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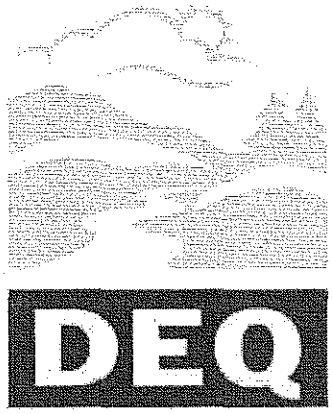
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS



State of Oregon
Department of Environmental Quality

OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

November 2, 1984

Room 1400
Department of Environmental Quality
522 SW Fifth Avenue
Portland, Oregon

TENTATIVE AGENDA

9:00 a.m. CONSENT ITEMS

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

A. Minutes of September 14, 1984, EQC meeting.

B. Monthly Activity Report for August 1984.

C. Tax Credits.

9:05 a.m. PUBLIC FORUM

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

HEARING AUTHORIZATIONS

D. Request for authorization to conduct a public hearing on proposed adoption of hazardous waste generator fees, OAR 340-105-075.

ACTION AND INFORMATION ITEMS

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

9:30 a.m. E. Review of Hearing Officer's decision in DEQ v. Sperling.

* F. Proposed adoption of modifications to Hazardous Waste Rules, OAR 340-100-010 and 340-105-010 (revised definitions and interim status standards).

* G. Proposed adoption of Opportunity to Recycle Rules, OAR 340-60-005 through 340-60-085.

* H. Proposed adoption of rule amendments incorporating noise inspections of automobiles, light trucks, and motorcycles into the Portland Vehicle Inspection Program.

* I. Proposed adoption of Revisions to Oregon Administrative Rule, Chapter 340, Division 12, Civil Penalties and Revisions to the State Clean Air Act Implementation Plan (SIP).

J. Proposal to amend status review date of the Portland International Airport Noise Abatement Program.

K. Proposed designation of a Carbon Monoxide Nonattainment Area in Grants Pass as a revision to the State Clean Air Act Implementation Plan.

L. Request for a variance from OAR 340-61-028(1)(6), Closure Permit Financial Assurance, by Disposal Industries, Inc. at the Newberg Landfill.

M. Request for a variance from OAR 340-25-315(1)(b), Veneer Dryer Emission Limits, for Brand-S Corporation, Leading Plywood Division, Corvallis.

N. Request from Churchill Group to use personal bond and alternative security for private sewerage system.

O. Informational Report: Portland Metropolitan Area Diesel Exhaust Study--results and recommendations.

WORK SESSION

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

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

The Commission will have breakfast (7:30 a.m.) at the Imperial Hotel, 400 SW Broadway in Portland. Agenda items may be discussed at breakfast. The Commission will have lunch at the DEQ offices, 522 SW Fifth Avenue in Portland.

The next Commission meeting will be December 14, 1984 in Portland.

Copies of the staff reports on the agenda items are available by contacting the Director's Office of the Department of Environmental Quality, PO Box 1760, Portland, Oregon 97207, phone 229-5395, or toll-free 1-800-452-4011. Please specify the agenda item letter when requesting.

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VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

NOTICE OF SPECIAL MEETING

ENVIRONMENTAL QUALITY COMMISSION

November 1, 1984

The Environmental Quality Commission will conduct a work session on November 1, 1984 from 3:00 pm to 5:00 pm in room 1400 of the DEQ offices at 522 S. W. Fifth Avenue in Portland. The only subject of the work session will be the proposed "Opportunity to Recycle" administrative rules (OAR 340-60-001 through 60-080).

No public testimony is scheduled for this work session, though the Commission may direct questions to a panel of representatives of the various affected groups and organizations.

Public hearings were held earlier on this subject, October 1 and 2, 1984 in Portland, Eugene, Medford and Pendleton.

No action will be taken on the final adoption of these proposed rules at this meeting. Final action is scheduled for the Commission's regular meeting on November 2, starting at 9:00 am, also in room 1400 of the DEQ offices.

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE ONE HUNDRED SIXTIETH MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

November 2, 1984

On Friday, November 2, 1984, the one hundred sixtieth meeting of the Oregon Environmental Quality Commission convened in room 1400 of the Department of Environmental Quality Offices, 522 SW Fifth Avenue in Portland, Oregon. Present were Commission Chairman James Petersen, and Commission members Arno Denecke, Wallace Brill, Mary Bishop and Sonia Buist. Present on behalf of the Department were its Director, Fred Hansen, and several members of the Department staff.

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

BREAKFAST MEETING

The Commission held a breakfast meeting at the Imperial Hotel in Portland. Commission members present were James Petersen, Mary Bishop, Wallace Brill, Sonia Buist and Arno Denecke. Also present were the Department's Director, Fred Hansen, and several members of the Department staff.

Minimizing Impacts from Slash Burning:

John Kowalczyk, of the Department's Air Quality Division, distributed a written report that he briefly summarized. Essentially, there are two issues involved in the minimizing of smoke impacts from slash burning. First, the need to have burning of slash, when it occurs, done under optimal weather conditions, be lighted quickly, smoldering fire extinguished, etc., as a means to ensure the smoke is dissipated quickly and as little smoke produced as practical given the amount of residue burned. Second, to find alternatives for burning as a means to dispose of logging debris. The Department of Forestry has been working on better burn techniques, but in the opinion of the Department, more needs to be done. As to burning less, Mr. Kowalczyk reported that apparently the Oregon Department of Forestry does not have any staff directly working on improving the utilization of slash.

Fred Hansen, Director, indicated he would discuss these matters with Mike Miller, the head of the Department of Forestry. Chairman Petersen said great improvements could be made in reducing the impacts from slash and field burning. He would like the staff to develop recommendations on a more efficient smoke management program in cooperation with the Department of Forestry. The rest of the Commission agreed. Mr. Kowalczyk said it would probably take approximately one year to agree on an updated smoke management program as part of the visibility SIP required by federal law, but that the staff would keep the Commission informed on a quarterly basis of the progress being made.

Field Burning Program Recap for 1984 Season:

Sean O'Connell, of the Department's Field Burning Office, reported that 1984 had been a relatively smoky summer due to difficulties in forecasting meteorological conditions. He said the Department had received over 1000 complaints which was a significant increase over previous years.

Opportunity to Recycle Rules:

Director Hansen reviewed the Commission's discussion of issues that took place at the work session the previous afternoon.

Election of Vice Chairman:

The Commission elected Arno Denecke as its Vice Chairman.

FORMAL MEETING

AGENDA ITEM A: Minutes of the September 14, 1984 EQC meeting.

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist and passed unanimously that the Minutes be approved as written.

AGENDA ITEM B: Monthly Activity Report for August 1984.

It was MOVED by Commissioner Bishop, seconded by Commissioner Brill and passed unanimously that the Monthly Activity Report for August 1984 be approved.

Commissioner Denecke asked if the schedule of contested case hearings was getting heavier. Linda Zucker, the Commission's hearing officer, replied that she had scheduled eight hearings for October and November, however, only two of those would probably proceed. The others had settled or may be settled.

Chairman Petersen asked status of Mt. Mazama Timber. Robert Haskins, Assistant Attorney General, replied that the company had shut down and the bank had called in loans. He said the bank was seeking an operator but had not been successful. It was asked if a new operator would also be seeking a variance before the Commission. Mr. Haskins replied that if the company reopened under new ownership it would be treated as a new company and have to meet the standards set forth in the rules.

AGENDA ITEM C: Tax Credit Applications.

Commissioner Bishop asked if the Commission would be setting a precedent by approving the Freres Lumber Company request for tax credit for a paving project. Robert Brown, of the Department's Solid Waste Division, replied that under normal circumstances this project would not have been recommended for approval but in this particular instance no other alternative was available to the company. They had been unable to find a suitable landfill; by paving they had cut their waste by 95 percent. Commissioner Bishop asked if they would come back for any further paving projects. Mr. Brown replied that this was a one time approval.

It was MOVED by Commissioner Buist, seconded by Commissioner Denecke and passed unanimously that the Tax Credit Applications be approved.

PUBLIC FORUM:

No one appeared.

AGENDA ITEM D: Request for authorization to conduct a public hearing on proposed adoption of hazardous waste generator fees, OAR 340-105-075.

A recent evaluation of estimated revenues versus estimated expenditures in the hazardous waste program revealed a probable deficit of $115,000 through June 30, 1985. This is principally due to a shortage of federal funds to maintain the program as described in more detail in the staff report.

In addition, a recent audit and capability assessment by EPA Region 10 led them to conclude that there are insufficient staff and expertise in the Hazardous Waste Program to properly carry out the permitting responsibilities proposed in the FY 85 State/EPA Agreement. It is Region 10's opinion that at least two additional staff are needed. They also expect the state to develop hydrogeology expertise.

To address these deficiencies the Department proposed to implement generator fees January 1, 1985 for the current fiscal year pursuant to existing law. The Department is proposing a generator fee schedule that will not only cover the deficit but would allow it to hire an environmental engineer and hydrogeologist January 1, 1985. Emergency Board approval is required to expand staff and the Department would seek that approval on November 8 and 9, 1984. (The approval was granted.)

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission authorize the Department to hold hearings on a proposed hazardous waste generator fee schedule, OAR 340-102-060.

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

AGENDA ITEM F: Proposed adoption of Hazardous Waste Rules, OAR 340-100-010 and 340-105-010.

Interim status standards are facility standards that are self-implementing, that is, enforceable in the absence of a permit. They are designed to assure minimal regulation of hazardous waste facilities in the interim before a permit can be issued.

Past federal Environmental Protection Agency comments have indicated the lack of specific interim status standards to be a deficiency in the Oregon program. Our initial response to these comments was to integrate selected standards into the Department's rules at Division 104. However, recent field experience indicated separate standards needed to be adopted.

This item requested the Commission to adopt interim status standards to clarify its authority to regulate hazardous waste facilities not yet under permit, and to adopt a clarifying definition for extraction of ores and minerals.

A public hearing was held October 2, 1984 in Portland. Seven people attended; four commented. No comment was made regarding adoption of interim status standards. All testimony was directed to the definitions of "residue" and "extraction of ores and minerals."

Some members of the regulated community continue to question the Department's authority to regulate potentially recyclable waste. It has always been the Department's position that by using the term "residue" rather than "waste," the Legislature clearly intended the Department to regulate potentially recyclable wastes as well as more traditional wastes such as garbage, refuse and sludge.

Because of the unanimity of testimony at the hearing against the proposed definition of "residue" it was withdrawn for consideration for adoption.

One comment was received on the definition of "extraction of ores and minerals" which pointed out that the standard mining and mineral industry usage of the term includes both extraction of ores from the earth and the extraction of metals from ores (i.e., processing). Notice of the Department's intent to regulate the processing of ores and minerals was made when OAR 340-101-004 was adopted on April 6, 1984. The proposed definition reaffirms the Department's original intent to regulate processing and is being submitted for adoption without change.

Director's Recommendation

Based on the Summation in the staff report, it is recommended that the Commission adopt the proposed modifications to OAR 340-100-010 and 340-105-010.

Charles Knoll, Teledyne Wah Change Company. Mr. Knoll testified that these rules would put an administrative burden on his company in order to obtain permits and that they were presently in compliance. He said they had currently submitted a Part B application to DEQ for comment but have not received any comment back.

Chairman Petersen asked Mr. Knoll what the economic impact would be to his company. Mr. Knoll replied that he had no estimate of that at this time, but the impact would mostly be from paperwork.

Commissioner Brill moved to defer for further study on the definition of the extraction of ores and minerals. Richard Reiter of the Department's Hazardous Waste Section said that even if the Commission deferred the definition, the Department's opinion would remain unchanged. The motion failed for lack of a second.

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist that the Director's Recommendation be approved. The motion passed with Chairman Petersen and Commissioner Brill dissenting.

AGENDA ITEM E: Review of hearing officer's decision in DEQ vs. Sperling.

This matter concerns the Department's request that the Commission reverse the hearing officer's decision in DEQ vs. Sperling. After a contested case hearing, the hearings officer found Wendell Sperling not liable for the $3,000 civil penalty asserted by the Department.

The Department was represented by Robert L. Haskins. Mr. Sperling was represented by Joseph Penna.

Mr. Haskins stated the Department did not dispute the basic facts in the case. Mr. Sperling followed the required statutory and regulatory procedure to open burn a 61-acre field by registering the acres, paying the registration fees, applying for a permit and having the permit issued, and paying the permit fee. However, not only did the Respondent burn the 61-acre field, but he also tacked on a contiguous 54 acres to his burn for a total of 115 acres. Mr. Sperling did not have permission to burn the additional 54 acres, nor did he ever attempt to register them, apply for a permit, or pay the registration and permit fees for those additional 54 acres. Mr. Haskins continued that the crux of the hearing officer's decision was the conclusion that informal practices had been established in the open field burning registration and permitting programs, that Mr. Sperling had relied on those informal practices, that reliance was reasonable and, therefore, Mr. Sperling was not negligent or willful in committing his violation and, consequently, not liable.

Mr. Haskins said the Department has attempted to control informal practices by continually updating and amending rules which the Commission have adopted through the years. He said what was needed to halt these informal practices was a strong statement from the Commission that the statutes and rules be followed. Mr. Haskins felt this was an appropriate case to make such a statement. Mr. Haskins concluded by saying that Mr. Sperling's $3,000 civil penalty should be affirmed and the Commission should adopt the Department's proposed Findings of Fact, Conclusions of Law, and Final Order as its own.

Commissioner Brill asked how long the regulations had been in effect and if there had been any other similar violations to these rules. Mr. Haskins replied that to his recollection the rules had been in existence since the early 70's, this violation occurred in 1981, and there had been several similar violations through the years. Chairman Petersen asked to what extent do the most recently adopted field burning rules take care of informal practices. Mr. Haskins replied that this was just the most recent of many tries to address this situation. Commissioner Buist asked how well the farmers understood the regulations. Mr. Haskins replied that on a general basis almost 100 percent understood the registration and permitting requirements, but that there were a lot of finer points that may not be understood. Those points, however, had no bearing on this case.

Commissioner Denecke asked if there was a statutory limit on the minimum amount of penalty that could be assessed. Mr. Haskins replied that $1,500 was the minimum in the rules at the time the violation occurred and that the Commission must assess that minimum unless they had a reason to mitigate.

Joseph Penna said that the Department seeks to impose a strict liability standard on growers which would eliminate the Department's burden of proving culpability. Mr. Penna said it was Mr. Sperling's contention that he was not negligent; had acted in conformance with common practices and relied upon the established procedures of the

local fire district. He said Mr. Sperling had requested transfer of acreage to allow the extra acres to be burned and assumed that permission had been given. Mr. Penna urged the Commission not to penalize individual growers instead of correcting problems in administration of the field burning program.

Commissioner Bishop asked how many acres Mr. Sperling had registered. Mr. Penna replied that this particular burn began as a 61-acre field, but that Mr. Sperling had registered several hundred acres all total.

Commissioner Denecke said it was his personal feeling that a technical violation had occurred but that there was room to mitigate the penalty. Chairman Petersen agreed with Commissioner Denecke, saying it was not the Commission's responsibility to police informal practices but that it was DEQ's responsibility to eliminate those informal practices. He said a technical violation of the rules did occur and the statute requires a penalty be imposed. Commissioner Denecke suggested a $100 per violation penalty; Commissioner Brill agreed.

It was MOVED by Chairman Petersen, seconded by Commissioner Brill and passed unanimously that the hearing officer's decision be overturned finding that a technical violation did occur; Mr. Sperling did burn a field without registration and without a permit, and that he be fined $100 per violation.

Commissioner Denecke said that he had discussed already with Ms. Zucker, the Commission's hearing officer, that perhaps at the next meeting both her and the Department could submit questions regarding contested cases that they wished to receive some guidance from the Commission on. The rest of the Commission agreed and Director Hansen said the Department would appreciate that guidance and would submit those questions at the next meeting.

AGENDA ITEM G: Proposed adoption of Opportunity to Recycle Rules, OAR 340-60-005 through 340-60-085.

This item concerned the Department's request to adopt proposed Opportunity to Recycle Rules. The proposed rules are required by statute and are necessary to implement the "Recycling Opportunity Act." Statutory deadline for rule adoption is January 1, 1985.

Director Hansen said that the cost of disposal, against which the economic feasibility test is applied to determine what materials were recyclable, needed to include all costs related to landfills, including such things as groundwater monitoring and siting of new landfills. He indicated that in establishing such costs in the process of implementing the "opportunity to recycle," the Department would seek full public input.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission adopt the proposed rules, OAR 340-60-005 through 340-60-085.

Judy Roumpf, Portland Recycling Team, testified they operate five drop-off centers in the Portland metropolitan area and conduct commercial collection of office paper. Ms. Roumpf said their goal is to divert as much waste as possible from the waste stream. She testified that drop-off centers are not collection facilities and the rules need to make more of a distinction between the two. Drop-off centers are already considered disposal sites and she asked that they be deleted from the definition of disposal sites. PRT cannot pay for commercial office paper because of the mixed grades they receive. Ms. Roumpf urged that the Commission set over a decision on the rule to provide for free collection in a nonexclusive environment and a better definition of disposal sites.

Roger Emmons, Oregon Sanitary Service Institute (OSSI), also testified that drop-off centers, such as those operated by PRT, and buy-back centers are not collection centers. Mr. Emmons asked that the issue of collection be held over for decision until the Commission's next meeting.

John Drew, Willamette Industries, also testified on behalf of the five other paper mills in the state that collect waste paper. He said it was not the intent of Senate Bill 405 to interfere with existing collection systems but to enhance them. He said the proposed rules presented a potential for massive disruption in the marketplace for existing recyclers.

Angela Brooks, Publisher's Paper, also testified on the matter of definition of collection centers. She said that currently about 77 percent of the newspaper in the Portland area is being recovered and that drop-off centers contribute a significant amount of that percentage.

Doug John, Roseburg Disposal Company, urged the Commission to listen to its advisors and what they were agreeing on. His concern was the cost of disposal. He operates in Douglas County which offers free disposal and has the lowest collection rates in the state. He said if he had to increase his collection fee to collect recyclables it would cause a significant reduction of his collection base and was not a reasonable way to save resources.

Chairman Petersen asked if the preface to the rules was appropriate. Robert Haskins, Assistant Attorney General, replied that the Commission had clear authority to adopt interpretive rules in any program. And in this case, they had express authority to adopt guidelines. Whether or not the guidelines were adopted as rules, they should not contradict the formal rules. Chairman Petersen said

he had no problem in delaying this matter if a better product would result. Commissioner Denecke asked that the task force involved in this matter submit key issues to the Commission well prior to the next meeting for their consideration. Commissioner Bishop added that she would like to include yard debris in the list of recyclable material.

Commissioner Petersen gave the task force the following guidelines to assist them in their deliberations before the next meeting:

- Collection. The legislature did not intend to include anything other than collection from the site or residence of the generator.

- Preface. Give as comprehensive guidelines as possible, exclude the policy statement from the rules and make it guidelines that are consistent with the rules.

- Commercial versus Residential. The Legislature did not intend to exclude commercial but the primary focus should be on residential. Residential recycling should be emphasized in the guidelines.

- Due or Special Consideration. Something stronger than these words needed to be included to protect existing recyclers who could be put out of business by a local government granting an exclusive franchise for recycling to someone other than existing recyclers.

- Grouping. Each item does not need to stand on its own in order to make sense.

- Local government needs to have maximum control so they may have the tools necessary to implement the opportunity to recycle.

It was MOVED by Commissioner Bishop, seconded by Commissioner Denecke and passed unanimously that this matter be tabled until the Commission's December 14, 1984 meeting.

Commissioner Denecke was excused for the balance of the meeting.

AGENDA ITEM H: Proposed adoption of rule amendments incorporating noise inspections of automobiles, light trucks and motorcycles into the Portland vehicle inspection program.

At the May 18, 1984 Commission meeting, a petition for rulemaking was accepted to consider incorporating noise inspections into the Department's Vehicle Inspection Program operated in the Portland

metropolitan area. At the June 29, 1984 Commission meeting public hearings were authorized to consider proposed rules and standards for noise testing various categories of motor vehicles.

Most of the hearing testimony was supportive of the proposal to include vehicle noise inspections within the Portland area program. Those in support also recommended noise inspections of all major vehicle categories including automobiles, light trucks, motorcycles, buses and heavy trucks.

The Director was recommending the adoption of rules that will begin vehicle noise inspections. The category of automobiles and light trucks will be subject to noise tests on July 1, 1985. Motorcycles will be phased into the program by July 1, 1985. Thus, the Department is proposing a fully comprehensive program of vehicle noise inspections for the Commission's approval.

Director's Recommendation

Based upon the summation in the staff report, it is recommended that the Commission take the following action:

(a) Adopt the rule amendments contained in Attachment III to the Staff Report regarding noise emission standards for light duty vehicles to be effective on July 1, 1985;

(b) Adopt the rule amendments contained in Attachment III to the Staff Report regarding noise emission standards for motorcycles to be effective on July 1, 1985;

(c) The Commission further directs the Department to seek necessary budget authority to receive additional inspection fees and hire inspectors to conduct noise emission testing of motorcycles;

(d) Request the Department to develop with Tri-Met a proposed consent agreement that will ensure all Tri-Met's buses are maintained to acceptable noise emission limits. This proposal shall be brought to the Commission for consideration prior to April 1, 1985;

(e) Request the Department to initiate development of noise inspection procedures and standards for heavy duty trucks and buses that are suitable for use at the Department inspection stations. A report shall be made to the Commission on this vehicle category prior to April 1, 1985;

(f) Prior to July 1, 1986 the Department shall report to the Commission on the effectiveness of inspections of light duty vehicles and motorcycles and recommend any necessary changes.

John Hector, of the Department's Noise Section, introduced a tape demonstrating noise levels from different types of vehicles.

Linore Allison, Livable Streets Coalition, was concerned about the proposed July implementation date. She requested the rules be phased in beginning in February so that the Legislature would be able to look at an already implemented program. She also asked for citizen input to the Department's agreement with Tri-Met on fleet inspection. In response to a question from Chairman Petersen, Ms. Allison said they would like that citizen input to ensure that Tri-Met does what it says it will. Ms. Allison said that they were pleased with the work the Department had done and were in full support of this program.

Commissioner Buist asked how the program would be phased in. Director Hansen replied that it was a question of whether testing should begin on light duty vehicles quicker than the July 1 date for all the rest of the vehicles. Commissioner Bishop asked why the testing should be put off until July 1. Director Hansen replied that it was an issue of equity. Motorcycles were not now tested under the emission inspection program and it would be difficult to bring them into the testing program until later. He also said that he felt it was easier for people to remember standard dates to begin a program such as the beginning or end of a fiscal year or a calendar year. Ron Householder, of the Department's Vehicle Inspection Program, said that testing of light duty vehicles could begin by February or March; the July 1 date would allow for some debugging of the system and for getting needed equipment into the stations.

Molly O'Reilly, Portland Noise Review Board, was pleased that the rules were moving forward but expressed concern that by not implementing them before the Legislative Session, fears and apprehensions would build up in people about the program. She also asked for earlier implementation and citizen input into the Tri-Met agreement.

John Hilley, was pleased with the Commission and the Department's concern about vehicle noise and believed that a phased in approach was important. He testified there would be less burden on the public and that he did not really care when the phased in plan happened, but felt that it needed to be carried out smoothly in order to be acceptable to the general public.

Director Hansen indicated to the Commission that they needed to keep in mind that cars over 20 years old were exempt from the vehicle inspection rules and, therefore, this noise inspection might not be picking up older vehicles in which noise was a problem.

Commissioner Bishop asked how the public would be notified that we would be doing noise inspections on their vehicles. Mr. Householder replied that that would be done by news releases and an explanation on the insert they get with their license tag renewal form.

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist and passed unanimously that the Director's recommendation be approved, however, allowing for implementation of testing of light duty vehicles by April 1, 1985.

AGENDA ITEM I: Proposed adoption of revisions to OAR Chapter 340, Division 12, Civil Penalties and revisions to the State Clean Air Act Implementation Plan (SIP).

At the Commission's August 1984 meeting they authorized the Department to conduct a public hearing and take testimony on the proposed revisions to the civil penalty rules and schedules contained in Oregon Administrative Rules, Chapter 340, Division 12, and revisions to the Air Quality State Implementation Plan. The hearing was held in Portland on September 17, 1984. Two people submitted written testimony, one person gave oral testimony at the hearing. The hearing officer's report was attached to the Staff Report for this agenda item.

The Department requests that the Commission adopt the proposed revisions to Division 12 and the State Implementation Plan.

Director's Recommendation

Based on the summation in the staff report, the Director recommends that the Commission adopt the proposed revisions to OAR Division 12 and revisions to the State Clean Air Act Implementation Plan.

Rule OAR 340-12-055(3)(b) has been left unchanged. The Department sought the Commission's determination on whether to change the "shall" to "may" and thereby allow but not require the Director to impose a civil penalty for an intentional or negligent oil spill. If the Commission chose to make this change, it would make explicit the Department's practice of exercising discretion in the imposition of civil penalties for negligent and intentional oil spills. Robert Haskins, Assistant Attorney General, told the Commission that in some cases the words shall and may had been used interchangeably. The Commission agreed to leave the rule unchanged.

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

AGENDA ITEM J: Proposal to amend status review date of the Portland International Airport Noise Abatement Program.

On August 19, 1983 the Commission approved a noise abatement program for the Portland International Airport that was developed pursuant to the Department's Airport Noise Control Rules.

One of the conditions of approval was a requirement for the Department to review the status of the abatement program prior to January 1, 1985. For several reasons the airport proprietor, the Port of Portland, has requested this review date be postponed until approximately May 1, 1985.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission amend condition #3 of the Director's Recommendation contained in agenda item H of the August 19, 1983 EQC agenda to read as follows:

3. Prior to [January 1, 1985] May 1, 1985, the Department shall submit an informational report on the status of this abatement program, an evaluation of implementation progress, and the need to amend the program.

Commissioner Bishop asked when federal funds would be available. John Newell, of the Port of Portland, replied that it was their estimation it would be at least one year.

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

AGENDA ITEM K: Proposed designation of a carbon monoxide nonattainment area in Grants Pass as a revision to the state Clean Air Act Implementation Plan.

This item proposed to designate a carbon monoxide nonattainment area in Grants Pass by formally recognizing the severity of the carbon monoxide problem and identifying the boundaries of the problem area. A public hearing was held on this issue in Grants Pass on September 18, 1984 with no major comments opposing the action. This designation would initiate the process of developing a carbon monoxide control plan for the area as required by the federal Clean Air Act. The Department is working with the City of Grants Pass, Josephine County and the Oregon Department of Transportation to develop this control plan. Likely plan elements are discussed fully in the staff report.

Director's Recommendation

Based on the summation in the staff report, the Director recommends that the Commission adopt the proposed Grants Pass carbon monoxide nonattainment area as a revision to the State Implementation Plan.

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

AGENDA ITEM L: Request for a variance from OAR 340-61-028(1)(b), Closure Permit Financial Assurance, by Disposal Industries, Inc. at the Newberg Landfill.

Disposal Industries, Inc. operator of the Newberg Landfill has requested a temporary variance until March 1, 1985 from the requirement to submit a financial assurance plan as part of the solid waste disposal site closure permit application. This will allow them time to determine the cost of remaining closure activities and to develop a plan to finance them. It will also enable the Department to issue a closure permit to replace their existing solid waste disposal permit which will expire on December 31, 1984.

Director's Recommendation

Based on the findings in the summation in the staff report, it is recommended that the Commission issue Disposal Industries, Inc. (DII) a temporary variance from ORS 459.270(2)(3) and OAR 340-61-028(1)(b) and a conditional closure permit which requires compliance with the financial assurance requirements by March 1, 1985.

A representative of the company was in the audience but did not wish to testify.

It was MOVED by Commissioner Buist, seconded by Commissioner Bishop and passed unanimously that the Director's Recommendation be approved, including the following findings from the summation.

The following findings support the granting of a temporary variance to Disposal Industries, Inc. because there are special circumstances beyond their control which make immediate compliance unreasonably burdensome:

A. The new financial assurance and post-closure maintenance requirements (January 1984) caught DII in the position of having to provide financial assurance in eight months rather than over as much as five years available to others.

B. DII made substantial commitment of assets in several unsuccessful landfill and transfer siting proposals and in the Lincoln County project. Those financial commitments were made prior to promulgation of the new financial assurance requirements.

C. DII's ability to generate adequate funds for closure was impaired. In August 1983, Yamhill County granted a rate increase to DII to provide additional funds for closure. Almost immediately over 20 percent of their waste volume was diverted to another landfill until late June 1984, leaving only three months of normal income to finance closure before the landfill closed September 30, 1984.

D. The total cost of completing the closure activities will be much higher than previously anticipated. Additional off-site cover material had to be purchased to replace on-site soil restricted by Yamhill County and the unit price of cover material was higher than estimated.

AGENDA ITEM M: Request for a variance from OAR 340-25-315(1)(b), Veneer Dryer Emission Limits, for Brand-S Corporation, Leading Plywood Division, Corvallis.

This item proposes to extend the October 7, 1983 Commission variance which expired October 1, 1984. The company has been unable to comply with the final compliance deadline of that variance due to the unavailability of commercial pollution control equipment which would adequately control the emissions from this facility. Leading Plywood proposes, with Department concurrence, to install a prototype experimental control unit on one of their two dryers. After certification by the Department that emissions comply with Department limitations, a second unit would be installed with final compliance by January 1, 1986. Representatives of Leading Plywood and Geoenergy International Corporation were in the audience but did not wish to testify.

Director's Recommendation

Based on the findings in the summation in the staff report, it is recommended that the Commission grant an extension to the October 7, 1983 variance to Brand-S, Leading Plywood Division, Corvallis, for OAR 340-25-315(1)(b), Veneer Dryer Emission Limits, with final compliance and increments of progress as follows:

A. Submit plans and specifications and notice of intent to construct for one Geoenergy ARS prototype control unit before November 15, 1984.

B. Complete installation and begin operation of the prototype Geoenergy ARS control unit on the moor dryer by February 15, 1985.

C. Complete troubleshooting and system tuning and notify the Department the system is ready for evaluation by March 15, 1985. (The Department staff will evaluate the system and determine compliance status by August 1, 1985.)

D. Submit plans and specifications and notice of intent to construct for the second Geoenergy ARS control unit by October 1, 1985.

E. Install and begin operation of the second ARS unit by January 1, 1986.

F. Submit status reports in writing within 10 days after each of the above dates, notifying the Department if the requirements are being met.

Chairman Petersen asked if by granting this variance another Mt. Mazama-type problem would be created. Director Hansen replied that Brand-S and Mt. Mazama were opposites. Here, Brand-S had invested in control technology, but it did not work satisfactorily. The variance would allow time for the purchase of new and innovative technology.

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

AGENDA ITEM N: Request from Churchill Group to use personal bond alternative security for private sewerage system.

This item addresses a request from Churchill Group, the owner of Willow Lake Mobile Estates, for the Commission to approve a personal bond as alternative security under OAR 340-15-020 for the sewage treatment plant serving the mobile home court.

Jan Turin, was in the audience on behalf of the Churchill Group, but did not wish to testify.

Director's Recommendation

Based on the summation in the staff report it is recommended that the Commission deny the request of Churchill Group for providing a personal surety bond.

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

AGENDA ITEM O: Informational Report Portland Metropolitan Area Diesel Exhaust Study--results and recommendations.

This was an informational report presenting the results and recommendations of the Diesel Exhaust Study. The purpose of the study was to examine the long term impacts on the Portland airshed of diesel exhaust particulates from motor vehicles. A chief aim of the study was to look at the impact of increasing numbers of diesel automobiles. To be comprehensive, the study also included particulate emissions from gasoline vehicles as well as diesel trucks and buses.

The study will involve further work by the Department to be coordinated with Tri-Met and Metro. The Department sought the Commission's concurrence in carrying out the recommendations of the diesel exhaust task force.

Director's Recommendation

The Director recommends that the Commission endorse the recommendations of the diesel exhaust study task force found in Attachment II of the staff report and direct the Department to coordinate with Tri-Met and Metro and other concerned agencies to fulfill recommendations of the task force.

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

There being no further business, the formal meeting was adjourned.

The Commission did not hold a lunch meeting.

Respectfully submitted,

Carol A. Splettstaszer
EQC Assistant

CAS:d

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE ONE HUNDRED FIFTY-NINTH MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

September 14, 1984

On Friday, September 14, 1984, the one hundred fifty-ninth meeting of the Oregon Environmental Quality Commission convened in room 314 of the Bend School District Building, 520 NW Wall Street, Bend, Oregon. Present were Commission Chairman James Petersen, and Commission members Arno Denecke, Wallace Brill and Mary Bishop. Commissioner Sonia Buist was absent. Present on behalf of the Department were its Director, Fred Hansen, and several members of the Department staff.

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

BREAKFAST MEETING

The Commission held a breakfast meeting at the Riverhouse restaurant in Bend. Commission members present were James Petersen, Arno Denecke, Wallace Brill and Mary Bishop. Also present were the Department's Director, Fred Hansen, and several members of the Department staff.

Budget Review:

Lydia Taylor, the Department's Budget Officer, reviewed the agency's budget request with the Commission with the assistance of the Director and Division Administrators, Mike Downs, Tom Bispham, Harold Sawyer, Ernest Schmidt, and Fred Bolton.

Crook County Landfill:

Gregg Hendricks, Crook County, reported to the Commission on the status of their variance condition. Mr. Hendricks is an attorney for Crook County. He said they had separated the penta-contaminated pallets from the rest of the material and were still pursuing the interests of senior citizens groups and using labor from correctional institutions to assist in their efforts.

Dates and Locations of Future EQC Meetings:

The following meeting dates were approved by the Commission. Tentatively these meetings are all set to be held in Portland. November 2, 1984; December 14, 1984; January 25, 1985; March 8, 1985; April 19, 1985; June 7, 1985; and July 19, 1985.

FORMAL MEETING

AGENDA ITEM A: Minutes of the August 10, 1984 EQC meeting.

It was MOVED by Commissioner Brill, seconded by Commissioner Denecke and passed unanimously that the Minutes be approved as written.

AGENDA ITEM B: Monthly Activity Report for July 1984.

It was MOVED by Commissioner Bishop, seconded by Commissioner Denecke and passed unanimously that the Monthly Activity Report for July 1984 be approved.

AGENDA ITEM C: Tax Credit Applications.

It was MOVED by Commissioner Denecke, seconded by Commissioner Brill and passed unanimously that the Tax Credit Applications be approved.

PUBLIC FORUM:

At this time, Chairman Petersen wanted to recognize three people from the Portland vehicle inspection staff who were involved in a recent incident. Chairman Petersen said that he thought they behaved admirably and heroically and needed to be recognized publicly.

On the morning of August 7, 1984 as the Milwaukie Vehicle Emission Inspection Station opened, a man waiting in line to get his car inspected slumped over in the car seat. The inspectors noticed and went to check on him. He had no pulse and was not breathing, so they removed him from the car, took him to the lunch room, laid him on a table and began administering CPR and called the emergency 911 number. By the time the paramedics arrived the man, by the name of Frank Carlo, was breathing but had an erratic heartbeat. The three inspectors who administered CPR were Tim Jackson, Dave Wall and Kevin McCrann.

Tim Jackson began as an inspector on March 23, 1982; he received his first aid training when he worked as a floor manager at the Everett Street Service Center. Dave Wall has been with the inspection program since February 26, 1980; he has worked at three different testing locations since he began with the Department. Kevin McCrann is the lead inspector for the Milwaukie station; he has been working in the program as an inspector since January 19, 1982 and was promoted to

Senior Vehicle Inspector in September of 1983. Both Mr. Wall and Mr. McCrann attended a CPR first aid training class in October of 1983. This class was sponsored by the Vehicle Inspection Program and was taught by the American Red Cross.

It was reported that the last word the Department had on Mr. Carlo was from his daughter about two weeks ago. Mr. Carlo has, since August 7, undergone triple by-pass surgery and is doing very well. He is up and around but, according to his daughter, has absolutely no memory from the time he went to bed on August 6 until he woke up in the hospital following the heart attack at the Milwaukie Inspection Station.

Chairman Petersen asked the three inspectors to come forward and they received the congratulations of the Commission.

Representative Tom Throop of District 54 welcomed the Commission to Bend; expressed his concern about hydroelectric development on the Deschutes River. He said at this time there were approximately 15 sites proposed on the River and that local government had adopted ordinances to determine the cumulative impact of these proposed projects. The DEQ's major role relates to Section 401, Water Quality Permits.

Vince Genna asked the Commission about what he understood to be a tightening of the regulations on sludge application. The City of Bend will be applying sludge as they have in the past on some of their recreational areas, principally athletic fields and the 18-acre Skyline Park. He said the sludge was needed for maintaining the parks because of poor soil. Harold Sawyer of the Department's Water Quality Division responded that the rules the Commission had adopted at their last meeting were in response to legislation giving the Commission more control over sludge. The intent of these rules is to utilize sludge in a proper manner instead of disposal. There is some requirement for public notice and an opportunity to comment on where sludge is placed. The result being that there might be some delay in the permit process. Mr. Sawyer went on to say he did not expect there would be any significant delay in the case of Bend.

Bob Robinson, local merchant, told the Commission he was disturbed about the air quality in Central Oregon. He said many days in the summer in Bend there is heavy smog, and Bend needs to depend on tourism for their economy. Mr. Robinson was pleased to see the recent woodstove legislation and believes DEQ can help by taking a leading role to resolve air quality problems. In the summer, haze comes in to Bend from the Willamette Valley through Santiam Pass and this haze seems to be coming from slash burning. Mr. Robinson asked why the DEQ was not in charge of regulating slash burning rather than the Forestry Department. He encouraged the DEQ to pay as much attention to complaints that come from Central Oregon about slash and field burning as they do to those complaints that come from the Valley.

Mr. Robinson also expressed concern about the hydroelectric projects on the Deschutes River. He was concerned that continuous development may cause permanent turbidity and water temperature problems. In closing, Mr. Robinson said that he believed DEQ's concerns were similar to those of the citizens in the area and he promised to help any way he could. He also said that he hopes the Commission would come to Bend more frequently.

Chairman Petersen replied that he was also concerned about the air quality in the Bend area and said this was a matter he would personally pursue. Commissioner Denecke remarked that he believed the Oregon Environmental Council will be introducing a bill to transfer slash burning smoke management from the Department of Forestry to DEQ.

This ended the public forum.

AGENDA ITEM D: Request for authorization to conduct a public hearing on proposed procedural rules for granting Water Quality Standards Compliance Certifications pursuant to Section 401 of the federal Clean Water Act.

Section 401 of the federal Clean Water Act requires any applicant for a federal license or permit to provide the licensing or permitting agency with a certification from that state that the project will comply with water quality protection requirements.

The Department has been implementing this section of the federal law without having adopted procedural rules regarding certification. Recently, numerous applications for certification of projects subject to licensing by the Federal Energy Regulatory Commission have demonstrated the need to clarify procedures for receiving applications and processing certifications.

In particular, the Department's agreement for coordination with the Land Conservation and Development Commission (LCDC) identifies Section 401 certifications as an activity affecting land use and thus requires a determination of land use consistency prior to issuance of certification. Procedures need to be clarified regarding this determination.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission authorize the Department to conduct a public hearing on proposed rules for certification of compliance with water quality requirements and standards pursuant to Section 401 of the Federal Clean Water Act.

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

AGENDA ITEM E: Request for authorization to conduct a public hearing on the modification of Hazardous Waste Rules (OAR 340-100-010 and 340-105-010).

"Interim Status" standards are facility standards that are self-implementing, that is, enforceable in the absence of a permit. They are designed to assure minimal regulation of hazardous waste facilities before a permit can be issued.

Past EPA comments have indicated the lack of specific interim status standards to be a deficiency in the Oregon program. The Department's initial response to these comments was to integrate selected standards into the Department's rules at Division 104. However, recent field experience has indicated that separate standards need to be adopted.

The Commission is now requested to authorize a public hearing on the adoption of interim status standards to clarify its authority to regulate hazardous waste facilities not yet under permit.

Director's Recommendation

Based on the summation in the staff report, the Director recommends that the EQC authorize a public hearing to take testimony on the proposed modifications of OAR 340-100-010 and 340-105-010.

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

AGENDA ITEM F: Request for authorization to conduct a public hearing on proposed new rules relating to the "Opportunity to Recycle" (OAR 340-60-005 through 340-60-085).

Prior to the 1983 Legislative Session the Commission asked that the Department prepare legislative concepts which would increase the level of recycling and make recycling service available to all Oregonians. Those concepts were incorporated into legislation and passed with strong support by the 1983 Legislature. The Department is requesting authorization for a public hearing on new rules relating to the Opportunity to Recycle Act (Senate Bill 405). The concepts of the law and the rules have been discussed at monthly advisory committee meetings, statewide special meetings with local government officials, and at public informational meetings.

Director's Recommendation

Based on the Summation in the staff report, it is recommended that the Commission authorize a public hearing to take testimony on the proposed rules for OAR Chapter 340, Division 60.

Chairman Petersen asked if there was statutory authority to implement a wastesheds agent and why were the counties designated as wastesheds rather than cities. Bill Bree, of the Department's Solid Waste Division, responded that the concept of a wasteshed agent was not in the statute but the Department felt they needed a single contact person for coordination purposes of recycling reporting. Robert Haskins, Assistant Attorney General, said legislation requires reporting but does not define who will do it. He said it was appropriate to have a single contact but the Department needed to be careful about the role of such an agent. Mr. Bree stated that the Department intended the wasteshed agent to have no more authority than that granted by the local governments of the wasteshed. He further noted that the word "agent" may most appropriately be replaced with "representative."

In response to the question of why wastesheds followed county boundaries, Mr. Bree said the statute specified that wastesheds needed to be areas of the state with common disposal systems or areas designated by the Commission as being appropriate to offer an opportunity to recycle. Counties are statutorily designed as the parties responsible for solid waste management. Consequently, except where certain cities requested to be their own wastesheds, such as Salem-Kaiser, the county boundary seemed most appropriate.

It was MOVED by Commissioner Bishop, seconded by Commissioner Brill and passed unanimously that the Director's Recommendation be approved including some renumbering to correct typographical errors in Section 340-60-030.

AGENDA ITEM G: Proposed adoption of changes to the indirect source rules in the Medford area (amendment to OAR 340-20-100 to 340-20-135).

This item concerns the proposed adoption of permanent changes to the indirect source rules in the Medford area. The Commission adopted temporary changes to the indirect source regulations on August 6, 1984 which will expire on October 3, 1984. Those temporary changes need to be made permanent because the time frame for developing and adopting the new carbon monoxide standard attainment plan will go well beyond the expiration date of the temporary rules. Based on the recently completed air quality analysis, development of a new carbon monoxide attainment plan without an auto emission inspection program will be difficult and is now certain to extend into 1985. Adoption of the proposed permanent changes would maintain firm requirements for the City of Medford to follow through on a more aggressive core area parking and circulation plan. Also, permanent changes will help to ensure that a parking project, or combination of projects, would not upset a revised carbon monoxide attainment plan or otherwise interfere with the attainment and maintenance of the carbon monoxide health standard.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission adopt the proposed amendments to OAR 340-20-100 to 340-20-135 as permanent rules for indirect sources in the Medford area.

Frank Pulver, Medford Chamber of Commerce President, testified they were concerned about the adverse impact of these rules. They asked for a postponement of the Commission's action and said that postponement was also supported by the state Economic Development Commission. He said they do not need another layer of regulation in an already economically depressed area. The Chamber supported an inspection and maintenance program but it failed at the polls. This proposed rule is counterproductive to achieving carbon monoxide compliance. A delay is also supported by the City of Medford and Jackson County. Mr. Pulver said that DEQ's credibility in the area is low because the Department said before the election that attainment could not be achieved in downtown Medford without an inspection and maintenance program but now it says it can. In lieu of a postponement of action, Mr. Pulver said the Chamber would recommend modifying the rule to 250 parking spaces in nonattainment areas, 500 parking spaces within the City of Medford, and 1,000 parking spaces outside the City; with a sunset provision requiring rejustification of the rule every six months and that the state provide funding for an independent consultant to study and offer alternatives and to find a politically acceptable solution. Mr. Pulver said they did not challenge the temporary rule because there was not time. But the proposed rule, which is along the lines of the temporary rule, is not acceptable.

Bob Gantenbein, professional engineer working for the Chamber of Commerce as a consultant, outlined some of the difficulties they saw with the proposed rule.

Stuart Foster, Medford attorney, said the major problem is the perceived lack of credibility of DEQ by City and County officials and by the public in the area. He said the high carbon monoxide levels were recorded only near a few intersections and not any reasonable distance from those intersections. He suggested leaded gasoline should be banned in the County, anti-tampering should be enforced, and traffic around the shopping center should be studied again. Mr. Foster said that if left on a local level, an inspection and maintenance program would not be passed and there needs to be a legislative mandate.

Merlyn Hough, of the Department's Air Quality Division, said a 1982 plan recognized that the north Medford intersections and downtown Medford would be the most difficult to bring into attainment. He said that something as effective as an inspection/maintenance program is still required in north Medford. Chairman Petersen asked what alternative the Commission would have other than inspection/ maintenance according to EPA. Mr. Hough replied that a plan must be submitted on how to attain compliance or EPA will impose

sanctions. The Department is aware of no strategy, other than an I/M program which will achieve the required reduction in CO levels necessary to meet the federal health standard.

Chairman Petersen commended the City, County and Chamber of Commerce on their work. He said he was frustrated because the federal law needs to be implemented but he does not like to impose unpleasant rules. The Medford area cannot help its meteorological conditions. Chairman Petersen said he wanted to avoid sanctions which he believed would be worse on the economy than the indirect source program. The Chairman was not pursuaded that these rules should be adopted, and he said he did not feel the Commission needed to take more steps than were necessary.

It was MOVED by Commissioner Brill that the indirect source rules be adopted with the modifications made by the Medford Chamber of Commerce, that is, 250 parking spaces in nonattainment areas, 500 parking spaces in the rest of the City of Medford, and 1,000 parking spaces outside of the City of Medford. The motion was seconded by Commissioner Denecke and passed unanimously.

Commissioner Bishop said she wanted to make clear that the Commission was not ducking out of the problem but that Medford needs an inspection and maintenance program.

Representative Tom Throop encouraged the Commission to come to the legislature with support for a mandatory inspection and maintenance program in the Medford area.

AGENDA ITEM H: Proposed adoption of revisions to the State Air Quality Implementation Plan (OAR 340-20-047) to address Class I visibility monitoring and to amend new source review rules (OAR 340-20-220 through 340-20-270) to add requirements to assess visibility impacts of new or modified sources in Class I areas.

This item proposed to amend the State Implementation Plan to incorporate a Phase I visibility protection plan required by EPA. Included is a monitoring commitment and the new source review rule modification to include visibility impairment analysis requirements for major, new or modified sources. A Phase II plan consisting of Best Available Retrofit Technology, Integral Vista Protection and long range control strategies, must be submitted to and approved by EPA by December 1986.

The proposed rule has been revised to eliminate the Integral Vista provisions because they are not required at this time. However, the Department firmly feels Integral Vista Protection is an essential element of a plan to protect against visibility impairment in Oregon Class I areas. The Department intends to propose Integral Vista Protection in their Phase II State Implementation Plan even if EPA relaxes their requirements in this area.

Director's Recommendation

Based upon the summation in the staff report, the Director recommends that the Commission adopt the revised proposed rule (OAR 340-20-220 through 340-20-275) and amendments to the State Implementation Plan (OAR 340-20-047, Section 5.2).

It was MOVED by Commissioner Bishop and seconded by Commissioner Brill and passed unanimously that the Director's recommendation be approved.

AGENDA ITEM I: Request for language amendments to Administrative Rule 340-53-027, Development and Management of the Statewide Sewerage Works Construction Grants Priority List.

This item revises the wording of OAR 340-53-027 that was adopted on August 10, 1984 by the Commission by adding the words "replacement or" before "major rehabilitation." The change is needed to make the rule identical to the federal statutes and consistent with staff action relative to the adopted FY 85 Priority List.

Director's Recommendation

Based on the summation in the staff report, the Director recommends that the Commission readopt OAR 340-53-027 as revised.

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

AGENDA ITEM J: Request for a variance from OAR 340-21-027(2) for the Brookings Energy Facility, Curry County.

This agenda item concerns a variance request for the Brookings Energy Facility. This facility incinerates municipal solid waste from Curry County. The variance being requested would exempt the facility from the temperature recorder requirements of OAR 340-21-027(2) which the Commission adopted on January 6, 1984. The Commission simultaneously relaxed the particulate emission limit and established gas retention time and temperature requirements for coastal incinerators. The time and temperature restrictions are intended to ensure that the higher particulate emission rates do not result in increased emissions of toxic air pollutants. The Department feels that temperature recorders to ensure proper operation of the incinerators, are paramount in monitoring adequate destruction of toxic compounds. The cost of a temperature recorder is very low, particularly when compared to the cost of installing particulate control equipment or the cost of toxic air pollution. The Department does not feel that this cost is an undue economic burden on the Brookings Energy Facility.

Director's Recommendation

Based on the findings in the summation in the staff report, it is recommended that the Commission deny the variance request from OAR 340-21-027(2) for the Brookings Energy Facility.

Pete Smart, Brookings Energy Facility, testified that their facility had eliminated three open burning dumps on the coast. They now operate with three transfer stations and one incinerator which is very expensive to run. Mr. Smart said the expense had to stop somewhere and that pyrometers are very expensive and will not make any difference in the way they operate. He said that if they have to install these monitors or pay penalties for not installing them, they may have to go bankrupt. In response to a question from the Commission, Mr. Smart said they could work with manually recording the temperatures.

T. V. Skinner, Brookings Energy Facility, testified that they do not have air quality problems from the incinerator. It is located in an area with good winds which carry any emissions out to sea. They are not a large operation and do not make a profit. The pyrometers cost $985, not installed. There is an estimated $100 per hour installation charge, and a $100 per hour maintenance charge. Open burning had been stopped at a tremendous cost to them. He asked for a variance for as long as possible and did say that they could manually record the temperatures.

It was MOVED by Commissioner Denecke that a one year variance be approved to allow manual recording and that the Department evaluate the effectiveness of this procedure. The motion also included the findings required in ORS Chapter 468.345(1)(b). The motion was seconded by Commissioner Brill and passed unanimously.

AGENDA ITEM K: Information Report: Status of Open Burning Solid Waste Disposal Sites.

At the August 10, 1984 Commission meeting, the EQC was informed that an informational report on open burning of solid waste at disposal sites would be prepared for the September meeting. This report outlines the history, present status and projected Department actions.

The Commission did not have any questions on this report and accepted it by unanimous consent.

AGENDA ITEM L: Request by Clatsop County for extension of variance from rules prohibiting open burning of solid waste at Seaside and Cannon Beach disposal sites (OAR 340-61-040(2).

Seaside and Cannon Beach disposal sites have had a series of variances to allow for open burning of solid waste while the County developed an overall solid waste management plan. Over the last year progress has been made in planning for solid waste disposal. However, replacement facilities for the open burning sites are not in place. The staff report outlined progress and status of the present program.

Director's Recommendation

Based on the findings in the summation in the staff report, it is the Director's Recommendation that the variance request for Seaside and Cannon Beach be denied.

No one was present to testify on this item.

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

AGENDA ITEM M: Central Region Manager's Report.

The Commission discussed this report with the Central Region Manager, Richard Nichols, and thanked him for it.

There being no further business, the formal meeting was adjourned.

The Commission then had lunch with various local officials at the Riverhouse restaurant in Bend.

Respectfully submitted,

Carol A. Splettstaszer
EQC Assistant

CAS:d

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. B, November 2, 1984, EQC Meeting

August 1984 Program Activity Report

Discussion

Attached is the August 1984 Program Activity Report.

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

Water Quality and Solid Waste facility plans and specifications approvals or disapprovals and issuance, denials, modifications and revocations of air, water and solid waste permits are prescribed by statutes to be functions of the Department, subject to appeal to the Commission.

The purposes of this report are:

1. To provide information to the Commission regarding the status of reported activities and an historical record of project plan and permit actions;

2. To obtain confirming approval from the Commission on actions taken by the Department relative to air contaminant source plans and specifications; and

3. To provide logs of civil penalties assessed and status of DEQ/EQC contested cases and status of variances.

Recommendation

It is the Director's recommendation that the Commission take notice of the reported program activities and contested cases, giving confirming approval to the air contaminant source plans and specifications.

Fred Hansen

SChew:d
MD26
229-6484
Attachment

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

August 1984

Table of Contents

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

AQ, WQ, SW Divisions (Reporting Unit) — August 1984 (Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans
	Month	FY	Month	FY	Month	FY	Pending
Air							
Direct Sources	9	18	12	14	0	0	40
Small Gasoline Storage Tanks Vapor Controls	-	-	-	-	-	-	-
Total	-	-	-	-	-	-	-
Water							
Municipal	13	42	13	37	0	2	18
Industrial	11	24	9	19	0	0	18
Total	-	-	-	-	-	-	-
Solid Waste							
Gen. Refuse	3	9	7	9	-	-	9
Demolition	-	-	-	-	-	-	1
Industrial	1	3	1	4	-	-	7
Sludge	-	-	-	1	-	-	-
Total	4	12	8	14	-	-	17
Hazardous Wastes	2	2	-	-	-	-	2
GRAND TOTAL	43	110	50	98	0	2	112

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DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT
DIRECT SOURCES
PLAN ACTIONS COMPLETED

COUNTY	NUMBER	SOURCE	PROCESS DESCRIPTION	DATE OF ACTION	ACTION
UMATILLA	000	JOHNS-MANVILLE SALES CORP	UNLOADING SYSTEM INSTALLATN	07/13/84	APPROVED
JEFFERSON	001	RAJNEESH INTL COMMUNE	INCINERATOR	07/11/84	APPROVED
LANE	006	WOOD/TECH PACIFIC INC	BAGHOUSE	08/22/84	APPROVED
BENTON	008	EVANS PRODUCTS CO	CYCLONE	07/26/84	APPROVED
COLUMBIA	010	PORTLAND GENERAL ELECTRIC	GLOBE VALVES INTALLATION	07/31/84	APPROVED
	011		REPLACE ISOLATION VALVES	07/31/84	APPROVED
MULTNOMAH	963	GRAPHIC ARTS CENTER	CATALYTIC CONTROL SYSTEM	06/29/84	APPROVED
MULTNOMAH	970	COFFEE BEAN INTL INC.	AFTERBURNER	07/31/84	APPROVED
MULTNOMAH	975	PORTLAND RENDERING CO	CHEM WASH QUAD SYSTEM	06/29/84	APPROVED
MULTNOMAH	983	TRUMBULL ASPHALT	INCINERATR/WASTE HEAT BOILER	07/31/84	APPROVED
MULTNOMAH	985	THE KOBOS CO	SMOKE INCINERATOR	07/27/84	APPROVED
LINN	996	CHAMPION INTERNATIONAL	CATALYTIC INCINERATOR	07/20/84	APPROVED

TOTAL NUMBER QUICK LOOK REPORT LINES 12

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — August, 1984 (Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received Month	Permit Actions Received FY	Permit Actions Completed Month	Permit Actions Completed FY	Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
Direct Sources							
New	5	11	3	7	18		
Existing	3	5	2	11	15		
Renewals	11	25	28	39	94		
Modifications	8	10	9	14	12		
Total	27	51	42	71	139	1609	1642
Indirect Sources							
New	1	1	0	1	2		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	1	1	0	0	1		
Total	2	2	0	1	3	224	227
GRAND TOTALS	29	53	42	72	142	1833	1869

Number of Pending Permits	Comments
37	To be reviewed by Northwest Region
12	To be reviewed by Willamette Valley Region
3	To be reviewed by Southwest Region
7	To be reviewed by Central Region
9	To be reviewed by Eastern Region
13	To be reviewed by Program Operations Section
54	Awaiting Public Notice
4	Awaiting end of 30-day Public Notice Period
139	

MAR.5 (8/79)
AA4407

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT
DIRECT SOURCES
PERMITS ISSUED

COUNTY	SOURCE	PERMIT NUMBER	APPL. RECEIVED	STATUS	DATE ACHIEVED	TYPE APPL.	PSEL
CROOK	ZAPATA PROPERTIES INC	07 0018	09/20/83	PERMIT ISSUED	07/25/84	RNW	
DESCHUTES	DAW FOREST PRODUCTS CO	09 0001	11/02/82	PERMIT ISSUED	07/25/84	RNW	
DESCHUTES	DAW FOREST PRODUCTS CO	09 0003	01/27/84	PERMIT ISSUED	07/25/84	RNW	
JOSEPHINE	COPELAND SAND & GRAVEL	17 0044	05/30/84	PERMIT ISSUED	07/25/84	EXT	
LINN	CHAMPION INTERNATIONAL	22 5196	06/28/82	PERMIT ISSUED	07/25/84	RNW	
MARION	GENERAL FOODS CORP	24 9044	10/04/83	PERMIT ISSUED	07/25/84	RNW	
PORT.SOURCE	BEAVER STATE SAND & GRAVL	37 0129	05/07/84	PERMIT ISSUED	07/25/84	RNW	
PORT.SOURCE	PACIFIC ROCK PRODUCTS INC	37 0318	06/21/84	PERMIT ISSUED	07/25/84	NEW	
COLUMBIA	SCAPPOOSE SAND AND GRAVEL	05 1954	10/20/83	PERMIT ISSUED	08/02/84	RNW	
DOUGLAS	DAN M PARKER CRUSHING	10 0109	12/12/83	PERMIT ISSUED	08/02/84	RNW	
LINN	BOISE CASCADE CORP	22 0511	05/23/83	PERMIT ISSUED	08/02/84	RNW	
MARION	WILCO FARMERS MT ANGEL BR	24 2702	06/15/84	PERMIT ISSUED	08/02/84	RNW	
MARION	WILCO FARMERS	24 7095	06/11/84	PERMIT ISSUED	08/02/84	RNW	
MULTNOMAH	B W FEED CO., INC	26 2607	06/01/84	PERMIT ISSUED	08/02/84	RNW	
MULTNOMAH	US VETERANS ADMIN	26 2955	02/03/84	PERMIT ISSUED	08/02/84	RNW	
UMATILLA	PENDLETON FLOUR MILLS	30 0012	00/00/00	PERMIT ISSUED	08/02/84	MOD	
PORT.SOURCE	DESCHUTES READY MIX S & G	37 0220	00/00/00	PERMIT ISSUED	08/02/84	MOD	
CURRY	F&C CONSTRUCTION INC	08 0030	11/21/83	PERMIT ISSUED	08/06/84	RNW	
DOUGLAS	NORDIC PLYWOOD, INC.	10 0023	01/31/84	PERMIT ISSUED	08/06/84	RNW	
DOUGLAS	ROSEBURG LUMBER CO	10 0083	05/23/83	PERMIT ISSUED	08/06/84	RNW	
MULTNOMAH	TERMINAL FLOUR MILLS	26 2013	06/21/84	PERMIT ISSUED	08/06/84	RNW	
WASCO	MTN FIR LUMBER CO, INC	33 0009	07/09/84	PERMIT ISSUED	08/06/84	RNW	
PORT.SOURCE	OR DEPT OF TRANSPORTATION	37 0098	05/23/84	PERMIT ISSUED	08/06/84	NEW	
PORT.SOURCE	SIERRA CASCADE EQUIP CO	37 0224	05/30/84	PERMIT ISSUED	08/06/84	RNW	
DOUGLAS	DOUGLAS CNTY NURSING HOME	10 0119	07/09/84	PERMIT ISSUED	08/08/84	RNW	
BAKER	ASH GROVE CEMENT WEST INC	01 0010	08/10/84	PERMIT ISSUED	08/20/84	MOD	
BAKER	ASH GROVE CEMENT WEST INC	01 0015	08/10/84	PERMIT ISSUED	08/20/84	MOD	
BAKER	ASH GROVE CEMENT WEST INC	01 0029	08/10/84	PERMIT ISSUED	08/20/84	MOD	
CLACKAMAS	ASH GROVE CEMENT WEST INC	03 1840	08/10/84	PERMIT ISSUED	08/20/84	MOD	
DESCHUTES	WESTERN CUTSTOCK INC	09 0073	07/24/84	PERMIT ISSUED	08/20/84	EXT	
JACKSON	DOWN RIVER FOREST PRODUCT	15 0027	12/23/83	PERMIT ISSUED	08/20/84	RNW	
JOSEPHINE	FOURPLY INC	17 0002	04/06/82	PERMIT ISSUED	08/20/84	RNW	
LINN	SIMPSON TIMBER CO	22 0512	05/20/83	PERMIT ISSUED	08/20/84	RNW	
MARION	HEAT LOG	24 5463	06/07/84	PERMIT ISSUED	08/20/84	NEW	
MULTNOMAH	DAVID DOUGLAS HIGH SCHOOL	26 1990	07/24/84	PERMIT ISSUED	08/20/84	RNW	
MULTNOMAH	DAVID DOUGLAS SR HS BLDG	26 2426	07/24/84	PERMIT ISSUED	08/20/84	RNW	
MULTNOMAH	COLUMBIA AMERICAN PLATING	26 2809	07/20/84	PERMIT ISSUED	08/20/84	RNW	
YAMHILL	RALSTON PURINA CHOW DIV	36 6214	08/10/84	PERMIT ISSUED	08/20/84	MOD	
JACKSON	ROGUE RIVER PAVING	15 0003	07/19/84	PERMIT ISSUED	08/27/84	RNW	
POLK	GNB BATTERIES INC	27 8012	10/24/83	PERMIT ISSUED	08/27/84	RNW	
DOUGLAS	LONE STAR MINERALS INC	10 0066	00/00/00	PERMIT ISSUED	08/28/84	MOD	Y
MULTNOMAH	COFFEE BEAN INTL INC.	26 3088	04/27/84	PERMIT ISSUED	08/28/84	MOD	

TOTAL NUMBER QUICK LOOK REPORT LINES 42

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — August, 1984 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action

Indirect Sources

MAR.6 (5/79)
AA4405

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — August, 1984 (Month and Year)

PLAN ACTIONS COMPLETED - 22

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES 13			
Lake	Lakeview Sewer Extensions, 3rd St. Pump Station Replacement	8-8-84	Comments to City Engineer
Douglas	RUSA Roseburg Regional Wastewater Treatment Facility	8-9-84	P.A.
Curry	Sandpiper Subdivision Near Brookings	8-13-84	Comments to Engineer
Hood River	Odell Sanitary District 1984 Sanitary Sewer Extensions Construction	8-13-84	P.A.
Hood River	Odell Sanitary District Sewage Treatment Plant Upgrading Project	8-13-84	P.A
Tillamook	Caudill R.V. Campground Near Neskowin Four Subsurface Systems	8-13-84	Comments given to Designer and Region
Clackamas	Tri-City Service District Willamette Interceptor No. 2	8-21-84	P.A.
Clackamas	Tri-City Service District Bolton Pump Station	8-22-84	P.A.
Clackamas	Tri-City Service District Gladstone Pump Station	8-22-84	P.A.
Clackamas	Tri-City Service District River Pump Station	8-22-84	P.A
Clackamas	Tri-City Service District Bolton and River Pump Station Force Mains	8-22-84	P.A.
Clackamas	Sandy Marketplace, Phase II	8-22-84	P.A.
Clackamas	Tri-City Service District Willamette Interceptor 1B	8-22-84	P.A.

P.A. = Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — August, 1984 (Month and Year)

PLAN ACTIONS COMPLETED - 22

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES 9			
Jefferson	PGE Round Butte Plant Oil Spill Control System	8-1-84	Approved
Polk	Sam Osberg Farm Manure Control System Dallas	8-1-84	Approved
Tillamook	Carl Fenk Dairy Manure Control System Tillamook	8-9-84	Approved
Tillamook	Hurliman Dairy Manure Control System Tillamook	8-9-84	Approved
Clackamas	Portland General Electric Oil Spill Containment System Farady	8-12-84	Approved
Benton	Willard Wieland Manure Control System Monroe	8-24-84	Approved
Marion	John Coelho & Sons Manure Control System Woodburn	8-24-84	Approved
Clatsop	Pacific Power & Light Oil Spill Containment Cannon Beach	8-24-84	Approved
Multnomah	Pacific Power & Light Oil Spill Containment Lincoln Station	8-24-84	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — August 1984 (Month and Year)

SUMMARY OF WATER PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
	Month	Fis.Yr.	Month	Fis.Yr.			
	* /**	* /**	* /**	* /**	* /**	* /**	* /**
Municipal							
New	0 / 1	0 / 1	1 / 1	1 / 2	2 / 3		
Existing	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0		
Renewals	3 / 2	8 / 4	4 / 1	10 / 1	32 /14	1 NPDES Changed to WPCF	
Modifications	5 / 0	5 / 0	4 / 0	4 / 1	7 / 0		
Total	8 / 3	13 / 5	9 / 2	15 / 4	41 /17	234/139	236/142
Industrial							
New	0 / 1	0 / 2	0 / 1	0 / 1	3 / 7		
Existing	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0		
Renewals	3 / 1	5 / 5	1 / 1	6 / 3	27 /12		
Modifications	3 / 9	5 / 9	4 / 9	7 / 9	2 / 0		
Total	6 / 11	10 / 16	5 / 11	13 / 13	32 /19	180/156	183/163
Agricultural (Hatcheries, Dairies, etc.)							
New	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0		
Existing	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0		
Renewals	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0		
Modifications	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0		
Total	0 / 0	0 / 0	0 / 0	0 / 0	0 / 0	2 /11	2 /11
GRAND TOTALS	14 / 14	23 / 21	14 / 13	28 / 17	73 /36	416/306	421/316

* NPDES Permits
** State Permits

5 General Permits Granted (4 indicated in Modifications)
Sources Under Permit Adjusted to Count Less 345 General Permits

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — August 1984 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL AND INDUSTRIAL SOURCES NPDES (6)			
Clackamas	Clackamas County S.D. #1 Kellogg, STP Milwaukie	8/6/84	Permit Renewed
Klamath	Henley High School STP Klamath Co. School Dist.	8/20/84	Permit Renewed
Coos	Coos Bay-North Bend Water Board, WTP Coos Bay	8/22/84	Permit Renewed
Polk	City of Dallas STP	8/22/84	Permit Renewed
Douglas	RUSA, Regional STP	8/22/84	Permit Issued
Linn	Fairway Apartments STP, Lebanon	8/22/84	Permit Renewed
MUNICIPAL AND INDUSTRIAL SOURCES WPCF (4)			
Wasco	Sportsmans Park Sewer Association, STP Tygh Valley	8/1/84	Permit Renewed
Curry	Sandpiper Subdivision STP, Brookings Area	8/6/84	Permit Issued
Polk	La Creole Fruit Co. Rickreall	8/20/84	Permit Issued
Multnomah	Stauffer Chemical Company Portland	8/31/84	Permit Renewed

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — August 1984 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL AND INDUSTRIAL SOURCES MODIFICATIONS AND OTHER PERMIT ACTIONS (17)			
Lane	City of Springfield STP.	8/1/84	Cancelled Permit Granted G.P. 1100
Clackamas	Ash Grove Cement West Inc. Lake Oswego	8/2/84	Transferred from Portland Cement
Lake	Robert Peel Discharge from Uranium Tailing Monitoring Wells	8/3/84	Special Permit
Union	City of La Grande STP	8/6/84	Letter Changing Schedule C
Baker	Alan Mellott	8/6/84	Cancelled Permit
Multnomah	Widing Transportation	8/6/84	Cancelled Permit
Benton	Wildish Corvallis Sand & Gravel	8/7/84	Cancelled Permit
Columbia	City of St. Helens STP	8/7/84	Letter Authorizing Bypass to Secondary Sewage Lagoon
Lane	MWMC, Eugene Agripac	8/13/84	Letter Modification for Irrigation
Marion	City of Mill City WTP	8/14/84	Transferred from PP&L and Granted G.P. 0200-J
Josephine	Jack McCain Wolf Creek Placer Mine	8/14/84	Change to General Permit 0600
Jefferson	Northwestern Potato, Inc. Metolius	8/15/84	Transfer from U & I Inc.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — August 1984 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL AND INDUSTRIAL SOURCES MODIFICATIONS AND OTHER PERMIT ACTIONS Continued			
Union	Royal Western Mining Inc.	8/20/84	Cancelled Permit
Umatilla	Alumax Pacific Corporation Umatilla	8/20/84	Cancelled Permit
Tillamook	Jetty Fishery STP	8/21/84	Suspended Permit
Multnomah	McCall Oil & Chemical	8/31/84	Transferred to G.P. 1300-J
Coos	Union Oil of California Coos Bay	8/31/84	Transferred to G.P. 1300-J
MUNICIPAL AND INDUSTRIAL SOURCES GENERAL PERMITS (5)			
Filter Backwash, Permit No. 0200-J (1)			
Marion	Mill City WTP	8/14/84	General Permit Granted
Gold Mining, Permit No. 0600 (1)			
Josephine	Jack McCain Wolf Creek Placer Mine	8/14/84	General Permit Granted
Suction Dredge, Permit No. 0700-J (1)			
Jackson	Don E. Case 8" Dredge Gold Hill	8/14/84	Granted General Permit

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — August 1984 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL AND INDUSTRIAL SOURCES GENERAL PERMITS (Continued)			
Oily Storm Runoff, Permit No. 1300-J (2)			
Multnomah	McCall Oil & Chemical Corporation Portland	8/31/84	Transferred to General Permit
Coos	Union Oil of California	8/31/84	Transferred to General Permit

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — August 1984 (Month and Year)

SUMMARY OF SOLID AND HAZARDOUS WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	FY	Month	FY			
General Refuse							
New	1	2	-	-	7		
Closures	-	1	1	1	14		
Renewals	-	4	-	-	20		
Modifications	2	-	2	2	1		
Total	3	7	3	3	42	163	163
Demolition							
New	-	-	-	-	-		
Closures	-	1	-	-	4		
Renewals	-	-	-	-	-		
Modifications	-	-	-	-	-		
Total	-	1	-	-	4	12	12
Industrial							
New	-	1	-	2	5		
Closures	-	-	1	2	8		
Renewals	1	1	2	4	11		
Modifications	-	1	-	1	-		
Total	1	3	3	9	24	100	100
Sludge Disposal							
New	-	-	1	1	-		
Closures	-	-	-	1	-		
Renewals	-	-	-	-	3		
Modifications	-	-	-	-	-		
Total	-	-	1	2	3	17	17
Hazardous Waste							
New	1	2	-	1	6		
Authorizations	146	337	146	337	-		
Renewals	-	-	-	-	1		
Modifications	-	-	-	-	-		
Total	147	339	146	338	7	14	20
GRAND TOTALS	151	350	153	352	76	306	312

SC1753.B
MAR.5S (4/79)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — August 1984 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Tillamook	Crown Zellerbach Hallinan Rd. Landfill Closed facility	8/1/84	Closure permit issued
Crook	Crook Co. Landfill Existing facility	8/14/84	Permit amended
Wasco	Tygh Valley Metal Site Closed storage site	8/14/84	Permit revoked
Multnomah	Waste Water Management New sludge facility	8/21/84	Permit issued
Klamath	Gilchrist Timber Co. Existing landfill	8/24/84	Permit renewed
Umatilla	Smith Frozen Foods Existing landfill	8/28/84	Permit renewed

SC1753.C
MAR.6 (5/79)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — August 1984 (Month and Year)

HAZARDOUS WASTE DISPOSAL REQUESTS

CHEM-SECURITY SYSTEMS, INC., GILLIAM CO.

WASTE DESCRIPTION

Date	Type	Source	Quantity Present	Quantity Future
TOTAL DISPOSAL REQUESTS GRANTED - 140				
OREGON - 42				
8/1	Sodium chlorite/sodium hydroxide solution	Electronic co.	0	2,000 gal.
8/1	Lead-contaminated nitric acid solution	" "	0	3,000 gal.
8/1	Sulfuric acid solution	" "	0	10,000 gal.
8/1	Grease, oil and dirt-contaminated mineral spirits	Golf cart mfg.	0	25 drums
8/1	Ionic exchange reagent containing kerosene, alphahydroxy oximes, beta diketones, $(NH_4)_2SO_4$, NH_4OH, Cu, Ni & Co	Research facility	0	1,000 gal.
8/1	Monoethanolamine reclaimer bottoms	Chemical co.	0	3,000 gal.
8/1	Tank bottoms containing arsenical compounds, copper oxide, NH_4OH & water	Wood treatment	0	100 drums
8/1	2,4-D-contaminated tank cleaning sludge	Pesticide formulator	0	8 drums

SC1753.E
MAR.15 (1/82)

Date	Type	Source	Quantity Present	Quantity Future
8/1	Spray developer solvent: chlorobenzene, xylene and polymethyl metacrylate	Electronic co.	0	52 drums
8/1	JF solvent: Freon TF, trichloroethane, IPA, acetone, etc.	" "	0	12 drums
8/2	PCB-contaminated dirt	Spill cleanup	0	4 drums
8/3	Paint sludge	Mfg. of particle boards	0	3,300 gal.
8/3	1,1,1-trichloroethylene sludge with MEK and MIBK	Mfg. of rubber	0	4 drums
8/3	Polymerized alkene olefin with xylene	Paint & wood preserv. mfg.	1 drum	0
8/8	Paint solvent: xylene/mineral spirits with pigments	Paint formulator	0	6 drums
8/9	PCB-contaminated dirt	Aluminum co.	0	10 drums
8/9	PCB capacitors	" "	0	10 drums
8/9	PCB liquids	" "	0	10 drums
8/9	2,4-D, chlorophenols & isooctyl alcohol-contaminated pit water	Chemical co.	0	160 cu.ft.
8/9	Off-spec. mixture of aliphatic hydrocarbon, alkyd resin & lead napthenate	Foundry	1 drum	4 drums
8/9	Off-spec. mixture of aromatic hydrocarbon, phenol-formaldehyde resin and lead oxide/ lead napthenate	" "	2 drums	8 drums
8/9	Off-spec. mixture of pyridine derivative & aromatic hydrocarbon phenol-formaldehyde resin and lead oxide/ lead napthenate	" "	3 drums	12 drums

Date	Type	Source	Quantity	
			Present	Future
8/9	Off-spec. mixture of aliphatic hydrocarbon & cobalt salt	Foundry	1 drum	4 drums
8/14	PCB ballasts	City gov't.	1,100 gal.	0
8/14	Trichloroethylene contaminated floor dry	Chain-saw mfg.	0	20 cu.yd.
8/15	PCB-contaminated tanks	Waste mgmt. co.	10,000 lb.	0
8/15	Cyanide salts	Electroplating	20 gal.	0
8/15	Esteron herbicide	Wood products	30 gal.	0
8/15	Herbicide monosodium acid methanearsonate	" "	5 gal.	0
8/15	Herbicide Envert DT	" "	120 gal.	0
8/15	Herbicide Tordon 155	" "	30 gal.	0
8/16	Asbestos	College	1 drum	0
8/23	Monoethanolamine reclaimer bottoms	Chemical co.	0	6 drums
8/23	Ferric chloride-contaminated floor dry	Chem. formul.	15 drums	15 drums
8/23	Outdated IPA/Triton X-100 solvent	" "	4 drums	4 drums
8/23	Triethanolamine contaminated with water	" "	4 drums	4 drums
8/23	Iron and iron oxides residue with cutting oil & heavy metals	Aerospace co.	0	4 drums
8/23	Clear oil #2: amino alcohol, caustic soda & water	Electronic co.	3 drums	0
8/23	Clear oil #1: mineral oil	" "	1 drum	0
8/23	Lead solder dross	Pet food co.	5 drums	5 drums
8/23	Chromic acid solution	Electronic co.	5 drums	5 drums

Date	Type	Source	Quantity	
			Present	Future
8/23	Chrome sludge	Mfg. of Al window frames	75 drums	75 drums
WASHINGTON - 85				
8/1	Mixture of dewatered lime sludge with heavy metals & paint sludge	Waste treatment	0	1,600 cu.yd.
8/1	Clothing, gloves, etc., contaminated with mineral spirits, lead napthanate and asphalt	Spill cleanup	0	20 drums
8/1	Mixed mineral acids	Aerospace co.	0	600 drums
8/1	Mixed alkaline liquid	" "	0	400 drums
8/1	Grease, dirt & water-contaminated mixed chlorinated solvents: carbon tetrachloride, dichloromethane, etc.	" "	0	10 drums
8/1	Mixed non-chlorinated solvents: acetone, MEK, alcohols, butyl & cellosolve acetate, etc.	" "	0	102 drums
8/1	Liquid fertilizer	Chemical co.	9,000 gal.	0
8/1	Paint sludge	Painting contractor	0	100 drums
8/1	PCB-contaminated soil	Spill cleanup	20 cu.yd.	0
8/1	Zyglo dye containing kerosene, methylene chloride, acetone, toluene and trichloro-ethylene	Machine shop	0	10 drums
8/1	Methylene chloride sludge	Stripping paint from aircraft	0	2,750 gal.
8/1	Paint sludge/methylene chloride	Stripping paint from Al/steel	0	20 drums
8/1	Trichloroethane with MEK	Electronic co.	0	15 drums

Date	Type	Source	Quantity	
			Present	Future
8/1	Ignitable paint sludge	Painting contractor	0	3,000 gal.
8/2	Gypsum sludge with heavy metals	Superfund project	15,000 cu.yd.	0
8/2	Flue dust with heavy metals	" "	5,000 cu.yd.	0
8/2	Battery chips	" "	5,000 cu.yd.	0
8/3	Lithium hydroxide	Dept. of Defen.	1 drum	0
8/3	Potassium hydroxide	" "	0	1 drum
8/3	Sodium silicofluoride	" "	0	2 drums
8/3	Mercury-contaminated clothing	" "	0	2 drums
8/3	Ferric chloride	" "	0	2 drums
8/3	Epoxy paint sludge	Shipbldg. co.	0	15,300 gal.
8/8	Paint sludge	Paint formul.	660 gal.	2,640 gal.
8/8	PCB-transformer	Medical center	282 gal.	0
8/8	PCB-contaminated matl.	Pulp mill	0	1 drum
8/8	Solidified paint sludge	Waste treatmt.	20 cu.yd.	240 cu.yd.
8/9	Paint sludge and out-dated paint products	Dept. of Defen.	0	48 drums
8/9	Otto fuel-contaminated rags	" "	0	32 drums
8/9	Epoxy solvent-contaminated rags, clothing, etc.	" "	0	4 drums
8/9	Mercury-contaminated equipment	" "	0	400 lb.
8/9	Chrome-contaminated rags, towels, etc.	" "	0	4 drums
8/9	Sulfuric acid/chrome-contaminated grates	" "	0	16 drums

Date	Type	Source	Quantity Present	Quantity Future
8/9	Spent chrome plating filters	Dept. of Defen.	0	24 drums
8/9	Otto fuel-contaminated tools, machine parts, etc.	" "	0	40 drums
8/9	Outdated anhydrous sodium sulfide	" "	0	4 drums
8/9	Monoethanolamine-contaminated charcoal and rags	" "	0	4 drums
8/9	Mercury-contaminated plastic bottles	" "	0	80 cu.ft.
8/9	Unwanted dimethyl formamide	" "	0	1 drum
8/9	Rags/absorbents soaked with diesel oil	" "	0	18 drums
8/9	Paints and empty containers	" "	0	4 drums
8/9	Diesel-soaked rags, absorbents, etc.	" "	0	6 drums
8/10	Chromated copper arsenate-contaminated water, dirt, sand, etc.	Wood preserving	0	5,000 gal.
8/14	PCB capacitors	Recycle paperbd.	2 drums	0
8/14	Oily water with Freon	Solvent process.	0	800 drums
8/14	Paint solvents/ sealants-contaminated floor dry	Aerospace co.	0	10,000 cu.ft.
8/14	Rags, floor dry contaminated with caustics with heavy metals	" "	0	30,000 cu.ft.
8/14	Soil/groundwater contaminated with chlorinated organics	Site investigation	70 drums	0

Date	Type	Source	Quantity Present	Quantity Future
8/15	Varapel liquid wood preservative containing pentachlorophenol in small containers	Superfund cleanup proj.	13,000 gal.	0
8/15	Asbestos insulation	" "	10 cu.yd.	0
8/15	Contaminated equipment	" "	5,000 cu.yd.	0
8/15	Spent HCl with chrome & lead	Pipe co.	3,700 gal.	0
8/15	Water contaminated with heavy metals, grease & some organics	Superfund cleanup proj.	40,000 gal.	0
8/15	Water/solvents/oil/ grease with heavy metals	" "	20,000 gal.	0
8/15	Caustic water with heavy metals	" "	10.000 gal.	0
8/15	Colloidal solids with trace amounts of heavy metals	" "	40 cu.yd.	0
8/15	Acidic water with heavy metals	" "	15,000 gal.	0
8/16	Epoxy paint-contaminated absorbent matl.	Dept. of Defen.	1 drum	4 drums
8/16	Waste treatment sludge with heavy metals	" "	1 drum	4 drums
8/16	Chlordane-contaminated dirt, absorbent, etc.	" "	1 drum	0
8/16	Diazinon-contaminated dirt, rags, etc.	" "	1 drum	0
8/16	Jet fuel-contaminated rags and tank sludge	" "	1 drum	4 drums
8/16	Methylene chloride paint stripping sludge	" "	45 drums	45 drums
8/16	Paint sludge	Construction co.	3,000 gal.	3,000 gal.
8/16	Household pesticides	Health dept.	1 drum	0

Date	Type	Source	Quantity Present	Quantity Future
8/16	Sulfonated oleic acid cleaning solution with acid blue dye #9	Chemical co.	300 gal.	0
8/16	Weed killer	Electronic co.	30 gal.	0
8/16	Partly solidified PCB oil	" "	1 drum	0
8/16	PCB oil	" "	1 drum	0
8/16	PCB-contaminated matl.	" "	1 drum	0
8/16	PCB-contaminated wooden pallet, rags, dirt, etc.	Lumber co.	1 cu.yd.	0
8/17	PCB-contaminated rags, coveralls, etc.	Electronic co.	0	50 drums
8/17	PCB transformers	" "	0	250 cu.yd.
8/17	Mixed chlorinated solvents and still bottoms	Waste recycling	10 drums	120 drums
8/17	PCB transformers	" "	0	150 cu.yd.
8/17	Baghouse dust with heavy metals	Steel mill	0	1,200 tons
8/17	Dinitro ortho cresol-contaminated gloves, rags, etc.	Chemical co.	0	10 drums
8/23	Organic acid soldering flux containing IPA	Electronic co.	200 gal.	800 gal.
8/23	Petroleum oil/grease with heavy metals	Defense Dept.	0	800 drums
8/23	Paint sludge	" "	3 drums	12 drums
8/23	Spent ethylene glycol monobutyl ether/mono-ethanol amine carbon dioxide remover	" "	1 drum	4 drums
8/23	Paint sludge	" "	2 drums	8 drums

Date	Type	Source	Quantity	
			Present	Future
8/23	Copper sulfate/H_2SO_4 solution	Electronic co.	1 drum	0
8/23	Various pesticides in lab packs	Pesticide formulator	2 drums	0
OTHER STATES - 13				
8/1	Aromatics/napthenes solvents with oil, grease and water	Food process. (HI)	5 drums	20 drums
8/1	Otto fuel with mineral spirits, grease & oil	Waste process. (HI)	150 drums	0
8/1	Arsenic/copper/chrome-contaminated tank bottoms	Wood treatment (HI)	20 drums	80 drums
8/2	Sulfinol degradation bottoms	Chemical co. (Alberta)	0	200 drums
8/8	Sodium arsenite	Dept. of Defen. (Guam)	600 gal.	0
8/8	Mercury-contaminated articles	" "	150 lb.	600 lb.
8/8	Ignitable paint sludge	State agny (AK)	0	130 drums
8/9	Various lab chemicals	Chem. lab (B.C.)	0	2 drums
8/10	Chrome-contaminated sea water	Construction co. (B.C.)	0	12,000 gal.
8/10	Pesticide/xylene-contaminated water	Pesticide formulator (B.C.)	0	70 drums
8/10	Talc contaminated with pesticides	" "	0	32 drums
8/15	Annealing salts consisting of barium chloride, potassium chloride and sodium chloride	Zirconium mfg. (UT)	50 drums	200 drums
8/17	Misc. lab chemicals	Laboratory (ID)	0	6 drums

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — August, 1984 (Month and Year)

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated Mo	New Actions Initiated FY	Final Actions Completed Mo	Final Actions Completed FY	Actions Pending Mo	Actions Pending Last Mo
Industrial/ Commercial	22	38	7	14	146	131
Airports				2	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program	August, 1984
(Reporting Unit)	(Month and Year)

FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Clackamas	Baert's Metal Products, Inc., Sandy	08-84	No Violation
Multnomah	Hollywood East Apartments, Portland	08-84	Referred to Portland Noise Office
Multnomah	Portland Adventist Convalescent Center, Portland	08-84	In Compliance
Multnomah	Professional Towel Company, Portland	08-84	In Compliance
Lane	Albertson's #550, Echo Hollow Plaza, Eugene	08-84	In Compliance
Lane	Payless Drug Stores, Inc., Echo Hollow Plaza, Eugene	08-84	In Compliance

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1984

CIVIL PENALTIES ASSESSED DURING MONTH OF AUGUST, 1984:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
City of Malin Malin, Oregon	WQ-CR-84-67 Failure to submit timely and complete waste discharge monitoring reports.	8-2-84	$50	City has requested penalty be withdrawn.
Patricia Patterson dba/Scappoose Cedar Prod. Scappoose, Oregon	AQOB-NWR-84-74 Open burning of industrial wood waste.	8-7-84	$50	Notice is being served by sheriff.
Northwest Basic Industries, Inc. dba/ Bristol Silica & Limestone Co.	AQ-SWR-84-82 Fugitive emissions from rock crusher and violations of air contaminant discharge permit.	8-15-84	$1,000	Hearing request and answer filed 8-29-84.

VAK:b
GB3739

September 1984
DEQ/EQC Contested Case Log

	ACTIONS	LAST MONTH	PRESENT
1	Preliminary Issues	12	10
2	Discovery	2	3
3	Settlement Action	1	3
4	Hearing to be scheduled	9	10
5	Hearing scheduled	3	1
6	HO's Decision Due	0	0
7	Briefing	2	2
8	Inactive	2	2
	SUBTOTAL of cases before hearings officer.	31	31
9	HO's Decision Out/Option for EQC Appeal	2	1
10	Appealed to EQC	1	1
11	EQC Appeal Complete/Option for Court Review	0	0
12	Court Review Option Pending or Taken	0	0
13	Case Closed	2	2
	TOTAL Cases	36	35

15-AQ-NWR-81-178	15th Hearing Section case in 1981 involving Air Quality Division violation in Northwest Region jurisdiction in 1981; 178th enforcement action in the Department in 1981.
$	Civil Penalty Amount
ACDP	Air Contaminant Discharge Permit
AG1	Attorney General 1
AQ	Air Quality Division
AQOB	Air Quality, Open Burning
CR	Central Region
DEC Date	Date of either a proposed decision of hearings officer or a decision by Commission
ER	Eastern Region
FB	Field Burning
Hrng Rfrl	Date when Enforcement Section requests Hearing Section schedule a hearing
Hrngs	Hearings Section
NP	Noise Pollution
NPDES	National Pollutant Discharge Elimination System wastewater discharge permit.
NWR	Northwest Region
OSS	On-Site Sewage Section
P	Litigation over permit or its conditions
Prtys	All parties involved
Rem Order	Remedial Action Order
Resp Code	Source of next expected activity in case
SS	Subsurface Sewage (now OSS)
SW	Solid Waste Division
SWR	Southwest Region
T	Litigation over tax credit matter
Transcr	Transcript being made of case
Underlining	New status or new case since last month's contested case log
WQ	Water Quality Division
WVR	Willamette Valley Region

CONTES.B

September 1984

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WAH CHANG	04/78	04/78		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	Current permit in force. Hearing deferred.
WAH CHANG	04/78	04/78		Prtys	03-P-WQ-WVR-78-2012-J NPDES Permit Modification	Current permit in force. Hearing deferred.
SPERLING, Wendell dba/Sperling Farms	11/25/81	11/25/81	03/17/83	Resp	23-AQ-FB-81-15 FB Civil Penalty of $3,000	To be reviewed by EQC at its November 2, 1984 meeting.
OLINGER, Bill Inc.	09/10/82	09/13/82	10/20-21/83 11/2-4/83 11/14-15/83 5/24/84	Resp	33-WQ-NWR-82-73 WQ Civil Penalty of $1,500	Respondent's closing brief filed September 4, 1984.
HAYWORTH FARMS, INC., and HAYWORTH, John W.	01/14/83	02/28/83	04/04/84	Hrgs	50-AQ-FB-82-09 FB Civil Penalty of $1,000	Transcript being reviewed.
McINNIS ENT.	06/17/83	06/21/83		Hrngs	52-SS/SW-NWR-83-47 SS/SW Civil Penalty of $500.	To be scheduled.
~~CRAWFORD, Raymond, M.~~	~~09/15/83~~	~~09/16/83~~	~~08/01/84~~	~~Prtys~~	~~54-AQOB-NWR-83-63 OB Civil Penalty of $2000~~	No appeal to EQC. Case closed.
MID-OREGON CRUSHING	09/19/83	09/27/83	10/02/84	Prtys	55-AQ-CR-83-74 AQ Civil Penalty of $4500	Hearing scheduled.

CONTES.T

Oct. 1, 1984

September 1984

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
McINNIS ENTERPRISES, LTD., et al.	09/20/83 10/25/83	09/22/83 10/26/83		Hrngs/ Prtys	56-WQ-NWR-83-79 WQ Civil Penalty of $14,500, and 59-SS-NWR-83-33290P-5 SS license revocation.	Scheduled hearing deferred to follow circuit court proceedings. Discovery continuing.
WARRENTON, City of	8/18/83	10/05/83		Prtys	57-SW-NWR-PMT-120 SW Permit Appeal	Settlement action.
CLEARWATER IND., Inc.	10/11/83	10/17/83		Hrngs	58-SS-NWR-83-82 SS Civil Penalty of $1000	To be scheduled.
WILLIS, David T., Jr.	01/05/84	01/18/84	08/28/84	Prtys	01-AQOB-NWR-83-102 OB Civil Penalty of $200	Hearings Officer's Decision sustaining penalty issued on September 7, 1984.
CLEARWATER IND., Inc.	01/13/84	01/18/84		Hrngs	02-SS-NWR-83-103 SS Civil Penalty of $500	To be scheduled.
HARPER, Robert W.	03/13/84	03/21/84		Prtys	03-AQ-FB-83-23 FB Civil Penalty of $1,000	Department requested without objection from Respondent that case be heard after October 1.
KUENZI, Lee A.	03/17/84	03/28/84		Prtys	04-AQ-FB-83-01 FB Civil Penalty of $500	Department requested without objection from Respondent that case be heard after October 1.
MALPASS, David C.	03/26/84	03/28/84		Prtys	05-AQ-FB-83-14 FB Civil Penalty of $500	Preliminary issues.

CONTES.T

Oct. 16, 1984

September 1984

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
LOE, Roger E.	03/27/84	03/28/84		Prtys	06-AQ-FB-83-15 FB Civil Penalty of $750	Department requested without objection from Respondent that case be heard after October 1.
SIMMONS, Wayne	03/27/84	04/05/84		Prtys	07-AQ-FB-83-20 FB Civil Penalty of $300	Preliminary issues.
COON, Mike	03/29/84	04/05/84		Prtys	08-AQ-FB-83-19 FB Civil Penalty of $750	Preliminary issues.
BIELENBERG, David	03/28/84	04/05/84		Prtys	09-AQ-FB-83-04 FB Civil Penalty of $300	Department requested without objection from Respondent that case be heard after October 1.
BRONSON, Robert W.	03/28/84	04/05/84		Prtys	10-AQ-FB-83-16 FB Civil Penalty of $500	Preliminary issues.
NEWTON, Robert	03/30/84	04/05/84		Prtys	11-AQ-FB-83-13 FB Civil Penalty of $500	Preliminary issues.
KAYNER, Kurt	04/03/84	04/05/84		Prtys	12-AQ-FB-83-12 FB Civil Penalty of $500	Department requested without objection from Respondent that case be heard after October 1.
BUYSERIE, Gary	03/26/84	04/05/84	09/25/84	Prtys	13-AQ-FB-83-21 FB Civil Penalty of $300	September 25, 1984 hearing postponed for completion of settlement action.

CONTES.T

Oct. 1, 1984

September 1984

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
BUYSERIE, Gary	03/26/84	04/05/84	09/25/84	Prtys	14-AQ-FB-83-22 FB Civil Penalty of $750	September 25, 1984 hearing postponed for completion of settlement action.
GORACKE, Jeffrey dba/Goracke Bros.	04/10/84	04/12/84		Prtys	15-AQ-FB-83-22 FB Civil Penalty of $500	Department requested without objection from Respondent that case be heard after October 1.
DOERFLER FARMS	04/30/84	05/08/84		Prtys	16-AQ-FB-83-11 FB Civil Penalty of $500	Department requested without objection from Respondent that case be heard after October 1.
TRANSCO Industries, Inc.	06/05/84	06/12/84		Prtys	17-HW-NWR-84-45 HW Civil Penalty of $2,500	Preliminary issues.
TRANSCO Industries, Inc.	06/05/84			Prtys	18-HW-NWR-84-46 HW Compliance Order	Preliminary issues.
INTERNATIONAL PAPER CO.	06/12/84	06/12/84		Prtys	19-WQ-SWR-84-29 WQ Civil Penalty of $7,450	Preliminary issues.
VANDERVELDE, Roy	06/12/84	06/12/84		Prtys	20-WQ-WVR-84-01 WQ Civil Penalty of $2,500	Preliminary issues.
~~CLINTON, Carl~~	~~07/03/84~~		~~07/09/84~~		~~21-NC-NWR-84 Noise Variance Request~~	Hearings Officer's decision not appealed to EQC. Case closed 8/13/84.

September 1984

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WESTERN PACIFIC LEASING CORP., dba/Killingsworth Fast Disposal	06/01/84	07/23/84		Prtys	22-SW-NWR-84 Solid Waste Permit Modification	Preliminary issues.
NORTHWEST BASIC INDUSTRIES, dba/Bristol Silica and Limestone Co.	08/21/84	08/28/84		Prtys	23-AQ-SWR-84-82 AQ Civil Penalty of $1,000	Discovery.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

VARIANCE LOG

October 1984

Source and Permit No.	Location	Variance From (Rule)	Date Granted	Date Expires	Status
AIR QUALITY					
Mt. Mazama Plywood (10-0022)	Sutherlin	Veneer Dryer Standards OAR 340-25-315(1) (b)	7/17/81 4/16/82 4/3/83 7/8/83	5/1/84	Plant has been taken over by the bank and is now shut down.
Champion International (22-5195)	Lebanon	Veneer Dryer Standards OAR 340-25-315(1) (b)	8/19/83	9/1/84	In compliance
FMC (26-2944)	Portland	VOC Standards OAR 340-22-170	10/15/82	12/31/86	On schedule
Carnation Can (34-2677)	Hillsboro	VOC Standards OAR 340-22-170(4) (a) (D)	10/15/82	12/31/85	On schedule
Rancho-Rajneesh Funeral Pyre (16-0021)	Jefferson County	Opacity Standards OAR 340-21-025(b)	12/3/82	Permanent	
Winter Products (26-3033)	Portland	VOC Standards OAR 340-22-170(4) (j)	1/14/83	1/1/87	On schedule
Leading Plywood Corp. (02-2479)	Corvallis	Veneer Dryer OAR 340-25-315(1) (b)	10/7/83	10/1/84	Company is requesting an extension of its variance.
These variances were a class variance for industrial painting operations granted at the 11/18/83 EQC.					
Amcoat (26-3036)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Bingham-Willamette Co. (26-2749)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule

MAR.22 (4/84)
ME40 (1)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

VARIANCE LOG

October 1984

Source and Permit No.	Location	Variance From (Rule)	Date Granted	Date Expires	Status
AIR QUALITY (cont.)					
Brod & McClung-Pace Co. (03-2680)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Cascade Corp. (26-3038)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Hearth Craft, Inc. (26-3037)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Lear Siegler-Peerless Div. (34-2670)	Tualatin	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Meyers Drum Co. (26-3035)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Northwest Marine Iron Works (26-3101)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Oregon Steel Mills (26-1865)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Pacific Fireplace Furnishings (34-2676)	Tualatin	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Portland Willamette Co. (26-2435)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Portland Wire & Iron Works (26-2486)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule

MAR.22 (4/84)
ME40 (2)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

VARIANCE LOG

October 1984

Source and Permit No.	Location	Variance From (Rule)	Date Granted	Date Expires	Status
AIR QUALITY (cont.)					
Reimann and McKenny (26-2572)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Tektronix, Inc. (34-2638)	Beaverton	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Union Pacific (26-3098)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Wade Manufacturing (34-2667)	Tualatin	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule
Wagner Mining Equipment (26-3039)	Portland	VOC Standards OAR 340-22-170	11/18/83	7/1/85	On schedule

MAR.22 (4/84)
ME40 (3)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

VARIANCE LOG

October 1984

Source and Permit No.	Location	Variance From (Rule)	Date Granted	Date Expires	Status
NOISE					
Murphy Veneer	Myrtle Point	Log loader noise OAR 340-35-035	2/24/84	7/1/87	On schedule.
Med Co.	Rogue River	Noise emission standards OAR 340-35-035	8/27/82	12/31/83	Extension request received and additional time granted to measure results of compliance efforts.

MAR.22 (4/84)
ME40 (4)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

VARIANCE LOG

October 1984

Source and Permit No.	Location	Variance From (Rule)	Date Granted	Date Expires	Status
SOLID WASTE DISPOSAL SITES					
~~Cannon Beach (23)~~	~~Clatsop County~~	~~Open Burning Standards OAR 340-61-040(2)~~	~~10/7/83~~	~~11/1/84~~	Transfer stations in planning stages. A variance request for 6-month extension on September EQC Agenda
~~Seaside (22)~~	~~Clatsop County~~	~~Open Burning Standards OAR 340-61-040(2)~~	~~10/7/83~~	~~11/1/84~~	Transfer stations in planning stages. A variance request for 6-month extension on September EQC Agenda
Powers (160)	Coos County	Open Burning Standards OAR 340-61-040(2)	5/18/84	5/29/86	City is upgrading the system
Adel (4)	Lake County	Open Burning Standards OAR 340-61-040(2)	9/21/79	7/1/85	On schedule
Christmas Valley (9)	Lake County	Open Burning Standards OAR 340-61-040(2)	9/21/79	7/1/85	On schedule
Fort Rock (276)	Lake County	Open Burning Standards OAR 340-61-040(2)	9/21/79	7/1/85	On schedule
Paisley (178)	Lake County	Open Burning Standards OAR 340-61-040(2)	9/21/79	7/1/85	On schedule
Plush (10)	Lake County	Open Burning Standards OAR 340-61-040(2)	9/21/79	7/1/85	On schedule
Silver Lake (184)	Lake County	Open Burning Standards OAR 340-61-040(2)	9/21/79	7/1/85	On schedule
Summer Lake (183)	Lake County	Open Burning Standards OAR 340-61-040(2)	9/21/79	7/1/85	On schedule

MAR.22 (4/84)
ME40 (5)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

VARIANCE LOG

October 1984

Source and Permit No.	Location	Variance From (Rule)	Date Granted	Date Expires	Status
SOLID WASTE DISPOSAL SITES (cont.)					
Mitchell (175)	Wheeler County	Open Burning Standards OAR 340-61-040(2)	4/24/81	7/1/86	On schedule
Butte Falls (205)	Jackson County	Open Burning Standards OAR 340-61-040(2)	7/16/82	7/1/85	On schedule

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

VARIANCE LOG

October 1984

WATER QUALITY STIPULATED CONSENT ORDERS

The water quality program supplements its permit program by use of stipulated consent orders establishing time schedules for construction of waste treatment facilities. The following consent orders are in force.

Source and Permit No.	Location	Purpose	Date Granted	Date Expires	Status
Happy Valley	Clackamas Co.	Establish time schedule	2/17/78	None	Compliance schedule being negotiated
Silverton (3146-J)	Marion Co.	Establish time schedule	1/14/83	4/1/85	On schedule
Tangent	Linn Co.	Establish time schedule	11/1/83	1/1/86	Required sewage system not on schedule. System size dependent on land-use determinations.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

VARIANCE LOG

October 1984

AIR QUALITY NEGOTIATED COMPLIANCE SCHEDULES

Source and Permit No.	Location	Schedule
~~Hyster Co. (26-3032)~~	~~Portland~~	The plant is now closed.
Boise Cascade (05-1849)	St. Helens	In compliance.
Hoff-Ronde Lumber	Union	Install particulate controls by May 1, 1984 and demonstrate compliance by June 1, 1984. Source test not yet submitted.
Pendleton Flour Mills	Pendleton	Control dust problem by August 7, 1985.
DAW Forest Products	Bend	Modify wood waste handling system and test boilers by October 1, 1984. Test data not yet submitted.

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item C, November 2, 1984, EQC Meeting

TAX CREDIT APPLICATIONS

Director's Recommendation:

It is recommended that the Commission approve tax credit applications for facilities under the old tax credit law.

Appl. No.	Applicant	Facility
T-1695	National Fruit Canning Company Inc.	Solids removal and waste water irrigation disposal system
T-1700	Omark Properties, Inc.	Heavy Metal pretreatment system
T-1701	Champion International Corp.	Waste water treatment system
T-1704	Freres Lumber Co. Inc.	Paving of log scaling and deck area
T-1705	Cascade Steel Rolling Mills Inc.	Baghouse installation
T-1706	Cascade Steel Rolling Mills Inc.	Direct shell evacuation system furnace pressure controls, duct work to baghouse

Fred Hansen

SChew
229-6484
10/9/84
Attachments

Purposed September 1984 Totals:

Air Quality	2,126,771
Water Quality	1,607,673
Solid/Hazardous Waste	270,989
Noise	-0-
	4,005,433

1984 Calendar Year Totals:

Air Quality	$11,528,847
Water Quality	1,657,060
Solid/Hazardous Waste	635,114
Noise	-0-
	13,821,021

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

National Fruit Canning Company, Inc.
2371 Eastlake Ave. East
Seattle, WA 98109

The applicant owns and operates a freezing and packaging facility for strawberries, green peas, green beans, and corn, at Albany.

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

2. Description of Claimed Facility

The facility described in this application is a solids removal and waste water irrigation disposal system consisting of:

a. A Dorr-Oliver solids removal screening system;
b. A pump station with 3 centrifugal pumps,
c. 18,500 feet of 8 inch pipe,
d. An irrigation pump station (3000 gal. wet well and 2 pumps),
e. A pressure filter,
f. A 400,000 gallon concrete-lined storage pond,
g. 120 acres of land, and
h. An irrigation system consisting of a buried header, two 1000 foot wheel line sprinkler systems, and a runoff collection and return system.

Request for Preliminary Certification for Tax Credit was made February 12, 1982, and approved March 25, 1982. Construction was initiated on the claimed facility June 1982, completed September 1982, and the facility was placed into operation September 1982.

Facility Cost: $780,353.60 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to installation of the claimed facility, all waste water was discharged to the City of Albany sanitary sewer system. Since the process is seasonal, the discharge caused periodic overloading of the sewage treatment plant which resulted in upset conditions. Due to the overloading, the Department requested the applicant to install a land irrigation system and eliminate the discharge to Albany's sanitary sewer. The new system is adequate to handle the volume of waste water sewered by the applicant and is designed to prevent surface water and groundwater contamination. National Fruit Canning Company contracts with a farmer to cut the grass and maintain the agricultural aspects of the site. The farmer utilizes the grass crop, but pays no money to National Fruit Canning Company for this crop. There is no return on investment from this facility.

4. Summation

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

b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).

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

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

e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $780,353.60 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1695.

L. D. Patterson:l
WL3598
(503) 229-5374
August 23, 1984

Application No. T-1700

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Omark Properties, Inc.
Waste Treatment Department
4909 S.E. International Way
Milwaukie, OR 97222

The applicant owns and operates a saw chain, saw bar, file and saw accessory manufacturing facility at Milwaukie.

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

2. Description of Claimed Facility

The facility described in this application is an upgrade of an existing heavy metal pretreatment system consisting of:

a. Steel and Polypropylene settling and chemical feed tanks,
b. A Parkson sand filter and surge reservoir,
c. Flow totalizer and strip chart,
d. Miscellaneous piping and concrete work.

Request for Preliminary Certification for Tax Credit was made February 17, 1982, and approved March 12, 1982. Construction was initiated on the claimed facility September 1, 1982, completed July 1, 1983, and the facility was placed into operation July 1, 1983.

Facility Cost: $149,418.70 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to installation of the claimed equipment, Omark Properties removed chrome and zinc from their effluent by chemical precipitation and gravity separation. This system could not consistently comply with the pretreatment requirements of the Clackamas County Service District. The new equipment has greatly improved the removal efficiency of heavy metals by passing the chemically treated water through a sand filter prior to discharging to the sanitary sewer. The system is now continuously complying with the Clackamas County pretreatment requirements. There is no return on investment from this facility.

4. Summation

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

b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).

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

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

e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $149,418.70 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1700.

Larry D. Patterson:l
WL3670
(503) 229-5374
September 11, 1984

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Champion International Corporation
Champion Building Products - Dee
P.O. Box 10228
Eugene, OR 97440

The applicant owns and operates a wet process hardboard manufacturing facility at Dee.

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

2. Description of Claimed Facility

The facility described in this application is a waste water treatment system consisting of:

a) A 42' x 90' building enclosure.
b) A Tenco-Hydro dissolved air flotation unit.
c) Chemical feed and mixing tanks.
d) A Tait-Andritz sludge dewatering press.
e) Pumps, piping, associated equipment, and instrumentation.

Request for Preliminary Certification for Tax Credit was made July 13, 1978, and approved August 22, 1978. Construction was initiated on the claimed facility June 1979, completed May 1980, and the facility was placed into operation December 1980.

Facility Cost: $677,902 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to December 1976, waste waters from the hardboard process received secondary biological treatment followed by settling in an earthen pond to remove the biological solids. A flood in December destroyed the final settling pond and a solids drying pond. Since land was not available to rebuild this system, Champion decided to install the dissolved air flotation unit to comply with the NPDES permit requirements. After biological treatment, the dissolved air flotation unit removes about 60 percent and 70 percent of the remaining BOD and suspended solids, respectively. Waste water from the system is discharged to the Hood River in compliance with the NPDES permit. Solids are dewatered in a sludge press and landfilled. There is no return on investment from this facility.

4. Summation

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

b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).

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

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

e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $677,902 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1701.

LDP:t
WT251
(503) 229-5374
August 29, 1984

Application No. T-1704

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Freres Lumber Co. Inc.
P.O. Box 312
Lyons, OR 97358

The applicant owns and operates a log peeling and veneer producing plant at Lyons.

Application was made for tax credit for a solid waste pollution control facility.

2. Description of Claimed Facility

The facility described in this application consists of paving of a log scaling and log deck area of the mill. The total area paved was 3.53 acres.

Request for Preliminary Certification for Tax Credit was made on June 9, 1983, and approved on September 20, 1983.

Construction was initiated on the claimed facility on June 30, 1983 completed on July 9, 1983, and the facility was placed into operation on November 30, 1983.

Facility Cost: $270,989 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to paving of the log yard, the company landfilled 2,500 tons of wood waste annually. New landfill sites are not available in the area and the existing site was at near capacity. The attached preliminary certification review report fully explains the difficulties encountered by the mill owners.

4. Summation

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

b. As required by ORS 468.165, the facility was under construction on or after January 1, 1973, and

(1) The substantial purpose of the facility is to utilize material that would otherwise be solid waste by burning; through the use of materials for their heat content;

(2) The end product of the utilization is a usable source of power; and

(3) The Oregon law regulating solid waste imposes standards at least substantially equivalent to the federal law.

c. In addition, the Commission finds that the facility is necessary to assist in solving a severe or unusual solid waste problem; the Department has recommended the facility as the most efficient method of solid waste control.

d. The facility is necessary to satisfy the intents and purposes of ORS Chapter 459, and the rules adopted under that chapter.

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $270,989 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1704.

R. L. Brown:b
(503) 229-5157
October 8, 1984
Attachment
SB3845

JEBorden cc: SW Division Sept. 20, 1983

DSWulffenstein

SW-Freres Lumber Company ← file
Linn County; SW-83-005
REVIEW REPORT

Background

Freres Lumber Co. owns and operates a veneer operation at Lyons (T9S; R2E; Section 19; W.M.). Raw logs are brought in for processing at the mill. The logs are decked for use during the winter in addition to the logs put directly into veneer.

In the process of decking, handling and scaling logs, bark and other wood debris is knocked from the logs. This material has a considerable economic value for use as fuel, and as much as possible is salvaged for that purpose in the company's hogged fuel boiler and for sale. However, substantial amounts of this material are unsuitable for use as fuel because it is contaminated by mud, dirt and other material during the decking, handling and scaling operation.

The standard method of handling the contaminated wood waste is to landfill the material. Over the past 40 years, lumber companies in the Lyons/Mill City area have indiscriminately landfilled wood waste. This practice has resulted in contamination of ground water to the point where the City of Lyons installed a drinking water distribution system.

With the recent concern toward ground water contamination, the Department has requested area companies to apply for permits for their woodwaste sites. Of specific concern is the case of Freres Lumber. In January, 1983, Freres requested permits for several sites on their mill property. In addition, they requested authorization to establish a woodwaste landfill in a mined out gravel pit. Because of the nature of the geology in the area and the concern over ground water contamination, Bill Bartholomew, Water Resources Department, was brought in to evaluate the proposed disposal sites. His attached report indicated that the entire Lyons area is located on an alluvial plain with shallow ground water tables (subject to localized ponding and some flooding). The shallow water table in this area is considered a good drinking water source, but is subject to contamination from landfills and other human activities (i.e., septic tanks, etc.). In addition, the underlying bedrock formations are of poor water bearing characteristics, limiting the development of water wells should the upper ground water be contaminated.

Based on this and other information and concerns, Bart recommended against allowing the woodwaste site in the gravel pit. The other sites requested

would not normally be suitable either. However, past practices of filling (in one case, the Department allowed the filling of an old log pond with woodwaste under Water Quality Tax Credit) have created "grandfather" landfills.

Since the City of Lyons currently relies on a community water system and the existing woodwaste disposal sites on the mill property were a known quantity, Bart and I felt that allowing their continued use would be preferable to establishing additional sites elsewhere (assuming there were suitable sites available) to possibly cause problems.

A draft permit has been issued covering three areas on the mill site itself. These areas have a limited capacity to handle the mill's wastes and Freres has requested preliminary certification for tax credit for a solid waste reduction facility in the form of paving the log scaling area.

It is the feeling that paving this area will provide the most reduction in wastes produced (rather than pave the decking areas). Recent changes in log scaling requirements resulted in logs being individually scaled. This requires each log to be unloaded and placed on the ground being moved several times by rolling with a larged rubber-tired loader. This results in large amounts of woodwaste being generated.

The Company submitted a Notice of Intent to Construct and Request for Preliminary Certification on June 13, 1983. Additional information was requested July 7, 1983, and that information was received August 10, 1983.

This review is based on the following:

1. Notice of Intent to Construct (SW-83-005) dated June 9, 1983.
2. Several meetings with the Company reviewing disposal practices.
3. Bart's review of several proposed sites in the area.
4. Our denial of a proposed site due to ground water considerations.
5. August 23, 1983 meeting between Freres; Bob Brown of SW Div.; and myself to discuss the proposed tax credit elibility.
6. Review of the limited capacity of the permitted landfill sites.

Evaluation

Since January 1, 1981, the EQC has had a policy of not granting tax credit relief for paving of log yards. The policy does, however, allow for the Department to recommend the facility as the most environmentally sound or efficient method of solid waste control.

In the case of the Freres request, the lack of acceptable or suitable disposal sites within an economic transport distance; the need to protect further degradation of the shallow ground water table in the area; and the need to extend the life of permitted disposal sites appear to meet the above criteria. Bob Brown agrees with this assessment.

Visual observations of waste material generated prior to and after completion of the paving project dramatically demonstrate the Company's claim that virtually all bark and woodwaste generated on the paved scaling site is recovered and usable. While previously generated material is virtually useless due to contamination with mud and rock, the recovered woodwaste is a very salable item for use as a fuel.

Recommendation

I recommend that Preliminary Certification for Solid Waste Tax Credit be granted, and that we support the Solid Waste Division in Final Certification based on the reduction of landfilled woodwaste.

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wr

Attachments:
1. Freres letter detailing why paving is needed.
2. Statement covering cost of construction.
3. Water Resources Dept. evaluation report.

Application No. T-1705

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Cascade Steel Rolling Mills, Inc.
3200 N. Highway 99W
McMinnville, Oregon 97128

The applicant owns and operates a scrap steel melting and steel rolling mill producing reinforcing bar, merchant bar, and steel fence posts at McMinnville, Oregon.

Application was made on July 15, 1974 for tax credit for an air pollution control facility.

2. Description of Claimed Facility

The facility described in this application consists of a baghouse installation for control of furnace emissions.

Notice of Intent to Construct was made on approximately July 15, 1974, which was the date for submittal of plans and specifications of the claimed facility, and approved on September 11, 1974. Preliminary Certification for Tax Credit is not required.

Construction was initiated on the claimed facility in July 1974, completed in February 1975, and the facility was placed into operation in February 1975.

Facility Cost: $1,761,103.98 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility consisting of a 500,000 cfm baghouse, (2) 800 hp Westinghouse Model 1615H-36 motors, (2) double inlet Buffalo Forge fans, roof canopy, duct work and controls were required by the Mid Willamette Valley Air Pollution Authority (MWVAPA) to control arc furnace emissions. This claimed facility was connected to existing side draft furnace hoods which were part of an undersized 100,000 cfm baghouse installation. The remainder of the undersized system was replaced by the new system. The old equipment had never been certified for tax credit.

The claimed facility was initially inspected by MWVAPA and was found to be operating in compliance with existing regulations and permit conditions in effect at that time. Department evaluation has found the baghouse facility capable of controlling the furnace emissions.

All material collected is classified as hazardous waste and is transported to Arlington, Oregon for disposal. Total operating expenses during the first year of operation were $175,000 and are broken down as follows:

Labor	$ 23,000
Utilities	100,000
Maintenance	33,000
Property Tax	18,000
Insurance	1,000
Total	$175,000

Since there is no return on the investment in the air pollution control facility, 80% or more of the claimed facility cost is allocable to pollution control.

The application was received on September 4, 1984, and the application was considered complete on September 4, 1984.

4. Summation

a. The facility was constructed under a certificate of approval to construct issued pursuant to ORS 468.175.

b. The facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).

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

d. The facility is necessary to satisfy the intents and purposes of ORS 468.155(1) and (2).

e. The portion of the facility cost that is properly allocable to pollution control is 80% or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $1,761,103.98 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1706.

W.J. FULLER:a
(503) 229-5749
October 5, 1984
AA4706

Application No. T-1706

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Cascade Steel Rolling Mills, Inc.
3200 N. Highway 99W
McMinnville, Oregon 97128

The applicant owns and operates a scrap steel melting and steel rolling mill producing reinforcing bar, merchant bar, and steel fence posts at McMinnville, Oregon.

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

2. Description of Claimed Facility

The facility described in this application consists of a 4th hole (direct shell evacuation) system with water cooled duct work, furnace pressure controls, and necessary duct work to connect the existing baghouse.

Request for Preliminary Certification for Tax Credit was made on December 3, 1980, and approved on January 13, 1981.

Construction was initiated on the claimed facility on December 15, 1980, completed in April 1981, and the facility was placed into operation in April 1981.

Facility Cost: $365,668.74 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility, an enhancement to the arc furnace fume collection system, maintains neutral to negative pressure on the furnace to reduce fugitive emissions. The claimed facility replaced the side draft hoods, which were required to be open during the charge and pour cycles, and which were the primary source of the fugitive emissions. The replaced side draft hoods, which were not certified for tax credit, were scrapped. The existing arc furnace fume collection system, which was marginal, coupled with increasing production and the attendant increases in power to meet increased production levels, resulted in significant fugitive emissions and opacity violations. As a result of the violations, the Department required corrective action.

The claimed facility has been inspected by Department personnel and has been found to be operating in compliance with Department regulations and permit conditions. It should be noted that prior to installation of the claimed facility, the company operated under a permit which allowed 20% opacity for no more than 3 minutes in any one hour. The system with the enhancements currently operate under a permit which only allows 3% opacity for no more than 3 minutes in any one hour.

All material collected is classified as hazardous waste and is transported to Arlington, Oregon for disposal. The additional operating expenses resulting from installation of the claimed facility was estimated by Cascade Steel Rolling Mills to be between $10,000 and $15,000 maintenance.

Since there is no return on the investment in the facility, 80% or more of the claimed facility cost is allowable to pollution control.

The application was received on September 4, 1984, additional information was received on September 4, 1984, and the application was considered complete on September 4, 1984.

4. Summation

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

b. The facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).

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

d. The facility is necessary to satisfy the intents and purposes of ORS 468.155(1) and (2).

e. The portion of the facility cost that is properly allocable to pollution control is 80% or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $365,668.74 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1705.

W.J.Fuller:s
(503) 229-5749
October 8, 1984
AS644

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. D, November 2, 1984, EQC Meeting

Request to Hold a Hearing on Proposed Adoption of Hazardous Waste Generator Fees, OAR 340-102-060

Background

In anticipation of declining federal fund support for the hazardous waste program, the Department sought authority from the 1983 Legislature to assess hazardous waste generator fees. Although the authority was granted (see ORS 459.610), a budget note limited its use to funding adequate staff to achieve authorization of the state program rather than expand into new program areas. Through June 30, 1984, adequate federal funds were available to maintain legislatively approved staff of 15.40 full time equivalents (FTE). Maintaining a staff of 14.90 FTE (a 0.5 FTE reduction in the area of public participation/public education) for the fiscal year that ends June 30, 1985, results in a projected deficit of $115,000 (see Figure 1).

Although Congress recently voted additional funding for state hazardous waste programs, restrictions are attached to these funds that make their availability to Oregon limited at best; if available, they probably cannot be used to maintain existing program activities. Furthermore, for the past

two years Alaska did not utilize its base federal grant funds. Instead, Alaska's allotment was distributed as supplementary funding to the other EPA - Region 10 states, including Oregon. This year, Alaska is applying for its full allocation; hence, Region 10 will have no supplementary funds to reprogram.

Also complicating Oregon's dilemma is a recent EPA - Region 10 Audit and Capability Assessment that identifies a lack of resources and expertise to properly carry out the permitting activities required of an equivalent state hazardous waste program. EPA estimates at least two additional persons are needed to handle the projected permitting workload. They also expect to see expertise developed in the area of hydrogeology.

In planning for the hazardous waste permitting workload, the Department expected one person to handle five to ten permit applications per year, based on its experience with major new facilities in the Air or Water

Quality permitting programs. EPA, on the other hand, uses the following workload measures:

Hazardous Waste Permit Type	Workload Measure
Disposal sites, surface impoundments, waste piles	2.3 person-years per permit
Incinerators	1.6 person-years per permit
Storage	0.6 person-years per permit

The reason for the apparent difference is that, once issued, a federal hazardous waste permit operates in lieu of the administrative rules upon which it was based (permit-as-a-shield). To insure the permit can operate in lieu of the rules, a very detailed and comprehensive permit application is needed. To verify its completeness, a very thorough review of an application is performed by EPA. Even though EPA does not expect states to adopt the "permit-as-a-shield" concept, they are expecting states to still require comprehensive applications and to complete thorough reviews as if EPA were doing the work. Consequently, just to implement an equivalent state program requires more staff than DEQ budgeted for.

Additionally, groundwater protection is probably the single most important element of EPA's hazardous waste program. Any facility potentially impacting groundwater must install a comprehensive groundwater monitoring program. States are expected to have specific hydrogeologic expertise to evaluate any proposed groundwater monitoring program submitted as part of a permit application. The Water Resources Department is not adequately staffed to handle this major new workload as well as ongoing Department requests for technical assistance and support.

Therefore, if the Department is to continue to actively pursue Final Authorization, the Department needs additional staff to implement an equivalent state program in the area of permitting. Because of timing, the Department will be seeking Emergency Board approval on November 9, 1984, of an additional two (2) FTE for the hazardous waste program, effective January 1, 1985. The E-Board action will be entered into the November 19, 1984 public hearing record and may influence the final proposed fee schedule.

Anticipating Emergency Board approval, an additional $50,000 is needed for the remainder of this biennium to hire the staff necessary to properly carry out proposed permitting activities. Added to the $115,000 previously identified means the hazardous waste generator fees need to raise $165,000 per year. Public hearings on these proposed fees are scheduled for November 19, 1984, in Portland and Eugene. The Commission is authorized to adopt such rules by ORS Chapter 468, including 468.020; 459, including 459.440 and 459.610; and 183. A Statement of Need for Rulemaking is Attachment II to this report.

Alternatives and Evaluation

In early 1982, the Department worked with a task force on the issue of hazardous waste generator fees. Several alternative fee schedules were considered:

1. A per-ton charge at disposal facilities.

2. A flat fee for each registered generator.

3. A flat fee plus a variable fee based on waste generation.

4. A variable fee based on waste generation.

Even though alternative 1 would be the easiest to administer, the task force felt it inappropriate to pass the Department's generator compliance and enforcement program costs through to out-of-state generators (about 80% of the waste coming to Arlington is from out-of-state). There was also concern that a fairly large per-ton charge would place the disposal site at a competitive disadvantage with other similar sites, reducing revenue that would go toward proper management. The disadvantage of alternative 2 is that on a per-unit of waste produced basis, small companies would be paying more for the same services that a larger generator would receive. As with alternative 2, alternative 3 would still impact small businesses, but not to the same extent. Alternative 4, on the other hand, minimizes the impact on small businesses while assessing the program costs on the basis of waste generation. After all things were considered, the task force recommended that any hazardous waste generator fee be based solely on the amount of hazardous waste generated (see Task Force Recommendation - Attachment I). Based on 1983 waste generation rates, the following fee schedule would raise the estimated $165,000 revenue needed to maintain current program and expand staff to meet minimum EPA expectations for Final Authorization:

Generation Rate (cu.ft./year)	Fee (dollars)	Number of Generators*	Estimated Revenue (dollars)
<35	--	--	--
35-99	$ 150	28	$ 4,200
100-499	375	41	15,375
500-999	1500	21	31,500
1,000-4,999	2250	25	56,250
5,000-9,999	5250	6	31,500
>10,000	7500	6	45,000
		Total	$183,825

* Preliminary 1983 data

Since the added staff will only be funded for a six-month period (January through July), an adjustment to this fee schedule, or the treatment, storage and disposal fee schedule adopted May 18, 1984, will be needed before July 1, 1985, to carry the positions on a full-time permanent basis, if these positions are authorized as a part of the Department's FY 85-87

budget. The Department proposes coming to you in March-April 1985 to recommend a long-term funding approach.

Summation

1. The Department has determined that to maintain the hazardous waste program at its current staffing level of 14.90 FTE, a deficit of $115,000 would accrue by June 30, 1985. This deficit is principally due to less federal fund support for the base program.

2. The Department and EPA have also determined that to operate an equivalent hazardous waste program, 2.0 additional FTE are needed to properly handle the permitting activities. Expertise in the area of hydrogeology is also needed to evaluate those facilities conducting groundwater monitoring programs.

3. Authority exists to establish hazardous waste generator fees to maintain current staff.

4. Authority is being sought from the Emergency Board to use hazardous waste generator fees to add staff to operate an equivalent program in the area of hazardous waste permitting.

5. Hazardous waste generator fees and/or treatment, storage and disposal fees will have to be increased to support the added staff on a permanent basis, if the positions are authorized by the Legislature.

6. The Department has drafted a proposed fee schedule and requests authority to hold public hearings on November 19, 1984.

7. The Commission is authorized to adopt such rules by ORS Chapter 468, including 468.020; 459, including 459.440 and 459.610; and 183.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission authorize the Department to hold hearings on a proposed hazardous waste generator fee schedule (OAR 340-102-060).

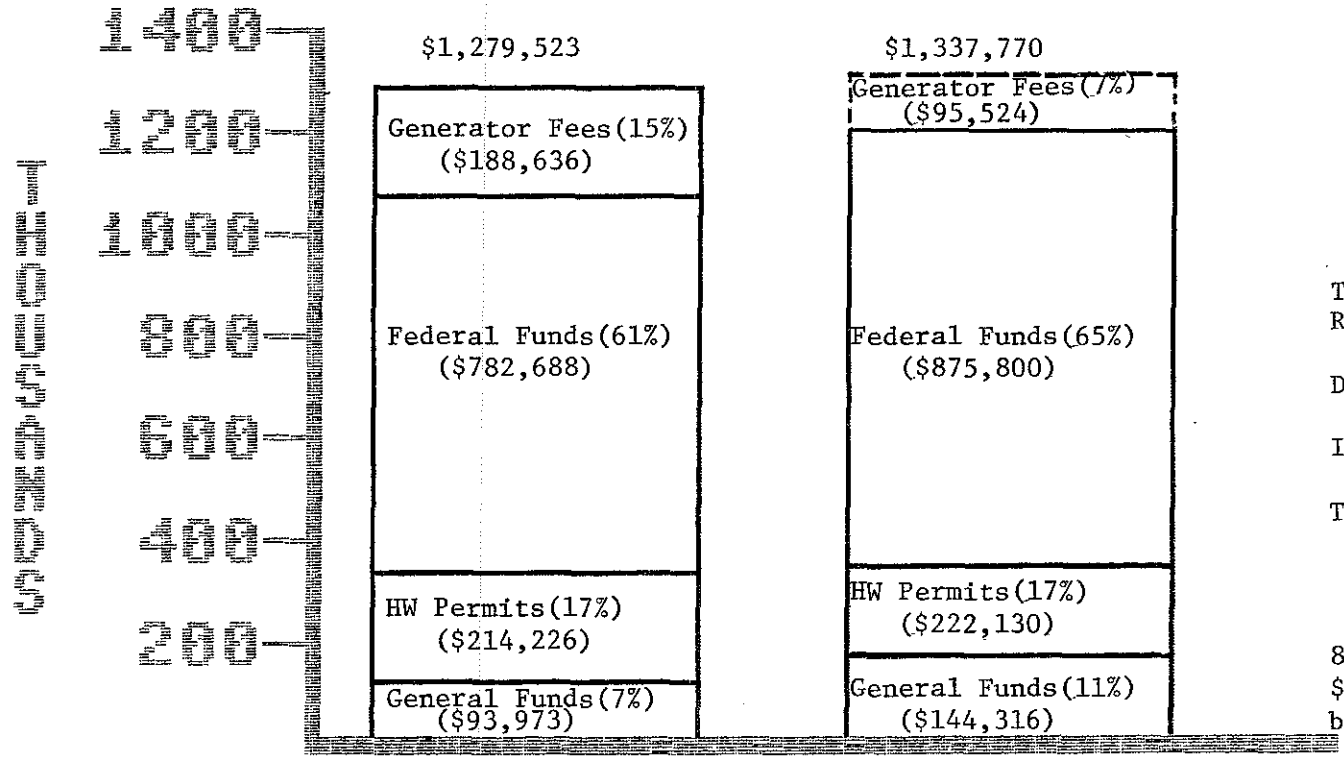
Fred Hansen

Attachments:
I. July 13, 1982 Task Force Resolution on Permit and Generator Fees
II. Statement of Need and Fiscal Impact
III. Hearing Notice
IV. Land Use Consistency Statement
V. Proposed Rule OAR 340-105-075

Richard P. Reiter:c
ZC1800
229-6434
October 17, 1984

FIGURE 1

DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE PROGRAM
1983-85 APPROVED BUDGET & ESTIMATED EXPENDITURE BY FUND*



TOTAL GENERATOR RESOURCES REQUIRED ARE:

DIRECT EXPENSES	$95,524
INDIRECT EXPENSES	$17,997
TOTAL EXPENSES	$113,521

83-85 General Fund includes $33,486 shift to correct a budget error between programs.

*exclusive of indirect cost assessments

Attachment I
Agenda Item No. D
11/2/84 EQC Meeting

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: DEQ Task Force DATE: July 13, 1982

FROM: Jack Johnston, VW&R
Tom Donaca, AOI
Roger Nelson, CSSI

SUBJECT: Permit and Generator Fees Financing a Portion of DEQ's Hazardous Waste Program

The Task Force has concluded that it is in the state's best interest to maintain a strong, viable state program (in lieu of a federal program run by EPA). In line with this conclusion, this subcommittee has reviewed the estimated financial needs of the DEQ to conduct such a program. We note at the outset that the estimated needs from other funds, due to anticipated reduction in federal and state funds, will tend to cause fees of some magnitude due primarily to the small number of generators and operators of storage, treatment, and disposal facilities (less than 250). If such estimated funds are necessary to carry on the Hazardous Waste Program, then the following financing recommendations are made:

1. Every effort shall be made to arrive at a more equitable balance between general, other, and federal funding of the hazardous waste program. Since October, 1979 (federal FY 80), a disproportionate share of federal funds have been used to implement this state program (supported 12.35 FTE during FY 82). Conversely, due to strains on state general funds, a disproportionate share of general (supported 1.0 FTE) funds have been used. Other funds in the form of an annual license fee at the state's only hazardous waste disposal site have supported 2.0 FTE.

2. Even in these very difficult financial times for the State of Oregon, the general fund support for the hazardous waste program should be increased by at least 3.0 FTE.

3. Constant efforts shall be made to run an efficient, cost-effective program. Cost saving ideas have been identified which could lead to very significant budget reductions as the Hazardous Waste Program matures in future years. A cost/benefit analysis should be completed so these ideas can be implemented.

4. Fees should be established on the basis of services rendered similar to Attachment 1, except that companies that hold multiple licenses (i.e., storage, treatment and/or disposal) shall only be charged one fee (that fee being the single highest fee from the storage, treatment or disposal schedule) plus a flat fee of $250

for each additional licensed activity. Further, storage, treatment, and disposal license fees shall not be so high as to drive these essential activities out of business. Other funding sources, including state general and federal funds should be used to fund the balance of the program.

5. As in air and water discharge permits, license fees shall be limited to the following uses:

   A. Issuance and renewal of licenses
   B. Inspections and environmental monitoring
   C. Compliance and enforcement activities, including manifest and other record reviews
   D. Administrative costs associated with A, B, and C above

6. A generator fee schedule shall be developed and limited to the following uses:

   A. Generator registration activities
   B. Inspections and environmental monitoring
   C. Compliance and enforcement activities, including manifest and other record reviews
   D. Administrative costs associated with A, B, and C above.

   NOTE: The Department shall make every effort to avoid multiple-counting of a waste stream when assessing the generation fee. For example, a generator sends waste solvent to a recycler. By definition, the recycler becomes a generator of that portion of the waste solvent not recoverable. Since the original generator has already paid a fee on generation, and the recycler will be paying a treatment site license fee, the Department should not charge another fee on the residue from the treatment process.

7. As with air and water discharge permits, license and generator fees shall be set by the EQC within guidelines established by statute and budgets adopted by the legislature.

RPR:b
ZB1079

HAZARDOUS WASTE FEE SCHEDULE

Disposal Site

	FY 84	FY 85
Direct service	65,560	70,150
Monitoring	12,735	13,626
Administration	21,854	23,383
Totals	100,149	107,159

Average 103,654/year

Storage & Treatment Sites

Treatment

Facility Size	Number of Facilities	Fee	Revenue
<25 gal/hr still cap or 50,000 gal/day other cap.	5 (est.)	250	1,250
25-200 gal/hr still cap or 50,000 to 500,000 gal/day other cap.	3	1,000	3,000
>200 gal/hr still cap. or >500,000 gal/day other cap.	2	2,500	5,000

Storage

Facility Size	Number of Facilities	Fee	Revenue
5-55 gal/drums or 250 gallons bulk	10 (est.)	250	2,500
5 to 250 - 55 gal/ drums or 250 to 10,000 gallons bulk	5	1,000	5,000
>250 - 55 gal/drums or >10,000 gallons bulk	1	2,500	2,500
	TOTAL (storage & treatment)		$19,250

Generators

Generation Rate (cubic feet)	Fee Dollars	1980 Data Number of Generators	1980 Data Revenue (Dollars)	1981 Data Number of Generators	1981 Data Revenue (Dollars)
<35	-	6	-	10	-
35-99	100	8	800	14	1,400
100-499	250	17	4,250	33	8,250
500-999	1,000	12	12,000	18	18,000
1,000-4,999	1,500	20	30,000	15	22,500
5,000-9,999	3,500	6	21,000	7	24,500
>10,000	5,000	8	40,000	12	60,000
			$108,050		$134,650
				Average	$121,350

TOTALS

Disposal site fee	$103,654
Storage & Treatment Site Fees	19,250
Generator Fees	121,350
	$244,254

Attachment II
Agenda Item No. D
11/2/84 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of the Adoption of Hazardous Waste Management Facility Permit Fees (OAR 340-105-070)	))))	Statutory Authority, Statement of Need, Principal Documents Relied Upon, and Statement of Fiscal Impact

1. Citation of Statutory Authority

ORS Chapter 468, including 468.020; 459, including 459.440 and 459.610; and 183, which allow the Environmental Quality Commission to adopt rules pertaining to hazardous waste management. Specifically, ORS 459.610 authorizes the assessment of generator fees to carry on a hazardous waste monitoring, inspection and surveillance program and related administration costs.

2. Statement of Need

In order to maintain its current hazardous waste program, the Department of Environmental Quality needs to raise an additional $115,000 for FY 84 (July 1, 1984 to June 30, 1985). In order to upgrade its current program to EPA expectations for Final Authorization, the Department needs to raise an additional $50,000 to add 2 persons in the area of permitting treatment, storage and disposal facilities. The Department is proposing to raise this revenue through an annual fee on the volume of hazardous waste generated by Oregon companies.

3. Principal Documents Relied Upon in this Rulemaking

a. ORS Chapter 459, including 459.440 and 459.610

b. Resolution on Hazardous Waste Fees by the DEQ Task Force on Rules on Program Direction - July 13, 1982

4. Statement of Fiscal Impact

This action will have fiscal and economic impact upon persons and companies generating hazardous waste in excess of 35 cubic feet per year (approximately five 55-gallon drums per year). Such persons and companies will be assessed a fee to cover the Department's cost for monitoring, inspecting and surveillance of waste generation activities, including related administrative costs (i.e., generator registration; review of quarterly generator reports; review of contingency plans, emergency preparedness plans and training programs). Small businesses generating less than 35 cubic feet per

year are exempted from regulation and will pay no generator fee. Businesses generating greater than 35 cubic feet per year will be assessed a fee based on their waste generation rate with larger generators paying a greater percentage of the Department's costs. The Department expects to generate $165,000 per year with the smallest fee being $150 and the largest fee being $7,500. Approximately 125 to 200 Oregon companies in the fields of electronics, metal plating, metal fabricating and pesticide formulation will be affected.

ZC1800.1

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Hazardous Waste Generator Fees

Date Prepared: October 10, 1984
Hearing Date: November 19, 1984
Comments Due: November 19, 1984

WHO IS AFFECTED:

Persons and companies generating more than 35 cubic feet of hazardous waste per year (approximately five 55-gallon drums).

WHAT IS PROPOSED:

The Department is proposing to adopt by rule hazardous waste generator fees. The fees would be used to maintain existing staff levels as well as add 2 persons to address a resource deficiency identified by EPA as an impediment to Final Authorization.

WHAT ARE THE HIGHLIGHTS:

According to the following schedule, the fee would vary based on the amount of hazardous waste generated:

Generation Rate (cu.ft./year)	Fee (dollars)
<35	--
35-99	$ 150
100-499	375
500-999	1500
1,000-4,999	2250
5,000-9,999	5250
>10,000	7500

HOW TO COMMENT:

Public Hearings

Monday, November 19, 1984

10:00 a.m.
DEQ Headquarters
Room 1400
522 SW Fifth Ave.
Portland, OR

9:00 a.m.
Lane County Courthouse
Conf. Rooms B and C
(Cafeteria Conference Rm.)
8th & Oak St.
Eugene, OR

Written comments should be sent to the Department of Environmental Quality, Solid Waste Division, PO Box 1760, Portland, OR 97207, by November 19, 1984. (Attention: Rich Reiter)

WHAT IS THE NEXT STEP:

The Environmental Quality Commission may adopt a fee schedule identical to the one proposed, adopt a modified schedule as a result of the hearing testimony, or decline to adopt a fee schedule.

Statement of Need, Fiscal Impact, Land Use Consistency, Statutory Authority and Principal Documents Relied Upon are filed with the Secretary of State.

ZC1800

P.O. Box 1760
Portland, OR 97207

8/10/82

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call ~~1-800-452-7813,~~ and ask for the Department of Environmental Quality. 1-800-452-4011

Attachment IV
Agenda Item No. D
11/2/84 EQC Meeting

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of the Adoption of Hazardous Waste Generator Fees, OAR Chapter 340, Section 105-075	)))	Land Use Consistency

The proposal described herein appears to be consistent with statewide planning goals. This proposal appears to conform with Goal No. 6 (Air, Water and Land Resources Quality) and Goal No. 11 (Public Facilities and Services). There is no apparent conflict with the other goals.

With regard to Goal No. 6, the proposal would establish a schedule of hazardous waste generator fees. The fees will help support the Department's existing regulatory program. The proposed fees are necessary to assure continued protection of public health and safety, and the air, water and land resources of the state. This action by definition complies with Goal No. 6.

With regard to Goal No. 11, the proposed fees would allow the Department to conduct inspections and investigations to ensure that hazardous waste generators are properly managing their waste and using only authorized treatment, storage and disposal facilities.

Public comment on these proposals is invited and may be submitted in the manner described in the accompanying NOTICE OF PUBLIC HEARING.

It is requested that local, state and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use and with Statewide Planning Goals within their expertise and jurisdiction.

The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflicts brought to our attention by local, state or federal authorities.

After public hearing the Commission may adopt a fee schedule identical to the one proposed, adopt a modified schedule as a result of hearing testimony, or decline to adopt a fee schedule. The Commission's deliberation should come in December 1984 as part of the agenda of a regularly scheduled Commission meeting.

ZC1800.3

Attachment V
Agenda Item No. D
11/2/84 EQC Meeting

A new rule, OAR 340-102-060, is proposed as follows:

Subdivision F: Fees

Hazardous waste generator fees.

340-102-060 (1) Beginning July 1, 1984, each person generating hazardous waste shall be subject to an annual fee based on the volume of hazardous waste generated during the previous calendar year. The fee period shall be the state's fiscal year (July 1 through June 30) and shall be paid annually by July 1, except that for fiscal year 1985 the fee shall be paid by January 1, 1985.

(2) For the purpose of determining appropriate fees, each hazardous waste generator shall be assigned to a category in Table 1 of this Division based upon the amount of hazardous waste generated in the calendar year identified in subsection (1) of this section except as otherwise provided in subsection (5) of this section.

(3) For the purpose of determining appropriate fees, hazardous waste that is used, reused, recycled or reclaimed shall be included in the quantity determinations required by subsection (1) of this section.

(4) In order to determine annual hazardous waste generation rates, the Department intends to use generator quarterly reports required by rule 340-102-041; treatment, storage and disposal reports required by 340-104-075; and information derived from manifests required by 340-102-020.

(5) Owners and operators of hazardous waste treatment, storage and disposal facilities shall not be subject to the fees required by subsection

(1) of this section for any wastes generated as a result of storing, treating or disposing of wastes upon which an annual hazardous waste generation fee has already been paid. Any other wastes generated by owners and operators of treatment, storage and disposal facilities are subject to the fee required by subsection (1) of this section.

(6) All fees shall be made payable to the Department of Environmental Quality.

Table 1

Hazardous Waste Generation Rate (cu.ft./year)	Fee (dollars)
<35	No fee
35-99	$ 150
100-499	375
500-999	1500
1,000-4,999	2250
5,000-9,999	5250
>10,000	7500

ZC1800.4

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

TO: Environmental Quality Commission DATE: October 12, 1984

FROM: Linda Zucker

SUBJECT: AGENDA ITEM E.
Appeal of Hearings Officer's Order in DEQ v. Sperling,
Case No. 23-AQ-FB-81-15

This matter is before the Commission on Department's request for review of a hearings officer's decision which found Respondent, Wendell Sperling, not liable for a civil penalty in connection with alleged unlawful field burning.

Enclosed for the Commission's review are:

1. Hearing Officer's Findings of Fact, Conclusions of Law and Order
2. Department's Exceptions and Brief
3. Respondent's Brief
4. Transcript of hearing.

LKZ:km

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON, Department, v. WENDELL SPERLING, Respondent.	HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

BACKGROUND

Wendell P. Sperling (Respondent) has appealed from Department's Notice of Assessment of Civil Penalty which alleged that on September 1, 1981 Respondent burned a 54-acre field without first registering and obtaining a permit to burn it. Department levied a civil penalty of $1,500. Respondent contested liability.

FINDINGS OF FACT

Participants in the Willamette Valley field burning program have developed a number of practices aimed at getting grass seed fields burned while minimizing adverse smoke impact. Some of the practices follow the law as set out in statutes and rules; some do not, but, nonetheless, have Department approval; some practices are expressly or tacitly authorized by local fire district staff[1] with or without Department's knowledge or approval. A number of informal practices are involved in this contested case.

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[1]The Environmental Quality Commission has delegated to the local fire districts various duties in connection with the smoke management program. The delegation is authorized by ORS 468.458 and implemented by OAR 340-26-012. The fire districts act with either actual or apparent authority in the operation of the smoke management program.

In 1981 the statutory limit on the number of acres which could be burned in the Willamette Valley was 250,000 acres. Each year more acres are registered than are burned.

Each spring grass seed growers are required to "register" their fields to make them eligible for open burning at the conclusion of the growing season. Registration is accomplished through the local fire districts by filling out forms provided by the Department. The grower specifies the location of the fields he wishes to burn, the size of the fields, and the type of crop. The registration fee is $1 per acre and the fee is due on registration. Growers are not provided a copy of their registration forms or maps displaying the fields as registered.

Growers register by estimation. At the time registration is required growers commonly have not finalized their field management plans for the prospective growing season. As circumstances change, growers adjust their plans. According to both growers and Department staff, the significant fact is the number of acres registered rather than early designation of the particular acres intended to be burned.

It is common to "transfer" registration from field to field. Transfers may involve fields in the same district or in different districts. While transferring acreage requires Department approval, growers look to the field burning agent to handle for them whatever formal authorization or paperwork is necessary to effect the transfer. Typically, growers are not charged a late registration fee as a result of transferring registration. Transfer requests telephoned to the field burning agent are accommodated. Moreover, growers sometimes burn fields without formally transferring registration provided the fields are within the same district, and this practice is known and allowed

by the fire district.

In addition to registration fees, growers must pay a permit fee for each acre actually burned. The law requires that burning fees be paid prior to burning. This requirement is routinely ignored by growers and program personnel. By practice in the Southeast Polk Rural Fire District, growers sign their permits and pay their fees once a week or so during the burning season. They pay according to the number of acres actually burned as tallied by the field burning clerk.

The terminology or vocabulary of the field burning program is often used differently by program participants. This "language gap" sometimes leads to misunderstandings.

During burning season, "test fires" are used to gauge and predict if weather conditions warrant field burning. Speed is a critical factor. The test field must be selected and burned quickly enough to allow program personnel to observe and analyze the behavior of the smoke, to implement a decision to allow general or selective burning on the basis of the observations, and to get the burning completed before the onset of adverse weather changes. Given the speed with which program participants must act, it has become common in various aspects of the program to operate on informal and verbal communications and authorizations. Test fire authorization is no exception.

Respondent is a veteran grass seed grower who participates in the Willamette Valley field burning program. In the spring of 1981 Respondent estimated the number of acres he wished to sanitize by burning at the conclusion of that year's growing season. As required by law, he filled out field burning registration forms on which he specified the location of

the fields he wished to burn, the size of the fields, and the type of crop. On the registration form he filed with the Southeast Polk Rural Fire District he registered 289 acres divided among seven fields. He showed field number F-26-HMI to be 61 acres. This field, referred to in this order as "the field", is actually 115 acres in size. Because Respondent did not intend to burn the whole field, but only its two hills which he proposed to plant to permanent grass, he estimated the size of the hills and registered only that amount. The field is located in the Willamette Valley, Oregon.

When Respondent registered his Southeast Polk County Fire District fields, his plans for the crop year were unclear. As is common, he registered by estimating how many fields he expected to plant to permanent grass. As is also his practice, he registered more acres than he expected to burn.

On September 1, field burning officials were attempting to set up a "test" burn to determine whether smoke would lift adequately for field burning to be authorized that day. Howard Pope, a Southeast Polk County Fire District employee in charge of the district's field burning program, was trying to locate a field dry enough for a test burn. Because timing of test burns is crucial, Pope seldom has more than a matter of minutes to locate the test field and arrange the burn. The usual procedure is for Pope to contact a grower in the field, obtain agreement to test, and relay the decision to the field burning clerk who would coordinate the permit issuing paperwork process.

That morning, Respondent was out with a neighbor, also a grower. Pope met the men and asked Respondent whether Respondent could burn a nearby wheat field. Respondent explained that the wheat field was too wet, but offered to burn the field which is the subject of this proceeding. The burning was

authorized. Respondent was told to call the field burning office to complete the arrangements.

When Respondent reached the field burning clerk she told him to have the fire lighted in 30 minutes. There was some discussion about the size of the field. The field burning clerk informed Respondent that the registration records showed only 61 acres registered, not the 115 he proposed to burn. Respondent indicated the likelihood of an error. Rather than resolve it then, the clerk told Respondent to go ahead with the burn.[2] Respondent offered to "straighten it out later", perhaps by "transferring" acres from elsewhere. Because it was a "test" fire, it was expectable that the burning would be closely observed by field burning program personnel.

Respondent burned the field.

At the end of the day, Respondent's wife stopped at the field burning office to sign permits and pay fees for the week's burning. Respondent's wife relies on the clerk to track and tally the number of acres burned and to inform her of the amount of payment due. Respondent's wife knew nothing of the day's events. She relied, as usual, on the clerk's calculations and paid the amount requested.

Later that day, a DEQ field burning inspector came to see Respondent and asked Respondent how many acres he had burned in the test burn. Respondent replied with the candor he showed throughout. He explained that he intended to make the necessary permit adjustments with the correct

---

[2]Ordinarily, the field burning clerk does not authorize a burn of unregistered acres. However, she was not certain she had not done so in this case.

acreage the following day. However, the field burning inspector informed Respondent that he "...would have to issue him a violation (sic) for not reporting all burned acreage accurately because he had only 61 acres registered and because he made no effort to settle the discrepancy before burning."

Respondent believed the burning was authorized. He acted in reliance on statements and past practices of field burning program personnel. His actions were within the range of informal practice developed in the smoke management program. His reliance was reasonable. His testimony was credible.

CONCLUSIONS OF LAW

1. The Commission has personal and subject jurisdiction.

2. On September 1, 1981 Respondent open burned 54 acres without first registering them with the local fire permit issuing agency on forms provided by the Department as required by ORS 468.475(1) and OAR 340-26-012(1), and without first paying burning fees and obtaining the permit required by ORS 468.455 and OAR 340-26-012(2)(a).

3. The above violations were not proximately caused by Respondent's negligence or wilful misconduct. Consequently, liability may not be imposed for the violations. ORS 468.300.

4. Respondent is not liable for the civil penalty assessed.

OPINION

Respondent was charged with burning more acres than he had registered and had obtained authorization to burn. Respondent denied the charges generally and requested a hearing. Although Respondent did not specifically outline the basis for his defense as required by agency procedural rule (OAR 340-11-107(2)), he did deny Department's allegations. The basis of his defense is one which

has become familiar to those involved in enforcement of field burning cases, namely: Respondent relied on past practices and on representations of program personnel in concluding he was authorized to burn his field. Administrative law is tolerant of pleading omissions which do not prejudice the ability of a party to prepare its case. See, Davis, Administrative Law Treatise, 2d Ed, Section 14.11 (1980). Although Respondent did not raise the issue in his answer, no prejudice is shown to have resulted from his omission, and the issue is properly a part of his defense.

Among the statutes and rules involved in this case are:

> **ORS 468.300 When liability for violation not applicable.**
>
> The several liabilities which may be imposed pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter upon persons violating the provisions of any rule, standard or order of the commission pertaining to air pollution shall not be so construed as to include any violation which was caused by an act of God, war, strife, riot or other condition as to which any negligence or wilful misconduct on the part of such person was not the proximate cause. (Formerly 449.825)
>
> **ORS 468.458 Permits for field burning; delegation of duty to deliver permits.**
>
> (1) On and after January 1, 1975, permits for open burning of perennial grass seed crops, annual grass seed crops and cereal grain crops are required in the counties listed in ORS 468.460(2) and shall be issued by the Department of Environmental Quality in accordance with air pollution control practices and subject to the fee prescribed in ORS 468.480. The permit described in this section shall be issued in conjunction with permits required under ORS 476.380 or 478.960.

(2) The Environmental Quality Commission may by rule delegate to any county court or board of county commissioners or fire chief of a rural fire protection district the duty to deliver permits to burn acreage provided such acreage has been registered pursuant to ORS 468.480(1)(a) and fees have been paid pursuant to ORS 468.480(1)(b).

ORS 468.474 Power of department.

(1) Enforce all field burning rules adopted by the commission and all related statutes;

(2) Monitor and prevent unlawful field burning; and

(3) Aid fire districts in carrying out their responsibilities for administering field sanitation programs.

ORS 468.480 Registration of number of acres to be burned; fees; disposition of fees.

(1)(a) On or before April 1 of each year, the grower of a grass seed crop shall register with the county court or board of county commissioners or the fire chief of a rural fire protection district, or his designated representative, the number of acres to be burned in the remainder of the year. At the time of registration the Department of Environmental Quality shall collect a nonrefundable fee of $1 per acre registered. The department may contract with counties and rural fire protection districts for the collection of the fees which shall be forwarded to the department. Any person registering after the dates specified in this subsection shall pay an additional fee of $1 per acre registered if the late registration is due to the fault of the late registrant or one under his control. Late registrations must be approved by the department. Copies of the registration form shall be forwarded to the department. The required registration must be made and the fee paid before a permit shall be issued under ORS 468.458.

(1)(b) Except as provided in paragraph (c) of this subsection, after July 2, 1975, the department shall collect a fee of $2.50 per acre of crop burned prior to the issuance of any permit

for open burning of perennial or annual grass seed crops or cereal grain crops under ORS 468.140, 468.150, 468.290 and 468.455 to 468.480. The department may contract with counties and rural fire protection districts for the collection of the fees which shall be forwarded to the department.

* * *

(2) With regard to the disbursement of funds collected pursuant to subsection (1) of this section, the department shall:

(a) Pay an amount to the county or board of county commissioners or the fire chief of the rural fire protection district, for each fire protection district 50 cents per acre registered for each of the first 5,000 acres registered in the district, 35 cents per acre registered for each of the second 5,000 acres registered in the district and 20 cents per acre registered for all acreage registered in the district in excess of 10,000 acres, to cover the cost of and to be used solely for the purpose of administering the program of registration of acreage to be burned, issuance of permits, keeping of records and other matters directly related to agricultural field burning.

* * *

OAR 340-26-010 The following provisions apply during both summer and winter burning seasons in the Willamette Valley unless otherwise specifically noted:

* * *

(2) Permits required:

(a) No person shall conduct open field burning within the Willamette Valley without first obtaining a valid open field burning permit from the Department and a fire permit and validation number from the local fire permit issuing agency for any given field for the day that the field is to be burned.

(b) Applications for open field burning permits shall be filed on Registration Application

forms provided by the Department, and shall include graphic delineation of all acreage so registered upon map materials provided by the Department and on file with the local permit issuing agency.

(c) Open field burning permits issued by the Department are not valid until acreage fees are paid pursuant to ORS 468.480(1)(b) and a validation number is obtained from the appropriate local fire permit issuing agency for each field on the day that the field is to be burned. The Department may specify that open field burning permits shall be valid for a designated period of time following the time of issuance and shall expire thereafter if the permitted field burn is not initiated within that designated period.

* * *

(e) Any person granted an open field burning permit under these rules shall maintain a copy of said permit at the burn site or be able to readily demonstrate authority to burn at all times during the burning operation and said permit shall be made available for at least one year after expiration for inspection upon request by appropriate authorities.

* * *

OAR 340-26-012 Registration and Authorization of Acreage to Be Open Burned.

(1) On or before April 1 of each year, all acreages to be open burned under this rule shall be registered with the local fire permit issuing agency or its authorized representative on forms provided by the Department. A nonrefundable $1 per acre registration fee shall be paid at the time of registration. At the time of registration, all registered acreage shall be delineated and specifically identified on map materials provided by the Department using a unique four-part reference code defined as follows: registration number-line number-crop type P (perennial), A (annual), C (cereal) -- acreage. In addition, the symbol "X" shall be appended to this reference code for fields which, because of their location with respect to particularly sensitive smoke receptors or severe

fire hazards, should not be burned under normally preferred windflow patterns.

(2) Registration of acreage after April 1 of each year shall require:

(a) Approval of the Department.

(b) An additional late registration fee of $1.00 per acre if the late registration is determined by the Department to be the fault of the late registrant.

(3) Copies of all Registration/Application forms and registration map materials shall be forwarded to the Department promptly by the local fire permit issuing agency.

* * *

OAR 340-26-013 Limitation and Allocation of Acreage to Be Open Burned.

* * *

(d) Transfer of allocations for farm management purposes may be made within and between fire districts on a one-in/one-out basis under the supervision of the Department. Transfer of allocations between growers are not permitted after the maximum acres specified in section (1) of this rule have been burned within the Valley.

* * *

There is no regulation defining the "fault" by which a grower incurs a late registration fee.

By statute a grower must on April 1 register the number of acres to be burned that year. ORS 468.480(1)(a). By rule a grower must identify the specific acres. OAR 340-26-010(2)(b). By statute and rule he must pay a nonrefundable $1 per acre fee at the time of registration. ORS 468.480(1)(a); OAR 340-26-012(1).

By statute and rule, after April 1 a grower must pay an additional $1 per

acre fee if late registration is "his fault". ORS 468.480(1)(a); OAR 340-26-012(2)(b). There is no rule defining fault, and the testimony in this case established that field-to-field transfers did not regularly result in late registration fees. By statute and rule late registration requires Department approval. ORS 468.480(1)(a); OAR 340-26-012(2)(a). By practice growers register fields according to their best prediction of their farm management plan and commonly "transfer" registration from one field to another as necessary without ordinarily obtaining the formal prior authorization required by statute and rule. By practice growers inform the field burning clerk either of what they intend to do or what they have done in terms of acreage transfers and rely on the clerk to "take care of it". Respondent and others have transferred registration from one field to another without incurring a late fee.

Statute and rule require that a grower have a permit "in hand" when he burns. See ORS 468.480(1)(b); OAR 340-26-012(2)(e). Hearing testimony established that this requirement was not enforced. Practice was to issue burning authorization by telephone. The "permit" was an administrative matter of little practical concern to the grower and was dealt with for him by the field burning clerk. By statute payment of burning fees is required before the permit could be issued. ORS 468.480(1)(a). By rule a permit is not valid until fees are paid. OAR 340-26-010(2)(c). In practice this requirement was routinely ignored. Department was aware of and allowed fees to be paid after burning.

In practice reliance was placed on the field burning clerk to keep records and to advise growers of amounts due. If growers were aware of "paperwork" requirements, they relied on the local field burning clerk to coordinate the necessary forms and approvals. In this and other ways growers looked to the

field burning clerk to keep them within the authorized program bounds. Growers informed the clerk of their intentions or wishes and relied on the clerk to make the necessary arrangements. This reliance became an integral part of the field burning program administration.

Because fee payment subsequent to burning is not authorized by statute or rule, only a developed practice governs the process. The practice in Polk County during the burning season in question was for the grower or a family member to make a weekly stop at the local fire district and pay fees in an amount stated by the field burning clerk as owing. This is what Respondent's wife did without consulting her husband on the afternoon of the burn in question.

In summary, registering by estimation is common practice. Informal transfer of registration from field to field is common practice. Late registration without surcharge is common practice. Payment of burning fees subsequent to burning is common practice. Reliance on the field burning clerk to advise growers of program limitations is common practice. Payment of burning fees as calculated by the field burning clerk is common practice. Reliance on the field burning clerk to take care of paperwork formalities is common practice. Each of these practices was endorsed either by the fire district or by the Department or both.

It is basic that government must provide fair notice of what behavior the law prohibits. Only then can citizens govern their own behavior to avoid unlawful conduct. When a regulatory program is implemented differently than it is enacted, even when it is enforced less stringently than is allowed, it becomes difficult to know what is actually prohibited, and to conform behavior to the law. Unintentional violations become a real

risk for even the most conscientious program participants.

This risk is balanced by ORS 468.300 which provides that liability for an air pollution violation may not be imposed unless the violation is proximately caused by negligence or wilful misconduct. Negligence involves behavior which departs from a reasonable standard of conduct. Lanning v. State Hwy. Comm., 15 Or App 310, 317, 515 P2d 1355 (1973). The existence of wilful misconduct depends on the facts of the particular case but "necessarily involves deliberate, intentional, or wanton conduct in doing or omitting to perform certain acts, with knowledge or appreciation of the fact, on the part of the culpable person, that danger is likely to result therefrom." Cowgill, Adm'r v. Boock, Adm'r, 189 Or 382, 392, 218 P2d 445 (1950). Given established program practices and the course of conduct found to have taken place, Respondent's actions did not amount to negligence or wilful misconduct. Sanctions are not appropriate under the facts of this case.

The smoke management program is continually evolving. The program is charged with the difficult goal of minimizing smoke intrusion into cities and adverse health effects while assuring burning of a maximum number of acres in a minimum number of days without substantial impairment of air quality. What is a difficult task might well be impossible if some flexibility were not allowed in program implementation. If past practice has allowed too great a measure of flexibility, the problem is correctable. The agency is not prevented by its past actions from requiring prospective compliance with rules or procedures aimed at assuring healthful, safe, environmentally sound burning practices under efficient program administration. Moreover, it may well be that a reduced tolerance for deviation from published rules and procedures is already established as program policy and practice.

Finally, any obligation Respondent would have for the normal fees incident to registration and permitting continues independent of this contested case proceeding.

ORDER

WHEREFORE IT IS ORDERED THAT Respondent is not liable for the civil penalty assessed.

Dated this 15th day of March, 1984.

Linda K. Zucker
Hearings Officer

NOTICE: Review of this order is by appeal to the Environmental Quality Commission pursuant to OAR 340-11-132. Judicial review may be obtained thereafter pursuant to ORS 183.482.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON,	)	
	)	No. 23-AQ-FB-81-15
Department,	)	DEPARTMENT'S EXCEPTIONS
v.	)	AND BRIEF
WENDELL P. SPERLING, DBA/W. P. SPERLING FARMS,	)	
Respondent.	)	

EXCEPTIONS

The Department takes exception to the Hearing Officer's Findings of Fact, Conclusions of Law and Order ("HO Ord") in their entirety except as they are consistent with Department's Proposed Findings of Fact, Conclusions of Law and Final Order, which is attached hereto marked Attachment "A" and is made a part hereof.

In support of its exceptions, the Department will rely on the following brief.

BRIEF

I. The Hearing Officer Misinterpreted ORS 468.300; Respondent Failed to Plead and Prove a 468.300 Defense.

This is a simple case. We do not dispute the basic facts. Respondent followed the required statutory and regulatory procedure to open field burn a 61 acre field; that is, he registered the acres, ORS 468.480(1)(a), paid the registration fees, ORS 468.480(1)(a), applied for a burning permit, ORS 468.458, had the

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permit issued and paid the permit fees.[1] However, not only did respondent burn the 61 acre field but he also tacked on a contiguous 54 acres to his burn for a total of 115 acres. Unfortunately, prior to the burn, respondent had not registered, applied for a permit, received a permit or paid the registration or permit fees for the additional 54 acres. Although respondent alluded to an intent to straighten it out later, (Tr 22), he never attempted to register, apply for a permit, or pay the registration and permit fees. Respondent got a free 54 acre burn.[2]

Although this is a simple case, the hearing officer has unnecessarily made it unduly complex by her misinterpretation of ORS 468.300. The crux of the hearing officer's decision is her conclusion that "ORS 468.300 * * * provides that liability for an air pollution violation may not be imposed unless the violation is proximately caused by negligence or wilful misconduct." (HO Ord 14.) The hearing officer went on for pages attempting to establish that "informal practices" had been established in the open field burning registration and permitting programs, that respondent had relied upon those informal practices and that respondent's

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[1]Respondent did not pay his permit fees, ORS 468.480(1)(b), prior to burning as required by ORS 468.475(1), but did pay them the same day. DEQ makes no issue of this shortcoming.

[2] Respondent paid no fees ($243); his total grower's sub-allocation for burning was not reduced by the 54 acres. OAR 340-26-013(5)(a). In practical effect, his personal sub-allocation increased by 54 acres, which more than made up for the 32 acres of his 289 registered acres which he lost during the 1981 season under his grower's sub-allocation (89 percent), pursuant to OAR 340-26-013(5)(a).

reliance was reasonable and that therefore respondent was not negligent or wilful in committing his violation and consequently was not liable.

The hearing officer's interpretation of ORS 468.300 misses the mark. In the case of State v. Fry Roofing Co., 9 Or App 189, 495 P2d 751, 4 ERC 1116 (1972), a criminal air pollution prosecution, the Oregon Court of Appeals was faced with a contention by the defendant that the statute should be interpreted similar to the hearing officer's interpretation. The court stated at 9 Or App 218:

> "The gist of defendant's first contention here is that defendant was entitled to an instruction that wilfull misconduct must be shown to be the proximate cause of the violation charged in the indictment, citing ORS 449.825, which reads:
>
> "'The several liabilities which may be imposed pursuant to ORS 449.702 to 449.717, 449.760 to 449.830 and 449.850 to 449.920 upon persons violating the provisions of any rule, regulation or order of the Environmental Quality Commission, shall not be so construed as to include any violation which was caused by an act of God, war, strife, riot or other condition as to which any negligence or wilful misconduct on the part of such person was not the proximate cause.'
>
> "We disagree with defendant's interpretation of the above section. The intent and purpose of ORS 449.825 is simply to excuse the violator from prosecution on account of violation which resulted

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from an independent, intervening cause such as an act of God, war, strife, riot or similar cause."[3]

In other words the Court of Appeals has considered and rejected the hearing officer's approach to ORS 468.300. According to the Court that section does not require the Department to show that the proximate cause of violation was wilful misconduct or negligence. Rather, it merely provides respondent with a defense which it must plead and prove.

Therefore, most of the hearing officer's decision is unnecessary and irrelevant: Respondent failed to plead or present any evidence that would support a finding that respondent's violation "resulted from an independent, intervening cause such as an act of God, war, strife, riot or similar cause." Id. at 9 Or App 218. What remains are respondents two violations: (1) burning an unregistered field and (2) burning without a permit.

The standard of conduct applicable to respondent in this

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[3]Prior to 1973, ORS 468.300 was numbered ORS 449.825. In 1973 it was amended in form, not substance as follows:

"Section 53. ORS 449.825 is amended to read:

"449.825. The several liabilities which may be imposed pursuant to [ORS 449.702 to 449.717, 449.727 to 449.741, 449.760 to 449.830, 449.850 to 449.920 and 449.949 to 449.965] **this chapter** upon persons violating the provisions of any rule, [regulation] **standard** or order of the [Environmental Quality] commission [,] **pertaining to air pollution** shall not be so construed as to include any violation which was caused by an act of God, war, strife, riot or other condition as to which any negligence of wilful misconduct on the part of such person was not the proximate cause." Oregon Laws 1973, ch 835, § 53.

case is not whether respondent was negligent or wilful in committing a violation. Rather, the standard is higher. The standard is whether respondent complied with the statue regardless of the absence of negligence or wilfulness.

II. No Informal Registration Practice Existed Upon Which Respondent Could Have Reasonably Relied to his Detriment

Although the existence of any alleged informal registration or permitting practice is not relevant because as stated above the standard of conduct is compliance, not absence of negligence, nevertheless, the Department feels compelled to respond to parts of the hearing officers lengthy discussion of "informal practices" and the record upon which it was based.

The Department is concerned that its Willamette Valley field burning program has unnecessarily been given a black eye based upon misinformation and misunderstanding in one fire district. It is also concerned that this misinformation and misunderstanding could be perpetuated and relied upon in future cases to establish compliance not merely the absence of negligence.

As you know, the day to day regulation of several hundred Willamette Valley grass seed growers through several dozen separate fire districts requires substantial measures of both strict compliance and flexibility. You may take official notice of the amendments to your field burning rules which you have adopted from year to year in an attempt both to tighten up loopholes and to provide flexibility.

The Department has been greatly concerned that under the guise of flexibility the following of "informal practices" could undermine enforcement of the necessary underpinnings of the program. The foundations of the program are the limitations of acreage that can be burned on an annual and daily basis as implemented through the registration and permit system.

The hearing officer's findings of "informal practices" suffer several shortcomings. First, they are founded basically on the testimony of only two farmers as to their personal experiences in one fire district. Each of those witnesses, Bob Cook and respondent, are biased by interest. Much of their testimony demonstrates a basic misunderstanding of the fundamental elements of the smoke management system and consequently the misuse of regulatory terms and the creation of new terms, resulting in a substantial distortion of the system for their own personal goals. By and large the hearings officer bought the whole story and adopted those misunderstandings as her findings. Not only did she adopt the two witnesses' testimony as her findings, but she also took a giant leap to conclude that those two witnesses alleged experiences represented general "informal practices" of the DEQ. The witnesses did not generally so testify, and to the extent that they did, their testimony was not substantial. We will not burden the body of this brief with all the details of all of those misunderstandings. Attached hereto, marked Attachment "B" is the Department's Response to Alleged "Informal Practices," which address some of the specifics.

In any event, in spite of all of the testimony and findings regarding "informal practices," respondent failed to present any testimony and the hearing officer made no finding that there was any "informal practice" of transferring acreage allocations from registered acres to unregistered acres. Acreage allocations, or in other words the general right to obtain a permit to burn registered acres (subject of course to daily meterological conditions, daily quotas, readiness to burn and priority within the fire district) are parcelled out "to the respective growers on a pro rata share basis of the individual acreage registered as of April 1, to the total acreage registered as of April 1." OAR 340-26-013(5)(a) (emphasis added). Registration of acreage is the cornerstone of the system. As was discussed in the hearing by many witnesses: "Transfer of allocations for farm management purposes may be made within and between fire districts on a one-in/one-out basis under the supervision of the Department." OAR 340-26-013(5)(d) (emphasis added.) Such is an authorized procedure which can be done over the telephone, and is not an "informal practice." However, transfer of allocations[4] can only be made from registered acres to registered acres, not to unregistered acres; no "informal practice" existed otherwise. All the witnesses who were asked, so testified. Testimony of Howard Pope (Tr 60); John Spruance (Tr 79); Brian Finneran (Tr 99-100,102)

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[4] Several witnesses and the hearing officer referred to "transfer of registration." There is no such procedure. See paragraph 4 of Attachment "B" for further discussion.

and Susan Pope (Tr 130-131, 133-134,140). Not even the grower witnesses contradicted that. Mr. Cook was ambiguous and could recall no specific dates (Tr 105). More importantly, respondent did not testify that he was familiar with or relied upon any "informal practice" to the contrary. In fact, respondent did not even attempt to determine whether his 54 acres were registered. (Tr 14).

The reason that transfers of allocations must be to registered acres is that an allocation is meaningless without a permit. One cannot burn without a permit. ORS 468.475(1). And one cannot obtain a permit without registering. ORS 468.475(1). Furthermore, "Late registrations must be approved by the department. Copies of the registration form shall be forwarded to the department." ORS 468.480(1)(a). Permit agent Susan Pope testified that that was her practice. (Tr 124-125). No one testified to the contrary, not even respondent or his friend Mr. Cook. Clearly a late registration could not be done immediately as was required for a test burn.

In spite of the uncontradicted facts that transfers of allocation could only be made to registered acres and that a late registration had to be physically delivered to Eugene and approved by the DEQ (and in the absence of any "informal practice" to the contrary) the hearings officer found that "Respondent believed the burning was authorized. He acted in reliance on statements and past practices of the field burning program personnel. His actions were within the range of informal practice developed

in the smoke management program. His reliance was reasonable. His testimony was credible." HO Ord 6. In other words, the hearing officer found that based on unrelated "informal practices" it was reasonable for respondent to rely on DEQ's permit agent to violate the clear dictates of the statutes, ORS 468.475(1), 468.480(1)(a), and thereby create a new specific "informal practice." The lesson to growers that comes from the hearing officer's decision is that if a grower can establish any "informal practice" then the grower need not comply with other unrelated formal procedures. That would give growers a license to violate!

The Department has attempted to control "informal practices," witness the amendments to the rules which it has proposed and you have adopted over the years. However, it is almost impossible to do so if the existence of one "informal practice" constitutes a license to violate other unrelated formal procedures contained in statutes and rules. What is needed to stem the tide of "informal practices," if such there be, is a strong statement from the Commission that the statutes and rules shall be followed.

This is an appropriate case to make such a statement. Respondent registered only 61 acres of his 115 acre field because he wanted to save the $1 per acre it would cost to "reserve" a later option to burn it. When the burning season came around, he changed his mind and wanted to burn the extra 54 acres, but did not want to wait for an available quota or risk having to pay a late registration fee to which all other growers are subject.

ORS 468.480(1)(a). He tried to pressure fire district employee Howard Pope into authorizing it, even though Respondent had not registered it. (Exh 4, Tr 73). Mr. Pope said no. (Exh 4, Tr 73). He then tried to pressure the fire district permit agent Susan Pope into authorizing it, but Mrs. Pope only gave him a permit for the registered acreage. (Exh 4). He indicated that he wanted to burn 115 acres and that he would come in later and "straighten it out." (Tr 22). He then burned the entire 115 acres. Pope notified DEQ of the infraction. (Exh 4). Respondent never registered the 54 acres, never obtained a permit to burn the 54 acres and never paid registration fees or permit fees to burn the 54 acre burn. (Exh 1, Tr 25). Neither did respondent establish any "informal practice" which would excuse his violation. Respondent was assessed a $1,500 civil penalty for burning without first registering and another $1,500 civil penalty for burning without a permit.

Respondent's $3,000 civil penalties should be affirmed and the Commission should adopt the Department's Proposed Findings of Fact, Conclusions of Law and Final Order (Attachment "A") as its own.

Respectfully submitted,

DAVE FROHNMAYER
Attorney General

Robert L. Haskins

ROBERT L. HASKINS
Assistant Attorney General
of Attorneys for Department
of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July, 1984, I served the within Department's EXCEPTIONS AND BRIEF upon respondent's attorneys by then depositing in the United States mail at Portland, Oregon, a full, true and correct copy thereof, addressed to said person as follows:

Joseph Penna
Attorney at Law
207 W. Main Street
Monmouth, OR 97361

Audrey M. Allen

AUDREY M. ALLEN
Administrative Assistant
Oregon Department of Justice
of Attorneys for
Department of Environmental Quality

CERTIFICATE OF SERVICE

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON,	
Department,	No. 23-AQ-FB-81-15
v.	DEPARTMENT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER
WENDELL P. SPERLING, DBA/W. P. SPERLING FARMS,	
Respondent.	

PROPOSED FINDINGS OF FACT

1. On March 30, 1981, respondent Wendell P. Sperling, doing business as W. P. Sperling Farms, registered with the Department of Environmental Quality a certain 61 acre cereal grain field ("respondent's registered field") for open burning pursuant to ORS 468.480(1)(a) and OAR 340-26-012(1), by filing a completed registration form with the Southeast Polk Rural Fire Protection District ("fire district") and paying the one dollar per acre registration fee. Respondent's registered field is located in Polk county.

2. At all material times the Southeast Polk Rural Fire Protection District ("fire district") was the agent of the Department of Environmental Quality for registering and issuing DEQ permits to open field burn grass and cereal grain fields in

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the district pursuant to ORS 468.458(2) and OAR ch 340 division 26.

3. Respondent's registered field was a part of a larger cereal grain field owned or controlled by respondent which totaled 115 acres ("respondent's 115 acre field"). At no time did respondent attempt to pay the one dollar per acre registration fee or file a registration form to register for open field burning, the remaining 54 acres of respondent's 115 acre field. Respondent's 54 acre field was not registered and shall be referred to as "respondent's unregistered field."

4. On September 1, 1981, respondent requested the fire district to issue a DEQ permit to open field burn respondent's 115 acre field.

5. In response to respondent's request, the fire district issued a DEQ open field burning permit (that is, issued a validation number, OAR 340-26-005(14)) authorizing respondent to open field burn respondent's 61 acre registered field but refused to issue to respondent a DEQ permit to open field burn respondent's 54 acre unregistered field because it was not registered. On respondent's behalf, respondent's wife paid the $2.50 per acre permit fee for the permit for respondent's 61 acre field.

6. On September 1, 1981, respondent open field burned respondent's 115 acre field including the 54 acre unregistered field. That air pollution source would not normally be in existence for five days.

7. By a notice dated November 3, 1981, DEQ Director William H. Young assessed respondent two civil penalities of $1,500 each for (a) burning the 54 acre field without having first registering it, and (b) for burning that field without a permit. Upon respondent's request, a contested case hearing was held pursuant to adequate notice.

PROPOSED CONCLUSIONS OF LAW

1. The Commission has personal and subject matter jurisdiction.

2. On September 1, 1981, respondent open field burned respondent's 54 acre field without ever registering it with the DEQ and paying the registration fees, as required by ORS 468.475(1), 468.480(1)(a) and OAR 340-26-012(1),(2).

3. On September 1, 1981, respondent open field burned respondent's 54 acre field without ever obtaining a DEQ open field burning permit and validation number and paying the permit fees, as required by ORS 468.458(2), 468.475(1), 468.480(1)(b) and OAR 340-26-010(2)(a).

4. Respondent failed to allege or present any evidence that the above violations were caused by any "independent, intervening cause such as act of God, war, strife, riot or similar cause." State v. Fry Roofing Co., 9 Or App 189, 218, 495 P2d 751, 4 ERC 1116 (1972); ORS 468.300.

5. Respondent is liable to the State of Oregon, Department of Environmental Quality: for $1,500 in civil penalties for the

violation set out in conclusion no. 2 above pursuant to OAR 340-26-025(2)(a)(A); and for $1,500 in civil penalities for the violation set out in conclusion no. 3 above, pursuant to OAR 340-26-025(2)(a)(B).

PROPOSED ORDER

WHEREFORE IT IS ORDERED that respondent is liable for civil penalties in the amount of $3,000 and that the State of Oregon, Department of Environmental Quality shall have judgment therefor.

NOTICE

Judicial review of this final order of the Commission may be obtained pursuant to ORS 183.482.

ENVIRONMENTAL QUALITY COMMISSION

Date: _____, 1984 By _____

DEPARTMENT'S RESPONSE TO ALLEGED "INFORMAL PRACTICES"

1. Pre-registration

Respondent frequently indicated in his testimony (Tr 16) that he went through a "pre-registration" process when he signed up his acreage for burning and described it as a "kind of estimate of what fields you know you want to burn" (Tr 16). Despite clarifying testimony by the Department, the hearing officer also referred to pre-registration and to registration as two different procedures. (Tr 23). However there is only one registration process and that is, in fact, a field specific procedure for which the grower is responsible. OAR 340-26-010(2)(b), 340-26-012(1). "Pre-registration" simply does not exist.

2. Registration by Estimation

The hearing officer concluded from the testimony that "growers register by estimation," (HO Ord 2), which implies that the respondent was not bound by the specific acres listed for each field on his registration form. This conclusion is contrary to OAR 340-26-010(2)(b), 340-26-012(1) requiring growers to identify specific fields and acres, and contrary to the testimony given by Department's witness. (Tr 61). In fact, it was only the respondent who testified that he believes registration is an estimate.

3. Registration - Number of Acres vs. Location of Acres

The hearing officer found that the "significant fact is the number of acres registered rather than early designation of the particular acres intended to be burned." (HO Ord 2).

1 - ATTACHMENT "B"

The hearing officer apparently relied on this finding to conclude that registration is not a field specific process. In fact, both aspects are of critical importance in the operation of the field burning program, the degree of significance depending on the particular program component. The fact that one aspect is important for one reason does not negate the importance of the other aspect for another purpose.

4. "Transfer of Registration"

The hearing officer found that registration can be transferred from field-to-field. (HO Ord 2,12,13).

The hearing officer's finding relies on a non-existent procedure. Registrations cannot be "transferred," and this was explained to the hearing officer by Department's hearing advocate (Tr 149). It was pointed out in the testimony that a grower can transfer some of his acreage allocation (Tr 33, 102), and it is clear that at times this "transfer of acreage allocation" was erroneously referred to as a "transfer of registration." The transfer of acreage allocation is a frequent and common practice in the Field Burning Program only after the particular field is formally registered. OAR 340-26-013(5)(d).

Transfer of acreage allocation can only take place between registered fields on a one-in/one-out basis. The permit agent and Department representative testified throughout the hearing that they not only correctly understood this practice, but that respondent's assertion that acreage allocation transfer between a registered field and an unregistered field was, in fact, illegal

and not the common practice at all. Respondent did not testify otherwise.

5. Late Registration Fee

The hearing officer also found that "typically, growers are not charged a late registration fee as a result of transferring registration" (HO Ord 2,12). Since there is no such thing as a transfer of registration as explained above, it can only be assumed here that the hearing officer was referring to the transfer of acreage allocation. This is still an inaccurate statement, as a late registration fee is only assessed for late registration; a transfer of acreage allocation could accompany a late registration, but does not itself incur any fee. The implication of the hearing officer's statement, notwithstanding the misuse of terminology, is that perhaps growers are typically not charged a late registration fee for late registration, or that if a transfer of acreage allocation between a registered field and an unregistered field occurs illegally, growers typically are not charged a late registration fee. The record does not support a finding that there exists a standard practice that the late registration fee is not regularly charged, or that a transfer of acreage allocation is ever made between registered fields and unregistered fields. The matter of late-fee payments is completely irrelevant to the violations committed by the respondent.

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6. Transfer of Acreage Allocations

The hearing officer also stated that "growers sometimes burn fields without formally transferring registration provided the fields are within the same district" (HO Ord 2,12). Again, assuming the hearing officer really means acreage allocation transfer rather than registration transfer, the testimony of Mrs. Pope (permit agent) clearly indicated that she routinely followed all formal procedures when transferring acreage allocation (Tr 140-142, 145-147).

7. Permit Fees - Prior Payment

The hearing officer found that growers and program personnel routinely ignore the requirement of ORS 468.475(1) that permit fees be paid prior to burning. The Department has made no issue of the fact the respondent paid the permit fees for the 61 acre burn after burning. Those fees were paid later that same day. However respondent has never made payment of any of the fees for the 54 acre unregistered, unpermitted burn.

Since growers do not know how many acres they will burn until they have completed burning each day, it is both impractical and burdensome to growers to require this prior payment. Growers can make payment prior to burning based on an estimate of the number of acres they anticipate burning, but again, this is impractical and difficult for most growers to do and is administratively burdensome for the Department's business office staff who would have to process many fee refunding requests. Therefore, as a matter of prosecutorial discretion the

Department has not strictly enforced the permit fee prior payment requirement. This should in no way lessen the grower's responsibility to comply with all other regulatory provisions.

8. Fire District Fire Permits

The hearing officer found that "growers sign their permits....once a week or so during the burning season." (HO Ord 3)

It appears that the hearings officer mistook references to the fire districts' own "fire permits," ORS 476.380, 478.900, see 468.475(1), as the DEQ's field burning permit, ORS 468.458, and that this error contributed to the hearing officer's erroneous conclusion that the Department does not require prior issuance of the DEQ field burning permit.

The hearing officer's statement demonstrates confusion over the basic terminology describing the formal procedures practiced in the field burning program. Testimony by both respondent and Department's witnesses frequently referred to the obtaining, signing, and paying for a "permit" after the burn. Additional testimony concerning a "validation number" was also made. (Tr 4, 24-27, 39-44, 56, 78-79, 88, 136, 144).

It is evident from the testimony that the term "permit" was used indiscriminately to refer to both the fire districts' fire permit and the DEQ's field burning permit. The "permit" frequently referred to during the hearing as that which is signed by the grower after the burn, was in fact, the fire districts' fire permit, and not the Department's field burning permit. Fire permits are signed upon issuance. (See Exh 3.) DEQ field burning permit

applications are only signed upon registration, not upon permit issuance. (See Exh 1.) Growers are instead issued a "validation number," OAR 340-26-005(14), which validates the Department's field burning "permit" or permission to burn, based on the specific acreages for each field listed on the grower's registration/permit application form. The validation number is actually entered by the permit agent on the fire district's copy of the registration/permit application form. (See Exh 1.) This is the formal and correct procedure that is practiced throughout the Willamette Valley. Fire districts are required by their own enabling statutes to issue fire permits for any burning activity that occurs in their jurisdiction. Fire permits thus accompany the DEQ's field burning permit (validation number), but in no way affect the validity of the Department's permits. The fire district's fire permit is completely a fire district matter and the Department has no involvement or authority in its issuance; the Department's validation number constitutes permission to burn from the Department, with the requirement that the grower pay a $2.50 per acre permit fee.

Repeatedly, the hearing officer and respondent's attorney made reference to a practice where burning takes place before fees are paid and permits are issued. As pointed out above, (See ¶ 7), payment of burning fees occurs after the burn in order to allow the grower to pay for the specific acres that were actually burned. The testimony provided by Howard Pope (Tr 56), Susan Pope (Tr 144) and even the respondent (Tr 32) indicated

that a validation number is given prior to the burning, and can be given either in person or by telephone. The respondent indicated in his testimony that he was given a "permit number" and authorization by Susan Pope (permit agent) to burn his field prior to burning it. This "permit number" respondent mentioned is clearly the "validation number," as later testimony indicates. (Tr 31, 32). He also indicated that he "had not signed a permit or seen a permit" (Tr 24) on the day of the burn, and also stated that it is "a common practice in Polk County to go in and sign the permits maybe once a week" (Tr 25). Respondent confirmed that "the practice has been that you paid the fees and obtained a permit; actually signed the permit after the fact, after you do the burn" (Tr 27). Clearly what the respondent is referring to here is signing the fire district's fire permit, and then paying the Department's burning fees.

When the fire district's fire permit is signed is irrelevant to this case; it is an administrative matter for the local fire district, and does not involve the Department. The concern of the Department is that the permit agent issues a validation number before the burn, and collects the appropriate burning fees.

9. Language Gap

The hearing officer found a "language gap" existed between participants in the field burning program concerning terminology or vocabulary used in the program (HO Ord 3).

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During the course of the hearing and in her written decision the hearing officer demonstrated confusion over terminology and procedures commonly used in the field burning program. Much of that confusion appeared to be the result of vague statements and the misuse of terms made by the respondent and grower witness, Bob Cook. The correct terminology and procedures practiced in the field burning program are found in the Commission's rules. The "language gap" referred to by the hearing officer was generally restricted to those two witnesses and the hearing officer. Department representatives were familiar with the program and generally suffered no "language gap."

10. DEQ Permit "In Hand"

The hearing officer found that both statute and rule require that a grower have a permit "in-hand" when conducting an open field burn and that that requirement was not enforced. (HO Ord 2)

The hearing officer cites ORS 468.480(1)(b) and OAR 340-26-010(2)(e) as requiring a grower to have a permit "in-hand." That rule states that "any person granted an open field burning permit shall maintain a copy of said permit at the burn site or be able to readily demonstrate authority to burn * * * " (Emphasis added.) The statement "readily demonstrate authority to burn" does not rigidly require the permit being "in-hand," as the hearing officer contends, but is satisfied by knowledge of the validation number issued by the permit agent. That number can be communicated to the permittee in person or over the telephone.

11. Registration Form - Copy to Grower

The hearing officer found that growers were not provided copies of the registration form (HO Ord 2). The registration form provides for the distribution of the original and copies of the form as follows:

> "ORIGINAL TO DEQ, EUGENE
> 1ST COPY + FEE TO PORT
> 2ND COPY TO FIRE DISTRICT
> 3RD COPY TO GROWER" (Exh 1) (Emphasis added)

Respondent's failure to keep the third copy should not be transformed into a general finding that "growers are not provided a copy of their registration forms * * * ." (HO Ord 2)

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON, Department, v. WENDELL P. SPERLING, dba W.P. SPERLING FARMS, Respondent.	Case No. 23-AQ-FB-81-15 RESPONDENT'S BRIEF

Department's exceptions and brief raises two issues for consideration on appeal:

1. What standard of culpability must the Department prove before a civil penalty can be imposed?

The Department argues that the Hearing Officer has misconstrued the law in requiring the Department to show that violation was willful or negligent.

Notwithstanding the applicability of ORS 468.330, the Department overlooks the specific language of OAR 340-26-025(1) which states:

> "Any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS..." (Emphasis Added)

Despite the clear language of the rule, the Department seeks to impose a "strict liability" standard on growers, thereby eliminating Department's burden of proving culpability.

The purpose of the civil penalty provision is not to allocate liability without regard to fault, but rather to deter

JOSEPH E. PENNA, P.C.
Attorney at Law
207 West Main Street
Monmouth, Oregon 97361
Telephone (503) 838-4996

willful or careless violations of field burning regulations.

Respondent's general denial of Department's allegations properly raises the culpability issue. Respondent's contention is simply that he was not negligent, but acted in conformance with common practices and relied upon established procedures of the local Fire District.

Finally, the Department cites no authority for its' bald assertion that the standard of culpability is higher than that established by the Administrative Rule.

2. What informal practices and procedures existed which respondent relied upon to his detriment?

Respondent was assessed a $1,500 civil penalty by the Department for burning without a permit, based upon OAR 340-26-010(2).

The permit agent for the local Fire Department was Susan Pope. Ms. Pope could not remember any of the details regarding the alleged violation, but testified that the routine practice was to authorize a burn by telephone and to issue the permit afterward (Tr 136).

The undisputed testimony is that the paperwork was completed later the same day based upon documentation provided by the permit agent.

The second alleged violation concerns failure to register acreage prior to burning.

The philosophy of Howard Pope, of the Southeast Rural Fire District is revealing:

> Q. Is there a practice in your district of transferring registrations from one field to another?

JOSEPH E. PENNA, P.C.
Attorney at Law
207 West Main Street
Monmouth, Oregon 97361
Telephone (503) 838-4996

A. It is not uncommon (Tr 59).

Q. ...Is the main concern the total number of acres, or is the main concern the specific plot of ground that is burned?

A. I would say our main concern is the total acres burned.

Q. You want to make sure you don't exceed a particular quota, is that right?

A. Right.

Q. Under what circumstances, if any, are you aware that a request for transfer would not be approved?

A. Well, that's up to, that's a decision of the DEQ; not ours.

Q. But as long as it's within the registration number, the number of acres registered, are you aware of any requests that have been denied?

A. I don't recall any, no. (Tr 60-61)

An exhaustive review of the testimony of the key witnesses would serve no useful purpose. The Hearings Officer had the opportunity to observe the demeanor of the witnesses and to guage their credibility.

It may be said that many of the witnesses have a vested interest in the outcome of the hearing. Certainly, Howard Pope and Susan Pope want to preserve the integrity of the system by minimizing the "bending of the rules" that was taking place.

But Robert Cook has no ax to grind. The Department asserts that he is "biased by interest". The record does not support Department's claim.

Mr. Cook was a key Department witness, and the Hearings Officer was entitled to give great deference to his testimony;

JOSEPH E. PENNA, P.C.
Attorney at Law
207 West Main Street
Monmouth, Oregon 97361
Telephone (503) 838-4996

Q. Have you transferred registrations within this particular district, Southeast Polk District?

A. Yes, I have.

Q. How do you accomplish that?

A. Well, I have done that over the telephone, communication with Susan Pope; and/or if it would be in another district, the other burning person and they would make the transfers back and forth. I guess, basically, I would state that I wanted to burn one filed or another, and if the acres would overlap, or could be transferred, it was quite workable.

Q. Have you ever had a request for a transfer refused?

A. Not to my knowledge.

Q. Does the main concern appear to be the total number of acres rather than particular fields burned?

A. I would think that would be so. (Tr 89-90)

Q. Mr. Cook, just briefly, what you described earlier, the transfer process that you are acquainted with, have you been able to accomplish that without paying late registration fees?

A. To my knowledge I have never paid a late registration fee for any transfer similar to that....

Q. Does that include a transfer to a field that you did not preregister?

A. Oh, definitely.

Q. So you are saying you late registered a field, but you were not charged fees?

A. Well, I don't know that I would say "late-registered"; the example would be that we have a 100 acre field here, and a 100 here -- two of them that had been registered, and, say there was one over here that had not been registered --- may be adjacent, or close to it --- you decide not to burn this particular one, but still had a 200 acre allocation; then, it seems to have been the practice in the past to have just used this particular registration for this field and paid the normal fee for burning...

JOSEPH E. PENNA, P.C.
Attorney at Law
207 West Main Street
Monmouth, Oregon 97361
Telephone (503) 838-4996

Q. And when that has happened, do you; is it your belief that the Fire District knew that you were burning one field instead of the other?

A. Of, of course; absolutely. (Tr 104-106)

There is no question that substantial "flexibility" has become commonplace in local Fire District procedures. The solution to the problem is to tighten the restrictions and increase the supervision of the local agents, rather than indiscriminately citing unsuspecting growers who have been lulled into a false sense of compliance by local mismanagement.

Finally, Departmemt refers to Attachments "A" and "B" to its' brief. The Attachments were not included with the brief, so Respondent is not in a position to reply to them.

Respectfully submitted,

Joseph E. Penna
Attorney for Respondent

JOSEPH E. PENNA, P.C.
Attorney at Law
207 West Main Street
Monmouth, Oregon 97361
Telephone (503) 838-4996

CERTIFICATE OF MAILING

I hereby certify that on August 15, 1984, I served the Respondent's Brief upon Department's Attorney by depositing in the U.S. mail at Monmouth, Oregon a correct copy thereof, addressed to Robert L. Haskins, Assistant Attorney General, Dept. of Justice, 500 Pacific Bldg., 520 SW Yamhill, Portland, Oregon 97204.

Joseph E. Penna

JOSEPH E. PENNA, P.C.
Attorney at Law
207 West Main Street
Monmouth, Oregon 97361
Telephone (503) 838-4996

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. F, November 2, 1984, EQC Meeting

Proposed Adoption of Modifications to Hazardous Waste Rules, OAR 340-100-010 and 340-105-010

Background

On April 20, 1984, the Commission adopted a revised set of hazardous waste management rules that were nearly identical to the federal hazardous waste management rules contained in 40 Codified Federal Regulations Parts 260, 261, 262, 263, 264 and 270 (DEQ Divisions 100, 101, 102, 103, 104 and 105, respectively). The staff did not include 40 CFR Part 265 since in the Department's judgment it was nearly identical to Part 264. The difference between these two parts is that Part 265 is a set of self-implementing standards that operate between rule adoption and issuance of a permit (interim status standards), whereas Part 264 is a set of final standards that are intended to be activated only upon issuance of a permit.

In commenting on the Department's June 1, 1984 Final Authorization Application, EPA pointed out a number of rules in Part 264 that are not self-implementing and therefore cannot operate as interim status standards. The full meaning of this was brought home when the Department, during several recent inspections, realized the near-impossibility of enforcing certain Part 264 rules that were not self-implementing. At its meeting on September 14, 1984, the EQC authorized the Department to hold a public hearing on a proposed set of rules equivalent to EPA's Part 265 interim status standards. The Department also proposed to adopt a definition for "extraction of ores and minerals" as used in the exclusion of residues from the extraction and beneficiation of ores and minerals (340-101-004(2)(g)), and a definition of "residue."

A "Statement of Need for Modifications" to Oregon Administrative Rules (OAR) 340-100-010 and 340-105-010 is Attachment I to this report.

The public hearing was held October 2, 1984, in Portland. Seven people attended; four commented.

Alternatives and Evaluation

No comment was made at the public hearing regarding adoption of interim status standards. The Department agrees with EPA that it does not have a set of interim status standards equivalent to EPA's Part 265 and, therefore, its June 1st Final Authorization Application is deficient. There are four alternative actions that the Commission may take:

1. Adopt 40 CFR Part 265 in its entirety by reference.

2. Amend OAR 340 Division 104 so that in fact it is fully equivalent to EPA's Parts 264 and 265.

3. Recodify Part 265 as OAR 340 Division 107 and adopt as interim status standards.

4. Make no changes in which case EPA has tentatively concluded our program is not equivalent.

Because of time constraints imposed by the authorization process, and to ensure that no further rule deficiencies occur, the Department recommends alternative no. 1: Adopt 40 CFR Part 265 by reference. Considering the effort that has been put into obtaining authorization to date, the Department does not consider alternative no. 4 worthy of further consideration.

A summary of the public testimony and the Department's response to that testimony are found in Attachments IV and V to this report. All testimony was directed to the definitions of "residue" and "extraction of ores and minerals."

The definition for "residue" was proposed since some members of the regulated community continue to question the Department's authority to regulate potentially recyclable waste. It has always been the Department's position that by using the term "residue," rather than "waste," the Legislature clearly intended the Department to regulate potentially recyclable wastes as well as more traditional wastes such as garbage, refuse and sludge.

The Department is convinced that there is a compelling need to exercise this legislative authority. The paramount policy objective of the hazardous waste program is to control the management of hazardous waste from point of generation to point of final disposition. Further, wastes destined for recycling can present the same potential for harm as wastes destined for treatment and disposal. That is, in many cases, the risk associated with transporting and storing wastes is unlikely to vary whether the waste ultimately is recycled, treated or disposed of. Similarly, using or reusing wastes by placing them directly on the land or by burning them for energy recovery may present the same sorts of hazards as actually incinerating or disposing of them.

This is not to say that hazardous waste recycling always must be regulated in the same way as other types of hazardous wastes management. The Department recognizes that certain types of hazardous waste recycling pose lesser environmental risks, for example, where recycled precious metal wastes are dealt with much like raw materials. However, we refute the argument that recycled hazardous wastes should not be regulated at all because they are inherently valuable and do not pose significant environmental risks.

The gist of the public hearing testimony centered on this point - that recycled waste are inherently valuable because they are not being thrown away, and so will not be mishandled. This argument goes much too far and does not account for the fact that recycling operations constitute some of the most notorious hazardous waste damage incidents - including nearly 50% of all Superfund sites nationwide. In Oregon, this includes Caron Chemical, Transco Northwest and Alkali Lake. It is important to note that most of these did not involve sham operators who merely held themselves out as recyclers but in reality intended to dispose of the waste received. Rather, they did engage in some recycling and meant to recycle the wastes they received.

In light of the unanimity of testimony against the proposed definition, it is obvious that it did not clarify the Department's position. As such, it is being withdrawn from consideration for adoption. However, the Department continues to believe that recycled wastes need to be regulated under its hazardous waste program. This conclusion is in accord both with legislative intent and with the Department's program objective of controlling hazardous waste from point of generation to point of final disposition.

It is recommended that the proposed definition for "extraction of ores and minerals" be adopted without modification. This definition occurs in the following rule:

> 340-101-004 (1) Residues which are not solid wastes or hazardous wastes. The following residues are not solid wastes or hazardous wastes for the purpose of this Division:
>
> (a) . . .
>
> . . .
>
> (g) Residues from the extraction and beneficiation of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.
>
> (Comment: The state program is more stringent that the federal program in that the federal program also excludes residues from processing.)

The only comment received on this definition pointed out that the standard mining and mineral industry usage of the term "extraction of ores and minerals" includes both extraction of ores from the earth and the extraction of metals from ores (i.e., processing). However, the Department's intention to regulate the processing of ores and minerals was enunciated in the "Comment" when OAR 340-101-004 was adopted on April 6, 1984, and to broaden the definition of "extraction" to include processing

would clearly circumvent the Department's intention. The proposed definition reaffirms the Department's original intent and is being submitted for adoption without change.

Summation

1. On April 20, 1984, the Department adopted hazardous waste management rules to make its program equivalent to the federal program.

2. Adopting the proposed interim status rule modification will ensure that the Department has a set of self-implementing standards, whereas the present OAR 340 Division 104 does not fully accomplish that purpose as originally intended.

3. Adoption of the proposed definition of "extraction of ores and minerals" will make it clear that the Department intends to regulate processing - the extraction of metals from ores and minerals.

4. Based on recommendations received during the public hearing, the definition of the term "residue" is being withdrawn.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission adopt the proposed modifications of OAR 340-100-010 and 340-105-010.

Fred Hansen

Attachments:
I. Statement of Need for Modifications
II. Statement of Land Use Consistency
III. Public Notice of Rules Adoption
IV. Hearing Officer's Report
V. Response to Comments
VI. Proposed Modifications

Fred S. Bromfeld:c
229-6210
October 17, 1984
ZC1793

Attachment I
Agenda Item No. F
11/2/84 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF MODIFYING OAR 340-100-010 and 340-105-010	))	STATEMENT OF NEED FOR MODIFICATIONS

STATUTORY AUTHORITY:

ORS 459.440 requires the Commission to:

(1) Adopt rules to establish minimum requirements for the treatment storage, and disposal of hazardous wastes, minimum requirements for operation, maintenance, monitoring, reporting and supervision of treatment, storage and disposal sites, and requirements and procedures for selection of such sites.

(2) Classify as hazardous wastes those residues resulting from any process of industry, manufacturing, trade, business or government or from the development or recovery of any natural resources, which may, because of their quantity, concentration, or physical chemical or infectious characteristics:

(a) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
(b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(3) Adopt rules pertaining to hearings, filing of reports, submission of plans and the issuance of licenses.

(4) Adopt rules pertaining to generators, and to the transportation of hazardous waste by air and water.

ORS 459.455 authorizes the Commission and the Department to perform any act necessary to gain Final Authorization of a hazardous waste regulatory program under the provisions of the federal Resource Conservation and Recovery Act.

NEED FOR THE RULES:

The management of hazardous waste is currently under both state and federal control but, by being authorized, a state may manage its own hazardous waste in lieu of a federally operated program. The proposed interim status modifications will better enable the Department to demonstrate that its program is equivalent to the federal program as required for Final Authorization.

The adoption of the definitions will clarify word usage relative to the management of hazardous waste.

PRINCIPAL DOCUMENTS RELIED UPON:

Existing federal hazardous waste management rules, 40 CFR Parts 260 to 265 and 270, and existing State rules, OAR Chapter 340, Divisions 100 to 110.

FISCAL AND ECONOMIC IMPACT:

Since the interim status standards apply only to facilities that are required to obtain a permit, and are in general less stringent than permit standards, they impose no new requirements on the regulated community.

The added definitions simply clarify the manner in which the words were intended to be used by the Department.

Since the proposed rules are only intended to clarify rules already in place, there is no positive or negative fiscal or economic impact on business, including small businesses.

FSB:c
ZC1685.1

Attachment II
Agenda Item No. F
11/2/84 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF MODIFYING OAR 340-100-010 and 340-105-010	))	STATEMENT OF LAND USE CONSISTENCY

The proposal described appears to be consistent with all statewide planning goals. Specifically, the rules comply with Goal 6 because they modify existing rules in a manner that ensures the safe management of hazardous waste storage, treatment and disposal, and thereby provide protection for air, water and land resource quality.

The rules comply with Goal 11 by controlling disposal site operations. They also intend to assure that current and long-range waste disposal needs will be accommodated.

Public comment on this proposal is invited and may be submitted in the manner described in the accompanying Public Notice of Rules Adoption.

It is requested that local, state and federal agencies review the proposal and comment on possible conflicts with their programs affecting land use and with statewide planning goals within their jurisdiction. The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflicts thereby brought to its attention.

After public hearing, the Commission may adopt permanent rules identical to the proposal, adopt modified rules on the same subject matter, or decline to act. The Commission's deliberation should come on November 2, 1984, as part of the agenda of a regularly scheduled Commission meeting.

FSB:c
ZC1685.2

Oregon Department of Environmental Quality

Attachment III
Agenda Item No. F
11/2/84 EQC Meeting

A CHANCE TO COMMENT ON...

Public Hearing on Amendments to the Hazardous Waste Rules

Date Prepared: August 8, 1984
Hearing Date: October 2, 1984
Comments Due: October 2, 1984

WHO IS AFFECTED:

Persons who manage hazardous waste including generators and owners and operators of hazardous waste treatment, storage and disposal facilities.

WHAT IS PROPOSED:

The Department of Environmental Quality (DEQ) proposes to amend hazardous waste rules that were adopted on April 20, 1984, by incorporating federal interim status standards. This is necessary to assure equivalence to the federal program in order for the Department to obtain Final Authorization to manage hazardous waste in Oregon.

The Department also proposes to adopt several definitions to clarify word usage relative to the management of hazardous waste.

WHAT ARE THE HIGHLIGHTS:

- o OAR 340-105-010 is being modified to adopt 40 CFR Part 265 by reference.
- o Several definitions are being added to OAR 340-100-010.

HOW TO COMMENT:

A public hearing is scheduled for oral comments on:

Tuesday, October 2, 1984
9:00 a.m.
DEQ Portland Headquarters
Room 1400
522 SW Fifth Ave.

Written comments can be submitted at the public hearing or sent to DEQ, PO Box 1760, Portland, Oregon, 97207, by October 2, 1984.

For more information, call Fred Bromfeld at 229-5913 or toll-free in Oregon 1-800-452-4011.

WHAT IS THE NEXT STEP:

After the public hearing, DEQ will evaluate the comments, prepare a response to comments and make a recommendation to the Environmental Quality Commission on November 2, 1984.

ZC1685.3

P.O. Box 1760
Portland, OR 97207

8/10/82

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call ~~1-800-452-7813,~~ and ask for the Department of Environmental Quality.
1-800-452-4011

VICTOR ATIYEH
GOVERNOR

Attachment IV
Agenda Item No. F
11/2/84 EQC Meeting

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: Fred Bromfeld, Hearings Officer

Subject: Summary of Public Testimony on Proposed Modification of Hazardous Waste Rules, OAR 340-100-010 and 340-105-010

Pursuant to notice, a hearing was conducted on October 2, 1984, in the offices of DEQ in Portland, Oregon, to receive testimony on the Department's proposal to modify hazardous waste management rules, OAR 340-100-010 and 340-105-010. Seven people attended; four commented. All the testimony concerned the definitions proposed to be adopted in OAR 340-100-010.

The most controversial issue concerned the definition of "residue."

Tom McCue, Oregon Steel Mill, testified that the definition was not needed.

Tom Donaca, Associated Oregon Industries, testified that residue could not be defined as this was already done by statute, ORS 459.410(6)(b). As he interprets the statute, the word "residue" pertains only to hazardous substances which are identified by the procedure described therein. Any other substances cannot rightly be called residue.

Testifying from a written submission (attached), Chuck Knoll, Teledyne Wah Chang, stated that the definition included all materials. As such, this could be interpreted to require any industry or manufacturer which produces and sells a product that is a hazardous material to comply with the hazardous waste regulations. After giving an example, he proposes adding the following to the definition: "Residue does not include products made by an industry, manufacturer, trade, business or government for the purpose of producing an item of economic value."

In further testimony, Tom Donaca commented that the proposed addition of the concept of economic value might have merit, but as a qualifier to a section such as OAR 340-101-003(2) rather than to the basic definition as proposed.

Tom Donaca, Chuck Knoll and Jim Brown, Tektronix, recommended that the proposed definition of "residue" not be adopted.

The other major issue pertained to the definitions regarding beneficiation and extraction.

Reading again from his written submission, Chuck Knoll testified that the Department should choose these definitions to conform to the EPA position of not regulating wastes generated by a metals manufacturing industry which produces metal from ores (processing). This includes industries that produce steel, titanium, aluminum, copper, zirconium, etc. To regulate such wastes will exclude the State of Oregon from any consideration as a potential new site for such industry.

He stated that this exemption was established by an Act of Congress which also required the EPA to study wastes generated by this category of industry and to establish suitable regulations. This study is presently not complete and he recommends, on the basis of providing fairer conditions for industries presently in the State of Oregon to compete on a nationwide level, that processing not be regulated at this time.

Chuck Knoll also raised a secondary issue concerning the need to allow sufficient time for an affected owner or operator to submit a Part A permit application.

In further testimony, Jim Brown stated that, as worded, OAR 340-101-004(2)(g) exempted only residues from "extraction and beneficiation" (a two-pronged test) whereas "extraction or beneficiation" (a single test) might be closer to what DEQ had intended.

Fred S. Bromfeld:c
229-6210
Attachment
ZC1793.A
October 7, 1984

TELEDYNE
WAH CHANG ALBANY
P.O. BOX 460
ALBANY, OREGON 97321
(503) 926-4211 TWX (510) 595-0973

Hand Carried

October 1, 1984

Mr. Richard P. Reiter, Director
Hazardous Waste Operations
Solid Waste Division
Department of Environmental Quality
P.O. Box 1760
Portland, OR 97207

RE: Comments Regarding the DEQ Proposed Modification of OAR 340-100-010 adding Definitions for "Residue", "Extraction," and "Beneficiation"

Dear Rich:

The following comments are to address the matter of modifying OAR 340-100-010. Specifically it addresses the definitions provided for "Beneficiation of Ores and Minerals," "Extraction of Ores and Minerals," and "Residues." The use of these definitions will have a definite economic impact on industries, manufacturers and businesses presently in the state of Oregon, as well as the operation of the hazardous waste section of the DEQ. Also, these definitions will make the hazardous waste rules for the state of Oregon yet one notch more stringent than the EPA rules used nationwide. As such, it makes it again a little more difficult to attract additional new industry to this state. This matter has been publicly stated to have a high importance recently.

"Residue" as defined includes all materials. As such, it will require any industry, or manufacturer, which produces and sells a product that is a hazardous material, to comply with the hazardous waste regulations. For example, products will require a hazardous waste label and

an industry, manufacturer, or even a sales distributor will need a license to store it for sale. To correct this all-including definition, the following clarification should be added: "Residue does not include products made by an industry, manufacturer, trade, business, or government for the purpose of producing an item of economic value.

Beneficiation of ores and minerals, and Extraction of ores and minerals, are both terminology that was adopted from the EPA Hazardous Waste Regulations and placed in the DEQ Hazardous Waste Regulations. The EPA did not provide a specific definition for these terms. However, the definition as proposed by the DEQ is much different than the terminology that is generally accepted. "Extraction" means "to remove or separate from ore." Benefit, from which the word beneficiation comes, means "anything contributing to an improvement in condition."

The DEQ proposed definition has therefore narrowed these definitions to only include the mining and upgrading of ores by the purely physical process. Both the EPA and DEQ rules exempt from hazardous waste regulations "Residues from the extraction and beneficiation of ores and minerals...." [OAR 340-101-004(1)(g)]. The EPA definition also includes "processing" of ores but in the sense of the word it includes or is equivalent to "extraction" and/or "beneficiation."

As administered by the EPA, this means that all wastes generated by a metals manufacturing industry which prduces metal from ores is exempt from hazardous waste regulations. This includes industries that produce steel, titanium, aluminum, copper, zirconium, etc. This interpretation is validated in the proposed wastewater regulations for the Nonferrous Metals Manufacturing Industries (Federal Register, June 27, 1984, p. 26396). To adopt this regulation will presently exclude the state of Oregon from any consideration as a potential new site for such industry.

This exemption was established by an Act of Congress as contained in Sec. 3001(b)(3) of the Resource Conservation and Recovery Act. This portion of the Act requires the EPA to study wastes generated by this category of industry and, as a result of this study, establish suitable regulations. This study is presently not complete.

So as not to exclude the state of Oregon from consideration as a potential site for industrial expansion, it is proposed not to adopt these definitions or consider new definitions for these terms until the nationwide study is complete and rules are established. This will also provide fairer conditions for industries presently in the state of Oregon to compete on a nationwide level.

If the definitions of "Residue," "Extraction," and "Beneficiation" are adopted, then modifications to OAR 105, Subdivision B, must be made. OAR 340-105-010(5) requires "(a) Owners or operators of existing hazardous waste management facilities that do not have a permit must submit a Part A permit application to the department by June 1, 1984." When this rule goes into effect then any owner or operator that may fit into this category may be in violation as the date has already passed. As required of OAR 340-105-010(5)(d), they will be instantly "subject to enforcement action including termination of the facility's operation." Also, if one industry is already covered by a Part B application that has been requested as per OAR 340-105-010 (5)(b), additional time should be allowed, such as a six-month period, to submit the application pertaining to those activities that were not previously covered by the regulations. Such a provision will provide time to submit a proper and complete application.

There are probably other instances such as this that should be allowed for in the rules so as to allow the owner or operator a reasonable amount of time to bring his facility into compliance before the rules become effective or subject to enforcement by the DEQ. Therefore, it is requested that the DEQ fully investigate the impact of these proposed modifications before they are adopted. Included with this investigation should be: (1) A list of the additional industries, businesses, and manufacturers that will now be subject to regulation; (2) the economic impact they will bear; (3) the additional administrative burden that will be recognized by the DEQ; and (4) the environmental benefit, if any, that the state of Oregon will receive by the proposed modification. It does not presently appear that such an investigation has been made by the DEQ.

Yours very truly,

Charles R. Knoll, P.E.
Environmental Control

CRK:dkm

Attachment V
Agenda Item No. F
11/2/84 EQC Meeting

RESPONSE TO COMMENTS on Public Hearing
Regarding the Modification of Hazardous Waste Rules
OAR 340-100-010 and 340-105-010

Comments on definition of "residue," OAR 340-100-010:

1. You cannot define "residue" as this is already done by statute, ORS 459.410(6)(b). The word "residue" pertains only to hazardous substances which are identified by the procedure described therein. Any other substances cannot rightly be called "residue."

2. "Residue" as defined includes all materials. As such, it will require any industry, or manufacturer, which produces and sells a product that is a hazardous material, to comply with the hazardous waste regulations. For example, products will require a hazardous waste label and an industry, manufacturer or even a sales distributor will need a license to store it for sale. To correct this all-including definition, the following clarification should be added: "Residue does not include products made by an industry, manufacturer, trade, business, or government for the purpose of producing an item of economic value."

Department Response: The definition for "residue" was proposed since some members of the regulated community continue to question the Department's authority to regulate potentially recyclable waste. It has always been the Department's position that by using the term "residue," rather than "waste," the Legislature clearly intended the Department to regulate potentially recyclable wastes as well as more traditional wastes such as garbage, refuse and sludge.

The Department is convinced that there is a compelling need to exercise this legislative authority. The paramount policy objective of the hazardous waste program is to control the management of hazardous waste from point of generation to point of final disposition. Further, wastes destined for recycling can present the same potential for harm as waste destined for treatment and disposal. That is, in many cases, the risk associated with transporting and storing wastes is unlikely to vary whether the waste ultimately is recycled, treated or disposed of. Similarly, using or reusing wastes by placing them directly on the land or by burning them for energy recovery may present the same sorts of hazards as actually incinerating or disposing of them.

This is not to say that hazardous waste recycling always must be regulated in the same way as other types of hazardous wastes management. The Department recognizes that certain types of hazardous waste recycling pose lesser environmental risks, for example, where recycled precious metal wastes are dealt with much like raw materials. However, we refute the argument that recycled hazardous wastes should not be regulated at all

because they are inherently valuable and do not pose significant environmental risks.

The gist of the public hearing testimony centered on this point - that recycled waste are inherently valuable because they are not being thrown away, and so will not be mishandled. This argument goes much too far and does not account for the fact that recycling operations constitute some of the most notorious hazardous waste damage incidents - including nearly 50% of all Superfund sites nationwide. In Oregon, this includes Caron Chemical, Transco Northwest and Alkali Lake. It is important to note that most of these did not involve sham operators who merely held themselves out as recyclers but in reality intended to dispose of the waste received. Rather, they did engage in some recycling and meant to recycle the wastes they received.

In light of the unanimity of testimony against the proposed definition, it is obvious that it did not clarify the Department's position. As such, it is being withdrawn from consideration for adoption. However, the Department continues to believe that recycled wastes need to be regulated under its hazardous waste program. This conclusion is in accord both with legislative intent and with the Department's program objective of controlling hazardous waste from point of generation to point of final disposition.

Comment on definitions of "beneficiation of ores and minerals" and "extraction of ores and minerals": The terminology used here was adopted from the EPA Hazardous Waste Regulations and placed in the DEQ Hazardous Waste Regulations. The EPA did not provide a specific definition for these terms. However, the definition as proposed by the DEQ is much different than the terminology that is generally accepted. "Extraction" means "to remove or separate from ore." Benefit, from which the word beneficiation comes, means "anything contributing to an improvement in condition."

The DEQ proposed definition has therefore narrowed these definitions to only include the mining and upgrading of ores by the purely physical process. Both the EPA and DEQ rules exempt from hazardous waste regulations "Residues from the extraction and beneficiation of ores and minerals . . ." [OAR 340-101-004(2)(g)]. The EPA definition of what is excluded also includes "processing" of ores but in the sense of the word it includes or is equivalent to "extraction" and/or "beneficiation."

As administered by the EPA, this means that all wastes generated by a metals manufacturing industry which produces metal from ores is exempt from hazardous waste regulations. This includes industries that produce steel, titanium, aluminum, copper, zirconium, etc. This interpretation is validated in the proposed wastewater regulations for the Nonferrous Metals Manufacturing Industries (Federal Register, June 27, 1984, p. 26396). To adopt this regulation will presently exclude the state of Oregon from any consideration as a potential new site for such industry.

This exemption was established by an Act of Congress as contained in Sec. 3001(b)(3) of the Resource Conservation and Recovery Act. This portion of the Act requires the EPA to study wastes generated by this category of industry and, as a result of this study, establish suitable regulations. This study is presently not complete.

So as no to exclude the state of Oregon from consideration as a potential site for industrial expansion, it is proposed not to adopt these definitions or consider new definition for these terms until the nationwide study is complete and rules are established. This will also provide fairer conditions for industries presently in the state of Oregon to compete on a nationwide level.

Department Response: It appears that commenter's problem lies more with what the Department intends to regulate rather than with the specific definitions chosen. This definition occurs in the following rule:

> 340-101-004 (1) Residues which are not solid wastes or hazardous wastes. The following residues are not solid wastes or hazardous wastes for the purpose of this Division:
>
> (a) . . .
>
> . . .
>
> (g) Residues from the extraction and beneficiation of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.
>
> (Comment: The state program is more stringent that the federal program in that the federal program also excludes residues from processing.)

However, the Department's intention to regulate the processing of ores and minerals was enunciated in the "Comment" when OAR 340-101-004 was adopted on April 6, 1984, and to broaden the definition of "extraction" to include processing would clearly circumvent the Department's intention. The proposed definition reaffirms the Department's original intent and is being submitted for adoption without change.

Comment on OAR 340-105-010: If the definitions of "residue," "extraction" and "beneficiation" are adopted, then modifications to OAR 105, Subdivision B, must be made. OAR 340-105-010(5) requires "(a) Owners or operators of existing hazardous waste management facilities that do not have a permit must submit a Part A permit application to the department by June 1, 1984." When this rule goes into effect then any owner or operator that may fit into this category may be in violation as the date has already passed. As required of OAR 340-105-010(5)(d), they will be instantly "subject to enforcement action including termination of the facility's operation." Also, if one industry is already covered by a Part B application that has been requested as per OAR 340-105-010(5)(b), additional time should be allowed, such a six-month period, to submit the application pertaining to those activities that were not previously covered by the regulations. Such a provision will provide time to submit a proper and complete application.

Department Response: This problem is a common one and may be faced in other cases such as when the Department classified a new waste as hazardous. Procedurally, if a violation such as described occurs, the Department would informally advise the owner/operator (by meeting, telephone call, etc.) of the need to submit a Part A permit application within 25 days (or longer, per a compliance order, to revise a Part B permit application). Submission of the application will then put the facility back into compliance with the rule.

For further information, commenter is referred to the document Hazardous Waste Operations Enforcement Response Policy, June 1, 1984.

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Attachment VI
Agenda Item No. F
11/2/84 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF MODIFYING) PROPOSED MODIFICATIONS
OAR 340-100-010 and 340-105-010)

1. 340-100-010 When used in Divisions 100 to 110 of this Chapter, the following terms have the meanings given below:

. . .

"Beneficiation <u>of ores and minerals</u>" means the upgrading of ores and minerals by purely physical processes (e.g., crushing, screening, settling, flotation, dewatering and drying) with the addition of other chemical products only to the extent that they are a non-hazardous aid to the physical process (such as flocculants and deflocculants added to a froth-flotation process).

. . .

<u>"Extraction of ores and minerals" means the process of mining and removing ores and minerals from the earth.</u>

. . .

2. 340-105-010 (1) Permit application. . . .

(2) Who applies? . . .

(3) Completeness. . . .

(4) Information requirements. . . .

(5) Existing management facilities. (a) Owners and operators of existing hazardous waste management facilities that do not have a permit must submit a Part A permit application to the Department by June 1, 1984.

(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.

(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, excluding Subdivision F, and] 40 CFR Part 265[, Subpart F] until final administrative disposition of a permit is made. After such final disposition, a management facility shall not treat, store or dispose of hazardous waste without a permit issued in accordance with Divisions 100 to 106.

(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.

(e) If an owner or operator of an existing management facility has filed a Part A permit application but has not yet filed a Part B permit application, the owner or operator shall file an amended Part A application:

(A) No later than 15 days after the effective date of the adoption of rules listing or designating wastes as hazardous if the facility is treating, storing or disposing of any of those newly listed or designated wastes; or

(B) Prior to any of the following actions at the facility:

(i) Treatment, storage or disposal of a new hazardous waste not previously identified in Part A of the permit application[;]..

(ii) Increases in the design capacity of processes used at a facility. The owner or operator must submit a justification explaining the need for the increase based on the lack of available treatment, storage or disposal capacity at other hazardous waste management facilities, and receive Department approval before making such increase.

(iii) Changes in the processes for the treatment, storage or disposal of hazardous waste. The owner or operator must submit a justification explaining that the change is needed because:

(I) It is necessary to prevent a threat to human health or the environment because of an emergency situation, or

(II) It is necessary to comply with the requirements of Divisions 100 to 108.

The owner or operator must receive Department approval before making such change.

(iv) Changes in the ownership or operational control of a facility. The new owner or operator must submit a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of [Subdivision H of Division 104] Subpart H of 40 CFR Part 265 (financial requirements), until the Department has released him in writing. The Department shall not release the old owner or operator until the new owner or operator has demonstrated to the Department that he is complying with that [Subdivision] Subpart. All other duties required by these rules are transferred effective immediately upon the date of the change of ownership or operational control of the facility.

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. G, November 2, 1984, EQC Meeting

Proposed Adoption of "Opportunity to Recycle" Rules (OAR 340-60-001 through -080)

Background

During its 1983 regular session, the 63rd Oregon Legislative Assembly passed Oregon's Recycling Opportunity Act (SB 405). It requires that the "opportunity to recycle" be made available to all Oregonians. The Act is codified in ORS Chapter 459. The Commission is directed by the Act to adopt rules and guidelines necessary to carry out the provisions of the Act by January 1, 1985.

The rules are required by ORS 459.170 to address:

1. Acceptable alternative methods for providing the opportunity to recycle. (OAR 340-60-035)

2. Educational, promotional and notice requirements. (OAR 340-60-040)

3. Identification of wastesheds within the state. (OAR 340-60-025)

4. Identification of the principal recyclable materials in each wasteshed. (OAR 340-60-030)

5. Guidelines for local governments and other persons responsible for implementing the provisions of the Act. (OAR 340-60-001 to -080)

6. Standards for the joint submission of the recycling reports by affected persons in the wasteshed. (OAR 340-60-045)

7. Permit fees assessed against disposal sites (adopted by Commission February 24, 1984, Agenda Item No. I). (OAR 340-61-115)

The "opportunity to recycle" must be provided to every person in the state by July 1, 1986. This includes households, businesses and industry. The "opportunity to recycle" includes at a minimum:

- o A recycling depot located either at a disposal site or at another site more convenient to the people being served. The depot is also a condition of the DEQ disposal site permit.

- o At least monthly collection of source-separated recyclable material from collection service customers within urban growth boundaries of cities with 4,000 or more population or within an urban growth boundary established by a metropolitan service district.

- o A public education and promotion program that encourages participation in recycling and gives notice to each person about the recycling program available to them.

The Act requires in ORS 459.170(2)(a) through (g) that the following criteria be considered in developing the proposed rules.

1. The purposes and policy stated in ORS 459.015.

2. Systems and techniques available for recycling, including but not limited to existing recycling programs.

3. Availability of markets for recyclable material.

4. Costs of collecting, storing, transporting and marketing recyclable material.

5. Avoided costs of disposal.

6. Density and characteristics of the population to be served.

7. Composition and quantity of solid waste generated and potential recyclable material found in each wasteshed.

The Department compiled and reviewed information pertinent to the criteria. Surveys were conducted to identify recycling markets, the amounts of materials recycled by those markets and the freight allowances offered by the markets. Disposal sites and communities throughout the state were surveyed to identify existing recycling activities. Previous waste generation and composition studies were reviewed. Available information on population densities and state geographical differences were compiled and reviewed. Existing solid waste planning and management areas were identified and evaluated for suitability for wasteshed designation. Local government mechanisms of collection service were reviewed. And, cities of 4,000 or more persons were identified.

Since the passage of the Act, the Department has had an extensive public involvement process to discuss the new legislation and these proposed rules in the following settings:

Group	No. of Meetings	Time Period
1983 Annual Conference - Oregon Sanitary Service Institute	1	September 1983
1983 Annual Conference - League of Oregon Cities	1	October 1983
Recycling Education Task Force	2	July 1983, April 1984
State Solid Waste Advisory Task Force - Recycling Rules Subcommittee	16	Oct. 1983 to Oct. 1984
Meetings with local governments and other affected persons	35	January to October 1984
Public information meetings on proposed recycling rules	8	June & July 1984
Regional meetings of the Association of Oregon Counties	14	June & September 1984
1984 Annual Conference - Association of Oregon Recyclers	1	September 1984

A Statement of Need for Rulemaking is included as Attachment VI to this report.

Alternatives and Evaluation

Five public hearings were held on October 1st and 2nd to receive comments on the Department's proposed rules. Participation occurred as follows:

Location	Attendance	Verbal Testimony	Written Testimony	Both Verbal and Written Testimony
Portland	60	20	11	5
Eugene	12	3	1	0
Medford	12	3	0	0
Bend	12	4	1	1
Pendleton	15	5	3	2

All testimony received was given consideration. The Hearings Officers' Reports are included as Attachment II. Many issues were raised during the public hearing process. These are described in Attachment III, Department's Response to Public Comment. The many small changes made in the proposed rules have been summarized in Attachment IV, Discussion of Changes in Proposed Rules. Substantive commented centered around six main issues. These are discussed below.

ACCEPTABLE ALTERNATIVE METHODS

In response to the rule for acceptable alternative methods of providing the opportunity to recycle (OAR 340-60-035), comment was received that the rule as written really allows no alternative to on-route collection of recyclable materials because, in subsection (2)(c), nothing could be more convenient than the method stated in the statute. The Department proposes to insert new language in the rule that would call for an alternative method to be simply "convenient" rather than at least "as convenient." The result of this change is that the focus is now more on recycling accomplished, rather than convenience. In addition, in this part of the rule a question was raised whether or not the Commission could delegate authority to the Department to approve an alternative method as written in the proposed rules. The Department believes that by adopting the proposed rules, the Commission is granting the Department this authority.

RECYCLING REPORTS

Testimony about the rule for standards for recycling reports (OAR 340-60-045), stated that the Department has no authority to either require the affected persons in a wasteshed to select an agent, or to select an agent for the wasteshed. The Department proposes changing the language of this rule to: "The cities and counties and other affected persons in each wasteshed should before July 1, 1985, identify a person as representative for that wasteshed . . ." and deleting any reference to the Department appointing such a representative if one is not appointed.

Another comment was that the required recycling report as described in the proposed rules would be complex and would require more effort in supplying information than was anticipated on the part of local governments and garbage haulers. It was suggested that the Department keep all reporting requirements as simple and as short as possible. To address this concern, the Department has reworked the proposed rule in regard to the content of and standards for the recycling report.

WASTESHED DESIGNATION

Several local governments offered comments about the rule for wasteshed designation (OAR 340-60-025). Comments from individual cities, such as Pendleton and Milton-Freewater, requested separate wasteshed designations instead of inclusion in the proposed Umatilla wasteshed. Multnomah County submitted testimony stating that all of unincorporated Multnomah County should be included in the Portland

wasteshed. After discussions with the local governments involved, the Department has revised the wasteshed designation rule. The Department supports separate wasteshed status for the City of Milton-Freewater because the City operates its own landfill, has municipal collection of solid wastes, and is sufficiently remote from the rest of the population of Umatilla County. The City of Pendleton has reconsidered its request and will be part of the Umatilla wasteshed with the understanding that they may request separate wasteshed designation at a later time. For the Portland wasteshed, the Department proposes revising the wasteshed to include the area within the City of Maywood Park, the City of Portland and the urban service boundary as stated in the City of Portland's urban service policy.

Prior to the public hearing, the City of Salem had requested separate wasteshed designation. Since that time the Cities of Salem and Keizer and Marion County have agreed to operate as a Marion wasteshed with the understanding that the Salem and Keizer urban growth boundaries would be a separate division within the wasteshed and could develop and carry out a city program for recycling. If in the future subgroups of a wasteshed desire to operate as their own wasteshed, the rewritten rule allows them to request that the Commission redesignate wasteshed boundaries.

PRINCIPAL RECYCLABLE MATERIALS

In response to the proposed rule for prinicipal recyclable materials (OAR 340-60-030), the Department received comments that the list of principal recyclable materials for each wasteshed should identify materials to be collected from commercial sources and materials to be collected from residential sources. Comments were also received that the Department should identify those materials to be collected for on-route collection in cities of 4,000 and those materials that would be received at solid waste disposal sites. The argument put forth for this split is that it would make implementation of the Act easier, because local governments and garbage collectors would not have to decide what the recyclable materials were at each location in a wasteshed.

The Act calls for the "opportunity to recycle" to be provided to all Oregonians, and does not identify the "opportunity to recycle" as being different for commercial and residential sources of recyclable material. The Act directs the Commission to adopt by rule the principal recyclable materials for each wasteshed, not each situation or location. The statutory definition of "recyclable material" is included as the basis for evaluating the recyclability of any material (including those listed as principal recyclable materials). The Department has added language to the rule for recyclable material (OAR 340-60-055) that addresses the calculation of the cost of disposal.

The Department believes one list of principal recyclable material for a wasteshed is sufficient instead of separate commercial and residential lists, or depot and on-route collection lists. The determination of the recyclable materials in a given situation will in

part depend on the type of collection system and marketing system that are developed and in part on the cost of collection and disposal in each of these situations. Affected persons in a wasteshed may wish to identify some materials on the list of principal recyclable materials as appropriate for a commercial recycling program and others for a residential recycling program.

Without further local input, the Department does not have sufficient information for each location where the opportunity to recycle is required, to definitively identify the recyclable materials in all those specific locations.

As a result, the rules as written envision that the affected persons within the wasteshed will determine which items from the principal recyclable list meet the test of "recyclable material" at each of the specific sites within that wasteshed where the opportunity to recycle is provided. If the affected persons determine at a specific site that one or more items from the principal recyclable list do not meet the test of "recyclable material" as defined in the statute (i.e., "any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material"), then justification for this determination will need to be contained in the recycling report.

FAIR MARKET VALUE EXEMPTION

The Recycling Opportunity Act clarifies local government's authority to regulate the collection of recyclable materials. The Act also provides that certain materials will be excluded from that regulation if they are purchased or exchanged for fair market value. Individuals who collect recyclable materials and are not presently regulated would like to see a broad definition of "exchange for fair market value" so that a minimum of regulation will occur. Individuals who are presently involved with regulation of solid waste management would like to see a narrow definition of "exchange" so that the maximum regulation will occur. Their concerns focus around the definition of "exchange for fair market value."

The Department has defined "exchange for fair market value" (OAR 340-60-050) as those instances of exchange of material between two parties when both parties receive some benefits of real value from the exchange. For example, if a local government requires, as part of its franchise, the franchise holder to collect recyclable materials from generators at no charge, and if another party removes the recyclable materials for free, then no exchange for fair market value has occurred. Therefore, the unfranchised collector is subject to regulation by local government.

The Department feels that the proposed rule provides adequate direction to the affected persons in the wastesheds so that they can proceed to implement the Opportunity to Recycle Act without placing undue restriction on the existing commercial recyclers, the group that is expressing the most concern.

This is the most significant issue which has been raised in the discussion of these proposed rules. Individuals on both sides of this issue feel that an adverse interpretation will conflict with the intent of the Act. Because of the complexity of the issue, it is important to point out alternatives to the Department's proposed course of action. The alternatives are:

(1) Taking no action to define terms in this area and referring the issue back to the Legislature for policy clarification.

(2) Tightening the definition of "purchase or exchange" so that, to qualify for the exemption, a purchase or exchange occurs only when an established market price is paid.

(3) Allowing the recycler and the customer to make the final decision as to when an exchange has taken place, even if this means that the generator receives nothing in return (including no cost avoidance for giving recyclable materials away).

(4) Exempting by definition all commercial recycling activities because all of these activities are based on the exchange of commodities of value. (The Attorney General's office has advised the Department that no statutory authority exists to exclude by rule a certain class of generator from being offered the opportunity to recycle. Exclusion of a class of generators must be based on the economic considerations contained in the statutory definition of "recyclable material" and the fair market value exemption.)

The main concern expressed over this issue centers on the possible disruption in current commercial recycling activities. The Department is suggesting the definition contained in the proposed rules as the best method to minimize any disruption and maximize the amount of recycling accomplished - the central purpose of SB 405.

PREFACE

The proposed recycling rules are headed by a preface (OAR 340-60-001). The value of that preface was questioned at the public hearings. Certain witnesses felt it was unnecessary and in places contradicted the proposed rules. The Department feels the preface addresses the purpose and intent behind the rules in a manner not easily achieved in the formal section-by-section rule. Consequently, the Department believes the preface is valuable and should be retained. Modifications have been made in those sections of the preface dealing with local government's role, recyclable materials, purchase or exchange for fair market value, and collection service to ensure there are no conflicts between the preface and the actual rule. A new section dealing with education and promotion was added to the preface.

The discussion of collection service in the preface received considerable comments, particularly with respect to the language that suggests collection service includes both drop-off locations for recyclable materials and on-route collection. Several individuals testified that drop-off depots or locations are not part of collection service and that they should not be mentioned in the Department's preface to the rules. The Department has reworked this portion of the preface to address these concerns.

Summation

1. ORS 459.170 requires the Commission to adopt by January 1, 1985, rules necessary to carry out the provisions of the Act.

2. The proposed rules were developed by giving consideration to the criteria stated in the Act.

3. Public hearings were held in Portland, Eugene, Medford, Bend and Pendleton.

4. The proposed rule for acceptable alternative methods for providing the opportunity to recycle (OAR 340-60-035) has been revised to allow for more flexibility.

5. The proposed rule for standards for recycling reports (OAR 340-60-045) has been revised to reflect the Department's desire to have a person represent the wasteshed for the purpose of reporting back to the Department. The proposed rule has been rewritten to make the requirements for reporting simpler and less burdensome.

6. The proposed rule for wasteshed designation has been revised to reflect testimony received from the City of Milton-Freewater and from Multnomah County.

7. The proposed rule for principal recyclable materials was not changed substantially. The Department will work with affected persons in each wasteshed to identify recyclable materials for residential and commercial sources.

8. The proposed rule for fair market value exemption (OAR 340-60-050) was the most controversial and received considerable testimony. The Department believes that its original recommendation as contained in the proposed rule is the best method to address this issue.

9. The preface (OAR 340-60-001) of the proposed rules will remain as part of the rules. The Department believes it adds clarity and comprehensibility to the rules. Modifications were made in the preface to address the concerns expressed during the public hearings.

10. The Department has made a large number of changes in the proposed rules to correct editorial errors and improve clarity of intent.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission adopt the proposed rules, OAR 340-60-001 through -080.

Fred Hansen

Attachments:
I. Agenda Item No. F, Sept. 14, 1984, EQC Meeting
II. Hearing Officer's Reports
III. Department's Response to Comments
IV. Discussion of Changes in the Proposed Recycling Rules
V. Proposed Rules OAR 340-60-001 through -080
VI. Statement of Need and Fiscal Impact
VII. Land Use Consistency Statement

William R. Bree:c
229-6975
October 11, 1984
SC1686

VICTOR ATIYEH
GOVERNOR

Attachment I
Agenda Item No.
11/2/84

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. F, September 14, 1984, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed New Rules Relating to the "Opportunity to Recycle" (OAR 340-60-001 through -080)

Background

During its 1983 regular session, the 63rd Oregon Legislative Assembly passed Oregon's Recycling Opportunity Act (SB 405). It requires that the "opportunity to recycle" be made available to all Oregonians. The Act is codified as ORS Chapter 459. The Commission is directed by the Act to adopt rules and guidelines necessary to carry out the provisions of the Act by January 1, 1985.

The rules as required by ORS 459.170 address:

1. Acceptable alternatives for providing the opportunity to recycle. (OAR 340-60-035)

2. Educational, promotional and notice requirements. (OAR 340-60-040)

3. Identification of wastesheds within the state. (OAR 340-60-025)

4. Identification of principal recyclable materials in each wasteshed. (OAR 340-60-030)

5. Guidelines for local governments for implementing the provisions of the Act. (OAR 340-60-001 to -080)

6. Standards for the joint submission of the recycling reports required of local governments. (OAR 340-60-045)

7. Permit fees assessed against disposal sites (adopted by Commission February 24, 1984, Agenda Item No. I). (OAR 340-61-115)

The "opportunity to recycle" must be provided to every person in the state by July 1, 1986. This includes households, businesses and industry. The "opportunity to recycle" includes at a minimum:

- o A recycling depot located either at a disposal site or at another site more convenient to the people being served. The depot is also a condition of the DEQ disposal site permit.

- o At least monthly on-route collection of source-separated recyclable material from collection service customers within urban growth boundaries of cities with 4,000 or more population or within an urban growth boundary established by a metropolitan service district.

- o A public education and promotion program that encourages participation in recycling and give notice to each person about the recycling program available to them.

The proposed rules were developed with the assistance of the Solid Waste Advisory Task Force Recycling Rules Subcommittee which has met at least monthly since October 1983. The Department also held a series of eight public informational meetings throughout the state on the proposed rules in June and July 1984. Additionally, the Department's staff met with many affected local governments and other affected persons to discuss the Act and its implementation. These meetings occurred from January to July 1984.

Alternatives and Evaluation

NEW POLICY

Adoption of a set of recycling rules is required by new statutory authority. The proposed rules will give local governments and other persons involved in the solid waste collection service process guidance to carry out new statutory requirements.

The Act signals a major change in direction for solid waste management in Oregon by establishing priorities to: (1) reduce the amount of solid waste generated, (2) reuse materials, (3) recycle materials, (4) recover energy from solid waste that cannot be reused or recycled and (5) dispose of the remaining solid waste that cannot be reused, recycled, or from which energy cannot be recovered. This Act places increased emphasis on recycling as a solid waste management method.

IMPLEMENTATION OF THE ACT

The Oregon Recycling Opportunity Act envisions a cooperative effort among local governments (cities and counties), garbage collection and disposal services, recyclers, and the public. It does not designate who shall provide the "opportunity to recycle," but requires that it be provided. Local government leaders, in conjunction with the other persons involved in the solid waste collection process, will decide who in their community can best make available the recycling collection and promotion in accordance with the Act.

The proposed rules are intended as a guidance to assist the affected persons in the wasteshed in implementing the opportunity to recycle. By these rules, the Commission will designate the wastesheds where the opportunity will be provided and the principal recyclable materials which will be recycled. The lists of principal recyclable materials are those materials which have a long-term past and expected future markets for recycling. If these materials can be collected, they are generally recyclable from the wasteshed. The Department and the affected persons will use these lists as they determine what materials shall be recycled for each specific situation or location in the wasteshed where the "opportunity to recycle" must be provided. The Department will provide assistance to the wastesheds in implementation of the Act. The key to success of the Act will be the cooperative efforts of the local governments and other affected persons in providing the opportunity. The successful implementation of these rules will also depend on the cooperation of the local governments and affected persons with the Department.

CRITERIA FOR PROPOSED RULES

The Act requires in ORS 459.170(2)(a) through (g) that the following criteria be considered in developing the proposed rules.

1. The purposes and policy stated in ORS 459.015.

2. Systems and techniques available for recycling, including but not limited to existing recycling programs.

3. Availability of markets for recyclable material.

4. Costs of collecting, storing, transporting and marketing recyclable material.

5. Avoided costs of disposal.

6. Density and characteristics of the population to be served.

7. Composition and quantity of solid waste generated and potential recyclable material found in each wasteshed.

The Department compiled and reviewed information pertinent to the criteria. Surveys were conducted to identify recycling markets, the amounts of materials recycled by those markets and the freight allowances offered by the markets. Disposal sites and communities throughout the state were surveyed to identify existing recycling activities. Previous waste generation and composition studies were reviewed. Available information on population densities and state geographical differences were compiled and reviewed. Existing solid waste planning and management areas were identified and evaluated for suitability for wasteshed designation. Local government control mechanisms of collection service were reviewed. And, cities of 4,000 or more persons with responsibilities under the Act were identified.

CRITIQUE OF PROPOSED RULES

Many alternatives to each of these rules were discussed and were eventually modified into the existing proposed rules. Individual cities and counties, groups of counties, cities with populations over 4,000, individual disposal site areas and large regions of the state were considered for possible wasteshed designations. These concepts were all modified to the proposed form that emphasizes existing county boundaries.

Counties already function as designated solid waste management areas. Linn and Benton Counties were joined into one wasteshed because they share common collection and disposal systems. The City of Portland was set aside as a separate wasteshed because it has a unique solid waste collection situation. The City of Salem has formally requested that the area within the urban growth boundaries of the cities of Salem and Keiser be considered a wasteshed. The Department has received no formal acknowledgement from the City of Keiser on this proposal. Marion County does not support this proposal because they believe such a division will lead to unnecessary duplication of effort and expenditure of resources when implementing the Act. Several other cities indicated an interest in being their own wasteshed. We are asking that those cities provide a formal statement at the public hearing on these rules requesting separate status. The Department will then make recommendations to the Commission on those requests.

Several options were considered in the discussion of principal recyclable materials; longer and shorter lists were proposed. The present list represents the materials most commonly available from the wasteshed and provides a practical starting point for recycling.

Various methods of education and promotion were discussed with a special education advisory group. While more complex education programs were considered, the proposed rule is practical and is a good starting point. Successful programs and resources can be used as models for increased recycling education and promotion.

The Act requires affected persons in a wasteshed to submit a recycling report to the Department by July 1, 1986. Initially, several options were considered for the recycling report. The concept of a short report to be submitted on forms provided by the Department is proposed as the most appropriate. The report needs to be short and simple, with emphasis placed on program implementation and not on reporting.

The proposed rule for alternative methods for providing the opportunity to recycle is intended to give the affected persons in the wasteshed as much room for accommodation of special or regional differences and still provide the opportunity to recycle as required by law. We have tried to make as many alternative methods as possible available to the local service providers so that some form of the opportunity to recycle is available to all Oregonians.

There was considerable discussion about the portion of the rule dealing with fair market value (OAR 340-60-059). ORS 459.192 allows a material which is purchased or exchanged from the generator for fair market value to be excluded from all regulations provided by the Act. How broadly or

narrowly "purchased or exchanged for fair market value" is interpreted will affect whether certain recycling activities are regulated by local franchises. For example, local government would not be able to regulate the number of persons providing collection of recyclable paper in a community as long as the paper was purchased or exchanged for fair market value. The recycling industry in Oregon is very concerned that present successful recycling efforts not be adversely affected. There was a great range of strong opinions on this issue.

Summation

1. On August 4, 1983, the Recycling Opportunity Act was signed into law.

2. The new statute requires the Commission to adopt by January 1, 1985, rules necessary to carry out the provisions of the Act.

3. The rules were developed by giving consideration to the criteria stated in the Act.

4. The rules preserve the primary responsibility of local government for adequate solid waste management programs.

5. The rules identify wastesheds based primarily upon existing designated solid waste management agencies, i.e., counties.

6. The rules identify principal recyclable materials for each wasteshed and a process for identification of recyclable materials for specific situations and locations where the opportunity to recycle is required.

7. The rules accommodate regional and demographic difference in Oregon by providing for alternative methods of providing the opportunity to recycle.

8. The rules clarify the exemption of certain materials from regulation when they are purchased or exchanged for fair market value.

9. The Department developed the proposed rules using a variety of avenues for public input.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission authorize a public hearing to take testimony on the proposed rules for OAR Chapter 340, Division 60.

Fred Hansen

Attachments:
I. Statement of Need for Rules
II. Statement of Land Use Consistency
III. Draft Public Notice of Rules Adoption
IV. Proposed Rules

William Bree:c
229-6975
August 29, 1984
SC1686

Attachment II-A
Agenda Item No. G
11/2/84 EQC Meeting

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission Date: October 3, 1984

From: Dennis Belsky, Hearings Officer

Subject: Report on Public Hearing Held October 2, 1984, Concerning Proposed Rules for Implementing the Recycling Opportunity Act

Summary of Procedure

Pursuant to public notice, a public hearing was convened in the city of Medford, at the Jackson County Auditorium in the Jackson County Courthouse on October 2, 1984 at 2:00 p.m. The purpose of the hearing was to receive testimony concerning adoption of proposed recycling rules.

Summary of Verbal Testimony

Doug John, representing Roseburg Disposal Co., Roseburg, Oregon, and President of OSSI, stated that the proposed rules put too much emphasis on local government involvement in the implementation of the Act, when actual implementation would be done by private industries and recyclers. He supports keeping local government involvement to a minimum in the rules. He felt designation of a wasteshed agent had no statutory base. He felt the rules dealing with recycling reports would make the report a cumbersome and a major undertaking. He stressed keeping the requirements for recycling reports simple and short so that recycling reports did not turn into a bookkeeping effort.

He also suggested that the list of principal recyclable materials should be split into separate lists identifying principal recyclable materials for industrial, commercial and residential sources. Having separate lists would make it easier to recognize existing recyclers and haulers involved in recycling in each of the arenas. He felt not identifying principal recyclable materials in this way would protect "mom and pop" recycling businesses and jeopardize implementation of the Act by subjecting it to court challenges. He also felt further distinction should be made for the list of principal recyclable materials. For each of the principal recyclable materials lists, materials should be identified for on-route collection and for depot collection. He did not feel that it was the legislative intent of the Act for local governments and haulers to decide what was recyclable material in each location where the opportunity to recycle is required.

He supported the rule dealing with fair market value. He felt that the concept free for free was not an exchange for fair market value. He suggested that the rules should address what constitutes a purchase for fair market value and that further definition of purchase for fair market value should be based on some payment made by weight.

In the proposed rule entitled "Policy Statement" OAR 340-60-015(2), he felt that the language in the rule that states, "to promote and support comprehensive local or regional government solid waste and recyclable material management planning" did not have a sufficient statutory base, since the legislature has never required that local governments do solid waste planning and that the Department was trying to do by rule what the legislature did not wish.

He felt the rule for Acceptable Alternative Methods provided no alternative for on-route collection as written and recommended it be changed to allow for an alternative.

He supported the Education and Promotion rule OAR 340-60-040(1)(a) that requires public notice that is reasonably designed to reach all persons who generate recyclable materials in the wasteshed. He felt that this was a better general approach than previous suggestions. He did feel that the notice requirement as stated in the rules was too lengthy. He suggested keeping all notice requirements to collection service customers short because most individuals will not read a long document and will pitch it into the garbage. He felt that the six-month interval reminders to garbage service customers should be handled using the current billing process whereby the informational reminder was placed on the billing or included in the envelope along with the billing.

He challenged the inclusion of the income from franchise rates to be considered when determining what is a recyclable material as stated in the preface on page 4 of the proposed rules. He did not feel that this was the intent of the Act and was not specifically stated in the Act.

Pat Fahey, Southern Oregon Sanitation, Grants Pass, Oregon, presented no prepared statements. He did have questions as to whether the rules addressed those situations where cities of under 4,000 were having additional requirements. Staff commented that the requirement for cities under 4,000, the franchise would be to provide information to garbage collection service customers about where the opportunity to recycle was available in their wasteshed.

Mr. Henry Turk, Grants Pass Sanitation, Grants Pass stated that rule OAR 340-60-075 which deals with how recyclable materials will be prepared for collection should specify how each material that is expected to be collected should be prepared. In the rule, it should state the minimum amount that would be acceptable to be collected and also how materials should be contained, for example, whether oil should be collected in glass or plastic containers.

Tim Roack, Sparc Enterprises, a nonprofit handicapped shelter workshop in Grants Pass, Oregon, stated that the definition of fair market value in the rules was vague and contradictory and that monetary exchange should not be the only

criteria to judge fair market value exchange. He felt that there should be clearer language about those situations when no money is changing hands. The rule he felt as written would hurt his operation.

In the preface under "Collection Service," he felt that drop-off centers are not part of collection service and should not be so included.

In rule OAR 340-60-045(3)(a), the designation of a wasteshed agent, he felt that if the Department appoints a person to act as wasteshed agent, the Department should have guidelines stated in the rule by which to select that particular person.

Summary of Written Testimony

There was no formal written testimony submitted at this hearing.

EAG:b
YB3823.1

Attachment II-B
Agenda Item No. G
11/2/84 EQC Meeting

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Robert L. Brown, Hearing Officer

Subject: Report on Public Hearing Held October 1, 1984, Concerning Adoption of Proposed Recycling Rules, Pendleton Hearing

Summary of Procedure

Pursuant to Public Notice, a public hearing was convened in the City of Pendleton, (Room 360, State Office Building, 700 SE Emigrant) on October 1, 1984, at 2:00 p.m. The purpose of the hearing was to receive testimony concerning adoption of the proposed recycling rules.

Summary of Verbal Testimony

Susan McHenry, Pendleton Sanitary Service, Pendleton, addressed the draft rules relating to alternative methods (OAR 340-60-035). She suggested that the rule for acceptable alternative methods include a provision to waive the requirement for an on-route collection system in consideration of:

a) a good faith effort on the part of local government, collectors and landfill operators to establish, operate and maintain a successful recycling program by other means;

b) continuing financial evaluations and economic feasibility reviews by collectors working closely with DEQ to determine cost reasonableness of an on-route collection system; or

c) failing the above, that on-route collections, if mandatory, be delayed in lieu of acceptable alternative methods for a period of time to allow the financial success of a less costly program to fund the equipment and manpower for on-route collection. We suggest a minimum of five years to develop a sound financial base from a recycling program, so mandatory on-route collection would not be required before January 1, 1990.

Rudy Murgo, representing the City of Pendleton, requested that Pendleton be allowed to perform as a separate wasteshed. The City franchises one operator and is hesitant to become involved with other cities in Umatilla County. He indicated that more complete written testimony would be submitted.

J. Bruce Sarizan, Malheur County Sanitarian representing Malheur County, asked that the rules be rewritten to be guidance rather than requirements. Specific points made are as follows:

1. 340-60-020(2)(a), proposes that the words "to each person" be deleted.

2. 340-60-040(1), proposes "where available" be added after "resources" and that "the maximum number" replace "reach all."

3. 340-60-040(3), proposes "provided by the Department" be added after the work "materials."

4. 340-60-045, proposes a new Section 2 to state:

   "The Department shall provide to the wasteshed agent all forms, materials, and instructions for completion of the recycling report not later than July 15, 1985."

5. 340-60-045(2)(c), proposes to insert at the beginning "Estimates or best currently available information of..."

6. 340-60-045(3)(c)(A), proposes to remove the words "single person" from the first line.

7. 340-60-055(1), proposes to remove the word "only" from line 2. On line five add after the word "it" "and the prorated cost of the wasteshed's recycling educational, promotional and notification program."

   Also add a new Section 2:

   "Any increase in the rate charged the consumer for collection or disposal, or new rates charged the consumer, resulting from the costs associated with recyclable materials shall be included in the calculation of the cost of collection and sale of a recyclable material."

8. 340-60-075, proposes to add "transport and storage" after the word "marketing" on line 4.

9. 340-60-080, proposes to add "without prior approval of the Department" to the end.

10. Add new section to end as follows:

    "No part of these rules shall cause the general public, an affected person or an employe or agent of an affected person to be exposed to a health or safety hazard. The final authority for determining when a health or safety hazard or potential health hazard exists shall rest with the county or city health officer of the appropriate jurisdiction."

In conclusion, Mr. Sarizan indicated that the county formally objects to the inadequate time given to affected persons and general public to read and comment on the rules. "And further believes that by the combination of short notice and absence of impact statement that if these rules are adopted at this time by the Commission, the Commission will have acted in a negligent and unethical manner."

Tom Harper, representing the City of Hermiston, stated he concurred with Mr. Sarizan's comments.

Ron Larvik, City Garbage Service, LaGrande, provided the following comments:

1. Page 4, preamble, Recyclable Materials - clarify what "avoided disposal cost savings and income from franchise rates" means.

2. Principal recyclable materials rule. General comments 260 miles from Portland, light density, 22,000 population, almost identical list than Portland should be fewer. Separate list for commercial and residential, and separate list of recycled materials for on-route collection and depots.

3. 340-60-035(2)(c), should change "as convenient" to allow for latitude in offering alternative methods. Nothing is as convenient as those outlined in law.

4. 340-60-040. Why people should recycle should not be part of notification. Notification should be separate from other portions and tailored to person distributing the notice.

   As a general comment, the rules are much better than the previous draft but need to go a little further.

Summary of Written Testimony

Susan McHenry and J. Bruce Sarizan presented written testimony which has been summarized above.

SS627

Attachment II-C
Agenda Item No. G
11/2/84 EQC Meeting

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission Date: October 2, 1984

From: Mark Whitson, Hearing Officer

Subject: Report on Public Hearing Held October 1, 1984, Concerning Proposed Rules for Implementing the Recycling Opportunity Act

Summary of Procedure

Pursuant to public notice, a public hearing was convened in the city of Eugene Council Chambers on October 1, 1984 at 3:00 p.m. The purpose of the hearing was to receive testimony concerning adoption of the proposed recycling rules.

Summary of Verbal Testimony

Dave Butler, Butler Recycling, Corvallis, expressed concerns that the new recycling act placed the burden of providing recycling services on garbage haulers and that they were likely to complain that "recyclers" were removing the highest value material from the waste stream. He did not want the rules to make it hard on recyclers to operate just because garbage men would have this new requirement to provide recycling service placed on them. He did not want to see private recyclers squeezed out just so that one party could control all of the recyclables in a given area. He considered himself a pioneer in providing recycling in Corvallis. He has recycled there for 11 years.

In the rules he felt that fair market value was something that is decided between himself and his customers, and he felt that no one really knew what a fair market value exchange was.

Ernest M. Unger, Director of the Eugene Mission, Eugene, Oregon, expressed concern with the preface of the rules that address collection service. He felt that the news drop boxes that the Eugene Mission operates are not collection service and are not franchisable. He felt that if these drop boxes for newspapers were franchised, it would totally disrupt their community based program which provides employment for 100 homeless individuals.

Ken Sandusky, Waste Reduction Coordinator for Lane County, speaking in behalf of the Lane County Commissioners, proposed that wording changes be made in OAR 340-60-040(1)(b). The proposed wording changes are: "public notice that is reasonably designed to reach collection service customers will be made every six months." He made this proposal in place of the wording "a written reminder."

This wording change was based on three points:

(1) Lane County has no convenient mechanism to place the burden of written notification on waste haulers. Lane County does not franchise for solid waste collection. Approximately 40 percent of the population in the county is served by unregulated garbage collection service.

(2) Lane County will be unable to guarantee the provision of a written reminder every six months to garbage collection customers because waste haulers will not provide a listing of their customers for the purpose of making biennial mailings. Waste haulers were unwilling to give their customer lists because the county cannot guarantee confidentiality of the lists.

(3) Lane County feels the cost of written reminders would be very high. They estimate that written reminders mailed out to all 60,000 collection service customers twice yearly would cost $20,500 per year. That cost includes the cost of postage, paper and printing. They feel that public notice through public service announcements could be equally effective in providing reminders to those customers receiving recycling service.

Summary of Written Testimony

Mary Ann Rombach, League of Women Voters, Eugene, Oregon, submitted written testimony at the hearing. This testimony is summarized as follows:

(1) The League of Women Voters supports Senate Bill 405 and they feel that the proposed rules present a positive approach to implementing the recycling act.

(2) The League is concerned about funding for notice and education at the local level, since no funding is available at the state level. They are concerned that OAR 340-60-040(1) states that: "affected persons in each wasteshed shall commit resources to implement an education and promotion program." They do not feel that this provides the mechanism for uniform education efforts across the state.

(3) The League is also concerned that there is no clear line of responsibility for implementation of the act. They feel that there is a need for clearer direction for implementation.

EAG:b
YB3823

Attachment II-D
Agenda Item No. G
11/2/84 EQC Meeting

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: William H. Dana, Hearing Officer

Subject: Report on Public Hearing Held October 1, 1984, Concerning Proposed Rules for Implementing the Recycling Opportunity Act.

Summary of Procedure

Pursuant to public notice, a public hearing was convened at 3:00 p.m., in the Bend City Council Chambers, on October 1, 1984. The purpose of the hearing was to receive testimony concerning proposed rules for implementing the Recycling Opportunity Act (SB 405). Twelve people attended the hearing and four of them testified.

Summary of Verbal Testimony

Mike Miller, representing the Deschutes County Solid Waste Division, expressed concerns about how responsibility for implementing the act will be determined and spread among the various parties involved. He stated that he was not very familiar with the proposed rules and was uncertain about what will be expected of the county. He had no specific comments concerning the rules.

Mark Bowers, representing Bend Recycling Team, submitted verbal and written testimony. The written testimony is attached. Mr. Bowers expressed strong support for the act and for the rules in general. However, he had three specific concerns about the proposed rules as follows:

1. He believes that once-a-month collection of recyclables is inadequate. He suggests that on-route recycling be provided at least twice a month.

2. He believes that on-route collection should be provided to all citizens, not just to "collection service customers" as indicated in the proposed rules.

3. He believes that the education section of the rules (340-60-040) needs more work. He thinks that more detail is needed. For example, he notes that there are many possible forms of "written notice to each household" and that some are more effective than others. He feels that more guidance is needed in the rules, and that on-going guidance will be needed from the Department.

David Riggs, representing the Crook County Court, questioned the inclusion of non-ferrous metal, motor oil, aluminum and container glass on Crook County's list of principal recyclable materials. He believes there are no markets for these materials and/or that insufficient quantities exist. He also opposes the requirement for on-route collection within the urban growth boundary of a city as well as within the city limits. He stated that in Prineville the collector is franchised by the city for service within the city limits only and that the county does not want to franchise collection outside the city limits. Mr. Riggs also stated that the rules should allow for the addition or deletion of principal recyclable materials without having to obtain a formal variance.

Jay Turley, representing the city of Bend, expressed concerns about how the costs of implementing the program will be passed on. He indicated that the city of Bend would be reluctant to grant a rate increase to the collectors. He expressed a fear that a rate increase would cause people to drop garbage service and resort to illicit dumping.

Summary of Written Testimony

The written testimony for Mark Bowers is summarized above and is attached.

SS633

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission Date: October 1, 1984

From: Linda Zucker, Hearing Officer

Subject: Report on Public Hearing Held October 1, 1984 Concerning Adoption of Proposed Recycling Rules

Background

Pursuant to public notice, public hearings were convened in Portland on October 1, 1984 at 3:00 p.m. and again that evening at 7:00 p.m. The purpose of the hearings were to receive testimony concerning adoption of the proposed rules relating to recycling.

Testimony

Forty-five people signed the registration sheet at the hearing. Twenty individuals provided oral testimony and five of these supplied written testimony. Three additional individuals provided only written testimony. Eight individuals provided written testimony after the close of the proceedings on October 1.

Summary of Testimony

Angela Brooks, Publishers Paper Co., stated that Publishers Paper Co. presently recycles 322 thousand tons of old paper per year (850 tons per day), of which 33 percent came from Oregon. Oregon presently has a 66 percent paper recovery rate. She testified that the rules should not disturb the present network of paper collectors. Any change would damage the recycling in the state. There should be no restraint on existing form of recovery. She indicated that she felt that the definition of "collection" should not include drop boxes or containers where recyclable newspaper is accumulated solely for the purposes of recycling. These activities are not disposal sites or collection service and should not be regulated by franchise.

Craig Sherman, Weyerhaeuser, indicated that Weyerhaeuser operates paper mills in Oregon utilizing 225 tons a day of old waste paper. Oregon has a 60 - 70 percent recovery rate for old corrugated cardboard, and Oregon mills utilize 900 tons per day of old corrugated paper. He stated that overall the proposed rules are an excellent job of implementing SB 405. However, the rules give too much authority to local government and take away freedom from individuals.

1. He stated the rules should limit "collection" to the process of picking up material.

2. He did not feel that the rules should include commercial and industrial recycling as mandated to be covered under the collection of recyclable materials. He felt the legislation was intended to address residential recyclable materials. He stated Oregon presently has a good collection system for recyclable materials. However, we still want to go after available incremental tons of recyclable material. Including commercial establishments in a mandated system of collection will have the effect of wiping out the capital investments of many small entrepreneurs. He implored the EQC to go out and try to go after the incremental tons in their implementation of SB 405, and to try to avoid stampeding local municipalities and counties into dismantling the existing programs.

Steve Colton, Association of Oregon Recyclers, he stated that these rules will almost certainly damage existing recycling business and threaten the steady growth of recycling in Oregon. He was concerned about the extent to which franchising would be authorized under these rules. He identified the three areas of recycling concern:

1. Residential recycling presently has a rate around 20 percent. Local government should have authority to franchise collection service from residential sources.

2. Commercial recycling now has a recycling rate of approximately 50 percent. Government should not franchise collection from commercial sources.

3. Collection service should not include situations where the generator delivers the material. Drop-off or depot locations should not be considered part of collection service.

He stated that the original draft of SB 405, Section 12 relating to fair market value, exempted only "purchase" of materials for fair market value, but that a later draft of the bill contained the present language referring to "purchase or exchange" for fair market value. He indicated page 6 of the proposed rules states, "if there has been no purchase of the material, there has not been an exchange for fair market value." He asks "In that case, why did the legislature include "exchange" in addition to "purchase" in the law which they passed?"

He stated, the Department has chosen to reject the recommendation of a group of advisors which proposed a definition for collection service and fair market value. The Department has chosen to use SB 405 to allow an aggressive restructuring of the existing recycling system. Further, the Department has so severely transformed SB 405 that it now stands as an instrument that can be used to wreak havoc on Oregon's recycling industry. The Department has deviated so far from the general thrust or tenor of last year's testimony and discussions in Salem that they are perilously close to writing their own law through these rules.

His major concerns were the definition of collection service and the scope of the exemption under the exchange for fair market value.

John Trout, representing Portland area collectors made the following suggestions:

Pages 4 and 5 - Starting with the last sentence on page 4, strike the word "franchises" and add "authority of cities or counties." He felt these last sentences should either be stricken or modified because the City of Portland does not grant a franchise.

Page 5 - Wording should be added after the last sentence of the principal recyclable material section. Add "after the wasteshed and affected persons agree, materials must meet the economic test."

Page 12, Policy Statement - "inadequate solid waste collection" is an appropriate term to use.

Page 13(5) - The entire section should be eliminated or modified to place more emphasis on haulers and collectors to provide service.

Page 16, Principal Recyclable Materials - There should be two lists of principal recyclable materials, one residential and one commercial/ industrial.

Page 19(2)(c) - The following wording should be added, "as convenient or cost effective to the effected person providing or receiving the service."

Page 19(a) - Delete "why people should recycle" in the notice requirement.

Page 21 - Insert a statement that a notification on the billing statement is sufficient and serves as notice.

Page 21 - Each type of recycling service provider should only be responsible for notifying those folks that they deal with of the availability of their facilities.

Page 21 - Education in public and private schools should be the responsibility of the local school districts.

Page 22 - There is too much to do in the recycling report section. The whole section should be redrafted and put into a form which is not complicated.

Ken Spiegle, representing Clackamas County, made the following comments:

Page 19 - He supports the language proposed indicating the public notice be "reasonably designed to reach to all persons generating recyclable materials in the wasteshed."

Page 21(d) - It is not counties' business to tell the schools how to develop their curriculum. DEQ should approach and work with the Board of Education.

Page 22(2) - This language is unclear and should be cleaned up.

Page 24(5) - The language should indicate "all affected persons shall make available to the wasteshed agent. . ."

Page 25 - Clackamas County strongly supports the proposed language relating to the fair market value exemption.

John Drew, representing Willamette Industries, indicated that Willamette Industries operates 22 plants in Oregon, employing approximately 3,200 individuals. The proposed rules would have an effect on Willamette Industries operations. Price is a key determining economic factor that influences the supply of waste paper. The recycling opportunity act will not improve the amount or efficiency of waste paper collection in the state of Oregon. The existing rules do not effectively exempt existing old corrugated waste collectors from regulation.

He disagrees with the Department's interpretation of Section 12 of SB 405, exemption for fair market value. The law should not intentionally damage existing recycling operations that have evolved to date. Section 340-60-050(2) will damage existing recycling. The Department has taken license to rewrite the law through these guidelines. Exchange for fair market value should be described as follows: "a generator willing to give his recyclables to a person, or deposit his recyclables in a person's container or deliver his recyclables to a person's premises for free in exchange for the service provided by the person."

R. T. Howard, representing Multnomah County. He stated "Our first option, given a satisfactorily operating Metropolitan Service District, is that Metro should be the wasteshed for the metropolitan area. However, conditions being what they are, our second preference would be that Multnomah County and the City of Portland be a single wasteshed." It is inappropriate to adopt a wasteshed with a fluctuating boundary. With annexation taking place between Multnomah County, Gresham and Portland, it would be appropriate to combine Multnomah County and Portland into a single wasteshed.

Ezra Koch feels "The rules will result in excessive paper work." These rules are not wise, not necessary, and not enforceable and, therefore, constitute poor regulation. "These rules go beyond the intent of SB 405, they go beyond credibility."

Roger Emmons, representing Oregon Sanitary Service Institute (OSSI), made a number of specific points.

Preface:

Local Government Role: Why so much stress on local government?

Wasteshed Agent: Where is the authority in the law for requiring a wasteshed agent?

Recycling Report: Recycling report needs to be shorter, clearer and more simplistic.

Recyclable Materials: What is the income from franchise rates that is supposed to offset recycling costs? Is this referring to franchise fees?

Principal Recyclable Material: He would like to see two separate lists for residential and commercial/industrial recycling sources. It is unclear to the reader trying to carry out a program whether all the principal recyclable materials must be served by all the programs, and who has the burden of proof that materials on the principal recyclable material list cannot be economically recycled.

Existing Recycling Programs: It appears that while the preface pays lip service to protecting existing programs, collection and drop-off depots and others, they are still vulnerable under later regulations in these rules.

Purchase for Fair Market Value: OSSI supports this proposed draft of the definition of purchase or exchange for fair market value.

Commercial and Industrial Recycling: OSSI questions whether the regulation of recycling from commercial and industrial sources in major metropolitan areas is enforceable against the number of scavengers who are presently recycling. OSSI questions, "Is the political, legal and administrative hassle over who recycles from commercial and industrial sources worth the small amount of added recycling?"

Mr. Emmons had the following comments on other rules sections:

Definitions. OSSI has difficulty with the definition of principal recyclable material. They wish to have references to specific conditions or locations deleted. OSSI has difficulties with the definition of generator. Asks Department to explain who is a generator in a multi-tenant situation.

Policy Statement (3) Plans. OSSI objects to another DEQ attempt to force comprehensive planning.

Policy Statement (5). OSSI asks for deletion of all reference to local government as being in the operation of recycling programs. If any part of this section is left in, it should be made certain that all affected persons work on development implementation and operation.

Principal Recyclable Materials. OSSI feels that there should be two lists of principal recyclable materials: a residential list and a commercial/industrial list.

Acceptable Alternatives. OSSI has a problem with the requirement that an acceptable alternative be equally convenient to the person being served, (page 19 (2)(c)), and feels new wording is necessary.

Education Promotion and Notice. OSSI feels that the reason why people should recycle does not belong in the notice requirement. OSSI feels that each service should provide its own notice, with collectors, depots, and disposal sites only having to provide notice about that type of service. OSSI prefers to have a reminder on the bill serve as public notice every six months. OSSI wants the education rules to be as flexible as possible. It should provide a method of public notification.

Standards for Recycling Reports. OSSI wants to see a short, concise recycling report and is concerned that these rules will cause a longer report to be necessary. Some specific points of concern are:

1. The criteria in (2)(a) are inclusive and none others can be considered including the cost of benefits should be changed to include a without limitation clause.

2. Criteria (2)(c)(f) on designation of persons to provide recycling service and franchising appear to be mandatory. Is that DEQ's intention? OSSI does not feel that this section belongs in the rules.

3. OSSI has a concern that the Department does not have the authority to require a recycling agent.

4. OSSI feels that the public input and review process, (4)(a), is excessive in relation to the cost and benefits.

5. Finally, on the top of page 24, OSSI questions DEQ's authority to require a recycling education contact person.

Fair Market Value Exemption. OSSI strongly supports the fair market value exemption as proposed in the rules, page 25.

Recyclable Materials. OSSI questions how the Department will determine whether materials are correctly grouped when a group of materials is considered to be a "recyclable material." OSSI has some concern over the provision in the rule which provides that recyclable materials will be determined based on all costs after the material leaves the use of the generator. They prefer an earlier (9/14) draft of the rules.

Prohibition. OSSI has some legal question relating to this rule since under ORS 459.095 no local government unit can have regulations in conflict with those of the DEQ adopted under ORS 459.045. Does that also apply to this rule? OSSI suggests that we address ORS 459.095 and ORS 459.045 in relationship to this prohibition and its interrelation with local government regulations or requirements where a collector would be in violation of a local ordinance if they comply with this rule.

Art Braun, The Dalles Disposal, had concerns that local government should realize that industry has the expertise needed to do the job of recycling but must be given the flexibility to experiment with new ideas. Local government should not operate recycling programs.

Page 3, Mr. Braun questions whether the wasteshed agent is supposed to be a person or a government agency.

Page 4, Mr. Braun indicates that he feels that a conflict between the statement of a simple recycling report on page 4 and the requirements laid out on pages 22, 23 and 24 of the rules. He feels that some of the requirements will be administrative nightmares. He further questions whether the DEQ has administrative authority to designate a wasteshed agent.

Page 23(4)(a), Mr. Braun is concerned that information provided for the wasteshed report will be trade secrets and should not be available to competitors.

Page 4, in discussion of recyclable materials, Mr. Braun is concerned about the language on the bottom of page 4 and top of page 5 relating to avoided disposal costs and income from franchised rates being used in considering what materials are recyclable.

Page 7, Mr. Braun recommends that there be two lists of principal recyclable materials, one residential and one commercial.

Pages 16 - 18, Mr. Braun would like to know what criteria will be used to remove or add materials to the lists of recyclable materials.

Pages 19 - 21, Mr. Braun has concern that education in the schools should not be a requirement of the recycling law but should be incorporated into school curricula and also that the notice on the billing should be considered adequate for the six month reminder.

Linda Westmoreland, Rainbow Recycling Inc., feels that DEQ rules on SB 405 are giving authority to local governments to interfere with individuals' rights to do business in the free enterprise system in the recycling industry in Oregon. She indicated that Rainbow Recycling is not getting and has not gotten cooperation from local government bodies to work with them and their haulers in providing recycling service to local communities. She is concerned that these rules not provide additional authority to local government in regulation of recycling.

Estelle Harlan, representing Clackamas County Refuse Disposal Association, supports the language on page 19 requiring reasonably designed public notice requirements and supports the language on page 25 relating to fair market value exemption.

Chris Bochsler, Portland Association of Sanitary Service Operators. Mr. Bochler had four concerns:

1. How can DEQ require everyone who is recycling to file a recycling report when there is no authority for DEQ to authorize this type of reporting requirement?

2. If reporting is required, what protection is there to keep these reports confidential?

3. How is DEQ going to require reports from the nonlicensed recyclers on their tonnages recycled in the wasteshed?

4. There should be two lists of recyclable materials, a residential and a commercial/industrial list.

Stainer Urdahl, representing Independent Paper Stock Company. Independent Paper Stock Company is a paper broker in the Portland metropolitan area in business since 1918 receiving and purchasing waste paper from the public. He indicates that part of the success of the accomplishment of a high recycling rate in the Portland area is from the absence of franchising. With regard to the rules, Independent Paper Stock opposes the idea that drop-off locations would be either disposal sites or covered under collection service franchises. He feels franchising would not increase recycling but would have the opposite effect.

Penny Kooyman, representing the Clackamas County Refuse Disposal Association and United Disposal. She indicated (pages 4 and 5 of the proposed rules) a concern that costs of collection should not include disposal site savings or franchise fees and wished to insert language indicating fees authorized of cities and counties. She feels that the reporting requirements are too great, too much paper work involved. She feels that there should be separate lists for commercial and residential recyclable materials.

Page 19, she supports the language referring to reasonably designed notification requirements.

Page 21(d), she is concerned about having to provide education in the schools.

David McMahon, Cloudburst Recycling, points out that section 10 of paragraph 6(c) of the bill attempted to address the question of the continued operation of existing recycling services. He indicates that later reference in the Act was to both recycling collection service and recycling or collection service, referring in the law to Section ORS 459.200(6)(c). He points out that the statements are so vague and ambiguous to appear totally ineffective and feels that the Department should take action to clarify these statements in a direction which will protect existing recycling programs from future franchising of recycling collection. He wishes the Department to address the question of what constitutes "due consideration." He is further concerned that in the law the word "any" as used in "any recycler or collector" being used in the random sense of the word rather than the inclusive "all" sense of the word which the bill drafters had in mind. To his knowledge, DEQ rules have completely ignored the problem of what constitutes a recycling collection service and whether a drop-off depot is a part of collection service. He fully expects a political dog fight over the recycling rights in the City of Portland and is certain that the ambiguity of the law will great exacerbate the situation unless DEQ in this rulemaking procedure clarifies the intent of the law. He recommends that DEQ adopt a rule to the following effect: "Any person providing a residential

recycling collection service as of June 1, 1983 which was then in substantial satisfaction of the wasteshed service requirements as currently promulgated by DEQ (even though he may not have provided service to the entire wasteshed) shall have the first right of refusal on any exclusive contract or franchise or portion thereof which represents at least his current volume of business at the time of its issuance."

Steve Salo, Curbside Recycling, notes that there is an anti-scavenging authority in the law. but that these rules do not provide any clarification or mention of anti-scavenging remedies.

Lori Parker, representing the Oregon Environmental Council, provided an amended copy of the proposed rules with editorial and clarifying comments.

One further general comment that she has made is that while local government has been granted the authority to regulate collection service and the Department has reasonably seen fit not to interfere with that local government authority because there is a delicate balancing act which must be based on local circumstances. "Given the fact that this unique balancing act must be based on the local circumstances unique to each wasteshed, we do not think that DEQ has shirked its duty by choosing to not decide the franchise authority issue at the state level. However, we would not oppose a rule defining collection service if it appears that the controversy might significantly disrupt early implementation of the Oregon Recycling Opportunity Act."

Stan Kahn, representing Sunflower Recycling, stated it is totally impossible to prevent paper from being taken away from a recycling collection program when prices were high, "you can't keep material in the franchise." Mr. Kahn pointed out that scrap paper is not on the wasteshed list of principal recyclable materials, even though it can presently be recycled in the Portland area. Mr. Kahn suggested that there be no franchise in the Portland metropolitan area. He would rather have districts established where recycling would be provided and diversion credits would be used to finance the collection of recyclable material.

Fred Neal representing League of Oregon Cities. Mr. Neal generally commented the Department had made a good effort to preserve existing recycling efforts and reserve to local government their regulatory role. Mr. Neal felt that a preamble section OAR 340-60-001 was unnecessary and redundant. Mr. Neal suggested the following changes:

Page 4, Recycling Report. He feels the DEQ has no authority to require any subsequent recycling reports beyond the one report required on July 1, 1986.

Page 4, Recyclable Materials. Mr. Neal feels that the discussion of cost effectiveness for recyclable materials should not include the costs related to income from franchise rates.

Page 7, Collection Service. Mr. Neal supports the policy of leaving flexibility with local government to define collection service. Asks the agency to resist

efforts to tie the hand of local government while we are responding to the responsibilities to improve recycling efforts. Mr. Neal feels that it is inappropriate to suggest in these rules that cities and home rule counties do not have regulatory power over garbage collection and solid waste management before passage of SB 405.

Page 10, Definitions, (17) Principal Recyclable Materials. This definition does not make sense. It needs to be reworded.

Page 12, Policy Statement. Mr. Neal has a problem with the policy statement section (5). He does not feel that local governments should be singled out for maximum particpation in planning development in operation of recycling programs rather all affected parties should be provide this participation.

Page 18, Alternative Methods. Mr. Neal questions the EQC authority to delegate to the Department the power to approve or disapprove alternative methods.

Page 21, Education and Notification. Mr. Neal has some difficulty with the reference to community groups and neighborhood associations as being undefined terms.

Page 22, Recycling Reports. Mr. Neal strongly objects to use of reference to the statutory requirements upon the Department in considering the need for mandatory source separation by the generators as part of the review of the recycling report.

Page 23, Mr. Neal questions whether levels of recovery or levels of participation are information that can be obtained to be used in the recycling report.

Page 24(D). Mr. Neal feels the appostrophe is inappropriate in this place.

Written Testimony

Lionel McAdon, Rainbow Recycling Inc., urges that the DEQ take a strong position in the implementation of SB 405 through strong control over local city governments. He strongly urges DEQ to not rely on local governments because of their outdated franchise practices which restrict private recycling efforts.

Mike Durbin, Portland Association of Sanitary Service operators, comments that the garbage haulers have the expertise and knowledge to best and most efficiently collect recyclable materials.

Robert Kincaid, City of Lake Oswego, recommends that there be a single Metropolitan Service District area wasteshed, because Metro has already developed a data base on solid waste disposal and recycling. A single wasteshed would reduce duplication of effort in this area. Second, he feels Metro should be designated as the wasteshed recycling report agent. Third, he feels that Metro should be designated as the agency responsible for developing and obtaining approval for the publicity and promotion requirements contained in the recycling opportunity act.

Judy Roumpf, Portland Recycling, would like the following changes made in the text of the proposed rules.

340-60-020(1)(a) - replace word "collecting" with "receiving."

340-60-040(1)(c) insert after "written information" "to be distributed to disposal site users."

340-60-045(7) insert "and promotion" after "education" throughout this section.

340-60-060 substitute "receipt" for "collection" and "receiving site" for "collection site."

340-60-080 insert or "received" after "collected."

Ms. Roumpf had two general comments. First in 340-60-040, the word "depots" is used although this term is not defined. She proposes that depot be defined in the rules as "a place for receiving source separated recyclable materials from the public." She recommends deletion of any rule or commentary in the rules that includes drop-off centers in the term collection or collection service. She also urges that we change the proposed rules to adhere to the language of the law regarding fair market value. The law allows for both purchase and exchange of recyclable materials for fair market value. The proposed rules virtually eliminate exchange.

Dennis Mulvihill, Metropolitan Service District. Mr. Mulvihill suggested the following specific changes or modifications.

On page 19(2)(a)(d), the use of the phrase "beyond the level anticipated from the general method and as effective in recovering recyclable materials from solid waste as the general method" should be changed to be more general and less restrictive.

On page 22(2)(a):(f), these criteria are not germane to the section dealing with what criteria will be used to evaluate the recycling reports.

On page 24(7)(f), the wording "copies of articles printed and that are being used" should be eliminated because many programs will not have the copies as required. He requested that the agency keep in mind the spirit of the report as described on page 4 of the rules. He indicated a concern for the absence in these rules of the attitude that will be used in identifying those recyclable materials which will be required at each location in the wasteshed for providing the opportunities to recycle. His final concern was that the rules should be designed to provide minimum of duplication of government efforts between different levels of government implementing the Opportunity to Recycle Act.

James E. Young, City of Salem, indicates that the City of Salem is willing to join with Keizer and the other municipalities in Marion County in a single Marion County wasteshed with the understanding that Salem and Keizer would be a separate division within the wasteshed and could develop and carry out programs for recycling that meet the facets of SB 405.

Roy Payne, City of Keizer, indicates that the City of Keizer is willing to join with the City of Salem and other municipalities in Marion County in a Marion wasteshed with the understanding Keizer and the Salem area within the urban growth boundary will be identified as a separate division of the overall Marion wasteshed. It is his feeling that the Marion wasteshed will result in an economy of resources and simplification of implementation.

Keith Read, Klamath County, indicates concern regarding principal recyclable materials. He indicated that while those materials are indeed recyclable at one time or another in the wasteshed; they are not all recyclable on a regular basis and dependable local markets do not exist. He is extremely hesitant to build a serious recycling system as outlined in the proposed rules and is extremely concerned about developing an education program based on an unstable recycling system.

It is his recommendation that Klamath County approach the implementation of these rules very cautiously.

Margaret Truttman, Alpine Disposal and Recycling, recommends that the City of Portland award a solid waste franchise to garbage haulers within the Portland city limits, with the condition that they offer recycling to all the customers within their boundaries. She further recommends that franchise fees, that the city collects for solid waste franchises, be used to provide education, promotion and notice requirements to the public, and in addition, that the franchise fees be extended as low interest loans to collectors as a means of updating and providing equipment to collect recyclable.

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Attachment III
Agenda Item No. G
11/2/84 EQC Meeting

Department's Response to Public Comment

The following is a summary of comments received in response to the proposed rules for implementation of the Oregon Recycling Opportunity Act, OAR 340-60-001 to 340-60-080, and the Department's response to those comments. Some changes have also been made in the rules as a result of Department staff review. These changes are not discussed in the public hearing response summary. Some references to section numbers in the comments will be inaccurate due to subsequent renumbering.

Preface (340-60-001)

Comment: On page 4, inclusion of franchise rates in determining what is recyclable is not appropriate. It was not specifically stated in the Act.

Response: The language did not intend that franchise rates would be used in the determination of what is recyclable. The language has been changed to clarify this.

Comment: On page 5, line 3, the word "franchise" should be deleted and the wording "authority of cities or counties" inserted.

Response: No changes should be made here. ORS 459.200(8) provides that "the rates established by the city or county shall allow the person holding the franchise to recover any additional costs of providing the opportunity to recycle at the minimum level required by this 1983 act or at a higher level of recycling required by or permitted by the city or county."

Comment: On page 5, language should be added after the existing text on principal recyclable materials to state "after the wasteshed and affected persons agree, materials must meet the economic test."

Response: The language of this section has been rewritten; however, it is not appropriate to apply the specific economic test to the list of principal recyclable materials in general. There is provision that the affected persons can use the economic test to identify recyclable materials at each place where the opportunity to recycle must be provided.

Comment: Relating to page 7, is the political, legal and administrative hassle over who recycles from commercial and industrial sources worth the small amount of added recycling?

Response: The Act does not distinguish between residential, commercial and industrial materials when referring to the need to provide an opportunity to recycle. It is appropriate that the affected persons in a wasteshed may

wish to distinguish between sources of recyclable material when designing the opportunity to recycle. Unless the controversy over this issue causes a significant disruption of implementation of the Recycling Act statewide, the Department feels these distinctions should be left at the local level. In any event, the Department believes that if a distinction is to be made between commercial/industrial and residential, it can be accomplished only with a change in the statute.

Comment: Drop-off locations and recycling depots are not part of collection and should not be so included.

Response: Rules make no effort to define collection beyond its direct use in the statutes. We have removed that portion of the collection service discussion in the preface which implied that drop-off locations might be a part of collection service. The statute gives local government the authority to regulate collection service but does not require that they do so.

Definitions (340-60-010)

Comment: Who is the generator in a multi-tenant situation?

Response: As stated in the definition of "generator," the generator is the person who last uses a material and makes it available for disposal or recycling. In a multi-tenant situation, the generator would be the individual tenants who use products and produce waste or recyclable materials. In writing franchise regulation, it might be appropriate to refer to the person who pays for or receives collection service as the customer, where appropriate, to distinguish this individual from the generator.

Policy (340-60-015)

Comment: In section (2), it is implied that local government should do solid waste management planning, there is no legislative mandate for any local government solid waste management planning.

Response: The word "planning" has been removed from the text.

Comment: The wording "inadequate solid waste collection" is an inappropriate term to use.

Response: Use of the term "inadequate solid waste collection" is not intended to apply to all solid waste collection situations. However, the Department is concerned that if inadequate solid waste collection does occur, it will create potential hazards or environmental problems. The Department feels this language is appropriate for a policy statement.

Comment: Section (5) indicates that local government should be providing the operation of required recycling programs, this participation should be provided by all affected parties and generators, not just local governments.

Response: The wording has been modified to reflect that all affected parties and generators should provide maximum participation.

Opportunity to Recycle (340-60-020)

Comment: Several persons submitted comments to change the definition of "opportunity to recycle." Proposed changes were to both tighten and loosen the definition. Changes that would tighten the definition of "opportunity to recycle" would require that (1) at least twice-a-month on-route collection of recyclable material should be offered to collection service customers, and (2) on-route collection should be provided to all citizens, not just those who have collection service. Changes that loosen the definition of "opportunity to recycle" include (1) changing the requirement that on-route collection be provided in the urban growth boundaries outside of cities, and (2) the word "to each person" in subsection (2)(A) dealing with notice should be deleted.

Response: The term "opportunity to recycle" is a term that is defined in statute. In the rule for opportunity to recycle, the Department further defines what "collection from collection service customers" means. In view of the statutory language the Department defines this as on-route collection from collection service customers. The Department does not feel it is possible within the bounds of the statute further define the frequency of on-route collection or go beyond the statement that collection service customers will receive on-route collection of their recyclable materials. A local government may choose to implement those provisions if it so desires. The Department did not delete the provision to provide on-route collection of recyclable materials in the urban growth boundary nor did it delete the requirement that states: "gives notice to each person of the opportunity to recycle." Both of these point are clearly and specifically stated in the statute, and it was not possible for the Department to write a rule in conflict with the statute.

Comment: There was a request to change the word "a place of collecting," subsection (1)(A) to "a place for receiving."

Response: The Department proposes changing the word "collecting" to "receiving" to emphasize that disposal sites must have a place to receive recyclable materials as opposed to providing for their collection on route. Change of the word reflects a passive activity associated with the disposal site, as opposed to the more active directed requirement for on-route collection.

Wasteshed Designation (340-60-025)

Comment: The Department has received requests from various local governments to change the designation of wasteshed as it involves them.

Response: The City of Pendleton and City of Milton-Freewater have requested separate wasteshed designation, separate from designation of Umatilla County as a wasteshed. In further discussion, the City of Pendleton has indicated they have decided to join with the Umatilla wasteshed with the recognition that in the future they may request separate wasteshed status from the Commission. The City of Milton-Freewater believes that they have enough unique circumstances to warrant separate consideration. The municipality operates their own landfill and provides all collection service, and their location in Umatilla County makes them sufficiently remote from the remainder of the population. The Department supports designating the urban growth boundary for the City of Milton-Freewater as a wasteshed because we believe we will get a better recycling program by this designation.

The City of Lake Oswego submitted testimony that requested that the Metropolitan Service District be identified as a wasteshed. The Department does not support this wasteshed designation since it has had numerous discussions with the local governments in the area that support the originally proposed wasteshed designation, especially Washington and Clackamas County since they have a mechanism that addresses the providing of collection service. Multnomah County testified that the unincorporated portions of Multnomah County should be grouped together with the City of Portland in a proposed wasteshed, since neither the unincorporated portion of Multnomah County nor the City of Portland franchises for garbage collection service. The Department proposes changing the wasteshed designation for the City of Portland to include the area within the City of Portland, the City of Maywood Park, and the City of Portland's urban service boundary as stated in the City of Portland's urban service policy. The City of Maywood Park is included in the Portland wasteshed because it will be surrounded by the City of Portland as annexations occur. The remainder of Multnomah County will be included in a wasteshed designation. This will include the incorporated Cities of Wood Village, Troutdale, Fairview and Gresham, and the proposed City of Gresham urban service boundary, plus the remainder of unincorporated Multnomah County. Designating wastesheds in this manner will address the changing boundaries of the Cities of Portland and Gresham. It will also allow the affected persons in the unincorporated areas proposed for annexation to work with the local governments that will ultimately be their representative.

The Cities of Salem and Keizer and Marion County have reached an agreement to be part of a Marion County wasteshed, with the understanding that Salem and Keizer will be a separate subdivision within the wasteshed and can develop and carry out programs for recycling that meet the requirements of Senate Bill 405.

Principal Recyclable Materials (340-60-030)

Comment: Nonferrous metal, motor oil, aluminum and containers glass should not be included in the list of principal recyclable materials in the Crook Wasteshed. There is no market for these materials or there are insufficient quantities of these materials for them to be recyclable.

Response: The statutory definition of "recyclable material" (ORS 459.005(15)) is the determining factor of whether a material is a recyclable material at a specific location where the opportunity to recycle is required. The Department feels that these materials will meet the definition of recyclable material at some location in the Crook Wasteshed. We are aware that there may be several locations in the Crook Wasteshed where some of the materials on the list of the principal recyclable materials will not meet the recyclable material criteria in that location.

Comment: These rules should allow for an addition or deletion to the principal recyclable materials list without a formal variance.

Response: The Act calls for the list of the principal recyclable materials to be adopted as a rule by the Commission. The Administrative Procedures Act requires rulemaking formal procedure to be used to add or remove materials from this list. However, affected persons in each wasteshed are free to develop separate lists of recyclable materials at each place where the opportunity to recycle must be provided. These lists would contain only those recyclable materials which meet the economic criteria at each location. They could be used to identify what the opportunity to recycle at each location would be.

Comment: There needs to be two lists of principal recyclable materials, one residential and one commercial, and possibly also two lists, one for on-route collection and one for depot collection (receiving).

Response: The rules have been modified to address this concern in the discussion of principal recyclable materials in the preamble: "The wasteshed's list of principal recyclable materials is a list of the most common materials which are 'recyclable material' at some place in the wasteshed. Some of the materials on the principal recyclable material list will be generated primarily from residential sources. Other material will mostly come from commercial or industrial sources. While the wasteshed's list of the principal recyclable materials does not distinguish material by source of generation, the affected persons may wish to do so in the process of implementation of the Act. The statutory definition of "recyclable material" (ORS 459.005(15)) is the determining factor of whether a material is a recyclable material at a specific location where the opportunity to recycle is required. The affected persons in a wasteshed may wish to identify recyclable materials by type of source, type of recycling service or location in the wasteshed. These rules provide a single list of the principal recyclable materials as a starting point for development of other lists of recyclable materials for the wasteshed." These rules are not intended to limit the affected persons in the wasteshed from developing separate lists or programs to deal with commercial, industrial or residential recyclable materials.

Comment: Who has the burden of proof that a material on the principal recyclable material list cannot be economically recycled?

Response: OAR 340-60-030(8) indicates that the recycling report should demonstrate which materials on the list of principal recyclable materials do not meet the definition of recyclable material for the specific location within the wasteshed where the opportunity to recycle is required. The burden of proof is on the affected persons in the wasteshed who provide the opportunity to recycle and submits the recycling report to prove that a material on the list of the principal recyclable material for the wasteshed is not a recyclable material at a specific location within the wasteshed.

Comment: Markets for some of the materials on the principal recyclable material list are very weak and the costs of delivering material to market are high for distant recyclers.

Response: The Act provides a definition for recyclable materials which allows for the cost of collection and marketing of the material. If the net cost of collecting and marketing a recyclable material was greater than the cost of collection and disposal of that material, then that material would not meet the economic test. This may be the case for some materials handled by recyclers who are distant from market locations. Affected persons within a wasteshed would not have to provide the opportunity to recycle a material on the principal recyclable material list if that material did not meet the definition of "recyclable material" in the Act.

Comment: Section (8) of the rule on principal recyclable materials (OAR 340-60-030(8)) indicates "except for any material, approved by the Department, which the recycling report demonstrates does not meet the definition of recyclable material for the specific location where the opportunity to recycle is required." Does the Department have statutory authority to approve these materials?

Response: The Department has authority to make this approval in the process of review of the recycling report which will identify each material on the list of the principal recyclable material which is not a recyclable material at a specific location in the wasteshed.

Acceptable Alternative Methods for Providing the Opportunity to Recycle (340-60-035)

Comment: The rules as written, by stating that the only alternative which will be accepted to on-route collection is one which is "more convenient," allow for no alternative because no alternative can be as convenient as on-route collection. The Department should make specific provision to waive the requirement for on-route collection system when other recycling programs are in place.

Response: The Act is specific in requiring that the opportunity to recycle for areas within the urban growth boundaries of a city of over 4,000 will include once-a-month collection from collection service customers. The

intent was that convenient on-route collection would be provided in urban areas. The alternative methods rule has been modified to remove the requirement that an alternative must be more convenient than the method described in the Act. This leaves room for an alternative method for on-route collection.

Comment: Wording of OAR 340-60-035(2)(c) should be changed to read "as convenient or cost-effective to the person providing or receiving the service."

Response: The wording in this section has been modified (see above) to provide that the alternative method is convenient to the people using or receiving the service.

Comment: Does the EQC have authority to delegate to DEQ the power to approve or disapprove alternative methods?

Response: Yes, by these rules the EQC has delegated to the Department the authority to approve or reject proposed alternative methods.

Education, Promotion and Notification (340-60-040)

Comment: More detail is needed in this rule.

Response: An education and promotion section has been added to the preface of these rules that provides some additional details regarding the required education and promotion programs. The Department will also be making available a variety of materials that can be used in implementing education and promotion programs including such things as camera-ready brochures, decals, door-hangers, information on working with the media and effective promotional ideas.

Comment: This rule requires too much paperwork.

Response: The reports required in this section are necessary. The Department needs to know what types of recycling education and promotion activities are happening around the state inorder to: (1) assist those areas that are having difficulty, (2) coordinate certain programs in order to avoid unnecessary and expensive duplication and (3) publicize successful programs that can serve as models for other wastesheds' programs. The Department expects that this can be provided easily by the wastesheds attaching a copy of education and promotion materials to the recycling report.

Comment: The required notice is too lengthy. Information on why people should recycle should not be included in the notice.

Response: The Department feels that the notice requirements are appropriate. The reasons for recycling are essential in convincing people that the effort involved in recycling is worthwhile. The initial notice

should, therefore, include information on why people should recycle. No change has been made.

People living in areas with on-route collection programs may prefer to take their recyclable material to a depot. The initial notice that people receive should also include information about depots. If there are a number of depots, it is sufficient to include a telephone number where people can call for information. If a local number is not available, people may be referred to the toll-free DEQ Recycling Information Service number (1-800-452-4011) or Metro's Recycling Information Service (224-5555). Samples of brochures and door hangers from recycling programs demonstrate that this information can be included in a concise and readable format.

Comment: A billing insert in collection service customers' bills should be considered an adequate reminder every six months.

Response: The Department agrees and this can be accomplished within the requirements of this rule as proposed.

Comment: Insert in (1)(c) "to be distributed to disposal site users."

Response: This wording has been included in the rules.

Comment: What are the requirements for cities under 4,000?

Response: Where the opportunity to recycle is required, cities with less than 4,000 people will to have an education and promotion program as described in the rule that encourages people to take advantage of the recycling opportunities available to them. If on-route collection programs for recyclable material are not available, the notice would contain the information described in (1)(a)(B).

Comment: Each type of service provider should only be responsible for notifying their customers about their service.

Response: Affected persons in the wasteshed will have to determine who will be involved in the various elements of the education and promotion program. The Department strongly advocates a coordinated and comprehensive education program that informs people about the recycling opportunities they are most likely to utilize.

Comment: Instead of a written notice to collection service customers every six months [(1)(b)], the rule should require a "public notice that is reasonably designed to reach collection service customers every six months."

Response: The rule [(1)(b)] has been changed to read "A written reminder, a more effective notice or a combination of both about the on-route collection program reasonably designed to reach all solid waste collection

service customers every six (6) months."

Comment: The word "depot" is used but not defined.

Response: The term "depot" has been added to OAR 340-60-010.

Comment: The rule does not provide a mechanism for uniform education efforts across the state.

Response: The Department is not concerned about the uniformity of programs; it is concerned about the effectiveness of programs. The rule was written to allow for creativity and flexibility necessitated by local circumstances. Factors in the development of programs (and program costs) will be, among other things, the number of people in the wasteshed, the number of cities with more than 4,000 people and the number of disposal sites. Extensive use of volunteers in the education and promotion program will be a significant way to keep costs down.

Comment: Insert "where available" after "commit resources" (1).

Response: Effective education and promotion cannot be done without resources. The Department requires that affected persons in the wasteshed find the resources to fund education and promotion efforts. These costs may be covered in the rate structure. No change has been made.

Comment: Change "reach all" to "reach the maximum number" in (1)(a).

Response: Section (1)(a) has been changed to "A written or more effective notice or combination of both that is reasonably designed to reach each person who generates recyclable materials in the wasteshed . . ." Each person is the maximum.

Comment: Under (3) insert "provided by the Department" after "The affected persons in the wasteshed shall provide notification and education materials."

Response: The Department plans to make available a variety of examples and models of education and promotion materials. It will be important for local information to be included in the information that is provided to the media and other groups that maintain regular contact with the public. No change has been made.

Comment: Education in public and private schools should be the responsibility of local school districts and the State Department of Education (1)(d).

Response: The Department is currently aware of about twenty people throughout the state who make presentations in schools on various aspects on recycling. While the Department encourages the continuation of this effort, we agree that a coordinated effort should be made to get expert and

ongoing recycling education into schools. The Department will work with the State Department of Education to determine effective ways to promote recycling education in schools. In the meantime, the reference to private and public schools will be dropped.

Recycling Report (340-60-045)

Comment: The recycling report requirements are too lengthy, involve too much paperwork and are cumbersome. They should be made simple.

Response: The rule has been rewritten to clarify some of the confusing language and to substantially reduce the specific requirements of what will be required in the report.

Comment: Does the Department have statutory authority to designate a wasteshed agent?

Response: Section (3)(b) has been deleted.

Comment: There should be a new section in this rule stating "the Department shall provide to the wasteshed agent all forms, materials, and instructions for completion of the recycling report not later than July 15, 1985."

Response: The proposed July 15, 1985 date is too early for the Department to provide final forms, materials and instructions for completion of the recycling reports. The Department will be working with the affected persons in the wastesheds between January 1, 1985 and January 1, 1986, on designing and finalizing materials and forms to be used for the recycling report, which is not due until July 1, 1986.

Comment: Section (2)(c) should be modified by inserting at the beginning "estimates or best currently available information of."

Response: That section of this rule has been changed to simplify the requirements. We have deleted the section for which this wording was proposed.

Comment: Section (3)(a)(A) the wording "single person as" should be deleted.

Response: This wording has been changed to "person" to clarify the requirements of this rule.

Comment: Section (2) of this rule is very confusing and contains language from the statute which was intended as criteria for the Department, not for the recycling report.

Response: Section (2) of this rule has been changed substantially to clarify confusing language and to remove inappropriate criteria. The wording of concern in this comment has been deleted.

Comment: Section (4) contains a public input and review process which is excessive.

Response: The Department feels that it is important for all affected persons in the wasteshed to have an opportunity to participate in the development of the recycling report. It is especially important that local governments with their particular responsibilities in solid waste management have opportunity to review the recycling report.

Comment: Can DEQ require individuals to file information in the recycling report and will information provided by individuals be kept confidential?

Response: These rules do not require individual recyclers to provide information in the recycling report. If such information was provided, it probably could not be held confidential. The Department will be encouraging individuals to provide appropriate information for the recycling report so the Department can determine if the opportunity is being adequately provided in each wasteshed. We hope to get general information such as total tonnages and participation rates, rather than specific information such as consumer lists or specific costs of service.

Comment: The Department had no authority to require subsequent recycling reports as indicated in the recycling report section of the preface.

Response: That reference in the preface has been removed. The Department will address the need for subsequent recycling reports if or when it occurs.

Comment: Reference is made in the recycling report requirements to an education program. Reference should be made to a "education and promotion program" throughout the report requirements.

Response: An appropriate change in reference to "education and promotion" has been made in the proposed rules.

Fair Market Value Exemption (340-60-050)

Comment: The language in both the preface and the fair market value rule is vague and contradictory. The rules need clearer language for situations where no purchase takes place.

Response: Both the preface section and the rule have been modified through the addition of new language and the reorganization of the existing language to clarify language and remove any apparent contradictions.

Comment: The definition of "exchange for fair market value" should be decided between the recycler and the customer and should not be defined in rules.

Response: These rules have been written to help clarify when an exchange for fair market value has taken place. They are based on the belief that an exchange takes place when benefits accrue to both parties. No substantial change in 340-60-050 has been made. The preface, 340-60-001(12), has been reorganized.

Comment: The rules for purchase or exchange for fair market value should state that recycling by existing commercial collectors is exempt because it already represents a purchase or exchange for fair market value.

Response: These rules do not automatically exempt all commercial recycling. The Department expects that much of the present commercial recycling activity does involve either a purchase or exchange for fair market value and will be exempted under this provision of the Act. Some present commercial recycling collection activities never involve an exchange for fair market value. If this is the case, such transactions could be regulated, if so chose by the involved local government, as a collection service. No substantial change in 340-60-050 has been made. The preface, 340-60-001(12), has been reorganized.

Comment: This rule should be rewritten to indicate that exchange has taken place when the following conditions exist: "a generator willing to give his recyclables to a person, or deposit his recyclables in a person's container, or deliver his recyclables to a person's premises for free, in exchange for the service provided by the person."

Response: This provision is generally compatible with the basis for the Department's rule. A benefit has been accrued to both parties. Consequently, no change is necessary and in fact might be detrimental because of the confusion this language could bring. The Department feels that the addition of this language would tend to further confuse the issue.

Recyclable Material (340-60-055)

Comment: Cost of providing the wasteshed's recycling education, promotion and notification program should be included as part of the overall analysis of what is a recyclable material.

Response: By statutory definition, a "recyclable material" is a material or a group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material. Including the cost of education, promotion and notification in the overall definition of a recyclable material is not appropriate. Also, in the statute, the cost of providing an education, promotion and notification program may be covered through fees assessed to collection service customers as part of providing the opportunity to recycle, or it may be covered through other funds a local government wishes to use for

the education and promotion program. No substantial change was made in this rule.

Comment: How does an affected person determine if the material is correctly grouped when being considered a recyclable material?

Response: The Department will be assisting local governments and other affected persons to determine what group of materials are to be considered recyclable material. In that consideration, the affected persons will be looking at where those materials are coming from, such as from homes or businesses, whether they are suitable for collection in an on-route collection system, or whether they should be received at depots. The volume and type of material available will determine how the materials are grouped for consideration as recyclable material. No substantial change was made in this rule.

Comment: A new section should be added to the recyclable materials rule that states "any increase in the rate charged to customers for collection or disposal or new rates charged to the customer resulting from costs associated with recyclable materials, shall be included in the cost of collection and sale of recyclable materials."

Response: Any cost of collection of recyclable materials will be reflected in the comparison made between recycling and disposal as stated in the definition of recyclable material. The Department recognizes that currently there may be no costs associated with collecting or receiving recyclable materials, because it is currently not done in many communities. In these cases, there will be initial start-up costs associated with putting a recyclable material collection system together.

Reasonable Specifications for Recyclable Materials (340-60-075)

Comment: This rule should specifically state the specifications for each material and include the minimum amount of material acceptable.

Response: This rule is intended to allow the individual recycler to provide reasonable specifications for each situation. By placing specifications in this rule it would limit flexibility. The suggested change has not been made.

Comment: The following language should be added to this rule after "marketing": ", transportation and storage."

Response: The suggested wording is compatible with the intent of this rule and has been added.

Prohibition (340-60-080)

Comment: Language should be added to the end of this rule indicating "without prior approval of the Department" because there may be situations where for a variety of reasons recycling or reuse may not be possible.

Response: The suggested new language would give the Department unlimited discretion to exempt from recycling material which would otherwise be recycled. Such discretion would not be authorized by law. The Department cannot see any situation where a material could not be made available for reuse or recycling and still meet the statutory definition of "recyclable material."

General Comments

Comment: How will the cost of implementation be passed on by a city that is reluctant to grant a rate increase to the collectors?

Response: The statute provides in ORS 459.200 that "the rates established by a city or county shall allow the persons holding a franchise to recover any additional costs of providing the opportunity to recycle at the minimum level required by this 1983 Act or at a higher level of recycling required or permitted by the city or county. The rate shall also allow the person to recover the costs of education, promotion and notice of the opportunity to recycle provided by a person holding a franchise."

Comment: There is too much emphasis on local government involvement. Local government involvement should be kept to a minimum.

Response: The Department feels that local government involvement is essential to the successful implementation of the recycling opportunity act.

Comment: We don't want these rules to squeeze private recyclers out of business.

Response: These rules are not intended to eliminate private recyclers. The rules do not indicate who shall provide the opportunity to recycle. Private recyclers have an essential role to play in recycling activities thoroughout Oregon. Many private recyclers have been exempted under the provision for purchase or exchange for fair market value.

Comment: There is no clear line of responsibility for implementation of the Act. There needs to be a clear direction for implementation.

Response: The Act was intentionally drafted without a clear line of responsibility for implementation of the Act. Since this was the intent of the drafters, the Department has not modified this direction. The key to success of the Act will be the cooperative efforts of the local governments and other affected persons in providing the opportunity to recycle. Successful implementation of these rules will also depend on the

cooperation of the local governments and affected persons with the Department.

Comment: A new rule should be added which states "no part of these rules shall cause the general public, an affected person or an employee or agent of an affected person to be exposed to a health or safety hazard. The final authority for determining when a health or safety hazard or potential health or safety hazard exists shall rest with the county or city health officer of appropriate jurisdiction."

Response: There is no intent or specific provision in these rules which will cause the general public, an affected person or an employee or agent of an affected person to be exposed to a health or safety hazard. Any potential or real health or safety hazard can be dealt with directly by the county or city health officer of the appropriate jurisdiction. There is no need for any additional authority to be provided in these rules.

Comment: A detailed economic impact statement should have been included in the rule packet.

Response: A general economic impact statement was provided to the Commission with the proposed rule packet. This impact statement was not distributed in the mailing or the proposed rules to the public. The fiscal impact statement will be a part of the materials reviewed by the Commission prior to final action on these rules. Detailed economic impact will also be determined in each wasteshed as affected persons determine which recyclable materials will be collected and recycled as part of providing the opportunity to recycle.

Comment: Affected persons, general public and the Commission have not had time or adequate information to consider these proposed rules. If these rules are adopted at this time by the Commission, the Commission will be acting in a negligent and unethical manner.

Response: All required administrative procedures for adoption of these rules have been addressed in the process of drafting public review, public hearing and Commission consideration. The Department staff and Commission have acted in a responsible and ethical manner in the process of development and review of the proposed rules.

Comment: These rules should not disturb or reduce existing recycling efforts. Existing recyclers should be given special consideration under these rules. The proposed language is suggested: "any person providing a residential recycling collection service as of June 1, 1983, which was then in substantial satisfaction of the wasteshed service requirements as currently promulgated by DEQ (even though he may not have provided service to the entire wasteshed) shall have the first right of refusal on any exclusive contract or franchise or portion thereof which represents at least his current volume of business at the time of its issuance."

Response: The Department does not believe these rules will reduce existing recycling efforts or that existing recycling programs will be harmed by implementation of the recycling opportunity act. The Act does provide in ORS 459.200(6)(c) that local government should give "due consideration" to individuals who are providing recycling service. Since the Department does not get directly involved in the granting of collection service franchises, the proposed new language is inappropriate for inclusion in these rules. This type of language would need to have been part of the statute to allow the Department authority to promulgate a rule such as has been suggested.

Comment: The Department should include a rule relating to anti-scavenging protection.

Response: The statute provides legal protection against theft of recyclable materials left out for recycling collection or of recycling materials removed from a container, box, collection vehicle, depot or other receptacle for accumulation or storage of recyclable material. These provisions are found in ORS 459.195. It was the Department's opinion that these statutory provisions and the associated penalties outlined in ORS 459.992 and 459.995 were adequate to provide sanctions against illegal scavenging.

Comment: Comments were made both stating that there should be a solid waste collection franchise in the City of Portland and that there should not be such a franchise in the City of Portland.

Response: These rules do not address specific local government actions on collection service franchising. There is no provision intended in these rules to direct the City of Portland for or against granting a collection service franchise.

Attachment IV
Agenda Item No. G
November 2, 1984
EQC Meeting

DISCUSSION OF CHANGES IN THE PROPOSED RULES FOR IMPLEMENTATION OF THE RECYCLING OPPORTUNITY ACT

Preface: 340-60-001

Line 4 - Additional language has been added to further state the purpose of the preface rule.

The sections of the preface have been numbered to be consistent with administrative rule format.

Reference to section number has been included.

(3) Local Government

In response to public comment, reference in the rule to "granting local government authority" has been changed to "clarifying local government authority."

Additional new language has been added to clarify the intent of these rules.

Some nonsubstantial editorial changes have been made.

(4) Collection Service

Reference to granting local government authority has been deleted.

The example referring to "drop-off locations" has been deleted so as not to imply that such location be regarded as "collection service."

Some nonsubstantial editorial changes have been made.

(5) Wasteshed Designation

Some nonsubstantial editorial changes have been made.

(6) Wasteshed Agent

Reference to "designated agent" has been changed to "identified representative."

(7) Recycling Report

New sentence has been added to indicate the purpose of review of the recycling reports by the Department.

Reference in the final sentence to subsequent recycling reports has been deleted.

Some nonsubstantial editorial changes have been made.

(8) Recyclable Materials

Editorial changes have been made to clarify the intent of this section.

As a result of public hearing testimony, unclear language referring to avoided disposal cost savings has been deleted.

New language has been added to clarify the intent of this discussion including a new discussion of disposal cost.

(9) Principal Recyclable Materials

A substantial amount of new language has been added to clarify the definition and purpose of the principal recyclable materials lists. This language includes discussion of how the wastesheds can deal with material generated from residential, commercial or industrial sources on separate recyclable material lists within each situation in the wasteshed.

Language was changed in the sentence referring to the Department's role in assisting the wastesheds in identifying which principal recyclable materials will not meet the definition of recyclable material. The language change consists of deleting "intends to" and inserting "will" and deleting "help" and inserting "assist in" to read: "The Department will work with affected persons in every wasteshed to assist in identifying materials contained on the principal recyclable material list which do not meet the definition of recyclable material . . ."

New language which makes reference to the importance of the statutory definition of "recyclable material" was added to this section.

Some other minor changes were made to clarify language in this section.

(10) Existing Recycling Programs

Some minor changes were made to clarify the intent of the language of this section.

(11) Education, Promotion and Notification

All of the language in this section is new language. This section is intended to provide a discussion of the purpose of the education, promotion and notification rules, OAR 340-60-040. It was an oversight to leave this discussion out of the proposed rules.

(12) Purchase or Exchange for Fair Market Value

Some additional language has been added to this section to clarify wording of this section. The sentence order of this section has been completely rearranged for purposes of clarification of the intent of this section. No changes of substance were intended in this reorganization.

(13) Commercial and Industrial Recycling

New language has been added at the end of this section to indicate that it is not the Department's intent to limit affected persons in a wasteshed from developing separate lists of recyclable materials.

Some nonsubstantial editorial changes have been made.

Definitions - 340-60-010

(8) A new definition for "depot" has been added. This term was used in the text without definition. Other definitions have been renumbered appropriately.

(18) The definition of principal recyclable materials has been changed to clarify the intent.

Policy Statement 340-60-015

(2) The word "planning" has been deleted from this section of the policy statement so as not to imply that local government is required to do solid waste management planning.

(5) Reference to "local government" has been deleted from this section and replaced with "all affected persons and generators" so as not to imply that local government has a specific responsibility for operation of recycling programs.

Opportunity to Recycle - 340-60-020

(1) The word "collecting" has been replaced with "receiving" to clarify the function of the activity at the disposal site. This change is not intended to specifically exclude these activities from definition of "collection service."

A reference to "rules by the Commission" has been replaced with reference to the specific rule "OAR 340-60-035."

Wasteshed Designation - 340-60-025

This rule has been renumbered to adjust to changes.

(1) (x) the Milton-Freewater wasteshed has been added.

(1) (z) the Multnomah wasteshed has been modified.

(1) (bb) the Portland wasteshed has been modified.

(1) (ee) the Umatilla wasteshed has been modified.

(2) the new section describes the appeal process as provided in the statute.

Principal Recyclable Material - 340-60-030

(2) The wording has been changed here to clarify the intent of this section, the word "identified" left the language unclear as to who would make the identification. New wording has been added to indicate the importance of the statutory definition of "recyclable material." The intent of this section was to indicate that recyclable materials might exist at specific locations not to require a specific party to make an identification of those materials.

(3) In Sections (3) through (7), reference to "Section 2(a) through" has been changed to "Section 1(a) through."

(3) Milton-Freewater wasteshed has been added to this section.

(8) The language of this section has been changed to be consistent with the new language in Section (2).

(9) Principal Recyclable Materials.

This is a new section and contains one sentence of language from the preface section related to principal recyclable material.

(11) An editorial change has been made to clarify this language.

Acceptable Alternative Methods for Providing the Opportunity to Recycle 340-60-035

(1) An editorial change has been made substituting "adequacy" for "acceptability."

(2) Subsection (a) has been changed so that the language now allows the increase resulting from the alternative method to be "at least to" rather than "beyond" the increase from the general method.

(2) Subsection (c) has been changed so that the language now allows the alternative method simply to be convenient and no longer requires the alternative method to be compared to the general methods set forth in OAR 340-60-020 before it is acceptable in terms of convenience.

(2) Editorial changes have been made in (a) through (d) to clarify the language of this section.

(3) A nonsubstantial editorial change has been made.

Education, Promotion and Notification - 340-60-040

(1) Subsection (a) has been changed to provide for either a written notice, a more effective notice or a combination of both that is reasonable and reference to "all persons" has been changed to "each person."

Editorial changes have been to Subsection (a) to help clarify language.

Subsection (b) has added language to provide for a written reminder, a more effective notice or a combination of both rather than just a written reminder.

Subsection (c) has added language "to be distributed to disposal site users" to clarify the intent of the written information called for in that subsection.

Subsection (c) has some editorial changes to clarify the intent of the subsection.

Subsection (d) has new language to clarify the intent and reference to "public and private schools" has been deleted.

(2) The section has an editorial change to clarify language.

(4) This is a new section which indicates that effected persons in a wasteshed should identify an education and promotion representative. This new language is parallel to language requesting the affected persons in a wasteshed to identify a recycling report representative. These representatives are intended to help communicate information during the implementation of the recycling opportunity act.

(5) This section contains an editorial change and a change in internal reference.

Standards for Recycling Reports - 340-60-045

Sections (2), (5), (6), and (7) have been deleted and rewritten in a more understandable form in new Sections (2) and (3).

Sections have been renumbered.

(4) The language in subsection (a) has been changed so that the identification of a wasteshed representative is an encouraged permissive rather than a required activity. "Shall" has been changed to "should" and "designate" has been changed to "identify."

Additional associated editorial changes have also been made.

(5) This section contains new language indicating how the Department will review the recycling report.

Fair Market Value Exemption - 340-60-050

(2) Additional language "by a franchised collector" has been added to clarify the intent of this section.

Recyclable Material - 340-60-055

(1) Editorial changes have been made in this section.

(3) New language has been added to discuss the concept of true "disposal cost."

Reasonable Specifications for Recyclable Materials - 340-60-075

New language "transportation or storage" has been added to clarify intent of this section without making policy changes.

Prohibition - 340-60-080

An editorial change has been made to replace "public" with "generator."

Attachment V
Agenda Item No. G
11/2/84 EQC Meeting

PROPOSED RULES FOR THE IMPLEMENTATION OF THE
RECYCLING OPPORTUNITY ACT
SHOWING ADDITIONS AND [DELETIONS]

Preface:

340-60-001 The following statements, 340-60-001(1) through 340-60-001(13), are intended to guide state agencies, local governments, industries, the public and the Department of Environmental Quality in their efforts to implement these rules and the provisions of Oregon's Recycling Opportunity Act. This preface is a discussion of the policy and intent of the Environmental Quality Commission in adoption of the rules which follow. Implementors of this Act should look to those rules, 340-60-005 through 340-60-080, for direction in implementation of the Act.

(1) NEW POLICY

(a) These rules give local governments and other persons involved in the solid waste collection service process guidance to carry out new statutory requirements of Oregon's Recycling Opportunity Act.

(b) The Act signals a major change in direction for solid waste management in Oregon by establishing priorities to: (1) reduce the amount of solid waste generated, (2) reuse materials, (3) recycle materials, (4) recover energy from solid waste that cannot be reused or recycled and (5) dispose of the remaining solid waste that cannot be reused, recycled, or from which energy cannot be recovered. The Act

places increased emphasis on recycling as a solid waste management method.

(c) The Act envisioned that every person in Oregon should have the opportunity to recycle and that any material which could be recycled for less cost or equal to the cost associated with disposal should be recycled. The Act is based on the policy that it is a higher and better use of material resources to reuse or recycle [a] materials rather than dispose of them.

(2) IMPLEMENTATION OF THE ACT

(a) The Oregon Recycling Opportunity Act envisions a cooperative effort among local governments (cities and counties), garbage collection and disposal services, recyclers, and the public. The Act does not designate who shall provide the "opportunity to recycle," but requires that it be provided. Local government leaders, in conjunction with the other persons involved in the solid waste collection process, will decide who in their community can best make available the recycling collection and promotion in accordance with the Act.

(b) These rules are intended to assist local communities in the implementation of the new Act. The Department will provide assistance to the local communities in implementation of the Act. The key to success of the Act will be the cooperative efforts of the local governments and other affected persons in providing the opportunity. The successful implementation of these rules will also depend on the cooperation of the local governments and affected persons with the Department.

(3) LOCAL GOVERNMENT ROLE

Local government will maintain its primary responsibility for solid waste management and will be a major factor in providing for the opportunity to recycle and in the preparation of the recycling report. These rules are intended to increase, not decrease, the role of local government in solid waste management. [In]The new Recycling Opportunity Act[,] clarified local government's [has clearly been granted the] authority to regulate both solid waste and recyclable material collection service. This [added] clarified authority will help see that an effective recycling system is [in place] established in each community. The use of such authority carries with it an implicit responsibility to use discretion in the exercise of that authority so that the final results of local government action is the optimizing of recovery of recyclable materials. Local government is also directed by this Act to give due consideration to persons who have lawfully provided recycling or collection service before the passage of the Act.

(4) COLLECTION SERVICE

These rules make no effort to define "collection" beyond its direct use in the statute. Local government has [been granted] the authority to regulate both "collection service" and "solid waste collection service" as part of its management of solid waste. There is no requirement that local government must limit competition in the field of recycling collection.[, h]However, it is appropriate to preserve their ability to do so when they feel it is necessary[.] [I]in order to provide an effective and efficient recycling program.[,] [they may desire to define the scope of collection to include drop-off locations as well as on-route collection or to limit the number of

persons who provide collection service of recyclable materials in a specific area.]

(5) WASTESHED DESIGNATION

These rules designate wastesheds throughout the state. An important consideration in the choice of wastesheds was whether the people involved could and would work together to provide the best opportunity to recycle to the public. The wasteshed boundaries were chosen to facilitate effective working relationships. Existing solid waste management areas were selected where there were already successful working relationships. By choosing existing local government boundaries as wasteshed boundaries, these rules place a continued emphasis on the local governments and their role in solid waste management. It is not intended that these wasteshed designations su[r]pplant any existing regulatory structure in the area or that any local government will be required to take on responsibilities beyond [their] its jurisdiction. The wastesheds as designated in these rules are intended to be used for the purposes of this Act only.

(6) WASTESHED [AGENT] REPRESENTATIVE

These rules make a provision that each wasteshed have an [designated agent] identified representative to deal with the Department in matters relating to the recycling report. The Act and these rules see the wasteshed as an area of the state. The Department does not intend to deal with the wasteshed as a new form of local government. Since it will be difficult to communicate with every person in the wasteshed on formal issues which arise relating to the recycling report, these rules call for a single [agent] representative in that role. The [agent] representative will operate on behalf of all affected persons within that wasteshed and will be an integral part of the

implementation of the opportunity to recycle insofar as that individual represents the diverse views of the affected persons in the wasteshed.

(7) RECYCLING REPORT

The recycling report called for by the Act and these rules should be viewed as a progress report and not a complex planning document. It is intended to be a communication from the people in the wasteshed to the Department stating how they will be or are implementing the opportunity to recycle within the wasteshed. Review of the report is the method by which the Department will determine the wasteshed's compliance with the law. The Department wishes to keep reporting requirements to a minimum. The Department intends to provide forms for the submittal of the report and to work with the people in each wasteshed well in advance of the report deadline to develop the information which will go into the report. The reports are intended to be simple[;] containing information which should be available well in advance of the reporting date.

[Since the Department is required to relay the report information to the legislative assembly, it may be necessary to require similar reports subsequent to future legislative sessions.]

(8) RECYCLABLE MATERIALS

The Act requires that the opportunity to recycle be provided for all recyclable materials. [In] To determine[ing what is] whether a [recyclable] material is recyclable at a specific location[, the definition includes] an economic criteria[.] is applied. This criteria compares the net cost of collection and sale for recycling

to the net cost of collection and disposal. [What] Whether material meets the definition of recyclable material will depend in part upon the method which is used to collect and market that material. It will also depend on both the direct costs associated with what is charged or levied as taxes to dispose of solid waste and the indirect costs necessary to provide for environmentally acceptable disposal. In some cases, the cost of collection of recyclable materials is not going to be on a profitable or break-even basis if based solely on the income from sales to markets. [Avoided disposal cost savings and income from franchise rates should also be considered.] Net cost of collecting and marketing a recyclable material may represent an expense to the recycler. [If it is not recovered in a rate structure.] However in these cases the material is still "recyclable material" if it meets the statutory criteria. Such costs were envisioned in the legislation and for situations involving franchised collection service are addressed in the provision that allows for recovery of costs of providing the opportunity to recycle in rates established under franchises.

(9) PRINCIPAL RECYCLABLE MATERIALS

These rules list the principal recyclable materials for each wasteshed. The lists are intended to be a [basis] guide for determining[ation of what are] the recyclable materials at each location where the opportunity to recycle is required. The wasteshed's list of principal recyclable materials is a list of the most common materials which are "recyclable material" at some place in the wasteshed. Some of the materials on the principal recyclable material list will be generated primarily from residential sources, other material will mostly come from commercial or industrial sources.

As they develop programs to provide the opportunity to recycle, the affected person in a wasteshed may wish to identify recyclable material by type of source, type of recycling service or location in the wasteshed. The statutory definition of "recyclable material" (ORS 459.005(15)) is the determining factor of whether a material is a recyclable material and should be included in a program to provide the opportunity to recycle. These rules provide a list of the principal recyclable materials as a starting point for development of lists of recyclable material for specific locations in the wasteshed. The Department is aware that there are economic, demographic and geographic factors which will allow a specific material to be a recyclable material in one portion of a wasteshed and not a recyclable material in another. These rules make provision for this circumstance. Between the time of the identification of the principal recyclable materials in these rules and the submittal of the recycling reports, the Department [intends to] will work with affected persons in every wasteshed to [help] assist in identifying materials contained on the principal recyclable list which do not meet the definition of recyclable material at [each] some locations in the wasteshed[.] where the opportunity to recycle is required. The Department will seek the advice of the people involved in recycling in each wasteshed in determining what materials meet the definition of recyclable material at each specific location where the opportunity to recycle is required. The Department will also make a periodic review of the principal recyclable material lists and will submit any proposed changes to these rules to the Commission. [for inclusion into these rules.]

(10) EXISTING RECYCLING PROGRAMS

The Department is aware that many areas of the state presently have recycling programs which meet or exceed the requirements envisioned in

these rules. The Department will endeavor to take full advantage of these success stories. Local governments are encouraged to provide special consideration to ongoing programs which provide the opportunity to recycle as required by the Act and these rules. Early implementation of the opportunity to recycle will benefit all of the parties involved. It is the intent of the Act and these rules to increase the level of recycling and to reduce the amount of material going to disposal. In addition, it is the intent of these rules to require provision[de] of the opportunity to recycle to [additional geographical] all areas of the state [as well as] and for [additional] all recyclable materials.

11) EDUCATION, PROMOTION AND NOTIFICATION

Education, promotion and notification are key elements of successful recycling programs. Unless people know about the recycling opportunities that are available and the importance of their participation in recycling, even the most efficient programs will not succeed. Recognizing this, the "opportunity to recycle" as defined in the Act includes a public education and promotion program that gives notice to each person of the opportunity to recycle and encourages source separation of recyclable material.

The education and promotion rule outlines the elements of education and promotion programs. Although it contains some specifics, the rule is intended to allow for creativity and flexibility. While collection service customers and people who utilize disposal sites are obvious targets of education and promotion efforts, information should also be made available to the general public.

Contact can be through written notices, meetings, presentations, articles, press releases, photos and/or public service announcements and should be made frequently so that the recycling effort in the community is seen as an on-going concern.

The content of the information should include information about specific recycling opportunities available in the community, the benefits of recycling, and the success of area recycling programs (e.g., amount of materials being recycled, number of people participating).

People involved in the coordination of the education program are encouraged to utilize the skills and resources of a variety of groups, including collectors, recyclers, professional educators, public relations specialists, and citizens groups. Citizen involvement will be essential, both for keeping the costs of programs down and for ensuring credibility.

(12) PURCHASE OR EXCHANGE FOR FAIR MARKET VALUE

-[NOTE: The material in this section has been reorganized without text changes except as noted]

The Act gave local government the authority to regulate the collection service for recyclable materials. The Act provides that any material which is source separated by the generator and purchased or exchanged from the generator for fair market value is exempt from the provisions of the Act. Such an exemption will limit local government in its ability to require collection service for these materials in these situations. The question of when a purchase for fair market value has taken place is mostly one of fact and is not addressed in any detail

in these rules. [These rules do not address the situation where a purchase has occurred, however they] The rule does address the issue of exchange for fair market value. The rule [definition] is based on the belief that for an exchange to have taken place benefits must accrue to both parties. [When] In situations where local government chooses to provide for the benefit of collection of a recyclable material from the generator through franchised collection service[,] then [they have] it has eliminated the possibility of any benefit to the generator by having another party provide equal service. In this instance [B]by definition, the [Department proposes] rule intends that if there has been no purchase of the material there has not been an exchange for fair market value. [So,]In such a situation, the material is not exempt from government regulation. The purpose for the inclusion of this rule [was] is to preserve as much control with local government in the expectation that local government will provide for an effective and efficient opportunity to recycle program. Whether a local government will choose to regulate recyclable materials in this regard is, of course, left up to the local government and the affected persons within the wasteshed.

(13) COMMERCIAL AND INDUSTRIAL RECYCLING

These rules do not make any distinction between different types of sources of recyclable materials. The same material may be generated from a residential, commercial, or industrial source. The intent of the statute and these rules is that every person, including industrial and commercial waste generators, be provided the opportunity to recycle. While there is an extensive system for the collection of large amounts of recyclable material from commercial and industrial generators, many [sources] generators of smaller amounts of material

do not presently have the opportunity to recycle the same materials. Commercial and industrial generators should be considered when a program to provide the opportunity to recycle is being implemented. While much recycling is already going on, there is still recyclable material going into the waste stream. Dealing with recycling from commercial and industrial sources [will] may be difficult for local government because of the diversity of size and business activity at commercial sources and because there are a number of competing collectors presently providing service to sources which generate valuable recyclable material. Further, some of the recyclable material generated from commercial sources will be exempted from local government regulation because it is purchased or exchanged for fair market value from the generators. These rules are not intended to limit the affected persons in the wasteshed from developing separate lists or programs to deal with commercial, industrial or residential recyclable materials.

Purpose:

340-60-005 The purpose of these rules is to prescribe requirements, limitations and procedures for planning, development and operation of waste reduction and recycling programs and for providing the opportunity to recycle.

Definitions:

340-60-010 As used in these rules unless otherwise specified:

(1) "Affected person" means a person or entity involved in the solid waste collection service process including but not limited to a recycling collection service, disposal site permittee or owner, city, county and metropolitan service district.

(2) "Area of the state" means any city or county or combination or portion thereof or other geographical area of the state as may be designated by the Commission.

(3) "Collection franchise" means a franchise, certificate, contract or license issued by a city or county authorizing a person to provide collection service.

(4) "Collection service" means a service that provides for collection of solid waste or recyclable material or both.

(5) "Collector" means the person who provides collection service.

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

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

(8) "Depot" means a place for receiving source separated recyclable material.

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

[(9)] (10) "Disposal site" means land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468.740; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site licensed pursuant to ORS 481.345.

[(10)] (11) "Generator" means a person who last uses a material and makes it available for disposal or recycling.

[(11)] (12) "Land disposal site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond or lagoon.

[(12)] (13) "Metropolitan service district" means a district organized under ORS chapter 268 and exercising solid waste authority granted to such district under ORS chapters 268 and 459.

[(13)] (14) "On-route collection" means pick up of source separated recyclable material from the generator at the place of generation.

[(14)] (15) Opportunity to recycle" means those activities described in OAR 340-60-020:

[(15)] (16) "Permit" means a document issued by the Department, bearing the signature of the Director or [his] the Director's authorized representative which by its conditions may authorize the permittee to construct, install, modify or operate a disposal site in accordance with specified limitations.

[(16)] (17) "Person" means the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

[(17)] (18) "Principal recyclable material" means [that] material which [will generally be] is a recyclable material [under the specific condition] at some place where the opportunity to recycle is required in a wasteshed[.] and is identified by the Commission in OAR 340-60-030.

[(18)] (19) "Recyclable material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

[(19)] (20) "Resource recovery" means the process of obtaining useful material or energy resources from solid waste and includes:

(a) "Energy recovery," which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material.

(b) "Material recovery," which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose;

(c) "Recycling," which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(d) "Reuse," which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

[(20)] (21) "Solid waste collection service" or "service" means the collection, transportation or disposal of or resource recovery from solid wastes but does not include that part of a business licensed under ORS 481.345.

[(21)] (22) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid wastes, dead animals and other wastes; but the term does not include:

(a) Hazardous wastes as defined in ORS 459.410

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals.

[(22)] (23) "Solid waste management" means prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

[(23)] (24) "Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

[(24)] (25) "Waste" means useless or discarded materials.

[(25)] (26) "Wasteshed" means an area of the state having a common solid waste disposal system or designated by the commission as an appropriate area of the state within which to develop a common recycling program.

Policy Statement

340-60-015 Whereas inadequate solid waste collection, storage, transportation, recycling and disposal practices waste energy and natural resources and cause nuisance conditions, potential hazards to public health and pollution of air, water and land environment, it is hereby declared to be the policy of the Commission:

(1) To require effective and efficient waste reduction and recycling service to both rural and urban areas.

(2) To promote and support comprehensive local or regional government solid waste and recyclable material management [planning]:

(A) Utilizing progressive waste reduction and recycling techniques;

(B) Emphasizing recovery and reuse of solid waste; and

(C) Providing the opportunity to recycle to every person in Oregon through best practicable methods.

(3) To establish a comprehensive statewide program of solid waste management which will, after consideration of technical and economic feasibility, establish the following priority in methods of managing solid waste:

(a) First, to reduce the amount of solid waste generated,

(b) Second, to reuse material for the purpose for which it was originally intended,

(c) Third, to recycle material which cannot be reused,

(d) Fourth, to recover energy from solid waste that cannot be reused or recycled so long as the energy recovery facility preserves the quality of air, water and land resources, and

(e) To dispose of solid waste that cannot be reused, recycled, or from which energy cannot be recovered by landfilling or other methods approved by the Department.

(4) To retain primary responsibility for management of adequate solid waste programs with local government units.

(5) To encourage maximum participation of [local government] <u>all affected persons and generators</u> in the planning[,] <u>and</u> development[, and operation] of required recycling programs.

Opportunity to Recycle

340-60-020 As used in these rules the opportunity to recycle means at least:

(1) (a) A place for [collecting] <u>receiving</u> source separated recyclable material located either at a disposal site or at another location more convenient to the population being served and, if a city has a population of 4,000 or more, on-route collection at least once a month of source separated

recyclable material from collection service customers within the city's urban growth boundary or, where applicable, withinthe urban growth boundary established by a metropolitan service district; or

(b) An alternative method approved by the Department which complies with [rules of the Commission] OAR 340-60-035.

(2) The "opportunity to recycle" defined in subsection (1) of this section also includes a public education and promotion program that:

(a) Gives notice to each person of the opportunity to recycle; and

(b) Encourages source separation of recyclable material.

Wasteshed Designation

340-60-025

(1) The following areas are designated wastesheds within the state of Oregon:

[(1)] (a) Baker wasteshed is all of the area within Baker County

[(2)] (b) Benton & Linn wasteshed is all of the area within Linn and Benton Counties excluding the area within:

[(a)] (A) the city of Gates

[(b)] (B) the city of Idanha

[(c)] (C) the city of Mill City

[(3)] (c) Clackamas wasteshed is all of the area within Clackamas County and all of the area within the cities of Lake Oswego, Wilsonville, and Rivergrove excluding the area within:

[(a)] (A) the city of Portland

[(b)] (B) the city of Tualatin

[(4)] (d) Clatsop wasteshed is all of the area within Clatsop County

[(5)] (e) Columbia wasteshed is all of the area within Columbia County

[(6)] (f) Coos wasteshed is all of the area within Coos County

[(7)] (g) Crook wasteshed is all of the area within Crook County

[(8)] (h) Curry wasteshed is all of the area within Curry County

[(9)] (i) Deschutes wasteshed is all of the area within Deschutes County

[(10)] (j) Douglas wasteshed is all of the area within Douglas County

[(11)] (k) Gilliam wasteshed is all of the area within Gilliam County

[(12)] (l) Grant wasteshed is all of the area within Grant County

[(13)] (m) Harney wasteshed is all of the area within Harney County

[(14)] (n) Hood River wasteshed is all of the area within Hood River County

[(15)] (o) Jackson wasteshed is all of the area within Jackson County

[(16)] (p) Jefferson wasteshed is all of the area within Jefferson County

[(17)] (q) Josephine wasteshed is all of the area within Josephine County

[(18)] (r) Klamath wasteshed is all of the area within Klamath County

[(19)] (s) Lake wasteshed is all of the area within Lake County

[(20)] (t) Lane wasteshed is all of the area within Lane County

[(21)] (u) Lincoln wasteshed is all of the area within Lincoln County

[(22)] (v) Malheur wasteshed is all of the area within Malheur County

[(23)] (w) Marion wasteshed is all of the area within Marion County and all of the area within the cities of Gates, Idanha, Mill City and the urban growth boundary of the city of Salem

(x) Milton-Freewater wasteshed is all the area within the urban growth boundary of the city of Milton-Freewater

[(24)] (y) Morrow wasteshed is all of the area within Morrow County

[(25)] (z) Multnomah wasteshed is all the area within Multnomah County excluding the area within:

(A) the city of Maywood Park

[(a)] (B) the city of Portland and that area within the city of Portland's urban service boundary

[(b)] (C) the city of Lake Oswego

[(26)] (aa) Polk wasteshed is all the area within Polk County excluding the area within:

[(a)] (A) the urban growth boundary of the city of Salem

[(b)] (B) the city of Willamina

[(27)] (bb) Portland wasteshed is all of the area within the city of Maywood Park, the city of Portland, and that area within the city of Portland's urban service boundary

[(28)] (cc) Sherman wasteshed is all of the area within Sherman County

[(29)] (dd) Tillamook wasteshed is all of the area within Tillamook County

[(30)] (ee) Umatilla wasteshed is all of the area within Umatilla County excluding the area within:

(A) the urban growth boundary of the city of Milton-Freewater

[(31)] (ff) Union wasteshed is all of the area within Union County

[(32)] (gg) Wallowa wasteshed is all of the area within Wallowa County

[(33)] (hh) Wasco wasteshed is all of the area within Wasco County

[(34)] (ii) Washington wasteshed is all of the area in Washington County and all of the area in the city of Tualatin excluding the area within:

[(a)] (A) the city of Portland

[(b)] (B) the city of Lake Oswego

[(c)] (C) the city of Wilsonville

[(d)] (D) the city of Rivergrove

[(35)] (jj) Wheeler wasteshed is all of the area within Wheeler County

[(36)] (kk) Yamhill wasteshed is all of the area within Yamhill County and all of the area within the city of Willamina.

(2) Any affected person may appeal to the Commission for the inclusion of all or part of a city, county, or local government unit in a wasteshed.

Principal Recyclable Material

340-60-030

(1) The following are identified as the principal recyclable materials in the wastesheds as described in Sections (3) through (7):

(a) newspaper

(b) ferrous scrap metal

(c) non-ferrous scrap metal

(d) used motor oil

(e) corrugated cardboard and kraft paper

(f) container glass

(g) aluminum

(h) hi-grade office paper

(i) tin cans

(2) In addition to the principal recyclable materials listed in (1) above, [additional recyclable] other materials may be [identified for the] recyclable material at specific locations where the opportunity to recycle is required.

(3) The statutory definition of "recyclable material" (ORS 459.005(15)) is the determining factor of whether a material is a recyclable material at a specific location where the opportunity to recycle is required.

[(3)] (4) In the following wastesheds, the principal recyclable materials are those listed in Section [2] 1 (a) through (i):

(a) Benton and Linn wasteshed

(b) Clackamas wasteshed

(c) Clatsop wasteshed

(d) Columbia wasteshed

(e) Hood River wasteshed

(f) Lane wasteshed

(g) Lincoln wasteshed

(h) Marion wasteshed

(i) Milton-Freewater wasteshed

[(i)] (j) Multnomah wasteshed

[(j)] (k) Polk wasteshed

[(k)] (l) Portland wasteshed

[(l)] (m) Umatilla wasteshed

[(m)] (n) Union wasteshed

[(n)] (o) Wasco wasteshed

[(o)] (p) Washington wasteshed

[(p)] (q) Yamhill wasteshed

(4) In the following wastesheds, the principal recyclable materials are those listed in Section [2] 1 (a) through (g):

(a) Baker wasteshed

(b) Crook wasteshed

(c) Jefferson wasteshed

(d) Klamath wasteshed

(e) Tillamook wasteshed

(5) In the following wastesheds, the principal recyclable materials are those listed in Section [2] 1 (a) through (h):

(a) Coos wasteshed

(b) Deschutes wasteshed

(c) Douglas wasteshed

(d) Jackson wasteshed

(e) Josephine wasteshed

(6) In the following wastesheds, the principal recyclable materials are those listed in Section [2] 1 (a) through (e):

(a) Curry wasteshed

(b) Grant wasteshed

(c) Harney wasteshed

(d) Lake wasteshed

(e) Malheur wasteshed

(f) Morrow wasteshed

(g) Wallowa wasteshed

(7) In the following wastesheds, the principal recyclable materials are those listed in Section [2] 1 (a) through (d):

(a) Gilliam wasteshed

(b) Sherman wasteshed

(c) Wheeler wasteshed

(8) The opportunity to recycle shall be provided for each of the principal recyclable materials listed in (3) through (7) above and for other materials [identified under (2) above] which meet the statutory definition of recyclable material at specific locations where the opportunity to recycle is required except for any material, approved by the Department, which the recycling report demonstrates does not meet the definition of recyclable material for the specific location where the opportunity to recycle is required.

(9) PRINCIPAL RECYCLABLE MATERIALS

Between the time of the identification of the principal recyclable materials in these rules and the submittal of the recycling reports, the Department will work with affected persons

in every wasteshed to assist in identifying materials contained on the principal recyclable list which do not meet the statutory definition of recyclable material at some locations in the wasteshed where the opportunity to recycle is required.

[(9)] (10) Any affected person may request the Commission to modify the recyclable material for which the Commission determines the opportunity to recycle must be provided or may request a variance under ORS 459.185.

[(10)] (11) The Department will make a periodic review of the principal recyclable material lists and will submit any proposed changes to the Commission, [for inclusion into this rule.]

Acceptable, Alternative Methods for Providing the Opportunity to Recycle

340-60-035

(1) Any affected person in a wasteshed may propose to the Department an alternative method for providing the opportunity to recycle. All proposals for alternative methods shall be submitted to the Department for approval of [acceptability] adequacy prior to implementation as part of the opportunity to recycle. Each submittal shall include a description of the proposed alternative method and a discussion of the reason for using this method rather than the general method set forth in OAR 340-60-020(1)(a).

(2) The Department will review these proposals as they are received. Each proposed alternative method will be approved, approved with conditions, or rejected based on consideration of the following criteria:

(a) [Will t]The alternative will increase recycling opportunities at least to [beyond] the level anticipated from the general method set forth in OAR 340-60-020 for providing the opportunity to recycle[?].

(b) [What] The conditions and factors which make the alternative method necessary[?].

(c) [Is t]The alternative method [as] is convenient to the people using or receiving the service. [as the general method for providing the opportunity to recycle?]

(d) [Is t]The alternative method is as effective in recovering recyclable materials from solid waste as the general method set forth in OAR 340-60-020 for providing the opportunity to recycle[?].

(3) The affected persons in a wasteshed may propose as provided in (1) above an alternative method to providing on-route collection as part of the opportunity to recycle for low density population areas within the urban growth boundaries of a city with a population over 4,000 or, where applicable, the urban growth boundaries established by a metropolitan service district.

Education, Promotion and Notification

340-60-040

(1) Affected persons in each wasteshed shall design, commit resources and implement an education and promotion program that provides:

(a) [Public notice that is reasonably] A written or more effective notice or combination of both that is reasonably designed to reach [all] each person[s] who generates recyclable materials in the wasteshed, and that clearly explains why people should recycle, the recycling opportunities available to the recipient, the materials that

can be recycled and the proper preparation of those materials.

(A) The notice used for persons within the urban growth boundaries of cities with more than 4,000 people shall include:

(i) reasons why people should recycle, and

(ii) the name, address and phone number of the person providing on-route collection, and

(iii) [the availability] a listing of depots for recyclable materials at all disposal sites serving the area, including what materials are accepted and hours of operation, and

(iv) [the availability] a listing of depots for recyclable material at locations designated as more convenient to the public being served, including [what] the materials are accepted and hours of operation, or

(v) instead of (iii) and (iv) a phone number to call for all such information about depot locations and collection service.

(B) The notice used for [people] persons not within the urban growth boundary of cities with more than 4,000 people, shall include:

(i) reason why people should recycle, and

(ii) [the availability] a listing of depots for recyclable materials at all disposal sites serving the area, including [what] the materials [are] accepted and hours of operation, and

(iii) [the availability] a listing of depots for recyclable materials at locations designated as the more convenient to the public being served,

including what materials are accepted and hours of operation, or

(iv) a phone number to call for all such information about depot locations and collection service.

(b) A written reminder, a more effective notice or combination of both about the on-route recycling collection program [distributed to] reasonably designed to reach all solid waste collection program customers every six (6) months.

(c) Written information to be distributed to disposal site users at all disposal sites with attendants and where it is otherwise practical.

(A) This written material shall include:

(i) reasons why people should recycle, and

(ii) a list of materials that can be recycled, and

(iii) instructions for the proper preparation of recyclable materials, and

(iv) a list of the recycling opportunities available at the disposal site or designated "more convenient location".

(B) At sites without attendants, a sign indicating the availability of recycling at the site or at the "more convenient location" shall be prominently displayed. [including what] The sign shall indicate the materials [are] accepted and hours of operation.

(d) Recycling information (written materials, displays and/or presentations) [and education to public and private schools,] to community groups and the general public.

(2) The affected persons in the wasteshed shall identify a [mechanism] procedure for citizen involvement in the development and implementation of the wasteshed's education and promotion program.

(3) The affected persons in each wasteshed shall provide notification and education materials to local media and other groups that maintain regular contact with the public including local newspapers, local television and radio stations, community groups, neighborhood associations.

(4) Affected persons in each wasteshed should identify a person as the education and promotion representative for that wasteshed to be the official contact between the persons in that wasteshed and the Department in matters relating to recycling education and promotion.

[(4)] (5) Information [related to] about the education and promotion program shall be included in the Recycling Report as outlined in OAR 340-60-045[(7)](2).

Standards for Recycling Reports

340-60-045

(1) The recycling report shall be submitted to the Department on forms supplied by the Department not later than July 1, 1986.

[(2) When reviewing the recycling reports, the Department will include consideration of:

(a) Those items set forth in ORS 459.185(6)(a) through (f):

"459.185(6)

(a) The materials which are recyclable;

(b) The manner in which recyclable material is to be collected;*

(c) The responsibility of each person in the solid waste collection and disposal process for providing the opportunity to recycle;

(d) A timetable for development or implementation of the opportunity to recycle;

(e) Methods for providing the public education and promotion program;

(f) A requirement that as part of the recycling program a city or county franchise to provide for collection service; and . . ."

(b) The situations in the wasteshed where the opportunity to recycle is specifically required by ORS 459.200 and ORS 459.250,

(c) Types and amounts of material which are recyclable, and

(d) For ongoing programs:

(A) Levels of recovery of recyclable materials at each situation and within the wasteshed as a whole;

(B) The level of participation in the opportunity to recycle at different locations in the wasteshed; and

(C) Proposed changes in the methods of providing the opportunity to recycle that will improve recycling levels.]

(2) The forms provided by the Department will call for information describing:

(a) The materials which are recyclable at each disposal site and in each city of 4,000 or more population;

(b) The manner in which recyclable material is to be collected;

(c) Proposed and approved alternative methods for the opportunity to recycle which are to be used in the wasteshed;

(d) Proposed methods for providing the public education and promotion program, and

(e) Other conditions which demonstrate the proposed programs for providing the opportunity to recycle.

(3) The forms provided by the Department will call for attachments to the Recycling Report including but not limited to the following materials related to the opportunity to recycle:

(a) Copies of materials that are being used in the wasteshed as part of Education and Promotion,

(b) A copy of any city or county collection service franchise, including rates under the franchise, and

(c) Other materials which demonstrate the proposed programs for providing the opportunity to recycle.

[(3)] (4) (a) The cities and counties and other affected persons in each wasteshed [shall] should before July 1, 1985:

(A) [Designate] Identify a [single] person as [agent] representative for that wasteshed [and official] to act as a contact between the affected persons in that wasteshed and the Department in matters relating to the recycling report.

(B) Inform the Department of the choice of [an agent] a representative.

[(b) If the cities and counties and other affected persons have not [designated an agent] identified a representative by July 1, 1985, the Department will [designate] identify such a person.]

[(c)] (b) The cities and counties and other affected persons in a wasteshed shall gather information from the affected persons in the wasteshed and compile that information into the recycling report.

[(4)] (5) (a) Prior to submitting the recycling report, it shall be made available to all cities and counties and other affected persons in the wasteshed for review.

(b) The recycling report shall include a certification from each

county and city with a population of over 4,000 that it has reviewed the report.

(c) The recycling report shall be made available for public review and comment prior to submittal to the Department. Any public comments shall be submitted to the Department with the report.

[(5) All affected persons in the wasteshed shall have the opportunity to make available to the wasteshed agent, the Department, or other persons developing the recycling report, any information which they feel is necessary to complete the recycling report.]

[(5)] (6) The Department shall review the recycling report to determine whether the opportunity to recycle will be provided to all persons in the wasteshed. The Department shall approve the recycling report if it determines that the wasteshed will:

(a) Provide the opportunity to recycle, as defined in OAR 340-60-020, for:

(A) each material identified on the list of principal recyclable material for the wasteshed, as specified in OAR 340-60-030, or has demonstrated that at a specific location in the wasteshed a material on the list of the principal recyclable material is not a recyclable material for that specific location; and

(B) other materials which are recyclable material at specific locations where the opportunity to recycle is required;

(b) An effective public education and promotion program which meets the requirements of OAR 340-60-040.

[(6) The recycling report shall include an attachment which describes all proposed and all approved alternative methods for the opportunity to recycle which are to be used in the wasteshed.

(7) The recycling report shall include the following information

related to Education, Promotion and Notification:

(a) The name, address and phone number of a recycling education contact person for the wasteshed;

(b) A description of the roadblocks to recycling identified in the wasteshed;

(c) A description of the education program elements being used to overcome the identified roadblocks and the efforts for the coming year aimed at overcoming those roadblocks;

(d) A summary of the public involvement process being used and, if possible, a list of the citizen's involved;

(e) A summary of, the cost of, and the funding for the wasteshed's education program; and

(f) Copies of articles that were printed or aired, samples of printed materials that are being used in the wasteshed and summaries of special events that have been held. If they have already been utilized, a brief summary of the effectiveness of these resources or efforts shall also be included.]

Fair Market Value Exemption

340-60-050

(1) To qualify for exemption under ORS 459.192 a source separated recyclable material must:

(a) Be purchased from the generator or

(b) Be exchanged between the generator and a collector with a measurable savings in solid waste collection or disposal cost to the generator resulting.

(2) If a local government requires that the opportunity to recycle a material be provided <u>by a franchised collector</u> at no charge to the generator, the material must be purchased from the generator

to qualify for an exemption under 459.192.

Recyclable Material

340-60-055 In determining what materials are recyclable materials:

(1) The cost of collection and sale of a recyclable material shall be calculated by considering [only] the collector's costs from the time [after] the material is source separated and leaves the use of the generator until it is first sold or [it is] transferred to the person who recycles it. All costs and savings associated with collection of a recyclable material shall be considered in the calculation.

(2) Any measurable savings to the collector resulting from making a material available for recycling as opposed to disposal shall be considered the same as income from sale.

(3) The cost of collection and disposal shall be calculated by including the direct and indirect costs of disposal. Direct costs may be reflected in fees charged, taxes levied or subsidy to dispose of solid waste. Indirect costs may have to be included to account for long term environmentally acceptable disposal.

More Convenient Location

340-60-060 Any disposal site that identifies a more convenient location for the collection of recyclable materials as part of providing the opportunity to recycle shall provide information to users of the disposal site about the location of the recycling collection site, what recyclable materials are accepted and hours of operation.

Exemption

340-60-065 Any disposal site that does not receive recyclable material separately or mixed with the solid waste which it accepts is not required to provide a place for collecting source separated recyclable material.

Small Rural Sites

340-60-070 Any disposal site from which marketing of recyclable material is impracticable due to the amount or type of recyclable material received or geographic location shall provide information to the users of the disposal site about the opportunity to recycle at another location serving the wasteshed. Such information shall include the location of the recycling opportunity, what recyclable materials are accepted, and hours of operation.

Reasonable Specifications for Recyclable Materials

340-60-075 No person providing the opportunity to recycle shall be required to collect source separated recyclable material which has not been correctly prepared to reasonable specifications which are related to marketing, transportation or storage requirements and which have been publicized as part of an education and promotion program.

Prohibition

340-60-080 In addition to the provisions set forth in ORS 459.195, no person shall dispose of source separated recyclable material which has been collected from the [public] generator by a method other than reuse or recycling.

Attachment VI
Agenda Item No.
11/2/84 EQC Meeting

ATTACHMENT I
Agenda Item No. F
9/14/84 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF ADOPTING OAR CHAPTER 340, DIVISION 60	))	STATEMENT OF NEED FOR PROPOSED RULES

STATUTORY AUTHORITY:

ORS 459.170 requires the Commission to:

(1) By January 1, 1985, and according to the requirements of ORS 183.310 to 183.550, the Commission shall adopt rules and guidelines necessary to carry out the provisions of ORS 459.005, 459.015, 459.035, 459.165, 459.200, 459.250, 459.992 and 459.995, including but not limited to:

(a) Acceptable alternative methods for providing the opportunity to recycle;

(b) Education, promotion and notice requirements, which requirements may be different for disposal sites and collection systems;

(c) Identification of the wastesheds within the state;

(d) Identification of the principal recyclable material in each wasteshed;

(e) Guidelines for local governments and other persons responsible for implementing the provisions of ORS 459.005, 459.015, 459.035, 459.165 to 459.200, 459.250, 459.992 and 459.995;

(f) Standards for the joint submission of the recycling report required under ORS 459.180(1); and

(g) Subject to prior approval of the appropriate legislative agency, the amount of an annual or permit fee or both under ORS 459.235, 459.245 and 468.065 necessary to carry out the provisions of ORS 459.005, 459.015, 459.035, 459.165 to 459.200, 459.250, 459.992 and 459.995.
(adopted by Commission February 24, 1984, Agenda Item No. I)
(OAR 340-61-115)

NEED FOR THE RULES:

The planning, developing and operating of a recycling program is a matter of statewide concern. The "opportunity to recycle" should be provided to every person in Oregon. There is a shortage of appropriate sites for landfills in Oregon. It is in the best interest of the people of Oregon to extend the useful lives of existing solid waste disposal sites by encouraging recycling and reuse of materials whenever it is economically feasible.

These proposed rules will make it possible to extend landfill life and provide all Oregonians with an "opportunity to recycle."

PRINCIPAL DOCUMENTS RELIED UPON:

Existing state statute ORS 459.005 through 459.250.

FISCAL AND ECONOMIC IMPACT:

The proposed rules will save natural resources and extend landfill life. Recovered materials will support jobs in recycling industries. The Recycling Opportunity Act allows the Department to assess fees against disposal sites and it allows for adjustments in the rates charged for garbage collection in order to cover cost associated with providing the opportunity to recycle where required. Local governments and disposal site permittees may incur cost associated with providing the "opportunity to recycle." These costs may be reflected in increases in garbage rates and disposal fees charged to the public.

The new Recycling Act and these proposed rules will have an effect on small business. First, every small business in Oregon will be provided the opportunity to recycle. This recycling opportunity has not always been available in the past. Second, several types of small business will be directly impacted by these rules. Most of the state's garbage collection companies, recycling collection companies and recycling brokers and dealers are small businesses. The recyclers and brokers will see an increase in income from increased volume of recyclable material as a result of implementation of these rules. The garbage collection companies will see a variety of impacts of these rules. They should see a decrease in garbage generation but an increase in material to be recycled. They will experience a savings in avoided disposal costs. Persons who provide the opportunity to recycle will have costs related to collection and income from sales of material. However, for franchised collection services, the law allows that any additional costs of providing the opportunity to recycle shall be recovered in rates provided under franchise agreements.

EG:c
SC1686.1

Attachment VII
Agenda Item No.
11/2/84 EQC Meeting

Attachment II
Agenda Item No. F
9/14/84 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF ADOPTING) LAND USE CONSISTENCY
OAR CHAPTER 340, DIVISION 60)

The proposal described appears to be consistent with all statewide planning goals. Specifically, the rules comply with Goal 6 because they provide for recycling of solid waste in a manner that encourages the reduction, recovery and recycling of material which would otherwise be solid waste, and thereby provide protection for air, water and land resource quality.

The rules comply with Goal 11 by promoting waste reduction at the point of generation, beneficial use and recycling. They also intend to assure that current and long-range waste disposal needs will be reduced by the provision of the opportunity to recycle.

Public comment on this proposal is invited and may be submitted in the manner described in the accompanying Public Notice of Rules Adoption.

It is requested that local, state and federal agencies review the proposal and comment on possible conflicts with their programs affecting land use and with statewide planning goals within their jurisdiction. The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflicts thereby brought to its attention.

After public hearing, the Commission may adopt permanent rules identical to the proposal, adopt modified rules on the same subject matter, or decline to act. The Commission's deliberation should come on November 2, 1984, as part of the agenda of a regularly scheduled Commission meeting.

EG:c
SC1686.2

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

Memorandum

To: Environmental Quality Commission Date: 10/22/84

From: Carol Splettstaszer

Subject: Agenda Item G - Recycling Rules

Attached for your information are copies of written testimony received to date on the Opportunity to Recycle Rules.

#3

Association of Oregon Recyclers

P.O. BOX 10051
PORTLAND, OREGON 97210

TESTIMONY PREPARED FOR PUBLIC HEARING BY THE ASSOCIATION OF OREGON RECYCLERS

October 1, 1984

My name is Steve Colton. I'm here today as a spokesperson for the Association of Oregon Recyclers (AOR). I have earned my livelihood in the recycling industry in Oregon for over eight years now. I spent two years with Portland Recycling Team, a non-profit operation with a residential focus; one year with Quality Paper Stock, a private sector commercial corrugated recycler; four years with Smith & Hill Recycling, a bottle bill beverage container recycling firm; and for the past two years I have had my own business selling recycling-related machinery and consulting in recycling.

This past year I served on the Board of AOR as Legislative Chairperson. For the past two years I have represented AOR on DEQ's Southwest Advisory Task Force, and this year I have served as Vice-Chairperson of that Task Force. Last year in Salem I was directly involved in the writing of SB 405, and was a party to virtually all of the discussions that formed the shape, scope and structure of the new law. AOR testified on several occasions before both Senate and House committees, and I think it is fair to say that our active support for the Bill was somewhat influential in its passage.

The Association of Oregon Recyclers is a non-profit organization of recycling professionals and activists committed to reducing waste and improving recycling in Oregon. Membership in AOR is open to all individuals, businesses and organizations committed to waste reduction and recycling.

As such, we are especially disappointed by some aspects of these Rules that will almost certainly damage existing recycling businesses and threaten the steady growth in the recycling rate that our state has enjoyed.

The crux of our concern is the extent to which franchising of recycling would be authorized. And, let's be clear: By franchising we mean the displacing of competition and the creation of monopolies.

In the Legislature last year the final hearing on SB 405 was in the House Energy and Environment Committee. After I had testified strongly supporting the Bill, Rep. Hooley asked me if we were sure the law would not inadvertently damage the existing recycling network. I responded that current recycling endeavors really fall into three spheres of activity.

The first is quite small and has a poor recovery rate. It is the collection of recyclables from residential sources. In the Portland Metro area, as an example, the overall recycling rate for all materials from commercial sources is over 50%. From residential sources it is probably 20% and, if we leave out newspaper, the rate drops to perhaps 5%. Clearly, this sphere of activity needs help, and this has always been the reason for AOR's strong support for SB 405. Our association has also agreed that local governments should have the authority to franchise recycling collection service from residences to assure sufficient volumes to the collectors.

The other two spheres of activity are quite large and growing at an excellent pace, largely through the efforts of private sector businesses, and it would be inappropriate for government to franchise and remove these spheres of activity from the private sector. The first of these large spheres is the collection of source-separated recyclable materials from commercial sources. This would include all the various recycling specialists who collect paper, or plastic scrap, or cooking fats, or scrap metals, or motor oil, etc. from business and industry. This huge sphere of recycling activity operates almost unknown and unseen. Perhaps it doesn't come to our attention because it operates so smoothly. The American Paper Institute estimated earlier this year that in the Portland Metro area there are between 1,500 and 2,000 people engaged in the business of collecting paper.

They collect several thousand tons of paper per month. AOR estimates that the recycling rate in the Metro area for corrugated cardboard is about 70%. For all materials from commercial sources it is about 50%. These figures are among the highest in the entire country.

In Section 10 of SB 405 we authorized the franchising of recycling collection service, but we followed it up with Section 12 which exempts from the threat of franchising that material which is purchased or exchanged for fair market value. Last year an earlier draft of SB 405 simply read "purchased." AOR testified against the Bill at that time because so many recycling collectors do not pay for the materials they pick up. As the value of the material is low, the materials are simply exchanged for the service of having them collected and no money changes hands.

The Department's Rules (page 6) state "... if there has been no purchase of the material, there has not been an exchange for fair market value." In that case, why did the Legislature include exchange in addition to purchase in the law they passed? It is interesting that the Department feels "fair market value" can exist if they authorize local governments to eliminate the free market.

The second large sphere of current recycling activity is drop-off opportunities. This includes full-line centers and the hundreds of newspaper boxes throughout the state. Oregon probably has the highest newspaper recycling rate of any state in the nation -- roughly 60%. About $7 million per year is paid to various Oregon recyclers for old newspapers. Both private sector businesses and service clubs are extremely active in this sphere of activity. Last year in Salem there was no concern whatsoever that SB 405 might threaten these endeavors because the franchising authorization in Section 10 spoke only of "collection service." It never occurred to us that anyone might try to stretch the definition of "collection service" to include situations where the generator of the material delivers it. But that is precisely what the Department has done in these Rules (page 7). There are a lot of people who would love to carve monopolies out of a $7 million per year industry, and DEQ's Rules would give them the tools to do just that.

Some will argue that residential curbside collectors must own all newspaper in order to subsidize their curbside programs. AOR feels it is sufficient to authorize franchising of the curbside collection itself and not deny householders the opportunity to deliver their newspapers to the recycling drop-off of their choice. If the curbside collectors do a serious job of offering their service, that opportunity to recycle will be at least as convenient as loading newspapers in one's car to deliver somewhere and the collectors will earn their tonnage just as every other recyclers must do.

A couple of months ago representatives from AOR, OSSI, the League of Cities, the Association of Counties, and the Association of Oregon Industries all approached the Department in unison. There was complete agreement among those representatives on the definitions of both "collection service" and "fair market value." But the Department has chosen to reject our recommendations.

There are several cities and counties where in past years many forms of recycling have been franchised making it illegal for our members to offer their services. A few of these local governments have in fact actually prevented recyclers from doing business in their jurisdictions. Most, however, have not enforced the ordinances because of their extremely shaky legal grounds. Across the country, court precedents -- such as the famous Boulder, Colorado decision -- have found similar franchises to be illegal unless the higher state law authorizes the restriction of trades. This, in fact, is the reason we authorized <u>garbage</u> franchises in SB 405 to validate existing franchises and prevent disruption. Just this past month in Springfield, Oregon, the court ruled as follows: "... Oregon did not have a clearly articulated and affirmatively expressed policy to allow garbage collection franchises before... the effective date of SB 405."

Let me give some specific examples from the past 12 months. In Clackamas County, numerous corrugated collectors have received letters telling them their recycling activities are illegal and they must go out of business. AOR objected and the County has postponed prosecution pending the outcome of these Rules. The City of Beaverton has threatened a large recycling company and the Fred Meyer stores for their cooperation in providing newspaper boxes in shopping center parking lots. The Oregon City Attorney has threatened to cite at least one recycling company. The list goes on.

At the same time, at least two major forest products firms have delayed or canceled plans to open plants to buy recyclables because of the direction the Department has been going with these Rules. SB 405 is becoming known as the "reduce-the-opportunity-to-recycle act."

Our Association worked hard to develop and pass SB 405. We did so because we thought it was a realistic way to incrementally increase and add to an already excellent recycling network. The Department, on the other hand, has chosen to use SB 405 to allow an aggressive restructuring of that existing network.

Our Association cannot emphasize strongly enough that the Rules as drafted by the Department have so severely transformed SB 405 that it now stands as an instrument that can be used to reek havoc on Oregon's recycling industry. We feel the Department has deviated so far from the general thrust and tenor of last year's testimony and discussions in Salem that they are perilously close to writing their own law through these Rules.

We want to thank you for the opportunity to present our opinion today. We ask that you consider the proven track record that our industry has established and the experience and knowledge of the industry that have shaped our opinions on these two important definitions: "collection service" and "exchange for fair market value."

PRESENTED TO THE ENVIRONMENTAL QUALITY COMMISSION October 1, 1984

SUBJECT: Proposed Recycling Rules

My name is John Drew. I am employed by Willamette Industries as the Secondary Fiber Manager for the Pacific Northwest. I purchase the wastepaper which is recycled at our Albany, Oregon paper mill.

Willamette Industries is an integrated forest products company with 57 manufacturing plants in 14 states. We have many manufacturing facilities in Oregon. Willamette operates 6 plywood plants, 6 lumber mills, 2 particleboard plants, a veneer plant, a custom products plant, a machine division, a paper mill, a corrugated container plant, a business forms plant, a kraft grocery bag plant and a specialty products ink plant in this state. Willamette also owns and manages 224,000 acres of timberland in Oregon. We employ 3,099 people in Oregon. Willamette is among the largest, if not the largest, forest products employers in the State of Oregon.

The pulp and paper mill in Albany produces the paperboard for our paper box and bag converting plants in Oregon and other Western states. The mill produces over 1,100 tons of finished paper each day. Willamette consumes nearly 400 daily tons of recycled old corrugated wastepaper (used cardboard boxes). Our other source of raw material is wood chips. These are a waste by-product or wood residue of our lumber and plywood manufacturing operations. So, in a sense our paper product is made entirely from recycled materials that might otherwise have to be treated as solid waste. Many jobs in our paper products facilities in Oregon are dependent upon the availability of these essential raw materials.

In 1983, our Albany paper mill received 45,500 tons of wastepaper which were generated by our Oregon suppliers. Based upon performance thus far this year, Willamette expects their Oregon receipts to grow 12% in 1984. We have not changed or added any significant new recyclers or suppliers in 1984. The additional tonnage has resulted partially from an improved Oregon economy. However, most of the increase is due to the sustained high prices paid for wastepaper during 1984. Price is the key determining economic factor that influences the supply of wastepaper and the demand for source separated recyclable material. The State of Oregon can mandate that recyclables will be collected but the consuming paper, glass, steel and aluminum mills will determine the need for these materials.

Willamette Industries does not believe that the Recycling Opportunity Act of 1983 will improve the amount or efficiency of wastepaper collection in the State of Oregon. Contrary to the position that the Department of Environmental Quality has taken, we believe that the new law, if implemented with present department guidelines, will seriously injure and perhaps destroy one of the most successful wastepaper recycling collection systems in the United States.

We know that it was not the intent of the people of the State of Oregon to legislate current recyclers out of business, to deprive citizens and businesses of their right to determine how to recycle wastepaper and to create state sanctioned paper collection monopolies at the expense of preexisting systems.

The problem that Willamette has with the Department's position on ORS 459 is that they have not effectively exempted existing old corrugated wastepaper collectors from the statute. Willamette relies upon the involvement of thousands of private individuals in Oregon to collect wastepaper for the recyclers who in turn supply the Albany mill and other Oregon paper mills. These individuals establish paper routes and arrange to pick up wastepaper from commercial and industrial businesses. Generally, this fleet of private collectors provides daily or frequent service and free pickup in exchange for source separated recyclable wastepaper. Oregon's many recyclers and Willamette, as well as other paper mills, have invested millions of dollars in plants and machinery to process and bale wastepaper which is purchased from the public. If wastesheds are allowed to give monopolies to a few haulers, then the existing collection system will be eliminated. The relatively few franchised haulers cannot economically afford to give this level of service to each store and small business and pick up ten or twenty pounds of old corrugated wastepaper that is perhaps worth 20¢ or 40¢. It would cost the people of the State of Oregon a fortune to provide free daily collection of wastepaper and other recyclables from every commercial source.

Specifically, Willamette disagrees with the Department's interpretation of Section 12 of Senate Bill 405 and Section 459.192 Exemptions of ORS 459. It is a very simple and short passage within ORS 459 which states the following:

"459.192 Exemptions. Nothing in ORS 459.005, 459.015, 459.035, 459.165 to 459.200, 459.250, 459.992 and 459.995 applies to recyclable material which is:

(1) Source separated by the generator; and

(2) Purchased from or exchanged by the generator for fair market value for recycling or reuse. (1983 c.729--12)"

Willamette believes that the law should not intentionally damage existing recycling operations that have evolved to date. Competitive recycling activities operating in a free market situation should be exempt from ORS 459. In some cases these individuals purchase materials from the generators. In other cases, as dictated by the competitive fair market value of the particular material, the materials are exchanged by the generator for the value of the recycling service without an actual purchase. In either case these recycling activities should be exempt. The intent of subsection (2) of Section 12 of SB 405 is to provide an exemption for these recyclers by using the language "purchased" or "exchanged . . . for fair market value."

The Department's guideline for Fair Market Value Exemption in Section 340-60-050, Subsection (1)(b) states that "source separated recyclable material must be exchanged between a generator and a collector with a measurable savings in solid waste collection or disposal cost to the generator resulting." No. The law simply states that the source separated recyclable material will be exempted where it is "exchanged by the generator for fair market value." Willamette believes that Exchanged For Fair Market Value in the context of ORS 459 means the following:

A generator willingly gives his recyclables to a person, or deposits his recyclables in a person's container or delivers his recyclables to a person's premises for free in exchange for the service provided by the person.

Furthermore, The Department states in Section 340-60-050, Subsection (2) that "if a local government requires that the opportunity to recycle a material be provided at no charge to the generator, the material must be purchased from the generator to qualify for an exemption under 459.192." ORS 459 does not require that recyclable materials be collected at no charge to the generator. The Department has taken license to rewrite the law through their guideline. Their description eliminates the opportunity for the free market to pick up the source separated recyclable material in "exchange for fair market value" or for free.

Willamette Industries strongly urges both the Department of Environmental Quality and The Environmental Quality Commission to rethink their position on ORS 459 Section 459.192 and allow the fair market value exemption to operate as it was originally intended by the State Legislature. We are confident that the State did not intend to destroy our proven commercial wastepaper collection and recycling system.

Respectfully submitted.

John G. Drew
Secondary Fiber Manager

JGD/bpd

#14

IPS INDEPENDENT PAPER STOCK CO.

September 28, 1984 VIA OVERNIGHT MAIL

Oregon Department of Environmental Quality
P. O. Box 1760
Portland, Oregon 97207

Solid Waste Division
Dept. of Environmental Quality
RECEIVED
OCT 2 1984
9:30 a.m.

Attention: Ms. Elaine Glendening
Recycling Specialist

Dear Ms. Glendening:

This letter confirms our conversation and Independent Paper Stock Co.'s desire to present a written comment for submission to the Public Hearing on the Proposed Recycling Rules. We shall also have Mr. Steinar Urdahl, our Regional Manager, representing our plant at 1315 Overton Street, Portland, Oregon 97209 in attendance at the hearing Monday, October 1st, 1984.

Independent Paper Stock Co. has been in business since 1918 and has operated a plant in Portland since the mid-1920's. Our basic business is to purchase recyclable paper fibers, bale them, and resell as raw materials to primary producers. We, additionally, buy used aluminum beverage containers and glass bottles for the same purpose. Our suppliers consist of individuals, collectors, rubbish companies, commercial and industrial accounts, buy-back centers, recyclers, charitable organizations, waste paper dealers, and glass suppliers. For sixty years, we have been investing in plants and equipment and supporting the establishment of the above suppliers to develop a successful recycling industry in many counties in Oregon, as well as many states in the Western United States. We are very proud to be part of a geographical area which has the highest percentage of recycling in the nation. Part of the success of this accomplishment is an absence of franchising, particularly in the Portland area.

The principal purpose of this letter is to encourage the Department of Environmental Quality to propose rules which protect these already existing recycling groups. It would be ridiculous to prohibit door to door collections of newspapers by Scout troops, churches, recycling businesses, etc. and the ability of an individual entrepreneur from collecting used corrugated cases from stores and shops simply because they are not paying for the material. The individual wastesheds should be very diligent not to adopt programs which would eliminate our already successfully operating recycling programs. In other states, communities that have quickly adopted well-meaning but overly broad franchising operations have inadvertently eliminated successful businesses and programs of their local organizations. The furor this caused saw many communities rescind such programs just as soon as it became possible.

1900 17TH STREET · SAN FRANCISCO, CALIFORNIA 94103 · 415/621-6100
MAILING ADDRESS: P.O. BOX 3871 · SAN FRANCISCO, CALIFORNIA 94119

The updated proposed rules of September 14,1984 on page number 7 under COLLECTION SERVICE suggests that the many drop-off disposal sites for recyclables may be franchised under these rules. Independent Paper Stock Co. opposes this idea. There are presently well over 200 drop-off disposal sites covering the Portland area with the revenues going to charities and private enterprise. Franchising would jeopardize these most effective recycling programs, and would be most unfair to the many charities and businesses who pioneered this concept and made Oregon the nation's top recycling area. Franchising would not increase recycling, but would have the opposite effect.

Our company's entire business is recycling and we totally support the opportunity to recycle through the free enterprise system. That most effectively can be done if it's available to all supplier organizations. We urge the Department to preserve this availability in all counties of the State. Our company is more than willing to assist in advising how to most effectively implement the Act. Mr. Urdahl can be contacted at 503/241-8273 in Portland, or me at the address or phone number shown on the letterhead.

Very truly yours,

R L Anderson

R. L. Anderson
Vice President and
Corporate Secretary

RLA:c

cc: Mr. Steinar Urdahl
Independent Paper Stock Co.
1315 Overton Street
Portland, Oregon 97209

Mr. Michael Linberg
City Commissioner
City of Portland
1220 S.W. 5th Avenue
Portland, Oregon 97204

#16

CLOUDBURST RECYCLING
COLLECTION SERVICE
PO BOX 12106
PORTLAND, OR 97212
PHONE: 281-8075

DAVID L. McMAHON
GENERAL MANAGER

OCT 1, 1984

RE: SB 405 RULES

Cloudburst Recycling was established 10 years ago to provide full service multi-material recycling collection on a regular schedule to residents of the City of Portland. At that time, the Cloudburst program was such a ~~novel idea~~ INNOVATIVE SERVICE that during the first year of operations, we received about 1500 letters of inquiry from across the country and around the world. ONE OF OUR MAIN PURPOSES WAS TO DEMONSTRATE THAT RECYCLING COLLECTION COULD BE A VIABLE COMPONENT OF SOLID WASTE MGMT.

Cloudburst's service area now includes NE, NW, and SW Portland, or roughly two-thirds of the City's residences.

The point I wish to address is this: neither SB 405, nor the proposed rules for its implementation, provide any assurance whatsoever that Cloudburst will be allowed to continue either its current level of operations or its growth.

Section 10, paragragh 6c of the bill attempts to address the question of continued operation of existing services: (July 5 Committee version):

> "In determining who shall provide the opportunity to recycle, a city or county shall give due consideration to any person lawfully providing recycling collection service on June 1, 1983...." etc.

The later wording of the bill as passed into law made this vague passage even more indeterminant by changing the words ~~person~~ "RECYCLING COLLECTION SERVICE" to ~~"recycler or collector"~~. "RECYCLING OR COLLECTION SERVICE" IN LAW THIS IS ORS 459.200 ¶ 6 (c)(c)

Unfortunately, this statement is so vague and ambiguous as to appear totally ineffective. Its can be quite broadly interpreted by the local government to whatever political end appears most expedient. In most Oregon communities, there will be little problem with this issue. But in Portland at least, we expect the issue of franchising recycling collection to be hotly contested.

We will be faced with difficult decisions in a very complex situation here in Portland, and the law provides little guidance. We will need to ask questions of the law such as:

What constitutes "due consideration"? If an existing legal recycling operater provided service in substantial satisfaction of the wasteshed requirements, and can meet the contractual requirements of the city, will he be awarded a franchise, or merely be heard and passed over?

What is meant by "of any recycler or collector". Believe it or not, some would argue that this phrase requires only consideration of "any" in the random sense of the word, rather than "all" as I would suspect the bill's drafters had in mind. If a garbage collection service provided no recycling service as of June 1, 1983, does the law require that he be given "due consideration"?

What constitutes "recycling collection service"? A newspaper drop-off shed? A multi-material drop-off center? A Cardboard scavenger? A multi-material curbside service?

TO MY KNOWLEDGE DEQ RULES HAVE COMPLETELY IGNORED THIS PROBLEM.

I fully expect a political dogfight over the "recycling rights" in the City of Portland. And I am certain that the ambiguity of the law will greatly exascerbate the situation unless DEQ, in this rule-making procedure clarifies the intent of the law.

While I do support an intelligent and ~~recycling~~ fair recycling franchise for the City of Portland as the only way to achieve a cost-efficient and effective residential curbside collection system, I firmly believe that the pioneers in residential curbside recycling must be fairly represented in that system.

I therefore recommend that the DEQ adopt a rule to the following effect:

Any person providing a residential recycling collection service as of June 1, 1983, which was then in substantial satisfaction of the wasteshed's service requirements as currently promulgated by DEQ, (even though he may not have provided service to the entire wasteshed) shall have the first right of refusal on any exclusive contract or franchise, or portion thereof which represents at least his current volume of business at the time of its issuance.

It is only through adoption of a rule to this effect that DEQ can assure the fair treatment of the groudbreaking recyclers such as Cloudburst, in a highly charged local political environment.

Lorie Parker #16
Testimony on Recycling Rules
October 1, 1984

OREGON ENVIRONMENTAL COUNCIL
2637 S.W. WATER AVENUE, PORTLAND, OREGON 97201 / PHONE: 503/222-1963

We have submitted amendments to the rules, most of which I would consider to be only clarifying or editorial, and not substantive. The one exception is the section on standards for recycling reports. Our proposed amendment would completely rewrite the section, setting out more clearly what must be included in a recycling report, and stating more precise standards for DEQ review and approval of wasteshed recycling reports. The DEQ review is important because it is the enforcement mechanism to ensure that the goals of the Oregon Opportunity to Recycle Act are met. Precise standards will be helpful to all interested parties, whether they be those who will be watching to see that the law is properly implemented, or those who must work together to provide the opportunity to recycle in the wastesheds.

I have listened carefully to both local governments and haulers, on one side, and recyclers on the other, in their debate about how far SB 405 goes in authorizing local governments to franchise not only curbside collection, but also newspaper dropboxes and perhaps even full-line recycling centers. There is no doubt in our minds, as drafters and sponsor of SB 405, that the authority to regulate curbside collection of recyclables was given to local governments. We also have no doubt that the authority was not given to regulate full-line recycling centers. There would be no purpose in so doing. But whether authority was granted to regulate newspaper dropboxes is less clear.

The authority to franchise recyclable materials was included because we thought that such a provision might be necessary to protect the economic feasibility of the full-line recycling collection service. If the most valuable materials are taken by unregulated collectors who pocket the profits and choose not to apply those profits toward collecting less profitable recyclable materials, then society as a whole is the loser. The franchised collector, left with only the least valuable recyclable materials, will either claim that these items are not recyclable because it would be cheaper to landfill them, or will request a rate increase to cover the cost of recycling them. But if the franchise protects all the recyclable materials, then local government can require the collection of the unprofitable materials to be offset by the profitable materials as a package deal. The result will be recycling of more materials than would be possible if scavengers are allowed to operate.

On the other hand, the purpose of the Act was not to regulate existing recycling, but to require provision of recycling service where there had previously been none. Each local government will have to balance the need to franchise in order to support a full-line recycling program with the need to not unnecessarily interfere with existing recycling operations. Where interference with existing recycling programs is absolutely necessary to support expanded collection of recyclable materials, franchise provisions should prevail. In that case, the regulation can be defended as rationally related to the legitimate government purpose of preserving natural resources, protecting the public from the health and safety dangers of landfilling, and relieving the public of disposal expenses.

Given the fact that this balancing act must be based on local circumstances unique to each wasteshed, we do not think DEQ has shirked its duty by choosing to not decide the franchise authority issue at the state level. However, we would not oppose a rule defining "collection service" if it appears that the controversy might significantly disrupt early implementation of ORO.

We appreciate this opportunity to comment on the proposed recycling rules, and commend the Department for its diligence in preparing the rules.

#23

CITY OF
PORTLAND, OREGON
BUREAU OF ENVIRONMENTAL SERVICES

Mike Lindberg, Commissioner
John Lang, Administrator
1120 S.W. 5th Ave.
Portland, Oregon 97204-1972
(503) 796-7169

October 1, 1984

TO: Department of Environmental Quality
PO Box 1760
Portland, OR 97207

SUBJECT: Testimony Regarding Proposed Rules for Implementing the Recycling Opportunity Act

This testimony is offered on behalf of Commissioner Mike Lindberg, City of Portland Commissioner of Public Works, and staff of the Bureau of Environmental Services.

We continue to support recycling as a priority in solid waste management and fully intend to comply with the cooperative effort intended in the Recycling Opportunity Act to increase opportunities for recycling.

The comments offered here are meant to improve the proposed rules for implementing the Act by allowing for the flexibility and local decision-making ability envisioned by the sponsors and supporters of the law to increase recycling in the State. This was the key to our support of the bill during the Legislative Session.

We offer the following recommendations and requests for clarification:

1. Preface, p. 1-8

   We request clarification in the rules on whether the preface is to be a part of the administrative rules and, if so, how it will be used.

2. Policy Statement, p. 13(5)

   We would like clarification in the rules that "maximum participation of local government in the...operation of required recycling programs" does not mean that local government must necessarily operate programs.

3. Principal Recyclable Materials, p. 18

   (8) If the preface is a part of the administrative rules, the discussion of principal recyclable materials on p. 5 does not agree with the proposed rule on p.18. The policy guideline states that "The Department will seek the advice of the people involved in recycling in each wasteshed in determining what materials meet the

definition of recyclable material at each specific location where the opportunity to recycle is required." The rule states that the opportunity shall be provided for each of the materials on the list except as approved by the Department and demonstrated as an exception in the Recycling Report.

We recommend that the proposed rule be changed to comply with the intent of the policy guidelines for a joint effort of DEQ and the wasteshed prior to submission of the recycling report. The recycling report is intended to be a communication relaying how the opportunity to recycle is or will be implemented, not a justification document (p. 4). If the language of the proposed rule stands, the Department's justification and formula for placing materials on the list must be part of the rule for each material at the specific location where the opportunity to recycle is required and from each source of generation - residential, commercial and industrial. This would necessarily require information on "the method which is used to collect and market the material." (p. 4)

(9) We request clarification in the rules regarding the impact of any affected person's request for a variance on other affected persons, particularly as a variance may adversely affect other service providers or the recycling program in place in the wasteshed. We understand the statutory requirement for public participation and a process for requesting variances under ORS 459.185, but will a variance requested by an individual service provider apply to all other service providers? Will the existing cooperative agreements of other affected persons in the wasteshed be considered? In what manner?

4. Acceptable Alternative Methods for Providing the Opportunity to Recycle

p. 18 (1) Our reading of the statute seems to indicate, as this rule does, that the "alternative method" applies primarily to OAR 340-60-020(1)(a), recycling at the disposal site or other convenient location and at least monthly collection in cities over 4,000 population. However, in the interest of flexibility, we recommend that consideration be given to allowing alternative methods for OAR 340-60-020(2)(a)(b), public education and promotion programs, as an integral part of the opportunity to recycle.

p. 19 (2) We recommend the following language for criteria for Department consideration of proposed alternative methods as more realistic evaluators of methods to increase recycling for a particular situation:

a) How will the alternative method increase recycling opportunities?

b) What conditions and factors make the alternative method desirable?

c) How convenient will the alternative method be to the people using or receiving the service?

d) How effective will the alternative method be in recovering recyclable materials from solid waste?

This changes the emphasis from "yes or no" criteria to an explanation format that allows a wasteshed to try something new while still being held accountable for thorough planning to make it work.

5. Standards for Recycling Report, p. 22-25.

(2)(a) This section inappropriately uses language from the statute (ORS 459.185(6)(a) through (f)) relating to a Commission order requiring the opportunity to recycle when the Commission determines, after a public hearings process and review of the recycling report, that the opportunity is not being provided. This is enforcement language, not standards, particularly subsection (f).

The standards and requirements for the recycling report (p. 22-25) should reflect the policy guidelines on p. 4 that state it is "a progress report and not a complex planning document" that keeps "reporting requirements to a minimum." We recommend the requirements for the recycling report ask only for information necessary for the Department to determine that the opportunity to recycle is or will be implemented without creating excessive paperwork or expense or requesting proprietary information from operators.

6. Fair Market Value Exemption, p. 25

(2) We request clarification in the rules that "no charge to the generator" in this situation means no direct charge to the generator who source separates at that site and not to the ability to charge overall costs of providing the opportunity to recycle to generators as a whole.

We also request justification from the Department for the proposal that "if there has been no purchase of the material there has not been an exchange for fair market value" (p. 6). It would seem that the Legislature intended there be a difference between purchase and exchange. Both terms would not have been used in the statute without reason.

The following comments are offered as minor corrections to the proposed rules:

1. p. 9 (14) The definition of "opportunity to recycle" should include those activities described in OAR 340-60-020 or end in a period after the citation.

2. p. 10 (15) This should read "...signature of the Director or (his) the Director's authorized representative..."

3. p. 16-18 (3) through (8) The notation in each subsection should read "...Section [2] 1..."

Thank you for the opportunity to comment. We look forward to a cooperative process with DEQ to implement this important legislation.

Submitted By: John Lang, Administrator
Delyn Kies, Solid Waste Director
Bureau of Environmental Services
City of Portland

cc: Commissioner Mike Lindberg

#23

CITY OF
PORTLAND, OREGON
BUREAU OF ENVIRONMENTAL SERVICES

Mike Lindberg, Commissioner
John Lang, Administrator
1120 S.W. 5th Ave.
Portland, Oregon 97204-1972
(503) 796-7169

October 2, 1984

Bill Bree
Department of Environmental Quality
PO Box 1760
Portland, OR 97207

Dear Bill:

Following the public hearing yesterday on the Proposed Rules for Implementation of the Recycling Opportunity Act, you requested information regarding the inclusion of Multnomah County in the City of Portland wasteshed.

I have attached copies of correspondence between the City, the County and DEQ in regards to this issue. Please note that the City had in mind only the unincorporated area of Multnomah County. I know that Elaine Glendening met with representatives of the incorporated cities within Multnomah County to discuss wasteshed designations, but I do not recall the outcome of that meeting.

If the County's desire is to include the entire County and the City in a single wasteshed as indicated by Dick Howard's testimony yesterday, we should discuss this further with all involved. Our original intent was simply to combine the areas with the most likelihood of developing similar programs in a similar set of circumstances, i.e., numerous operators, size and type of collection systems and unregulated collection.

Please call me at 796-7010 if further discussion or information is needed.

Sincerely,

Delyn

Delyn Kies
Solid Waste Director

DK:al
4:bree

cc: Commissioner Mike Lindberg
John Lang

CITY OF
PORTLAND, OREGON
BUREAU OF ENVIRONMENTAL SERVICES

Mike Lindberg, Commissioner
John Lang, Administrator
1120 S.W. 5th Ave.
Portland, Oregon 97204-1972
(503) 796-7169

April 9, 1984

Elaine Glendening
Dept. of Environmental Quality
PO Box 1760
Portland, Oregon 97207

Dear Elaine:

In response to your letter of February 9th regarding proposed wasteshed options, I would like to suggest that the City of Portland be designated as a wasteshed.

After reviewing the alternatives informally with other City staff and members of the solid waste and recycling industry, designating the City as its own wasteshed appears to be the most acceptable option. In view of the unique problems and numerous players in recycling in Portland, an independent designation will allow us to fully concentrate on developing an "opportunity to recycle" best suited to the City.

This does not mean, however, that we will not be looking at other areas of the three-county region and the State for assistance or that we will not be compatible with other efforts. There are many reasons to work regionally, particularly in terms of markets and promotion and education.

We have much work ahead of us and look forward to continued cooperation with you and others at the Department to increase recycling opportunities in the City of Portland. Please call me at 796-7010 if you would like to discuss this issue further.

Sincerely,

Delyn

Delyn Kies
Solid Waste Director

DK:al

cc: John Lang

CITY OF
PORTLAND, OREGON
BUREAU OF ENVIRONMENTAL SERVICES

Mike Lindberg, Commissioner
John Lang, Administrator
1120 S.W. 5th Ave.
Portland, Oregon 97204-1972
(503) 796-7169

May 15, 1984

Dick Howard
Multnomah County
2115 SE Morrison
Portland, Oregon 97214

Dear Dick:

As you know, the Department of Environmental Quality is preparing draft rules for implementing Oregon's Recycling Opportunity Act. Rules defining wastesheds and recyclable materials will be available for informal comment by all affected persons by the end of the month.

Particular to wastesheds, the DEQ has tried to adhere to existing jurisdictional boundaries as much as possible. For most of the State, this means that wastesheds will include local governments, recyclers, haulers and disposal site operators within each County's boundaries as the "affected persons" responsible for insuring that citizens within that boundary have the opportunity to recycle.

For the Portland metropolitan area, however, this type of designation is more problematic due to the number of players involved, the varying types of waste and recycling collection methods, and the legal authorities of the governments involved.

The City of Portland has suggested to DEQ that the City be designated as its own wasteshed. After informally reviewing several alternatives with members of the solid waste and recycling industry, this appeared to be the most acceptable option. We felt that the number of participants, the unregulated system of collection, and the emphasis the law places on curbside collection of recyclables for which cities and counties have authority, warranted a separate designation. Although we intend to work with other jurisdictions and be compatible with efforts throughout the system, working independently will allow us to concentrate on meeting the law's requirements within our own unique circumstances.

This designation would leave the remainder of Multnomah County as a wasteshed and Clackamas and Washington Counties each as a wasteshed according to DEQ's currently drafted rules. Since unincorporated Multnomah County has a similar set of circumstances as the City of Portland, it may be advantageous to consider including that area in the wasteshed for the City.

I would be happy to meet with you and anyone else you think may be affected to discuss this possibility. The DEQ is planning an open meeting for the Portland area on June 11th to informally discuss the draft wasteshed and recyclable materials rules. It would be helpful if we could talk before then.

I look forward to hearing from you soon.

Sincerely,

Delyn

Delyn Kies
Solid Waste Director
796-7010

DK:al

cc: John Lang
Elaine Glendening
David Lawrence
John Cronise

MULTNOMAH COUNTY OREGON

ENGINEERING SERVICES
2115 S.E. MORRISON STREET
PORTLAND, OREGON 97214
(503) 248-3591

DENNIS BUCHANAN
COUNTY EXECUTIVE

May 30, 1984

Elaine Glendening
Oregon State Dept. of Environmental Quality
P. O. Box 1760
Portland, Oregon 97207

RE: Draft Rules Proposed to Implement
Recycling Opportunity Act

Dear Ms. Glendening:

You recently requested Multnomah County's preference for a "waste shed" designation.

Although the MSD's solid waste program could bear improvements, it is our position that consistent with the disposal site criteria, the logical waste shed boundary in the metropolitan area is the MSD with the remainder of each involved county to be included with the adjacent Hood River, Marion, Yamhill and Columbia County waste sheds.

If such a scheme is not presently acceptable to the other involved jurisdictions, Multnomah County and the City of Portland should comprise a single waste shed, minimizing the number of regulations a collector or customer must face. (The city's boundary is rapidly changing).

Very truly yours,

DICK SODERQUIST, Manager
Engineering Planning/Design Section

R. T. Howard

RICHARD T. HOWARD, P.E.
Service District Engineer

RTH/js

cc: Delyn Kies/City of Portland
MSD/Solid Waste Section

CITY OF LAKE OSWEGO

September 27, 1984

Robert Brown
State of Oregon
Department of Environmental Quality
P.O. Box 1760
Portland, OR 97207

Dear Mr. Brown:

The purpose of this letter is to provide you with comments from the City of Lake Oswego concerning the proposed administrative rules for the implementation of the Recycling Opportunity Act.

The most important issue which concerns the City is that the specific roles of governmental agencies, specifically, in the Metropolitan Area, be clearly defined by the rules. This is of particular importance so that duplication of services can be kept to a minimum.

Under the proposed rules, there are three areas which could be improved to help clarify the specific roles of cities, counties and the Metropolitan Services District (METRO). The first concern that the City has is that of wasteshed boundaries. As proposed, the Metropolitan Area is divided into four wastesheds. This would require each wasteshed to develop data bases and submit separate reports to the state. Since METRO already has developed some data on solid waste disposal and recycling, and has a certain degree of control over solid waste management in the Metropolitan Area, it would seem more logical to have one wasteshed for the Metropolitan Area. This boundary should be tied to METRO's boundaries. I might add that by designing only one wasteshed, other agencies would not necessarily be precluded from developing their own information and establishing their own programs (i.e., it just wouldn't require it).

Second, and in conjunction with modifying the several Metropolitan Area wastesheds into one, it would seem to make sense to designate METRO as the reporting wasteshed agent.

Finally, it would also seem logical to designate METRO as the agency responsible for developing and obtaining approval for the publicity and promotion requirement contained in the Recycling Opportunity Act.

By designating the METRO Urban Service Boundary as a single wasteshed boundary, and by designating METRO as the reporting agent, and by requiring METRO to develop a Metropolitan-wide publicity campaign, a more efficient and better coordinated effort would seem to result. It should be mentioned that redefining METRO's role with respect to recycling would not preclude cities from undertaking or expanding upon their own recycling efforts.

I hope that this information and these comments have been helpful. If clarification is needed, please feel free to contact me.

Respectfully submitted,

Robert A. Kincaid
Assistant to the City Manager

RAK/sms

cc: Corky Kirkpatrick, METRO

0425K

#25

PORTLAND RECYCLING

3045 N.W. Front Ave., Portland, Oregon 97210 (503) 228-5375

October 2, 1984

Oregon Dept. of Environmental Quality
P.O. Box 1760
Portland, OR 97207

To the hearings officer:

Portland Recycling Team welcomes the chance to comment on the proposed rules to implement the Recycling Opportunity Act. We look forward to the implementation of this law, but believe the proposed rules will negatively affect the potential levels of recycling achievable through the Act.

We are concerned by the failure to clearly distinguish between recycling collection and recycling centers in the rules. If there is an ambiguity in the law, it is our understanding the Attorney General has informed the Department that the rules may and should clarify the law. With this in mind, we propose the following changes to the rules: ([deletion]; addition)

340-60-020
1(a) A place for [collecting] receiving source separated recyclable material located at disposal site or at another location more convenient to the population being served ...

In section 340-60-040, "depots" is used although the term is not defined. We propose that "depot" be defined in the rules as "a place for receiving source separated recyclable material from the public." Without such definition, the rule is ambiguous at best; with it, the rule is adequate.

In 340-60-040,1 (c) should be changed to read:

"Written information to be distributed to disposal site users at all disposal sites with attendants ..."

For consistency, section 340-60-045 (7) should say education and promotion program throughout.

340-60-060 should be changed, again for distinguishing collection from centers, to read:

> "Any disposal site that identifies a more convenient location for the [collection] receipt of recyclable materials as part of providing the opportunity to recycle shall provide information to users of the disposal site about the location of the recycling [collection] receiving site (or depot), what recyclable materials are accepted and hours of operation."

340-60-080 should be changed to:

> "In addition to the provisions set forth in ORS 459.195, no person shall dispose of source separated recyclable material which has been collected or received from the public by a method other than reuse or recycling."

From our understanding of the intent of the law, the rules do indeed change the meaning of collection service, contrary to the statement on page 7 of the rules. Further, experience throughout Oregon and the United States indicates that collection services and drop-off centers in a combined program are effective and efficient. Effectiveness and efficiency are not reasons for incorrectly broadening the definition of "collection," and thus the potential for franchising, to drop-off locations. We strongly recommend deletion of any rule or commentary in the rules that includes drop-off centers in the terms "collection" and "collection service."

We also urge you to change the proposed rules to adhere to the law's language regarding fair market value. The law allows for both the purchase and exchange of recyclable materials for fair market value. The proposed rules virtually eliminate exchange.

As a non-profit organization operating recycling centers and serving the recycling needs of many offices in the Portland area, we are concerned that the rules could harm our operations. But more importantly the rules could reduce the recycling rates in the state.

Thank you for considering our comments. We look forward to progressive implementation of the law.

Sincerely,

Judy Roumpf

Judy Roumpf
President
Board of Directors

sah

#26

METROPOLITAN SERVICE DISTRICT
Providing Zoo, Transportation, Solid Waste and other Regional Services

527 SW Hall St.
Portland, OR
97201-5287
503/221-1646

October 2, 1984

Environmental Quality Commission
522 S. W. 5th Avenue
Portland, OR 97201

Dear Commission Members:

Re: Testimony of Metro on Rules Pertaining to Oregon's Recycling Opportunity Act

In your deliberations on the draft rules to implement Oregon's Recycling Opportunity Act we ask you to keep in mind that the primary goal for all this effort is to increase the recycling rate. The Legislature and Governor adopted new policies and directives to govern the management of solid waste in Oregon with this principle in mind. The added convenience of on-route curbside collection of recyclables was identified by them as a key method to a higher recycling rate. But they also allowed that other alternatives may produce the same results. This increased service level was expected to cost the individual consumer/generator some money at first, but the trade off is a societal gain of better land use through extending the life of landfills, energy and natural resource savings. Also, as the public's behavior changes because of promotion, education and convenience, participation and recycling rates will increase and result in a reduction of service level costs.

A caveat to accompany this higher plain of thinking is the recognition that there is no science of recycling. The "best ways" of doing it are in a constant state of flux and evolution. Consequently, we suggest that an attitude of flexibility should temper your development and administration of the rules and this Act. Decide what you want as an end result, but do not dictate how those that must implement the Act are to get there. Adequacy should be measured against results, not how a program is designed and run.

With this framework of principles we have some specific recommendations to make regarding the draft rules.

- On p. 19, (2)(a)(d), the use of the phrases "beyond the level anticipated from the general method" and "as effective in recovering recyclable material from solid waste as the general method" is presumptuous and subjective and could easily be used to stymie new, creative and possibly more effective methods of recycling from being tried.

- On p. 22, (2)(a):(f), this is a statement of your authority to require franchising in the event of the opportunity to recycle not being met and does not seem germane to a section dealing with criteria you will use to evaluate the recycling reports.

- On p. 24, (7)(f), you require "copies of articles printed," "that are being used." The recycling report is a document to show how a wasteshed will be implementing the opportunity, not how it has implemented, so they probably would not have the copies as required.

- Since the recycling report has not been designed and the rules merely suggest what it may require, we ask that you keep in mind the spirit of the report as described on p. 4 of the rules and that it be a "progress" report and not turn into a "complex planning document."

- A similar concern needs to be raised over the absence in these rules of the "attitude" that will be used in identifing those recyclable materials you will require each location in the wasteshed to provide the opportunity to recycle for. This "minimum level" will determine how much a city or county or landfill will need to raise its rates to recover any additional costs. How aggressive this "minimum level" will be should be clearly indicated in the rules so that those who will be impacted can comment.

  For example, what standard will be used to determine when a city may drop or must add a material on their list of recyclables to be collected? If a materials market "dries up" must they warehouse it, or can it be landfilled?

- Our final concern is the need for clarification of roles in implementing of this Act. ORS 459.035 states "consistent with ORS 459.015(2)(c) the department shall provide to state agencies, local government units and persons providing solid waste collection service advisory, technical and planning assistance and development and implemention of effective solid waste management plans and practices, implementation of recycling programs under ORS 459.165 to 459.200 and 459.250 and assistance in training of personnel in solid waste management." Because of the way Oregon's laws are written there is great potential for duplication of effort (DEQ and Metro's). You have raised money for the purpose of implementing this Act through a recycling fee at the landfill but have not developed your plan of how this service might be delivered to those who need it. We, need to work closely on designing a mutually beneficial approach in order to avoid the oft quoted charge of government waste through duplication of efforts.

In closing, we think it important to recognize that Oregon is pioneering the implementation of a new way of dealing with the management of solid waste, injecting new principles into an old system. This will require behavioral changes on the part of all involved and will take time, patience, creativity and cooperation if it is to succeed.

Thank you.

DM/gl
2045C/D4-5

#27

CITY
OF SALEM,
OREGON
GENERAL SERVICES DEPARTMENT
1340 20th St. S.E.
Salem, OR 97302
Telephone (503) 588-6136

October 2, 1984

Elaine Glendening
Recycling Specialist
Solid Waste Division
Department of Environmental Quality
522 SW Fifth Avenue
Box 1610
Portland, OR 97207

Dear Ms. Glendening:

We have been notified that the City of Keizer has endorsed the concept that Marion County be a single wasteshed, with the Salem/ Keizer UGB as a separate division within the County wasteshed.

The City previously forwarded to you a letter from Mayor Harris stating the position of the City Council and Energy Conservation and Advisory Committee on this matter. A copy of the letter is enclosed. The City of Keizer has now endorsed Marion County as a wasteshed area. The concept of the UGB as a separate wasteshed obviously does not have their support. The idea of having an urban area such as the UGB as a wasteshed separate and apart from other rural parts of the County is certainly negated to a large degree if the City of Keizer is in a wasteshed different than the City of Salem.

In light of the present circumstance regarding this issue, it appears that the logical course for the City is to accept the County wasteshed designation with the understanding that Salem and Keizer (the UGB) would be a separate division within the wasteshed and could develop and carry out a City program for recycling that meets the facets of SB 405.

We look forward to functioning closely with the City of Keizer in joint endeavors and we will be cooperating with Marion County to make recycling successful in the Salem area.

Sincerely,

James E Young

James E. Young
Director of General Services

JEY:ds

Enclosure

CITY
OF SALEM,
OREGON
City Hall / 555 Liberty St. S.E.
Zip Code 97301

MAYOR'S OFFICE
Telephone (503) 588-6255

May 8, 1984

Elaine Glendening
Recycling Specialist
Solid Waste Division
Department of Environmental Quality
522 SW Fifth Avenue
Box 1610
Portland, OR 97207

Dear Ms. Glendening:

This letter is in response to your invitation for the City recommendation on what geographical boundary should constitute the wasteshed for the Salem area.

At today's City Council meeting, Council adopted the following motion submitted by the Salem Energy and Conservation Advisory Committee:

> "Our area of interest is the area within the Urban Growth Boundary (UGB). We invite the City of Keizer and Marion and Polk Counties to join us in a cooperative and coordinated effort to serve the UGB.
>
> "Therefore, pending consent of the City of Keizer and Marion and Polk Counties, we recommend that the area within the UGB be declared a wasteshed."

On April 19, 1984, letters were sent to the City of Keizer and to Marion and Polk Counties apprising them of the fact that the Energy Committee's recommendation would be before Council today. One response has been received, that being from Marion County's Director of Public Works. A copy of that letter is enclosed.

We have been informed verbally through a representative of the Salem Area Haulers that they are in agreement with the City's position that the area within the Urban Growth Boundary be designated as a wasteshed.

Thank you for your consideration of this matter and invitation for input in deciding Salem's wasteshed boundary.

Sincerely,

Sue Harris

Sue Harris
Mayor

ds

Salem, Oregon
ALL-AMERICA CITY
1982-1983

#20

City of Keizer
4823 River Rd. N. • Keizer, Oregon 97303 • (503) 390-3700

October 2, 1984

Elaine Glendening
Recycling Specialist
Department of Environmental Quality
Solid Waste Division
522 SW Fifth Avenue - Box 1760
Portland, Oregon 97207

RE: DESIGNATION OF WASTESHED BOUNDARY

Dear Ms. Glendening:

The City of Keizer has reviewed the Wasteshed Rules proposed by the Department of Environmental Quality with regard to designation of wastesheds.

The Keizer City Council at their regular council meeting on October 1, 1984 adopted the following motion:

The City Council concurs in the wasteshed designation proposed by Marion County which identifies Marion County as the wasteshed designation with separate divisions within the wasteshed as identified on the attached map prepared by the Marion County Department of Public Works.

With the above recommendation, it is our understanding that the Keizer/Salem Urban Growth Boundary area will be identified as a separate division of the overall Marion County Wasteshed. It is our opinion that with the designation of Marion County as the overall wasteshed boundary with sub-divisions, this will result in an economy of resources and simplification in such areas as:

1. Staff required for implementation and record-keeping.
2. Citizens serving on task force.
3. Media and education programs.
4. Recycling switchboard.
5. Recycling documentation methods.
6. Recycling attitude assessments.
7. Opportunities for the principle recyclables.

It is our further understanding that the DEQ will support this approach to a wasteshed designation boundary for Marion County.

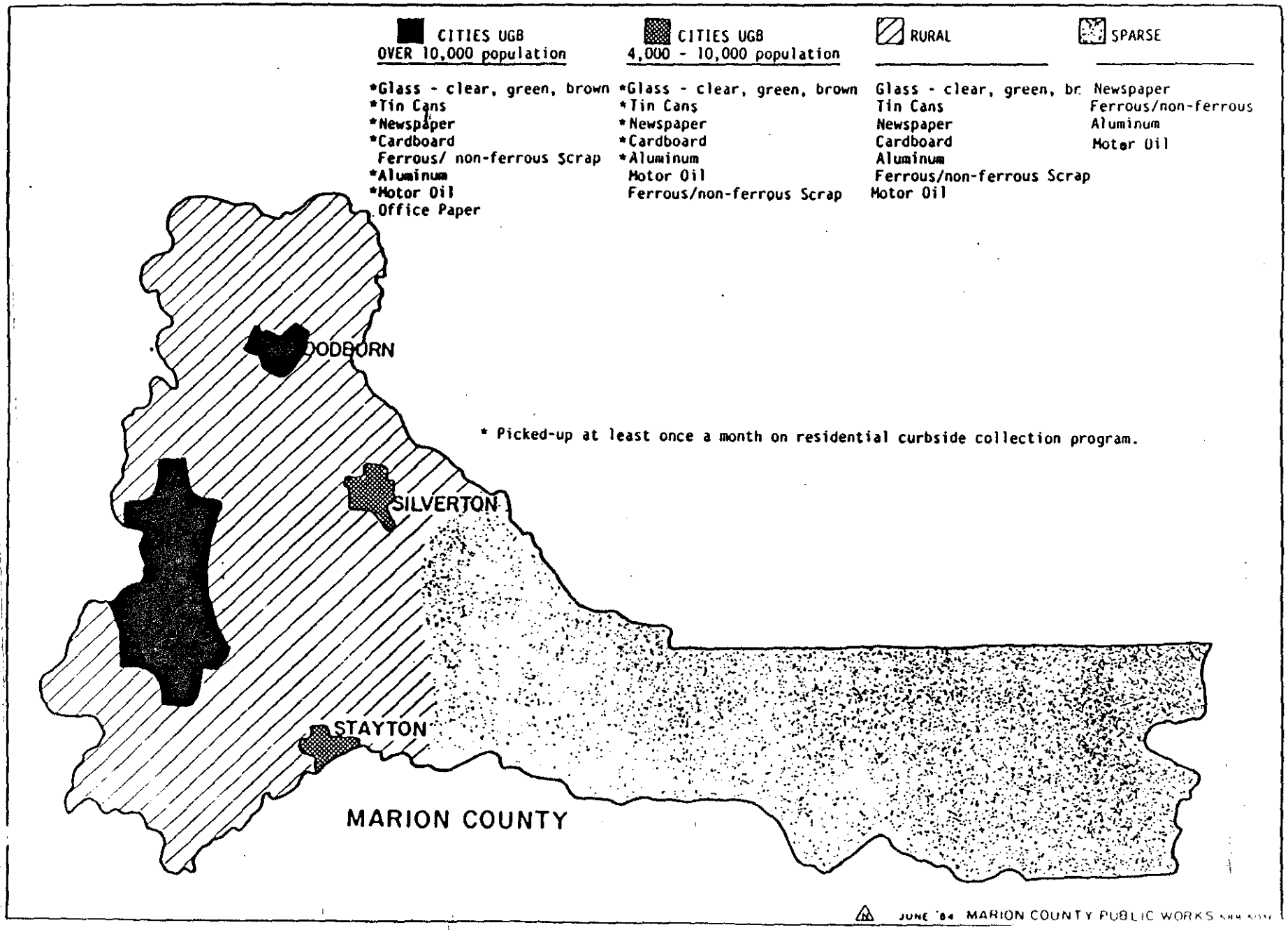
Sincerely,

Roy Payne
City Manager

RP:jj
Attachment

Divisions of the Waste Shed

and Opportunity to Recycle



#29

Klamath County - Department of Solid Waste Management

VETERANS MEMORIAL BUILDING — 503-882-2501 — KLAMATH FALLS, OREGON 97601

September 28, 1984

Department of Environmental Quality
P. O. Box 1760
Portland, OR 97207

Gentlemen:

This letter is in response to your call for comment regarding the PROPOSED RULES FOR THE IMPLEMENTATION OF THE RECYCLING OPPORTUNITY ACT.

Regarding the principal recyclable materials in the Klamath County waste shed:

(1) I do not doubt that at one time or another those materials listed are indeed recyclable.

(2) However, not all of them are recyclable on a regular basis.

(3) And, as in the case of used motor oil, if we did not have a dependable local market, it would not be practicable to even begin a recycling effort.

I am extremely hesitant to build a serious recycling system as outlined in your proposed rules. In order for such a system to work, any recycling center would need to not be at the mercy of a single materials broker. I am afraid that in the case of paper and glass this is the case.

For me, or any group, to go the public, sell them on the merits of recycling, convince them to separate their solid waste, pay to have it collected; and then at some point in time end up landfilling their efforts is ludicrous. I know that we have previously landfilled others recycling efforts, simply because of an undependable and fluctuating market.

It is my recommendation that Klamath County approach the implementation of these rules very cautiously; that we not only look very hard at what we can recycle, and how, but we be very careful on pro-

moting any program that may not be workable on a regular basis.

Thank you for the opportunity to comment.

Very truly yours,

Keith Read
Director

KR:ml
cc: Department of Environmental
Quality, Bend, OR
Board of County Commissioners

#30

P.O. Box 603
Gresham, Oregon 97030
(503) 661-3967
October 1, 1984

Mr. Bob Brown
c/o The DEQ
P.O. Box 1760
Portland, Oregon 97207

Dear Mr. Brown:

This letter is in response to the public hearing today at the Portland Building. I was there as a listener, but did not comment at the meeting. My comments are in response to what I heard at the meeting.

As an independent garbage hauler, we are primarily concerned with a solid waste franchise within the Portland city limits. If it takes involving recycling, then we will do what we have to do to get a solid waste franchise. As you can see from our name we do offer recycling as a service to our customers. At this point we offer the recycling as a hedge against our competitors (Cloudburst, etc...).

After listening at the meeting, I do see the point of the businesses that involve recycling as their main source of revenues.

My recommendation is that the city award solid waste franchises to garbage haulers in the Portland city limits with the condition that they offer recycling to all the customers within their boundaries. Identify the recyclable materials for both residential and commercial accounts that would be feasible to collect. Continue to allow the companies that offer recycling services to operate as before. Let it be the decision of the serviced resident or company, which means they want to use to dispose of their recylables.

With the franchise fees the city would collect from solid waste franchises they could provide educational, promotional and notice requirements to the public. In addition, each garbage hauler could have a recycling notice printed or stamped on their bills as we have continously done. In addition, the franchise fees could be extended as low interest loans to

collectors as means of updating and providing equipment to collect recyclables.

As was mentioned at the meeting, only about 30% of the total recycled materials come from residential sector. By offering recycling through garbage haulers this would undoubtedly increase. The business from recyclers and charitable organizations could continue door to door or through drop off containers. The garbage haulers will take care of the people who don't want to take the time to take the recyclables to a depot.

At the present time we offer recycling to our garbage customers on a weekly basis. We feel that this method involves less equipment, manpower, and fuel. However, let it be the decision of the garbage hauler, just as long as they do offer the service at least once a month.

While I have talked primarily about the city of Portland this recommendation could be incorporated into areasthat already involve solid waste franchises. The use of franchise fees as loans would undoubtedly lessen the financial burden.

While I realize that these comments are late, I hope that they will be considered.

Respectfully,

Marguerite Truttman

Marguerite Truttman
Alpine Disposal & Recycling

#136

TELEPHONE (503) 997-8233

SIUSLAW SANITARY SERVICE, INC.

P.O. BOX 1160 · 85040 HIGHWAY 101 SOUTH · FLORENCE, OREGON 97439

September 28, 1984

Solid Waste Division
Dept. of Environmental Quality
RECEIVED
OCT 3 1984

Oregon Dept. of Environ. Quality
P.O. Box 1760
Portland, OR 97207

Dear Sirs:

We are Siuslaw Sanitary Service of Florence, Oregon, and would like to respond to your Proposed Recycling Rules. We have provided an on-route complete recycling program for the last three years. We would like to tell what we have done, activity it has generated and additional comments relating to your proposed rules.

We began the recycling program by building bumper boxes and side boxes for our garbage trucks, fabricating a glass crusher and 8 - 3½'X3½'X3½' bins for crushed glass, leasing a cardboard baler which we also use to bale tin. To save handling newspaper several times we thought it necessary to have a van trailer for storage of newspaper. We also invested in a semi-truck and haul newspaper and cardboard for another recycling company.

We have a part-time employee whose job is to sort the glass by color and crush it, bale cardboard, sort and stack the newspaper that is put into a van trailer directly off the route, bale tin and aluminium. He spends half of a day per week with a back-up truck picking up cardboard from commercial accounts. We went to the local restaurants and gave them trash cans to be used for recycled glass and flattened tin. At the time the cardboard is picked up, we also pick up as much of the tin and glass as possible.

The regular trash trucks collect recyclables on route every day. We asked our customers to set the recyclables beside their regular can of trash. We will even pick up recyclables without regular trash service. Some of the recyclables of the commercial accounts are picked up by the regular trash truck. We have a competitor who also picks up cardboard, but he doesn't handle the other recyclables. We are buying newspaper from a church youth group. There is also a local handicapped center who pickup newspaper from local drop areas in town. We have a drop off center at our office/shop and have 1 - 3 customers per day bring in recyclables. Some do it on a regular basis.

Since we began the program, the volume has remained fairly constant. We have approximately 10% of our customers recycling. Of those recycling about 30% are weekly (mostly the commercial accounts), 30% are often, at least two times a month, and the rest are occasionally, once a month or less. We have 12% of our commercial customers recycling with the largest volume coming from restaurants.

The chain grocery stores bale their own cardboard, but we get some cardboard from small grocery stores. Our volume runs around 100 tons of material per year. We get about one bale of aluminium a year. We do accept used motor oil, but don't collect much.

One point that we find has never been fully addressed is who is going to pay for the recycling. The trash collector has been reluctant because he can see the labor and equipment cost will be more if it is recycled than taken to the dump. There are additional labor costs of handling and processing the materials. The rate of these direct costs will remain the same whether one ton or one hundred tons are processed. The price for the materials just barely covers the transportation costs to market as we have to haul from 60 to 160 miles. There are parts of the state that are further away from the markets than we are.

So far the inducement to get the customer to recycle has been free of charge. But the customer is still going to have to pay to get rid of his waste whether it goes to the dump or is recycled. This fact must be included in the education. Now people say, "How much are you going to pay me to give it to you to recycle?" They become indignant when we say we can't pay anything as we are losing money as it is.

Another point that hasn't been addressed to our satisfaction is how are we going to handle the volume if everyone recycles. There is probably 50% of a can that can be recycled. If 90% of our customers recycled rather than the 10% that we have, the volume of recyclables would be tremendous. Now our trucks come in off the routes full of recyclables most of the time. The increased volume would require different type of equipment to collect it. We have heard of flatbed trucks with special bins, but the technology is not there right now to take care of the problem. Before the people can be mandated to recycle, there needs to be better and more economical means of collecting and processing the materials.

The government bodies need to work very closely and individually with the various collectors of recyclables in the education and promotion. The individual collectors don't have the financing or the time to put on educational programs. On the other hand a promotional program that would work in a large city would not necessarily work in a small town or rural area. In our own promotion of recycling we use a single page calendar for the year. On the back we use cartoon characters (in our case, horses) with brief descriptions of what to do with the recyclable materials. A copy is enclosed as we are down to our last file original. The calendars have been very popular. We get additional requests for friends and relatives. It is helpful throughout the year to give to new customers.

It will be a slow process to convince the people that they should recycle. We find most of our active recyclers are retired people, who have more time and have come through the depression where it was necessary to save everything, and young adults, who have been exposed to recycling ideas in school. The middle class, more affluent and those on welfare are least likely to recycle.

Since we began the recycling program, we in our home have recycled. We find all the storage space we need is a box to put glass and tin in and a large grocery bag on its side for newspapers to slip in on a shelf in a closet. As cans and glass jars are used, they are rinsed and set on the drainboard to dry. We take a few minutes to remove the other end, take off the label and flatten the can. In the box the tin cans slide to the bottom and the glass is easily picked out and put into a grocery bag or plastic bag for disposal. Cardboard boxes can be slashed and tied or put into another box for ease of handling.

It is important to be flexible enough with the rules so the small operator is able to continue operating as well as the large operators. Inflexible rules will stifle growth, creativity and imagination.

Please keep any reports simple to do. That is definitely what the bookkeepers don't need - another time consuming, detailed report to have to fill out which may never be used. Are the reports really necessary? If reports are for statistics, maybe one annual report is enough. We know Lane County Solid Waste is already requesting a quarterly report. The data that each county collects should be the same that the state would want and could come from the county summary reports. Our request is that any report be simple and quick to do.

We believe it is important for the people to recycle and reuse our resources rather than wasting them by throwing them away. There has been a tremendous change in attitudes towards recycling in the ten years we have been in the trash business. It will take many more years to get the entire population to recycle automatically. Patience, flexibility and working together will make it happen faster. Education, especially in the schools, will make the job easier.

We hope you are able to get some useful ideas from our presentation.

Sincerely yours,

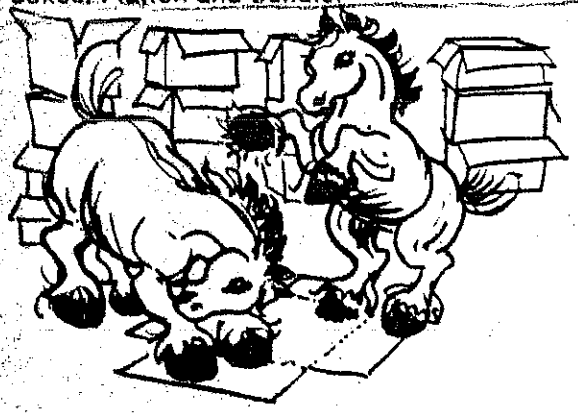
Loraine R Johnson

LORAINE R. JOHNSON

Chuck & Diane with Helpful Hints on Recycling

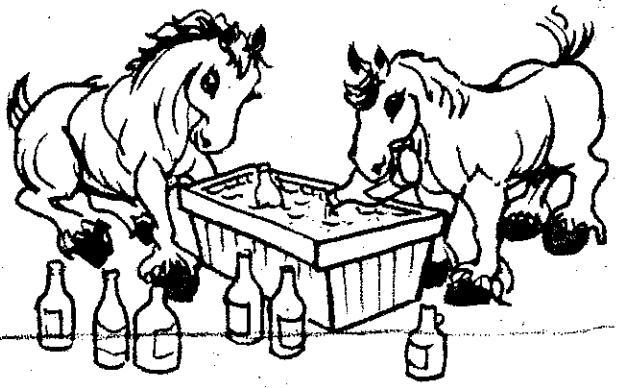
1. TIN CANS
Rinse, remove labels & flatten.

2. CARDBOARD
CORRUGATED ONLY - Please, no waxed or cereal boxes. Flatten and bundle.

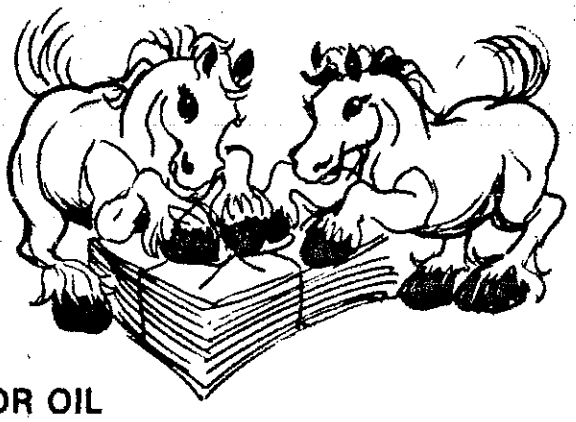


3. ALUMINUM CANS & FOIL
Remove labels, rinse & flatten.

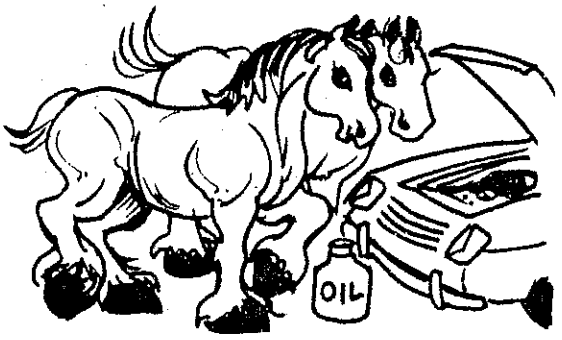
4. GLASS BOTTLES
Rinse. DO NOT BREAK. No pyrex or window glass.



5. NEWSPAPERS
Tie or sack in easily handled bundles. Please, no magazines or slick paper.



6. MOTOR OIL
Put in non-glass container with screwtop lid, or old milk cartons.



PLACE your recyclables in separate containers next to your trash can on your regular pickup day

or

DROP them off at our office located at 85040 Highway 101 South, behind the Park Motel. COLLECTION programs are also available to commercial and industrial businesses. For information and service arrangements please call our office.

Phone
997-8233

Thank you
Siuslaw Sanitary Service, Inc.
P.O. Box 1160
Florence, Oregon 97439

BEND RECYCLING TEAM
Conservation for Central Oregon, Inc.
P.O. Box 849
Bend, Oregon 97709
Phone (503) 388-3638

October 10, 1984

Testimony given to Oregon Department of Environmental Quality regarding rules to implement SB 405, the Oregon Recycling Opportunity Act.

Bend Recycling Team would like to express its strong support of SB 405 and the draft rules for implementing the Recycling Opportunity Act. Both the Act and the rules reflect extensive research throughout the state and careful consideration of the needs and desires of those groups that will be affected by implementation of the Act. Any time a complex system like the current recycling system undergoes change, there will be inevitably both positive and negative effects. Bend Recycling Team anticipates changes in its operations and structure, and is confident that positive changes will vastly outnumber negative changes both in Central Oregon and statewide.

BRT would like to offer comments in three areas. They are:

Collection Frequency
Collection for All
Education, Promotion, and Notification Rules

(1) Collection Frequency.
SB 405 requires on-route collection frequency to be no less than monthly. Operators of on-route systems already in action have consistently stated that public participation levels increase dramatically when collection frequency increases to twice-monthly or weekly. We feel that on-route collection should be provided at least twice-monthly, on the same day as garbage pickup.

(2) Collection for All
The Act only requires on-route collection be provided to "collection service customers." Again, conversations with existing on-route system operators would suggest that all residents within the urban growth boundary should be served, whether or not they are collection service customers. The economics of running a recycling (or garbage) collection service show a high ratio of fixed vs. variable costs. Thus it helps, not hinders, on-route recycling economics if <u>all</u> residents who set out materials are served, since the fixed costs can then be spread out over more revenue from sale of collected materials. Existing on-route collectors have found this to be true by trial and error. It would be helpful to those collectors entering the picture over the next two years if this fact is made clear during the implementation process. It would help them financially and the opportunity to recycle would be extended even further.

(3) Education, Promotion, and Notification Rules
BRT feels that any weakness in the rules lies in this area. A danger exists that education, the key to the entire process, will be given short shrift in some cases. This section of the rules (340-60-040) needs more work. Many people unfamiliar with recycling education will be inclined to take needlessly expensive and possibly ineffective steps toward the public notification requirements. For example, the "written notice to each household" could be done by mass mailings, an obvious "solution." However, those in the know say that garbage can hangers or stickers, combined with truck-side logos are cheaper and more effective. The information required by the rules is complete, but more guidance is needed in terms of media for disseminating that information.

DEQ has done an outstanding job of developing the draft rules. They show a great deal of thought, research, and industry input. We at Bend Recycling Team are very optimistic about the changes SB 405 will bring. We feel that, given the opportunity to recycle, Oregonians will recycle, in large numbers. Let us hope that we can provide a model for the rest of the nation. Thank you for this opportunity to comment.

Mark Bowers
General Manager
Bend Recycling Team

#31

CITY OF
MILTON-FREEWATER

P.O. Box 6, Milton-Freewater, Ore. 97862 · Phone 503-938-5531

Since 1889

October 02, 1984

Department of Environmental Quality
Attn: Elaine Glendening
522 SW Fifth Avenue, Box 1760
Portland, OR 97207

Dear Elaine:

After reviewing your proposals on the Recycling Opportunity Act, we have the following comments.

The City of Milton-Freewater would like to be considered a wastesehed individually and excluded from Umatilla County wastesehed. The reason for the request to change this is the City of Milton-Freewater operates their own solid waste collection system and landfill. We think it would be easier to coordinate a wastesehed if the City of Milton-Freewater is considered separately.

Also, on Page 13 Section 340-60-020 subsections A and B, it is our opinion that a great deal of latitude must be considered by the department in considering and allowing alternative recycling methods.

The department should also consider the cost of recycling, especially on route collection. It is extremely expensive when implemented by a small collection service that operates such as the City of Milton-Freewater.

The distance from markets for recycled material is extremely important when calculating the cost benefit ratio of recycling. Milton-Freewater operates their solid waste collection and landfill as a utility and estimates that at least a 20 percent (20%) rate increase to all customers would be necessary to fully implement the Recycling Opportunity Act as it is presented in the latest proposed rules.

Sincerely,

Jack D. King
Public Works Director

JDK/dsk

mun. garb service 2. 32 gall cans a week
curb - $5/mon
backyd 7.60/mon
Landfill 3.25 pickup
or 2.60 uncompacted cu/yd.
seniors 1-32 - 3.60

#35 PENDELTON PUBLIC HEARING

Malheur County Sanitarian

P.O. Box 277 • Vale, Oregon 97918
(503) 473-3185

Testimony on Proposed Recycling Rules
by Malheur County

Malheur County would like to go on record approving the concept of recycling but opposing mandated statewide requirements forcing local governments to divert rare tax dollars from existing programs to promote recycling. We believe that local government is better able to judge the level of funding and the kind of programs that are both workable and fundable within its jurisdiction than the Department. These proposed rules proclaim on page one to give guidance to local governments and others in carrying out the requirements of the statute. However, on page thirteen the true colors of these rules are stated as "the purpose of these rules is to prescribe requirements....." Malheur County requests the Environmental Quality Commission to direct the Department to rewrite these rules in terms of guidance rather than prescribed requirements.

In the event the Commission elects not to rewrite the rules Malheur County would like consideration given to the following specific segments:

1. Page 13, 340-60-020(2)[a]: The rule as written requires that each and every person be given notice of the opportunity to recycle. Implementation of such would simply not be possible and any attempt to do so extremely expensive. The rule could be interpreted to mean door to door direct presentation of the notice which is most unrealistic. Bob Brown, DEQ Solid Waste Supervisor has assured us that regardless of how the rule is written this is not its intent. To clarify this issue we propose that the words

"TO EACH PERSON" be removed.

2. Page 19, 340-60-040(1) - This rule requires affected persons to commit resources to implement an education and promotion program. No limit is placed on the resources the agency could require an affected person (county, city, business, etc.) to commit to this project. With already tight budgets and the possibility of a property tax limitation bill some limit must be set. We propose the words "WHERE AVAILABLE" be inserted after the word "RESOURCES" in the first line of this section. To maintain consistancy with our first proposal we propose that the words "REACH ALL" on the first line of subsection (a) of this section be replaced with the words "THE MAXIMUM NUMBER."

3. Page 22, 340-60-040(3) - This section requires the affected persons to provide notification and education material to media and groups maintaining contact with the public. Many small counties, cities, and affected persons do not have the ability in graphics, news editors, etc. to properly carry out this requirement. The Department does, however. Therefore, we propose the words "PROVIDED BY THE DEPARTMENT" be inserted after the words MATERIALS on the second line of this section.

4. Page 22, 340-60-045 - Section one requires each wasteshed to submit a recycling report to the Department on forms supplied by the Department not later than July 1, 1986. No where is it specified when the Department must provide these forms to the wasteshed agent. We therefore propose a new section 2 to state:

   THE DEPARTMENT SHALL PROVIDE TO THE WASTESHED AGENT ALL FORMS, MATERIALS, AND INSTRUCTIONS FOR COMPLETION OF THE RECYCLING REPORT NOT LATER THAN JULY 15, 1985.

5. Page 22, 340-60-045(2)[c] - Requires the recycling report to include types and amounts of materials which are recyclable. Because this precise information may not be available in all cases in every wasteshed we propose to insert at the beginning of this section the words "ESTIMATES OR BEST CURRENTLY AVAILABLE INFORMATION OF".

6. Page 22, 340-60-045(3)[a](A) - This paragraph requires that each wasteshed designate a single person as the wasteshed agent. There may be cases where a specific legal entity, committee, or office would more appropriately be able to carry out the functions of a wasteshed agent than an individual person. We therefore propose to remove the words SINGLE PERSON from the first line of this paragraph.

7. Pgae 25, 340-60-055(1) - This section defines the cost of a recyclable material which is used in other sections to determine what materials must be recycled in a given wasteshed or area within a wasteshed. The costs included in this section are not representative of the true cost to the wasteshed's affected persons. We therefore propose to remove the word "ONLY" from line 2, remove the period after the word "IT" in line 5 and add the statement:

    "AND THE PRORATED COST OF THE WASTESHED'S RECYCLING EDUCATIONAL, PROMOTIONAL AND NOTIFICATION PROGRAM.

We additionally propose the addition of a new section 2 to read:

    ANY INCREASE IN THE RATE CHARGED THE CONSUMER FOR COLLECTION OR DISPOSAL OR NEW RATES CHARGED THE CONSUMER RESULTING FROM THE COSTS ASSOCIATED WITH RECYCLABLE MATERIALS SHALL BE INCLUDED IN THE CALCULATION OF THE COST OF COLLECTION AND SALE OF A RECYCLABLE MATERIAL.

8. Page 26, 340-60-075 - This section states that persons providing the opportunity to recycle can set specifications for preparation of the materials as related to marketing requirements. It does not allow the person to set specifications related to transport and storage. We therefore propose that the words "TRANSPORT AND STORAGE" be inserted after the word marketing on line 4 of this section.

9. Page 27, 340-60-080 - This section requires all source separated recyclable materials to be disposed of by reuse or recycling. There may be situations where for a variety of reasons this may not be possible. We propose adding the words "WITHOUT PRIOR APPROVAL OF THE DEPARTMENT" to follow the word recycling at the end of this section.

10. Page 27, New Section. Nowhere in these rules is the health or safety impact of the recycling program addressed. Because counties and other affected individuals must consider health and safety we propose a new section to read:

    NO PART OF THESE RULES SHALL CAUSE THE GENERAL PUBLIC, AN AFFECTED PERSON OR AN EMPLOYEE OR AGENT OF AN AFFECTED PERSON TO BE EXPOSED TO A HEALTH OR SAFETY HAZARD. THE FINAL AUTHORITY FOR DETERMINING WHEN A HEALTH OR SAFETY HAZARD OR POTENTIAL HEALTH HAZARD EXISTS SHALL REST WITH THE COUNTY OR CITY HEALTH OFFICER OF THE APPROPRIATE JURISDICTION.

To conclude our testimony Malheur County formally objects to the manner in which these rules have been presented. Specifically we believe that inadequate time was given to the affected persons and general public to read, study and consider these rules and more importantly to prepare testimony related to these rules. We also believe that an economic impact statement should have

been prepared and included in the rule packet information. Without a detailed economic impact statement we believe it is impossible for the commission, affected persons, and general public to completely and intelligently evaluate the proposed rules. And further believe that by the combination of short notice and absence of impact statement that if these rules are adopted at this time by the commission, the commission will have acted in a negligent and unethical manner.

Testimony Prepared and Presented by:

J. Bruce Sarazin, R.S.

J. Bruce Sarazin, R.S.
Malheur County Sanitarian

Testimony Approved for the Malheur County Court by:

Judge E. M. Seuell
Malheur County Judge

Testimony Dated October 1, 1984

#33

LEAGUE OF WOMEN VOTERS OF OREGON
317 Court Street N.E., Suite 202 Salem, Oregon 97301 (503) 581-5722

October 1, 1984

TO: Department of Environmental Quality

FROM: League of Women Voters of Oregon

RE: Recycling Rules

The League of Women Voters of Oregon supported SB 405 as an important step in Solid Waste management for the State of Oregon and supports the general intent of the proposed rules.

The proposed rules present a positive approach with the intent of the Recycling Act clearly stated in the preface. The objectives are defined to increase levels of recycling and reduce disposal, the emphasis of carrying out the Act is placed locally, and the opportunity to recycle gives us a positive way to regulate.

One important factor to the success of these rules is tied to the education of the public and their willingness to recycle. The League is concerned about where the funds will come from in the important phase of notice and education at the local level, due to the lack of State fund support. The rules simply state "that affected persons in each wasteshed shall committ resources", but do not provide the mechanism for a uniform educational effort across the State.

The League is also concerned that there is no clear line of responsibility for the implementation of the Act. As stated "the key to success of the Act will be cooperative efforts of the local governments and other affected persons." Then the emphasis changes as a role of local government. There is a need for clearer direction for implementation.

Maryann Rombach

Kris Hudson, President
5038 S.W. Idaho
Portland, OR 97221

Mary Ann Rombach, NR Chair
85782 Springfield/Cr. Hwy.
Pleasant Hill, OR 97455

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201

Phone: 503/222-1963

October 17, 1984

To the Environmental Quality Commission:

This letter is an addendum to the testimony I gave on behalf of Oregon Environmental Council at the October 1 recycling rulemaking hearing.

In focusing on the draft rules, I forgot to comment on what had been entirely left out of the rules. Yard debris should be listed as a principal recyclable material within the areas covered by the yard debris burning restrictions you recently adopted. (Or. Admin. R. 340-23-065(5)(1984).

Currently, yard debris may or may not fit the definition of recyclable, depending on the amount of compaction of the yard debris when it is hauled to the landfill or yard debris processor. If the yard debris is compacted, it is cheaper to take it to a yard debris processor than to the landfill because the processors charge by volume. In contrast, the landfill charges by weight. But if yard debris is sometimes not recyclable now (under the Oregon Recycling Opportunity Act definition), it will surely be recyclable by July 1, 1986 when recycling programs must be on line. All indications are that disposal costs will continue to rise and that the cost of recycling yard debris will drop as volumes increase and markets develop. It will be more cost effective to recycle the yard debris than to dump it in a landfill.

You and the DEQ should not ignore the fact that yard debris is or will meet theORO definition of a recyclable material simply because yard debris has not traditionally been a part of recycling programs. It is too important to ignore. Yard debris takes up approximately 19% of the volume in our landfills. (National average. Solid Waste Data: A Compilation of Statistics on Solid Waste ManagementWithin the United States. 1981.) As you recently concluded, the option to burn is no longer an option we can afford to inflict upon the airshed. Alternative disposal methods must be found. ORO can provide that alternative. Curbside collection of yard debris, with chipping at the curb or at fixed locations, can relieve the landfill and save the resource. Processed yard debris can be used as fuel, bark mulch, soil additive, and possibly as a bulking agent in the City of Portland's new composting plant.

By listing yard debris as a recyclable material, you will give the local governments, haulers and recyclers within the metropolitan Portland wastesheds the necessary lead time to implement full-scale yard debris recycling programs by July 1, 1986.

Lorie Parker

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. H , November 2, 1984, EQC Meeting

Proposed Adoption of Rule Amendments Incorporating Noise Inspections of Automobiles, Light Trucks, and Motorcycles into the Portland Area Vehicle Inspection Program.

Background

On April 16, 1984, a petition for rulemaking was received from the Livable Streets Coalition, asking that Portland area motor vehicles be inspected for excessive noise as part of the current air emission inspection program. The petition requests that the standards established in Table 2 of OAR 340-35-030, Noise Control Regulations for In-Use Motor Vehicles, be a mandatory part of vehicle inspections and requested that automobiles, light trucks, motorcycles, heavy trucks and buses be included in a noise emission inspection program.

The Commission, at its May 18, 1984 meeting, accepted the petition and directed the Department to initiate rulemaking proceedings. The Department noted that a number of issues needed to be addressed prior to proposing inspection rules that could require noise testing large numbers of vehicles. The Department proposed to address these issues and if appropriate, request authorization to hold public hearings on proposed rules.

At the June 29, 1984 Commission meeting, public hearings were authorized to accept testimony on the petitioner's request and on an alternative developed by the Department. Two public hearings were held in Portland on August 15, 1984. The first hearing began at 9:00 a.m. and the second began at 7:30 p.m. In addition, written testimony was submitted by mail and accepted as part of the hearing record. A summary of the public hearing and written testimony is continued in Attachment 4 of this report.

Motor vehicle noise in the Portland area is a significant problem. Within the vehicle inspection area boundary, an area that is less than one-half of one percent of the total area of the state, reside 40 percent of the State's population and 37 percent of the State's motor vehicles. Thus, with high population densities and large numbers of vehicles, the potential for vehicle noise impacts to people is high. As for autos and light trucks only, studies show that approximately ten percent of these vehicles in the Portland area exceed current standards. A recent study of the Tri-Met bus fleet indicate that as many as 18 percent of their buses may exceed standards. Rough estimates on noise levels from motorcycles indicate that as high as 25 percent of them may be too noisy. These studies verify the magnitude of the noise problem in the Portland area caused by defective or inadequate motor vehicle exhaust systems.

The public reaction has been demonstrated in several ways. Attitude surveys identify motor vehicles as the source of the most serious noise problem. A survey conducted in the Portland Standard Metropolitan Statistical Area found that noise from motor vehicles was perceived to be a community problem ranking fourth after property taxes, crime and quality of education.[1] Another Portland survey found that 68 percent of those polled identified motor vehicles as the source of external sounds noticed in the neighborhood.[2]

The Commission may adopt rules to include noise emission testing and enforcement of standards within the Portland area motor vehicle inspection program, pursuant to ORS 481.190, 468.370 and 467.030. These statutes allow adoption and enforcement of noise emission standards for any motor vehicle that is licensed with Oregon-only plates (not apportioned) and any vehicle that is less than 20 years old based on the vehicle model year. A draft statement of need for rulemaking is included in this report as Attachment 1.

Alternatives and Evaluation

The Commission authorized public hearings to consider testimony on the vehicle noise inspection proposal submitted by the petitioner and an alternative procedure developed by the Department for inspection of autos and light trucks. The petitioner's proposal included standards and procedures for the vehicle categories of (a) autos and light trucks; (b) motorcycles; (c) Tri-Met buses; and (d) heavy-duty trucks and other buses. For ease of presentation, the following discussion is separated into sections detailing the Department's analysis by vehicle class.

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1. Bardsley & Haslacher, Inc. - 1977.
2. Moore Information, Inc. - 1983

I. Automobiles and Light Trucks

A. Petitioner's Proposal

For autos and light trucks, the noise control rules recommended by the petitioner describe a noise test procedure that measures exhaust system noise emissions while the vehicle is stationary and the engine is accelerated under an unloaded condition to a speed determined as 75 percent of the engine speed at which maximum horsepower is reached. The length of time to conduct this test within the vehicle inspection stations is primarily affected by the need to determine the 75 percent engine speed. At this time, this information is tabulated in a book of tables, and staff estimates an average of 45 seconds per vehicle to determine the engine test speed from this book. Conducting the noise inspection is estimated to add an additional 20 seconds to the inspection time. This portion of the test requires the locating of a microphone near the exhaust outlet, accelerating the engine to the proper speed, and the recording of noise emission data. Therefore, this procedure would add an average of 65 seconds to each vehicle inspected for noise emissions. Current average air emission test time per vehicle is about 3 minutes. As a result, incorporation of this noise test procedure would increase test time per vehicle by about one-third.

B. DEQ Alternative

Another test procedure was investigated by staff. This procedure measures the vehicle exhaust noise emissions during a portion of the air emission test cycle. One portion of the air test requires the engine to be accelerated to approximately 2500 RPM and held constant for 10 to 15 seconds to measure exhaust gas emissions. When the microphone has been located near the exhaust outlet, noise emissions may also be measured during this portion of the air test cycle. To evaluate this procedure, the Department conducted aural and visual inspections, and noise emission measurements on over one thousand automobiles and light trucks. This evaluation found that approximately 12 percent of the vehicles were aurally judged noisy and that over 9 percent of the total (1052), inspected visually, had modified or defective exhaust systems. Examination of noise emission level data led staff to conclude that this test procedure could be used to accurately identify those vehicles that would produce excessive noise emissions under normal operating conditions due to defective or modified exhaust systems.

Based on these data that included aural, visual and noise emission information on each vehicle, staff determined that a reasonable noise emission limit of 93 dBA for front engine light-

duty vehicles (autos and light trucks), and 95 dBA for rear engine light-duty vehicles, would be an appropriate standard when measured during the 2500 RPM portion of the air emission test cycle. These proposed limits would initially identify approximately 5 percent of the autos and light trucks as exceeding standards. It is staff's opinion that the proposed limits would adequately address light duty vehicles that are responsible for the most significant noise impacts in the community. The advantage of this test procedure is the substantially reduced time to conduct this test compared to the 75 percent engine speed test. Under this procedure, it is believed that the noise testing would add approximately 10 seconds to each vehicle inspection (as compared to the increase of 65 seconds for the 75 percent engine speed test). With the metered noise test incorporated into the air emission test, it is thus possible to conduct metered noise tests on all vehicles within current staffing levels. It is not anticipated that the quality of service would suffer or the length of wait lines would increase if the 2500 RPM test procedure were implemented. Since the Department has estimated that more than 10 percent of the automobile population exceeds existing standards, and this proposal would initially identify approximately 5 percent of those inspected as exceeding standards, this test procedure would affect the loudest of the noncompliant vehicles. In the future, if this test procedure were adopted, it may become necessary to adjust standards and procedures to insure that the less noisy but still noncompliant vehicles are identified.

C. Public Comments and Staff Evaluation

Most comments on these two proposals were supportive of the Department's alternative due to its efficiency. Several suggested that the 2500 RPM alternative be adopted and implemented with the condition that its effectiveness be reviewed at a specific future date. Several industry representatives were more supportive of the petitioner's 75 percent of rated RPM procedure but admitted that the 2500 RPM procedure would likely provide a satisfactory inspection.

Two groups representing a number of Portland neighborhood association supported the 75 percent procedure because they believe it would provide a better level of enforcement and that the added time impact of approximately 30 percent was justified to achieve adequate results.

Of the two procedures, staff believes the 2500 RPM procedure offers the best tool to efficiently inspect a large number of vehicles. Although this procedure has been shown to accurately identify the loudest 5 percent of a vehicle population that

contains 10 percent "noisy" vehicles, it has been criticized as not being capable of identifying all of the noisy vehicles. The 75 percent RPM procedure also has similar deficiencies. In a 1980 Department study where 9.4 percent of the vehicles were noisy, this procedure only accurately identified 6.3 percent as noisy. Thus, both procedures have some inherent error in their ability to identify every vehicle that has been judged noisy. Most importantly, these procedures have been designed to accurately identify noisy vehicles without errors of commission (those errors in which a "quiet" vehicle is incorrectly identified "noisy"). As the 2500 RPM procedure is more compatible with the present air emission inspection process, staff believes it is preferable.

Although not part of the formal hearings record, comments have been received from some fleet inspection operators who would, under this proposal, need to conduct noise emission tests on their vehicles in addition to air emission tests. These operators believe noise tests of their vehicles are unnecessary and an extra burden on them as they do not own vehicles with "modified" exhaust systems and their regular maintenance schedule ensures that deteriorated systems are repaired and replaced. Staff believes this claim is valid; however, fleet operators must accept the responsiblity of compliance with standards. The draft rules provide in Section (14) of rule 24-310, that a judgment is to be made whether the noise test is necessary. However, this Section does not relieve the fleet operator from certifying that each vehicle does comply with the standards contained in rule 24-337 as required in Section (15) and (16) of 24-310. Therefore, staff believes under this proposal fleet inspectors have the option of conducting noise emission tests using a sound level meter or making an evaluation of the exhaust system noise emissions based upon an aural and visual inspection of the vehicle. Whichever procedure is used, the fleet inspector must certify that the vehicle does meet the applicable noise emission limits. If random audits detect that fleet inspection procedures are not adequate, appropriate enforcement action would be taken.

II. Motorcycles

A. Petitioner's Proposal

The petitioner's request includes noise emission inspection of all motorcycles registered within the boundaries of the Portland area inspection program. The proposed standards (OAR 340-35-030, Table 2) and test procedures for motorcycles require measuring noise emissions at different engine speeds for different models of motorcycles. The procedure requires the measurement to be taken while the vehicle is stationary and the engine is acceler-

ated under an unloaded condition to either: (a) a speed determined as 50 percent of the engine speed at which maximum horsepower is reached, or (b) a speed determined as 45 percent of the manufacturer's recommended maximum engine speed ("red line.")

Noise testing engine speeds for motorcycle models, based on the "50 percent of rated" procedure, are contained in a book of tables. The procedure using engine "red line" normally is preferred as the factory installed tachometer on the motorcycle would provide the necessary test engine speed for most models. The time necessary to inspect motorcycle noise emission is expected to take approximately the same amount of time required to conduct an air emission inspection on an automobile or about 3 minutes per vehicle.

If motorcycles were included in a noise inspection program, staff estimates a workload increase of approximately 7 percent (3 additional inspectors) to process the approximately 30,000 motorcycles registered within the inspection program boundaries. This added cost would be offset by inspection fees. However, budget amendments would be necessary to add staff and increase the program limitations to accept additional inspection fees.

B. Public Comments and Staff Evaluation

Most testimony was highly supportive, and often insistent, that motorcycles be included within a noise emission inspection program. As these vehicles are highly visible, and are audibly identifiable due to their distinctive exhaust tone characteristics, they are often the highest rated noise source in public attitude surveys. Staff review of available data indicates that as many as 25 percent of the motorcycle population would exceed current noise emission standards.

Due to the single event noise impacts caused by loud motorcycles, a relatively small population of these vehicles have been identified by many as the highest priority source of noise pollution. Therefore, the need to provide motorcycle noise inspections has been adequately established.

Comments from the motorcycle manufacturing industry supported the concept of noise enforcement. One manufacturer supports the use of the existing procedures and standards as recommended by the petitioner. The industry trade association would prefer the use of the procedure that measures noise at 50 percent of maximum horsepower RPM. This procedure is one of those in the current rules, as well as the procedure that measures at 45 percent of red line RPM. Staff believes the procedure based on a percentage of red line RPM is preferable due to the ease

of determining the test RPM. However, staff also believes the procedure based on maximum rated horsepower RPM is an acceptable test procedure but would increase testing time. Under the proposed procedure, staff believes that most motorcycles, those fitted with a factory installed tachometer, would be tested at 45 percent of red line RPM while the balance would be tested at 50 percent of maximum rated horsepower RPM. The industry association suggested the two procedures be reevaluated after a period of a few years.

III. Tri-Met Buses

A. Petitioner's Proposal

The petitioner proposed to include Tri-Met, as well as other buses, within a noise inspection program. The current standards and test procedures for buses requires the unloaded engine to be accelerated until the governor holds the engine at a constant speed. Noise measurements are taken 25 feet from the stationary bus.

At this time, Tri-Met's fleet is composed of approximately 640 diesel-powered buses. These buses are operated in, and near, residential areas as well as the heavily pedestrian used downtown Portland Transit Mall. A number of these buses are exceeding existing noise emission standards due to deteriorated and defective exhaust system components. As a result, noise impacts caused by these vehicles are significant.

B. Public Comments and Staff Evaluation

Subsequent to the June, 1984 Commission meeting, Department staff, in cooperation with Tri-Met, conducted noise emission measurements on 172 buses that represented the distribution of various models in the Tri-Met fleet. Of those tested, more than 18 percent exceeded current noise standards. Tri-Met has retained a noise consultant to further evaluate their fleet in order to accomplish the following:

a) Identify why buses exceed standards and the necessary corrective action;

b) Determine whether different test methods and standards are necessary for all-weather compliance testing; and

c) Develop the capability to conduct annual noise inspections as part of their fleet inspection program.

Comments received from the general public during the public

hearings were generally supportive of the need to address excessive noise caused by Tri-Met buses. However, it was also generally agreed it would take a reasonable amount of time to develop and implement a noise inspection program for this vehicle category.

IV. Heavy-Duty Trucks and Other Buses

A. Petitioner's Proposal

Gasoline-powered heavy duty trucks and buses (mostly school buses) are currently inspected for air emissions by the Department. At this time, approximately 10,000 gasoline-powered trucks and buses are within the inspection program. Staff estimates that an additional 10,000 diesel-powered heavy duty trucks are registered within the inspection program boundaries that are, as diesel-powered buses, not subject to air emission requirements. The current noise emission standards and testing procedures, as proposed by the petitioner, require the unloaded engine to be accelerated while the vehicle is stationary, with noise emissions measured at a distance of 25 feet from the vehicle.

B. Public Comments and Staff Evaluation

The current noise emission test procedure for heavy-duty trucks and buses is not compatible with the Department inspection stations because of the necessary open area needed to measure 25 feet from the vehicle. Some of these vehicles could be noise inspected in fleet inspection programs, such as Tri-Met's; however, many of these vehicles are currently inspected within the Department's facilities.

Public comment on the need to include heavy-duty trucks and other buses in a noise inspection program were generally supportive. Several recommended that these vehicles be brought into the inspection program within a specific time schedule, as they realized that further development of standards and procedures is necessary, as well as addressing the implementation difficulties.

V. General Overall Evaluation

Critics of the proposals have raised several issues that have been previously addressed but deserve discussion in this report.

The cost of compliance was quoted by a local newspaper as ranging from $44 to $250 per vehicle. Staff believes the average automobile muffler replacement cost will likely be at the lower end of this

scale. A survey of a national automotive muffler replacement franchise, with six shops in the Portland area, found an average of $50 for muffler replacement and $70 for muffler and tailpipe replacement. This particular company guarantees to replace the muffler at no charge for as long the vehicle remains under the same ownership. Several Portland area muffler shops advertise installed mufflers for less than $40. Some vehicles will experience higher costs. For example the top-of-the-line Mercedes Benz sedan muffler at this same franchise was quoted at $105 for the 1976 model 450 SEL. Naturally, replacement by the imported original equipment will likely be higher in cost.

A further cost of compliance is the sanction provided to enforce vehicle inspection program rules. Any vehicle that does not eventually meet all rule requirements will not receive a Certificate of Compliance. Without this certificate, the State Motor Vehicle Division will not register or renew the vehicle registration and thus, license plates will not be issued or will remain expired.

It has been suggested that a voluntary or advisory inspection program should be proposed rather than one with the proposed registration enforcement provisions. In 1977, the Department initiated a program of providing advisory noise tests at the inspection stations. During a 12 month period over 8,000 metered noise tests were conducted with results provided to the vehicle driver. Since that time, any vehicle driver asking for a voluntary or advisory noise test at any of the inspection stations is provided a free test. However, most noise testing is now the result of a referral after the vehicle is cited for excessive noise by local police. Presently, less than 100 noise tests per year are conducted under the present voluntary and referral programs.

Staff does not believe an advisory noise program is an adequate substitute for one with mandatory enforcement provisions. Most people owning noisy vehicles are aware, or should be aware, of the problem. A number of these owners need a reminder to have the problem repaired, as they are aware that a deteriorated exhaust system is dangerous to the vehicle occupants, as well as causing noise impacts. However, a large number of vehicles have modified exhaust systems. While these systems are claimed to improve power and fuel economy, they often exceed allowable noise emission limits. Often these owners have invested $200 to $400 in a performance exhaust system, and they are not inclined to reduce its noise emissions unless required under the threat of sanctions. Performance exhaust systems can comply with Oregon noise limits, but they must be properly designed with noise standards as a primary design criterion.

A number of individuals, groups, and news articles, have interpreted the Department as not recognizing the need to include all categories

of vehicles into a noise inspection program. Some have demanded in their testimony that all vehicle categories, autos, trucks, motorcycles and buses be included. Staff has always been supportive of including all vehicle categories in a noise inspection program once the capability to test these vehicles has been established. Naturally, the Department prefers a timed phase-in of additional work once testing procedures are established and operational issues are resolved. This procedure was followed when the category of heavy duty gasoline powered trucks was added to the air inspection program

Most of the public comments requested that all vehicle categories be included in a noise inspection program, as any single loud vehicle has the capability to cause single event noise impacts (a single noisy vehicle pass-by) that they believe are as severe as continuous noise from a stationary source.

Staff agrees that single event noise impacts are often severe; however, an effective inspection program must only address vehicle categories for which a reasonable expectation of improvement is predicted. Thus, if only a very small number of violations within a category exists, such an enforcement strategy may not be justified. Current estimates are that more than 10 percent of the autos and light trucks in the Portland area exceed standards, between 10 and 20 percent of Tri-Met's buses exceed standards, and a rough estimate of 25 percent of all motorcycles exceed standards. Staff has no data on heavy truck noise emissions from vehicles operating in the Portland area. Based on the above, it appears there is reasonable justification to develop the capability to inspect autos, light trucks, motorcycles, and Tri-Met buses for noise emissions. It also appears reasonable to initiate studies to completely evaluate the need to conduct noise inspection of heavy duty trucks and other buses.

Some have suggested that additional data was needed prior to proposing a mandatory inspection program. As previously noted in this report, thousands of Portland area vehicles have received noise emission tests. Since the petition was received, staff has conducted three additional engineering studies of light-duty vehicles. The first study evaluated over 470 vehicles to verify that the average number of noisy vehicles has remained at approximately 10 percent (9.3 percent in this study). A second study evaluated over 1050 vehicles and documented the effectiveness of the 2500 RPM test procedure. The third study evaluated an additional 130 vehicles to further evaluate the 2500 RPM procedure.

Staff also conducted a noise emission study of the Tri-Met bus fleet. This study measured 172 buses that were representative of the entire fleet mix. Tri-Met has verified this study and is continuing an engineering study designed to measure and determine abatement measures for excessive bus noise.

It has also been suggested that the vehicle noise inspection issue be addressed by the 1985 Oregon Legislative Assembly, prior to any rule adoption. The vehicle noise issue has previously been fully addressed and further reviews are unlikely to change these major conclusions:

1. Vehicle noise is a special problem in the Portland area due to the large population, the high population density, and the large numbers of motor vehicles operating in excess of noise emission standards.

2. The noise emission standards are statewide limits that are part of the Commission's rules which are also contained in the state motor vehicle statutes for enforcement by state and local police.

3. The enforcement mechanism of the vehicle noise standards in the Portland area is the most important issue being raised. This question was resolved by the Legislature in the 1974 Special Session when the authority to enforce vehicle noise emission standards in the Portland area inspection program was added to the statutes. During the 1979 Legislative Session, a thorough evaluation of this authority was conducted when a special interest group proposed to eliminate the Commission's authority to include noise inspections within the vehicle inspection program. The final result of this evaluation was the retention of the original authority to include noise emission inspections. Therefore, the Department sees no need for the Commission to ask for a legislative review to determine whether vehicle noise is a serious environmental problem and if an inspection program would be a reasonable method to mitigate the problem.

Discussion and Conclusions

I. Automobiles and Light Trucks

The Department's alternative test procedure and standards to inspect automobiles and light trucks has been shown to be a more efficient method than that proposed by the petitioner. Both procedures appear to be about equal in their ability to identify the noisiest vehicles. However, the recommendation to evaluate the effectiveness of the new procedure after a period of implementation is desirable.

Noise impacts caused by noncompliant vehicles in this category are of a magnitude to justify this proposed enforcement strategy. Approximately, 10 percent of these vehicles, or more than 50,000 autos and light trucks registered in the Portland area, exceed existing noise emission limits. Cost of compliance will likely average less than $50 for those vehicles, approximately 5 percent or 25,000, that would be found in noncompliance with the proposed inspection program standards. No increase in the inspection fee is anticipated under the

Department's alternative inspection procedure as the time impact of this additional test is within the capacity of existing inspector staffing.

Implementation of an inspection program for this category of vehicles would be primarily dependent upon resolving sound measurement equipment needs at each of the Department's inspection stations. Several automated sytems have been evaluated by staff. These systems, once developed, could lessen the workload on the inspector. However, interim equipment needs can be met using existing sound monitoring equipment within the Department's noise control and vehicle inspection programs.

II. Motorcycles

The strong public demand for motorcycle noise controls, coupled with the suitability of the test procedure recommended by the petitioner, warrants serious consideration of adding this vehicle category to a noise inspection program.

Several necessary tasks must be accomplished prior to including motorcycles in the inspection program. The Department budget must be adjusted to increase inspector staffing (approximately 3) and to accept additional Certificate of Compliance fees. All costs of this program to the Department would be offset by inspection fees. The Motor Vehicles Division of the Department of Transportation would also need to make budget adjustments to process additional DEQ certificates and to notify additional vehicle owners of the new inspection requirements. Costs of the services supplied by this Division would be charged to DEQ but would be offset by inspection fees. The Motor Vehicles Division estimates a six month period would be needed to complete necessary changes to add new vehicle categories to their current program of notification and processing inspection certificates.

As the proposal to begin noise inspections of motorcycles on July 1, 1985 will require additional inspectors and other budget adjustments, it will be necessary to obtain approval of these items within an amendment to the Department's 1985-87 budget request. If approval of this request fails, the Department will not be able to implement an inspection program for motorcycles.

Noise emission measurement equipment, if installed for testing automobiles, would be adequate for motorcycle inspections. As with automobiles, improved or automated measurement systems, which could be obtained in the future, would also enhance the ability to inspect this vehicle category.

III. Tri-Met Buses

Adequate justification exists to require periodic inspections and necessary corrective work to reduce noise emissions from Tri-Met buses. Tri-Met recommended in their testimony on this rulemaking proposal that annual noise emission fleet testing would be a workable method of noise inspection for them. However, they are concerned whether the current procedures and standards adequately identify those buses with defective exhaust systems. Therefore, they have initiated an engineering study that should resolve these issues. Tri-Met is also interested in developing the ability to conduct noise inspections within an indoor test cell to avoid inspection problems during inclement weather.

Several options are available to the Commission to address Tri-Met bus noise. Rules can be adopted for this vehicle category and Tri-Met can, as a owner of 50 or more publicly owned vehicles, conduct emission inspections and issue certificates of compliance under license from the Department as a "fleet" inspection program. Note that Tri-Met currently operates an air emission "fleet" inspection program for their fleet of automobiles.

Another option for the Commission and Tri-Met is an agreement that would contain appropriate conditions to ensure that all buses are inspected and corrective action taken on a periodic schedule.

Due to the need by Tri-Met to complete their study to develop the best method to measure bus noise emissions, and to determine measures that will be necessary to reduce noise from noncompliant buses, staff believes a schedule must be developed to include these vehicles in an acceptable noise emission inspection program.

IV. Heavy-Duty Trucks and Other Buses

Trucks and buses are normally identified by the public as being responsible for causing noise impacts. Therefore, including these vehicles within a noise inspection program is justified. However, at this time, staff has very little information on the distribution of noise emission levels produced by these vehicles. In addition, staff believes a new test procedure and corresponding emission standards must be developed that would allow testing these vehicles within the confines of the inspection stations. Therefore, if noise inspection of these vehicles is considered necessary, staff must develop appropriate inspection methods.

Summation

1. A rulemaking petition, requesting mandatory inspection of motor vehicle noise emissions within the Portland metropolitan area, was accepted by the Commission on May 18, 1984.

2. Public hearings were authorized by the Commission on June 29, 1984 to consider a vehicle noise inspection proposal from the petitioner and an alternative proposal developed by the Department.

3. Two public hearings were held on August 15, 1984 to receive comments on the proposals. A summary of these public hearings and comments submitted by mail is contained in Attachment 4.

4. Excessive noise from motor vehicles has been shown to be a serious community problem in the Portland area affecting public health and welfare, as well as livability and quality of life.

5. Most of those providing comment on the rulemaking proposals recommended adoption of noise emission limits, enforceable through the vehicle inspection program, for all vehicle categories including automobiles, light-duty trucks, motorcycles, Tri-Met buses, heavy-duty trucks and other buses.

6. The proposal to conduct noise emission tests on autos and light trucks at an engine speed of 2500 RPM during a portion of the air emission inspection cycle is generally considered an acceptable procedure due to its efficiency and effectiveness. Implementation of this procedure would neither require additional inspection staff nor result in an increase to the current inspection fee schedule. A review of the 2500 RPM procedure after a period of implementation would provide data to judge whether this new procedure is effectively identifying all noisy vehicles.

7. Inclusion of motorcycle noise emissions within the vehicle inspection program is supported by most of the public, and the proposed test procedures and standards have been found acceptable. As motorcycles would be a new vehicle category for the inspection program, it is estimated that testing could not be initiated until at least six months after rule adoption.

8. Tri-Met's commitment to develop the capability to inspect and take necessary corrective action on their bus fleet is a necessary step toward resolving mobile noise pollution in the Metropolitan area. The Department believes an agreement can be developed with Tri-Met to ensure that all buses are inspected on an adequate schedule that will maintain individual bus noise emission levels within acceptable standards.

9. Heavy-duty trucks and other buses (generally school buses) have been identified as a source of community noise impacts. However, the present stationary testing procedures are not suitable for use at the vehicle inspection stations. Therefore, the next necessary step in considering noise emission inspection of this vehicle category would be the development of new test procedures and standards.

10. The cost impact of inspection rules for automobiles should not be excessive. No increase in inspection fees would be necessary and 95 percent of these vehicles would not need corrective action. Failing vehicles would most likely need a new muffler that would cost an estimated average of less than $50 per vehicle. Notwithstanding this proposal, all vehicles operated in this state are subject to existing laws for excessive noise and violators are at risk of police action that could result in required corrective measures and fines.

11. The Department believes it is appropriate to enforce motor vehicle noise emission limits through the vehicle inspection program in the Portland metropolitan area because:

    a. State statutes specifically provide authority and direction to enforce noise emission limits, as well as air emission limits, for vehicles registered within the Portland area inspection boundaries.

    b. The high density of people and motor vehicles result in a special noise problem in the Portland area caused by a significant number of noncomplying loud vehicles.

    c. Noise emission standards have been established for all vehicles operated in the state. However, noise inspections in the Portland area would provide a more reasonable level of enforcement within this specially impacted area.

Director's Recommendation

Based on the Summation, it is recommended that the Commission take the following action:

a. Adopt the rule amendments contained in Attachment 3 regarding noise emission standards for light duty vehicles to be effective on July 1, 1985.

b. Adopt the rule amendments contained in Attachment 3 regarding noise emission standards for motorcycles to be effective on July 1, 1985.

c. The Commission further directs the Department to seek necessary budget authority to receive additional inspection fees and hire inspectors to conduct noise emission testing of motorcycles.

d. Request the Department to develop with Tri-Met, a proposed consent agreement that will ensure all Tri-Met's buses are maintained to acceptable noise emission limits. This proposal shall be brought to the Commission for consideration prior to April 1, 1985.

e. Request the Department to initiate development of noise inspection procedures and standards for heavy-duty trucks and buses that are suitable for use at the Department inspection stations. A report shall be made to the Commission on this vehicle category prior to April 1, 1985.

f. Prior to July 1, 1986, the Department shall report to the Commission on the effectiveness of inspections of light-duty vehicles and motorcycles and recommend any necessary changes.

Fred Hansen

Attachments

1. Draft Statement of Need for Rulemaking
2. Draft Hearings Notice
3. Draft Rule Amendments (OAR Chapter 340, Division 24)
4. Hearings Officer Memorandum

J. M. Hector:s
229-5989
October 9, 1984

AS522

Attachment 1
Agenda Item H
November 2, 1984
EQC Meeting

Statement of Need for Rulemaking

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

1. Legal Authority

This proposal may amend OAR 340-24 under authority of ORS 481.190, 468.370 and 467.030.

2. Need for the Rule

Approximately 10 percent of the light duty motor vehicles registered in the Portland area exceed noise emission limits due to modified and defective exhaust systems. This proposal would add noise limits to the existing air emission inspection program presently operated in the Portland area.

3. Principal Documents Relied Upon in this Rulemaking

a. EQC staff report "Petition to Incorporate Mandatory Noise Inspections into the Portland Area Vehicle Inspection Program," dated May 18, 1984.

b. DEQ memorandum "Preliminary Noise Test Review," by Jerry Coffer, dated May 17, 1984.

4. Land Use Consistency

The proposed rule appears to affect land use and to be consistent with the Statewide Planning Goals. With regard to Goal 6, the proposed rule is consistent because its purpose is to reduce environmental noise impacts at noise sensitive uses. This proposal is also consistent with Goal 12 because its purpose is to provide a transportation system that minimizes environmental impacts. The proposed rule does not appear to conflict with the other Goals. Public comment on any land use issue involved is welcome and may be submitted in the same fashion as indicated for testimony in the notice of public hearing. It is requested that local, state, and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use and with Statewide Planning Goals within their expertise and jurisdiction. The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any appropriate conflicts brought to our attention by local, state, or federal authorities.

5. Fiscal and Economic Impact

No significant adverse fiscal or economic impact to business is expected. The small business impact of this proposal is not expected to cause adverse economic impacts.

John Hector
229-5989
June 12, 1984

AS117.A

Attachment 2
Agenda Item H
November 2, 1984
EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROPOSED RULES FOR MOTOR VEHICLE NOISE INSPECTIONS

Date Prepared: July 3, 1984
Hearing Date: August 15, 1984
Comments Due: August 20, 1984

WHO IS AFFECTED: Owners of motor vehicles less than 20 years old and registered in the Portland metropolitan area currently affected by DEQ's air emission inspection program.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend OAR 340-24, Motor Vehicle Emission Control Inspection Test Criteria, Methods, and Standards. The amendments would establish methods and standards for exhaust noise emissions for automobiles and light trucks.

The Department has also been petitioned to conduct noise emission inspections of all vehicle categories in accordance with the standards and procedures established in OAR 340-35-030.

WHAT ARE THE HIGHLIGHTS: Motor vehicles with defective and deteriorated exhaust systems may exceed State noise limits. The proposed rule amendments could require vehicles to pass a noise emission test as a requirement for vehicle registration or re-registration.

The DEQ proposal for testing automobiles and light trucks would intially identify approximately 5 percent of these vehicles as exceeding standards and corrective action would be required to the exhaust systems. No increase to the current inspection fee is anticipated as a result of approval of this proposal.

The proposal submitted by the petitioner could add noise emission requirements for the vehicle categories of motorcycles, buses, and heavy trucks as well as a standard different than the DEQ proposal for automobiles and light trucks. Comments are also solicited on the petitioner's proposal.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from the Air Quality Division in Portland (522 S. W. Fifth Avenue). For further information contact:

DEQ Noise Control
P. O. Box 1760
Portland, OR 97207
Phone: (503) 229-6085

P.O. Box 1760
Portland, OR 97207

8/10/82

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call ~~1-800-452-7813,~~ and ask for the Department of Environmental Quality. 1-800-452-4011

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

9:00 a.m.
August 15, 1984
Room 1400
522 S. W. Fifth Avenue
Portland, Oregon

and

7:30 p.m.
August 15, 1984
Room 602
Multnomah County Courthouse
1021 S. W. Fourth Avenue
Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Air Quality Division, Noise Pollution Control, P.O. Box 1760, Portland, OR 97207, but must be received by no later than August 20, 1984.

WHAT IS THE NEXT STEP: After public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation should come in September 1984 as part of the agenda of a regularly scheduled Commission meeting.

A Statement of Need is attached to this notice.

AS117.N

Attachment 3
Agenda Item H
November 2, 1984
EQC Meeting

Motor Vehicle Emission Control Inspection Test Criteria, Methods, and Standards
Proposed Amendments
November 1984

New Material is Underlined and
Deleted Material is [Bracketed]

Scope

340-24-300 Pursuant to ORS 468.360 to 468.405, 481.190 to 481.200, [and] 483.800 to 483.825, and 467.030, the following rules establish the criteria, methods, and standards for inspecting motor vehicles[, excluding motorcycles,] to determine eligibility for obtaining a Certificate of Compliance or inspection.

Stat. Auth.: ORS Ch. 468
Hist: DEQ 89, f. 4-22-75, ef. 5-25-75; DEQ 139, f. 6-30-77 ef. 7-1-77

Definitions

340-24-305 As used in these rules unless otherwise required by context:

(1) "Carbon dioxide" means a compound consisting of the chemical formula (CO_2).

(2) "Carbon monoxide" means a compound consisting of the chemical formula (CO).

(3) "Certificate of Compliance" means a certification issued by a vehicle emission inspector that the vehicle identified on the certificate is equipped with the required functioning motor vehicle pollution control systems and otherwise complies with the emission control criteria, standards, and rules of the Commission.

(4) "Certificate of inspection" means a certification issued by a vehicle emission inspector and affixed to a vehicle by the inspector to identify the vehicle as being equipped with the required functioning motor vehicle pollution control systems and as otherwise complying with the emission control criteria, standards, and rules of the Commission.

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

(6) "Crankcase emissions" means substances emitted directly to the atmosphere from any opening leading to the crankcase of a motor vehicle engine.

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

(8) "Diesel motor vehicle" means a motor vehicle powered by a compression-ignition internal combustion engine.

(9) "Director" means the director of the Department.

(10) "Electric vehicle" means a motor vehicle which uses a propulsive unit powered exclusively by electricity.

(11) "Exhaust emissions" means substances emitted into the atmosphere from any opening downstream from the exhaust ports of a motor vehicle engine.

(12) "Factory-installed motor vehicle pollution control system" means a motor vehicle pollution control system installed by the vehicle or engine manufacturer to comply with United States motor vehicle emission control laws and regulations.

(13) "Gas analytical system" means a device which senses the amount of contaminants in the exhaust emissions of a motor vehicle, and which has been issued a license by the Department pursuant to rule 340-24-350 of these regulations and ORS 468.390.

(14) "Gaseous fuel" means, but is not limited to, liquified petroleum gases and natural gases in liquefied or gaseous forms.

(15) "Gasoline motor vehicle" means a motor vehicle powered by a spark-ignition internal combustion engine.

(16) "Heavy duty motor vehicle" means a motor vehicle having a combined manufacturer vehicle and maximum load rating to be carried thereon of more than 3855 kilograms (8500 pounds).

(17) "Hydrocarbon gases" means a class of chemical compounds consisting of hydrogen and carbon.

(18) "Idle speed" means the unloaded engine speed when accelerator pedal is fully released.

(19) "In-use motor vehicle" means any motor vehicle which is not a new motor vehicle.

(20) "Light duty motor vehicle" means a motor vehicle, <u>excluding motorcycles,</u> having a combined manufacturer vehicle and maximum load rating to be carried thereon of not more than 3855 kilograms (8500 pounds).

(21) "Model year" means the annual production period of new motor vehicles or new motor vehicle engines designated by the calendar year in which such period ends. If the manufacturer does not designate a production period, the year with respect to such vehicles or engines shall mean the 12 month period beginning January of the year in which production thereof begins.

(22) "Motorcycle" means any motor vehicle, <u>including mopeds,</u> having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground and having a mass of 680 kilograms (1500 pounds) or less with manufacturer recommended fluids and nominal fuel capacity included.

(23) "Motor vehicle" means any self-propelled vehicle used for transporting persons or commodities on public roads.

(24) "Motor vehicle fleet operation" means ownership by any person of 100 or more Oregon registered, in-use, motor vehicles, excluding those vehicles held primarily for the purposes of resale.

(25) "Motor vehicle pollution control system" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle, or a system or engine adjustment or modification which causes a reduction of pollutants emitted from the vehicle, or a system or device which inhibits the introduction of fuels which can adversely effect the overall motor vehicle pollution control system.

(26) "New motor vehicle" means a motor vehicle whose equitable or legal title has never been transferred to a person who in good faith purchases the motor vehicle for purposes other than resale.

<u>(27) "Noise level" means the sound pressure level measured by use of metering equipment with an "A" frequency weighting network and reported as dBA.</u>

[(27)] <u>(28)</u> "Owner" means the person having all the incidents of ownership in a vehicle or where the incidents of ownership are in different persons, the person, other than a security interest holder or lessor, entitled to the possession of a vehicle under a security agreement, or a lease for a term of 10 or more successive days.

[(28)] <u>(29)</u> "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

[(29)] (30) "PPM" means parts per million by volume.

(31) "Propulsion exhaust noise" means that noise created in the propulsion system of a motor vehicle that is emitted into the atmosphere from any opening downstream from the exhaust ports. This definition does not include exhaust noise from vehicle auxiliary equipment such as refrigeration units powered by a secondary motor.

[(30)] (32) "Public roads" means any street, alley, road, highway, freeway, thoroughfare, or section thereof in this state used by the public or dedicated or appropriated to public use.

[(31)] (33) "RPM" means engine crankshaft revolutions per minute.

[(32)] (34) "Two-stroke cycle engine" means an engine in which combustion occurs, within any given cylinder, once each crankshaft revolution.

[(33)] (35) "Vehicle emission inspector" means any person possessing a current and valid license by the Department pursuant to rule 340-25-340 of these regulations and ORS 468.390.

Stat. Auth.: ORS Ch. 468
Hist: DEQ 89, f. 4-22-75, ef. 5-25-75; DEQ 139, f. 6-30-77, ef. 7-1-77; DEQ 9-1978, f. & ef. 7-7-78; DEQ 22-1979, f. & ef. 7-5-79.

Publicly Owned Vehicles Testing Requirements

340-24-306 (No Proposed Amendments)

Light Duty Motor Vehicle Emission Control Test Method

340-24-310 (1) The vehicle emission inspector is to insure that the gas analytical system is properly calibrated prior to initiating a vehicle test.

(2) The Department approved vehicle information data form is to be completed at the time of the motor vehicle being inspected.

(3) Vehicles having coolant, oil, or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted shall be rejected from the testing area. The emission test shall not be conducted until the defects are eliminated.

(4) The vehicle is to be in neutral gear with the hand or parking brake engaged.

(5) All vehicle accessories are to be turned off.

(6) An inspection is to be made to insure that the motor vehicle is equipped with the required functioning motor vehicle pollution control system in accordance with the criteria of Section 340-24-320(3). Vehicles not meeting this criteria shall be rejected from the testing area without an emission test. A report shall be supplied to the driver indicating the reason(s) for rejection.

(7) With the engine operating at idle speed, the sampling probe of the gas analytical system is to be inserted into the engine exhaust outlet.

(8) The steady state levels of the gases measured at idle speed by the gas analytical system shall be recorded. Except for diesel vehicles, the idle speed at which the gas measurements were made shall also be recorded.

(9) Except for diesel vehicles, the engine is to be accelerated with no external loading applied, to a speed of between 2,200 RPM and 2,700 RPM. The engine speed is to be maintained at a steady speed within this speed range for a 10 to 15 second period and then returned to an idle speed condition. In the case of a diesel vehicle, the engine is to be accelerated to an above idle speed. The engine speed is to be maintained at a steady above idle speed for a 10 to 15 second period and then returned to an idle speed condition. The values measured by the gas analytical system at the raised rpm speed shall be recorded.

(10) The steady state levels of the gases measured at idle speed by the gas analytical system shall be recorded. Except for diesel vehicles, the idle speed at which the gas measurements were made shall also be recorded.

(11) If the vehicle is equipped with a multiple exhaust system, then steps (7) through (10) are to be repeated on the other exhaust outlet(s). The readings from the exhaust outlets are to be averaged into one reading for each gas measured for comparison to the standards of rule 340-24-330.

(12) If the vehicle does not comply with the standards specified in rule 340-24-330, and it is a 1981 or newer Ford Motor Company product, the vehicle shall have the ignition turned off. restarted, and steps (8) through (11) repeated.

(13) If the vehicle is capable of being operated with both gasoline and gaseous fuels, then steps (7) through (10) are to be repeated so that emission test results are obtained for both fuels.

(14) If it is [ascertained] judged that the vehicle[s] may be emitting propulsion exhaust noise in excess of the noise standards of rule 340-24-337, adopted pursuant to ORS 467.030, then a noise measurement is to be conducted and recorded while the engine is at the speed specified in Section (9) of this rule. [in accordance with the test procedures adopted by the Commission or to standard methods approved in writing by the Department.] A reading from each exhaust outlet shall be recorded at the raised engine speed.

(15) If it is determined that the vehicle complies with the criteria of rule 340-24-320 and the standards of rule 340-24-330 and 340-24-337, then, following receipt of the required fees, the vehicle emission inspector shall issue the required certificates of compliance and inspection.

(16) The inspector shall affix any certificate of inspection issued to the lower left-hand side (normally the driver side) of the front windshield, being careful not to obscure the vehicle identification number nor to obstruct driver vision.

(17) No certificate of compliance or inspection shall be issued unless the vehicle complies with all requirements of these rules and those applicable provisions of ORS 468.360 to 468.405, 481.190 to 481.200, [and] 483.800 to 483.825 and 467.030.

Stat. Auth.: ORS Ch. 468
Hist: DEQ 89, f. 4-22-75, ef. 5-25-75, DEQ 139, f. 6-30-77, ef. 7-1-77

Motorcycle Noise Emission Control Test Method

340-24-311

(1) The vehicle is to be in neutral gear with the brake engaged. If the vehicle has no neutral gear, the rear wheel shall be at least 2 inches clear of the ground.

(2) The engine is to be accelerated to a speed equal to 45 percent of the red line speed. Red line speed is the lowest numerical engine speed included in the red zone on the motorcycle tachometer. If the red line speed is not available, the engine shall be accelerated to 50 percent of the speed at which the engine develops maximum rated net power.

(3) If it is judged that the vehicle may be emitting propulsion exhaust noise in excess of the noise standards of rule 340-24-337, adopted pursuant to ORS 467.030, then a noise measurement is to be conducted and recorded while the engine is at the speed specified in Section (2) of this rule. A reading from each exhaust outlet shall be recorded at the raised engine speed.

(4) If it is determined that the vehicle complies with the standards of rule 340-24-337, then, following receipt of the required fees, the vehicle emission inspector shall issue the required certificates of compliance and inspection.

(5) No certificate of compliance or inspection shall be issued unless the vehicle complies with all requirements of these rules and those applicable provisions of ORS 468.360 to 468.405, 481.190 to 481.200, 483.800 to 483.825 and 467.030.

Heavy Duty Gasoline Motor Vehicle Emission Control Test Method

340-24-315 (No Proposed Amendments)

Light Duty Motor Vehicle Emission Control Test Criteria

340-24-320 (No Proposed Amendments)

Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria

340-24-325 (No Proposed Amendments)

OAR 340-24-330 LIGHT DUTY MOTOR VEHICLE EMISSION CONTROL CUTPOINTS OR STANDARDS

(No Proposed Amendments)

340-24-335 HEAVY-DUTY GASOLINE MOTOR VEHICLE EMISSION CONTROL EMISSION STANDARDS

(No Proposed Amendments)

340-24-337 Motor Vehicle Propulsion Exhaust Noise Standards.

(1) Light duty motor vehicle propulsion exhaust noise levels not to be exceeded as measured at no less than 20 inches from any opening to the atmosphere downstream from the exhaust ports of the motor vehicle engine:

Vehicle Type	Maximum Allowable Noise Level
Front Engine	93 dBA
Rear and Mid Engine	95 dBA

(2) Motorcycle propulsion exhaust noise levels not to be exceeded as measured at no less than 20 inches from any opening to the atmosphere downstream from the exhaust ports of the motorcycle engine:

Model Year	Maximum Allowable Noise Level
Pre-1976	102 dBA
1976 and later	99 dBA

Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Pollution Control Systems and Execute Certificates

340-24-340 (No Proposed Amendments)

GAS ANALYTICAL SYSTEM LICENSING CRITERIA

340-24-350 (No Proposed Amendments)

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

Attachment 4
Agenda Item H
November 2, 1984
EQC Meeting

MEMORANDUM

To: Environmental Quality Commission

From: Linda K. Zucker, Hearings Officer

Subject: Hearings Regarding Proposed Motor Vehicle Noise Inspections for Light Duty Vehicles, Motorcycles, Buses and Heavy Trucks in the Portland Area.

Background

In response to a citizen petition, the Commission authorized public hearings on a proposal to incorporate noise emission inspections into the Department's Vehicle Inspection Program. The program currently provides air emission inspection and issues certificates of compliance in the Portland metropolitan area. The petitioners requested that the vehicle categories of autos, light trucks, motorcycles, buses and heavy trucks be inspected for compliance with the stationary vehicle noise standards of OAR 340-35-030 (Table 2). The Department recommended an alternative to the Table 2 standards and procedures for the category of autos and light trucks. This alternative was included in the rule proposed for public comment.

Under these proposals vehicles within specific categories, registered within the Portland area inspection boundary, must receive a certificate of noise emission compliance before vehicle registration or re-registration. Vehicles older than 20 years (model year) are exempt from the program.

Pursuant to Commission authority, morning and evening hearings were held in Portland on August 15, 1984. In addition to oral testimony provided at the hearings, a signficant amount of written testimony was submitted. A summary of all oral and written testimony received prior to September 15, 1984 follows:

1. Jane Cease, State Representative, District 18.

   Generally supports DEQ alternative proposal for light duty vehicles but wishes to continue to evaluate program effectiveness. Wants all

vehicle categories to be included in the future and pledges legislative support, if needed.

Identified vehicle noise as one of the most significant adverse factors affecting comfortable urban living.

2. Margaret Strachan, City of Portland Commissioner.

Recognizes that motor vehicle noise is a significant problem, and therefore, is supportive of the proposal. Supports immediate initiation of inspection of light duty vehicles but urges study and development of a program to phase in testing of motorcycles, heavy trucks and buses. Recommends establishment of a December 31, 1984 deadline to add requirements for buses, heavy trucks and motorcycles.

3. Mike Lindberg, City of Portland Commissioner.

Vehicle noise is a significant problem in Portland, and thus, the time has come to add noise inspections to the emissions inspection program. Supports the Department's procedure for light duty vehicles because of its efficiency, but recommends the procedure be evaluated over the first year of implementation. At that time, if necessary, the procedure should be changed.

Recommends a plan to inspect trucks and buses be developed within one year and working to obtain budget approval to be able to add motorcycles to the program within one year.

Notes that the program would have a tangible positive effect on the urban environment. Believes the application of noise testing only in urban areas is logical due to the concentration of people and vehicles.

4. Arnold Biskar, Multnomah County Commissioner.

Supports the proposal as a necessary requirement to improve the quality of life in the community.

5. Clackamas County Sheriff's Department

Sheriff's Department supports proposed noise inspections. Program would identify and delete a number of violations. This would assist them and also decrease the discomfort and annoyance of the public.

6. West Linn Police Department

Supports testing of all vehicles for noise emissions. Also recommends development of rules prohibiting the sale of new mufflers not meeting noise emission limits.

7. Clackamas County Board of Commissioners.

State statutes and Clackamas County noise ordinances address noisy vehicles. They consider this proposal an imaginative step in the ultimate control of these noise sources.

8. Tri-Met

Given the high density of people and motor vehicles within the inspection area boundary, motor vehicle noise is a significant problem. All reasonable and effective efforts should be made toward compliance with standards. In response to this concern, Tri-Met offers the following:

a. They are currently testing to estimate the number of non-compliant buses.

b. They recommend annual fleet noise inspections as a workable program for their bus fleet.

9. John Charles, Oregon Environmental Council

Excessive motor vehicle noise is a concern. As major stationary noise sources are controlled, it becomes more important to address mobile sources. Supports proposal to address light duty vehicles initially, but the Department must also develop plans to control the other vehicle categories because:

a. Public expects equity of enforcement among categories, and;

b. Other vehicle categories are major contributors to single event noise impacts.

10. Jim Owens, S.E. Uplift Coalition.

This coalition of neighborhood associations represents 40 percent of Portland's population. The coalition board of directors voted unanimously to support the petition. It believes the 3/4 RPM procedure is adequate, and the additional 65 second test time per vehicle is not excessive. It recommend that light duty vehicles be tested immediately and a time schedule be developed to phase in motorcycle and truck testing. They recommend immediate action on Tri-Met buses.

11. Tom Gihring, Livable Streets Coalition.

Research establishes that people do not adjust to excessive vehicle noise. Vehicle noise in Portland is a particular problem because of the narrow street right-of-ways resulting in small distances from streets to homes. As an example, many Portland major arterials have

80 foot right-of-ways, however a typical example in other cities is 200 feet. Recommends standards be approved, implemented and then studied to determine whether they are adequate or need to be adjusted.

12. Linore Allison, Livable Streets Coalition.

Offered the following from books on urban noise:

a. "Beware of devoting more space to noise than community" - Donald Appleyard.

b. "If noise stress causes us to seek quiet, what happens when the need cannot be met?" - Robert Baron.

Believes that the proposal is reasonable and recommends the Department's light duty proposal be approved and implemented. Recommends motorcycles be included within six months, and trucks and buses within one year.

Offered support of legislation to enhance noise control efforts.

13. Portland Noise Review Board, Molly O'Reilly, Chair.

The current vehicle noise standards are not being enforced. With the large population of vehicles and high density of people in the Portland area, inspections are justified. Quoted a recent attitude survey taken in North Portland that found 68 percent of those polled identify motor vehicles as external sounds noticed in the neighborhood. Urges the adoption of rules and implementation as soon as possible.

14. Irvington Community Assoc., Michael Sievers, President.

Noted that vehicle noise is not adequately addressed by local police. Suggested that the petition is an example of public policy being set by citizen initiative. Thus, the public has recommended solutions to problems affecting it. Believes that the proposed vehicle inspection is an efficient way to ensure that motorists meet their social contract. Correcting the problem at its source is a very positive goal and is a preventative action that is long overdue. Recommends adoption.

15. Northwest District Association.

As representatives of Portland's most urban neighborhoods, they are adversely affected by vehicle noise. Urges adoption of comprehensive program of vehicle noise inspection.

Recommends the 3/4 RPM procedure over the 2500 RPM alternative for light duty vehicles. Urges the establishment of standards for motorcycles, trucks and buses, as they are major noise contributors.

16. Citizen's Association of Portland, Sue Guentner, President.

Recommends the adoption of standards that apply to all categories of vehicles. Cannot support a proposal that would not regulate motorcycles, trucks and buses.

17. Oregon Department of Transportation, Highway Division.

The noise control walls and berm installed by the Highway Division are not effective against vehicles with modified exhaust systems. The proposal would benefit their division by reducing the number of noise complaints they receive. They suggest standards equivalent to that for a new vehicle with an allowable loss of effectiveness due to normal use.

18. Oregon Department of Transportation, Motor Vehicles Division.

If noise inspections are approved, it will be necessary for the Motor Vehicles Division to adjust procedures and budget to provide the necessary assistance to process renewal notices and compliance certificates. They estimate a lead time of six months needed to add any new vehicle categories (e.g. motorcycles), for their services to be provided. They wish to be kept informed on the progress of the proposal.

19. Noise Program Advisory Committee, Steve Lockwood, Chair.

Vehicle noise is a top priority of the Committee. The proposal to inspect vehicle noise emissions is a step toward solving this priority issue. They urge adoption.

20. Oak Lodge Community Council, Jessica Williamson, Chair.

They consider vehicular noise caused by faulty muffling devices to be a patently unnecessary threat to the public health and well-being, and to the quality of life in our society. The proposal seems to be logical and cost effective. They support the proposal. As noise damages health and hearing, they wonder on what grounds anyone could contest the proposal.

21. Daly Engineering Co., Edward A. Daly, P.E.

Motor vehicle noise is the predominant and prevailing sound in the three county Portland area. In large parts of Portland noise exceeds the Housing and Urban Development "normally acceptable" standards for housing due to vehicle noise.

During daytime hours, major vehicle noise sources are truck and buses. At night, modified or poorly maintained cars and motorcycles become the dominant noise source affecting rest and sleep.

The Oregonian newspaper estimate of muffler replacement at $44 to $250 is high. Most vehicles would be at the lower end of this range. In Oregon's mild climate, the exhaust system has a life of 5 to 8 years without major repair.

22. Automotive Exhaust Systems Manufacturers Council

The council is the trade association of automotive exhaust system manufacturers that supply both original equipment to vehicle manufacturers and replacement equipment to the automotive aftermarket. Its members produce 90 percent of the exhaust systems for light duty vehicles. The council suggests that if the program does not include trucks, motorcycles and buses, the livability sought by the petitioners will not be met.

The council supports the 3/4 RPM procedure and recommends that aural screening be conducted prior to a metered test. However, it would appear empirically that the dBA level at 2500 RPM is compatible with the 3/4 RPM standard.

The council supports the proposal to inspect vehicle exhaust systems, as excessive noise obviously affects the public health and welfare.

23. General Motors Corporation (GMC)

GMC agrees with the close-in stationary noise enforcement technique for in-use vehicles. Such a program can identify noisy vehicles and provide an incentive for vehicle owners to be more aware of the condition of the exhaust system.

Although GMC is more familiar with the 3/4 RPM and 3000 RPM procedures, it believes the proposed 2500 RPM procedure and decibel limits should provide a satisfactory inspection.

24. Kawasaki Motors Corporation, U.S.A.

Kawasaki support the proposed procedure and standards for motorcycles.

25. Motorcycle Industry Council

The council supports stationary testing to control excessively loud motorcycles. It prefers the 50 percent of rated horsepower RPM procedure rather than 50 percent of red line RPM. It suggests that the program be evaluated after a few years to compare the two test methods.

26. Specialty Equipment Market Association.

They are an association of 1600 members of manufacturers, distributors and retailers of specialty aftermarket parts for autos and trucks. Although the aural test is subjective, they support it as an accept-

able time-saver. The allowable RPM variation within the 2500 RPM procedure could produce a 3 dBA variance and result in an incorrect test. The location of the microphone needs to be more specific, as variations from 1 to 3 dBA could result. The procedure does not address the test site, test equipment, atmospheric conditions, instrument calibration and operator skill.

They recommend measurements be conducted outside in accordance with SAE J1169 standards.

27. George Lawson, Portland.

There is a large number of loud motorcycles. They can be muffled to be acceptable. Recommends the inclusion of motorcycles in the noise inspection program.

28. Lee Perlman, Portland.

Noise is an important neighborhood livability issue. It is expensive to deal with many traffic related issues, but the enforcement of vehicle noise is relatively cheap for government and the public. Recommends the program eventually address all vehicle categories.

29. John Hilley, Milwaukie.

Noisy vehicles affect health, quality of life, and property values. Little enforcement of vehicle noise laws has been made by local police. Many non-compliant vehicles were modified to increase noise. Thus it is reasonable that the violator spend money to bring it back into compliance. Hopes the proposal is adopted.

30. Chad Metzger, Lake Oswego.

Supports the adoption of a comprehensive and meaningful vehicle noise program. The program should include all vehicle categories. Recommends the 3/4 RPM procedure, because altered or defective exhaust is more objectionable at higher engine speeds.

31. Peter Gray, Newberg.

Supports the efforts to control excessive motor vehicle noise. As a motorcyclist, he supports the concept of including motorcycles in the noise inspection program.

32. Aaron Stauffer, Portland.

The enactment of adequate measures to control noise pollution is a necessary and long overdue requirement to improve our environment. Loud exhaust noise is the most offensive noise maker. We would do our whole society a favor by controlling traffic noise.

33. Val Doern, Lake Oswego.

Has a neighborhood noise problem and looks to this proposal as a solution.

34. Calvin Clements, Portland.

Strongly favors the proposal to regulate noise from all vehicle categories. The standards should be tight enough to reduce vehicle noise to acceptable levels. Vehicle noise in his neighborhood is an increasing problem.

35. Richard and Virginia Bach, Portland.

Welcomes the proposal. Living on a noisy thoroughfare (S.W. Vista), they are subjected to constant vehicle noise.

36. Jeanne McDonald, Portland.

Vehicle noise on N.E. 122nd is a problem. She is pleased that DEQ cares about solving this problem.

37. Denis Burman, City Administrator, King City.

The proposal is commendable in its basic purpose to minimize noise pollution. However, he is opposed to mandatory air emission and noise inspections, unless they apply to the entire state.

38. Jonathan Axt, Aloha.

Opposed to any procedure that adds "wait time" in the inspection lines. Noise should be enforced on the road, as noise can easily by identified. Some will install a quiet muffler for the purpose of the test and remove it afterwards. Vehicles registered outside the test area will not be inspected. Suspects that large trucks, motorcycles and Tri-Met buses make more noise than suggested by DEQ staff. Most people are motivated to keep exhaust systems in good repair, while tampering with emission controls may enhance performance and economy.

39. Mike Miles, Portland.

Opposed to any government control over noise inspections. Suggests that all DEQ inspections be conducted by private dealers licensed by the State.

40. Letter signed "Rip Off."

Does not think the air emission program is effective. Now DEQ is proposing noise inspections. What else after that?

41. The Vanderlines, Portland.

Has problems of loud cars and motorcycles disturbing nighttime sleep. Supportive of the proposal.

42. Alyce and Jay Jantzen, Lake Oswego.

Wants the exhaust noise caused by Tri-Met buses solved as it is a neighborhood problem.

43. John W. Broome, Tualatin.

In Tualatin vehicular noise is horrendous. Noisy cars, motorcycles and diesel trucks make verbal communication impossible at times near residences. Loud noise contributes to personal stress, and adversely affect long-term health and well being. Not just a matter of tolerance or inconvenience. Department testing for noise should be part of the program.

AS471

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

October 11, 1984

MEMORANDUM

To: Environmental Quality Commission Members

From: John Hector, Noise Pollution Control JH

Subject: Written Testimony - VIP/Noise Hearings

Attached are copies of all written testimony received as part of the rule proposal to add noise inspections to the Portland area Vehicle Inspection Program. Comments are arranged in the following order:

1. Jane Cease, State Representative
2. Margaret Strachen, Commissioner, City of Portland
3. Mike Lindberg, Commissioner, City of Portland
4. Arnold Biskar, Commissioner, Multnomah County
5. Clackamas County Sheriff's Department
6. West Linn Police Department
7. Clackamas County Board of Commissioners
8. Tri-Met
9. Northwest District Association
10. Citizens' Association of Portland
11. Highway Division
12. Motor Vehicles Division
13. Noise Program Advisory Committee
14. Oak Lodge Community Council
15. Daly Engineering Company
16. Automobile Exhaust Systems Manufacturers Council
17. General Motors Corporation
18. Kawasaki Motors Corporation, USA
19. Motorcycle Industry Council
20. Speciality Equipment Market Association
21. John Hilley
22. Chad D. Metzger
23. Peter H. Gray
24. Aaron L. Stouffer
25. Val G. Doern
26. Calvin A. Clements
27. Richard & Virginia Bach
28. Jeanne McDonald
29. City of King City
30. Jonathan Axt
31. Mike Miles
32. "Rip Off"
33. The Vanderlindes
34. Alyce & Jay Jantzen
35. John W. Broome

ahe
Attachments (35)

JANE CEASE
MULTNOMAH COUNTY
DISTRICT 18

REPLY TO ADDRESS INDICATED:

☐ HOUSE OF REPRESENTATIVES
SALEM, OREGON 97310

☒ 2625 N.E. HANCOCK
PORTLAND, OREGON 97212

COMMITTEES
MEMBER:
INTERGOVERNMENTAL AFFAIRS
TRANSPORTATION

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310

August 20, 1984

AUG 21 1984
Noise Pollution Control

DEQ Noise Control
PO Box 1760
Portland, Oregon 97207

Dear People:

I am petitioning you for enforcement of vehicular noise because for years I have worked to keep our city liveable, to attract active community citizens who like city living, who are happy here and will support the necessary money measures to run our city. Noise, especially vehicle noise, is one of the biggest factors in comfortable, or uncomfortable urban living. That is why it is perfectly acceptable for the Department to address the problem in only an urban area such as this one.

The DEQ has been charged with noise control for years but hasn't done much, mainly due to budgetary problems.

Generally I support the staff proposal but have some concerns at things in our petition which staff has not addressed. One is the 4000 rpm test option. I understand your procedures and why you are going to 2500 rpm but I hope, if you adopt your rules as proposed, we can work together to get to the higher standard.

I am also concerned at leaving our motorcycles, trucks and buses. Motorcycles are one of the major noise irritants in neighborhoods. I understand your budgetary problems with including them, but then I have always supported a higher budget for you in the Legislature and will again. Please try to find the funds to include motorcycles.

Trucks and buses are also a major noise irritant. If space at testing stations is a problem, perhaps you can test them at their own motor pools. Car noise in neighborhoods is more a cumulative motor and tire noise situation. Motorcycles, trucks and buses cause loud motor noise and this problem must be addressed.

Sincerely,

Jane Cease

Jane Cease, State Representative

CITY OF

PORTLAND, OREGON

COMMISSIONER OF PUBLIC UTILITIES

Margaret D. Strachan, Commissioner
1220 S.W. 5th
Portland, Oregon 97204
(503) 248-4151

August 20, 1984

The Environmental Quality Commission
State of Oregon
c/o Fred Hansen, Director
Department of Environmental Quality
P.O. Box 1760
Portland, Oregon 97207

Dear Commissioners:

Several weeks ago, John Hector was informed that I would not be able to attend the public hearings scheduled to discuss the proposed rule amendments establishing mandatory noise emission standards for motor vehicles.

As a petitioner of the April 12, 1984 petition from the Coalition of Liveable Streets, I would like to comment on the Proposed Draft Rule amendments outlined at the EQC meeting of June 29, 1984.

First, because of my jurisdiction over the City of Portland's Noise Control Office and my past experience as a neighborhood association coordinator, I have had the opportunity to hear from many, many citizens and professionals who regard motor vehicle noise as a significant problem. Therefore, I would like to commend the efforts of the Commission and the Department of Environmental Quality for soliciting input from the public regarding this issue.

Secondly, I am very pleased that it appears that no additional financial charges and only an additional minimal seconds will be added to DEQ's current mandatory air emission inspection program to test for motor vehicle noise for autos and light trucks. This additional test should improve the noise problem somewhat and I am very pleased with both the EQC and DEQ efforts and cooperation this far.

However, after analyzing the Director of the EOC June 29, 1984 report, it appears that it will take additional time, effort, staff, funds and testing methods before the real motor vehicle culprits of noise pollution can be tested. Those culprits include motorcycles, buses, and heavy trucks that professionals contend cause the most damage to neighborhood liveability and public health and safety.

Therefore, I urge you to continue to study this problem and develop a testing program that will phase in motorcycles, buses heavy trucks and all motor vehicles that may exceed the current noise standards. Further, I would urge you to continue to involve the public in any rule amendments under consideration by the EQC and DEQ.

Because it will take a reasonable amount of time to phase all motor vehicles into a noise pollution testing program, I can support initiating the program limiting it to cars and light trucks which are currently subject air emission requirements of the DEQ.

I would like to recommend that the EQC and DEQ establish a deadline of no later than December 31, 1984 to add noise emission requirements for buses, heavy trucks, and motorcycles.

Again, I appreciate your efforts to address this issue and to respond to our Portland residents who's intent is to improve the liveability of neighborhoods for citizens in the Portland area. Please do not hesitate to contact my office if I can provide further assistance.

Sincerely,

Margaret D. Strachan

Margaret D. Strachan
Commissioner of Public Utilities

wd4ea

cc: Coalition for Liveable Streets
John Hector

ENVIRONMENTAL QUALITY COMMISSION

HEARING ON NOISE PETITION

WEDNESDAY, AUGUST 15, 1984

9:30 A.M.

522 S. W. 5TH AVENUE

ROOM 1400

CONTACT: LENORE ALLISON - 287-2357

TESTIMONY BY COMMISSIONER MIKE LINDBERG

GOOD MORNING. MY NAME IS BILL DEIZ, AND I AM HERE THIS MORNING REPRESENTING PORTLAND CITY COMMISSIONER MIKE LINDBERG, A CO-SIGNER OF THE PETITION SUBMITTED BY THE COALITION FOR LIVABLE STREETS. MR. LINDBERG IS CURRENTLY IN SESSION AT CITY COUNCIL.

THE ISSUE BEFORE YOU TODAY IS THE REGULATION AND ELIMINATION OF EXCESSIVE VEHICLE NOISE, AS DEFINED BY STATE LAW, IN THE PORTLAND AREA. COMMISSIONER LINDBERG FIRMLY BELIEVES THAT THE TIME HAS COME TO ADD <u>NOISE INSPECTION</u> TO EMISSIONS INSPECTION. IN A RECENT NEIGHBORHOOD PROFILES SURVEY, PORTLAND AREA RESIDENTS RANKED EXCESSIVE VEHICLE NOISE AS THEIR FOURTH MAJOR CONCERN FOLLOWING PROPERTY TAXES, CRIME AND QUALITY OF EDUCATION!

AS DEPARTMENT OF ENVIRONMENTAL QUALITY STAFF HAVE NOTED IN THEIR REPORT TO YOU, THE ISSUES RAISED IN THE PETITION HAVE MERIT. STAFF PROPOSES, HOWEVER, THAT IMPLEMENTATION OF THE INSPECTION PROGRAM BE DONE IN A WAY THAT IS SUBSTANTIALLY DIFFERENT FROM THE WAY DESIRED BY PETITIONERS.

NONETHELESS, COMMISSIONER LINDBERG'S FIRST PRIORITY IS THAT THE PROGRAM BE ESTABLISHED AND GIVEN A CHANCE TO WORK. FOR THIS REASON, HE SUPPORTS THE STAFF REPORT WITH THE FOLLOWING CONDITIONS:

1. STAFF SAYS THAT IT WOULD BE MORE EFFICIENT AND VIRTUALLY AS EFFECTIVE TO TEST FOR NOISE AT THE SAME TIME AS EMISSIONS ARE TESTED...AT APPROXIMATELY 2,500 RPM....RATHER THAN AT <u>75% OF ENGINE SPEED</u> AS PETITIONERS SUGGEST. COMMISSIONER LINDBERG FEELS THE PROGRAM SHOULD BE IMPLEMENTED USING THE STAFF-RECOMMENDED PROCEDURE, BUT THAT STAFF SHOULD BE DIRECTED TO ENGAGE IN A STUDY OVER THE FIRST YEAR OF THE

PROGRAM TO DETERMINE THE EFFECT OF THIS PROCEDURE RELATIVE TO THE PETITIONERS' SUGGESTION, AND THEN TO RETURN TO THIS BODY AFTER ONE YEAR WITH FINDINGS TO JUSTIFY THE STAFF DECISION. PERIODICALLY DURING THIS STUDY PERIOD, A NOISE INSPECTOR SHOULD SUBJECTIVELY PREDICT VIOLATORS UPON ARRIVAL OF A VEHICLE...AND THEN CHECK THE OBJECTIVE MEASUREMENT OF THAT VEHICLE'S NOISE EMISSION. IN OTHER WORDS, IF AN INSPECTOR HAS REASON TO SUSPECT A CAR IS IN VIOLATION, THE INSPECTOR SHOULD CONDUCT THE OBJECTIVE TEST. IF THE DEPARTMENT FINDS THAT A SIGNIFICANT NUMBER OF VIOLATORS ARE NOT BEING CITED, OR IF IT CANNOT SUBSTANTIATE THE CLAIMS FOR EFFICIENCY MADE IN THE STAFF REPORT, THEN THE TESTING METHOD PROPOSED BY THE PETITIONERS SHOULD BE AUTOMATICALLY IMPLEMENTED AT THAT TIME.

2. STAFF SAYS THAT TRUCKS AND BUSES SHOULD BE EXEMPT FROM THE PROGRAM AT THIS TIME. COMMISSIONER LINDBERG WOULD LIKE TO SEE STAFF DIRECTED TO RETURN BEFORE THIS BODY IN ONE YEAR WITH A PLAN FOR A REGULATED INSPECTION PROGRAM FOR TRUCKS AND BUSES.

3. STAFF NOTES THAT MOTORCYCLES ARE NOT CURRENTLY INSPECTED: AND THAT TO DO SO WOULD REQUIRE LEGISLATIVE AUTHORITY TO BUDGET FOR EXTRA STAFF. COMMISSIONER LINDBERG, SIMILARLY, REQUESTS THAT YOU DIRECT THE DEPARTMENT TO BEGIN THE PROCESS FOR GAINING THAT AUTHORITY, IN ORDER TO ADD MOTORCYCLES TO THE NOISE INSPECTION PROGRAM IN ONE YEAR.

ESTABLISHING THIS PROGRAM IN THE PORTLAND AREA WILL NOT ONLY HAVE A TANGIBLE POSITIVE EFFECT ON THE QUALITY OF OUR URBAN ENVIRONMENT, IT WILL ALSO ADDRESS A MAJOR CONCERN OF PORTLAND AREA RESIDENTS. AS COMMISSIONER LINDBERG STATED IN PREVIOUS TESTIMONY: THE APPLICATION OF NOISE EMISSION TESTING, IN ONLY URBAN AREAS, IS LOGICAL BECAUSE OF THE GREATER NUMBER OF NOISE SOURCES AND VEHICLES, AS WELL AS HIGHER DENSITY AND MORE ACTIVITY.

WE NEED TO AGGRESSIVELY ADDRESS THE ISSUE OF URBAN NOISE. COMMISSIONER LINDBERG URGES YOU TO ADOPT THE STAFF REPORT, WITH THE AMENDMENTS LISTED ABOVE, AND TO PROCEED WITH THIS PROGRAM AS A SIGNIFICANT STEP ON THE ROAD TO PRESERVING URBAN ENVIRONMENTAL QUALITY.

THANK YOU VERY MUCH.

ARNOLD BISKAR
Multnomah County Commissioner
District One

Room 605, County Courthouse
Portland, Oregon 97204
(503) 248-5220

August 14, 1984

Department of Environmental Quality
Noise Control Office
522 SW 5th
Portland, OR 97204

TO WHOM IT MAY CONCERN:

Please enter into the record my support of your proposed noise emission testing of motor vehicles. Your proposed amendments are necessary requirements to improve the quality of life in our community.

If I can be of any assistance, please contact me at 248-5220.

Sincerely,

Arnold Biskar

Arnold Biskar
Presiding Officer

AB:jn

PRESIDING OFFICER
Board of
County Commissioners

CLACKAMAS COUNTY SHERIFF'S DEPARTMENT

2223 S. Kaen Road Oregon City, Oregon 97045
(503) 655-8218

Office of
BILL BROOKS, SHERIFF
CLACKAMAS COUNTY

August 20, 1984

DEQ Air Quality Division
Noise Pollution Control
P O Box 1760
Portland, OR 97207

Dear Sir,

This is to advise you that the Clackamas County Sheriff's Department supports the proposal for noise inspection at DEQ Test Centers.

We receive many calls from citizen concerned with motor vehicle noise pollution on their streets. Although we have a strict enforcement policy, many times our units are not close enough to apprehend violators. The testing for noise at DEQ Centers would identify and delete a significant number of vehicles in violation of statutes regulating motor vehicle noise.

This would not only help us, but also decrease the discomfort and annoyance of people who desire to exist in a noise free environment.

Sincerely,

BILL BROOKS, SHERIFF

by LONNIE RYAN, CAPTAIN
OPERATIONS DIVISION COMMANDER

City of West Linn
POLICE DEPARTMENT

CITY HALL
WEST LINN OREGON
97068
(503) 655-6211

TO: D.E.Q. Noise Control

FROM: A. R. Enderlin, Chief of Police

DATE: August 13, 1984

SUBJECT: Motor Vehicle Noise Control

Sir:

In the City of West Linn we have been enforcing motor vehicle noise for the past ten years. We believe motor vehicle noise is as hard on people as any other type of noise.

I would encourage the D.E.Q. to help regulate noise by testing all vehicles that to through the regular D.E.Q. test when their vehicle license becomes due.

I believe one more step must be taken. D.E.Q. should attempt to get someone to sponsor legislation to prohibit the sale of mufflers that do not meet D.E.Q. noise standards. If we can stop the sale of that type of muffler, we could cut down the problem by a large amount, then the police could help control the ones that are worn out. I believe the sale of noisy mufflers cause more noise then the worn out ones.

Sincerely,

A. R. Enderlin,
Chief of Police

ARE/hg
cc:file

COUNTY OF CLACKAMAS
BOARD OF COMMISSIONERS
OREGON CITY, OREGON 97045
655-8581

ROBERT SCHUMACHER, CHAIRMAN
RALPH GROENER, COMMISSIONER
DALE HARLAN, COMMISSIONER

August 20, 1984

Department of Environmental Quality
Air Quality Division
Noise Pollution Control
P. O. Box 1760
Portland, Oregon 97207

Gentlemen:

Clackamas County, in its Noise Control Ordinance, recognizes the effects of automobile noise. The ordinance notes this despite the fact there are statutes intended to contol noisy vehicles.

We consider your attempts, through amendment of OAR 340-23, an imaginative step in the ultimate contol of thses noise generators.

You are to be commended in considering this amendment.

Sincerely,

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Robert Schumacher, Chairman

Dale Harlan, Commissioner

RS:ss

TRI-COUNTY
METROPOLITAN
TRANSPORTATION
DISTRICT
OF OREGON

TRI-MET
4012 SE 17th AVENUE
PORTLAND, OREGON 97202

COMMENTS OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT ON PROPOSED RULE AMENDMENTS ESTABLISHISHING NOISE EMISSION STANDARDS FOR MOTOR VEHICLES
AUGUST 20, 1984

On May 18, 1984, the Environmental Quality Commission accepted a petition for rulemaking from the Coalition for Liveable Streets and directed the Department of Environmental Quality (DEQ) to initiate rulemaking proceedings.

The Coalition has proposed that all categories of motor vehicles including automobiles, light and heavy trucks, motorcycles and buses undergo noise inspection as part of the Department's Vehicle Inspection Program (VIP).

Tri-Met concurs with the findings of the Department and the Coalition that motor vehicle noise in Portland is a significant problem given the high density of persons and motor vehicles living within the Portland vehicle inspection area boundary. We also concur that all reasonable and effective efforts should be made to monitor motor vehicle compliance with the noise standards established in ORS 467.030.

In response to DEQ's request for comment on methods of conducting noise emission inspection on Tri-Met buses, Tri-Met offers the following:

1. Tri-Met and the DEQ are currently cooperating in an effort to test Tri-Met buses for noise emission and estimate the number of non-compliant vehicles.

2. Tri-Met recommends annual noise emission fleet testing as a workable method of noise inspection.

3. Tri-Met would be willing to participate with the DEQ in securing capital funding for the construction of noise and exhaust emission testing cells which would insure frequent and reproduceable noise emission inspection and diagnosis.

4. Tri-Met has led the transit industry in its motorbus noise control engineering.

RECENT TESTING DATA

In mid-July of this year, Tri-Met and the DEQ staff began conducting preliminary noise emission tests on Tri-Met buses as part of Tri-Met's regular fleet inspection program. While an exact testing procedure is still being worked out, the preliminary findings indicate that the problem is manageable.

Of the 170 Tri-Met buses tested (26% of the Tri-Met fleet), 32 or 18%, exceeded the 91 dba level. The average dba level for all Tri-Met buses tested was 88.4. We are confident that due to the disproportionately high number of AM General series 1000 buses found in the group tested, the total fleet percentage of non-compliant buses is actually between 10 and 15%.

With these figures as a basis, Tri-Met believes that the vast majority of Tri-Met buses are currently meeting DEQ noise standards, that diagnosis and repair of non-compliant vehicles is manageable and that effective noise testing procedures could be helpful in identifying non-compliant vehicles.

ANNUAL NOISE EMISSION TESTING OF TRI-MET BUSES

Tri-Met recommends that if noise emission testing for Tri-Met buses is mandated, an annual noise emission testing procedure should be added to its regular fleet inspection program.

Under such a testing program, Tri-Met and the DEQ staff would concur on acceptable inspection procedures and standards that would be applied to the entire fleet over a one year period. Results of the testing and re-testing program would be presented to the DEQ for its review.

Annual inspection of Tri-Met buses is a more frequent testing program than the 2-year inspection cycle for automobiles, but would give Tri-Met adequate leeway to allow for adverse weather and noise interference conditions.

TESTING CELL

While Tri-Met recommends annual inspection for noise emission control within its existing facilities and resources, it must be recognized that a real solution to the noise problem requires frequent, convenient and reproduceable testing.

Currently, noise testing procedures require nearly perfect weather conditions and the absence of any other noise interference. In a city setting and given the Oregon climate, this is difficult to achieve with any regularity.

For this reason, Tri-Met is willing to work with the DEQ and other state and local authorities to secure grant funding for several noise and exhaust emission testing cells. The cost for each testing device is estimated at $1 to $1.5 million, including instrumentation and facilities. The local match requirement for most available federal grants is 15-20%.

Clearly an investment of this size is only warranted if the testing cells can be used full time by Tri-Met and other large public or commercial fleet owners. Given the demonstrated concern over noise pollution, however, an investment of federal, state, local and even private dollars might be considered.

TRI-MET IS A LEADER IN NOISE EMISSION CONTROL ENGINEERING

Because of the Transit Mall and the expectation that it should remain a "people place", more all around transit motorbus noise control engineering has been done in Portland than anywhere else in the country.

As early as 1975 when Mall construction began, Tri-Met, the DEQ and the City Noise Control Office aggressively pursued a project to establish a voluntary noise control standard. Impetus was added to the project when the Housing and Urban Development office notified the City that future housing renovation projects would be placed in jeopardy if noise levels on the Mall exceeded HUD standards.

Subsequent investigations revealed that Tri-Met buses were not relatively noisy compared to newly manufactured buses, compared to buses operated by other transit districts or compared to modern intercity trucks. In fact, they were on the quiet side. Moreover, there were no known easily applied field fixes to the problem.

As a result of these early findings, Tri-Met applied for and received a $.5 million grant from the Urban Mass Transportation Administration and the U.S. Environmental Protection Agency to study noise control of transit motorbuses. Tri-Met hired its own acoustical engineering expert, Michael C. Kaye, and has retained his services periodically since that time. The result of Mr. Kaye's efforts has been numerous small breakthroughs and innovations in noise engineering and several articles and pamphlets on motorbus retrofitting.

The problem remains, however, that little can be done to retrofit a motorbus vehicle for noise control that is not excessively expensive. The answer apparently lies in federal standards at the manufacturer's level. Oregon has been progressive in its approach to vehicular noise, but without the help and pressure of other states and transit properties, it is unlikely that our efforts alone can force movement in this arena.

August 30, 1984

Mr. John Hector
DEQ Air Quality Division
Noise Pollution Control
P.O. Box 1760
Portland, Oregon 97207

John:

I am submitting written commentary to you regarding the proposed rules for motor vehicle noise inspection by DEQ.

As you know, the Irvington Community Association is one of the co-petitioners on this issue. It is an issue vital to the stability and well-being of our community, as well as the region as an entity.

My commentary includes three points, each of which was covered by me in my testimony at the hearing held on August 15, 1984.

The first point is simply that Irvington is a dense, inner-city community that is greatly impacted by vehicular noise. The number of buses, cars, motorcycles, trucks and trailers that use our community is substantial, and many of them may be in violation of the noise laws.

The second point on this issue is that public policy often serves to reinforce the social contract that binds communities together. Noise inspection is a policy question answered by the continuing stability of neighborhoods within the region. This is a citizen initiative process that requests a public policy decision to help us solve a very difficult problem.

Finally, this noise inspection concept is a very positive goal. It is an idea that meets the problem at its source, rather than attempting to identify it after the fact. This is a preventive action that is long overdue.

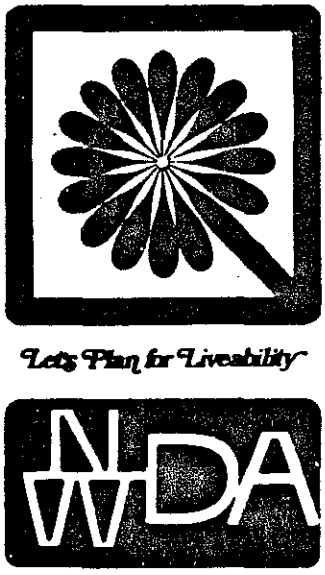
Thank you for your consideration on this important issue.

Sincerely,

Michael G. Sievers

Michael G. Sievers, president
Irvington Community Association
1909 NE 24th Avenue
Portland, Oregon 97212

Northwest District Association



August 14, 1984

Enviornmental Quality Commission
State of Oregon
P.O. Box 1760
Portland, Oregon 97207

Dear Commissioners:

The Northwest District Association Board voted unanimously on August 13, 1984 to urge the Commission to adopt a comprehensive program for noise emission inspection of vehicles. As residents and as customers and employees of commercial and industrial enterprises located in Portland's most urban neighborhood, we are especialy aware of the detrimental affects of vehicular noise on both commerce and on the quality of life.

The Board has particular concern with two areas in which the staff report falls short of the program envisioned in our original petition.

First, simply as a technical matter, noise emission measurement should not be conducted simultaneously with exhaust emission testing. The result of testing at lower r.p.m's would be to automaticly pass as many as half of the non-complying vechicles. We suggest that the noise testing should be done at the appropriate r.p.m's, during the same visit to DEQ for the emissions test, but not simultaneously.

Second, motorcycles, trucks, and buses are major contributors to noise problems.We strongly urge the Commission to make a commitment today,to establish, monitor and enforce noise emission standards for these vehicles.

If further study is in fact required, we believe a firm schedule should be adopted now, laying out the timeline for studies to lead to enforceable regulations. We urge such a schedule because of our numerous experiences--doubtless shared by this Commission--of studies serving in the main to delay action, at least until the decision-makers adopt deadlines.

We appreciate your sharing our concern for the reduction of noise pollution and we expect to remain actively in support of actions to protect and improve our enviornment.

Yours very truly,

Joleen Jensen

Joleen Jensen, President
Northwest District Association

cc: Fred Hanson, Director of DEQ

JJ:lak

N.W.D.A., the Community Organization for Northwest Portland, Inc.
1819 N.W. Everett, #205, Portland, Oregon 97209, 223-3331

CITIZEN'S ASSOCIATION OF PORTLAND (C.A.P.)
P.O. BOX 17222
PORTLAND, OREGON 97217

August 20, 1984

DEQ Air Quality Division
Noise Pollution Control
P.O. Box 1760
Portland, OR 97207

RE: Public Hearing
August 15, 1984
Room 602
Multnomah County Courthouse
Portland, OR

Dear Sir:

This letter is to reaffirm the Citizen's Association of Portland, Inc.'s stand on the noise emissions control. As stated in my testimony at the above mentioned public hearing, we want the standards and procedures established in the general noise control rules, Table 2 of OAR 340-35-030 be incorporated, by adoption, within the Vehicles Inspection Program rules. This would include automobiles, light trucks, motorcycles, buses, and heavy trucks.

As Portland is a growing city with high noise impact areas, we feel it is imperative to reduce all noise pollution to make Portland more liveable. The motorcycles, buses, and heavy trucks contribute significantly to the noise pollution and should be controlled along with autos and light trucks. To omit these categories would seriously undermine the noise control program and would be unfair to the majority of the motoring public who would be subjected to noise inspection while the most serious offenders are exempt.

Let it be known that we oppose this type of regulation in it's present form; motorcycles, buses, and heavy trucks should be regulated also. We do not feel we can support regulating only automobiles and light trucks which are the least offensive source of noise emission while ignoring the major offenders.

Sincerely,

Sue Guentner

Sue Guentner
President, C.A.P.

VICTOR ATIYEH
GOVERNOR

Department of Transportation

HIGHWAY DIVISION

TRANSPORTATION BUILDING, SALEM, OREGON 97310

In Reply Refer to
File No.:

ENV 3

August 9, 1984

John Hector, Manager
Noise Pollution Control Program
Oregon Department of Environmental Quality
P.O. Box 1760
Portland, OR 97207

RE: Proposed Rules for Motor
Vehicle Noise Inspections

Dear Mr. Hector:

The Department of Transportation frequently recieves complaints concerning noise from motor vehicles. As you know, on all new construction and reconstruction projects we review the noise implications of those projects during the planning stages. When feasible and cost-effective, noise mitigation is provided to lessen or eliminate noise impacts. Occassionally we receive noise complaints from individuals benefitting from noise barriers already in place. These complaints are usually with regard to the isolated occurances, not general noise levels. This intermittent noise is usually caused by a vehicle with a modified exhaust system. This exhaust noise is particularly noticeable during the late evening and early morning hours.

We are unable to provide noise mitigation through placement of noise barriers effective enough to prevent the isolated high noise levels from penetrating neighborhoods and other sensitive areas. We therefore do not attempt to mitigate this type of vehicle noise emission, but must rely on local law enforcement agencies who may have authority to prevent loud vehicle noise.

We believe your proposed inspection program would benefit the Department of Transportation by reducing the number of noise complaints we recieve from residents hearing an occasional isolated vehicle with a particularly noisy exhaust system. We would suggest that standard factory should be sufficient to eliminate excessive exhaust noise, and that the rule should allow for a reasonable loss of effectiveness due to normal use.

Sincerely,

Campbell M. Gilmour

Campbell M. Gilmour, Manager
Environmental Section
Oregon State Highway Division
324 Capitol Street N.E.
Salem, OR 97310

CMG:JNS:dm

VICTOR ATIYEH
GOVERNOR

Department of Transportation
MOTOR VEHICLES DIVISION
1905 LANA AVENUE N.E., SALEM, OREGON 97314

August 10, 1984

Department of Environmental Quality
Air Quality Division
Noise Pollution Control
Post Office Box 1760
Portland, Oregon 97207

Re: Proposed Adoption of Rules on
Noise Pollution

Gentlemen:

We have received a copy of your information bulletin and proposed rule amendments, wherein you propose to add noise testing to your inspection program.

To determine impact on the division, we would need to know more specifics about the program as it would relate to this division. We would also need to know what specific vehicle types would be involved. This division would need to request legislative approval for any increased costs which might be incurred on our part. These costs in turn would have to be passed on to your agency.

If noise testing is implemented only on those vehicles currently subject to testing, and if there are no required changes in the way the division handles renewals for these vehicles, impact may be limited to whatever complaints or inquiries which are generated by this program.

On the other hand, if different procedures are necessary to determine compliance, or if additional or different vehicles are added to the program there could be further impact. This would come from such things as the need to review more documents for compliance with DEQ, a potential increase in the number of rejected documents, and any data processing programming necessary to implement the changes. We would need lead time (estimated 6 months) to complete changes to add additional vehicles types and to insure that persons effected receive the notices with their renewal reminders.

We would recommend that the insert we enclose with vehicle renewal reminder notices be revised to include information on noise testing, should you adopt this program.

Please keep us informed of your progress in this area. If you do adopt noise testing, we need to meet on the specifics of the program as soon as possible.

Very truly yours,

Joanne Peterson

Joanne Peterson
Manager Technical Services
Telephone 378-6900

JP:st

Noise Program Advisory Committee
PO Box 3492
Portland, OR 97208
August 13, 1984

Oregon DEQ
Noise Pollution Control
PO Box 1760
Portland, OR 97207

Re: Proposed Motor Vehicle
Inspection Noise Rules

The Noise Program Advisory Committee, a statewide committee that advises the DEQ's noise control program on important issues, has identified motor vehicle noise as a top priority. Although new motor vehicles meet reasonable noise emission limits, many vehicles have either deteriorated or have been modified in a manner to produce excessive noise under normal operating conditions.

The proposal to enforce motor vehicle noise emission limits within the DEQ's motor vehicle inspection program is an important step in meeting the goals of the Advisory Committee. Therefore, in support of the Committee goals, I urge the adoption and implementation of reasonable and effective motor vehicle noise emission standards to be enforced within the DEQ's existing inspection program.

Sincerely,

Steve Lockwood

Steve Lockwood, Chairman
Noise Program Advisory Committee

14212 S.E. River Road
Milwaukie, OR 97222
August 9, 1984

Mr. James E. Petersen, Chairman
Oregon Environmental Quality Commission
P.O. Box 1760
Portland, Oregon 97207

Dear Mr. Petersen:

Earlier this spring members of the Oak Lodge Community Council urged that Clackamas County include an effective vehicle noise control section in their recently adopted Noise Control Ordinance. We wrote the Committee on Noise Control and one of our members testified before the committee emphasizing the fact that he and his neighbors were greatly bothered very late at night by vehicles operating either with no muffling devices or pipes that emphasize engine noise. In short, we consider vehicular noise that results from faulty muffling devices to be a patently unnecessary threat to the public health and well-being, and the quality of life in our society.

State laws requiring that vehicles operate at reasonable decibel levels have not been enforced, and DEQ which is authorized to act in this area has to this date done nothing to effectively resolve the problem. Consequently, we salute the commission for unanimously voting to consider the proposal to conduct noise emission inspections at the same time vehicle emissions inspections are being conducted.

The proposal seems to us the most logical and cost effective way to enforce a law of the state of Oregon that was written with the health of the people in mind. You have our most emphatic support regarding the proposal to monitor vehicle noise.

We frequently read that noise in modern society is an ever increasing, insidious force that damages health and hearing. In the case of motor vehicles, noise is easily controlled mechanically, but our law enforcement agencies do little to control vehicle noise. We wonder upon what grounds anyone could contest the proposal at the hearings.

We thank you and the members of your committee for the work you do in the public interest.

Sincerely,

Jessica S. Williamson

Jessica S. Williamson
Chairman
Oak Lodge Community Council

Daly Engineering Company
11855 S.W. Ridgecrest Drive, Room 201, Beaverton, Oregon 97005-6321

Oregon Department of Environmental Quality
Noise Control
P.O. Box 1760
Portland, Oregon

August 20, 1984

Gentlemen:

This letter is sent to supply written comment on the DEQ petition to revise rules on vehicle inspection program to include testing of sound from in-use motor vehicles.

As some of my comments are of a technical nature, I should point out that I am a practicing Professional Engineer registered as especially qualified in Acoustical and in Mechanical Engineering. I have had a Consulting Office specializing in the measurement and control of sound and vibration for the past 15 years in the Portland area. I taught at the university level in these same fields for some 15 years before opening my consulting office.

There is no question that motor vehicle noise is the predominate and all prevailing sound throughout the three county area about Portland. Large parts of Portland fall within the HUD "normally unacceptable" sound levels for housing. This program is a step in getting some limited control of this problem.

The program will not change the sound levels produced by well maintained vehicles. Therefore, it will only lessen the extremely unnecessary part of the problem. My office has made many ambient sound level studies in the three county area. The major sounds in the day time are truck and bus sound levels. While the present proposed rule change does not include truck and bus testing, funds for this testing should be sought.

The major noisy vehicles at night are modified or poorly maintained cars and motorcycles. These are a serious and unnecessary disturbance of rest and sleep. While the Oregonian of August 16, 1984, stated that the cost of correcting such noisy vehicles was between $44 and $250, the article failed to point out that most correction would be at the lower end of this range. Vehicles that would require the middle and upper part of this cost range have been dangerously neglected or deliberately modified to make a disturbing sound level. Such vehicles do not need special consideration because of the cost of repair. An exhaust system in the mild climate of Oregon has a life of 5 to 8 years without

major repair. When it needs such repair, it should be done for safety reasons as well as noise control.

The exemption of motorcycles from air emission tests is not defendable. One could as easily justify selecting a make and model of a small car (Honda Civic for example) and more easily justify it exemption. Motorcycles are modified more often than cars to make them noisy. The noise from motorcycles is as disturbing, if not more so, than modified cars.

The argument that testing for unreasonable exhaust and noise emissions is an unnecessary infringement on our freedom does not stand up to logic. One bus, car, or motorcycle that produces unreasonable emissions infringes on the reasonable rights of many people for each block it travels and on every day it travels. All freedoms must be restricted when such freedoms infringe unreasonably on the rights of others. I long ago had to stop letting others enjoy my cigars whether they wished to or not. Noise for the sake of noise (or because of poor maintenance) must go the same path as my cigar!

Sincerely,

DALY ENGINEERING COMPANY

Edward A. Daly

Edward A. Daly, P.E.

EAD/na

Automotive Exhaust Systems Manufacturers Council
222 CEDAR LANE, TEANECK, NEW JERSEY 07666/PHONE 201-836-9500
ADMINISTERED BY
MOTOR & EQUIPMENT MANUFACTURERS ASSOCIATION

August 14, 1984

Mr. John Hector
Department of Environmental Quality
Air Quality Division
Noise Pollution Control
P. O. Box 1760
Portland, Oregon 97207

Re: Automotive Exhaust Systems Manufacturers Council
Testimony on Proposed Rules for Motor Vehicle Noise Inspection

Dear Mr. Hector:

The Automotive Exhaust Systems Manufacturers Council (AESMC) has reviewed the Oregon Department of Environmental Quality proposal to amend the existing vehicle emission control inspection procedures to include exhaust noise emissions test procedures for automobiles and light trucks.

AESMC is an independent trade association of automotive exhaust system manufacturers. It was organized in 1970 to provide a medium for industry consultation and cooperation with respect to federal and state legislation and regulatory developments affecting automotive exhaust system components. The member-manufacturers of AESMC supply exhaust systems both as original equipment to the vehicle manufacturers, and as replacement equipment to the automotive aftermarket. Aftermarket sales are made through all channels of distribution, including warehouse distributors, wholesalers, jobbers, chain stores, service stations, repair garages, and vehicle dealers. AESMC members produce approximately 90% of the exhaust systems for passenger cars and light trucks.

As a result of our review of the proposal, AESMC would like to comment on several concerns as follows:

- Although there appears to be no use of the phrase, "modified and defective", in the verbatim proposed amendments, the phrase does appear several times in the associated documents . . . usually as "approximately 10% of the light duty motor vehicles registered in the Portland area exceed noise emission limits due to modified and defective exhaust systems. AESMC has a serious concern in regard to the use of the word "modified" as it describes exhaust systems. The word "modified" implies a change . . . and in most cases, when used in reference to exhaust systems, implies a change from the original equipment exhaust system as installed by the vehicle manufacturer. Unfortunately, very few replacement exhaust systems or replacement exhaust system components (including some of those available from vehicle manufacturers) are exact duplicates of the

original equipment. Replacement exhaust systems and components may vary in size, shape, design, etc. There have been documented cases where a replacement exhaust system has been deemed "illegal" or "failed inspection" simply because it was physically different than the original equipment system. Usually, this difference has become apparent based on a visual inspection only.

AESMC's concern is that the noise control function of the exhaust system is not solely dependent upon the physical shape and size of the system, and, therefore, these characteristics should not be the basis for a system to be judged "modified".

The term "modified" when used, should communicate a change in the noise control capability of the exhaust system, which is not dependent solely upon visable physical characteristics. Our concern is that a literal and technical interpretation of the term "modified" could include most replacement exhaust systems, because of the physical and dimensional changes from the original system. Despite these visable changes, most replacement exhaust systems do not diminish the noise control capability of the vehicle's exhaust system. Thus, our concern with the term "modified".

We would hope and recommend that all Oregon personnel involved with the noise control inspection and enforcement, will be so informed in regard to "modified" exhaust systems.

- It is our understanding that the Portland, Oregon proposal is based on a petition requesting inspection of motor vehicle noise emissions. In most motor vehicle noise situations, there has been unanimous agreement that heavy duty trucks, motorcycles and buses are prime noise offenders. Despite the rationale expressed in the proposal in regard to motorcycles, heavy duty trucks and buses, AESMC suggests that Oregon's inspection of only passenger cars and light duty trucks will not provide the "liveability" sought by the petitioners.

AESMC's concern in this regard relates to the last sentence of paragraph C. on page 4 of the EQC memo of June 29, 1984. This sentence implies that once the test procedures are adopted, more restrictive dBA standards may be the result of future adjustments.

AESMC certainly would expect that any future adjustments of dBA levels would be subject to public hearings and comments. Further, reductions in passenger car and light duty truck noise levels would seem to provide but little or insignificant reductions in community noise levels without first adopting controls for other motor vehicles.

- AESMC suggests that the Department and the Commission seriously consider the aural screening of vehicles to determine a metered test, if necessary. Such aural screening would appear to be reasonable in terms of total time consumed and would maintain use of the existing table 2 of the OAR 340-35-030 which calls for a 95 dBA level at 20" and 3/4ths of maximum graded horsepower RPM. This procedure would maintain the current Oregon regulatory levels and test procedures which are compatible with other state levels and procedures. Such uniformity would be advantageous to the nation's vehicle owners, state regulatory agencies and exhaust systems manufacturers.

  The manufacturer-members of AESMC have previously endorsed and supported the 95 dBA level when measured at 20" from the vehicle's tailpipe at a 3/4ths of maximum horsepower RPM. Some jurisdictions have also adopted a optional 3,000 RPM for the 95 dBA level. These levels and optional procedures have also been supported by SAE (Society of Automotive Engineers) and NANCO (National Association of Noise Control Officials).

- Our organization does not have and has not had time to collect a base of data for stationary vehicle exhaust system tests at 2,500 RPM. It would appear empirically that the dBA levels proposed by Oregon at 2,500 RPM level are compatible with the 95 dBA level at 3/4ths maximum horsepower RPM. However, AESMC does not, at this time, have the data available to make a positive statement in this regard. We must hold such a judgment in abeyance pending further development.

In summary, AESMC supports Portland, Oregon's proposal to adopt inspection of vehicle exhaust systems. Exhaust system inspection procedures, both visual and noise metered, have been proven successful in identifying a defective exhaust system. AESMC has a concern that the descriptive term "modified" when applied to exhaust systems, implies a change from the original equipment installed exhaust system which diminishes noise control capabilities. . . thus, a "modified" exhaust sytem is akin to a defective exhaust system. Since most replacement exhaust systems are physically different from the original equipment system, a strict literal interpretation could deem them "modified". However, most replacement exhaust systems are equivalent in noise control characteristics to the original equipment system, and, therefore, should not be deemed "modified". We would hope that the Oregon officials are informed in this regard. AESMC would suggest that Oregon maintain a 95 dBA level and test procedures associated with Table 2 (340-35-030) for the proposed noise test in order to maintain uniformity.

AESMC strongly supports the basic principle that "excessive noise obviously affects the public health and welfare," and we firmly endorse the control of "excessive noise" by regulatory agencies. The business of AESMC member manufacturers has been, for many years, devoted to the control of automotive exhaust noise and these companies have developed, over the past quarter century, a unique expertise in the control of automotive noise. AESMC feels that any automotive noise standard and test procedure adopted by state legislation or regulatory agencies must be reasonable and great care must be used in developing reasonable standards because of the multifaceted, interacting and subjective variables constituting and affecting excessive noise. These facts, when viewed in terms of the complex manufacturing and physical distribution functions of the automotive replacement equipment market, have caused AESMC and its representatives to provide its expertise to Federal agencies such as the Department of Transportation and the Environmental Protection Agency Office of Noise Abatement and Control, and state agencies such as the California Highway Patrol, the Florida Department of Environmental Regulations, the Maryland Motor Vehicle Administration's Department of Transportation and State Police, the Minnesota Pollution Control Agencies, and the Illinois Pollution Control Agency, the National Association of Noise Control Officials and the consulting firms of McDonnell Douglas and Bolt, Beranek and Newman, and numerous other interested groups.

Very truly yours,

Ralph W. Van Demark
Executive Director

RWV/dj

Environmental Activities Staff
General Motors Corporation
General Motors Technical Center
Warren, Michigan 48090

16 August 1984

Mr. John M. Hector, Chief
Noise Pollution Control Section
Oregon Department of Environmental Quality
P.O. Box 1760
Portland, OR 97207

Dear Mr. Hector:

Re: Proposed Motor Vehicle Inspection Stationary Noise Test

General Motors respectfully requests that the comment period with respect to proposed changes in the Rules of the Oregon Environmental Quality Commission, to include a stationary noise test in the Portland area Vehicle Inspection Program, be held open from the current closing date of 20 August 1984 to 31 August 1984.

General Motors is in the process of developing comments in response to the proposed Rules changes. To support the comments to be offered for consideration, General Motors is evaluating the effects of the proposed 2500 rpm engine test speed on exhaust system sound levels of available light vehicle models representative of current production.

In addition, it is requested that, should the Commission consider similar Rules changes affecting buses and/or heavy duty trucks, General Motors be so notified and given the opportunity to comment.

Sincerely Yours,

Keith D Cherne

Keith D. Cherne
Staff Project Engineer

cc: P.P. Pataky

File: 382-OR

Environmental Activities Staff
General Motors Corporation
General Motors Technical Center
Warren, Michigan 48090

23 August 1984

Mr. John M. Hector, Chief
Noise Pollution Control Section
Oregon Department of Environmental Quality
P.O. Box 1760
Portland, OR 97207

Dear Mr. Hector:

Re: Proposed Oregon Motor Vehicle Inspection Stationary Noise Test

Attached are five (5) copies of the comments of General Motors Corporation with respect to the proposal to add a stationary noise test to the current State of Oregon automotive exhaust emissions inspection program.

General Motors is in agreement with the concept of in-use vehicle noise enforcement by means of the close-in stationary exhaust system noise test. It has been demonstrated by other in-use vehicle noise enforcement programs that the vast majority of noise violators are vehicles that are modified or improperly maintained. A program of regular vehicle inspections has the potential for identifying these types of vehicles and, further, such a program also provides incentives for vehicle owners to be more aware of the condition of the exhaust systems on the vehicles they drive.

In establishing the proposed Oregon stationary exhaust system noise test, you should be aware that one of the objectives of General Motors as a vehicle and equipment manufacturer is to design exhaust systems to meet a close-in standard of 95 dB at three quarters of rated engine speed rather than the nominal 2500 rpm contained in the Oregon proposal. Additionally, General Motors typically obtains data at 3000 rpm in accordance with SAE J1169. This is pointed out so that you are advised of the possibility that manufacturers cannot provide a significant body of data to support the 2500 rpm test engine speed. In general, because there is a reasonably well-understood relationship between engine speed and sound level, we believe the proposed standard of 93 dB at a nominal 2500 rpm should provide a satisfactory inspection criterion.

The attached comments are directed toward matters of technical concern with respect to test conditions and production vehicle variability, both of which may have some bearing on the proposed inspection program.

If you have any questions or we can be of further assistance in this, or other motor vehicle noise matters, please feel free to call or write.

Sincerely yours,

Keith D Cherne

Keith D Cherne
Staff Project Engineer
(313) 575-1975

Attachment (5 copies)

cc: P.P. Pataky

File: 382-OR

General Motors Comments
with respect to
State of Oregon: Proposed Rule Amendments Establishing
Noise Emission Standards for Motor Vehicles
Subject to the Portland Area Motor Vehicle
Inspection Program; OAR Chapter 340, Division 24

General

General Motors has reviewed the Oregon Environmental Quality Commission proposal to adopt rules to include a stationary exhaust system noise test within the Portland area motor vehicle inspection program (VIP) and offers the comments that follow for consideration by the Oregon Environmental Quality Commission.

As a motor vehicle manufacturer, General Motors recognizes in-use enforcement as an essential element in a program intended to control noise from motor vehicles. It is also important that such an enforcement program take into account the variety of models and power trains that exist in the vehicle population so that it does not result in noise citations for properly equipped and well-maintained vehicles.

The comments address technical issues with respect to conducting the close-in stationary exhaust system noise test proposed for use in the Oregon inspection program and present information relating to the tailpipe sound levels and vehicle-to-vehicle variability of exhaust systems on representative recent production vehicles.

Technical Issues

As a minimum, external factors that can influence sound level readings should be reasonably controlled. In this area, it is practical to consider the specified conditions for testing as determined during development efforts for the SAE J1169 and California stationary test procedures. These conditions are specified as follows:

SAE J1169 -

"3.1 A suitable test site shall be out-of-doors and shall consist of a level concrete, asphalt, or similar hard material flat surface, free from snow, grass, loose soil, ashes, or other absorbing material. It shall be an open space free from large reflecting surfaces, such as parked vehicles, buildings, billboards, trees, shrubbery, parallel walls, people, etc., within 3 m (10 ft) radius from the microphone location and any point on the vehicle."

The California Stationary Test (as adopted in Section 17-18.76 of the Rules of the Florida Dept. of Environmental regulation) -

"(1) Measuring Site. The vehicle under test shall be positioned either on outdoor pavement or on a shop floor (not over a hoist or pit) in location where the exhaust outlets face an open shop door. No sound reflecting surface other than the pavement and the vehicle being measured shall be within 10 feet (3.0 m) of the exhaust outlets."

If all VIP stations do not meet the open area requirements of these test procedures, consideration should be given to a duplicate test in an area that does meet these requirements for vehicles that initially do not meet the 93 dB standard in the proposed rule.

Additionally, as presently understood, there will be an exhaust emissions probe inserted in the tailpipe of the vehicle under test during the time the noise test is being performed. While General Motors has no experience with the stationary test as performed with a tailpipe probe inserted, there is evidence that, in some cases, restrictions of the exhaust outlet can cause "hissing" as the exhaust gases exit the tailpipe and that the hissing can affect sound level readings. Therefore, it is recommended that consideration be given to a duplicate test, without the probe, for vehicles that initially do not meet the 93 dB standard in the proposed rule with the probe installed.

Sound Levels and Variability

Significant resources were expended in development of the California and SAE J1169 stationary exhaust system noise test procedures. Both objective sound level data and subjective jury evaluation were involved in derivation of the 95 dB standard commonly used in in-use enforcement programs. The combination of objective and subjective methods arrived at the 95 dB standard as a rational criterion, or "coarse filter," for purposes of separating factory- or equivalent-equipped vehicles from those with modified or defective exhaust systems, particularly "gross violators."

Consequently, General Motors and its exhaust system suppliers, for both original equipment and aftermarket, have directed their efforts toward equipment designs and test programs that center on the 95 dB standard with an adequate design margin. It should also be pointed out that the stationary test is essentially secondary to the vehicle manufacturer goal of compliance with an 80 dB passby sound level standard in accordance with the SAE J986 wide open throttle test as mandated by state and local light vehicle noise regulations in the United States.

With few exceptions, light vehicles that meet an 80 dB passby noise standard will also meet the 95 dB stationary noise standard.

2500 rpm Engine Test Speed

Based on available information, it appears that the 93 dB standard at 2500 rpm contained in the Oregon proposal has the potential for being as effective as the 95 dB standard at three quarters of rated rpm as an enforcement criterion.

To support this position, General Motors has performed a number of tests on available vehicles to evaluate the relationship between engine speed and tailpipe sound levels. The results of these tests are presented in Table 1 and graphically summarized in attached charts 1 through 8.

All charts indicate a tendency for lower engine speeds to result in lower tailpipe sound levels. The relationship between engine speed and tailpipe sound level, however, is not necessarily linear, exponential, logarithmic nor

any other predictable correlation as might be expected. The most likely reasons for this (which are beyond the scope of these comments) are thought to lie in the areas of exhaust pipe length and number of bends, pipe diameter, inclusion of a catalytic converter in the system and muffler and/or resonator design, i.e., the number, type and design of baffles, number and design of flow pipes inside the muffler or resonator, single or dual inlets or outlets, and muffler and/or resonator volume. These design features can cause resonant peaks at discrete engine speeds which could account for the shape of the engine rpm vs tailpipe sound level curves shown in charts 1, 3, 4, 5 and 8.

Another aspect of the 2500 rpm test engine speed evaluation that appears in the data in Table 1 is the run-to-run variability of the stationary test. The data indicates up to a 2 dB variation at any one engine speed in the primary area of interest (2300 to 2700 rpm) for the vehicles and power trains tested with a maximum of 4 dB for vehicle number 1 at 2000 rpm. This variability should not be problematical at the proposed nominal 2500 rpm for the Oregon test, except in the case of vehicles that are marginal with respect to the 93 dB standard. In these cases, Oregon inspection officials should be aware that such variability exists, especially if the inspection process relies on a single run test result as the proposal indicates.

Furthermore, it is apparent, from the differing slopes of the curves that appear in each of Charts 1 through 8, that the relationship between engine speed and tailpipe sound level varies. As shown in Table 2., the approximate linear slopes of the means of the test runs, which describe the relationship of engine rpm and tailpipe sound level, range from 0.4 dB per 100 rpm in Chart 6 to 1.0 dB per 100 rpm in Chart 8. The curves in Charts 1 and 3 are considered too random to permit a meaningful evaluation of engine rpm to tailpipe sound level. Nonetheless, the tendency toward lower sound levels at lower engine speeds appears, and tends to support the proposed standard of 93 dB at 2500 rpm.

Vehicle-to-Vehicle Variability

A summary of vehicle-to-vehicle variability test results appears in Table 3. These data have been gathered on 1979 to 1984 model year General Motors passenger cars. While some of the vehicle types or engines are no longer in production, they are representative of vehicles presently in service.

Some aspects of the variability data are worthy of discussion. The vehicle types depicted in Table 3. are representative of production configurations which were readily available in sufficient quantities to permit accumulation of a statistically significant sample within a relatively short period of time. However, they are not representative of the entire spectrum of product offerings. It is noted that, while the entire spectrum of product offerings is not shown, the range of the stationary test sound levels of recent production vehicles is represented. All of the vehicles represented are designed and built to comply with an 80 dB wide open throttle passby noise standard.

In the data presented, which is considered typical with respect to vehicle-to-vehicle variability for the stationary test, the nominal range of standard deviations is from about 0.5 to 1.5 dB. It is possible that a 93 dB

stationary test standard, as proposed, may be marginal with respect to some factory- or equivalent-equipped vehicles in view of the standard deviations shown.

Some other aspects of the variability study include the fact that testing of vehicle type 'E' revealed that, of 19 vehicles tested, there appeared to be two distinct sub-groups wherein 15 vehicles were closely grouped at a mean sound level of 77.4 dB and the other four vehicles were closely grouped at a mean of 82.8 dB, some 5 dB higher. Specifics are not available, but it is considered a possibility that the two groups represent exhaust equipment provided by two different manufacturers, though the difference does not appear in the passby data. This can happen because General Motors provides specifications for exhaust equipment, such as mufflers and resonators, for a specific power train and has various suppliers develop this equipment on a test vehicle. With the exceptions of the type and thickness of material to be used and the space envelope and its construction as specified by General Motors, the suppliers develop individual, and most likely different, proprietary internal configurations. Based on performance, engineering judgment and other factors, General Motors then places equipment orders with one or more suppliers. This equipment may have similar external shapes but somewhat different noise characteristics depending on the internal construction. It is not known how extensive the multiple-supplier effect may be with respect to the entire product line, but there is a possibility that it will show up in inspection testing of otherwise nominally identical production vehicles.

In another instance, some vehicles in the test sample were classified as "outliers" when they exhibited sound levels 3 or 4 dB higher than the rest of the vehicles in that sample. It is suspected that the outliers were equipped with mufflers that contained slight differences, such as a missing baffle or a misplaced baffle. Although this type of difference appears very infrequently, it can happen in the mass production process. A visual inspection of such vehicles obviously would not identify an anomaly in factory- or equivalent-equipped vehicles but stationary test results could reflect such differences when testing otherwise nominally identical production vehicles.

Summary Remarks

- It should be recognized that the primary noise goals of General Motors, as a light vehicle and exhaust equipment manufacturer, are:

  + Compliance with an 80 dB passby noise standard, and

  + Compliance with a 95 dB stationary test noise standard at three-quarters of rated engine speed.

- In general, vehicles designed and built to comply with an 80 dB passby noise standard should also meet the proposed 93 db stationary noise standard at a nominal engine test speed of 2500 rpm.

- A stationary test sound level standard of 93 dB at a nominal 2500 rpm engine test speed should provide a satisfactory "coarse filter" for checking the adequacy of light motor vehicle exhaust systems.

- An inspection program should consider variations in exhaust equipment and test variability so it does not result in the citation of vehicles that are factory-equipped and in compliance with the existing 80 dB passby noise standard or otherwise properly maintained.

orestat/kc

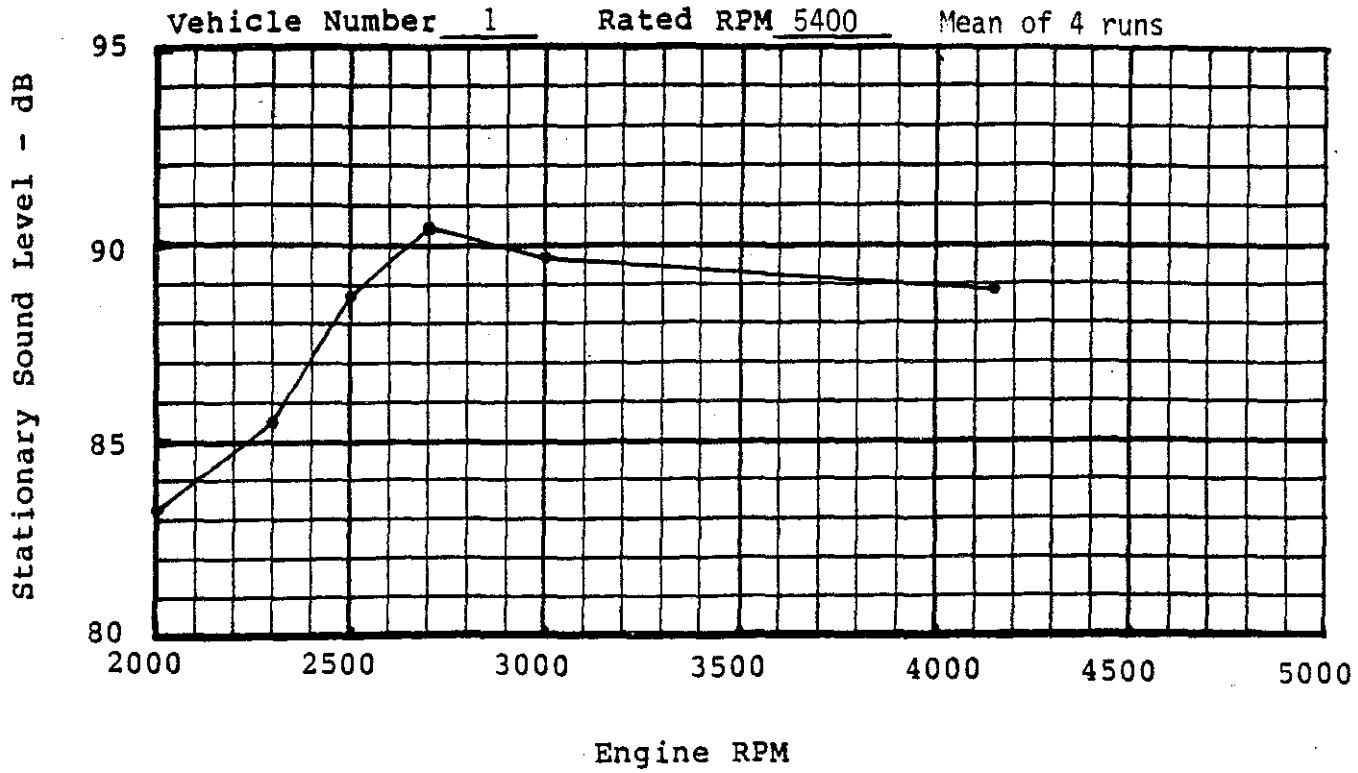
Table 1.

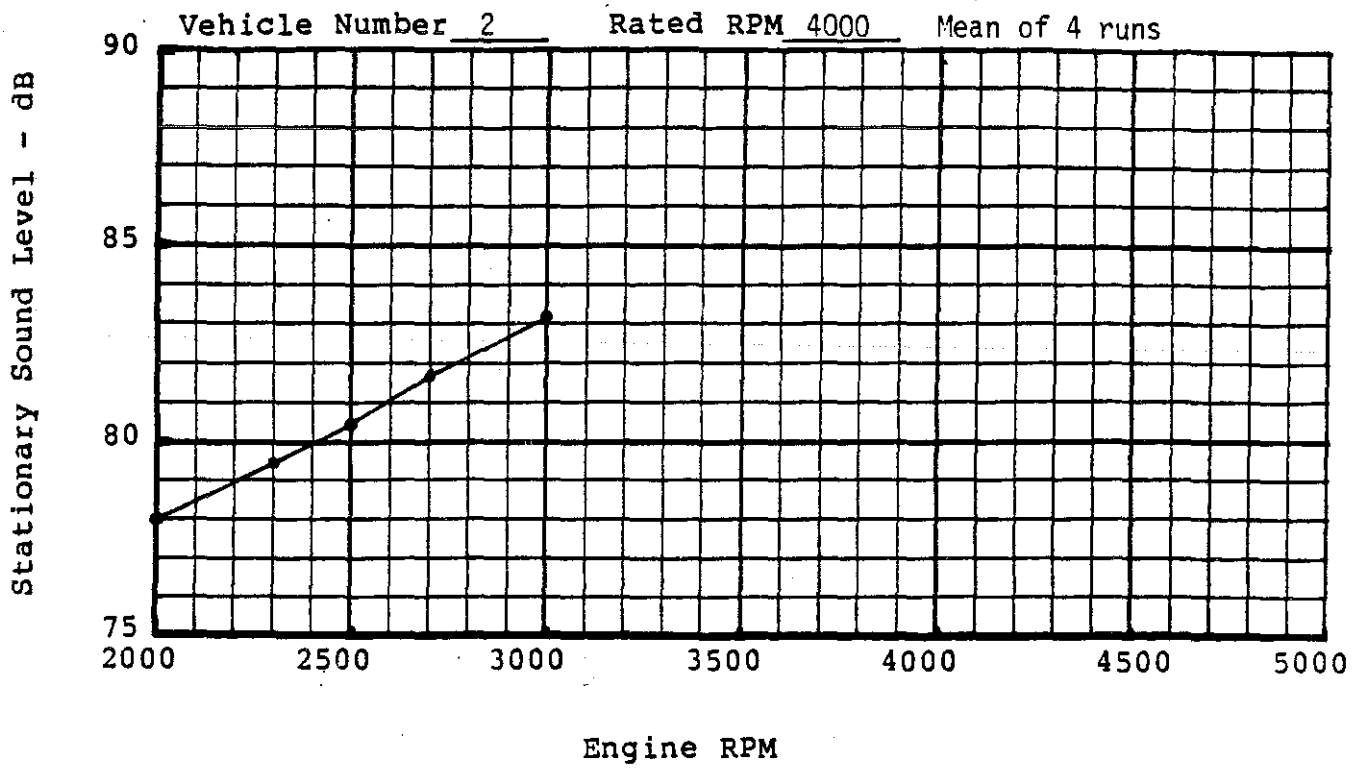
Light Vehicle Sound Levels as a Function of Engine Speed Measured at 0.5 Meters from the Tailpipe Outlet

Vehicle Number	Rated RPM	Engine Speed - RPM 2000	2300	2500	2700	3000	3/4 Rated (test rpm)
1	5400	84.0	85.5	89.0	90.5	90.0	89.5(4150)
		85.0	85.0	88.0	90.5	90.0	89.0
		81.0	86.0	89.0	90.5	89.5	88.5
		83.0	85.5	89.0	90.0	89.5	88.5
	Mean	83.2	85.5	88.8	90.4	89.8	88.9
2	4000	79.0	79.0	80.0	81.5	83.0	(3000)
		79.0	79.0	80.0	81.5	83.5	
		77.0	80.0	81.0	82.0	83.0	
		77.0	80.0	81.0	82.0	83.0	
	Mean	78.0	79.5	80.5	81.8	83.1	
3	4000	85.0	84.5	83.5	84.0	91.5	(3000)
		85.0	84.0	83.5	83.5	92.0	
		83.0	84.0	83.5	85.0	91.0	
		83.5	84.0	83.5	85.0	92.0	
	Mean	84.1	84.2	83.5	84.4	91.5	
4	4800	76.0	78.0	81.0	81.0	82.5	84.0(3600)
		76.5	79.0	81.0	81.0	82.5	83.5
	Mean	76.3	78.5	81.0	81.0	82.5	83.8
5	4000	82.5	86.0	86.0	87.0	89.4	(3000)
		81.6	86.5	86.5	87.0	89.5	
	Mean	82.1	86.3	86.3	87.0	89.5	
6	3600	85.0	87.0	87.5	87.8	89.5	(2700)
		85.0	86.5	87.5	88.0	89.0	
		87.5	86.0	87.0	88.0	89.5	
		85.5	86.0	87.0	88.0	89.0	
	Mean	85.8	86.4	87.3	88.0	89.3	
7	3200	81.0	82.0	83.2	86.0	89.5	82.5(2400)
		81.0	82.0	83.5	86.0	89.5	83.0
	Mean	81.0	82.0	83.4	86.0	89.5	82.8
8	4400	78.0	81.0	82.5	84.5	86.0	91.5(3300)
		78.0	80.0	82.5	84.0	86.5	91.5
		78.5	80.0	80.0	84.5	84.5	91.0
		78.0	79.0	81.0	84.0	84.5	90.0
	Mean	78.1	80.0	81.5	84.3	85.4	91.0

Data for Charts 1 through 8.

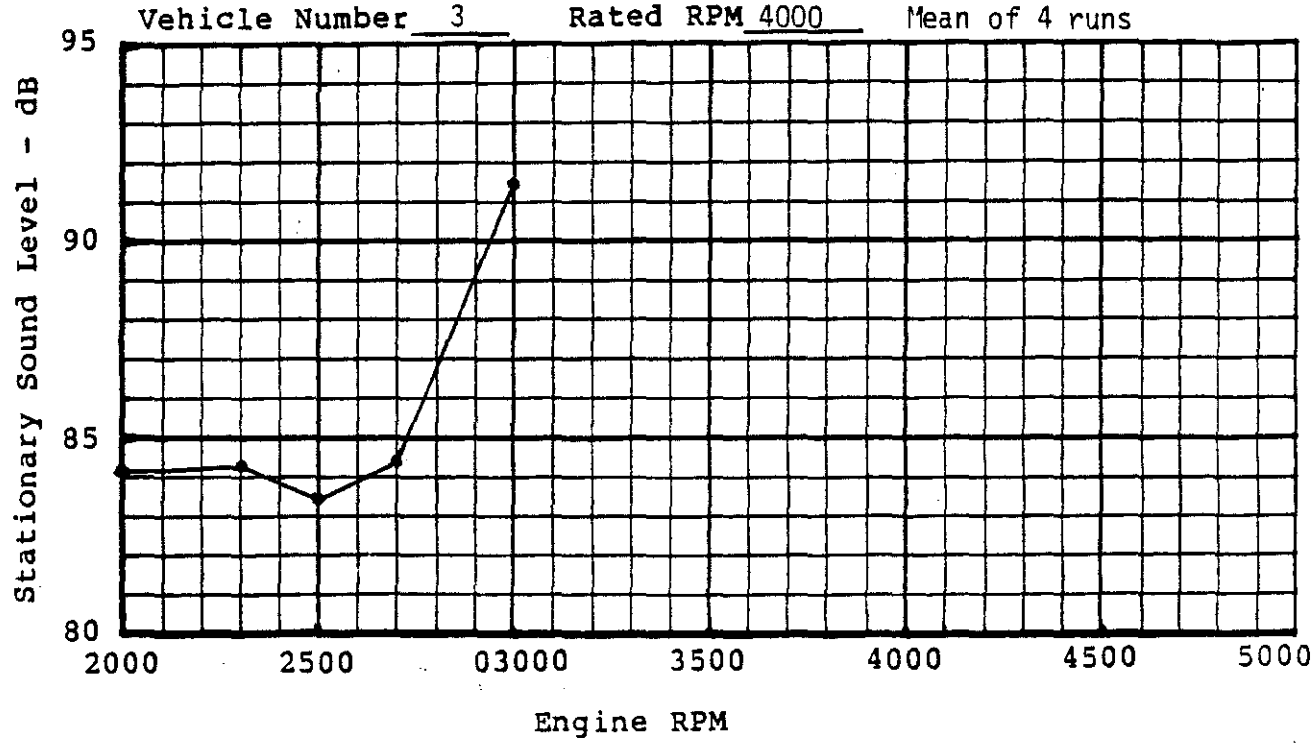
orestat/kc

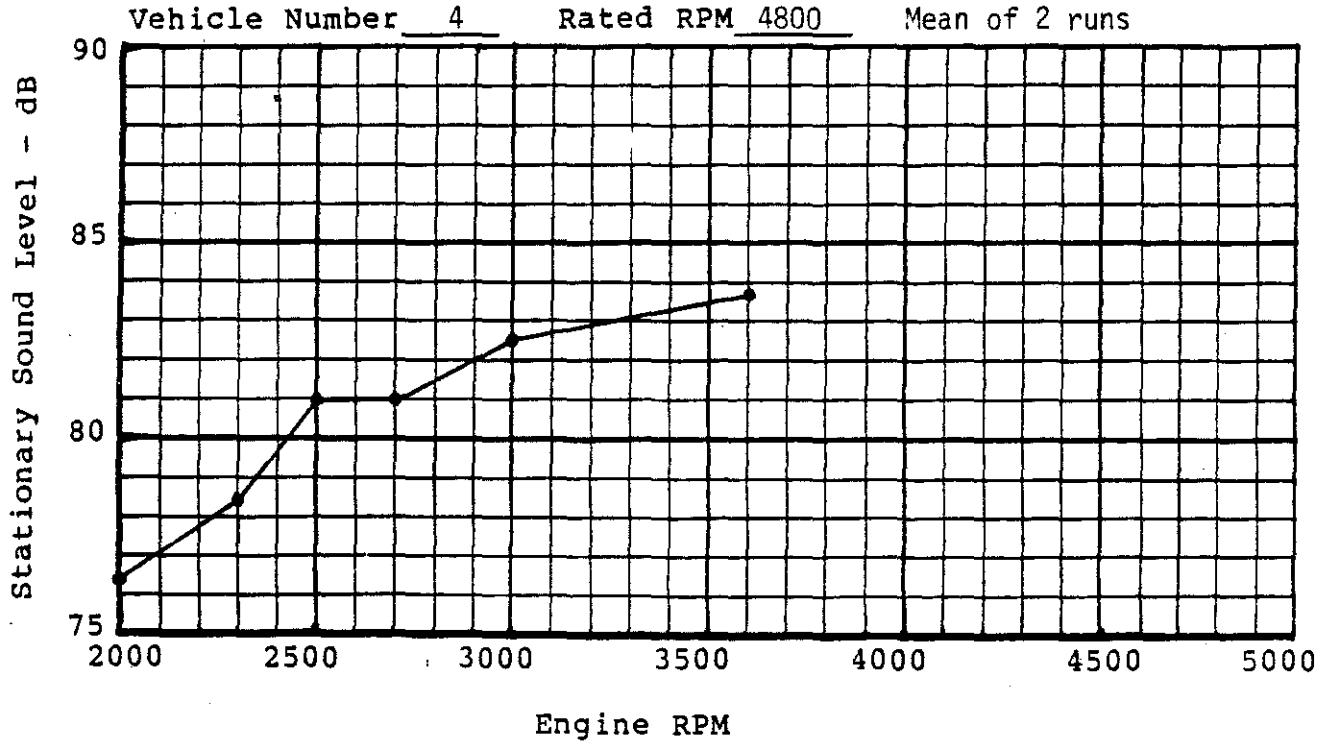




Stationary Exhaust System Sound Level Data for Close-in (0.5 m) Test.

Source: Table 1.





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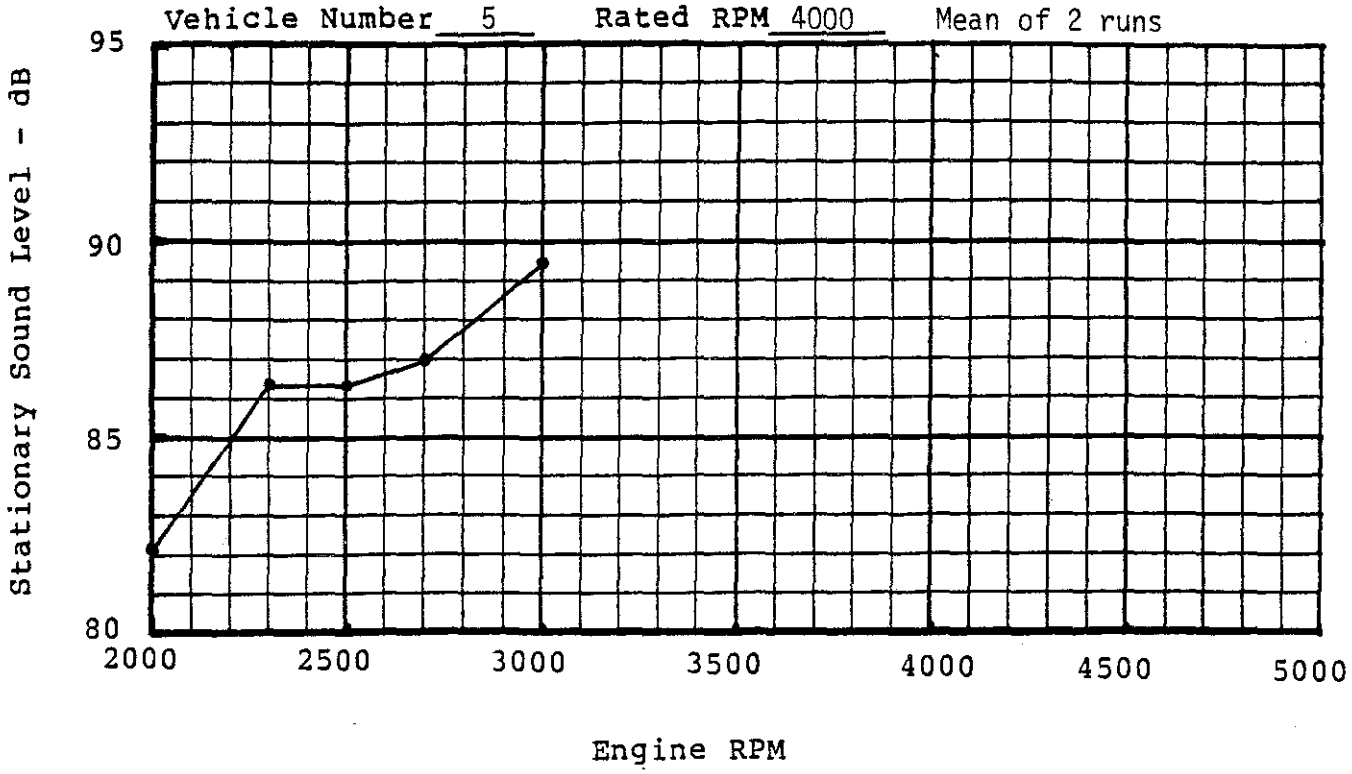
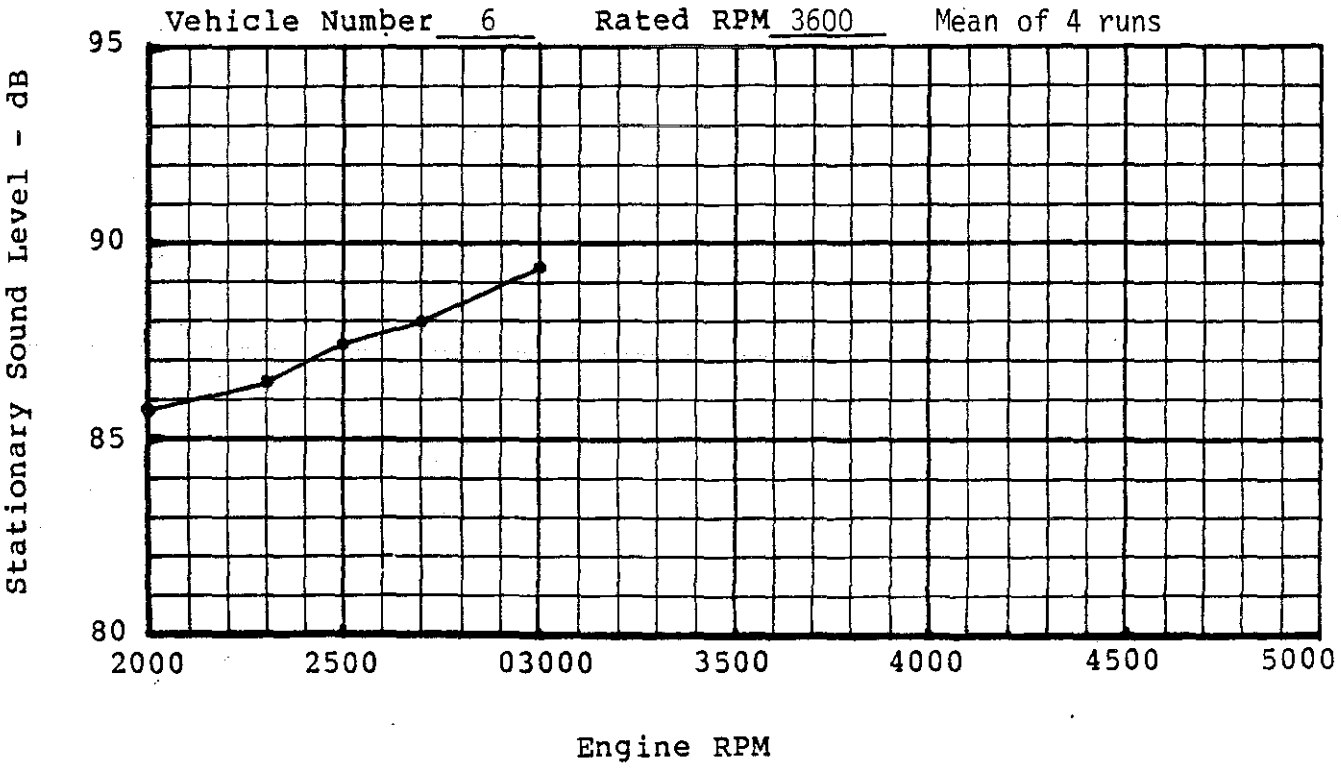
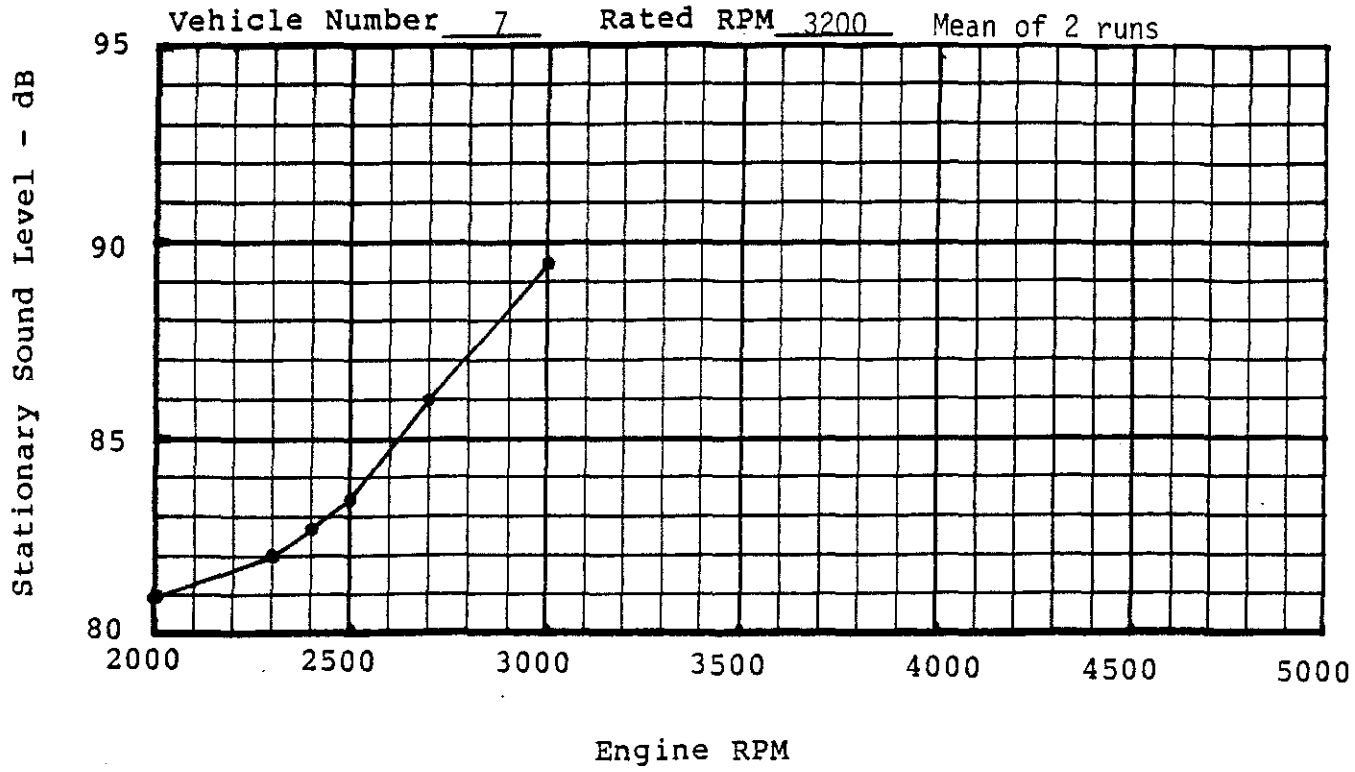
Source: Table 1.

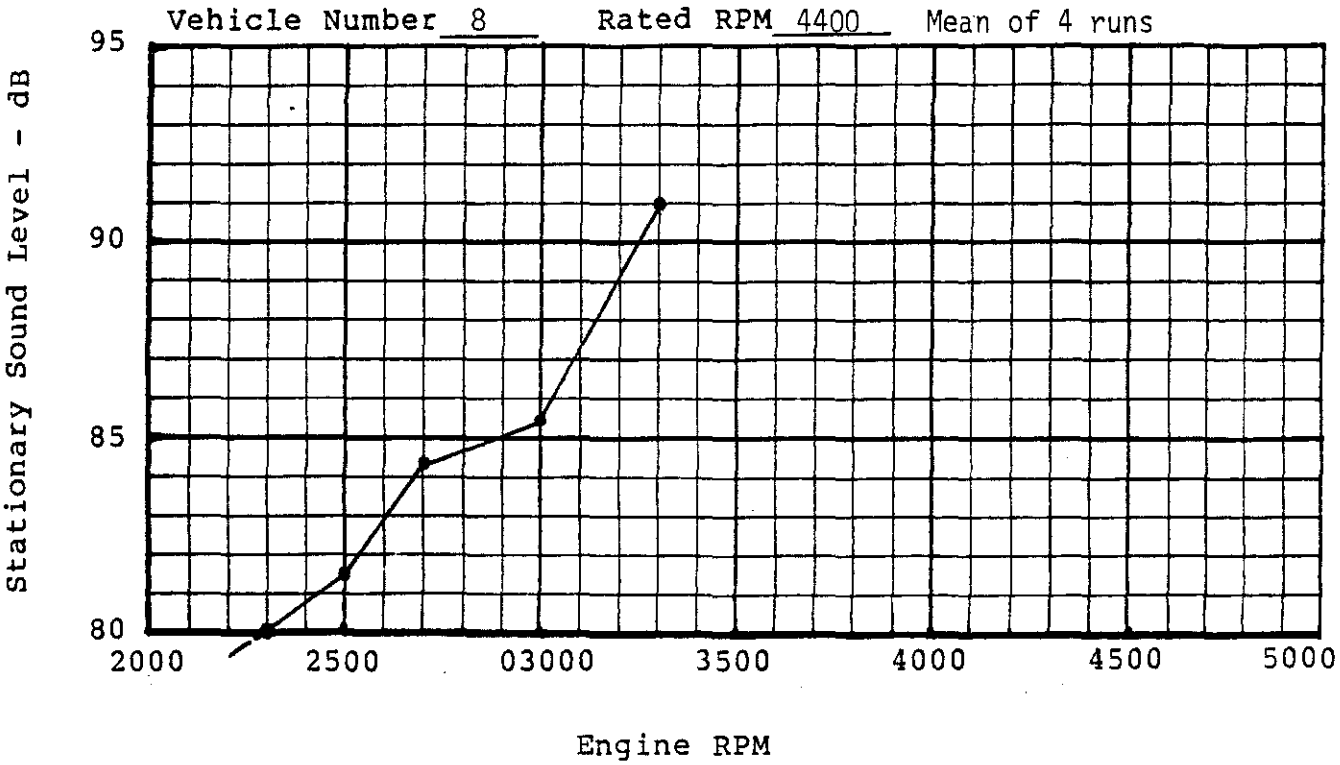




Stationary Exhaust System Sound Level Data for Close-in (0.5 m) Test.

Source: Table 1.





Stationary Exhaust System Sound Level Data for Close-in (0.5 m) Test.

Source: Table 1.

Table 2.
Approximate Change in Tailpipe Sound Level per 100 RPM Change in Engine Speed for Representative General Motors Light Vehicles

Vehicle (Chart) Number	Change in Tailpipe Sound Level - dB	Change in Engine Speed - RPM	dB/100RPM*
1	Too variable for linear approximation.		
2	5.1	1000	0.5
3	Too variable for linear approximation.		
4	7.5	1600	0.5
5	7.4	1000	0.7
6	3.5	1000	0.4
7	8.5	1000	0.8
8	12.9	1300	1.0

* - dB/100RPM values rounded to the nearest 0.1 dB.

orestat/kc

Table 3.

Close-in Stationary Exhaust System Noise Test Data
Variability Summary for
Representative General Motors Passenger Cars
(1979 and later model years)

Vehicle Type	Sample Size	Passby - dB		Static - dB				Rated RPM	Comments**
				3/4 Rated		3000 RPM			
		Mean	S/D*	Mean	S/D	Mean	S/D		
A	21	72.3	0.91					4200	Out of production
	18			80.5	1.92				
	19					79.8	2.35		
B	21	73.0	0.42	77.5	1.05	78.5	1.16	3800	
C	21	78.2	1.04	90.7	1.56	93.1	0.73	3600	Diesel - Currently rated @ 3200 rpm
D	21	74.9	0.77					5200	
	17			82.9	0.54	80.8	1.05		
E	20	72.8	0.65					4000	Static for n=15
	19			78.6	2.34	78.6	2.34		Mean:77.4;S/D:0.72
F	20	70.2	1.00	78.4	1.22	79.5	1.42	3800	Turbo - No longer produced.
G	21	69.1	1.12					3800	
	20			78.1	0.47	79.4	0.46		
H(A)	11	73.7	0.99	80.9	1.25	78.9	1.39	4400	Auto Trans
H(M)	3	72.2	0.81	80.0	0.82	77.9	1.65		Manual Trans
H	15	--	--	80.6	1.19	78.7	1.48		Combined
I(A)	8	74.6	0.65	82.8	0.61	79.9	1.19	4800	Auto Trans
I(M)	5	69.2	0.74	83.6	0.43	81.4	0.89		Manual Trans
I	13	--	--	83.1	0.64	80.5	1.30		Combined
J	10	78.8	0.93	92.5	1.00	90.6	0.85	4800	

* - S/D is the Standard Deviation (1 sigma) for sample shown.

** - Notes on Comments:

1. For vehicle type 'E' - 4 of 19 test vehicles had a sub-group mean of 82.8 dB for the stationary test at 3000 rpm. The remaining 15 vehicles yielded the mean and the standard deviation shown under the comments.

orestat/kc

Kawasaki Motors Corp., U.S.A.

2009 East Edinger Avenue, P.O. Box 11447, Santa Ana, California 92711 • (714) 835-7000

August 16, 1984 GR4-115RH

Mr. John Hector
Oregon Department of Environmental Quality
Air Quality Division/Noise Control
P.O. Box 1760
Portland, OR 97207

Re: Proposed Rules for Motor Vehicle Noise Inspections

Dear Mr. Hector:

Kawasaki Motors Corp., U.S.A. wishes to comment in support of the petition to conduct noise emission inspections of motorcycles (and other vehicle categories) in conjuction with the existing exhaust emissions inspection program currently under way in the Portland area.

Kawasaki has long maintained that the most effective means of reducing the annoyance and adverse impacts caused by noisy motorcycles is to identify and correct the noisy vehicles, not to try to reduce further the noise level of the quiet vehicles. By adopting the EPA limits for new motorcycles, the State of Oregon has already assured itself of a population of new motorcycles that are quiet. Some form of enforcement program is advisable to ensure that they stay quiet, and to encourage owners of motorcycles which have suffered deterioration or modifications that increased the noise level to return their machines to a quiet configuration. Kawasaki believes that including motorcycles in a periodic noise inspection program can help to reduce the annoyance caused by the relatively small percentage of the motorcycle population that are excessively loud.

The test procedure and enforcement limits of OAR 340-35-030 should be effective in identifying the majority of motorcycles that are responsible for excessive noise. Should Oregon decide to proceed with this proposal, Kawasaki recommends use of these parameters.

Sincerely,
KAWASAKI MOTORS CORP., U.S.A.

Roger Hagie
Manager, Government Relations

RH/bw

MOTORCYCLE INDUSTRY COUNCIL, INC.

Executive Office

August 10, 1984

Mr. John Hector
Administrator, Noise Control Division
Oregon Department of Environmental Quality
P.O. Box 1760
Portland, Oregon 97207

Dear Mr. Hector:

The Motorcycle Industry Council would appreciate your consideration of the following comments regarding the inclusion of motorcycles in a motor vehicle noise inspection program. As a general rule, the MIC supports stationary testing to control excessively loud motorcycles.

You have asked for comments on modifying the SAE J1287 test procedure to simplify field enforcement of noise standards. SAE J1287 MAR 82, Appendix A-4, Enforcement Testing, provides for an alternative test speed of one half "redline" RPM with an appropriate tolerance of 3 dBA added to the applicable sound level limit. We prefer, however, that the one half maximum rated horsepower RPM be used whenever possible. We also ask that you consider a pilot study to compare the two test methods and evaluate the program after a few years.

Thank you for allowing us to comment at this late date of your regulatory review process.

Sincerely yours,

Paul Golde
Technical Analyst

PG/bjr

cc: Technical Committee

3151 Airway Avenue, Building P-1 • Costa Mesa, California 92626 • (714) 241-9251

SPECIALTY EQUIPMENT MARKET ASSOCIATION

Dedicated to serving the interest of the specialty automotive aftermarket

11540 E. Slauson Ave.
P.O. Box 4967
Whittier, CA 90607
213/692-9402

August 13, 1984

DEQ Air Quality Division
Noise Pollution Control
P.O. Box 1760
Portland, Oregon 92707

Gentlemen:

Subject: Proposed Rules for Motor Vehicle Noise Inspections

On behalf of the Specialty Equipment Market Association (SEMA), I would like to thank you for the opportunity to comment on the proposed rules for the Motor Vehicle Noise Inspection Program recommended for the Portland area.

SEMA is an Association with 1600 members, made up of manufacturers, distributors and retailers of specialty aftermarket parts for automobiles and trucks, some of which would be subject to the rules and standards being considered by the Department of Environmental Quality. We have had an opportunity to review some of the materials that are the subject of public hearings scheduled for August 15, 1984, and we have a few comments.

In reviewing the documents that we have been provided, we are concerned that the proposal suffers some serious impediments. We find the proposal contains language that has not been properly defined and procedures lacking in specificity, as would be required to put those subject to the rule on notice as to what is expected of them.

Of particular concern to SEMA are the following:

1. The use of the word "modified". Without definition it allows for subjective judgements, and would appear to serve no useful purpose to any written or un-written procedure.

2. We agree that an aural test is subjective, but would be acceptable as a time-saver where determining whether a vehicle should be tested rather than failed.

3. The proposed 2500 RPM test is an obvious attempt to reduce the overall emission/noise test time, however, the emission test procedure permits sampling between

2200 RPM and 2700 RPM. This allowable difference in RPM could produce a 3 dBA variance in sound levels which could result in failing a normally complying vehicle or the passing a non-conmplying vehicle.

4. The proposal does not specify a set procedure for the placement of the test instrument's microphone other than exhaust noise levels are to be made no less than 20 inches from the tailpipe opening. Noise level differences of from 1 dBA to 3dBA can be realized by moving the instrument microphone from a direct line rearward from the tailpipe to a 45 degree angle from the tailpipe opening, maintaining a 20 inch distance.

5. The proposed procedure does not address the test site location, the close proximity of other vehicles, walls, emission test equipment, atmospheric conditions, instrument calibration and operator skill, all recognized and accountable for test variations.

SEMA believes it was the Department's intent to develop a cost effective, time expedient program capable of achieving its intented purposes without creating unreasonable burdens on the public or on the regulated industry. To this end, SEMA respectfully requests the following changes to your proposal.

1. Delete the word "modified" from any written or unwritten procedures to eliminate any misinterpretations as to the use of non-original exhaust products.

2. Amend the "2500 RPM Test Option" to read "3000 RPM Test Option" and adopt the uniform state and industry model regulation VESC-21 established by the Vehicle Equipment Safety Commission, approved August 1981, entitled "Standardization of Motor Vehicle Exhaust Systems Including Maximum Noise Levels" (enclosed). This regulation adopts noise test procedures in accordance with SAE J1169 (1977), (enclosed), "Measurement of Light Vehicle Exhaust Sound Level Under Stationary Conditions" and a maximum noise level of 95 dBA as established by many states, including California and Oregon (Ref. 340-35-030 - In-Use Road Vehicle Standards - Stationary Test). This stationary measurement procedure and sound level has been used for many years by muffler manufacturers, muffler installers and enforcement agencies alike, and has proven to be a very satisfactory method for control. Any deviation to this procedure and sound level could cause undue hardship on all concerned.

SAE J1169 addresses all other concerns SEMA has with the Department's

proposed program, such as, inconsistent test RPM, instrument microphone positioning and site location.

SEMA would recommend that any noise measurement be made outside in accordance with SAE J1169 immediately prior to emission testing where the 3000 RPM engine speed would aid in maintaining or giving reasonable assurance of catalytic converter light-off on those vehicles so equipped providing for more consistent emission measurements.

If SEMA can be of further assistance, please feel free to contact me.

Sincerely,

Robert C. Burch
Technical Director

RCB/aq

Attachments: VESC-21
SAE J1169

6401 S. E. Thiessen
Milwaukie, OR 97222
August 19, 1984

Mr. James E. Petersen, Chairman
Oregon Environmental Quality Commission
c/o DEQ Noise Control
P.O. Box 1760
Portland, Oregon 97207

Dear Mr. Petersen:

I live south of Milwaukie on a heavily traveled two lane road where, during weekdays, a vehicle with an excessively noisy muffler passes by at least once every minute. People living on our street and thousands of people living on heavily traveled thoroughfares continuously experience the palpable intrusion of excess noise from excessively noisy vehicles that affects their quality of life, their health, and their property values.

The vast majority of vehicles pass with little noise, but there has been essentially no effort made by law enforcement agencies to apprehend violators of the law. People drive vehicles equipped with no mufflers or modified systems that seem to accentuate the noise of their particular muscle car, pickup or van. They are in violation of state law ninety-five per cent of the time their engines are running, yet they are never apprehended in the area of most jurisdictions. For a multitude of reasons (many not valid) our traffic officers have done essentially nothing to correct the condition, to apprehend the offenders. The DEQ to date has done essentially nothing to correct the situation. Cars that are noisy a quarter of a mile away are driven with impunity for years on end. I have followed the process for many years.

Finally, we see movement. The fact that your commission unanimously chose to consider the current proposed rules for motor vehicle noise inspections demonstrates that you have the knowledge, the concern, and the courage to implement activities to enforce a law.

The truth of the matter is that enforcement of laws regarding the control of noisy mufflers is not a difficult thing. The driver whose system grossly violates the statute is easily identified as he is almost constantly in violation as he drives. Even the allotment of a small portion of a police department's personnel would have an effect upon those violating the law as they would be forced to spend money to put their system back into compliance. They would pass the word on to others who would then be far less likely to spend the money to equip their vehicles with illegal mufflers or pipes. I would like to comment here that it seems imperative to me that the DEQ should in no way permit itself to be placed on the defensive by those who will claim that they face a hardship when they must spend money to place their vehicles in compliance. In many cases they have spent money to make their vehicles non-compliant, i.e., extremely noisy. The victims are those who now endure the obscenely noisy vehicles that will be identified if DEQ adopts the proposal to monitor noise emissions. Let us not be concerned that law-breakers face hardships such as spending money to achieve compliance.

All excessive noise that emanates from excessively noisy exhaust systems is so needless. The vehicles do not come from the manufacturer that way, but modifications to the exhaust system that essentially result in straight pipes permit the unrestricted sounds of internal combustion (loud explosions) to accompany the vehicle wherever it goes. A truly ridiculous situation exists when our major automobile companies are required to manufacture vehicles that comply with noise emission requirements set for the public welfare, yet, immediately after purchase the purchaser of that vehicle can make a farce of the whole process and safely change his exhaust system so that it gives off volumes of sound that threaten the well being of society wherever it is driven, mile upon mile upon mile. When many drivers create and drive such noisy vehicles, stress and tension is produced among the general public that tends to reduce the life span. A subtle kind of population control more or less.

Note: The law does not permit the driver to drive such a vehicle, but an easily enforceable law is ignored by the agencies that should address the problem.

I wrote that a noisy vehicle passes my house on the average of one a minute. Such a statement is based upon the number of cars passing by and the percentage of vehicles conservatively estimated to be in violation. In reality, as the sedate citizens file home in heavy numbers (thirty cars per minute, cars traveling two ways), very little noise emanates from their exhaust systems. On some weekends however (8:30 p.m. to 12:30 p.m. on Fridays and Saturdays), it is another story. It seems that the young people who are on the move on the weekends drive macho machines, e.g., VW Bugs with no mufflers, vans with straight pipes and muscle cars and pickups with no mufflers. Our street sounds like a racetrack and our homes are bathed in sound produced by machines operating in the 90 to 100 and above decibel ranges (I have tested them with a sound meter). At times we seem to experience an hour or two when that kind of noise is the rule rather than the exception. For reasons such as the location of restaurants, pubs, and certain businesses, the drivers seem to cruise our street back and forth several times within the evening. The sound waves actually shake walls that are not made of thick, rigid masonry. It is difficult to hear radios and televisions, and to talk in normal voice tones. I doubt that any member of the commission experiences conditions such as I describe here. The statistical average of one noisy car per minute does not represent what we experience.

I sincerely hope that the commission adopts the proposal. Frankly, I think that such a plan should have been adopted long ago, and I think that the legislature intended that the DEQ and the law enforcement agencies of our state should adopt programs to implement the law. Maybe we are seeing the beginning of meaningful control of a truly easily controlled and terribly bothersome sound source. Would that all of our noise problems could be as easily resolved as this major noise source can be.

I appreciate the time and concern that you and the other members of the commission give to society.

Sincerely,

John Hilley

John Hilley

Mr. John M. Hector
D.E.Q. Noise Control Program
522 S.W. Fifth Ave
Portland, Oregon

8/12/84

Dear Mr. Hector,

In your files under noise pollution, you may also find a section of correspondence from me relating to the need for the D.E.Q. to adopt vehicle noise pollution standards. My efforts to gain such controls were futile over a period of a year, but did take me to the Oregon State Legislature, D.E.Q., City of Lake Oswego, and the City of Eugene Or. which had the foresight to adopt vehicle noise level standards a number of years ago.

Noise pollution symposiums, such as one held in Seattle Washington some six or six years ago, as well as many other cities across the U.S. have proven evidence that continued vehicle emission noise levels which exceed specific decibel levels, are not only emotionally disturbing, but can be injurious to the human ear.

I am pleased that after the last hearing on this subject, which found primary opposition from auto parts suppliers ect., a new proposal is to be discussed August 15th.

I personally feel that a State such as Oregon which prides itself and rightly so, on its quality of environment, both air, clean air and water both would be derelict in its continuing efforts, if a meaningful vehicle noise limitation standard is not adopted.

Unfortunately I will be in Medford on business Wednesday, the day of the hearings, but after a year of efforts, I would appreciate some small reply regarding your progress.

Very Truly Yours,

Chad D. Metzger
P.O. Box 445
Lake Oswego, Or. 97034

P.S. Good Luck!

Mr. John M. Hector
Dept. of Environmental Quality
522 S.W. Fifth St.
Portland, Oregon

8/17/84

Mr. Hector,

I am pleased to find after the hearings held Wednesday, August 15th, that the D.E.Q. may soon adopt a labeled emission noise limitation program, which to many supporters is long overdue.

Understandably, labeled emission decibel testing equipment is an added expense, but we disagree with a staff report that states "raising engine R.P.M. To a Seventy four percent of maximum power level" would take To long, and recommended instead that noise labels be checked under normal R.P.M. emission standards currently in use.

Altered or defective exhaust systems produce their most objectionable noise levels under conditions of high compression, such as Jake Brakes on Trucks, or during free "idle down" from high R.P.M.'s.

Every kid who installed a set of 22 cm Porter mufflers learned quickly how To "beat the system" by easing on and off the accelerator gently, eliminating fast deceleration from high R.P.M.! (Or at least I did)

Our only comment regarding D recommendation

that motorcycles be exempted from noise emission standards is in the form of an analogy: "To polish your shoes properly, one must shine the entire shoe, and not just the toe".

Large trucks, such as semi-tractor trailer rigs may be another issue, for you addressed me some years ago, that there standards for emission noise levels were governed under federal regulations.

At any rate, we trust that both you and your agency will adopt a comprehensive and meaningful vehicle noise limitation program soon, for under present legislative laws, it will take three to four years after adoption, to just regulate those vehicles of Oregon license within the State today!

Very Truly Yours,

Chad O. Metzger
P.O. Box 445
Lake Oswego, Or. 97034

Route 1, Box 123A2
Newberg, OR 97132

August 16, 1984

Mr. John Hector
Department of Environmental Quality
P. O. Box 1760
Portland, OR 97207

Dear Mr. Hector,

I have recently become more aware of your efforts and the efforts on the part of others in the community to supress and control the excessive noise produced by motor vehicles.

I support efforts and commend you for the progress you have made to date. I might add that I am a motorcyclist and do support the concept of adopting regulations to include that vehicle in the noise testing procedures.

Very truly yours,

Peter H. Gray
538-5032
222-1644

AARON L. STAUFFER
P. O. BOX 25586
PORTLAND, OR 97225

8/6/84

Department of Environmental Quality,
Air Quality Division,
Noise Pollution Control,
P.O. Box 1760,
Portland, Oregon

Sirs;

The enactment of adequate measures to control and reduce noise pollution is a necessary and long overdue requirement to improve the quality of our ~~environment~~ environment.

Modern society depends heavily upon the use of motors in all fields of activity. The use of load enhancement systems on transportation vehicles is certainly the most offensive noise maker of our time. Let us do our whole society a favor by creating controls with enforcement powers to reduce unnecessary and offensive traffic noise.

Yours truly,
Aaron Stauffer

AARON L. STAUFFER
P. O. BOX 25586
PORTLAND, OR 97225

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROPOSED RULES FOR MOTOR VEHICLE NOISE [illegible]

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15, 1984
20, 1984

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DEQ
P.O. Box 1760
Portland, OR 97207
8/10/82

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

9:00 a.m.
August 15, 1984
Room 1400
522 S. W. Fifth Avenue
Portland, Oregon

and

7:30 p.m.
August 15, 1984
Room 602
Multnomah County Courthouse
1021 S. W. Fourth Avenue
Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Air Quality Division, Noise Pollution Control, P.O. Box 1760, Portland, OR 97207, but must be received by no later than August 20, 1984.

WHAT IS THE NEXT STEP: After public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation should come in September 1984 as part of the agenda of a regularly scheduled Commission meeting.

A Statement of Need is attached to this notice.

AS117.N

Sir -
We have a road problem in our neighborhood - we need to stop this problem - more. Thanks
Dale

RECEIVED
AUG 06 1984
Noise Pollution Control

33

July 22, 1984

DEQ Air Quality Division
Noise Pollution Control
P. O. Box 1760
Portland, OR 97207

Gentlemen:

I am glad to have received a copy of the summary of Proposed Rules for Motor Vehicle Noise Inspection with its invitation for comments. I appreciate this opportunity.

I am whole-heartedly in favor of stricter and enforceable motor vehicle noise control. The proposed expansion of the motor vehicle inspection program to include vehicles less that 20 years old, I think should be further expanded to include all operating motor vehicles that fall within the DEQ's jurisdiction regardless of age - though the inclusion of such vehicles over 20 years of ages would not include a great many more.

I strongly favor the petitioner's proposal that noise emissions limit requirements be extended to all licensed motor vehicles including automobile, light trucks, motorcycles, buses and heavy trucks. Noise is noise from whatever source generated. and I believe the DEQ should be empowered to set and maintain noise emissions standards for all vehicles under its jurisdiction; and the standards should be tight enough so that noise is really reduced to bearable levels. Motor vehicle exhaust noise is an increasingly vexing problem in my neighborhood, and, I'm sure, in other neighborhoods as well.

Questions that come to mind in connection with the proposal are:

> How are the proposed noise standards to be enforced on a continuing basis? Will determination of compliance, or non-compliance, be limited to the time of the biannual inspection? Not all noisy exhausts are due to worn or defective systems. So-called "modified" exhaust systems, resonating "pipes", are popular with certain people. They put them on their new or not-so-old cars. The roaring, house-rattling, gut-wrenching noise, which sends many of us, who live in once quiet neighborhoods, climbing the walls, at any and all hours of the day or night. In anticipation of the inspection, I understand, that noise levels can be reduced in order to comply with standards. What is to prevent "un-adjusting" back after inspection, and what provisions are contemplated for continuing enforcement of standards between inspections?

Will the DEQ noise control responsibilities co-ordinate with the responsibilities of existing noise control agencies? Will local police have enforcement power? How will citizens' complaints be handled? Will response to complaints be prompt enough to be effective. Will the complaint process be as simple as it is now? Or will the process become so cumbersome as to discourage and frustrate citizen efforts to get quick relief from this serious problem?

Enforcement, in my opinion, should require compliance and be accompanied by appropriate penalties for non-compliance - not merely a request from the enforcement agency without follow-up.

Noise from all sources seems at times to be getting out of hand, and I believe that limits should be set with adequate, workable provisions for compliance with strict standards by all of us with appropriate penalties for those who knowingly and wilfully violate those standards.

Very truly,

Calvin A. Clements

1834 S. E. 56th Ave.
Portland, OR 97215

RICHARD D. BACH
GEORGIA-PACIFIC BUILDING
PORTLAND, OREGON 97204

July 23, 1984

Oregon Department of
Environmental Quality
Air Quality Division
Noise Pollution Control
PO Box 1760
Portland, OR 97207

Re: Proposed Rules for Motor
Vehicle Noise Inspection

We were delighted to hear of your proposal to adopt rules requiring exhaust noise emission inspection procedures for automobiles and light trucks. As a family living adjacent to a busy thoroughfare (SW Vista Avenue), we are constantly subjected to a nerve-racking barrage of noise from automobiles, trucks, buses and motorcycles.

We submit that without an inspection program to preclude relicensing for excessively noisy vehicles, there will be no effective method by which you can enforce your vehicle noise standards. And in the absence of any meaningful enforcement program, the few inconsiderate or deliberately obnoxious individuals who create intolerable conditions in residential neighborhoods will remain free to ignore the law.

While we have not seen the petition to include motorcycles, heavy trucks and buses in this program, we agree that those vehicle categories should be inspected also. Those are among the heaviest contributors to exhaust noise, and we are at a loss to understand why they should not be regulated.

In addition, we trust that your program will include testing for exhaust noise under maximum loading conditions such as accelerating uphill (rather than merely at idling speeds).

Many vehicles are fairly quiet while idling, but produce horrendous noise when accelerating.

We would appreciate it if you would send us a copy of the complete proposed rule package you have prepared for this matter. Thank you for your efforts to control this serious problem.

Richard D. Bach

Virginia Burney Bach

RDB:twa

Aug. 20, 1984
1226 N.E. Stanton
Portland, Oregon 97230

D.E.Q. Air Quality Division
Noise Pollution Control
P.O. Box 1760
Portland, Oregon 97207

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
AUG 2.. 1984
AIR QUALITY CONTROL

Oregon Dept. of Environmental Control;

Your letter on Proposed Rules for Motor Vehicles Noise could be completely studied from N.E. San Rafael to N.E. Fremont on N.E. 122nd, producing no doubts in your minds what has to be done to curb this Noise Pollution Problems.

This is an excellent area to give you the true insight on a 24 hr. daily basis, for the answers you are seeking on all varieties of vehicles.

Try the N.E. Corner of 122nd & Stanton for your answer to buses.

My descriptions on any of these problems could not be adequately described, what is a real must, is for you to see, hear and smell for yourself.

I am writing this because I am pleased you care, as I care deeply also.

Thank You,

Mrs. Jeanne McDonald

RECEIVED
AUG 2 1 Recd
Noise Pollution Control

City of King City

15390 S.W. 116th Avenue
King City, Oregon
97223

August 16, 1984

Terry L. Obteshka
Noise Pollution Control
Dept. Of Environmental Quality
P.O.Box 1760
Portland, Oregon 97207

Dear Mr. Obteshka:

The proposal to amend OAR 340-24 to establish methods and standards for exhaust noise emissions for cars and light trucks in the Portland metropolitan area is commendable in its basic purpose to minimize noise pollution. However, to impose this restriction and testing upon one segmentof the population of this State, in the opinion of this jurisdiction, is both discriminatory and unconstitutional as it ignores what is possibly the largest segment of vehicular traffic arriving and departing the metropolitan area daily, those transient vehicles commuting from outside the area, which are equally guilty of noise above the established standards.

This also applies to the emissions system testing. The emission control testing program has been an abject failure in that it has not substantially reduced the amount of carbon monoxide and hydro- carbons in the atmosphere. The voluntary actions of industrial plants in the area to reduce their emissions have certainly attained more tangible results.

The farcial aspects of the test have been long proven and literally thousands of affected motorists have now made it a practice to re-adjust their engines after the test in order to make them run smoothly and economically without stumble and stall.

The purpose of this letter is an appeal to either make this mandatory testing, both of the emissions of noise and pollutants, a State- wide program, rather than one confined to a small segment of the motoring population. Then the full impact of the usefulness of the test would be readily ascertainable.

There seems to be no valid reason why a small number of citizens must pay $7.00 in order to obtain their car license, while others go scot-free. This also imposes a hardship on fixed income retirees.

Yours truly,

Denis Borman

Denis Borman
City Administrator

CC Senator Jim Simmoms

Representative Paul Phillips

File

4580 SW 160
Aloha, Oregon 97007

August 20, 1984

Department of Environmental Quality
522 SW Fifth
Portland, Oregon 97207

I wish this letter to become part of the received testimony for the proposed DEQ noise test. I have a number of concerns.

1. If it is true that 10% of all cars and light trucks are non-compliant, then you are asking nine people to bear extra cost and spend extra time in the test line in order to allow identification of the one offender. This is unfair to the nine complying people.

2. Emission testing is justified because the only way to identify an individual offender is to test him. It is impossible for a motorist to tell on his own whether his vehicle complies. (Residenst of Los Angeles know that it is easy to see the sum result of all offenders.) Such is not the case for exhaust noise: offenders can easily be identified on the road and dealt with there. The laws already exist. 100% noise testing is not justified.

3. Emissiin control equipment deteriorates more slowly and is more difficult to tamper with than an exhaust system. For that reason it is likely that a vehicle that passes a noise test may soon become non-compliant, either intentionally or otherwise, It is all too easy for a serious motorist, who may do all his own maintenance work, to install a quiet muffler for the purpose of the test only to remove it latter.

4. Offending vehicles registered outside the VIP Boundary (either legally or fraudulently) will not be tested.

5. The amount of noise a vehicle makes depends to a large degree upon how it is driven. Owners of motorcycles and modified vehicles tend to drive more agressively, thus augmenting the effect of their already loud vehicles. Police observation and control of these drivers is probably more effective than testing all vehicles statically, as the driver element of the noise production will be lost in the static test (whether at 2500 rpm or 75% of maximum power rpm.)

6. I suspect that large trucks (which are likely registered outside the VIP Boundary), motorcycles, and Tri-Met (which, being already financially strapped, will not be eager to take on another vehicle problem) make more noise impact than suggested by the DEQ staff. Yet they will probably be exempt.

7. I live near a highway and there non-engine noises (tires, wind, etc) are a problem that will not be addressed.

8. Most people are motivated to keep their vehicles free of excessive noise and leaks since a defective exhaust system is both uncomfortable

and dangerous, and does not result in better performance or fuel economy. Tampering with the exhaust emission system may very well enhance the vehicle's performance and economy.

9. I understand the frustrations of the petitioners. Two years ago I reported a drinking driver to the state police. I had a complete description of the driver and the vehicle, down to the brand of beer she was drinking behind the wheel. The state police dispatcher laughed at me. (I have since received the appropriate apology from Gil Bellamy.) My point is that once the police become aware that a problem causes public concern they will respond. The solution to the drinking/driving problem is not a sobriety test at license renewal time, but rather continuous police observation. The same reasoning follows for noise. The state of an exhaust system is as easily changed as the state of the driver's mind.

In conclusion, I oppose a vehicle noise testing program for the following reasons:

a. It is too easily evaded.

b. The inconvenience to the total driving population to identify a few violaters is unwarranted.

c. Only a small part of the total noise problem is addressed.

d. This is a heavy-handed, meat cleaver approach to the noise problem.

e. It will be more effective to single out offenders on an individual basis.

Sincerely,

Jonathan Axt,
Registered Professional Engineer

Miles
12400 S. E. Knapp St.
Portland, Or. 97236

Env. Quality Comm.
522 S. W. 5th. Ave
Portland, Or. 97201

To Whom it May Concern:

I am opposed to any government control over noise inspection. It becomes an added burden to the tax payer. Governmental organizations are proven disasters when it comes to any form of efficiency. Your DEQ inspections on emmissions are a farce. It would be better for the people and the economy if inspections were conducted by private dealers licensed by the state. In order to reduce government spending ~~XX~~ I would like to suggest that you abandon these centers and let business inspect with a scientifically proven emmission formula all motor vehicles for noise and air quality. With a program conducted by private business think of the money that could be saved by the government and the added revenue to an economy.

Sincerely, Mike Miles

Mike Miles

8-16-84

THIS IS BAD ENOUGH, BY HAVING A POLLUTION CONTROL WHICH IS MICKEY MOUSE, AND A RIPOFF AS I SEE NEW CARS SMOKING ALL THE TIME. NOW YOU WANT A NOISE CONTROL, AND GOD KNOWS WHAT ELSE AFTER THAT.

I THINK THE AMERICAN PEOPLE BETTER START DOING THINGS ABOUT JUNK LIKE THIS.

SIGNED BY

RIP OFF

AUGUST 16,1984

To the DEQ

Good !good ! good ! We live near the Beaverton -Hillsdale Hwy, and I can't begin to tell you how many times we are awakened by cars and motorcycles in the middle of the night who seem to think that having loud cars or cycles make them real MACHO. In fact we have one who will start his car very late at night, it sounds more like an airplane than a car and let it idle at full throttle for 15 minutes. Quite nerve racking when we are awakened so rudely in the middle of the night.

GO FOR IT WE ARE WITH YOU

THE VANDERLINDE'S
8745 S.W. BEAVERTON-HILLSDALE HWY.
PORTLAND, OREGON 97225

DEQ may impose tests to curb automobile noise

-12

19220 S.W. Marlin Ct.
Lake Oswego, Ore. 97034
August 28, 1984

Dept. of Environmental Quality
Noise Control
P.O. Box 1760
Portland, Ore. 97207

Dear Sirs:

This letter is written to lodge a complaint about the noise, particularly exhaust noise, from Tri Met busses which operate in my neighborhood.

It is becoming a real problem, and we believe is causing our neighborhood to be less livable.

We will help in any way possible to reduce or remove this problem.

Sincerely,

Alyce and Jay Jantzen

4 September 1984

Mr. John M. Hector
DEPARTMENT OF ENVIRONMENTAL QUALITY
522 S.W. 5th Avenue
Portland, Oregon 97204

Dear Mr. Hector:

I hope it is not too late to add my voice to those already calling for noise control of motor vehicles in the Portland metropolitan area.

I live in Tualatin where vehicular noise is horrendous. Excessively noisy cars, motorcycles and diesel trucks make verbal communication in our front yard almost impossible at times. Having lived in Norway for three years I know that it is not necessary to tolerate such noise levels.

I should not have to note that high sound pressure levels contribute to personal stress. It is not just a matter of tolerance or inconvenience. It is a matter of long term health and physical well being.

I hope something really can be done about automobile and truck noise levels in the Portland area. Surely DEQ testing for noise should be part of the program.

Sincerely yours,

John W. Broome

John W. Broome
P.O. Box 236
Tualatin, Oregon 97062

JWB/cf
6225C

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. I, November 2, 1984, EQC Meeting

Proposed Adoption of Revisions to Oregon Administrative Rule, Chapter 340, Division 12, Civil Penalties and Revisions to the State Clean Air Act Implementation Plan (SIP)

Background

On August 10, 1984, the Commission authorized the Department to conduct a public hearing to receive testimony on the proposed rule revisions to Oregon Administrative Rule (OAR), Chapter 340, Division 12 and revisions to the State Clean Air Act Implementation Plan (SIP). The proposed revisions would allow the Department to assess a civil penalty without warning notice for unauthorized disposal of hazardous waste, allow the Department to assess the maximum penalty allowed by statute if warranted, make civil penalty schedules more consistent among programs, display the more frequently occuring rule violations, revise civil penalty rules in the SIP, and amend the language of proposed rule OAR 340-12-055(5) to recognize the discretion exercised by the Department in taking oil spill enforcement action.

Notice of the public hearing was given by publication in the Secretary of State's bulletin on August 15, 1984 and in the Oregonian classified ads on August 17, 1984. In addition, public notices were mailed to the Air Quality Division's mailing list, Water Quality Division's mailing list, all cities, counties and councils of government, the Association of Oregon Counties, League of Oregon Cities, Metropolitan Service District, Oregon Sanitary Service Institute and the state clearing house (A-95 review process).

The public hearing was held in Portland, Oregon on September 17, 1984. The hearings officer's report is contained in Attachment A along with the written testimony submitted. Additional background information on the proposed rule revisions, statement of need for rulemaking, statement of land use consistency, and public hearing notice are contained in the August 10, 1984, EQC Agenda Item No. D (Attachment B).

Evaluation of Testimony

1. Testimony was received from one person who stated that one of the proposed rule revisions, OAR 340-12-055(5), seeks to change the mandatory civil penalty for negligent or intentional oil spills provided for in ORS 468.140(3)(a) to a permissive civil penalty and maintained that the rule should not be changed.

In general, the Department believes that it should review the circumstances surrounding a given spill in its determination of whether a civil penalty is warranted or not, and if a penalty is warranted, the amount of the penalty that should be assessed. Notable circumstances would include prompt notification by the spiller, whether or not the spiller took immediate steps to contain and clean up the spill, the magnitude of the spill, and the spiller's previous violation history. The Department's administrative practice for all violations, including oil spills, has always been to use civil penalties as a discretionary enforcement tool rather than a mandatory one. The Department has limited enforcement resources and must direct those resources towards those violations the Department deems most important to its enforcement objectives. With the exception of this one rule, all of the Commission's civil penalty rules state the Director "may" rather than "shall" assess a penalty. Similarly, the statutes authorizing civil penalties in those other instances in general contain the word "shall" rather than "may" to describe what will happen if there is a violation.

The authorizing statute provides:

> ORS 468.140 civil penalties for specified violations.
>
> . . .
>
> (3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into waters of the state <u>shall</u> incur a civil penalty not to exceed the amount of $20,000 for each violation. (emphasis supplied)

The Department had requested a change in the rule to express the discretion it has traditionally exercised. The Department is modifying this requested change. Instead of requesting the change from "shall" to "may," the Department is seeking the determination of the Commission as to whether the seriousness of an intentional or negligent discharge of oil into waters of the state warrant a stronger expression of the mandatory nature of the assessment of a civil penalty.

2. Testimony was received from a person that civil penalties give the impression that state government is not willing to help business and that government is pursuing an antibusiness policy. The Department has had the authority to assess civil penalties for violations of Oregon statutes and the Commission's rules since 1972. The Department believes that it has used its civil penalty authority in a responsible manner over the last 12 years. That authority has not lessened the Department's willingness to work with people to resolve their environmental problems.

3. Finally, testimony was received from a person who urged stronger enforcement action against violators of hazardous waste regulations. The Department believes the proposed change to OAR 340-12-040(3)(b)(B) will result in stronger hazardous waste enforcement by allowing the Department to assess a civil penalty without warning for unauthorized disposal of hazardous waste.

Summation

1. On August 10, 1984, the Commission authorized the Department to conduct a public hearing on the proposed revisions to OAR Chapter 340, Division 12 and the State Clean Air Act Implementation Plan.

2. Public notice concerning the proposed rule revisions, and the date and time of the public hearing, was filed in the Secretary of State's bulletin on August 15, 1984, the Oregonian classified ads on August 17, 1984, and mailed to various interested parties.

3. The authorized hearing was held in Portland, on September 17, 1984.

4. The hearing officer's report and the written testimony received is contained in Attachment A.

5. The proposed rule OAR 340-12-055(5) has been left unchanged. The Department seeks the Commission determination on whether to change the "shall" to "may" and thereby allow, but not require, the Director to impose a civil penalty for an oil spill. If the Commission chooses to make this change, it will make explicit the Department's practice of exercising discretion in the imposition of civil penalties for negligent and intentional oil spills.

Director's Recommendation

Based on the summation, the Director recommends the Commission adopt the proposed revisions to OAR 340, Division 12 (Attachment C) and revisions to the State Clean Air Act Implementation Plan.

Fred Hansen

Attachments: A. Hearing Officer's Report and the Written Testimony Received
B. Staff Report and Attachments (except for rule revisions) for Agenda Item No. D, August 10, 1984, EQC Meeting
C. Proposed Rule Revisions to Division 12

Van A. Kollias:b
229-6232
October 8, 1984
GB3843

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Larry M. Schurr, Presiding Officer

Subject: Presiding Officer's Report Following Public Hearing Held September 17, 1984

Proposed Revisions to Oregon Administrative Rules, Chapter 340, Division 12, (Civil Penalties) and to the State Clean Air Act Implementation Plan (SIP)

The subject public hearing was commenced shortly after 2:00 p.m. on September 17, 1984 in Room 1400 of the Yeon Building, 522 S.W. Fifth Avenue, Portland, Oregon. Two people submitted written testimony; one person appeared and gave oral testimony.

Summary of Testimony

Michael E. Swaim, a Salem attorney, expressed concern that the proposed revisions would make the assessment of a civil penalty in certain cases discretionary rather than mandatory. Written testimony is attached.

Roger Conrad, President, Conrad Wood Preserving Co. of Coos Bay. In a letter to Governor Atiyeh that was forwarded for inclusion into the record of this hearing, Mr. Conrad expressed his belief that civil penalties are "anti-business" and that civil penalties give the impression that state government is not willing to "help" businesses. Written testimony is attached.

John Nickelson of Klamath Falls appeared and testified that he operates a septage sludge lagoon near Klamath Falls, and that he was "victimized" by a person who illegally dumped a load of waste pentachlorophenol solution into his lagoon. Mr. Nickelson urged stronger enforcement action against violators of hazardous waste regulations.

There being no other testimony offered or received, the hearing record was closed at 2:45 p.m. on September 17, 1984.

Respectfully submitted,

Larry M. Schurr

Larry M. Schurr
Presiding Officer

Larry M. Schurr:b
229-6932
September 25, 1984
GB3819

SWAIM & BETTERTON
ATTORNEYS AT LAW
270 COTTAGE STREET N.E.
SALEM, OREGON 97301

MICHAEL E. SWAIM
KEN L. BETTERTON

CECIL H. QUESSETH
OF COUNSEL

August 21, 1984

TELEPHONE
(503) 363-0063

Department of Environmental Quality
Enforcement Section
P. O. Box 1760
Portland, OR 97207

Re: Proposed Revisions to Civic Penalty Rules
(OAR Chapter 340)

Gentlemen:

I have received a copy of your proposed changes to Chapter 340 of the Oregon Administrative Rules. I believe that there are a number of problems in your proposed changes, especially those affecting OAR 340-12-055.

Specifically, the proposed rule seeks to change the mandatory civil penalties, which are presently provided for in the rule, into permissive civil penalties. However, ORS 468.140(3)(a) specifically provides that:

> "In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into waters of the State shall incur a civil penalty not to exceed the amount of $20,000.00 for each violation." (emphasis added)

Thus, it appears that unless there is some future legislative amendment to ORS 460.140, it would be an ultra vires act for the adminstrative agency to attempt to change the requirement of a mandatory penalty into a permissive penalty.

Finally, I find it somewhat curious that neither the memorandum from the Director to the Commission, nor the Notice of Public Hearing, indicate in any fashion that certain mandatory penalties are being proposed to be deleted in favor of discretionary penalties. Such a change is so significant that I would think that that would have been brought to everyone's attention.

I hope this letter may be of some assistance to you,

and I hereby submit it as written testimony to be placed before the Hearings Officer on September 17, 1984.

Very truly yours,

SWAIM & BETTERTON

Michael E. Swaim

MES/nl

cc: Environmental Quality Commission
Fred Hanson, Department of Environmental Quality

SWAIM & BETTERTON
ATTORNEYS AT LAW
270 COTTAGE STREET N.E.
SALEM, OREGON 97301

MICHAEL E. SWAIM
KEN L. BETTERTON

CECIL H. QUESSETH
OF COUNSEL

TELEPHONE
(503) 363-0063

August 24, 1984

Department of Environmental Quality
Enforcement Section
P. O. Box 1760
Portland, OR 97207

Re: August 21, 1984, letter

Gentlemen:

Just a brief note to point out to you that the citation in the fourth paragraph of my letter to you of August 21, 1984, to "ORS 460.140" should read "ORS 468.140." The difference was a typographical error which, I suppose, you would have noted on your own. I just wanted to bring this to your attention so that there would be no confusion whatsoever.

Thank you for your attention.

Very truly yours,

SWAIM & BETTERTON

Michael E. Swaim

MES/nl

cc: Environmental Quality Commission
Fred Hanson, Department of Enviromental Quality

ATTACHMENT I

Agenda Item D, August 10, 1984, EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

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

(1) Legal Authority:

Oregon Revised Statute (ORS) 468.125(2) identifies certain categories of violations for which the Department does not need to issue a warning notice prior to assessing a civil penalty. The 1983 Legislature amended ORS 468.125(2) to add disposing of hazardous waste at an unauthorized site to those categories.

ORS 468.130(1) gives the Commission authority to adopt, by rule, a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation.

ORS 468.140 specifies civil penalties for specified violations.

(2) Need for Rule:

The need for the schedule of civil penalties is to give guidance in setting penalty levels for specific violations.

The proposed schedules are intended to achieve this end by making the minimum and maximum penalties consistent between programs for similar type of violations.

Revisions are needed in the State Clean Air Act Implementation Plan (SIP) to make these federally-enforceable rules consistent with existing and proposed state rules.

(3) Principal Documents Relied Upon:

Existing schedules of civil penalties for all programs.

(4) Fiscal & Economic Impact:

There may be fiscal and economic impact on individuals, public entities, small business, and large business that violate the Commission's rules. By increasing the amount of some of the minimum and maximum penalties, a person liable for a civil penalty could receive a larger penalty.

Van A. Kollias:b
229-6232
July 12, 1984
GB3500.A

CONRAD WOOD PRESERVING CO.
1221 NO. BAYSHORE DR.
COOS BAY, OR 97420

by Roger Conrad
Pres.

22 AUG 1984

FOR DEQ July response POT

RECEIVED
AUG 21 1984
Governor's Office

0 1263

ATTACHMENT II

Agenda Item D, August 10, 1984, EQC Meeting

LAND USE CONSISTENCY

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

Van A. Kollias:b
229-6232
July 12, 1984
GB3500.A

8/20

Gov Atteyeh

The authority of a "bureaucrat" to impose penalties furthers the impression that state government is not willing to help business in the private sector but is persuing its continued anti-business policy. This action is resented by many in the private sector

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROPOSED REVISION OF CIVIL PENALTY RULES

NOTICE OF PUBLIC HEARING

Date Prepared: July 12, 1984
Hearing Date: September 17, 1984
Comments Due: September 17, 1984

WHO IS AFFECTED: People who may violate Oregon's air quality, noise pollution, water quality, solid waste, on-site sewage disposal and hazardous waste regulations.

WHAT IS PROPOSED: The DEQ is proposing to revise the civil penalty rules, OAR 340-12-005 through 12-075, and to revise the federally-enforceable Oregon State Implementation Plan (SIP) to be consistent with state rules.

WHAT ARE THE HIGHLIGHTS:

1. Proposed State Rule Revisions:

- o The unauthorized disposal of hazardous waste is being added to the category of violations for which a civil penalty may be assessed without prior warning notice.
- o Some existing violation categories are being deleted from the solid waste schedule of civil penalties and more frequently occurring rule violations such as operating a site without a permit and violating a condition of a solid waste permit are being added.
- o Violating a condition of a hardship permit or letter permit and unauthorized open burning are being added to the Air Quality Schedule of Civil Penalties.
- o Discharging waste water or operating a disposal system without a permit and failing to immediately clean up an oil spill are violations being added to the Water Pollution Schedule of Civil Penalties.
- o Some of the penalty schedules for similar categories of violations are not consistent from program to program. The proposed rule change would make the minimum and maximum penalties for similar classes of violations more consistent.
- o No minimum penalty would be less than $25. No maximum penalty would be less than the maximum allowed by statute.

-over-

P.O. Box 1760
Portland, OR 97207

FOR FURTHER INFORMATION:

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

2. Proposed State Implementation Plan (SIP) Revisions:

- o The following rules with proposed modifications applicable to the Air Quality Program are being incorporated: OAR 340-12-030, 340-12-040 and 340-12-050.
- o The following rules which have been previously repealed and rules which are not applicable to the Air Quality Program are being deleted: OAR 340-12-005 through 340-12-025 and 340-12-052 through 340-12-068.
- o The following existing rules for procedures to assess a civil penalty and to mitigate/settle a civil penalty are being added: OAR 340-12-070 and 340-12-075.
- o The following existing rules are being retained: OAR 340-12-035 and 340-12-045.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from the Regional Operations Division, Enforcement Section, in Portland (522 S.W. Fifth Avenue) or the regional office nearest you. For further information contact Van Kollias at 229-6232.

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

2:00 p.m.
Monday, September 17, 1984
DEQ Offices, Room 1400
522 S.W. Fifth Avenue, Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Enforcement Section, P.O. Box 1760, Portland, OR 97207, but must be received by no later than 5:00 p.m., September 17, 1984.

WHAT IS THE NEXT STEP: After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation may come on November 2, 1984 as part of the agenda of the regularly scheduled Commission meeting. If adopted, the proposed SIP revisions will be submitted to the U.S. Environmental Protection Agency as a revision of the state Clean Air Act Implementation Plan (SIP).

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

GB3500.P

ATTACHMENT B

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. D, August 10, 1984, EQC Meeting

Request for Authorization to Conduct a Public Hearing on the Revision of Oregon Administrative Rule, Chapter 340, Division 12, Civil Penalties and Revisions to the State Clean Air Act Implementation Plan (SIP)

Background and Problem Statement

1. Proposed State Rule Revisions:

Oregon Revised Statute (ORS) 468.125(2) identifies certain categories of violations for which the Department does not need to issue a warning notice prior to assessing a civil penalty. The 1983 Legislature amended ORS 468.125(2) to add disposing of hazardous waste at an unauthorized site to those categories. The proposed rule changes would amend Oregon Administrative Rule (OAR) Section 340-12-040(3)(b)(B) to be consistent with the controlling statute.

The Department is in the process of reviewing all its rules pursuant to ORS 183.545 which requires agencies to review rules not less than every three years and consider economic effect on small business. During the review process, a number of housekeeping changes were apparent in OAR Chapter 340, Division 12, Civil Penalties.

Many of the schedules have not been changed since originally adopted in 1974, and need updating. For example, some violations are listed in the Solid Waste Schedule of Civil Penalties that are no longer supported by rules in the division regulating solid waste. These are proposed to be replaced by more frequently occurring rule violations such as operating a site without a permit and violating a condition of a solid waste permit.

Several frequently occurring violations are being specifically listed on the penalty schedules. These include: on the air quality schedule - violating a condition of a hardship permit or letter permit and unauthorized open burning; on the water pollution schedule - discharging waste water or operating a disposal system without a permit and failure to immediately clean up an oil spill.

Some of the penalty schedules for similar categories of violations are not consistent from program to program. The proposed revisions would make the minimum and maximum penalties for similar classes of violations more consistent. No minimum penalty would be less than $25.

Finally, the maximum penalties provided by ORS 468.140 are not reflected in all categories of the current schedules. The maximum penalty allowed by statute should be incorporated into the schedules.

2. Proposed State Clean Air Act Implementation Plan (SIP) Revisions:

Certain proposed changes in the state civil penalty rules must be incorporated into the SIP in order to meet federal requirements. Since the civil penalty rules in the existing SIP contain some obsolete and non-applicable sections, this would be an appropriate time to bring the entire SIP rules relating to civil penalties up to date. The Department is, therefore, proposing the following SIP actions:

- Incorporate the following proposed rules as modified: OAR 340-12-030, 340-12-040 and 340-12-050.
- Add the following existing rules: OAR 340-12-070 and 340-12-075.
- Delete the following obsolete or non-applicable rules: OAR 340-12-005 through 340-12-025, and OAR 340-12-052 through 340-12-068.
- Retain the following existing rules: OAR 340-12-035 and 340-12-045.

Alternatives and Evaluation

1. Do not revise Division 12.

This alternative would keep the civil penalty rules as is with some violations listed that are not rule violations, some violations not listed that are common rule violations, inconsistencies between civil penalty schedules, and schedules providing less than the statutory maximum. Also, the Department would be required to give a warning notice to a person illegally disposing of hazardous waste rather than immediately penalizing as authorized by statute. This would be inconsistent with unauthorized sewage and solid waste disposal for which the current rule allows penalty without warning.

2. Revise Division 12 as proposed.

This alternative will result in more consistent schedules, a display of the more common rule violations, and will authorize the Department to assess a civil penalty without warning notice for anyone disposing of hazardous waste at an unauthorized site.

3. Do not revise the Oregon SIP.

The Department must have current and appropriate civil penalty rules in the SIP in order to meet federal requirements. Failure to incorporate proposed changes to the state civil penalty rules in the SIP or bring the existing rules in the SIP up to date with current state rules would put the state in technical violation of the Clean Air Act requirements and ultimately force EPA to take remedial or sanction action.

4. Revise the Oregon SIP as proposed.

This alternative would make the federally enforceable SIP rules consistent with current state rules.

2. Proposed State Clean Air Act Implementation Plan (SIP) Revisions:

Certain proposed changes in the state civil penalty rules must be incorporated into the SIP in order to meet federal requirements. Since the civil penalty rules in the existing SIP contain some obsolete and non-applicable sections, this would be an appropriate time to bring the entire SIP rules relating to civil penalties up to date. The Department is, therefore, proposing the following SIP actions:

- Incorporate the following proposed rules as modified: OAR 340-12-030, 340-12-040 and 340-12-050.
- Add the following existing rules: OAR 340-12-070 and 340-12-075.
- Delete the following obsolete or non-applicable rules: OAR 340-12-005 through 340-12-025, and OAR 340-12-052 through 340-12-068.
- Retain the following existing rules: OAR 340-12-035 and 340-12-045.

Alternatives and Evaluation

1. Do not revise Division 12.

This alternative would keep the civil penalty rules as is with some violations listed that are not rule violations, some violations not listed that are common rule violations, inconsistencies between civil penalty schedules, and schedules providing less than the statutory maximum. Also, the Department would be required to give a warning notice to a person illegally disposing of hazardous waste rather than immediately penalizing as authorized by statute. This would be inconsistent with unauthorized sewage and solid waste disposal for which the current rule allows penalty without warning.

2. Revise Division 12 as proposed.

This alternative will result in more consistent schedules, a display of the more common rule violations, and will authorize the Department to assess a civil penalty without warning notice for anyone disposing of hazardous waste at an unauthorized site.

3. Do not revise the Oregon SIP.

The Department must have current and appropriate civil penalty rules in the SIP in order to meet federal requirements. Failure to incorporate proposed changes to the state civil penalty rules in the SIP or bring the existing rules in the SIP up to date with current state rules would put the state in technical violation of the Clean Air Act requirements and ultimately force EPA to take remedial or sanction action.

4. Revise the Oregon SIP as proposed.

This alternative would make the federally enforceable SIP rules consistent with current state rules.

Summation

1. Many of the civil penalty schedules have not been revised since 1974 and are outdated.

2. The civil penalty schedules are not consistent among programs.

3. The civil penalty schedules do not give the Department the flexibility to assess the maximum penalty authorized by statute if warranted.

4. The civil penalty schedules do not display some of the more frequently occuring rule violations.

5. ORS 468.125(2) authorizes the Department to assess a civil penalty without warning notice for unauthorized disposal of hazardous waste while present agency rules do not.

6. The civil penalty rules in the federally-enforceable SIP must be revised to be consistent with current and proposed modifications to the state rules.

Director's Recommendation

Based upon the summation, it is recommended the Commission authorize a public hearing to take testimony on the proposed revisions to the civil penalty rules, OAR Chapter 340, Division 12, and proposed revisions to the SIP.

Fred Hansen

Attachments: Summary of Proposed Changes to Civil Penalty Schedule Amounts
Draft Statement of Need for Rulemaking
Draft Statement of Land Use Consistency
Draft Public Hearing Notice
Proposed Revision to OAR Chapter 340, Division 12

Van A. Kollias:b
229-6232
July 12, 1984
GB3500

SUMMARY OF PROPOSED CHANGES
TO CIVIL PENALTY SCHEDULE AMOUNTS

	Current Schedule		Proposed Schedules	
Air Quality	Minimum	Maximum	Minimum	Maximum
Hardship Permit Violation	$ 25	$7,500	$ 50	$10,000
Letter Permit Violation	25	7,500	50	10,000
Operating Without a Permit	25	7,500	50	10,000
"Any Other Violation"	25	7,500	25	10,000
Noise Control				
Exceeding Noise Levels	25	500	50	500
"Any Other Violation"	10	300	25	500
Water Pollution				
Violating an Order	50	10,000	100	10,000
Failure to Immediately Cleanup an Oil Spill	25	7,500	500	10,000
Operating Without a Permit	25	7,500	50	10,000
"Any Other Violation"	25	7,500	25	10,000
Negligent Oil Spill	500	15,000	500	20,000
On-Site Sewage Disposal				
Violating an Order	25	500	100	500
Solid Waste Management				
Disposing of Solid Waste at an Unauthorized Site	25	300	50	500
Establishing a Site or Operating Without a Permit	25	300	50	500
Violating Conditions of a Permit or Variance	25	300	50	500
"Any Other Violation"	25	300	25	500

GB3500.S

ATTACHMENT I

Agenda Item D, August 10, 1984, EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

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

(1) Legal Authority:

Oregon Revised Statute (ORS) 468.125(2) identifies certain categories of violations for which the Department does not need to issue a warning notice prior to assessing a civil penalty. The 1983 Legislature amended ORS 468.125(2) to add disposing of hazardous waste at an unauthorized site to those categories.

ORS 468.130(1) gives the Commission authority to adopt, by rule, a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation.

ORS 468.140 specifies civil penalties for specified violations.

(2) Need for Rule:

The need for the schedule of civil penalties is to give guidance in setting penalty levels for specific violations.

The proposed schedules are intended to achieve this end by making the minimum and maximum penalties consistent between programs for similar type of violations.

Revisions are needed in the State Clean Air Act Implementation Plan (SIP) to make these federally-enforceable rules consistent with existing and proposed state rules.

(3) Principal Documents Relied Upon:

Existing schedules of civil penalties for all programs.

(4) Fiscal & Economic Impact:

There may be fiscal and economic impact on individuals, public entities, small business, and large business that violate the Commission's rules. By increasing the amount of some of the minimum and maximum penalties, a person liable for a civil penalty could receive a larger penalty.

Van A. Kollias:b
229-6232
July 12, 1984
GB3500.A

ATTACHMENT II

Agenda Item D, August 10, 1984, EQC Meeting

LAND USE CONSISTENCY

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

Van A. Kollias:b
229-6232
July 12, 1984
GB3500.A

ATTACHMENT II

Agenda Item D, August 10, 1984, EQC Meeting

LAND USE CONSISTENCY

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

Van A. Kollias:b
229-6232
July 12, 1984
GB3500.A

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROPOSED REVISION OF CIVIL PENALTY RULES

NOTICE OF PUBLIC HEARING

Date Prepared: July 12, 1984
Hearing Date: September 17, 1984
Comments Due: September 17, 1984

WHO IS AFFECTED: People who may violate Oregon's air quality, noise pollution, water quality, solid waste, on-site sewage disposal and hazardous waste regulations.

WHAT IS PROPOSED: The DEQ is proposing to revise the civil penalty rules, OAR 340-12-005 through 12-075, and to revise the federally-enforceable Oregon State Implementation Plan (SIP) to be consistent with state rules.

WHAT ARE THE HIGHLIGHTS:

1. Proposed State Rule Revisions:

- o The unauthorized disposal of hazardous waste is being added to the category of violations for which a civil penalty may be assessed without prior warning notice.
- o Some existing violation categories are being deleted from the solid waste schedule of civil penalties and more frequently occurring rule violations such as operating a site without a permit and violating a condition of a solid waste permit are being added.
- o Violating a condition of a hardship permit or letter permit and unauthorized open burning are being added to the Air Quality Schedule of Civil Penalties.
- o Discharging waste water or operating a disposal system without a permit and failing to immediately clean up an oil spill are violations being added to the Water Pollution Schedule of Civil Penalties.
- o Some of the penalty schedules for similar categories of violations are not consistent from program to program. The proposed rule change would make the minimum and maximum penalties for similar classes of violations more consistent.
- o No minimum penalty would be less than $25. No maximum penalty would be less than the maximum allowed by statute.

-over-

P.O. Box 1760
Portland, OR 97207

8/10/82

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call ~~1-800-452-7813,~~ and ask for the Department of Environmental Quality. 1-800-452-4011

2. Proposed State Implementation Plan (SIP) Revisions:

- o The following rules with proposed modifications applicable to the Air Quality Program are being incorporated: OAR 340-12-03[illegible] 340-12-040 and 340-12-050.
- o The following rules which have been previously repealed and rules which are not applicable to the Air Quality Program are being deleted: OAR 340-12-005 through 340-12-025 and 340-12-052 through 340-12-068.
- o The following existing rules for procedures to assess a civil penalty and to mitigate/settle a civil penalty are being added: OAR 340-12-070 and 340-12-075.
- o The following existing rules are being retained: OAR 340-12-035 and 340-12-045.

HOW TO COMMENT:

Copies of the complete proposed rule package may be obtained from the Regional Operations Division, Enforcement Section, in Portland (522 S.W. Fifth Avenue) or the regional office nearest you. For further information contact Van Kollias at 229-6232.

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

2:00 p.m.
Monday, September 17, 1984
DEQ Offices, Room 1400
522 S.W. Fifth Avenue, Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Enforcement Section, P.O. Box 1760, Portland, OR 97207, but must be received by no later than 5:00 p.m., September 17, 1984.

WHAT IS THE NEXT STEP:

After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation may come on November 2, 1984 as part of the agenda of the regularly scheduled Commission meeting. If adopted, the proposed SIP revisions will be submitted to the U.S. Environmental Protection Agency as a revision of the state Clean Air Act Implementation Plan (SIP).

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

2. Proposed State Implementation Plan (SIP) Revisions:

- o The following rules with proposed modifications applicable to the Air Quality Program are being incorporated: OAR 340-12-03[illegible] 340-12-040 and 340-12-050.
- o The following rules which have been previously repealed and rules which are not applicable to the Air Quality Program are being deleted: OAR 340-12-005 through 340-12-025 and 340-12-052 through 340-12-068.
- o The following existing rules for procedures to assess a civil penalty and to mitigate/settle a civil penalty are being added: OAR 340-12-070 and 340-12-075.
- o The following existing rules are being retained: OAR 340-12-035 and 340-12-045.

HOW TO COMMENT:

Copies of the complete proposed rule package may be obtained from the Regional Operations Division, Enforcement Section, in Portland (522 S.W. Fifth Avenue) or the regional office nearest you. For further information contact Van Kollias at 229-6232.

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

2:00 p.m.
Monday, September 17, 1984
DEQ Offices, Room 1400
522 S.W. Fifth Avenue, Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Enforcement Section, P.O. Box 1760, Portland, OR 97207, but must be received by no later than 5:00 p.m., September 17, 1984.

WHAT IS THE NEXT STEP:

After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation may come on November 2, 1984 as part of the agenda of the regularly scheduled Commission meeting. If adopted, the proposed SIP revisions will be submitted to the U.S. Environmental Protection Agency as a revision of the state Clean Air Act Implementation Plan (SIP).

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

GB3500.P

Readers' Guidance

The Department is proposing the following actions with respect to the federally-enforceable State Clean Air Act Implementation Plan (SIP):

- Delete the following obsolete or non-applicable rules from the SIP: OAR 340-12-005 through 340-12-025 and OAR 340-12-052 through 340-12-068
- Incorporate the following rules with proposed modifications into the SIP: OAR 340-12-030, 340-12-040 and 340-12-050
- Retain the following existing rules in the SIP: OAR 340-12-035 and 340-12-045
- Add the following existing rules to the SIP: OAR 340-12-070 and 340-12-075.

GB3500.G

DIVISION 12

CIVIL PENALTIES

Introduction

340-12-005 [DEQ 33,f. 12-17-71, ef. 1-1-72; Repealed by DEQ 78, f. 9-6-74, ef. 9-25-74]

Notice Provisions

340-12-010 [DEQ 33, f. 12-17-71, ef. 1-1-72; Repealed by DEQ 78, f. 9-6-74, ef. 9-25-74]

Classification and Schedule for Violation of Air Quality

340-12-015 [DEQ 33, f. 2-17-71, ef. 1-1-72; Repealed by DEQ 78, f. 9-6-74, ef. 9-25-74]

Classification and Schedule for Violation of Water Quality

340-12-020 [DEQ 33, f. 12-17-71, ef. 1-1-72; Repealed by DEQ 78 f. 9-6-74, ef. 9-25-74]

Classification and Schedule for Violation of Solid Waste

340-12-025 [DEQ 33, f. 12-17-71, ef. 1-1-72; Repealed by DEQ 78, f. 9-6-74, ef. 9-25-74]

Definitions

340-12-030 Unless otherwise required by context, as used in this Division:

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

(2) "Director" means the Director of the Department or [his] <u>the Director's</u> authorized deputies or officers.

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

(4) "Order" means

(a) Any action satisfying the definition given in ORS Chapter 183; or

(b) Any other action so designated in ORS Chapter 454, 459, 467, or 468.

(5) "Person" includes individuals, corporations, associations, firms,

partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(6) "Respondent" means the person against whom a civil penalty is assessed.

(7) "Violation" means a transgression of any statute, rule, standard, order, license, permit compliance schedule, or any part thereof and includes both acts and omissions.

Stat. Auth.["] ORS Ch. 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74

Consolidation of Proceedings

340-12-035 Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

Stat. Auth.: ORS Ch. 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74

Notice of Violation

340-12-040 (1) Except as provided in subsection (3) of this section, prior to the assessment of any civil penalty the Department shall serve a Notice of Violation upon the respondent. Service shall be in accordance with rule 340-11-097.

(2) A Notice of Violation shall be in writing, specify the violation

partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(6) "Respondent" means the person against whom a civil penalty is assessed.

(7) "Violation" means a transgression of any statute, rule, standard, order, license, permit compliance schedule, or any part thereof and includes both acts and omissions.

Stat. Auth.["] ORS Ch. 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74

Consolidation of Proceedings

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Stat. Auth.: ORS Ch. 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74

Notice of Violation

340-12-040 (1) Except as provided in subsection (3) of this section, prior to the assessment of any civil penalty the Department shall serve a Notice of Violation upon the respondent. Service shall be in accordance with rule 340-11-097.

(2) A Notice of Violation shall be in writing, specify the violation

and state that the Department will assess a civil penalty if the violation continues or occurs after five days following receipt of the notice.

(3)(a) A Notice of Violation shall not be required where the respondent has otherwise received actual notice of the violation not less than five days prior to the violation for which a penalty is assessed.

(b) No advance notice, written or actual shall be required where:

(A) The act or omission constituting the violation is intentional;

(B) The violation consists of disposing of solid waste, hazardous waste or sewage at an unauthorized disposal site;

(C) The violation consists of constructing a sewage disposal system without the department's permit;

(D) The water pollution, air pollution, or air contamination source would normally not be in existence for five days; or

(E) The water pollution, air pollution or air contamination source might leave or be removed from the jurisdiction of the department.

Stat. Auth.: ORS Ch. [183 &] 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 25-1979, f. & ef. 7-5-79

Mitigating and Aggravating Factors

340-12-045 (1) In establishing the amount of a civil penalty to be assessed, the Director may consider the following factors [and shall cite those he finds applicable]:

(a) Whether the respondent has committed any prior violation, regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore;

(b) The history of the respondent in taking all feasible steps or

procedures necessary or appropriate to correct any violation;

(c) The economic and financial conditions of the respondent;

(d) The gravity and magnitude of the violation;

(e) Whether the violation was repeated or continuous;

(f) Whether a cause of the violation was an unavoidable accident, or negligence, or an intentional act of the respondent;

(g) The opportunity and degree of difficulty to correct the violation;

(h) The respondent's cooperativeness and efforts to correct the violation for which the penalty is to be assessed;

(i) The cost to the Department of investigation and correction of the cited violation prior to the time the Department receives respondent's answer to the written notice of assessment of civil penalty; or

(j) Any other relevant factor.

(2) In imposing a penalty subsequent to a hearing, the Commission shall consider factors (a), (b), and (c), of section (1) of this rule, and each other factor cited by the Director. The Commission may consider any other relevant factor.

(3) Unless the issue is raised in respondent's answer to the written notice of assessment of civil penalty, the Commission may presume that the economic and financial conditions of respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the respondent's economic and financial condition shall be upon the respondent.

Stat. Auth.: ORS Ch. 468

Hist: DEQ 78.f. 9-6-74, ef. 9-25-74

procedures necessary or appropriate to correct any violation;

(c) The economic and financial conditions of the respondent;

(d) The gravity and magnitude of the violation;

(e) Whether the violation was repeated or continuous;

(f) Whether a cause of the violation was an unavoidable accident, or negligence, or an intentional act of the respondent;

(g) The opportunity and degree of difficulty to correct the violation;

(h) The respondent's cooperativeness and efforts to correct the violation for which the penalty is to be assessed;

(i) The cost to the Department of investigation and correction of the cited violation prior to the time the Department receives respondent's answer to the written notice of assessment of civil penalty; or

(j) Any other relevant factor.

(2) In imposing a penalty subsequent to a hearing, the Commission shall consider factors (a), (b), and (c), of section (1) of this rule, and each other factor cited by the Director. The Commission may consider any other relevant factor.

(3) Unless the issue is raised in respondent's answer to the written notice of assessment of civil penalty, the Commission may presume that the economic and financial conditions of respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the respondent's economic and financial condition shall be upon the respondent.

Stat. Auth.: ORS Ch. 468

Hist: DEQ 78.f. 9-6-74, ef. 9-25-74

Air Quality Schedule of Civil Penalties

340-12-050 In addition to any liability, duty, or other penalty provided by law, the Director, or the director of a regional air quality control authority, may assess a civil penalty for any violation pertaining to air quality by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) for violation of an order of the Commission, Department, or regional air quality control authority.

(2) Not less than fifty dollars ($50) nor more than ten thousand dollars ($10,000) for:

(a) [Any violation of] Violating any condition of any Air Contaminant Discharge Permit, Hardship Permit, Letter Permit, Indirect Source Permit, or variance; [or]

(b) Any violation which causes, contributes to, or threatens the emission of any air contaminant into the outdoor atmosphere[.];

(c) Operating any air contaminant source without first obtaining an Air Contaminant Discharge Permit; or

(d) Any unauthorized open burning.

(3) Not less than twenty-five dollars ($25) nor more than [seven thousand five hundred dollars ($7,500)] ten thousand dollars ($10,000) for any other violation.

Stat. Auth.: ORS Ch. 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ. 5-1980 f. & ef. 1-28-80

Noise Control Schedule of Civil Penalties

340-12-052 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to noise control by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for violation of an order of the Commission or Department.

(2) Not less than [twenty-five dollars ($25)] fifty dollars ($50) nor more than five hundred dollars ($500) for any violation which causes, substantially contributes to, or will probably cause:

(a) The emission of noise in excess of levels established by the Commission for any category of noise emission source[.]; or

(b) Ambient noise at any type of noise sensitive real property to exceed the levels established therefor by the Commission.

(3) Not less than [ten dollars ($10)] twenty-five dollars ($25) nor more than [three hundred dollars ($300)] five hundred dollars ($500) for any other violation.

Stat. Auth.: ORS Ch. 467 & 468

Hist: DEQ 101, f. & ef. 10-1-75

Water Pollution Schedule of Civil Penalties

340-12-055 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation relating to water pollution by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall

Noise Control Schedule of Civil Penalties

340-12-052 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to noise control by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for violation of an order of the Commission or Department.

(2) Not less than [twenty-five dollars ($25)] fifty dollars ($50) nor more than five hundred dollars ($500) for any violation which causes, substantially contributes to, or will probably cause:

(a) The emission of noise in excess of levels established by the Commission for any category of noise emission source[.]; or

(b) Ambient noise at any type of noise sensitive real property to exceed the levels established therefor by the Commission.

(3) Not less than [ten dollars ($10)] twenty-five dollars ($25) nor more than [three hundred dollars ($300)] five hundred dollars ($500) for any other violation.

Stat. Auth.: ORS Ch. 467 & 468

Hist: DEQ 101, f. & ef. 10-1-75

Water Pollution Schedule of Civil Penalties

340-12-055 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation relating to water pollution by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall

be determined consistent with the following schedule:

(1) Not less than [fifty dollars ($50)] one hundred dollars ($100) nor more than ten thousand ($10,000) for[:] any violation of an order of the Commission or Department.

[(a) A violation of an order of the Commission or Department;]

[(b) A violation of a State Waste Discharge Permit or National Pollutant Discharge Elimination System (NPDES) permit;]

[(c) Any violation which causes, contributes to, or threatens the discharge of a waste into any waters of the state.]

[(2) Not less than twenty-five dollars ($25) nor more than seven thousand five hundred dollars ($7,500) for any other violation.]

(2) Not less than fifty dollars ($50) nor more than ten thousand dollars ($10,000) for:

(a) Violating any condition of any National Pollutant Discharge Elimination System (NPDES) Permit or Water Pollution Control Facilities (WPCF) Permit;

(b) Any violation which causes, contributes to, or threatens the discharge of a waste into any waters of the state or causes pollution of any waters of the state;

(c) Any discharge of wastewater or operation of a disposal system without first obtaining a National Pollutant Discharge Elimination System (NPDES) Permit or Water Pollution Control Facilities (WPCF) Permit.

(3) Not less than five hundred dollars ($500) nor more than ten thousand dollars $10,000 for failing to immediately clean up an oil spill.

(4) Not less than twenty-five dollars ($25) nor more than ten thousand dollars ($10,000) for any other violation.

[(3)] (5) (a) In addition to any penalty which may be asessed pursuant to sections (1) [and (2)] through (4) of this rule, any person who

intentionally causes or permits the discharge of oil into the waters of the state shall incur a civil penalty of not less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000) for each violation.

(b) In addition to any penalty which may be assessed pursuant to sections (1) [and (2)] through (4) of this rule, any person who negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty of not less than five hundred dollars ($500) nor more than [fifteen] twenty thousand dollars [($15,000)] $20,000 for each violation.

Stat. Auth.: ORS Ch. 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74

On-Site Sewage Disposal Systems Schedule of Civil Penalties

340-12-060 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to on-site sewage disposal systems by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

[(2)] (1) No less than one hundred dollars ($100) nor more than five

intentionally causes or permits the discharge of oil into the waters of the state shall incur a civil penalty of not less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000) for each violation.

(b) In addition to any penalty which may be assessed pursuant to sections (1) [and (2)] through (4) of this rule, any person who negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty of not less than five hundred dollars ($500) nor more than [fifteen] twenty thousand dollars [($15,000)] $20,000 for each violation.

Stat. Auth.: ORS Ch. 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74

On-Site Sewage Disposal Systems Schedule of Civil Penalties

340-12-060 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to on-site sewage disposal systems by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

[(2)] (1) No less than one hundred dollars ($100) nor more than five

hundred dollars ($500) upon any person who[;]:

(a) Violates a final order of the Commission requiring remedial action;

(b) Violates an order of the Commission limiting or prohibiting installation of on-site sewage disposal systems in an area;

[(a)] (c) Performs, or advertises or represents [himself] one's self as being in the business of performing, sewage disposal services, without obtaining and maintaining a current license from the Department, except as provided by statute or rule;

[(b)] (d) Installs or causes to be installed a subsurface alternative or experimental sewage disposal system or any part thereof, without first obtaining a permit from the Agent;

[(c)] (e) Fails to obtain a permit from the Agent within three days after beginning emergency repairs on a subsurface, alternative or experimental sewage disposal system.

[(d)] (f) Disposes of septic tank, holding tank, chemical toilet, privy or other treatment facility sludges in a manner or location not authorized by the Department;

[(e)] (g) Connects or reconnects the sewage plumbing from any dwelling or commercial facility to an existing system without first obtaining an Authorization Notice from the Agent;

[(f)] (h) Installs or causes to be installed a nonwater-carried waste disposal facility without first obtaining written approval from the Agent therefor;

[(g)] (i) Operates or uses an on-site sewage disposal system which is failing by discharging sewage or septic tank effluent onto the ground surface or into surface public waters;

[(h)] (j) As a licensed sewage disposal service worker, performs any

sewage disposal service work in violation of the rules of the Department.

[(1)] (2) Not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) upon any person who:

[(a) Violates a final order of the Commission requiring remedial action;]

[(b) Violates an order of the Commission limiting or prohibiting installation of on-site sewage disposal systems in an area;]

[(c)] (a) Installs or causes to be installed an on-site sewage disposal system, or any part thereof, which fails to meet the requirements for satisfactory completion within thirty (30) days after written notification or posting of a Correction Notice at the site;

[(d)] (b) Operates or uses a nonwater-carried waste disposal facility without first obtaining a letter of authorization from the Agent therefore;

[(e)] (c) Operates or uses a newly constructed, altered or repaired on-site sewage disposal system, or part thereof, without first obtaining a Certificate of Satisfactory Completion from the Agent, except as provided by statute or rule;

[(f)] (d) Fails to connect all plumbing fixtures from which sewage is or may be discharged to a Department approved system;

[(g)] (e) Commits any other violation pertaining to on-site sewage disposal systems;

Stat. Auth.: ORS Ch. 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 4-1981, f. & ef. 2-6-81

Solid Waste Management Schedule of Civil Penalties

340-12-065 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any

sewage disposal service work in violation of the rules of the Department.

[(1)] (2) Not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) upon any person who:

[(a) Violates a final order of the Commission requiring remedial action;]

[(b) Violates an order of the Commission limiting or prohibiting installation of on-site sewage disposal systems in an area;]

[(c)] (a) Installs or causes to be installed an on-site sewage disposal system, or any part thereof, which fails to meet the requirements for satisfactory completion within thirty (30) days after written notification or posting of a Correction Notice at the site;

[(d)] (b) Operates or uses a nonwater-carried waste disposal facility without first obtaining a letter of authorization from the Agent therefore;

[(e)] (c) Operates or uses a newly constructed, altered or repaired on-site sewage disposal system, or part thereof, without first obtaining a Certificate of Satisfactory Completion from the Agent, except as provided by statute or rule;

[(f)] (d) Fails to connect all plumbing fixtures from which sewage is or may be discharged to a Department approved system;

[(g)] (e) Commits any other violation pertaining to on-site sewage disposal systems;

Stat. Auth.: ORS Ch. 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 4-1981, f. & ef. 2-6-81

Solid Waste Management Schedule of Civil Penalties

340-12-065 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any

violation pertaining to solid waste management by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for violation of an order of the Commission or Department.

(2) Not less than fifty dollars ($50) nor more than five hundred dollars ($500) for [any violation which causes, contributes to, or threatens]:

[(a) A hazard to the public health or safety;]

(a) Disposing of solid waste at an unauthorized site;

[(b) Damage to a natural resource, including aesthetic damage and radioactive irradiation;]

(b) Establishing, operating or maintaining a solid waste disposal site without first obtaining a Solid Waste Disposal Permit;

[(c) Air contamination;]

(c) Violating any condition of any Solid Waste Disposal Permit or variance;

[(d) Vector production;]

[(e) A common law public nuisance.]

(3) Not less than twenty-five dollars ($25) nor more than [three hundred dollars ($300)] five hundred dollars ($500) for any other violation.

Stat. Auth.: ORS Ch. 459

Hist: DEQ 78, F 9-6-74, ef. 9-25-74; DEQ 1-1982, f. & ef. 1-28-82

Hazardous Waste Management Schedule of Civil Penalties

340-12-068 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to hazardous waste management by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) upon any person who:

(a) Establishes, constructs or operates a geographical site in which or upon which hazardous wastes are disposed without first obtaining a license from the Commission.

(b) Disposes of a hazardous waste at any location other than at a hazardous waste disposal site.

(c) Fails to immediately collect, remove or treat a hazardous waste or substance as required by ORS 459.685[.] and OAR Chapter 340 Division 108.

(2) Not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) upon any person who:

(a) Establishes, constructs or operates a geographical site or facility upon which, or in which, hazardous wastes are stored or treated without first obtaining a license from the Department.

(b) Violates a Special Condition or Environmental Monitoring Condition of a hazardous waste management facility license.

(c) Dilutes a hazardous waste for the purpose of declassifying it.

(d) Ships hazardous waste with a transporter that is not in compliance with OAR Chapter 860, Division 36[,] and Division 46 or OAR Chapter 340, Division 103 or to a hazardous waste management facility that is not in compliance with OAR Chapter 340, Divisions [63] 100 thru 106.

Hazardous Waste Management Schedule of Civil Penalties

340-12-068 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to hazardous waste management by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars ($2,500) nor more than ten thousand dollars ($10,000) upon any person who:

(a) Establishes, constructs or operates a geographical site in which or upon which hazardous wastes are disposed without first obtaining a license from the Commission.

(b) Disposes of a hazardous waste at any location other than at a hazardous waste disposal site.

(c) Fails to immediately collect, remove or treat a hazardous waste or substance as required by ORS 459.685[.] and OAR Chapter 340 Division 108.

(2) Not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) upon any person who:

(a) Establishes, constructs or operates a geographical site or facility upon which, or in which, hazardous wastes are stored or treated without first obtaining a license from the Department.

(b) Violates a Special Condition or Environmental Monitoring Condition of a hazardous waste management facility license.

(c) Dilutes a hazardous waste for the purpose of declassifying it.

(d) Ships hazardous waste with a transporter that is not in compliance with OAR Chapter 860, Division 36[,] and Division 46 or OAR Chapter 340, Division 103 or to a hazardous waste management facility that is not in compliance with OAR Chapter 340, Divisions [63] 100 thru 106.

(e) Ships hazardous waste without a manifest.

(f) Ships hazardous waste without containerizing and marking or labeling such waste in compliance with OAR Chapter 340, Division [63] 102.

(g) Fails to immediately report to the Oregon Accident Response System (Oregon Emergency Management Division) all accidents or other emergencies which result in the discharge or disposal of hazardous waste.

(3) Not less than one hundred dollars ($100) nor more than ten thousand dollars ($10,000) upon any person who:

(a) Violates an order of the Commission or Department.

(b) Violates any other condition of a license or written authorization or violates any other rule or statute.

Stat. Auth.: ORS Ch. 459

Hist: DEQ 1-1982, f. & ef. 1-28-82

Written Notice of Assessment of Civil Penalty; When Penalty Payable

340-12-070 (1) A civil penalty shall be due and payable when the respondent is served a written notice of assessment of civil penalty signed by the Director. Service shall be in accordance with rule 340-11-097.

(2) The written notice of assessment of civil penalty shall be in the form prescribed by rule 340-11-100 for a notice of opportunity for a hearing in a contested case, and shall state the amount of the penalty or penalties assessed.

(3) The rules prescribing procedure in contested case proceedings contained in Division 11 shall apply thereafter.

Stat. Auth.: ORS Ch. 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74

Compromise or Settlement of Civil Penalty by Director

340-12-075 At any time subsequent to service of the written notice of assessment of civil penalty, the Director is authorized to seek to compromise or settle any unpaid civil penalty which [he] the Director deems appropriate. Any compromise or settlement executed by the Director shall not be final until approved by the Commission.

Stat. Auth.: ORS Ch. 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74

Compromise or Settlement of Civil Penalty by Director

340-12-075 At any time subsequent to service of the written notice of assessment of civil penalty, the Director is authorized to seek to compromise or settle any unpaid civil penalty which [he] the Director deems appropriate. Any compromise or settlement executed by the Director shall not be final until approved by the Commission.

Stat. Auth.: ORS Ch. 468

Hist: DEQ 78, f. 9-6-74, ef. 9-25-74

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. J, November 2, 1984, EQC Meeting

Proposal to Amend Status Review Date of the Portland International Airport Noise Abatement Program

Background and Problem Statement

On August 19, 1983, the Environmental Quality Commission approved a noise abatement program for Portland International Airport (PIA) pursuant to Commission rule, Noise Control Regulations for Airports (OAR 340-35-045). Condition 3 of approval was the following status report requirement:

> "Prior to January 1, 1985, the Department shall submit an informational report on the status of this abatement program, an evaluation of implementation progress, and the need to amend the program."

The Port of Portland, proprietor of PIA, has requested this review date be delayed until approximately May 1985 for the following reasons:

1. A key element of the abatement plan is the installation of a VOR/DME navigational aid at the airport. This equipment will allow more precise guidance of arriving and departing aircraft to avoid densely populated areas. Due to delays in federal approval and delays in negotiating contractural details with the supplier, the operational date has slipped from mid-1984 to January 1, 1985.

2. The plan includes the soundproofing of approximately 230 residential units within the Ldn 70 dBA airport noise contour. Funding for this project is contingent upon federal approval of the abatement plan that should occur by the end of 1984.

3. Three plan elements require the pursuit of new legislation before abatement measures can be implemented. These legislative concepts could enhance land use controls by improving the airport's compatability in those areas that will continue to be heavily impacted by noise. This proposed legislation will not be drafted or filed until after January 1, 1985.

Evaluation

Staff concurs with the Port of Portland's request to delay the submission of the abatement plan status report until May 1985. It appears that implementation of the plan is generally on the schedule approved by the Commission.

Although the new navigational aid will not be installed as quickly as hoped, this plan element will be completed within the approved schedule. As many of the airport operational abatement elements are dependent upon the new navigational aid, it appears justified to review the status of the plan after this equipment has been installed and has become fully operational.

Federal approval of the abatement plan will make some elements eligible for federal funding. The navigational aid is now being funded with approximately $200,000 of Port of Portland money. They hope to be reimbursed by the federal government for this expense. The plan element to sound insulate residences in the most impacted areas would cost approximately $666,000. This element could be 90 percent federally funded. Thus, the success of this element is highly dependent upon federal approval of the plan, which will hopefully occur near the end of 1984.

Plan elements needing action by the Oregon Legislature are intended to be brought to the 1985 Legislative Assembly by the Port of Portland. These elements include changes in the uniform building code, tax credits for sound insulation, and required disclosures to buyers in noise impacted zones. A better evaluation of progress on these elements can be provided in mid-1985 than in late-1984.

Summation

1. The Commission approved abatement plan for the Portland International Airport requires submission of a status report prior to January 1, 1985.

2. Although several elements of the abatement plan will not be completed until late 1984 or early 1985, at this time the plan is on schedule and final implementation dates are expected to be met.

3. The Port of Portland, the airport proprietor, has requested the status report submission be delayed until approximately May 1985 in order to more fully evaluate the plan elements that will not be completed for review on the January 1, 1985 review date.

4. The staff concurs with the Port of Portland request as a more complete review of this abatement plan can be conducted after all major elements are completed.

Director's Recommendation

Based on the Summation, it is recommended that the Commission amend condition number 3 of the Director's Recommendation contained in Agenda Item H of the August 19, 1983 EQC agenda to read as follows:

3. Prior to [January 1, 1985] May 1, 1985, the Department shall submit an informational report on the status of this abatement program, an evaluation of implementation progress, and the need to amend the program.

Fred Hansen

John Hector:s
229-5989
October 9, 1984

AS632

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. K, November 2, 1984, EQC Meeting

Proposed Designation of a Carbon Monoxide Nonattainment Area in Grants Pass as a Revision to the State Implementation Plan.

BACKGROUND

The federal Clean Air Act requires States to develop and submit plans demonstrating how areas which do not meet ambient air quality standards (nonattainment areas) will meet the standards.

The Department expanded its air monitoring activities in the Grants Pass area in 1979 in response to a request by a local citizens group. The expanded monitoring identified a potential carbon monoxide (CO) air quality problem in Grants Pass in 1981. Subsequent special studies during 1982-84 have confirmed that:

1. CO violations occur in a portion of Grants Pass;

2. CO violations will likely continue for at least the next few years; and

3. The nonattainment area is a relatively small area of downtown Grants Pass.

A carbon monoxide control plan must be developed for the Grants Pass area. The first steps in this process are the formal recognition of the nonattainment area and the identification of the nonattainment area boundaries. At the August 10, 1984 EQC meeting, the Commission authorized a public hearing for September 18, 1984 on the proposed designation of a carbon monoxide nonattainment area in Grants Pass.

ORS 468.305 authorizes the Commission to prepare and develop a comprehensive plan for the control of air pollution. Attachment 1 contains the Statements of Need for Rulemaking, Fiscal and Economic Impact, and Land Use Consistency.

EVALUATION AND ALTERNATIVES

Ambient Air Quality Monitoring

The Department has recorded violations of the CO standard in Grants Pass each year from 1981 through 1984. A special study during the winter of 1982-83 determined that the current CO monitoring site located near 6th and G Streets reasonably characterized the maximum CO concentration area. A subsequent study during the 1983-84 winter identified the boundaries of the problem area. The Grants Pass CO problem area appears to be closely associated with high traffic volumes on the Redwood Highway corridor through downtown (6th and 7th Streets couplet).

The Grants Pass CO problem appears to be less severe than the Medford problem. For example, Grants Pass exceeded the CO standard on 13 days in 1983, while Medford exceeded the standard on 34 days. In 1983, the second highest CO day in Grants Pass was 29% above the standard, while the second highest day in Medford was 45% above the standard. The proposed Grants Pass nonattainment area is about 0.2 square miles and the Medford problem area is about 1.5 square miles.

Alternatives

The Federal Clean Air Act (CAA) outlines two procedures for initiating the development of control strategies for newly identified problem areas:

1. A State may designate a new nonattainment area and submit the redesignation to EPA for promulgation in the Federal Register (CAA Section 107(d)(5)); or

2. EPA may notify a State that its State Implementation Plan (SIP) is inadequate since it does not address the newly identified problem area (CAA Section 110(a)(2)(H)).

In either procedure, the State is given twelve months to submit a control strategy for the newly identified problem area and up to an additional four years (maximum total of five years) to implement the strategy and attain standards. The time frames begin with EPA final action in the Federal Register in response to a State redesignation submittal (the first procedure above) or EPA letter notification to a State of SIP inadequacy (the second procedure). The Department believes that the first procedure outlined above, designation of the Grants Pass CO nonattainment area by the Commission, is the preferred procedure for initiating the development of the Grants Pass CO control strategy.

Informational Meetings and Public Hearing

The Department met with representatives of the City of Grants Pass and Josephine County on July 26, 1984. The group recognized the traffic congestion and carbon monoxide problems in downtown Grants Pass. Past

studies recommended improvements in the traffic signal system and construction of a third bridge over the Rogue River to reduce traffic congestion.

The Department met with the Grants Pass City Council and staff on September 10, 1984. Background information on the CO problem was reviewed in preparation for the City's testimony at the public hearing.

The Department held a public hearing in Grants Pass on September 18, 1984. The Hearing Officer Report is included as Attachment 2. Three persons testified:

1. Eleanor Edmondson, a resident of Grants Pass, supported the Department's proposal;

2. Ed Murphy, Director of Community Services, representing the City of Grants Pass, generally supported the Department's proposal but recommended that the southern boundary of the nonattainment area be reduced from the Rogue River to M Street; and

3. Harold Haugen, Josephine County Commissioner, expressed concern that correction of the CO problem could not be achieved by local government alone. He recommended that the State of Oregon take the lead role in correcting the CO problem since:

    a. The problem area is closely related to traffic on State Highway 99;

    b. Traffic congestion is partially caused by the Southern Pacific Railroad that passes through the CO problem area; and

    c. State funding assistance through the Oregon Department of Transportation would be required to build a third bridge across the Rogue River to reduce traffic congestion caused by the limited traffic capacity of the existing bridges.

Response to Testimony

In response to the City of Grants Pass recommendation on the southern boundary of the nonattainment area, the Department has re-analyzed the CO data and survey results. The survey results indicate that CO levels may approach standard levels at the 6th and M Streets intersection on peak CO days. However, the Department did not record any violations of the CO standard at this location with continuous monitoring during the 1979-80 winter or with intermittent monitoring during 1982-84. In addition, CO concentrations are expected to decrease between M Street and the Rogue River as the distance increases from the central downtown (the area of peak traffic emissions) and ventilation improves due to the influence of the river. Therefore, the Department is not opposed to revising the southern boundary of the proposed nonattainment area to M Street as recommended by the City of Grants Pass. The southern boundary has been revised in the proposed CO nonattainment area (Attachment 3).

In response to the concerns expressed by Harold Haugen, Josephine County Commissioner, the Department agrees that the State of Oregon should work closely with the City of Grants Pass and Josephine County in developing a plan to attain CO standards in Grants Pass. The development of the CO attainment plan will probably involve both the Oregon Department of Transportation and the Department of Environmental Quality. However, the federal Clean Air Act (Section 174(a)) requires, where possible, that a local government be the lead agency in the preparation of an attainment plan for a transportation-related pollution problem such as the Grants Pass CO problem. The Grants Pass CO attainment plan would ultimately be incorporated into the overall State Implementation Plan.

At the Department's meeting with City and County representatives on July 26, 1984, there was a preliminary consensus by those present that the City of Grants Pass would be the most appropriate lead agency. Unfortunately, the City of Grants Pass had to recently reduce its planning staff due to the failure of a levy election. The Department agreed to investigate possible Section 105 funds from EPA for lead agency planning activities. The Department will continue to work with the local governments to secure planning funding and select the most appropriate lead agency.

Schedule for Control Strategy

If the Commission concurs with proceeding to designate the Grants Pass CO nonattainment area, then the Department would anticipate the following schedule for completing the Grants Pass CO control strategy.

Date	Action
NOV 84	Designation of nonattainment area by EQC.
DEC 84	Selection of lead agency by Governor.
MAY 85	Expected designation of nonattainment area by Environmental Protection Agency (EPA) in the Federal Register.
DEC 85	Control plan completed by lead agency.
MAY 86	Plan due to EPA (12 months after EPA designation).
1986-on	Implement strategy to attain CO standard.

A preliminary analysis indicates that local transportation improvements and continuation of the Federal Motor Vehicle Emission Control Program (replacement of older vehicles with newer, less polluting vehicles) may be adequate to meet the CO standard in Grants Pass. Key factors in the final analysis will be the forecasted traffic growth rate, the construction schedule for a third bridge over the Rogue River, and the implementation schedule for traffic signal improvements. For example, if new car sales and the traffic growth rate remain normal, and the traffic signal improvements and third bridge are completed by early 1990, then CO concentrations in the Grants Pass area should be below the CO standard by that date.

The third bridge is scheduled for detailed design by the Oregon Department of Transportation during 1987, but the construction funding and schedule have not yet been identified. An analysis of the existing traffic signal system, with specific recommendations for improvements, has been completed but funding is not yet available.

SUMMATION

1. Carbon monoxide (CO) concentrations in Grants Pass have exceeded, and are expected to continue to exceed for at least the next few years, the state and federal ambient air quality standards.

2. A CO control strategy must be developed by the State as required by the federal Clean Air Act. The first steps in this process are the formal recognition of the Grants Pass CO nonattainment area and the identification of the boundaries of the problem area.

3. The proposed boundaries of the Grants Pass CO nonattainment area have been revised slightly in response to comments received at the September 18, 1984 public hearing.

4. Grants Pass CO concentrations exceeded the ambient CO standard (based on the second highest day) by 29% in 1983. The problem area is about 0.2 square miles.

5. The severity of the CO problem, in terms of the magnitude and frequency of CO exceedances, is less in Grants Pass than in Medford. The size of the CO problem area in Grants Pass is substantially smaller than in Medford.

6. The Department will be working with the City of Grants Pass and Josephine County to develop the CO control strategy. Local planned transportation improvements and the federal new car emission control program may be adequate to attain the CO standard.

RECOMMENDATION

Based on the Summation, the Director recommends that the EQC adopt the proposed Grants Pass Carbon Monoxide Nonattainment Area (Attachment 3) as a revision to the State Implementation Plan.

Fred Hansen

Attachments:
1. Public Hearing Notice, Statements of Need for Rulemaking, Fiscal and Economic Impact, and Land Use Consistency.
2. Hearing Officer Report.
3. Proposed Grants Pass Carbon Monoxide Nonattainment Area as a Revision to the State Implementation Plan.

MERLYN L. HOUGH:a
AA4532
229-6446
October 8, 1984

Attachment 1
Agenda Item No. K
November 2, 1984
EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Designation of a Carbon Monoxide Nonattainment Area in Grants Pass
NOTICE OF PUBLIC HEARING

Date Prepared: 7/16/84
Hearing Date: 9/18/84
Comments Due: 9/20/84

WHO IS AFFECTED:

Residents, businesses, and government agencies in the City of Grants Pass and Josephine County.

WHAT IS PROPOSED:

The Department of Environmental Quality is proposing to amend OAR 340-20-047, the Oregon Clean Air Act State Implementation Plan, by designating a Grants Pass Carbon Monoxide Nonattainment Area. A hearing on this matter will be held in Grants Pass on September 18, 1984.

WHAT ARE THE HIGHLIGHTS:

Carbon monoxide (CO) concentrations in downtown Grants Pass exceed, and are expected to continue to exceed for at least the next few years, state and federal ambient air quality standards. The federal Clean Air Act requires states to submit plans for nonattainment areas demonstrating how they will attain ambient air quality standards. The first steps in this process are the formal recognition of the nonattainment area and the identification of the nontattainment area boundaries.

This proposal would designate a carbon monoxide (CO) nonattainment area in Grants Pass based on measured violations of the ambient air quality standard for CO. Proposed boundaries are:

- B Street on the north;
- 8th Street on the east;
- The Rogue River on the south; and
- 5th Street on the west.

HOW TO COMMENT:

Copies of the complete proposed rule package may be obtained from the Air Quality Division in Portland (522 S.W. Fifth Avenue) or the regional office nearest you. For further information contact Merlyn L. Hough at 229-6446 (or toll-free at 1-800-452-4011).

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

7:00 p.m. on September 18, 1984
Grants Pass City Council Chambers
101 NW A Street
Grants Pass, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Air Quality Division, P.O. Box 1760, Portland, OR 97207, but must be received by no later than September 20, 1984.

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call ~~1-800-452-7813,~~ and ask for the Department of Environmental Quality. 1-800-452-4011.

P.O. Box 1760
Portland, OR 97207

8/10/82

WHAT IS THE NEXT STEP:

After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The adopted rules will be submitted to the U. S. Environmental Protection Agency as part of the State Clean Air Act Implementation Plan. The Commission's deliberation should come on November 2, 1984 as part of the agenda of a regularly scheduled Commission meeting.

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

AS277

RULEMAKING STATEMENTS

for

Proposed Designation of a Carbon Monoxide Nonattainment Area in Grants Pass

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

STATEMENT OF NEED:

Legal Authority

This proposal amends OAR 340-20-047. It is proposed under authority of ORS 468.305.

Need for the Rule

Carbon monoxide (CO) concentrations in downtown Grants Pass exceed, and are expected to continue to exceed for at least the next few years, state and federal ambient air quality standards. The federal Clean Air Act requires states to submit plans for nonattainment areas demonstrating how they will attain ambient air quality standards. The first steps in this process are the formal recognition of the nonattainment area and the identification of the nonattainment area boundaries.

Principal Documents Relied Upon

Clean Air Act as Amended (P.L. 97-95) August 1977.
DEQ Air Quality Annual Reports.

FISCAL AND ECONOMIC IMPACT STATEMENT:

New major sources of CO locating in or near the proposed CO nonattainment area would be required to meet more restrictive new source review criteria than would be required in most other areas of Oregon. The more restrictive criteria could result in increased air quality analysis and air pollution control equipment costs for new industries or small businesses (if major sources of CO) in the Grants Pass area.

This proposal would initiate a planning process that will require planning resources of the City of Grants Pass, Josephine County, Oregon Department of Transportation and Oregon Department of Environmental Quality. The eventual carbon monoxide control plan resulting from this planning process will require rulemaking to revise the State Implementation Plan. The control plan rulemaking may have other impacts on the public, small businesses or industries and will be covered by a later public hearing.

LAND USE CONSISTENCY STATEMENT:

The Proposed rule appears to affect land use and appears to be consistent with the Statewide Planning Goals.

With regard to Goal 6 (air, water, and land resources quality) the rules are designed to enhance and preserve air quality in the affected area and are considered consistent with the goal.

Goal 11 (public facilities and services) is deemed unaffected by the rule. The rule does not appear to conflict with other goals.

Public comment on any land use issue involved is welcome and may be submitted in the same fashions as are indicated for testimony in this notice.

It is requested that local, state, and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use and with Statewide Planning Goals within their expertise and jurisdiction.

The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflict brought to our attention by local, state, or federal authorities.

AS278

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Dennis Belsky, Hearings Officer

Subject: Report on a Public Hearing held September 18, 1984 in Grants Pass to Designate a Carbon Monoxide Nonattainment Area in Grants Pass as a Revision to the State Implementation Plan

Procedure and Purpose of the Public Hearing

Pursuant to public notice, a public hearing was convened at the Grants Pass City Council Chambers, 101 NW "A" Street, Grants Pass, OR at 7:00 pm on September 18, 1984. The purpose of the hearing was to receive testimony on two proposals: (1) the formal designation of nonattainment status for carbon monoxide and (2) establish the boundaries of the nonattainment area in the City of Grants Pass. Approximately twelve persons attended the hearing. Three persons submitted oral testimony.

Summary of Testimony

In order of appearance:

Eleanor Edmondson, 1706 SW "I" Street, Grants Pass, supported the proposals.

Ed Murphy, Director of Community Services, representing the City of Grants Pass, was in general support of the proposals and suggested that a more appropriate southern boundary for the nonattainment area would be "M" Street. Staff proposal for the southern boundary was the Rogue River. Mr. Murphy cited the following reasons to support the views of Grants Pass:

a. No monitoring stations were located south of "M" Street by the Department during their evaluation of the nonattainment area;
b. The Rogue River probably helps moderate carbon monoxide levels; and
c. Any traffic improvements, including traffic signalization, would probably only affect areas at "M" Street and to the north.

Harold Haugen, Josephine County Commissioner, 4300 Lower River Rd., Grants Pass, did not specifically address the nonattainment designation or the proposed boundaries. His testimony concerned:

1. Since a local governmental entity perhaps could not effect sufficient change to the management of the state highway in the nonattainment area, the State of Oregon should take the lead role in attaining the air quality standard. His reasons were:

   a. Possible (federal) sanctions may be imposed on Grants Pass even though the proposed nonattainment boundary is primarily a state highway (Hwy. 99).

   b. Traffic congestion in the proposed nonattainment area is partially caused by the Southern Pacific Railroad, especially during the hours of 11-12 noon and at 4:00 pm. When a train passes, traffic backs up to 6th and C. As traffic waits, emissions can build up.

   c. Another cause of traffic congestion is the narrowing down of four lanes of traffic to two lanes to cross the Rogue River when traveling south.

2. The DEQ, after analysis of the air quality problem, should require the Oregon Department of Transportation to seriously consider funding and building a third bridge across the Rogue River as a means of alleviating traffic congestion and traffic density in the nonattainment area.

The hearing adjourned at 7:36 pm.

Recommendations

The hearings officer makes no recommendations.

Respectfully submitted,

Dennis Belsky

Dennis Belsky
Hearings Officer

Attachment

1. Three witness registrations

Attachment 3
Agenda Item No. K
November 2, 1984
EQC Meeting

Section 4.11

GRANTS PASS NONATTAINMENT AREA
STATE IMPLEMENTATION PLAN FOR CARBON MONOXIDE

October 1984

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Table of Contents*

* Only Section 4.11.1 is included at this time. Other sections will be included at a later date.

4.11.0 GRANTS PASS NONATTAINMENT AREA STATE IMPLEMENTATION PLAN FOR CARBON MONOXIDE

4.11.1 AMBIENT AIR QUALITY

4.11.1.1 Geographic Description

The Grants Pass Carbon Monoxide Nonattainment Area is located within the City of Grants Pass in Josephine County, Oregon. The City of Grants Pass is located at an elevation of 948 feet above sea level in a mountainous valley formed by the Rogue River. Figure 4.11-1 is a map of Grants Pass and vicinity. The City of Grants Pass has a population of 15,040 and Josephine County has a population of about 59,000. The principal industries are logging, wood products manufacturing, agriculture and tourism.

4.11.1.2 Ambient Monitoring Data

The Department began monitoring carbon monoxide (CO) in Grants Pass in 1979. The initial monitoring, done at a site near 6th and M Streets, indicated that maximum CO concentrations were close to but not above the ambient air quality standard of 10 milligrams per cubic meter ($mg/^3$), 8-hour average, at the monitoring site. Subsequent monitoring near 6th and G streets indicated the maximum CO concentrations were above the standard as outlined below:

Year	Number of Days Above Standard	Second Highest Day (mg/m^3)
1981	25	13.2
1982	38	14.9
1983	13	12.9

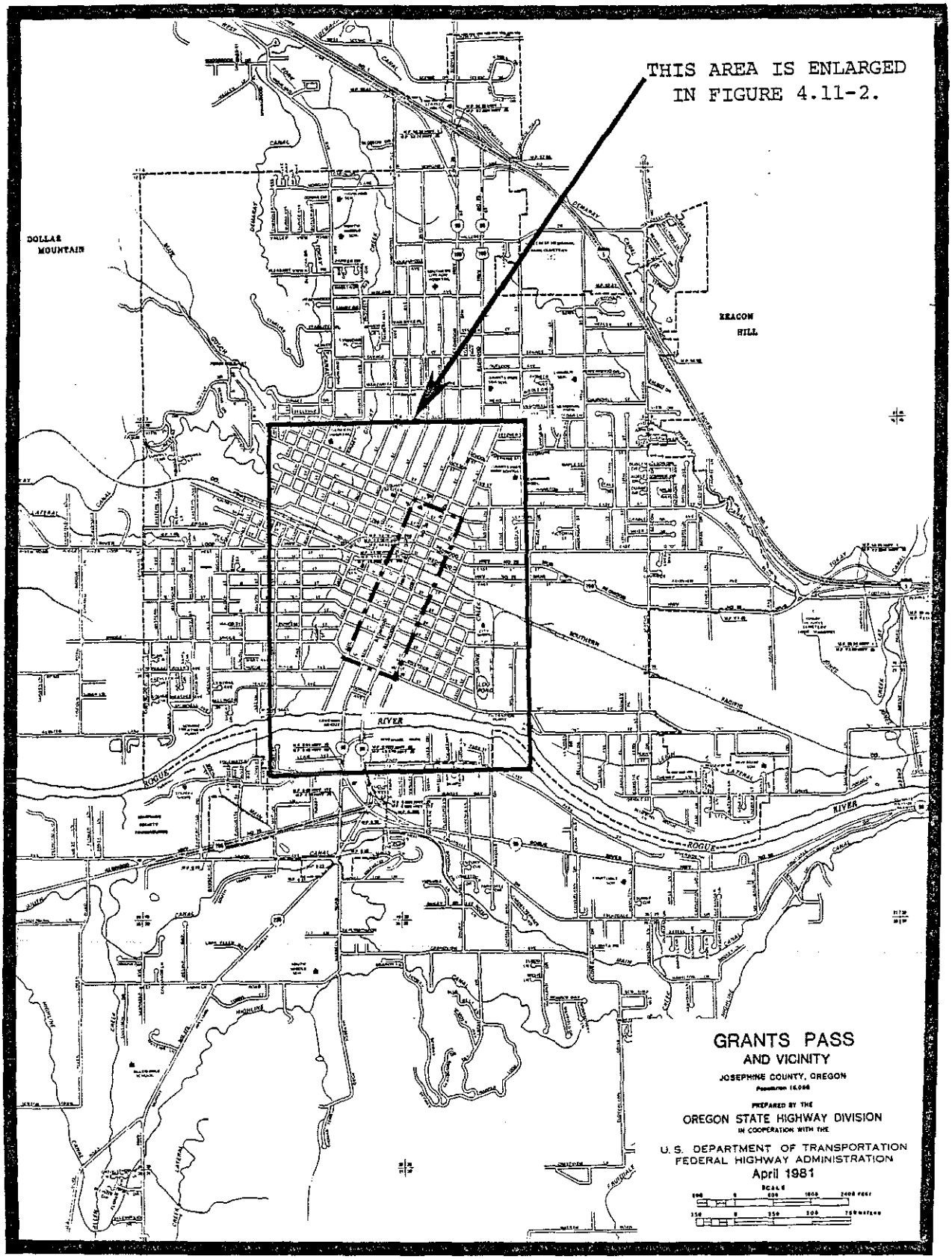

FIGURE 4.11-1: GRANTS PASS AND VICINITY.

4.11.1.3 Nonattainment Area Boundaries

The Department conducted two special studies during 1982-84 in order to locate the optimum monitoring site and define the problem area. A special study during the winter of 1982-83 determined that the 6th and G site reasonably characterized the maximum CO concentration area. A subsequent study during the 1983-84 winter identified the boundaries of the problem area. The problem area is enclosed by B Street (to the approximate north), 8th Street (to the east), [the Rogue River] M Street (to the south), and 5th Street (to the west).

Figure 4.11-2 is a map of the proposed nonattainment area. The Grants Pass CO problem area appears to be closely associated with high traffic volumes on the Redwood Highway corridor through downtown (6th and 7th Streets couplet).

AS283

Note: Additions are underlined; deletions are bracketed.

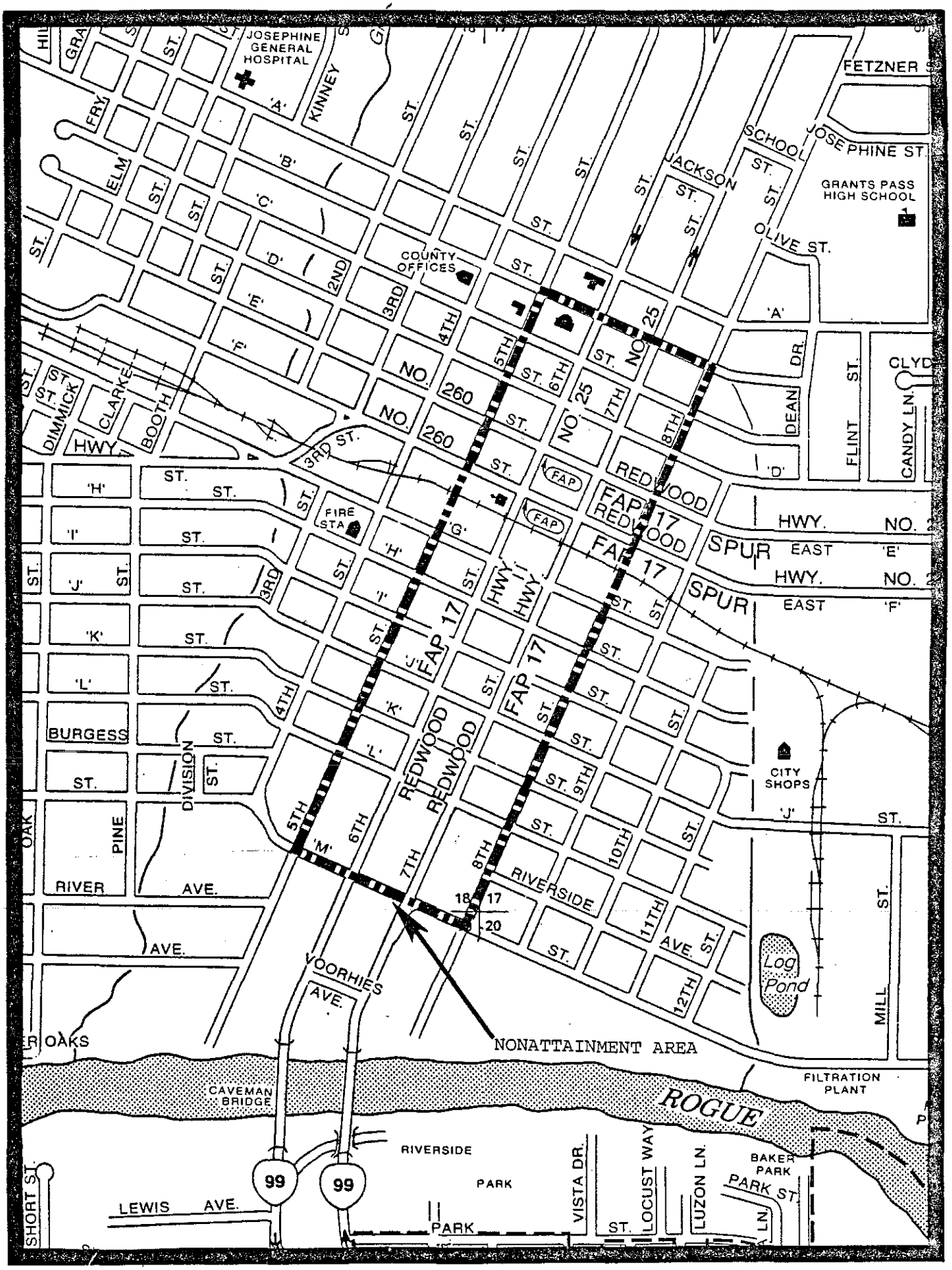

FIGURE 4.11-2: GRANTS PASS CARBON MONOXIDE (CO) NONATTAINMENT AREA.

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. L, November 2, 1984, EQC Meeting

Request for a Variance from ORS 459.270(2) and (3) and OAR 340-61-028(1)(b), Closure Permit Financial Assurance, by Disposal Industries, Inc. at the Newberg Landfill

Background

Disposal Industries, Inc. (DII), operator of the Newberg Landfill, has requested a temporary variance from ORS 459.270(2) and (3) and OAR 340-61-028(1)(b) which require a land disposal site operator to submit a financial assurance plan as part of the closure permit application. The variance is requested until March 1, 1985 (Attachment I).

The landfill closure law that was passed by the 1983 legislative session and the administrative rules adopted by the Commission in January, 1984 require land disposal site permit holders to obtain a closure permit 5 years before the proposed date of closure. Sites scheduled to close within 5 years were required to apply for a closure permit by January 31, 1984.

A closure plan and a financial assurance plan are required elements of a complete closure permit application. The closure plan describes how the site will be finished off when waste is no longer received; how it will be maintained thereafter; and who will be responsible. The financial assurance plan describes the projected costs of closure and post-closure maintenance activities; how those costs will be financed; and identifies the form of "assurance" that will either pay for the closure costs or will guarantee that they will be completed.

Angus and Norma MacPhee are the owners and corporate officers of Disposal Industries, Inc. The landfill is located on leased property owned by Joe Schneider and Al LaJoie. It has been operating under a solid waste permit for many years. It stopped receiving waste on September 30, 1984, when final filling was accomplished. DII is subject to the closure permit requirements.

On March 15, 1984, DII submitted an incomplete closure permit application. DII failed to include a financial assurance plan and an updated closure plan because issues of responsibility for post-closure maintenance and

financial impacts from reduced waste flow to the site had not been resolved. The new law caught DII in the position of having to provide financial assurance in 8 months rather than over as much as 5 years available to others. The diminished waste flow was reducing the accumulation of funds to finance closure.

These issues were still not resolved by April 18, 1984, when DII was served a Notice of Violation for failure to submit a complete closure permit application. In June, 1984, waste flows were restored. In September, 1984, Yamhill County conditionally agreed to accept responsibility for post-closure maintenance in return for title to the property. This tentative commitment includes acceptance of title only after Department approval of final closure.

On September 18, 1984, the Department and Yamhill County conducted a joint inspection of the Newberg landfill to determine the adequacy of ongoing closure activities. Additional soil cover was needed on the sides of the landfill in order to effectively seal existing leachate seeps.

Information provided by Newberg Ready Mix, supplier of DII's off-site cover material, confirms that over $144,000 of cover material was purchased between June and October, 1984. This figure does not include the cost of placement and compaction. An accurate estimate of remaining closure activities cannot be made without a thorough engineering evaluation. However, it is likely that those costs will exceed $100,000. The MacPhee's and other representatives of DII contend that there are insufficient assets to pay the remaining costs at this time.

DII has requested a temporary variance until March 1, 1985, to allow them time to determine the costs of remaining closure activities and develop a final plan to finance them. The March 1, 1985 date was requested to allow DII's engineer to complete recommendations on the project and Department staff to evaluate the effectiveness of the completed closure activities during January and February. That is the period of greatest leachate production. The Department wants to be sure that all necessary closure activities are identified before the financing plan is finalized. As a practical matter, no further closure work is possible until next construction season.

At this time, the site has stopped receiving waste and all of the waste has been covered. However, the depth of cover soil is inadequate, particularly on the side slopes where leachate seeps exist. Because the waste is covered, less leachate will be generated now, but the site is not adequately closed.

If nothing is done, leachate seeps will continue to break out on the site and flow onto adjacent properties and probably into the Willamette River. The leachate strength will decline over time.

Alternatives and Evaluation

There are two potential alternatives for dealing with the Newberg landfill closure issue.

1. Deny the variance and bring enforcement actions, including civil penalties, against Disposal Industries, Inc. for failure to submit a financial assurance plan and obtain a closure permit.

   DII was issued a Notice of Violation in April 1984 for failing to submit a financial assurance plan and obtain a closure permit. They have acknowledged responsibility to properly close the site. By applying for this variance, they seem to be committing to try to resolve the issue in a responsible manner. Enforcement actions, including civil penalties, initiated at this time are not likely to be effective in resolving this situation.

2. Grant a temporary variance from the requirement to submit a financial assurance plan as part of the closure permit application and issue a conditional permit with a compliance schedule allowing adequate time to develop and submit a financial assurance plan.

   This would allow issuance of a closure permit to replace the existing permit which expires December 31, 1984. The closure requirements would be spelled out in an enforceable permit. Time would be allowed to determine remaining closure costs. The adequacy of closure actions already completed can be assessed this winter and the costs of any changes or repairs can be incorporated when the remaining closure activities are completed. This should result in a better final closure and reduce post-closure maintenance costs. It is anticipated that these items can be completed and a financial assurance plan submitted by March 1, 1985.

The owners of DII also have been principals in solving Lincoln County's long-standing solid waste disposal problem. The focal point of their proposal is a garbage baling plant and landfill to be located at Agate Beach. DII's owners report they were required to pledge all assets to obtain private financing for the Lincoln County project. If DII defaults on its obligation to complete closure of the Newberg disposal site, the responsibility will fall on the property owners. Potential litigation could delay final closure of the Newberg landfill and adversely impact the Lincoln County project.

The EQC has authority under by ORS 459.225 to issue a variance and a conditional permit containing a compliance schedule specifying the time permitted to bring the Newberg site into compliance with the solid waste laws and administrative rules. Before granting a variance or conditional

permit, the Commission must find that one or more of the following criteria are met:

a. Conditions exist that are beyond the control of the applicant.

b. Special conditions exist that render strict compliance unreasonable, burdensome or impractical.

c. Strict compliance would result in substantial curtailment or closing of a disposal site and no alternative facility or alternative method of solid waste management is available.

The timing of the new law caught this landfill in the situation of needing to comply within a much shorter period than most other sites. The financial assurance and post-closure maintenance requirements went into effect 8 months before the landfill closed. This was after DII had invested heavily in several unsuccessful landfill and transfer station siting proposals and in the Lincoln County project. DII planned to obtain approximately one-third (20,000 cu. yd.) of their final cover material on-site. In late 1983, Yamhill County required a 100 foot road setback. This eliminated the use of most of the on-site soil. To replace this material, DII had to buy more cover soil from off-site. The unit price of cover soil also increased from the original engineering estimate of $2.00/cubic yard to $3.18/cubic yard.

Compounding the problem was the diversion of over 20% of the waste volume from the Newberg Landfill in September, 1983, immediately after Yamhill County granted a rate increase to DII to provide additional funds for closure. This occurred when waste from Washington County haulers was diverted to the River Bend Landfill in McMinnville because that landfill gave them a lower rate. Revenues to the Newberg landfill operator dropped rather than increasing as intended. This situation restricted the accumulation of adequate funds for closure because waste volumes were not restored until June 1984, just 3 months before the landfill closed.

If the variance is granted, the Department would expect DII to submit the following to the Department by March 1, 1985:

a. A detailed list of remaining closure activities.

b. An updated as-built plan of the site showing final contours, surface water drainage diversion ditches, areas needing additional cover soil and location of leachate seeps.

c. A detailed cost estimate of all remaining closure activities.

d. An identification of the source, type and amount of off-site cover material.

e. A time schedule for completing all remaining closure activities.

f. A description of how these activities will be funded and how the Department will be assured that funds will be available.

g. Completion of all arrangements for post-closure maintenance of the site.

Summation

1. Disposal Industries, Inc. the operator of the Newberg landfill, has requested a temporary variance from ORS 459.270(2) and (3) and OAR 340-61-028(1)(b) which require that a financial assurance plan be submitted as part of the closure permit application.

2. The EQC has the authority under ORS 459.225 to issue a variance and a conditional closure permit containing a compliance schedule specifying the time permitted to bring the site into compliance with the solid waste laws and administrative rules.

3. The following findings support the granting of a temporary variance to Disposal Industries, Inc. because there are special circumstances beyond their control which make immediate compliance unreasonably burdensome:

   a. The new financial assurance and post-closure maintenance requirements (January 1984) caught DII in the position of having to provide financial assurance in 8 months rather than over as much as 5 years available to others.

   b. DII made substantial commitment of assets in several unsuccessful landfill and transfer siting proposals and in the Lincoln County project. Those financial commitments were made prior to promulgation of the new financial assurance requirements.

   c. DII's ability to generate adequate funds for closure was impaired. In August, 1983, Yamhill County granted a rate increase to DII to provide additional funds for closure. Almost immediately, over 20% of their waste volume was diverted to another landfill until late June, 1984, leaving only 3 months of normal income to finance closure before the landfill closed September 30, 1984.

   d. The total cost of completing the closure activities will be much higher than previously anticipated. Additional off-site cover material had to be purchased to replace on-site soil restricted by Yamhill County and the unit price of cover material was higher than estimated.

4. Issuing a temporary variance with a conditional closure permit requiring compliance with the financial assurance rules by March 1, 1985, will allow time for Disposal Industries, Inc. to determine the remaining closure costs, evaluate the effectiveness of completed closure activities this winter, and develop a plan and time schedule for financing and implementing the necessary final closure work.

5. A closure permit should be issued before December 31, 1984, when the existing permit for the Newberg landfill expires.

6. The Newberg landfill is currently closed and all waste has been covered. However, the depth of cover soil on some parts of the site are inadequate and a number of necessary final closure activities remain to be completed.

Director's Recommendation

Based on the findings in the Summation, it is recommended that the Commission issue Disposal Industries, Inc. a temporary variance from ORS 459.270(2) and (3) and OAR 340-71-028(1)(b) and a conditional closure permit which requires compliance with the financial assurance requirements by March 1, 1985.

Fred Hansen

Attachment: I. Letter from Ramsay, Stein, Feibleman & Myers, Attorneys, requesting variance, dated September 28, 1984

Joseph F. Schultz:l
SL3755
229-6237
October 12, 1984

Attachment I
Agenda Item No.
11/2/84 EQC Meeting

RAMSAY, STEIN, FEIBLEMAN & MYERS
ATTORNEYS AT LAW
544 FERRY STREET S.E.
SALEM, OREGON 97301

(503) 399-9776

September 28, 1984

GILBERT B. FEIBLEMAN
RICHARD C. STEIN
RAYMOND M. RAMSAY
A. CARL MYERS

Mr. Fred Hansen, Director
Department of Environmental Quality
P.O. Box 1760
Portland, OR 97207

RE: SW - Newberg Landfill Closure
SW - Permit No. 97
Yamhill County
Request for Variance

Dear Mr. Hansen:

Our firm represents Disposal Industries, Inc., Newberg, Oregon, the permit holder and operator of the above landfill.

Disposal Industries, Inc., is in the closure process at Newberg and will not be accepting solid waste after September 29, 1984. An application for an amended permit covering closure has been submitted to DEQ, but for a variety of reasons, we find it necessary to seek a variance from the requirement of a financial assurance plan for a period of time.

I would first like to make it clear that we have already spent a very significant amount on closure of this facility. As of September 28, 1984, Disposal Industries, Inc. has spent $127,843.04 on the Newberg Landfill closure. We expect to have the entire landfill covered and seeded on an interim basis prior to the on-set of this year's rainy season.

There are numerous reasons that Disposal Industries, Inc. is compelled to seek this variance:

1. Insufficient Lead Time for Closure Funding

As you know, the new legislation went into effect on January 31, 1985 and anticipated a five-year period for accumulating a closure fund. We are faced with funding closure seven (7) months, not five years, after the effective date of the legislation. A rate increase granted in 1983 to help fund closure was virtually negated due to diversion of a significant amount of solid waste flow to other landfills almost immediately after the increase was granted.

2. Loss of Recommended Newberg Transfer Station

When Yamhill County denied two (2) successive applications for a replacement Newberg landfill, it became clear that the solid waste from this area would go to the Riverbend Landfill, 18 miles to the southwest near McMinnville. An intergovernmental committee (Yamhill County, cities of Newberg, Dundee and Dayton) requested proposals for a transfer station and Disposal Industries, Inc. submitted a proposal that won the committee's recommendation. This would have provided an on-going source of funding for closure at the Newberg Landfill. However, the local collector refused to use the facility in favor of his own (the losing proposal) and the appropriate local governments refused to compel him to do so.

3. Loss of On-site Cover Materials

There has been a greater loss to erosion of previously covered areas than had been anticipated, requiring new placement of cover as part of the permanent closure. Disposal Industries, Inc. had also planned to use a substantial amount of on-site fill as cover material, but Yamhill County objected on the ground that a 100-foot set back was necessary to protect a possible future roadway. This meant that it was necessary to purchase and transport this large amount of material from off-site sources. It is no longer feasible to use this area because Disposal Industries, Inc. has filled the surrounding area with waste as a result of the county's decision and it is no longer accessible.

4. Uncertainty as to Closure Permit and Funding

Finally, there has been a great deal of uncertainty as to these two issues. Disposal Industries, Inc. is only the operator of the landfill. Mr. LaJoie and Mr. Schneider are the owners of the property. There has also been some discussion of a county role. DEQ staff has been involved at various times in these discussions.

For all of the above reasons we are specifically requesting the Environmental Quality Commission to grant a variance from the financial assurance plan requirements of ORS 459.270(2)(3) and OAR 340-61-028(1)(6) until March 1, 1985, approving the issuance of the permit without this exhibit. This date is dependent upon completion of engineering work to determine the extent of additional work required, which analysis is possible only during the rainy season to pinpoint any leachate seep areas.

Thank you for your consideration. My clients would be happy to answer any questions that you may have. Kindly advise us when

this matter will appear on the Environmental Quality Commission agenda so that we may appear and answer any questions that they may have.

Sincerely,

RAMSAY, STEIN
FEIBLEMAN & MYERS

Richard C. Stein

RCS:sk

cc: Disposal Industies, Inc.
Mr. Gary Messer
Mr. Joseph F. Schultz

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. M, November 2, 1984, EQC Meeting

Request For An Extension of a Variance From OAR 340-25-315(1)(b), Veneer Dryer Emission Limits, For Brand-S Corporation, Leading Plywood Division, Corvallis.

Background and Problem Statement

Brand-S Corporation, Leading Plywood Division, owns and operates a plywood mill at Corvallis, Oregon. Past violations of the Department's 10% average and 20% maximum opacity limits for veneer dryer emissions resulted in issuance of a Notice of Violation and Intent to Assess Civil Penalty in April, 1983. Subsequent modifications in veneer dryer operation; dryer scrubber operation and maintenance; and dryer seal improvements failed to result in compliance. The Department notified Leading that violations were continuing and further work would be needed.

Due to severe economic conditions and poor profitability, the Company was unable to purchase commercially available veneer dryer control equipment. Leading Plywood requested and was granted a variance (Attachment A) from the Department's veneer dryer opacity limits by the Commission on October 7, 1983, subject to the following conditions:

1. The Company would complete modifications, already underway, on one of the existing dryer gravel bed scrubbers by adding a sand bed filtering section by October 10, 1983.

2. The Company was to review existing commercially available "off the shelf" veneer dryer control systems from three vendors; submit documentation on the suitability, expected performance and cost of installation of these systems for Department review; and select the most suitable system for installation by March 1, 1984.

3. By October 1, 1984, they were to purchase and install the selected control system and demonstrate compliance with the permit opacity limits.

4. Beginning April 1, 1984, the Company was to submit monthly reports, detailing progress in meeting the above requirements.

Leading Plywood has completed the requirements of Conditions 1, 2, and 4. (Progress reports were generally in the form of frequent telephone conversations and meetings with Department staff. Attachment B is a status report summarizing the Company's activities and investigations and has been accepted as satisfying the variance reporting requirements). However, the critical step of purchase and installation of adequate control equipment has not been met due to the following:

1. The Company's efforts to upgrade the existing gravel bed scrubber by installing a sand/fabric section were not successful. A large, "home-built" sand filter section was then added. In the Company's opinion, the new sand filter section was "equal to or better than" commercially available sand filters. The improved sand filter, however, failed to achieve compliance despite several months of fine tuning and modifications.

2. Price quotes and proposals were received on two commercial scrubber systems, the Radar Sand Filter and the Ceilcote Ionizing Wet Scrubber. Two other systems were considered but no proposals solicited because of compliance problems documented by the Department.

   The Radar sand filter was rejected by Leading due to the inability of their own sand filter unit to achieve compliance. Since the Department has no other experience with sand filter scrubbers controlling wood fired dryers, we agreed with this conclusion. The Ceilcote proposal was rejected because of the high initial cost and the variability of performance on different wood fired dryer installations around the State. High maintenance and operating costs were also drawbacks for this small Company.

3. Concurrent with these investigations, Leading Plywood commissioned, with Department approval, two experimental pilot-scale control system tests (one on each dryer). Only one of the systems, the GeoEnergy Aerosol Recovery System (ARS), an electrostatic precipitator system used successfully for control of cooking oil smoke in the potato industry, appeared to hold promise in controlling wood fired emissions. Low projected operation and maintenance costs also made this control system appealing.

4. Leading Plywood represents possibly the "worst case" situation for control of wood fired dryer emissions:

   a. Poorest quality resinous veneer is processed into sheathing grade plywood. Roughly 70% of the veneer dried is Douglas

fir "white spec", which historically produces the greatest amount of smoke or blue haze.

b. The fuel used to heat the dryers is ground up trim from the plywood sheets and contains salts (from the resin glue) which aggravates opacity levels in the emissions.

c. When the dryers were converted from natural gas firing to wood firing in the mid-1970's, suspension burners were added to the superheater sections of the dryers. This configuration did not allow for efficient recirculation of exhaust gases for incineration of hydrocarbons and, therefore, no additional treatment occurs within the burner system.

d. High exhaust flows from each dryer increase the difficulty of successfully controlling emissions using conventional control devices.

5. In mid-1983, the Air Quality Division conducted a study of veneer dryer performance/compliance statewide. After preliminary review of the study, the Department found that there were compliance problems with all types of control systems serving wood fired veneer dryers and that none of the current technology was able to achieve continuous compliance with the 10% average opacity limit.

6. Leading Plywood has been suffering from the general downturn in the wood products industry for the past several years. At the request of their lending institution, the Company has taken measures to increase profitability. Steps include reducing work force, salaries, benefits, and hours of operation. The Company is limited by their bankers to amount of capital expenditures which can be made. Only recently have they been able to negotiate for purchase of emission control equipment due to the special considerations GeoEnergy is giving Leading Plywood on this system. However, if they are required to purchase other add-on equipment without accompanying accommodations in price and financing, funding would not be possible at this time.

Given the circumstances, Leading Plywood was reluctant to purchase <u>any</u> currently available commercial control equipment. However, the test results for the pilot GeoEnergy ARS show better opacity and particulate control than currently available commercial systems. Therefore, Leading Plywood chose to further pursue this option. After review of the test data, the Department agreed with this decision. Since funding was a major stumbling block for Leading and the technology was new to veneer dryer control, Department staff investigated EPA Research and Development

funding. EPA advised this project would compete nationwide for funds and appeared to have little chance for approval.

In early September, 1984, Leading Plywood reached a verbal agreement with GeoEnergy for purchase and installation of a prototype full-scale control unit at a reduced price. GeoEnergy agreed to this arrangement in an effort to establish the viability of their system for control of veneer dryer emissions in Oregon. Regional and Air Quality Division staff met with Leading and contacted GeoEnergy and verified that they were working on final contract language (anticipated contract signing by October 15, 1984). However, the October 1, 1984, deadline for achieving compliance cannot be met. The Department has issued a Notice of Violation and Intent to Assess Civil Penalties for failure to meet the deadline as outlined in the October, 1983, variance. Further enforcement is contingent upon continued progress toward achieving compliance and the Company's requesting an extension of the above variance.

By letter of September 27, 1984, Leading Plywood has requested an extension of their temporary variance, from the Department's 10% average, 20% maximum opacity rule for veneer dryer emissions (Attachment C). They propose to achieve compliance according to the following time table:

1. By October 15, 1984, sign final agreements and contracts.

2. By February 1, 1985, take delivery of the initial prototype control unit.

3. By February 15, 1985, complete installation of the prototype control unit.

4. By March 15, 1985, complete troubleshooting and tuning and notify the Department so certification observations can begin.

A second control unit would be ordered within 90 days of certification by the Department that the control system is meeting the limitations of the permit. By January 1, 1986, the second unit would be installed and in full operation.

The Commission is authorized by ORS 468.345 to grant variances from Department rules if it finds that strict compliance would result in substantial curtailment or closing down of a business, plant or operation; and/or special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause.

Alternatives and Evaluations

The Department has reviewed several alternatives available to the Company as detailed in the Status Report (Attachment B). Four will be discussed here:

1. Request an extension of the October, 1983, variance to allow for design, construction, installation and DEQ certification of the prototype GeoEnergy ARS control system for both dryers.

   This alternative would allow the Company to proceed with work already begun to control emissions. It would also provide an opportunity for the development of a new control technology for wood fired dryers. The Department feels this system will provide more reliable emission control for this difficult emission category. Because of the prototype nature of this control system, Leading Plywood would be able to purchase the necessary control equipment over the next 14 months at a price and terms acceptable to their lending institution and board of directors.

2. Purchase available new or used "off the shelf" control equipment with possible shorter installation time.

   This alternative may or may not result in compliance. Final results are not easily predictable due to the nature of the Company's emissions and Department experience with currently available equipment in achieving continuous compliance. A variance extension would also be necessary to allow time for purchase and installation of equipment. Due to the high cost of this equipment, Leading Plywood may not be able to obtain financing for this alternative.

3. Change product mix to eliminate processing of resinous veneers which produce heavy smoke.

   This alternative may allow the Company to reduce emissions using existing controls if non-resinous whitewoods were processed exclusively. There are currently several mills which operate dryers in compliance strictly on these veneers. It is doubtful, however, if Leading could achieve compliance unless a switch to non-resinous wood fuels occurred concurrently.

   This alternative would require a complete change in veneer suppliers, marketing procedures, and possible modifications to the production lines. It is also questionable if room exists in this highly competitive plywood market for another supplier.

4. Switch from ply trim fuel to natural gas or other wood fuels containing no resins or salts.

   This alternative would require the Company to change from low cost fuel, produced from excess materials trimmed from the final products, to a high cost fuel in the case of natural gas; or purchase pelletized wood fuel to be ground and burned in the existing burners. In either case, the added cost of buying outside fuel and providing

Summation

1. Brand-S Corporation, Leading Plywood Division, operates a sheathing grade plywood mill at Corvallis, Oregon. Veneer dryer emissions are currently out of compliance with the Department's 10% average, 20% maximum opacity limitations. They are operating under a Notice of Violation and Intent to Assess Civil Penalty for these violations.

2. Leading Plywood's emissions represent the "worst case" situation because of the poor quality and resinous veneer they process; salts included in the dryer heat cell fuel; lack of dryer exhaust recirculation/incineration; and high exhaust flows from the dryers. Application of existing control technology would be difficult.

3. The Company was unable to finance and purchase add-on emission control equipment and received a variance from the Commission in October, 1983, that required modifications to their "home built" scrubber; review of commercially available veneer dryer control equipment; and selection, installation, and demonstration of compliance with opacity limits by October 1, 1984.

4. Leading Plywood completed modification of their "home built" scrubber but was unable to achieve compliance. Investigations into other types of control systems led them to believe no equipment was available which would assure continuous compliance with the Department's limitations. They did not meet the October 1, 1984, deadline.

5. Concurrent with the other work underway, the Company commissioned pilot-scale testing of two experimental control systems. Of the two, GeoEnergy's ARS control system appeared to hold promise in successfully controlling wood fired dryer emissions. The pilot-scale unit showed better opacity and particulate control than currently available scrubbers.

6. A statewide study by the Department in mid-1983 showed significant problems with wood fired dryer emission controls. As a result, the Department is encouraging Leading Plywood to pursue development of the GeoEnergy ARS control device, which appears to be a more suitable technology for wood fired dryers.

7. Leading Plywood reached agreement with GeoEnergy in early September, 1984, for purchase of a control system at a reduced price and favorable financing. They requested an extension of the October, 1983, variance under ORS 468.345 for a period of 14 months, and proposed an acceptable schedule for controlling dryer emissions. The extension would allow continued violation of the opacity limitations until adequate controls could be installed.

The Company has based their request on the lack of adequate control equipment available to assure continuous compliance due to special problems with wood fired dryer emissions and financial hardship if immediate compliance is required.

8. The Commission is authorized by ORS 468.345 to grant variances from Department rules if it finds that special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause.

9. The Commission should find that special circumstances exist (lack of adequate control technology to insure continuous compliance of wood fired veneer dryer emissions) that render strict compliance impractical due to special physical cause.

Director's Recommendation

Based on the findings in the Summation, it is recommended that the Commission grant an extension to the October 7, 1983, variance to Brand-S, Leading Plywood Division, Corvallis, for OAR 340-25-315(1)(b), Veneer Dryer Emission Limits, with final compliance and increments of progress as follows:

1. Submit plans and specifications and Notice of Intent to Construct for one (1) GeoEnergy ARS prototype control unit before November 15, 1984.

2. Complete installation and begin operation of the prototype GeoEnergy ARS control unit on the Moore dryer by February 15, 1985.

3. Complete troubleshooting and system tuning and notify the Department the system is ready for evaluation by March 15, 1985. (Department staff will evaluate the system and determine compliance status by August 1, 1985.)

4. Submit plans and specifications and Notice of Intent to Construct for the second GeoEnergy ARS control unit by October 1, 1985.

5. Install and begin operation of the second ARS control unit by January 1, 1986.

6. Submit status reports, in writing, within 10 days after each of the above dates, notifying the Department if the requirements are being met.

Fred Hansen
Director

Attachments:
A. October 7, 1983 Variance Report.
B. Brand-S, Leading Plywood, Emission Control Status Report.
C. Variance Extension Request, September 27, 1984.
D. October 2, 1984, Notice of Violation and Intent to Assess Civil Penalty.

Dale Wulffenstein: wr
378-8240
October 9, 1984

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. N, October 7, 1983, EQC Meeting

Request For A Variance From OAR 340-25-315(1)(b), Veneer Dryer Emission Limits, For Brand-S Corporation, Leading Plywood Division, Corvallis.

Background and Problem Statement

Brand-S Corporation, Leading Plywood Division, owns and operates a plywood mill at Corvallis, Oregon. Two wood-fired veneer dryers dry purchased Douglas fir veneer used in the production of sheathing grade plywood. Emissions generated by each dryer are controlled by "home-built" gravel bed scrubber systems installed in July and October 1979.

The mill was certified in compliance with the Department's 10% average, 20% maximum opacity rule for veneer dryers in July and October 1979 and again in October of 1980. No opacity readings were taken in 1981. Subsequent evaluations in 1982 and 1983 have shown emissions from both scrubbers to be in excess of opacity limits by a significant margin.

A Notice of Violation (Attachment 1) was issued in September 1982 to Brand-S for opacity violations and they were asked to submit a proposal for correcting the problem. Brand-S responded by proposing increased maintenance activities which included replacement of the gravel in the scrubbers. No significant improvement in opacity was realized.

Because of continuing violations, Brand-S was issued a Notice of Violation and Intent to Assess Civil Penalty (Attachment 2) in April 1983. The Notice set a schedule for completing modifications to the existing system to achieve compliance. These modifications included sealing the ends of the dryers to reduce exhaust air flows, increased water usage in the scrubber spray system, and a general increase in maintenance activities. Follow-up evaluations of the mill after completion of these modifications showed no significant reduction in opacity.

Brand-S has claimed since the first Notice of Violation that the current slump in the plywood market prevents expenditures for emission control beyond that budgeted for operation and maintenance. The Corporation has submitted their banker's testimony (Attachment 3) supporting their claim that "given the working capital position of Brand-S Corporation as a whole, and the fact that these expenditures would not have a direct bearing on productivity and thus income for the corporation, we would find such expenditures to be unacceptable...".

Brand-S has proposed more modifications to the existing scrubbers within the constraints of their financial capabilities in an effort to try to regain compliance. These modifications involve the installation of a fabric/sand filter within the existing scrubber system. A "pilot" installation is to be completed by October 10, 1983. In addition, the Corporation has committed to investigate available "off-the-shelf" emission control equipment, select a control strategy by March 1984 and demonstrate compliance by October 1, 1984.

Brand-S has requested a temporary variance from the Department's 10% average, 20% maximum opacity rule until October 1984 (Attachment 4). The Commission is authorized by ORS 468.345 to grant variances from Department rules if it finds that strict compliance would result in substantial curtailment or closing down of a business, plant or operation.

Evaluation and Alternatives

The nature of pollutant emissions from the mill includes the characteristic visible blue haze associated with veneer dryer emissions. Recent opacity readings at the mill have shown average opacities up to 36% and maximum opacities up to 45%. A photograph of mill emissons taken during recent observations is attached for reference (Attachment 5).

The Corvallis area is in compliance with all ambient air quality standards. The mill is situated within the urban fringe just west of Corvallis and is bounded on the south, west and north by hills creating a "pocket" in which air tends to stagnate. A subdivision, mobile home park, and the Benton County Fairgrounds are located east of the mill about 1/4 to 1/2 mile. The OSU campus is further east at about 1-1/2 miles. Two formal complaints on visible emissions were received by the Department in August 1981 during the renewal of Brand-S's Air Contaminant Discharge Permit. No other complaints have been received, although the characteristic blue haze occasionally extends to adjoining residential properties.

Several factors have been identified as potentially causing or contributing to the apparent increase in emissions since scrubber installation:

1. The gravel bed scrubbers were originally equipped with fog nozzles in the inlets and stainless steel demister sections on the outlets. Both the nozzles and the demisters plugged and were removed (not reported to DEQ).

2. The gravel has been changed several times. Currently, coarse gravel is in the units. Fine gravel, tried during initial operations, resulted in plugging and a high-pressure drop.

3. The Douglas fir veneer quality has become worse. The mill is now running on white spec, which is very low-grade veneer.

4. Dryer production has increased slightly.

5. Fuel size to the wood-fired burners is difficult to control because of hammermill screen failures resulting in larger material. Larger fuel causes smoke from the dryers.

6. The resin, as received, may contain some salts. Salts would increase opacity as the "ply trim" is used for fuel in the burners.

The proposed fabric/sand filter addition to the existing scrubber system shows some potential for reducing emissions but appears to be quite maintenance-intensive and is unproven technology. The pilot project to be completed by October 10, 1983, will be evaluated in all these respects to assess whether it is an acceptable final control strategy for maintaining compliance with opacity limits. The Corporation contends that expenditures beyond the fabric modification will be limited to their financial capabilities at the time.

A number of "off-the-shelf" scrubber systems have been installed in recent years on wood-fired dryers, including the Ceilcote ionizing set scrubber, Rader "Sandair" filter, and the Coe (Georgia-Pacific) scrubber with demister section. The cost of installing one of these units at Brand-S probably would range between $500,000 and $750,000. Better cost estimates will be available after Brand-S contacts equipment vendors.

Staff estimates have shown that at the mill's current production, a capital outlay of $500,000, plus operation and maintenance, would cost the corporation approximately $0.80 per 1,000 square feet of plywood sold, or about 1/2% of the current wholesale prices. Any market advantage attributable to cost savings by not installing adequate veneer dryer control is unknown to the Department. The mill has been operating three shifts per day, five days per week throughout the year.

The Leading Plywood mill is the only mill in Oregon owned by the principals of Brand-S Corporation. The Corporation also owns Cascade Resins, a plywood resin manufacturing plant, in Eugene. Brand-S has reportedly been losing money at the Leading Plywood Division and in November, 1982, the entire corporation staff took a 15% salary cut. Capital outlays have been limited to that available from bank loans.

Brand-S and other Oregon plywood corporations have questioned the ability of installed "off-the-shelf" control devices to continually meet the Department's opacity rule. The Air Quality Division is currently

conducting a statewide assessment of installed emission controls. Results of this review are expected later this fall, well before Brand-S is to select a final control strategy in March of 1984.

The Corporation claims to have spent in excess of $350,000 on their two existing scrubbers. The original estimated cost for each unit was about $35,000. The "as-built" costs were over double this amount and frequent maintenance and changes to the systems escalated costs dramatically.

The Department staff has identified three alternatives:

1. Grant the variance with increments of progress and a final compliance date of October 1, 1984. There is risk that the Corporation will not be in a significantly better cash flow position by March 1 when the control strategy is to be selected; however, the Company and staff feel this is a reasonable time schedule.

2. Grant the portion of the variance request through the March 1, 1984, control strategy deadline. A staff report would then be made to request Commission action on extending the request through the period of equipment purchase and installation.

3. Deny the variance request and require strict compliance with the opacity limits. Because of the magnitude of the opacity violations, it is expected that severe production curtailment, even to the degree of plant closure, would be necessary to achieve compliance.

Although the staff does not look forward to another year of violation of the opacity rule, the schedule as proposed, along with the commitment to review available "off-the-shelf" control systems and achieve compliance by October 1, 1984, presents an acceptable solution. Therefore, the Department staff concurs with the variance request as submitted.

Summation

1. Brand-S Corporation, Leading Plywood Division, operates a sheathing grade Douglas fir plywood mill just west of Corvallis.

2. In 1979, the Corporation installed "home-built" gravel bed scrubbers to control blue haze emissions from two wood-fired veneer dryers. The scrubbers were certified in compliance with the Department's 10% average, 20% maximum opacity limits.

3. Staff inspections in 1982 and 1983 revealed non-compliance with the opacity limits and a Notice of Violation was issued. Maintenance activities were increased, however, the violations remained and the Company was placed on a Notice of Violation and Intent to Assess Civil Penalties in April, 1983.

4. Further work to improve the scrubbers failed to result in compliance. The Corporation has proposed an experimental modification consisting of adding a fabric/sand filter to one of the scrubbers by October 10, 1983. The modification is unproven technology and will be closely evaluated by Department staff.

5. In addition to the above modifications, the Corporation has committed to reviewing "off-the-shelf" control systems and selecting a final control strategy by March 1, 1984, with a final compliance deadline of October 1, 1984.

6. The Corporation has requested a variance under ORS 468.345 for a period of about one year. The variance would allow continued operation in violation of the opacity rule until a control system can be selected and installed. The Corporation has based their request on financial hardship and has submitted documentation from the United States National Bank of Oregon in Eugene.

7. The Department staff, after reviewing alternatives with the Corporation and discussing their financial condition, concurs that the variance is necessary and the time frame reasonable. Although the plant has been operating continually, it has operated at a loss. Any curtailment of production or dryer throughput to reduce opacity would result in further financial loss.

8. Although blue haze emissions from the veneer dryer scrubbers occasionally reach a nearby subdivision, only two complaints have been received on the plant in the past three years.

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

10. The Commission should find that strict compliance would result in substantial curtailment or closing down of Brand-S, Leading Plywood Division, at Corvallis.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission grant a variance to Brand-S Corporation, Leading Plywood Division, Corvallis, from OAR 340-25-315(1)(b), Veneer Dryer Emission Limits, with final compliance and increments of progress as follows:

1. Complete the experimental modifications presently underway on a fabric/sand filter for one scrubber by no later than October 10, 1983.

2. Review available "off-the-shelf" emission control systems from at least three vendors and submit documentation from the vendors on

the suitability, expected performance and costs to the Department. Select the most suitable control device by no later than March 1, 1984.

3. Purchase and install the emission control system and demonstrate compliance with opacity limits by no later than October 1, 1984.

4. Submit monthly progress reports to the Department, beginning April 1, 1984, on the status of purchase and installation of the control device.

Bill

William H. Young

Attachments:
1. Regional Notice of Violation, September 1, 1982
2. Notice of Violation and Intent to Assess Civil Penalties, April 20, 1983
3. Letter From United States National Bank, Eugene
4. Variance Request and Expense Detail for Existing Scrubbers
5. Photograph of Plant Taken During Opacity Observation

D. ST. LOUIS:a
(503) 378-8240
September 16, 1983
AA3822

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

ATTACHMENT 1

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

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

September 1, 1982

Mr. Harvey Crawford, Manager
Leading Plywood Division
Brand S Corporation
P.O. Box L
Corvallis, OR 97330

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: NOTICE OF VIOLATION
AQ-WVRS-82-99
AQ-Leading Plywood
ACDP 02-2479; Benton County

Dear Mr. Crawford:

The opacity observations conducted August 26, 1982, showed that the veneer dryer emissions from Leading Plywood are in violation of Condition 5 of the Air Contaminant Discharge Permit. Specifically, opacities exceeded the 10% average, 20% maximum limit.

These readings, plus the results of an earlier observation, are summarized below. I've attached the opacity reports for your records.

Date	Average Opacity		Maximum Opacity	
8/26/82	25.5%	(Moore)	35%	(Moore)
	18.6%	(Prentice)	40%	(Prentice)
5/21/82	10.6%	(Moore)	15%	(Moore)
	23.7%	(Prentice)	30%	(Prentice)

Our files show that in 1979 and 1980 Department personnel took formal opacity readings and found the plant to be in compliance. We have no record of opacity observations in 1981. The file also contains numerous photographs depicting plumes of much less density than are currently emitted.

The Department requests that, by September 15, 1982, you submit a letter addressing the violations and include discussion of the following:

1. Any modifications that have been made since the initial certification.

2. Whether or not the rock and gravel currently in the scrubbers is the same as the original.

3. How fuel sizing problems could be eliminated when hammermill screen failure occurs.

4. What impact, if any, the decreasing veneer quality has had on opacity, and whether or not production has increased.

5. Any corrective action that may be identified and the time schedule for implementation.

If scrubber performance cannot be restored, another control device may be in order. The Department is aware of the problems with wood-fired systems throughout the State. That fact, combined with the current economic conditions, may preclude selection and installation of another control device in the foreseeable future.

Should your review of the current system show that no improvements can be made, and if the Company's financial status prevents purchasing another device, the Department would be willing to support a variance. The variance must be obtained from the Environmental Quality Commission and full documentation of the Company's financial status would have to be disclosed. Attached for your information is a copy of the Statute addressing variances.

Thank you for your cooperation. If we can be of any help, please call either Stan Sturges or me.

Sincerely,

David St. Louis, P.E.
Assistant Regional Manager

DSL/wr
Attachments:
1. Inspection report of 5/21/82.
2. Inspection Report of 8/26/82 and memo of 8/30/82.
3. Statutes pertaining to EQC Variances.

cc: Air Quality Division w/att att 1, 2

cc: Van Kollias, Enforcement Section w/o att

ATTACHMENT 2

Department of Environmental Quality

VICTOR ATIYEH
Governor

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

CERTIFIED MAIL NO. P 297 307 220

Brand-S Corporation
Leading Plywood Division
Sydney B. Lewis Jr., Registered Agent
344 N.W. Sixth Street
Corvallis, OR 97330

Re: Notice of Violation and Intent to Assess Civil Penalty, AQ-WVR-83-46, Benton County

This Department is very concerned with the lack of effective control of veneer dryer emissions from your plywood plant at Corvallis. Department staff has on several occasions in the last year observed and documented veneer dryer emissions from your plant significantly in excess of the 10% average and 20% maximum opacities allowed by your Air Contaminant Discharge Permit. The resulting emissions have been observed to create a very visible haze in the airshed "pocket" bordered by the hills to the south, west, and north of your plant which is visible from quite a distance away. We have received complaints. Continued operation in violation of your permit as such is not acceptable.

Oregon Revised Statutes (ORS) 468.315(2) states that: "no person shall increase in volume or strength discharges . . . in excess of the permissible discharges specified in the existing permit." The violations of your permit are violations of state law, must be corrected, and not allowed to recur. Comparable Oregon industries have successfully controlled veneer dryer emissions to within applicable air quality standards. The technology is available. It is essential that you achieve compliance in a timely manner.

Pursuant to correspondence between Mr. Owen Bently, Jr., of your company and Mr. David St. Louis of our Willamette Valley Regional office, the following compliance schedule has been agreed upon to assure compliance is reestablished in the most timely manner practicable:

1. By May 1, 1983, you should have completed those system modifications outlined in Mr. Bently's February 28, 1983 letter.

2. Soon after May 1, 1983, Department's staff will review your compliance after the modifications have been made.

3. The Department will notify you in writing if compliance is not achieved with those modifications. Within 60 days of receipt of that notification, you shall submit a proposal containing additional steps for the Department's review and approval. In

that proposal, you must adequately demonstrate that the proposed steps will be sufficient to provide the required emission control. Such steps may require major system modifications and/or additional control. The steps will be incorporated into your permit as a compliance schedule by permit addendum.

We recognize that you are currently making an attempt to restore the efficiency of the scrubbers. Nevertheless, the plant has been out of compliance with opacity limits for almost a year. Because of the length of the noncompliance period, we now find it is necessary to address the violations in a more formal manner.

The enclosed legal notice warns you of our intent to assess civil penalties if the above schedule is not carried out and violations continue. The air quality schedule of civil penalties provides for penalties of a minimum of $50 to a maximum of $10,000 per day. If measurable progress continues, it is not our intent to assess civil penalties at this time.

Questions regarding this action should be directed to Mr. David St. Louis or Mr. Stanley Sturges of our Willamette Valley Regional office at 378-8240.

Sincerely,

Van A. Kollias for:

Fred M. Bolton
Administrator
Regional Operations Division

VAK:b
GB2091.L
Enclosure(s)
cc: Willamette Valley Region, DEQ
Air Quality Division, DEQ
Department of Justice
Environmental Protection Agency
Harvey Crawford, Brand-S Corporation

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, OF THE STATE OF OREGON, Department, v. BRAND-S CORPORATION, an Oregon corporation, Respondent.	)	NOTICE OF VIOLATION AND INTENT TO ASSESS CIVIL PENALTY No. AQ-WVR-83-46 BENTON COUNTY

I

This notice is being sent to Respondent, Brand-S Corporation, an Oregon corporation, pursuant to Oregon Revised Statutes ("ORS") 468.125(1) and Oregon Administrative Rules ("OAR") Section 340-12-040(1) and (2).

II

On or about September 28, 1981, the Department of Environmental Quality ("Department") issued Air Contaminant Discharge Permit No. 02-2479 ("Permit") to Respondent. The Permit authorized Respondent to discharge exhaust gases containing air contaminants including emissions from those processes directly related or associated thereto at Respondent's Leading Plywood Division plant located at 6300 Reservoir Road, Corvallis, Oregon, in accordance with the requirements, limitations and conditions set forth in the Permit. The Permit expires on June 1, 1986. At all material times cited herein, the Permit was and is now in effect.

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III

On or about August 26, 1982, between the hours of 10:52 a.m. and 11:17 a.m., Respondent operated Respondent's Moore veneer dryer and Respondent's Prentice veneer dryer such that the visible emissions emitted from the Moore dryer stack and the Prentice dryer stack exceeded an average operating opacity of 10% and a maximum opacity of 20%, in violation of Condition 4 of the Permit, OAR 340-25-315(1)(b)(B) and (C), and ORS 468.315(2).

IV

If five (5) or more days after Respondent receives this notice, the one or more violations cited in Paragraph III of this notice continue, or any similar violation occurs, the Department will impose upon Respondent a civil penalty pursuant to Oregon statutes and OAR, Chapter 340, Divisions 11 and 12. In the event that a civil penalty is imposed upon Respondent, it will be assessed by a subsequent written notice, pursuant to ORS 468.135(1) and (2), ORS 183.415(1) and (2), and OAR 340-11-100 and 340-12-070. Respondent will be given an opportunity for a contested case hearing to contest the allegations and penalty assessed in that notice, pursuant to ORS 468.135(2) and (3), ORS 183, and OAR Chapter 340, Division 11. Respondent is not entitled to a contested case hearing at this time.

April 20, 1983
Date

Dan A. Kollias for:
Fred M. Bolton, Administrator
Regional Operations, DEQ

Certified Mail P 297 307 220

ATTACHMENT 3

UNITED STATES NATIONAL BANK OF OREGON
A Subsidiary of U.S. Bancorp

EUGENE MAIN BRANCH
811 WILLAMETTE STREET
P.O. BOX 10308, EUGENE, OREGON 97440
HEAD OFFICE—PORTLAND

September 9, 1983

Brand-S Corporation
P.O. Box 1087
Corvallis, OR 97330

ATTN: John S. Brandis, Jr.
President
Richard D. Procarione
Executive Vice President

Gentlemen:

We understand that you have been asked to consider making capital improvements in your Leading Plywood facility of approximately $500,000. We understand that these expenditures would be for the purpose of installing polution control equipment.

As you are aware, expenditures in this amount would violate the Loan Agreement currently in existance between Brand-S Corporation and ourselves. In addition, given the working capital position of Brand-S Corporation as a whole, and the fact that these expenditures would not have a direct bearing on productivity and thus income for the corporation, we would find such expenditures to be unacceptable and would be unwilling to grant our approval, through a deviation in our Loan Agreement, for these expenditures to be made.

Please direct any questions or comments concerning this matter to myself.

Very truly yours,

Joseph McKeown
Branch Officer, Commercial Loans

cc: Stanley G. Sturges
Sr. Environmental Consultant

ATTACHMENT NO. 4

BRAND S CORPORATION

P. O. BOX 1087 CORVALLIS, OREGON 97339 503/757-7777

September 9, 1983

REQUEST FOR AIR QUALITY CONTROL VARIANCE

Brand-S Corporation is requesting an Air Quality Control variance that would allow us, by October 1984, to meet the current state standards. We are in the process of modifying our present system to simplify the maintenance to give us more consistent performance.

During the period of November 1973 through March 1976, Brand-S tried a Moore of Oregon - Low Em emission control system that was not at all successful. Brand-S then designed and built our own water scrubber system. We installed one scrubber on our Moore dryer in July 1979 and a second scrubber on our Prentice dryer in October 1979. It took almost two years of research and modification to complete the installation and bring the dryers into compliance. The cost of this installation was in excess of $375,000 (see enclosed cost break down). This installation was certified by the D.E.Q. to be in compliance on September 22, 1981. Brand-S has continued to work on this system to make it more efficient. Cost of maintenance and electrical power approaches $100,000 annually.

Brand-S makes sheathing grade plywood using Douglas Fir veneer. A high proportion of the veneer is white spec. The fuel for the dryers is ground waste wood, burned in suspension burners. This combination causes a unique emission control situation. Although our present system has successfully contained emissions under the conditions described above, there have been maintenance problems which we are working to eliminate through a combination fabric and sand filter (see enclosed drawing). The modification to install the fabric/sand filter is done, but to get the desired pressure drop to efficiently use the fabric/sand filter we have to install another fan. To run this fan we are going to have to run additional power to our emission control unit. Consumer Power has been called to make the needed changes in the transformer bank so we can install the additional transmission lines. We don't have a firm time commitment from Consumer Power to make this change, but expect to have the power necessary to run the fans shortly after October 1, 1983. We should be able to evaluate the results of the fabric/sand installation in early October. As you will note in the enclosed letter from U.S. National Bank, our present loan agreement limits the amount of money we can get for capital expenditures. But we have arranged to meet with representatives of both Ceil-Cote and Rader to discuss their solutions to our emission problem and get estimates from them on the cost of their equipment.

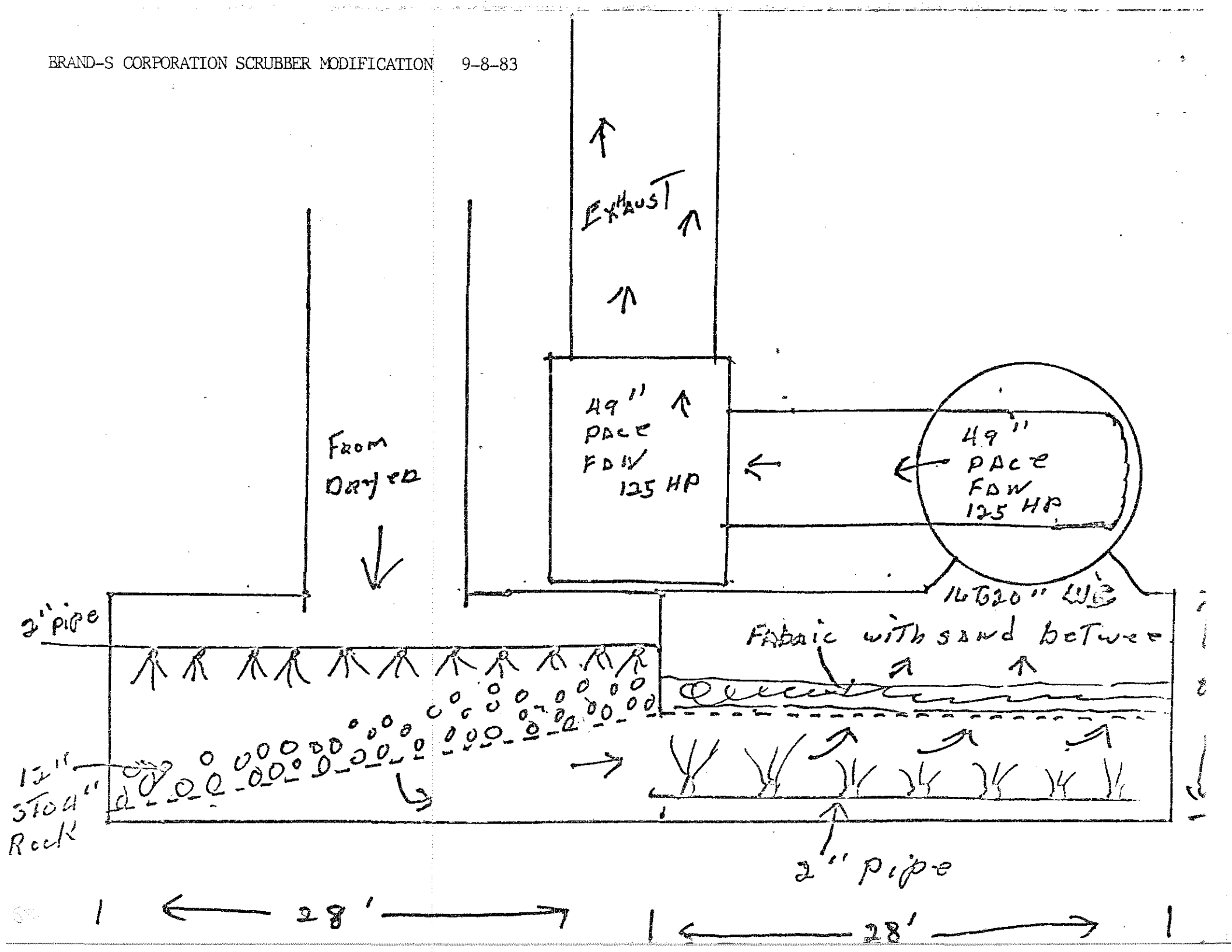
Harvey Crawford, manager of Brand-S Plywood plant has a great deal of experience with veneer dryers and emission control systems, having engineered and built both the fuel conversion and emission control systems presently in use, which like most commercial equipment now in use throughout the industry was capable of controlling emissions when first installed, and was certified by state inspection. Harvey has designed the fabric/sand modification we are now installing and we feel confident that the modifications we are installing will effectively control our emissions. We can make this limited kind of expenditure under our present loan agreement.

Although we feel we can demonstrate the effectiveness of the fabric/sand modification to our system by October of this year, we would like to have until March 1984 to fine tune the fabric/sand modification. This would give us time to also evaluate the proposals we receive from Ceil-Cote and Radar. If by March we need to further modify our system, we would present a plan to have those modifications completed by October 1984.

Enclosures:

1. Cost figures for No. 1 and No. 2 Scrubbers.
2. Drawing of fabric/sand scrubber modification.
3. Letter from U.S. National Bank.

BRAND-S CORPORATION SCRUBBER MODIFICATION 9-8-83



[illegible] Dryer Extension #1 [illegible]

[illegible] 00-1490 Construction in Progress

[illegible]					
[illegible] Wall	38636		608175		
[illegible]	38749		6839		
[illegible]	38750		27645		
[illegible] Truman	38751		347000		
[illegible] Tax			137363		*
[illegible]			26456		
[illegible]			4450		
[illegible] Steel			521601		
[illegible] Sheet Metal			30550		
[illegible] Welding			74127		
[illegible]			10224		
[illegible] Coast Electric			14706		
[illegible]			10455		
[illegible]			[illegible]	3140391	
[illegible] Co		✓	13263.15		
[illegible]		✓	700000		
[illegible] Crane Service		✓	210000		
[illegible] Systems Inc		✓	524000		
[illegible] Industrial		✓	6455		
[illegible]		✓	10556		
[illegible] Electric		✓	659600		
[illegible]		✓	199185		
[illegible]		✓	15700		
[illegible] Electric		✓	193835		
[illegible] Fastener		✓	100591		
[illegible] Steel		✓	242837		
[illegible]		✓	131675		
Industrial Welding		✓	98141		
[illegible]		✓	2442		
[illegible]		✓	54100		
[illegible] Supply		✓	20358		
[illegible] International		✓	29150		
[illegible] Electric		✓	23134		
[illegible] Supply		✓	4336		
[illegible]		✓	5454		
[illegible] Supply		✓	46369		
[illegible] Electric		✓	199933		
[illegible]		✓	6480		
[illegible]		✓	5231		
[illegible]		✓	1945		
[illegible]		✓	14164		
[illegible]		✓	3566		
[illegible] Supply		✓	15000		
[illegible]		✓	28643		
P/R.			[illegible]		*
[illegible]		✓	99215		
[illegible]		✓	3600		
[illegible]		✓	16400		
[illegible] Steel		✓	69100		
Barry Underwood			549.80		

7

1980–1981 Allegan Dryer Extension #1 Moore

Acct 1690 Construction in Progress

			1	2	3 YTD
1980					
Dec	Bal fwd				
	223 Ark.		85.00		
	Nick Crawnick	✓	225.00		
	Concrete Systems Inc	x	75.00	97,521.57	121,925.48
1981					
Jan	Allegan Bank (Max Wall)	x	11,950.00		
	Max Wall	x	2,100.00		
	~~[illegible]~~ Eff[illegible]	x	100.00		
	Federal [illegible]	x	92.44		
	[illegible]	x	[illegible]		
	APF	x	115.00		
	Terry Duffy	x	[illegible]		
	H A Crane	x	340.50		
	[illegible]	x	394.75		
	[illegible] Inc	x	[illegible]		
	[illegible] Contractors	x	[illegible]		
	[illegible] Bearings Inc	x	237.35		
	Nick Crawnick	✓	[illegible]		
	[illegible] Corp. Contractors	✓	12,590.00		
	APF	✓	[illegible]		
	[illegible]	x	2,497.50		
	[illegible] Equip	x	215.52		
	[illegible]	x	[illegible]		
	[illegible]	x	37.91		
	[illegible]	x	[illegible]		
	[illegible] Sheet Metal	x	110.00		
	[illegible] White Rock	x	368.25		
	[illegible] Welding	x	351.44		
	Mill Supply	x	684.15		
	[illegible]	x	1,200.00		
	[illegible] Supply	x	132.13		
	[illegible]	x	91.60		
	[illegible] Electric	x	131.54		
	[illegible] Hdwe	x	24.71		
	[illegible] Electric	x	36.81		
	[illegible]	x	90.00		
	Lumber Supply	x	84.26		
	[illegible]	x	138.24		
	[illegible] Electric	x	389.56		
	[illegible]	x	264.00		
	T/R	✓	29,611.77	62,442.09	191,362.57

198_-198_ Scrubber Dryer Extension #1 Maine

1-000-16-90 Construction in Progress

Date	Description		1	2	3
					$ 191,367.57
198_ Feb	T/R-	Chas Bellingfield	574.00 *		
	T/R Lease 30 E adj		134.00		
	Jones White Rock		108.50		
	Dick's Crane Co		225.00		
	Brown's Crane Service		32.00		
	Jones White Rock		131.37		
	H & H Crane Service		158.00		
	Pyramid Electric		264.47		
	Standard Steel		360.50		
	Underwood Machine Works		144.30		
	Bangor Gas		565.11		
	Specialized Welding *		463.25		
	Knight Electric		6,808 [illegible]	10,039.27	$ 201,406.84
March					

Dryer "Scrubber" #1

Dec 1978

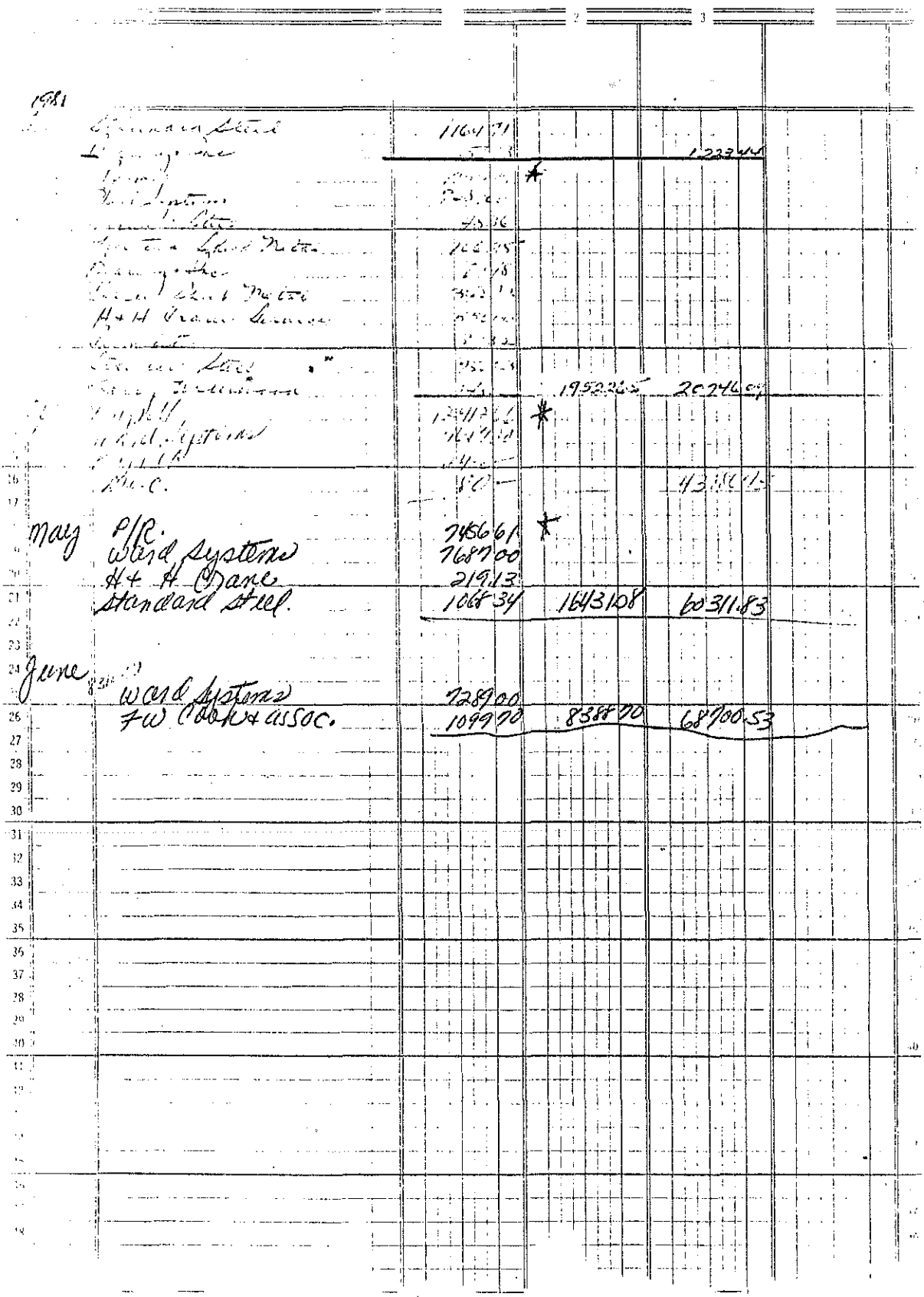
1978		Dr		CR		YTD.	
Dec 31	Labor.	913300	X				
	Bro S- Hauling Paper & Wood	12500					
	C H2 M- Pollution Tests	139000					
	Carothers Co	92229					
	O. D. Neuman, Excavation	29500					
	Standard Steel	54970					
	Farmest Steel	30858					
	Fenstad Sheet Metal	497265					
	Neville Crane Service	17600					
	Paramount Supply	4478					
	Power Trans. Products	13309					
	Timber Supply Co	5152					
	Vetus Electric	217398					
		2027559				* 2027559	
1979							
Jan 31	Cutler Mfg.	475200					
	Engine Fasteners	4942					
	Farmest Steel	130304					
	C H2 M. Hill	8100					
	W W Drawings	56400					
	Vetus Electric	7703					
	Labor.	256828	X				
		939477				2967036	
Dec 28							
	Labor	434790	X				
	Jos Zarfloh Mfg	40000					
	Standard Steel	21374					
	"	120443					
	Coast Crane & Equip	10225					
	Consolidated Electric	20733					
	Farmest Steel	60537					
	Fenstad Sheet Metal	44160					
	W & H Crane Service	12600					
	Hub City Concrete	16360					
	Morse Bros.	24688					
	O. Geo Neuman Exc.	119841					
	Paramount Sply	3523					
	Vetus Electric	112273					
	Metro Steel	24360					
		1065907				4032943	

Dryer "Scrubber"

013-097-02 #1 1979

1979		DR	CR	YTD
Feb 28	Bal Fwd.			46,329.43
Mar 31	Labor	459.92	+	
	Bearings Inc	145.07		
	Mc Master - Carr	198.93		
		768.99	(2)	
	Standard Steel (Tube Sply)	427.09		
	Oregon Transfer	63.00		
	Webster Sheet Metal	872.00		
	Fenster Sheet Metal	717.85		
	W W Grainger	918.18		
	Morse Bros.	43.33		
	Paramount Supply	123.31		
	Snell Tool Rental	112.50		
	Vetters Electric	194.49		1,717.67
		1,717.67		5,750.65
April 30	Labor	1,170.68	#	
	Alex Fetter Sales Service	320.05		
	Gamma Assoc	232.86		
	Bearings Inc	232.35		
	Better Bldg Sply	210.00		
	Coast Crane Equip	245.00		
	Zelta Lewis	14.50		
	Grainger	90.54		
	Mc Master - Carr	160.72		
	North Coast Supply	216.00		
	PMT	21.84		
	Legal Electric Co.	699.72	(3)	
	Robnett's Hdwe	111.88		
	Jepsen Electric	371.70		
	Snell Tool Rental	18.10		
	Vetters Electric	123.67		
		974.61		1,725.76
May 31	Bearings Inc	116.37		
	No. Coast Supply -	<216.00>		<99.63>
		<99.63>		671.51

Dryer Sendzw #2 Section #4



Dryer "Scrubber" #2

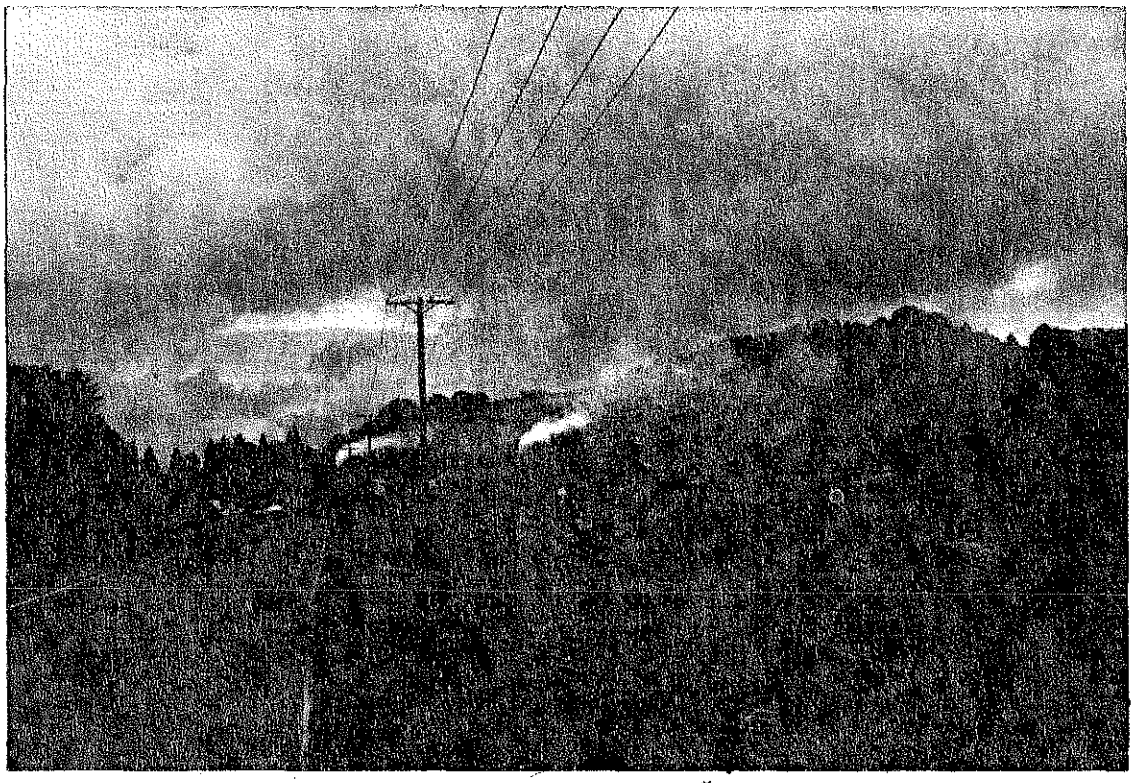
1979 013-097-03

1979		DR	CR	YTD
Nov 31	Farmont Steel	112555		112555
April 30	Carvalho Auto Parts	3103		115658
May 31	Standard Steel	27701		
	Carvalho Auto Parts	3803		
	United Heating - Sheet Metal	79663		
	Bearing Inc	60565		
	" "	33850		
	Farmont Steel	141507		
	United Heating - Sheet Metal	94663		
	Grainger	8470		
	Industrial Welding	20087		
	Orell Tool Rental	2175		
	Standard Steel	51142		
	Paramount Supply	33677		
	Titus Electric	132157		
	Larry Younger	37926		
	Delta Line	2143		
	Labor - Dayton Griffin	472249	*	
		1092306		
June 30	Clark Sheet Metal	354750		
	Ridgeway Pk Line	6550		
	Bearing Inc	11992		
	Oil Skimmers Inc	307195		
	Delta Line	1477		
	Trade/Mr. Cracken	7254		
	Bearing Inc	14443		
	Consolidated Electric	5449		
	Clarke Sheet Metal	110500		
	Detroit Stoker	581600		
	Eugene Fastener	15834		
	Ellenstein Sheet Metal	11250		
	WW Grainger	84970		
	Paramount Supply	11867		
	Robinette Hoist	270		
	Orell Tool Rental	2000		
	Standard Steel	2420		
	Titus Electric	33449		
	Delta Line	1316		
	Labor - Dayton Griffin	500000	*	
		2084586		3292550

Purges - Periods # 2

1979 - 013-097-03

1979		DR	CR	YTD
Jan 30	Bal Fwd			3792550
July 31	A. M. Lavin Machine Wks.	356500		
	Basic	8856		
	Coast Crane Equip	185000		
	Farwest Steel	29126		
	Fenstad Sheet Metal	2810		
	Mill Supply Corp	1427		
		583719		3876269
Aug 31	Drakes	4741		
	Basic	26095		
	Clarke Sheet Metal	127630		
	Farwest Steel	28070		
	Br S Benton - Labor. ("Chuck")	9197	*	
		165711		4071980
Sept 30	Recall Electric	94970		
	Consolidated Fst	4669		
	Snell Tool Rental	9890		
		109529		4181509
	Transfer to LHI Oct 79			



July 13, 1983 Photograph of Brand-S Corporation, Leading Plywood Division, Corvallis. View is toward the west. Opacity is approximately 35--40%.

ATTACHMENT B
Agenda Item M, 11/2/84 EQC Meeting

BRAND-S CORPORATION

Emission Control Status Report

October 8, 1984

Brand-S Corporation
P.O. Box 1087
Corvallis, Oregon 97339
757-7777

TABLE OF CONTENTS

INTRODUCTION

Leading Plywood Corporation makes sheathing grade plywood using Douglas Fir veneer. Two dryers, a Moore and a Prentice, are used to dry the veneer. The fuel for the dryers is ground plywood trim, burned in suspension burners.

In the past 10 years, Leading Plywood has spent an enormous amount of money in an effort to control the dryer emissions to be within compliance of the stringent standards of the Department of Environmental Quality.

Expenditures in Emission Control

Capital Expenditures	
11/73	$ 98,031
4/74	29,589
3/76	78,241
Scrubber #1	266,158
Scrubber #2	110,516
Total Capital Expenditure	$ 582,535
Maintenance by Suppliers	
May 1981 thru July 1983	$ 32,683
In-House Maintenance - estimate	
May 1981 through April 1982	26,911
May 1982 through April 1983	36,814
May 1983 through July 1983	11,475
August 1983 through April 1984	21,060
May 1984 through August 1984	7,452
Total In-House Maintenanc	$ 103,712
TOTAL EMISSION CONTROL EXPENDITURE	$ 718,930

After years of research and modification of emission control devices and the expenditure of this considerable amount of money, we are presently out of compliance with emission standards.

This status report has two purposes. First, to advise the Environmental Quality Commission of the steps we have taken during the past twelve months in our effort to achieve compliance. And second, to outline the course of action which we believe will adequately reduce opacity levels to within compliance levels.

SECTION 1

Emission Control Testing Procedures

On October 15, 1983, the Department of Environmental Quality granted to Brand-S a variance on its Air Contaminant Discharge Permit. A provision of that variance called for completion of experimental modifications on the fabric/sand filter at Leading Plywood. The following is an analysis of the procedures tested to increase efficiency of the emission control device.

1. Duration of project: 60-90 days; completed January 10, 1984. Installed stainless steel baffles in both ends of both dryers to decrease the amount of outside air within the dryer. Objective was to decrease CFM of air through the scrubbers. Result: Very small change.

2. January, 1984. Replaced existing rock in scrubber with filter media similar to that used in a bag house operation. Result: Small difference.

3. January, 1984. Increased filtration from one filter to four. Increased water pressure and volume, increasing pressure to 14" W.C. from 9" W.C. Result: Small change.

4. January, 1984. Installed two fabric filters using 3" river run sand and increased pressure to 16" W.C. Result: No change.

5. February, 1984. Built 8´ x 28´ x 8´ scrubber in line with old scrubber with #18 silica sand. Result: inconclusive as there was insufficient horsepower to move necessary volume of air through both units.

6. March, 1984. Increased horsepower from 125 to 250 at 18" W.C. Result: Looked good for 6 to 7 hours until silica sand plugged.

7. March, 1984. Doubled water volume for back washing purposes. Result: Silica sand still plugged.

8. March, 1984. Went from #18 silica to #12 silica sand. Result: Very little change.

9. April, 1984. Went from #12 silica to #8 silica sand. Result: Opacity back to 20%.

10. May, 1984. Went to #12 natural sand with fresh water backwash and approximately one inch thick layer of 3/4" round rock in scrubber ahead of sand with recirculating backwash. Pressure was increased from 16" W.C to 30" W.C. Result: Very small difference in opacity.

CONCLUSION

After testing numerous configurations of our sand/filter control system, our observations of opacities were mixed. At the low scale observation, opacities averaged 10% with a maximum of 20%. The high average was 21% with a 30% maximum. While some improvement was obtained, our conclusion is that with current technology, we will not achieve continual compliance with DEQ emission standards.

SECTION 2

Review of Off-The-Shelf Emission Control Devices

Prior to March, 1984, Brand-S Corporation conducted a review of emission control devices available for wood-fired veneer dryers. Certain of the devices were immediately rejected due to proven non-compliance with opacity limits as demonstrated by manufacturers operating under similar conditions. Included in these rejected devices were the Geogia Pacific Scrubber and the Burley Scrubber. Since neither of these two emission control units are recommended by the Department of Environmental Quality, a discussion of those findings will not be included in this report.

Two other units were reviewed with the expectation that their technology could reduce both mass emissions and opacity from Leading Plywood's dryers.

Rader SandAir Filter

Brand-S Corporation solicited a price quotation from Rader Companies, Inc. for a Rader SandAir Filter. The proposed equipment was rated to handle around 30,000 CFM and, according to the proposal, "should bring Leading Plywood veneer dryers into compliance." The price of the first unit was considerably reduced because it was a used unit.

Based upon conversations with manufacturers with operating experience using the SandAir Filter, we are convinced that the technology utilized by the filter is not superior to our own filter.

Ceilcote Ionizing Wet Scrubber (IWS) System

Developed to remove fine particulate down to 0.05 microns and less, Ceilcote's Ionizing Wet Scrubber has seen considerable usage in veneer drying operations but with an inconsistant degree of success. By incorporating the advantages of electrostatic precipitators and wet scrubbers within one device, the IWS has been the technological leader in emission control for veneer dryers.

Ceilcote sites as characteristics of the IWS low operating and installation costs, simplified design and construction, minimal maintenance and service requirements, high collection efficiencies, nonsensitivity to particle size or composition and high operating reliability. Unfortunately, our review and analysis of the device did not support all of their contentions.

First, a report to the DEQ by Southwest Forest Industries in February 1983 sites the need for "aggressive scrubber maintenance" to control plate buildup. We believe it is generally accepted that minimal maintenance is not a feature of the Ceilcote Scrubber.

Second, the cost of the installed unit is extraordinarily high. Brand-S solicited a price quotation for an emission control device for a plywood veneer drier having the following estimated exhaust

conditions:

Volume: 30,000 ACFM

Temperature: 300 degrees F D.B.
135 degrees F W.B.

One Model IWS-740 including:

Prescrubber (crossflow design)
Ionizer with transformer/rectifier
Charged particle scrubber
Recycle pump and recycle piping
Centrifugal fan with motor and accessories
Stub exhaust stack

Total Budget Price: $216,000.00 F.O.B. Berea, Ohio

Our estimate of freight and installation: $35,000.00

Total estimated cost per installed IWS: $251,000.00 or $502,000.00 to outfit both dryers at Leading Plywood.

In a letter to Brand-S Corporation from Joseph McKeown, Branch Officer of United States National Bank of Oregon, Mr. McKeown stated, "Expenditures in this amount would violate the Loan Agreement currently in existance between Brand-S Corporation and ourselves. In addition, given the working capital position of Brand-S Corporation as a whole, and the fact that these expenditures would not have a direct bearing on productivity and thus income for the corporation, we would find such expenditures to be unacceptable and would be unwilling to grant our approval for these expenditures to be made."

Finally, of the five Ceilcote IWS units installed on similarly configured wood fired veneer dryers, we do not believe that actual field, laboratory or operating experience demonstrate compliance with the stringent environmental regulations and codes governing output emission and opacity.

CONCLUSION

The veneer dryers in use at Leading Plywood Corporation pose particularly difficult emission removal problems. And although the Rader SandAir Filter and the Ceilcote Ionizing Wet Scrubber have proved successful in removing coarse particulates and noxious gases from the process stream, there is not sufficient evidence that either unit could solve Leading Plywood's problems associated with submicron particulates.

Our primary objective remains achieving compliance to DEQ's particulate emission limits. To make a huge investment in a technology which fails to demonstrate compliance in actual operation is not a prudent decision.

SECTION 3

Moleculetor Emission Control Device

In February, 1984, Leading Plywood conducted an experiment with a Moleculetor Energizer (M/E). These devices have been used successfully in small stacks, but nothing approaching the 30,000 ACFM in our veneer dryer. The M/E unit was designed to reduce the amounts of particulate emission and dissolve arsenic emissions. The re-arranging of the ions within the gaseous emission molecules was intended to reduce or eliminate sulfide and arsenic levels in the emission.

CH2M Hill, Inc. performed emission testing in accordance with the State of Oregon DEQ Method 7. Two 64-minute sampling runs were performed both before and after installation of the M/E unit. The stack gas was sampled at a total of 32 velocity and sample points. The stack gas velocity, temperature and moisture content was continuously monitored and the sampling rates adjusted as to maintain isokinetic sampling conditions.

TABLE 3-1

Emission Test Results

Leading Plywood Corporation - Prentice Dryer

February 1984

Test Identity	Before M/E Install.			After M/E Install.		
	1	2	AVG	3	4	AVG
Dryer Production	8000 sq. ft/hr 3/8" basis white spec			8000 sq. ft/hr 3/8" basis white spec		
Stack Gas Analysis						
Temperature, (F)	192	195	194	147	146	146
Moisture Content,	6.6	6.6	6.6	5.8	5.4	5.6
Carbon Dioxide Con	1.4	1.6	1.5	1.4	1.5	1.4
Oxygen Content, %	19.5	19.3	19.4	19.5	19.4	19.5
Velocity, fpm	2546	2659	2602	1887	1913	1900
Flow Rate, sdcfm	24,280	25,250	24,760	29,910	30,510	20,210
acfm	31,990	33,420	32,700	36,440	36,940	36,690
Particulate Concentration	0.078	0.074	0.076	0.051	0.049	0.051
Emission Rate,	16.2	16.0	16.1	12.8	12.8	12.8
lbs/1000 bd.ft.	2.02	2.00	2.01	1.60	1.60	1.60

Observations of emissions from the Prentice dryer controlled by the M/E unit showed opacities in excess of a 30% average,

substantially in excess of the 10% average limit. Additionally, source test results showed only a 20% particulate collection efficiency.

Although the M/E unit failed to accomplish its emission control objectives regarding opacity levels, there was a marked reduction of noxious and other gaseous emissions. With the M/E unit installed, throat and nose membranes were not irritated and there was less watering of the eyes.

Table 4-2
OPACITY READINGS

Stack height: 10 feet
Stack diameter: 10 inches
Observer location: Approximately 50 feet from stack with sun at back
Weather: Variable clouds and sun
Ambient temperature: 50 degrees F
Observer information: Kris A. Hansen (Certification number 830401)

Summary of readings

Flow Rate (acfm)	ARS	Opacity Percent
250	Off	50-60
250	On	10-15
500	On	30
500	Off	50-60
500	On	30
500	Off	50-60
250	Off	50
250	On	5

Table 4-3
EXHAUST RELATIVE HUMIDITY

Run	Relative Humidity
1	80
2	100
3	100
4	100
5	100
6	100
7	100
8	93
9	100
10	100
11	100

Conclusions

The results of the field tests have demonstrated the technical possibility of the Aerosol Recovery System for successfully controlling the organic emissions from Leading Plywood's veneer dryers. System efficiencies of 90 percent leading to opacities of 10 percent or less are, we believe, readily attainable.

SECTION 5

Operational Changes at Leading Plywood

Over the past twelve months, Leading Plywood Corporation has made significant operational changes. The measures taken, for the most part, were made in response to changing economic conditions and to achieve greater operational efficiencies. Also present in the decision making process, though, was concern for the control of emissions. The measures taken have resulted in considerable reductions in the emissions of hydrocarbons and suspended particulates.

Reduced Production

In July, 1984, Leading Plywood changed from a three shift to a two-plus shift operation. This resulted in an overall reduction in volume of plywood produced of 10%. Obviously, this was accompanied with a 10% throughput reduction in the veneer dryers and the accompanying emissions. Additionaly, since the dryers continue to be operated on a 24 hours-per-day basis, the reduced throughput allows lower dryer temperatures resulting in even less total emissions.

Reduced Sodium in Phenolic Resins

The adhesive for binding the veneers in plywood is Phenolic Resin which is manufactured from Phenol, Formaldehyde and Sodium Hydroxide. Usually, this Phenolic Resin is mixed with extenders of two basic types: Inert, which contains residue from corn cobs, bark, or wood flour, or Protien, containing wheat flour, additional sodium hydroxide and soda ash. Leading Plywood is probably the only plywood mill that does not add extenders to the glue mix. While the use of these extenders reduces overall glue costs, the moisture vs solids content of the binder is increased requiring higher drying temperatures. Also, the sodium content by weight is increased resulting in suspended particulate emissions containing higher levels of salt.

Some mills, including Leading Plywood, use plywood trim for fuel for the veneer dryers. There is a contention that the dryer effluent of these operations is higher in sodium content because of the sodium catalyst of the glue mix. Since Leading Plywood uses undiluted Phenolic Resin to bind the veneers of plywood, the overall glue cost is increased, but the lower moisture content of the glue allows us to operate the veneer dryers at a lower temperature. This, we believe, has resulted in a significant overall reduction of emissions of both hydrocarbons and suspended sodium particulates.

SECTION 6

Discussion of Alternatives

Having assessed the experimental test procedures conducted on the sand/air filter at Leading Plywood and reviewed various off- the-shelf emission control devices, it is also necessary to evaluate any other alternatives to achieve compliance to DEQ standards.

Possible Alternatives:

1. Switch fuels from wood to Natural Gas eliminating the products of wood combustion and discharge of salts contained in the plytrim resin.

   Discussion: At current market prices, natural gas will cost from between $8.00 - $10.00/MSM. Given our current level of production of 100,000,000 feet per year, this would equate to fuel costs of $800,000 to $1,000,000 per year. It is estimated that the capital expenditure to convert from wood fired burners to natural gas burners would be approximately $100,000 for the two dryers. Finally, given the difficult emission problems of the Leading Plywood operation, there is no guarantee that the conversion would bring the operation into continuous compliance.

2. Eliminate wood fuel containing salts (plytrim resin). Utilize instead sander dust or other dry wood by-products (pellets, etc.).

   Discussion: It would take all of the available sander dust in the northwest to supply sufficient fuel to fire the two Leading Plywood dryers. Besides being expensive as a raw product, the logistics of transporting the dust to Philomath makes the alternative unrealistic as well as unaffordable. Brand-S Corporation has had considerable experience in using wood pellets as a fuel source. Over $150,000 was invested in converting dryers at both Leading Plywood and the Brand-S Natron Plywood mill to burning wood pellets in suspension burners. The testing lasted well over one year but never resulted in compliance with emission standards. Inconsistant supply and poor quality of the wood pellets were the primary reason for failure. In addition, burner maintenance increased substantially and the veneers had a distinct covering of soot resulting in poor product acceptance.

   Cost is also a major factor in considering a conversion to wood pellets. Pellet unloading, storage and handling would create a considerable one-time and continuing expense. We conservatively estimate the cost of this fuel at $4.00/MSM or approximately $320,000 - $400,000 annually.

3. Modify dryer burners to incorporate dryer exhaust recycle/incineration to reduce hydrocarbon emissions and reduce total air flow from the dryers which have to be

treated.

Discussion: In early 1983, Leading Plywood invested over $50,000 in a low-end recirculator from Moore of Oregon. A plenum was installed to maintain a minimum temperature of 1,200 degress with a minimum of 25% recirculation. As reported to the DEQ, the system had absolutely discernable results.

4. Eliminate processing of resinous and poor quality veneers to reduce blue haze emissions. (i.e.: dry white woods or high quality veneers).

   Discussion: There is insufficient commercially available white wood veneer to support switching from Douglas Fir veneer. In addition, the American Plywood Association will not grade a panel containing any white wood as a Group 1 product. Since most residential and commercial construction building codes require Group 1 products, a Group 2 panel is worth considerably less money.

5. Reduce dryer temperatures and increase drying times to produce less blue haze and smoke.

   Discussion: The temperatures in the Leading Plywood's dryers has been reduced to 350 degrees at the hottest point. Most dryers in this region average temperatures in excess of 400 degrees. The temperature is as low as possible to maintain current levels of production. Any reduction in production will increase the cost per unit thereby making the operation even less financially viable.

6. Install add-on dryer control equipment, such as the GeoEnergy system discussed in Section 4, capable of meeting DEQ opacity limits.

   Discussion: This appears to be the most financially viable alternative and the one which has the greatest chance at achieving compliance with opacity limits.

CONCLUSION

Brand-S Corporation in the past 10 years has diligently pursued emission control through expenditures in excess of $700,000 and experimentations using the latest technological advances. Unfortunately, those measures have not proven to be successful. It is still our intention to achieve compliance with DEQ opacity limits as quickly as economically possible.

As a result of the recession of the past four years, Brand-S Corporation has suffered significant losses, leaving us in a difficult cash position. Only with major operational changes including production curtailments and a significant reduction in the compensation package has Leading Plywood been able to continue in operation and move toward becoming a viable operation again. But production levels have been reduced to the lowest level that is affordable on a unit cost basis and compensation levels will not be further decreased. Also, due to economic conditions, the Leading Plywood mill has not received the capital improvements necessary to keeping it a competitive entity.

Therefore, it is vitally important that any emission control measures taken at this point be not just successful, but successful at a realistic, affordable price.

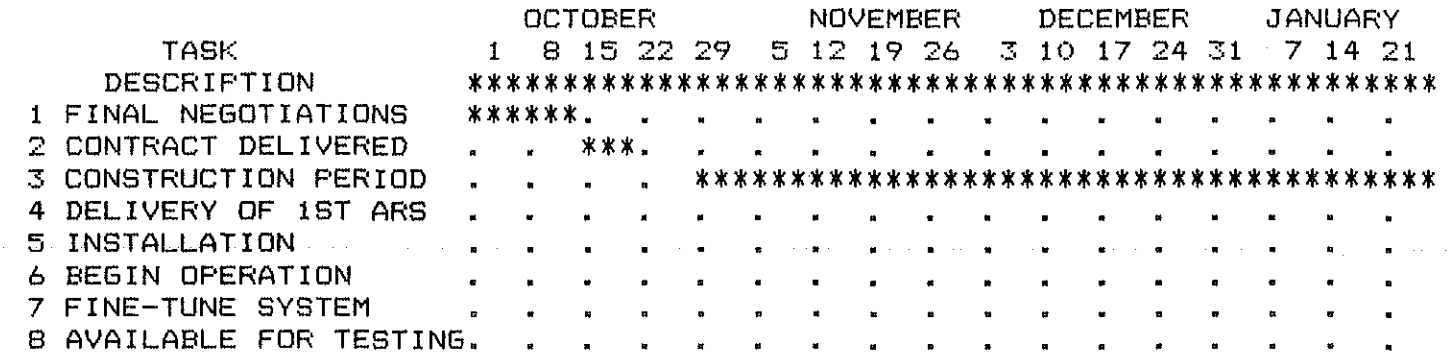
Brand-S has signed a "letter of intent" to purchase the first GeoEnergy unit. Final contract negotiations are soon to be completed at which time production can begin. It is our intention to pursue the installation of the GeoEnergy emission control device according to the timetable presented on the following page. The timetable is based on the assumption that the financing for this capital expenditure will be approved by the lending agency and the Brand-S Corporation Board of Directors.

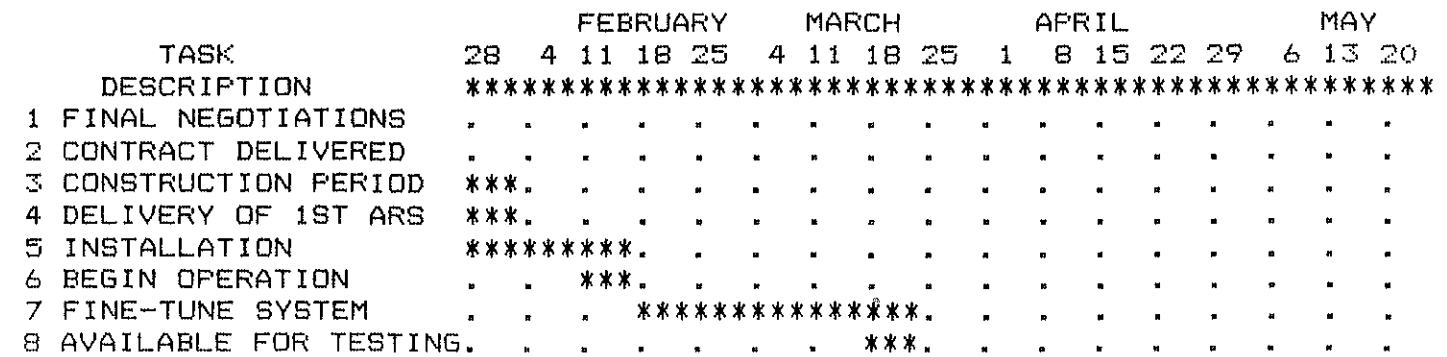
BRAND-S CORPORATION GANTT PLANNING SYSTEM

JOB DESCRIPTION: INSTALL AERosol RECOVERY SYSTEM

BEGINS: 01-Oct
ENDS: 19-Mar
DURATION: 169 Days
TODAY'S DATE: 01-Oct

	TASK DESCRIPTION	DAYS REQUIRED	TASK DURATION	EARLIEST POSSIBLE START		PRECE-DENT TASKS	TASK BEGINS	TASK ENDS
1	FINAL NEGOTIATIONS	5 DAYS	2 WEEKS	01-Oct	0		01-Oct	14-Oct
2	CONTRACT DELIVERED	1 DAYS	0 WEEKS		1		15-Oct	15-Oct
3	CONSTRUCTION PERIOD	65 DAYS	13 WEEKS	01-Nov	1	2	01-Nov	31-Jan
4	DELIVERY OF 1ST ARS	1 DAYS	0 WEEKS		3		01-Feb	01-Feb
5	INSTALLATION	10 DAYS	2 WEEKS		4		02-Feb	16-Feb
6	BEGIN OPERATION	1 DAYS	0 WEEKS		5		17-Feb	17-Feb
7	FINE-TUNE SYSTEM	20 DAYS	4 WEEKS		6		18-Feb	18-Mar
8	AVAILABLE FOR TESTING	1 DAYS	0 WEEKS		7		19-Mar	19-Mar
99	END						19-Mar	





ATTACHMENT C
Agenda Item M
11/2/84 EQC Meeting

BRAND S CORPORATION

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
SALEM, OFFICE

P. O. BOX 1087 CORVALLIS, OREGON 97339 503/757-7777

September 27, 1984

REQUEST FOR EXTENSION OF VARIANCE OF
AIR CONTAMINANT DISCHARGE PERMIT NO. 02-2479

On October 15, 1983, the Department of Environmental Quality granted to Brand-S Corporation a variance on its Air Contaminant Discharge Permit. The variance will expire on October 2, 1984. During the year of this variance, Brand-S has expended considerable energy and funds in the pursuit of compliance with DEQ emission standards. Although our efforts have not achieved compliance, experimentation using a technology new to the veneer drying industry has led us to believe that compliance can be realized. Final negotiations are underway regarding the purchase and installation of the emission control unit but it will be necessary to exceed the variance expiration date.

We are completing a detailed Emission Control Status Report for the review of the Environmental Quality Commission at the November meeting. The status report will include the following sections:

1. An analysis of the experimental modifications of the fabric/sand filter currently in use at Leading Plywood Corporation.

2. The results of the investigation into available "off-the-shelf" emission control systems. Included in the investigation is the suitability, expected performance and costs associated with Ceilcote's Ionizing Wet Scrubber, Rader's SandAir filter, Georgia Pacific's Scrubber and Burley's Scrubber.

3. A review of the installation, operation and testing of the Moleculetor Energizer. Having been used successfully in smaller scale emission control operations, the electrostatic system failed to adequately reduce opacity levels from the veneer dryer.

4. The detailed results of a field test of the Aerosol Recovery System (ARS) developed by GeoEnergy International Corporation. During the period of March 11 to March 28, 1984, a single-tube pilot was tested at Leading Plywood Corporation to determine the applicability of the recovery system for controlling blue haze. Simultaneous inlet and outlet testing, EPA Method 5, was performed on the ARS unit. System efficiencies ranged from 82 to 96 percent with an average value of 88 percent over the entire test period. Allowing for less than optimum results due to varying the system configurations, it is expected that a full-size ARS unit can operate with an efficiency of approximately 95 percent.

Brand-S Corporation has signed a "letter of intent" to purchase the first Aerosol Recovery System for veneer dryer emission control. Included in the status report will be a detailed timetable regarding the purchase, construction, installation, tuning period and the accessibility to the Department of Environmental Quality for certification testing. A summary of that timetable is as follows:

Signed contract delivered	October 15, 1984
First ARS delivered to plant	February 1, 1985
Installation complete, begin operation	February 15, 1985
Tuning period complete, ready for DEQ certification process	March 15, 1985
Purchase of second ARS unit	after certification

5. Also included in the status report will be a review of personnel and operational changes of the last 12 months which have resulted in reduced emissions of hydrocarbons and suspended particulates. The measures were taken with regard to both economics and emission control. Included in these changes were reductions in dryer temperatures, elimination of caustic extenders to the phenolic resins (which raised the resin cost but allowed lower dryer temperatures and reduced sodium content) and a 25% reduction in hours of operation.

In the past 10 years, we have documented capital expenditures in excess of $700,000 for emission control at Leading Plywood Corporation and still have not achieved compliance with state standards. During this past year, the most technically advanced emission control unit available would have cost approximately $500,000 for the two veneer dryers. It is our contention that the installation of this equipment would not have delivered an average opacity of 10% or less. We believe that DEQ documents support our contention.

The Aerosol Recovery System appears to give us our best chance to effectively control emissions at Leading Plywood. The process is well underway but an extension of our permit variance is necessary. Therefore, we request that the Department of Environmental Quality grant us this extension and waive the Intent to Assess Civil Penalty.

Yours truly,

R. D. Procarione
Executive Vice-President

RP/db

VICTOR ATIYEH
Governor

Department of Environmental Quali

ATTACHMENT D
Agenda Item M
11/2/84 EQC Meeting

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

October 2, 1984

CERTIFIED MAIL NO. P 422 372 224

Brand-S Corporation
Leading Plywood Division
c/o Sydney B. Lewis Jr.
Registered Agent
344 N.W. Sixth Street
Corvallis, OR 97330

Re: Notice of Violation and Intent
to Assess Civil Penalty
AQ-WVR-84-105
Benton County

On October 7, 1983, the Environmental Quality Commission granted Brand-S Corporation, Leading Plywood Division, a variance from OAR 340-25-315(1)(b). The variance contained a schedule for compliance which was incorporated into Air Contaminant Discharge Permit No. 02-2479 by Permit Addendum No. 1 issued by the Department on October 14, 1983.

The compliance schedule required you to purchase and install an emission control system for the veneer dryers and demonstrate compliance with the permit limitations by no later than October 1, 1984. You have failed to install the control equipment and demonstrate compliance, in violation of the permit and the Commission's variance.

Therefore, I have enclosed a formal notice warning you the Department's intent to assess a civil penalty should the cited violations continue. Each day of each violation is subject to a civil penalty of from a minimum of $50 to a maximum of $10,000.

We understand you are pursuing the development and installation of the Geo-Energy Aerosol Recovery System and are in the process of requesting a variance extension. The Department does not intend to assess a civil penalty at this time provided you are actively pursuing a request for a variance extension before the Environmental Quality Commission at its November 2, 1984 meeting in Portland, Oregon.

I wish to remind you that the Department sent you a Notice of Violation and Intent to Assess Civil Penalty No. AQ-WVR-83-46 on April 20, 1983 because your veneer dryers exceeded the permitted emission limits. That notice is still in effect and remains in effect. You are also liable for civil penalties for emission violations that occur on or after October 1, 1984.

Questions regarding this notice should be directed to Mr. Dale Wulffenstein of the Department's Willamette Valley Region at 378-8240.

Sincerely,

Fred M. Bolton
Administrator
Regional Operations

VAK:b
GB3816.L
Enclosure(s)
cc: Air Quality Division, DEQ
Willamette Valley Region, DEQ
Department of Justice
Environmental Protection Agency

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY, OF THE STATE OF OREGON, Department, v. BRAND-S CORPORATION, an Oregon corporation, Respondent.	)	NOTICE OF VIOLATION AND INTENT TO ASSESS CIVIL PENALTY No. AQ-WVR-84-105 BENTON COUNTY

I

This notice is being sent to Respondent, Brand-S Corporation, an Oregon corporation, pursuant to Oregon Revised Statutes ("ORS") 468.125(1) and Oregon Administrative Rules ("OAR") Section 340-12-040(1) and (2).

II

On or about September 28, 1981, the Department of Environmental Quality ("Department") issued Air Contaminant Discharge Permit No. 02-2479 ("Permit") to Respondent. The Permit authorized Respondent to discharge exhaust gases containing air contaminants including emissions from those processes directly related or associated thereto at Respondent's Leading Plywood Division plant ("Plant") located at 6300 Reservoir Road, Corvallis, Oregon, in accordance with the requirements, limitations and conditions set forth in the Permit. On or about October 14, 1983, Department issued to Respondent, Addendum No. 1 to the Permit. The Permit expires on June 1, 1986. At all material times cited herein, the Permit as amended was and is now in effect.

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III

On October 7, 1983, the Environmental Quality Commission ("Commission") granted Respondent a variance for Respondent's Plant from OAR 340-25-315(1)(b), Veneer Dryer Emission Limits, until October 1, 1984. That variance was granted subject to the requirement that Respondent meet the final compliance and increments of progress set forth in the "Director's Recommendation" portion of the memorandum to the Commission from then Director, William H. Young. The memorandum entitled "Request For A Variance From OAR 340-25-315(1)(b), Veneer Dryer Emission Limits, For Brand-S Corporation, Leading Plywood Division, Corvallis," Agenda Item No. N, October 7, 1983, EQC Meeting is on file with the Commission, and is incorporated herein by this reference.

IV

Respondent is required by the Commission's variance and Condition 9 of the Permit to provide adequate emission controls for the veneer dryers in accordance with the following schedule:

a. By no later than October 10, 1983, complete the experimental modifications underway on the fabric/sand filter for one scrubber.

b. By no later than March 1, 1984, review available "off-the-shelf" emission control systems from at least three vendors and submit documentation from the vendors on the suitability, expected performance, and costs to the Department and select the most suitable control device.

c. By no later than October 1, 1984, purchase and install the emission control system and demonstrate compliance with the limitations of Condition 4.

d. Beginning April 1, 1984, submit detailed progress reports on the status of purchase and installation of the control device.

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Respondent did not purchase and install the emission control system and demonstrate compliance with the limitations of Condition 4 of the Permit by October 1, 1984, in violation of Condition 9c of the Permit and the Commission's variance.

V

If five (5) or more days after Respondent receives this notice, the one or more violations cited in Paragraph IV of this notice continue, or any similar violation occurs, the Department will impose upon Respondent a civil penalty pursuant to Oregon statutes and OAR, Chapter 340, Divisions 11 and 12. In the event that a civil penalty is imposed upon Respondent, it will be assessed by a subsequent written notice, pursuant to ORS 468.135(1) and (2), ORS 183.415(1) and (2), and OAR 340-11-100 and 340-12-070. Respondent will be given an opportunity for a contested case hearing to contest the allegations and penalty assessed in that notice, pursuant to ORS 468.135(2) and (3), ORS 183, and OAR Chapter 340, Division 11. Respondent is not entitled to a contested case hearing at this time.

October 2, 1984
Date

Fred M. Bolton, Administrator
Regional Operations, DEQ

Certified Mail P 422 372 224

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. N, November 2, 1984, EQC Meeting

Request from Churchill Group to Use Personal Bond as Alternative Security for Private Sewerage System

Background and Problem Statement

Oregon Revised Statutes (ORS) 454.425 require a surety bond to be filed with the Department from every person proposing to construct or operate a private sewerage system. It also allows the Commission to permit the substitution of other security for the bond.

The Churchill Group of Pasadena, California, own several mobile home parks around the country. One of them, Willow Island Mobile Estates, is in Oregon. It has a sewerage system which needs a surety bond pursuant to ORS 454.425. The sewage treatment plant serving the mobile home park is an extended aeration package plant followed by a three-day holding pond. It discharges to the Willamette River near the mouth of Parrot Creek, River Mile 31.6, about six miles upstream from Canby. This private sewage treatment facility requires a $25,000 surety bond or alternative security. The owners have submitted a request to have the Commission approve a personal bond for $25,000 as alternative security allowed by OAR 340 Division 15. They have filed a bond form of the type previously approved by the Commission for other personal bonds. They have also filed a financial statement. The reason they desire to provide a personal bond is that they do not want to tie up liquid assets in a low interest savings account.

When this mobile home park was built, no security was required because it was a licensed facility under the Department of Commerce and was exempt from the surety bond requirements [OAR 340-15-015(b)]. Mobile home parks are no longer licensed by the Department of Commerce and are therefore not exempt from the surety requirement. The Department has requested that they file the required $25,000 surety bond or approved alternative.

Alternatives and Evaluation

Between 1968 and 1972 the Commission approved several personal surety bonds as alternative security allowed by ORS 454.425. Some of these are as follows:

Name	Development	Date of Bond	Amount
John Gray & John McCallum	Sunriver Properties	12/3/68	$25,000
Rivergate Development Corp.	Riverview Mobile Home Pk.	11/4/70	20,000
Kenneth T. Place	Knoll Terrace Park	5/7/72	25,000
Teeples & Thatcher Inc.	Zig Zag Condominiums	6/9/72	25,000
Allen Pynn & Charles Wellons	West-Lynn Corp.	9/7/72	21,000

In 1975 the Commission adopted rules (OAR 340 Division 15) which outline the type of security to be filed, as well as the amount. Those rules provided other alternatives so the request for personal bonds diminished. Most private sewage treatment plant owners who have been unable to secure a perpetual surety bond have submitted a savings account or certificate.

The types of security described by the current rules are:

1. Perpetual surety bond issued by a Surety Company licensed by the Insurance Commission of Oregon;

2. Insured savings account assigned to the Department;

3. A combination of insured savings account and non-perpetual bond while capitol is being collected to cover the entire security requirement with a savings account.

4. Other security in such form and amount as specifically approved by the Commission.

The problem of assuring an appropriate level of security has become increasingly apparent. The aim is to reach a balance between the need for adequate resources for future repairs, and the burden on permittees.

The $25,000 security required would be sufficient to repair or replace minor items at the sewage treatment plant, if necessary. It would not be enough to make major repairs or replace the sewage treatment plant.

A review of the attached, unaudited, financial statement of the Churchill Group indicates that adequate resources are available, at the present time, to assure operation and maintenance of the sewage treatment facilities. However, the Department has no assurance that the financial status will remain adequate in successive years. That makes the acceptance of a personal bond risky.

A task force of bonding and financial specialists has been selected to evaluate all of the Department's financial security needs. Until they complete their

report and recommendations, the Department believes it to be prudent to limit alternative security to an assigned savings account or other assigned insured savings certificates.

Summation

1. ORS 454.425 requires a surety bond for construction and/or operation of private sewerage systems.

2. Willow Island Mobile Estates, owned by Churchill Group, has a sewage treatment plant which, at one time, was exempt from the Department's surety bond requirements, but now needs a surety bond or alternative security in the amount of $25,000.

3. Churchill Group has requested approval of a personal bond for Willow Island Mobile Estates, as an alternative form of security.

4. Between 1968 and 1972, several personal bonds were approved by the Commission, prior to the adoption of rules which provided an insured savings account as an approved alternative.

5. By rule, the Commission has approved an insured savings account and under special conditions, a non-perpetual bond in combination with a savings account as alternative security and may approve other forms on a case-by-case basis.

6. The Director has appointed a task force to evaluate the Department's financial security rules, needs, and procedures.

Director's Recommendation

Based on the Summation, it is recommended that the Commission deny the request of Churchill Group for providing a personal surety bond.

Fred Hansen

Attachments: 4
1. Personal Bond filed by Churchill Group
2. Financial Statement of Churchill Group
3. OAR 340 Division 15
4. Letter to task force members

Charles K. Ashbaker:l
WL3657
229-5325
October 19, 1984

ATTACHMENT 1

Churchill Group

August 24, 1984

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

Attention: Charles K. Ashbaker

Re: Willow Island Mobile Estates
Lake Oswego
File No. 97612

Dear Mr. Ashbaker:

Enclosed is the signed Performance Bond you requested in your letter of August 10, 1984.

Very truly yours,

Jack Talbert
General Counsel

JT:nr

Enclosure

POST OFFICE BOX 7114 · PASADENA, CALIFORNIA 91109 · (213) 795-9760

PERFORMANCE BOND FOR CONSTRUCTION
AND OPERATION AND MAINTENANCE OF
DOMESTIC SEWERAGE SYSTEM

KNOW ALL MEN BY THESE PRESENTS: That Churchill Group, a California Corporation, as principal, and George S. Gradow and Barbi Benton Gradow of Pasadena, California, as sureties are held and firmly bound unto the State of Oregon in the total amount of twenty-five thousand dollars ($25,000.00), lawful money of the United States of America, or any part thereof as provided in ORS 454.425, the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns, firmly by these presents.

NOW THEREFORE, the conditions of this obligation are as follows:

1. The principal shall properly operate and maintain the domestic sewerage system serving Willow Island Mobile Estates, located in Sec.23 T.3S, R1E, W.M. in Clackamas County near Canby, Oregon, in accordance with the rules regulations, permits, and orders of the Department of Environmental Quality and the bond shall remain in force and effect until such time as a responsible city, county, sanitary district or other public body acquires ownership, or assumes full liability and responsibility for operation and maintenance, of the domestic sewerage system or until the domestic sewerage facility is connected to an area-wide sewerage system or until the surety bond has been replaced with an equivalent security approved by the Environmental Quality Commission.

2. The principal shall not transfer ownership of the domestic sewerage system without first obtaining the written approval of the Department of Environmental Quality.

If the principal shall promptly and faithfully perform the foregoing conditions, then this obligation shall be void, otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF, the principal and the sureties have executed this performance bond on this 23rd day of August, 1984.

Corporate Seal
of Principal

OFFICIAL SEAL
RHONDA L. DUNSTAN
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires Apr. 5, 1985

Churchill Group
a California Corporation
Principal

Sureties

Countersigned:

_____
Registered Agent for Oregon

_____
Address

_____
Date

WS397.A

Churchill Group

May 14, 1984

Department of Environmental Quality
Box 1760
Portland, Oregon 97207

Attention: Charles K. Ashbaker, Supervisor

Re: Willow Island Mobile Estates
File No. 97612

Dear Mr. Ashbaker:

Pursuant to our telephone conversation of approximately three weeks ago, I am enclosing a financial statement of George Gradow and his wife, Barbi Benton Gradow. Mr. Gradow is the General Partner of Willow Associates, which owns Willow Island Mobile Home Park, and as I indicated to you, is prepared to sign personally as an indemnitor under the requirement of the Department of Environmental Quality for an operator of a sewage collection and treatment facility. I direct your attention to OAR 340-15-020, Provision 4, which states that, "Other security in such form and amount as specifically approved by the Commission." This refers, of course, to the security that need be furnished pursuant to OAR 454.425. I advised you in our discussion that Mr. Gradow's personal signature (because of his substantial net worth) should be sufficient and you indicated that once delivery of his financial statement was made to you, you would present it to the Board. Therefore, I would appreciate it if you would go forward and advise me if this is sufficient so that we may move ahead and have Mr. Gradow execute whatever documents are necessary.

Should you have any questions, do not hesitate to call.

Very truly yours,

Jack Talbert
General Counsel

Enclosure

POST OFFICE BOX 7114 · PASADENA, CALIFORNIA 91109 · (213) 795-9760

CHURCHILL GROUP AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS (NOTE A & B)

(INTERNAL & UNAUDITED)

MARCH 31, 1984

ASSETS

Cash and cash equivalents (Note C)	$ 386,065
Secured notes receivable (Note D)	5,938,999
Loans and advances to affiliates (Note E)	1,275,703
Commissions and fees receivable (Note D)	268,583
Investment in partnership (Note F)	631,096
Building and other depreciable assets (net of depreciation)	676,743
Non-depreciable assets	200,000
	$ 9,377,189

LIABILITIES AND STOCKHOLDERS' EQUITY

Liabilities:

Secured notes payable (Note G)	$ 5,165,958

Stockholders' equity:

Shareholders' equity (Note H)	$ 4,082,460
Paid-in capital	128,771
	$ 9,377,189

CHURCHILL GROUP AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(INTERNAL & UNAUDITED)

MARCH 31, 1984

Note A - Summary of Significant Accounting Policies:

Principles of Consolidation

The consolidated financial statements include the accounts of Churchill Group and its subsidiaries. The subsidiaries are wholly owned and all significant intercompany accounts and transactions have been eliminated.

Income from Sales and Deferred Income on Sales of Investments

The company recognizes income from sales when the down payment, (including special fees and interest prepaid to future years), is substantial in relation to the total selling price in accordance with the guidelines set forth in the AICPA Industry Accounting Guide, "Accounting for Profit Recognition on Sales of Real Estate".

Gains on sales of investments to groups in which officers and shareholders have a significant interest have been deferred. At such time as their interests are sold to third parties, these gains will be recognized in accordance with the guidelines described in the preceding paragraph.

Income Taxes

The financial statements have been prepared on the accrual basis of accounting; however, the Company files consolidated tax returns on the cash basis.

The Company follows the flow-through method of accounting for the investment credit. The amounts are not material.

Unearned Income

Funds received in advance for interest on notes and other fees are deferred and taken into income in the period in which they are earned.

Note B - Business:

Churchill Group, a California corporation, is engaged primarily in the acquisition and sale of real estate, syndication of partnerships for real estate investments and the management of developed real properties.

CHURCHILL GROUP AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(INTERNAL & UNAUDITED)

MARCH 31, 1984

Note C - Cash and Cash Equivalent:

Cash and temporary investments are summarized as follows:

	March 31, 1984
Cash	$ 46,065
Commercial Paper	340,000 (1)
	$ 386,065

(1) None of the commercial paper is for a period longer than 30 days.

Note D - Notes Receivable:

Notes receivable are summarized as follows:

Notes receivable arising from the sales of limited partnership interests, collateralized by those interests, collectible in monthly installments, including interest at 8½% to 10% per annum.	$ 268,583
Notes receivable arising from the sales of real property, collateralized by all-inclusive deeds of trust encumbering the real property sold, collectible in monthly installments, including interest at 6.97% to 10% per annum.	$5,938,999
	$6,207,582

Notes receivable arising from the sales of limited partnership interests and real property are subject to prior deeds of trust encumbering the underlying real estate. The Company is obligated to service the indebtedness of certain of these notes.

Notes Receivable and Notes Payable

The Company has imputed interest on the basis of 9% per annum over a 25-year period on certain notes receivable and payable arising from the purchase and sale of mobile home parks.

CHURCHILL GROUP AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(INTERNAL & UNAUDITED)

MARCH 31, 1984

Note E - Loans and Advances to Officer and Affiliates:

Substantially all amounts are due from entities in which the president/sole stockholder has an interest as general partner. In most cases, the president/sole stockholder does not participate in operating profits and losses and in some cases may have an interest in profits to be realized from disposition of the underlying assets of these affiliates.

Note F - Investment in Partnership:

The Company has an investment as general partner in LC Properties, Ltd., (a limited partnership). The partnership's primary assets consist of an all-inclusive mortgage of approximately $2,400,000 arising from the sale of the partnership's real estate. The mortgage is collateralized by a deed of trust of approximately $1,200,000.

Note G - Notes Payable:

Notes payable are summarized as follows:

Notes arising from the sales of real property and partnership interests are encumbered by mortgages, deeds of trust and in some cases security agreements on equipment, and for the most part are all-inclusive of prior mortgages and deeds of trust. The obligations bear interest rates of 7.22% to 10% per annum with maturity dates from 1985 through 2003. All notes receivable are encumbered by these notes.	$ 5,165,958

The annual principal payments for the next three years are as follows:

1984	$239,324
1985	225,471
1986	172,477

CHURCHILL GROUP AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(INTERNAL & UNAUDITED)

MARCH 31, 1984

Note H - Commitments, Contingencies and Other Matters:

During 1982, the Company conducted its operations from office space leased from the president/sole stockholder of the Company. The office lease is classified as an operating lease with a month-to-month rental of $1,000.

Litigation and Claims

Various claims and legal actions are pending against the Company. In the opinion of management, the ultimate disposition of these matters will have no material adverse effect on the Company's financial statements.

Ownership

100% of the stock of Churchill Group is owned by George S. Gradow, as his separate property. 100% of all subsidiaries are owned by Churchill Group.

GEORGE S. GRADOW and BARBI BENTON (GRADOW)

BALANCE SHEET (NOTES A & B)

(UNAUDITED)

MARCH 31, 1984

ASSETS	ESTIMATED VALUE BASIS
Cash and cash equivalents (Note C)	$ 131,972
Secured notes receivable (Note D)	825,000
Real estate (Note E)	19,680,000
Churchill Group stock (Note F)	4,211,231
Other assets (Note G)	572,500
	$25,420,703

LIABILITIES AND OWNERS' EQUITY

Liabilities:	
Unsecured notes payable (Note H)	$ 204,000
Secured notes payable (Note I)	4,842,461
Estimated income tax payable on unrealized asset appreciation (Note J)	3,861,389
Owners' Equity	16,512,853
	$25,420,703

GEORGE S. GRADOW and BARBI BENTON (GRADOW)

NOTES TO FINANCIAL STATEMENT

MARCH 31, 1984

Note A - Summary of Significant Accounting Policies:

All loans, advances, or receivables by and between George S. Gradow, Barbi Benton and Churchill Group or any of its affiliates, have been deleted from this financial statement as well as the financial statement of Churchill Group, as George S. Gradow is considered to be the parent of Churchill Group.

Note B - Business:

George S. Gradow is the sole stockholder and President of Churchill Group, a California Corporation. Mr. Gradow has sources of income which total approximately $707,039 per year, of which $170,000 was from Churchill Group as salary for 1983. Miss Benton's sole business is as an entertainer, and her income can change substantially from year to year. The following is a summary of the gross income received by Miss Benton for the previous three years:

1981	$ 79,234
1982	69,857
1983	51,667

Note C - Cash and cash equivalents:

Cash and temporary investments are summarized as follows:

	March 31, 1984	
Cash	$ 31,972	
Commercial Paper	100,000	(1)
	131,972	

(1) None of the Commercial Paper is for a period longer than 30 days.

GEORGE S. GRADOW and BARBI BENTON (GRADOW)

NOTES TO FINANCIAL STATEMENT

MARCH 31, 1984

Note D - Notes Receivable Secured by Real Estate:

Notes receivable are summarized as follows:

DATE OF NOTE	INTEREST RATE	PAYABLE	FACE AMOUNT
July, 1981	10% to 1983. 12% to 1986.	Int. only, all due July, 1986	$225,000
September, 1982	8.33% to 1983. 9% to 1984. 9.6% to 1985. 10.33% to 1986. 11% to 1987. 11.6% to 1988	Int. only, all due Aug., 1988	$600,000
			$. 825,000

GEORGE S. GRADOW and BARBI BENTON (GRADOW)

NOTES TO FINANCIAL STATEMENT

MARCH 31, 1984

Note E - Real Estate:

Real estate is summarized as follows:

	ESTIMATED VALUE BASIS	
Personal Residence Pasadena, California	$3,500,000	(1&2)
193 Space Mobile Home Park Council Bluffs, Iowa	2,500,000	(1)
159 Space Mobile Home Park Tulsa, Oklahoma	2,500,000	(1)
233 Space Mobile Home Park Iowa City, Iowa	3,700,000	(1)
189 Space Mobile Home Park Clayton, California	4,400,000	(1)
168 Space Mobile Home Park Thomasville, Georgia	1,380,000	(1)
114 Space Mobile Home Park Kokomo, Indiana	900,000	(1)
128 Space Mobile Home Park Holts Summit, Missouri	800,000	(1)

(1) The estimated value basis of these properties was arrived at by informal appraisals of two or more real estate brokers familiar with this type of real estate and the particular area. The appraisals were given on or about October through December, 1983.

(2) After this property was acquired in January, 1978, $466,000 of improvements were made to the property. The cost of said improvements is carried and amortized on the books and records of Churchill Group.

Note F - Stocks and Securities:

The estimated value basis of the Churchill Group Common Stock was arrived at by taking the book value of Churchill Group as of March 31, 1984. No goodwill factor was added. George S. Gradow is the holder of 100% of the Churchill Group Common Stock. (See Appendage 1.)

GEORGE S. GRADOW and BARBI BENTON (GRADOW)

NOTES TO FINANCIAL STATEMENT

MARCH 31, 1984

Note G - Other Assets:

Other assets are summarized as follows:

	ESTIMATED VALUE BASIS	
Various antiques, including 3 Tiffany lamps; and certain major Renaissance Revival pieces	$250,000	(1)
Diamond - 11.79 cts.; pear-shaped	150,000	(2)
Platinum diamond & ruby necklet (Diamonds - 21.90 cts.) (Rubies - 33.80 cts.)	67,500	(3)
Ruby & diamond earrings - 12.05 cts.	30,000	(4)
Misc. jewelry, furs, paintings, etc. (excluding antiques)	75,000	
	572,500	

(1) The estimated value basis of these assets was arrived at by the valuation for insurance purposes.

(2) This diamond was appraised on February 8, 1984 by Albert Kirsh & Son, Jewelry Appraisers, pursuant to the Code of Ethics of the American Society of Appraisers. The diamond has been graded by the Gemological Institute of America, Inc.

(3) This necklet was appraised on January 27, 1983, by B. D. Howes & Son, Jewelry Appraisers, pursuant to the Code of Ethics of the American Society of Appraisers.

(4) These ruby and diamond earrings were appraised on March 26, 1983 by Albert Kirsh & Son, Jewelry Appraisers, pursuant to the Code of Ethics of the American Society of Appraisers.

GEORGE S. GRADOW and BARBI BENTON (GRADOW)

NOTES TO FINANCIAL STATEMENT

MARCH 31, 1984

Note H - Unsecured Notes Payable:

These notes arise from purchases of real estate and are all in favor of private parties. These obligations bear interest rates from 10% to 12% per annum with maturity dates from 1987 through 1993. Presently Mr. Gradow has no unsecured borrowing from his bank, Union Bank.

GEORGE S. GRADOW and BARBI BENTON (GRADOW)

NOTES TO FINANCIAL STATEMENT

MARCH 31, 1984

Note I - Secured Notes Payable:

These notes arise from purchases of real property and are encumbered by mortgages, deeds of trust and in some cases security agreements on equipment. These obligations bear interest rates of 7.4% to 11% per annum with maturity dates from 1988 through 2007.

STATED INTEREST RATE	ORIGINAL FACE VALUE	UNPAID BALANCE AS OF MARCH 31, 1984
9.00%	$ 451,253	$ 411,988
9.00%	1,120,000	1,062,276
10.25%	573,407	481,837
11.00%	240,000	80,000
8.75%	930,000	897,755
11.00%	400,000	400,000
9.00%	240,000	120,000
11.00%	735,000	735,000
17.00%	270,864	270,762
12.00%	47,158	47,105
10.00%	148,940	148,734
9.00%	187,004	187,004
	$ 5,343,626	$ 4,842,461

GEORGE S. GRADOW and BARBI BENTON (GRADOW)

NOTES TO FINANCIAL STATEMENT

MARCH 31, 1984

Note J - Estimated Income Taxes Payable on Unrealized Asset Appreciation:

Unrealized appreciation in value of assets would, if realized normally, require payment of taxes at capital gain rates. A liability has been recorded in the statement of assets and liabilities for estimated income taxes applicable to unrealized appreciation at tax rates currently in effect.

DIVISION 15

SURETY BONDS OR OTHER APPROVED EQUIVALENT SECURITY FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF SEWAGE COLLECTION, TREATMENT OR DISPOSAL FACILITIES

Statement of Purpose

340-15-005 These rules, adopted pursuant to ORS 454.425, prescribe the requirements and procedures for the filing, maintenance, and termination of surety bonds or other approved equivalent security for the construction, operation, maintenance of sewage collection, treatment, or disposal facilities.

Stat. Auth.: ORS Ch.
Hist: DEQ 82, f. 1-30-75, ef. 2-25-75

Definitions

340-15-010 As used in these rules, unless the context requires otherwise:

(1) "Alternative sewage disposal system" has the same meaning as in ORS 454.605(2).

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

(3) "Construct" or "Construction" includes installation, repair, and major modification or addition.

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

(5) "NPDES waste discharge permit" means a waste discharge permit issued in accordance with requirements and procedures of the National Pollutant Discharge Elimination System required by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500) and of OAR 340-45-005 through 340-45-065.

(6) "Person" means any person as defined in ORS 174.100 but does not include, unless the context specifies otherwise, any public officer acting in his official capacity or any political subdivision, as defined in ORS 237.410.

(7) "Subsurface sewage disposal system" has the same meaning as in ORS 454.605(14).

Stat. Auth.: ORS Ch.
Hist: DEQ 82, f. 1-30-75, ef. 2-25-75; DEQ 99(Temp), f. & ef. 10-1-75; DEQ 102, f. & ef. 12-18-75

Surety Bond Required

340-15-015 (1) Every person proposing to construct facilities for the collection, treatment, or disposal of sewage shall file with the Department a surety bond, or other approved equivalent security, of a sum determined under rule 340-15-025 of these rules.

(2) The following shall be exempt from the provision of section (1) of this rule:

(a) Any subsurface, alternative, or other sewage disposal system or systems designed or used to treat or dispose of a sewage flow of not more than 5,000 gallons (18.925 cubic meters) per day;

(b) Any subsurface, alternative, or other sewage disposal system or systems, regardless of size, used to serve any food handling establishment, mobile home or recreation park, tourist and travelers facilities, or other development operated by a public entity or under a valid license or certificate of sanitation issued by the State Health Division or Department of Commerce;

(c) Any sewage collection, treatment, or disposal facility owned and operated by a state or federal agency, city, county, county service district, sanitary authority, sanitary district, or other public body, including, but not limited to, a school district or port district;

(d) Any sewage collection, treatment, or disposal facilities of an industrial plant or commercial development having a valid NPDES Waste Discharge Permit or Water Pollution Control Facilities Permit issued by the Department pursuant to ORS 468.740 provided such facilities serve only employees or customers but no permanent residences.

Stat. Auth.: ORS Ch.
Hist: DEQ 82, f. 1-30-75, ef. 2-25-75; DEQ 99(Temp) f. & ef. 10-1-75; DEQ 102, f. & ef. 12-18-75

Type of Security

340-15-020 The type of security to be furnished pursuant to ORS 454.425 may be:

(1) Perpetual surety bond executed in favor of the State of Oregon on a form approved by the Attorney General and provided by the Department, such bond to be issued by a Surety Company licensed by the Insurance Commissioner of Oregon;

(2) Insured savings account assigned to the Department with interest earned by such account made payable to the assignor; or

(3) When it is not possible to acquire a perpetual surety bond or insured savings account for the total amount of security as required by OAR 340-15-025, a combination of insured savings account and a non-perpetual surety bond may be approved if the following conditions are met:

(a) Evidence must be provided that a perpetual surety bond cannot be acquired. This evidence shall consist of denial letters from at least two surety companies.

(b) A minimum insured savings account for at least 20% of the total required security must be provided. The remainder of the required security may be covered by a renewable, non-perpetual bond, on a form provided by the Department.

(c) The surety bond shall not be cancellable during construction of the facility and one full year of operation.

(d) Each year thereafter the insured savings account shall be increased by at least 20% of the total required security until such time as the savings account is equal to the total required security. The renewable bond may be decreased equivalent to the savings account increase until it is no longer required.

(e) At all times the combination of the savings account and the surety bond must be equal to the total amount of security required by OAR 340-15-025, unless specifically approved otherwise by the Commission.

(3) Other security in such form and amount as specifically approved by the Commission.

Stat. Auth.: ORS Ch. 454
Hist: DEQ 82, f. 1-30-75, ef. 2-25-75; DEQ 4-1984, f. & ef. 3-7-84

Amount of Bond or Other Security

340-15-025 The amount of the surety bond or other approved equivalent security filed with the Department shall be equal to $1.00 per gallon per day of installed sewage treatment or disposal capacity with the minimum sum not to be less than $2,000, or shall be of some other sum specifically approved by the Commission, except that in no case shall the maximum sum exceed $25,000.

Stat. Auth.: ORS Ch.
Hist: DEQ 82, f. 1-30-75, ef. 2-25-75

Transfer of Facilities

340-15-030 The ownership of the sewage disposal facilities shall not be transferred without the prior written approval of the Department and the surety bond or other approved

equivalent security filed pursuant to ORS 454.425 shall remain in full force and effect notwithstanding any subsequent ownership transfer without such prior written approval.

Stat. Auth.: ORS Ch.
Hist: DEQ 82, f. 1-30-75, ef. 2-25-75

Maintenance and Termination of Security

340-15-035 The surety bond or other approved equivalent security filed pursuant to ORS 454.425 shall remain in force and effect until such time as a state or federal agency, city, county, county service district, sanitary authority, sanitary district, or other public body acquires ownership or assumes full liability and responsibility for operation and maintenance of the sewage disposal facilities with the prior written approval of the Department pursuant to rule 340-15-030.

Stat. Auth.: ORS Ch.
Hist: DEQ 82, f. 1-30-75, ef. 2-25-75

ATTACHMENT 4

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

May 31, 1984

Mike Cusick
Lemma, Gill, Cusick and Hensley
4800 SW Macadam Avenue
Portland, OR 97201

Dear Mike:

Increasingly, the long-term affects of pollution damage are being translated into attempts to secure long-term financial responsibility. Accordingly, our Department has rules which require financial assurance for a variety of polluting activities. These include operating a private sewage treatment plant, pumping septic tanks, running a landfill or garbage transfer station, disposing of hazardous wastes and most recently, for storing or treating of hazardous wastes.

Our knowledge about the true costs, and actual security of the assurances which we require is less than complete. In some areas, we are receiving conflicting information about the availability of certain types of security. We also question the Department's ability to have access to some of these types of funds, should some clean up action be necessary at a site.

I thank you in advance for your willingness to help examine this portion of our pollution control program to ensure that the most cost-effective and varied security scheme is offered to our clients, at the same time not compromising the availability of funds should they be needed quickly to correct an environmental problem.

I have asked Carol Splettstaszer, Assistant to the Director, to call to arrange a time in the next few weeks when we might be able to get together for our first meeting. Other individuals I have asked to join the discussion are: Harvey Rogers, Bond Counsel with the Ragen, Roberts law firm who has agreed to serve as Chair; Scott Clements, Vice President with Foster and Marshall; Jim McCullough, Vice President in charge of the Investment Department of the Oregon Bank; and Judy Hatton who manages DEQ's Business Office. Other Department staff will be available throughout the course of your deliberations to offer any other information or assistance you might need.

Thanks. See you soon.

Sincerely, Original Signed By
Fred Hansen

MAY 31 1984

Fred Hansen
Director

FH:d
FD718

DEQ-1

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. O, November 2, 1984, EQC Meeting

Informational Report: Portland Metropolitan Area Diesel Exhaust Study-Results and Recommendations

Background

The purpose of this report is to present the results of the Portland Metropolitan Area Diesel Exhaust Study (Executive Summary included as Attachment 1), a joint effort of the Department and the Metropolitan Service District. The basic aim of the study was to look at impacts on particulate air quality in the Portland airshed due to future increases in the number of diesel vehicles (both light and heavy duty) in the metropolitan area. A task force (members listed in Attachment 1) guided the study and made recommendations for future action. The Metro Council endorsed the study and final set of recommendations (Attachment 2) at its July 26, 1984 meeting.

The study was given impetus by the significant increases in the sales of diesel automobiles and light trucks that occurred in the late 1970s and early 1980s. Prior to the 1978 model year, the percentage of national car sales that were diesel for each new model year (data available for the 1972-1977 model years) stayed well below 1.0%. Beginning with the 1978 model year, the percentage of car sales that were diesel passed the 1.0% mark and went as high as 5.98% in the 1981 model year. The sales rate of new diesel cars has recently declined to a level of 3%, thus clouding future trends. The future sales rate for diesel automobiles is likely to be strongly influenced by fuel availability and price.

Diesel automobiles emit more than 17 times the amount of particulate that comes from the exhaust of new gasoline automobiles. Diesel exhaust is also odorous and a significant source of polycyclic organic compounds (POMs), which are a potential air toxicant.

Outline of Diesel Exhaust Study

In order to determine potential air quality impacts of dieselization of the automobile population, Metro and the Department chose the year 2000 as the target date of the analysis. Because of uncertainties as to the level of future diesel sales and the amount of control from future tailpipe exhaust regulations (see discussion below), the following scenarios were studied:

1. 1980 Base Year (incorporated a 4% sales level for diesel cars in 1980)

2. Year 2000

   a. Four percent of annual autos sales are diesel with no tailpipe regulations.

   b. Four percent of annual auto sales are diesel with tailpipe regulations.

   c. Twenty percent of annual auto sales are diesel without tailpipe regulations.

   d. Twenty percent of annual auto sales are diesel with tailpipe regulations.

   For all the above scenarios, the heavy truck fleet was assumed to be 90% diesel by 2000. The high percentage of diesel trucks is based on the expected continuation of the current practice of replacing short haul gas trucks with diesel trucks.

Future Diesel Vehicle Tailpipe Exhaust Regulations

In 1980, the Environmental Protection Agency (EPA) published regulations that would have required a 0.60 gram/mile (gm/mi) standard for both diesel cars and diesel light trucks beginning with the 1982 model year. By the 1985 model year, more stringent standards would have been established for diesel cars (0.20 gm/mi) and light duty diesel trucks (0.26 gm/mi). The 1985 standards were predicated upon the availability of "trap-oxidizers." The trap-oxidizer technology developed more slowly than was originally projected, and as a partial consequence, EPA has delayed the effective date of the 0.20 gm/mi standard to the 1987 model year. The 0.60 gm/mi standard is to become effective with the 1985 model year. However, the impact of the 0.60 gm/mi standard will be small, as most diesel autos presently emit particulates at a rate below that level.

California has received permission from EPA to require a 0.20 gm/mi standard for diesel cars effective with the 1986 model year. Additionally, California plans to enforce a 0.08 gm/mi standard for the 1989 model year.

With respect to heavy duty diesel vehicles, EPA promulgated emission control regulations for those vehicles on October 15, 1984 under a regulatory schedule imposed by a U.S. District Court. March 15, 1985 was set as the deadline for final rulemaking. The levels of the exhaust standards being proposed by EPA had not been analyzed at the time of report deadline. Detailed information is expected to be available at the EQC meeting.

Key Findings

The following key findings emerged from the study:

- If the sales of diesel automobiles stay at current relatively low levels and average 4% to the year 2000 with no further tailpipe controls (0.20 gm/mi standard is not implemented), there will be a moderate degradation of air quality in the Portland metropolitan area attributable to diesel cars by themselves.

- Under the 4% without tailpipe regulations diesel sales scenario, regional particulate from diesel autos and trucks in the year 2000 would be increased by 77% over 1980 levels.

- Under the 4% without tailpipe regulations scenario and without offsets from gasoline vehicles, visibility of Mt. St. Helens and Mt. Hood would decrease by two days per year. According to National Weather Service records, Mt. St. Helens is visible 35 days per year and Mt. Hood is visible 56 days per year. The decreased visibility is based on applying a visibility model to the frequency distribution of reported 1 p.m. visual ranges at the Portland International Airport. In turn, the visibility model is based on predicted regional pollution concentrations in combination with data on individual pollutant light scattering efficiencies. The results of the particulate emissions analysis were put into a regional particulate concentration model to produce the predicted particulate concentrations for the various scenarios.

- Diesel trucks are currently a major contributor of motor vehicle particulate emissions. Under the 4% without tailpipe regulations scenario, diesel trucks would contribute more than four times as much particulate as diesel cars in the year 2000. Only in the worst case scenario (20%) are diesel trucks and diesel cars approximately equal in the contribution of particulate emissions. Therefore, controls on diesel trucks will likely yield more air quality benefit in the future than controls on diesel autos.

- For downtown Portland, diesel buses are predicted to contribute from 14% to 19% of mobile source particulate emissions.

- The large reduction (76% less in 2000 than in 1980 under the 4% scenario) in particulate emissions from gasoline vehicles due to the phase-out of leaded gasoline is expected to offset increases in particulate emissions from diesel vehicles. The combined effect of both vehicle types on particulate emissions yields a slight net improvement in air quality, unless the percentage of diesel autos goes to more than 10% of the automobile population.

  An important policy question is raised as to whether the decrease in particulate emissions from gasoline vehicles should be considered as an "offset" to the increase in particulate emissions from diesel

vehicles. The Diesel Exhaust Study Task Force recommended not to consider the decrease in emissions from gasoline vehicles as an offset. The task force recommended that strict emission standards be applied to diesel automobiles, trucks and buses. The rationale for this action is that diesel vehicles are a distinct source of increased emissions and should be treated on a comparable basis to a new major industrial source, which would be subject to installing expensive pollution control equipment and also finding emission offsets.

The resolution adopted by the Metro Council, which contains recommendations of the Diesel Exhaust Study Task Force with amendments approved by the Transportation Policy Alternatives Committee and the Joint Policy Alternatives Committee on Transportation, is shown in Attachment 2. One of the key recommendations is that the Department analyze the potential benefit of testing diesel buses and trucks in the existing biennial vehicle inspection program. The resolution adopted by the Metro Council recommends that the diesel and bus inspection benefit analysis be completed by March 31, 1985.

Director's Recommendation

The Director recommends that the Commission endorse the recommendations of the Diesel Exhaust and Study Task Force (Attachment 2) and direct the Department to coordinate with Tri-Met and Metro, and other concerned agencies to fulfill recommendations of the Task Force.

Fred Hansen

Attachments

1. Executive Summary of Potential Impacts to Air Quality Resulting from the Increased Use of Diesel Vehicles in the Portland Metropolitan Area.

2. Metropolitan Service District Resolution No. 84-480 for the Purpose of Endorsing the Recommendations of the Diesel Exhaust Study Task Force.

Howard W. Harris:s
229-6086
October 1, 1984

AS620

Attachment 1

POTENTIAL IMPACTS TO AIR QUALITY RESULTING FROM THE INCREASED USE OF DIESEL VEHICLES IN THE PORTLAND METROPOLITAN AREA

EXECUTIVE SUMMARY

METROPOLITAN SERVICE DISTRICT
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

June 1984

This study was funded in part by a grant from the U.S. Environmental Protection Agency.

Introduction

Until recently, transportation/air quality planners have focused their attention on efforts to reduce pollution from gasoline automobiles. These efforts have led to a significant reduction in carbon monoxide, hydrocarbon and particulate emissions from those vehicles.

However, in the late 1970s and early 1980s, there was a significant increase in the number of diesel automobiles and trucks sold in the United States. While new diesel automobiles emit comparatively small amounts of carbon monoxide and hydrocarbons, they do emit more than 17 times the amount of particulate as each new gasoline automobile on the road (Table 1). Recognizing this, the Metropolitan Service District (Metro) and the Oregon Department of Environmental Quality (DEQ) undertook an analysis to determine the potential impact to air quality in the year 2000 from the increased use of diesel vehicles.

Table 1

EXHAUST PARTICULATE EMISSION RATES
(grams/mile)

Source	1984 Vehicles
Gasoline Autos	0.02
Diesel Autos	0.34
Gasoline Trucks	0.26
Diesel Trucks	1.61
Diesel Buses	2.40

The analysis first examined the effect on air quality considering only the impacts of increased numbers of diesel automobiles and trucks. Recognizing that emissions from gasoline vehicles would be decreasing during this same time frame, the analysis then examined the combined impact on air quality from all mobile sources.

To assist in reviewing the analysis and in making policy recommendations, Metro and DEQ formed the Diesel Exhaust Study Task Force. The Task Force was composed of representatives of the public and private sectors. Their recommendations are found at the end of this report.

A. Conclusions

There has been a significant downward trend in the sale of diesel automobiles since 1982. If sales of diesel automobiles stay relatively low and average approximately 4 percent of all

new car sales through the year 2000, there will be a moderate degradation of air quality in the Portland metropolitan area attributable to them.

- Regionwide, particulate emissions from diesel automobiles and trucks would increase by 77 percent over 1980 levels.
- Fine particulate concentrations from diesel vehicles in downtown Portland would increase by 7 percent, or 0.72 ug/m^3.
- Average visual range would decrease by 2 percent, or .83 kilometers.
- Visibility of Mt. St. Helens and Mt. Hood would decrease by two days per year, or 6 percent and 3 percent, respectively.
- If sales of diesel automobiles increase beyond 4 percent of the automobile fleet, there would be further degradation of air quality.
- The analysis also found that diesel trucks are now and will continue to be the major contributor of mobile source particulate emissions through the year 2000. (Sixty-five percent of mobile source emissions are from diesel trucks in the year 2000.) For this reason, strict controls on diesel trucks will yield more air quality benefit than controls on diesel automobiles.
- Diesel buses are a significant contributor to mobile source particulate emissions in downtown Portland. In addition, research found that vertical exhaust stacks on transit buses reduced odors at curbside by a factor of eight over buses with horizontal exhaust.
- Although emissions from diesel vehicles are increasing, there will be a large reduction in particulate emissions from gasoline vehicles due to the phase-out of leaded gasoline. If diesel and gasoline particulate emissions are considered together, there will be a slight net improvement in air quality from those sources, unless the percentage of diesel automobiles increases to more than 10 percent of the automobile fleet.
- If emissions from all other sources of particulate (road dust, space heating, etc.) are taken into account, air quality will moderately degrade unless new particulate control strategies are implemented.

B. Recommendations

The Portland metropolitan area currently exceeds both state and federal particulate air quality standards and will continue to do so unless additional particulate control strategies are

implemented. One effect of this status is that new industries wishing to locate in the Portland metropolitan area must purchase costly emission "offsets" from other industries or area sources and install extensive pollution control equipment. (These actions ensure that the total amount of emissions in a region do not increase from a new or expanding industry.)

The decision regarding whether or not to consider the decrease in emissions from gasoline vehicles as an "offset" to the increase in emissions from diesel vehicles is, therefore, an important policy question. If the decrease is considered as an offset, the rationale for recommending strict diesel emission control standards is diminished. However, if the increase in emissions from diesel automobiles were treated similarly to those from a new industry, they would be considered a "major source" by DEQ and, therefore, be subject to the requirement for obtaining emission offsets and installing extensive pollution control equipment.

In Portland, the Diesel Exhaust Study Task Force, which was composed of representatives from the public and private sectors, recommended that the decrease in emissions from gasoline vehicles not be considered an offset and that strict emission standards be applied to diesel automobiles, trucks and buses. The rationale for this recommendation was based on a consideration of equity. Almost all other major sources of particulate in the region (industry, woodstoves, backyard burning, etc.) have been required to strictly control their emissions to the point where little additional air quality benefit is possible from them. Diesel vehicles represent one of the few significant particulate sources remaining to control to help the region achieve its air quality objectives.

Based on the conclusions of the study, the Task Force recommended to the Metro Council and the Director of DEQ:

- That DEQ and Metro urge Congress and EPA to retain or accelerate the effective date of the 0.2 gm/mi exhaust particulate standard for diesel automobiles promulgated in the January 24, 1984, Federal Register.

- That DEQ and Metro urge Congress and EPA to promulgate similar exhaust particulate emission control standards for diesel trucks and buses at the national level.

The Task Force also recommended:

- That DEQ analyze the potential benefit to air quality from testing diesel trucks and buses in the DEQ vehicle inspection program. DEQ should consider testing these vehicles in their inspection program if the benefits are significant.

- That DEQ should monitor the current demonstration project in southern California which is testing the air quality benefits of retrofitting transit buses with trap oxidizers. If the program is successful, DEQ should discuss with Tri-Met retrofitting their bus fleet.

- That DEQ should consult with Tri-Met when they purchase new buses to ensure that air quality concerns are addressed, and that this coordination should take place prior to Metro's TIP approval of any bus purchase grant.

- That DEQ monitor sales of diesel automobiles, and if those sales become greater than 10 percent of all new automobile sales, reconvene the Diesel Exhaust Study Task Force to determine if further actions are warranted.

The recommendations of the Task Force have been reviewed by two policy advisory committees of the Metropolitan Service District. The recommendations have been strengthened to add the following:

- That DEQ and Metro shall consult with EPA and UMTA to explore revising bus design specifications to effectively address air quality concerns.

- That DEQ should complete their analysis of the benefit of testing diesel buses and trucks by March 31, 1985. If the benefit is cost-effective, DEQ should revise the Particulate State Implementation Plan to include this measure.

- That Tri-Met seek funds in FY 1986 to purchase trap oxidizers if their potential air quality benefits are found to be cost-effective.

RB/srb
1438C/372
07/12/84

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ENDORSING THE RECOMMENDATIONS OF THE DIESEL EXHAUST STUDY TASK FORCE	)))))	RESOLUTION NO. 84-480 Introduced by the Joint Policy Advisory Committee on Transportation

WHEREAS, The Portland Air Quality Maintenance Area is in violation of state and federal particulate air quality standards; and

WHEREAS, The region will continue to violate this standard unless additional particulate control strategies are adopted; and

WHEREAS, Continued violation of this standard will require that new industries wishing to locate in the Portland Air Quality Maintenance Area (or existing industries wishing to expand their production) must purchase costly emission offsets; and

WHEREAS, The Diesel Exhaust Study conducted by the Metropolitan Service District (Metro) and the Oregon Department of Environmental Quality (DEQ) found that projected increases in the use of diesel automobiles and diesel trucks will moderately degrade particulate air quality in the metropolitan area; and

WHEREAS, A Diesel Exhaust Study Task Force was initiated and charged with recommending to the Metro Council and the Director of DEQ measures to mitigate potential adverse air quality impacts from diesel vehicles; and

WHEREAS, The Task Force recommended appropriate measures to reduce particulate air quality impacts from diesel vehicles; now, therefore,

BE IT RESOLVED,

1. That the Metro Council endorses the recommendations as

shown in Attachment A.

2. That Metro transportation staff coordinate with DEQ, Tri-Met and other concerned agencies to fulfill the recommendations of the Task Force.

ADOPTED by the Council of the Metropolitan Service District this 26th day of July, 1984.

Corky Kirkpatrick
Presiding Officer

RB/srb
1462C/382
06/29/84

Certified A True Copy of the Original Thereof
Acting Clerk of the Council

ATTACHMENT "A"

RECOMMENDATIONS OF THE DIESEL EXHAUST STUDY TASK FORCE

- That DEQ and Metro urge Congress and EPA to retain or accelerate the effective date of the 0.2 gm/mi exhaust particulate standard for diesel automobiles promulgated in the January 24, 1984, Federal Register.

- That DEQ and Metro urge Congress and EPA to promulgate similar exhaust particulate emission control standards for diesel trucks and buses at the national level.

- That DEQ analyze the potential benefit to air quality from testing in the DEQ vehicle inspection program all diesel trucks and buses not registered under apportioned registration agreements provided for by ORS 481.645 (i.e., not registered in multiple states). DEQ should consider testing these vehicles in their inspection program if the benefits are significant.

- That DEQ should monitor the current demonstration project in southern California which is testing the air quality benefits of retrofitting transit buses with trap oxidizers. If the program is successful, DEQ should discuss with Tri-Met retrofitting their bus fleet.

- That DEQ should consult with Tri-Met when they purchase new buses to ensure that air quality concerns are addressed, and that this coordination should take place prior to Metro's Transportation Improvement Program (TIP) approval of any bus purchase grant.

- That DEQ monitor sales of diesel automobiles, and if those sales become greater than 10 percent of all new automobile sales, reconvene the Diesel Exhaust Study Task Force to determine if further actions are warranted.

ADDITIONAL RECOMMENDATION OF TPAC

- That DEQ and Metro shall consult with EPA and UMTA to explore revising bus design specifications to effectively address air quality concerns.

ADDITIONAL RECOMMENDATIONS OF JPACT

- That DEQ should complete their analysis of the benefit of testing diesel buses and trucks by March 31, 1985. If the benefit is cost-effective, DEQ should revise the Particulate State Implementation Plan to include this measure.

- That Tri-Met seek funds in FY 1986 to purchase trap oxidizers if their potential air quality benefits are found to be cost-effective.

RB/srb
1462C/382
07/12/84

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: John F. Kowalczyk

Subject: November 2, 1984 EQC Breakfast Agenda, Minimizing Impacts From Slash Burning

What more can be done to reduce slash burning impacts?

The article by the U.S. Forest Service copied on the back indicates techniques have been identified to reduce emissions 30-50 percent while conserving Biomass. These techniques include: 1) lowering minimum removal size; 2) more spring burning; 3) helicopter or other high intensity ignition; and 4) better mop up practices. While the these techniques are being used in Oregon to some extent, they are not used in all, or even the majority of cases.

Another example of an impact reducing measure is an element of the State of Washington smoke management program which imposed a summer weekend burn restriction on slash burning which might affect Class I areas in Washington. Stricter enforcement of the Oregon Department of Forestry's smoke management plan also appears to be an additional measure which could reduce impacts as several smoke intrusions have been identified as being caused by burns which did not follow the smoke management advisory.

What are the mechanisms for implementing further measures to reduce slash burning impacts?

Implementing additional slash burning reduction measures is highly dependent on better identifying the following: 1) magnitude of existing impacts; 2) regulatory requirements that must be met; and 3) benefits of control measures versus the costs. These items are primarily up to the Department to pursue. As a result of the federal requirements to develop a Class I visibility protection program, complete with control strategies by December 1985, the Department is proceeding on a work schedule to develop information on the above items as key elements in shaping the visibility SIP.

Specific mechanisms that can result in implementation of further slash burning emission reduction measures include: 1) Class I visibility SIP - draft scheduled for December 1985; 2) update of smoke management plan between the Department and the Oregon Department of Forestry. This may be done in conjunction with and on the visibility SIP schedule and 3) PM_{10} control strategies - schedules will depend on when EPA adopts a new PM_{10} standard.

Other

It would also be highly desirable to better identify and promote economic incentives or reduce economic barriers to increase slash utilization levels. This is a task appropriate to the State Department of Forestry; however, at this time, they have no staff dedicated to this effort. Fred Hansen will be talking to Mike Miller of the Department of Forestry about this need.

AS732.E

Oregon emission inventory - fine particulate (approx.)

Annual (tons/year)		Seasonal (April-October)	
Slash	70,000 (∿40%)	Slash	70,000 (60%)
Industry	40,000	Industry	20,000
Woodstoves	30,000	Dust	20,000
Dust	30,000	Grass fields	10,000
Grass field	10,000	Woodstoves	5,000
Autos	5,000	Autos	2,500
	185,000		127,500

Slash Salvage Cuts Forest Smoke Pollution

Status Report on Fire and Atmospheric Sciences Research, USDA Forest Service, Forest Residues and Energy Program (FR&EP) FTS: 399-7815.

Current research shows that better logging-residue salvage can reduce slash-burning pollution by 30 to 50 percent and conserve biomass fuel. As a result, residue-recovery research heads the study list of the Forest Residues and Energy Program (FR&EP).

Fourteen FR&EP study projects are planned or underway. The topics are:

- Fuel consumption and fire duration in clearcuts and partial clearcuts, to predict effects on air quality, soil and residual stands. Data are from 31 experimental burns in National Forests on the west side of the Cascade Range;
- The effects of various ignition techniques on fuel consumption;
- Demonstration of ignition systems;
- Effects of arrangement on fuel consumption;
- Emission factors for smoldering phase;
- Emission factors for flaming phase;
- Emission chemistry (pollutant "fingerprints" that identify smoke sources);
- Emission factors for live fuel;
- Demonstration of increased residue removal;
- Smoke-management costs;
- Emissions from piled slash;
- Demonstration of meteorological smoldering-smoke reduction;
- Demonstration of mop-up effect on smoldering;
- Emissions-control guidebook and research summary.

The studies are scheduled through 1985, incorporating the research needs of several agencies.

One of the studies shows that removing big branches and fragments also reduces fire damage to the layer of forest litter (duff). Duff is the primary source of plant nutrients, and also the largest source of pollutant emissions from prescribed fires.

In one project, the 1981 Green Mountain Smoke Characterization Study in the Willamette National Forest, lowering the minimum residue-removal size to 6 feet by 6 inches, from the standard 8 inches by 10 feet, reduced emissions by 30 percent during the flaming stage. Emissions dropped another 50 percent during the subsequent smoldering stage.

While the main FR&EP effort is on residue recovery, a secondary goal is to find improved burning techniques. Ways of predicting smoke-dispersion to aid the scheduling of fires are also under study.

The four most promising emission-reduction avenues appear to be: Salvage of residues down to 3 inch diameter, more spring burning, employment of helicopter or other high-intensity ignition methods and better mop-up to reduce smoldering.

Better ignition can cut flaming-stage emission 25 percent, early studies have shown.

The region's evolution to second-growth forests also is an element in the air-quality equation, and half of field studies are sited in forests less than 160 years old to measure that impact.

More information is available from David V. Sandberg, USDA Forest Service, 206/442-7815, or from the PNW Experiment Station, Forestry Sciences Laboratory, 4043 Roosevelt Way NE, Seattle, WA 98105.

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201
Phone: 503/222-1963

November 1, 1984

Environmental Quality Commission
PO Box 1760
Portland, OR 97204

Dear Commissioners:

I regret that I will be out of town on Friday, November 2, and will miss your meeting. In my absence, Lorie Parker, an OEC Board member will represent OEC in discussions relating to the SB 405 rules. As for other agenda items, I would like to make a few brief comments in writing for your consideration.

1. Agenda Item No. H.: Vehicle Noise Rules. We believe this staff report is a considerable improvement over the earlier draft that went out for public comment. The inclusion of motorcycles, and the intention to include heavy-duty trucks and buses other than Tri-Met vehicles, is an important strengthening of the proposal.

However, I can find no reason for delaying implementation of the rules until July 1, 1985. It may be that the staff believes it wiser to await the conclusion of the 1985 Oregon legislative session before implementation. I don't think the legislature will be particularly interested in this issue, and such interest on their part would not be a compelling reason to delay implementation anyway.

We believe February 1, 1985, would be a more appropriate start-up time.

2. Agenda Item No. J.: Portland International Airport. Since OEC was the organization that originally petitioned the EQC to require a noise abatement plan for PIA, we have maintained a keen interest in its implementation. We would like to see a progress report as soon as possible. However, the issues raised by PIA appear to be valid, and we have no objection to moving the reporting date to May 1, 1985.

3. Agenda Item No. O: Diesel Emissions. I served on DEQ's diesel task force referenced in the staff report. The staff report raises some of the important issues that our committee discussed, but it is deficient in two aspects: First, it understates the potential health impacts of diesel emissions, and second, it does not discuss one of the policy options available to the state of Oregon.

The report characterizes diesel impacts mostly in terms of visibility reductions and potential impacts on TSP violations. It scarcely mentions the overriding reason why we should be concerned with diesel emissions, namely, public health. The Commission should be aware of the following facts about diesel emissions:

a) 100% of diesel particulate is less than 15 microns in diameter, and approximately 97% is less than 2.5 microns.

b) The extractable organic fraction of diesel particulate has been shown to be mutagenic in short-term bioassays.

c) A single high-level exposure to diesel exhaust can produce acute pulmonary toxic effects.

d) Diesel emissions have been characterized by some researchers as very similar to tobacco smoke in nature.

I attach for your information a one-page health-effects summary provided by the DEQ staff during our deliberations.

Because diesel engines emit such a high percentage of respirable particulates, which can pose both short- and long-term health hazards, I believe the Commission ought to examine all policy options available in an effort to reduce emissions. One such option would be to adopt emission standards for light-duty vehicles that are identical to the tighter California standards (0.20 gm/ml by 1986, 0.08 gm/ms by 1989). Under the terms of the Clean Air Act, states have only two options for auto-emission controls: They can either accept the federal standards promulgated by EPA or Congress, or they can adopt standards identical to California. In

order to do this, the state would have to petition EPA for permission to adopt the California standards.

This option was discussed in the advisory committee but was not endorsed because the majority of committee members felt that the contributions of diesel vehicles to the overall pollution problem was too insignificant to worry about. I disagree with that view for two reasons:

First, although the relative contribution to the pollution loadings may be small, the health risks are disproportionately greater than many other types of TSP. Thus control of this source merits special attention.

Second, if this approach--i.e., "too small to worry about"--is applied to all other sources, it will be self-defeating. It's true that tighter standards would only gain an incremental reduction in TSP, but virtually all of our pollution-control strategies are now incrementals. The same arguments were used during the backyard-burning debates and were rejected by this Commission.

Since the diesel report is listed as an informational report on your agenda, it would not be appropriate to take any kind of binding action aside from simply accepting the report. However, I would urge you to direct the staff to report back at a later date on the option of adopting California standards, so that the pros and cons of such an action can be more fully explored.

Thank you for your consideration of this request.

Yours very truly,

Silkenfeld
for John A. Charles

John A. Charles
Executive Director

JAC/hls
enc.

HEALTH EFFECTS SUMMARY

The possibility of increased numbers of light-duty diesel vehicles traveling on streets and highways in the future has given rise to concern about human health hazards due to diesel exhaust. As a result of this concern, the Health Effects Panel of the Diesel Impacts Study Committee, National Research Council reported to EPA on the body of health effects research, as it existed up to 1981. The panel made the following major points:

1. Diesel exhaust contains mutagenic compounds, and biologically active substances may be released from inhaled particulates.

2. Whole diesel exhaust does not appear to be mutagenic in mammals.

3. Extracts from the exhausts of diesel and gas engines have carcinogenic materials, and engine design and operation may affect the strength of carcinogenic activity.

4. Whole diesel exhaust does not appear to be carcinogenic when inhaled by laboratory animals.

5. A single high-level exposure to diesel exhaust can produce accute pulmonary toxic effects.

6. Epidemiological studies of occupational exposure to diesel exhaust do not convincingly demonstrate excess risk of developing lung cancer.

7. The possibility that synergism between cigarette smoke and diesel exhaust may lead to an increased risk of lung cancer needs further research.

Since 1981, several papers have been written that attempt to quantify the risk of developing lung cancer as a result of exposure to diesel exhaust. A table of risk factors developed by various researchers is shown below.

LUNG CANCER RISK FACTORS FOR DIESEL PARTICULATES

Author	Annual Excess Lung Cancer Deaths/100,000/ug/m^3 Diesel Particulates
Albert, et al.	0.05
Harris	0.1
Cuddihy, et al.	0.1

A note of caution on the above risk factors is appropriate. Some scientists are critical of the assignment of lung cancer risk to the general population based on exposure to diesel exhaust particulates.

With the above caveat, application of the highest risk figures to the Portland downtown area indicates that the net impact of the worst case scenario would be about 0.1 excess deaths due to increases in light-duty diesel emissions. However, on a national basis, some researchers indicate that the impact of increased dieselization to a 20% level could mean an almost ten-fold increase in excess lung cancer deaths by 1990.