear Mr. Westcott:

This letter is to summarize the discussion that took place at your Canby shop in regard to licensing Wesco Parts Service as a hazardous waste treatment/storage site.

Mr. Dave Hanline, of the Seattle Region X Environmental Protection Agency (EPA) office, concurred that EPA-X does not have the authority to permit Wesco Parts Cleaners as either a hazardous waste storage or treatment facility. This decision was based on the information supplied to them by you and the Department by phone. Oregon DEQ does, however, under state hazardous waste rules regulate your facility as a hazardous waste storage and treatment facility.

To start the licensing procedure, a written statement from the Clackamas County land use department is requested. This statement shall state whether Wesco Parts Cleaners has land use approval for the N.E. corner of Tull and 99E site.

Guideline documents and the Department's Division 62 and 63 rules were left with you to assist in your firm's application.

While the license application is being prepared, Wesco Parts Cleaners shall comply with Division 62 and 63 rules in regard to hazardous waste handling, storage and treatment. The gravity separator (drop box) waste material in particular must be barreled or containerized and managed through a hazardous waste licensed storage, treatment or disposal site. This material may not, as in past practices, go to a solid waste landfill. Any spillage of waste material shall immediately be cleaned up and contained.

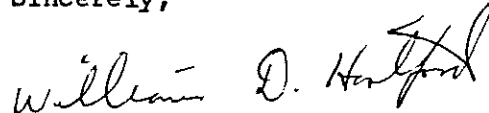
The preliminary plans, as indicated in section A6 of the draft license left with you, shall be written as soon as possible and integrated into your operating procedure.

Mr. Robert D. Westcott
October 25, 1983
Page 2

The Department would expect the land-use statement to be submitted by November 9, 1983. The remaining items necessary for a license application shall be supplied as soon as possible. A time schedule will be negotiated with the Department to insure a timely submittal of the license application after receipt of the land use statement.

If you have any questions, please call me at 229-5316.

Sincerely,

A handwritten signature in cursive script that reads "William D. Hartford". The signature is written in dark ink and is positioned above the typed name.

William D. Hartford
Hazardous Waste Specialist
Solid Waste Division

WDH:j
SJ103

cc: Rich Reiter, Hazardous Waste
Northwest Region



CHEM-SECURITY SYSTEMS, INC.

P.O. Box 1866 • Bellevue, Washington 98009-1866 • (206) 827-0711

CSSI

STATEMENT BY

CHEM-SECURITY SYSTEMS, INC.

BEFORE THE

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

ON

PROPOSED REVISIONS TO HAZARDOUS WASTE RULES

March 30, 1984

CHEM-SECURITY SYSTEMS, INC (CSSI) is pleased to submit these comments on proposed revisions to Hazardous Waste Management Rules under OAR Chapter 340 Divisions 100 to 110. CSSI is the operator of the hazardous waste treatment, storage and disposal facility located near Arlington, Oregon. The facility first commenced operation in 1976 and has functioned as a Regional facility serving the entire Pacific Northwest and parts of Canada. We are strong advocates of strict environmental regulation of hazardous waste management practices, recognizing that lack of such regulation elsewhere in the nation in years past has encouraged improper disposal which has resulted in damage to the environment and the public health.

Over the years, the Department of Environmental Quality has been a leader in the development of a strong environmental regulatory program. The proposed rules, which are the subject here, strengthen and continue that strong program. We have reviewed the rulemaking package and would like to offer the following comments:

THE BAN ON LAND DISPOSAL OF CERTAIN HAZARDOUS WASTES

The Department's proposal, in rule 340-104-317, to ban the disposal of certain types of hazardous wastes as of January 1, 1985 is too ambitious. We recommend that the date be postponed to coincide with the date alternate technology will become operational at Arlington. We understand the Department's intentions, however, the timeframe allowed to install appropriate alternate equipment to incinerate these wastes is too short.

On November 6, 1983 CSSI requested the Department of Environmental Quality and the Environmental Protection Agency (EPA) to issue a RCRA Part B Permit for an incineration facility at Arlington. The permitting process is long and arduous as it is one of the most difficult tasks in the hazardous waste program. Once preliminary approval is granted and detailed engineering of the

unit is completed, another regulatory review must be performed. If the Part B permit is issued in early September 1984, as EPA has predicted, this phase would not likely be complete until March of 1985. Only then can construction of the incinerator and the ancilliary storage and blending tanks commence. It is expected that the construction phase may take another nine (9) months.

Once the tanks are constructed CSSI will accumulate a large volume of incinerable wastes sufficient to conduct the emission test program. The test phase is extremely difficult and laborious and may take four (4) or five (5) months just to acquire emissions data. After that, regulatory agencies review the test results and final approval can be granted. The time required for data review and final approval could take another four (4) months.

Now, if we total these various component tasks it may not be until December 1986 before a RCRA incinerator can become operational at the Arlington facility.

As the Department is well aware, the need for an incinerator at Arlington has been paramount on CSSI's mind for many years. We have evaluated many options, including the use of cement kilns to incinerate wastes, but the matter is not easy and simple. Now, we are facing a new problem where the Department has just now defined the waste types. It is difficult for CSSI to perform a necessary market study, design the technology to be used, make a final investment decision, implement the decision and obtain the necessary regulatory approvals all within the allocated nine (9) month period.

In view of this, the January 1, 1985 scheduled effective date will cause one of two things to occur. One alternative is that the waste will be shipped to either Texas or Arkansas for incineration. The other, and the most likely for the majority of generators in Oregon, will be that the waste will be transported for landfilling at a disposal facility located in southern Idaho. In either case, the public and the environment would be exposed to an increased risk of spills because hazardous wastes would be hauled over longer distances on Oregon roads.

In the case of landfilling these wastes in Idaho, the environmental problem perceived by DEQ would be exported out of state. From an environmental perspective, we will have accomplished only longer transportation and associated higher risk for no change in the method of disposal.

We see the Department's goal as the promotion of advanced technology to manage hazardous wastes. CSSI's agreement of this goal is demonstrated by our proposal in the Part B Permit Application to spend millions of dollars to build such facilities at Arlington. Our only question is the degree to which the January 1985 implementation date will afford any additional environmental protection when contrasted to the significant increase Oregon generators will incur to ship this material to Texas or Arkansas. We estimate such cost will be a factor of 3 to 6 higher than current disposal costs.

IMPLEMENTATION OF THE RULE

The rule will require a major and significant amount of testing and inspection to determine if a waste is subject to the prohibition.

First, a detailed sampling program must be conducted to quantify the percent of free-liquid contained in the waste. The method of determining if free liquid is present relies upon a paint filter and provides a "yes/no" indication. It does not provide percentage of liquid as this has to be done through sample collection, weighing and evaporation. The reliability of the test is in direct proportion to the representativeness of a sample drawn from the container; however, the rule is silent on sampling criteria. We see this as a major omission. Moreover, we do not understand the basis for selecting the 20 percent criteria. Is this based on an evaluation of generator wastes?

Second, even if the generator can determine if the waste contains more than 20% free liquid, the disposal facility operator must assure compliance by performing redundant sampling and analysis. This will have to be performed at the Arlington facility prior to CSSI accepting the waste shipment and will thus result in lengthy delays before unloading may occur. One problem we see is that additional free liquid will separate from the solid fraction during

the course of transportation. This is of particular concern because a waste shipment which originates at the generator facility at less than 20% free liquid may arrive at Arlington with greater than 20% free liquid. Although this would not seem to be the fault of the generator, CSSI would have to reject the shipment. As a result there will be greater handling of the waste and the cost of disposal would significantly increase. A typical example would be the need to open, sample and analyze every small container of paint waste.

Third, the applicability of rule 340-104-317(2) to "any manufacturing process waste or other residue having 3% or 10% concentration ..." represents a significant analytical cost. In order for the disposal facility to assure compliance to the rule, wastes must have undergone a very detailed chemical analysis to verify that any of the "P" or "U" listed compounds are not present at concentrations in excess of the stated limit. The generator must perform this analysis in order to properly characterize the waste before shipment and the disposer must perform redundant testing upon receipt of the waste. This will have a major effect on disposal costs.

Fourth, the requirement that wastes must be analyzed to determine the presence of Appendix VIII constituents is unreasonable. There are approximately 387 items listed in Appendix VIII. In order to determine if any of these items are contained in the waste an extensive laboratory analysis must be performed by the generator and the disposer. This represents a significant cost impact.

Use of the Appendix VIII list is also inappropriate as a significant number of the items contained on that list should be deleted. Reasons are provided on Attachment 1.

Finally, and perhaps most importantly, the criteria pertaining to ignitability and Appendix VIII constituents seems to contain a double negative. As stated, if an ignitable waste contains hazardous constituents it can be landfilled. This needs to be clarified as we do not understand the intent of the rule.

FINANCIAL ASSURANCE MECHANISMS

The rule requires that hazardous waste disposal facilities establish financial assurance for closure only through use of a Trust Fund. We believe this requirement is extremely onerous as it does not allow use of an alternate mechanism such as the one CSSI now has in place. We request that the Department allow use of a Surety Bond guaranteeing payment into a Trust Fund or at least allow the Trust Fund to become fully funded by the date of projected facility closure.

If the Department finds the Surety Bond option unacceptable for disposal facilities, we suggest that a hybrid option be developed. This option would be a combination of a Trust Fund and Surety Bond guaranteeing payment into a Standby Trust Fund. In this case, annual payments would be made to the Trust Fund over a pay-in period ending on the closure date as identified in the closure plan. The difference between the closure cost estimate and the cash balance in the Trust Fund would be covered by a Surety Bond. This is essentially the way the Arlington facility has been operating since 1980.

The value of the fund to assure proper closure and post-closure care is based upon monitoring for a 30-year period following closure. Thus, money should be collected over the life of the facility, and certainly no less than 30 years. If the Department demands payment in cash over a 10-year period (or even less as discussed below), the impact will be to greatly increase the cost of operations at Arlington. In effect, generators would be paying now the full burden for those who use the facility many years later. We submit that it is more equitable that the program be designed as a pay-as-you-go program and thus the Trust Fund and Surety Bond option which we propose is both fair and does not in any way jeopardize financial assurance to protect environmental safeguards.

We understand the Department's interest in adopting EPA's 40 CFR Part 264 Financial Requirements, verbatim; however, the option we suggest would be a new approach which is more stringent than the Surety Bond option defined by EPA at 40 CFR 264.143(b). This would seem to be authorized under 40 CFR 264.149.

If the Department wishes not to include this option, we would ask that careful consideration be given to defining matters relating to "initial value of the Trust Fund" and the "amount of the first payment". The DEQ has required trust funds and the like long before EPA adopted its April 16, 1982 financial assurance requirements. Therefore, the terms used in EPA's rules are not interchangeable with the financial assurance program now in-place in the State of Oregon.

Also, in the future, we can envision situations where the closure cost estimate will substantially decrease. The methods for determining annual payment, and adjusting the required cash balance must take this into account. any oversight in this regard could result in CSSI being required to make a cash deposit equal to 90% of the closure cost estimate.

Finally, the requirements that the wording of the Trust Agreement be identical to the wording specified in the rules is unreasonably restrictive. Minor wording changes which do not in any way change the substance or intent of the Trust Agreement must be allowed. In situations where EPA has primacy over acceptance of the Trust Agreement, we can identify specific instances where Region 10 has accepted alternate wording of this nature. We request that the Department include a way in the rules to accept such minor changes as this would seem to be allowable under 40 CFR 264.149.

OTHER ITEMS

We also have comment on various aspects of other rules. Those are included on the attached page of supplemental comments (Attachment 1).

Thank you for the opportunity to present our views on this important matter.

ATTACHMENT 1

SUPPLEMENTAL COMMENTS BY
CHEM-SECURITY SYSTEMS, INC.

The following is a list of comments directed at particular aspects of the specific rules listed. The issues are relatively straight forward and do not appear to need extensive comment. Those are as follows:

340-100-030(1) "Landfill": The term landfill is used in 340-104-317(1) as a verb, yet only the noun form is defined. The verb usage carries with it significant connotations. Either the text of rule 340-104-317(1) should be clarified or the definition should be expanded to precisely define that which constitutes "landfilling".

340-101-033(3)(a): The term "any manufacturing process waste or other residue" covers every conceivable source of waste. Does the Department intend this requirement to be so broad? If not, we suggest that the rule be expanded to clarify the applicability.

340-101-230, Table 6: The characterization of X012 at a concentration greater than 50 ppm PCB seems to be in conflict with EPA regulations at 40 CFR Part 761. Is the concentration indeed a criteria, and if so how is the PCB concentration in materials such as rags or debris to be determined? What constitutes a representative sample?

340-102-160(4)(b): With regard to PCB Items, the Department requirement pertaining to "...the date of their generation" is different from EPA's term "...the date taken out of service". On their face these two terms have a substantially different meaning and would have an impact to the operator of the disposal facility. We would ask that the Department reconcile these differences because it will result in DEQ Rules having one meaning with the EPA regulations having yet another for the same regulated waste.

340-104-314(1)(b): The requirement that wastes be "chemically and physically" stabilized is unclear. A performance standard needs to be defined for this type of treatment. In the case of physical stabilization, it is our understanding that a free liquid test must be performed. However, there is no associated description as to what constitutes acceptable chemical stabilization.

340-104-317(2) -- Reasons Why The Appendix VIII List Should Be Modified:

Determination of a chemical substance universe appropriate to prohibition from landfilling must bear a reasonable relationship to the universe of chemical compounds whose presence has been determined sufficient to characterize or list a waste as hazardous. Although Appendix VIII is a list of substances whose presence may be considered a reason to list a particular waste as hazardous, it is clear the presence of an Appendix VIII constituent does not, by itself, define a waste as hazardous. It is but a single factor to be considered in determining whether to list a waste as hazardous.

It seems to us that any reasonable approach must begin with a listing of those chemical substances whose presence has been determined as the reason for characterizing or listing a waste as hazardous. Such listing would be a composite of Table I of 40 CFR 261.24 (the substances which serve to characterize a waste as "EP Toxic"), Appendix VII to 40 CFR, Part 261 (the "hazardous constituents" which form the basis for listings at 40 CFR 261.31 and 261.32), the listing of "acute hazardous wastes" at 40 CFR 261.33(e), and the listing of "toxic wastes" at 40 CFR 261.33(f). Any chemical substance not on such composite list has not been considered one which is sufficient to characterize or list a waste as hazardous.

The list generated by integration of the four cited lists does not, however, constitute a final list. Further amendments are required:

- A. All substances listed solely because of corrosivity, or reactivity should be deleted because these particular characteristics are not the focus of concern. An example of a substance which should be deleted is benzenesulfonic acid chloride (U020).

B. Compounds which are gases at ambient temperatures should be deleted. Examples would be cyanogen and nitrogen dioxide.

C. Compounds which ionize should be deleted, for the reason that such compounds are not organic in nature and will not volatilize at ambient temperatures. As an illustration, we refer to thallium carbonate and sodium cyanide.

D. Compounds for which EPA has not described analytical methods should be deleted. EPA has acknowledged there are at least nine such compounds. [Supplementary Information, 47 F.R. 32296, col. 2].

In addition to our proposal for the formation of a reasonable list, we propose the list should be subdivided into those parameters for which Standard GC/MS or A/A analytical methods are useable (Group A) and those parameters for which unique or specialized methods would be required only upon an affirmative finding that the constituent was reasonably expected to be in the waste (Group B).

340-107-550(3): This rule requires that PCB landfills be monitored monthly while rule 340-107-230 requires that RCRA landfills be monitored nominally on a semi-annual basis. It is requested that the Department include in the subject rule some latitude for an alternate monitoring frequency such that all landfills could be, at some point, subject to the same monitoring requirements.

340-116-270: The term "storms" needs to be defined. Does it apply to a heavy rain, a 100-year storm or some combination thereof? Specific criteria should be included.



DEPARTMENT OF THE ARMY
HEADQUARTERS US ARMY MATERIEL DEVELOPMENT AND READINESS COMMAND
3001 EISENHOWER AVENUE, ALEXANDRIA, VA. 22304

29 MAR 1981

ORCED-D

Mr. F. Bromfeld
Department of Environmental Quality
522 Southwest 5th Avenue
Portland, Oregon 97204

Dear Mr. Bromfeld:

The US Army Materiel Development and Readiness Command (DARCOM) appreciates the opportunity to comment on the State of Oregon's proposed Hazardous Waste Management Regulations. DARCOM fully concurs with the State's desire to provide for the safe management of hazardous waste. The Army has developed an extensive program and devotes considerable resources to insure its peacetime operations fully comply with both the spirit and intent of all environmental laws and regulations. In addition the Army has an equal responsibility to exercise its stewardship of the taxpayer's money and avoid any unnecessary costs.

Based upon this dual responsibility, we must comment on the proposed regulations, specifically section 340-101-003(a) as it interfaces with section 340-101-033(1) and the listing of the nerve agents GB & VX as a hazardous commercial chemical product with number P999. The nerve agents are not a commercial chemical product but are military unique toxic compounds which are maintained and controlled by a professional group of specially trained individuals within the military establishment. Further, we feel that current regulations and procedures already in effect adequately provide for proper storage, handling and disposal and will minimize risks to public health or the environment. Historically the US Environmental Protection Agency, Regions IX and X, have not considered these agents as a hazardous waste since they are extensively regulated by public laws and regulations and are militarily unique and have no commercial utility. Like nuclear weapons, chemical munitions are part of our national defense deterrent stockpile and must be retained until an appropriate arms control treaty can be negotiated.

Subdivision I, Use and Management of Containers of your proposed regulations appears to prescribe facility inspection requirements -- sections 340-104-174 and 340-104-175 respectively -- which would have a substantial cost and personnel resource impact on the Army while neither enhancing environmental protection nor public health. During the twenty plus years that the Army has stored M55, GB and VX filled rockets, we have never had a chemical agent release which threatened

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DRCED-D


Mr. F. Brownfeld

the environment or human health. The Army's surety program and mandated routine inspection procedures have proven to be most effective and appropriate. The proposed weekly inspections are not necessary or realistic. Further the procedures currently used are more detailed and rigorous than those being proposed and we object to changing a program that has over a long period time demonstrated its effectiveness. In fact, the effectiveness of the current program was recently verified by a General Accounting Office review. A copy of this report is provided as support for our position. In addition, the comprehensive Army Regulation AR 50-6 assigning responsibilities and prescribing procedures for the safe, secure and reliable management of chemical agents and munitions is also provided as supporting documentation of the effectiveness of the program.

The Army understands and shares the concern of the State on the potential for an accidental release of nerve agent from the proposed Umatilla Depot Activity Chemical Demilitarization Facility. In fact, the Army will meet stack emission standards more stringent than the proposed incinerator standards. The Surgeon General of the Public Health Service, through the Department of Health and Human Services has established stack emission standards of 0.0003mg/M3 for GB and 0.00003mg/M3 for VX. These equate to destruction efficiency requirements of greater than 99.99972. The proposed facility at Umatilla Depot Activity is being designed to exceed even these stringent requirements. This reflects our recognition of the obligation and commitment to conduct environmentally safe disposal operations.

In summary, we are confident that current operating procedures fully satisfy the spirit and intent of the proposed regulations, which is to protect health and the environment to the fullest extent possible. In view of the complexity of this issue DARCUM and its installation, Umatilla Depot Activity, would welcome the opportunity to discuss this topic more fully with you before a final decision is made. Should this not be possible and if you have need for further information regarding this important matter please contact Mr. William N. Harsalkus, Chief of the DARCUM Environmental Quality Division, (202) 274-9016 immediately. We appreciate your thorough consideration of our views regarding the proposed regulation. Indeed, we have a joint obligation to protect the public and environment of your beautiful State.

Sincerely,


William N. Harsalkus
Brigadier General, U. S. Army
Deputy Executive Director for
Chemical and Nuclear Matters

Enclosures

2/2

Terry Boner of

NORTHWEST PULP AND PAPER ASSOCIATION COMMENTS
DEPARTMENT OF ENVIRONMENTAL QUALITY PROPOSED
HAZARDOUS WASTE REGULATIONS
CHAPTER 340, DIVISIONS 100 - 125

DIVISION 101 - IDENTIFICATION OF HAZARDOUS WASTE

Specific Comments

340-101-050 Beneficial Use and Recycle: NWPPA endorses DEQ's proposed requirements for beneficial users and recyclers of hazardous wastes. The proposed standards accurately reflect the intent of EPA's April 4, 1983 rulemaking.

340-101-210, - 220: These sections should contain references to inner liners or container residues which have been used to hold any commercial chemical product, or manufacturing chemical intermediates including quantity exemption levels and disposition of containers or inner liners.

340-101-300(2)(D): The phrase "managing the liner as hazardous waste" needs clarification.

340-101-350 Small Quantity Management: There is an overlap between this section and Division 102-040(2) as both contain requirements for the management and disposal of small quantities of hazardous waste. Section 101-350 should reference the small quantity generator requirements of Section 102-040(2) to ensure that these additional requirements will be brought to the readers attention.

DIVISION 102 - GENERATORS

340-102-400 Beneficial Use: This section could include a provision regarding unavoidable situations where a 30-day advance notice is not possible.

DIVISION 122 - LICENSE BY RULE

General Comments

DEQ proposes to regulate wastewater treatment and elementary neutralization facilities through a license by rule. These facilities currently are excluded from federal regulation in RCRA Sections 122.21, 264.1, 265.1, and 122.26. Although EPA did issue proposed permit by rule regulations for these facilities November 17, 1980, the Agency now is developing a concept, "Class Permits," to replace their previously proposed permit by rule regulations. "Class permits" are an EPA priority regulation and a proposed rulemaking is scheduled in February 1984. It is advisable for the DEQ to wait to propose regulations for these facilities until EPA's intentions are clear.

The state currently regulates wastewater treatment facilities through the NPDES program and many of the proposed License by Rule requirements are present in NPDES. NPDES contains provisions that apply not only to discharges, but also to the proper operation and maintenance of the wastewater treatment system. The DEQ will not gain any further degree of environmental protection by regulating these facilities through a License by Rule and it is unnecessary for the state to regulate these facilities by including them within the hazardous waste program.

Specific Comments

Given the above considerations it is more appropriate for the DEQ to exclude wastewater treatment and neutralization facilities from regulation at this time. If the state still feels that some additional regulation of these facilities is necessary, a more limited set of criteria, such as that proposed in the November 17 Federal Regulations should be applied.

The Specific Facility Requirements 340-122-200 for elementary neutralization or wastewater treatment facilities appear redundant with the requirements for General Facilities.

RESPONSE TO COMMENTS

The following is a response to the comments submitted pursuant to a March 30, 1984 public hearing on the proposed adoption of hazardous waste management rules, OAR Chapter 340, Divisions 100 to 110. These comments are appended to the Hearing Officer's Report. Because of their length, they are not reproduced but are referenced in the responses below.

Department response to comments by Wesco Parts Cleaners, Canby, OR: While we sympathize with commentor's point of view, we feel that it is critical for the public to have assurance that a recycle site is properly operated and that there is bonding and insurance to provide relief in the event that the business cannot continue to operate. The best way for providing this would be a permit. However, in recognition that recycling is often "small business," we agree to eliminate the permitting requirement for certain less hazardous wastes provided the recycler complies with rules for good operation and meets the bonding and insurance requirements. We believe this to be minimal to protect public health and the environment. See revised rule 340-101-006(4).

Department response to comments by Associated Oregon Industries, Tualatin, OR

1. Subdivision H: Financial Requirements: Your suggested amendments requiring subsidiaries to obtain a corporate guarantee removes our most immediate concern and we propose to adopt them, although in somewhat modified language. See repropsoed rules 340-104-143(6) and 145(6). However, because of the complexity of the issue, and the number of comments received, we intend to pursue further modifications to address several other of our concerns such as the adequacy of an annual audit and the enforceability of an out-of-state corporate guarantee.
2. Rule 340-104-317: We believe there is agreement that landfilling is not the proper disposal method for the wastes listed in the subject rule. The basis of this comment is to decide upon an implementation date. Commentor's suggestion of delaying to January 1986 may be reasonable but only if there is some assurance that Oregon will be close to having an operable incinerator by that time. But, according to Chem-Security's Part B permit application, their incinerator is "contemplated," which means a unit . . . which our company expects to become economically feasible--based on current regulatory and market trends--in the near future, . . . To wait on this expectation would be to base an Oregon environmental decision upon a Chem-Security economic decision. In the final analysis, we have no assurance that an incinerator will ever be built.

The problem of winter transport, while real, does not seem insurmountable. A generator may store wastes for 90 days (can be extended to 120 days) without a permit which should allow adequate time to wait for safe transport weather.

Thus we continue to see no basis for postponement of the ban until January 1986 and remain with our proposed January 1985 implementation date. (See also related Chem-Security comment.)

Department response to comments by Chem-Security Systems, Inc.,
Bellevue, WA

1. Ban on land disposal (rule 340-104-317): While we recognize that obtaining a hazardous waste incinerator permit may be a long and arduous task, we cannot agree with postponing the ban until such time as Arlington is ready to install an incinerator (indeed, we have no assurance that Arlington will ever be ready to install an incinerator). Thus we believe it necessary to adopt a firm ban implementation date.

We also agree that much of the banned waste will be landfilled in other states, but disagree that nothing much will be accomplished environmentally. To the extent possible, we are attempting to ensure that Oregon groundwater remains clean and can see no reason to continue what we consider to be improper disposal just because our neighbors lack adequate regulatory controls. (See also related AOI comment.)

2. Implementation of ban (rule 340-104-317): The allowance of soil stabilization and burial for wastes containing 20% or less free liquid is a relaxation of our previously discussed free liquid ban (Section (1) of rule). The 20% level selected is believed to be a reasonable trade-off between minimizing disposal costs and keeping toxic liquids out of the environment. We feel that simply modifying the paint filter test to relate the volume of waste tested to that passing through the filter will be adequate for purposes of this rule. We will work with the regulated community on the details of such a test.

The procedure for sampling a container is the same as that now required for you to analyze the waste, and is referenced in Appendix I of Division 101 (EPA reference).

The problem of settling of solids between the generator and disposal site is not a factor since a representative sample of a waste should contain the same percent liquid no matter where it is taken (percent liquid by our test being a physical property of the waste). However, in recognition that the test is somewhat more complicated than a

visual examination for free liquid, it would be necessary to develop a sampling protocol for percent liquid. It seems reasonable for generators and facility operators to perform the test as frequently as they perform waste analysis.

With regard to the comment on "P" and "U" listed wastes (subsection (2)(a)), if Arlington received a waste listed, say P050, it could only be a commercial chemical product, manufacturing chemical intermediate, off-spec. of the above, or a waste containing 3% or greater of P050. Any other waste should not be identified as P050. We cannot see why there would be any greater cost in verifying the generator's analysis in a 3% or greater waste than there would in one of the purer discarded products.

We agree to drop the requirement for testing for Appendix VIII constituents in ignitable wastes (subsection (2)(b)) as this is not required of the generator if he chooses to recycle or reclaim. The intent of the rule, is, of course, to force such recycling or reclamation.

Financial assurance mechanisms: We propose to adopt the federal rule at this time (See related AOI comment.)

340-100-030(1)(as it pertains to 340-104-317(1)): We have modified rule 340-104-317(1) to use the noun form which is defined in rule 340-100-010.

340-101-033(3)(a): Our intent is to be broad as mandated by our statute "Residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources. . ." (ORS 459.410(6)(b)).

340-101-230, 340-102-160(4)(b) and 340-107-550(3): As stated in the Public Hearing Notice, we are foregoing the identification of PCB as a hazardous waste and adopting rules identical to the federal PCB rules.

340-104-314(1)(b): This is an EPA requirement and we will check with them. However, it is believed that chemical stabilization refers to a process, such as that of Stablex Corp., in which waste is chemically bonded to a matrix. The resultant product would appear to pose much less environmental hazard than that of a product obtained by simply mixing waste with soil.

340-104-317(2) - Reasons to modify Appendix VIII: Your comments are well taken. We are modifying rule 340-104-317(2)(a) to read "Organic wastes identified in rules 340-101-033(1) to (3) as acutely hazardous (H) or toxic (T)." This should satisfy "A" and "C." Our response to "B" is that toxic gaseous compounds should not be put in a landfill because the eventual atmospheric pollution is akin to that of the eventual groundwater pollution by liquids. And finally, "D," if EPA lists a compound, we are obliged to also list it even though an analytical test may not yet be finalized. In the event of Arlington receiving an exotic waste for which there is no such procedure, Chem-Security, EPA and the Department, working together, should be able to provide a satisfactory way to handle it.

340-116-270 (renumbered 340-104-303): This is an EPA rule and I will check further their definition of "storm." In the interim, it would seem appropriate to check your facilities after any rain, wind, etc. heavy enough to possibly cause damage.

Department response to comments by Department of Army: Our chief concern is that the treatment, storage and disposal of nerve agents be adequately managed and that such management be adequately inspected and monitored. We believe that the EPA standards, which are proposed, will do this. In your letter of March 29, 1984, you have indicated the existence of U.S. Department of Health standards which are equivalent to, or exceed, those of EPA. A more complete submission purporting to contain these standards was received on April 3, 1984.

However, we simply do not have time to review the latter submission before the April 6, 1984 adoption date. We therefore propose to go forward with our recommendation that waste nerve agents be identified as hazardous waste.

Following that, we will completely review the submission including any further related information. Should we concur that the Department of Health regulates waste nerve agents to the extent that we are proposing, including a regular monitoring and inspection program, we would have the option to go back through the public hearing process on the question of State regulation.

It should also be noted that the storage of reactive waste (i.e., munitions) beyond 90 days, and its treatment, is regulated by the federal hazardous waste program. We must also adopt these regulations if our program is to qualify for Final Authorization. Since the waste nerve agent is contained in munitions, it seems that, to a large extent, we will already be involved with the nerve agent, although peripherally to our regulation of the waste munitions.

Department response to comments by D & B Supply, Caldwell, ID, and General Battery, Reading, PA. These rather lengthy comments relate to a continuation of an exemption for spent lead-acid batteries that appeared in an earlier version of our rules. This unqualified exemption was removed at the request of EPA and has been replaced by an exemption more in accord with the current EPA program. Recodified as rule 340-101-006(5).

ZB3212

PROPOSED MODIFICATIONS TO DIVISIONS 100 to 110

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
<u>DIVISION 100</u>			
1	"Subdivision C"	"Rulemaking"	
2	Line 17	"101 to 106"	"100 to 106 and 110"
2	Line 18	"regulations"	"regulations and correspond as follows: Division 100 (40 CFR Part 260), 101 (261), 102 (262), 103 (263), 104 (264), 105 (270), 106 (124) and 110 (761)."
3	Lines 12 & 13	Both lines	
4	Following "Active portion"		"'Aquatic LC ₅₀ ' (median aquatic lethal concentration) means that concentration of a substance which is expected in a specific time to kill 50% of an indigenous aquatic test population (i.e., fish, insects or other aquatic organisms). Aquatic LC ₅₀ is expressed in milligrams of the substance per liter of water."
4	"Beneficiation"		Bold printing
4	"Beneficial use"		Bold printing
4	Following "Beneficial use"		"'Certification' means a statement of professional opinion based upon knowledge and belief."
4	"Collection"		Bold printing

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
4	"Commission"		Bold printing
5	"Department"		Bold printing
5	"Dermal LD50"		Bold printing
6	"Discharge"	Entire definition	"'Discharge.' See 'spill.'"
7	Following line 8		"'Existing portion' means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit."
9	"Inhalation LC50"		Bold printing
10	"License"		Bold printing
10	"Management facility"		Bold printing
11	"Off-site"		Bold printing
11	"Oral LD50"		Bold printing
11	"Oxidizer"		Bold printing
12	Line 8	"issued to implement"	"that contains"
13	"Reclamation"		Bold printing
13	"Recycle"		Bold printing
13	"Reuse"		Bold printing
14	"Spill"	Entire definition	"'Spill' means unauthorized disposal."
17	Line 3	"340-101-011"	"340-100-011"
18	Line 1	"Rulemaking"	

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
18	Line 3	"modify or revoke any provision in Divisions 100 to 110."	"approve an equivalent testing or analytical method or to exclude a waste produced at a particular facility."
18	Line 7	"100"	"101"
18	Line 16	"regulatory"	
19	Lines 2 and 3	Delete	
19	Line 9	"100 or 104 may petition for a regulatory amendment"	"100 or 104 shall petition"
19	Line 13	"100"	"101"
19	Line 23	"100"	"101"
20	Line 5	"amends the regulations to permit use of a new testing method"	"permits use of a new testing or analytical method"
20	Following Line 7		"(Comment: The Department will not consider approving a testing or analytical method until it has been approved by EPA.)"
20	Line 11	"may petition for a regulatory amendment"	"shall petition"
20	Line 22	340-101-003(1)(b)(B) or (3)	340-101-003(2)(b) or (4)
23	Line 20	"020(4)"	"020(5)"
<u>DIVISION 101</u>			
1	In Subdivision A	"340-101-107"	"340-101-007"
1	In Subdivision C	"340-101-025 Characteristics of pesticides"	
1	In Subdivision D		"340-101-034 Pesticides"
2	Line 5	"110"	"108"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
5	Line 6	"components"	"constituents"
5	Line 13	"if it meets"	"if it is not excluded from regulation under rule 340-101-004 and it meets"
6	Lines 4 & 11	"solvents listed"	"solvents, or mixtures of those solvents, listed"
6	Line 24	"340-101-033"	"340-101-033 or pesticide listed in rule 340-101-034"
6	Line 27	"subparagraph"	"paragraph"
11	Following line 27		"(j) Intermediate manufacturing or mining products which result from one of the steps in a manufacturing or mining process that are typically processed through the next step of the process within a short time."
12	Line 5	"102 to 106"	"100 to 108"
12	Line 6	"impoundment, or"	"impoundment or a waste pile, or"
12	Line 14	"102 to 106"	"100 to 108"
13	Line 26	"102 to 106"	"100 to 108"
14	Line 19	"102 to 106"	"100 to 108"
15	Line 11	"102 to 106"	"100 to 108"
16	Rule -005(7)(d)(B)		Bold printing
16	Line 23	"waste from other than household use"	"hazardous waste"
17	Line 11	"more"	"hazardous waste obtained only from small quantity generators in amounts greater"
17	Line 11	"of hazardous waste"	
17	Line 15	"102 to 106"	"100 to 108"
17	Line 18	"section (3)"	"sections (3) to (5)"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
17	Line 20	"102"	"100"
17	Line 22	"on-site or off-site"	
17	Line 23	"on-site"	
17	Line 25	"on-site or off-site"	
17	Line 26	"on-site"	
18	Line 14	"102 to 106"	"100 to 108"
19	Following line 7		<p>"(4) Wastes that exhibits any of the characteristics of hazardous waste identified in Subdivision C or that are listed in rule 340-101-033 solely because they meet a characteristic identified in Subdivision C, and that are managed off-site by being recycled or reclaimed for materials, or accumulated, stored, or treated prior to being reclaimed for energy or materials, are subject to the following requirements with respect to that management:</p> <p>(a) Division 102;</p> <p>(b) OAR Chapter 860, Divisions 46 and 66 and Divisions 103 of this Chapter; and</p> <p>(c) Applicable provisions of Subdivisions A to J excluding F, of Division 104.</p> <p>"(5) Used motor oil, lubricating oil, or spent lead-acid batteries are not subject to regulation under Divisions 100 to 106 if it meets subsections (1)(a) or (b) of this rule."</p>
19	Line 12	"101 to 106"	"100 to 108"
19	Line 15	"101 to 106"	"100 to 108"
19	Line 19	"rule 340-101-025 and -033(4)"	"rule 340-101-033(4) and -034"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
19	Following line 24		"(C)(i) No more than 3% by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size; or (ii) No more than 0.3% by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size."
20	Line 2	"rule 340-101-025 and -033(4)"	"rule 340-101-033(4) and -034"
26	Line 6	"as Method 5.2"	
27	Following line 9		"(Comments: (1) In most instances, the Department will consider waste containing greater than 100 ppm cyanide to be a reactive waste. (2) Pulping liquor is not normally considered reactive.)"
29	Rule 340-101-025		Recodified as rule 340-101-034: "Pesticides"
30	Line 16	"an EP Toxic Waste (E) or"	"a"
31	F001 to F005		Bold printing of "or mixtures of solvents"
35	Waste No. K088	"R"	"R,T"
36	Line 7	"in (a)"	"in either: (a)"
36	Line 21	"and"	"or"
40	P999		Bold printing
52	Footnote	Footnote	Add to (6) and (7)
52	Following (7)		"(Comment: The above standards and reports are available for inspection at the Department of Environmental Quality, 522 SW Fifth Ave., Portland, OR 97204.)"
55	Line 27	"-140"	"-024"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
<u>DIVISION 102</u>			
2	Line 6	"of this Division"	
2	Rule 340-102-010(5)	Rule	"(5) A person who generates a hazardous waste as defined by Division 101 must comply with the requirements of this Division. Failure to comply will subject a person to the compliance requirements and penalties prescribed by ORS 459.650 to .690, .992 and .995, and OAR Chapter 340, Division 12."
3	Line 5	"104 and 105"	"100 to 108"
4	Line 14	"EPA's"	"a modified EPA"
5	Rule -020(5)		Bold printing
<u>DIVISION 103</u>			
2	Line 5	"within the United States"	
2	Following line 14		"(4) Rail and highway transporters must comply with the regulations of the Public Utility Commissioner."
7	Line 14	"air and water"	
7	Line 22	"OARS;"	
8	Line 5	"environment."	"environment. See Division 108 for further requirements"
<u>DIVISION 104</u>			
6	Line 21	Delete entire subsection (h)	"(h)(A) Except as provided in paragraph (B) of this subsection, a person engaged in treatment or containment activities during immediate response to any of the following situations: (i) A discharge of a hazardous waste; (ii) An imminent and substantial threat of a discharge of hazardous waste;"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
			(iii) A discharge of a material which, when discharged, becomes a hazardous waste.
			(B) An owner or operator of a facility otherwise regulated by this Division must comply with all applicable requirements of Subdivisions C and D.
			(C) Any person who is covered by paragraph (A) of this subsection and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of Divisions 100 to 108 for those activities."
10	Line 9	"movement"	"shipment"
11	Line 9	"movement"	"shipment"
11	Line 14	"movement"	"shipment"
12	Line 24	"(1)(a) or (1)(b)"	"(2)(a) or (b)"
16	Line 2	"the effective date of these regulations or six months after"	
18	Line 9	"Reserved"	<p>"(1) Seismic considerations. (a) Portions of new facilities where treatment, storage or disposal of hazardous waste will be conducted must not be located within 200 feet of a fault which has had displacement in Holocene time.</p> <p>(b) As used in subsection (a) of this section:</p> <p>(A) "Fault" means a fracture along which rocks on one side have been displaced with respect to those on the other side.</p> <p>(B) "Displacement" means the relative movement of any two sides of a fault measured in any direction.</p> <p>(C) "Holocene" means the most recent epoch of the Quarternary period, extending from the end of the Pleistocene to the present.</p>

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
			"(Comment: Facilities in Oregon are assumed to be in compliance with this requirement. See 40 CRF 264.18)"
19	Line 7	"EPA, or"	"EPA, permitted by EPA under 40 CFR 264 and 270, or"
19	Lines 16 to 22	Delete 7 lines	
29	Line 19	"102, 103 and 104"	"100 to 108"
36	Following line 18		"(Comment: The state program is more stringent than the federal program in that it requires monthly or quarterly operating reports whereas the federal program requires a biennial report.)"
36	Line 24	"340-101-005, then"	"340-101-005 or -006, then"
37	Line 13	"quantities of hazardous waste"	"quantities and certain beneficially used hazardous wastes"
37	Line 17	"Otherwise, the Department suggests that the owner or operator file an unmanifested waste report for the hazardous waste movement.)"	
43	Line 13	"144.8"	"144.7"
46	Line 7	"144.8"	"144.7"
54	Line 2	"Appendix VIII"	"Appendix VIII of Division 101"
54	Line 17	"Appendix VIII"	"Appendix VIII of Division 101"
74	Line 18	"102 to 106"	"100 to 108"
79	Line 3	"section"	"rule"
79	Lines 4 to 8		Bold printing starting with "However"
79	Line 23	"permitted or"	"permitted under these rules or"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
81	Line 2	"have if"	"have contained if"
82	Line 22	"Section"	"rule"
85	Line 19	"Unless"	"Until"
88	Line 7	"Unless"	"Until"
92	Line 16	"U.S. district"	"circuit"
93	Line 9	"demonstrating that"	<p>"obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements of subsections (6)(b) through (6)(i) of this rule and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in rule 340-104-151(8). The corporate guarantee must accompany the items sent to the Department as specified in subsection (6)(d) of this rule. The terms of the corporate guarantee must provide that:</p> <p>(A) If the owner or operator fails to perform final closure of a facility covered by the corporate guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in rule 340-104-143(1) in the name of the owner or operator.</p> <p>(B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.</p>

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
			(C) If the owner or operator fails to provide alternate financial assurance as specified in this rule and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator."
93	Line 10	"he passes"	"(b) The guarantor must pass"
93	Lines 11, 13 & 24	"owner or operator"	"guarantor"
93	Line 11	"(6)(a)(A) or (6)(a)(B) of this rule"	"(A) or (B) of this subsection"
94	Line 6	"(b)"	"(c)"
94	Line 7	"(6)(a)"	"(6)(b)"
94	Line 8	"owner's and operator's"	"guarantor's"
94	Line 10	"(c)"	"(d)"
94	Lines 10, 18 & 26	"owner or operator"	"guarantor"
94	Lines 12, 15 & 17	"owner's or operator's"	"guarantor's"
94	Line 26	"(d)"	"(e)"
94	Line 27	"(6)(c)"	"(6)(d)"
95	Line 2	"(e)"	"(f)"
95	Lines 3, 6, 18 & 27	"(6)(c)"	"(6)(d)"
95	Lines 3, 7, 15, 17 & 20	"owner or operator"	"guarantor"
95	Line 7	"(f)"	"(g)"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
95	Lines 8, 16 & 21	"(6)(a)"	"(6)(b)"
95	Line 8	"he"	"the owner or operator"
95	Line 12	"owner or operator no longer"	"guarantor no longer"
95	Line 15	"(g)"	"(h)"
95	Line 24	"(h)"	"(i)"
95	Line 26	"owner's or operator's"	"guarantor's"
96	Line 4	"(i) The owner or operator"	"(j) The guarantor"
96	Line 5	"(6)(c)"	"(6)(d)"
96 & 97	Line 10	Delete entire section (j)	
100	Lines 5 to 9		Bold printing starting with "However"
100	Line 24	"permitted or"	"permitted under these rules or"
102	Line 3	"have if"	"have contained if"
106	Line 21	"Unless"	"Until"
109	Line 15	"Unless"	"Until"
113	Line 24	"U.S. district"	"circuit"
114	Following line 24		"obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements of subsections (6)(b) through (6)(j) of this rule and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in rule 340-104-151(8). The corporate guarantee must accompany the items sent to the Department as specified in subsection (6)(d) of

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
			<p>this rule. The terms of the corporate guarantee must provide that:</p> <p>(A) If the owner or operator fails to perform post-closure care of a facility covered by the corporate guarantee in accordance with the post-closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in rule 340-104-145(1) in the name of the owner or operator.</p> <p>(B) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Department, as evidenced by the return receipts.</p> <p>(C) If the owner or operator fails to provide alternate financial assurance as specified in this rule and obtain the written approval of such alternate assurance from the Department within 90 days after receipt by both the owner or operator and the Department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator."</p>
114	Line 25	"demonstrating that he passes"	"(b) The guarantor must pass"
114	Lines 26 & 28	"owner or operator"	"guarantor"
114	Line 27	"(6)(a)(A) or (6)(a)(B) of this rule"	"(A) or (B) of this subsection"
115	Lines 11 & 25	"owner or operator"	"guarantor"
115	Line 21	"(b)"	"(c)"
115	Line 22	"(6)(a)"	"(6)(b)"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
115	Lines 23 & 27	"owner's or operator's"	"guarantor's"
115	Line 25	"(c)"	"(d)"
116	Lines 2 & 4	"owner's or operator's"	"guarantor's"
116	Lines 5, 13, 18 & 22	"owner or operator"	"guarantor"
116	Line 13	"(d)"	"(e)"
116	Lines 14, 18 & 21	"(6)(c)"	"(6)(d)"
116	Line 17	"(e)"	"(f)"
116	Line 22	"(f)"	"(g)"
116	Line 23	"(6)(a)"	"(6)(b)"
116	Line 23	"he"	"the owner or operator"
116	Line 27	"owner or operator no longer"	"guarantor no longer"
117	Line 2	"(g)"	"(h)"
117	Lines 2, 4, 7 & 24	"owner or operator"	"guarantor"
117	Lines 3 & 8	"(6)(a)"	"(6)(b)"
117	Lines 5, 14 & 25	"(6)(c)"	"(6)(d)"
117	Line 11	"(h)"	"(i)"
117	Line 13	"owner's or operator's"	"guarantor's"
117	Line 19	"(i)"	"(j)"
117	Line 24	"(j)"	"(k)"
118	Line 2	Delete entire section (k)	
121	Line 1	"coverage"	"insurance"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
121	Lines 3 to 7	Delete starting with "This"	
121	Line 8	"(A)"	"(a)"
121	Line 23	"(B)"	"(b)"
122	Lines 1 to 8	Delete 8 lines	
122	Line 15	"coverage"	"insurance"
122	Lines 18 to 21	Delete 4 lines	
122	Line 22	"(A)"	"(a)"
123	Line 9	"(B)"	"(b)"
123	Lines 13 to 20	Delete 8 lines	
124	Line 3	"coverage"	"insurance"
125	Line 2	"coverage"	"insurance"
125 to 127	Line 9	Delete entire section (6)	
129	Line 19	"to (for each facility insert the EPA"	"to the facilities and cost estimates identified on attached Schedule A (on Schedule A list the"
152 to 157	Section (7)	Delete entire section	
167	Line 19	"102 to 104"	"100 to 108"
169	Line 15	"102 to 104"	"100 to 108"
170	Line 6 to 8	Delete 3 lines	"(2) The regulations in this Subdivision do not apply to facilities that treat or store hazardous waste in covered underground tanks that cannot be entered for inspection."
173	Line 18	"102 to 104"	"100 to 108"
174	Line 11	"260.11"	"rule 340-100-011"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
181	Line 7	"does not permit the closure of surface impoundments with"	"requires the removal of all wastes, etc., at closure whereas the federal program gives the option of closing with"
190	Line 2	"impoundment"	"waste pile"
193	Following line 8		"(Comment: The Department believes the primary aim of land treatment to be the complete degradation of hazardous constituents.)"
198	Line 2	"and"	"if done"
204	Line 24	"paragraph"	"section"
209	Line 5	"pile"	"landfill"
209	Line 13	"pile"	"landfill"
210	Line 7	"pile"	"landfill"
210	Line 24	"(c)"	"(3)"
216	Line 24	"not landfill"	"not place in a landfill"
216	Line 25	"containing"	"if such mixture contains"
217	Line 2	"Wastes"	"Organic wastes"
217	Line 2	"(3);"	"(3) as acutely hazardous (H) or toxic (T);"
217	Line 4	"rule 340-101-025(1)(a)"	"rule 340-101-034(1)(a)"
217	Line 6	"and contain no Appendix VIII of Division 101 constituent which would reasonably be expected to be present"	
226	Line 9	"102 to 104"	"100 to 108"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
<u>DIVISION 105</u>			
3	Line 8	"110"	"108"
5	Lines 21, 22 & 24	"discharge"	"spill"
5	Line 24	"discharged"	"spilled"
7	Line 23	"HWM"	"management"
7	Line 23	"Owners"	"(a) Owners"
7	Line 24	"facilities must immediately submit both"	"facilities that do not have a permit must submit"
7	Line 25	"and Part B"	
7	Line 25	"Department. The Department may allow an owner or operator until November 1, 1984, to complete the Part B submission."	"Department by June 1, 1984"
8	Following line 1		<p>"(b) The Department may at any time require the owner or operator of an existing management facility to submit Part B of their permit application. The owner or operator shall be allowed at least six months from the date of request to submit Part B of the application. Any owner or operator of an existing management facility may voluntarily submit Part B of the application at any time.</p> <p>(c) An owner or operator of an existing management facility that has not yet been issued a management facility permit shall comply with the regulations of Division 104 until such permit has been issued.</p>

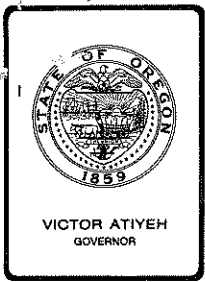
<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
			(d) An owner or operator that has not submitted an acceptable Part A permit application, or an acceptable Part B permit application when required to do so, or does not operate in compliance with the regulations of Division 104, as required by subsections (a) to (c) of this section, shall be subject to Department enforcement action including termination of the facility's operation."
8	Lines 2, 3, 6 & 11	"HWM"	"management"
11	Following line 10		"(Comment: Any information stamped confidential must be accompanied by an explanation as to why it should be so considered under the criteria of ORS 192.500 and 459.460. The Department believes that very little, if any, information in an application will meet the criteria.)"
12	Following line 7		"(Comment: Applications for permits on Indian lands shall be forwarded to EPA Region X.)"
13	Line 7	"permits"	"permits such as a water quality NPDES or WPCF permit, an air quality ACD or NESHAPS permit, or a State Lands' Removal or Fill Permit."
17	Line 7	"104 to 106"	"100 to 108"
22	Line 19	"(3)(f)"	"(3)(g)"
23	Line 24	"and"	"for"
30	Line 2		"(see rule 340-100-011)."
31	Line 26	"paragraph"	"section"
37	Following line 7		"(10) A detailed report with supporting information justifying the need for the landfill as proposed."

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
			(11) An explanation of how the requirements of rule 340-104-317 will be complied with after January 1, 1985."
38	Line 12	"459 and"	"459 and OAR Chapter 340 and"
46	Lines 20-23	Delete	"(1) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:"
48	Lines 17-19	Delete	
48	Line 20	"(a)"	"(f) Alternative to termination."
48	Line 23	"(3)"	"(2)"
55	Line 7	"-011(2)"	"-010"
55	Line 17	"106"	"104"
57	Line 9		"(see rule 340-100-011)."
62	Line 8	"with"	"within"
63	Lines 1 & 13	"Subdivision M"	"Subdivision M of Division 104"
63	Line 19	"-015(2)"	"-015"
64	Line 18	"-015(2)"	"-015"
<u>DIVISION 106</u>			
3	Line 7	"30"	"45"
4	Line 15	"The appeal shall be considered denied if the Commission takes no action on the letter within 60 days after receiving it."	
8	Following line 5		"(b) Public notice of a public hearing shall be given at least 30 days before the hearing."

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
11	Line 8	"hearing within"	"hearing under rule 340-106-011 within"
<u>DIVISION 108</u>			
2	Line 9	"occurring"	"occurring on the site of a generator who accumulates hazardous waste or"
2	Line 11	"procedures set forth in"	"contingency plan prepared in accordance with Subdivision D of"
2	Line 13	"with OAR"	"with ORS Chapter 468 and OAR"
3	Line 7	"discharge of"	"disposal"
3	Line 13	"spill" definition	"'Spill' means unauthorized disposal."
4	Line 12	"110"	"108"
6	Lines 8 to 10	Delete 3 lines	
6	Table	"Pesticide, rule 340-101-025"	"Pesticide, rule 340-101-034"
7	Line 1	"(1)"	
7	Lines 3 to 5	Delete Comment (2)	
7	Line 6	"must also report spills"	"must report spills of any quantity that occur during transportation"
7	Line 11	"and"	
7	Line 12	". "	"; and"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
7	Following line 12		"(iii) It is completely cleaned up without further incident." "(Comment: For reporting purposes, quantity calculation involving hazardous waste shall be made independent of the concentrations of the hazardous components. For example, the table in this rule requires reporting a 10 pound spill of acrolein (a rule 340-101-033(3)(a) waste). This shall be interpreted as requiring reporting a 10 pound spill of a waste containing acrolein whether the concentration of acrolein is 3, 30 or 100%.)"
7	Line 21	"within 15 days"	"within 15 days of the spill or other incident"
<u>DIVISION 109</u>			
2	Line 10	"102 to 106"	"100 to 108"
7	Line 28	"55"	"30"
<u>DIVISION 110</u>			
1	Subdivision D		"340-110-077 Permits"
13	Line 15	"approval"	"a permit"
13	Line 16	"such approval"	"a permit"
14	Line 19	"approve"	"permit"
15	Line 24	"approved"	"permitted"
16	Line 5	"Any approval by the Department shall be in writing and"	"The permit"
16	Line 6	"approved"	
16	Line 11	"approval"	"permit"
16	Line 12	"approval"	"permit"

<u>Page</u>	<u>Location</u>	<u>Delete</u>	<u>Add</u>
19	Line 27	"disposal of PCBs."	"disposal of PCBs and shall be reported and managed in accordance with Division 108."
31	Lines 23 & 24	Both lines	
31	Line 25	"(h)"	"(g)"
34	Line 2	"an approval provided in"	"the permit required by"
35	Line 4	"7/82."	"7/82 (see rule 340-100-011)."
37	Line 12	"-78."	"-78 (see rule 340-100-011)."
37	Line 26	"Approval"	"Permitting"
39	Lines 24 & 25	Both lines	
39	Line 26	"(g)"	"(f)"
40	Following line 7		<p>"340-110-077 (1) The procedures of Division 106 will be followed in issuing permits required by this Division.</p> <p>(2) The treatment facility fee schedule set forth in Subdivision G of Division 105 shall apply to permits required by this Division.</p> <p>(3) Persons currently holding valid management facility permits issued under OAR Chapter 340, Divisions 62 and 63, when those Divisions were in effect, shall be deemed to have a PCB permit until such time as the permit expires, is modified, revoked and reissued, or terminated pursuant to Division 106."</p>



Department of Environmental Quality

522 S.W. 5th AVENUE, BOX 1760, PORTLAND, OREGON 97207

MEMORANDUM

To: Environmental Quality Commission Date: 4/23/84

From: Carol Splettstaszer *CS*

Attached is the letter from Senator Kitzhaber that Fred Hansen told you about during your conference call last Friday. It will be made a part of the meeting record.

JOHN KITZHABER, M.D.
DOUGLAS COUNTY
DISTRICT 23

REPLY TO ADDRESS INDICATED:

- Senate Chamber
Salem, Oregon 97310
- 1033 W. Brown
Roseburg, Oregon 97470



OREGON STATE SENATE
SALEM, OREGON
97310

COMMITTEES
Chairman:
Energy and Environment
Vice-Chairman:
Human Services and Aging
Member:
Labor
Revenue

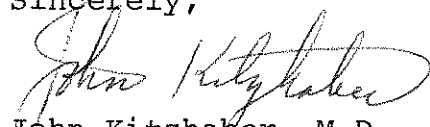
April 19, 1984

Environmental Quality Commission
522 SW Fifth
Portland, OR 97204

Dear Commission Members:

It is my understanding that the Environmental Quality Commission will be making a decision concerning whether or not to list nerve gas under hazardous waste. If listed as a hazardous waste the state would have total control over the destruction of nerve gas by the armed forces. I would strongly urge you to support placing nerve gas on the list as a hazardous waste. I am much more comfortable with the Department of Environmental Quality and the Environmental Quality Commission overseeing the destruction of these substances than I am with the U. S. Army. I also do not wish to have a precedent set that might be pointed to later regarding other hazardous wastes of governmental origin.

Sincerely,


John Kitzhaber, M.D.
Senator
District 23

pg

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMO

TO: Environmental Quality Commission

DATE: April 16, 1984

FROM: Fred Hansen

SUBJECT: Conduct of Commission Meeting to Discuss Backyard Burning Regulations

At its April 6 meeting, the Commission requested the Department to make recommendations on the conduct of the Commission meeting where the backyard burning rules will be discussed.

For review, the Department held five public hearings around the Portland area to take public testimony on the backyard burning rule. In addition, 200 letters were included in the hearing record. A detailed memo summarizing the testimony, and copies of all the written testimony will be mailed to you next week.

We would recommend that the Commission take public testimony ONLY on those issues which have been changed from the initial staff rule package. We will provide the Commission with a list of those issues when our recommendations are finalized. We will also indicate on the agenda the limited scope of acceptable public testimony, and will have available extra copies of a list of points made in previous testimony. We have also moved the Commission meeting to a larger room in the Multnomah County Courthouse.

FH:d
FD717