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OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS

DEQ

State of Oregon
Department of Environmental Quality

OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

January 25, 1985

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 December 14, 1984, EQC meeting.

B. Monthly Activity Report for November, 1984.

C. Tax Credits.

9:10 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 amendments to Solid Waste Rules relating to open burning of solid waste at disposal sites (OAR 340-61-015 and OAR 340-61-040(2)).

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.

10:00 a.m. E. Public hearing and proposed adoption of amendments to the rule regulating use of cesspools and seepage pits, OAR 340-71-335.

F. Request for adoption of rules for granting Water Standards Compliance Certification pursuant to requirements of Section 401 of the Federal Clean Water Act.

G. Proposed redesignation of the Medford-Ashland AQMA as Attainment for Ozone and proposed revision of the State Implementation Plan.

H. Request for a variance from emission limits for Total Reduced Sulfur (TRS) compounds from Kraft Mill recovery furnaces and lime kilns, OAR 340-25-1650(a) and (b), and OAR 340-25-630(2)(b) and (c) by International Paper Company, Gardiner, Oregon.

I. Status Report: Noise Rule exemption for alcohol and nitromethane from fuel drag race vehicles.

J. Proposed adoption of amendments to Hazardous Waste Rules to provide that only those liquid organic hazardous wastes which can be beneficially used will be banned from landfilling after January 1, 1985.

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 S.W. Broadway in Portland. Agenda items may be discussed at breakfast. The Commission will have lunch at the DEQ offices, 522 S.W. Fifth Avenue.

The next Commission meeting will be March 8, 1985 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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THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE ONE HUNDRED SIXTY-SECOND MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

January 25, 1985

On Friday, January 25, 1985, the one hundred sixty-second meeting of the Oregon Environmental Quality Commission convened in Room 1400 of the Department of Environmental Quality offices at 522 S. W. 5th Avenue in Portland, Oregon. Present were Commission Chairman James Petersen and Commission members Mary Bishop, Wallace Brill, Sonia Buist, and Vice Chairman Arno Denecke. Present on behalf of the Department were Director Fred Hansen and several members of the Department Staff.

The staff reports presented at this meeting, which contained the Director's recommendations mentioned in these minutes, are on file in the office of the Director of the Department of Environmental Quality, 522 S. W. 5th 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 AGENDA

1. Agency Organization Changes

   Director Hansen announced he had recently renamed the Solid Waste Division the Hazardous and Solid Waste Division and appointed Michael Downs as the Administrator. Mr. Downs was formerly the Administrator of the Management Services Division. The Management Services Division Administrator position would be filled on a rotational basis with Lydia Taylor, the Agency's Budget Officer until the first of March and then with Judy Hatton, the Agency's Accounting Services Supervisor, from the first of March until the position is filled. Director Hansen also announced the recent appointment of Carolyn Young, formerly with KOIN TV, as the Agency's Public Information Officer.

2. Meeting with Oregonian Editorial Board

   Director Hansen reported on a successful meeting with The Oregonian's Editorial Board in response to their editorial criticizing the Department's actions in regard to the need for an auto testing program in Medford.

3. Review of Governor's Recommended Budget

   Lydia Taylor and Michael Downs, of the Agency's Management Services Division, reviewed with the Commission the Department's 1985-87 Governor's recommended budget. The discussion included a handout of materials which is made a part of the record of this meeting.

4. Status Report on Legislation

Stan Biles, Assistant to the Director, reported to the Commission on the status of DEQ legislation and other legislation which would affect the Department.

FORMAL AGENDA

All Commission members were present for the formal meeting.

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

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist and passed unanimously that the minutes of the December 14, 1984 Commission meeting be approved.

AGENDA ITEM B: Monthly Activity Report for November 1984.

It was MOVED by Commissioner Buist, seconded by Commissioner Bishop and passed unanimously that the monthly activity report for November 1984 be approved.

AGENDA ITEM C: Tax Credit Applications.

David Kobos, owner of the Kobos Company, testified regarding their tax credit application. The Department had recommended denial of this application as the Company had not filed Notice of Intent to Construct and Request for Preliminary Certification for Tax Credit. Mr. Kobos said the Department's report was true and accurate in all its particulars, but he simply had not seen the form in the packet of information that was given to him by Department staff member Harry Demaray. Throughout the construction of the facility, which was over about a one year period, Mr. Kobos said he was in contact with Department representatives and felt that in all ways the intent and purposes of the pollution control laws had been complied with. In summary, Mr. Kobos said that he had no wish to be a polluter and they were very proud of their new installation which had virtually eliminated smoke and odor emissions.

Commissioner Bishop asked why a phone call had not been made to Mr. Kobos to remind him to submit the application. Director Hansen replied that the Department had sent letters to the Kobos Company requesting additional information and explanation why they had not yet submitted the preliminary certification form. There was no response to that letter until the final application came in, which was beyond the 30-day requirement in which additional information needs to be submitted. Director Hansen went on to say the Department recognized the Company took all of their actions in good faith with the expectation that they would receive tax credit. However, the Department did not have the ability to deviate from the Commission's rules.

It was MOVED by Commissioner Buist, seconded by Commissioner Denecke and passed unanimously that the tax credit applications be approved, including application No. T-1714 for the Kobos Company, finding that the company adequately satisfied the technical requirements for preliminary certification.

PUBLIC FORUM:

Robert Forthan, an employee of the Department's Vehicle Inspection Program appeared regarding race relations. Mr. Forthan had also appeared before the Commission at its December meeting. He said he had reviewed with Susan Payseno, Personnel Manager, the Department's affirmative action statistics. Mr. Forthan still contends that even though the State of Oregon apparently has a commitment to minorities working in state government, in his opinion the statistics did not bear this out. He said Ms. Payseno had only given him statistics for full-time employees, however numerous temporary employees had been hired in the last three years, and the Vehicle Inspection Program had not hired any full-time employees since 1981. Mr. Forthan contended that if temporary employees did not apply to the affirmative action statistics, the State of Oregon could get around the affirmative action law by hiring temporary instead of full-time employees. Mr. Forthan said that Ms. Payseno had told him that the State of Oregon had 26,000 employees, of which 1,000 were minorities. He thought that was not equal representation. Mr. Forthan stated calculation of minorities should be done in a different manner. In his view, there were more minorities in the Metropolitan Service District than elsewhere in Oregon and the statistics should be recalculated. Mr. Forthan said he was trying to promote jobs for minorities and would like to go to the Legislature and ask for the same thing.

Chairman Petersen gave Mr. Forthan a copy of an affirmative action report that Susan Payseno had prepared for the Commission and which the Commission was going to discuss at its lunch meeting. Chairman Petersen said he would ask Ms. Payseno some of the questions Mr. Forthan had raised about part-time versus full-time statistics, but basically the report showed the Department has made a positive effort to hire minorities. He encouraged Mr. Forthan to take his concerns to the Legislature because what he was really talking about was a state-wide hiring policy. Director Hansen said that the legislative committee having to do with hiring policies would generally be Human Resources Committees in both the House and the Senate.

This ended the Public Forum.

AGENDA ITEM D: Request for Authorization to Conduct a Public Hearing on Proposed Amendments to Solid Waste Rules Relating to Open Burning of Solid Waste at Disposal Sites. (OAR 340-61-015 and OAR 340-61-040(2)).

At the September 4, 1984 meeting, the Commission approved a course of action for dealing with open dumps which included a Department Task Force. The Department was to examine the issue and develop a policy dealing with open burning of solid waste at disposal sites. The study has been

completed by the Department Task Force. The Department is requesting authorization to conduct public hearings to gather testimony and propose amendments to the Solid Waste Administrative Rules. The proposed rule amendments would allow small rural sites in eastern Oregon which meet the criteria, to continue to open burn under restricted operating conditions. The proposed criteria are based on environmental and economic concerns.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission authorize public hearings to take testimony on the proposed amendments to rules for open burning of solid waste at disposal sites (OAR 340-61-015 and OAR 340-61-040(2)).

Commissioner Denecke asked if it was true as stated in the report that the state could not be sued for permitting open burning. Michael Huston of the Attorney General's office replied it was at least the prevailing view of the federal courts, as well as EPA, that recourse does not provide a remedy against a state regulatory agency. In addition, Director Hansen indicated the liability was not one of financial risk, but one of closing the site or stopping the practice.

Chairman Petersen asked what evidence the Department had to state that if all open burning was stopped, some local governments may abandon their disposal operations. Bob Brown, of the Department's Hazardous and Solid Waste Division, replied that Lake County indicated during discussions on the variance application procedures that if they could not burn, they could not afford to operate the sites and would essentially close them and let people go back to what they had been doing before, which was dumping on BLM land. Chairman Petersen asked if that was a lawful option for the counties. Mr. Brown replied that the statutes did not allow the Department to order a county government to provide a solid waste disposal facility. Commissioner Brill asked if there were any approved sites that were privately operated. Mr. Brown replied that he did not think any of them were operated privately, but instead were operated by local governments.

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

AGENDA ITEM F: Request for Adoption of Rules for Granting Water Standard Compliance Certification Pursuant to Requirements of Section 401 of the Federal Clean Water Act.

At the September 14, 1984 Commission meeting, the staff presented some proposed procedural rules for Department certification of federal licenses or permits pursuant to Section 401 of the Clean Water Act. At that meeting, the Commission authorized the Department to proceed through the public hearing process. A hearing was held on November 28, 1984 and the proposed rules have been modified in part in response to those public comments.

Director's Recommendation

Based on the summation in the staff report, the Director recommends that the Commission adopt the rules OAR 340-48-005 to OAR 340-48-040 as presented in Attachment A to the staff report.

Jack Smith testified on behalf of the Oregon Shores Conservation Coalition and Northwest Environmental Defense Center. Mr. Smith provided written copies of his testimony to members of the Commission. He noted the Commission had in their staff report a letter from Lynn Frank, Director of the Department of Energy, which stated that this issue was of great importance to the state and its citizens. Mr. Smith agreed. He said in order for the state to play a meaningful role in the federal decision-making process on hydroelectric facilities, the state must have an effective instrument for coordinated review of those facilities and that Section 401 certification was such an instrument. Mr. Smith said the Federal Clean Water Act stated very clearly that no license or permit shall be granted if certification has been denied by the state. DEQ has a responsibility he continued, to exercise a far more aggressive role in asserting the state's interest in federal licensing and permitting activities affecting the state's waters than is presently proposed in the rules. The burden in Section 401 was on the applicant to provide information or evidence supporting certification and through that process to convince the state why they should not deny that certification. In reviewing the Department's files of over 200 applications dating from 1982, Mr. Smith found only two which had been denied. The first one was the Gold Hill Project, which was denied because the Oregon Legislature withdrew that section of the Rogue River from hydroelectric development; and the second was the Lava Diversion Project on the Deschutes River, which was denied just recently because of some very specific water quality considerations, and because of failure on the part of the applicant to secure a statement from Deschutes County that the project was compatible with the local land use plan. Also, in reviewing the applications, they only found one file that had any identifiable public notification of actions. From this brief review, Mr. Smith stated that it had been their observation the Department has historically simply waived the opportunity or obligation that it has to deny certification of compliance of FERC license applications as being in compliance with the water quality requirements of Section 303 of the Clean Water Act. Basically, the reason for being concerned with this Section 303 water quality requirement in the context of 401 certification or denial, he continued, was the establishment of any such allowable pollutant load would necessarily turn out to be a function of stream flow, or stream flow conditions.

It was their view Mr. Smith said, that the rules as proposed did not clearly enough indicate or recognize the quite broad authority that is granted to the state by Section 401 to assert the state's interest in protecting the use of its waters from such federally licensed or permitted activities. Mr. Smith then made some specific recommendations for changes to the rules.

> 340-48-015... must provide the licensing or permitting agency a certification from the Department that [any such discharge] <u>any such activity</u> will comply with...

340-48-020, add the following subsections:

Information and evidence demonstrating that the project is compatible and consistent with all the designated uses of the affected waters.

(3)... assist the DEQ to adequately evaluate the project impacts on water quality or designated beneficial uses of the affected waters...

340-48-025, addition under subsection (2):

Findings: "That the project is compatible and consistent with all the designated uses of the affected waters."

Mr. Smith said it was their belief the above changes would make more clear the role that Section 401 actually provides to the State of Oregon in controlling federally licensed or permitted activities affecting the waters of the state, and also the responsibility that DEQ has in affirmatively exercising that particular role.

Commissioner Denecke asked where the Water Policy Review Board would fit into the picture. Mr. Smith replied that the federal law states that the state shall establish water quality standards which shall include designated uses. The Oregon Water Quality Laws place the establishment of designated beneficial uses within the preview of the Water Policy Review Board. Commissioner Denecke replied that it appeared to him that if the Commission were to adopt Mr. Smith's suggestions, they would be covering ground and doing things that the statute allots to a different body. Harold Sawyer, Administrator of the Department's Water Quality Division, replied that was a concern the Department had also. For hydroelectric projects in particular, he continued, the Water Resources Department and the Water Policy Review Board were involved in making decisions on the granting of water rights. Land use was also involved, and the Department of Energy might be involved if an energy facility site certificate was required. How all of these agency actions fit together was an issue that the Legislature was going to be wrestling with in a number of bills that would be presented to them, he said.

Also, in response to Commissioner Denecke, Mr. Sawyer said although he had not had an opportunity to review Mr. Smith's amendments in detail, his initial reaction was that they were probably within the general intent of what the Department was trying to do. However, he would like opportunity to sit down with the Department's legal counsel and review those amendments before they were adopted.

Chairman Petersen asked Mr. Smith if in commenting that the Department's response to clarification request was cursory, did he believe that the Department's approvals in the past were improper. Mr. Smith replied that, although he would not use the word 'improper', the Department's review did not address the basic question of how projects would disrupt any of the designated uses for those waters.

In response to Chairman Petersen, Director Hansen said although he did not have an extensive history of this program, he believed the Department should have a broad level of responsibility to evaluate a whole series

of factors in going through the 401 sign-off certification waiver or denial process. He said the proposed language changes appeared to be along the lines of what the Department was trying to accomplish, but he would be concerned about the Commission adopting those changes without making sure that no problems would result. His preference would be to have time to evaluate those changes.

John Churchill, professor at Portland State University, stated his background was in the field of administration of water policy, particularly at the federal level where he helped draft Public Law 92-500 (Clean Water Act) and the 1965 Act on water quality standards. He also worked with the Department for two years in setting up the Water Quality 208 Program for the State of Oregon. Mr. Churchill said he would like to see a good set of rules that would not have to be continually amended. He said Section 401 was written into the Federal Clean Water Act to give states the authority to control federal actions which would affect their ability to manage the water quality of their state. 401 was a tool to make the federal licensing procedures consistent with state policies and was a very deliberate attempt by the federal government to give the state authority over federal actions in order to comply with their program. Mr. Churchill continued that he thought it was very important that the burden of information be placed on the applicant prior to the time that the public is asked to review the application. Mr. Churchill questioned why the requirements were passed by the federal government in 1972, and the Department of Environmental Quality still did not have a written set of regulations in 1985. He suggested that as long as it had taken this long, why not wait another month so that a good set of regulations could be developed.

Mr. Churchill also commented on the appeals procedures that only allowed the applicant to appeal after a permit is denied and not the public that would be affected. At present, the only appeal someone other than the applicant would have would be to the courts. Mr. Churchill said he thought citizens should have the right to appeal to the Commission as well as applicants.

John Charles, Director of the Oregon Environmental Council. Mr. Charles agreed with Mr. Smith and Mr. Churchill and also requested that the package of rules be put on hold for another month for further review.

In addition, Mr. Charles was also concerned with a much broader policy issue, which they had raised before - that of allowing citizens, in addition to applicants, the right of appeal on permit issuance. He proposed the following rule language:

> "Any person adversely affected or aggrieved by the conditions or limitations of any permit issued by the Department may request a hearing by the Commission or an authorized representative."

He did not feel this procedure would delay the issuance of permits as staff contends.

In response to Commissioner Denecke, Mr. Sawyer said that the Department had approximately one dozen applications for certification pending now, plus one denial appeal which the Commission would most likely hear at their next meeting.

It was MOVED by Commissioner Buist, seconded by Commissioner Bishop and passed unanimously that this item be tabled until the Commission's next meeting. Chairman Petersen added a request that on Page 3 of the rules, Subsection 5, the language be tightened up. Specifically, the terms "useful" and "significant."

AGENDA ITEM E: Public Hearing and Proposed Adoption of Amendments to Rule Regulating the Use of Cesspools and Seepage Pits (OAR 340-71-335).

At their December 14, 1983 meeting, and at Multnomah County's request, the Commission adopted a temporary rule amendment which delays implementation of the prohibition pertaining to cesspool and seepage pit use. The temporary rule was drafted without the customary input from Multnomah County or other affected and concerned parties, because the prohibition was to become effective on January 1, 1985. The staff indicated they would return before the Commission at its January meeting with a request for proposed adoption of amendments to the cesspool seepage pit rule. This then is intended to be a public hearing at the end of which the Department would ask the Commission to take final action.

Chairman Petersen asked that as there were numerous people who wished to speak on this particular agenda item, they limit their testimony to no more than three minutes. He also asked that to the extent the same arguments had been made by prior witnesses, current witnesses refrain from repeating the same arguments over again.

John Lang, Administrator of the Bureau of Environmental Services, City of Portland, testified that the Portland City Council had discussed this rule proposal in a public hearing earlier in the week. He said Commissioner Bogle had requested he inform the Commission that the City Council in their informal discussion generally supported the rule as proposed. Most of the City Council members were extremely concerned about allowing discharge of pollutants to continue on an increasing level in this area through cesspools or seepage pits. Although the City Council felt it was not desirable, he continued, they also felt it was necessary to allow the level of discharge that currently exists to continue if it can be controlled without increasing for a short period of time until the city had the sewer installations under way so that connections could be made and the discharge level actually reduced. Mr. Lang also said that there would be testimony later on in the hearing recommending some modifications in the rule dealing with the way it is to be administered, and he would be happy to answer any questions about those proposed amendments. Generally the city would support those amendments, except for a specific number of cesspool and seepage pit hookups. Mr. Lang said the City of Portland felt that conservatively there may be 125 cesspools and seepage pits disconnected in 1985 in the area. He felt any

modifications to the rule should be limited to allowing no more than 125 new cesspools or seepage pits to be installed, which would maintain the same level of discharge that now exists.

William Snell, builder in east Multnomah County, testified that he had developed a subdivision in the area last fall but failed to get permits for a couple of lots he had yet to build on, so this rule directly impacted him. He said right now was the best environment that has existed for either building or buying houses in quite a long time, as the interest rates are reasonable. He suggested if the Commission were going to restrict building in unsewered sections of the county that perhaps it would be possible to look at increasing the density in sewered sections of the county so that housing units could continue to be developed. Mr. Snell also addressed the economic impact of the rule which he felt would be to put people out of work in the building industry and would also affect businesses in the entire area.

Chairman Petersen asked Mr. Snell if he was aware that the temporary rule did not stop development but merely says that in order for a development to proceed with temporary sewerage systems, there has to be a comparable number of systems disconnected. The intent of the Commission was not to stop development but to allow development without allowing the water pollution problems to get worse. Mr. Snell agreed that both development and water pollution were issues that the Commission needed to be concerned about, but the proposals he had heard suggested that there would be an absolute cap on the number of cesspool permits that are issued in the coming few months.

Jim Sitzman, Department of Land Conservation and Development, submitted testimony from Jim Ross, Director of the Department. Mr. Sitzman said DLCD supported the Department's proposed amendments limiting the increase of disposal of waste into the subsurface of the area affected. Mr. Sitzman said that they found the Land Use Consistency Statement did not deal with Goal 10 on housing and Goal 14 on urbanization as extensively as perhaps they should be, and certainly not as extensively as Goal 6 on water quality and Goal 11 on public facilities. They believe that if those findings were more complete, the potential impact on development would be more clearly identified.

Chairman Petersen reiterated this was a temporary rule that was implemented to get the Department through the next six months, wherein after the results were received of questions submitted to local jurisdictions the Commission would take action.

Maurice Smith, representing the Columbia Group of the Sierra Club, testified that he believed it was time to take positive action to prevent further damage to the aquifer in the area. They strongly supported DEQ's efforts to provide for eventual installation of sewers throughout the area. Given the clear superiority of seepage pits over cesspools, he continued, the Columbia Group of the Sierra Club opposed further installation of cesspools in the Inverness, Columbia and Gresham sewage treatment plant areas. They proposed language to amend 340-71-335 to prohibit construction of cesspools, but allow construction of new seepage pits when existing cesspool or seepage pits within the affected area had been eliminated by

connection to a public sewer facility. He said that the problem of mid-county groundwater pollution had been around for many years, and they were pleased to see that action was being taken to correct it.

Charles Hales, Pat Ritz and Dick Cooley, Homebuilders Association of Metropolitan Portland. Mr. Hales testified that they understood the Commission intended at its December 14 adoption of the temporary rule, to allow development to continue in mid-county, pending submission of the final plans from the jurisdictions involved and pending the declaration of a threat to drinking water. Unfortunately, he continued, as a practical matter, the temporary rule works as an out right moratorium, at least in the short run. Basically, the temporary rule provides that a new cesspool permit No. 1 is issued when abandonment permit No. 1 is issued. However, that first abandonment permit has yet to be issued this year, and there are currently 106 applications for new cesspools to accompany building permits pending with the City of Portland. He said they were there to propose an amendment to the rule that would alleviate that problem. Mr. Cooley testified that a policy which limited development in the unsewered portions of Multnomah County was counterproductive to the installation of sewers. He said that since 1975, a developer installing a new cesspool has been required to waive his right to remonstrate against sewer improvements and agree to connect to sewers when available. He also believed the current rules require that dry lines be put in and that cesspools be located to accommodate future connections. These commitments, especially on behalf of large cesspool users such as the Portland Adventist Medical Center and Woodland Park Hospital, would make a significant impact in the area. Mr. Cooley reiterated that prohibiting cesspools in the county would not help sewer the county and was in fact counterproductive.

Pat Ritz testified that where permits are contingent upon hookups to sewers, it would be nearly impossible for a builder or realtor to judge the availability of a lot for development. Therefore, the Homebuilders were asking for a certain number of permits to be available during 1985 to accommodate those applications already pending. Mr. Ritz was also concerned about the economic impact and the questions that the gentleman from LDCD had as to whether or not certain economic goals had been properly considered. He cited a couple of new industrial developments in the area which would bring jobs to the area and urged that they be able to provide housing for those workers.

Mr. Hales commented that the Homebuilders agree the principal solution to the water quality problem in the area is sewering, and they wanted to see that proceed as quickly as possible.

Commissioner Bishop commented this had been a problem since she had been on the Commission and that she wanted it resolved before her time on the Commission was up. She felt that the time to resolve it was now.

Mr. Hales presented the following proposed amendments to the rule:

> 340-71-335(2)(b)(A)... if an equivalent sewage load into an existing cesspool or seepage pit within the affected area [is] has been eliminated by connection to a public sewerage facility.

340-71-335(2)(b)(E)... shall be required to install dry sewers at the time of development [.] if existing engineering data can be provided by the agent to allow such dry lines to be later connected to a sewer. When insufficient data are available, the person applying for a construction-installation permit may, as an alternative, post a bond or deposit for the cost of the remaining sewer construction needed to connect the affected buildings to a public sewerage facility.

340-71-335(2)(c) subsection (2)(b) of this rule shall be administered in a manner so [as to preclude any net increase in] that the net cesspool or seepage pit discharge into the ground on December 31, 1985 are not significantly greater than discharges on January 1, 1985. To insure that discharge goals are met, the agent of the Department of Environmental Quality may issue construction installation permits not to exceed 200 equivalent dwelling units for new cesspools or seepage pits during 1985. If discharge is greater than 200 equivalent dwelling units are eliminated by connection to a public sewerage facility during 1985, the total construction-installation permits issued during the year may increase to equal the discharge load which has been eliminated.

Pat Gillis, State Representative, District 20, testified he had the opportunity to visit with several residents of the affected area while he was campaigning, and found that environmental concerns were prominent in their minds. However, they had not yet been convinced there was substantial evidence of a threat to the groundwater. Also, he continued, residents in the area were concerned about economic development in east county. Representative Gillis said the residents in east county were not going to give up their cesspools when there was no guarantee that sewers were going to be installed for the next 12 to 20 years.

Bill Whitfield, Permit Manager for Multnomah County, testified that as the proposed rule now stands, the county had a concern about the connection to a public sewage facility as being the only criteria for cesspool abandonment in trading off a cesspool abandonment for a new cesspool permit. He maintained if a cesspool was abandoned it should count as an opportunity for a new cesspool installation, providing the discharge from the new development does not exceed the discharge that was removed from the abandoned system. Mr. Whitfield presented the following proposed changes to the proposed rule:

340-71-335(2)(b)(A)... An existing cesspool or seepage pit within the affected has been eliminated [by connection to a public sewerage facility].

340-71-335(2)(b)(C) - Delete this entire paragraph, as it is already more appropriately stated in OAR 340-71-335(4)(a).

340-71-335(2)(c)... Monthly reports shall be submitted to DEQ on or before the [5th] 15th day of the following month.

George Perkins, resident of east Multnomah County, testified that with this moratorium he would now owe more on his house than it was worth. He was also speaking for his father-in-law who developed a piece of property to provide for his retirement and now has two lots that cannot be developed. He said that most people think that sewers are coming, they expect it and they are willing to accept it if there is a threat to the groundwater. He urged that a moratorium be delayed for at least two to five years to allow people to plan better for it and take steps to remedy their personal situations. He asked if it would be possible to divert the groundwater usage to industrial use and save Bull Run water for drinking water.

Chairman Petersen replied that the basic issues Mr. Perkins had raised were exhaustively discussed at previous public hearing and suggested that Mr. Perkins talk with Harold Sawyer of the Water Quality Division who could provide him answers to these questions.

Burke Raymond, Multnomah County, presented a resolution from the Multnomah County Board in support of increasing the number of cesspool permits by 125 based on the county's best estimates that at least 125 cesspools will be taken out of service in 1985. The resolution had yet to be acted on formally, but Mr. Raymond expected that would probably happen within the next week. Mr. Raymond said the Board was also concerned about the issue of dry sewers and urged that the installation of dry sewers be done on a case-by-case basis. Mr. Raymond said that he wanted to convey to the Commission that the Multnomah County Board supported and agreed with the position of the Portland City Council. Chairman Petersen asked Mr. Raymond how they arrived at the number of 125. Mr. Raymond replied they took the number of cesspools that were disconnected last year, which was 25, and tried to run an estimate on what they thought was going to hookup as a result of primarily the construction of the new Sandy-122nd Avenue trunk, and the biggest input there was the Woodland Park Hospital, which should be connected some time in the summer of 1985, and is equivalent to about 80 cesspools. That brings the total to 105, and the county put a factor on top of that to allow some amount of flexibility anticipating some additional connections along that new sewer line. Mr. Raymond said he believed the Homebuilders felt that in addition to the numbers the county had come up with, they looked at additional connections along the Burnside line, east of 146th Avenue and additional connections along the new Sandy-122nd Line. Mr. Raymond said he did not know specifically how the Homebuilders arrived at the figure of 200, but he thought that was the rationale they used.

Commissioner Buist asked how the number from Woodland Park Hospital, for instance being equal to 80 cesspools, was computed. Mr. Raymond replied it was a formula which was established by the engineering profession in which they calculate the number of gallons of water that a person will on the average contribute to the sewer system and then multiply that times the average household population as established by census information, which gives the household gallonage that on the average is going to be put into the sewer system, which then establishes the EDU (equivalent dwelling unit). They then looked at various other classifications of planned use, which in the case of hospitals is measured by how many beds it takes on the average to equal one house and the one-for-one cesspool abandonment hookup ratio takes that into account.

Jeanne Orcutt, cited 340-71-335(2)(b) in which governmental entities responsible for providing sewer service are required to submit an assessment of the feasibility of imposing user fees or area taxes on existing systems and appropriate exemptions from such fees or taxes not later later than July 1, 1983, and by July 1, 1984 submit to the Department detailed plans scheduling priorities, phasing and financial mechanisms for sewering the entire cesspool area. She asked if Clackamas County, Troutdale and any other governmental entities in Multnomah County, other than Portland, Gresham and the Central County Service District, had complied with that directive. Harold Sawyer replied that the issue was addressed in part during the previous public hearings. He continued that Troutdale was not included because it had been identified as not having cesspools, but there were a few cesspools the Department was aware of remaining in Clackamas County along the Johnson Creek trunk. However, no additional cesspool permits had been issued in Clackamas County since 1982 or 1983. Mr. Sawyer said he did not know if final plans were in yet. As Clackamas County chose not to issue any more cesspool permits, the Department considered the requirement met. Ms. Orcutt maintained that Troutdale still had cesspools. In response from a question from Chairman Petersen, Mr. Sawyer said that if Ms. Orcutt found an active cesspool in Troutdale, the Department would try to get it connected to an available sewer system.

Ms. Orcutt asked what the penalty was for not complying with Oregon Administrative Rules. Mr. Hansen replied for water quality violations, it was a minimum of $50 to $10,000 per day. Ms. Orcutt requested that if there had been a violation for not complying with the rule, the Department either require compliance or impose a penalty. Chairman Petersen asked the staff to report back to the Commission on whether they believed that the law had been complied with, and on what they based that belief.

Ms. Orcutt reiterated she did not believe there was a threat to drinking water in east Multnomah County, but that if the Commission finds a threat to drinking water exists, then the most economical solution is to supply Bull Run water to the few remaining residents who now receive well water.

Dennis Ward appeared on behalf of Arlene Westenfelder, a resident of Troutdale. Ms. Westenfelder is trying now to sell property to provide for her retirement and according to a representative from a real estate firm, if the moratorium goes through, it would cost her at least half the value of her property. When Ms. Westenfelder purchased her property, she was in compliance with the Multnomah County code at the time and should not now be penalized. Chairman Petersen replied that some of the questions that the Commission had asked the local jurisdictions to reply to by July would answer some of Ms. Westenfelder's concerns, primarily on the source of financing and the elimination or minimization of hardship as much as possible on the residents of the area.

John Miller testified in strong support of the sewers. In response from questions from Chairman Petersen, Mr. Miller said he felt that there should be no cesspools in the area until sewers are available.

George Ward, George D. Ward & Associates, Consulting Engineers, testified his firm did innovative alternative sewerage design. He said they are aware of the problem and felt they knew some of the solutions. He asked the Commission to consider amending its rule to provide for an interim type of treatment or disposal, rather than imposing a total moratorium. Chairman Petersen replied that the Commission expected, when the final rules were adopted in the summer of 1985, to have interim rules that would take into consideration the transition period, so that orderly development could continue without compounding the pollution problem.

Pat Brown testified in regard to the information on cesspool equivalencies of hospitals. She said few of the hospitals in the area were operating at full capacity which should be taken into account when cesspool equivalencies are calculated. Ms. Brown is a member of the United Citizens in Action and stated that they did not feel that a threat to drinking water had been proven. They said their position was they were not against sewers as long as the Commission pursued the most economical solution to the problem, and they also opposed the implementation of a seepage fee. Ms. Brown also said that she did not feel that high density should be allowed while the Commission was considering the ban. In addition, Ms. Brown said the Commission should take into consideration flag lots so buyers are aware of the additional amount of money it would cost them to connect to a sewer.

Chairman Petersen asked if the staff had an opinion about the number of permits to be put in the bank up front. Mr. Sawyer replied that the Department had tried to review with jurisdictions just what was planned to provide a foundation for a number there would be some reasonable assurance could be achieved during the course of a year. It appears to the Department that 125 is within reason to achieve in the way of system abandonments through connection.

Commissioner Bishop said because there was a rush to get permits between the middle of December and the end of December, how could a single developer be kept from obtaining the rest of the remaining permits, whether it be 125 or 200. Mr. Hales of the Homebuilders replied they intend to ask the County Board of Commissioners to adjust the length of time of those permits were good for to a shorter duration so that hoarding does not take place.

Chairman Petersen then went through the following proposed changes to OAR 340-71-335.

> (2)(b)(A) A cesspool or seepage pit system to serve a new sewage load may be permitted only if an equivalent sewage load into an existing cesspool or seepage pit within the affected area [has been] is eliminated. [by connecting it to a public sewerage facility.]
>
> (2)(b)[(C) Any new or repair cesspool or seepage pit system installed shall be located between the structure and the location of the point where the connection to a sewer will eventually be made so as to minimize future disruption and cost of sewer connections.]

(2)(b)[(E)](D) After the effective date of this rule, any land development the involves the construction of streets, and all subdivisions platted after the effective date shall be required to install dry sewers at the time of the development [.] if existing engineering data can be provided by the agent to allow such dry lines to be later connected to a sewer. When insufficient data are available, the person applying for a construction-installation permit may, as an alternative, post a bond or deposit for the cost of the remaining sewer construction needed to connect the affected buildings to a public sewerage facility.

(2)(c) Subsection (2)(b) of this rule shall be administered in a manner so [as to preclude any net increase in] that the net cesspool or seepage pit discharges into the ground[.] on December 31, 1985 are not greater than discharges on January 1, 1985. To insure that such discharge goals are met, the agent of the Department of Environmental Quality may issue construction-installation permits not to exceed 200 Equivalent Dwelling Units for new cesspools or seepage pits during 1985. If discharge is greater than 200 equivalent dwelling units are eliminated [by connection to a public sewerage facility] during 1985, the total construction-installation permits issued during the year may be increased to equal the discharge load which has been eliminated....

(2)(c)... Monthly reports shall be submitted to DEQ on or before the [5th] 15th day of the following month.

(3) Criteria for approval[:]. [except as provided for in Section (2) of this rule, seepage pits and cesspools may be used for sewage disposal on sites that meet the following site criteria:]

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

Chairman Petersen thanked the citizens, the Homebuilders, the County and the City for their constructive efforts in coming up with some solutions to a very difficult problem.

AGENDA ITEM G: Proposed redesignation of the Medford-Ashland AQMA as attainment for Ozone and proposed revision of the State Implementation Plan.

The Medford-Ashland area has been designated as nonattainment for three air pollutants: suspended particulate, carbon monoxide and ozone. The Medford-Ashland area has been in compliance with the ozone standards since 1979 and has been expected to stay in compliance with the ozone standard in future years. This agenda item proposes to redesignate the Medford-Ashland area as attainment for ozone. The Department did not receive any adverse comments on this proposal at a December 4, 1984 public hearing.

Director's Recommendation

Based on the Summation in the staff report, the Director recommends that the Commission:

1. Redesignate the Medford-Ashland AQMA as an attainment area for ozone;

2. Replace the ozone attainment strategy for the Medford-Ashland AQMA (Section 4.8 of the State Implementation Plan) with an ozone maintenance strategy containing a revised growth cushion as a revision to the State Clean Air Implementation Plan.

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

AGENDA ITEM H: Request for a variance from emission limits for total reduced sulfur (TRS) compounds from kraft mill recovery furnaces and lime kilns, OAR 340-25-165(a)(b), and OAR 340-25-630(2)(b) and (c), by International Paper Company, Gardiner, Oregon.

The recovery furnaces and lime kiln at the International Paper Company kraft mill near Gardiner cannot maintain full time compliance with total reduced sulfur compound emission regulations. This company has submitted acceptable compliance strategies and schedules and has requested a variance from applicable TRS regulations until their problems are corrected in 1986.

The Department has recommended approval of the variance because the compliance program is acceptable and environmental impacts would be minimal.

Director's Recommendation

Based on the findings in the Summation in the staff report, it is recommended that the Commission approve the compliance schedules set forth in Attachment 1 to the staff report and grant a variance to International Paper Company, Gardiner, from OAR 340-25-165(1)(a) and -630(2)(b) until September 18, 1986, and from OAR 340-25-165(1)(b) and -630(2)(e) until May 18, 1986, with the following conditions:

1. The operating improvements which have been implemented shall employed during the period of this variance as a means of minimizing TRS emissions.

2. Quarterly progress reports shall be submitted to the Department until compliance is achieved.

3. This variance may be revoked if the Department determines that these conditions are not being met or if unforeseen deterioration of air quality occurs.

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

AGENDA ITEM I: Status report: Noise Rule Exemption for Alcohol and Nitromethane from Fuel Drag Race Vehicles.

The noise control rules for motor racing exempt two categories of drag race vehicles from muffler requirements, because it was determined that reasonable control technology did not exist at the time of adoption. These rules require this exemption to be reevaluated at this time, approximately four years after adoption of this rule.

The Department now believes that muffler technology may be feasible for one category of these vehicles, unless a rule amendment may be required. The other category for which muffler technology appears still not feasible should again be reevaluated after a period of two more years.

Director's Recommendation

It is recommended that the Commission concur in the following:

1. An exemption for nitromethane-fueled drag race vehicles is necessary until further engine or muffler development indicates noise controls are technically feasible.

2. The Department should initiate rulemaking to remove the exemption for alcohol-fueled drag race vehicles as mufflers appear feasible. This class of vehicles, however, could continue to be eligible for exemptions from muffler requirements for national events.

3. The Department should report to the Commission prior to January 31, 1987 on muffler technology for top fuel drag race vehicles.

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

AGENDA ITEM J: Proposed Adoption of Amendments to Hazardous Waste Rules to Provide That Only Those Liquid Organic Hazardous Waste Which can be Beneficially Used Will Be Banned From Landfilling After January 1, 1985.

The landfilling of liquid organics at the Arlington Hazardous Waste Disposal Site is of critical concern to the Department due to the potential for contamination of groundwater and surface waters.

As a result of this concern, the Department recommended, and the Commission adopted a prohibition on landfilling certain liquid organics as of January 1, 1985.

In evaluating the breadth of the current ban, the Department has concluded that certain liquid organics will merely be transported to landfills in other states, rather beneficially used or incinerated. The Department believes that such a shift to other landfills is not a desirable environmental result, due in part to the increased probability of transportation-related spills.

Therefore, the Director recommends the Commission adopt the rule amendments to OAR Chapter 340 Division 104, which would retain the present ban on landfilling ignitable liquid wastes and grant the Department the authority to ban from landfilling on a case-by-case basis other liquid hazardous wastes which can be used beneficially, or where there is a more desirable disposable option available.

Director's Recommendation

It is recommended that the Environmental Quality Commission adopt amendments to OAR Chapter 340, Division 104, as presented in Attachment 5 to the staff report to retain the present landfill ban on ignitable liquids and to allow the Department to determine which other hazardous wastes should be banned from landfilling at Arlington on a case-by-case basis.

It was MOVED by Commissioner Denecke, seconded by Commissioner Buist and passed unanimously that the Director's recommendation be approved. This ended the formal meeting.

LUNCH MEETING

1. Affirmative Action

Susan Payseno, the Department's Personnel Manager, reviewed for the Commission the Department's Affirmative Action Plan, statistics and objectives, which are outlined in a report that is hereby made a part of the record of this meeting.

In regard to the Vehicle Inspection Program, Chairman Petersen expressed that he wanted to be sure that discrimination/discretion is not a problem at the Department's Vehicle Inspection Stations.

2. Agency questions on principles and procedures used in EQC review of Agency enforcement actions.

Due to the shortness of time, this item was postponed until March when the Commission will take it up at a work session at 3:00 p. m. on March 7, the afternoon before the regularly scheduled Commission meeting, March 8.

3. Status report on backyard burning.

John Kowalczyk of the Department's Air Quality Division said that the fall ban had worked quite well. There were approximately 35 burn days, which was normal for a fall burning period. He said the major workload for the Division was in processing the hardship permit applications. Approximately 329 permits were issued for the fall burning season.

Judy Johndohl of the Department's Northwest Region Office felt the media was helpful in implementation of the ban. There was good coverage on just what the backyard burn ban was, and who it affected.

Ms. Johndohl said the Department had received 41 complaints during the fall burning season, 33 of which were for people without hardship permits, and 8 were for people who did hold hardship permits.

Bill Bree of the Department's Solid Waste Division said that yard debris processors felt that there was an increase in their business due to the ban.

John Lang of the City of Portland said that if the City itself denies funding again for composting, they were prepared to fund it in their bureau. The City would like to do a pilot program this spring to determine the cost of curbside collection. Mr. Lang said he believed all City Commissioners supported the ban, but many see METRO as being responsible for collection instead of the City. He suggested a letter to the City Council, expressing support for them to implement the Task Force recommendations could be helpful.

Chairman Petersen asked the staff to draft a letter expressing support to cities that are not already supporting alternatives to backyard burning, and another letter to cities that have implemented alternatives encouraging more.

There was some discussion about the Department's enforcement policy, and Chairman Petersen said he wanted to be flexible during the first year to avoid creating more hostility than necessary.

4. Citizen Appeal Right.

The Commission asked that the staff work that had been done previously on this issue be sent to them for review.

5. Future Meeting Dates.

The following dates were approved for 1985. March 8, in Portland; April 19, in Salem; June 7 and July 19 (location to be determined); September 6, in Bend; October 18, in Portland; November 22, in Eugene.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Carol Splettstaszer
EQC Assistant

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE ONE HUNDRED SIXTY-FIRST MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

December 14, 1984

On Friday, December 14, 1984, the one hundred sixty-first meeting of the Oregon Environmental Quality Commission convened in room 602 of the Multnomah County Courthouse, 1021 SW Fourth Avenue in Portland, Oregon. Present were Commission Chairman James Petersen, and Commission members Wallace Brill, Mary Bishop and Sonia Buist. Commission Vice Chairman Arno Denecke 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 Portland Motor Hotel in Portland. Commission members present were James Petersen, Mary Bishop, Wallace Brill and Sonia Buist. Commissioner Denecke was absent. Also present were the Department's Director, Fred Hansen, and several members of the Department staff.

Cesspools in East Multnomah County

Director Hansen and Harold Sawyer, of the Department's Water Quality Division, reviewed the history that led up to an imposition of a ban on construction of cesspools in Multnomah County. Effective January 1, 1985 installation of new cesspools and seepage pits is prohibited. Multnomah County has requested an extension of time on this ban until the threat to drinking water issue is resolved.

Legislation

Stan Biles, the Department's Legislative Coordinator, reported to the Commission that no bills had been filed as yet to overturn the ban on backyard burning. However, he said that there might be a bill introduced to limit or ban field burning.

Slash Burning

Tom Bispham, of the Department's Air Quality Division, reported that the staff had met with the State Department of Forestry to discuss development of improvements to slash burning and the smoke management program.

FORMAL MEETING

AGENDA ITEM A: Minutes of the November 1, 1984 work session and November 2, 1984 EQC meeting.

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

AGENDA ITEM B: Monthly Activity Reports for September and October 1984.

It was MOVED by Commissioner Buist, seconded by Commissioner Bishop and passed unanimously that the Monthly Activity Reports for September and October 1984 be approved.

AGENDA ITEM C: Tax Credit Applications.

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist and passed unanimously that the Tax Credit Applications be approved, with the exception of Tax Credit Application T-1694, The Amalgamated Sugar Company, which was withdrawn from consideration because it had previously been certified.

PUBLIC FORUM:

Robert Forthan, who is one of the Department's Vehicle Inspectors, questioned why the Department did not hire minorities in the Vehicle Inspection Program. He said he had been with the program for 8 years and in all that time only five minorities had been hired. Mr. Forthan said that without minorities being represented on the Vehicle Inspection staff it affected the way that cars were tested.

Chairman Petersen asked Director Hansen to return to the Commission at its next breakfast meeting with a report on the Department's Affirmative Action program.

AGENDA ITEM D: Request for authorization to conduct a public hearing on proposed rule revisions to the Motor Vehicle Emission Inspection Program, Rules OAR 340-24-300 through 340-24-350.

The Commission is being asked to authorize public hearings on proposed revisions to the Motor Vehicle Inspection Program Rules. Three rule revisions are proposed:

1. That the special test procedure currently limited to 1981 through 1983 model year Ford vehicles be extended indefinitely to maintain conformity with Federal regulations;

2. That a procedure be provided through an alternative test criteria when proper pollution control equipment is unavailable; and

3. That the exhaust gas analyzer calibration procedures and requirements for licensed self-inspecting fleets be tightened.

In addition to these items, the Department wishes to solicit comments on the appropriateness of including heavy duty diesel vehicles and motorcycles in the vehicle inspection program. While no rules or test procedures are being proposed, comments on the air quality benefits and possible procedures or standards would be requested. Traditionally, for those hearings all of the Program's rules have been open for comment. It is proposed that this policy again be followed.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the public hearings be authorized to take testimony on the proposed rule modifications and related items. The public hearings are tentatively scheduled for February 19, 1985.

Chairman Petersen asked about the Chrysler Corporation comments. William Jasper, of the Department's Vehicle Inspection Program, said that Chrysler had requested a special test procedure for a certain model of car. There are only about 250 of those cars in the Portland metropolitan area. The procedure requested was to test the vehicle in drive rather than in neutral and the Department has safety concerns about such a test. Mr. Jasper said the Department had received a request from EPA that states consider Chrysler Corporation's request. Mr. Jasper continued that by the end of the year replacement parts would be available for these particular vehicles that would allow for testing in neutral, and at this time the staff did not feel that it would be a wise thing to modify the test procedure for these vehicles.

Commissioner Buist asked why the failure rate of diesel vehicles in the State of New Jersey was so low. Mr. Jasper replied that New Jersey had buses that were newer than those in the Tri-Met fleet, they were also burning cleaner fuel, and they had an inspection/ maintenance program that covered the diesel vehicles.

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

AGENDA ITEM E: Request for authorization to conduct a public hearing on Pollution Control Tax Credit Rule Amendments, OAR Chapter 340, Division 16.

This item asks for authorization to conduct a public hearing on proposed amendments to the Pollution Control Tax Credit Rules which would address problems raised by Legislative Counsel related to refunding fees and problems found by the staff in administering the rules.

Director's Recommendation

Based on the Summation in the staff report, it is recommended that the Commission authorize public hearings to take testimony on the proposed Pollution Control Tax Credit Rule amendments, Chapter 340, Division 16.

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

AGENDA ITEM F: Sewerage Operator Training and Certification in Oregon--past, present, and proposal for the future.

For years the Department has participated in training and certification programs for operators of sewage treatment plants. Much of the participation with other agencies and institutions has been on an informational basis. Changing conditions, particularly with Oregon State University, create a need for more formalized support and direction of these programs for the future.

Director's Recommendation

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

(1) Provide an expression of support for continuation of the training and certification programs for wastewater treatment plant operators.

(2) Authorize the Department to seek an Executive Order to designate a statewide training committee to provide overall direction and coordination of state training programs.

Commissioner Bishop asked what other states were doing in this regard. Harold Sawyer, of the Department's Water Quality Division, said that substantial coordination went on between northwest states and British Columbia, but in general each state has to have some program to meet EPA requirements. Oregon has a successful program that the Department is simply seeking to keep going.

Commissioner Brill asked if this training program would apply to all operators, even those in smaller treatment plants. Mr. Sawyer replied that the resources are available to the operators of small community systems, but DEQ mostly works on a one-to-one basis with those operators because it is sometimes difficult for them to get away from their plants for training.

Commissioner Bishop asked what was involved in seeking an Executive Order. Mr. Sawyer said the Department would draft the Order and ask the Governor's Office for approval.

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

At this time, Chairman Petersen recognized Professor Martin Northcraft, of Oregon State University, with a plaque of appreciation from the Department for his many years of involvement in the sewerage operator training and certification program.

AGENDA ITEM G: Proposed adoption of Hazardous Waste Generator Fees, OAR 340-102-060.

The Commission is requested to adopt a schedule of Generator Fees which are estimated to raise $180,000. The fees, to be assessed directly on generators, are based on the volume of waste generated and are believed to best reflect the actual compliance and enforcement efforts that are required of the Department.

The monies collected will be dedicated to off-setting a deficit and maintaining current staffing in the Hazardous Waste Program (14.9 FTE) as well as adding 2.0 FTE for permitting activities.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission adopt the proposed Hazardous Waste Generator Fee schedule (OAR 340-010-060).

Commissioner Buist asked if the Hazardous Waste Program was going to get larger. Richard Reiter, of the Department's Solid Waste Division, replied that RCRA had been authorized for another five years and Congress was planning on bringing more and more sources under regulation. In Mr. Reiter's estimation the program would continue to expand.

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

AGENDA ITEM H: Proposed adoption of Opportunity to Recycle Rules, OAR 340-60-005 through 340-60-085. (Postponed from November 2, 1984 EQC meeting.)

At the November 2, 1984 EQC meeting, the Commission postponed adoption of Agenda Item G, the Opportunity to Recycle Rules, OAR 340-60-005 through -085. At the Commission's request, the staff, with the assistance of the Solid Waste Advisory Task Force, has developed language to address outstanding issues. The staff submitted revised proposed rules and a separate Commission guidance document for adoption.

Director's Recommendation

Based upon the summation in the staff report, it is recommended that the Commission adopt the proposed rules, OAR 340-60-005 through -085 as amended and it is also recommended that the Commission adopt the policy guidance document.

Charles Hales, Multifamily Housing Council, Home Builders Association of Metropolitan Portland, testified that in general they thought the draft rules were excellent, but suggested the following changes be made in order to make it clear that existing private sector recycling efforts underway in multifamily complexes where a contractor provides a multimaterial collection from those complexes can continue under the new rules. He presented suggested amendments as follows:

340-60-010

(4) "Collection service" means a service that provides for collection of solid waste or recyclable material or both. "Collection service" of recyclable materials does not include a place to which persons [not residing on or occupying the property] may deliver source separated recyclable material.

(11) "Generator" means a person who last uses a material and makes it available for disposal or recycling[.] , or a person who provides a depot for such material.

340-60-015

(7)(b) Commercial [and], industrial, and depot sources.

William Bree, of the Department's Solid Waste staff, responded that he had not had an opportunity to review these amendments until this time. He said that these particular amendments were not affecting the Department's role in solid waste management, but rather the local government and the multifamily unit recycler relationship.

Ernest Schmidt, Administrator of the Department's Solid Waste Division, said the Department had proposed in the rules to not call drop boxes at shopping centers and so forth a part of the collection service. The issue with the multifamily dwellings had to do with whether or not the Commission in the rules would preclude local governments from making a decision as the best way to get the most materials from the most complexes. He said that Mr. Hales was suggesting to protect existing, largely newspaper-only collection services, and the Commission needed to decide if they wanted to interfere with the local decision making process.

Fred Neal, League of Oregon Cities, thanked the Commission for delaying adoption of the rules to allow further discussion by members of the Solid Waste Advisory Task Force, Recycling Rule Subcommittee. He said discussions since the last Commission meeting on some controversial issues were very constructive and brought about a general consensus along the guidelines the Commission provided to the Department. Mr. Neal testified to two amendments that he understood would be brought to the Commission. He was concerned about the proposed amendments from the Multifamily Housing Council as he felt that those decisions should be made on the local level. He said he felt that the Legislature's intent under Senate Bill 405 was that the opportunity to recycle be provided by each local government.

Mr. Neal also testified about a proposed amendment from the Oregon Environmental Council regarding "due consideration." He said the law provided that in determining who shall provide the opportunity to recycle, a city or county shall first give consideration to anyone lawfully providing recycling or collection service on June 1, 1983. The Task Force agreed that due consideration was a stricture to local government for providing the opportunity to recycle. Mr. Neal advised the Commission against following the suggestion of the Oregon Environmental Council to require local government to go beyond the mere responsibility to give due consideration to persons already providing recycling or collection service to the extent of (1) publishing at least 30 days' notice of intent to franchise and (2) allowing those persons to consider and apply for a franchise. By so doing, the Commission would risk going beyond the intent of the Legislature by creating a state agency intrusion into local government procedure.

In closing, Mr. Neal said that they supported the Department's present rule draft and would not support any of the suggested alternatives. He said they thought the Department and Mr. Hansen had done an admirable job of bringing the affected parties together on this subject and urged the Commission to adopt the rule as proposed by the Department and get recycling on the road.

Lorie Parker, Oregon Environmental Council, stated that "due consideration" should be explained in the rule itself because having it only in the guidance document would do nothing. She proposed language somewhat more explicit than what was in the guidance document. Ms. Parker said local government was just as happy to have due consideration in the guidance document instead of in the rule because they know they would not have to follow it. She was proposing that the requirement for public notice in the guidance document be put into the rule to make sure that it gets done.

Angela Brooks, Publishers Paper Company, was concerned about the effect the present rule proposal would have on door-to-door collections by nonprofit charitable and educational organizations. She said the policy statement in 340-60-015 appeared to limit charitable and other groups that currently use recycling as a fund raiser, while not allowing groups that may want to do this in the future to be involved. Ms. Brooks presented the following language:

340-60-015

(7) To encourage local governments to develop programs to provide the opportunity to recycle in a manner which increases the level or scope of recycling and does not regulate, limit, adversely impact, or disrupt directly or indirectly the recycling activities or results thereof, of:

(A) Charitable, fraternal, and civic groups, and

(B) Recycling collection from commercial and industrial sources.

Ms. Brooks also had a concern with the fair market value exemption (340-60-015(2)). By grouping newspapers with other recyclables, Ms. Brooks believed the Commission would actually reduce the amount of waste newspaper currently collected. As an example, waste newspaper is currently collected at multifamily housing units. They would be required to recycle a number of other items that could result in less actual collections. Further, Ms. Brooks believed that the law itself did not allow for grouping of recyclables as proposed in the rule.

Roger Emmons, Oregon Sanitary Service Institute, strenuously opposed any attempt to put in a nonprofit exemption. He said in all of their local franchise proposals an exemption was written in for civic, charitable, and benevolent groups, particularly for such groups as scouts and churches who are doing newspaper drives. He suggested the Commission would have some problems in writing an exemption into a rule because of the question as to what is a civic, charitable, or benevolent group. He said he did not know of a community in which he had dealt with franchises that had run into difficulty in dealing with groups such as the Lions Club, Kiwanis, and churches who conduct newspaper drives for fund raising.

Mr. Emmons said that the proposal by the Multifamily Housing Council would provide for the creaming of newspapers. Chairman Petersen asked Mr. Emmons to explain what creaming of newspapers meant. Mr. Emmons replied that one of the questions before the Commission and the Task Force in providing the opportunity to recycle was how to get residential materials together where newspaper could carry the recycling of the other materials such as glass and tin. Basically, newspaper is the only recyclable with a ready market. There might be some cardboard and waste oil that has a market also, but the value that supports residential recycling is newspaper. Mr. Emmons said the proposed rules allowed for the grouping of materials together under the fair market value exemption. Mr. Emmons believed that was the only way that long-range services would be provided. He said the Task Force had spent a great deal of time with the Multifamily Housing Council and had considered their proposals, but asked that the Commission stay with the rules as currently proposed.

Regarding the notice requirement proposed by the Oregon Environmental Council, Mr. Emmons said there was not one single case in the state where anybody had been disadvantaged. The one case that had been previously cited to the Task Force was a recycler in North Bend who apparently complained that a franchise was given without notice to him. In investigating that franchise, it was determined that it did not deal with recycling.

Mr. Emmons urged the Commission to stay with the Task Force recommendations and the Director's Recommendation. He said he thought they adequately protected the public.

In anticipating the next witness who was a representative from the Boy Scouts of America, Chairman Petersen asked Mr. Emmons to explain in more detail how exemptions would be provided to nonprofit groups through local franchise proposals. Mr. Petersen said in the last several weeks he had heard personally from several scouting organizations that were concerned that in order for them to continue their existing collection and fund raising efforts, they were going to have to get some kind of a city or county permit. Mr. Emmons replied that there were one or two local governments that may require some sort of permit, usually without charge, just so groups would know what the recycling regulations are in the community and what services are available. Normally, however, there was an exemption clause in franchise agreements for people who haul their own waste and people who have repairable discard businesses, such as Goodwill and St. Vincent DePaul, and usually another exemption for civic, charitable, or benevolent organizations who are not organized for solid waste collection. Mr. Emmons said that normally there was a total exemption for fund raising drives and he did not know of a case where there has been a problem. In response to Chairman Petersen, Mr. Emmons said that there was no intent by the Advisory Committee to include those types of activities in any sort of regulation. He said that local government was better able to sift through those organizations who are legitimate that would fall under these civic, charitable, or benevolent exemptions in the franchise. Mr. Emmons said he did not feel that these regulations would be cast in concrete

and that if, in the future, there is a substantial violation of people's rights, or there is a substantial violation of the intent to provide more recycling by more people, or to really injure those people who are providing those types of services, the rules could be amended. But he would not like to see that sort of an amendment happening before the Commission at this time. Chairman Petersen asked if Mr. Emmons would consider those types of nonprofit collection activities would fall under the heading of existing recycling programs. Mr. Emmons replied that he was not sure the word "existing" necessarily had to be in the rule with respect to those programs because there would be a number of programs that would come in and out of the recycling effort in the future, and that he did not think the Commission would want to preclude new fund raising activities. He urged the Commission not to use the word "nonprofit" because it could be very violently abused under the circumstances.

Craig Reide, Boy Scouts of America, said he was pleased that the Commission had heard from a lot of civic organizations, particularly youth groups. He said the scouting program has long stood for conservation of all the Nation's natural resources. They were concerned about what they felt were rules that could potentially effect youth organizations and the way they raise substantial amounts of money to fund their programs. He said Director Hansen had spent considerable time trying to explain that he did not believe that these rules would affect nonprofit organizations. Mr. Reide, however, said he differed with Mr. Hansen because once a local government is mandated to provide collection of recyclable materials they would not be able to take an easy attitude, which they have now, to allow youth organizations just to go out and use recycling of materials as profit making ventures. Once it is mandated, Mr. Reide continued, then a city has to take a harder look at who they have going door to door doing collections. He said he realized that in some cases this would mean creaming newspapers; however, some groups do collect other items. Mr. Reide asked for a specific exemption in the rules that would allow nonprofit organizations to continue door to door collection of recyclable materials without having to obtain special permits. Chairman Petersen asked if Mr. Reide thought that local governments wouldn't be in the best position to determine who should have these exemptions and privileges as the term "nonprofit" could be abused. Mr. Reide replied that he basically agreed local control was very important, but that as local governments come under a crunch to provide the opportunity to recycle they would have pressure from individual recyclers who are in the business of recycling to grant them exclusive rights. It would then become very difficult, community by community, to take an individual approach.

Chairman Petersen asked the Assistant Attorney General to comment on the statutory authority the Commission would have if they desired to adopt a rule exempting certain organizations.

Robert Haskins, Assistant Attorney General, replied that the act itself directed the Commission to implement a program that would assure the opportunity to recycle is implemented through local governments. The question was, would it be proper to take something out of that system. Mr. Haskins said he could not find authority to take this small section and say it was exempt from the act. He suggested the Commission could do as proposed and put a statement in the policy guidance document encouraging local governments to take a particular approach. Mr. Haskins thought the Legislature had given local governments, subject to the Commission's guidelines, broad authority to put together programs in individual communities giving due consideration to existing programs, but that he could not find statutory authority to pull something out of the act completely.

Director Hansen said that, as an example, there was a list of four items that would be recycled out of a particular community with the most valuable item being newspaper which would carry the other three items. Mr. Hansen said, as Mr. Reide indicated, if the newspaper is allowed to come out, either those other items would not be recycled because they would no longer be economically feasible, or to be able to recycle them there would have to be an additional charge built back into the rate base to cover collection. Director Hansen said what the proposed rule does is allow the decision to be made by local government. If local government allowed certain groups to collect only some recyclables, they would still have the obligation to provide for the recycling of all the items the Commission says must be recycled.

Bruce Bailey, Chairman of the Solid Waste Advisory Task Force, was pleased that his group had been able to arrive at a consensus. He said the rules weren't perfect and appreciated the Commission's willingness to let the Task Force spend some additional time to resolve certain issues. He said he thought the time was here to move forward and hoped the Task Force would be able to resolve any remaining issues that may come forward in the months ahead.

Chairman Petersen thanked the Committee for its efforts and the hundreds of hours spent in trying to help draft these rules. The Commission then went through the proposed guidance document and rules making the following changes:

Policy Guidance, page 2:

(1)(g) Regulatory intervention in recycling systems [for commercial and industrial sources] should be kept to the minimum necessary to accomplish the purposes of the act.

Policy Guidance, page 3:

(3)(b) . . . The final result of local government action should be to provide for effective [residential] recycling systems . . .

Policy Guidance, page 5:

(6) . . . The representative should act on behalf of and represent to the Department the diverse views of all affected persons in the wasteshed.

Policy Guidance, page 9:

(10)(f) The Department shall make [a periodic] at least an annual review of the principal recyclable material lists and submit any proposed changes to these rules to the Commission.

(11)(a) The [Department] Commission is aware . . .

Proposed Rules, page 6:

340-60-015(7)(a) [Existing] recycling efforts, . . .

Proposed Rules, page 21:

340-60-055(3) . . . Costs [may] shall include fees charged, taxes levied or subsidy to collect and to dispose of solid waste. Costs [may] shall also include . . .

Commenting on the proposal by the Multifamily Housing Council in regard to the definitions of collection service and generator, Chairman Petersen said the due consideration provisions in the rule were as far as the Commission wanted to go in guiding local governments in this particular area. He said he felt the Commission needed to give as much freedom to local government as it could, so Chairman Petersen was inclined not to go along with the Multifamily Housing Council's proposal. The rest of the Commission agreed.

In deleting the word "existing" from 340-60-015(7)(a), Chairman Petersen commented that the Commission was wanting to encourage local governments to provide for the recycling activities of charitable, fraternal, and civic groups and to provide a minimal amount of disruption to these organizations. Chairman Petersen felt that this amendment would make the rules strong enough to make that provision. In doing this, he assumed that cities were not going to require these organizations to ask for special permits and was expecting that this would be a matter of franchise. The rest of the Commission agreed.

Commissioner Bishop commented that as yard debris was not currently in the rules as a recyclable material, she wanted it to be considered in the future. She asked to discuss this matter so that the Commission would be sure it would come up again and that yard debris would be considered as a potential recyclable material. William Bree presented testimony from the City of Portland and the Advisory Committee with a strong recommendation that the Commission not put yard debris on the principal recyclable material list because yard debris was unique as compared to some other recyclable materials.

Other materials are presently being purchased by their market. People are generally paying to have yard debris hauled away. Yard debris is a recyclable material for the individual who self-hauls, but the margin is very small. Commissioner Bishop commented that she understood why yard debris was not considered in the list of recyclable materials at this time, but that there was a problem out there that the Commission was going to have to address at some point in time. Commissioner Buist also expressed concern about the yard debris issue. She felt that not enough education was being done to inform people about the alternatives to backyard burning and the availability of those alternatives. She asked the Department to report within 12 months on alternatives. Mr. Bree commented that the Commission would have, at its next meeting, a report on the status of the backyard burning ban. Chairman Petersen suggested that the next meeting would be the time to discuss the yard debris issue.

It was MOVED by Commissioner Buist, seconded by Commissioner Bishop that the proposed rules and policy guidance as amended be adopted. The motion passed unanimously.

Mr. Bree asked the Commission if it was their intent that the policy guidance should carry weight similar to the rules, or that the policy guidance be only suggestions to local government. Chairman Petersen replied that the policy guidance obviously did not have the force of rules because it was not rule, but that, hopefully, it would give local government enough guidelines to answer most of their questions and that local government should weigh those guidelines accordingly.

Presentation to Robert L. Haskins, Assistant Attorney General

Robert Haskins, Assistant Attorney General, had served as legal counsel to the Department and Commission for the past 13 years. Mr. Haskins has recently been reassigned to other duties in the Justice Department. In recognition of Mr. Haskins many years of outstanding service to the Commission and the Department, Chairman Petersen presented him with a plaque and wished him well in his future endeavors.

AGENDA ITEM I: Information Report--Request by LaPine Sanitary District for extension of submittal of facilities plan.

In May 1983, the Commission adopted rules requiring a facilities plan report by January 1, 1985 for sewering the LaPine core area by January 1, 1987. Due to delays obtaining financing and hiring a consultant to prepare the report, the LaPine Sanitary District will not meet the January 1, 1985 date and has requested an extension. The Department proposes to allow the District until June 1, 1985 to submit the report.

The Commission thanked the staff for this informational report and accepted it.

AGENDA ITEM J: Proposal for EQC to declare a threat to drinking water in a specifically defined area in mid-Multnomah County pursuant to the provisions of ORS 454.275 et seq.-- Summary and Evaluation of Hearing Record.

Based on hearings held August 30 and September 11, 1984, and written testimony submitted through September 11, 1984, the Department staff have prepared an evaluation and report pertaining to a threat to drinking water in mid-Multnomah County.

The report focuses on several specific questions and issues:

1. Does a threat to drinking water exist in the affected area;

2. If a threat is found to exist, are the boundaries appropriate;

3. If a threat is found to exist, can it be eliminated or alleviated by treatment works; and

4. Are proposed treatment works the most economical method to alleviate the threat.

The staff evaluation endeavors to answer those questions.

Three alternatives for Commission action were identified and discussed in the report, and the staff prepared a recommendation.

Director's Recommendation

It is recommended that the Commission proceed to implement alternative three (3) in the staff report as follows:

1. Review the staff evaluation of the record and preliminarily conclude that:

   a. A threat to drinking water as defined in ORS 454.275(5) exists in the affected area in that at least three of the conditions necessary to find a threat to drinking water, conditions (a), (b), and (c), exist in the affected area;

   b. The affected area as defined by the local governing bodies is appropriate and should not be modified;

   c. Construction of treatment works is necessary to alleviate the conditions in the affected area that result in a finding of a threat to drinking water;

   d. Additional information is needed before findings and recommendations can be adopted.

2. Delay adoption of findings and recommendations until additional information is received.

3. Direct each of the affected local governing bodies to develop and submit, by no later than July 1, 1985, information to address the following:

   a. Revised treatment works plans, specific schedules, and implementation programs to provide assurance that all discharges of sewage to the groundwater from cesspools or seepage pits in the affected area will be eliminated by no later than December 31, 2005.

   b. Complete cost estimates for implementing the revised plan including a display of the total costs to be borne by typical residential and commercial property owners.

   c. Equitable and affordable financing options for the costs to be borne by property owners.

4. Establish a date in July 1985 for reconvening the hearing to receive additional testimony on the revised plans and information submitted by the local governing bodies.

Chairman Petersen said that it was the Commission's feeling that at this time they had taken all the testimony they could. Several public hearings had been held and a hearing record had been developed on the issue. The Commission had reviewed the hearing record and did not believe any further rehashing of those particular issues was necessary in order to aid them in their decision at this time. He pointed out that if the Commission adopts the Director's recommendation, there would be a future time when more public input would be appropriate, and after an order and findings are issued, if that were the action taken by the Commission, there would be still another opportunity for the public to respond to the order and the findings. Because of these opportunities, the Commission did not believe they were unfairly cutting off any testimony on this issue at this time. Chairman Petersen said he had had a brief discussion during the recess with one of the legal representatives for some of the groups who had been vocal on this issue and before the Commission moved on the Director's recommendation, he would allow their attorney, Mr. Henry Kane, to have five minutes to address the Commission and set forth whatever points and arguments he wanted to make at this time.

Henry Kane, Attorney for United Citizens in Action. Mr. Kane made the following points:

1. Notice in the East Metro edition of The Oregonian said that this hearing of the Commission would be in the Yeon Building. That was an error.

2. On page 35 of the staff report there is a statement that boundaries are not in dispute. Mr. Kane believed the record would show that they are in dispute and it was his personal view that if there is a threat to drinking water, the boundary should be the entire east Multnomah County including areas within cities such as Portland. Mr. Kane said that part of those areas are not sewered.

3. He submitted that the Commission should obtain opinion of its Counsel as to whether ORS 454.010(5)(b) permits the most economical method of reducing this alleged threat to drinking water, and that is to simply direct the water districts to obtain 100 percent of their water from Bull Run or treat their water. The documentation Mr. Kane has seen indicated that all but two of the districts obtain 100 percent of their water from Bull Run, and the others say that they passed the water quality tests.

4. It was Mr. Kane's understanding that the hearing record had not been transcribed. He believed it should be, particularly since one of the hearings was conducted by but one member of the Commission. Mr. Kane said there was a question as to whether a summary would be considered legally adequate.

Mr. Kane said his clients were in favor of clean drinking water. They certainly think that they have it and when they are finished with their research they would submit an analysis of this recommendation which they suspected would support their view that the statutory requirements have not been met. Parenthetically, Mr. Kane said he was preparing an ORS Chapter 183 petition for adoption of a rule by the Commission that would permit interested parties to cross-examine witnesses. He said that at the first hearing there was a great deal of very broad statements made with no opportunity for cross examination. He believed that in the future the opportunity for cross examination would enable the Commission to get to the truth of the matter. Mr. Kane said that the Chairman, as an attorney, was aware that the Supreme Court had been raising the standards of procedure and proof that must be followed by the Commission or a body of this nature if the action is to be upheld. He submitted that his group's analysis would show that the standards that the Supreme Court is proposing have not been met. Mr. Kane said he understood that his group would have an opportunity to present a more detailed analysis.

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

Chairman Petersen said he would be writing a letter to local governments to give them further information and guidance on what the Commission expected them to provide in the next six months.

In a related matter, the Commission heard from two Multnomah County Commissioners regarding the ban on further construction of cesspools and seepage pits which was set to be implemented January 1, 1985.

Multnomah County Commissioner Caroline Miller read the following letter into the Commission's record:

Dated December 13, 1984, to the Environmental Quality Commission.

"This letter concerns the threat to drinking water in mid-Multnomah County. One of the topics to be addressed at your meeting on December 14th.

Initially, you are to be commended for your recent decision to require a more detailed examination of the potential financial burden sewers will place on the residents of mid-Multnomah County. As you know, another potential crisis the ban on the installation of cesspools and thereby a moratorium on all development takes effect on January 1, 1985.

As your body has established a deadline of June 1985 for submission of more detailed financial plans on the sewering of mid-Multnomah County, we request a similar extension of that County's exemption from the operation of OAR 340-71-335. At that time, when the EQC will likely establish a sewering plan for the mid-County region it could simultaneously address the process by which the use of cesspools could be phased out as sewers were constructed between the present and the target completion date of 2005.

If you find the above suggestion unworkable, we would at least hope for a 30 day delay of the expiration of our exemption on cesspool construction during which time we could develop a plan for establishing a continuously decreasing cap on the number of cesspools allowed in mid-County.

We appreciate the difficult job you face and the consideration our suggestions will be given."

Sincerely, Caroline Miller, Richard Levy, Gordon Shadburne.

Multnomah County Commissioner Earl Blumenauer presented a similar letter signed by himself, Commissioner Arnold Biskar, and Dennis Buchanan.

Commissioner Blumenauer preferred some sort of an interim activity that would not allow for further pollution, but would allow for an interim trade off of cesspool installation for sewer hookup. Commissioner Blumenauer said that industry would not site in an area where sewers were not available, therefore, an extension of this date would not hurt economic development. He said that governments had dallied too long on this issue and that the costs were going up along with the pollution. He appreciated the time the Commission and the DEQ were spending and the work that they have done to solve this problem.

Chairman Petersen presented the following proposed temporary rule.

OAR 340-71-335(2)(c) shall be modified to read as follows:

(c) Effective January 1, 1985 and until the EQC takes final action on the proposal to find a threat to drinking water in mid-Multnomah County, installation of cesspool and seepage pit sewage disposal systems shall only be allowed subject to the following conditions:

(A) A cesspool or a seepage pit system to serve a new sewage load may only be installed if an equivalent loading of sewage to an existing cesspool (or cesspools) has been removed from discharge to the groundwater by connection to a sewer.

(B) A cesspool or a seepage pit system may be installed to repair an existing failing system only if connection to a sewer is not practicable and no other alternative is available.

(C) Any new or repair cesspool or seepage pit system installed shall be located between the structure and the location of the point where the connection to a sewer will eventually be made so as to minimize future disruption and costs of sewer connection.

(D) Cesspool or seepage pit systems shall not be allowed on any lot that is large enough to accommodate a standard on-site system.

(E) Any new subdivision or development that involves construction of streets shall be required to install dry sewers at the time of development.

(d) Subsection (c) above shall be administered in a manner so as to preclude any net increase in cesspool or seepage pit discharges into the ground. The agent of the Department of Environmental Quality responsible for the implementation of on-site sewage disposal rules in Multnomah County shall, prior to issuing any further cesspool or seepage pit installation permits, develop and implement a system to account for discharges removed, cesspools properly abandoned and new permits issued. Accounting shall be on an equivalent single family dwelling unit (EDU) basis. The accounting system shall be submitted to DEQ for approval. Monthly reports shall be submitted to DEQ on or before the 5th day of the following month.

Both Commissioner Blumenauer and Commissioner Miller agreed that this would be an equitable solution.

It was MOVED by Chairman Petersen, seconded by Commissioner Bishop and passed unanimously that the temporary rule be adopted, including the findings necessary under ORS 183.335(5).

Dick Cooley, a developer in the area, testified that he had not had an opportunity to see the draft rule and would like a normal hearing process to make his views clear. Chairman Petersen replied that the Commission would be setting a hearing within the next six months.

Louis Turnidge, testified in the matter of further information. He said that in the Commission's report they had taken almost for granted projected population increases, and suggested that the Commission look into that matter. He also testified on the information in the report on nitrate levels and the clarity of the water. He said that nitrate and nitrogen had been lumped into some of the Commission's basic data and asked the Commission to look into it. Finally, he said that the basic data regarding methemoglobenemia was scanty and was not available in the Multnomah County library, and asked that the Commission also look into that.

Chairman Petersen asked that the records show that Mr. Turnidge had testified on the same subject before the Commission several times before.

AGENDA ITEM K: Request for authorization to conduct a public hearing on a proposed rule amending Hazardous Waste Rules to provide that only those liquid organic hazardous wastes which can be beneficially used will be banned from landfilling after January 1, 1985.

At the Commission's April 20, 1984 they adopted comprehensive hazardous waste rules dealing with a series of practices affecting all aspects of hazardous waste management from generation of such wastes to their eventual disposal. A key approach to the management of hazardous waste has been the intent to find ways to handle those wastes in the most environmentally sound fashion.

The Hazardous Waste Rules adopted by the Commission are identical in most regards to the federal law. However, there are several areas which the Department felt were particularly significant to protect Oregon's environment that the federal program did not address. One of those areas deals with the landfilling of certain liquid organic hazardous wastes. The Department believes that the most desirable methods, in order of preference, to properly manage hazardous wastes is as follows:

1. Nonproduction;
2. Treatment to render nonhazardous;
3. Reuse or recycle;
4. Incineration; and
5. Land disposal.

Landfilling of liquid organics is particularly critical due to two concerns. First, as a result of their liquid nature, there is a greater possibility that those hazardous wastes can migrate offsite through soils, and potentially contaminate ground and surface water.

Secondly, many hazardous waste organic materials do not break down in the environment and, consequently, once put into a landfill pose a continuing threat.

As a result of these concerns, the Department recommended and the Commission adopted a ban on the landfilling of liquid organics at Arlington as of January 1, 1985. Since the time of adoption of these rules in April, several important developments have taken place. There have been no additional hazardous waste incinerators authorized to operate in the United States. Consequently, the three existing hazardous waste incinerators have had trouble keeping up with the amount of waste desired to be incinerated. Additionally, new data has been developed on what alternatives were available to landfilling.

From this additional information it was concluded that certain organics, particularly those that were heavily chlorinated, would not be able to be beneficially used. Consequently, the options available to industrial generators of these chlorinated liquid organics would be to send them either to one of the three incinerators for permanent destruction or send them to another hazardous waste landfill.

Director's Recommendation

It is recommended that the Environmental Quality Commission authorize the Department to conduct a public hearing for the purposes of accepting testimony on a proposed rule amendment to OAR Chapter 340, Division 104, which would allow the Department to determine in what circumstances hazardous waste material should be banned from landfilling at Arlington.

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

This ended the Formal Meeting.

LUNCH MEETING

The Commission had lunch in the Department's offices at 522 SW Fifth Avenue in Portland. Present were Commission members Petersen, Bishop, Brill and Buist. The threat to drinking water in mid-Multnomah County was briefly addressed and Chairman Petersen asked the staff to draft a letter for him to local governments asking for additional information the Department would be needing in the next six months on this matter.

Respectfully submitted,

Carol A. Splettstaszer
EQC Assistant

CAS:d

TRANSCRIPT OF JANUARY 25, 1985 EQC MEETING

Petersen: ... sign-up sheet which is out on the table, out there, if you want to address the Commission. They're this color out on the table out in the lobby. Please feel free to do so, but we will need a sign-up sheet in order to know whom to call. Thank you.

The first item of business has to do with the Minutes of the Commission meeting December 14, 1984. Call the roll.

???: I move their approval.

Petersen: Oh.

???: I second it.

Petersen: Alright. It has been moved and seconded that the Minutes be approved, would you call the roll please.

Hansen: Certainly, Mr. Chairman. Commissioners Buist?

Buist: Aye.

Hansen: Denecke?

Denecke: Aye.

Hansen: Bishop?

Bishop: Aye.

Hansen: Brill?

Brill: Yes.

Hansen: Chairman Petersen?

Petersen: Yes. Agenda Item B, Program Activity Report. Is there a motion?

???: I move approval.

???: Second.

Petersen: Discussion? Call the roll.

Hansen: Yes. Commissioners Buist?

Buist: Aye.

Hansen: Denecke?

Denecke: Aye.

Hansen: Bishop?

Bishop: Aye.

Hansen: Brill?

Brill: Yes.

Hansen: Chairman Petersen?

Petersen: Yes. Agenda Item C, Tax Credits. Mr. Hansen, do you have ...

Hansen: Yes...

Petersen: ...comments? I understand we have someone here to testify, Mr. Kobos, of the Kobos Company. Maybe we ought to take his comments first before we proceed further. Mr. Kobos.

Kobos: My name is David Kobos. I own the Kobos Company. We're roasters of coffees; we also sell gourmet cookware and utensils. We have five retail stores in the Portland area and we also roast all our own coffees at 5620 SW Kelly Street, near the Water Tower at Johns Landing. I want to thank you and the members of the Department for allowing me to appeal this denial of our request for a tax credit. I've read the DEQ report very carefully and have found that the body of the report is true and accurate in all its particulars. However, I do feel that the conclusions seem to ignore the preponderance of evidence in our favor. As

Kobos: (cont.) stated in that report, the notice of intent to construct and the request for preliminary certification for tax credit was not filed before the start of the construction. There was a reason for my not filing this form, although not what I would call a thoroughly good reason, I simply did not see it in the packet of information. I looked through the packet when it was handed to me by Mr. Demaray, who worked with us throughout this process, and I looked very carefully at the application for certification of a pollution control facility for tax relief purposes and assumed that that was the document that I need submit. But it obviously had to be filled out after the project had been completed. I put the entire packet aside and, as you know from the report, the process of building that afterburner took place over about a one year period. And I didn't really think about the documents until we were very close to completion. And I admit this is a very serious oversight on my part, but I do want to emphasize that there was never an attempt to belittle the law, or intentionally thwart the processes, or anything like that. The project was begun at the request of the DEQ and I was in communication with DEQ representatives throughout the construction. In all ways I feel the intent and purposes of the applicable laws were carried through. I would also like to point out to you a memo of 6/28/84, of Mr. Harry Demaray to Charles Clinton. I believe I sent that to you some time ago when I requested this hearing; I also have copies of it now if you want, but it just verifies this contention that Mr. Demaray was

Kobos: (cont.) aware of the process throughout and felt that the intent of the law was carried through. Also, there, in our file is a memo of Mr. Gillaspie, Messrs. Gillaspie and Clinton to Messrs. Bispham and Kostow, in which reference to the Wacker Siltronics case is made. In a similar circumstance to ours the DEQ knew about a facility, worked closely with the company throughout the process, but no preliminary certificate was filed. The Department then refused the tax credit, the denial was appealed to you, and the Commission then granted the tax credit. I could, I'd like to just quote briefly from that report because it almost reads word for word what is in our report, and yet the conclusion is exactly opposite.

> "The Department did not realize that the notices of intent to construct and request for preliminary certification for tax credit was not on record until receipt of this application. The Department had worked closely with CH2M Hill and Wacker on this facility and was of the opinion that the full intent of the law had been met. Wacker believes that the application for preliminary certification was submitted and that the full intent of the law was met. In spite of the fact that no file record exists of the subject application, the Department staff

Kobos: (cont.) does believe that the facility has met the intent of the pollution control tax credit laws."

The major difference here was that, I assume that Wacker thought they had delivered the document, but hadn't. In our case we hadn't, until after the, until after the process. I'd also like to point out that the installation of this pollution control device was very expensive for us. Well, the device cost us about $10,000, our entire roaster and set-up was originally an expense of $20,000. Gas consumption during our roasting process now has doubled because of the afterburner and this has served to put us at a slight competitive disadvantage, since most small coffee roasting plants in Oregon do not have afterburners. We figure very roughly that the afterburner addition has added about 5 cents a pound to our roasting costs. However, I've had no wish to be a polluter and we're very proud of our installation. It has virtually eliminated smoke and odor emissions and the complaints we get now are that it doesn't smell as good outside our roasting plant. But the loss of this tax credit would really hurt us and I hope that you would approve it.

Petersen: Further questions for Mr. Kobos, or for the staff?

Bishop: Well, I guess I would have a question for the staff which is, why wasn't that simple telephone call made to remind them since they were working so closely with Mr. Kobos? It seems to me it's so easy to pick up and say...

Hansen: Mr. Chairman, Commissioner Buist, or Commissioner Bishop, we had, we had sent, as the staff report outlines, a letter additionally requesting and additionally requesting that information that should, could they explain to us why it had not yet been submitted, which we would have then evaluated, and had there been reason there we would have, we would have taken that into account. Let me mention something else, though, that...

Petersen: What was the response to that letter?

Hansen: There was not, until the actual final application came in, but it was not during that 30 day period in which we ask for that response. The difficulty here, and its the difficulty of the rules, and that is the rules set out that the application must be received and so on. We recognize that all actions were taken in good faith with expectations this would be, would receive a tax credit. We, the Department, do not have an ability to deviate from those rules and yet the Commission does, and I think that's a very appropriate process for the appeal to be made to you. We would not, I don't think we would find ourselves troubled at all by the fact that if you made the decision to say

Hansen: (cont.) that no, this did represent substantial prenotification as a preliminary notification as required. The problem is with under the rules it just isn't there as we, the Department, see it.

Petersen: Okay.

???: I move that we approve the applicant's request for a tax credit because of mitigating circumstances.

???: I second.

???: I second (at the same time).

Petersen: Alright. Then, I suppose, could that motion be that we approve the tax credit Director's recommendations with respect to tax credit applications except for the Kobos application...

???: Yes.

Petersen: ...wherein we reverse it. Okay. Call the roll please.

Hansen: Yes. Commissioners Buist?

Buist: Aye.

Hansen: Denecke?

Denecke: Aye.

Hansen: Bishop?

Bishop: Aye.

Hansen: Brill?

Brill: Yes.

Hansen: Chairman Petersen?

Petersen: Yes.

Kobos: Thank you very much.

Petersen: Thank you, Mr. Kobos. This is the time that has been set aside for public forum. An opportunity for people who wish to address the Commission on items that aren't on the agenda. I have one person who has signed up for this at this time, Mr. Forthan (? sp.) .

Forthan: Good morning.

Petersen: Good morning.

Forthan: A, well, I'm here about race relations. I caught the bus this morning, my car wouldn't start, and I felt pretty good though, sitting on the bus, nobody, there was a variety of races on the bus, nobody went to the back of the bus. Orientals, they sat where they wanted to. Blacks sat where they wanted to, everybody sat right next to everybody. Unfortunately, I don't feel the state of Oregon feels that way. I've had a interview, or appointment with Sue Payseno and we went over how the state correlates their, I would guess, affirmative action statistics. And it's, well, the way she told me, she only used full-time employees. They, my Department, they haven't hired anyone in, since 1981. Since there was what we call a, what they call a classification, what did she call it, well, somehow they reclassified. Okay, let me, I got some notes here, I'm a little bit better prepared than last time, not much but a little bit. Okay. I can read it even though nobody else can. Okay. Well, any, however it comes out, the state approves of minorities working for the state. But I've been here for 8 years, I started in 1975, and there's been 2 or 3 hundred temporaries, seasonal, full-time seasonal, part-time, just people that's been there for temporary employment for over 3 years. None of them are minorities, and this would be those statistics that Sue Payseno gave me, were for full-time employees since 1981. They haven't, my agency hasn't hired anyone full-time since 1981. It's called a position reclassification, that's what it was called. And to me that was the beginning of what I would

Forthan: (cont.) call a conspiracy not to hire minorities, because you can hire temporary employees. And I guess it's a different standards or something. Okay, well, there's that. Okay. As for how Oregon, this is where like, this is where the pollution, Oregon makes their own rules. This is where the pollution problem is. This is where the minority's at. How can you say that one, let's see what is it, 6 percent of the total population, total working force full-time force is, well, is something like over 26,000 state employees. Out of that 26,000 state employees, 6 percent are minorities; that's less than 1,000 or in that area, 1,300. That's, when I got on this bus this morning there was probably 15 Blacks, I saw a Chinese in there, 2 Chinese ladies, they were talking fluent English, good English. Well, okay. Sue Payseno and myself, we were going over these statistics and she told me to think broader. And I'd say DEQ had 12 minorities and then she would say, well, I would VID had 12 minorities total for the entire state of Oregon. She would say DEQ has 258 full-time staff and I would say DEQ has 258 full-time staff, and she would say the state of Oregon has 26,000 employees, and then I would say the state of Oregon's got 26,000 employees, and she would say the VED, which is where I work, the Vehicle Inspection Division's got 12 minorities. We did this three times. And 1,000 employees out of 26,000 isn't equal representation for this area. This is where the pollution problem is, this is where there should be some type of, of an adjustment for minority population to have them as

Forthan: (cont.) state employees. True, like I say I'm not organized, but I'm just trying to say that somehow there should be a different way of, of calculating the minorities. There's a lot of minorities in the Metropolitan Service District. You go outside the Metropolitan Service District you might not see a minority for 100 miles or more. I'm just trying to promote jobs. I would like to go to the Legislation and ask the same thing. It's just the cost of trying to re, just re, just somehow recalculate the way they put minorities. True, minorities are through the whole state. Indians, you can't segregate, somehow the state of Oregon has done it. But, well, somehow it's gotta be, hopefully it's gotta be a way that, I been here 8 years and you're telling me legally that, is, Black people, that I can't work with another Black person. That's what basically, or a minority because of location. Oregon's got 26,000 employees, 6 percent of them, those are minorities, that's a awful small number. And if you could somehow concentrate it or, there's a lot of Black people that like work. This is easy work. Oregon...

Petersen: Mr. Forthan...

Forthan: Yes...

Petersen: Excuse me, go ahead, I didn't mean to cut you off.

Forthan: Oregon makes their own rules. This is one of the, a job flyer for a Program Manager B. It says it needs 5 years of skill and specialized experience in staff, technical, and laboratory or field work dealing with the environmental program. With this position here, this Environmental Manager B, I was denied for that, well for whatever reason. But I have another application form here for a Environmental Technician 4, it's college education too, but I don't have it, but yet my application was accepted and I got a 95 on that score. You can do what you want to do with the numbers, statistics you can put numbers anywhere you want to. I just know that there's a lot more Black people or minorities in this whole state, and mostly in the Metropolitan Service District, that's where the majority of the minorities are. Either come up with a law that you sign, you waiver, that, so you can't sue the state, so you can hire minorities. There's got to be another way. I test an awful lot of cars, see an awful lot of minorities, and for 12 minorities for us throughout the whole state, for representing this agency, everybody breathes air, drinks water, and has solid waste. I can't see how the state can just do this and say that everything is fine. Just, I'm just trying to put in a word for minorities, and if it's possible I would like to go to Salem to say the same thing. Somebody's got to do something, it isn't right. I'm sorry that I'm not prepared but I'm doing the best I can. Thank you.

Petersen: Just, just hold on, just a second. Thank you. I wonder whether...Sue Payseno, at our request, at the December meeting where you appeared last time, we asked her to give us a report on the affirmative action program for the Department. And she's prepared a report and I have a copy here which I'll be happy to give to you. And we're going to discuss it at our noon meeting today. And I will ask her some of those questions that you raised with us about the part-time versus the full-time statistics. But basically the report does show what the Department's, first of all, it has a very positive statement about hiring policies, and then it does show the statistics. I would agree that statistics can be...

Forthan: You can make 'em up any...

Petersen: ...you can, sure you can, and we understand that, and we're going to ask her questions about this report and I want to make sure you have a copy of it, so if you want to come up I'll give you a copy of it.

Forthan: Thank you.

Petersen: And I'm sure she'd be glad to talk to you about it. I'd also encourage you to, I don't know what Legislative committee has to do with state hiring policies, but I'm sure they would be willing to, to listen to this man's

Petersen: (cont.) testimony. I mean if, because we're really talking about a state, a statewide policy, I think that's what questions that you raised. Do you know what committee that is?

Hansen: It would generally be Human Resources on both the House and Senate side.

Petersen: Yes. So that would be something that I would encourage you to do, to speak out.

Forthan: Thank you.

Petersen: Thank you. Are there other comments for the public forum this morning? Then I'll close it and move on to Agenda Item D, which is a request for authorization to conduct a public hearing on proposed amendments to the Solid Waste Rules relating to open burning of solid waste at disposal sites. Mr. Hansen.

Hansen: Thank you, Mr. Chairman. At the September 14, 1984 EQC meeting you approved a course of action which included a Department task force on the issue of open dumps to have the Department examine the issue and develop a policy dealing with open burning of solid waste at disposal sites. The study has been completed by the Department task force. The Department is requesting authorization to conduct public hearings to get, to gather testimony and proposed amendments to the solid waste administrative rules. The proposed rule

Hansen: (cont.) amendments would allow small rural sites in eastern Oregon meeting the criteria to continue to open burn under restricted operating conditions. The proposed criteria are based on environmental and economic considerations. Bob Brown, of the Hazardous and Solid Waste Division, is here to answer any questions, as is Mike Downs.

Petersen: Are there questions?

Denecke: I have one question on page 5 of your report, Mr. Hansen. And this, perhaps, I understand that to say that you can't sue the state now for permitting open burning.

Hansen: Yes, Mr. Chairman, Commissioner Denecke, that is the case. Michael Huston is here and may want to comment directly on it.

Huston: That's accurate, Mr. Chairman and Commissioner. It's the, at least the prevailing view of the federal courts as well as EPA's view that the, that recourse does not provide a remedy against a state regulatory agency.

Denecke: The burner may or may not be successfully sued depending upon the effect of its burning, I'd say?

Huston: I'd say that that's exactly right.

Hansen: And, Commissioner Denecke, it is, it would, the liability is not one of financial risk, it is one of closing or stopping that practice rather than subjecting additional monetary risk.

Petersen: So it's an injunctive type deal?

Hansen: Yes.

Petersen: There is a statement in the staff report on page 4 that says that there is concern that if all open burning is stopped, some local governments may abandon their disposal operation. What evidence does the Department have to make that statement, and what was meant by that?

Brown: Bob Brown, of the Solid Waste staff, Mr. Chairman and members of the Commission. Especially in discussions with Lake County who, during the variance application procedures, they indicated to staff that if they couldn't burn they couldn't afford to operate the sites. And would just essentially close them and let the people go back to what they had been doing before, which is dumping on BLM land.

Petersen: Do they have that option? I mean, is that a lawful option that the counties have?

Brown: We have no mandatory rules or, the statutes do not allow us to order a county government to provide solid waste disposal facilities.

???: What did we do in that request from Crook County about burning?

Hansen: You granted them a variance.

Petersen: A temporary variance for a year.

Hansen: Yes, a temporary variance. But that was really for industrial waste at that site.

Brill: Do we have any approval of, are there any sites approved that are operated privately in the state?

Brown: Commissioner Brill, right off the top of my head, I think all of these are local government sites. I don't think any of them are operated by private operators.

Hansen: Mr. Chairman, I know it's a long report but the task force report does, particularly the tables, outlines clearly what the, what the issue is. The balance is that on some of those sites where we have found that there have been say, for example, an increase in charges, we have found a substantial decrease in the amount of use of that in

Hansen: (cont.) indiscriminant dumping as a result. And that's the balance we are trying to be able to get. On the one hand something that's environmentally sound and yet, if you start putting too much restriction on, effectively what you do is you just make the problem worse and disperse it.

Petersen: Okay.

???: Mr. Chairman, I move the request for authorization to conduct a public hearing be granted.

???: Second.

Petersen: Okay. Call the roll.

Hansen: Thank you. Commissioners Buist?

Buist: Aye.

Hansen: Denecke?

Denecke: Aye.

Hansen: Bishop?

Bishop: Aye.

Hansen: Brill?

Brill: Yes.

Hansen: Chairman Petersen?

Petersen: Yes. We have received on Agenda Item E, which is a public hearing, we've received numerous requests for testimony and also some additional written material. I'd like to... Yes?

Hansen: Only that it has been scheduled at 10 p.m., or a.m. and we're not quite there, I'm not sure how you...

Petersen: Good point. Okay. That's good, let's then, if that's been the public notice, then let's move around that Item to Agenda Item F. Agenda Item F is the request for adoption for rules for granting water standards compliance certification pursuant to requirements of Section 401 of the Federal Clean Water Act.

???: Mr. Chairman, could we take, I haven't finished this material that was put on our desk this morning about the testimony...

???: Right...

???: ...Can I, can we take just...

Petersen: Yes.

???: ...a minute or two more to complete that?

Petersen: Right. I think, for those of you who are wondering what we are doing, we have lengthy staff reports and other materials that are sent out to us in advance of the meeting so we have a chance to prepare. Sometimes these things don't get to us until the time of the meeting, and so we need to take a little time to review it so that everybody's input has had a chance for Commission review. And, I think it might be appropriate then for a very brief recess to go over that material. So we will take one.

Hansen: It should be only the testimony...

Petersen: Do you plan to read this at, your testimony? You asked for 15 minutes, and, is that about how long it's going to take to read this? Is that your plan?

???: That was my plan, yes.

Petersen: Okay. We can continue. We will reconvene the meeting and proceed with Agenda Item F at this time. Mr. Hansen.

Hansen: Yes. At the September 14, 1984 Commission meeting, the staff presented some proposed procedural rules for Department certification of federal licenses or permits pursuant to Section 404 of the Clean Air Act. The, at that

Hansen: (cont.) meeting the Commission authorized the Department to proceed through the public participation process. A hearing was held on November 28, 1984, and the proposed rules have been modified in part in response to those public comments. They are on the Agenda today for final action. And as you will know, there are people here to testify.

Petersen: Okay. Mr. Smith.

Smith: Thank you, Mr. Chairman and members of the Commission. For the record, my name is Jack Douglas Smith, I live at 6980 SW 68th Avenue in Portland. I am testifying here for and on behalf of two organizations, the Oregon Shores Conservation Coalition and the Northwest Environmental Defense Center. Because this testimony is reasonably technical in nature I have provided, or asked to have provided, copies of the written testimony to members of the Commission. Hopefully I won't degenerate into reading it all word for word, but. The sense of the testimony is that this is an extremely important issue for the state of Oregon. I note on the back of the staff report, that I believe you have, a letter from Lynn Frank, Director of the Department of Energy, wherein Mr. Frank states that this is an issue of great importance to the state and its citizens. And that in order for the state to play a meaningful role in the federal decision making process on hydroelectric facilities, the state must have an effective instrument for coordinated review of those facilities.

Smith: (cont.) And Mr. Frank believes that Section 401 certification is, in fact, such an instrument. We certainly concur in the fact, or in the judgment that Section 401 certification is the instrument that the state has at its disposal for controlling and, in fact, denying federal licenses and permits affecting the waters of the state of Oregon. If you all would care to read Section 401 of the Federal Clean Water Act, the first paragraph in that Section states quite bluntly that no license or permit shall be granted if certification has been denied by the state. And the final paragraph in Section 401 ends with a series of specifications that the state is able to place as a condition on any such federal license or permit. This is the, the fact that this does appear to us to be the, the available instrument, the instrument available to the state of Oregon for controlling, among other things, FERC licensing of hydroelectric facilities in the state of Oregon. This is the reason that we have been and continue to be so interested in this particular proposal for rules, is our belief that DEQ should be responsible, has a responsibility for the exercise of a far more aggressive role in aserting the state's interest in federal licensing and permitting activities affecting the state's waters than its presently proposed rules indicate. The burden in Section 401 is not on the state to find a way to certify these federal activities in the state waters. The burden in Section 401 is on the applicant to provide a certification to the federal agency and through that process

Smith: (cont.) to convince the state that, or to provide the state with convincing information and argument as to why the state should not deny that certification. Let me provide a bit of history. In the public hearing on these proposed rules, NEDC requested, what is described on page 5 of the staff report as, extensive information relating to the Department's certification and reviews during the past 5 years. We were advised that we were free to review that material in DEQ files and we, a researcher from our organization spent a day this week doing precisely that. We reviewed the files of well over 200 FERC applications dating from last week back through the year 1982. We found, of those 200-odd applications we found 2 which had been denied. The first one was the Gold Hill project which was denied because the Oregon Legislature withdrew that section of the Rogue River from hydroelectric development. And, the second one was dated a month or so ago, and that was the lava diversion project on the Deschutes River. And that was denied because of some very specific, a series of specific water quality considerations and because of a failure to date of the, on the part of the applicant to provide a statement from Deschutes County that that project is compatible with the local land use plan. Certification for all of the remaining FERC applications that we reviewed were found to have been either waived or granted outright, generally with a one page letter that was concerned virtually in all cases with whether or not there would be some significant change in existing water quality, or some

Smith: (cont.) such language. The only application file that we did find that included any identifiable public notifications of these actions was that for the lava diversion project. That also was the only application file which we found to contain an evaluation report that was more comprehensive than the one page letters waiving or granting the requested certifications. In only the Gold Hill project was there a recognition that the designated uses of the state's waters might, themselves, be a consideration in the evaluation of a certification application. The idea that the use of the waters themselves is an appropriate matter for concern and 401 certification stems from the addition in 1977 of Section 303 to the list of provisions that the applicant is supposed to provide certification for. It is Section 303(c)(2) that defines what water quality standards are. And they are, in that Section, defined as not only the criteria, not only the water quality criteria, but also, and first, the designated uses of the waters involved. It is Section 303(c)(2) that states about water quality standards that such standards shall be such as to protect the public health or welfare and shall be established taking into consideration their use and value for such things as the propagation of fish and wildlife, recreational purposes, and other purposes, and also taking into consideration their use and value for navigation. From our brief review, it has been our observation that DEQ has historically simply waived the opportunity or obligation that it has had to deny certification of compliance of FERC license

Smith: (cont.) applications with the water use requirements of Section 303. The most, to date, complete evaluation of such an application, that of the lava diversion project, was fairly narrowly concerned, other than the land use compatibility requirement was narrowly concerned with some specific impacts on water quality, i.e., turbidity, dissolved oxygen, temperature, and so forth. Rather than the broader and more fundamental question of the impact of such a project on the very use of the affected waters. A second and, I think, crucial part of Section 303 is the requirement specifically of 303(d), Section 303(d), that the state shall establish the allowable total maximum daily load for pollutants based on the water quality needs of the affected waters. In the staff report about the middle of page 4 there is a quite accurate description of what a total maximum daily pollutant load is under Section 303(d)(1)(C) of the Federal Clean Water Act. Basically the reason for being concerned with this requirement in the context of 401 certification or denial of 401 certification, is that the establishment of any such allowable pollutant load will necessarily turn out to be a function of stream flow, or stream flow conditions. Lower stream flow or impounded flows, for example, would translate into a lesser allowable pollutant loading based on the water quality requirements of that segment of the stream. Conversely, a higher stream flow would translate into a higher allowable pollutant load resulting, for example, from additional available pollution.

It's, it's frankly quite difficult to see how a FERC or any other project that proposes to change stream flow conditions can very easily be certified to comply with an established allowable pollutant load when the changed stream flow conditions themselves will change the allow, change that allowable pollutant load. Certification of compliance with this particular Section of the federal act would seem to require the simultaneous establishing of a new and different total maximum daily load for pollutants. This is a subject that we anticipate providing additional and rather more extensive testimony to the Commission about when the Department's proposed revised water quality standards come eventually before this Commission for adoption. I hope that these kinds of comments and observations make it clear to you all why we are so concerned about the adequacy of these proposed rules for certification of federally licensed or permitted activities. Our view is that the rules, as proposed, do not clearly enough indicate or recognize the quite broad authority that is granted to the state by Section 401 to assert the state's interest in protecting the use of its waters from such federally licensed or permitted activities. There are a series of specific recommendations that we make that we hope will prop up what are inadequately strong rules. The first of these recommendations has to do with the scope of the certification. In the staff report on page 1, the first paragraph, the report speaks of certification of any such discharge or activity...

Petersen: Excuse me, Mr. Smith, you're not referring to the staff report you're referring to the rules, aren't you?

Smith: I'm referring to the first page of the staff report.

Petersen: I beg your pardon.

Smith: The summation section on page five of the same report speaks of a requirement to review and certify the proposal and of requirements for the protection of public waters.

Now, getting to the rules, which are Attachment A to the staff report:

The first paragraph under purpose on the first page of these rules contains language about certification for projects. By the time that we get to page 2, under certification required, however, there is now the more narrowly construed description of a certification not of a project or activity or proposal, but of any such discharge. Our recommendation in this context is that this phrase "any such discharge" be changed to the more broadly construed "any such activity."

Denecke: The discharge referred to by Mr. Smith is on the third line on page 2 of the rules.

Smith: On the fifth line. (one, two, three....I have that on the fifth line.)

Denecke: Oh, yes, there are two discharges there - okay.

Smith: Also, on page 2 of the proposed rules under the information requirements listed as 340-48-020, subparagraph 2, we recommend the addition of the following subsections:

Subsection I: Information and evidence demonstrating that the project is compatible and consistent with all the designated uses of the affected waters. Also, on page 2 of the proposed rules under 340-48-020, subparagraph 3, to the end of the sentence, presently ending with the phrase: "Project impacts on water quality," we recommend the addition to that sentence of the words: "or designated beneficial uses of the affected waters."

On page 4 of the proposed rules under the paragraph, Issuance of a certificate: The applicant shall be notified promptly that until the Department completes action on the application for certification, the certification shall be considered to be denied. Also, on page 4 of the proposed rules, under paragraph 340-48-025, subparagraph 2, we recommend the addition of the following subsection I. Findings: that the project is compatible and consistent with all the designated uses of the affected waters. That is the extent of the recommended additions and changes. It is our belief that these will make rather more clear the role that Section 401 actually provides to the State

of Oregon in controlling federally licensed or permitted activities affecting the waters of the states and also the responsibility that the Department of Environmental Quality has in affirmatively in exercising that particular role. On behalf of both Oregon Shores Conservation Coalition and the Northwest Environmental Defense Center, I thank you for your attention and consideration.

Peterson: Thank you, Mr. Smith. I am sure there are several more questions, if you would hang in there for a few more minutes.

Questions of the Commission for Mr. Smith?

Denecke: The question I have, Mr. Chairman, because I don't know what the jurisdiction is, "Where would the water resources order (of course, I do not know what they are called), where would they fit in this picture?

Mr. Smith The federal law states that "the state shall establish water quality standards, which shall include designated uses." The water quality laws of the State of Oregon place the establishment of the designted beneficial uses within the purview of the Water Policy Review Board. The way that it turns out, there are in fact designted uses within this Department's administrative rules, for each basin, and it is my understanding that those designated uses are compatible with the uses that have been designated by the

Water Policy Review Board, although within the uses designated by the Water Policy Review Board, this Department has some subcategories. Cold water and warm water fisheries being one example.

Denecke: Let me - maybe Mr. Hansen, or somebody from his staff can answer it, but it seems to me that if we were to adopt your suggestions under the present rules, or rules of DEQ, we would be covering ground and doing things that the statutes allot to a different body. Am I correct in that belief, Mr. Hansen?

Hansen: I think only in some regards. I think it would be most valuable to have Mr. Sawyer, the Division Administrator in charge of Water Quality, respond specifically, but I think only in part.

Peterson: Why don't you come up here, Mr. Sawyer, and you guys can share the microphone. Did you hear Commissioner Denecke's question?

We are talking about jurisdiction, and we are concerned that we adopt rules, as I understand it, that will infringe or be unnecessarily duplicative of other rules that another agency has primary responsibility for.

Sawyer: From the Department's staff perspective, I think we are equally concerned about that jurisdictional question. My

impression is that, as we started out acting under Section 401 and making Water Quality standards compliance certification, that section of the statute was, I believe, interpreted much more narrowly than it is being interpreted today, and our actions were certainly in that line. We were limiting it to compliance with our adopted water qulity standards. Our perception was that some of the earlier opinions out of the federal agencies suggested that that narrow, very narrow interpretation was appropriate. More recently, some of the actions that have been occurring, court cases that have been considered, have broadened, appraently, the role that the state may take under this 401 certification provision. The proposal of the Department of Energy and Len Frank(?), is certainly one that we feel takes some more exploration as to how far our authority goes. It came quite late, after the hearing. We felt it was something we needed to go into further and come back with, rather than holding this item up. And it really is that question of "How far we should be going in that matter?" At least that was the staff's perception.

Denecke: Well, how about - is there any overlap with the - whatever Bill Young's outfit is called now?

Sawyer: Yes, and, you know, on projects, you know, hydroprojects in particular, the Department of Water Resources and the Water Policy Review Board, is involved in making decisions on the granting of water rights. There are land use issues

involved. The Department of Energy may be involved if an energy facility site certificate is required. How all of those actions fit together, in addition to perhaps permits issued by the Division of State Lands for fill and removal - or others - how all of those fit together, really is an issue that I think the Legislature, in some of their water policy considerations, is going to be wrestling with and a number of the bills that are in there. It is an area where we are feeling our way, at least I think, and we are not comfortable with how far we should be going at this point.

Denecke: What's your reaction to Mr. Smith's recommended amendments?

Sawyer: I was trying to note what they were, and have not really not had an opportunity to look at them in the context. My initial reaction on them is, I think they are alright and within the general intent that we are going, but I would like an opportunity to sit down with our counsel and review it, frankly, first. Just to make sure that we understand what it is and what it does, and I have really not had a chance to do that this morning.

Peterson: Mr. Smith, you made the statement that in the past, your studies show that the Department's response to these requests were cursory (you did not use the word "cursory," but I think that is what you were implying) either they waived the right to say anything, or it was kind of a

one-page answer. Are you suggesting, or do you believe that the Department's approvals - any of these approvals in the past were improper?

Smith: Mr. Chairman, I am not going to use that word. What I will say is that whether the certifications have been waived or whether they have been granted, they have been quite narrowly..... The concerns of the Department in the letters in the files that I have read - have been quite narrowly concerned with some very specific and some very limited water quality considerations, primarily, increases in turbidity during construction. They have not addressed the question - what is really the basic question - in management of our water system is the use of those waters and how such a project would disrupt any of the other designated uses for those waters.

????: We have designated uses in our rules, basin by basin, I think I have come across those before. Would you agree with that statement, Mr. Sawyer?

Sawyer: We have the designated uses in our management plan, and that is really kind of the stepping stone to get from the designated uses down to the evaluation tool, which is the water quality standards. The standards were basically established, to the best of our ability, to assure that the balance of uses, identified to the best of our

ability, are protected. The question, really, and it is back to the one of how narrow our evaluation or interpretation has been and how broad or narrow it should be. I would certainly agree, our past evaluation has been narrowly construed. We have done minimal documentation. Much of our evaluation has been based on staff knowledge, expertise, judgement, observations of projects in the past and the kinds of impacts that have been observed resulting from those. And I think that one of the things, as we have moved forward to propose these rules, is the view that we need to do a more systematic evaluation and documentation of these as we go forward.

????: Mr. Smith, one of your suggestions says that for rule change, are you recommending that the applicant - that the following language be inserted: In 340-48-025, in place of the last sentence, which reads now in the proposed rules: "If the Department failes to take timely action on an application, the certification requirements in Section 401 are waived." And, you are suggesting in place of that - "that the applicant shall be notified promptly that until the Department completes action on the application, the certification shall be considered to be denied."

Now, that to me is a very fundamental policy question and I am sure that you are aware that normally, at least the modern trend of agency rules is that unless the government

takes some action within a reasonable period of time, they they have lost their.....and the citizen has the right to waive, and that has a certain appeal to me, frankly. Otherwise government agencies can sit on these things and cause, perhaps unfair and unnecessary delay. Wouldn't your suggestion forfeit that policy?

Sawyer: It does remain a reason of fact that the Department of Environmental Quality, through Section 401, does have a very unique responsibility amongst agencies of the state. They are the designated agency to license or deny better licensing of permitted activity. What I am saying is that process ought to begin with a presumption of denial, and the applicant ought to provide the necessary information and evidence in argument that he should be allowed to disrupt already established uses for the waters of the state and that disruption ought not to be allowed or perpetrated on the people of the State of Oregon as a result of inaction by the Department of Environmental Quality. The Department can always do the analysis and reverse the denial and grant the certification, if that is the appropriate action.

??? If I understand, you are saying this so important that that policy consideration should be overriden and that if the state doesn't take any action, then it is denied, if I understand you correctly.

Peterson: Yes, Mr. Sawyer?

Sawyer: The language that we have in the proposed rule really is by my recollection, a product of the language in the federal statute which specifically says if we do not act within one year, it is deemed waived. We did not view, certainly, that by rule we could overrule that provision. We simply did that to acknowledge that in the procedures we had proposed here.

Denecke: Mr. Smith, you said that DEQ was the designated agency to handle 401 certifications. Is there a statute allotting that to DEQ?

Mr. Sawyer is shaking his head.

??????: I believe that is part of Chapter 348 (or DEQ) enabling legislation.

Denecke: I was not intending to be picky, or anything, this goes back to my first question. I am wondering where DEQ and Water Resources enter the picture.

??????: Mr. Chairman, I would in that situation under Chapter 468, there is a section that authorizes the Commission and the Department to take whatever actions are necessary to comply

with the federal Clean Water Act. That is - we have interpreted it as an implied designation that the 401 certification belongs with the agency, I do not remember whether the Governor formally designated us as one to fulfill that role. The concern that I have underlying this question of how broad 401 is interpreted is the one of whether the Department as an agency is taking on a broader role than was envisioned by the Legislature in the combination of statutes that is there. That would be my concern as we really try to narrow in on this issue - how broad it should be.

Peterson: Mr. Hansen

Hansen: Mr. Chairman. I am about six days away from my year anniversary here, so my knowledge and the history is not as extensive, but certainly my instincts tell me that we as a Department should have a broad level of responsibility to be looking, and certainly to be evaluating a whole series of factors when we go through that 401 sign off certification waiver or denial process. And Harold and I have talked about this. It would seem to me appropriate that, as Harold has said, the language here, except for that one particular change, is probably something that could certainly along the lines of thrust that we are talking about, but I would be some nervous about adopting it without making sure that word for word we were not causing problems. And I would want to have some level of time to be able to

evaluate that, and possibly what would be valuable, because we contemplated it in the staff report, and so indicated that we would come back to you with a broader look at some of those issues. And, I think that at your request, if you would so like, we would intend to do that and address not only some of these issues, but some other issues that were raised by, for example, the Department of Energy.

Peterson: You are suggesting we adopt these today and review later, or are you suggesting that we table this..

Hansen: Okay - I would prefer the latter.

Peterson: I was going to suggest that as appropriate. What kind of timing problems do we have, Mr. Sawyer?

Hansen: Well, pardon me, I am talking about the changes suggested by Mr. Smith - not the changes that were proposed by us. Whatever the case is, some of the procedural steps need to be put into place, and we need to be able to have some definite approach to that. And I think really what Mr. Smith is saying is - and I don't mean to speak for you, Jack, but I think you are saying that part's okay, but you really ought to be doing more - and addressing that "more" is something I am committed to, and I think we need to be doing. I would like to be able to see how best we can approach that and come back to you. Is that a fair statement, Jack, of what your concerns are?

Smith: Yea.

Hansen: Harold?

Sawyer: As we are getting more into some of these and they are increasingly more controversial projects, we feel we need some procedural rules backing the actions that we take to provide better guidance to that process, and so our recommendation would be to adopt the rules, if you would feel comforatle with some minor modifications, that is fine, but we feel we do need to come back on that broader issue raised by the Department of Energy, and our choice, rather than recommending deferral at this time would be to adopt and then come back with "intent to modify" if appropriate.

Peterson: Which would require further public hearing.

Sawyer: Further hearing, but it's an issue that we felt was not adequately addressed in the proposal that we put out or in the hearing tht was held and perhaps is a broader issue that requires re-opening the hearing on that.

Peterson: Okay. Mr. Smith, how do you feel about that?

Smith: Well, I of course think that the rules as proposed are unnecessarily whimpy.

Peterson: Whimpy, is that what you said?

Smith: Yes, and we have proposed a series of recommendations that we think will strengthen those rules. Beyond that, how the procedure works and so forth, I would hope that the Commission would quite expeditiously get to seriously examining those recommendations. Whether that happens precisely at this meeting or the following meeting, or so forth.

Sawyer: We try to be sensitive to adopting rules and then amending them for clarification because they are not technically correct, because our lawyer tells us they are not technicly correct - because that breeds inconsistency. So we are inclined to, I think, and since we did not see this until five minutes before the meeting, it really did not give us or the staff or our legal counsel a chance to look at them and, I don't think for my own part - except for that one question I raised on policy, I don't have any objections to this. So I would be inclined to go ahead with the adoption of the rules as proposed and then we would instruct the staff to expeditiously come back, after they have had a chance to review it, and obviously include your views in the review and the reviews of the organizations that you represent and go from there.

Smith(?): Mr. Chairman, I do want to note that the Departmental proposed rules at the bottom of page 3 of the proposals

do in fact include as a consideration in the evaluation of project applications existing and potential beneficial uses of waters. And it is primarily for that reason that I am certainly am not going to protest too loudly about reviewing our recommendtions a little more leisurely. My fundamental problem, however, with the way these rules read is that very, very crucial consideration is really diluted in impact by simply being included at the top of a laundry list of a whole numnber of considerations, and I really think that is the fundamental consideration in 401 certification.

Chairman: Okay.

Is there a motion?

??? I move for adoption.

Churchill: I want to speak.

Chairman: I beg your pardon. I am really sorry. All I saw were "E's" down here. You are absolutely right, I certainly - oh, yea - here we go - a couple of F's.

John

Churchill: My name is John Churchill. I am a professor at Portland State University. I teach in the field water quality. I also, with Dr. Smith, did graduate work at Harvard

University, and I want to say something about Dr. Smith's qualifications. He has written over 300 papers, professional papers in the area of water quality, and he has advised many state commissions and state agencies, and so on. I want to state that my own background is in the field of administration of water policy, particularly at the federal level where I helped draft 92 500 and the 1965 Act on Water Quality standards. I was in charge with the federal, the legislation of the policy staff of the Federal Water Quality Administration and worked on Bill Rucklehouse's team to write such a 401 in other parts of the Water Quality Act. I have also worked with DEQ for two years when I was requested by the former director Kramer to come out and set up the 208 program for the State of Oregon after I developed the guidelines at the national level. And, at that time, Director Kramer asked me why we weren't administering Section 401 until several years ago. It appears to me that if this Department has neglected its duty for nigh on to a dozen years in writing regulations, a good set of regulations are in order and not piecemeal. Because I think as an applicant for a permit, I would like to know what the rules of the game are and not changing them every month. I think that since most of the issues, Mr. Smith, proposed were discussed with the staff, we had a good discussion why these were. If they are to be further advised, I would like to have it as a continuation of that hearing in this set of rules, so that on balance, you can look at it and not just amend,

amend, amend as an additional pressure comes before you. I would like to see a good set of rules.

What is 401? When you look at the Water Quality Act, when Dr. Smith was talking about 303 and several other sections, I saw the difficulty you were all having with this very complex act. Most of the sections were very carefully intermingled and interrelated in the development by Senator Muskee and his staff and us in the Department and some of some of the people in the States in the writing of 92 500. If Section 401, could be looked at legislatively - it is the forerunner of what we know as the State consistency requirement in the coastal zone management act. We wrote a Section 401 into the Federal Clean Air Act and into the Federal Water Quality Act to give the state the authority to control federal actions which would affect their ability to take on their responsibility to manage the water quality of their state. It was a very powerful tool over the federal government, and if you will look at Section 313, it allows the state to participate in direct federal actions so that 401 is a real tool here to make the federal licensing procedures consistent with the state policies. It is nothing to dibble with; it is a tool to implement your program, our program in this state. Now, I think it is a very important section of the Act, not only because I helped to draft it, but it was a very deliberate intent by the federal government to give the state authority federal actions in order to comply with their program.

Because the state had the burden of doing this. Now, I would prefer that they do the job right, we have raised these issues before. This is not the first time Dr. Smith's issues were raised among the staff, and they have rejected them. They don't come here now to defend their rejection and they didn't do it in the staff report. They improperly wrote the staff report, because they did not defend their turning down of these proposals from the staff report.

Now, the other point is that I think it is very important that the burden of information be required of the applicant prior to the time the public is asked to review the application. Because the way the regulations, as I read them now is: The applicant comes in, gives no information as to the impact, if it is really on water quality, or the requirements. DEQ then does the research, and the tax payer pays for the research of this application. The public reviews it, but without the information as to what the impact is. And I find that a faulty way of going about it. I am a member of the public, and I want to know what that application is going to do to my water quality. I should have the information as I review it, and it should be supplied at the cost of the applicant. .... Almost all other applications for a federal or a state permit is that you are required as the applicant to get a land use permit. You must make the information available to the regulating agency and to the public.

Now, I would like to address one more issue. And this is a question of use, which Commissioner Denecke raised. The water quality standard in the 1965 Act and the 1972 Act is first of all - it is the use that is determined. Secondly, it is the criteria - the physical, chemical or biological criteria which is necessary to meet the use that is designated in that stream or stretch of water and in the '65 Act, it was an implementation plan. Now, the Oregon statute was changed in 1969 to comply with the federal act that use and criteria are a part of this standard. Use and criteria - the criteria only implements the use. If you do not evaluate the use, looking at the numbers of the amount of sediment coming down the stream, doesn't do anything for you. You could have sediment and not impact a use. If it was a different season and so on, but the whole thrust of the federal statute is fishable and swimmable water and recreation. It is a use, so that the regulations should require that the applicant make a finding as the impact on the use is designated in the Water Quality Plan as required by the Oregon statute. There is no doubt in my mind about that. Just a look at criteria as has been done by this Department, is not carrying out the law. They have been deficient in what they have been doing. They have been adminisratively deficient, if not legally deficient in what they have been doing. They should be describing what the impact of that application is on the use. The regulations today do not call for that, as far

as I can see. They should really come right out and say what is the impact on any of the designated uses and what is the impact then on the criteria which govern those uses. Certainly a hydroelectric project is a physical restraint upon the use of water for certain other things. How much it is, what it is, you know - is something the Department should weigh. And from my perspective, I think they ought to go back and do a good job and come forward with a set of regulations that the Department and State could be pround of. You know, these requirements were passed in 1972, and isn't it astounding this is 1985 and the Department has never had a set of written regulations. Why cann't they wait another couple of weeks or another month and develop a good set of regulations.

Chairman: Good questions, Mr. Churchill.

(??)

Do you support the changes suggested by Dr. Smith?

Churchill: There is one more thing that I think Mr. Charles will speak to, and that is that I appeal very strongly on the appeals procedure that to only allow the applicant to have an appeal procedure after permit is denied and not the public that is affected, is a violation of the spirit, if not the letter of the public participation features in 92 500. I think that an offended party should have the procedural right to appeal just as much as the applicant. I feel very strongly on this matter of the procedural rights of citizens

and their environment. I also think that to make the citizen go to the Circuit Court would tend to clog the courts, because I see more and more applicants coming under 401 by citizens, because this is a vehicle. Just as Section 515 is, that the citizen can take the Administrator or the State to Court if they don't enforce. And I see more and more opportunity here for citizens to actually participate in these federal actions. And I think that the question that the citizen should have the right to appeal to this commission just like the aplicant to develop something. The citizen who wants to protect the environment and has a counter value system to the developer - should have the same procedural right that the developer does. And I think that to deny them that right is to deny him his full process or rights as citizenship in this state in the environment.

??? Doesn't that have to do, though, with the definition of affected party?

Churchill: You read Section 101E of the Act which I drafted and this was to give full equal right to the citizen to protect his environment with the developer who was in fact impacting the environment. There is no question that the citizen involvement thing was to balance. To put a balance against the Administrator and against the developer - into the Act. The whole congressional history of this Act is that the citizen should have equal status with the developer in the

procedural, in the administration and in the procedural appeal in the administration of the Act. That's my judgement.

Peterson: Other questions?

Thank you, Mr. Churchill.

Mr. Charles.

??? Thank you Mr. Chairman, John Charles, Director of Oregon Environmental Council.

A couple quick comments. A little background on the keen interest the various people of the state have in Section 401 is precisely because it is a lever where the state can control what some of these projects are doing to water quality. Certainly as a resident of Deschutes County I am sure you are well aware of the problems that the County is having..... and this is a chance for the state to control its own destiny with regard to water quality, also the Regional Power Council has been extremely concerned with all of the millions of dollars they are spending on fish enhancement projects in the region. In fact, Al Hansen testified before the Legislature that he and Dan Evans, Senator Dan Evans, who at the time was Chairman of the Power Council, the two of them, when they were both on the Power Council, traveled back to Washington, D.C. to talk with

(Fehr ?) - could Fehr? take into consideration the Power Council's regional plan for fish enhancement. They were essentially told to take a stroll somewhere. And so, the Power Council has had a lot of concern, the state Legislature has had a lot of concern, the local governments have had a lot of concern about how the state is going to be able to control these federally licensed projects in matters consistent with state interest, and Section 401 is in fact the vehicle by which to do that and so I think that is why it is important that you put together a really complete rule package, and I would support Professor Churchill in that I think you should simply put this whole package of stuff off for another month, rather than adopt some and then come back some time later, which I think that for some people who are not here today might get the notion that, basically, most of it is done with. When, in fact, I don't think it is.

Second, why I am concerned with Section 303 and the maximum allowable pollutant loadings - but I think that I am going to skip that because Dr. Smith went into that. My final concern is in fact the procedural issue. I have raised it with you before. You may recall at the time that it was in the context of the Oregon City Gargabe Burner facility, and I think that Commissioner ... or at least Mr. Burgess, was not very inclined to change the rules because of the feeling that we were only raising this issue to torpedo that facility. Well, that is all history now.

I have always been concerned with the much broader policy, not just this particular application. And I will just read briefly from some recycled testimony here that I submitted a couple years ago, to you, that we felt at the time, and we still do, that the Commission ought to change the rules, so that the language would read: "Any person adversely affected or aggrieved by the conditions or limitations of any permit issued by the Department may request a hearing by the Commission or authorized representative." And, this would address the issue that Professor Churchill raised, that not only the Developer have a chance to test the case hearing before you, but that an adversely affected or aggrieved person had the same procedural rights. I will just read briefly from some of the other testimony that I had submitted: "Where affected persons must now await administrative action before contributing to the process of judicial review with the closed record" - under our proposal, such persons could put all the facts before the Commission, thus increasing the likelihood of a complete and accurate decision in decreasing the need for judicial review and suggest the language which has the advantage of clarity derived from prior judicial constructions of identical language in the judicial review statute. ORS 183.410. We believe that experience with other agencies will not support the argument which has been put forward by the staff, that permits would often be delayed by contested case proceedings to decide that only permit applicants who have sufficiently important interest to

obtain contested case review, is to deny the significance of environmental impacts, which are the very reason for the Commission's existence. So, subsequent to that, I then gave your hearings officer, Linda Zucker, four pages of research on what other agencies in the state do with regard to some specific concerns that Chairman Richards had raised about - well -- if we changed that part of the statute, he wanted to know - do other agencies permit appeals by third parties - what is the meaning by person adversely affected - how can the Commission preserve its discretion as to whether to accept an appeal. Some other questions that the research reveals that was submitted, and my conclusion is that - to broaden the rule, allow adversely affected or aggrieved parties to appeal, and it would not unduly burden or delay the procedure of the Department, and yet open up a more, what I consider to be more fair, process. So I have some of the same subsequent concerns that Dr. Smith and Dr. Churchill have raised. And also this procedural concern. I think that since we have waited a long time for these rules you ought to just table the action today, entirely, reopen the hearing record and have this come back before you as a complete package again at another time.

??? What would you expect would happen in the next six weeks.

??? In another six weeks?

??? Yes, say we postponed it until the next Commission meeting.

??? Well, I think everyone involved - the staff, council, public would have another round at examining these rules as a package, and not piecemeal. I would like to go into them a little further. In fact, when the issue of maximum allowable pollutant loadings, Section 303, since Section 401 requires that you be in compliance with Section 303, I disagree with the staff that, in fact, they are implementing Section 303 correctly. It would allow further exploration of those issues.

Denecke: Mr. Sawyer, are there any applications for certification pending now?

Sawyer: Yes.

Denecke: How many?

Sawyer: Oh, a dozen, or more - that is approximate.

Denecke: Yes.

??? We have an appeal that we are going to hear _____ next meeting on one that was denied by the Department.

??? I think you can consider that every application we have not acted on now, is pending, because at some point in their processing, activity pertinent to the question would come up or the question will come up for certification, and at that time, when they have all their marbles on it, that they will submit it.

Chairman Other questions for Mr. Charles? Comments?

(?) I guess my concern is to what is going to happen in this next period of time. We have had an opportunity to be heard, and I am a little puzzled and not quite sure why these issues are - I don't know whether the contention is that they were not considered by the staff, or they did not have time to be considered by the staff, or they were not adequately reported to us by the staff - or why - procedurally why we find ourselves in this position right now.

Chairman: Any comments, Mr. Hansen?

Hansen: No, I find myself confused, too. Maybe Mr. Sawyer can some of that.

??????: I was the hearings officer. We did receive no specific

recommendations during the hearing, as we have received now. We interpreted their testimony as best we could, and made the changes we felt were appropriate. But, other than that, we did receive no specific recommendation that we have turned down.

Denecke: Mr. Chairman, I am uncertain about this, but I tilt to moving to postpone consideration of these rules until the next meeting. Some of these questions bother me, and I do not know enough about them to try to make a decision.

Buise; (?) I was quite persuaded by the testimonies of the three individuals and it seems to me this is an incredibly important issue. There is so much uncertainty at this point that I would feel much more comfortable if we should table it.

Chairman (?) Okay. Any other comments? Any other people that I have missed in the stack that need to talk to us this morning on this issue? Okay, I will entertain a motion.

?? Moved.

?? Seconded.

Chairman (?) It has been moved and seconded that we table this matter until the next Commission meeting. Call the roll.

Hansen: Certainly. Commissioners: Buist.

Buist: Aye.

Hansen: Denecke.

Denecke: Aye.

Hansen: Bishop.

Bishop: Aye.

Hansen: Brill.

Brill: Yes.

Hansen: Chairman Petersen.

Peterson: Yes, and I would like to add a request that on page 3 of rules, subsection 5, that the language be tightened up a little bit. I was concerned that, for example, or group of persons to request or petition for a public hearing with respect to certification application - if the Director determines that useful information - may be produced thereby, or if there is significant public interest. Those terms seemed quite vague to me. I would like for you to try to tighten those up a little bit, because they - and then obviously, in consideration of the suggestions that

were made here this morning.

Hansen: Absolutely.

Peterson: I think, if I might make one final comment on this - what I hear everybody saying is, I have never noticed, at least in my ~~ten years~~ tenure on the Commission, that the Department has been whimpy or reluctant in proposing rules to enforce the law. I think the reluctance, or what we see here, is a lack of clarification as to whose responsibility it is. Whether it is this Agency's responsibility, or some other. The federal law talks about the state. The federal law does not talk about the DEQ or Water Resources. Well, there are a lot of arms of the state that are involved in this issue and the Department and the Commission is sensitive to having duplicative regulations, if there are two agencies that are trying to do the same thing. We think that really confuses the public and compounds the regulatory problem. My understanding of the problem is that the Department has not been derelict or irresponsible. It is just that there have not been clear lines defined as to where this Department fits into the whole scheme - clearly, it fits in, and I would like the Department to consider that, and I do not know whether we are going to get any answers. We may just have to take an aggressive position with the advice of our counsel, if the statutory authority is there, and if after conferring with the other agencies that might be involved we determine they are not getting involved to

Hansen: Staff indicated that they would return before the Commission at their January meeting with a request for proposed adoption of amendments to the Cesspool/Seepage Pit rule. This is intended to be a public hearing at the end of which we would ask the Commission to take final action.

Petersen: We have numerous people who have asked to speak on this issue. So that we can give everybody an opportunity to be heard, I would like to ask, as I have in prior hearings on this particular subject, that you limit your testimony to no more than three minutes unless there is some really good reason. I would also like to ask that to the extent that the same arguments have been made by prior witnesses that you refrain from repeating the same arguments over and over again to the extent that you can. If you would just be sensitive to those two requirements or suggestions or requests, I think we can flow this along fairly smoothly. I would like to start by calling John Lange of the city of Portland.

Lange: I am John Lange. I am the administrator for the Bureau of Environmental Services in the city of Portland. My purpose in being here is two-fold. One is to transmit to you some informal opinions of the Portland City Council, who discussed this rule proposal in their meeting during a

public hearing Wednesday morning of this week. I'm here reporting at the request of Commissioner Bogle. The city council, in their informal discussion, generally supports the rule that is proposed. Most of the city council members voiced extreme concern about allowing discharge of pollutants to continue on an increasing level in this area that is under discussion through cesspools or seepage pits. Although they felt it was undesireable to do so, they do feel that it is necessary to allow that level of discharge that currently exists to continue, if it can be controlled without increasing for a short period of time, until we have the sewer installations underway so that connections can be made and the discharge level actually reduced. Consequently, the second reason I'm here is to suggest that there will be later testimony this morning recommending some modifications to the staff's proposed rule. Specifically, those modifications deal with the way it is to be administered, and when those modifications are submitted to you, I'll be glad to _____ any questions. Generally, the city supports them except for a specific number that will be mentioned. The city of Portland feels that conservatively, there may be 125 cesspools and seepage pits disconnected in 1985 in this area. We feel that any modifications to the rule should be limited to allowing no more than 125 new cesspools or seepage pits to be installed.

Consequently, you would maintain that same level of discharge that exists now, which I think was the intent of the rule as proposed by staff.

Petersen: Any questions for Mr. Lange? Thank you. Mr. William Schnell, Southwest 25th Street.

Schnell: I'm a builder in the east Multnomah County area. I developed a subdivision there about a year ago last fall, so this impacts directly on me. I've got a couple of lots left in it. I didn't get the cesspool permits before the first of the year, as I think a number of builders did in that area, and so I'm stuck with that situation, so I have an obvious personal interest in it. But beyond that, I think that to the extent that this Commission restricts building in what is already a highly restricted environment for doing business in the housing industry, we've responded to the LCDC and other rulings that have been laid down, and we are highly regulated by the county, that it's directly harmful to the public interest. The plan that was laid out by the LCDC a while back says that we have to have more housing in the area. There needs to be housing for people and yet here we are trying to do it, and we are interrupted by the various rulings and such that come along. This is the best environment that has existed for either building or

buying housing in quite a long time. The interest rates are reasonable now, there is a pent-up demand for housing that accumulated in the period when interest rates were entirely outrageous, so what the delay results in, among other things, is that people who might be able to buy houses if they are available now with the interest rates what they are will not be able to afford it later on, possibly for an unknown period until interests come down again if they go up as everybody figures they probably will. If we are going to restrict building in unsewered sections of the county, is there a possibility that some look should be given to increasing the density allowable in those sewered sections of the county so that the production of housing units can go on, provide places for people to live. The economic impact of this thing, which is going to be addressed I'm sure again and again, is fairly obvious. It puts people out of work in the building industry, those people who have been out of work and in and out of work for the last several years. It affects businesses in the entire area. We are going to end up pushing the development that we've sought after, with recent changes in our state tax rulings and attitudes in that respect, off to somewhere else again if we don't modify our attitudes as far as keeping the thing flowing onward. It seems to me that it is more or less the job of those people who run the government to keep this thing going

ahead, to avoid this stop and go, and interrupted confused aspects of it. That's really all I have to say.

Petersen: Mr. Schnell, are you aware that the temporary rule does not stop development; it merely says that in order for development to proceed with temporary sewage systems, there has to be a comparable number of sewage systems disconnected. So it really isn't stopping the builders. That's why we took the action we did in December, because there was a prohibition as of January 1. I hear you laughing out there, and I'm probably going to hear more about why this does stop development, but the intent of the Commission was not to stop development. The intent was to allow development but to not allow the water pollution problem to get worse, and so if there are more constructive ways to do that, unless it's your feeling that we should not be concerned with the water pollution, we should be more concerned with development, then of course that's a different matter. You see what I'm getting at.

Schnell: Certainly, I do and I think we need to be concerned with both issues.

Petersen: Okay.

Schnell: But, the proposals that I have heard suggest that there will be an absolute cap on the number of cesspool permits that are issued in the coming period and if you disconnect quite a number of units, is it not feasible to connect an equal number of units. Should there be a cap on it; should there be some sort of arbitrary cap that says we are only going to allow 125 hook ups, no matter if there are 300 disconnects from cesspools during that time and connections to sewers.

Petersen: Okay. I understand that. I understand your point there. You are not suggesting that the economics of the situation outweigh the environmental aspects of the situation.

Schnell: I'm suggesting that economics of the situation weigh equally because we have both areas to deal with.

Petersen: Okay.

Schnell: I have nothing further to say. Somebody else I'm sure has something to say.

Petersen: Thank you very much. Are there any questions for Mr. Schnell? Mr. Sitzman of the Land Conservation and Development Commission -- Department, excuse me.

Sitzman: My name is Jim Sitzman and I'm representing Jim Ross, the Director of the Department of Land Conservation and Development. I have circulated his written testimony. For brevity, I will not read the entire thing, but I will summarize it in a few statements. First, we do support your proposed amendment, which would limit the increase of disposal of wastes into the subsurface of the area effected. We do agree that the testimony that you have heard already is also important, that we should be cautious about doing this in a manner that has the least negative impact possible upon the development opportunities that we hope are going to be increasing in that area. In regard to this, we think that technically, as well as practically, there are a couple things that you might consider. One is that we find in your Land Use Consistency Statement the fact the Goals 10 on housing and 14 on urbanization have not been dealt with as extensively as perhaps they should be, certainly not as extensively as Goal 6 and 11 on water quality, and public facilities and sewer services had. We believe that if those findings were more complete that the potential impact on development would be more clearly identified in your finding and in your analysis, and that perhaps that would be a stimulus if the findings are what people are testifying would be true, there would be other opportunities generated by that for you to look at alternatives for increasing the

disconnects from cesspools and hook ups to sewer service in order to allow for more developments. It's in that arena that I think our Department is willing to work with your staff and with local governments in the area and the home builders to try to generate as many new hook ups to the existing service system as possible in order the expand upon that development opportunity. So we would request that perhaps as a later expansion of the findings for this action that a more thorough analysis of the impacts on housing and urbanization goals in the statewide planning program be done in order to provide for adequate consistency on that point. With that, I think if you have questions, either on what I've said or what you've seen on the written testimony, I'd be open to that.

Petersen: Questions? You understand that this is a temporary rule that at least in my mind was implemented to get us through this six-month period where we've the local jurisdictions to come back with answers to about 25 different questions on what they would propose to do to solve this overall problem. It was my view at that time that in July, or at our July meeting, that we would be looking at rules that would be long-term in terms of recognizing the need for this transition period between temporary systems and permanent systems, and obviously, we wouldn't be shutting off all

temporary systems at that time. Would it be your feeling that this study that you recommended with regard to Goals 10 and 14 and other review of suggestions that are going to be made should be implemented prior to that time, or do you think that that should be part of that final, hopefully final rule that we adopt in July of '85.

Sitzman: I suspect _____ both end answers is the best answer to that. I think some parts of it could be commenced prior to that time in order to generate as many of those additional opportunities for development as could be generated, but that it may not be completed and ought to be enlarged upon as part of the effort that goes on after July. So, I think it would be appropriate to look into them both ways.

Petersen: Okay. Thank you. I think that's it. Morey Smith.

Smith: My name is Morey Smith and I represent the Columbia group of the Sierra Club. The residents and businesses of many parts of the Mid-Multnomah County have been pumping raw sewage into the ground for many years now. There is little doubt that the aquifers that provides drinking water will eventually be badly polluted, if indeed, they are already not, if they are not already. I believe it is time to take positive action to prevent further damage to this valuable

resource. We strongly support all efforts to provide for the eventual installation of sewers throughout the area. The question for you today is how to minimize degradation of groundwater until such time that sewers can be installed. Given the clear superiority of seepage pits over cesspools, the Columbia group of the Sierra Club opposes further installation of cesspools in the Iverness, Columbia and Gresham sewage treatment plant basis. We believe that they should be specifically prohibited in OAR 340-71-335. We propose specific changes to this rule that would prohibit construction of cesspools but that continues to allow new seepage pits when an equivalent or greater sewage load into existent cesspool or seepage pit within the affected area has been eliminated by connection to a public sewage facility. Our proposed language would also require that Subsection 2b of the rule be administered in a manner so as to affect a net decrease in charges into the ground. The changes we have proposed are a positive step towards reducing the amount of sewage that will ultimately find its way into the groundwater. They're simple, realistic and will not greatly increase the financial burden on those wishing to build in the area. With these or similar changes, the Sierra Club supports the proposed amendments to OAR 340-71-335. The problem of mid-county groundwater pollution has been around for many years, and we are pleased

to see that action is being taken to correct it. We commend the Environmental Quality Commission for their efforts to address this problem. Thank you.

Petersen: Thank you. Are there questions? Pat Ritz of the Home Builders' Association of Metropolitan Portland.

Ritz: Mr. Chairman, I request that _____ address you hear at this time. _____

Petersen: Certainly, come on up. Be sure you identify yourself for the record.

Hales: Thank you Mr. Chairmen, members of the Commission. For the record, I am Charlie Hales, with the Home Builders' Association of Metropolitan Portland. We are here today to testify on the temporary rule and proposed permanent rule, and we have brought with us and will explain to the Commission our proposal for amending the proposed amendments. We understand that the Commission intended at its December 14 adoption of the temporary rule to allow development to continue in mid-county, pending the submission of the final plans from the jurisdictions involved and pending the declaration of the threat to drinking water. Unfortunately, as a practical matter, the temporary rule works as an outright moratorium, at least in

the short-run. The structure of the rule says basically that you get a new cesspool permit no. 1 when someone else gets abandonment permit no. 1. Abandonment permit no. 1 has net yet been issued this year, therefore, there are 106 applications for new cesspools to accompany building permits sitting on Mr. Whitfield's desk, awaiting that first disconnect. For those 106 applicants, and for all others until the first removal is accomplished, the temporary acts as an outright moratorium. That is why we are here today and that is what we hope that the Commission will repair in the adoption of the final rule.

Petersen: Okay, go ahead.

Cooley: My name is Dick Cooley. I manage a family-owned development real estate business that has been working primarily in Mid-Multnomah County for about 40 years. I was a member of the Multnomah County Planning Commission from 1981 through 1984, so I sympathize with the difficult and sometimes impossible decisions that you must make on a routine basis as citizen members of this Commission. It is my experience that you can only digest so much information and opinion in a forum such as this, and I am therefore focusing my remarks on a single argument, that is, that a policy which limits development in the unsewered portions of Multnomah County is

counterproductive to putting sewers in, which I will explain. There is, of course, an obvious advantage to prohibiting new cesspools. It prevents a further increase in the total number. The gesture is, however, largely symbolic. In the past few years, new development has contributed less than 1/4 of 1 percent annually to the inventory of cesspools in the county. On the other side of the ledger, since about 1975 a developer installing a new cesspool has been required to waive his rights to remonstrate against sewer improvements and agree to connect to sewers, when available. I believe that currently the rules also require that you put in dry lines and locate cesspools to accommodate future connection. These sewer commitments made over the past 10 years by new development are scattered throughout the county and provide a significant impetus for the construction of sewer lines and an important source of planned, uncontested connections. As an example, the Cherry Park interceptor will benefit greatly from the commitment of the Portland Adventist Medical Center to connect. In fact, the Adventist Medical Center put in 1/4 mile of the interceptor 10 years ago and has been waiting to connect. Another good example is Woodland Park Hospital, which is serving as magnet to sewer trunk in that area. The conversion of cesspools to sewers is a quarter of a billion dollar venture, the success of

which is going to be a function of a complex set of variables. I submit to you that new development is a very important component of the _____ realistic formulation of implementation. I would also add that new development increases the tax base on which financing for individual connection charges will be built. On the other hand, a moratorium against new development has just the opposite affect. It is likely to reduce the tax base, as it is clearly arguable that the value of a vacant piece of land subject to a moratorium is zero. Finally, and this is very important, I want to caution with respect to an intangible but very real by-product of a moratorium. The no-growth image. You may intend a policy that the affect which is only a short-term moratorium followed by planned reductions in cesspools, which is a policy which makes a lot of sense, but the development community is not that finely tuned. The typical developer will go elsewhere with his plans and his product and will be very slow in returning to a jurisdiction where he has had those kinds of problems. Not only the loss of the immediate development opportunity and the things that go along with that, but you may have lost the whole development community for an indefinite period of time. If I were on the Clark County Chamber of Commerce, I would be looking forward to putting up billboards all over the county that said go out to I-205, turn north, development permitted

in Clark County. And that's where the development will occur and will take root and flourish. I guess the point I'm trying to make is that the new cesspool -- prohibiting cesspools in the county will not help sewer the county, maybe it is, in fact, counterproductive. I realize this seems inconsistent to allow new cesspools while you are talking about all the damage being done by the existing ones, but it is not inconsistent to allow the new ones.

Ritz: I'm Pat Ritz and I am...

Petersen: Why don't you move the microphone over so that people in the back can hear Mr. Ritz. Thank you.

Ritz: I am the Multnomah County Chairman of the Home Builders' Association. I would like to address two issues. One is the economic impact of this ruling, but first I'd like to explain a little bit on the current typical method of selling a new house in East Multnomah County. Unlike other places, the typical method is one in which a potential home buyer is shown a model home or is shown plans of new houses and then is driven throughout the area that they are interested in living and they inspect various and sundry lots, and when they find one to their satisfaction, they like the trees, they like the location, then the contract is

drawn up to construct a house on that property. With the current situation with the way it is set up is where permits are contingent upon hook ups to sewer it will be nearly impossible for builder or realtor to judge the availability of a lot for development. It will be impossible for all potential buildable lots to have these permits, of course, because there are many thousands that are available that are out there and so even though at the end of 1985, even though there may very well be ultimately enough sewer hook ups to accommodate all of the building needs, I can assure you that it will cause tremendous disruption in the mid-county area and that probably what will be the scenario is there will be ultimately be less homes and less places developed than would be done based on market pressures. So that's why our proposal is -- which Charles will go into in a minute -- is to ask you for a certain number of permits to be available during 1985. Second issue is the gentlemen from LCDC questioned whether or not certain economic goals have been properly considered. I do agree with the Chairman that when you adopt and considered the temporary rule, you felt that you were doing something that was going to lessen the economic impact of the situation. However, it's obvious that 30 days into this that the reverse is occuring. Jujitsu has just acquired a piece of property out there and is building a large factory in which there are going to be

1,000 people employed. There is major land development around the airport and along the Columbia River, which ultimately is going to require housing availability to house the workers in those new developments. We got to have a balanced development and if people consider whether or not its true or not, if they think there is a moratorium in Mid-Multnomah County, this is going to be an argument that Vancouver, Washington, and Seattle and other places are going to use when they are competing against a site in Multnomah County. So there is, in our opinion, a tremendous potential economic impact. I'm not an expert on water quality, you people are and I know you are weighing very heavily the impact on water quality by allowing even a small number of additional cesspools, and you do have to weigh that, on the other hand, you need to weigh the economic issues and they are a grave concern not just to the home builders but to the economic well-being of all people in the Portland area.

Petersen: Mr. Ritz can you tell me what the current inventory of used housing on the market is in this area.

Ritz: I can't speak in specifics, but the mid-county, there are about 9,000 homes currently listed in the Portland metropolitan area, new and existing. However, I can say

this, that the number of housing units developed in '84 and projected to be developed in '85, relative to the size of the area, relative to the number of homes that are sold -- existing and new -- the ratio is extremely low. There were 4,000 and 4,300 homes built in the Tri-County area in 1984, and in the last 20 years, 8,000 is about the average, and in the late '70's it was 18,000. So we are not talking about a housing boom. We are more concerned about some of the psychological issues that will have direct relationship with the economic development with areas east of the river.

Bishop: I can't help but ask if there isn't psychological problems with water quality for drinking.

Ritz: I agree. Now that's in, as I said before, I'm not an expert on water quality. I have lived in other parts of the country and I have tasted some pretty poor water, and I enjoy the water that comes out of the tap in Portland, Oregon. I don't -- I guess my only question would be is if there is a threat to the drinking water, I know there's steps that can be taken that would contribute to the resolution to the problem. I don't see that there's been any kind of declaration in that area.

Carol, I believe the following speaker to be Hales.

Hales: Also, if I may respond to that question as well, we agree that one of the best, that the principal solution to the water quality problem is sewering and we want to see sewering proceed as fast as possible and as Dick mentioned, between systems development charges that each new homeowner pays, the dry sewer lines being construct in new subdivisions and the non-remonstrance agreement being signed by new residents, development only aids the cause of sewering and therefore, aids the cause of improving drinking water.

Bishop: I guess my problem is since I've been on the Commission this has been a problem. It was a problem before I came on the Commission. I don't want to get off -- I want this resolved before I'm off this Commission and I think the time is here.

???: I guess the point we're making is do you resolve it with this policy.

Bishop: I understand what you're saying.

Hales: We are in agreement that the problem has to be resolved and its complicated because we are dealing with three political entities, and as we have taken the time to try and resolve this problem and get people interested in the last three weeks, it's difficult when you have three entities you have to go talk to and try to get agreement, and if it was the intention of this board to focus on the issue, you certainly have achieved that goal. Home builders are, they are concerned about their well-being today and in 1985, particularly as someone else explained, with interest rates down and the economy more solid, we get windows every couple of years and its going to be a window this year. I know what we are requesting is only about 65 percent of the typical hook ups in the last 10 years. The demand may be greater than that but our proposal is, we are willing to compromise, even though it appears our compromise level is higher than city of Portland's.

Petersen: We're looking for solutions and I understand that you have one to propose to us.

Hales: If I may, Mr. Chairman, I'd like to explain the rule draft that I have provided to staff. In preface, we have worked over the last couple of weeks with the city of Portland's Environmental Service staff -- Lange, among others, the

Multnomah County staff involved -- and have consulted frequently with the Department's staff on the proposed rule draft. As we mentioned, though there is no agreement on all points, everyone has been involved in the drafting of this rule amendment proposal. First of all, as you'll see in the introductory statement, our proposed amendments to the amended rule are in yellow highlight. The existing temporary rule, proposed as a permanent rule, is typed in normal rule form and where we have proposed either deletions, we have bracketed as is the standard format, or additions, we have underlined them, but they are all of our proposed changes to the temporary rule are in yellow highlight. If I may walk the Commission through our draft and then get into it more precisely. Subsection A, on the first page, changing of the tense from <u>has been</u> to <u>is</u> will make more sense when you get to the next page, but the intent of it is to allow the Commission to project development rather than to wait for it to happen.

Petersen: I understand.

Hales: The second page, subsection B, deals specifically with the requirement for installing dry sewer lines in new subdivisions. As it was proposed in the temporary rule

draft, that requirement would have applied across the board. Developers like to construct dry sewer lines, as opposed to going back a couple of years later and ripping pretty new streets. Dry lines are being constructed -- have been constructed in some of the subdivisions built in the area already. However, I have not been able to get agreement between the county and DEQ staff as to whether the necessary engineering data exists so that every time the county can tell the developer the sewer trunk in front of your development will be X feet below the surface of the street at such and such a point. There is disagreement between the county and DEQ staff as to whether or not that data exists. So, our rule draft attempts to deal with that by saying that if the data exists, the dry line must be constructed. If the data are not available, the person who applies to build the subdivision may, as an alternative, post a cash bond or deposit, as is often done with other off-site or deferred improvements, for the cost of that. For example, they would post a bond perhaps with the county for the cost of the remaining sewer line down their own street and perhaps pave the street a half depth, an inch and a half of overlay instead of three inches, and also post a bond with the county for the remaining inch and a half, so once the work was finished, they could go back and cap the street and have it look like it was intended that way from the beginning.

But, again, we support the requirement that if it's feasible from an engineering standpoint and the data is there, not the data will be there in six months, but the data are there, the developer should be required to install dry lines. If the data are not there, the developer may post a cash bond or deposit with the county or the city, as the case may be for the cost of that later improvement.

Brill: ?? May I ask you something? Is that dry line from the house to the property line out in front? Is that what you're speaking of?

Hales: Generally, it's from the house to the middle of the street and thence onto the entrance to the subdivision at wherever the property of the subdivision is.

Brill:?? In other words, the problem arises in the fact that they don't know the elevation of the main trunk line in the street, so to speak.

Hales: Exactly.

Petersen: But they do know, will know the cost so that you can...

Hales: Oh, yes. They will be able to estimate the cost with a reasonable amount of precision because they know how long that and where roughly that pipe has to go, which is not sure exactly how -- at what level it's going to connect to the trunk line when it comes along in the street out front.

Petersen: But what if the projected sewer completion for that area is 15 years from now.

Hales: Presumably the interest earned by the county on the deposit would ....

Petersen: Offset the inflationary...

Hales: ...inflation and the cost of the improvements. Subsection C is the specific administration of the one-for-one formula that is now embodied in the rule. We propose here a number of changes that will solve the problem, we hope. First of all, the change from precluding any net increase to having the December 31 figure not significantly greater than the January 1 figure for the total discharge. That is the projection that by the end of the year, there will not be a significant increase in the amount of pollution caused by new development vis-a-vis the number of sewer connections from cesspools that have been made. Then, we propose that

200 permits, 200 equivalent dwelling units worth of permits, be granted up front to allow construction to proceed on the assumption that approximately, or nearly that many, are going to be needed by development. As I mentioned earlier, there are 106 permits now pending with the county in the first 25 days of 1985. Granted, some of those are probably generated out of fear, and we intend to ask the county to change the duration of those permits from one year to a short length of time so they will go back into circulation if they haven't been used. But, it's pretty clear to us that 125 permits is not going to get us through half the year, much less nearly the whole year, so therefore, 200 we think is pretty tight but will probably last through the summer. Remember that until 1983, we were running at a rate of about 300 cesspool permits per year in mid-county. We, in the last two years that some have used as a baseline, we've been at an historic low in the building industry. Given the market condition that was mentioned earlier and the demand for permits already, 125 simply is not enough and will quickly divert to a defacto moratorium. We also proposed in the last part of our highlighted amendment that if the sewering program proceeds at a faster clip than everyone thinks it will, if there are other major connections such as the Gateway shopping center or the Adventist Hospital ahead of schedule, if they do better than

they expect to do, and therefore, exceed 200 in connections to sewers, the cesspool allowance for new development be allowed to rise with that above 200. A guarantee of 200 followed by a lock-step increases in allowed cesspools, along with disconnection of cesspools above 200. I hope I have made that clear. It's a little complex for us all; maybe I can answer some questions and go into some more detail.

Petersen: I think you have made it very clear. I appreciate your efforts in positively suggesting some improvements. You used the word "significantly greater." Words like that bother me because I don't know what "significantly" means. It may mean one thing to the home builder and developer, and it may mean another thing to the county or the city. Could you help me in what you meant by "significantly?"

Hales: Well, let's assume that the Commission via this rule allows 200 permits up front and the very conservative estimates prove to be closer to the actual performance this year than what we expect, and there are 25 or 50 more cesspools installed in terms of equivalent dwelling units than removed. I regard 50 out of 50,000 as insignificant, 1/10 of 1 percent, in light of other benefits of continuing development that have been mentioned is, in our opinion,

worthwhile. And, remember too, the psychological problem of having such a small number of permits available. If the Commission were today to allow 125 permits to be available when there are 106 already demanded, there's not much change that the county is under a moratorium and that all the available permits for the year have been snapped up, because that would happen in a few more days. I think with 200 on the books, the industry could in some sense relax and assume that at the rate of development projected we will be able to make it until the permanent program for sewering the area has been outlined.

Bishop: I wondered of your reaction to Mr. Smith's comments of not having cesspools but only seepage pits -- making only seepage pits allowed.

Hales: I think Dick has had more...

Ritz:?? We've gone through this two years ago. The people I've talked -- I'm not a mechanical expert at all, but the people I've talked to understand that putting a septic tank in front of the cesspool, which is what a seepage pit is, simply prolongs the life of the cesspool, does not reduce the nitrates going down into the acquifer. It just lengthens the life of the cesspool, and in that sense, it is

a waste of money. It is especially a waste of money when you know or think you're going to have a sewer in five or ten years, so it's -- personally, if I was going to have to spend that money on a seepage pit, I would rather give it as a charitable contribution to some program that was going to get sewers, because it is just literally throwing the money away -- the $1000 or $1500 a clip.

Hales: And we're assuming -- the development community is assuming that given the sewer program that's going to be finalized this summer, that all such cesspool permits are temporary permits for some period less than 20 years.

Bishop: I hope so.

Denecke: ?? I would like to ask something. If, by chance, a cesspool is put in, three years later a sewer line comes along, is there any tax write-off, does anybody know about these things or not -- to an individual? It would be to a business, I'm sure.

Petersen: The tax write-off would only evolve, if at all, to the investor who is renting his property and depreciating his capital investment and then you could perhaps write it off.

The individual homeowner has no deduction for his capital investment.

Hales: We understand, peripheral to this issue somewhat, but I think is important in the long-run, we understand that both the county and the city are approaching the Legislative Assembly for enhanced bonding authority to further the sewer program. I intend to ask our board to support that legislation, because it is for a cause that we support, and that's another pending improvement in the picture by mid-summer that should be in place and allow the rate of connection of homes to sewers from cesspools to accelerate past the conservative levels that are estimated by the city.

Petersen: Mr. Denecke, did you have a question?

Denecke: Do you know how many connections to cesspools were abandoned last year.

Hales: I believe Bill Whitfield and Burke Raymond from Multnomah County are here, but I believe it was in the neighborhood of 30.

Petersen: ...25 she says. I think I had one more question on the number of 200 versus 125. That 200 number that you're

suggesting is an annual number, what would be your request if we are talking about a semi-annual number -- 100?

Hales: No, because it is pretty clear already that -- and its normal in the building cycle that when the window comes, to get your permits and at the beginning of the year you get your permits. In Oregon, one usually doesn't start a construction project in November. If they were all like this January that would be a little different.

Ritz: Could I make a comment on that? Historically, in the late '70's you were talking about 1,000 permits in that area. Then in '80 and '81, you're talking about 375 each year and now you're at 104. This is going to be a window year; everything is nicely laid out for that. Two hundred is not going to get you half through the year. We are hoping that with the 200 that it is a small enough number to be acceptable to you, but give us six months really, when you -- when the issue becomes hot again and we can begin to work all the edges we can to get removals, conversions and that sort of thing. Two hundred scares me, it really does.

Petersen: Any further questions? Thank you, gentlemen. We may have further questions later. I'd like to call Pat Gillis, State Representative, District 20.

Gillis: Thank you, Mr. Chairman and Commissioners. My name is Pat Gillis. I'm State Representative from District 20, whose boundaries of which are Northeast 122nd on the west, Northeast 202nd on the east, Sandy on the north and Division on the south, which is a large chunk of area that this issue certainly accompanies. During my campaigning, I had the opportunity, of course, to visit several residents of this area through the door-to-door campaign process. I learned several things, besides of course the property tax situation facing this state, the next concern I heard the most about was the whole concern over sewers and cesspool issue that is facing this Commission. I can report to you that the environmental concerns are very pertinent in the minds of the residents in East County, but I believe that that is balanced by two things: 1) that in the minds of the residents in East County, they have not been convinced that the there is substantial evidence of the groundwater threatening, that the cesspool and seepage tanks are now concerned with. Also, it is balanced too I believe by the concern over jobs and economic development in East County. So, I believe the key question is this -- what is the best course for the future of East County as we head toward the year 2000? I'm particularly concerned by the lower number of homeowners in the age ranges of 21 to 35. I canvassed in approximately 26 out of the 32 precincts in my district and

I was just stunned by the low number of homeowners in my age bracket, and it is indeed a greying area, and I think that if this action is taken, it will seriously threaten the job outlook and the economic development outlook in this area, and indeed, it could make for a depressed and abandoned area as we head towards to turn of the century. I think that it already has been reported that there is going to be in the Legislative Assembly this session legislation on the Bancroft Bonding issue and there will also be, I'm sure, support from other members in the East County delegation for that legislation. So, I would certainly encourage you to consider that issue -- deliberate this issue -- and I will be happy to answer any questions you have.

Petersen: Representative Gillis, is it your suggestion that we have no restriction whatsoever on additional cesspools in the area?

Gillis: Well, I think the evidence, at least the way I have read it so far, indicates that the trade-off from cesspool toward building permit, there is already, I believe, 38 building permits now on tap for East County, and there's been no withdrawal from cesspools. Folks in East County are not going to give up their cesspools when there is no guarantee that sewers are going to be implemented in East County for 12 to 20 years. That simply is not going to happen. Folks

again are concerned about the environmental concerns of this issue, but they are not guaranteed that there is substantial threat to the groundwater yet, and until they are assured of that guarantee, and until they are particularly assured that the costs of the sewers is not going to devastate their pocketbook, then they are not going to give up their cesspools.

Petersen: Thank you. Bill Whitfield, Multnomah County.

Whitfield: Bill Whitfield. I'm the Permit Manager for Multnomah County and serve as the contract agency for DEQ. My comments today are basically around the administration of the proposed rules and some of the problems that we may encounter. Some of these concerns will not be effective or be of concern if the home builder's proposal or parts of it are adopted, but as the rule stands now -- as the proposed rule stands, we have a concern about the connection to a public sewerage facility as being the only criteria for cesspool abandonment in trading off a cesspool abandonment for a new cesspool permit. We had 37 demolitions in Multnomah County. I can't be sure that all of those were in affected cesspool area, but in any rate, our concern is that, if a cesspool is abandoned, it ought to count as an opportunity for a new cesspool installation. Development that occurs as a result

of marginal installations, or marginal housing, ought to be allowed to go ahead so that, say marginal residences could be removed and a commercial development, if it is so zoned, could be constructed, providing the discharge from the new development does not exceed the discharge that is removed from the marginal housing. That, I think, will provide a better value or maintain the property value, so which is certainly conducive to sewer construction in the future. So, my suggestion that you just delete the words in 2(b)(a) "by connection to a public sewerage facility."

Brill: Mr. Whitfield, you said 2(b)(a)?

Whitfield: Yes.

Petersen: Page 3.

Whitfield: Our other concern is 2(b)(c) which is the requirement that cesspools be -- when they're installed as a replacement for failed cesspool be constructed between the residential unit or the building and the point of sewer connection in the future. Our concern here is that this is already more appropriately stated in OAR 340-71-335(4)(a). The other problem we have is that there is a legislative effort underway to provide Bancrofting loan opportunities on

private property for financing the effort that is necessary to turn the plumbing and provide the line out to the public right-of-way or the point where it connects to the sewer -- the future sewer. If the person locates their cesspool in some more costly location so that it can be connected to the sewer in the future, they will have eliminated the opportunity for Bancrofting at the time sewers are available, if I understand the way rule will come out of the Legislature. Secondly, we have difficulty in the day-to-day operation of determining the exact -- the best location for sewer connection to a sewer which has not been installed. Certainly, if we have a master plan that shows that the sewer is going to be located in the street and there is adequate room in the front yard, it makes very good sense to locate the cesspool in the front yard. But, the other problem we face is that the rule requires that a cesspool be located 10 feet from a building and 10 feet from a property line if the zoning for most of the property in which this condition will apply can be located with a 20 foot setback, making it so that it's impossible under other rules to locate a cesspool where it really ought to be, between the house and the point of connection on the sewer. I think the other thing related to that is that while there is a psychological implication that sewers are coming, and that's good, but there really is no savings to the individual to

locate their cesspool in what might be a more costly location because the work will have to be done at the time they connect to the sewer and the cost of that work does not differ greatly from doing part of it in advance of sewer and connection, and coming back and making physical connection to the sewer at a later date. And, the last item which is 2(c), we simply like to move the date of our reporting requirement from the 5th to the 15th. If the 1st falls on Saturday, it makes it a very short period of time for us to compile the figures and have them in...

Petersen: What was the reference on that again Mr. Whitfield.

Petersen: What...go ahead, I'm sorry.

Whitfield: I had the staff prepare a map and it basically outlines the sewer basin and the discussion that the Home Builders' representatives and I have had concerning the requirement for dry sewers to be located in advance of the sewers, or a master plan that would indicate to the Department how sewers ought to be constructed in a subdivision, relative to what is proposed in elevation and location of trunk lines, is one that concerns us because that we cannot always establish that sewer constructed in a subdivision or development can be located without adding unnecessary cost in the future in

the form of a pumping station or some other relocation of sewer or change in grade. This map which _____ you'll notice that green line -- yellow line represents the sewer basin and that the green line represents the area which separates the Central County Sewer System on the north. The Portland Basin, which will be certified across the road on the south, basically this area will align about here and to the south part of the basin. This area, according to my information, the city has no master plan on it. So, if a developer has a subdivision in this location, and they have really no information to go by to determine the engineering criteria from which to establish the sewer without a major design of the whole system. So, it would seem to me the rule should be revised so that...

Carol, the map being rolled up caused too much background noise.

... development approval in the event that we cannot determine with reasonable accuracy where that sewer should be located. That concludes my presentation.

Brill: Mr. Whitfield, at the beginning of your testimony you said something about your response to the Home Builders. I didn't get what you said.

Whitfield: Well, the Home Builders, in their testimony, were concerned with the dry sewer requirement.

Brill: What you just talked about now. Is that what you had in mind when you first...

Whitfield: The rule that I discussed originally about removing the words "connected to a public sewerage facility" may not have impact if the level that the Home Builders is proposing is adopted.

Brill: But, the rule reads now, I think it would have -- I think we would have _____ areas that we may not be able to serve, particularly if the rule extends past the July date.

Petersen: What if the Legislature does not accept the recommendations of the city to change the Bancroft bonding legislation to allow Bancrofting of hook ups. What if that didn't occur? Would that change your testimony or opinion with regard to the location of the new or repair cesspool vis-a-vis the subsequent sewer installation?

Whitfield: No, I don't think so. I think -- the rule is already adequately spelled out elsewhere in the rules that wherever possible we should locate replacement cesspool at a point

convenient to connection to the sewer, and certainly we ought to do that, but there are many conditions on which we can do that. Either we violate other rules or cesspool location, or just simply at extremely high cost for achieving that, and we can't be sure that we have the correct point in which to locate. This will be particularly true in steep terrain and so on. We might very well find that the location of the cesspool replacement has is not compatible with the sewer design and therefore, there will be additional plumbing costs related in rerouting the outfall to its proper location.

Petersen: And that you say is adequately covered or protected in your province, the permitting area. You are going to follow other DEQ rules that require that when possible, put it here, but you'd like to have the discretion in those unusual circumstances to not have to apply that. Okay. Thank you.

Whitfield: That's okay.

Petersen: Other questions for Mr. Whitfield. Thank you very much. George Perkins.

Perkins: My name is George Perkins and thank you for the opportunity to speak to you this morning. I'm an East County resident

and I heard about this temporary rule or moratorium after it happened after the first of the year. A lot has been discussed here today with development, economic impact to the county, for developers, etc., but very little has been said about the economic impact to the individual property owner. I own a piece of property that I have a mortgage on of an 80 percent loaned value. Taken into consideration of that is a buildable lot, with a value of approximately $15,000. My house is valued at 60, mortgage 48. This moratorium, I now owe more on my house than it's worth. I'm not the only one; there are several hundred. My father-in-law, who I am speaking for today also, lives on 157th in Mid-Multnomah County. He developed a piece of property to provide for his retirement in his 70's. He kept two lots for himself and sold the rest. Now, he has two lots that were worth probably $19,000 that are nice garden spots. That's what they'll be for somebody; nothing for his retirement. I think that this is something that you ought to consider. As public officials, you have a responsibility to tell the public what you are doing. You can send moratoriums, memorandums, whatever, around to various agencies, you tell the news media what you're, but everybody doesn't see it. I didn't and most don't, and I would urge you to let the public know what is going to happen. Most people think sewers are coming; they expect it and they're

willing to accept it if there is a threat to groundwater, but many people who had what they consider buildable land, that was an investment, that if they were just being used for future purposes, they didn't know that that was going to be turned into garden plots. You should really take that into consideration on any action that you take. I would urge that maybe a moratorium be delayed for at least two to five years, as we had testimony today that new cesspools going in is a fraction of what is already there and certainly isn't going to threaten groundwater anymore than it's already threatened, especially with sewers coming. A lot of people know what's happening so they can plan for it, and possibly take steps to remedy their personal situations. If possible, am I allowed to ask you any questions?

Petersen: Well, we're here to take your testimony and we're going to make a decision based on what we hear today.

Perkins: Okay. The only thing I wanted was -- is groundwater being used now; is there a water shortage; if it is being used now, if it's turned off, then are other possible uses for the groundwater in the future. In other words, is groundwater, can it only be used for drinking. As someone said, Jujitsu is coming in, large water user -- hopefully, to the industrial north Portland and Columbia basin area,

whichever, other factories, etc. will be coming in also. Would it be possible to divert the groundwater usage to industrial use. Lay water lines at a nominal cost compared to what it can cost the people of East Multnomah County now for that purpose, saving the Bull Run water for consumption use. Is that a possibility or is it anything anybody has considered?

Petersen: The basic issues that you just raised were exhaustively debated in an 8 1/2 hour public hearing at Parkrose High School in August. Considerable testimony was developed on that, and I think what I would like you to do is have you talk to Hal Sawyer of our Water Quality Division, who could probably provide whatever answers you need as far as the possible industrial uses of the groundwater and that kind of thing. We are not prepared to answer that today.

Perkins: Thank you very much. That's all I have to say.

Petersen: Thank you. Burke Raymond, Multnomah County. Mr. Raymond, you indicated on your sign up sheet that a copy of the resolution was attached. I don't believe that I've seen it, or if I have, I've misplaced it.

???? There was only one copy.

Raymond: This resolution was -- the thrust of the resolution was considered at the Multnomah County Board meeting yesterday, and you will notice that it's signed by the presiding officer, Commissioner Blumenauer, whose statement represents the substance of the County position in the past and what the Board of County Commissioners agreed to on Thursday, January 24. It has yet to be acted on formally by the Commission. It probably will be acted on next week. Basically, the Multnomah County Board is in support of increasing the number of cesspool permits by 125 based on our best estimates that at least 125 cesspools will be taken out of service in 1985. The Board is also concerned about the issue of the dry sewers that Mr. Whitfield talked about, and what we would urge is that the installation of dry sewers be done on a case-by-case basis. That when a developer comes in that the developer and the county staff meet with the DEQ staff and make a determination as to whether 1) dry sewers should be put in because it is a reasonable distance from an existing sewer line, or 2) that either cash deposit or bond be placed with the county to ensure the construction of the sewers at the time when it is practical to put sewers there, but I wanted to bring you a sense of the Board that they are in support and agree with the position of the Portland City Council.

Petersen: Which as I understand from Mr. Lange is in agreement with the proposal of the Home Builders, except for the number.

Raymond: That's correct.

Petersen: So you would agree with that.

Raymond: That's correct.

Petersen: Let's talk about the number for a minute because I have a feeling that going to be -- that we're going to focus on that. Can you help us understand better how you arrive at 125 and how they might arrive at 200, and how we might make some kind of determination one way or another on that.

Raymond: Well, we arrived at 125 by taking the number of cesspools that were disconnected last year, which is 25, and trying to run an estimate on what we think is going to hook up as a result of primarily of the construction of the new Sandy-102nd Avenue trunk and the biggest input there is the Woodpark Hospital will be connected sometime this summer, and that is about the equivalent of 80 cesspools, which gives a total of 105, and we put a factor on top of that to allow some amount of flex above what we estimated of 105 because there will be some additional connections along that

new sewer line. I believe the Home Builders felt that in addition to the ones that we had come up with that they were looking at additional connections along the Burnside line, east of 146th, which is in the Gresham Basin where its already operable, and additional connections along the new Sandy 102nd line. I don't know how they arrived at the specific figure of 200 but that's I think the rationale that they were using.

Petersen: And you people did not think there would be additional connections in those other areas.

Raymond: Well, we weren't totally confident that there would be, and then the second calculation that we used in coming to our conclusion was the number of new permits issued last year for construction in the area, which was approximately between 160 and 165 or maybe 170, but there was obviously a rush on new permits after the December 14th temporary rule was adopted, so there was about 70 new permits after December 14th. If you subtract those out you are back down to around 100.

Petersen: Okay, so you still feel that way even though we have 106 permits on the books right now -- or applications.

Raymond: I can't verify that 106 figure. The last time I looked it was about 40.

Petersen: Okay.

Raymond: So, I don't know.

Petersen: What about the argument that the Home Builders make that 1985 is going to be a better year for building than '84 because of lower interest rates -- this window argument that they make -- the timing of the whole thing.

Raymond: Well, that may have validity. I don't feel qualified to talk about their projections for new home building.

Petersen: Okay.

Raymond: Judy _____ tells me 106 is the latest count. That is either 1) better economic times and a great desire to build, or 2) an attempt to get your name on the list so that as they become available, your name pops up. I can't answer which it is.

Petersen: Would you agree with the concept that if more than 125 abandonments could be shown, that more permits (thnn) should be issued to equal the amount of abandonments.

4

Raymond: Absolutely. In fact, that's what we state in the resolution.

Petersen: Okay. How we do we -- help me with the mechanical process of how and when we learn about abandonments. As I understand the homeowner's problem, the problem with the temporary rules we adopted in December is obvious to me is that you don't -- it's kind of the cart before the horse type thing, and I'm sympathetic with that, but how do we determine the number of abandonments so that we could make that decision.

Raymond: Well, there is -- there are rules on the books that people have to fill in an abandoned cesspool, and they have to take out a permit to do that at the county. I'm not going to say 100 percent compliance with that, which would point out to the fact that there may be more abandonments than we get reports on because people don't want to pay the $600 or $700 to fill them up with sand that is required, but at least administratively, they come down and take out a permit. We keep track of those and we file reports with whoever requests them, and now in this case, DEQ and the EQC.

Petersen: And that's kind of an on-going process.

Raymond: Yes.

Petersen: Okay. Right now the number of abandonments in 1985?

Raymond: The number -- there's two different figures.

Petersen: Okay.

Raymond: There's the abandonments, which Mr. Whitfield talked about which were 37. These are structures which were torn down and abandoned.

Petersen: Demolitions.

Raymond: Then there were -- in addition to that, 25 where there were disconnects and connections to sewers.

Petersen: Okay. Right. Both county. Right. I understand that.

Buist: I have another question about numbers. It seems to me that the assumption is that the ~~influent~~ effluent from a cesspool from one house is equal to that from another house, and yet you quoted the number from which hospital -- Woodland Park Hospital -- is equal to about 80. How do you actually compute numbers? Is a multiple dwelling -- how many numbers go into a count for a multiple dwelling.

Raymond: I can't rattle all those numbers off. It's a formula which is established by the engineering profession. They calculate the number of gallons of water that a person will on the average will contribute to the sewer system and then you multiply that times the average household population as established by census information, which I think at this

point right now is about 3.4 or 3.5, and that gives you a household gallonage that on the average is going to be put into the sewer system. That establishes then the single family equivalency.

Petersen: That's the EDU.

Raymond: Yes, that's the EDU. Then they look at various other classifications of land use, let's say the case of hospitals, by actual measurement, as a profession nationwide, and they develop how many beds it takes on an average make it equal one house and that becomes kind of the standard information, and I assume it can be challenged and changed, but that becomes kind of the standard that is used throughout the country, and so then you end up with so many beds equals a house.

Buist: So, the one-for-one takes that into account?

Raymond: Yes.

Petersen: Commissioner Denecke

Denecke: Mr. Raymond, your 125 estimate, did that include estimated abandonments? By that I mean not connecting up with...

Raymond: No, I don't believe it did.

Denecke: I have no idea what the -- I don't think Mr. Whitfield testified what the -- whether you can forecast what it would be. Do you think 30 more abandonments in '85?

Raymond: I would say between 20 and 30 is about what we average with structures being torn down and not replaced.

Petersen: A year?

Raymond: Yes.

Petersen: I thought he said there were already 37 in '85?

Raymond: In '84.

Petersen: Thank you. Matt Hodge.

Carol, Matt Hodge apparently declined to testify at this time.

Petersen: Jean Orcut.

Orcut: On page 2 of Attachment A. Pardon? Jean Orcut, Gresham. On page 2 of Attachment A under 2B. This is a directive to governmental entities responsible for providing sewer

service to the seepage pit and cesspool areas with Multnomah and Clackamas Counties. Has Clackamas County, Troutdale and any other governmental entities in Multnomah County other than Portland, Gresham, and the Central County Service District, complied with both requirements in this directive.

Petersen: Did anybody catch that. Mrs. Orcut, I'm sorry. I...

Orcut: Okay. It's on page 2 of the attachment.

Petersen: Right, I've got that.

Orcut: And see that number 2 at the top?

Petersen: Right.

Orcut: Then under that 2 at the top the small little b. The directive there is to governmental entities responsible for providing sewer service to the seepage pit and cesspool areas in within Multnomah and Clackamas County.

Petersen: Right. I see that. "As set forth in the Metro master plan, shall not later than July 1..." am I reading the right place.

Orcut: That's right.

Petersen: "...submit to the Department the assessment of the feasibility of imposing user fees or area taxes on existing systems and appropriate exemptions from such fees and by July 1, 1984 submit to the Department detailed plans, scheduling priorities, phasing and financial mechanisms." Now, I'm with you.

Orcut: I wanted to know if Clackamas County and Troutdale, or any other governmental entities in Multnomah County, other than Portland, Gresham and the Central County Service District, have complied with both of these requirements in these directives.

Petersen: I don't know.

Orcut: Does any one here know?

Petersen: Mr. Sawyer, do you know? These are things that should have been done by '83 and '84, and she's wanting to know whether they were done.

Sawyer: The issue was it part addressed in the drinking water hearing in that Troutdale basically identified as not having cesspools and did not include with this. There are a few

cesspools that we are aware of remaining in Clackamas County along the Johnson Creek trunk. Plans are -- I don't know that we have the final plans yet, I'm not sure on that on how those eventually will be served, but no additional cesspool permits have been issued in Clackamas County since '82 or '83. They choose not to wish to go forward with any further cesspools in the interim, so we consider this requirement met and I think discussions on the details of the service to the areas currently served by cesspools in Clackamas County is an on-going (or out-going) because the institutional _____.

Orcut: Based on what the law says, they have to submit these things to you. Unless there has been some rule changes. They have not complied with this law. Troutdale still has cesspools. In fact, Senator Otto, then Representative Otto, the one that introduced the Seepage Bill, he has property along the Sandy River in Troutdale on cesspool.

Petersen: That may or may not be, Mrs. Orcut, I don't know.

Orcut: I know it to be a fact.

Petersen: The information was to be submitted to the Department and I understood Mr. Sawyer to say that it has been complied with.

Orcut: That isn't what I heard him to say.

Sawyer: To our knowledge, there are no cesspools on existing properties in Troutdale. There are no -- there have not been cesspool permits issued in Clackamas County, I would guess, since October of '82.

Petersen: What would the Department's position be if Mrs. Orcut found an active cesspool in Troutdale?

Sawyer: We would be trying to get it connected to a sewer system that is available.

Petersen: Okay.

Orcut: Okay. After this meeting, if I go to your staff and ask for this report that was supposed to be submitted by Clackamas County, by Troutdale, the one on January -- the one on July 1, 1983, and the other one on July 1, 1984, would you have them there for me to have -- to get -- obtain?

Petersen: Mr. Sawyer.

Sawyer: What we interpret as relative to July 1, 1983, Assessment Feasibility for Proposing User Fees and Area Taxes was an

extension of the seepage fee legislation that Multnomah County sponsored by the Legislature, we considered that requirement to be basically satisfied -- basically established a legal mechanism for feasibility of doing that. Relative to '84, I'm not aware of any plans submitted to us by Troutdale, and basically the assertion of Troutdale is that they have no cesspools, and there was no plan required to be submitted. That was submitted in a letter which was part of the drinking water testimony. We will have to verify exactly the status and findings.

Orcut: I believe Burke Raymond could address whether there is any cesspools in Troutdale.

Petersen: Well, I can't force Mr. Raymond to address anything, but I'm sure he would be happy to talk to you afterward, unless he wants to come forward and talk on that issue now.

Orcut: Well, he would know the answer.

Petersen: I understand what she is stating. I think it would be best, Mrs. Orcut, if you would go ahead and ~~in part~~ imagt to us what your concerns are and what your testimony and recommendations are rather than try and use this forum as an opportunity to cross-examine...

Orcut: Okay, what have I heard here..

Petersen: ...members of other jurisdictions _____

Orcut: From what I have heard here, it appears that these governmental entities did not comply, and that they should be notified and steps taken to ensure that they comply with the law, and I would like to know what is the penalty for not complying with Oregon Administrative Rules.

Petersen: There are numerous penalties. In this particular rule...

Orcut: What would be the penalty.

Petersen: I'm sorry I can't cite that to you. Is that readily available?

Hansen ??? For water quality violations, what's the minimum $50 in water, $50 to $10,000 per day violation.

Sawyer: Fifty to $10,000 per day for a violation, if in fact, there has been one.

Orcut: I would like for this researched, and if in fact there has been a violation, I would request that you require

performance from these non-complying governmental entities or assess them the penalty.

Petersen: Okay.

Orcut: Now, I would like to know -- Columbia Basin seems to have shown up and I was wondering -- I would like to when this came into existence. It does not appear to be in the 208 regional plan, and I was wondering how a Basin can be created that does not appear in the 208 regional plan.

Petersen: Mrs. Orcut, I can't these questions. We're here to consider proposed rules that have been proposed by staff and if you want to talk to our staff people, who hopefully have answers to your questions, you're welcome to do that.

Orcut: Well, I was hoping some of these key staff people are here..

Petersen: I would encourage... They are here.

Orcut: I was hoping they would be able to answer some of this.

Petersen: Would you like to make -- tell me what point you would like to make.

Orcut: I think I've already made my point very well. I feel that these governmental entities have not complied with the law, and earlier in this meeting, we talked about wimpy or reluctant performance of the law and this would to me appear to be one, or perhaps you yourselves don't believe that there is any threat to drinking water, is what I'm getting.

Petersen: We've already declared that we believe that there is, but I'd like to ask staff to address these questions and report to the Commission on whether that they believe that the law has been complied with and on what they base that belief.

Orcut: Then I would like to again state that I do not believe there is any threat to drinking water in East Multnomah County. This Commission can find that the threat to drinking water exists without actually testing the water according to the redefined state law in 1983. They don't have to test water. Dr. Shade, in his report, Dr. Shade is the Multnomah County Health Officer, and his report did not cite one single case of illness or disability caused from drinking water in the affected area. In an article that appeared in the Oregonian, Frank Ivancie, former Mayor of Portland, gave well water a good review. He said that the well water practically matches the quality of water from our Bull Run Mountain Reserve. Robert Willis, the project engineer for

the Portland wells, stated that although the aquifers are below the largest unsewered urban area in the United States, they are too deep to be contaminated by sewage. The well water comes from four separate underground streams called aquifers, flowing slowly through layers of gravel at depths of from 300 to 600 feet. Willis said that some of the water has been in the deepest aquifer an estimated 1700 years, as measured by carbon dating tests. The city of Portland has constructed 19 wells along the Columbia River and plans to construct an additional 14 wells east of the Portland International Airport by 1987. Portland would not construct 33 wells if groundwater was contaminated. Most of the drinking water supplied by water districts in Mid-Multnomah County is Bull Run water purchased from Portland. The Parkrose Water District is now connected to the Bull Run water supply. Their customers no longer receive water from the district's shallow wells. The Environmental Protection Agency in Portland stated that they have forwarded all results of water sampling in the so called affected area of Multnomah County to their regional office in Seattle because our drinking water is within the safe drinking water standards set by our federal government. If the Environmental Quality Commission finds a threat to drinking water exists in Mid-Multnomah County, then the most economical solution is to supply Bull Run water to the few remaining residents who now receive well water. Thank you.

Petersen: Thank you.

enforce the law - then, in my view, we clearly can - because water quality is one of our primary concerns.

Does that help?

Hansen: Absolutely. That certainly is my view, also.

Petersen: Thank you. The next item is Agenda Item "E" - which is a public hearing, and I understand there are a large number of people out in the waiting room. I am going to take a recess of ten minutes, at this time. One of the purposes of the recess will be to read additional information that has been submitted on this Agenda Item, as of today that we have not had a chance to review. We will reconvene in ten minutes.

Tape #3

Ford: My name is Dennis ~~Ford~~ Ward. I am speaking on behalf of Arlene Westenfelder, of Troutdale, Oregon, whose sole income is widow's benefits from social security. She owns a small one-bedroom, self built house on what is presently divided up as six lots. She has owned this property for 35 years and is trying to sell the property now to provide for her retirement, and also to escape an outrageous sewer estimate that was proposed last summer, of $25,000 for a sewer that would not even go to the lot that her house is built on.

According to a representative of 20/20 Properties, if this moratorium goes through, it will cost Mrs. Westenfelder at least half the value of her property, which she has been depending on for all of these years. There must be alternatives, or exceptions for these people who will be devastated by the effects of a building moratorium. After all, when they purchased their property, they were in compliance with the codes set by Multnomah County and should not be punished for this.

Peterson

~~????????:~~ Some of the questions that we have asked the local jurisdictions, Mr. Ford, to come back to us on by July, hopefully will answer some of these concerns. Primarily, the source of financing and the elimination or minimization of hardship, as much as possible, on the residents out there. We are concerned about that. You can pass that on to her.

Mr. Miller requested to speak, if John Lange from the City did. Does Mr. Miller still want to speak?

Mr. Miller: Yes.

Chairman: Okay.

Miller: My name is John Miller, 7136 S.E. Mall Street, 97206. I strongly support the sewers.

Mr. Lange has heard different things at that City Council meeting than what I heard. I have what is supposed to be a copy of a resolution put up by Mr. Bogle. It came up on the floor of the City Council. Mr. Bogle called Mr. Lange to testify. Mr. Lange did testify. I couldn't tell you exactly what he said, because he does not speak very loud - and it is a poor system they have there. The only two people who spoke were Mr. Lange and the man from the Home Builders Association. The man from the Home Builders Association gave the testimony almost like it was at the City Council. But Mr. Lange heard things there that I did not hear. And the meeting was run, I would say - kind of backwards, because after I testified, the only one I heard say anything was the Mayor who asked me if I opposed dumping the cesspools. I said, yes. And I was talking about a piece in the Sunday Oregonian about Environmental Protection Agency testing the air over the sewage plant in Philadelphia and finding it had just been transferred from the water to the air. Mrs. ~~Strong~~ Straehen interrupted me to say that Portland has a more modern sewage plant. I didn't argue with her, but I know that it was built right after World War II. It must be 45 years old, so it isn't very modern. But then, when I stopped, the Mayor was going to call for roll call. I said - what are you voting on? The clerk immediately piped up: Therefore be it resolved that the Council will hear the concerns of the Homebuilders Association at its regular scheduled meeting on Wednesday, January 23 and will discuss the issues at the time.

I couldn't believe my ears - this had already happened - and they voted to do it. I mentioned it to Mr. Lange, as he and I walked out together. I said: "They didn't vote anything." I said: "You better keep within the facts, now, when you get to that Environmental Quality meeting, because I am going to jump you. You talk about formal testimony. There was no formal testimony. The sewers - I took an active part in bull run. This reminds me of it some. Keep in mind - there are a few people who did not get re-elected to office who did not protect people's rights in the bull run. They are: Ivancie, is one; Robert Duncan, Representative, is one; there was a few people who did not get re-elected, and this putting a pipeline all the way to somewhere out in Multnomah County down to the Portland Sewage Disposal Plant - if what the EPA says is so - just transferring it from the water to the air and bringing this pollution into Portland. And these people say the water is not getting contaminated out there. I forgot to tell you why Park Rose went on bull run water, because their water got polluted, and there are various other places. I had a lot of propaganda handed to mailed to me from, I don't remember just where, about water quality and where they tested it and what they found in it. Where it was getting up to almost against the law to use it. They forget these things. And who here - how many people here are sick enough for the people to _____ the water.

Chairman: Mr. Miller, if I understand your testimony, you are in favor of sewers out there, am I correct?

Mr. Miller: Absolutely.

Chairman: Okay. Do you have anything specific to tell us. What are your comments with regards to this temporary rule that we are discussing today, as far as limiting the amount of additional cesspools that can go in without eliminating the amount of discharge that is going out to the public.

Mr. Miller: They should allow no cesspools. Just like it was out in Washington County. Out in Washington County, there was sewage running down the ditches, and these I presume - some finance companies and some big builders are out in Multnomah County. They put in a housing project out there, in Washington County, and they put in half enough sewage disposal.

Chairman: Okay. So your feeling is that there should be no new cesspools whatsoever, so therefore no new development whatsoever - until there are sewers there.

Miller: Yes.

Chairman: Okay, thank you. George Ward. George D. Ward & Assoc., consulting engineers.

Ward: Thank you, Mr. Chairman, members of the Commission. I am a consulting civil engineer today, and I essentially have an interest in the activities out there from an engineering point of view. Beyond that, I represent no property owners of no individuals with any vested interest, other than my own engineering interest. Possibly, an offer that might give this Commission and some of those property owners interim relief.

My firm is small. We do basically innovative alternative sewerage design. We have in the past found solutions to industrial sewage disposal requirements in that East County area. It has made possible jobs for several thousands of workers, five or ten industrial plants. So, we do know the problem; we feel we do know some of the solutions.

I think there are some alternatives that I would like to offer in your review of this particular temporary type ruling. One is that there be a consideration for interim solutions, if approved. And I stress "if approved". The way it is written now, it is an either/or decision. Either you do have the cesspool, or you don't. You must then have provision to connect to what is referred to as some form of a governmentally supplied sewage system, and that is good in a sense. But, I think we all realize that is a long ways away. I made a few, in some cases. I made a few notations on some individual recommendations of the rule change, and those have all been covered, so I will

not repeat them. In a sense, most of the testimony I have heard with very few exceptions, I support. So what I would like the Commission to think of is amending the rules to provide an interim type treatment or disposal or some manner that is approved by the health and all regulatory authorities, including political authorities, that would make it possible to not contaminate the ground water any further. I submit to that as a completely viable intent of the rules in which your board is reviewing today. But to put a total moratorium on - there are probably some interim solutions. For example: there are the possibilities that as a result of a meeting I was invited to yester, there is the initial interest and perhaps the formation of a Columbia Corp. or Utility type corporation that could fit between the eventual construction of municipal sewers in what is there now and provide solutions, possibly from private funding, to make it possible for an orderly funding and construction of the normal-type center sewers. Within the ruling of the federal government, there is an enormous thrust for the allowance, the research of and implementation of what they refer to as innovative and alternative sewage management systems.

In the broad sense, we are recommending that you consider the inclusion within the present rules, of some form of interim method of either sewage treatment or sewage disposal that meets all the health requirements that your present objective sets out to meet. I think the corporation thrust,

as started yesterday, can form. I came today to see if there was a serious need for it. I believe there is. I think politically it could fit in the funding mechanisms that are necessary and would have to move rather slowly, for the enormous engineering construction time delays it would take to build both a sewage treatment capacity, the collectors and the individual lines. Everything I say is not intended to slow that down one bit. I know of no suggestion to speed it up, other than putting in the rules provisions for perhaps interim systems. When I say interim systems, that includes an enormous variety of different techniques. Most of which I am referring to are approved by the federal government.

Chairman: Mr. Ward, on that subject, I don't think there is any question in my mind. I think that in the Commissions mind that we expect when final rules are adopted on this in the summer of '85 to have interim rules that will take into consideration the transition period that we are going to have, so that we can have orderly development without compounding the problem while we are getting the area sewered, if in fact that decision is made. So I believe that will be taken into consideration at that time. Any ideas that anybody has for funding and for how these rules might be put into place and what these rules should be would be very welcome, I am sure, by our staff as they go about the job proposing those. So that is going to happen, that it is impossible to have a situation where we shut

everything off until we have all the sewers out there. That just will not happen.

Mr. Ward: I think we all realize that. The interim rules, if one could say that the state recognizes the availability of interim systems, also including interim rules.

Chairman: Sure.

Ward: Rules are one thing. We are talking systems that could be implemented within the industrial site. For example the Columbia Corp. or development that is now being pushed by the proper authorities. There is not a piece of property there that could not be served by private funding and private enterprise with adequate sewage transmission or treatment, or both, right now.

Chairman: I find that encouraging, if that is the case.

Ward: That is why I am here.

Chairman: Yes. I think that any interim systems, or anything that helps us get to where we need to get to with the least amount of economic dislocation and the personal dislocation, the better.

Ward: I think the organization that we are gradually formulating its purpose that is not clearly defined yet, is to offer

your Commission and the property owners and the governmental entities in that area, and others for that matter, to make room for private enterprise. To move, move swiftly, move environmentally safely, meet all the health standards, but I think maybe government could step out of the way and let progress and let progress and the private enterprise move ahead faster. All other aspects of the rule are good. The intent, no one denies.

Chairman: Questions for Mr. Ward?

Thank you.

Does anyone from the staff have anything to add with respect to the suggestions that have been made today - comments that they might have?

Speak now or forever hold your peace.

Yes, sure, you may have one minute.

Pat Brown: My name is Pat Brown. I live at 1456 S.E. 138th Avenue in the area in question. I was not going to testify, but I just have a couple of comments to make.
For one thing, as far as the hospital goes. Few of the hospitals in our area are operating on full sensus, so you might take that into consideration when you start allowing so many cesspools to go in as a result of hospital going

on. In all of 1984, 25 cesspools went out of use; therefore it seems a little bit strange that the government people would like to start a program of deficit permitting and that they feel with the expansion of Woodland Park Hospital, that is presently under construction, that a number of new units would give them a reserve to work with. I do not see how they consider that. As a member of United Citizens in Action, I wanted to state that we do not feel that a threat to drinking water has been proven. Our position is that we are not against sewers, as long as you pursue the most economical solution to the problem and we will oppose the implementation of a ~~leakage~~ seepage fee.

Two comments: I don't feel that high density should be allowed while you are considering this ban. At one time the Neighborhood Association Centennial Community Group tried to get a limit on buildable lot size. They wanted it to be 7,005 sq. feet, or more. Multnomah County changed that and now it is 5,000 sq. feet for a buildable lot, which I don't think is sufficient. The lots that I have seen that have been built on that are of that size are small, they will not permit the use of more than one cesspool. There is no room to move the cesspool if something happens to the first cesspool. I think you should address lot size.

Another think that you might take into consideration is ~~flat~~ flag lot. The unsuspecting buyer, if you are allowing new cesspools to be installed, the buyer should be made aware

of the additional amount of money it is going to cost him to connect to a sewer. Some of those flag lots go way in off of the street, and that could be just an uncalled for amount of money for a person to come up with.

Thank you.

Chairman: Thank you. What is the wish of the Commission?

Buist: What are our options:

Chairman: Well, we have had some suggestions made. And the way I sift through all of it, there really is not that much disagreement. I asked staff if they had anything further to say, and in fact Mr. Sawyer who is sitting down near the side of the room leads me to believe he doesn't. You don't have to. I just thought that since the staff has not had an opportunity to testify today that you might want to add something if you think it is appropriate, but if you don't, that is fine.

Sawyer

~~?????~~: Perhaps I should make a couple of comments. One, something that we have discovered that we really need to also propose. And this on the fourth page of the draft rule. It is existing rule language, but we missed a section in trying to make that consistent in its intent and applications. We went through it, and there at the top of the page - #3 - the criteria for approval -- the "except as provided for"

in Section 2 of this rule - that referred to the old Section 2, and as it has been re-written, that whole exception needs to be deleted and simply "criteria for approval" and then on to A, B, C and D; otherwise, it sets things outside the frame for which it was intended. That was an oversight on our part.

Chairman: And that is it?

Sawyer
??????: Unless you have some questions.

Chairman: Does staff have an opinion about the number of permits to be put in the bank up front?

Sawyer
??????: We have tried to review with the jurisdictions just what is going on, just what is planned, what is in the mill that would back up - you know, provide a foundation for a number that there is some reasonable assurance would be achieved during the course of a year. And I think, really, John Lange could probably add more specifics to that in terms of the information that has been provided to us. A significant piece of that is the 85 equivalent dwelling unit load from Woodland Park Hospital that will be removed when that is connected to a sewer. Beyond that, the estimates appear conversative and within reach. One of the pieces of information that we have requested of the jurisdictions was how many existing structures or dwelling units are on cesspools but adjacent to sewers that at least

provide some opportunity for connections without relying on new construction projects.

The best estimate that we have come up with at this time in both central county district and the City of Portland would be in the range of 1,000 units, so that if action could be taken at the local level to accomplish connections from portion of those, it is clearly possible. Sewers will go to bid on the extension of a line of 122d Ave. this summer. My understanding is that the sewers are supposed to go to bid to construct collection systems in the Argay Terrace area in the area that was recently annexed to Portland that would get under way this summer. Most of those connections would perhaps be coming later. It at least appeared to us that 125 is a number that is within reason to achieve in the way of system abandonments through connection.

????: How do the local jurisdictions get these thousand people to hook up?

Sawyer

~~????~~: That is one of the issues that we have had nunmerous discussions with them for. Neither does Portland, to my knowledge, does not have an ordinance that requires people adjacent to the sewer to connect. They have been at least at this point - maybe I had better let them speak for themselves.

????: Multnomah County has recently enacted an ordinance that requires connection to the sewer. That ordinance goes into effect on July 1, and after notification or the property owners, they have six months to connect. That begins to address the issue. We would have been more comfortable with the effective date if that ordinance date had been sooner, rather than July 1.

Hansen: Mr. Chairman. Maybe just for the summary position of where I think that we as a Department are, for your consideration, is that the theory behind the adoption of the temporary rule on December 14 was the one for one trade off. What we are really saying is that there is an accounting process that really ought to be established to make sure that works. The best estimates we are hearing from the jurisdictions is 125. Whatever level that is, we think it should be one for one trade off. If it is to go above that, it seems to us that the pressure ought not to be to have this Commission allow for greater number of cesspools installed for discharge, but rather on the jurisdictions that in fact can take action to be able to get hook ups where there are in fact sewer lines and have that as the way to be able to provide for more room for additional development.

Our recommendation to you would be that the balance of one for one is what really should be there. That is 125 - that is what we are hearing - if it is higher than that or lower than that - that is a judgement that - you have the

information as we do.

Peterson
?????: Well, I am sympathetic to that, and that approach to forcing the situation.

Mr. Hales has some additional comments he would like to us about the number. I guess that if we have a situation where if we agree that 125 is not a cap but merely an initial target so that things can get going, and then if we also way that if there are 300, then that cap could go up to 300, then I guess, Mr. Hales, you would want to speak to that - why is that a problem?

Hales: Thank you, Mr. Chairman. That is a problem because we will get going for about two weeks and then shut down again, with 106 applications pending, that is, 19 short of the amount that is discussed. I want also to point out to the Commission that because of the speed with which this issue has developed, because of the unprecedented nature of it, one error of calculation occurred all along. And that is, with our discussions with the City Council and the Multnomah County Commission over the lst 10 days, we have been operating on the assumption that there are about 30 to 40 permits sitting in the building department awaiting; whereas, this morning it turns out that there are 106. We learned that figure as you did this morning, so the nature of the crisis is considerably greater than all of us, both with the Homebuilder's staff and your staff and

the local government staff in dealing with the issue have assumed. I believe that Mr. Lange and Mr. Raymond are correct from their point of view in very conservatively estimating the number of permits that they think will be generated by connections. As far as I understand it, and I think the testimony bears us out, they did not take abandonments into account in the 146 to 199th area was not taken into account - that part of the Gresham basin. So I do not think it is unreasonable to project a greater connection rate than 125. Please understand, also, that from our perspective, we are not here before the Commission trying to buy a rug. We are are not here with the 200 figure because we are hoping we can get something less than that and be able to get by. I think the 200 figure, in light of the historic level of activity in the county, and what we think we really need for development over the years - a compromise already.

Finally, regarding mandatory connections, it has been our assumption, and I believe it is the assumption of the jurisdictions involved, that that kind of requirement cannot come, and indeed will probably accompany a threat to drinking water, or that they cannot proceed on that issue without that direction from this Commission. So, in the short term the possibilities, as we understand it, mandatory connection requirements do not exist until after that order, if it is handed down, is produced.

Hansen: Mr. Chairman, you may want to, because of the issue of the 106 applications pending, is obviously a factor - you may want to ask Mr. Raymond and his staff to delineate whether that is all single family, whether there is one particularly large development, who the developers are, and what the realistic prospect is for that. They seem to jump rather dramatically here rather recently in terms of the numbers and have sense of what those numbers are and how realistic they really are. Because I think that against the 125 does make a difference in the issue. It is up to you.

Bishop
????: Also, I am concerned that we had, (supposedly) this rush to get permits between the middle of December and the end of December. Now, there is a number - whether it be 125 or 155 or 200 - how do we fairly treat the developers - how do we keep one developer who has 50 lots in the area from coming in and sucking up the majority of that. How do we address that problem?

Hales
????: I addressed that a little earlier, Mr. Chairman. We intend to ask the Board of Commissioners, if necessary, or the staff if it can be done at that level in Multnomah County, to adjust the length of time one of those permits is good for. They are now good for a year, and those at the end of '84 are gone. They are good til December (something), 1985, but the one's that will be issued, presuming that the Commission adopts this proposal, we plan to ask them to make them for a shorter duration so that some kind of

hoarding does not take place. It is pretty clear there are 106 people asking for permits that they think they are probably going to use this year. And remember that those ultimately carry a fairly substantial price tag. That 125 is not going to be enough. Also, it is my understanding that most of those 106 requests reflect individual requests. There is not one big project, though we have been contacted by a developer. Someone wants to build a retirement home near Portland Adventist Hospital that would use a substantial number of permits. It is my understanding that proposal is not included in the requests that are now pending before the county.

Chairman: Mr. Sawyer?

Sawyer: With regard to the duration of a permit, there is some information that you need to be aware of. Under the general on site rules - a rule in a different section provides that permits are good for one year from the date of issuance. If that were to be shortened, I think it would be our opinion that we would probably need to add some rule language, either to authorize the agent to issue them for a lesser period of time or to specify some lesser period of time for the cesspool permits.

We, frankly, expected some more testimony from the City, County or the jurisdictions on that issue.

Chairman: Okay.

Well, as is often the case, the only way we are going to get from point A to point B is to go through the rule as proposed and make suggested amendments as the Commision want to make.

Let's see, I am sympathetic with Mr. Whitfield's testimony on the subject of eliminating a language that would require discharge into a public sewer to evidence a reduction in the amount of cesspool discharge. He suggests that in paragraph ~~2BA (?)~~ (2)(b)(A) that that language "into public sewer" be eliminated.

Is there any comment on that?

Let's do it like we did with - what was the last one? - Recycling - where we went through it and got a consensus and debated it as we went through it. I think that is the best way to do that.

Hansen: Mr. Chairman. Do I hear you correctly, that you would put a period at the end of eliminated?

Chairman: Yes. Then in ~~2BC~~ (2)(b)(C) (?) where we talk about the requirement that we have that any new or repaired cesspool system shall between the structure and the location of the point. Mr. Whitfield's testimony was that other rules that we have

require the permitting agent to, when possible, do that. But the discression is there. I am very sympathetic with that. We have to maintain some flexibility, and I am confident that the permitting agency will follow that other rule; however, I would like to have that rule repeated if we could, in this particular instance.

????: Mr. Chairman.

Mr. Chairman: Yes.

????: If you could on that one - again, if you would turn to page 4 of the rules - under 4 Sub A(?). There is slightly more general language. His reference really was, and I think perhaps appropriately, with that slightly more general language, is sufficient.

Mr. Chairman: Okay. That is what he was referring to. I thought he was referring to other rules that we have that are not under consideration.

Okay, then I would just propose that we eliminate subparagraph C, then, for that reason.

Is that agreeable with everybody?

He also requests a change in the reporting date from the 5th to the 15th. I assume that is acceptable.

????: We can accept it.

Mr. Chairman: Alright.

He then got into the subject which is the Homeowner's rules which I want to get to, basically, about not having sufficient engineering data so that if we require the dry lines to be installed, they may be installed in either the wrong elevation or the wrong location. So, the alternative, if there is sufficient information available, i.e., master plan - then we get dry lines. I hope this will be an incentive for the jurisdictions to expedite their master planning, so that we can do that.

The alternative to that would be posting a bond, and I am

satisfied that is appropriate and that the interest rate earned on the fund would be enough to offset inflation should this actual cost not be incurred for 5 or 10 years down the road. I think that language is sufficient, and the Homebuilder's proposed amendment - let's get to that right now - why don't we?

I am referring now to their memorandum to us and their language that is outlined in yellow. They propose the addition of the word "further" up there in the preamble. That seems to me to be appropriate. They also propose the word "is" as apposed to "has been" to denote the perspective aspect of this - that seems to be appropriate.

Is that agreeable with everybody?

Then, the next change was in subparagraph E, and this is material I was just talking about, where the bond and that kind of thing, and I would support that change.

Is that agreeable?

Okay.

Now, we get down to the tougher issues. First of all, once again, I still don't like the word "significantly", and I would propose that we eliminate the word "significantly" because I really don't think that is the way we want to

go. I want to be more definite about that. Anybody disagree? Okay.

Now, the problem we are going to get into here is that if you look at the rest of this line in this subparagraph c, we have the number, obviously, to discuss and we also have repeated the concept of by connection to a public sewerage facility. We have already changed that earlier. Do you follow me, Harold? So that would be out by virtue of our prior discussion - that to a public sewer thing. And that gets us really to the question of the number. I would entertain comments on that right now from the Commission.

Buist: (?) It is very hard, I think, for me to know whether it is 125 or 200, and that is very difficult. I would go with the staff's recommendation which is 125. I have a feeling these permits have been applied for because of this proposed legislation, rather proposed rules. But I can be - if the staff wants to feel 200 is the way to go - 125 / 200 - I would feel more in favor of some sort of compromise. It seems to me that the number of 125 is built on certain estimates and the estimates may not be very accurate. So I guess I would go in favor of allowing a little leeway because I am suddently sympathetic to the please of the homebuilders and the please of the economy. So I would suddently be prepared to compromise.

????: Compromise to 200?

Buist: I would be prepared to compromise to 200.

????: I think I would be, too.

Buist: I think the basic principal is that we want to get on with the sewering. And we want a plan to put into effect which will bring that about. I am not sure - certainly, in my mind, this is not a very crucial issue, because it is just part of the plan to get where we are going. But I don't think that the difference between 125 and 200 is going to affect the water quality or the ground quality that much.

????: Well, I guess that I am more persuaded by the fact that I think that there probably will be more than 125 when you consider abandonments in addition to connections, especially with the county order that is going to be implemented, it will not be in '84, but will have 6 months from within that time and a certain number of those 1,000 units, when ordered to connect, really will do so. And, so I think that when you combine the abandonments and the sewer connections that 200 is a reasonable figure, and so in my mind 200 does not mean we are going to contribute to the problem. I guess that is what I am committed to. I do not want to commit any more to the problem that is already there.

Denecke: Mr. Chairman, I am strangely silent, because I do not have background, not having been able to get to the last meeting.

Chairman: Oh.

Denecke: But, I would - I am not sure from what was said - whether they contemplated the so called bank. I assume that was true. I would go with the bank.

Chairman: Well, really, all we are doing is - we are trying to provide an estimate of what data disconnect is going to be. We have already agreed that whatever ultimately occurs will be the fact. If it is 300, then we are going to allow up to that amount, so that the one for one concept, I think. All we are trying to do is just estimate, and I guess as a regulator, I would rather have the burden of that estimate on us, as opposed to the development community. I think also that will provide sufficient incentive for the jurisdictions to get those connections made as soon as they can, or encourage that they get made as soon as possible, using whatever efforts they have available to them.

????: Mr. Chairman. Am I understanding in looking at the number 200, you are viewing that as a reasonable estimate and would expect aggressive action by the jurisdictions to assure that number is in fact _____.

Chairman: Absolutely. If in fact there aren't 200, then I don't know what we are going to be looking at for interim rules for July, but we want to make it very clear that we are

expecting a one for one. We are just trying to figure out a mechanism to get there that is fair to everybody. If it isn't 200, if it is more like 135, and Mr. Hales' estimates were exaggerated, then we are going to expect a corresponding decrease down the line. So, it is kind of put your money where your estimates are, and we are prepared to let you have that opportunity, which is what you have asked for. I think that is reasonable.

Once again, keeping in mind the deletion of that 2A (?) public sewage facility_____in the Homeowner's rule.

There was one other item that Mr. Sawyer - and I don't know where this would go, Mr. Sawyer, but I would like to propose as part of this that the permitting agent be authorized to issue permits for periods shorter than 1 year to prevent inequities in the number of permits issued to a particular developer. That may not be the right language, but you know what I am trying to get at. You probably have something right there to suggest.

Denecke: Mr. Sawyer, before you answer - I am still bothered by this, and because I don't know the business, I don't see how this would help the situation. Because, supposedly they came in with this retirement home next week - there are 50 right there. In six months - that is fine, I will get this place going in six months. That squeezes out 50 private homes,

and I don't see how the shorter time for the permits solves the problem.

Hansen: It addresses it from the standpoint of banking. Somebody says: Well, maybe I thought about doing this and just to make sure I have the opportunity, I had better get a permit.

With no real possibility, so that it has to be given up. There is an economic cost to it, and what it means is that the person who is really ready to build -.....more likely rests speculation on that bank.

Chairman: We are not going to get into a black market of permitting here, where we have permits that are being sold back and forth amongst builders, and that kind of thing.

Hansen: We would certainly hope at that point that the pressure comes to be applied to the jurisdictions to get hook-ups to solve the problem, not to be able to merely play around with that bank.

I think you have made the record very clear - that is what you expect.

Chairman: Yes.

?????: It would take probably 90 to 100 days.....

?????: If a guy asks for a permit, he has to start within 90 to 120 days, This would be something that the Homebuilders would recommend.

Chairman: Yes.

????: I would just like to clarify one point there. 90 days is fine to start, but in the East-Mid County, Homeowners are very, very sketchy as to their loans. Sometimes it takes considerable time by the time you write the earnest and by the time you go find your loan for proof. I would like a clarification. Say, I would go out and buy a lot and 91 days later, my permit expires and my buyer just got it approved. I don't mind putting the cesspool in and them paying for it and having that done, but I would sure hate to lose that permit in 91 days and everything I put into it is down the drain.

Chairman: That is a good point. I don't think we are going to suggest a specific time period. I wouldn't think that would be our position.

????: We can add this quickly at the tail end, or at the back of page 4, a subsection 5 with the rule that would say: "not withstanding the permit duration specified in Section 340 79 160 sub 9, which is the other rule. A permit pursuant to this rule may be effective for a period of less

than 1 year from the date of issue, if specified by the agant." The agent could specify shorter duration than the one here.

Chairman: We are going to start drafting in Committee here, which is always dangerous, and maybe we out to get Mr. Huston involved in that. That seems to me could open the door for inconsistent application. Builder A comes in and he gets a permit that is good ..... but the opportunities for that are there. He comes in (Builder B ?) and he gets his permit for 120 days. Builder C gets his for 60 days. Maybe that is appropriate if we are going to leave it up to the discretion that maybe that is as far as we should go.

But, do you see that as a problem, Mr. Sawyer?

Sawyer: I don't know.

Chairman: The thing about the construction permits is the.....

The majority of the construction in this area is going to occur when the weather permits that. Right now, weather is pretty good. Providing the latitute for the agent to determine the period of time at which construction might begin, I think is reasonable. They could use whatever they think is reasonable when determining that length of time

- up to but not exceeding 1 year. They could pick anything, but generally they could consider the useable building period for that. That would, then, allow for that flexibility. One person might get 60 days to construct if you were applying in September to put in a system. The person applying in June might get a longer period of time because he has a longer period in which he can construct that cesspool.

Hansen: Mr. Chairman, I might also add that if in fact discrimination were to take place in some fashion, it would seem to me that would be appropriate for Multnomah County to take corrective action, relative to their agent.

Chairman: Okay. Everybody understand that suggested rule?

Okay, I will entertain a motion. Is there anything else anybody wants to.....

???: Mr. Chairman, you did have that language deletion.

Chairman: Thank you. Mr. Sawyer's language deletion.

????: It is on the top of page 4.

Chairman: Thank you.

Subparagraph 3: Criteria for approval of deleting the

preamble language and starting right out with subparagraph A - The permanent water table.

I would entertain a motion at this time.

Buist: I approve the Director's recommendation as amended, be approved.

????: Seconded.

Buist: Does that cover it?

Chairman: I think so.

Alright, it has been moved and seconded.

Call the roll.

Hansen: Yes.

Commissioners:

Buist.

Buist: Aye

Hansen: Denecke

Denecke: Aye.

Hansen: Bishop

Bishop: Aye.

Hansen: Brill

Brill: Aye

Hansen: Chairman Peterson

Peterson: Yes

Chairman: I would like to thank the citizens who testified, the home-builders, the county the city, for your constructive efforts, positive efforts in coming up with some solutions to a very difficult problem, and if we keep that approach in place, as we march down this very tough road with that problem, I predict we are going to get there with a lot less pain and suffering. Thank you.

Agenda Item G. Which is the proposed redesignation of the Medford, Ashland AQMA as attainment for Ozone and proposed revision of the state implementation plan.

Mr. Hansen.

Hansen: The Medford-Ashland area has been designated as been non-attainment for three air pollutants: ~~suspended~~ particulate, carbon monoxide and ozone. The Medford-Ashland area has been in compliance with the ozone standards since 1979, and has been expected to stay in compliance with the ozone standard in future years. This agenda item ~~closes~~ proposes to ~~a~~ re-designate the Medford-Ashland area as attainment for ozone. The Department did not receive any adverse comments ~~as of~~ at the December 4, 1984 public hearing.

Merlin Huff ~~(?)~~ Hough is here, and if you would like any questions answered.

Chairman: Are there questions?

Bishop: I would move the Director's recommendation be approved.

Buist: Second.

Chairman: Okay. Call the roll.

Hansen: Yes, Commissioner Buist.

Buist: Aye

Hansen: Denecke

Denecke: Aye

Hansen: Bishop

Bishop: Aye

Hansen: Brill

Brill: Aye

Hansen: Chairman, Peterson

Peterson: Yes.

Agenda Item H: Request for a variance from emission limits for a total reduced sulfur compounds from craft mill, recovery furnaces and lime kilns by International Paper Co. of Gardiner, Oregon.

Mr. Hansen.

Hansen: Yes. Recovery furnaces at this operation near Gardiner cannot maintain full time compliance with TRS (total reduced sulfur compounds) on emission regulations. This company has submitted acceptable compliance strategies and schedules and requested a variance from applicable TRS regulations until the problems are corrected in 1986. We have recommended approval to variance because the compliance program is acceptable and the environmental impacts would

be variable.

Mr. Skirvin is here from the Air Quality Division, if you have any questions.

Chairman: And, also David Eckelman from International Paper is here, if you have any questions for the company.

Are there questions for either Mr. Skirvin or Mr. Eckelman?

Denecke: I move it be approved.

Buist: I second it.

Chairman: Call the roll

Hansen: Commissioners:

Buist

Buist: Aye

Hansen: Denecke

Denecke: Aye

Hansen: Bishop

Bishop: Aye

Hansen: Brill

Brill: Aye

Hansen: Chairman Peterson

Peterson: Yes.

Agenda Item I: Status report - noise rule exemption for alcohol and nitro-methane from fuel drag race vehicles.

Mr. Hansen.

Hansen: Thank you. The noise control rules for motor racing exempt two categories of drag racing vehicles from its muffler requirements because it was determined that reasonable control of technology did not exist at the time of adoption. The rules require this exemption to be re-evaluated at this time. That is, approximately 4 years after their adoption. The staff now believes that muffler technology may be feasible for one category of these vehicles, and thus a rule amendment may be required. The other category for which muffler technology appears still not feasible should again be re-evaluated after a period of two more years.

We need a status report with three recommendations

Bishop: Aye

Hansen: Brill

Brill: Aye

Hansen: Chairman Peterson

Peterson: Yes.

Agenda Item I: Status report - noise rule exemption for alcohol and nitro-methane from fuel drag race vehicles.

Mr. Hansen.

Hansen: Thank you. The noise control rules for motor racing exempt two categories of drag racing vehicles from its muffler requirements because it was determined that reasonable control of technology did not exist at the time of adoption. The rules require this exemption to be re-evaluated at this time. That is, approximately 4 years after their adoption. The staff now believes that muffler technology may be feasible for one category of these vehicles, and thus a rule amendment may be required. The other category for which muffler technology appears still not feasible should again be re-evaluated after a period of two more years.

We need a status report with three recommendations

to be able to carry out those specifics. The director of our Noise Division is here, if you have any comments.

At least Tom is.

Chairman: Are there questions?

Bishop: I move the Director's recommendations be approved.

???: I second.

Chairman: Call the roll.

Hansen: Thank you.

Commissioners:

Buist

Buist: Aye

Hansen: Denecke

Denecke: Aye

Hansen: Bishop

Bishop: Aye

Hansen: Brill

Brill: Yes

Hansen: Chairman Peterson

Peterson: Yes.

Agenda Item J: Proposed adoption of amendment to hazardous waste rules to provide that only those liquid organic hazardous wastes which can be beneficially used be banned from landfilling after January 1, 1985.

Mr. Hansen:

Hansen: Thank you. The handling of the liquid organics at the Arlington hazardous waste disposal site is of critical concern to the Department due to the potential for contamination of ground and surface waters. As a result of this concern, the Department recommended, and the Commission adopted, a prohibition on land filling certain liquid organics as January 1 of this year. In evaluating the breadth of the current ban, the Department has concluded that certain liquid organics will be merely transported to landfills in other states, rather than beneficially used or incinerated. The Department believes that such a shift to other landfills is not a desirable environmental result,

due in part to the increased probability of transportation-related spills.

Therefore, the Director recommends the Commission adopt rule amendments to OAR of Chapter 340, Division 104, which would retain the present ban on landfilling ignitible liquid waste and grant the Department authority to ban from landfilling on a case by case basis other liquid hazardous waste which can be used beneficially, or where there is a more desirable disposal option available. This is a proposal that we work closely with associated Oregon industries, and other other affected parties. Mike Downs, Rich Reiter, Fred Bronfeld are all here, if you would like to ask any questions.

Chairman: This is kind of a repeat performance on this issue, isn't it? We discussed this before.

Hansen: Yes.

Chairman: We did it one way; we did it another way.

Hansen: Yes

Chairman: Any questions?

Bishop: As I recall, there was a question by Tom D_____ about the uncertainty that doing it on an individual basis

left some uncertainty as to how people would be taxed.

Hansen: Yes, and we addressed that in the proposed amendment before you. The concern of Mr. D_____may be here. The concern was - how, then, if one in fact made a judgement that a particular waste stream should not in fact not be landfilled, would all of a sudden there be a decree, and there would not be any process for due process for all alternatives found, evaluated and a chance of appeal. That has been addressed in the current rule.

We believe that has been addressed, and Mr. D_____ nods, yes.

Bishop: Good.

Buist: What about the question of: When is a liquid not liquid?

Hansen: We do have a definition, maybe Rich would like to comment on that. (Standard for free liquid)

??? Members of the Commission, Richard Reiter. There is a definition of free liquid in our current rules, and it is basically applying a paint filter test. If the waste will pass through a paint filter and at least 20% of the volume that you apply to the paint filter passes, then it would be subject to the rule. If less than 20% of the waste passes through a paper, then it would not be affected by

this rule.

Chairman: Okay. Any other questions?

Denecke: I move the adoption.

Buist: Second.

Chairman: Call the roll.

Hansen: Yes. Commissioners:

Buist

Buist: Aye

Hansen: Denecke

Denecke: Aye

Hansen: Bishop

Bishop: Aye

Hansen: Brill

Brill: Yes

Hansen: Chairman Peterson

Peterson: Yes.

I believe that concludes our agendas, and so we will adjourn the formal portion of the meeting and re-set for a luncheon session. Thank you.

ENVIRONMENTAL QUALITY COMMISSION

January 25, 1985

BREAKFAST AGENDA

1.	Review of Governor's Recommended Budget	Mike Downs Lydia Taylor
2.	Status Report on Legislation	Stan Biles
3.	Report on Department's Affirmative Action Plan	Sue Payseno

LUNCH AGENDA

1.	Agency questions on principles and procedures used in Commission review of agency enforcement actions.	Fred Hansen
2.	Status Report on Backyard Burning	Tom Bispham
3.	Future EQC Dates	Carol Splettstaszer

11/25/85
Broadcast
Mtg

DEPARTMENT OF ENVIRONMENTAL QUALITY

1985-87 GOVERNOR'S RECOMMENDED BUDGET

Air Quality Program	$11,498,504
Water Quality Program	7,577,742
Solid Waste Program	4,683,117
Agency Management Program	3,750,427
	$27,509,790

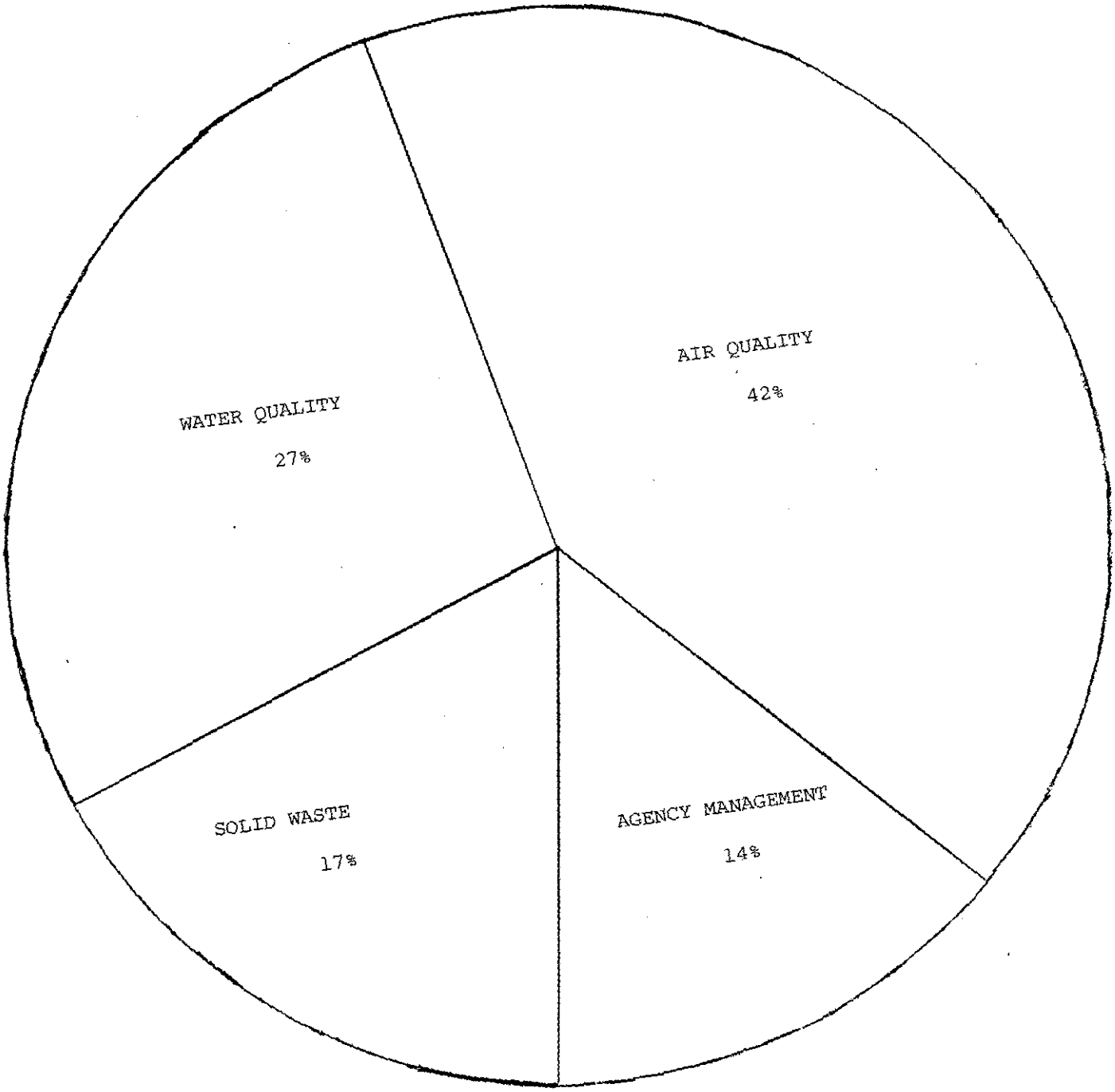
Total Number of Positions (Full Time Equivalent)	297.61

Bond Fund Debt Service	$34,788,193

Bond Fund Grants and Loans	$47,540,000

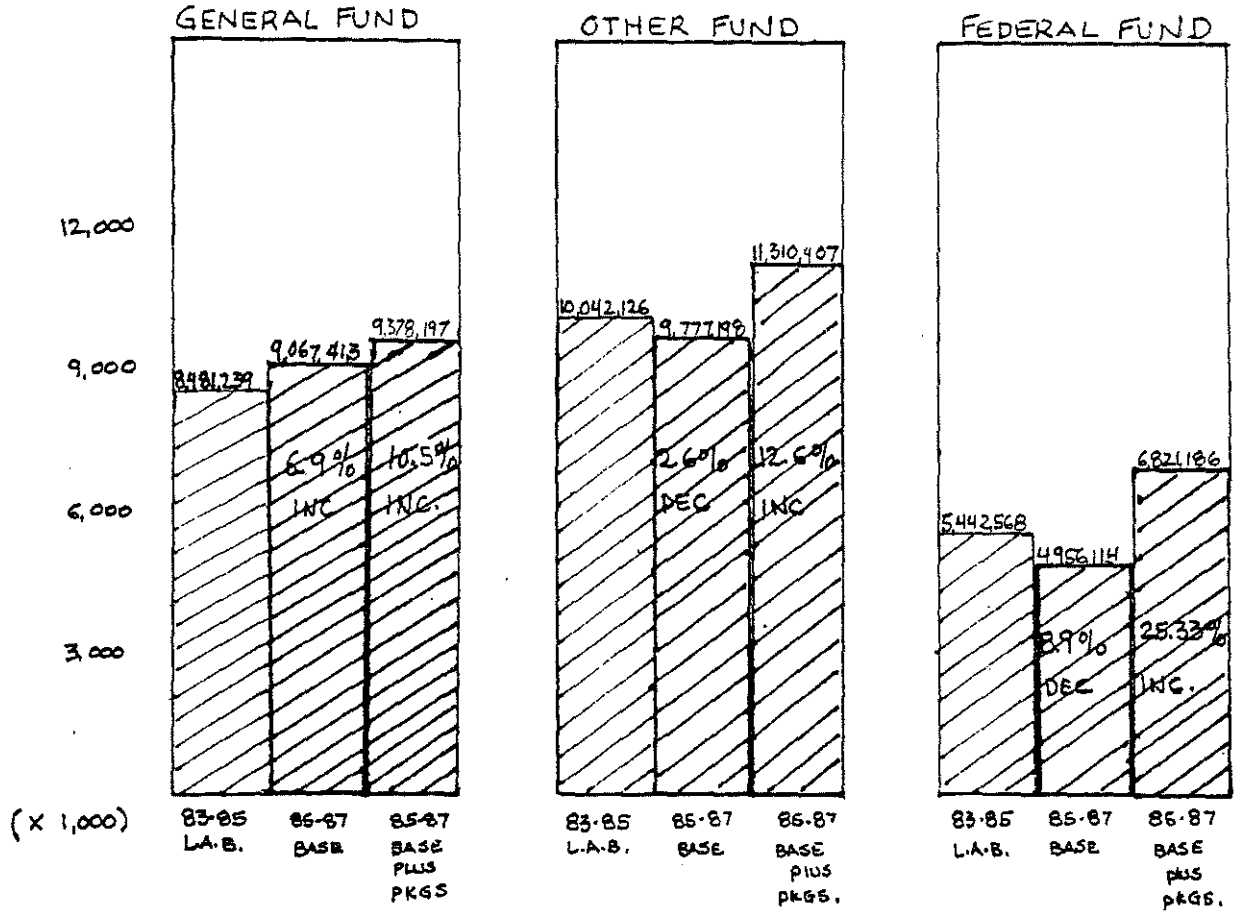
Department of Environmental Quality

1985-1987



COMPARISON BY FUND OF GOVENORS 1985-87

RECOMMENDED BUDGET OVER 1983-85 L.A.B.



AIR QUALITY PROGRAM

Base Budget	No. of Full-time and Part-time Positions	Amount of Full-time Equivalent	Budget Amount
Air Source Control	28	25.00	$ 2,144,134
Field Burning	9	6.25	1,575,313
Motor Vehicle Inspection	76	50.49	3,198,358
Noise Control	3	3.00	283,341
Air Administration/LRAPA	8	9.15	1,219,323
Air Planning/Monitoring	33	30.85	2,733,908
Subtotal for Base	157	124.74	$11,154,377
Decision Packages			
Continue EPA funding and replace 3 limited duration positions with permanent positions; provide a sufficient level of federal fund limitation to cover all activity now funded with EPA supplemental dollars, including some activity already in base budget.	3	3.00	$217,040
Automated lab sample tracking system (Air Quality's portion of cost).	--	--	$47,250
Increase monitoring of the extent and sources of visibility impairment within the State's Class I areas. (Lab)	1	.50	$41,837
If sufficient EPA funds are available increase federal funding to LRAPA.	--	--	$38,000
Total Budget	161	128.24	$11,498,504

Fund Breakdown

General Fund	$ 3,141,871
Other Fund	5,565,869
Federal Fund	2,790,764
	$11,498,504

WATER QUALITY PROGRAM

Base Budget	No. of Full-time and Part-time Positions	Amount of Full-time Equivalent	Budget Amount
Source Control	27	26.11	$ 2,352,615
Water Planning/Monitoring	22	20.95	1,752,991
Subsurface	15	14.90	1,153,224
Water Quality Administration	9	7.82	892,921
Subtotal for Base	73	69.78	$6,151,751
Decision Packages			
Evaluate groundwater conditions, develop pollution control and prevention program. Identify pollution sources.	4	3.01	$301,471
Provide chronic toxicity testing and evaluation of sediments for accumulated toxics.	1	.50	$30,628
Add Industrial Waste Engineer to draft permits, develop control requirements and compliance assurance, especially on high technology industry. Adds a chemist in the Lab for Quality Assurance activity.	2	2.00	$151,160
Update Willamette Basin wasteload management strategy, recalibrate existing computer model. Limited Duration positions.	4	4.00	$272,522
Automated lab sample tracking system (Water Quality's portion of cost).	--	--	$47,250
Assume Sewerage Construction Works Grant Program.	8	8.00	$622,960
Total Budget	92	87.29	$7,577,742

Fund Breakdown

General Fund	$3,075,413
Other Fund	1,626,181
Federal Fund	2,876,148
	$7,577,742

SOLID WASTE PROGRAM

Base Budget	No. of Full-time and Part-time Positions	Amount of Full-time Equivalent	Budget Amount
Solid Waste Management	16	18.75	$ 1,546,914
Hazardous Waste Management	13	13.91	1,161,124
Administration	4	4.03	427,962
Subtotal for Base	33	36.69	$3,136,000
Decision Packages			
Create permanent funding to allow state and local government to respond to major oil and hazardous material spills. (Requires legislation which has not yet received final go-ahead from the Governor.)	4	3.39	$989,951
Automated lab sample tracking system (Solid Waste's portion of cost).	--	--	$10,500
Increase number of hazardous waste generators to be inspected annually.	2	1.50	$143,836
Establish a computer-based Toxic Information Retrieval Center. (Final package not yet decided. Still under consideration, along with other State agency budgets, for final decision by the Governor.)	4	4.00	$402,830
Total Budget	43	45.58	$4,683,117

Fund Breakdown

General Fund	$1,869,440
Other Fund	1,849,197
Federal Fund	964,480
	$4,683,117

AGENCY MANAGEMENT PROGRAM

Base Budget	No. of Full-time and Part-time Positions	Amount of Full-time Equivalent	Budget Amount
Agency Management	30	30.00	$ 2,831,949
Central Data Processing	6	5.50	526,648
Subtotal for Base	36	35.50	$3,358,597
Decision Packages			
Increased funds to pay for major increases in telecommunication costs over the normal inflation amount.	--	--	$172,496
Add a position to coordinate efforts on environmental issues requiring cooperation between DEQ programs and other agencies. Do studies, investigations, research on interprogram issues.	1	1.00	$219,334
Total Budget	37	36.50	$3,750,427

Fund Breakdown

General Fund	$1,291,473
Other Fund	2,268,935
Federal Fund	190,019
	$3,750,427

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

MEMORANDUM

TO: Environmental Quality Commission DATE: January 25, 1985

FROM: Susan Payseno, Personnel Manager

SUBJECT: Affirmative Action Report

At the December, 1984 Commission meeting, Chairman Petersen requested an update of the Affirmative Action Program at the Department. DEQ currently has in place a plan and program; dated July 1, 1980. This plan was initiated in September, 1974 with revisions made in 1976, 1978, 1980 and 1983.

At this time, the Department of Environmental Quality reaffirms its commitment to the policy and practice of affirmative action and equal employment opportunity. The policy of the Department continues to be to take positive steps to assure current personnel practices are non-discriminatory and to remedy continuing effects of past discrimination. The policy of the Department, is, no individual will be discriminated against in recruitment, selection, promotion, transfer, training, compensation or disciplinary action because of race, color, religion, national origin, marital status, sex, age, or handicap. The Department, that is, the Director, Agency Administrators, and the management staff, have committed to achieving equal employment opportunity at all levels, and in all phases of the Department program structure. Women and minorities are encouraged to apply for any position for which they are qualified or qualifiable. Special efforts will be directed at the recruitment and selection process to assure that women and minorities are not restricted from certain employment and advancement opportunities from which tradition or arbitrary and discriminatory practice may have excluded them.

1983-85 GOALS AND PROGRESS (1983-85 BIENNIUM)

The primary 1983-85 biennium goal has been to achieve within the Department an improved minority workforce representation.

Minority Group[1]	6/30/81	6/30/82	6/30/83	6/30/84	12/31/84
Total Number	11.0	11.0	8.0	12.0	13.0
% of DEQ Workforce	4.02	3.35	3.0	3.9	5.07
Statewide Labor Force[2]	4.0	4.1	4.1	4.3	5.0

[1]This is the sum of White "Spanish Origin" and all races except White; the categories of minority groups are: Hispanic, Black, Asian, American Indian, Other Non-White.

[2]All those in the job market either employed and on the job or unemployed and actively seeking employment.

All definitions are derived from information of the Employment Division, Research and Statistics Unit, report "Data for 1984 Affirmative Action Programs - Oregon Statewide, Labor Market Information."

During the period from July 1, 1981 through June 30, 1982, the Department experienced 19 agency layoffs due to statewide cutbacks. At that time, hiring to fill permanent positions was virtually nonexistent. During the time from July 1, 1982 through June 30, 1983, 27 permanent positions were filled. However, 15 of these positions were filled either from agency layoff lists or agency promotion or transfer. The overall impact was a decrease in the minority representation in the DEQ workforce.

Today, however, it appears there is an increase in the total number of minorities in the Department and that an overall improvement has been made. At the onset of the biennium, July, 1983, 3.0 percent of the Department workforce was a member of a minority group; at midpoint in the biennium, July, 1984, that percentage has increased to 3.9 percent. By December of 1984, 5.07 percent of the Department workforce was from a minority group. With the projected vacancies, within the Department during the remainder of this biennium, indications are that the women and minority workforce representation will continue to increase. Recruitment and selection will be directed specifically to the women and minority workforce. This goal will continue to be monitored closely and evaluated prior to July, 1985.

The second 1983-85 biennium goal within the Department has been to improve the total number of females in the DEQ workforce in the Technician, Professional and Official/Administrator job category.

Job Category	83-85 Projection	6/30/84	12/31/84
Official/Administrator	1	1	2
Professional	1	2	5
Technician	3	1	1
Total	5	4	8

Well into the biennium, indications are DEQ efforts at achieving this goal have been met. A concerted effort will continue to be directed at the recruitment and selection of females in the Technician job category throughout the remaining months of the biennium.

MINORITY/WOMEN BUSINESS

During the 1983-85 biennium, the Department has entered into five personal service contracts with businesses owned by women. This number represents approximately 23 percent of all personal service contracts entered into during the 1983-85 biennium.

AFFIRMATIVE ACTION GOALS FOR 1985-87

The 1985-87 goals are intended to reflect the positive steps DEQ, as a Department, is continuing to take to achieve equal employment opportunity for women, minorities and the handicapped. Specifically they are:

1. To achieve within the Department an improved female, minority and handicapped workforce representation;

2. To ensure that all managers and staff are familiar with the Department policies relative to Equal Employment Opportunity and Affirmative Action;

3. To ensure that all managers receive continuing education on the subject of Equal Employment Opportunity and Affirmative Action;

4. To improve the representation of females in the Official/Administrator, Professional and Technician job categories; and

5. To provide promotional opportunities to all qualified employes in the Department when possible.

Steps are being taken to improve the representation of female, minority groups and handicapped individuals at DEQ. As each vacancy occurs a determination is currently being made as to which hiring procedure will be the most effective in achieving affirmative action goals. Open competitive recruitment relies on recruiters from within and outside the agency. The Personnel staff, DEQ managers, supervisors and agency employes provide one recruitment source. The Governor's Office, Affirmative Action Program, other agency Affirmative Action and Personnel Managers, and minority group leaders are utilized as a recruitment source. Newspapers, both general distribution and minority group publications, serve as a source to advertise vacancies. Other contacts include women and minority group organizations, colleges and universities. Further, existing personnel procedures are being monitored on a continuing basis to identify possible barriers for potential minority female or handicapped applicants.

SP:d
PLD754

DEQ STATISTICS AS OF 2/1/85

		White	Black	Asian	Hispanic	Handicap
Permanent, Full Time						
Male	161	157	1	4		
Female	70	67	1	1	1	2
TOTAL	231	224	2	5	1	2
Permanent, Part Time						
Male	6	5	1			
Female	7	4	2	1		1
TOTAL	13	9	3	1		1
Seasonal, Full Time						
Male	11	10			1	
Female	2	2				
TOTAL	13	12			1	

GRAND TOTAL = 257

Minorities

		DEQ	STATEWIDE	DIFFERENCE
Black	5	1.95%	1.4%	+ 0.55%
Asian	6	2.34%	1.3%	+ 1.04%
Hispanic	2	0.78%	2.5%	- 1.72%
TOTAL	13	5.07%		- 0.13%

PLC757

VIP STATISTICS AS OF 2/1/85

	Permanent Full Time	Seasonal Full Time	Black	Hispanic
VEI - Inspector				
Male	16	11	1	1
Female	3	2		
	32 total		1 (3.1%)	1 (3.1%)
Sr. VEI - Lead Inspector				
Male	5			
Female	1			
	6 total			
Management Service				
Male	4			
Other staff				
Male	6			
Female	1			

PLC757

DEQ HIRING SINCE 2/1/85

Minorities

Name	Division/ Program	Classification	Start Date
Tebeau, Gale (Black)	Mgt. Services	Mgt. Analyst	5/23/84
Yamasaki, Susan (Asian) (terminated)	Mgt. Services	Word Proc. Spec.	5/15/84
Sepulveda, Robert (Hispanic)	VIP - Air Quality	VEI	10/19/84
Harris, Carol (Black)	Director's Office	Cler. Spec.	12/6/84

Women at Salary Range (SR) 19 or above

Name	SR	Division/ Program	Classification	Start Date
New Appointments				
Taylor, Lydia	M26	Mgt. Services	Bus. Mgr. B	7/1/84
Brooks, Jo	19	OD/Pub. Affairs	Info. Rep. 2	8/6/84
Woods, Cheryll	21e	RO/SWR-Roseburg	Waste Mgt. Spec.	10/24/84
Blomenkamp, Joni	21e	RO/ER-Pendleton	Waste Mgt. Spec.	12/1/84
Young, Carolyn	M25	OD/Pub. Affairs	Excl. Info Rep C	1/25/85
Reclasses				
Rist, Gretchen	19	OD/Pub. Affairs	Info. Rep. 2	3/1/84
Harradine, Gail	20	MSD/Data Proc.	Programmer	3/1/84
Sims, Wendy	27	Air Quality	Sr. Envir. Engr.	4/11/84
Promotions				
Splettstaszer, C.	M19	Dir. Office	Mgt. Asst. C	4/1/84
Johndohl, Judy	22e	RO/NW Region	Envir. Analyst	6/18/84
Gillaspie, Janet	M29	RO/NW Region	Envir. Mgr. B	8/15/84

PLC756
1/24/85

DEQ STATISTICS AS OF 2/1/85

		White	Black	Asian	Hispanic	Handicap
Permanent, Full Time						
Male	161	157	1	4		
Female	70	67	1	1	1	2
TOTAL	231	224	2	5	1	2
Permanent, Part Time						
Male	6	5	1			
Female	7	4	2	1		1
TOTAL	13	9	3	1		1
Seasonal, Full Time						
Male	11	10			1	
Female	2	2				
TOTAL	13	12			1	

GRAND TOTAL = 257

Minorities

		DEQ	STATEWIDE	DIFFERENCE
Black	5	1.95%	1.4%	+ 0.55%
Asian	6	2.34%	1.3%	+ 1.04%
Hispanic	2	0.78%	2.5%	- 1.72%
TOTAL	13	5.07%		

PLC757

Petersen: We now come to the public forum portion of the meeting where--this is the time where citizens who want to address the Commission on items that aren't on the agenda should come forward. We do have one request from a Robert Forthan, but if I mispronounce your name I apologize, apparently works for the Department. Right over there is where you go, sir.

Forthan: What am I supposed to do? Just speak what's on my mind?

Petersen: Sure, just tell us what's on your mind and why you wanted to address us.

Forthan: Well, I've been with the Department with the Vehicle Inspection Division for about eight years and within those eight years I've probably seen, well, for employment, probably five minorities in eight years.

Petersen: Um.

Forthan: And three of those five--see there was two Mexicans when I first started and three blacks counting myself. That was the whole minority--one Chinese. The Department just doesn't hire minorities--uh with the Vehicle Inspection Division. And it does have an impact on the way we test cars. There is no way without equal representation that you can test cars fairly. I don't know if you've ever been to a test center. Have you?

Petersen: Yes.

Forthan: Have you ever had a disconnect or did you just breeze through, or--you probably have a newer car. It looks like you're well established like the rest of the group--there's no problem. I'm not smart at all, but I'm here. And I'm representing black people. Black people are here. We're going to stay here. Unfortunately, the State of Oregon does not represent black people or minorities. Vietnamese people. I can't see how they should be exempt from the test because no mater if their car's passing, because they're Vietnamese, they might not pass, because it's the discretion. It's up to the individual inspector. So far just all white people and they're the ones who say, "well he can't speak English, he got $25,000 just for coming over here." Oregon needs to do something with minorities.

Petersen: Let me ask you a question.

Forthan: Ok.

Petersen: When you test cars do you discriminate?

Forthan: Do I?

Petersen: Between a white man's car and a black man's car?

Forthan: Unfortunately, I do. I'm going to be honest. It's not computerized. The only thing I can do is--you've got so many white people fillin' out black people, indians, out for anything. I don't know if you know what a preheat tube is, but it's a matter of just hooking it up. It's up to the indiviual inspector's

discretion to hook it up. If he doesn't want to hook it up he can fail the person and send him back 45 minutes of a wait just to take a test to hook this thing that the inspector could've did. The reason why I say I do discriminate cuz it's my discretion too to hook it up or not. If I don't feel good I won't hook it up. Now this noise test we're getting ready to take. It's going to be a subjective test I believe. You're just going to listen. If you think the car is loud, you're--probably be acceptable.

Petersen: When you discriminate, do you--is it that you are tougher on a white man or easier on a black man?

Forthan: It's not being tough or easier. I wouldn't say that.

Petersen: I see.

Forthan: Color doesn't--it could be age. If a person too old I might fail them. It's up to the individual inspector's discretion.

Petersen: I see.

Forthan: And believe me I'm not the only one. I'm not the only one. It took eight years for me--I was a alcholholic 18 months ago. Why I stayed on--why they kept me I don't know. I hope I'm doing a good job. And I'm here to represent black people. I'm going to the Legislature too. Supposedly I've been invited by State Representative Ron Chase to tell them the same thing. Black people, minorities of all races, especially Vietnamese--I can't see--I don't know--you probably--you don't know me but I can show you some of my writings and you'd be embarassed. I have two years of college too, and you'd be embarassed at how

I write.

Petersen: Let me say this, I'd like to ask the Director if he would please report back to the Commission at our next breakfast meeting which is prior to our January meeting, and maybe ask Sue Payseno to give us a summary of our affirmative action program and also comments on other comments that this gentleman raised here today. I don't think--obviously you weren't prepared for that. I don't think it would be fair to you to ask you to respond right now, but I would like you to get back to us at our next meeting. Thank you very much.

Hansen: We will be.

Forthan: They said you guys do it fast. You do it fast. I appreciate--at least. Black people are here. Minorities are here. Vietnamese are here. Chinese. You name it. We're going to test cars or whatever else the State of Oregon's got to do, we're going to do it.

Petersen: I believe that. Thank you.

Forthan: Thank you.

Hansen: We'll back on the breakfast agenda, Mr. Chairman.

Petrsen: Any other items of public forum? I'll close the public forum.

TO: Environmental Quality Commission

FROM: Susan Payseno
Personnel Manager

SUBJECT: Robert Forthan's Concerns

Mr. Robert Forthan, an employee of the Air Quality Division's Vehicle Inspection Program, came before you at the Public Forum, EQC meeting on December 1984. The issues concerning Mr. Forthan are:

1. The Department doesn't hire minorities.
2. The Vehicle Inspection Program doesn't hire minorities.
3. He (Robert Forthan) "discriminates" between a white person's car and a black person's car because its his discretion.
4. He (Robert Forthan) isn't the only employee discriminating when testing a motor vehicle.

Ted Wacker, Vehicle Inspection Units supervisor, and I met with Robert Forthan to answer his questions and respond to his concerns. In answering, I reviewed at some length the agency Affirmative Action plan and the 1985-87 Affirmative Action goals and objectives. Specifically,

1. Reviewed transcript from December EQC meeting, defined issues.

2. Reviewed Affirmative Action plan referencing 85-87 budget document.

3. Reviewed State Employee Profile and Affirmative Action statistics.

4. Reviewed recruiting process for vacancies at DEQ.

5. Reviewed agency organization and communication.

6. Reviewed report to Commission.

Robert generally agreed with issues as presented. He strongly believes a 45% minority represention is acceptable. Recognizes efforts are being made to recruit minorities, however, disagrees with the basis of the statistics, in his words they are "quota discrimination".

In conclusion Robert stated this all stems from verbal instructions from Ted Wacker on underhood testing procedures. These instructions were given on July 28, 1984.

ROBERT L. FORTHAN

Hired March 17, 1975 - Administrative Assistant I - Air Quality Vehicle Inspector
Reclassed May 1, 1975 - Environmental Tech 1 - Vehicle Inspector
Reallocation January 1, 1983 - Vehicle Emission Inspector - as a result of ERB (Employee Relation Board) decision.

Completed trial service October 1, 1976.
On a A - D scale, got a "C" which means meets most requirements, but does need improvement in areas listed below. Written comment: "Dependable and cooperative; communicates well with the public. Needs further training as an Inspector 1 to upgrade skill and ability.

November 5, 1976 LWOP to September 19, 1977.

PERFORMANCE APPRAISALS

September 1, 1978 to September 1, 1979 1-5 scale 3 rating achieves performance requirements of position in a satisfactory manner. Comments: No problems. Relates well to the public, works well with supervisor. Progressed in knowledge of emission equipment disconnects.

September 1, 1979 to September 1, 1980 Performance Appraisal Scale 1-5 3 rating. Comments: Asset to creq at NW station. Knowledgeable, recognizes disconnects, cooperative, noted problem with uniform.

September 1, 1980 to September 1, 1981 Scale 1-5 3 rating. Comments: Satisfactory performance, no complaints.

September 1, 1982 Scale 1-3 2 rating. Comments: Conscientious in his work, testing vehicles fair and accurate.

September 1, 1983 Scale 1-3 2 rating. Comments: Capable, accurate in testing, professional demeanor. Works well in the lane.

September 1, 1984 Scale 1-3 1 rating. Comments: Satisfactory. Works well with co-workers and supervisor and is able to provide valuable information and job skills to new employees.

December 1, 1976 Filed a complaint with EEO Commission regarding layoff and impact on minority staff members. Received by DEQ August 19, 1977.

December 3, 1976 Filed a complaint with Bureau of Labor based on race and color. Had "C" performance appraisal.

April 1978 December 1, 1976 complaint dropped. EEOC unable to locate Mr. Forthan.

July 16, 1980 Discrimination complaint with Bureau of Labor and EEOC because of race/color. Different treatment; passed over for promotion to head inspector. Others appointed with less seniority. Also, supervisor warned Forthan three (3) times about uniform. July 15, 1980 sent home to change. Others had wrinkled uniforms.

June 22, 1981 Settled: Pre-Determination Settlement Agreement. $35.00, agree to inform in writing of next promotional opportunity; agree to inform in writing of all steps required in applying for promotional opportunity; will be considered for promotion if completes application.

July 28, 1984 Filed grievance regarding a dissatisfaction with VIP policy on disconnect. Ted Wacker responded in writing and with an all-day training session.

August 6, 1984 Grievance resolved.

October 3, 1984 Filed grievances with Executive Dept., Personnel Division.

October 29, 1984 Appointment with Robert Forthan regarding Affirmative Action and Equal Employment Opportunity. Discussed functional resumes, his desire to be spokesperson for minorities and Vietnamese applying for State of Oregon jobs.

December 5, 1984 Representative Cease contacts DEQ regarding Forthan's concerns.

January 22, 1985 Appointment with Robert Forthan regarding Affirmative Action and Equal Employment Opportunity.

SMP:ml
1/24/85

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Environmental Quality Commission DATE: November 29, 1984

FROM: Linda K. Zucker

SUBJECT: Principles and Procedures Used in Commission Review of Agency Enforcement Actions

To provide direction to its hearings officer, the Commission is asked to consider and comment on the following questions:

1. In reviewing enforcement actions for the Commission, should the hearings officer give any weight to the fact that the Department has undertaken an enforcement action, or should the burden of proof and case record control case results?

2. In reviewing penalty actions for the Commission, should the hearings officer exercise the Commission's prerogative to mitigate penalties? What test should the hearings officer apply?

a) Is the penalty appropriate under all the circumstances proved,
b) Is the penalty within an appropriate "range of discretion", or
c) Some other test?

On review:

a) Is the minimum penalty the amount to be assessed in the absence of aggravating or mitigating factors, or
b) Is the minimum penalty the base to which aggravating factors are added, or
c) Is the minimum penalty the base from which mitigating factors are subtracted, or
d) Is the penalty amount determined in some other way?

3. The Commission reviews Department enforcement actions on the evidentiary record created at hearing and will accept additional evidence only under predetermined limited circumstances. Will the Commission consider only those legal defenses raised at the hearing level, or will it consider new theories for liability and nonliability raised for the first time on review to the Commission?

4. On Commission review of the hearings officer's decision, what weight will the Commission give to the hearings officer's findings of credibility?

5. The Commission has decided that under ORS 468.300 lack of negligence is not a defense to violation of agency statute or rule. Does the Commission believe a litigant can successfully defend against a Department penalty assessment either under a theory of estoppel or under a theory that the litigant obtained a permit by operation of law?

HM52.2

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Environmental Quality Commission DATE: November 30, 1984

FROM: Sean O'Connell

SUBJECT: Principles and Procedures Used in Commission Review of Agency Enforcement Actions.

To provide direction to its Hearings Officer, the Commission is asked to consider and comment on the following questions:

1. If the minimum penalty is assessed, should the Hearings Officer have any authority to reduce it even below this minimum amount?

2. Does the Commission expect the Hearings Officer to substitute her judgment for the Department's, even given the same factual situation?

3. If the Hearings Officer elects to reduce a penalty should the basis for the reduction (and degree) be clearly spelled out? Should this justification address the financial benefit the grower could have gained as a result of the infraction?

4. Should the "estoppel" argument be removed from any application to field burning cases (involving grower claims of permit agent transgressions) until a legal opinion on the matter can be obtained?

5. Should the Department consider enforcement action against permit agents for rule violations?

AS834

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

File with EQC Reports for January 85

MEMORANDUM

To: Environmental Quality Commission

From: John Kowalczyk, Judy Johndohl, Bill Bree

Subject: Lunch Agenda, January 25, 1985 EQC Meeting
Fall '84 Portland Area Backyard Burning Review

The October 1 to December 15, 1984 fall backyard burning period in the Portland area was the first covered by the ban adopted by the EQC on May 8, 1984. Prior to the ban, about 85,000 households burned a total of about 85,000 cubic yards of yard debris per year in their backyard. The smoke from this practice contributed to violations of federal Total Suspended Particulate Air Quality Standards, and caused significant nuisance to neighbors. The fall '84 burning ban season went smoothly with extremely good compliance, few complaints and no air quality standard violations on burning days.

Hardship Permits

During the fall of '84, 1,482 hardship burning permit applications were sent out. Included with these applications were hardship criteria and information on alternatives to burning. Only 417 completed applications were returned to DEQ for processing. Of these, 329 applicants were granted and utilized hardship burning permits for the '84 fall season, 57 applicants are being considered for permit in 1985, and 31 applicants were not issued hardship permits because of insufficient information, or justification, or other reasons.

Enforcement

Enforcement of the fall '84 backyard burning ban season in the Portland metropolitan area was actively pursued by the Department and was carried out by three means: use of a 24-hour code-a-phone complaint line, seven day per week surveillance and fire department enforcement referrals. Enforcement was set up to respond to all complaints in a timely manner; the use of a 24-hour code-a-phone complaint line allows the Department to provide appropriate field response during the weekdays and the weekends.

During the fall 1984 burning season, the Department received 41 complaints on residential backyard burning within the Portland Metro burn ban area. The Department responds to these complaints through field investigation. Phone calls are also made when complaints are received on individuals with hardship permits. When the Department was not able to contact an individual through a field investigation, a letter was sent to that individual notifying them of the complaint received.

The following is a breakdown of complaints received and follow-up action taken:

33 complaints on individuals without hardship permits -

- 12 Notice of Violations sent
- 1 Civil penalty action pending
- 8 Open burning information letters sent (letter sent when complaint is denied and there is no evidence for enforcement)
- 2 Open burning general informational letters sent (letter sent when no contact is made with an individual)
- 10 Invalid complaints (e.g., wrong address, no evidence)

8 complaints on individuals with hardship permits -

- 7 Complaints followed up by advising individual that permit conditions do not allow nuisances to be created and restrict certain materials from being burned and that permit can be revoked - no letters sent
- 1 Notice of Violation sent

Air Quality Impacts

Ventilating during the fall '84 burn ban period was similar to previous years. Thirty-five burn days were allowed. Considering that six days during the period were prohibited by rainy conditions, a new burn day decision criteria, the number of burn days compares favorably with the fall of 1981, 1982, 1983 when 45, 41, and 36 burn days were allowed respecively. No violations of air quality standards were recorded on burn days. One violation day did occur on December 8, 1984 which was not a burn day.

Yard Debris Disposal Activities

In 1983, about 115,000 cubic yards of yards debris were collected at four recycling sites. This was generated by over 39,000 public deliveries. In 1984, those figures increased. There were 46,000 site deliveries and over 140,000 cubic yards of material delivered to two recycling sites.

In 1983, very little of the material received by the two major processors was actually recycled. Both firms were actively developing their processing systems. By 1984, both companies were able to process yard debris into a product which they sold. The processors report that 60,000 cubic yards, or the equivalent of 40% of the material received, were recycled in 1984. They claim that their processing equipment has a capacity of many times this number and they are optimistic about the markets for the products of this recycling.

There continues to be an interest in setting up either satellite collection yards for the major processors or independent small scale processing yards. The small scale processing yards have not proven to be successful in the past. However, the satellite receiving yards could be successful if they are operated in conjunction with some other business activity related to yard care, like bark dust sales.

Collection systems for yard debris recycling are slowly developing in the metropolitan area. Both the local governments and the traditional collection industry are designing or testing collection systems in area cities, notably, West Linn and Lake Oswego. The City of Portland has suffered some set back by failure of the City Council to authorize needed funds for neighborhood cleanups. Cities which have had collection systems for several years continue to provide that service. Clearly, the public demand for either collection service of neighborhood clean-up drop off locations for yard debris has increased since the burning restrictions were imposed and will continue to increase. Costs to the public for the disposal through recyclers is averaging about one-half the costs associated with landfill disposal.

J.KOWALCZYK:a
229-6459
January 23, 1985
AA4767

1985 EQC MEETING DATES

NOTE: Dates have already been approved through July. Dates for September, October and November are proposed.

1985

JANUARY

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	(25)	26
27	28	29	30	31		

FEBRUARY

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

MARCH

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	(8)	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

APRIL

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	(19)	20
21	22	23	24	25	26	27
28	29	30				

MAY

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

JUNE

S	M	T	W	T	F	S
						1
2	3	4	5	6	(7)	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

JULY

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	(19)	20
21	22	23	24	25	26	27
28	29	30	31			

AUGUST

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

SEPTEMBER

S	M	T	W	T	F	S
1	2	3	4	5	(6)	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

OCTOBER

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	(18)	19
20	21	22	23	24	25	26
27	28	29	30	31		

NOVEMBER

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	(22)	23
24	25	26	27	28	29	30

DECEMBER

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

HOLIDAYS:
May 27, Memorial Day
July 4, Independence Day
September 2, Labor Day
November 11, Veteran's Day
November 28, Thanksgiving Day
December 25, Christmas Day

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. B, January 25, 1985, EQC Meeting

November 1984 Program Activity Report

Discussion

Attached is the November 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

November 1984

Table of Contents

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans Pending
	Month	FY	Month	FY	Month	FY	
Air							
Direct Sources	8	40	6	29	0	0	38
Small Gasoline Storage Tanks Vapor Controls	-	-	-	-	-	-	-
Total	8	40	6	29	0	0	38
Water							
Municipal	7	76	4	71	0	3	16
Industrial	0	39	5	37	0	0	15
Total	7	115	9	108	0	3	31
Solid Waste							
Gen. Refuse	-	16	1	15	-	-	10
Demolition	-	-	-	-	-	-	1
Industrial	1	9	1	10	-	-	7
Sludge	1	1	1	2	-	-	-
Total	2	26	3	27	-	-	18
Hazardous Wastes	-	4	-	-	-	-	4
GRAND TOTAL	17	185	18	164	0	0	91

MD1441
MAR.2 (1/83)

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT
DIRECT SOURCES
PLAN ACTIONS COMPLETED

COUNTY	NUMBER	SOURCE	PROCESS DESCRIPTION	DATE OF ACTION	ACTION
MULTNOMAH	021	ESCO CORPORATION PLANT 3	CLOSE CAPTURE HOOD	11/02/84	APPROVED
MULTNOMAH	023	ESCO CORPORATION PLANT 1	DUST COLLECTION SYSTEM	11/02/84	APPROVED
COLUMBIA	028	BOISE CASCADE PAPERS	OPACITY METER REPLACEMENT	11/02/84	APPROVED
DESCHUTES	030	WILLAMETTE INDUSTRIES	DRYER SYSTEM & MULTICLONES	10/29/84	APPROVED
UMATILLA	035	PENDLETON FLOUR MILLS	BAGHOUSE	11/06/84	APPROVED
BAKER	909	ELLINGSON LUMBER COMPANY	BAGHOUSE W/DUST STORAGE	07/25/84	APPROVED

TOTAL NUMBER QUICK LOOK REPORT LINES 6

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — November, 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	1	18	3	19	12		
Existing	5	15	3	20	16		
Renewals	21	65	14	75	100		
Modifications	2	14	9	37	11		
Total	29	112	29	151	139	1420	1448
Indirect Sources							
New	0	2	1	3	0		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	1	0	1	0		
Total	0	3	1	4	0	227	227
GRAND TOTALS	29	115	30	155	139	1647	1675

Number of Pending Permits	Comments
42	To be reviewed by Northwest Region
14	To be reviewed by Willamette Valley Region
9	To be reviewed by Southwest Region
8	To be reviewed by Central Region
11	To be reviewed by Eastern Region
16	To be reviewed by Program Operations Section
36	Awaiting Public Notice
3	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
CURRY	BROOKINGS ENERGY FACILITY	08 0039	00/00/00	PERMIT ISSUED	10/25/84	MOD	
MULTNOMAH	PORTLAND WIRE & IRON WKS	26 2486	00/00/00	PERMIT ISSUED	10/31/84	MOD	
DOUGLAS	P&M CEDAR PRODUCTS INC	10 0026	00/00/00	PERMIT ISSUED	11/01/84	EXT	N
DOUGLAS	BOHEMIA INC., DRAIN PLYWD	10 0054	03/21/83	PERMIT ISSUED	11/01/84	RNW	Y
JACKSON	WHITE CITY DRY KILN INC.	15 0053	08/10/84	PERMIT ISSUED	11/01/84	MOD	
JACKSON	BRISTOL SILICA-LIMESTONE	15 0184	06/13/84	PERMIT ISSUED	11/01/84	NEW	Y
MULTNOMAH	ESCO CORPORATION PLANT 3	26 2067	08/06/82	PERMIT ISSUED	11/01/84	RNW	Y
MULTNOMAH	ESCO CORPORATION PLANT 1	26 2068	08/06/82	PERMIT ISSUED	11/01/84	RNW	Y
MULTNOMAH	BINGHAM-WILLAMETTE CO	26 2749	11/15/82	PERMIT ISSUED	11/01/84	RNW	Y
WASHINGTON	SP ANODIZING INC	34 2685	05/22/84	PERMIT ISSUED	11/01/84	NEW	N
WASHINGTON	GOODRICH FOREST PROD INC	34 2687	08/23/84	PERMIT ISSUED	11/01/84	EXT	N
BENTON	EVANITE HARDBOARD INC.	02 2159	07/05/83	PERMIT ISSUED	11/08/84	RNW	
CLATSOP	HUGHES RANSOM MORTUARY	04 0049	02/14/84	PERMIT ISSUED	11/13/84	RNW	
DOUGLAS	C&D LUMBER CO	10 0009	05/30/84	PERMIT ISSUED	11/13/84	RNW	
BENTON	LEADING PLYWOOD CORP	02 2479	00/00/00	PERMIT ISSUED	11/19/84	MOD	
CLACKAMAS	PARK LUMBER DIV CROWN Z	03 1778	00/00/00	PERMIT ISSUED	11/19/84	MOD	
COLUMBIA	RSG FOREST PRODUCTS INC	05 1771	00/00/00	PERMIT ISSUED	11/19/84	MOD	
CLACKAMAS	OREGON READY MIX	03 2500	08/16/84	PERMIT ISSUED	11/21/84	RNW	
DESCHUTES	CUSTOM REMFG INC	09 0068	04/12/84	PERMIT ISSUED	11/21/84	EXT	
DOUGLAS	D R JOHNSON LUMBER CO.	10 0018	08/08/83	PERMIT ISSUED	11/21/84	MOD	
DOUGLAS	ROSEBURG PAVING CO	10 0122	08/09/84	PERMIT ISSUED	11/21/84	RNW	
JOSEPHINE	SOUTHWEST FOREST INDUSTR.	17 0030	12/22/83	PERMIT ISSUED	11/21/84	RNW	
MULTNOMAH	OREGON STEEL MILLS	26 1865	09/29/81	PERMIT ISSUED	11/21/84	MOD	
MULTNOMAH	NORWEST PUBLISHING	26 1892	06/20/83	PERMIT ISSUED	11/21/84	RNW	
MULTNOMAH	DURA INDUSTRIES, INC.	26 3112	08/23/83	PERMIT ISSUED	11/21/84	NEW	
TILLAMOOK	TRASK RIVER GRAVEL	29 0041	01/27/84	PERMIT ISSUED	11/21/84	RNW	
YAMHILL	AMITY CO-OP	36 0008	09/07/84	PERMIT ISSUED	11/21/84	RNW	
PORT.SOURCE	EUCON CORP OF IDAHO	37 0092	00/00/00	PERMIT ISSUED	11/21/84	MOD	
CURRY	CHAMPION BUILDING PRODUCT	08 0004	04/08/82	PERMIT ISSUED	11/23/84	RNW	

TOTAL NUMBER QUICK LOOK REPORT LINES 29

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources			
Multnomah	Gresham Technology Park, 300 Spaces, File No. 26-8410	11/19/84	Final Permit Issued

MAR.6 (5/79)
AA4405

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED - 9

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES 4			
Polk	Falls City Collection System Sand Filter, Drainfield	11/26/84	Review Comments to to Engineer
Marion	Port of Entry (Woodburn) Septic Tanks, Dosing Tank, Sand Filter	12/8/84	Review Comments to Willamette Valley Region
Deschutes	Sportsman Motel Septic Tank, Recirculating Sand Filter, Disposal Beds	12/7/84	Review Comments to Engineer
Lane	Eugene Pressure Bypass Pipe Connection, Willakenzie Pump Station	12/7/84	Review Comments to Willamette Valley Region

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED - 9

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES - 5			
Linn	Pacific Power & Light Oil Spill Containment System Albany	11-1-84	Approved
Multnomah	Williams Air Controls Division, Ion Exchange Conductivity Controllers, pH Neuralization System, Portland	11-5-84	Approved
Washington	Tektronix, Inc. Chemical Containment Area Forest Grove	11-6-84	Approved
Malheur	Ore-Ida Foods Sludge Centrifuge Ontario	11-7-84	Apporoved
Washington	Ralph VanDyke Manure Control Facility	11-10-84	Approved

SUMMARY OF ACTIONS TAKEN ON WATER PERMIT APPLICATIONS IN NOV 84

SOURCE CATEGORY &PERMIT SUBTYPE	NUMBER OF APPLICATIONS FILED						NUMBER OF PERMITS ISSUED						APPLICATIONS PENDING PERMIT ISSUANCE (1)			CURRENT TOTAL OF ACTIVE PERMITS		
	MONTH			FISCAL YEAR			MONTH			FISCAL YEAR								
	NPDES	WPCF	GEN	NPDES	WPCF	GEN	NPDES	WPCF	GEN	NPDES	WPCF	GEN	NPDES	WPCF	GEN	NPDES	WPCF	GEN
DOMESTIC																		
NEW	0	0	1	0	3	1	0	0	1	1	2	1	2	5	0			
RW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
RWO	1	1	0	16	8	0	1	1	0	17	6	0	35	14	0			
MW	1	0	0	1	0	0	0	0	0	0	0	0	2	0	0			
MWO	1	0	0	9	2	0	0	0	0	6	3	0	4	0	0			
TOTAL	3	1	1	26	13	1	1	1	1	24	11	1	43	19	0	241	140	64
INDUSTRIAL																		
NEW	0	0	1	2	4	6	0	0	9	0	1	13	3	9	0			
RW	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0			
RWO	3	3	0	19	11	0	3	0	0	11	5	0	31	17	0			
MW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MWO	0	1	0	11	4	0	0	2	0	4	5	0	5	1	0			
TOTAL	3	4	1	32	19	6	3	2	9	16	11	13	39	27	0	179	157	245
AGRICULTURAL																		
NEW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
RW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
RWO	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
MWO	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
TOTAL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	13	57
GRAND TOTAL	6	5	2	58	32	7	4	3	10	40	22	14	82	46	0	422	310	366

1) DOES NOT INCLUDE APPLICATIONS WITHDRAWN BY THE APPLICANT, APPLICATIONS WHERE IT WAS DETERMINED A PERMIT WAS NOT NEEDED, AND APPLICATIONS WHERE THE PERMIT WAS DENIED BY DEQ.

IT DOES INCLUDE APPLICATIONS PENDING FROM PREVIOUS MONTHS AND THOSE FILED AFTER 30-NOV-84.

NEW - NEW APPLICATION
RW - RENEWAL WITH EFFLUENT LIMIT CHANGES
RWO - RENEWAL WITHOUT EFFLUENT LIMIT CHANGES
MW - MODIFICATION WITH INCREASE IN EFFLUENT LIMITS
MWO - MODIFICATION WITHOUT INCREASE IN EFFLUENT LIMITS

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	SOURCE ID	LEGAL NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
General: Cooling Water									
IND	100	GEN01	NEW	16320	CHILOQUIN FOREST PRODUCTS, INC.	CHILOQUIN	KLAMATH /CR	28-NOV-84	31-DEC-85
General: Log Ponds									
IND	400	GEN04	NEW	33580	GIUSTINA BROS. LUMBER & PLYWOOD CO.	EUGENE	LANE /WVR	28-NOV-84	31-DEC-85
General: Boiler Blowdown									
IND	500	GEN05	NEW	54175	MCCALL OIL AND CHEMICAL CORPORATION	PORTLAND	MULTNOMAH /NWR	13-NOV-84	31-JUL-86
IND	500	GEN05	NEW	16320	CHILOQUIN FOREST PRODUCTS, INC.	CHILOQUIN	KLAMATH /CR	28-NOV-84	31-JUL-86
General: Placer Mining									
IND	600	GEN06	NEW	75876	ROGERS, LAURA BELLE	HUNTINGTON	BAKER /ER	06-NOV-84	31-JUL-86
IND	600	GEN06	NEW	100026	SHERMAN, JUNETTE NANCY		JOSEPHINE /SWR	08-NOV-84	31-JUL-86
General: Gravel Mining									
IND	1000	GEN10	NEW	62469	NORTHWEST SAND AND GRAVEL, INC.	CLACKAMAS	CLACKAMAS /NWR	27-NOV-84	31-DEC-86

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	SOURCE ID	LEGAL NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
General: Sewers & Pump Stations									
DOM	1100	GEN11	NEW	47255	KNOXTOWN SANITARY DISTRICT	WEDDERBURN	CURRY /SWR	13-NOV-84	31-DEC-86
General: Oily Stormwater Runoff									
IND	1300	GEN13	NEW	54175	MCCALL OIL AND CHEMICAL CORPORATION	PORTLAND	MULTNOMAH /NWR	13-NOV-84	31-JUL-88
IND	1300	GEN13	NEW	80841	SHELL OIL COMPANY	PORTLAND	MULTNOMAH /NWR	14-NOV-84	31-JUL-88
NPDES									
IND	100004	NPDES	RWO	87628	TEKTRONIX, INC.	BEAVERTON	WASHINGTON/NWR	01-NOV-84	31-OCT-89
IND	100005	NPDES	RWO	90845	UNION OIL COMPANY OF CALIFORNIA	PORTLND	MULTNOMAH /NWR	09-NOV-84	31-OCT-89
IND	100006	NPDES	RWO	24357	DAW FOREST PRODUCTS COMPANY, L.P.	BEND	DESCHUTES /CR	19-NOV-84	30-SEP-89
DOM	100008	NPDES	RWO	77110	THE ROYAL HIGHLANDS SEWER ASSOCIATION	PORTLAND	MULTNOMAH /NWR	28-NOV-84	31-OCT-89
WPCF									
IND	3546	WPCF	MWO	19957	COOS HEAD TIMBER CO	COOS BAY	COOS /SWR	03-NOV-84	31-AUG-87
IND	3332	WPCF	MWO	24358	DAW FOREST PRODUCTS COMPANY, L.P.	REDMOND	DESCHUTES /CR	13-NOV-84	31-MAR-86
DOM	100007	WPCF	RWO	64770	OREGON DEPT. OF TRANSPORTATION, PARKS & RECREATION DIVISION	ROGUE RIVER	JACKSON /SWR	28-NOV-84	31-OCT-89

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — November 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	5	2	8	3		
Closures	-	1	1	4	10		
Renewals	6	14	-	2	27		
Modifications	1	1	-	2	2		
Total	8	21	3	16	42	168	168
Demolition							
New	-	-	-	-	-		
Closures	-	1	-	-	4		
Renewals	-	-	-	-	-		
Modifications	-	-	-	-	-		
Total	-	1	-	-	4	12	12
Industrial							
New	-	2	-	3	5		
Closures	-	2	1	3	9		
Renewals	3	6	2	6	11		
Modifications	1	2	1	2	-		
Total	4	12	4	14	25	100	100
Sludge Disposal							
New	-	-	-	1	-		
Closures	1	-	1	2	-		
Renewals	-	-	2	4	-		
Modifications	-	-	-	-	-		
Total	1	-	3	7	-	17	17
Hazardous Waste							
New	-	2	-	3	4		
Authorizations	105	762	105	762	-		
Renewals	-	-	-	-	1		
Modifications	-	-	-	-	-		
Total	105	764	105	765	5	15	19
GRAND TOTALS	118	798	115	802	76	312	316

SC1916.B
MAR.5S (11/84)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Tillamook	ABC Hardwoods Existing facility	10/30/84*	Letter authorization renewed
Clatsop	Elsie Landfill Existing facility	11/9/84	Closure permit issued
Columbia	His Salvage & Transfer New facility	11/9/84	Permit issued
Lincoln	T & L Lagoon Closed facility	11/9/84	Closure permit renewed
Linn	Fred Smith Landfill Existing facility	11/9/84	Closure permit issued
Marion	Green Veneer, Inc. Existing facility	11/9/84	Permit renewed
Wasco	Mt. Fir Lumber Co. Existing facility	11/9/84	Permit amended
Washington	Forest Grove Transfer New facility	11/9/84	Permit issued
Harney	Oard's Sludge Site Existing facility	11/16/84	Permit renewed
Klamath	JNS Sludge Lagoon Existing facility	11/21/84	Permit renewed

* Not reported for October

SC1916.D
MAR.6 (5/79)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

HAZARDOUS WASTE DISPOSAL REQUESTS

CHEM-SECURITY SYSTEMS, INC., GILLIAM CO.

WASTE DESCRIPTION

Date	Type	Source	Quantity Present	Quantity Future
TOTAL REQUESTS GRANTED - 104				
OREGON - 26				
11/19	Acetone/methyl ethyl ketone with HCl, H_2SO_4 and water	Chemical co.	0	2 drums
11/19	Wood fibers, soil and water contaminated with chlorophenols	Anti-stain op.	0	72 drums
11/19	Cupric chloride solution	Spill cleanup	3600 gal.	0
11/19	Sand, dirt and gravel contaminated with cupric chloride solution	" "	100 tons	0
11/19	Spent Turco Transpo paint remover consisting of methylene chloride, cresylic acid, kerosene, sodium chromate, sodium fluoride and water	Helicopter mnt.	1 drum	4 drums
11/19	Spent D-370PV paint stripper containing methylene chloride, methanol, IPA, 1,1,1-trichloroethane, NH_3 and water	" "	1 drum	4 drums

SC1916.E
MAR.15 (1/82)

Date	Type	Source	Quantity Present	Quantity Future
11/28	Chlorobenzene/carbon tetrachloride-contaminated absorbent and containers	Electronic co.	2 drums	0
11/28	Carbon tetrachloride-contaminated sodium bicarbonate and inert absorbents	" "	3 drums	0
11/28	Paint waste, paint thinners and containers in lab packs	" "	4 drums	0
11/28	Off-spec. commercial products consisting of methanol, trichloroethane, solder flux and hexamethyl disilazane	" "	14 gal. (in original containers)	0
11/28	Lube oil additive (ethyl anti-oxidant)	Oil co.	1 drum	0
11/28	Wood stain and lacquer booth sludge (95% water)	Mfg. of commercial doors and windows	5 drums	0
11/28	Inorganic salts containing 1-3% cyanide	Heat treatment	0	20 drums
11/28	Dewatered heavy metals sludge	Electroplating	0	3200 cu.ft.
11/28	Calcium silicate-asbestos fiber insulation	Plywood mill	60 drums	0
11/28	Filter cartridges contaminated with heavy metals	Mfg. of print. circuits	0	12 drums
11/30	Obsolete paint and varnish remover product containing methylene chloride (60%), alcohol (20%) and ammonia (20%)	Chemical co.	1000 cu.ft.	0
11/30	Electroless copper solution with formaldehyde and EDTA	Circuit bd. prod.	0	30 drums

SC1916.E
MAR.15 (1/82)

Date	Type	Source	Quantity Present	Quantity Future
11/30	Paint booth wastewater with lead	Ship repair	0	17 drums
11/30	Paint booth sludge with lead	" "	0	4 drums
11/30	Dry paint and used paint filters	Mfg. of mining equip.	0	30 drums
11/30	Cu/Zn hydroxides sludge containing sulfides	Electroplating	0	500 drums
11/30	Absorbents contaminated with chromium trioxide, copper oxide, arsenic and pentoxide	Chemical co.	5 drums	20 drums
11/30	Small quant. of various lab chemicals in lab packs	School	0	4 drums
11/30	Spent Stoddard solvent	Mfg. of wood prod. tools	0	60 drums
11/30	Spent mixed ink solvents containing water (10-70%)	Printing	0	72 drums
WASHINGTON - 43				
11/19	Baghouse dust containing steel and iron oxide with heavy metals	Mfg. of railcars	0	300 drums
11/19	Tertiary butyl phenol tar with dibutyl and butyl phenols	Chemical co.	0	25 drums
11/19	Outdated ApL-Kleen 246 product containing phosphoric acid, inert components and IPA	Chemical co.	205 gal.	0
11/19	Outdated Tomato Lustr 222 product containing orthophenylphenol and inerts	" "	1 5-gal. pail	0

Date	Type	Source	Quantity	
			Present	Future
11/19	Outdated Chemley Ethoxyquin product	Chemical co.	2 5-gal. pails	0
11/19	Outdated ApL Lustr 256 product containing IPA, ammonium hydroxide and inerts	" "	10 drums	0
11/19	Outdated ApL Lustr 221 product containing IPA, ammonia and inerts	" "	7 drums	0
11/19	Outdated ApL Lustr 217 product containing IPA, ammonia and inerts	" "	7 drums	0
11/19	Spent MEK with epoxy thinners and paint pigments	Metal fab.	0	50 drums
11/19	Paint resin/pigments with small amount of thinners	" "	0	50 drums
11/19	Outdated Deccosol 128 fungicide product containing sodium orthophenylphenate (14.5%) and inert ingredients (85.5%)	Chemical co.	14 drums	0
11/19	Outdated Decco Lustr 250 product containing water, natural waxes, fatty acid soaps, propylene glycol, wetting agents and silicon anti-foam	" "	2 drums	0
11/19	Outdated Deccosol 125 fungicide product containing sodium orthophenylphenate (14.5%) and inert ingredients (85.5%)	" "	1 drum	0
11/19	Outdated commercial product sodium fluoroborate	Defense Dept.	0	3 drums

Date	Type	Source	Quantity Present	Quantity Future
11/19	Dellulube-contaminated soil	Defense Dept.	0	50 drums
11/19	Off-spec. electrolyte battery fluid (40-47% H_2SO_4)	" "	0	20 drums
11/19	Off-spec. monosodium phosphate commercial product	" "	0	5 drums
11/21	PCB-contaminated concrete, soil, sand, gloves, clothing, etc.	Paper mill	0	2000 cu.ft.
11/28	Paraformaldehyde tank cleanout (solid)	Chemical co.	0	15 drums
11/28	Phenolic bottoms containing phenol, ortho tertiary butyl phenol, para tertiary butyl phenol and 2,4-ditertiary phenol	" "	0	50 drums
11/28	Hydrochloric acid-contaminated concrete debris	Defense Dept.	50 cu.yd.	0
11/28	Hydrochloric acid-contaminated plastic debris	" "	10 cu.yd.	0
11/28	Paint/paint solvent-contaminated rags, gloves, brushes, containers, absorbent and other debris	Shipbuilding	0	45 drums
11/28	Coating sludge consisting of toluene, 2-propanol, petroleum naphtha, xylene, 2-methyl-1-propanol, ethylbenzene, ethanol, alkyd, urea resin and fillers	Cabinet mfg.	0	3000 gal.
11/28	Oily wastewater with phenanthrene	Waste treatment	40,000 gal.	0

Date	Type	Source	Quantity	
			Present	Future
11/28	Electrolysis cell precipitate containing chloride salts of magnesium, sodium and potassium with free magnesium	Mfg. of titanium	0	500 drums
11/28	Tank bottom sludge containing tetrachlorophenol, pentachlorophenol, wood fibers and water	Wood treatment	5 drums	20 drums
11/30	Spent Eveready Air Cell signal batteries containing mercury mixed with soil, plastic and other debris	Railroad co.	20 cu.yd.	0
11/30	Spent alkali-filled signal batteries containing mercury and mercury bichloride mixed with plastic and other inerts	" "	0	700 cu.ft.
11/30	Oak wood contaminated with o-nitrotoluene	Trailer shop	4.3 cu.yd.	0
11/30	Silica with chloride salts of Fe and Cu	Electronic co.	0	2400 cu.yd.
11/30	Dewatered electroplating sludge	Chemical treat.	0	1820 drums
11/30	Gelled polyester resin containing acetone (solid)	Recycling	0	100 drums
11/30	Unused product of polyurethane foam components (solid)	Drilling parts	200 cu.ft.	0
11/30	Paint sludge/obsolete paints containing epoxides, alkyds, vinyls, ketones, aliphatic and aromatic hydrocarbons, etc.	Steel fab.	0	48 drums

Date	Type	Source	Quantity Present	Quantity Future
11/30	Deoxidizer #4 consisting of potassium dichromate (70-80%), potassium nitrate (15-20%) and sodium bifluoride (5-10%)	Metal shop	2 40-gal. & 5 30-gal. drums	0
11/30	Polyurethane foam equipment washing solvent containing epoxy resin, MEK, methylene chloride, isocyanate A & B, glycol ether and water	Mfg. of skis	0	50 drums
11/30	Tin-lead plating bath sludge	Mfg. of circuit boards	0	1 drum
11/30	Obsolete Envert D.T. herbicide product containing 2,4,5-T	Wood product co.	1 drum	0
11/30	Obsolete Emulsavent 100 herbicide containing 2,4,5-T	" "	5 30-gal. drums	0
11/30	Densified fumed silica	Electronic co.	0	10-15 drums
11/30	Lab waste consisting of used wares, gloves, paper, soil/marine and freshwater sediments and activated carbon	City	0	20 drums
11/30	Flecto Varapal varnish product	Store	1 drum	0
OTHER STATES - 35				
10/31	Mixed solvents: 1,1,1-trichloroethane, hexane and MEK	Can plant (HI)	5 drums	20 drums
10/31	1,1,1-trichloroethane/ MEK solvent	" "	5 drums	20 drums
11/7	Silver and cyanide-contaminated film (solid)	EPA (MT)	20-50 cu.yd.	0

SC1916.E
MAR.15 (1/82)

Date	Type	Source	Quantity Present	Quantity Future
11/7	Silver and cyanide-contaminated soil	EPA (MT)	200 cu.yd.	0
11/7	Potassium chromate solution	Research (ID)	100 drums	0
11/7	Mercury-contaminated absorbents	" "	0	7 drums
11/19	Spent phosphoric acid solution with carbon	Mfg. of magnesium (UT)	30 drums	0
11/19	Concentrated phosphoric acid (99%)	" "	30 drums	0
11/19	Soil containing petroleum, oil, gasoline, etc.	Defense Dept. (AK)	0	125 drums
11/19	Spent paint stripping solvent consisting of 1-butanol, 2,2,4,4-tetramethyl pentanone and water	Coast Guard (HI)	0	7 drums
11/19	Chrome/nickel plating solution	Electroplating (MT)	0	20 drums
11/19	Soil and stabilized sludge contaminated with mercury and other heavy metals	Chem. plant (Alberta)	0	1000 cu.yd.
11/19	PCB-contaminated transformer oil	PCB phase-out (MT)	4 drums	0
11/19	Evershield T Seed Protectant containing Thiram, polyvinyl acetate, ethylene glycol, polysaccaride, defoamer and water	Chemical co. (ID)	330 gal.	0
11/19	Evershield V Seed Protectant containing carboxin, polyvinyl acetate, ethylene glycol, polysaccaride, defoamer and water	" "	285 gal.	0

Date	Type	Source	Quantity Present	Quantity Future
11/21	Hydrogen peroxide solution (35-70% H_2O_2)	Defense Dept. (AK)	0	550 gal.
11/21	Spent phosphoric acid solution with butyl cellosolve	Power plant construct. (MT)	30 gal.	0
11/21	Spent paint thinner consisting of xylene, toluene, butyl alcohol, isopropyl acetate, cellosolve solvent, etc.	" "	800 gal.	0
11/21	Spent Alkali Oakite 360L solution (45% caustic soda)	" "	480 gal.	0
11/21	Spent sulfuric acid solution (35% H_2SO_4)	" "	240 gal.	0
11/21	Acid Oakite Foam-on containing ionic and nonionic surfactants organic phosphates and water	" "	90 gal.	0
11/21	Spent Oakite DZL solution containing sodium hydroxide, ethoxyethanol, sodium silicate and water	" "	715 gal.	0
11/21	Spent Aerowash solution containing sodium metasilicate, ethylene glycol-n-butyl ether and water	" "	275 gal.	0
11/28	Paint/paint thinners and epoxy	Waste collect. (AK)	0	51 drums
11/28	Butyl carbityl ether	" "	0	1 drum
11/28	Spent duplicating machine toner containing graphite, kerosene and Freon	" "	0	3 drums
11/28	Denatured alcohol	" "	0	1 drum
11/28	Acetone/lacquer & varnish	" "	0	3 drums

SC1916.E
MAR.15 (1/82)

Date	Type	Source	Quantity	
			Present	Future
11/28	PCB-contaminated rags, towels, gloves, etc.	Paper co. (ID)	1 drum	0
11/28	PCB transformer fluid	" "	1 drum	0
11/30	Debris contaminated with lead and cadmium	Fire cleanup (B.C.)	1 drum	0
11/30	Misc. lab chemicals in lab packs	Oil co. (Alberta)	0	6 drums
11/30	Chromic acid-contaminated fiberboard and wood debris	Spill cleanup (AK)	0	1000 cu.ft.
11/30	Lacquer/varnish/acetone reducing compound	Waste collect. (AK)	0	3 drums
11/30	Hexane contaminated with lanolin	Can plant (HI)	5 drums	20 drums

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated		Final Actions Completed		Actions Pending	
	Mo	FY	Mo	FY	Mo	Last Mo
Industrial/ Commercial	5	62	5	36	148	148
Airports				6	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Multnomah	U-Haul Company 8816 S.E. Foster Road Portland, OR	11/84	In Compliance
Washington	Shop Services, Inc. Aloha	11/84	No Violation
Washington	Wood Yard, Inc. Aloha	11/84	In Compliance
Lane	J.H. Baxter Co. Eugene	11/84	In Compliance
Lane	South Lane Public Schools District #45 Cottage Grove	11/84	In Compliance

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1984

CIVIL PENALTIES ASSESSED DURING MONTH OF NOVEMBER, 1984:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Robert L. Coats dba/ Deschutes Ready-Mix Sand & Gravel Co. Klamath County	AQ-CR-84-95 Exceeded emission limits of air contaminant discharge permit.	11-7-84	$500	Defaulted
Jack Mahana Monmouth, Oregon	AQ-FB-84-87 Did not plant a 44-acre field into a seed crop after open burning a cereal grain crop in 1983.	11-7-84	$1,100 ($25/ acre)	Request for mitigation of penalty received 11-21-84.
George Gisler Stayton, Oregon	AQ-FB-84-88 Did not plant a 24-acre field into a seed crop after open burning a cereral grain crop in 1983.	11-7-84	$600 ($25/ acre)	Paid 11-19-84
Ray A. Drayton, Jr. dba/T & L Septic Tank Service Lincoln County	SW-WVR-84-119 Did not complete closure of septage lagoon in violation of solid waste disposal site closure permit.	11-9-84	$300	Awaiting response to notice.
Fort Hill Lumber Company Grande Ronde, Oregon	WQ-WVR-84-97 Discharged a toxic waste into public waters.	11-29-84	$1,000	Awaiting response to notice.

GB4048

November 1984
DEQ/EQC Contested Case Log

ACTIONS	LAST MONTH	PRESENT
1 Preliminary Issues	7	3
2 Discovery	3	1
3 Settlement Action	5	3
4 Hearing to be scheduled	7	0
5 Hearing scheduled	5	12
6 HO's Decision Due	1	2
7 Briefing	1	1
8 Inactive	2	8
SUBTOTAL of cases before hearings officer.	31	30
9 HO's Decision Out/Option for EQC Appeal	0	1
10 Appealed to EQC	0	1
11 EQC Appeal Complete/Option for Court Review	1	0
12 Court Review Option Pending or Taken	0	0
13 Case Closed	2	0
TOTAL Cases	34	32

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

November 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	Dept	23-AQ-FB-81-15 FB Civil Penalty of $3,000	Order reflecting EQC decision to be issued.
OLINGER, Bill Inc.	09/10/82	09/13/82	10/20-21/83 11/2-4/83 11/14-15/83 5/24/84	Hrngs	33-WQ-NWR-82-73 WQ Civil Penalty of $1,500	Decision due.
HAYWORTH FARMS, INC., and HAYWORTH, John W.	01/14/83	02/28/83	04/04/84	Prtys	50-AQ-FB-82-09 FB Civil Penalty of $1,000	Briefing.
McINNIS ENT.	06/17/83	06/21/83		Prtys	52-SS/SW-NWR-83-47 SS/SW Civil Penalty of $500	Hearing deferred pending conclusion of court action.
McINNIS ENTERPRISES, LTD., et al.	09/20/83	09/22/83		Prtys	56-WQ-NWR-83-79 WQ Civil Penalty of $14,500	Scheduled hearing deferred to follow circuit court proceedings.
McINNIS ENTERPRISES, LTD., et al.	10/25/83	10/26/83		Prtys	59-SS-NWR-83-33290P-5 SS license revocation	Scheduled hearing deferred to follow circuit court proceedings.

November 1984

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
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		Prtys	58-SS-NWR-83-82 SS Civil Penalty of $1000	Hearing deferred pending conclusion of court action.
CLEARWATER IND., Inc.	01/13/84	01/18/84		Prtys	02-SS-NWR-83-103 SS Civil Penalty of $500	Hearing deferred pending conclusion of court action.
HARPER, Robert W.	03/13/84	03/21/84		Prtys	03-AQ-FB-83-23 FB Civil Penalty of $1,000	Settlement action.
KUENZI, Lee A.	03/17/84	03/28/84	11/08/84	Hrngs	04-AQ-FB-83-01 FB Civil Penalty of $500	Decision issued 12/5/84. Penalty liability $300.
MALPASS, David C.	03/26/84	03/28/84	02/05/85	Prtys	05-AQ-FB-83-14 FB Civil Penalty of $500	Hearing scheduled.
LOE, Roger E.	03/27/84	03/28/84	11/13/84	Hrngs	06-AQ-FB-83-15 FB Civil Penalty of $750	Decision due.
SIMMONS, Wayne	03/27/84	04/05/84	02/19/85	Prtys	07-AQ-FB-83-20 FB Civil Penalty of $300	Hearing scheduled.
COON, Mike	03/29/84	04/05/84		Prtys	08-AQ-FB-83-19 FB Civil Penalty of $750	Scheduled hearing deferred to allow settlement discussion.

November 1984

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
BIELENBERG, David	03/28/84	04/05/84	12/11/84	Prtys	09-AQ-FB-83-04 FB Civil Penalty of $300	Hearing scheduled.
BRONSON, Robert W.	03/28/84	04/05/84	03/05/85	Prtys	10-AQ-FB-83-16 FB Civil Penalty of $500	Hearing scheduled.
NEWTON, Robert	03/30/84	04/05/84	03/12/85	Prtys	11-AQ-FB-83-13 FB Civil Penalty of $500	Hearing scheduled.
KAYNER, Kurt	04/03/84	04/05/84	01/08/85	Prtys	12-AQ-FB-83-12 FB Civil Penalty of $500	Hearing scheduled.
BUYSERIE, Gary	03/26/84	04/05/84	01/15/85	Prtys	13-AQ-FB-83-21 FB Civil Penalty of $300	Hearing scheduled.
BUYSERIE, Gary	03/26/84	04/05/84	09/25/84	Prtys	14-AQ-FB-83-22 FB Civil Penalty of $750	Hearing scheduled.
GORACKE, Jeffrey dba/Goracke Bros.	04/10/84	04/12/84	03/26/85	Prtys	15-AQ-FB-83-22 FB Civil Penalty of $500	Hearing scheduled.
DOERFLER FARMS	04/30/84	05/08/84	01/29/85	Prtys	16-AQ-FB-83-11 FB Civil Penalty of $500	Hearing scheduled.

November 1984

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
TRANSCO Industries, Inc.	06/05/84	06/12/84	02/27/85	Prtys	17-HW-NWR-84-45 HW Civil Penalty of $2,500	Hearing scheduled.
TRANSCO Industries, Inc.	06/05/84		02/27/85	Prtys	18-HW-NWR-84-46 HW Compliance Order	Hearing scheduled.
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.
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.
CLEARWATER INDUSTRIES, INC.	10/11/84	10/11/84		Prtys	24-SS-NWR-84-P Sewage Disposal Service License Denial	Hearing deferred pending conclusion of court actions.

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, January 25, 1985, EQC Meeting

Tax Credit Applications

Director's Recommendations

It is recommended that the Commission take the following action:

1. Issue tax credit certificates for facilities subject to old tax credit laws:

Appl. No.	Applicant	Facility
T-1693	Avison Lumber Co.	Pentachlorophenol anti-stain application drip and spill control
T-1697	Willamette Industries	Replacement sewer line

2. Deny tax credit certification for a facility under the new tax credit law:

Appl. No.	Applicant	Facility
T-1714	The Kobos Company	Coffee roaster afterburner

3. Revoke Pollution Control Facility Certificate 739 issued to Brooks Scanlon, Inc. and reissue it to DAW Forest Products.

4. Revoke Pollution Control Facility Certificate 1316 issued to Diamond International Corporation and reissue it to DAW Forest Products.

Fred Hansen

SChew
229-6484
1/7/85

Proposed January 1985 Totals:

Air Quality	-0-
Water Quality	330,798
Solid/Hazardous Waste	-0-
Noise	-0-
	$330,798

1984 Calendar Year Totals:

Air Quality	29,484,900
Water Quality	2,334,720
Solid/Hazardous Waste	635,114
Noise	-0-
	$32,454,734

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Avison Lumber Co.
P.O. Box 419
Molalla, OR 97038

The applicant owns and operates a lumber mill at Molalla, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is pentachlorophenol anti-stain application drip and spill control facility.

The pollution control facilities consist of a metal building, associated concrete floor and sump, drip pans and rollcases, and associated electrical and hydraulic equipment.

Request for Preliminary Certification for Tax Credit was made June 3, 1983, and approved June 7, 1983.

Facility is subject to the 1981 tax credit law. Construction was initiated on the claimed facility June 11, 1983, completed November 1, 1983, and the facility was placed into operation November 1, 1983.

Facility cost $302,705 (Accountant's certification was provided.)

The Accountant certified a Facility Cost of $363,265.50. However, this cost included pieces of process equipment which are not part of the pollution control facility. The applicant has submitted a revised page for the application showing a pollution control facility cost of $302,705.

3. Evaluation of Application

Prior to construction of the claimed facility, the applicant immersed lumber into an open steel tank of pentachlorophenol with a forklift. Upon removal of the lumber from the tank, chlorophenols dripped onto the surrounding ground since the system had no drip or spill control capabilities. (Buyers of export lumber generally require the application of a thin coat of anit-stain chemical to prevent fungal growth on the wood surface during shipment.) Once the Department became aware the operation was causing releases of pentachlorophenol to a nearby stream, the applicant was required to upgrade the

facility. The new facility is designed in accordance with the Department's Best Management Practices for anti-stain operations. The dip tank and conveyors are located within a metal building and sit on concrete where spills and drips can be collected and reused. The lumber is held in the building over drip pans until drippage stops. The new facility is in compliance with the Department's requirements. There has been no return on investment from this facility.

4. Summation

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

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

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

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

e. The portion of the Facility Cost that is properly allocable to pollution control is 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 $302,705 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1693.

L. D. Patterson:t
(503) 229-5374
1/2/85
WT532

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Willamette Industries, Inc.
Albany Mill Division
3800 First Interstate Tower
Portland, OR 97201

The applicant owns and operates a pulp and paper mill at Albany, Oregon.

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 replacement sewer line consisting of approximately 1380 feet of 18 inch diameter Ameron pipe, the associated fittings, and vacuum breakers.

Request for Preliminary Certification for Tax Credit was made November 13, 1979 and approved December 31, 1979.

Facility is subject to the 1981 tax credit law. Construction was initiated on the claimed facility April 1981, completed July 1981, and facility was placed into operation October 1981.

Facility Cost: $28,093.85 (Accountant's certification was provided.)

The Accountant certified a Facility Cost of $99,077.35 which included all costs associated with replacing the sewer line. At the time the project was approved (December 31, 1979), the applicant was informed in writing that only that portion of the replacement cost in excess of any estimated cost for repairs would be eligible for tax credit. (This policy was based upon an informal legal opinion provided by the Department of Justice on December 11, 1979. A copy of that legal opinion is attached. The 1983 revisions to ORS Chapter 468 specify that if the cost to replace or reconstruct a facility is greater than the like-for-like replacement cost of the original facility (due to a requirement imposed by the Department), then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility. The 1983 revisions do not apply to facilities that received preliminary certification and on which construction was completed before January 1, 1984. The applicant completed this project in July of 1981.)

The applicant was notified in writing that the Accountant's certified Facility Cost was in error in that it did not account for estimated costs of repairs. The applicant has submitted a revised request for tax credit with a Facility Cost of $28,093.85 based on a repair cost of $70,983.50 ($99,077.35 - 70,983.50 = $28,093.85).

3. Evaluation of Application

The facility is a sewer effluent line which transports approximately 10 million gallons per day of waste water from the primary treatment ponds to the biological secondary aeration stabilization basins. The old steel pipeline had been repaired for leaks several times and had the potential for a substantial failure. Rather than continue to repair pieces of the line, the applicant chose to replace it with a better grade of pipe. The original system was an 18 inch diameter concrete coated steel pipe. This is a necessary portion of the applicant's waste water treatment system. There has been no return on investment from this replacement facility.

If the 1983 revisions had applied to this project, the facility would not have been eligible for tax credit since the higher quality pipe which exceeded the like-for-like replacement cost of the original facility was not required by the Department. The original facility did receive the full amount of tax credit certified to that 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 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 $28,093.85 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1697.

L. D. Patterson:t
(503) 229-5374
1/7/85
WT534

State of Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMO

To: Ray Underwood

Date: 11/28/79

From: Mike Downs MD

Subject: Request for Informal Legal Opinion

Please provide a written informal legal opinion in response to the following questions:

1. Is the complete reconstruction of an existing pollution control facility, resulting in its replacement rather than just repair, eligible for tax credit certification even though the existing facility has previously been certified for tax relief and received its 10 years of available tax relief?

2. Answer the same question assuming the facility has never been certified for tax relief.

3. If an existing pollution control facility is in need of extensive repair, and the company decides to replace it rather than repair it, is the facility eligible for tax credit certification?

4. Does it make a difference in your answer to 3. if the reconstructed facility has a greater capacity than the existing facility, even though the capacity of the existing facility is adequate for pollution control purposes?

Attached is a copy of a memo from Larry Patterson which precipitated this request. If you have any questions, please call me.

/cs
Attachment
cc: Larry Patterson

RECEIVED
NOV 29 1979
Dept. of Environmental Quality

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

December 11, 1979

Mr. Mike Downs
Department of Environmental
Quality
522 S.W. 5th Street
Portland, OR 97204

Re: Tax Credits for Reconstructed or
Replaced Pollution Control Facilities

Dear Mike:

This letter responds to your November 28, 1979 memorandum to me requesting an informal legal opinion regarding four specific questions set out therein. The responses are in the same order as your questions.

1. Yes, the complete reconstruction of an existing control facility, resulting in its replacement rather than just repair is eligible for tax credit certification though the existing facility has previously been certified for tax relief and received its 10 years of available tax relief. ORS 468.155(1) specifically includes in the definition of "pollution control facility" the "reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if a substantial purpose of such use, erection, construction or installation is the prevention, control or reduction of air, water or noise pollution or solid waste***." Such reconstruction or replacement would bring it within the definition of pollution control facility notwithstanding that the prior existing pollution control facility had previously been certified for tax relief and received its ten years of available tax relief. If the prior pollution control facility had not received its full ten years of available tax relief upon the application for a tax credit for the replacement facility, the certification for the

former facility should be revoked at the date of certification of the replacement facility in order to avoid any possible duplication of tax credits for a single facility.

2. Yes the answer would be the same as in 1 above though the original facility had never been certified for tax credit.

(3) Yes, if an existing pollution control facility is in need of extensive repair and such facility is replaced rather than repaired, the facility is eligible for tax credit certification, but only to the extent of the excess of the replacement cost over the cost that would have been necessary to repair the existing facility. The latter qualification follows from the fact that a repair of an existing facility would not be eligible for tax credit certification, therefore the cost of replacement up to that repair amount would not be eligible for tax credit certification.

4. It does not make any difference in the answer to 3 if the reconstructed facility has a greater capacity than the existing facility, even though the capacity of the existing facility is adequate for pollution control purposes if the reconstructed facility meets the substantial purpose test of ORS 468.155. The excess capacity could be taken into account to the extent of the applicability of ORS 468.190, regarding allocation of costs to pollution control.

Please let me know if you have further questions regarding this matter.

Sincerely,

Ray Underwood

Raymond P. Underwood
Chief Counsel

dg

The Commission could make an alternative finding. Since the installation of the control device was made in direct response to a requirement imposed by the Department and since the Department knew what was being done at all times, the company's actions and the Department's knowledge of these actions could be accepted as the filing of a Request for Preliminary Certification for Tax Credit in a form prescribed by the Department and, therefore, in accordance with Oregon Revised Statutes 468.175(1). These events occurred before the Oregon Administrative Rules for Pollution Control Tax Credits 340-16-015(1)(a) required that the application be made on a form provided by the Department effective July 13, 1984. The Commission has made alternative findings granting tax credit certification based on similar circumstances in the past.

The application was received on November 21, 1984, additional information was received on December 5 and 6, 1984, and the application was considered complete on December 6, 1984.

4. Summation

a. A Request for Preliminary Certification for Tax Credit was not received by the Department before the start of construction.

b. The Department is not aware of special circumstances that made the filing of a Request for Preliminary Certification for Tax Credit unreasonable.

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

d. The facility is designed for and is being operated in accordance with the requirements of ORS 468.155(1) and (2).

5. Director's Recommendation

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

Lloyd Kostow:s
(503) 229-5286
January 11, 1985

AS881

ATTACHMENT A

VICTOR ATIYEH
GOVERNOR

Department of Environmental Qua...

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

CERTIFIED
MAIL
#P297 306 487
Return
Receipt
Requested

To: Mr. Lawrence G. King,
Coffee Roasting Supervisor
The Kobos Company
5620 S. W. Kelly St.
Portland, Oregon 97201

Date: July 27, 1984

File Reference: AQ - Kobos Company
File No. 26-3100 - Multnomah Coun
NC #1985 and NWR-400-A

Department action as indicated below has been taken on your Notice of Intent to Construct and Request(s) for Construction Approval and/or Preliminary Certification for Tax Credit for the proposed facility.

Project	Project Description	Plans & Specifications Identification
Kobos Company 5620 S.W. Kelly Portland, Oregon	Smoke incinerator.	NC # 1985

PLANS AND SPECIFICATIONS AND CONSTRUCTION APPROVAL

☒ - APPROVED - Subject to the conditions listed on the reverse side.

Plans and Specifications reviewed by: Charles R. Clinton

PRELIMINARY CERTIFICATION FOR TAX CREDIT OF A POLLUTION CONTROL FACILITY

☐ - APPROVED - This preliminary certification makes the proposed facility eligible for consideration for tax credit but does not insure that any specific part or all of the pollution control facility will be issued a tax credit certificate.

Tax credit review by: _____

If the Department can be of assistance, or if there are any questions, please contact:

Name: Charles R. Clinton Title: Regional Supervisor Phone: 229-6955

Sincerely,

Charles R. Clinton
Regional Supervisor
Northwest Region

CRC/mb
Enclosure
cc: Air Quality Division, DEQ

Application No. T-1714

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

The Kobos Company
5620 SW Kelly Street
Portland, OR 97201

The applicant owns and operates a coffee roasting plant at 5620 Southwest Kelly Street, Portland, Oregon, 97201.

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

2. Description of Claimed Facility

The facility described in this application is an afterburner to incinerate the hydrocarbon emissions from the coffee roaster. The afterburner has a 350,000 Btu per hour natural gas-fired burner and is refractory lined.

A Request for Preliminary Certification for Tax Credit was not made; the applicant requests that the Commission waive the requirement for filing.

Construction was initiated on the claimed facility on April 25, 1983, completed on July 15, 1984, and the facility was placed into operation on April 15, 1984.

This facility is subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Facility Cost: $9,559.74 (Complete documentation by copies of invoices was provided.)

3. Evaluation of Application

The principal purpose of construction and installation of the facility is to comply with a requirement imposed by the Department to control hydrocarbon emissions from the coffee roaster. The afterburner was installed at the same time that the business was moved to a new location. The coffee roaster with just a chaff collector cyclone was operated at the old location. The afterburner was installed on the outlet of the cyclone. Hydrocarbon emissions in the form of smoke and gases are incinerated at 1200°F by a natural gas-fired burner. The system operated at zero percent opacity when inspected by the Department.

The only function of the afterburner is pollution control. The total cost to install the afterburner was $10,059.74. Without the afterburner, a straight through duct could have been installed at a cost of less than $500. Therefore, the claimed facility cost is $10,059.74 - $500 = $9,559.74 of which 100 percent is allocable to pollution control.

The Department began working with the Kobos Company at their old location on September 29, 1982 because of complaints concerning odor and smoke from its coffee roaster. The company was told that they needed to obtain an Air Contaminant Discharge Permit and to install an afterburner to control emissions from the roaster at that time. The company was also informed it should submit a Notice of Intent to Construct and Request for Preliminary Certification for Tax Credit for the afterburner. After a follow-up letter from the Department on April 25, 1983 concerning submittal of the permit application, the Department received the application on May 26, 1983 with a letter saying the company was in the process of installing an afterburner. Construction started on April 25, 1983 with completion anticipated in June 1983.

In a letter dated October 11, 1983, Kobos indicated that it had run into problems with the installation of the afterburner and, also, that it now planned to move to a new location. The letter requested an extension of the completion date for the afterburner at the new location. The Department had been in contact with the company a number of times and was aware of the problems that had occurred. Therefore, the Department, in a letter dated October 19, 1983, granted an extension until March 1, 1984. On March 7, 1984, the Department was informed by letter that the company had just signed the lease for the new location and would move during the month of March 1984. The roaster, cyclone and afterburner were installed as a system at the new location. Installation started on March 20, 1984, and the system was operated on April 15, 1984.

On May 10, 1984, the Department received a Notice of Intent to Construct and Request for Preliminary Certification for Tax Credit. Plans for the project were requested and were received on June 5, 1984. On July 27, 1984 (Attachment A) the Department sent the company a letter which approved the plans and specifications for the afterburner and said that unless additional information to support the Request for Preliminary Certification was received within 30 days of receipt of the letter, it would be considered incomplete. The Department received a letter dated September 4, 1984 (Attachment B) which gave the history of the installation but did not indicate any reason why the filing of the Request for Preliminary Certification for Tax Credit was unreasonable.

ORS 468.175(1) requires that prior to the commencement of construction a Request for Preliminary Certification for Tax Credit be filed with the Department, unless the Commission finds that filing is inappropriate because special circumstances render the filing unreasonable. In this situation the Department does not know of any circumstances, nor has the company listed any circumstances, that rendered the filing of a Request for Preliminary Certification for Tax Credit unreasonable.

The company submitted an Application for Final Certification of a Pollu-tion Control Facility for Tax Relief Purposes on July 19, 1984, which was not accepted for filing and was returned by the Department on August 20, 1984 because the project had not received preliminary approval. Upon inquiry from the company, the Department sent a letter on November 16, 1984 (Attachment C) which agreed to review the application once again and to submit the application to the Commission. The Department followed this approach to avoid coming to the Commission twice, first for preliminary certification and possibly again for final certification.

PLANS AND SPECIFICATIONS AND CONSTRUCTION APPROVAL CONDITIONS

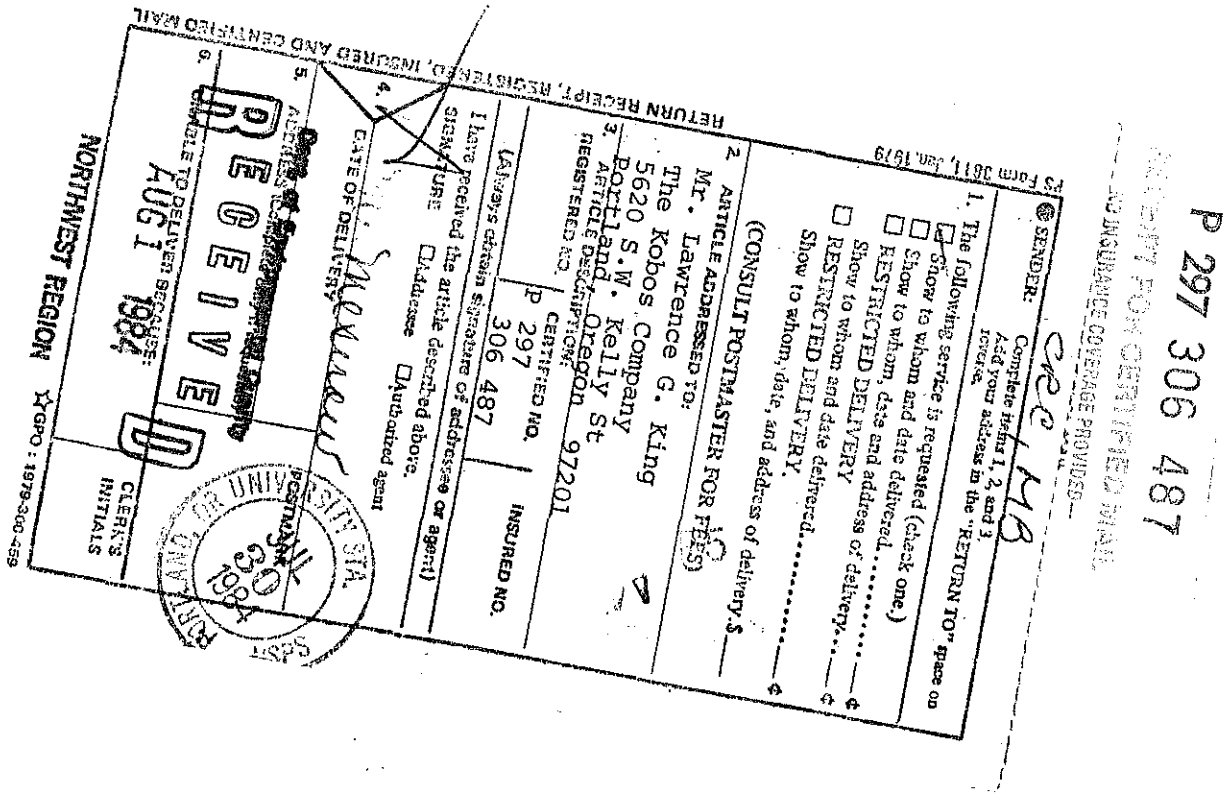
1. The construction of the project shall be in strict conformance to approved plans and specifications identified above. No changes or deviations shall be made without prior written approval of the Department of Environmental Quality. (Air contaminant facilities are subject to confirmation by the Environmental Quality Commission.)

2. Granting approval does not relieve the owner of the obligation to obtain required local, state and other permits and to comply with the appropriate statutes, Administrative Rules, standards, and if applicable to demonstrate compliance.

3. Please fill out and return the enclosed Notice of Construction Completion form within 30 days upon completion of this approved project.

4. Since construction of the project was initiated prior to receipt of the request for preliminary tax credit certification, our interpretation of Oregon Revised Statutes (ORS) 468.175 is that it will not be eligible for preliminary certification for tax credit.

   Unless you can provide information to support eligibility for certification within thirty (30) days of receipt of this letter, we will consider the application for preliminary certification incomplete.



ATTACHMENT B

the KOBOS company
The Water Tower • 5331 S.W. Macadam
Portland, Oregon 97201

September 4, 1984

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
SEP 06 1984
OFFICE OF THE DIRECTOR

Mr. Fred Hansen, Director
Department of Environmental Quality
P. O. Box 1760
Portland, Oregon 97207

Dear Mr. Hansen:

Late in 1982 we began research on an air pollution device for our coffee roaster as it was becoming evident that our smoke emissions were becoming a problem in our neighborhood. Early in 1983 we were visited by Mr. Harry Demaray of your department who informed us that we would be required to install a smoke incinerator. We immediately engaged an engineer. By April of that year the engineer had drawn plans but due to personal problems, he did little construction on the device unti September when he delivered the combustion chamber. By the end of September he had not delivered the promised components necessary to complete installation. We were then plunging into our busiest season of the year and it was becoming apparent that we had outgrown our warehouse/roasting facility and would have to move. It was then (letter of 10/11/84) I requested that Mr.Bispham grant us an extension of our expected completion date until Spring. Mr. Bispham granted our request.

By late February of 1984 we had completed negotiations and signed a lease on a new facility at 5620 S. W. Kelly. Mr. Bispham then granted us another months extension. On 4/15/84, the afterburner was operational and by 6/21/84, fully completed.

Through a misreading of the applicable documents, the Notice of Intent to Construct and Request for Preliminary Certification for Tax Credit was not submitted until after the pollution device was operational. However, throughout this entire process we were in contact with Mr. Harry Demaray and made every attempt to comply with DEQ regulations and deadlines. It came as a great shock to us that the tax credit was denied. As you know, we are not a large company and do not command limitless capital. The $10,000 expense for this afterburner was no small expenditure for us. I would like to ask that you and the Commission reconsider my request for a tax credit. I have enclosed copies of memos from Mr. Clinton and Mr. Demaray. All other documents are on file in the DEQ offices.

Yours truly,

David A. Kobos
President

cc: James E. Peterson
Mary V. Bishop
Wallace B. Brill
A. Sonia Buist
Arno H. Denecke
Charles Clinton
Harry Demaray

Attachment C

VICTOR ATIYEH
Governor

Department of Environmental Qu

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

November 16, 1984

David A. Kobos
President
Kobos Company
5331 SW Macadam
Portland, OR 97201

26-3100

Dear Mr. Kobos:

I apologize for taking so long to respond to your letter regarding your tax credit application. We have been trying to find ways of certifying your pollution control equipment, even though you did not file the appropriate forms in a timely manner.

It would be best if you could resubmit your application for final certification for tax credit. I have enclosed a copy of the application forms, should you have discarded your old copies. We will go ahead and process your tax credit as we research ways to certify your project.

Regardless of our research, you will have an opportunity to argue your eligibility for tax credit to the Environmental Quality Commission directly. The EQC must make all final decisions regarding tax credits under Oregon law; our Department's role is advisory in nature.

We will send you a copy of our final recommendation, and the schedule for the EQC meeting where it will be discussed. Should you have further questions, please contact Lloyd Kostow in our Air Quality Division at 229-5186.

Sincerely,

Original Signed By
Fred Hansen
NOV 15 1984

Fred Hansen
Director

JAG:c
RC1860
cc: Environmental Quality Commission
Air Quality Division, DEQ
Management Services Division, DEQ
Northwest Region, DEQ

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 16 1984
AIR QUALITY CONTROL

State of Oregon
Department of Environmental Quality

REISSUANCE OF POLLUTION CONTROL FACILITY CERTIFICATE

1. Certificate Issued To:

Brooks Scanlon, Inc.
P.O. Box 1111
Bend, OR 97701

The certificate was issued for a water pollution control facility.

2. Summation:

On October 15, 1976, the Environmental Quality Commission issued Pollution Control Facility Certificate 739 to Brooks Scanlon, Inc. for removal of log handling operations and other discharges from the Deschutes River.

By letter of December 19, 1984, (attached) Diamond International advised the Department that they had sold their Oregon Lumber operations to DAW Forest Products. Brooks Scanlon had been previously sold to Diamond International Corporation but the Department was not notified.

3. It is recommended that Pollution Control Facility Certificate 739 be revoked and reissued to DAW Forest Products; the certificate to be valid only for the time remaining from the date of first issuance.

Certificate No. 739

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 10/15/76

Application No. T-820

POLLUTION CONTROL FACILITY CERTIFICATE

Stock in below Corporation purchased by Diamond International Corporation

Issued To:	Location of Pollution Control Facility:
Brooks Scanlon, Inc. P. O. Box 1111 Bend, Oregon 97701	Bend, Oregon Deschutes County
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Facilities for removal of log handling operations and other discharges from the Deschutes River.

Type of Pollution Control Facility: ☐ Air ☒ Water ☐ Solid Waste

Date Pollution Control Facility was completed: April 1976 Placed into operation: April 1976

Actual Cost of Pollution Control Facility: $ 540,586.95

Percent of actual cost properly allocable to pollution control:

100%

In accordance with the provisions of ORS 468.155 et seq., it is hereby certified that the facility described herein and in the application referenced above is a "Pollution Control Facility" within the definition of ORS 468.155 and that the air and water or solid waste facility was erected, constructed or installed on or after January 1, 1967, or January 1, 1973 respectively, and on or before December 31, 1980, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or solid waste pollution, and that the facility is necessary to satisfy the intents and purposes of ORS Chapters 459, 468 and the regulations thereunder.

Therefore, this Pollution Control facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

RECEIVED
DEC 20 1976
Water Quality
Dept. of Environmental Quality

Signed _____

Title Chairman

Approved by the Environmental Quality Commission on the 15th day of October 1976

DEQ-TC-6 1-76

Diamond International

Diamond International Corporation

733 Third Avenue
New York, New York 10017
212/697-1700

December 19, 1984

State of Oregon
Department of Environmental Quality
522 S. W. 5th Avenue, Box 1760
Portland, Oregon 97207

RE: Pollution Control Facilities

Gentlemen:

Please be advised that Diamond International Corporation has sold its Oregon Lumber operations on May 19, 1984 and is no longer in need of the following Pollution Control Facility Certificates:

Number 739 (Issued to Brooks Scanlon, Inc.)
Number 1316 (Issued to Diamond Internaltional Corporation)

The above facilities have been sold to:

DAW Forest Products
P. O. Box 758
Redmond, Oregon 97756

This notification is in compliance with ORS 317.116(8).

Very truly yours,

Donald D. Colistra
Tax Manager

Encl.

EC/mmm

State of Oregon
Department of Environmental Quality

REISSUANCE OF POLLUTION CONTROL FACILITY CERTIFICATE

---

1. Certificate Issued To:

Diamond International Corp.
Oregon Lumber Division
P.O. Box 1111
Bend, OR 97701

The certificate was issued for a solid waste pollution control facility.

2. Summation

On December 4, 1981, the Environmental Quality Commission issued Pollution Control Facility Certificate 1316 to Diamond International Corp. for a fuel processing and storage system for waste wood, a fluidized bed burner and boiler system.

In letters dated December 18 and 19, 1984, DAW Forest Products and Diamond International respectively, notified the Department of the sale of the plywood plant formerly belonging to Diamond International to DAW Forest Products.

3. Director's Recommendation:

It is recommended that Pollution Control Facility Certificate 1316 be revoked and reissued to DAW Forest Products; the certificate to be valid only for the time remaining from the date of first issuance.

SChew
229-6484
1/07/85

Certificate No. 1316

Date of Issue 12/4/81

Application No. T-1387

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Diamond International Corp. Oregon Lumber Division P. O. Box 1111 Bend, Oregon 97701	Redmond, Oregon
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Fuel processing and storage system for waste wood, fluidized bed furner and boiler system.

Type of Pollution Control Facility: ☐ Air ☐ Noise ☐ Water ☒ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 12/10/80 Placed into operation: 12/16/80

Actual Cost of Pollution Control Facility: $ 3,808,000.00

Percent of actual cost properly allocable to pollution control: 100%

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of ORS 468.175 and subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE — The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

Signed _____

Title Joe B. Richards, Chairman

Approved by the Environmental Quality Commission on the 4th day of December, 19 81

DAW Forest Products Company
Plywood Operations - P.O. Box 758, Redmond, OR 97756 - (503) 548-2193

December 18, 1984

Department of Environmental Quality
522 S. W. Fifth Avenue
P. O. Box 1760
Portland, OR 97206

Dept. of Environmental Quality

Subject: Request for ownership update, and tax credit.

In the 4th Quarter of 1981, Diamond International Corporation, the former owners of this Plywood Plant, completed an energy project. The project, due to its nature, qualified for a tax credit as defined under current tax laws.

At this time, we are requesting the tax credit be changed from Diamond International Corporation (the former owners) to the current owners, DAW Forest Products, who are based in Lake Oswego, Oregon. The effective date of the sale was May 7, 1984.

We would also like any information you may have in regards to the tax credit, which was issued on the completion of this capital project.

Please advise if further information is necessary.

Sincerely,

Charles E. Preston
Office Manager

CEP/pc

Enclosures

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, January 25, 1985, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Amendments to Solid Waste Rules Relating to Open Burning of Solid Waste at Disposal Sites (OAR 340-61-015 and 340-61-040(2))

Background

At the September 14, 1984, EQC meeting, an informational report on the "Status of Open Burning Disposal Sites" was presented (Agenda Item No. K, attached). The report proposed a course of action to examine the following open burning issues through a Department interdivisional task force:

1. Air quality impacts of open burning.
2. Groundwater impacts from disposal at site.
3. Identification of those sites which need upgrading to sanitary landfill operating standards.
4. Identification of sites which should be closed.
5. Identification of sites where open burning is the most environmentally suitable solid waste disposal option.

The EQC accepted the above course of action.

Since the beginning of the Solid Waste Program, it has been the EQC's position that open burning of solid waste is not an acceptable practice. Burning at disposal sites has been phased out at all but small rural disposal sites.

A task force of twelve Department staff identified and evaluated the above and wrote a detailed report. The report is attached (Attachment II).

One of the recommendations of the task force was that the solid waste rules relating to open burning at disposal sites be clarified and modified to clearly reflect whether open burning is to be allowed, and if so in what

situations and under what conditions. Proposed amendments to OAR 340, Division 61 have been prepared (Attachment VI).

Statement of Need and Fiscal Impact (Attachment III), Notice of Public Hearing (Attachment IV) and Land Use Consistency (Attachment V) are attached.

Alternatives and Evaluations

The task force members prepared environmental profiles for each of the landfills presently open burning solid waste and developed the following criteria to rate acceptability of open burning at a particular site:

1.	Air quality impacts:	As measured by potential health hazard and nuisance complaints.
2.	Proximity to people:	Open burning should not be allowed within city or urban growth boundary or where it would impact nearby residents.
3.	Climate:	Open burning should not be allowed in wet climate because garbage gets too wet to burn quickly and smolders. Wet/dry generally corresponds to east or west of the Cascades. Prevailing wind direction should be away from nearby residents and urban growth boundary.
4.	Size:	This criteria relates to economics of alternative disposal methods as measured by people and/or volumes of waste. The task force considered 450 persons within a dump service area to be necessary for adequate fee generation.
5.	Composition of wastes:	Hazardous or substantial industrial waste was considered unsuitable for an open burning dump.
6.	Cost for upgrade:	Task force believes costs in excess of $10/month to the household would be excessive.
7.	Poorly sited existing site:	Sites should be relocated if they cause other problems such as groundwater contamination or complaint letters, or are subject to washout by surface water, etc.

The criteria 1 through 5 are proposed to be added to the rule to delineate those sites where open burning of domestic solid waste could continue (OAR 340-61-040(2)(b)(A-E)).

Operating conditions were also developed for those sites where open burning might be allowed. Operating conditions require:

1. Controlled access.
2. An attendant on duty during open hours and while burning.
3. Limit burning to two times per week when the site is closed.
4. Fire permit from local fire agency.
5. Burial of ash at least two times per year.

The operating conditions are included in the rule amendment (OAR 340-61-040(2)(c)(A-F)).

The task force did not make a final conclusion on whether open burning should be allowed, but developed two options with the condition that open burning of solid waste should not be allowed west of the Cascade Mountains.

If criteria developed to determine if sites should be allowed to continue open burning were applied, the two western Oregon sites now open burning solid waste would be forced to close (Powers and Butte Falls).

The first option is that open burning is an acceptable disposal practice in those rural areas that meet the criteria and under specified operating conditions. Justification for this option is as follows:

1. In certain areas and under specified operating conditions, it appears open burning does not create significant air quality impacts.

2. Open burning sites require smaller land area than do landfills and the lifespan of a given site can be longer.

3. Open burning operations require less equipment than landfills.

4. Open burning reduces long-term pollution liability at the site, as compared to a sanitary landfill. A significant amount of organics are removed by burning. (High concentrations of organics are found in landfill leachate.)

5. Open burning reduces closure costs to the extent that less land area and material are involved.

6. Open burning reduces potential for groundwater impacts.

7. Frozen ground does not impede disposal at an open burning site. It can at a landfill.

Federal law authorizes citizen suits to curtail violations of RCRA and its rules. In a citizen suit, closure appears to be the only available remedy in federal proceedings. Under RCRA, the state has exposure for citizen suit liability only if it receives federal funding for non-hazardous solid waste activities. Oregon does not receive such funding. RCRA does not affect other established bases of civil liability for damages.

RCRA reauthorization recently passed by Congress has authorization for solid waste funding for states. It is too early to determine what dollar level if any will actually be appropriated. It is also legal counsel's opinion that should the state apply for federal funding that the Department would be required to enforce federal criteria and stop all open burning. RCRA reauthorization also requires EPA to redraft criteria guidelines by March 31, 1988 for facilities that receive hazardous household waste. If a state lacks a program to implement the revised criteria, EPA is authorized to enforce the open dump ban. There is a slight possibility that western states may be successful in lobbying EPA to change the air criteria to allow for some open burning at disposal sites.

The other option is to stop open burning at all disposal sites. This would eliminate all air emissions, be safer and cause less fire hazard and in at least some cases lead to more acceptable environmental alternatives.

There is concern that if all open burning is stopped, some local governments may abandon their disposal operation. Presumably, this could greatly increase the amount of illegal dumping on federal, state and private lands.

Because of the negligible environmental impact that would be caused by allowing controlled open burning at small, rural disposal sites, the Department is supportive of allowing open burning to continue. Because of possible changes in federal criteria and law within three years, any site operator allowed to continue open burning should be notified that the rules may be subject to change. Although the task force recommendation was for long-term burning, it may only be a short-range option.

The rule as drafted would allow those sites that meet the criteria to continue to open burn. Of the twenty-five sites that presently burn, nine would be required to stop open burning. These sites are Butte Falls, Powers, Christmas Valley, Paisley, Silver Lake, Halfway, Huntington, Jordan Valley, and Fossil. They are all larger sites and include the two western Oregon sites. Even though open burning would be allowed at some sites, upgrading would occur because of the operating conditions that are also included in the rule. Burning would be reduced to a maximum of two times per week only when the site was closed to the public.

Summation

1. At the September 14, 1984 EQC meeting, the Commission approved a course of action to examine the problem and develop policy regarding open burning of solid waste at disposal sites.

2. A task force composed of Department staff recommended that the rules regarding open burning be clarified and/or modified. Criteria were developed to evaluate whether sites should be closed, upgraded or allowed to continue to burn. The rule is designed to establish this criteria.

3. Recommendation was made that the rule reflect whether open burning is to be allowed.

4. The task force made the following recommendations regarding continuation of open burning.

   o That no burning be allowed west of the Cascade Mountains.

   o That in eastern Oregon:

   Allow continued open burning at rural landfills subject to strict operating criteria.

   -or-

   To phase out all open burning.

5. Legal opinion is that the state is not presently subject to legal remedy for allowing continued open burning. However, the site operator is subject to citizen suit in federal court for closure.

6. RCRA reauthorization requires EPA to rewrite the landfill criteria by March 31, 1988 and allows EPA to enforce if states are not able.

7. Because of the negligible environmental impact associated with open burning of solid waste at small rural landfills and the possibility that local governments would abandon any form of disposal, the Department is recommending that open burning is an acceptable disposal practice in certain situations.

8. Under the proposed rule, nine of the twenty-five sites presently open burning solid waste would be required to upgrade to landfill or close.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission authorize public hearings to take testimony on the proposed amendments to rules for open burning of solid waste at disposal sites (OAR 340-61-015 and OAR 340-61-040(2)).

Fred Hansen

Attachments:
I Agenda Item K, 9-14-84 EQC Meeting
II Task Force Report
III Statement of Need for Rulemaking
IV Notice of Public Hearing
V Land Use Consistency
VI Draft Rule

Robert L. Brown:b
229-5157
December 27, 1984
SB4117

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, September 14, 1984, EQC Meeting

Informational Report: Status of Open Burning Solid Waste Disposal Sites

Background

Open burning of solid waste materials is generally considered to be an unacceptable practice. It is allowed only in cases where no other alternative is available. Of the approximately 200 disposal sites receiving municipal waste in the state at the passage of ORS 459 by the 1971 Legislature, over 70% were open burning dumps. Through a statewide solid waste planning process conducted in the 1973-75 period, and subsequent implementation, most of these open dumps have been converted to landfills or transfer stations, or closed. The Department has continued to exert pressure on open burning dumps with additional closures or upgrades occurring each year.

OREGON REGULATION

ORS 459 does not specifically prohibit open burning, but policy statements indicate that more sanitary, efficient and economical methods of disposal should be developed. The EQC adopted a policy statement in 1971 which includes the following:

> ". . . when acting on questions of solid waste disposal, [the Department] shall place primary emphasis on salvage, recycling and reconstitution of solid waste. Incineration of solid waste shall be permitted only where no other method of disposal is feasible . . ."

Division 61 of the Department's rules states:

> "OAR 340-61-040(2) Open burning. No person shall conduct the open burning of solid waste at a landfill, except in accordance with plans approved and permits issued by the Department prior to such burning. The Department may authorize the open burning of tree stumps and limbs, brush, timbers, lumber and other wood waste, except that open burning of industrial wood waste is prohibited."

In spite of this negative attitude toward open burning garbage, the Department has supported variances to its rule to allow open burning in specific situations for cause. Two basic categories of open burning variance have been presented to and approved by the Commission: (1) temporary variances to allow local officials time to plan for and construct replacement facilities or to upgrade open burning dumps (such as Seaside and Cannon Beach) and (2) long-term variances on small sites that have no significant impact on the environment and have no concerted planning for replacement (such as Adel and Plush). Twelve disposal sites are presently operating under variances granted by the EQC. Half of these would be termed temporary. There are additional rural sites in eastern Oregon which are unattended and burn regularly or occasionally without variances in violation of Solid Waste Disposal Permits. The Department has held open burning at rural disposal sites a low priority item. Impact on the environment is typically minimal and the amount of waste involved is also minimal.

The Department now intends to put all open burning disposal sites on some type of formal status approved by the Commission. Permits with reasonable, meaningful and enforceable conditions will be issued. This effort will require that all open burning sites be divided into categories of short-term correctable sites and long-term sites with no reasonable alternative.

An internal interdivisional task force is proposed to examine the open burning problem and develop the following:

1. Air quality impacts of open burning.

2. Groundwater impacts from disposal at site.

3. Identification of those sites which need upgrading to sanitary landfill operating standards.

4. Identification of sites which should be closed.

5. Identification of sites where open burning is the most environmentally suitable solid waste disposal option.

For those sites where the task force believes open burning should continue, some recommendations on how to accomplish this within the confines of federal law will be sought. If a scheme where limited open burning at disposal sites is possible which is legal under federal law, but not under existing Oregon law, recommendations on the necessary changes in state statutes will be made.

FEDERAL REGULATION

In October 1976, the Resource Conservation and Recovery Act (RCRA) was enacted by Congress. The two major provisions were Subtitle C - Hazardous Waste and Subtitle D - Solid Waste. Under Subtitle D, the Environmental Protection Agency (EPA) was directed to develop "minimum criteria for determining what solid waste disposal facilities and practices pose no reasonable probability of adverse effects on health or the environment."

The criteria were also to provide the standard to be applied by the federal district courts in determining whether parties have engaged in acts that violate the prohibition of open dumping.

The sanitary landfill criteria were published in the Federal Register September 13, 1979. Although the Regulation Preamble indicated findings of "no reasonable probability of adverse effects," the criteria are inflexible on open burning. 40 CFR Part 257 Subsection 257.3-7 states "the facility or practice shall not engage in open burning of residential, commercial, institutional or industrial solid waste."

During the initial years of RCRA (1976-80), the Department received grant funds from EPA under Subtitle D to develop a state solid waste management plan and conduct an open dump inventory. The state plan was adopted by the EQC in January 1981 and the open dump inventory was substantially completed. There are 28 Oregon sites on that list. Most of these are listed for open burning. It should be pointed out that this "state plan" under RCRA was a necessary activity to funding the state solid waste program and was separate from earlier DEQ-sponsored solid waste management plans.

EPA has no direct enforcement powers in solid waste; however, the federal law does provide for citizen lawsuit. Section 7002 of the Act provides that any person (very broadly defined in the Act) may commence a civil action in federal district court against any person "who is alleged to be in violation of any permit, standard, regulation, condition, requirement or order which has become effective pursuant to this Act." Disposal sites under a compliance schedule established by a state plan are protected from citizen suit. Original wording in the law gave protection for 5 years from the date of publication of the open dump inventory. This wording was used in the state solid waste management plan which was approved by EPA. The first open dump inventory was published on May 29, 1981; thus, the date the Department had been working against is May 29, 1986.

The Department has recently learned that the May 29, 1986 date was affected by an amendment to RCRA on October 21, 1980. The wording "5 years from the date of publication of the inventory" was changed to "5 years from the date of publication of the criteria." As the criteria were published on September 13, 1979. the final date for protection against citizen suit is September 13, 1984. For unknown reasons, EPA overlooked the state's proposed enforcement program. which clearly extended beyond 1984, when it approved the Oregon state plan June 22, 1981.

Open burning of most solid waste is prohibited by the criteria. Thus, after September 13, 1984, all sites which open burn domestic solid waste (or otherwise violate federal sanitary landfill criteria) are subject to citizen suit. There is no general agreement among the states and EPA as to the significance of this. Initial contacts with Kenneth Schuster, EPA-Washington, indicate that only the site operator is subject to suit in federal court. Mr. Schuster has the only active program authority presently at EPA. His indication was that as long as the state is receiving no funding for solid waste activity, the Department is not

subject to suit. It may be that the only suable remedy under RCRA is halting "open dumping" and/or closure of the open dump. EPA has played no role in domestic solid waste matters since 1981.

In regard to the open dumps listed in the inventory, the introduction to the latest EPA-written update, published in 1984, states:

> "In EPA's view, the open dumping prohibition is a provision of Federal law which stands on its own, separate from the State planning program. The inventory of open dumps is a publication of State findings from State planning efforts to satisfy the requirement of Section 4003 [state program funding] of the Act. The inclusion of a facility in the list of open dumps is not an administrative determination by EPA that any particular parties are engaging in the prohibited act of open dumping.
>
> "A determination for purposes of the open dump inventory need not precede an open dumping suit. However, before the results of the inventory may be used to support a legal determination that open dumping has occurred, the court would have to determine that the classification was a correct application of the criteria and that the defendant was responsible for actions violating the criteria. The court would be obliged to review the sufficiency of the State's classification of a facility and not simply defer to the State's decision."

In fewer words, EPA does not intend the appearance of a disposal site on the inventory to constitute any conclusive finding usable in a citizen-initiated lawsuit.

EPA Region 10 (Seattle) is aware of two citizen suits in the region. Cedar Hills Landfill. Seattle, and Tillamook Landfill, Tillamook, Oregon, are both being sued for "open dumping." Both cases have been in federal court for approximately two years and neither have come to trial (Tillamook trial is scheduled for September 5-7, 1984).

The questions of who is subject to citizen suit and what remedies can be pleaded for have been referred to the Attorney General's Office for investigation and clarification.

CONCLUSION

The Department proposes that no action be taken at this time in regard to those sites with outstanding variances. However, with the current status of federal law. new variances contrary to EPA landfill criteria should not be granted and other actions should be suspended until the proposed task force has had time to examine open dumping in general and to explore alternatives. The variance request on behalf of Seaside and Cannon Beach (Clatsop County) is unique and is proposed to be acted on at this meeting (see Agenda Item No. L).

The Department is notifying all sites listed on the open dump inventory plus any others that may be violating federal sanitary landfill criteria, of the current applicability of federal law to their activities.

Director's Recommendation

It is the Director's recommendation that the Commission concur with the course of action outlined above by the Department.

Fred Hansen

Robert L. Brown:c
229-5157
August 22. 1984
SC1713

Attachment II
Agenda Item No. D
1/25/85 EQC Meeting

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Fred Hansen DATE: October 25, 1984

FROM: Tom Lucas

SUBJECT: Report on Oregon Open Dumps

The Open Dump Task Force is pleased to submit a report on Oregon Open Dumps. The report is a product of the entire Task Force and reflects both group concensus and individual perspectives.

The report covers all identified open dumps with emphasis on those sites which practice open burning.

The report is organized as follows: (1) summary, conclusions, and recommendations, (2) the main body of the report, and (3) attachments which contain detailed information. The Task Force emphasized the development and assembly of data and information on which to make its evaluation and recommendations.

Many of the recommendations are conditional, i.e., they cannot be finalized until a legal opinion is received from Mike Huston. The Task Force expressed an interest in reconvening after the legal opinions are received, to finalize recommendations.

TJL:t
TT387

T A S K F O R C E R E P O R T

O N

O P E N D U M P S

Submitted By:

Dennis Belsky
Don Bramhall
Bob Brown
Charlie Gray
Mary Halliburton
Ron Householder
Tom Lucas
Bill Jasper
Gary Messer
Brett McKnight
Andy Schaedel
Joe Schultz
Jim Vilendre

October 25, 1984
Department of Environmental Quality

Contents

SUMMARY

The Resource Conservation and Recovery Act (RCRA), passed in 1976, required EPA to develop minimum criteria to determine what solid waste facilities and practices would protect public health and the environment. Sites which fail to satisfy these criteria are classed as open dumps, including those which practice open burning of solid waste. The criteria were published on September 13. 1979.

A state solid waste management plan, prepared under RCRA requirements, was adopted by EQC action in 1980 and approved by EPA in 1982. The plan commits to upgrade or to close open dumps to the extent that they violate state law or DEQ rules. A list of open dumps was developed and included in the state plan and subsequently was published in the Federal Register. These were dumps that violated RCRA criteria. mainly the air and groundwater criteria. It was believed that open dumps, identified on an EPA inventory and under compliance schedules, while pursuing upgrade or closure. were protected from citizen lawsuit provisions of RCRA or until May 29, 1986.

The Department recently learned that protection of open dumps on the EPA inventory from citizen lawsuit provisions of RCRA would end September 13. 1984, five years from the date of publication of RCRA criteria. Any dump that does not meet the criteria is subject to citizen lawsuit provisions.

Recognizing the need for a comprehensive approach to effectively address the issue of open dumps, a Task Force was to evaluate environmental impacts of open dumps; identify sites which should be closed, upgraded, or allowed to burn; evaluate federal and state laws with respect to open burning; and present recommendations and a strategy for dealing with open burning dumps.

The Task Force approach was to discuss and evaluate issues and problems pertaining to open dumps; prepare detailed environmental profiles of open dumps; prepare a tentative categorization of open burning dumps with respect to: (1) those which showed upgrade or close. and (2) those which showed continue open burning; suggest and evaluate courses of action for dealing with open burning dumps; and prepare final recommendations.

During the discussion of open dumps, it was decided to eliminate several open dumps from consideration (closed or near closure) and to add new ones for consideration. It was agreed that sites with groundwater or surface water problems would be treated differently from open burning dumps, i.e., the Task Force would concentrate its efforts on open burning dumps.

Environmental profiles were prepared for 35 sites. In addition, material was prepared describing air quality impacts of open burning and potential for groundwater impacts if open burning dumps were converted to sanitary landfills.

Criteria were developed to categorize active open burning dumps. The sites were categorized and both alternatives to open burning and factors which may prevent their implementation are presented.

The Task Force believed that an initial evaluation of open burning dumps should be based on environmental considerations, but that legal opinions should be requested concerning state liability. Suggested strategies for pursuing legal open burning and existing rules were evaluated. It was perceived that current rules pertaining to open burning sites are not precise and that a definitive policy on open burning needs to be established. Thus, strategies were outlined and discussed under two broad policy options:

(A) Open burning is an acceptable long-term solid waste disposal practice in rural areas and under specified operating conditions;

(B) Open burning is not an acceptable long-term solid waste disposal practice and the Department should pursue upgrade/closure at all sites.

Under Policy Option A, justifications for open burning, an evaluation of identified strategies to make open burning legal, and considerations should the policy be established were presented. Under Policy Option B, justifications for not open burning, an evaluation of identified strategies for upgrade or closure, and considerations should the policy be established were presented.

Final recommendations for the Director's review and consideration were developed.

CONCLUSIONS

There is a conflict between RCRA criteria and state laws and rules, regarding open burning dumps, insofar as state laws and rules appear to allow open burning.

There is ambiguity in the Department policies and rules. A policy indicates open burning is an unacceptable practice, whereas the rules appear to allow open burning. The rules are not precise with respect to open burning.

Any site which can be shown to violate RCRA criteria is now subject to a citizen's lawsuit.

Open dumps which generally have groundwater problems should be addressed by a separate Task Force. This conclusion was based on: (1) sites on the inventory list with identified groundwater problems are scheduled for closure in the near future, and (2) groundwater pollution from leachate may be more widespread than the list of open dumps suggests.

The only available information on air quality impacts from open burning dumps are complaints and nuisance conditions.

Conversion of sites from open burning dumps to landfills could possibly increase the potential for groundwater pollution.

There are 25 active open burning dumps in Oregon. Twenty-three of these sites are east of the Cascade Mountains.

Less than 0.5 percent of Oregon's citizens are served by open burning dumps. Open burning dumps are confined to a few counties and generally in remote areas.

Site operations at open burning dumps are variable and range from well-controlled burning operations to virtually uncontrolled burning. The schedules for burning vary from once weekly to unscheduled and sporadic.

Financial capability and local government cooperation is essential to conversion of open burning dumps to sanitary landfills, and also for well-managed open burning dumps. In very rural and remote areas of Eastern Oregon it appears that counties, as compared to cities, have the best financial and management capability to prepare solid waste management plans; insure implementation of the plans; and insure proper site management.

Operators of many open burning dumps have failed to follow Department approved plans for disposal of solid waste in a landfill and have allowed the sites to revert to open burning.

The potential exists for several sites to close very soon, insofar as nine sites are owned by the Bureau of Land Management (BLM), and both BLM and the U.S. Forest Service use open burning dumps for disposal of solid waste. The RCRA criteria strictly prohibit federal agencies from using open dumps. If alternatives to open burning are not provided, random dumping could result.

Based on available information, it appears that many sites could continue to operate as open burning dumps without any apparent environmental impact.

Based on available information, it appears that several open burning dumps either have some known environmental impact or have the potential for environmental impacts and should upgrade to landfills or close.

Climate, particularly high rainfall amounts, appear to correspond to smoldering fires and creation of nuisance conditions.

Site location, with respect to proximity to residents and volumes of waste burned, appear to relate to nuisance conditions and complaints.

Lack of a firm Department policy on open burning may create confusion among local governments and encourage open burning where it need not occur. There are solid justifications both for Policy Option A (open burning as an acceptable long-term practice) and for Policy Option B (open burning is not an acceptable long-term solid waste disposal practice), for sites east of the Cascade Mountains.

Additions or modifications to state statutes would not be necessary under either Policy Option A or B. However, addition of some rules and policies and modification of others would clarify Department intent.

Viable strategies for pursuing upgrade or closure of open burning sites include: (1) issuing Stipulated Consent Orders requiring plans and schedules to all site operators without variances, (2) enforcing permits with recently approved plans which prohibit open burning, and (3) for those sites with variances, notify site operators that no open burning and no extension of variance will be allowed upon variance expiration date. Those sites with variances which require plans are subject to enforcement.

Legal open burning of solid waste does not appear to be possible under the current RCRA criteria.

Strategies to pursue legal open burning would require changes in RCRA criteria and may be a lengthy process.

A legal opinion is needed from the State Attorney General to determine the state's liability under the citizens lawsuit provisions of RCRA. An opinion should be forthcoming soon.

RECOMMENDATIONS

1. The Department should take immediate action to phase out open burning dumps west of the Cascade Mountains and to prohibit new ones.

   The two sites which practice open burning should be notified that their respective open burning dumps must be upgraded or closed by the end of the variance period and that there will not be any extension or renewal of variances.

   The Department should request that the Environmental Quality Commission issue Stipulated Consent Orders which require each site operator (municipality) to submit plans and a schedule for upgrading the existing open burning dumps or to utilize transfer stations for disposal of solid waste.

   The Department should prepare a rule for Environmental Quality Commission adoption which. at a minimum, would prohibit open burning dumps west of the Cascade Mountains.

2. The Department should prepare notification letters to all site owners and operators of all landfills and open dumps in Oregon of (1) the citizen lawsuit provisions of RCRA, and (2) the Department's position on open burning dumps.

3. The Department should not take any position on open burning dumps east of the Cascade Mountains until an informal legal opinion is received from the Attorney General.

   If the legal opinion indicates substantial state liability under the citizens lawsuit provisions of RCRA, the Department should choose Policy Option B (open burning is not an acceptable long-term solid waste disposal practice and the Department should pursue upgrade/ closure at all sites).

   If the legal opinion indicates limited state liability under citizens lawsuit provision of RCRA, the Department should choose either Policy Option A (open burning is an acceptable long-term solid waste disposal practice in rural areas and under specified operating conditions) or Policy Option B.

4. The Department should prepare for Environmental Quality Commission adoption, a rule which clearly sets forth Department policy with respect to open burning dumps. Furthermore, existing rules which conflict with a policy should be modified.

5. The Department should contact the U.S. Bureau of Land Management and the U.S. Forest Service to determine what these agencies intend to do regarding usage of open burning dumps and what the Bureau of Land Management intends to do about the nine sites which it owns.

6. If the Department chooses Policy Option A (open burning is an acceptable long-term solid waste disposal practice in rural areas and under specified operating conditions) for open burning dumps east of the Cascade Mountains, it should:

   a. Propose changes to RCRA criteria with EPA by working with other states through the Association of State and Territorial Solid Waste Management Officials.

   b. Propose for Environmental Quality Commission adoption a rule which specifies criteria which must be met to allow a site to practice open burning. (Suggested criteria are presented in Table 2 of the report.)

   c. Require the site operator to submit a long-range plan and implementation program, approved by the county, confirming that the use of open burning at the site fits in with the adopted county plan, and further that the plan meets the criteria and specified site operating conditions. (Suggested site operating conditions are presented in Attachment 7.)

   d. Issue permits which include the operating conditions for open burning.

7. If the Department pursues Policy Option B (open burning is not an acceptable long-term solid waste disposal practice and the Department should pursue upgrade/closure at all sites) for open burning dumps east of the Cascade Mountains, it should:

   a. Enforce permits at sites where open burning is prohibited and where the Department has recently approved plans for a landfill. Prepare Stipulated Consent Orders for issuance by the Environmental Quality Commission requiring schedules for implementing the approved plans.

   b. Prepare Stipulated Consent Orders for issuance by the Environmental Quality Commission requiring a plan and schedule for upgrading to a sanitary landfill at sites where permits prohibit open burning and plans have not been prepared.

   c. For those sites with variances, notify site operators that no open burning and no extension of variances will be allowed upon variance expiration date. Those sites with variances which require plans are subject to enforcement.

   d. The Department should assemble case studies, success stories, etc., of rural communities which have converted from open burning dumps to landfills.

8. The Department should pursue the need for new legislation which would make counties responsible for developing long-range solid waste management plans, delegating local implementing entities, and insuring plan implementation. An alternative which should be considered is new legislation which would require County Comprehensive Plans to address solid waste as part of the LCDC post acknowledgment review process.

9. The Director should form an open dump Task Force in the near future, to address the issue of groundwater pollution at solid waste disposal sites.

A majority of the Task Force members believe that Policy Option B should be established. There was strong minority disagreement. Generally, positions of the members reflect geographical location of work.

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SECTION I. ISSUE STATEMENT

Resource Conservation Act (RCRA) prohibits "open dumping." Solid waste facilities and practices which fail to satisfy RCRA's Criteria for Classification of Solid Waste Disposal Facilities and Practices", published in the Federal Register September 13, 1979, are considered open dumps. Classification criteria include items which address floodplains, endangered species habitat, surface water, groundwater, application to land used for the production of food chain crops, disease, safety, and air.

While RCRA did not give EPA authority to take legal action against parties that violate the open dumping prohibition, it provides that any person may commence a civil action in Federal district court against any person "who is alleged to be in violation of any permit, standard, regulation condition, requirement, or order which has become effective pursuant to this Act. This is called a provision for citizen suit. Under the Act, solid waste disposal sites identified by the state as open dumps and placed on a compliance schedule were protected from citizen suit for a period of time while pursuing upgrade or closure. Original wording in the Act gave protection for five years from the date of publication in the open dump inventory. Because the first open dump inventory was published on May 29, 1981, the Department has been working toward closure or upgrade of open dumps by May 29, 1986.

The Department recently learned that the May 29, 1986 date was affected by an amendment to RCRA on October 21, 1980. The wording "5 years from the date of publication of the inventory" was changed to "5 years from the date of publication of criteria." Since the criteria were published on September 13, 1979,. the final date for protection against citizen suit was September 13, 1984. thus, after September 13, 1984, any site which open burns domestic solid waste, or otherwise violates federal sanitary landfill criteris is subject to citizen suit.

Recognizing the need for a comprehensive approach to effectively address the issue of open dumps, Fred Hansen directed that a Task Force be formed to evaluate solid waste disposal sites identified as open dumps and subject to citizen law suit provisions.

SECTION II. CHARGE OF TASK FORCE

The Director asked for a report presenting solid recommendations on what should be done with open dumps and a logical strategy for dealing with the issue, with emphasis placed on those open dumps that burn.

The charge to the Task Force was to evaluate each open dump and assess:

a. Air quality impacts of open burning;

b. Groundwater impacts from disposal at sites;

c. Identify those sites which need upgrading to sanitary landfill operating standards;

d. Identify those sites which should be closed; and

e. Identify those sites where open burning is the most environmentally suitable solid waste disposal option.

For those sites where the Task Force believe open burning should continue, some recommendations on how to accomplish this within the confines of federal law are needed. If a scheme where limited, open burning at disposal sites is possible and is legal under federal law, but not under existing Oregon law, recommendations on the necessary changes in state statutes are needed.

SECTION III. BACKGROUND ON RCRA REQUIREMENTS, STATE STATUTES AND RULES, AND DEPARTMENT ACTIONS

In October 1976, the Resource Conservation and Recovery Act (RCRA) was enacted by Congress. The two major provisions were Subtitle C - Hazardous Waste and Subtitle D - Solid Waste. Under Subtitle D, the U.S. Environmental Protection Agency (EPA) was directed to develop "minimum criteria for determining solid waste disposal facilities and practices which pose no reasonable probability of adverse effects on health or the environment". The criteria were also to provide the standard to be applied by the federal district courts in determining whether parties have engaged in acts that violate the prohibition of "open dumping".

"Criteria for Classification of Solid Waste Disposal Facilities and Practices" were published in the Federal Register on September 13, 1979. Facilities which fail to satisfy the criteria are considered "open dumps" for purposes of state solid waste management planning. Under the Act, classification criteria for solid waste facilities and practices include items which address flood plains, endangered species habitat, surface water, groundwater, application to land used for the production of food-chain crops, disease, safety, and air.

Under the air criteria, <u>any</u> facility or site that engages in open burning of residential, commercial, institutional, or industrial solid waste is considered an open dump. EPA defines open burning as: "The combustion of solid waste without (1) control of combustion air to maintain adequate temperature for efficient combustion, (2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and (3) control of the emission of the combustion products."

Under the groundwater criteria, "A facility or practice shall not contaminate an underground drinking water source beyond the solid waste boundary or beyond an alternative boundary specified in accordance with paragraph (b) of this section." "Only a State with a solid waste management plan approved by the Administrator pursuant to Section 4007 of the Act may establish an alternative boundary to be used in lieu of the solid waste boundary. A State may specify such a boundary only if it finds that such a change would not result in contamination of ground water which may be needed or used for human consumption."

During the initial years of RCRA (1976-80), the Department received grant funds from EPA under Subtitle D to develop a state solid waste management plan and conduct an open dump inventory. This "state plan" under RCRA was a necessary activity to funding the state solid waste program and was separate from earlier DEQ-sponsored solid waste management plans.

The state solid waste management plan was adopted by the Environmental Quality Commission (EQC) in January 1981. Components of the plan include a methodology for conducting an inventory of all existing disposal sites defined by RCRA, a methodology for requiring closure or upgrade of open dumps found in violation of the criteria and a policy statement prohibiting the establishment of new open dumps.

Twenty-eight sites are listed on the current state inventory of open dumps (Attachment 1) published in 1984. Seventeen are identified as violating the air criteria because they engaged in open burning. Eight of the seventeen were listed for violating other criteria, such as disease and safety criteria in addition to the air criteria. Eleven are identified as violating the disease, safety, groundwater and/or surface water criteria.

The plan commits to working toward upgrade or closure of those facilities classified as open dumps:

"to the extent that state rules are equivalent to the RCRA criteria. That is, violation of the criteria is not of itself an illegal act under Oregon law. However, facilities or practices which violate the Criteria may also violate equivalent state statutes or rules and therefore be subject to enforcement action by the Department. Permits for facilities found to be violating the Department's rules or Oregon statutes will be promptly amended to include a time schedule for upgrading or closure, unless such a schedule is already in effect. The time period allotted for compliance shall not exceed five years from the date of publication on the open dump list."

The RCRA did not give EPA authority to take legal action against parties that violate the open dumping prohibition. Instead, Section 7002 of the Act provides that any person (very broadly defined in the Act) may commence a civil action in federal district court against any person "who is alleged to be in violation of any permit, standard, regulation, condition, requirement, or order which has become effective pursuant to this Act."

Certain conditions must be met before the suit is filed. They are:

1. Plaintiff must give 60 days notice to, (a) the Administrator (EPA), (b) state in which the violation occurs, and (c) to the alleged violator.

2. If the Administrator or state has commenced and is diligently prosecuting a civil or criminal action in court, they must await completion before filing. They may intervene in the case.

The plan therefore acknowledged that, in addition to the Department's enforcement program, any citizen may file suit in federal court against any facility believed to be in violation of the prohibition on "open dumping" described in Section 4005(c) of RCRA.

Disposal sites identified on the open dump inventory and under a compliance schedule established by a state plan were protected from citizen suit for a period of time while pursuing closure or upgrade. Original wording in the law gave protection for 5 years from the date of publication of the open dump inventory. Because the first open dump inventory was published on May 29, 1981, the Department has been working towards closure or upgrade of open dumps by May 29, 1986.

The Department recently learned that the May 29, 1986, date was affected by an amendment to RCRA on October 21, 1980. The wording "5 years from the date of publication of the inventory" was changed to "5 years from the date of publication of the criteria." Since the criteria were published on September 13, 1979, the final date for protection against citizen suit was

September 13, 1984. Thus, after this date, any site which open burns domestic solid waste (or otherwise violates federal sanitary landfill criteria) is subject to citizen suit.

The state's proposed enforcement program, under the plan, set the compliance date of May 29, 1986. The EPA did not comment on the amended date when it approved the Oregon state plan June 22, 1982.

There is general confusion among the state and EPA as to the significance of this. Contacts with Kenneth A. Schuster, (Chief, Land Disposal Branch, Waste Management and Economic Division, U.S. EPA, Washington), indicate that only the site operator is subject to suit in federal court. Mr. Schuster has the only active program authority presently at EPA. His indication was that as long as the state is receiving no funding for solid waste activity, it is not subject to suit.

EPA's involvement in domestic solid waste matters has been virtually nonexistent since 1981. Essentially, all activity has shifted to hazardous waste efforts. EPA does not know of any court activity on citizen suits. In regard to the open dumps listed in the inventory, the introduction to the latest open dump inventory update, published in 1984, states:

"In EPA's view, the open dumping prohibition is a provision of Federal law which stands on its own, separate from the State planning program. The inventory of open dumps is a publication of State findings from State planning efforts to satisfy the requirement of Section 4003 [state program funding] of the Act. The inclusion of a facility in the list of open dumps is not an administrative determination by EPA that any particular parties are engaging in the prohibited act of open dumping."

"A determination for purposes of the open dump inventory need not precede an open dumping suit. However, before the results of the inventory may be used to support legal determination that open dumping has occurred, the court would have to determine that the classification was a correct application of the criteria and that the defendant was responsible for actions violating the criteria. The court would be obliged to review the sufficiency of the State's classification of a facility and not simply defer to the State's decision."

In fewer words, EPA does not intend the appearance of a disposal site on the inventory to constitute any conclusive finding usable in a citizen-initiated lawsuit. The language does suggest, however, that <u>any</u> facility or site that can be shown to violate RCRA criteria is subject to citizen suit provisions, regardless of whether the site appears on an open dump inventory.

EPA Region 10 (Seattle) is aware of two citizen suits in the region. Cedar Hills Landfill, Seattle, and Tillamook Landfill, Tillamook, Oregon, are both being sued for "open dumping because they violate RCRA criteria other than open burning. Both cases have been in federal court for approximately 2 years and neither have come to trial.

Solid Waste Control Statute, ORS 459, does not specifically prohibit open burning, but policy statements indicate that more sanitary, efficient, and economical methods of disposal should be developed. The EQC adopted a policy statement (separate from rule) in 1971 which includes the following:

". . . when acting on questions of solid waste disposal, [the Department] shall place primary emphasis on salvage, recycling, and reconstitution of solid waste. Incineration of solid waste shall be permitted only where no other method of disposal is feasible . . ."

Existing rule OAR 340-61-038 specifies authorized and prohibited disposal methods. It states:

"(1) Sanitary Landfill. Disposal of solid waste is authorized only at a sanitary landfill.
(2) Open Dump. The establishment, operation, or maintenance of an open dump is prohibited."

Furthermore, the Department defines an "open dump" differently than EPA. OAR 340-61-010(31) states an open dump means a facility for the disposal of solid waste which does not comply with these [state] rules.

ORS 459.225(3) allows the Commission to grant variances from particular requirements, if:

"(a) Conditions exist that are beyond the control of the applicant (b) Special conditions exist that render strict compliance unreasonable, burdensome or impractical (c) Strict compliance would result in substantial curtailment or closing of a disposal site and no alternative facility or alternative method of solid waste management is available."

Division 61 of the Solid Waste Management Rules which cover Special Rules Pertaining to Landfills, states:

"OAR 340-61-040(2) Open burning. No person shall conduct the open burning of solid waste at a landfill, except in accordance with plans approved and permits issued by the Department prior to such burning. The Department may authorize the open burning of tree stumps and limbs, brush, timber, lumber, and other wood waste, except that open burning of industrial wood waste is prohibited."

The rules, therefore, technically allow open burning without the need for a Commission variance, if plans have been approved and permits are issued for open burning by the Department. Also, since the rules provide for granting of variances to the rules where no alternative is available, a site which is granted a variance to burn is not an "open dump" under the state rule definition.

The Air Quality rules control open burning in agricultural, forestry, commercial, and residential areas. Solid waste disposal sites covered by solid waste permits are exempt from Air Quality rules according to OAR 340-23-042(6) as follows:

> No person shall cause or allow to be initiated or maintained any open burning at any solid waste disposal site unless authorized by a Solid Waste Permit issued pursuant to OAR 340-61-005 through 340-61-085.

Open burning of solid waste materials has been considered an unacceptable practice. Of the approximately 200 disposal sites receiving municipal waste in the state at the inception of legislation in 1971, over 70 percent were open burning dumps. Through a statewide solid waste planning process conducted in the 1973-75 period, and subsequent implementation, most of these open dumps were converted to landfills or transfer stations, or closed. The Department has continued to exert pressure on open burning dumps with additional closures or upgrades occurring each year.

In spite of the Department's posture toward open burning of garbage, the Department has supported variances to the permit requirements to allow open burning in specific situations for cause. Two basic categories of open burning variance have been presented to and approved by the Commission: (1) short-term variances up to 2 years to allow local officials time to plan for and construct replacement facilities or to upgrade open burning dumps (such as Seaside and Cannon Beach), and (2) longer -term variances on small sites that have no significant impact on the environment and have no concerted planning for replacement. Twelve disposal sites are presently operating under variances granted by the EQC. There are additional rural sites in Eastern Oregon which are unattended and burn regularly or occasionally without variances. Two site owners have recently requested variances.

SECTION IV. INFORMATION COLLECTION ON OPEN DUMPING, WITH EMPHASIS ON SITES THAT OPEN BURN

This section describes information generated over the course of three Task Force meetings and rationale for the approach taken by the Task Force in developing Section V, Categorization of Open Burning Dumps and Section VI, Alternative Courses of Action for Dealing with Open Burning Dumps.

"Open Dumps" Considered

The Task Force began its assignment with a list of open dumps identified on the 1984 open dump inventory (Attachment 1) and a list of sites put together by the Solid Waste Division in August 1984 (Attachment 2), representing those they currently considered to be open dumps.

At the first meeting Bob Brown and Brett McKnight gave an overview of open dumps and presented some slides of actual dump sites. Through the presentation and group discussion many important informational items were covered. Discussions included: (1) the extent of the open dumps in the state, (2) state statutes and rules, (3) the federal RCRA criteria, (4) EPA staffing and enforcement, (5) the Citizen Suit provisions, (6) relation of Air Quality rules to Solid Waste Permits, and (7) some factors which should be looked at in the course of evaluating open dumps.

The entire Task Force participated in both a general discussion of open dumps and a specific description of sites, site conditions, etc. at each dump identified on the two lists. As a result of the discussions, it was agreed that four sites (Willow Creek, Elsie, Brogan-Jamieson, and Santosh) would not need to be considered because they had either closed or upgraded their operations. It was also agreed that two dumps (Seneca and Huntington) should be added to a list of active open dumps because they engage in open burning.

It was noted that some sites on the lists have plans approved and permits issued for landfill operations but, by virtue of financial capability, equipment or other factors, have reverted to open burning rather than operate their sites as originally approved.

If the Department does not actively pursue compliance assurance activities with respect to existing landfills, sites could revert to burning and would need to be added to a list of open burning sites.

It was also concluded that those sites on the list which were identified as having primarily groundwater problems should be treated differently than those that engage in open burning. Groundwater monitoring at solid waste landfill sites, field investigations and available monitoring data indicate that groundwater pollution may be more widespread than the open dump list suggests. Therefore, solid waste disposal sites where groundwater pollution is a concern should be dealt with by a separate Task Force in the very near future.

The list for which the group agreed to develop specific recommendations would include all sites known currently to engage in open burning. However, the status of <u>all</u> sites appearing on either of the two preliminary lists, plus those added by the Task Force would be presented.

In addition to the environmental profile, general air quality impacts resulting from open burning and the potential impact to groundwater from a conversion of an open burning dump to a sanitary landfill would be reviewed and presented to the Task Force.

Ideas for criteria to evaluate and categorize the dumps would be considered by each Task Force member prior to the group developing recommendations with respect to: (1) sites which should be closed and why, (2) sites which should be left open but need to be upgraded to meet current solid waste and RCRA standards, (3) sites where open burning is the most suitable option and why, and (4) dumps for which a conclusion cannot be drawn because more information is needed.

Discussion of General Impacts - Air Quality

The group discussed information provided on general air quality impacts and potential groundwater concerns should open burning dumps be converted to landfills. Literature reviews of these topics revealed that little research has been conducted on air quality impacts from open burning. Emission factors, expressed in pounds per ton of municipal refuse burned, for particulates, sulfur oxides, carbon monoxide, hydrocarbon (methane and non-methane) and nitrogen oxides, are available for ground level burning (Attachment 3). No information appeared to be available which differentiates between urban and rural garbage burning. No information was available on dioxin impacts, nor on volumes of other pollutants emitted. It appears that the lack of information can be attributed to the fact that currently there are few open burning dumps in urban areas and EPA has not conducted any further research on air quality impacts.

Ambient air quality monitoring in Oregon is not conducted near sites at which open burning occurs. The open burning sites generally are not included in the air quality emissions inventory. Thus, the contribution of pollutants that are emitted at such sites have not been estimated.

It was estimated that since the total population served by open burning dumps in Eastern and Central Oregon is around 6,600 people, the air pollution from burning would be small. It appears that nuisance conditions and complaints are the only measure of air quality impacts from open burning at this time.

Discussion of General Impacts - Water Quality

Regarding potential impacts on groundwater from conversion of open burning dumps, no article was found in the literature search that directly compared the differences in leachate quality between burned and unburned household refuse. Therefore, an assessment of the predicted chemical transformations produced by burning was developed and is presented in Attachment 4.

In general, it appears that burning would reduce the impact of leachate on groundwater. Specifically, it would:

1. Lower the organic loading to groundwater which reduces the tendency to form a reducing environment where metals become more soluble and mobile; reduces the organic carbon which is a food source for slime-producing bacteria; and reduces the formation of methane.

2. Oxidize metals which are in a more stable and less mobile form. However, by concentrating the refuse through burning, the concentration of metals per unit volume would increase.

3. Volatilize or destroy household organic solvents and pesticides, and destroy pathogenic bacteria.

4. Create a higher "first flush" of inorganic salts, which would normally leach out over time. However, by concentrating the refuse through burning, the loading per unit area would increase.

5. Tend to shift the pH of leachate from acidic to alkaline, although leachate is generally well buffered.

Discussion of Environmental Profiles

The Task Force also discussed environmental profile information gathered on each site for the purpose of developing tentative criteria for categorizing them with respect to recommending closure or upgrade, or allowing open burning.

Individual profiles on each site are presented in Attachment 5 and information from them is summarized in Table 1. Pertinent information extracted from these individual profiles and from the group discussion of the profiles is presented below.

1. Demographic. There are approximately 8,400 persons in Oregon served by open burning dumps. About 1,700 are served by two dumps in Southern Oregon, with the remainder (6700) served by 23 sites in Eastern Oregon. The communities served by open burning dumps range from a population of 150 to 900. The average size statewide is 390. The average size of communities served by open burning dumps in Eastern Oregon is about 300.

2. Location. Location also appears to be an important consideration. Most of the open burning dumps are in remote and rural locations of the state, and have small populations. The distance from a sanitary landfill is generally 30-70 miles.

3. Climate. There are two active open burning dumps remaining in Western Oregon. Most other open dumps in Western Oregon have groundwater or surface water problems. Areas of high rainfall are not conducive to open burning. The areas in Eastern Oregon with open burning dumps are generally located where rainfall does not significantly increase the potential for nuisance complaints from burning garbage.

4. Variability of Operation. Site operations vary considerably between open burning dumps. Some sites are well run with an attendant, scheduled burn, and have safety features, such as restricted access and fencing. Other sites are very poorly managed, with no attendant and no fire control. Some open burning dumps have trenches for containing the fire and for litter control. Others burn at ground level and with no fire control. Frequency of burning varies from a weekly scheduled burn to unscheduled, sporadic burns.

The sites of most open burning dumps are quite limited in size. If upgraded to sanitary landfills, many would soon run out of space at their current location. In addition, some open burning dumps are poorly sited, e.g., close to town, at locations where there is no cover material, etc.

5. Transitory Nature. It should be recognized that without constant surveillance, any listing of open dumps, and particularly open burning dumps, is quite transitory, because landfills do on occasion burn and do revert to permanent open burning dumps.

6. Government/Finances. Perhaps the key to a successful landfill operation is cooperativeness of local government. Many counties in Eastern Oregon do not have open burning dumps but do have rural populations in remote areas.

   Adequate financing of operations is also important. Some small towns and rural counties have assembled a financial program for siting and operating landfills. Generally, those communities with an adequate disposal fee are able to cover costs of the landfill operation. In some cases, a subsidy is provided from the municipality general fund. Sufficient fees also affect adequacy of open burning operations. Generally, communities which charge fees employ an attendant and have good site management. Communities which do not charge a fee usually do not have an attendant and burning is often uncontrolled. Several communities listed in Attachment 5 do not charge fees, as shown in Attachment 5.

   Six communities with open burning dumps closed their burning dumps and had received plan approvals and permits to operate landfills. These communities either did not implement the plan or simply reverted to open burning at a later date. A few Task Force members believe some communities cannot "afford" the increased cost of operating a landfill.

7. Site ownership and site operation varies from site to site. Of the 25 active open burning dumps eight are owned and operated by the same government entity. Many sites are owned by counties and operated by cities. Four sites are owned by private citizens or corporations but operated by local governments. Nine sites are owned by the Bureau of Land Management (BLM) but operated by local governments (one site operated by an unofficial group). Two sites are owned by the State of Oregon (administered by the Department of Fish and Wildlife (DFW) and operated by local governments. The DFW, State Parks, U.S. Forest Service, and BLM use open burning dumps for disposal of solid waste. Federal agencies are strictly prohibited from using open burning dumps under RCRA. All affected local, state, and federal governments and agencies, private citizens and corporations would need to be notified of potential liability under RCRA and of any courses of action which the Department may wish to take.

TABLE 1
CURRENT STATUS OF OPEN DUMPS IN OREGON

OPEN DUMP IDENTIFICATION	SITE IDENTIFICATION				ESTIMATES OF SOLID WASTE RECEIVED			REGULATORY STATUS			RCRA CRITERIA VIOLATED	STATUS OF SOLID WASTE CONTROL PROGRAMS	
	Dump Site	County	Operator	Land Owner	Population Served	Estimated Volume	Types of Waste Received	Permit	Variance	Variance Status		Waste Management Plan Completed (Municipal or County Plan)	Status of Implementation
I. WEST OF CASCADE MOUNTAINS													
A. OPEN DUMPS DUE TO GROUNDWATER CONCERNS, SURFACE WATER, DISEASE OR SAFETY													
1984 ODI	Astoria	Clatsop	Astoria	Astoria	10,400	45,000 cu. yards/year	Residential, Commercial	Yes	No		Disease and Leachate	Yes	Scheduled for Closure Spring 1985. Transfer station and haul to Raymond, WA
1984 ODI	Warrenton	Clatsop	Warrenton	Warrenton	1,850	1,200-4,000 cu yds/year	Residential, Fish Packing Plant	No	No	DEQ allowing operation until Transfer station placed at Astoria	Ground and Surface Water	Yes	Scheduled for Closure Spring 1985. Garbage will be hauled to Astoria Transfer Station
1984 ODI	Creswell	Lane	Lane County	Lane County		15 Tons/day	Mainly Residential	Yes	No		Groundwater	Yes	Scheduled for Closure December 1985. Transfer station and haul to Short Mountain Landfill
1984 ODI	Cottage Grove	Lane	Lane County	Lane County		60 Tons/day	Residential, Commercial, Industrial, Demolition	Yes	No		Safety	Yes	Scheduled for Closure December 1985. Transfer station and haul to Short Mountain Landfill
1984 ODI	Agate Beach	Lincoln	Normac Disposal Services, Inc.	Newport	Now Operating as Sanitary Landfill - Permit Issued. Remove from Open Dump List. Site name is Agate Beach Balefill and Recycling Center						Disease and Surface Water		
1984 ODI	Waldport	Lincoln	Gene Dahl	Gene Dahl	Now Operating as Sanitary Landfill - Permit Issued. Remove from Open Dump List Site name is South Lincoln Landfill								
1984 ODI	Browns Island	Marion	Browns Island, Inc.	William Trussel (Active site area)		400 Tons/day	Residential, Commercial, Industrial, Demolition	Yes	EQC Authorized Extension	EQC authorized closure date extended to May 1986	Groundwater and Safety	Yes	Scheduled for Closure of Municipal wastes May 1986. Municipal waste to be hauled to Regional Incineration Facility
1984 ODI	Fowlers	Polk	John Fowler	John Fowler		30 Tons/day	Primarily Demolition	Yes	No		Groundwater (Seasonal)	Yes	Scheduled for Closure in December 1985

IDENTIFICATION	SITE IDENTIFICATION				ESTIMATES OF SOLID WASTE RECEIVED			REGULATORY STATUS			CRITERIA VIOLATED	STATUS OF SOLID WASTE CONTROL PROGRAMS	
	Dump Site	County	Operator	Land Owner	Population Served	Estimated Volume	Types of Waste Received	Permit	Variance	Variance Status		Waste Management Plan Completed (Municipal or County Plan)	Status of Implementation
I. WEST OF CASCADE MOUNTAINS (continued)													
B. OPEN BURNING DUMPS													
1984 ODI	Cannon Beach	Clatsop	Richard Wallsborn	Richard Wallsborn	1,500		Residential	Yes	Yes	Expires October 1984. No Extension	Air and Disease	Yes	Scheduled for Closure November 1984. Garbage will be hauled to Seaside Transfer Station.
1984 ODI	Seaside	Clatsop	Seaside Sanitary Service	Seaside Sanitary Service	Site Now Closed. Garbage Now Hauled to Astoria			Yes	Yes	Expires October 1984. No Extension	Disease and Air	Yes	Transfer Station to be Placed at Site
1984 ODI	Powers	Coos	Powers	Joe Harris Medford	795	500 cu yds/month	Residential, Commercial	Yes	Yes	Expires May 1986. No Conditions.	Air	Yes	Plan does not directly address site.
1984 ODI	Butte Falls	Jackson	Butte Falls	Medford Resources Corp.	900	600 cu yds/month	Residential, Commercial	Yes	Yes	Expires July 1985. Required to Submit Progress Reports to Upgrade or Close. Not Submitted	Air and Disease	Yes	None. Plan calls for Transfer Station. Haul to Dry Creek Landfill
II. EAST OF CASCADE MOUNTAINS													
A. OPEN BURNING DUMPS AND DISEASE OR SAFETY													
1984 SWD Addition	Halfway	Baker	Halfway	BLM ✓	650	300 cu yds/month	Residential, Commercial	Expired 7/31/84	No		Air	Yes	Plan calls for Landfill. Now Open Burning
1984 ODTF Addition	Huntington	Baker	Huntington	Huntington	550 Plus Farwell Bend State Park	300 cu yds/month	Rural Residential, Commercial	Yes	No		Air	Yes	Varies. Plan calls for Landfill. Now Open Burning.
1984 SWD Addition	Richland	Baker	Richland	BLM ✓				Expired 7/31/84	No		Air	Yes	New Site Set Up for Landfill. Now Open Burning.
1984 SWD Addition	Unity	Baker	Unity	BLM ✓	110	70 cu yds/month	Rural Residential	Yes	No		Air	Yes	Site Set Up for Landfill. Now Open Burning.
1984 SWD Addition	Dayville	Grant	Dayville	Grant County	205	90-100 cu yds/month	Rural Residential, Some Commercial	Yes	No		Air	Yes	Site Set Up as Landfill. Reverted to Open Burning.

OPEN DUMP IDENTIFICATION	SITE IDENTIFICATION				ESTIMATES OF SOLID WASTE RECEIVED			REGULATORY STATUS			RCRA CRITERIA VIOLATED	STATUS OF SOLID WASTE CONTROL PROGRAMS	
	Dump Site	County	Operator	Land Owner	Population Served	Estimated Volume	Types of Waste Received	Permit	Variance	Variance Status		Waste Management Plan Completed (Municipal or County Plan)	Status of Implementation
II. EAST OF CASCADE MOUNTAINS (Continued)													
A. OPEN BURNING DUMPS AND DISEASE OR SAFETY													
1984 SWD Addition	Long Creek	Grant	Long Creek	Long Creek	235	120 cu yds/month	Rural Residential, Some Commercial	Yes	No		Air	Yes	Set Up as Modified Land-fill. Now Open Burning
1984 SWD Addition	Monument	Grant	Monument	Monument	190	70 cu yds/month	Rural Residential	Yes	No		Air	Yes	Set Up as Modified Land fill. Now Open Burning
1984 ODTF Addition	Seneca	Grant	Seneca	Ed Hines Lumber	190	70 cu yds/month	Rural Residential	Yes	No		Air	Yes	Plans Submitted to DEQ Require Landfill. Now Open Burning.
1984 ODI	Adel	Lake	Lake County	BLM ✓ ○	150	75-100 cu yds/month	Rural Residential	Yes	Yes	Expires July 1985 No Conditions	Air	Yes	Implemented Plan Calls for Open Burning
1984 ODI	Christmas Valley	Lake	Lake County	BLM ✓	500	1000 cu yds/month	Rural Residential	Yes	Yes	Expires July 1985 No Conditions	Air	Yes	Implemented Plan Calls for Open Burning
1984 ODI	Fort Rock	Lake	Lake County	BLM ✓	400	120 cu yds/month	Rural Residential,	Yes	Yes	Expires July 1985 No Conditions	Air	Yes	Implemented Plan Calls for Open Burning
1984 ODI	Paisley	Lake	Paisley	Paisley	500	2000-3000 cu yds/month	Rural Residential, Some Commercial	Yes	Yes	Expires July 1985 No Conditions	Air Air	Yes	Implemented Plan Calls for Open Burning
1984 ODI	Plush	Lake	Lake County	BLM ✓ ○	150	80-100 cu yds/month	Rural Residential	Yes	Yes	Expires July 1985 No Conditions	Air	Yes	Implemented Plan Calls for Open Burning
1984 ODI	Silver Lake	Lake	Lake County	BLM ✓	600	1000-1500 cu yds/month	Rural Residential, Ranch Waste	Yes	Yes	Expires July 1985 No Conditions	Air	Yes	Implemented Plan Calls for Open Burning
1984 ODI	Summer Lake	Lake	Lake County	State of Oregon DFW	400	150 cu yds/month	Rural Residential	Yes	Yes	Expires July 1985 No Conditions	Air	Yes	Implemented Plan Calls for Open Burning

OPEN DUMP IDENTIFICATION	SITE IDENTIFICATION				ESTIMATES OF SOLID WASTE RECEIVED			REGULATORY STATUS			RCRA CRITERIA VIOLATED	STATUS OF SOLID WASTE CONTROL PROGRAMS	
	Dump Site	County	Operator	Land Owner	Population Served	Estimated Volume	Types of Waste Received	Permit	Variance	Variance Status		Waste Management Plan Completed (Municipal or County Plan)	Status of Implementation
II. EAST OF CASCADE MOUNTAINS (Continued)													
A. OPEN BURNING DUMPS AND DISEASE OR SAFETY													
1984 ODI	Harper	Malheur	Malheur County	Malheur County	150	75 cu yds/month	Rural Residential	Expired 8/31/80	No		Air, Safety and Disease	No	
1984 ODI	Jordan Valley	Malheur	Jordan Valley	Malheur County	460	250 cu yds/month	Rural Residential	Yes	No		Air, Safety and Disease	No	
1984 ODI	Juntura	Malheur	Malheur County	Malheur County	150	75 cu yds/month	Rural Residential	Expired 8/31/80	No		Air, Safety and Disease	No	
1984 ODI	McDermitt	Malheur	Unofficial Group	BLM ✓ O	200	300 cu yds/month	Rural Residential	Yes	No		Air	No	
1984 SWD Addition	Imnaha	Wallowa	Wallowa County	A. L. Duckett	150	50 cu yds/month	Rural Residential	Expired 8/31/80	No	Have Requested Variance to Burn	Air	No	
1984 SWD Addition	Troy	Wallowa	Wallowa County	State of Oregon DFW	150	60-70 cu yds/month	Rural Residential	Expired 8/31/80	No	Have Requested Variance to Burn	Air	No	
1984 ODI	Fossil	Wheeler	Wheeler County	Wheeler County	500	230-270 cu yds/month	Residential Commercial	Expired 8/31/80	No		Air	Yes	Plan Calls for Landfill - Now Open Burning
1984 ODI	Mitchell	Wheeler	Mitchell	Mitchell	165	75 cu yds/month	Rural Residential	Yes	Yes	July 1986-Required to Submit Progress Report to Upgrade or Close. Not Submitted	Air and Safety	Yes	Plan Calls for Landfill - Now Open Burning

OPEN DUMP IDENTIFICATION	SITE IDENTIFICATION			ESTIMATES OF SOLID WASTE RECEIVED			REGULATORY STATUS			RCRA CRITERIA VIOLATED	STATUS OF SOLID WASTE CONTROL PROGRAMS	
	Dump Site	County	Operator	Land Owner	Population Served	Estimated Volume	Types of Waste Received	Permit	Variance	Variance Status		Waste Management Plan Completed (Municipal or County Plan)	Status of Implementation
III. SITES ON 1982 OPEN DUMP INVENTORY BUT CLOSED OR UPGRADED TO LANDFILLS													
1984 ODI	Elsie	Clatsop		Upgraded to Landfill									
1984 ODI	Santosh	Columbia		Closed									
1984 ODI	Brogan-Jamieson	Malheur		Upgraded to Landfill									
1984 ODI	Willow Creek	Malheur		Upgraded to Landfill									

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SECTION V. CATEGORIZATION OF OPEN DUMPS

Following development of individual profiles, the Task Force considered recommendations for categorizing open dumps.

Those open dumps with specific plans in place to close and those which have closed were not evaluated further. The remaining 25 open dumps engage in open burning and were discussed at great length.

The Task Force first developed a set of criteria for use in making specific site-by-site recommendations to either: (1) close or upgrade, or (2) recommend a continuation of open burning. The criteria development encompassed two Task Force meetings and several revisions. The finalized criteria used to categorize open burning dumps are presented in Table 2.

Following criteria development, each site was evaluated by the Task Force and recommendations were made. Table 3 presents results of this evaluation. The recommendations are presented in Column 2 of the table. Column 3 contains the basis for the recommendation, i.e., specific criteria applicable to a particular site or "no environmental impact". Column 4 presents alternatives to open burning considered by Task Force members and Column 5 contains factors which may prevent implementation of either recommendations or alternatives.

It should be recognized that these recommendations are very tentative and are based on limited information available to the Task Force members. It should also be recognized that these recommendations are subject to alternative courses of action recommendationa for dealing with open dumps (presented in Section VI.

TABLE 2

Criteria for categorizing open burning dumps with respect to: (1) closure/upgrade and (2) recommending open burning to continue.

1.	Air quality Impacts:	As measured by potential health hazard and nuisance complaints.
2.	Proximity to People:	Open burning should not be allowed within city or urban growth boundary or where it would impact nearby residents.
3.	Climate:	Open burning should not be allowed in wet climate because garbage gets too wet to burn quickly and smolders. Wet/dry generally corresponds to east or west of the Cascades. Prevailing wind direction should be away from nearby residents and urban growth boundary.
4.	Size:	This criteria relates to economics of alternative disposal methods as measured by people and/or volumes of waste. The Task Force considered 450-500 persons within a dump service area to be necessary for adequate fee generation.
5.	Composition of Wastes:	Hazardous or substantial industrial waste was considered unsuitable for an open burning dump.
6.	Cost for Upgrade:	Task Force believes costs in excess of $10/month to the household would be excessive.
7.	Poorly sited existing site:	Sites should be relocated if they cause other problems such as groundwater contamination, complaint letters, or are subject to washout by surface water, etc.

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TABLE 3
RECOMMENDATIONS AND ALTERNATIVES
FOR
SITES WHERE OPEN BURNING IS PRACTICED

SITE	COMMITTEE TENTATIVE RECOMMENDATION	BASIS FOR RECOMMENDATIONS (Criteria Not Met)	ALTERNATIVES TO OPEN BURNING CONSIDERED	FACTORS WHICH MAY PREVENT IMPLEMENTATION OF RECOMMENDATIONS OR ALTERNATIVES
SOUTHWEST REGION				
Butte Falls	Close or Upgrade	Size, Climate	1. Transfer station, haul to Dry Creek Landfill. 2. Conversion to Sanitary Landfill.	Transfer station will increase fees. Conversion to Landfill not practical - poor site conditions.
Powers	Close or Upgrade	Size, Climate	1. Transfer station, haul to Beaver Hill Incinerator. 2. Conversion to Sanitary Landfill.	Transfer station will subtantially increase fees. Conversion to Landfill not practical - poor site conditions.
CENTRAL REGION				
Adel	Continue Open Burning	No Environmental Impacts	1. Close. 2. Convert to Transfer Station. 3. Upgrade to Sanitary Landfill.	Closure would result in random dumping. Transfer station would result in 30-mile haul. Conversion to Sanitary Landfill would require more equipment/increased operating costs.
Christmas Valley	Upgrade	Size	1. Convert to Transfer Station. 2. Upgrade to Sanitary Landfill.	Transfer station would result in 65-mile haul. Upgrade would require more equipment/increased operating costs.
Fort Rock	Continue Open Burning	No Environmental Impacts	1. Close. 2. Convert to Transfer Station. 3. Upgrade to Sanitary Landfill.	Closure would result in random dumping. Transfer station would result in 35-mile haul. Upgrade would require more equipment/increased operating costs.
Paisley	Upgrade	Size, proximity to town, aesthetics (close to state highway).	1. Convert to Transfer Station. 2. Upgrade to Sanitary Landfill.	Transfer station would result in 40-mile haul. Upgrade would require more equipment/ increased operating costs.
Plush	Continue Open Burning	No Environmental Impacts	1. Close. 2. Convert to Transfer Station. 3. Upgrade to Sanitary Landfill.	Closure would result in random dumping. Transfer station would result in 40-mile haul. Upgrade would require more equipment/increased operating costs.
Silver Lake	Upgrade	Size, proximity to town, aesthetics (close to state highway).	1. Convert to Transfer Station. 2. Upgrade to Sanitary Landfill.	Transfer station would result in 94-mile haul. Upgrade would require more equipment/increased costs.
Summer Lake	Continue Open Burning	No Environmental Impacts	1. Close. 2. Convert to Transfer Station. 3. Upgrade to Sanitary Landfill.	Closure would result in random dumping. Transfer station would result in 76-mile haul. Upgrade would require more equipment/increased operating costs.

SITE	COMMITTEE TENTATIVE RECOMMENDATION	BASIS FOR RECOMMENDATIONS (Criteria Not Met)	ALTERNATIVES TO OPEN BURNING CONSIDERED	FACTORS WHICH MAY PREVENT IMPLEMENTATION OF RECOMMENDATIONS OR ALTERNATIVES
EASTERN REGION				
Halfway	Close or Upgrade	Size, poorly sited	1. Implement approved plan which calls for Modified Landfill. 2. Find joint site with Richland.	Implementation would be possible with community financial plan. Joint site with Richland would result in greater haul and would require more equipment/increased operating costs.
Huntington	Close or Upgrade	Size	1. Implement approved plan which calls for Sanitary Landfill.	Upgrade would be fairly easy with better equipment. Increased operating costs.
Richland	Continue Open Burning	No Environmental Impacts	1. Implement approved plan which calls for Modified Landfill. 2. Find joint site with Halfway.	Implementation of Modified Landfill would require equipment and additional funds to operate. Joint site with Halfway would require more equipment/ increased operating costs and greater haul distance.
Unity	Continue Open Burning	No Environmental Impacts	1. Implement approved plan which calls for Modified Landfill.	Implementation of Modified Landfill would require equipment and funds to operate.
Dayville	Continue Open Burning	No Environmental Impacts	1. Implement approved plan which calls for Modified Landfill.	Implementation of Modified Landfill would require equipment and funds to operate.
Long Creek	Continue Open Burning	No Environmental Impacts	1. Implement approved plan which calls for Modified Landfill.	Implementation of Modified Landfill would require equipment and funds to operate.
Monument	Continue Open Burning	No Environmental Impacts	1. Implement approved plan which calls for Modified Landfill.	Implementation of Modified Landfill would require equipment and funds to operate.
Seneca	Continue Open Burning	No Environmental Impacts	1. Implement approved plan which calls for Modified Landfill.	Community using all available resources in area, including available equipment.
Harper	Continue Open Burning	No Environmental Impacts Some safety concerns from Uncontrolled Burning	None	
Jordan Valley	Close or Upgrade	Size, Proximity to Residents (now nearby subdivision), complaints	1. Upgrade to Sanitary Landfill	Site could be upgraded. City would need to establish budget for site operation and equipment.
Juntura	Continue Open Burning	No Environmental Impacts Some safety concerns from Uncontrolled Burning	None	
McDermitt	Continue Open Burning	No Environmental Impacts Some safety concerns from Uncontrolled Burning	None	

SITE	COMMITTEE TENTATIVE RECOMMENDATION	BASIS FOR RECOMMENDATIONS (Criteria Not Met)	ALTERNATIVES TO OPEN BURNING CONSIDERED	FACTORS WHICH MAY PREVENT IMPLEMENTATION OF RECOMMENDATIONS OR ALTERNATIVES
Imnaha	Continue Open Burning	No Environmental Impacts	None. Have applied for Variance	
Troy	Continue Open Burning	No Environmental Impacts	None. Have applied for Variance	
Fossil	Close or Upgrade	Size, proximity to residents (inside city limits), complaints	1. Implement approved plan which calls for Modified Landfill. 2. Develop new site.	Current site should be closed. New site could be developed. Would be more expensive to operate. Plan would be needed prior to site development.
Mitchell	Continue Open Burning	Landfilling caused odors, complaints. Site appears better suited for burning.	1. Implement approved plan which calls for Modified Landfill.	Have tried to run landfill in past. Currently would have to purchase expensive equipment and have funds to operate.

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SECTION VI. ALTERNATIVE COURSES OF ACTION FOR DEALING WITH OPEN BURNING DUMPS

It was felt that initial evaluations of sites with respect to recommending closure/upgrade or allowing open burning to continue should be based on environmental considerations, rather than on whether the state was liable under RCRA citizen suit provisions or whether open burning could somehow be found legal under RCRA. Therefore, as a separate item, proposals were suggested and discussed and a subgroup pursued the ideas further.

Initial proposals included: (1) requesting a legal opinion from Mike Huston, Assistant Attorney General, as shown in Attachment 6, and (2) pursuing suggestions for allowing open burning to occur legally at selected sites where no environmental impact is documented and (3) developing strategies for encouraging and/or requiring sites to upgrade or close their operation because of pollution concerns.

The request for a legal opinion includes questions concerning liability to the State of Oregon, if the Department: (1) allows existing open burning dumps to continue, (2) allows new open burning dumps in the future, or (3) allows open burning on state-owned land leased to a local government, and where the Department has issued variances to allow open burning.

The request also asks for advice on mechanisms that might eliminate state liability and language which should be included in various types of notification letters. Responses to these questions are integral to the Department making a final decision on recommendations to pursue.

The Department's stance on open burning as an acceptable or unacceptable long-term disposal practice is unclear, as shown in the discussion on solid waste state statutes, rules, policy and management plan presented in the Background Section.

It was agreed that the lack of an explicit policy on open burning, as either an acceptable or unacceptable long-term disposal practice, can create confusion among local governments. This confusion may, in fact, encourage open burning where it need not occur.

It was generally agreed that there is justification for arguing both positions. However, before the Department pursues strategies for dealing with open burning dumps, a clear, definitive policy outlining the Department's position on the issue should be established.

Therefore the Task Force proposed to evaluate alternative courses of action for dealing with open dumps under two broad policy scenarios as follows:

Policy Option A — Open Burning is an Acceptable Long-Term Solid Waste Disposal Practice in Rural Areas and Under Specified Operating Conditions

Policy Option B — Open Burning is Not an Acceptable Long-Term Solid Waste Disposal Practice and the Department Should Pursue Upgrade/Closure at all Sites

Table 4 presents a summary of the evaluation of strategies under each policy option. More detailed discussions and evaluations are presented in Attachment 8.

Policy Option A can be justified on the basis that, East of the Cascade Mountains, few open burning sites create air impacts. Also, open burning sites require less land, equipment, and once a site closes, long-term pollution liability is comparatively less than at a landfill.

It appears, however, that the only viable alternative for pursuing open burning as a legal practice is to work with other states and EPA to amend RCRA criteria. This process would be lengthy and time-consuming, and in the interim, the site operators, property owners, and/or the state, could still be liable under RCRA citizen suit provisions.

Likewise, pursuing this option also raises questions regarding its impact on proposed revisions to RCRA now being considered by Congress. The provisions call for EPA to promulgate revisions to its criteria for sanitary landfills receiving such waste and authorizes funding for grants to states to carry out permit programs spelled out in the bill. The proposed revisions recently came to the attention of the Solid Waste Division in the October 1, 1984, Solid Waste Report, and additional information on the subject is not available. The Task Force cannot evaluate the implication of this proposal, nor its affect on pursuing an amendment to allow open burning. Bob Brown did state his opinion that if the Department accepts grant monies, the state would be obligated to phase out open burning dumps.

Some concern was raised by members of the Task Force regarding whether pursuing this option would jeopardize the Department's ability to define an alternative boundary beyond a landfill boundary for the purposes of identifying landfill sites which do not result in a violation of any applicable federal or state drinking water rules or regulations (RCRA Groundwater Criteria). The impact of this on Policy Option A is not known, however.

If a policy was established which regards open burning as an acceptable practice, the Solid Waste Division should finalize specific criteria for determining those sites which should be allowed to burn. These criteria should be adopted as rule. Site operators who wish to open burn should be required to submit, as an exhibit, a long-range plan and implementation program approved by the county confirming that the use of open burning at the site fits in with the adopted county plan. Permits issued to sites approved for open burning should include specified operating conditions, as shown in Attachment 7.

The existing rules which appear to conflict with a policy establishing open burning as an acceptable practice would need to be modified.

Policy Option B can be justified on the basis that open burning does not promote recycling and reuse because fewer materials would be available. Total air pollutant emissions would be reduced, and prohibiting open burning can lead to implementation of a more acceptable environmental alternative.

Mechanisms exist to enforce permits and issue Stipulated Consent Orders containing specific compliance schedules for upgrade or closure. Sites would need to be notified of RCRA requirements and citizen suit provisions emphasing that no new variances will be granted.

If sites close without development of an alternative disposal practice, littering and random dumping could result. Therefore it would be essential that information on operating techniques, fees, how communities can gain access to equipment, etc., should be distributed to sites which continue to open burn. Through example, it could be shown that open burning, even at sites with limited financial capability, is not the only feasible or available method.

New legislation which requires a governmental entity to develop long-range solid waste disposal plans and to delegate an entity to implement the plan could be used to address sites which open burning concerns as well as groundwater pollution concerns. The proposed legislation would probably be met with a great deal of resistance, however.

If a policy was established which regards open burning as an unacceptable long-term solid waste disposal practice, mechanisms for requiring closure and upgrade need to be established for each site, and interim operating conditions for open burning, while pursuing closure/upgrade, should be placed in permits.

Existing rules which appear to conflict with a policy establishing open burning as an unacceptable practice would need to be modified.

Regardless of the policy chosen, the Department should notify all site owners and operators of all landfills and open dumps in Oregon of RCRA Criteria, citizen law suit provisions, and the Department's position on open burning.

Because federal agencies are strictly prohibited from using open dumps, the Department needs to contact BLM and the U.S. Forest Service and determine what course of action they intend to take regarding their practice of disposing waste at open burning dumps. Since BLM leases land to nine site operators, the Department needs to know their intended course of action will be. Perhaps BLM may be willing to sell or trade land to municipalities or assist municipalities in upgrading the sites to meet RCRA criteria.

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TABLE 4

SUMMARY OF ALTERNATIVE COURSES OF ACTION FOR DEALING WITH OPEN BURNING DUMPS

Policy Option A — Open Burning is an Acceptable Long-Term Solid Waste Disposal Practice in Rural Areas and Under Specified Operating Conditions

1. Investigate RCRA definitions to determine whether open burning can be legal under certain situations, redefine open burning dumps as "rural incinerators, etc.

   Based on the extracted discussion of similar topics in the Federal Register, the Task Force concluded that, unless EPA could be persuaded to change its stance, no mechanism currently exists to legally allow open burning at small rural sites.

2. Work with other states and EPA to pursue an amendment to RCRA

   The viability of this strategy is not known. If this option is pursued, the Association of State and Territorial Solid Waste Management Officials and the National Governor's Association should be contacted to determine their interest in pursuing the issue.

3. Merely advise sites that operate open burning dumps of RCRA requirements and citizen suit provisions

   However, if the legal opinions show that the state is not liable under RCRA citizen suit provision, this may be the only alternative (though it may not be the most acceptable) to pursuing an amendment to RCRA under this policy option.

4. Get legal opinion on mechanisms which would eliminate state liability.

   Depending on the final legal opinion, pursuing this course of action could be contradictory to a policy which regards open burning as an acceptable practice. For example, Mike Huston indicated that use of a Stipulated Consent Orders would be seen as efforts to gain compliance with RCRA Criteria.

Policy Option B — Open Burning is Not an Acceptable Long-Term Solid Waste Disposal Practice and the Department Should Pursue Upgrade/Closure at all Sites

1. Notify sites of RCRA requirements and citizen suit provisions.

   This is a viable alternative. Upon receipt of legal opinion regarding state's liability and suggestions for language to be included in various types of notification letters, letters should be prepared to all site operators. The Department's intent to establish policy prohibiting open burning should be included. The Department should also explain that no new variances will be granted and existing variances will not be extended.

2. Notify property owners who lease land to open burning sites and federal users of open dumps of their liability and ask for their assistance to help upgrade the site

   Upon receipt of legal opinion regarding liabilities and suggested language to be included in notification letters, prepare and distribute letters to all property owners. Explain the Department's intent to establish policy prohibiting open burning. Request that they offer communities assistance in upgrading the site.

3. Revoke permit or variance.

   This suggestion was dismissed as a viable alternative because it would likely result in contested case hearings. The hearings would probably extend beyond the expiration dates of existing variances and thus not achieve closure/upgrade any sooner. Likewise revocation of permits would not achieve closure/upgrade any sooner. Likewise, revocation of permits would not achieve upgrade/closure.

4. Place sites under Stipulated Consent Orders with specific compliance schedules
5. Enforce permits and variances.

   This is a viable alternative for prohibiting burning at sites which have plans and permits for land fills and sites which have failed to meet variance conditions.

6. Prepare case studies which describe mechanisms used by other small communities to upgrade and/or implement alternatives to open communities.

   The Task Force noted that other small communities which previous open burned, have achieved compliance with RCRA Criteria. Information on operating techniques, fees, how communities can gain access to equipment, etc., should be distributed to sites which continue to open burn.

7. Propose new legislation which would make local governments responsible for for developing long-range plans and identifying the governmental entity delegated the implementing agency.

   This course of action could address so waste management concerns beyond the scope of the open burning issue. It would likely meet a great deal of resistance.

8. Propose new legislation which would require County Comprehensive Plans to address solid waste management as part of the LCDC's post-acknowledgment review process.

   This was posed as an alternative to new solid waste legislation. It also would meet with a great deal of resistance from counties.

A T T A C H M E N T S

1. 1984 Inventory of Open Dumps
2. 1984 Solid Waste Division Listing of Open Dumps
3. Potential Air Quality Impacts of Open Burning Dumps
4. Potential Groundwater Impacts - Conversion of Open Burning Dumps to Sanitary Landfills
5. Open Dump Profile
6. Request for Informal Legal Opinions
7. Site Operating Criteria - For Consideration
8. Discussion of Alternative Courses of Action for Addressing Open Burning Dumps

ATTACHMENT 1

1984 INVENTORY OF OPEN DUMPS

The following Oregon sites have been listed on the federal FY '84 "Open Dump List."

SW Permit No.	Site Name	County	Criteria Violated
118	Astoria	Clatsop	Disease
23	Cannon Beach	Clatsop	Disease, Air
22	Seaside	Clatsop	Disease, Air
120	Warrenton	Clatsop	Ground & Surface Water
162	Agate Beach	Lincoln	Disease & Surface Water
132	Waldport	Lincoln	Disease & Surface Water
83	Cottage Grove	Lane	Safety
78	Creswell	Lane	Groundwater
255	Brown's Island	Marion	Groundwater, Safety
198	Fowler's	Polk	Groundwater
184	Silver Lake	Lake	Air
4	Adel	Lake	Air
9	Christmas Valley	Lake	Air
276	Fort Rock	Lake	Air
178	Paisley	Lake	Air
10	Plush	Lake	Air
183	Summer Lake	Lake	Air
160	Powers	Coos	Air
205	Butte Falls	Jackson	Disease, Air
175	Mitchell	Wheeler	Safety, Air
272	Juntura	Malheur	Disease, Safety, Air
271	Harper	Malheur	Disease, Safety, Air
103	Brogan Jamieson	Malheur	Disease, Safety
295	Jordan Valley	Malheur	Disease, Safety, Air

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ATTACHMENT 2

1984 SOLID WASTE DIVISION LISTING OF OPEN DUMPS

1984 Solid Waste Division Listing of Open Dumps

A. Dumps With Variances

Cannon Beach
Seaside
Silver Lake
Adel
Christmas Valley
Fort Rock
Paisley
Plush
Summer Lake
Powers
Butte Falls
Mitchell

B. Dumps Which Have Requested Variances

Troy
Imnaha

C. Dumps Which Burn Continuously Or Occasionally - Have Not Requested Variances

Juntura
Harper
Jordan Valley
McDermit
Unity
Richland
Halfway
Long Creek
Dayville
Monument

D. Dumps With Groundwater Or Other Problems

Astoria
Warrenton
Agate Beach
Waldport
Cottage Grove
Creswell
Brown's Island
Fowlers

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ATTACHMENT 3

POTENTIAL AIR QUALITY IMPACTS OF OPEN BURNING DUMPS

STATE OF OREGON

INTEROFFICE MEMO

TO: Tom Lucas

DATE: October 1, 1984

FROM: Bill Jasper

SUBJECT: Air Quality Impacts - Open Burning dumps

I have reviewed the air pollution factors book AP-42. The attached sections summarize from very general emission factors. These data are generated from research that dates to the mid-60's, and were recently modified to give a methane/non-methane Hydrocarbon differential. I talked with Tom Lahre at EPA's RTP, and he indicated that EPA has not developed anything more recent than those emission factors listed. This is attributed, in part, to the fact that there just aren't many open burn dumps in urban areas anymore. No additional Federal effort on studying air quality impacts from open burning is expected.

In the federal register write-up, most of the air quality impact appeared addressed to OSHA standards for operator protection rather than public health concerns.

I was unable to find any reference that might differentiate between urban and rural garbage. No dioxin impact on open dump burning was available. No other differentiation of pollutants other than those listed in AP-42 (attached) was available.

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Attachment

2.4 OPEN BURNING

2.4.1 General[1]

Open burning can be done in open drums or baskets, in fields and yards, and in large open dumps or pits. Materials commonly disposed of in this manner are municipal waste, auto body components, landscape refuse, agricultural field refuse, wood refuse, bulky industrial refuse, and leaves.

2.4.2 Emissions[1-19]

Ground-level open burning is affected by many variables including wind, ambient temperature, composition and moisture content of the debris burned, and compactness of the pile. In general, the relatively low temperatures associated with open burning increase the emission of particulates, carbon monoxide, and hydrocarbons and suppress the emission of nitrogen oxides. Sulfur oxide emissions are a direct function of the sulfur content of the refuse. Emission factors are presented in Table 2.4-1 for the open burning of municipal refuse and automobile components.

Table 2.4-1. EMISSION FACTORS FOR OPEN BURNING OF NONAGRICULTURAL MATERIAL
EMISSION FACTOR RATING: B

Source	Particulate	Sulfur oxides	Carbon monoxide	VOC[a]		Nitrogen oxides
				methane	nonmethane	
Municipal refuse[b]						
kg/Mg	8	0.5	42	6.5	15	3
lb/ton	16	1	85	13	30	6
Automobile components[c]						
kg/Mg	50	Neg.	62	5	16	2
lb/ton	100	Neg.	125	10	32	4

[a]Data indicate that VOC emissions are approximately 25% methane, 8% other saturates, 18% olefins, 42% others (oxygenates, acetylene, aromatics, trace formaldehyde).
[b]References 2, 7.
[c]References 2. Upholstery, belts, hoses and tires burned together.

Emissions from agricultural refuse burning are dependent mainly on the moisture content of the refuse and, in the case of the field crops, on whether the refuse is burned in a headfire or a backfire. (Headfires are started at the upwind side of a field and allowed to progress in the direction of the wind, whereas backfires are started at the downwind edge and forced to progress in a direction opposing the wind.) Other variables such as fuel loading (how much refuse material is burned per unit of land area) and how the refuse is arranged (that is, in piles, rows, or spread out) are also important in certain instances. Emission factors for open agricultural burning are presented in Table 2.4-2 as a function of refuse type and also, in certain instances, as a function of burning techniques and/or moisture content when these variables are known to significantly affect emissions. Table 2.4-2 also presents typical fuel loading values associated with each type of refuse. These values can be used, along with the corresponding emission factors, to estimate emissions from certain categories of agricultural burning when the specific fuel loadings for a given area are not known.

Emissions from leaf burning are dependent upon the moisture content, density, and ignition location of the leaf piles. Increasing the moisture content of the leaves generally increases the amount of carbon monoxide,

Table 2.4-2. EMISSION FACTORS AND FUEL LOADING FACTORS FOR OPEN BURNING OF AGRICULTURAL MATERIALS[a]
EMISSION FACTOR RATING: B

Refuse Category	Particulate[b] kg/Mg	Particulate[b] lb/ton	Carbon Monoxide kg/Mg	Carbon Monoxide lb/ton	VOC[c] Methane kg/Mg	VOC[c] Methane lb/ton	VOC[c] Nonmethane kg/Mg	VOC[c] Nonmethane lb/ton	Fuel Loading Factors (waste production) Mg/hectare	Fuel Loading Factors (waste production) ton/acre
Field Crops[d]										
Unspecified	11	21	58	117	2.7	5.4	9	18	4.5	2
Burning techniques not significant[e]										
Asparagus[f]	20	40	75	150	10	20	33	66	3.4	1.5
Barley	11	22	78	157	2.2	4.5	7.5	15	3.8	1.7
Corn	7	14	54	108	2	4	6	12	9.4	4.2
Cotton	4	8	88	176	0.7	1.4	2.5	5	3.8	1.7
Grasses	8	16	50	101	2.2	4.5	7.5	15		
Pineapple[g]	4	8	56	112	1	2	3	6		
Rice[h]	4	9	41	83	1.2	2.4	4	8	6.7	3.0
Safflower	9	18	72	144	3	6	10	20	2.9	1.3
Sorghum	9	18	38	77	1	2	3.5	7	6.5	2.9
Sugar cane[i]	2.5-3.5	6-8.4	30-41	60-81	0.6-2	1.2-3.8	2-6	4-12	8-46	3-17
Headfire burning[j]										
Alfalfa	23	45	53	106	4.2	8.5	14	28	1.8	0.8
Bean (red)	22	43	93	186	5.5	11	18	36	5.6	2.5
Hay (wild)	16	32	70	139	2.5	5	8.5	17	2.2	1.0
Oats	22	44	68	137	4	7.8	13	26	3.6	1.6
Pea	16	31	74	147	4.5	9	15	29	5.6	2.5
Wheat	11	22	64	128	2	4	6.5	13	4.3	1.9
Backfire burning[k]										
Alfalfa	14	29	60	119	4.5	9	14	29	1.8	0.8
Bean (red), pea	7	14	72	148	3	6	10	19	5.6	2.5
Hay (wild)	8	17	75	150	2	4	6.5	13	2.2	1.0
Oats	11	21	68	136	2	4	7	14	3.6	1.6
Wheat	6	13	54	108	1.3	2.6	4.5	9	4.3	1.9
Vine Crops	3	5	26	51	0.8	1.7	3	5	5.6	2.5
Weeds										
Unspecified	8	15	42	85	1.5	3	4.5	9	7.2	3.2
Russian thistle (tumbleweed)	11	22	154	309	0.2	0.5	0.8	1.5	0.2	0.1
Tules (wild reeds)	3	5	17	34	3.2	6.5	10	21		

Orchard Crops[d,l,m]										
Unspecified	3	6	26	52	1.2	2.5	4	8	3.6	1.6
Almond	3	6	23	46	1	2	3	6	3.6	1.6
Apple	2	4	21	42	0.5	1	1.5	3	5.2	2.3
Apricot	3	6	24	49	1	2	3	6	4	1.8
Avocado	10	21	58	116	3.8	7.5	12	25	3.4	1.5
Cherry	4	8	22	44	1.2	2.5	4	8	2.2	1.0
Citrus (orange, lemon)	3	6	40	81	1.5	3	5	9	2.2	1.0
Date palm	5	10	28	56	0.8	1.7	3	5	2.2	1.0
Fig	4	7	28	57	1.2	2.5	4	8	4.9	2.2
Nectarine	2	4	16	33	0.5	1	1.5	3	4.5	2.0
Olive	6	12	57	114	2	4	7	14	2.7	1.2
Peach	3	6	21	42	0.6	1.2	2	4	5.6	2.5
Pear	4	9	28	57	1	2	3.5	7	5.8	2.6
Prune	2	3	21	42	0.4	0.7	1	2	2.7	1.2
Walnut	3	6	24	47	1	2	3	6	2.7	1.2
Forest Residues[n]										
Unspecified	8	17	70	140	2.8	5.7	9	19	157	70
Hemlock, Douglas fir, cedar[p]	2	4	45	90	0.6	1.2	2	4		
Ponderosa pine[q]	6	12	98	195	1.7	3.3	5.5	11		

[a]Expressed as weight of pollutant emitted/weight of refuse material burned.

[b]Reference 12. Particulate matter from most agricultural refuse burning has been found to be in the submicrometer size range.

[c]Data indicate that VOC emissions average 22% methane, 7.5% other saturates, 17% olefins, 15% acetylene, 38.5% unidentified. Unidentified VOC are expected to include aldehydes, ketones, aromatics, cycloparaffins.

[d]References 12-13 for emission factors, Reference 14 for fuel loading factors.

[e]For these refuse materials, no significant difference exists between emissions from headfiring or backfiring.

[f]Factors represent emissions under typical high moisture conditions. If ferns are dried to <15% moisture, particulate emissions will be reduced by 30%, CO emissions 23%, VOC 74%.

[g]Reference 11. When pineapple is allowed to dry to <20% moisture, as it usually is, firing technique is not important. When headfired at 20% moisture, particulate emissions will increase to 11.5 kg/Mg (23 lb/ton) and VOC will increase to 6.5 kg/Mg (13 lb/ton).

[h]Factors are for dry (15% moisture) rice straw. If rice straw is burned at higher moisture levels, particulate emissions will increase to 14.5 kg/Mg (29 lb/ton), CO emissions to 80.5 kg/Mg (181 lb/ton), and VOC emissions to 11.5 kg/Mg (23 lb/ton).

[i]Reference 20. See Section 8.12 for discussion of sugar cane burning. The following fuel loading factors are to be used in the corresponding states: Louisiana, 8 - 13.6 Mg/hectare (3 - 5 ton/acre); Florida, 11 - 19 Mg/hectare (4 - 7 ton/acre); Hawaii, 30 - 48 Mg/hectare (11 - 17 ton/acre). For other areas, values generally increase with length of growing season. Use the larger end of the emission factor range for lower loading factors.

[j]See text for definition of headfiring.

[k]See text for definition of backfiring. This category, for emission estimation purposes, includes another technique used occasionally to limit emissions, called into-the-wind striplighting, which is lighting fields in strips into the wind at 100 - 200 m (300 - 600 ft) intervals.

[l]Orchard prunings are usually burned in piles. There are no significant differences in emissions between burning a "cold pile" and using a roll-on technique, where prunings are bulldozed onto the embers of a preceding fire.

[m]If orchard removal is the purpose of a burn, 66 Mg/hectare (30 ton/acre) of waste will be produced.

[n]Reference 10. NO_x emissions estimated at 2 kg/Mg (4 lb/ton).

[p]Reference 15.

[q]Reference 16.

hydrocarbon, and particulate emissions. Increasing the density of the piles increases the amount of hydrocarbon and particulate emissions, but has a variable effect on carbon monoxide emissions. Arranging the leaves in conical piles and igniting around the periphery of the bottom proves to the least desirable method of burning. Igniting a single spot on the top of the pile decreases the hydrocarbon and particulate emissions. Carbon monoxide emissions with top ignition decreases if moisture content is high but increases if moisture content is low. Particulate, hydrocarbon, and carbon monoxide emissions from windrow ignition (piling the leaves into a long row and igniting one end, allowing it to burn toward the other end) are intermediate between top and bottom ignition. Emission factors for leaf burning are presented in Table 2.4-3.

For more detailed information on this subject, the reader should consult the references cited at the end of this section.

Table 2.4-3. EMISSION FACTORS FOR LEAF BURNING[18,19]
EMISSION FACTOR RATING: B

Leaf Species	Particulate[b]		Carbon monoxide		VOC[c]			
					Methane		Nonmethane	
	kg/Mg	lb/ton	kg/Mg	lb/ton	kg/Mg	lb/ton	kg/Mg	lb/ton
Black Ash	18	36	63.5	127	5.5	11	13.5	27
Modesto Ash	16	32	81.5	163	5	10	12	24
White Ash	21.5	43	57	113	6.5	13	16	32
Catalpa	8.5	17	44.5	89	2.5	5	6.5	13
Horse Chestnut	27	54	73.5	147	8	17	20	40
Cottonwood	19	38	45	90	6	12	14	28
American Elm	13	26	59.5	119	4	8	9.5	19
Eucalyptus	18	36	45	90	5.5	11	13.5	27
Sweet Gum	16.5	33	70	140	5	10	12.5	25
Black Locust	35	70	65	130	11	22	26	52
Magnolia	6.5	13	27.5	55	2	4	5	10
Silver Maple	33	66	51	102	10	20	24.5	49
American Sycamore	7.5	15	57.5	115	2.5	5	5.5	11
California Sycamore	5	10	52	104	1.5	3	3.5	7
Tulip	10	20	38.5	77	3	6	7.5	15
Red Oak	46	92	68.5	137	14	28	34	69
Sugar Maple	26.5	53	54	108	8	16	20	40
Unspecified	19	38	56	112	6	12	14	28

[a]References 18-19. Factors are an arithmetic average of results obtained by burning high and low moisture content conical piles, ignited either at the top or around the periphery of the bottom. The windrow arrangement was only tested on Modesto Ash, Catalpa, American Elm, Sweet Gum, Silver Maple and Tulip, and results are included in the averages for these species.
[b]The majority of particulate is submicron in size.
[c]Tests indicate that VOC emissions average 29% methane, 11% other saturates, 33% olefins, 27% other (aromatics, acetylene, oxygenates).

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2.5 SEWAGE SLUDGE INCINERATION

By Thomas Lahre

2.5.1 Process Description [1-3]

Incineration is becoming an important means of disposal for the increasing amounts of sludge being produced in sewage treatment plants. Incineration has the advantages of both destroying the organic matter present in sludge, leaving only an odorless, sterile ash, as well as reducing the solid mass by about 90 percent. Disadvantages include the remaining, but reduced, waste disposal problem and the potential for air pollution. Sludge incineration systems usually include a sludge pretreatment stage to thicken and dewater the incoming sludge, an incinerator, and some type of air pollution control equipment (commonly wet scrubbers).

The most prevalent types of incinerators are multiple hearth and fluidized bed units. In multiple hearth units the sludge enters the top of the furnace where it is first dried by contact with the hot, rising, combustion gases, and then burned as it moves slowly down through the lower hearths. At the bottom hearth any residual ash is then removed. In fluidized bed reactors, the combustion takes place in a hot, suspended bed of sand with much of the ash residue being swept out with the flue gas. Temperatures in a multiple hearth furnace are 600°F (320°C) in the lower, ash cooling hearth; 1400 to 2000°F (760 to 1100°C) in the central combustion hearths, and 1000 to 1200°F (540 to 650°C) in the upper, drying hearths. Temperatures in a fluidized bed reactor are fairly uniform, from 1250 to 1500°F (680 to 820°C). In both types of furnace an auxiliary fuel may be required either during startup or when the moisture content of the sludge is too high to support combustion.

2.5.2 Emissions and Controls [1,2,4-7]

Because of the violent upwards movement of combustion gases with respect to the burning sludge, particulates are the major emissions problem in both multiple hearth and fluidized bed incinerators. Wet scrubbers are commonly employed for particulate control and can achieve efficiencies ranging from 95 to 99+ percent.

Although dry sludge may contain from 1 to 2 percent sulfur by weight, sulfur oxides are not emitted in significant amounts when sludge burning is compared with many other combustion processes. Similarly, nitrogen oxides, because temperatures during incineration do not exceed 1500°F (820°C) in fluidized bed reactors or 1600 to 2000°F (870 to 1100°C) in multiple hearth units, are not formed in great amounts.

Odors can be a problem in multiple hearth systems as unburned volatiles are given off in the upper, drying hearths, but are readily removed when afterburners are employed. Odors are not generally a problem in fluidized bed units as temperatures are uniformly high enough to provide complete oxidation of the volatile compounds. Odors can also emanate from the pretreatment stages unless the operations are properly enclosed.

Emission factors for sludge incinerators are shown in Table 2.5-1. It should be noted that most sludge incinerators operating today employ some type of scrubber.

Table 2.5-1. EMISSION FACTORS FOR SEWAGE SLUDGE INCINERATORS
EMISSION FACTOR RATING: B

Pollutant	Emissions[a]			
	Uncontrolled[b]		After scrubber	
	lb/ton	kg/MT	lb/ton	kg/MT
Particulate[c]	100	50	3	1.5
Sulfur dioxide[d]	1	0.5	0.8	0.4
Carbon monoxide[e]	Neg	Neg	Neg	Neg
Nitrogen oxides[d] (as NO_2)	6	3	5	2.5
Hydrocarbons[d]	1.5	0.75	1	0.5
Hydrogen chloride gas[d]	1.5	0.75	0.3	0.15

[a]Unit weights in terms of dried sludge.
[b]Estimated from emission factors after scrubbers.
[c]References 6-9.
[d]Reference 8.
[e]References 6, 8.

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ATTACHMENT 4

POTENTIAL GROUNDWATER IMPACTS - CONVERSION OF OPEN BURNING DUMPS TO SANITARY LANDFILLS

STATE OF OREGON
Environmental Quality
Laboratories and Applied Research

INTEROFFICE MEMO

TO: Open Dump Task Force

DATE: October 4, 1984

FROM: Andy Schaedel /ael

SUBJECT: Differences in Leachate Quality in Open Burning Dumps vs Sanitary Landfills

PURPOSE

To assess the potential impacts on groundwater from conversion of open burning dumps to sanitary landfills.

APPROACH

A brief literature search was conducted with a focus on literature developed prior to 1970 when open burning dumps were commonly in use but were being phased out. In addition, predicted chemical transformations produced by burning household wastes and the resultant changes to leachate quality were discussed with Rick Gates (a DEQ chemist with years of experience in monitoring and analyzing solid waste and leachate quality).

To focus the discussion, three major assumptions were made. Obviously, the adequacy and effectiveness of the "burn" is a critical factor in transforming the refuse. A partial burn would produce a leachate with characteristics somewhere between unburned and total burned refuse. Therefore, the discussion will focus on comparing the two extremes: unburned and "adequately" burned refuse. Secondly, in order to produce leachate, water must move through the fill. The resultant quality will depend upon a variety of site dependent factors and cannot easily be predicted. These factors include: water balance, level of water table and movement of water, waste composition, soil type, landfill operation, decomposition rate, etc.. Ideally, the dumps would be located in regions of a water deficit where leachate would not be produced, would be sited such that water would not move through the fill, or would be operated in a manner to reduce leachate production. For purposes of this discussion, it is assumed that some leachate is produced. Finally, it was assumed that only housefold refuse was being disposed.

FINDINGS

No article was found in the literature search that directly compared the differences in leachate quality between burned and unburned household refuse. This is not to state that they do not exist, but that they were not found during the time available to search the literature. Interestingly enough, articles that most directly dealt with the water quality impacts from the conversion of open dumps to sanitary landfills were written by Oregon State Board of Health staff in 1969 and 1970. In general, these articles state that the problem of leachate became more noticeable in western Oregon after the conversion of open burning dumps to landfills:

> *Sanitary landfill appears to be the most accepted method at present for correcting "open burning dumps." This method, therefore, has been recommended to large and small communities by the Oregon State Board of Health to improve handling of solid waste in that state. Some communities have converted by obtaining new sites for burial of this waste. In western Oregon, conversion to burial of compacted waste has led to some observable problem of leachate not previously documented.*
>
> (from "Leachate from Landfills May be a New Pollutant," Culham and McHugh, JEH, May/June, 1969)

Given limited groundwater monitoring and a limited number of parameters analyzed during that period of time, as well as the limited literature available, it was felt that an assessment of the predicted chemical transformations produced by burning would be a better approach to addressing the question. Table 1 is a brief comparison by groups of parameters that are of concern in leachate or drinking water. The action that is more beneficial in reducing parameter concentration in leachate is shown with the anticipate effect stated.

In general, it appears that burning would reduce the impact of leachate on groundwater. Specifically, it would:

1. Lower the organic loading to groundwater which: reduces the tendency to form a reducing environment where metals become more soluble and mobile; reduces the organic carbon which is a food source for slime-producing bacteria; and reduces the formation of methane.
2. Oxidizes metals which are in a more stable and less mobile form. However, by concentrating the refuse through burning, the concentration of metals per unit volume would increase.
3. Burn, volatilize, or destroy household organic solvents and pesticides.
4. Destroy pathogenic bacteria.
5. Create a higher "first flush" of inorganic salts, but they would not leach out over time. However, by concentrating the refuse through burning, the loading per unit area would increase.
6. Shift the pH of leachate from acidic to alkaline.

ALS:sd

Table 1

COMPARISON OF BURNING VERSUS BURIAL OF
HOUSEHOLD WASTE RELATIVE TO PARAMETER GROUPS OF CONCERN

PARAMETER GROUPING	PARAMETER CONCERN	More Beneficial Action for Groundwater	Anticipated Affect
Inorganic ions (Na,K,Ca,Mg,Cl,SO_4, TDS, Conduct)	Some are secondary drinking water standards and good leachate indicators.	?	Burning would cause high "first flush;" burial would leach out over time.
Organic Carbon	High TOC and BOD deleting O_2 and producing a reducing environment, CH_4 production, carbon source for bacteria.	Burning	Organic carbon changed to CO_2 and H_2O, most of which is lost to atmosphere; reduces organic loadin to groundwater, thus favoring an oxidizing is a reducing environment.
Organic Nitrogen	Could form either NO_3 or NH_3, drinking water concern.	Possibly burning.	Burning may reduce (volatilize) some nitrogen; predominant form found in oxidized leachate would be NO_3; with burial and subsequent reducing environment, predominant form would be NH_3.
Heavy Metals (As,Ba,Cd,Cr, Pb,Hg,Se,Ag)	Primary drinking water standards.	Burning	Converted to metal oxides which ar generally less soluble and more stable. With less organic matter, an oxidizing environment would most likely exist.
Fe, Mn	Secondary drinking water standards.	Burning	Principal source is natural soils; both become soluble and mobil in a reducing environment, burning would favor an oxidizing environment.
Solvents, Pesticides	Drinking water concern.	Burning	Burn or volatilize solvent, destroy pesticide.
Bacterial Slime	Nuisance growth.	Burning	Organic carbon converted to CO_2 and H_2O resulting in loss of carbon food source.
Pathogenic Bacteria	Drinking water concern.	Burning	Destroys bacteria.
pH	Secondary drinking water standard.	?	Burning would favor alkaline pH; burial would favor acidic pH.

ALS:sd
10/4/84

ATTACHMENT 5

OPEN DUMP PROFILE

The Environmental Profiles present the following information:

1. Dump name; location, e.g., proximity to community, county, region; owner; responsibility for operation.

2. Number of people served and garbage loadings, type of waste disposed.

3. Description of site, e.g., site size, lifespan, site conditions and limitations; method of operation, e.g., equipment, attendant, cover.

4. Summary of environmental problems or concerns, e.g., data, frequency, severity of pollution problems, complaints/problems investigated and results.

5. Evaluation of operational capabilities, e.g., operating budget/fee structure, economic base; dependence upon county subsidies, franchise operation.

6. Evaluation of current known alternatives/proposals to minimize or eliminate problems by region or entity, to date, e.g., distance to nearest approved site, feasibility of conversion to transfer station, etc.

7. Description of current regulatory state, e.g., under variance, conditions, dates, NOV's fines, etc.

OPEN DUMP PROFILE - NORTHWEST REGION (VILENDRE)

Astoria Landfill

Location:	Sec 16 and 17, T8N, R9W, W.M.
County:	Clatsop
Owner:	City of Astoria
Operator:	City of Astoria
Region:	Coastal
Distance to Community:	In city
Distance to Nearest Residence:	1,200 feet
Population Served:	10,400
Type of Waste:	Commercial/Residential
Waste Volume:	45,000 cubic yards/year
Site Size:	29.9 acres
Site Features:	Down slope rock and clay soil.
Lifespan:	Existing landfill to be closed.
Method of Operation:	City burns brush in a designated area as weather permits. A salvage pile is maintained and white goods are separated out. The domestic and commercial garbage is covered.
Equipment:	Large compacting cat.
Attendant:	Operator on site 7 days/week 8 hr/day.
Available Cover:	Rock and clay from nearby hillside.
Evaluation of Financial Capabilities:	Site operator collects fee for dumping. Commercial haulers pay part of the pick up fees to city.

Summary of Environmental Problems and Concerns: Surface water pollution. Routing streams and storm runoff through culverts (beneath the fill) is the primary cause of leachate problems at the site.

Evaluation of Alternatives:

1. Site to be closed and transfer station built in spring of 1985.

2. Waste hauled to Raymond, Washington for disposal.

Current Regulatory Status: Currently operating under Permit No. 118, due to expire March 31, 1985.

Cannon Beach

Location:	Sec 20, T5N, R10W, W.M.
County:	Clatsop
Owner:	Richard Wallsborn
Operator:	Richard Wallsborn
Region:	Coastal
Distance to Community:	2 miles
Distance to Nearest Residence:	2 miles
Population Served:	1,500
Type of Waste:	Residential
Site Features:	Down slope rock and clay soil.
Lifespan:	Site to be closed November 1, 1984.
Method of Operation:	Burning, separation of some larger non-burnable items.
Equipment:	No equipment at site, about once every 3 months someone covers burned material.
Attendant:	No operator at site, site closed to public, entrance gated.
Available Cover:	Dirt, rock, clay mixture, or hillside near site.
Evaluation of Financial Capabilities:	Private owner, charge/car Budget for garbage is $3,500, and will not be increased. No fees are charged at the disposal site.

Summary of Environmental Problems: Air pollution from burning the garbage.

Evaluation of Alternatives:

1. Dump will be closed and covered by November 1, 1984.

2. Cannon Beach garbage will be hauled to Seaside transfer station.

Current Regulatory Status: Burning variance until November 1, 1984. No new permit will be issued.

Seaside

Location:	Sec 14, T6N, R10W, W.M.
County:	Clatsop
Owner:	Seaside Sanitary Service
Operator:	Seaside Sanitary Service
Region:	Coastal
Distance to Community:	3 miles
Distance to Nearest Residence:	1 mile
Population Served:	6,000
Type of Waste:	Residential/Commercial
Waste Volume:	6,500 tons/year
Site Size:	3 acres
Site Features:	Closed and covered
Lifespan:	Existing landfill to be closed.
Method of Operation:	Burn fill and push over bank. Some white goods separated out for salvage.
Equipment:	Small cat
Attendant:	Operator on site when site was open.

Summary of Environmental Problems: Rodent problem after closing. Rodents being baited.

Evaluation of Alternatives:

1. Site will be made into a transfer station.

Current Regulatory Status: Closed

Warrenton Landfill

Location:	Sec 20, T8N, R10W, W.M.
County:	Clatsop
Owner:	City of Warrenton
Operator:	City of Warrenton
Region:	Coastal
Distance to Community:	3,000 feet
Distance to Nearest Residence:	1,200 feet
Population Served:	1,850
Type of Waste:	Residential/fish packing plants
Waste Volume:	1,200-4,000 cubic yards
Site Features:	Sand dune area
Lifespan:	Due to be closed. Letter sent to Jim Rankin June 5, 1984. Closure plan due prior to October 1, 1984.
Method of Operation:	No burning, cover with sand by city operator.
Equipment:	City provides cat.
Attendant:	City operator
Available Cover:	Sand available on site.
Evaluation of Financial Capabilities:	Operator collects fees. Commerical haulers pay part of pick-up fee to city.

Summary of Environmental Problems and Concerns: Significant groundwater pollution.

Evaluation of Alternatives:

1. Close site permanently.

2. Haul to Astoria Landfill. (Transfer station proposed Spring of 1985.)

Current Regulatory Status: Operating without a permit but covered under the law due to letter received by the Department requesting operation until Astoria is set up with a transfer station, Spring of 1985.

OPEN DUMP PROFILE - WILLAMETTE VALLEY REGION (MESSER)

Brown's Island Landfill

1. The landfill is located on the Minto/Brown's Island complex in Marion County, approximately four (4) miles west of the City of Salem. The current operations are on lands owned by a Mr. William Trussel, who leases the property to Brown's Island, Inc. Brown's Island, Inc. is responsible for the operation which is regulated by a DEQ Solid Waste Permit, 110.255.

2. Brown's Island Landfill is the current regional solid waste disposal site serving the majority of Marion County, Eastern Polk County, and Northeastern Linn County. It accepts all types of solid waste except hazardous waste. Waste volumes average approximately 400 tons per day.

3. The landfill site is part of a large agricultural parcel that is bordered on the north by the Willamette River. The landfill is set back from the river at distances that vary from 700 to 900 feet. The properties bordering the site to the west and south are large agricultural parcels. The properties to the east are City of Salem properties that are being used for agricultural, wildlife habitat, and day-use recreation. The actual area of the entire landfill is approximately 88 acres. Approximately 7 acres remain unfilled, giving the site a potential remaining operational life of approximately 4 to 6 years depending on local economic conditions. The existing site boundaries were established by a Corps of Engineers Flood Plain Study, conducted in 1977-78. Based on these studies, the site was enclosed by a large engineered earthern berm to protect the site from flood elevations and velocities above the 100 year flood frequency stage. Once the berms were constructed, the method of operation was to divide the interior of the site into 2-year operational areas and fill them using the area fill method. The site operation has two full-time dozer operators, a salvage and litter controller, a traffic controller, and a site manager. The gate is controlled by two full-time Marion County employees. Wastes that are received are pushed to an active operational area that may not exceed a 100' x 200' area at any time and are compacted daily. Soil covering requirements are at frequencies so that the areas of exposed refuse do not exceed the 100' x 200' of active operational area at any time. The site has a negative soil inventory, so all cover soils must be purchased and imported to the site.

4. The landfill is located on the Minto/Brown's Island complex that was formed by flood plain deposits of the Willamette River, at a point where the Willamette River bisects the Eola Hills. During fall and winter, air stagnation and inversions commonly occur between the flood plain valley of the two hills. This results in poor dispersion of odors. Unfortunately, these conditions occur at the same time the local cannery season is at its peak, and the landfill commonly receives in excess of 100 loads of cannery waste per day. Odor complaints are common during these periods.

   The landfill has twelve (12) sets of double and triple completion monitoring wells. The landfill is in a local and intermediate groundwater discharge zone. All aquifer zones are being monitored. The site has no leachate collection or treatment system other than an imported bottom soil liner that is five (5) feet thick to aid in leachate attenuation. Monitoring well data shows the primary impact has been to the local groundwater discharge aquifer, immediately below the landfill, and in a dispersed leachate plume that travels in a north/northeast direction across the Trussel property. The ultimate discharge point for these underground flows is the Willamette River, however, no measurable impacts have been found. A comprehensive groundwater study was made at the site in 1978 by Sweet, Edward, and Associates. Their findings were similar to DEQ's, that measurable impacts to the Willamette River were unlikely, primarily due to the vast dilution effect of local groundwaters and the river itself.

5. The Brown's Island Landfill was opened in 1967 and was Marion County's first attempt to establish a regional landfill. The choice of a flood plain location was poor, but apparently it marked an improvement over numerous open burning dumps serving the area at that time.

   Operational capabilities at this site are difficult, especially during winter. The site is operated within an enclosed berm that creates internal drainage problems during extended rainfall periods. All cover soils must be purchased and imported. Development of access roads to the site in 1971 have restricted normal flood overflow channels and have created localized erosion problems. Long-term erosion control contracts have been signed between Marion County and Brown's Island, Inc. to correct future problems as they arise. The site operation is totally dependent on gate fees approved by Marion County. Since Marion County collects the fees, they know when the operation in in the "Red" and have typically approved rate increase requests as needed.

6. Since Brown's Island is a regional solid waste disposal site, the only alternative is to develop another regional site to replace it. Marion County's primary alternative is development of a region refuse incineration/electrical generation facility in the Brooks area, 7 miles north of Salem. DEQ permits and Marion County building permits have been obtained for this facility. Ground breaking started on September 24, 1984, and the target date for obtaining operational status is March 1986.

7. The site is currently operating under an EQC approved renewal permit that was extended until May 1986, to coincide with the "presumed" May 1986 RCRA closure date for open dumps. The site was placed on the Federal RCRA Open Dump List in May 1981 for violation of the RCRA groundwater criteria. The site has a record of NOVs being issued each winter for exceeding the size of the 100' x 200' allowable operational area. This has primarily resulted due to the internal drainage problems discussed above.

Fowler's Demolition Landfill

1. The landfill is located on a large agricultural parcel in the west Salem area of Polk County. It is approximately three (3) miles north of the Center Street Bridge which crosses the Willamette River to connect Salem with West Salem. The owner and operator of the site is a Mr. John Fowler. The site is regulated by DEQ Solid Waste Permit No. 158.

2. The site serves as the primary demolition landfill for Marion, Polk, and southeastern Polk County. It accepts primarily construction demolition, land clearing debris, and yard cleaning debris. Waste volumes have significantly decreased in recent years due to local economic conditions, and the site currently averages approximately 30 tons per day contrasted to over 100 tons per day during the 1970's.

3. The landfill site located along the northern boundary of a large agricultural/industrial parcel that is used for growing wheat and mining sands, gravels, and top soils. The property is bordered on the north, west, south, and east by large agricultural parcels. The actual area of the landfill is approximately 17 acres. Approximately 1/2 acre remains to be filled under the current approved operational plan. The site should reach capacity and close by December 1985. The site is operated as a trench fill in annual operational areas. A full-time gate attendant controls access. Wastes are compacted and covered weekly with a dozer. The site has a positive soil inventory, so requirements for cover and development of fire berms have always been met.

4. The primary environmental concern is that the site has been developed in geologically young alluvial soils, underlain by sands and gravels. Well data shows that the landfill seasonally impacts the underlying aquifer with elevated iron levels. All other standard leachate monitoring parameters were fairly low.

5. The site operates entirely on user fees. Since the types of wastes received are primarily demolition in nature, operational expenses are low. As noted above, the site also has an abundant soil inventory for cover material. The disposal operation is franchised by Polk County.

6. There are several alternatives for this site.

   a. It can continue operation by installing artificial liners in future fill cells.
   b. It can continue acceptance of inert materials such as dirt, rock, concrete, brick, etc.

   NOTE: Marion County very much wants the burnable demolition wastes from this site for their high BTU valves in the proposed Brooks incineration/electrical generation facility.

7. The site is currently operating under a DEQ imposed RCRA closure order for impacting groundwaters beyond the solid waste boundary of the site. The scheduled closure date is December 1985. Operationally, this is a well maintained site with no records of complaints or NOVs within the past 5 years.

Creswell Landfill

1. The landfill is located adjacent to the Creswell Golf Course in Lane County. The site is owned and operated by Lane County. The operations are regulated by DEQ Solid Waste Permit No. 78.

2. The landfill serves primarily the Creswell rural community and accepts all types of solid waste except hazardous wastes. Waste volumes are very low, averaging 15 tons per day or less.

3. The landfill property is bordered on the north by the Creswell Golf Course, on the east by the coast fork of the Willamette River, on the south by a county road and undeveloped pasture lands, and on the west by undeveloped lands owned by Creswell. The site has been in operation since 1965 and covers approximately 10 to 15 acres. The remaining fill areas are limited to a partially filled trench, approximately 120' x 200' in size. There are two large depressed and ponded areas on the east side of the landfill property, but DEQ has opposed requests to fill them since they are the areas closest to the river. The active operational area is commonly maintained so it does not exceed a 40' x 50' area. The site has a full time gate attendant. The site is maintained with a small dozer. The site has adequate reserves of on-site cover soils to conduct operations. The remaining life of the site is approximately 15 months.

4. Primary environmental concern is high seasonal groundwater elevations, its location immediately adjacent to the coast fork of the Willamette River, and the preserve of the Creswell community well field southwest of the site. Hydrogeologic studies and well tests conducted by Lane County indicate the community well field has not been impacted, nor is it likely to be impacted, since the local groundwater flow system in the area flows from the well field toward the landfill, even during peak summer demand periods when well drawdown gradients are at their peak.

5. County operations of the site are funded by user fees and county general fund monies.

6. The alternative for this site is to construct a small rural transfer station and dispose of wastes at the major Lane County Short Mountain Landfill, approximately 8 miles away. Public access is not allowed at Short Mountain, thus a transfer station is desirable.

7. The site is currently under a DEQ imposed RCRA closure order due to groundwater concerns with the site being located immediately adjacent to the coast fork of the Willamette River. A December 1985 closure date is required by the current operational permit.

Cottage Grove Landfill

1. The landfill is located in the rurally developed area of east Cottage Grove in Lane County. It is also located near the Cottage Grove air strip that accommodates primarily small privately owned aircraft. Lane County owns and operates the landfill. Lane County also maintains a county road department shop and storage yard on the property. The landfill operations are regulated by DEQ Solid Waste Permit No. 83.

2. The landfill serves primarily the Creswell Community and accepts all types of solid waste except hazardous wastes. Waste volumes are fairly low, averaging approximately 60 tons per day.

3. The landfill property is bordered on the north by county shops located on an elevated terrace, on the east by a few rural home sites, on the south and west by the Row River. Across the Row River at the west end of the landfill property is located the Cottage Grove air strip. The site was opened in 1969 and has filled two lifts over approximately 10 acres. The remaining fill area is limited to completing the last lift to obtain final contour grades to promote runoff after closure. The county's request to consider additional lifts was denied in 1983. The site is operated as a confined area fill. All cover soils must be purchased and imported. The site has a full-time gate attendant and a dozer operator.

4. Primary environmental concern is the site's location adjacent to the Row River. The obvious safety concern is the location of the Cottage Grove air strip across the river. This is due to the site being a "potential" bird attractant.

5. County operations of the site are funded by user fees and county general fund monies.

6. The alternative for this site is to construct a transfer station and dispose the wastes at the major Lane County Short Mountain Landfill, approximately 15 miles north of Cottage Grove.

7. This site is currently under a DEQ imposed RCRA closure order due to groundwater concerns with the site being located adjacent to the Row River. It also is listed for failure to meet RCRA safety criteria due to the presence of the adjacent air strip. A December 1985 closure date is required by the current operational permit.

Agate Beach and Waldport Landfills, Lincoln County

Based on feasibility and hydrogeologic studies completed by Sweet, Edwards and Associates, submission of approved site renovation and operational plans, plus the recent issuance of new 5 year solid waste permits for these sites--they should now be removed from the open dump list.

The Agate Beach Landfill is now called the Agate Beach Balefill and Recycling Center.

The Waldport Landfill is now called the South Lincoln County Landfill.

OPEN DUMP PROFILE - SOUTHWEST REGION (BELSKY)

Butte Falls

Name:	Butte Falls Landfill, SW Permit No. 205
Location:	Jackson County, MEDCO Shop Road (Section 11, T35S, R2E, W.M.) Butte Falls
Operator:	Town of Butte Falls P.O. Box 268 Butte Falls 503-865-3262
Owner:	Medford Resources Corporation P.O. Box 550 Medford, OR 97501
Maps:	Attachment 1
People Served:	1982 estimate of 900 persons, 400 residents of Butte Falls, 500 residents of Jackson County. Above area is in Butte Falls School District.
Waste Type:	Domestic - no industrial waste
Waste Volume:	1984 estimate of 60 cubic yards per month

Description of Site: Active since 1965. Site serves Butte Falls and residents of Jackson County within 5 miles. Access is by gravel road past Medford Corporation shop. Road is maintained by Butte Falls. Butte Falls is a somewhat isolated community in rural Jackson County. No conflicts with surrounding land use. No zoning restrictions prohibiting use of the site for a landfill or transfer facility. The site is well screened by trees and vegetation and is located far enough from Butte Falls to prevent conflicts with residents. There is no current problem with roadside litter, promiscuous dumping, or complaints. Since October 1, 1983, there has been a permit system. The charge is $8 per quarter for residents and $12 per quarter for businesses. There is an attendant who also operates the sewage area.

Medford Corporation loans equipment to cover ashes and noncombustibles for which a charge of approximately $1600 annually is made. Cover is applied 2 or 3 times a year. This consists of pushing the ash and noncombustibles from the pit down gradient 100-200 feet and covering.

The site is two acres in size. Open burning takes place once a week except during fire season.

Environmental Aspects: Operation of the landfill has improved in the last year since an attendant has been at the site. Refuse dumping is confined to a small area and litter is being controlled. The salvage area, while visible, is orderly. The site is locked during off hours. No complaints have been received on the dump operation including open burning, odors, litter, or vector conditions.

Jackson County, in preparing a Solid Waste Plan in 1974, provided information on the site's physical limitations including groundwater, surface water, leachate potential, adequacy of cover material, and soil characteristics. This information is enclosed as Attachment 2.

Operational Capabilities: The site is operated on a fee basis. Residents are charged $8 per quarter and local businesses $12 per quarter. Permits are issued only to residents of the Butte Falls School District. Estimated annual income is:

400	Households x $ 8/quarter =	$12,800
20	Businesses x $12/quarter =	960
		$13,760

There is no county subsidy or revenue from a franchise operation. Additional revenue may be available from Jackson County if the site would serve as a transfer station and take trash from three county-run recreational areas nearby.

Known Alternatives: Conversion to a sanitary landfill has never been a seriously considered alternative. The site has severe space limitations, inadequate cover material, poor soil suitability and insufficient population to finance a sanitary landfill.

A transfer station would be the desired alternative to the present open burning dump. This scenario has been studied a couple of times since the early 1970's. Jackson County's Solid Waste Plan concludes that a transfer station is a feasible alternative.

A transfer station or drop box service could be serviced by Pat's Sanitary Service of Grants Pass with ultimate disposal at Dry Creek. The haul distance is 33 miles, more or less. Costs for establishing a transfer station have not been estimated recently. Jackson County estimated costs in 1980 of $20.000 initial cost and $13,000 annual cost based on 2,700 cy/year and a drop box of 30-50 cy. Waste volumes have declined significantly since the advent of the permit system.

Current Regulatory Status: Butte Falls has Solid Waste Permit No. 205 which expires July 31, 1985. A variance was granted by the EQC July 16, 1982 to allow controlled open burning until July 1, 1985. As a condition to the variance, Butte Falls is to submit progress reports on July 31, 1983 and July 31, 1984 describing progress made towards eliminating open burning and providing a timetable for completion of an alternative facility or method of operation prior to July 1, 1985.

Butte Falls has failed to submit progress reports or a compliance schedule. A regional NOV May 10, 1984 has failed to prompt any action on the part of Butte Falls.

Powers

Name:	Powers Disposal Site
Location:	Coos County (Section 12, T31S, R12E, W.M.)
Operator:	City of Powers P.O. Box 250 Powers, OR 97466
Site Contact:	City of Powers
Property Owner:	Joe Harris Powers, OR 97466 439-2234
Maps:	Attachment 3
People Served:	Approximately 300 households. Population is 775.
Waste Type:	Domestic - no industrial waste
Waste Volume:	Rough estimate of 40 cy per month.

Description of Site: The landfill is on a small 2 acre site that would be rapidly filled if operated as a sanitary landfill. Powers is an isolated community in the coast range. Winter travel can be treacherous on the road to Highway 42 and Myrtle Point. The nearby residents have apparently adjusted to the landfill over the years. Recent improvements and operation have reduced the nuisance conditions at the site. Garbage rates are $4.50 per month. The terrain at the landfill is steep and lacks a ready supply of cover material.

Environmental Aspects: At the present time, there are no complaints or significant nuisance conditions at the landfill that have been reported to the Department. Leachate may be present in small pockets.

Operational Capabilities: Residents of Powers are charged a monthly fee of $4.50. Combined with businesses in town, monthly income was estimated by the Powers City Council as $1,920 per month. The city now operates the disposal site (as of 4-3-84). Collection is mandatory with the idea that as long as people are paying to have their garbage hauled away, they won't be prone to dump indiscriminately along the road somewhere.

Known Alternatives: This dump cannot be upgraded to a sanitary landfill, primarily because the operational costs would be considerable and because achieving successful operation in the wet mountainous terrane is very difficult. A suitable site has not been identified.

Hauling garbage to the Beaver Hill incinerator is probably the most practicable solution provided the economics are not unreasonable. Costs were estimated to be $10 per month per household for this option. However, there is much resistance locally to this option because the folks are on limited fixed incomes. Also, Beaver Hill would not accept white goods, yard debris, and demolition waste. This could lead to roadside dumping of these items.

Current Regulatory Status: Powers has Solid Waste Permit No. 160, which expires 12-31-84. A variance was granted 6-8-84 to open burn until 5-29-86. A closure permit application was to have been submitted by 9-1-84. This application has not been received. No enforcement action is pending at this time.

Attachment 1 Butte Falls Dump

10-4-84

Attachment 1

Figure III-7

Site Physical Limitations:

. Adequacy of Cover Material: Soil in the vicinity of the site has been tentatively mapped by the Jackson County Planning Department Soil Scientist as shown on Figure III-8 and Table III-34. The existing disposal site is located in a Freezner gravelly loam over clay at slopes of 12 to 35% (48E). This soil in an undisturbed state usually does not have a seasonally high water table and occurs in depths from 40 to 60 inches. It has a Unified Soil Classification of MH which includes silty materials with a high plasticity. It exhibits poor compaction characteristics and poor stability but does have a low- to medium-compacted permeability which is desireable for a landfill.

Soil near the site and the bed of Ginger Creek is classified as Gobleigh gravelly loam over clay at slopes of 1 to 12% (47C). This soil exhibits identical characteristics in both disturbed and undisturbed states to the Freezner soil. A trace of Geppert soil at 35 to 60% on south slopes exists also in the area.

In general, the site is confined by the type and amount of cover material. Expansion of the disposal operation to other areas is not believed appropriate at this time.

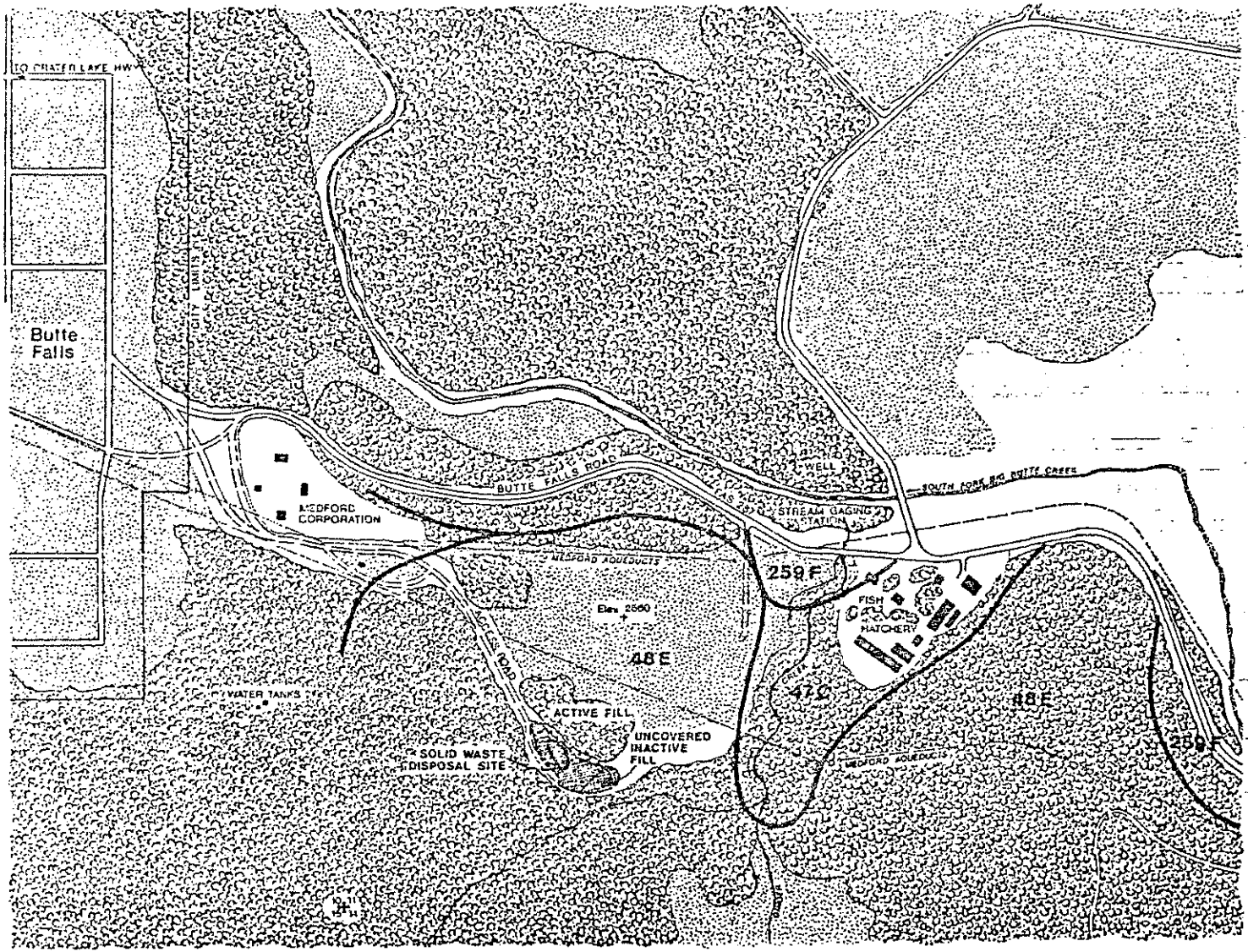
. Surface Water Effects: Ginger Creek, a perennial stream and a tributary to the South Fork of Big Butte Creek, is encroached upon by wastes deposited at the lower end of the site. The solid wastes can be washed or otherwise enter the creek due to the short distance. The dump is not located in the established water course. Water entering the dump results only from rainfall and some overland flow from surrounding hills. There are no diversion ditches to reduce the amount of surface water into the dump. It can be expected that the refuse will become saturated during wet-weather periods but will remain fairly dry during the summer months.

. Subsurface Water: The extent of subsurface water in the Butte Falls area is not precisely known. Some springs have been observed in the northerly end near the access road.

. Regional Groundwater: Only three wells of record exist in the vicinity of the disposal site. Two of the wells are in excess of 200 feet and one is about 60 feet deep. None of the wells is recorded as producing more than 20 gpm. The City of Butte Falls obtains domestic water from Ginger Creek upstream from the dump. The Oregon State Fish Hatchery obtains water from the South Fork of Big Butte Creek through a pipeline. From this limited information it appears the site does not overlay a major groundwater resource.

. Leachate: No leachate has been observed by study personnel (or local officials) and there is no evidence of concentrated leachate flows in the past. One reason for absence of typical leachate may be because it is an open dump in which wastes are decomposed aerobically (in the presence of air) compared to anaerobic (lack of air) decomposition resulting in objectionable products such as methane, carbon dioxide, water, organic acids, nitrogen, ammonia, and sulfides of iron, manganese and hydrogen.

Attachment C



	CHARACTERISTICS	SLOPE
47C	COBLEIGH	1 TO 12%
48E	FREEZNER	12 TO 35%
259F	GEPPERT	35 TO 80% SOUTH (TRACE)

NORTH

500 0 500 FEET

SEC 11
T35S R2E

Figure III-8
BUTTE FALLS SITE–SOIL MAP

Table III-34
BUTTE FALLS SITE
SOIL CRITERIA

SOIL MATERIAL
Undisturbed Soil[1]

Symbol	Soil Name	Texture	Depth	Seasonal High Water Table	Slope	Flood Hazard
39A	Cove	Clay	60"+	Yes	0 to 3%	Yes
47C	Cobleigh	Gravelly Loam Over Clay	40 to 60"	None	1 to 12%	None
48E	Freezner	Gravelly Loam Over Clay	40 to 60"	None	12 to 35%	None

COVER MATERIAL
Disturbed Soils[2]

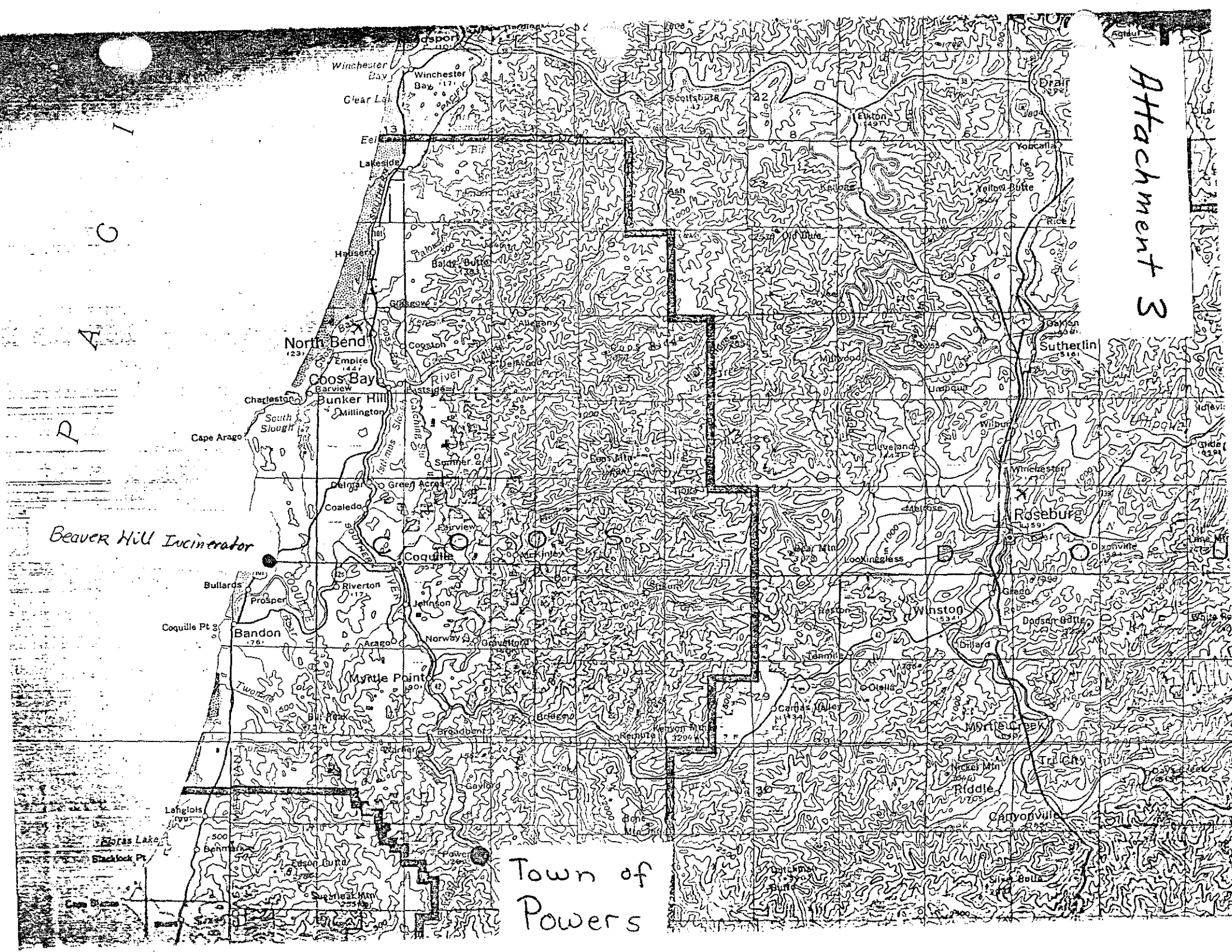
Symbol	Soil Name	Engineering Classification Unified	Engineering Classification AASHO	Compaction Characteristics	Compacted Permeability	Compressibility	Resistance To Piping	Stability
39A	Cove	CH	A-7	Poor to Fair	Low	High	High	Poor to Fair
47C	Cobleigh	MH	A-7	Poor	Low to Med.	High	Med. to High	Poor
48E	Freezner	MH	A-7-5	Poor	Low to Med.	High	Med. to High	Poor

SOIL EROSION AND SEDIMENT CONTROL
– Diversions and Vegetative Cover

Symbol	Soil Name	Slope	Texture	Depth	Permeability (IN/HR)	Stability	Capacity	Plant Nutrient Supply
39A	Cove	0 to 3%	Clay	60"+	.06	Poor	High	High
47C	Cobleigh	1 to 12%	Gravelly Loam Over Clay	40 to 60"	0.2 to 0.6	Fair	Medium	Medium
48E	Freezner	12 to 35%	Gravelly Loam Over Clay	40 to 60"	.06 to 0.2	Fair	High	Moderate

[1]Based on natural soil and landscape characteristics.
[2]Based on engineering characteristics of the soil.

Source: Jackson County Planning Department


Attachment 3
Beaver Hill Incinerator
Town of Powers
North Bend
Coos Bay
Bunker Hill
Charleston
Cape Arago
Coquille
Bandon
Myrtle Point
Roseburg
Winston
Sutherlin
Riddle
Myrtle Creek
Canyonville
Winchester Bay
Lakeside
Coquille Pt.
Langlois
Powers

OPEN DUMP PROFILE - CENTRAL REGION (SCHULTZ/BRAMHALL)

Christmas Valley Dump

Location:	T26S, R17E, Sec 28
County:	Lake
Owner:	BLM
Operator:	Lake County
Region:	Central
Distance to Community:	3.5 miles
Distance to Nearest Residence:	1 mile
Population Served:	500
Type of Waste:	Rural residential
Waste Volume:	~1000 cubic yards/mo
Site Size:	Estimated 10 acres
Site Features:	Flat basin floor
Lifespan:	Unlimited if burning continues. Estimated 8-10 years if converted to landfill.
Method of Operation:	Site burned once/week by County Road Department. Other site users also burn waste.
Equipment:	None at site. County occasionally brings in "cat" to dig a new trench.
Attendant:	None - No fee charged.
Available Cover:	Soil available on site from trench excavation.
Evaluation of Financial Capabilities:	Site operation is financed through county general fund. No fees are charges.

Summary of Environmental Problems and Concerns: Staff is not aware of any complaints on this site. Pollution problem is nuisance smoke from burning once each week. No one is in the immediate vicinity to impact except dump users. Visual impact only.

Evaluation of Alternatives:

1. Upgrade to Sanitary Landfill - Capital and operating costs would include cost of excavation of additional trenches, hiring part-time attendant, sharing cost of crawler-tractor, and low boy truck with other Lake County sites and sharing labor costs of equipment operator. Another alternative would be to contract with local crawler-tractor owner to operate the site if anyone in the area has the equipment. The 1982 estimated cost to convert all 6 Lake County burning dumps to sanitary landfills was estimated at $227,000 for capital costs plus $84,000 annual operating costs.

2. Convert to Transfer Station - The area is not served by a collector. Haul distance is 65 miles to southwest landfill in Deschutes County and 115 miles to Lakeview. Poor road conditions exist in the winter. Costs would include purchase, operation and maintenance of transfer equipment, site development, part-time attendant, and dumping charges.

3. Close Site - Nearest landfill is 65 miles away. Closing site would result in random dumping on public land.

4. Continued Burning - No change in current costs for salary and transportation for traveling operator. That is approximately $26,000 each year divided between the Lake County sites.

Current Regulatory Status: Site operates under Solid Waste Disposal Permit No. 9, including EQC variance granted June 11, 1982, which allows open burning until July 1, 1985. No enforcement actions have been initiated.

Fort Rock Dump

Location:	T26S, R14E, Sec 5
County:	Lake
Owner:	BLM
Operator:	Lake County
Region:	Central
Distance to Community:	1.5 miles west of the community of Fort Rock.
Distance to Nearest Residence:	1 mile
Population Served:	400
Type of Waste:	Rural residential wastes and agriculture wastes
Waste Volume:	Estimated ~120 cubic yards/mo
Site Size:	Estimated 10 acres
Site Features:	Old rock quarry
Lifespan:	Unlimited if burned. Limited life if burning is stopped. Probably less than 10 year.
Method of Operation:	Site burned once/week by County Road Department. Other site users also burn waste. County digs new trench as needed when the old one fills up with ash.
Equipment:	None at site. County occasionally brings in "cat" to dig a new trench.
Attendant:	None - No fee charged.
Available Cover:	Limited - site is an old rock quarry.
Evaluation of Financial Capabilities:	Site operation is financed through the county general fund. No fees are charged.

Summary of Environmental Problems and Concerns: Staff is not aware of any complaints on this site. Pollution problem is nuisance smoke from burning once each week. No one is in the immediate vicinity to impact except dump users. Visual impact only.

Evaluation of Alternatives:

1. Upgrade to Sanitary Landfill - Capital and operating costs would include cost of financing site, importing cover soil, hiring part-time attendant, and sharing cost of crawler-tractor and low boy truck with other Lake County sites and sharing labor cost of equipment operator. Another alternative would be to contract with a local crawler-tractor owner to operate the site if anyone in the area has the equipment. The site may need to be located due to the lack of available cover soil. This would add extra costs for land purchase or lease, engineering, and site development. 1982 estimated cost to convert all 6 Lake County burning dumps to sanitary landfills was estimated at $227,000 for capital costs plus $84,000 annual operating costs.

2. Convert to Transfer Station - The area is not served by a collector. Haul distance is 35 miles to southwest landfill in Deschutes County and 120 to Lakeview. Poor road conditions exist in the winter. Costs would include purchase, operation, and maintenance of transfer equipment, site development, part-time attendant, and dumping charges.

3. Close Site - Nearest landfill is 35 miles away. Closing site would result in random dumping on public land.

4. Continue Burning - No change in current costs for salary and transportation for traveling operator. That is approximately $26,000 each year divided between the 6 Lake County sites.

Current Regulatory Status: Site operates under Solid Waste Disposal Permit No. 276, including EQC variance granted June 11, 1982, which allows open burning until July 1, 1985. No enforcement actions have been initiated.

Summer Lake Dump

Location:	T29S, R16E, Sec 36
County:	Lake
Owner:	Oregon Department of Fish and Wildlife
Operator:	Lake County
Region:	Central
Distance to Community:	2.5 miles
Distance to Nearest Residence:	2 miles
Population Served:	400
Type of Waste:	Rural residential
Waste Volume:	~150 cubic yards/mo
Site Size:	Estimated 10 acres
Site Features:	Toe slope of hillside - some soil available.
Lifespan:	Unlimited if burning continues.
Method of Operation:	Site burned once/week by County Road Department. Other site users also burn waste. Pick up with blade for site clean up.
Equipment:	None at site. County occasionally brings in "cat" to dig a new trench.
Attendant:	None - No fee charged.
Available Cover:	Soil available on site from trench excavation.
Evaluation of Financial Capabilities:	Site operation is financed through the county general fund. No fees are charged.

Summary of Environmental Problems and Concerns: Staff is not aware of any complaints on this site. Pollution problem is nuisance smoke from burning once each week. No one is in the immediate vicinity to impact except dump users. Visual impact only.

Evaluation of Alternatives:

1. Upgrade to Sanitary Landfill - Capital and operating costs would include cost of fencing site, excavation of additional trenches, hiring part-time attendant, sharing cost of crawler-tractor, and low boy truck with other Lake County sites and sharing labor costs of equipment operator. Another alternative would be to contract with local crawler-tractor owner to operate the site if anyone in the area has the equipment. The 1982 estimated cost to convert all 6 Lake County burning dumps to sanitary landfills was estimated at $227,000 for capital costs plus $84,000 annual operating costs.

2. Convert to Transfer Station - The area is not served by a collector. Haul distance is 76 miles to Lakeview. Poor road conditions exist in the winter. Costs would include purchase, operation and maintenance of transfer equipment, site development, part-time attendant, and dumping charges.

3. Close Site - Nearest landfill is 76 miles away. Closing site would result in random dumping on public land.

4. Continued Burning - No change in current costs for salary and transportation for traveling operator. That is approximately $26,000 each year divided between the Lake County sites.

Current Regulatory Status: Site operates under Solid Waste Disposal Permit No. 183, including EQC variance granted June 11, 1982, which allows open burning until July 1, 1985. No enforcement actions have been initiated.

Silver Lake Disposal Site

Location:	T28S, R14E, Sec 24
County:	Lake
Owner:	Oregon Department of Fish and Wildlife
Operator:	Lake County
Region:	Central
Distance to Community:	2 miles
Distance to Nearest Residence:	1/2 mile
Population Served:	600
Type of Waste:	Rural residential and ranch waste (wire and fencing) and cml. waste from Silver Lake.
Waste Volume:	~1000-1500 cubic yards/mo
Site Size:	10 acres for disposal, 40 acres total
Site Features:	Flat basin floor
Lifespan:	Estimated 20 years
Method of Operation:	Site burned once/week by County Road Department. Other site users also burn waste.
Equipment:	None at site. County occasionally brings in "cat" to dig a new trench and pick up with blade for clean up.
Attendant:	None - No fee charged.
Available Cover:	Soil available on site from trench excavation.
Evaluation of Financial Capabilities:	Site operation is financed through the county general fund. No fees are charged.

Summary of Environmental Problems and Concerns: Staff is not aware of any complaints on this site. Pollution problem is nuisance smoke from burning once each week. No one is in the immediate vicinity to impact except dump users. Visual impact only.

Evaluation of Alternatives:

1. Upgrade to Sanitary Landfill - Capital and operating costs would include cost of fencing site, excavation of additional trenches, hiring part-time attendant, sharing cost of crawler-tractor, and low boy truck with other Lake County sites and sharing labor costs of equipment operator. Another alternative would be to contract with local crawler-tractor owner to operate the site if anyone in the area has the equipment. The 1982 estimated cost to convert all 6 Lake County burning dumps to sanitary landfills was estimated at $227,000 for capital costs plus $84,000 annual operating costs.

2. Convert to Transfer Station - The area is not served by a collector. Haul distance is 94 miles to Lakeview. Poor road conditions exist in the winter. Costs would include purchase, operation and maintenance of transfer equipment, site development, part-time attendant, and dumping charges.

3. Close Site - Nearest landfill is 94 miles away. Closing site would result in random dumping on public land.

4. Continued Burning - No change in current costs for salary and transportation for traveling operator. That is approximately $26,000 each year divided between the Lake County sites.

Current Regulatory Status: Site operates under Solid Waste Disposal Permit No. 184, including EQC variance granted June 11, 1982, which allows open burning until July 1, 1985. No enforcement actions have been initiated.

Adel Dump

Location:	T39S, R25E, Sec 33
County:	Lake
Owner:	Oregon Department of Fish and Wildlife
Operator:	Lake County
Region:	Central
Distance to Community:	6 miles
Distance to Nearest Residence:	5 miles
Population Served:	150
Type of Waste:	Rural residential
Waste Volume:	~75-100 cubic yards/mo
Site Size:	7.5
Site Features:	Borrow pit on valley floor.
Lifespan:	Estimated 20 years.
Method of Operation:	Site burned once/week by County Road Department. Other site users also burn waste.
Equipment:	None at site. County occasionally brings in "cat" to dig a new trench. Pick up with blade for site clean up.
Attendant:	None - No fee charged.
Available Cover:	Soil available on site from trench excavation.
Evaluation of Financial Capabilities:	Site operation is financed through the county general fund. No fees are charged.

Summary of Environmental Problems and Concerns: Staff is not aware of any complaints on this site. Pollution problem is nuisance smoke from burning once each week. No one is in the immediate vicinity to impact except dump users. Visual impact only.

Evaluation of Alternatives:

1. Upgrade to Sanitary Landfill - Capital and operating costs would include cost of excavation of additional trenches, hiring part-time attendant, sharing cost of crawler-tractor, and low boy truck with other Lake County sites and sharing labor costs of equipment operator. Another alternative would be to contract with local crawler-tractor owner to operate the site if anyone in the area has the equipment. The 1982 estimated cost to convert all 6 Lake County burning dumps to sanitary landfills was estimated at $227,000 for capital costs plus $84,000 annual operating costs.

2. Convert to Transfer Station - The area is not served by a collector. Haul distance is 30 miles to Lakeview. Poor road conditions exist in the winter. Costs would include purchase, operation and maintenance of transfer equipment, site development, part-time attendant, and dumping charges.

3. Close Site - Nearest landfill is 30 miles away. Closing site would result in random dumping on public land.

4. Continued Burning - No change in current costs for salary and transportation for traveling operator. That is approximately $26,000 each year divided between the Lake County sites.

Current Regulatory Status: Site operates under Solid Waste Disposal Permit No. 4, including EQC variance granted October 7, 1980, which allows open burning until July 1, 1985. No enforcement actions have been initiated.

Plush Dump

Location:	T36S, R24E, Sec 20
County:	Lake
Owner:	Oregon Department of Fish and Wildlife
Operator:	Lake County
Region:	Central
Distance to Community:	1.5 miles
Distance to Nearest Residence:	1.5 miles
Population Served:	150
Type of Waste:	Rural residential
Waste Volume:	~80-100 cubic yards/mo
Site Size:	10 acres
Site Features:	Hillside site
Lifespan:	Unlimited if burning continues. Estimated 8-10 years if converted.
Method of Operation:	Site burned once/week by County Road Department. Other site users also burn waste.
Equipment:	None at site. County occasionally brings in "cat" to dig a new trench.
Attendant:	None - No fee charged.
Available Cover:	Soil available on site from trench excavation.
Evaluation of Financial Capabilities:	Site operation is financed through the county general fund. No fees are charged.

Summary of Environmental Problems and Concerns: Staff is not aware of any complaints on this site. Pollution problem is nuisance smoke from burning once each week. No one is in the immediate vicinity to impact except dump users. Visual impact only.

Evaluation of Alternatives:

1. Upgrade to Sanitary Landfill - Capital and operating costs would include cost of fencing site, excavation of additional trenches, hiring part-time attendant, sharing cost of crawler-tractor, and low boy truck with other Lake County sites and sharing labor costs of equipment operator. Another alternative would be to contract with local crawler-tractor owner to operate the site if anyone in the area has the equipment. The 1982 estimated cost to convert all 6 Lake County burning dumps to sanitary landfills was estimated at $227,000 for capital costs plus $84,000 annual operating costs.

2. Convert to Transfer Station - The area is not served by a collector. Haul distance is 40 miles to Lakeview. Poor road conditions exist in the winter. Costs would include purchase, operation and maintenance of transfer equipment, site development, part-time attendant, and dumping charges.

3. Close Site - Nearest landfill is 40 miles away. Closing site would result in random dumping on public land.

4. Continued Burning - No change in current costs for salary and transportation for traveling operator. That is approximately $26,000 each year divided between the Lake County sites.

Current Regulatory Status: Site operates under Solid Waste Disposal Permit No. 10, including EQC variance granted October 7, 1980, which allows open burning until July 1, 1985. No enforcement actions have been initiated.

Paisley Disposal Site

Location:	T33S, R18E, Sec 13
County:	Lake
Owner:	City of Paisley
Operator:	City of Paisley
Region:	Central
Distance to Community:	1 mile
Distance to Nearest Residence:	1 mile
Population Served:	300 city residents and 200 surrounding county residents
Type of Waste:	Residential, small commercial volume, ranching waste (wire, etc.)
Waste Volume:	No monitoring information available, rough guess would be 2,000-3,000 cubic yards/mo.
Site Size:	80 acres, 60 usable for waste disposal, 7-10 acres have been used.
Site Features:	Located on gentle slope above valley floor.
Lifespan:	No estimate
Method of Operation:	City burns trench when full. County will cover used trench and dig a new one when needed (about once per year).
Equipment:	None at site, none available from city.
Attendant:	None - No fee charged.
Available Cover:	Soil available from trench excavation.
Evaluation of Financial Capabilities:	Site operation is financed through the city general fund. A 1976 memo says the city budget for garbage is $3,500, and will not be increased. No fees are charged at the disposal site.

Summary of Environmental Problems and Concerns: We do not have a record of any complaints on this site. The pollution problem arose from smoke from the burning, and litter which is blown from the site. There is no one in the immediate vicinity to impact, other than the site users. The only impact is visual when burning.

Evaluation of Alternatives:

1. Upgrade to Sanitary Landfill - Capital and operating costs would include access control, purchase or lease of equipment, and labor costs. In 1980, the city estimated $200,000 for equipment and $5,000 annually for operation and maintenance. An alternative would be to rent a cat from a local source to compact and cover the site as needed.

2. Convert to Transfer Station - The Paisley area is not served by a garbage collection service. The nearest landfill would be the Lakeview site 40 miles away. Poor road conditions exist in the winter. Costs would include the purchase, operation, and maintenance of transfer equipment, site development, a part-time attendant, and dumping charges.

3. Close Site - This would result in random dumping on BLM and Forest Service lands.

4. Continued Burning - No change from existing conditions.

Current Regulatory Status: Site operates under Solid Waste Disposal Permit No. 178, which includes EQC variance to burn until July 1, 1985. The permit expires July 31, 1985. No enforcement actions.

TT338

OPEN DUMP PROFILE - EASTERN REGION (McKNIGHT)

Seneca

Location:	T16S. R31E, Sec 34
County:	Grant
Owner:	Ed Hines Lumber Co. - city trying to obtain site
Operator:	City of Seneca
Region:	ERO
Distance to Community:	2 miles west of town
Distance to Nearest Residence:	1 mile
Population Served:	190
Type of Waste:	Rural residential
Waste Volume:	70 yds^3/mo
Site Size:	Presently 5 acres, more land might be available.
Site Features:	Sage brush ground, with good deep soils, no apparent groundwater problems at the site.
Lifespan:	With the present operation, 20 yrs+.
Method of Operation:	They separate the metals to a metal storage area, and the solid waste is separated into burnable/nonburnable. Burnable are burned in a pit, and ash is buried with the nonburnable. Site cleaned monthly.
Equipment Used at Site:	They use local heavy equipment on a volunteer basis to maintain minimum standards at the site.
Financial Capabilities of Site:	Extremely limited. Site runs on 70% volunteer service.
Environmental Concerns:	None - site is really well operated for an open burning site. Access is controlled, attendant is on duty.
Alternative Evaluation:	It appears that the community is already maxing-out all available resources in the area. 60 miles to the John Day site.
Regulatory Status:	Site operates under Solid Waste Disposal Permit No. 201. Plans submitted to Department require landfill - now open burning.

Monument

Location:	T8S, R27E, Sec 36
County:	Grant
Owner:	City of Monument
Operator:	City of Monument
Region:	ERO
Distance to Community:	1 mile north of town
Distance to Nearest Residence:	3/4 mile
Population Served:	190
Type of Waste:	Rural residential
Waste Volume:	70 yds^3/mo
Site Size:	4 acres
Site Features:	Relatively new site, sits above town by the airport. No water problems, good soils.
Lifespan:	Long
Method of Operation:	Trench method, no equipment, no operator, no access control. Waste is placed in trench and burned.
Equipment Used at Site:	None
Financial Capabilities of Site:	None presently set up. Limited funds could be implemented if they had a fee structure. No city or county funds used to operate the site.
Environmental Concerns:	None - no complaints on the site, open burning helps control a lot of minor nuisance problems, such as blowing litter.
Alternative Evaluation:	70 plus miles to the John Day Landfill. Without a financing plan to operate the site, no alternatives available.
Regulatory Status:	Site operating under Solid Waste Disposal Permit No. 324.

Long Creek

Location:	T10S, R30E, Sec 8
County:	Grant
Owner:	City of Long Creek
Operator:	City of Long Creek
Region:	ERO
Distance to Community:	2 miles west of town
Distance to Nearest Residence:	3/4 mile from nearest home
Population Served:	235
Type of Waste:	Rural residential, some commercial waste
Waste Volume:	120 yds^3/mo
Site Size:	Approximately 3-5 acres
Site Features:	Large metal storage area, shallow soils, perched groundwater during winter runoff.
Lifespan:	If no burning, very short - if burning, long
Method of Operation:	They attempted to operate a pit/fill operation, however with no equipment, they have resorted to burning.
Equipment Used at Site:	None
Financial Capabilities of Site:	No fees
Environmental Concerns:	Site does have controlled access and an attendant on duty. Groundwater would pose a problem if they went to a modified landfill. No complaints on the site have been received.
Alternative Evaluation:	The John Day site is 70 miles away. Locating a site in the Long Creek area is extremely hard. No alternative at hand except to burn. Would need a financing plan to operate a modified landfill.
Regulatory Status:	Site operating under Solid Waste Disposal Permit no. 127.

Dayville

Location:	T13S, R27E, Sec 6
County:	Grant
Owner:	Grant
Operator:	City of Dayville hires operator
Region:	ERO
Distance to Community:	3 miles east of town
Distance to Nearest Residence:	1 mile
Population Served:	205
Type of Waste:	Rural residential and some commercial
Waste Volume:	90-100 yds^3/mo
Site Size:	10 acres
Site Features:	New site - good soil
Lifespan:	20 plus years
Method of Operation:	Trench method, the operator has no equipment to operate the site. Site was permitted as a modified landfill, but has reverted to open burning.
Equipment Used at Site:	None
Financial Capabilities of Site:	Fees are charged and limited collection (I think) is available. Very small population to draw from.
Environmental Concerns:	Good site, well located, good operating plan. However, no $, so they burn. No complaints received on the new site or management of the site.
Alternative Evaluation:	None offhand. Too far to transfer the garbage, 60 miles. New site is a 100% improvement over the old site that was closed out.
Regulatory Status:	Site operating under Solid Waste Disposal Permit No. 332.

Mitchell

Location:	T11S, R21E, Sec 26
County:	Wheeler
Owner:	City of Mitchell
Operator:	City of Mitchell
Region:	ERO
Distance to Community:	<1 mile
Distance to Nearest Residence:	<1 mile
Population Served:	165
Type of Waste:	Rural residential
Waste Volume:	75 yds^3/mo
Site Size:	5 acres
Site Features:	Drainage way in the site, little to no cover material available.
Lifespan:	Long, if continue to burn - otherwise, expired.
Method of Operation:	The site applied for and received a variance to open burn.
Equipment Used at Site:	County Rd. Dept. occassionally checks the site, the City of Mitchell has no equipment.
Financial Capabilities of Site:	No fees, no budget, small population base to work off of.
Environmental Concerns:	Landfilling of the waste caused concerns of improper covering, odors, and complaints. Site safety not inspected since the variance.
Alternative Evaluation:	Open burning appears best suited for this area. Finding adequate sites here is a problem. Closest site is 70 miles away.
Regulatory Status:	Site operating under Solid Waste Disposal Permit No. 175, and under variance which allows open burning until July 1986. Variance requires progress reports to upgrade or close - have not submitted reports.

Fossil

Location:	T6S, R21E, Sec 33
County:	Wheeler
Owner:	Wheeler County
Operator:	Wheeler County
Region:	ERO
Distance to Community:	In town
Distance to Nearest Residence:	Close
Population Served:	500
Type of Waste:	Residential and Commercial
Waste Volume:	230-270 yds^3/mo
Site Size:	10 acres
Site Features:	Shallow groundwater at the lower end of the site has reduced the size of the site. No good cover material available.
Lifespan:	Soon - letters requesting closure have been sent 5/23/84.
Method of Operation:	Trench method the county hires an operator to run the site.
Equipment Used at Site:	Bulldozer. Operator does not always use it, that's why they have burned in the past.
Financial Capabilities of Site:	No charge. The county subsidizes this site completely.
Environmental Concerns:	Open burning at this site causes complaints. The site has a shallow groundwater table.
Alternative Evaluation:	A new site is needed for the city/county. A financial plan should be included in developing the new site to insure it operates in compliance.
Regulatory Status:	Site operating under Solid Waste Disposal Permit No. 260. Plan calls for landfill not open burning.

Troy

Location:	T5N, R34E, Sec 4
County:	Wallowa
Owner:	State of Oregon - DFW
Operator:	Wallowa County Rd. Dept.
Region:	ERO
Distance to Community:	1/2 mile from town
Distance to Nearest Residence:	1/2 mile
Population Served:	150
Type of Waste:	Rural residential
Waste Volume:	60-70 yds^3/mo
Site Size:	4 acres
Site Features:	Site has cover material, surface water is present in the bottom of the trench, diversion ditch needed above site.
Lifespan:	Good site life left.
Method of Operation:	County digs the trenches, no operator, no equipment, no money, so the site burns.
Equipment Used at Site:	County Rd. Dept. watches over the site.
Financial Capabilities of Site:	Extremely limited, no collection service, small rural area.
Environmental Concerns:	The surface water diversion needs to be installed and maintained to keep water out of the trenches. No complaints received from open burning.
Alternative Evaluation:	None at hand - the county has applied for variance to burn. Closest site is 50 miles one way.
Regulatory Status:	Site opening under Solid Waste Disposal Permit No. 192 (expired 8/31/80). Have applied for a variance - pending.

Imnaha

Location:	T1N, R48E, Sec 20
County:	Wallowa
Owner:	A.L. Duckett
Operator:	Wallowa County
Region:	ERO
Distance to Community:	2 miles west of Imnaha
Distance to Nearest Residence:	Not identified
Population Served:	150
Type of Waste:	Rural residential and burn barrel ashes
Waste Volume:	50 yds^3/mo
Site Size:	1.2 acres
Site Features:	Small draw with diversion in upper end, very small area. perched groundwater during winter runoff.
Lifespan:	Long, if burning - otherwise, months
Method of Operation:	Garbage is dumped over a small embankment and burned. The ashes are area filled in the upper end of the small draw.
Equipment Used at Site:	County Rd. Dept.
Financial Capabilities of Site:	Extremely small. Relies entirely on the county to operate the site.
Environmental Concerns:	Site is adequate for a burn site, but not suited to develop as a modified landfill due to site size, shape, and location.
Alternative Evaluation:	None at hand, closing site would cause random dumping, the Joseph transfer station is 50 miles one way, poor road. County has applied for a variance.
Regulatory Status:	Site operating under Solid Waste Disposal Permit No. 300 (expired 8/31/80). Have applied for a variance - pending.

Halfway

Location:	T9S, R46E, Sec 11
County:	Baker
Owner:	BLM
Operator:	City of Halfway
Region:	ERO
Distance to Community:	10 miles south of Halfway
Distance to Nearest Residence:	6 miles
Population Served:	400 plus surrounding area = 650
Type of Waste:	Rural residential and commercial
Waste Volume:	300 yds^3/mo
Site Size:	10 acres
Site Features:	Old rock pit source, very little cover material available.
Lifespan:	Limited <5 yrs
Method of Operation:	Filling in of the old excavation areas of the rock pit. Due to a lack of available cover material, the site regularly burns. Metals are separated.
Equipment Used at Site:	Operator has limited use of equipment, however, none has ever been observed at the site.
Financial Capabilities of Site:	With a stronger financial plan, it is conceivable that the community could operate a modified landfill. Limited collection service.
Environmental Concerns:	The site lacks adequate cover material. The site is gated and fenced. An operator is on duty during open hours.
Alternative Evaluation:	This operation could team up with Richland and try to operate a site together. They need to start looking for a new site location.
Regulatory Status:	Site operates under Solid Waste Disposal Permit No. 181 (expired 7/31/84).

Richland

Location:	T10S, R45E, Sec 35
County:	Baker
Owner:	BLM
Operator:	City of Richland
Region:	ERO
Distance to Community:	Approximately 4 miles east of town
Distance to Nearest Residence:	2 miles
Population Served:	200
Type of Waste:	Rural residential and some commercial waste (small volume)
Waste Volume:	100 yds^3/mo or less
Site Size:	50 acres
Site Features:	The site is located on a high flat with a gentle slope
Lifespan:	Long
Method of Operation:	Trenches are to be constructed along the contours of the slope. Relatively new site, fenced and gated.
Equipment Used at Site:	County has dug the first trenches and it is up to Richland to carry the ball. They have been sacked for a loss - no equipment presently at site.
Financial Capabilities of Site:	Fairly restricted. There is limited collection service available.
Environmental Concerns:	The site is high and dry. No complaints have been received on the operation (burning).
Alternative Evaluation:	There exists the possibility of combining the solid waste with Halfway and operate one site. Limits to this would be (1) a better collection service, (2) the haul road from Richland to Halfway is bad in the winter.
Regulatory Status:	Site operating under Solid Waste Disposal Permit No. 323 (expired 7/31/84).

Huntington

Location:	T14S, R45E, Sec 29
County:	Baker
Owner:	City of Huntington
Operator:	City of Huntington
Region:	ERO
Distance to Community:	3 miles east of town
Distance to Nearest Residence:	1 1/2 miles
Population Served:	550 plus the Farwell Bend State Park
Type of Waste:	Rural residential and commercial
Waste Volume:	300 yds^3/mo plus
Site Size:	20 acres
Site Features:	Site consists of a gently sloping valley and no defined water course
Lifespan:	Long expected site life
Method of Operation:	Past operation has been random dig/fill/burn. The ERO has been working with the city on revising the operating plan.
Equipment Used at Site:	The city has an old cable blade cat not capable of digging trenches. Equipment is badly in need of repairs.
Financial Capabilities of Site:	It would appear that there is adequate waste volume and $ to operate the site better.
Environmental Concerns:	The site is high and dry. They have access control and an attendant on duty. A good portion of the park waste consists of fish by-products (flies).
Alternative Evaluation:	With a more reliable piece of equipment for operating the site, this site would have no problem upgrading. Based on the existing equipment, the operation is tied into the county digging their future trenches.
Regulatory Status:	Site operating under Solid Waste Disposal Permit No. 151.

Unity

Location:	T13S, R37E, Sec 15
County:	Baker
Owner:	BLM
Operator:	City of Unity
Region:	ERO
Distance to Community:	Approximately 2 1/2 miles
Distance to Nearest Residence:	1 1/2 miles
Population Served:	110
Type of Waste:	Rural residential
Waste Volume:	70 yds^3/mo
Site Size:	5 acres - fenced site
Site Features:	Site lies in a sagebrush flat
Lifespan:	20 plus years
Method of Operation:	The site uses the trench method of filling. The waste is regularly burned, but the site has access control and an attendant on duty.
Equipment Used at Site:	No equipment present at site, the city tried to find an operator with equipment - no luck.
Financial Capabilities of Site:	The U.S. Forest Service uses the site and pays a separate fee. The service area is somewhat limited for capital expense.
Environmental Concerns:	None - the site is high and dry. No complaints on the new operation. Access is controlled, attendant on duty.
Alternative Evaluation:	This site has the potential for upgrading because of the U.S. Forest Service use of the site. However, available equipment and dollars to operate the site are a concern.
Regulatory Status:	Site operating under Solid Waste Disposal Permit No. 352.

Juntura

Location:	T21S, R38E, Sec 19
County:	Malheur
Owner:	Malheur County
Operator:	Malheur County Rd. Dept., no attendant on duty.
Region:	ERO
Distance to Community:	50 miles to the Lytle Blvd. site
Distance to Nearest Residence:	Approximately 1 mile
Population Served:	150
Type of Waste:	Rural residential
Waste Volume:	75 yds^3/mo
Site Size:	5 acres
Site Features:	Bare sagebrush site - good dump soils
Lifespan:	Long expected site life
Method of Operation:	The county has excavated a 50x50x10' deep pit, and the solid waste is burned in the pit.
Equipment Used at Site:	County Rd. Dept.
Financial Capabilities of Site:	Unincorporated area, no budget to operate the site.
Environmental Concerns:	Safety concerns from uncontrolled operating. No other environmental problems.
Alternative Evaluation:	Small volume of waste, long haul to next closest sanitary landfill. No collection service.
Regulatory Status:	Site operating under Solid Waste Disposal Permit No. 272 (expired 8/31/80).

Harper

Location:	T20S, R42E, Sec 8
County:	Malheur
Owner:	Malheur County
Operator:	Malheur County - no attendant on duty, Rd. Dept.
Region:	ERO
Distance to Community:	25 miles to the Lytle Blvd. site, twisty Rd.
Distance to Nearest Residence:	1 mile
Population Served:	Approximately 150
Type of Waste:	Rural residential
Waste Volume:	75 yds^3/mo
Site Size:	5 acres
Site Features:	Site is an old quarry site that is being filled.
Lifespan:	Long expected site life.
Method of Operation:	Solid waste has been dumped over a bank and burned. The county is proposing to construct a trench. Site regularly open burns.
Equipment Used at Site:	Equipment consists of the County Rd. Dept.
Financial Capabilities of Site:	Unincorporated area, no budget to operate a site.
Environmental Concerns:	No environmental problems at the site except those concerning safety, because the site does not have access control or a attendant on duty. No complaints on site.
Alternative Evaluation:	Small volume of waste, no collection service available, haul distance is not real far, but the road is slow.
Regulatory Status:	Site operating under Solid Waste Disposal Permit No. 271 (expired 8/31/80).

Jordan Valley

Location:	T29S, R46E, Sec 34
County:	Malheur
Owner:	County owns site
Operator:	City of Jordan Valley - no attendant on duty
Region:	ERO
Distance to Community:	Site is approximately 1 mile north of town.
Distance to Nearest Residence:	1/2 mile to the west
Population Served:	Approximately 460
Type of Waste:	Rural residential
Waste Volume:	Approximately 250 yds^3/mo
Site Size:	10 acres
Site Features:	Site sits on a high ridge north of town
Lifespan:	Long expected site life
Method of Operation:	The county digs a trench and places the final close out on the filled up trench. They regularly burn at the site.
Equipment Used at Site:	None present - except for county Rd. Dept.
Financial Capabilities of Site:	No present budget in the city for operating the site. They may have limited collection service.
Environmental Concerns:	A residential subdivision is developing to the west of the site. Due to no access control or attendant, the open burning poses safety concerns. Have received complaints on the site in the past.
Alternative Evaluation:	It is approximately 85 miles to the Ontario Landfill. In order to upgrade the site, the city would need to establish a budget for operating the site that was not dependent on the county.
Regulatory Status:	Site operating under Solid Waste Disposal Permit No. 295.

McDermitt

Location:	T41S, R43E, Sec 17
County:	Malheur
Owner:	BLM
Operator:	Unofficial group operates the site, no attendant.
Region:	ERO
Distance to Community:	3 miles north of McDermitt
Distance to Nearest Residence:	1 mile
Population Served:	Approximately 200
Type of Waste:	Rural residential
Waste Volume:	Approximately 300 yds^3/mo
Site Size:	2 acres
Site Features:	Flat desert land in slight depression
Lifespan:	Long expected life to present site
Method of Operation:	Trench dug by county (both Malheur and Nevada). The solid waste is regularly burned. Ashes are buried when necessary by government body.
Equipment Used at Site:	None
Financial Capabilities of Site:	No budget to operate it. Relies on the government entities to maintain the site.
Environmental Concerns:	No environmental problems identified. Safety features from open burning are a concern. No complaints on site operation.
Alternative Evaluation:	It is 100 miles to the next closest Oregon site. The site does not have a variance for open burning.
Regulatory Status:	Site operating under Solid Waste Permit Disposal No. 310.

TT376

No $ = (No Equipment + No Operator + No O&M) = Open Burning Site

	Lack of $ is Due to: 1, 2, or 3			
Site Name	1) Small Waste Volume	2) No Financial Plan	3) Uni Corp	Poor Site
McDermitt	X	X		
Jordan Valley	X	X		
Harper	X	X	X	
Juntura	X	X	X	
Unity	X	X		
Huntington		X		
Richland	X	X		
Halfway		X		X
Imnaha	X	X		X
Troy	X	X		
Fossil		X		
Mitchell	X	X		X
Dayville	X	X		
Long Creek	X	X		X
Monument	X	X		
Seneca	X	X		

TJL:t
TT377
10/25/84

ATTACHMENT 6

REQUEST FOR INFORMAL LEGAL OPINIONS

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

October 12, 1984

MEMORANDUM

TO: Mike Huston, Assistant Attorney General
Department of Justice Bldg.
Salem, OR 97310

FROM: Tom Lucas, Chair, Open Dump Task Force

SUBJECT: Request for Legal Opinion - State of Oregon Liability Under Citizen Lawsuit Provisions of Section 7002 of the Federal Resource Conservation and Recovery Act

Effective September 13, 1984, the Resource Conservation and Recovery Act (RCRA) prohibits open burning of most solid waste materials. The EPA does not have any direct enforcement powers in solid waste. However, Section 7002 of RCRA provides that any person may commence a civil action in federal district court against any person "who is alleged to be in violation of any permit, standard, regulation, condition, requirement, or order which has become effective pursuant to the Act".

The Department generally considers open burning of solid waste materials to be unacceptable and has allowed this practice only in cases where no other alternative is feasible. Currently there are approximately twenty-four open burning dumps in Oregon.

Fred Hansen recently appointed a Task Force to look into the problem of open dumps, with emphasis on open burning dumps. In particular, the Task Force charge is to provide recommendations as to which open burning dumps should be closed, upgraded to sanitary landfills, or allowed to continue burning on site. The Task Force may recommend that many sites be allowed to continue the practice of open burning.

Administratively, the status of open burning dumps is quite complex: (1) most, but not all, open burning dumps are regulated through a solid waste permit which prohibits the practice of open burning; (2) variances have been granted to some permittees which extend well beyond the 9/13/84 federal deadline; (3) some of the dumps are located on federal property, either BLM or the USFS; (4) some sites are located on state property administered by the Department of Fish and Wildlife.

The Department requests informal legal opinions concerning liability to the State of Oregon under the citizen lawsuit provisions of RCRA, as follows:

1. Liability to the State of Oregon if the Department allows existing open burning dumps to continue in operation.

2. Liability to the State of Oregon if the Department allows new open burning dumps to open in the future.

3. Liability to the State of Oregon where the site is on state owned land and leased to a local government for the purpose of operating an open burning dump.

4. Liability to the State of Oregon on those sites where variances have been issued to permittees to allow open burning.

In addition, the Department requests advice on the following questions:

1. Are there mechanisms, other than closing open burning dumps, which would eliminate state liability? An example might be a stipulated consent order.

2. In the event a lawsuit is initiated against a site manager, e.g., a city leases county land, is liability extended to the site owner?

3. Could you suggest some legal language which should be included in the following types of notification letters:

   a. Notification to close or upgrade to a landfill.

   b. Notification that the practice of open burning would be allowed, subject to certain site operation conditions, and other conditions.

   c. Notification to the appropriate administrative agency on state owned lands.

   d. Notification to the appropriate administrative agency on federal owned lands.

   e. Notification to state and federal agencies which use open burning dumps, e.g., state and federal lands and campgrounds.

If you have some question please call me at 229-5284.

TJL:t
TT360

ATTACHMENT 7

SITE OPERATING CRITERIA - FOR CONSIDERATION

Site Operating Criteria - For Consideration

1. Access control - gate/fence.

2. Site operator responsible for directing and burning.

3. Fire breaks for large fires.

4. Wind conditions defined as to when to burn.

5. Trench method/or dug pit.

6. Quarterly site renovation; i.e., bury ashes/dig new trench.

7. Exclude certain types of waste from burning.

   - separate salvage material
   - tires
   - car bodies
   - dead animals
   - commercial type chemical containers, i.e., agricultural pesticides

8. Must have fire equipment; i.e., 250 gallon tank and pump.

9. Fees charged to cover basic requirements (financial plan).

10. Days open not to exceed two days per week.

11. No overnight burning.

12. Permits for burning must be secured through the local fire permitting agency.

13. Combustion air fans with diesel sprays.

14. Site must make a written request stating it can comply with the restrictions and that the site meets the minimum qualifications of an open burning site.

15. No burning while public dumping at site.

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TT376.F
10/23/84

ATTACHMENT 8

DISCUSSION OF ALTERNATIVE COURSES OF ACTION FOR ADDRESSING OPEN BURNING DUMPS

DISCUSSION OF ALTERNATIVE COURSES OF ACTION FOR DEALING WITH OPEN BURNING DUMPS

It was felt that initial evaluations of sites with respect to recommending closure/upgrade or allowing open burning to continue should be based on environmental considerations, rather than on whether the state was liable under RCRA citizen suit provisions or whether open burning could somehow be found legal under RCRA. Therefore, as a separate item, proposals were suggested and discussed and a subgroup pursued the ideas further.

Initial proposals included: (1) requesting a legal opinion from Mike Huston, Assistant Attorney General, as shown in Attachment 6, and (2) pursuing suggestions for allowing open burning to occur legally at selected sites where no environmental impact is documented.

The request for legal opinion includes questions concerning liability to the State of Oregon, if the Department: (1) allows existing open burning dumps to continue, (2) allows new open burning dumps to open in the future, or (3) allows open burning on state owned land leased to a local government, and where the Department has issued variances to allow open burning.

The request also asks for advice on mechanisms that might eliminate state liability and language which should be included in various types of notification letters. Responses to these questions are integral to the Department making a final decision on recommendations to pursue.

It was also recognized that strategies would be needed for encouraging and/or requiring sites to upgrade or close their operations because of pollution concerns. Some of these sites are under variances which allow open burning until their variances expires. Others either have expired variances or permits that prohibit open burning.

As the suggested strategies for dealing with open burning were further evaluated, questions arose regarding:

1. Whether open burning should be allowed at selected sites indefinitely,

2. Whether attempts to pursue making open burning a "legal" practice should include provisions for <u>new</u> open burning sites, and

3. Whether allowing continued open burning at selected sites conflicts with aspects of the current Solid Waste Management Plan, state rules, and efforts which discourage open burning.

It was agreed that the lack of an explicit policy on open burning, as either an acceptable or unacceptable long-term disposal practice, can create confusion among local governments. This confusion may, in fact, encourage open burning where it need not occur. It was generally accepted that there is justification for arguing both positions. However, before the Department pursues strategies for dealing with open burning dumps, a clear, definitive policy outlining the Department's position on the issue must be established.

The need for a policy was affirmed as alternative strategies to make open burning legal under RCRA, as described below, were reviewed. It appears that mechanisms for allowing open burning to occur legally at selected sites are limited and that the viable strategies may be time consuming and lengthy. Therefore, the Task Force proposed to discuss alternative strategies for dealing with open dumps under two broad policy scenarios.

The discussion under each policy scenario includes: (1) justification for the policy, (2) an evaluation of identified strategies, to the extent possible, and (3) general considerations should the policy be established.

Policy Option A — Open Burning is an Acceptable Long-Term Solid Waste Disposal Practice in Rural Areas and Under Specified Operating Conditions

Justification

1. In certain areas and under specified operating conditions, it appears open burning does not create air quality impacts.

2. Open burning sites require smaller land area than do landfills (cost) and the lifespan of a given site can be longer.

3. Open burning operations requires less equipment than landfill (cost).

4. Open burning reduces long-term pollution liability at the site, as compared to a sanitary landfill. A significant amount of organics are removed by burning. (High concentrations of organics are found in landfill leachate.)

5. Open burning reduces closure costs to the extent that less land area and material is involved.

6. Open burning reduces potential for groundwater impacts.

7. Frozen ground does not impede disposal at an open burning site. It can at a landfill.

Evaluation of Strategies to Make Open Burning Dumps Legal Under RCRA

1. Investigate RCRA definitions to determine whether open burning can be legal under certain situations, redefine open burning dumps as "rural incinerators", etc.

   The Federal Register, Thursday, September 13, 1979, contains EPA responses to testimony on proposed RCRA criteria and the interim final promulgated criteria. The Task Force found that similar questions and concerns were raised by respondents to the RCRA criteria regarding the issue of rural open burning and discussed by EPA.

For example, in response to commentors who suggested that disposal facilities used by small communities (especially those in rural areas) be excluded from coverage by the criteria because of the higher unit cost of compliance, EPA responded:

> "The Agency found no basis for such an exclusion. In fact, such an exclusion could foster the development of additional small facilities in order to escape the cost of compliance and, cumulatively, could result in greater environmental damage in rural areas. Thus, the criteria apply to large and small facilities, whether urban or rural, because it is essential that all facilities prevent adverse impacts on health and the environment in accordance with the criteria.
>
> Less sophisticated and less costly design and operational techniques, however, may be applicable at small facilities due to the smaller quantities of waste disposed and reduced magnitude of potential adverse effects. In addition, small or rural communities may take various approaches to reduce the per capita cost burden and achieve economy of scale through regionalized collection and disposal systems, sharing of equipment among facilities, or operation of facilities only during limited hours."

On questions about the size and type of the facility affected by the criteria, the EPA responded:

> "EPA does not believe that Congress intended the Subtitle D classification scheme to be implemented at the household level. Section 1004(27) refers to wastes from "community activities". In addition, the legislative history indicates at several points that "municipal" wastes are of concern under Subtitle D. The Act's emphasis on "community" or "municipal" waste, indicates that the Congress intended to focus on solid waste management at that level rather than at the household level. EPA believes that "backyard" practices should be controlled through State or local nuisance and public health laws."

The definitions of Section 1004 of the Act include the following:

> ""Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters."
>
> ""Facility" means any land and appurtenances thereto used for the disposal of solid wastes."
>
> ""Open dump" means a facility for the disposal of solid waste which does not comply with this part."
>
> ""Practice" means the act of disposal of solid waste."

> ""Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923)."

EPA's rationale to prohibit open burning is based on the fact that "open burning is a potential health hazard, can cause property damages and can be a threat to public safety... The air emissions associated with open burning are much higher than those associated with incinerators equipped with air pollution control devices."

Responses to commentors who suggested that a ban on open burning is unnecessary, EPA responded:

> "EPA has decided to retain that provision for residential, commercial, institutional or industrial waste. The ongoing open burning of these wastes presents significant hazards to human health, and no health or environmental benefit is derived from the practice."

Where commentors suggested allowing open burning with a variance, EPA responded:

> "There is no environmental rationale for such a variance because open burning does not lessen the need for disease vector control or leachate control for maintaining surface and groundwater quality. Moreover, variance procedures for this situation would be particularly difficult to administer because of the dynamic nature of the many variables involved (existing air quality, wind speed, humidity, mixing and vertical dispersion, efficiency of the burn, amount and type of waste, etc.)."

The only waste exempt from the open burning prohibition are:

> "Those wastes which are typically burned infrequently. The burning of agricultural wastes in the field, land-clearing debris, standing trees in a forest, diseased trees, debris from emergency clean-up operations and ordinance is not typically an ongoing practice and, thus, does not present a significant environmental risk. In addition some of these practices, particularly the destruction of disease-carrying trees or debris from emergency clean-up operations, provides an added environmental benefit in preventing chances of

disease or accident. It should be noted, however, that the criteria assure that the conduct of these infrequent acts of burning must be in compliance with applicable requirements developed under the State SIP..."

Where commentors requested clarification regarding the impact of the criteria on the use of pit or trench incinerators, EPA replied:

"Emission factors (i.e., particulates) for such incinerators equal or exceed those for open burning dumps. Since such devices do not control emissions, they fit the definition of open burning. Thus, for purposes of the criteria, combustion at trench incinerator constitutes "open dumping."

Based on the extracted discussion of similar topics in the Federal Register, the Task Force concluded that, unless EPA could be persuaded to change its stance, no mechanism currently exists to legally allow open burning at small rural sites.

2. Work with other states and EPA to pursue an amendment to RCRA

The viability of this strategy is not known. If this option is pursued, the Association of State and Territorial Solid Waste Management Officials and the National Governor's Association should be contacted to determine their interest in pursuing the issue.

It should be noted that a similiar situation arose in the 1970s with respect to the applicability of secondary treatment criteria for lagoons designed to serve a population greater than 10,000. Fourteen years later an amendment to the Clean Water Act was passed and lagoons are now considered capable of meeting secondary treatment criteria.

Even if this course of action is pursued, the State may well be liable under the citizen suit provision of RCRA, in the interim, until the outcome is determined.

3. Merely advise sites that operate open burning dumps of RCRA requirements and citizen suit provisions

This strategy does not involve the Department actively pursuing a means to find open burning legal.

However, if the legal opinions show that the state is not liable under RCRA citizen suit provision, this may be the only alternative (though maybe not the most acceptable) to pursuing an amendment to RCRA under this policy option.

A response to the request for legal opinion is not expected until after the report is submitted. Mike Huston, however, attended two meetings with the Task Force and remarked that if no damages can be shown at sites which burn, the outcome of a citizen suit would likely be limited to eventual closure of an open burning dump.

4. Get legal opinion on mechanisms which would eliminate state liability and merely allow the open burning to continue

Depending on the final legal opinion, pursuing this course of action could be contradictory to a policy which regards open burning as an acceptable practice. For example, Mike Huston indicated that use of a Stipulated Consent Order may eliminate state liability, but such orders include long-term compliance schedules and would be seen as efforts to gain compliance with RCRA Criteria.

The legal opinion may suggest more viable mechanisms to eliminate state liability and allow open burning to continue.

Considerations for Policy Option A

1. If the Department regards open burning an acceptable practice, an explicit policy to that effect should be established.

2. If established, the Solid Waste Division should finalize specific criteria for determining those sites which should be allowed to burn. These criteria should be adopted as rule.

3. Sites which open burn should be required to submit as an exhibit a long-range plan and implementation program. This plan should be approved by the county confirming that the use of open burning at the site fits in with the adopted county plan.

4. Permits issued to sites approved for open burning should include specified operating conditions as shown in Attachment 7.

5. The Department's position to allow open burning would still conflict with RCRA criteria unless and until an amendment is accomplished.

6. Some concern was raised by members of the Task Force regarding whether pursuing policy option A would jeopardize the Department's ability to define an alternative boundary beyond a landfill boundary for the purposes of identifying landfill sites which do not result in a violation of any applicable federal or state drinking water rules or regulations (RCRA Groundwater Criteria). The impact is not known, however.

7. Likewise, pursuing this option also raises questions regarding its impact on proposed revisions to RCRA now being considered by Congress. It appears that Congress is contemplating revisions to RCRA which contain provisions that apply to facilities that may receive "hazardous household wastes," in addition to those that receive hazardous wastes from small quantity generators. The provisions call for EPA to promulgate revisions to its criteria for sanitary landfills receiving such waste and authorizes funding for grants to states to carry out permit programs spelled out in the bill. The proposed revisions recently came to the

attention of the Solid Waste Division in the October 1, 1984 Solid Waste Report, and additional information on the subject is not available. The Task Force cannot evaluate the implication of this proposal, nor its affect on pursuing an amendment to allow open burning. Bob Brown did state his opinion that if the Department accepts grant monies, the state would be obligated to phase out open burning dumps.

Policy Option B — Open Burning is Not an Acceptable Long-Term Solid Waste Disposal Practice and the Department Should Pursue Upgrade/Closure at all Sites

Justification for Policy Option A

1. Recycling and reuse are promoted to the extent that more materials are available.

2. Total air pollutant emissions are reduced.

3. There would be less fire hazard.

4. Landfilling is safer than open burning.

5. Prohibiting open burning can lead to more acceptable environmental alternatives, e.g., transfer stations and hauling to a large well-run landfill.

Evaluation of Strategies for Achieving Upgrade/Closure at Open Burning Sites

Interim Strategies

1. Notify sites of RCRA requirements and citizen suit provisions
Upon receipt of legal opinion regarding states liability and suggestions for language to be included in various types of notification letters, letters should be prepared to all site operators. The Department's intent to develop and adopt a rule prohibiting open burning should be included. The Department should also explain that no new variances will be granted and existing variances will not be extended. Some Task Force members felt that this action would likely result in some sites upgrading their sites to sanitary landfills as originally intended, and additional pressure to close/upgrade sites would not be necessary.

   However, if sites decide to close without the development of an alternative disposal practice, littering and random dumping will result.

2. Notify property owners who lease land to open burning sites and federal users of open dumps of their liability and ask for their assistance to help upgrade the site

Upon receipt of legal opinion regarding liabilities and suggested language to be included in notification letters, prepare and distribute letters to all property owners. Explain the Department's intent to develop and adopt a rule prohibiting open burning. Request that they offer communities assistance in upgrading the site.

If property owners should choose to terminate their lease and an disposal alternative is not developed, littering and random dumping could result. Since federal agencies prohibited from using open dumps, they may elect to help a community upgrade the sites.

3. Place sites under Stipulated Consent Orders with specific compliance schedules

As mentioned earlier, Stipulated Consent Orders may be a mechanism which limits state liability and shows intent to pursue upgrade/closure of sites which open burn. At a minimum, Stipulated Consent Orders requiring plans and schedule to all sites operators without variances could be issued.

4. Revoke permit or variance

This suggestion was dismissed as a viable alternative because it would likely result in contested case hearings. The hearings would probably extend beyond the expiration dates of existing variances and thus not achieve closure/upgrade any sooner. Likewise revocation of permits would not achieve upgrade/closure.

5. Enforce permits and variances

Pursue closure/upgrade through routine enforcement activities available to the Department, including issuing notices of violation, intent to assess civil penalties etc. This measure could be used in combination with issuance of Stipulated Consent Orders.

At a minimum, permits with recently approved plan which prohibit open burning could be enforced. Those sites with variances which require plans, could be enforced.

6. Prepare case studies which describe mechanisms used by other small communities to upgrade and/or implement alternatives to open burning.

The Task Force noted that other small communities which previously open burned have achieved compliance with RCRA criteria. Information on operating techniques, fees, how communities can gain access to equipment, etc. should be distributed to sites which continue to open burn. Through example it could be shown that open burning, even at sites with limited financial capability, is not the only method available or feasible.

Long-Term Strategies

1. Propose new legislation which would make local governments responsible for developing long-range plans and identifying delegated implementing agency.

   This course of action could address solid waste management concerns beyond the scope of the open burning issue.

   Existing statues do not require a local government to take responsibility for future planning, management, and control of solid waste, nor do they identify "who" is responsible for implementation.

   Language in ORS 459.017 states the "local government has the primary responsibility for planning for solid waste management". However, under ORS 459.085, regarding areas outside of cities, "a board of county commissioners may, by ordinance or by regulation or order adopted pursuant thereto: ... e) Regulate solid waste management..." and may adopt ordinances to provide for "2(a) the licensing of disposal sites as an alternative to franchising of service".

   For the most part, open burning dumps are confined to a few counties. This indicates that some counties are not providing planning and pursuing alternatives to open burning.

   Past efforts to make counties responsible for areas such as recycling have failed. Therefore, there could be a great deal of resistance to this proposal.

2. Propose new legislation which would require County Comprehensive Plans to address solid waste management as part of the Land Conservation and Development Commission (LCDC) post-acknowledgment review process

   This suggestion was offered as an alternative to item 1. The Task Force did not evaluate the viability of this option nor discuss its potential ramifications. The intent of the suggestion is to note that adequate planning for current and future solid waste disposal, including provisions for financing, is lacking in some counties. This strategy could meet with a great deal of resistance also.

Considerations for Policy Option B

1. If a policy prohibiting open burning were established, existing rules would need to be modified. Currently they are unclear as to whether open burning is acceptable.

2. All sites should be notified of RCRA criteria and citizen suit provisions, regardless of the mechanisms to be used to encourage and/or require closure or upgrade.

3. Variances, where issued, should remain in effect until they expire.

4. The mechanisms for requiring closure and upgrade need to be decided on following receipt of legal opinion.

5. Time-frames for requiring closure or upgrade need to be established for each site.

6. Interim operating conditions for open burning need to be established while pursuing closure/upgrade.

TJL:t
TT376.G
10/25/84

Attachment III
Agenda Item No. D
1/25/85 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of Modification of Solid Waste in General Rules Relating to Open Burning of Solid Waste at Disposal Sites (OAR 340-61-015 and OAR 340-61-040(2))	))))	Statutory Authority, Statement of Need, Principal Documents Relied Upon, and Statement of Fiscal Impact

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 Statutes Chapter 459. Specifically ORS 459.045.

2. Need for Rule

Amendments to the existing rule are necessary to specify specific operating conditions and for clarification.

3. Principal Documents Relied Upon in this Rulemaking

a. Agenda Item No. K, September 14, 1984, EQC Meeting.

b. "Task Force Report on Open Dumps, Department of Environmental Quality, Portland, Oregon, October 25, 1984."

c. Public Law 94-580 (Resource Conservation and Recovery Act, 1976) as amended.

Fiscal and Economic Impact

This action will have fiscal impact on operators of disposal sites which currently open burn solid waste. Increased cost of disposal site operation may secondarily impact customers of the disposal site including small business. There is no other direct impact on small business.

RLB:b
SB4117.3

Oregon Department of Environmental Quality

Attachment IV
Agenda Item No. D
1-25-85, EQC Meeting

A CHANCE TO COMMENT ON...

Notice of Public Hearing

Date Prepared: 12-28-84
Hearing Dates: 3-7-85
3-12-85
3-13-85
3-14-85
Comments Due: 3-15-85

WHO IS AFFECTED: Operators and neighbors of small, rural solid waste disposal sites which are presently conducting the practice of open burning of solid waste.

WHAT IS PROPOSED: Amendments to rules to require specified operating conditions if open burning is to continue.

WHAT ARE THE HIGHLIGHTS: Proposed rules would allow for continued open burning of domestic solid waste at those sites that meet the following criteria:

1. Minimal air quality impact.
2. Site located outside city or urban growth boundary with little impact on neighbors.
3. Located in a dry climate of average rainfall less than 25 inches per year.
4. Total population served less than 450.
5. Site shall not accept hazardous waste or burn industrial waste.

In addition, the following is required of sites that continue to open burn solid waste:

(A) Access must be controlled to restrict unauthorized entry.
(B) There must be an attendant on duty during open hours and during burning operation.
(C) Burning must take place no more than two times per week when the site is closed to public access and in some type of containment area such as a trench. Fire must be extinguished before dark.
(D) Operator must have a permit from local fire-permitting agency.
(E) Disposal site must be maintained by burying ash at least two times per year or more often if specified in the permit.

-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

HOW TO COMMENT:

Public Hearing

10:00 a.m. March 7, 1985 Room 1400 522 S.W. 5th Avenue Portland, Oregon	3:00 p.m. March 11, 1985 Attorneys' Lounge, 2nd Floor Courthouse, 251 B Street W. Vale, Oregon
10:00 a.m. March 12, 1985 County Courtroom Courthouse 3rd & Washington Baker, Oregon	2:00 p.m. March 12, 1985 Commissioners' Courtroom Courthouse 2nd & Baxter Coquille, Oregon
10:00 a.m. March 13, 1985 Courthouse Conference Room Courthouse 200 S. Canyon Blvd. John Day, Oregon	10:00 a.m. March 14, 1985 Commissioners' Courtroom Courthouse 513 Center Lakeview, Oregon

Written comments should be sent to Robert L. Brown, Solid Waste Division, Box 1760, Portland, OR 97207 by March 15, 1985.

WHAT IS THE NEXT STEP:

After public hearing, the Commission may adopt the proposed modifications identical to that proposed, adopt a modified rule or decline to take action. The Commission's deliberation should come in April, 1985 as part of the agenda of a regularly scheduled Commission meeting.

SB4117.4

Attachment V
Agenda Item No. D
1-25-85 EQC Meeting

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Modification of Solid Waste in General Rules Relating to Open Burning of Solid Waste at Disposal Sites (OAR 340-61-015 and OAR 340-61-040(2)	)))))	Land Use Consistency

This proposed rule does not conflict with land use planning goals. The rule is consistent with Goal 6 in that it does not degrade air or water quality. The rule is also consistent with Goal 11 in that it provides for continued disposal of solid waste in rural areas.

Public comment on any land use issue involved is welcome and may be submitted in the same fashion as 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 appropriate conflicts brought to our attention by local, state or federal authorities.

After public hearing, the Commission may adopt the proposed modification identical to that proposed, adopt a modified rule or decline to take action. The Commission's deliberation should come in April 1985 as part of the agenda of a regularly scheduled Commission meeting.

RLB:b
SB4117.5

POLICY

340-61-015 Whereas inadequate solid waste collection, storage, transportation, recycling and disposal practices cause nuisance conditions, potential hazards to public health and safety and pollution of the air, water and land environment, it is hereby declared to be the policy of the Department of Environmental Quality to require effective and efficient solid waste collection and disposal service to both rural and urban areas and to promote and support comprehensive county or regional solid waste management planning, utilizing progressive solid waste management techniques, emphasizing recovery and reuse of solid wastes and insuring highest and best practicable protection of the public health and welfare and air, water and land resources. Open burning of solid waste is generally an environmentally unacceptable method of solid waste disposal and will be allowed only if there is very low risk of adverse environmental impact and the criteria established in these rules have been met. In keeping with the Oregon policy to retain primary responsibility for management of adequate solid waste programs with local government units (ORS 459.015) and the Environmental Quality Commission's perception of Legislative intent under Chapter 773, Oregon Laws 1979, the Commission will look for, and expect, the maximum participation of local government in the planning, siting, development and operation of needed landfills. It is expected that local government will have carried out a good faith effort in landfill siting, including but not limited to public participation and Department assistance, before requesting the Department to site the

landfill. Local government will be expected to assume or provide for responsibility in the ownership and operation of any Department/Commission sited landfill under anything but an extraordinary circumstance.

SPECIAL RULES PERTAINING TO LANDFILLS

340-61-040 (1) Plan Design Requirements. Unless an exemption has been granted under section 340-61-025(4), in addition to the requirements of rule 340-61-025, detailed plans and specifications for landfills shall include but not be limited to:

(a) Topographic maps which show natural features of the site; the location and design of all pertinent existing and proposed structures, such as berms, dikes, surface drainage control devices, access and on-site roads, water and waste water facilities, gas control devices, monitoring wells, fences, utilities, maintenance facilities, shelter and buildings; legal boundaries and property lines, and existing contours and projected finish grades. Unless otherwise approved by the Department, the scale of the plan drawings shall be no greater than one inch equals 200 feet, with contour intervals not to exceed five feet. Horizontal and vertical controls shall be established and tied to an established bench mark located on or near the site. Where the Department deems it essential to ensure compliance with these rules, the bench mark shall be referenced to the Oregon State Plane Co-ordinate System, Lambert Projection.

(b) A minimum of two perpendicular cross section drawings through the landfill. Each cross section shall illustrate existing grade, excavation grade, proposed final grade, any additions for groundwater protection, water table profile and soil profile. Additional cross sections shall be provided as necessary to adequately depict underlying soils, geology and

landfill contours, and to display the design of environmental protection devices or structures.

(c) A description of the design assumptions and methods used to forecast flows and to determine the sizing of pumps, pipes, ditches, culverts and other hydraulic equipment used for the collection, treatment and disposal of leachate and for the control of surface drainage.

(d) A detailed operational plan and timetable which describes the proposed method of operation and progresssive development of trenches and/or landfill lifts or cells. Said plan shall include a description of the types and quantities of waste materials that will be received (estimated maximum daily and average annual quantities); methods of waste unloading, placement, compaction and covering; areas and/or procedures to be used for disposal of waste materials during inclement weather; types and weights of equipment to be used for site operation; detailed description of any salvaging or resource recovery operations to take place at the facility; such measures for the collection, containment, treatment or disposal of leachate as may be required; provisions for managing surface drainage; and measures to be used for the control of fire, dust, decomposition gases, birds, disease vectors, scavenging, access, flooding, erosion, and blowing debris, as pertinent.

(2) Open Burning.

No person shall conduct the open burning of solid waste at a landfill, except [in accordance with plans approved and permits issued by the Department prior to such burning.] <u>as provided for in this section.</u>

<u>(a)</u> The Department may authorize the open burning of tree stumps and limbs, brush, timbers, lumber and other wood waste, except that open burning of industrial wood waste is prohibited.

(b) The Department may authorize only those disposal sites that meet the following criteria to open burn domestic solid waste:

(A) There is minimal air quality impact.

(B) The disposal site shall be located outside city or urban growth boundaries and in a location where there is little impact on nearby residents.

(C) The disposal site shall be located in a dry climate with average yearly rainfall of less than 25 inches.

(D) The total population served shall be less than 450 persons.

(E) The disposal site shall not accept hazardous wastes or burn industrial waste.

(c) At a minimum, any operator of a disposal site which meets the criteria listed in 340-61-040(2)(b) and desires to open burn domestic solid waste must meet the following conditions:

(A) Access must be controlled to restrict unauthorized entry.

(B) There must be an attendant on duty during open hours and during burning operation.

(C) Burning must take place no more than two times per week when the site is closed to public access and in some type of containment area such as a trench. Fire must be extinguished before dark.

(D) If there is a local fire protection agency, then the operator must have a valid permit from that agency.

(E) Disposal site must be maintained by burying ash at least two times per year unless as specified in the permit.

(3) Leachate. Any person designing, constructing, or operating a landfill shall ensure that leachate production is minimized. Where required by the Department, leachate shall be collected and treated or otherwise controlled in a manner approved by the Department.

(4) Groundwater:

(a) Each landfill permittee shall ensure that:

(A) The introduction of any substance from the landfill into an underground drinking water source does not result in a violation of any applicable federal or state drinking water rules or regulations beyond the solid waste boundary of the landfill or an alternative boundary specified by the Department.

(B) The introduction of any substance from the landfill into an aquifer does not impair the aquifer's recognized beneficial uses, beyond the solid waste boundary of the landfill or an alternative boundary specified by the Department, consistent with the Commission's adopted Groundwater Quality Protection Policy and any applicable federal or state rules or regulations.

(b) Where monitoring is required, monitoring wells shall be placed between the solid waste boundary and the property line if adequate room exists.

(c) The Department may specify an alternative boundary based on a consideration of all of the following factors:

(A) The hydrogeological characteristics of the facility and surrounding land;

(B) The volume and physical and chemical characteristics of the leachate;

(C) The quantity and directions of flow of groundwater;

(D) The proximity and withdrawal rates of groundwater users;

(E) The availability of alternative drinking water supplies;

(F) The existing quality of the groundwater including other sources of contamination and their cumulative impacts on the groundwater; and

(G) Public health, safety, and welfare effects.

(5) Surface Water:

(a) No person shall cause a discharge of pollutants from a landfill into public waters, including wetlands, in violation of any applicable state or federal water quality rules or regulations.

(b) Each landfill permittee shall ensure that surface runoff and leachate seeps are controlled so as to minimize discharges of pollutants into public waters.

(6) Monitoring:

(a) Where the Department finds that a landfill's location and geophysical conditions indicate that there is a reasonable probability of potential adverse effects on public health or the environment, the Department may require a permittee to provide monitoring wells to determine the effects of the landfill on groundwater and/or on the concentration of methane gas in the soil.

(b) If the Department determines that monitoring wells are required at a landfill, the permittee shall provide and maintain the wells at the locations specified by the Department and, at the Department's request, shall submit a copy of the well logs to the Department within thirty (30) days of completion of construction.

(c) Where the Department determines that self-monitoring is practicable, the Department may require that the permittee collect and analyze samples of surface water, groundwater and/or gas, at intervals

specified and in a manner approved by the Department, and submit the results within a time frame specified by the Department.

(d) The Department may require permittees who do self-monitoring to periodically split samples with the Department for the purpose of quality control.

(7) Endangered Species. No person shall establish, operate, expand or modify a landfill in a manner that will cause or contribute to the actual or attempted:

(a) Harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing or collecting of any endangered or threatened species of plants, fish, or wildlife.

(b) Direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(8) Gas Control. No person shall establish, operate, expand or modify a landfill such that:

(a) The concentration of methane (CH_4) gas at the landfill exceeds twenty-five (25) percent of its lower explosive limit in facility structures (excluding gas control or gas recovery system components) or its lower explosive limit at the property boundary.

(b) Malodorous decomposition gases become a public nuisance.

(9) Surface Drainage Control. Each permittee shall ensure that:

(a) The landfill is designed, constructed and maintained so that drainage will be diverted around or away from active and completed operational areas.

(b) The surface contours of the landfill are maintained such that ponding of surface water is minimized.

(10) Floodplains. No permittee of a landfill located in a floodplain shall allow the facility to restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(11) Cover Material. Each permittee shall provide adequate quantities of cover material of a type approved by the Department for the covering of deposited solid waste at a landfill in accordance with the approved operational plan, permit conditions and these rules.

(12) Cover Frequency. Each permittee shall place a compacted layer of at least six inches of approved cover material over the compacted wastes in a landfill at intervals specified in the permit. In setting a requirement for cover frequency, the Department may consider such factors as the volume and types of waste received, hydrogeologic setting of the facility, climate, proximity of residences or other occupied buildings, site screening, availability of equipment and cover material, any past operational problems and any other relevant factor.

(13) Access Roads. Each permittee shall ensure that roads from the landfill property line to the active operational area and roads within the operational area are constructed and maintained so as to minimize traffic hazards, dust and mud and to provide reasonable all-weather access for vehicles using the site.

(14) Access Control. Each permittee shall insure that the landfill has a perimeter barrier or topographic constraints adequate to restrict unauthorized entry.

(15) Site Screening. To the extent practicable, each permittee shall screen the active landfill area from public view by trees, shrubbery, fence, stockpiled cover material, earthen berm, or other appropriate means.

(16) Fire Protection:

(a) Each landfill permittee shall make arrangements with the local fire control agency to immediately acquire their services when needed and shall provide adequate on-site fire protection as determined by the local fire control agency.

(b) In case of accidental fires at the site, the operator shall be responsible for initiating and continuing appropriate fire-fighting methods until all smoldering, smoking and burning ceases.

(c) No operator shall permit the dumping of combustible materials within the immediate vicinity of any smoldering, smoking or burning conditions at a landfill, or allow dumping activities to interfere with fire-fighting efforts.

(17) Special Handling. Large dead animals, sewage sludges, septic tank pumpings, hospital wastes and other materials which may be hazardous or difficult to manage, shall not be deposited at a disposal site unless special provisions for such disposal are included in the operational plan or otherwise approved by the Department.

(18) Signs. Each permittee of a landfill open to the public shall post a clearly visible and legible sign or signs at the entrance to the disposal site specifying the name of the facility, the hours and days the site is open to the public, an emergency phone number and listing the general types of materials which either will be accepted or will not be accepted.

(19) Truck Washing Facilities. Each permittee shall ensure that any truck washing areas at a landfill are hard surfaced and that any on-site disposal of wash waters is accomplished in a manner approved by the Department.

(20) Sewage Disposal. Each landfill permittee shall ensure that any on-site disposal of sewage is accomplished in a manner approved by the Department.

(21) Salvage:

(a) A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the landfill only when such recovery is conducted in a planned and controlled manner approved by the Department.

(b) No person may salvage food products, hazardous materials or furniture and bedding with concealed filling from a landfill.

(22) Litter:

(a) Each permittee shall ensure that effective measures such as compaction, the periodic application of cover material or the use of portable fencing or other devices are taken to minimize the blowing of litter from the active working area of the landfill.

(b) Each landfill operator shall collect windblown materials from the disposal site and adjacent property and properly dispose of same at sufficient frequency to prevent aesthetically objectionable accumulations.

(23) Vector and Bird Control:

(a) Each permittee shall ensure that effective means such as the periodic application of earth cover material or other techniques as appropriate are taken at the landfill to control or prevent the

propagation, harborage, or attraction of flies, rodents, or other vectors and to minimize bird attraction.

(b) No permittee of a landfill disposing of putrescible wastes that may attract birds and which is located within 10,000 feet (3,048 meters) of any airport runway used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport used by only piston-type aircraft shall allow the operation of the landfill to increase the likelihood of bird/aircraft collisions.

(24) Weighing. The Department may require that landfill permittees provide scales and weigh incoming loads of solid waste, to facilitate solid waste management planning and decision making.

(25) Records. The Department may require records and reports it considers reasonably necessary to ensure compliance with conditions of a permit or these rules.

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. E, January 25, 1985, EQC Meeting

Public Hearing and Proposed Adoption of Amendments to the Rule Regulating Use of Cesspools and Seepage Pits, OAR 340-71-335.

Background and Problem Statement

At its March 13, 1981 meeting, the Commission adopted a comprehensive set of administrative rules for on-site sewage disposal, OAR 340-71-100 through 340-71-600. Within that set of rules, a specific rule addresses cesspools and seepage pits, OAR 340-71-335. Section 2 of the rule prohibited the installation of cesspools to serve new structures after October 1, 1981. During the interim period from October 1, 1981 to January 1, 1985, seepage pits could be installed in lieu of cesspools.

At its August 28, 1981 meeting, the Commission, at Multnomah County's request, delayed by temporary rule the implementation of the cesspool prohibition to March 1, 1982. At its March 5, 1982 meeting, the Commission, again by temporary rule, further delayed implementation to April 16, 1982.

At its April 16, 1982 meeting, the Commission, after hearing, adopted rule amendments that changed the cesspool prohibition date to October 1, 1982, with a stipulation that if the appropriate jurisdictions adopt a system to collect additional funds for each cesspool installation, the prohibition would not become effective until January 1, 1985. The rule also required the local jurisdictions to submit plans and schedules by July 1, 1984, for providing sewer service to the cesspool area.

Multnomah County adopted an ordinance to collect a Systems Development Charge applicable to all new cesspools installed in the County. The collected funds were dedicated for use in planning, design, and construction of sewers in the cesspool-seepage pit areas.

At its December 14, 1984 meeting, in response to Multnomah County concerns, the Commission adopted a temporary rule amendment which delayed implementation of the prohibition of cesspool and seepage pit installation to serve new structures.

The Commission found that failure to act promptly would result in serious prejudice to the public interest or interest of the parties concerned, in that effective January 1, 1985, the installation of cesspool and seepage pit systems to serve new structures would be prohibited. Most of the properties within the affected area are too small to physically install other types of on-site sewage disposal systems, and public sewers are not available in most of the area. Thus, many people and small businesses would be unable to develop properties until sewers were available. Cesspool and seepage pit sewage disposal systems are central issues in the pending proposal before the Commission to find a threat to drinking water in Mid-Multnomah County. Final action on this proposal is not expected until sometime after July 1, 1985. The Commission found it necessary to exercise the temporary rule adoption process authorized by ORS 183.335 because the prohibition would go into effect before their next scheduled meeting on January 25, 1985.

The temporary rule was intended to allow some development to occur without increasing the discharge of sewage into the ground pending a final decision on the proposal to find a threat to drinking water in the affected area. This was accomplished by allowing a new cesspool to be installed only if an existing cesspool receiving an equivalent sewage load is removed from service and abandoned. The rule also was intended to facilitate the eventual connection of new structures to sewers when they become available.

The temporary rule was filed on January 2, 1985, and will remain in effect until the Commission takes final action on the proposal to find a threat to drinking water in Mid-Multnomah County or the temporary rule is replaced by a permanent rule, but not beyond June 30, 1985.

Staff indicated they would return to the Commission at the January 25, 1985 meeting with a proposed permanent rule amendment.

Notice of Public Hearing before the Commission on January 25, 1985, was published in the January 1, 1985 edition of the Secretary of State's Bulletin. Additional notice was given by mailing to the Department's on-site sewage mailing list and East Multnomah County mailing list. The notice indicated that final action might be taken on January 25, 1985.

The Department has prepared amendments to OAR 340-71-335 (Attachment A). The amendments incorporate the temporary rule (with housekeeping changes) into the permanent rule. The amendments also delete existing rule sections that are largely inconsistent with the temporary rule or are no longer necessary. New transition sections are added to re-incorporate essential elements from the larger deleted sections.

Alternatives and Evaluations

There appear to be several alternatives for Commission consideration:

1. After the public hearing, the Commission can adopt the proposed rule amendments to OAR 340-71-335, as set forth in Attachment "A".

The proposed amendments incorporate the temporary rule adopted on December 14, 1984, with modifications to eliminate any ambiguous or conflicting language. Adoption of the proposed amendments will permit the installation of cesspools and seepage pits to continue on a controlled and limited basis within the described Mid-Multnomah County area, without allowing any net increase in discharges into the ground.

2. After the public hearing, adopt a modified version of Attachment "A".

   Modifications may be appropriate based on testimony received.

3. After public hearing, decline to act on the proposal to amend OAR 340-71-335 and continue under the existing rule as modified by the temporary rule.

   This alternative is not recommended because the temporary rule will probably expire prior to action on the proposal to find a threat to drinking water in Mid-Multnomah County--resulting in a further change of "ground rules" for the area. In addition, sections of the existing rule language could be interpreted to negate the intent of the temporary rule language. Thus, further amendments are desirable to implement the intent of the temporary rule.

4. Recind the temporary rule adopted December 14, 1984.

   This alternative would, upon adoption, have the effect of immediately prohibiting installation of new cesspool or seepage pit systems in the affected area. Since sewers are not available in most of the area, little if any construction of homes or businesses could occur. This alternative is not recommended.

Once final action is taken on the proposal to find a threat to drinking water in the area, the Department would expect to propose further modifications to the "cesspool" rule to be consistent with the findings and order of the Commission. If the Commission adopts findings of a threat and orders construction of sewers pursuant to the schedule submitted by the local jurisdictions, proposals for modification would include changes to allow continued development consistent with a schedule for systematic reduction of sewage discharges to the groundwater to the end point of zero discharge by the year 2005. If findings are not adopted and an order is not entered, other modifications may be appropriate.

Summation

1. On March 13, 1981, the Commission adopted a rule, 340-71-335, which prohibited the installation of cesspools to serve new structures after October 1, 1981. For the period of October 1, 1981 to January 1, 1985, seepage pits could be used in lieu of cesspools.

2. On April 16, 1982, the Commission amended the rule by extending the prohibition implementation date to October 1, 1982, with a provision that the prohibition would not become effective until January 1, 1985, if certain conditions were met.

3. Multnomah County adopted an ordinance which fulfilled the requirements to allow the prohibition to be delayed until January 1, 1985.

4. Multnomah County requested the prohibition date again be amended to allow cesspool installation to continue beyond January 1, 1985. The Commission adopted a temporary rule which delays implementation of the cesspool prohibition until final action is taken on a proposal to find a threat to drinking water in Mid-Multnomah County. The temporary rule which will expire on June 30, 1985, does not allow the quantity of sewage discharged into the ground via cesspool or seepage pit systems to increase in the interim.

5. Notice of Public Hearing before the Commission on January 25, 1985, to consider adoption of a permanent rule amendments, was published in the January 1, 1985 edition of the Secretary of State's Bulletin. Additional notice was given by mailing to the Department's on-site sewage mailing list and East Multnomah County mailing list.

6. The Department has prepared proposed amendments to OAR 340-71-335 (Attachment A).

Director's Recommendation

Based upon the summation, it is recommended that the Commission (1) receive public testimony on the proposal to amend OAR 340-71-335, as set forth in Attachment "A", (2) evaluate the testimony received, and (3) adopt amendments to OAR 340-71-335 as appropriate.

Fred Hansen

Attachment "A" - Proposed Amendments to OAR 340-71-335
"B" - Hearing Notice
"C" - Statement of Need
"D" - Land Use Consistency Statement

S. O. Olson:t
(503) 229-6443
1/10/85
XT536

ATTACHMENT "A"

Note: The following presents OAR 340-71-335 as amended by the temporary rule adopted by the Environmental Quality Commission on December 14, 1984. The deletions and additions made by temporary rule are noted in the margin. Bracketed and underlined sections represent further proposed amendments to both the existing rule and the temporary rule. Adoption as proposed would have the effect of amending the existing rule and incorporating the temporary rule, with modifications, as a permanent amendment.

Amend OAR 340-71-335 as follows:

340-71-335 CESSPOOLS AND SEEPAGE PITS. [Diagrams 16 and 17]

(1) For the purpose of these rules:

(a) "Cesspool" means a lined pit which receives raw sewage, allows separation of solids and liquids, retains the solids and allows liquids to seep into the surrounding soil through perforations in the lining.

(b) "Seepage Pit" means a "cesspool" which has a treatment facility such as a septic tank ahead of it.

NOTE: Underlined ___ material is new.
Bracketed [ ] material is deleted.

[(2) Prohibitions. Cesspools and seepage pits shall not be used except in areas specifically authorized in writing by the Director. After May 1, 1981, the Agent may not grant approvals or permits for cesspools or seepage pits to serve new structures without first receiving written authorization from the Director.

(a) Effective October 1, 1982, unless the provisions of paragraph (2)(a)(C) of this rule are met:

(A) Installation of new cesspools is prohibited. Cesspools may be used only to replace existing failing cesspools.

(B) Seepage pits may be used only on lots created prior to March 13, 1981, which are inadequate in size to accommodate a standard subsurface system, unless the land use plan for the area anticipates division of existing lots to provide for more dense development and a program and timetable for providing sewerage service to the area has been approved by the Department.

(C) The prohibitions contained in paragraphs (2)(a)(A) and (B) of this rule shall not become effective until January 1, 1985, provided that by October 1, 1982, the appropriate jurisdiction(s) have adopted a system whereby additional funds are collected for each cesspool installation, and the funds collected are used for planning, design and construction of sewers in the cesspool-seepage pit areas.

(b) The governmental entities responsible for providing sewer service to the seepage pit and cesspool areas within Multnomah and Clackamas Counties, as set forth in the METRO Master Plan, shall not later than July 1, 1983, submit to the Department an assessment of the feasibility of imposing user fees or area taxes on existing systems and appropriate exemptions from such fees or taxes, and by July 1, 1984, submit to the Department, detailed plans, scheduling, priorities, phasing and financial mechanisms for sewering the entire cesspool area.

This subsection was replaced by the Temporary Rule adopted December 14, 1984.

(c) Effective January 1, 1985, unless this rule is further modified in response to plans required in subsection (2)(b) of this rule:

(A) Installation of cesspools is prohibited.

(B) Installation of new seepage pits is prohibited.

(C) Seepage pits may be used only to replace existing failing cesspools or seepage pits on lots that are inadequate in size to accommodate a standard subsurface system.]

(2) Prohibitions. Except as allowed in subsections (2)(a) and (2)(b) of this rule, the agent shall not issue favorable site evaluation reports or construction-installation permits for cesspool or seepage pit systems.

(a) Except as allowed in subsection (2)(b) of this rule, seepage pit systems shall be used only to replace existing failing seepage pit and cesspool systems on lots that are inadequate in size to accommodate a standard system or other alternative on-site sewage systems. A construction-installation permit allowing replacement of the failing system shall not be issued if a sewerage system is both legally and physically available, as described in OAR 340-71-160(5)(f).

NOTE: Underlined ___ material is new.
Bracketed [ ] material is deleted.

These subsections were initially adopted as a Temporary Rule on December 14, 1984.

(b) [[c]][Effective January 1, 1985,] Unless and until the Environmental Quality Commission [EQC] takes final action on the proposal to find a threat to drinking water in Mid-Multnomah County, installation of cesspool and seepage pit sewage disposal systems shall [only] be allowed within the affected area of three (3) sewage treatment plant basins (Inverness, Columbia, and Gresham, as described in Appendix 3 of the document entitled Threat to Drinking Water Findings, June, 1984), subject to the following conditions:

(A) A cesspool or seepage pit system to serve a new sewage load may be permitted only [only be installed] if an equivalent sewage load into [loading of sewage to] an existing cesspool [[or cesspools]] or seepage pit within the affected area has been [removed from discharge to the groundwater] eliminated by connection to a [sewer.] public sewerage facility.

(B) [A cesspool or seepage pit system may be installed to repair] A permit to replace an existing failing cesspool or seepage pit system may be issued only if [connection to a sewer is not practicable and no other alternative is available.] sewers are not physically available [refer to OAR 340-71-160(5)(f)] and there is insufficient area available to install either a standard or other alternative system.

(C) Any new or repair cesspool or seepage pit system installed shall be located between the structure and the location of the point where connection to a sewer will eventually be made so as to minimize future disruption and costs of sewer connection.

(D) Cesspool or seepage pit systems shall not be [allowed] authorized on any lot that is large enough to [accommodate] install a standard or other alternative on-site system.

(E) [Any new subdivision or development] After the effective date of this rule, any land development that involves the construction of streets , and all subdivisions platted after the effective date, shall be required to install dry sewers at the time of development.

(F) The system for collection of additional funds for each cesspool installation (System Development Charge) enacted by the jurisdictions in the affected area prior to October 1, 1982, shall be maintained.

(c) [[d]] Subsection (2)(b) of this rule [[c] above] shall be administered in a manner so as to preclude any net increase in cesspool or seepage pit discharges into the ground. The agent of the Department of Environmental Quality responsible for implementation of on-site sewage disposal rules in Multnomah County shall, prior to issuing any further cesspool or seepage pit construction-installation permits, develop and implement a system to account for discharges removed, cesspools and seepage pits properly abandoned, and new permits issued. Accounting shall be on an equivalent single-family dwelling unit (EDU) basis. The accounting system shall be submitted to DEQ for approval. Monthly reports shall be submitted to DEQ on or before the 5th day of the following month.

NOTE: Underlined ___ material is new.
Bracketed [ ] material is deleted.

(3) Criteria for Approval. Except as provided for in Section (2) of this rule, seepage pits and cesspools may be used for sewage disposal on sites that meet the following site criteria:

(a) The permanent water table is sixteen (16) feet or greater from the surface.

(b) Gravelly sand, gravelly loamy sand, or other equally porous material occurs in a continuous five (5) foot deep stratum within twelve (12) feet of the ground surface.

(c) A layer that limits effective soil depth does not overlay the gravel stratum.

(d) A community water supply is available.

(4) Construction Requirements:

(a) Each cesspool and seepage pit shall be installed in a location to facilitate future connection to a sewerage system when such facilities become available.

(b) Maximum depth of cesspools and seepage pits shall be thirty-five (35) feet below ground surface.

(c) The cesspool or seepage pit depth shall terminate at least four (4) feet above the water table.

(d) Construction of cesspools and seepage pits in limestone areas is prohibited.

(e) Other standards for cesspool and seepage pit construction are contained in Rule 340-73-080.

NOTE: Underlined ___ material is new.
Bracketed [ ] material is deleted.

SOO:t
XT517.A

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE ON-SITE SEWAGE DISPOSAL RULES

Date Prepared: 12/19/84
Notice Issued: 1/25/85
Comments Due: 1/25/85

WHO IS AFFECTED: Persons and businesses wishing to construct cesspools and/or seepage pits within portions of three (3) sewage treatment plant basins (Inverness, Columbia, and Gresham), in Multnomah County.

WHAT IS THE PURPOSE: In order to enhance and protect the quality of public waters below the affected area, the DEQ is proposing to revise OAR 340-71-335 which regulates use of cesspools and seepage pits. The changes propose to allow the installation of cesspools and seepage pits on a controlled and limited basis until the Environmental Quality Commission takes final action on a proposal to find a threat to drinking water in Mid-Multnomah County.

HOW TO COMMENT: Copies of the proposed rule amendments may be obtained from the DEQ Water Quality Division in Portland (522 S.W. Fifth Ave.). For further information, contact Sherman Olson at 229-6443.

A public hearing will be held before the Environmental Quality Commission at:

10 a.m.
January 25, 1985
Room 1400, Yeon Building
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 Water Quality Division, P.O. Box 1760, Portland, Oregon, 97207, but must be received no later than 5 p.m., January 24, 1985.

WHAT IS THE NEXT STEP: Immediately following the public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act.

XT509

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

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 rules.

1. Legal Authority

ORS 454.625 and ORS 468.020, which requires the Environmental Quality Commission to adopt rules pertaining to on-site sewage disposal.

2. Need for the Rule

The Environmental Quality Commission (EQC) has adopted administrative rules which prohibit the installation of cesspool and seepage pit sewage disposal systems to serve new structures, effective January 1, 1985. That prohibition date has been modified by the adoption of a temporary rule affecting a portion of Multnomah County. It allows installation of those systems in a controlled and limited manner. The temporary rule will expire before the EQC takes final action on a proposal to find a threat to drinking water in the area. Cesspool and seepage pit systems are central to that issue. The proposed rule will allow the continued use of these systems in a controlled manner until the EQC completes its action.

3. Principal Documents Relied Upon in This Rulemaking

a. Agenda Item No. J, December 14, 1984 EQC Meeting.

The above document is available for public inspection at the Office of the Department of Environmental Quality, 522 S.W. Fifth Avenue, Portland, Oregon, during regular business hours, 8 a.m. to 5 p.m.

4. Fiscal and Economic Impact

In the affected area, most of the properties are too small in area to physically install on-site sewage systems other than cesspools and seepage pits. Public sewerage facilities are available in some areas but not in others. In the event the prohibition date is not modified, many people and small businesses would be unable to develop their property until connection to public sewerage facilities is possible, thus causing potential economic losses to both groups.

SOO:t
XT509
12/19/84

LAND USE CONSISTENCY STATEMENT

The Department has concluded that the proposed rule amendments conform with the Statewide Planning Goals.

With respect to Goal 6, the proposed amendments are designed to maintain and, over time, improve the groundwater quality in the affected area, and are consistent with the goal.

With respect to Goal 11, the proposed amendments will cause the implementation of an orderly and efficient shift in the methods of sewage disposal in the affected area, by phasing out cesspool and seepage pit use with connection of structures to public sewage treatment facilities. The proposed amendments are consistent with the goal.

The proposed amendments do not appear to conflict with 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 this notice.

It is requested that local, state, and federal agencies review the proposed amendments 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 their attention by local, state, or federal authorities.

SOO:t
XT509
12/19/84

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: Director

Subject: Agenda Item No. F, January 25, 1985, EQC Meeting

Request for Adoption of Rules for Granting Water Quality Standards Compliance Certification Pursuant to Requirements of Section 401 of the Federal Clean Water Act

Background

Any person who applies for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities which may result in any discharge into navigable waters is required by Section 401 of the Federal Clean Water Act to obtain a water quality compliance certification from the state in which the discharge originates. That certification must state that any such discharge or activity will comply with applicable effluent limitations, water quality standards and implementation plans, national standards of performance for new sources, and toxic and pretreatment effluent standards adopted pursuant to the Clean Water Act.

The Department has been implementing this section of the federal law since 1973, without having adopted procedural rules regarding certification. The DEQ has evaluated slightly over 5400 waterway project proposals under federal permitting programs since 1975. Approximately 1800 of these required water quality certification.

Until recently, nearly all requests for certification have been for projects in navigable waters or adjacent wetlands requiring permits from the U.S. Army Corps of Engineers or the U.S. Coast Guard. In both of these cases the State of Oregon has a well established agency coordination program where the Division of State Lands receives applications from the applicant (by way of the federal agency), distributes them to natural resource agencies for review and comment, and compiles comments into a coordinated state response to the applicant. Under this coordinated program, the federal agency issues public notice of the project on behalf of all of the agencies. DEQ's notice of request for certification is circulated with the project information package by the federal agency.

DEQ's certification is forwarded to the Division of State Lands. The coordinated response is then released by the Division of State Lands when agency comments are compiled and the project is determined to be compatible with land use requirements. This process has been quite efficient and effective.

Since few permits from other federal agencies were encountered, no formal procedure for processing requests was established.

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 pursuant to Section 401 of the Clean Water Act.

There were two basic alternatives available at that time. The easiest would have been to continue as in the past with some administrative clarification of procedures but without adopting rules. While this may be satisfactory in most cases, there will likely be times when such informal procedures will lead to problems--particularly if a certification is challenged.

The preferred alternative was to adopt procedural rules which clearly define the procedure for receiving applications, giving public notice as required by Section 401 of the Clean Water Act, and issuance or denial of certification. Draft rules were written to formalize and continue the present streamlined procedure for coordinated agency response through the Division of State Lands for U.S. Corps of Engineers and U.S. Coast Guard permit applications. In addition, the draft rules define procedures for receiving, processing, and taking final actions on all other applications for certification.

On September 14, 1984, the Commission authorized a public hearing on the draft rules. The agenda item prepared for that Commission meeting is attached as background for this report (Attachment E).

Notice was given by publishing in the Secretary of State's Bulletin November 1, 1984, and by mailing to the Department's rule making mailing list on October 23, 1984. A hearing was held at 1 p.m., November 28, 1984. The hearing record remained open until 5 p.m. The hearing officer report is attached as Attachment B.

Discussion and Evaluation of Testimony

As noted in the hearing officer's report, the Deschutes and Coos County Planning Departments wanted the proposed rule 340-48-020(6)(d) rewritten so that it did not appear that the Division of State Lands was preempting the counties in land use compatibility determinations. Although most land use compatibility determinations are provided by local planning agencies, state law does not preclude other parties from making land use findings where

appropriate. In order to clarify the issue, but not preclude any of the various mechanisms for arriving at adequate land use compatibility determinations, the rules have been modified to state that the Division of State Lands is responsible to assure that the compatibility determination has been made rather than being responsible for determining compatibility.

The Baker County Planning Department suggested that the required land use compatibility statement from a local planning agency could result in a conflict of interest if the county was also the applicant for the permit or license requiring certification. Legal counsel disagrees that a conflict of interest occurs in that circumstance. However, in order to provide some response to that concern, language has been added to the rules to indicate that the State Land Conservation and Development Department may be asked to review the county determinations in those instances.

Testimony received at the public hearing suggested that the draft rules were inadequate because they did not include "specific factors" the Department would evaluate before certifying a project's compliance with applicable portions of the Federal Clean Water Act and State Water Quality Standards. It was also suggested that the review evaluate compliance with applicable 208 plans.

Because each project is different, it is hard to identify common factors which could be used in addressing all projects. However, in order to address those concerns, the following review factors have been added to the proposed rules:

1. Existing and potential beneficial uses of surface water or groundwater which could be affected by the proposed facility.

2. Potential impact from the generation and disposal of waste chemicals or sludges at the proposed facility.

3. Potential modification of surface water quality or quantity.

4. Potential modification of groundwater quality.

5. Potential impacts from the construction of intake or outfall structures.

6. Potential impacts from waste water discharges.

7. Potential impacts from construction activities.

8. The project's compliance with applicable 208 plans.

Testimony at the hearing also suggested that the public participation procedures should be equivalent to the NPDES permitting process found in OAR 340-45-035. In response to that request, 340-48-020(4) has been reworded to more closely compare with the public participation procedures in OAR 340-45-035. Of course, there are several agencies involved in reviewing these projects. The public participation procedure in the proposed rules only pertains to areas under DEQ review.

Other testimony at the public hearing suggested that the Department is currently in violation of Section 303 of the Federal Clean Water Act in that the total maximum daily loading of pollutants has not been established for each of the state's river basins. It was suggested that determination should precede or at least be concurrent with these rules.

Staff do not agree with the view that the Department is in violation of Section 303 of the Clean Water Act. Staff also do not believe that further efforts to establish total maximum daily loads should be a prerequisite to adoption of procedural rules for certification under Section 401.

Section 303(d)(1)(C) of the Federal Clean Water Act requires states to establish total maximum daily pollutant load limits for those stream segments where implementation of federal effluent guidelines (secondary treatment and BPT) for municipal and industrial discharges will not improve water quality enough to meet water quality standards. The total maximum daily load would be the maximum load the stream segment could assimilate and still meet water quality standards. The total maximum daily load for each parameter would then be allocated to the sources discharging to the stream segment and incorporated into the permit as the discharge limit for more stringent controls.

The Department established pollutant load limits for all permitted discharges prior to passage of the Federal Clean Water Act in 1972. Water quality standards were substantially met with a factor of safety (to accommodate new sources) by the established pollutant load limits. In particular, water quality in the Willamette River improved enough to meet critical low flow period standards for all parameters except bacteria. The Department's Water Quality Management Plan further requires that more stringent treatment be employed by existing sources as necessary to accommodate growth without increasing discharge loads. This program was considered sufficient to meet the intent of Section 303(d)(1)(C).

The Department agrees that continued study and refinement of load allocations and load limits is desirable and necessary. As priority problem areas are scheduled for water quality studies and update of management plan provisions, load allocations will be evaluated and adjusted as appropriate. This will be an ongoing effort as resources permit.

During the public participation period, the Department received a request from the Northwest Environmental Defense Center (NEDC) for extensive information relating to the Department's certification reviews during the past 5 years and all pending applications. They have been informed that the material is in the department files and is available for their review at DEQ offices.

The NEDC also requested that the rules provide a means for an aggrieved member of the public to appeal a certification which was improperly given. In the past, the Commission has limited rule making to address only those appeal procedures for applicants who may be aggrieved by Department actions. Nothing is being proposed in these rules which would vary from that practice. The Courts are the vehicle available for an aggrieved third party to appeal a Department or Commission Action.

On January 4, 1985, the Department received a request from the State Department of Energy (Attachment F) requesting that language be added to the rules to require that a completed application for certification of an energy facility larger than 25 megawatts must contain a certificate or permit from the Energy Facility Siting Council. Further evaluation of this proposal is needed before a recommendation can be made. If it appears appropriate to adopt this type of provision, the Department will initiate rule modification including appropriate public participation procedures.

Alternatives

1. Adopt the proposed rules as modified in response to the hearing testimony (Attachment A).

2. Adopt the rules as initially proposed and taken to hearing.

3. Do not adopt any rules.

The Department believes that continued reliance on informal procedures is not desirable. Adoption of the proposed rules as modified in response to public testimony is the preferred alternative.

Summation

1. Section 401 of the Clean Water Act requires states to review proposals for federal licenses or permits and to certify that the proposal will meet federal and state requirements for the protection of public waters.

2. The Department has been operating since 1973 without procedural rules. The staff have relied upon established procedures and statutory requirements.

3. Procedural rules are needed to clarify the Department's practices for handling requests for certification.

4. Notice of a public hearing was given in the Secretary of State's Bulletin November 1, 1984, and mailed to the Department's rule making mailing list on October 23, 1984.

5. A hearing was held at 1 p.m. on November 28, 1984. The record was kept open until 5 p.m.

6. All public testimony has been reviewed and evaluated. The proposed rules (Attachment A) have been revised in response to the testimony received.

Director's Recommendation

Based on the summation, the Director recommends that the Commission adopt the rules, OAR 340-48-005 to 340-48-040, as presented in Attachment A.

Fred Hansen

Attachments:
A. Proposed Rules with Modifications to Reflect Public Comments
B. Hearings Officer's Summary of Public Testimony
C. Public Hearing Notice
D. Statement of Need for Rulemaking
E. Commission Agenda Item D, September 4, 1984, EQC Meeting
F. Letter From Department of Energy

Glen D. Carter
229-5358
WL3921
1/10/85

Proposed Rules with Modifications
to Reflect Public Comment

DEPARTMENT OF ENVIRONMENTAL QUALITY Water Quality Program

OREGON ADMINISTRATIVE RULES
Chapter 340, Division 48

DIVISION 48

CERTIFICATION OF COMPLIANCE WITH WATER QUALITY REQUIREMENTS AND STANDARDS.

Purpose

340-48-005 The purpose of these rules is to describe the procedures to be used by the Department of Environmental Quality for receiving and processing applications for certification of compliance with water quality requirements and standards for projects which are subject to federal agency permits or licenses and which may result in any discharge into navigable waters or impact water quality.

Definitions

340-48-010 As used in these rules unless otherwise required by context:

(1) "Certification" means a written declaration by the Department of Environmental Quality, signed by the Director, that a project or activity subject to federal permit or license requirements will not violate applicable water quality requirements or standards.

(2) "Clean Water Act" means the Federal Water Pollution Control Act of 1972, PL 92-500, as amended.

(3) "Coast Guard" means U.S. Coast Guard.

(4) "Commission" means Oregon Environmental Quality Commission.

(5) "Corps" means U.S. Army Corps of Engineers.

(6) "Department" or "DEQ" means Oregon Department of Environmental Quality.

(7) "Director" means Director of the Department of Environmental Quality or the Director's authorized representative.

(8) "Local Government" means county and city government.

Certification Required

340-48-015 Any applicant for a federal license or permit to conduct any activity, including but not limited to the construction or operation of facilities which may result in any discharge to waters of the State, must provide the licensing or permitting agency a certification from the Department that any such discharge will comply with Sections 301, 302, 303, 306, and 307 of the Clean Water Act which generally prescribe effluent limitations, water quality related effluent limitations, water quality standards and implementation plans, national standards of performance for new sources, and toxic and pretreatment effluent standards.

Application for Certification

340-48-020 (1) Except as provided in section (6) below, completed applications for project certification shall be filed directly with the DEQ.

(2) A completed application filed with DEQ shall contain, at minimum, the following information:

(a) Legal name and address of the project owner.

(b) Legal name and address of owner's designated official representative, if any.

(c) Legal description of the project location.

(d) A complete description of the project proposal, using written discussion, maps, diagrams, and other necessary materials.

(e) Name of involved waterway, lake, or other water body.

(f) Copies of the environmental background information required by the federal permitting or licensing agency.

(g) Copy of any public notice and supporting information, issued by the federal permitting or licensing agency for the project.

(h) A statement from the appropriate local planning agency that the project is compatible with the acknowledged local comprehensive plan or that the project is consistent with statewide planning goals if the local plan is not acknowledged. <u>If a county is the applicant for a project for which it has also made the land use compatibility determination, the State Land Use Conservation and Development Department may be asked to review and comment on the County's compatibility determination.</u>

(3) The DEQ reserves the right to request any additional information necessary to complete an application or to assist the DEQ to adequately evaluate the project impacts on water quality. Failure to complete an application or provide any requested additional information within the time specified in the request shall be grounds for denial of certification.

(4) [Public notice of all applications filed with DEQ shall be by publication in the Secretary of State's Bulletin, mailing of notification to those persons who request to be on a DEQ mailing list for receiving such notices, and mailing of notification to local governments in the project area. Notices shall specify the duration of the comment period which will normally be 30 days.] <u>In order to inform potentially interested persons of the application, a public notice announcement shall be prepared and circulated in a manner approved by the Director. The notice shall tell of public participation</u>

opportunities, shall encourage comments by interested individuals or agencies, and shall tell of any related documents available for public inspection and copying. The Director shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit written views and comments. All comments received during the 30-day period shall be considered in formulating the Department's position. The Director shall add the name of any person or group upon request to a mailing list to receive copies of public notice.

(5) The Director shall provide an opportunity for the applicant, any affected state, or any interested agency, person, or group of persons to request or petition for a public hearing with respect to certification applications. If the Director determines that useful information may be produced thereby, or if there is significant public interest in holding a hearing, a public hearing will be held prior to the Director's final determination. Instances of doubt shall be resolved in favor of holding the hearing. There shall be public notice of such a hearing.

(6) For projects or activities where the Division of State Lands is responsible for compiling a coordinated state response (normally applications requiring permits from the Corps or Coast Guard), the following procedure for application and certification shall apply:

(a) Application to the Federal agency for a permit constitutes application for certification.

(b) Applications are forwarded by the Federal Agency to the Division of State Lands for distribution to affected agencies.

(c) Notice is given by the Federal Agency and Division of State Lands through their procedures. Notice of request for DEQ certification is circulated with the Federal Agency Notice.

(d) All comments including DEQ Water Quality Certification are forwarded to the Division of State Lands for evaluation and coordination of response. The Division of State Lands is responsible for [determination of] assuring compatibility with the local comprehensive plan or consistency with statewide planning goals.

(7) The Department's evaluation of an application for project certification will include but not be limited to the following:

(a) Existing and potential beneficial uses of surface or groundwater which could be affected by the proposed facility.

(b) Potential impact from the generation and disposal of waste chemicals or sludges at a proposed facility.

(c) Potential modification of surface water quality or quantity.

(d) Potential modification of groundwater quality.

(e) Potential impacts from the construction of intake or outfall structures.

(f) Potential impacts from waste water discharges.

(g) Potential impacts from construction activities.

(h) The project's compliance with plans applicable to Section 208 of the Federal Clean Water Act.

Issuance of a Certificate

340-48-025 (1) Within ninety (90) days of receiving a complete application for project certification, the DEQ shall serve written notice upon the applicant that the certification is granted or denied or that a further specified time period is required to process the application. Written notice shall be served in accordance with the provisions of OAR 340-11-097 except that granting of certification may be by regular mail. Any extension of time shall not exceed 1 year from the date of filing a completed application. If the Department fails to take timely action on an application for certification, the certification requirements of Section 401 of the Clean Water Act are waived.

(2) DEQ's Certification for a project shall contain the following information:

(a) Name of Applicant;
(b) Project's name and federal identification number (if any);
(c) Type of project activity;
(d) Name of water body;
(e) General location;
(f) Statement that the project complies with applicable requirements of the Federal Clean Water Act;

(g) Special conditions if necessary to assure compliance with Sections 301, 302, 303, 306, and 307 of the Clean Water Act and state water quality requirements.

(h) Findings that the project is compatible with the local comprehensive plan and/or the statewide planning goals, except for those projects for which the Division of State Lands coordinates the response.

(3) If the applicant is dissatisfied with the conditions of any granted certification, the applicant may request a hearing before the Commission. Such requests for a hearing shall be made in writing to the Director within 20 days of the date of mailing of the certification. Any hearing shall be conducted pursuant to the rules of the Commission for contested cases.

(4) Certifications granted pursuant to these rules are valid for the applicant only and are not transferable.

Certification Delivery

340-48-030 For projects where application for certification is filed directly with DEQ by the applicant, the DEQ certification will be returned directly to the applicant. For those applications that are coordinated by the Division of State Lands, DEQ certification will be delivered to the Division of State Lands for distribution to the applicant and the federal permitting agencies as part of the State of Oregon coordinated response.

Denial of Certification

340-48-035 If the Department proposes to deny certification for a project, a written notice setting forth the reasons for denial shall be served upon the applicant following procedures in OAR 340-11-097. The written notice shall advise the applicant of appeal rights and procedures. A copy shall also be

provided to the federal permitting agency. The denial shall become effective 20 days from the date of mailing such notice unless within that time the applicant requests a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the rules of the Commission for contested cases.

Revocation or Suspension of Certification

340-48-040 (1) Certification granted pursuant to these rules may be suspended or revoked if the Director determines that:

(a) The federal permit or license for the project is revoked.

(b) The federal permit or license allows modification of the project in a manner inconsistent with the certification.

(c) The application contained false information or otherwise misrepresented the project.

(d) Conditions regarding the project are or have changed since the application was filed.

(e) Special conditions or limitations of the certification are being violated.

(2) Written notice of intent to suspend or revoke shall be served upon the applicant following procedures in OAR 340-11-097. The suspension or revocation shall become effective 20 days from the date of mailing such notice unless within that time the applicant requests a hearing before the Commission or its authorized representative. Such a request for hearing shall be filed with the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the rules of the Commission for contested cases.

GDC:t
WT245.A
Revised 1/3/85

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

November 29, 1984

MEMORANDUM

To: Environmental Quality Commission

From: Kent Ashbaker, Hearings Officer

Subject: Public Testimony Regarding Proposed Rules which Establish Department Procedures for Certification of Federal Licenses or Permits Pursuant to Section 401 of the Federal Clean Water Act

A public hearing was held in Room 1400 of the Yeon Building at 1 p.m., November 28, 1984. Other than members of the staff, there were five persons who attended the hearing, three of whom gave oral testimony. Previous to the hearing, the Department received written testimony from five public entities. A summary of attendees and other testimony received is as follows:

Person or Organization	Written Testimony	Oral Testimony	Attended Hearing
Oregon State Highway Division	Yes	No	No
Deschutes County	Yes	No	No
Washington County	Yes	No	No
Coos County	Yes	No	No
Baker County	Yes	No	No
Oregon Shores Conservation Coalition	Yes	Yes	Yes
Northwest Environmental Defense Center	Yes	Yes	Yes
Portland General Electric	No	No	Yes
Oregon Environmental Council	No	Yes	Yes
Jack Churchill	No	Yes	Yes
Land Conservation and Development	No	No	Yes

Summary of Individual Testimony

The State Highway Division stated that as long as the rules proposed no change from existing procedures, they had no need to comment.

Deschutes County was concerned that the present language in the draft rules would appear to allow the Division of State Lands to make the land use compatibility determination, rather than the local land use agency. They propose clarifying language to assure that it was the local land use agency

which determined consistency with acknowledged comprehensive plans or statewide planning goals.

Washington County sent a letter of support for the draft rules.

Coos County also questioned the language on land use compatibility. They requested that the language in the rules be changed to clarify the issue.

Baker County also commented on the land use compatibility question. However, their primary concern was the apparent conflict of interest when the county is the applicant and also the agency which provides the land use compatibility determination. They suggested that an alternative mechanism be provided to remove that potential conflict of interest.

Mr. J. D. Smith, representing Oregon Shores Conservation Coalition, suggested that the rules were completely inadequate in their present form. He stated that the rules should include all the specific factors the Department would evaluate before certifying that the project would comply with applicable portions of the Federal Clean Water Act and State Water Quality Standards. He also stated that the rules should contain the specific criteria used in evaluating each of the established factors.

Mr. Smith also suggested that the public should be involved in the evaluation procedure. At a minimum, the public participation procedures should be equivalent to those of the NPDES permitting process found in OAR 340-45-035.

Mr. Smith stated that the Department is currently in violation of Section 303 of the Federal Clean Water Act in that the total maximum daily loading of pollutants has not been established for each of the state's river basins. He suggested that that determination should precede or at least be concurrent with these rules.

Mr. J. D. Smith also presented oral testimony for the Northwest Environmental Defense Center (NEDC). He said that NEDC supported the comments from the Oregon Shores Conservation Coalition. In addition, they requested that the Department send them extensive information regarding DEQ's past certification procedures including a copy of the technical evaluation of all certifications for the past 5 years and the public notice given. They also requested a list of all pending 401 certification requests.

Jack Churchill testified on behalf of himself. He requested that the rules specify that all facilities requesting certification be required to be in compliance with 208 plans. He also stated that the rules should contain what information DEQ would require of the applicant upon which DEQ would base its judgment as to the impact the facility would have on water quality standards and all beneficial uses. Benefits from any proposal must be compared to all potential impacts on water quality, not just those impacts related with point source discharges.

John Charles, representing Oregon Environmental Council, expressed the same concerns as expressed by Mr. Smith and Mr. Churchill. Rules should contain criteria for evaluating compliance with 301, 302, 303, 306, and 307, of the Clean Water Act. He also stated that the Department should be developing river basin maximum daily loadings prior to or concurrent with these rules. Mr. Charles also requested that the rules provide a means for an aggrieved member of the public to appeal a certification which was improperly given.

As there were no other persons desiring to testify, the hearing was closed at 2 p.m. It was announced that the hearing record would remain open for written comments until 5 p.m. No further written testimony was received.

Charles K. Ashbaker:l
WL3902

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PUBLIC HEARING ON RULES FOR
WATER QUALITY STANDARDS COMPLIANCE CERTIFICATION

Date Prepared: 10-8-84
Notice Issued: 10-23-84
Comments Due: 11-28-84
5 p.m.

WHO IS AFFECTED: Any person or party applying for a federal agency permit or license to construct and/or operate facilities which may affect waters of the state and persons who use the waters of the state.

WHAT IS PROPOSED: The DEQ is proposing procedural rules for processing applications and issuing water quality standards compliance certifications for water related projects subject to federal agency permit or license. Projects include waterway fills, instream construction, hydroelectric projects, etc.

WHAT ARE THE HIGHLIGHTS: Some federal agencies issue permits for facilities and activities in waters of the state that result in discharges of materials that may pollute the water. Consequently, Section 401 of the Federal Clean Water Act of 1977, requires that the applicant for such a federal permit must first obtain certification from the DEQ that there is reasonable assurance the proposed discharge or activity will not violate applicable water quality requirements and standards. The DEQ must also provide procedures for public notice and public hearing of its actions.

SPECIAL CONDITIONS: The proposed rules require a land use compatibility determination for each project prior to certification.

HOW TO COMMENT: A public hearing will be held to receive oral comments on:

Date: November 28, 1984
Time: 1 p.m.
Place: Room 1400, Yeon Building
522 S.W. 5th, Portland, Oregon

Written comments should be sent to the Department of Environmental Quality, Water Quality Division, P.O. Box 1760, Portland, OR, 97207.

Any questions or requests for additional information should be directed to Glen Carter of the Water Quality Division, 229-5358 or toll free 1-800-452-4011.

WHAT IS THE NEXT STEP: Once the public testimony has been received and evaluated, the rules will be revised if necessary, and then presented to the Environmental Quality Commission for adoption.

WT246

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

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

ORS 468.020 authorizes the Commission to adopt rules necessary and proper in performing the functions vested by law in the Commission.

ORS 468.730 authorizes the Commission to adopt the necessary rules to implement those provisions of the Federal Water Pollution control Act which are within the jurisdiction of the state.

(2) Need for the Rule

Under the Federal Water Pollution Control Act (Clean Water Act) the Department of Environmental Quality has the responsibility to review applications for a Federal license or permit to conduct any activity which may result in any discharge into navigable waters. After review, the Department must certify whether the discharge or activity will comply with effluent limitations, water quality standards, national standards of performance for new sources, and toxic and pretreatment standards. Rules are needed to establish procedures for applying for certification, providing for public input in the certification process, addressing land use issues and concerns, and describing certification issuance, denial and appeal procedures.

(3) Principal Documents Relied Upon in This Rulemaking

a. ORS 468.020
b. ORS 468.730
c. Federal Water Pollution Control Act (Clean Water Act) Title IV, Section 401.

LAND USE CONSISTENCY

The proposed rules appear to affect land use and to be consistent with the Statewide Planning goals.

Goal 6 (Air, Water and Land Resources Quality): This proposal is deemed to improve and maintain water quality and is consistent with the goal because the DEQ certification assures compliance with state and federal water quality standards and requirements.

These rules are also deemed compatible with the Statewide Land Use Planning goals since they require an application for certification to contain a statement of land use compatibility from the appropriate planning agency.

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

FISCAL AND ECONOMIC IMPACT STATEMENT

The proposed rules should have minimal impact on small businesses. The requirement for certification has been in effect for more than 10 years, and certifications have been routinely processed throughout this period. The rules codify the procedure that has evolved over time. This should make it easier for applicants to understand and meet requirements for certification. The rules clarify the requirement for land use consistency for projects to be certified. The rules benefit project applicants, including small businesses, by reducing the normal response time from 1 year allowed by federal law to 90 days.

GDC:l
WL3639
September 4, 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. D, September 14, 1984, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Rules for Granting Water Quality Standards Compliance Certifications Pursuant to Section 401 of the Federal Clean Water Act

Background

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 effluent limitations, water quality related effluent limitations, water quality standards and implementation plans, national standards of performance for new sources, and toxic and pretreatment effluent standards adopted pursuant to the Clean Water Act.

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

Until recently, nearly all requests for certification have been for projects in navigable waters or adjacent wetlands requiring permits from the U.S. Army Corps of Engineers or from the U.S. Coast Guard for structures that may impact navigation. For these applications, the State of Oregon has a well established agency coordination program where the Division of State Lands receives applications from the applicant (by way of the Federal Agency), distributes them to state natural resource agencies for review and comment, and compiles comments into a coordinated state response to the applicant. Under this coordinated program the federal agency issues public notice of the project on behalf of all of the agencies. DEQ's notice of request for certification is circulated with the package by the Federal Agency. DEQ's

certification is forwarded to the Division of State Lands. The coordinated response is then released when agency comments are compiled and the project is determined to be compatible with land use requirements. This process has been quite efficient and effective.

Alternatives and Evaluation

There are two basic alternatives available at this time. The easiest would be to continue present procedures with some administrative clarification regarding land use compatibility statements, but without adopting rules.

While this may be satisfactory in most cases, there will likely be times when such informal procedures will lead to problems--particularly if a certification is challenged. This alternative is not recommended.

The recommended alternative is to adopt procedural rules which clearly define the procedure for receiving applications, giving public notice as required by Section 401 of the Clean Water Act, and issuance or denial of certification.

Draft rules have been developed which define the minimum information needed to constitute a complete application. In addition to the applicant's normal project descriptive information, the rules require submittal of a statement from the appropriate local planning jurisdiction that the project is either compatible with the acknowledged local comprehensive plan, or is consistent with statewide planning goals if the local plan is not acknowledged.

The rules also provide that failure to complete an application or supply requested additional information will be grounds for denial of certification.

DEQ's Coordination Agreement with LCDC anticipated that DEQ may in some instances need to proceed to review an application without a land use determination from the local agency. In such case, DEQ's action would be conditional upon the applicant obtaining such a statement prior to initiating work. This process was necessary in the beginning when most jurisdictions were fully involved in plan preparation and unable to promptly respond to requests for compatibility determination. Since most jurisdictions now have acknowledged plans, and the local planning agencies are better able to review and respond to proposals, it is appropriate to make the land use statement a necessary part of a completed application. DEQ does not propose to grant certification without the local land use sign off.

The draft rules further describe public notice procedures and procedures for issuance, denial, revocation and suspension of certification. The federal law allows up to one year to process certifications; if action is not complete within that time, the certification requirement is waived. The Department proposes to act within 90 days. This allows for receiving applications, forwarding notice to the Secretary of State Bulletin 10 days in advance of the nearest publication date (1st or 15th of each month), 30 days notice period for public comment and approximately 30 to 45 days for evaluation of comments and final action by the Department. A process is also provided for extending the period for action beyond 90 days where necessary to allow for hearing, submittal of additional information or other cause.

Draft rules have been written to formalize and continue the present streamlined procedure for coordinated agency response through the Division of State Lands for U.S. Corps of Engineers and U.S. Coast Guard permit applications as an exception to the normal process.

The following is a brief outline of the proposed rules:

48-005 Purpose

48-010 Definitions

48-015 Certification Required--describes situations where certification will be required.

48-020 Application for Certification--describes contents of a complete application, including requirement for land use compatibility statement, and public notice requirements. Describes procedures for requesting a hearing on any application. Describes alternative procedure for applications processed through Division of State Lands Coordination program.

48-025 Issuance of Certificate--describes time limits for processing completed applications, the form of certification, and procedures for appealing the conditions of granted certifications.

48-030 Certification Delivery--describes procedure for forwarding certificates to applicant or Federal permitting agency.

48-035 Denial of Certification--describes procedure for denial of certification, notification of applicant, and appeal.

48-040 Revocation or Suspension of Certification--describes conditions for revocation or suspension of certification and procedures for notification and appeal.

Summation

1. Section 401 of the Federal Clean Water Act requires applicants for Federal permits and licenses to obtain certification from the State that the proposed activity will comply with water quality requirements and standards.

2. The Department has been processing applications for certification since the Clean Water Act was passed, relying on the language of the Federal Statute to guide the process rather than specific rules adopted by the Commission.

3. Recent changes in the number and nature of applications as well as the need to clarify land use compatibility requirements have demonstrated the need for clarification of application processing procedures by adoption of specific procedural rules.

Director's Recommendation

Based on the Summation, 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 as contained in Attachment 1.

Fred Hansen

Attachments: 3
1. Draft Rules
2. Public Notice
3. Statement of Need

Glen D. Carter
229-5358
WL3640
September 4, 1984

ATTACHMENT F

VICTOR ATIYEH
GOVERNOR

Department of Energy

LABOR & INDUSTRIES BUILDING, ROOM 102, SALEM, OREGON 97310 PHONE 378-4040
TOLL FREE 1-800-221-8035

January 3, 1985

Fred Hansen, Director
Department of Environmental Quality
P.O. Box 1760
Portland, OR 97207

RE: Draft Rules, Chapter 340, Division 48

Dear Fred:

This letter is to urge a revision in your proposed rules. Section 340-48-020(2)(h) of that draft provides that a complete application for certification must contain "a statement from the appropriate local planning agency that the project is compatible with the acknowledged local comprehensive plan or that the project is consistent with state-wide planning goals if the local plan is not acknowledged." We support that approach as a way of ensuring local input into the certification process and ultimately into the federal permitting process. This is of particular concern with respect to hydroelectric projects under the jurisdiction of the Federal Energy Regulatory Commission (FERC).

We believe that this approach would also be useful as a means of ensuring other state agency input into the process as well. We would urge the Commission to condition its certification upon receipt of appropriate state agency endorsements, especially for Energy Facility Siting Council approval of hydroelectric projects larger than 25 megawatts. For this reason, we suggest the following additional language for OAR 340-48-020(2).

> "(i) a complete application for certification must contain a certificate or permit from the Energy Facility Siting Council for projects larger than 25 megawatts."

This language will assure that existing state statutory requirements are effectively implemented.

For example, ORS 469.310 provides the following:

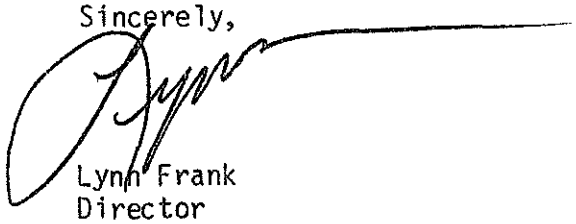
> In the interests of the pubic health and the welfare of the people of this state, it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state. It is, therefore, the purpose of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution and to establish in cooperation with the Federal Government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state. [Formerly 453.315]

Further, ORS 469.520 requires that rules and actions of other state agencies be consistent with this policy. Finally, ORS 469.400(5) requires that approval of permits for energy facilities by state and local agencies must be consistent with site certificate decisions of the Energy Facility Siting Council.

This is an issue of great importance to the state and its citizens. In order for the state to play a meaningful role in the federal decision making process on hydroelectric facilities, the state must have an effective instrument for coordinated review of these facilities. We believe that section 401 certification is such an instrument. It could be strengthened further by explicitly including the Energy Facility Siting Council approval as a prerequisite to issuance of the section 401 certification.

Thank you for your consideration of these comments.

Sincerely,



Lynn Frank
Director

LF:kk
83851

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, January 25, 1985, EQC Meeting

Proposed Redesignation of the Medford-Ashland AQMA as Attainment for Ozone and Proposed Revision of the State Implementation Plan.

BACKGROUND

The federal Clean Air Act requires states to develop and submit plans demonstrating how areas which did not meet ambient air quality standards (nonattainment areas) would meet the standards. The Medford-Ashland Air Quality Maintenance Area (AQMA) was designated nonattainment for ozone in January 1978 based on measured violations of the ambient air quality standard for ozone in 1976 and 1977.

The Environmental Quality Commission adopted an ozone control strategy for the Medford-Ashland AQMA in June 1979. This strategy was approved by the Environmental Protection Agency (EPA) in June 1980.

The Medford-Ashland ozone strategy projected attainment of the ambient ozone standard by the end of 1982 due to more effective pollution controls on new motor vehicles and substantial industrial controls. Ambient ozone levels in the Medford-Ashland area have improved significantly since 1976. The Medford-Ashland area has been in continuous compliance with the ambient ozone standard since 1979. Compliance is also projected for future years, even during healthy economic conditions. It appears appropriate to redesignate the Medford-Ashland area as attainment for ozone.

It is important to recognize, however, that the Medford area continues to have serious problems with carbon monoxide and particulate matter. The proposed action to redesignate the area as attainment for ozone would not change the nonattainment designation for carbon monoxide and particulate matter.

Authority for the Commission to Act

ORS Chapter 468.020 gives the Commission authority to adopt necessary rules and standards; ORS Chapter 468.305 authorizes the Commission to develop a comprehensive plan for air pollution control. Attachment 1 includes the Statements of Need for Rulemaking, Fiscal and Economic Impact, and Land Use Consistency.

At the November 18, 1983 EQC meeting, the Commission authorized a public hearing on the proposed redesignation of the Medford-Ashland AQMA as attainment for ozone. The Department initiated the A-95 intergovernmental review process on October 31, 1984. The public notice was published in the Secretary of State Bulletin on November 1, 1984. The hearing was held in Medford on December 4, 1984.

ALTERNATIVES AND EVALUATION

Ozone is an odorless and potentially toxic gas associated with photochemical smog. It is formed by photochemical reactions in the atmosphere between oxides of nitrogen and volatile organic compounds (VOC) in the presence of direct sunlight and warm temperatures. Reducing VOC emissions is the accepted method of lowering ozone levels.

Ambient Ozone Trend

Ambient ozone levels in the Medford-Ashland area have improved significantly since 1976. Ozone levels have been 18-25 percent below state and federal ambient air quality standards each year from 1979 through 1984.

VOC Emission Trend

VOC emissions in the Medford-Ashland area decreased by about 45 percent from 1977 to 1983. Even with expected increases in industrial production and commercial activity, VOC emissions in 1987 are projected to be about 30 percent lower than in the 1977 base year.

VOC Growth Cushion

The Medford-Ashland ozone strategy adopted in 1979 anticipated that the VOC emissions would be reduced below the level required for attainment of the ozone standard by 1982. Redesignation has not been proposed until now to insure collection of sufficient monitoring data to demonstrate continual attainment past the projected attainment date. In addition, the projected VOC emission reductions were expected to provide a VOC growth cushion of about 1200 tons per year, or about 3000 kilograms per day (kg/day), by 1987. The Department has reevaluated the Medford-Ashland ozone strategy based on ambient ozone trends, VOC emission trends, and the most current EPA modeling guidance. The updated analysis indicates that the available growth cushion is larger than originally anticipated. The revised growth cushion was projected to be about 1900 kg/day in 1984, increasing to 5000 kg/day by 1987.

Redesignation Alternatives

There appear to be at least three alternatives regarding the ozone status of the Medford-Ashland area. These three alternatives are:

1. The Commission could retain the ozone nonattainment status for the Medford-Ashland area and the Department could continue to administer the new source review program using the existing growth cushion;

2. The Commission could redesignate the Medford-Ashland area as attainment for ozone and the Department could continue to administer the new source review program using the updated growth cushion; or

3. The Commission could redesignate Medford-Ashland as attainment for ozone and the Department could administer the new source review program without the growth cushion concept.

The first alternative could be challenged by the public, local government, or industry since five consecutive years of ozone monitoring indicate compliance with the ozone standard in the Medford-Ashland area. Only three years of data are required for redesignation.

Redesignation of the Medford-Ashland area, as outlined in the second and third alternatives, would make it easier and less expensive for industries with significant VOC emissions to locate or expand in the Medford-Ashland area. The significant emission rate criteria for determining whether a new or expanded source would be subject to new source review requirements would be 40 tons of VOC per year, rather than the current 20 tons per year criteria for the Medford-Ashland area. New or expanded industries would be required to provide best available control technology (BACT) rather than the more stringent lowest achievable emission rate (LAER).

The Department recommends the second alternative. Under this alternative, the Department recommends that the Commission revise the State Implementation Plan, replacing the 1979 ozone attainment strategy with a new ozone maintenance strategy for the Medford-Ashland area. The proposed revision is outlined in Attachment 2. This alternative would allow the Department to review new or modified VOC sources and insure that proposed VOC increases would not exceed the available growth cushion.

The third alternative would not identify the available VOC growth cushion in the ozone maintenance strategy. Due to the apparent sensitivity of the Medford-Ashland airshed, the Department recommends that the Commission continue a defined growth cushion in the maintenance strategy for the Medford-Ashland area.

Public Hearing

One person gave verbal testimony at the December 4, 1984 public hearing and four persons provided written testimony following the hearing. The testimony is outlined in the Hearing Report (Attachment 3). All of the testimony was supportive of the proposed action to redesignate the Medford-Ashland area as attainment for ozone and administer the new source review program using the updated growth cushion.

SUMMATION

1. The Medford-Ashland AQMA is currently designated as a nonattainment area for ozone.

2. The Medford-Ashland ozone strategy was adopted by the Commission in June 1979 and approved by EPA in June 1980. This strategy projected attainment of the ozone standard by the end of 1982.

3. Ozone monitoring in the Medford-Ashland area indicates that the area has been in continuous compliance with the ozone standard since 1979.

4. The Department has reevaluated the Medford-Ashland ozone strategy based on ambient ozone trends, VOC emission trends, and updated VOC emission projections. This reevaluation indicates that the Medford-Ashland area is expected to continue in compliance with the ozone standard in future years and that the VOC growth cushion will increase from 1900 kg/day in 1984 to about 5000 kg/day by 1987.

5. The Department has prepared an ozone standard maintenance strategy for the Medford-Ashland area which should insure the maintenance of the ozone standard in future years.

6. It appears appropriate to redesignate the Medford-Ashland AQMA as attainment for ozone.

7. No adverse comments were received at the December 4, 1984 public hearing on the proposed action.

DIRECTOR'S RECOMMENDATION

Based on the Summation, the Director recommends that the Commission:

1. Redesignate the Medford-Ashland AQMA as an attainment area for ozone; and

2. Replace the ozone attainment strategy for the Medford-Ashland AQMA (Section 4.8 of the State Implementation Plan) with an ozone maintenance strategy containing a revised growth cushion as a revision to the State Clean Air Implementation Plan (Attachment 2).

Fred Hansen

Attachments:
1. Public Hearing Notice, Statements of Need for Rulemaking, Fiscal and Economic Impact, and Land Use Consistency.
2. Proposed Medford-Ashland AQMA Maintenance Strategy for Ozone as a Revision to the State Implementation Plan.
3. Hearing Report

AS962
MERLYN HOUGH:a
229-6446
January 2, 1985

Attachment 1
Agenda Item No. G
January 25, 1984
EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Redesignation of the Medford-Ashland Area as Attainment for Ozone and Revision of the State Clean Air Act Implementation Plan

Date Prepared: October 19, 1984
Hearing Date: December 4, 1984
Comments Due: December 10, 1984

WHO IS AFFECTED: Residents, industries, and local governments of the Medford-Ashland area.

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 revising the ozone control strategy for the Medford-Ashland Air Quality Maintenance Area, and redesignating the area as attainment for ozone.

WHAT ARE THE HIGHLIGHTS: Major elements of the rule change include:

- o Redesignating the Medford-Ashland area as being in compliance with the State and Federal ambient air standards for ozone.
- o Revising the ozone strategy from an "attainment strategy" to a "maintenance strategy".
- o Recognizing a 5000 kilogram per day growth cushion for Volatile Organic Compounds by 1987.

The Medford-Ashland Air Quality Maintenance Area is currently designated as a nonattainment area for ozone based on violations of the ambient air ozone standard in 1976, 1977, and 1978. The area has been in continuous compliance with the ozone standard since 1979 and is expected to remain in compliance in future years. However, the Medford area continues to violate ambient air standards for carbon monoxide and particulate matter.

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 Hough at 229-6446 (call toll-free, 1-800-452-4011).

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

(TIME) 7:00 P.M.
(DATE) December 4, 1984
(PLACE) Jackson County Courthouse Auditorium
10 S. Oakdale, Medford, Oregon

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

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 December 10, 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 adopted rules will be submitted to the U. S. Environmental Protection Agency as part of the State Clean Air Act Implementation Plan. The Commission's deliberation should come in January 1985 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.

AA3978

RULEMAKING STATEMENTS

for

Proposed Redesignation of the Medford-Ashland Area as Attainment for Ozone and Revision of the State Clean Air Implementation Plan

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 Chapter 468, including Section 305 which authorizes the Environmental Quality Commission to adopt a general comprehensive plan for air pollution control.

Need for the Rule

The Medford-Ashland Air Quality Maintenance Area is currently designated as a nonattainment area for ozone based on violations of the ambient air ozone standard in 1976, 1977, and 1978. The area has been in continuous compliance with the ozone standard since 1979 and is expected to remain in compliance in future years.

Principal Documents Relied Upon

Clean Air Act as Amended (PL 95-95) August 1977.
EPA Control Technology Guidelines.
DEQ Updated Emission Inventories.
DEQ Ambient Monitoring Data for Ozone and Precursors.
EPA Users Manual for Kinetic Model and Ozone Isopleth Plotting Package.
EPA Guideline for Use of City-Specific EKMA in Preparing Ozone SIPs.

FISCAL AND ECONOMIC IMPACT STATEMENT:

The proposed rule change would affect industries locating or expanding in the Medford-Ashland area. The proposed redesignation as an ozone attainment area and recognition of an increased growth cushion for volatile organic compounds (VOC) would make it easier and less expensive for industries and small businesses with significant VOC emissions to locate or expand in the Medford-Ashland area.

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.

AA3979

Attachment 2
Agenda Item No. G
January 25, 1985
EQC Meeting

Section 4.8

MEDFORD-ASHLAND AIR QUALITY MAINTENANCE AREA
PLAN FOR MAINTENANCE OF OZONE STANDARD

January 1985

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Table of Contents

Appendices

4.8.0 MEDFORD-ASHLAND AIR QUALITY MAINTENANCE AREA PLAN FOR OZONE

4.8.0.1 Introduction

The Medford-Ashland Air Quality Maintenance Area (AQMA) was designated as a nonattainment area for ozone in January 1978 based on measured exceedances of the ozone standard in 1976 and 1977. The Environmental Quality Commission adopted an ozone control strategy for the Medford-Ashland AQMA in June 1979. This strategy was approved by the Environmental Protection Agency (EPA) in June 1980.

The 1979 Medford-Ashland ozone strategy projected attainment of the ambient ozone standard by the end of 1982. Ambient ozone levels in the Medford-Ashland area have improved significantly since 1976. The Medford-Ashland area has been in continuous compliance with the ambient ozone standard since 1979.

The Medford-Ashland ozone strategy has been revised from an attainment strategy to a maintenance strategy. The maintenance strategy is designed to ensure that compliance with the ozone standard is maintained in the Medford-Ashland area in future years.

4.8.0.2 Summary

Ozone is an odorless and toxic gas associated with photochemical smog. It is formed by photochemical reactions in the atmosphere

between oxides of nitrogen and volatile organic compounds (VOC) in the presence of direct sunlight and warm temperatures. Reducing VOC emissions is the accepted method of lowering ozone levels.

VOC emissions from stationary and mobile sources in the Medford-Ashland area have decreased substantially since the 1977 base year. These VOC emission decreases have been primarily due to the following measures:

1. Highway motor vehicle VOC emissions have decreased each year due to requirements for progressively more effective pollution control equipment on new motor vehicles (federal motor vehicle emission control program).

2. Stationary source VOC emissions decreased substantially from 1977 to 1983 due to new VOC control requirements for several industrial and commercial source categories.

Future VOC emission increases will be controlled as a result of the source review (NSR) and plant site emission limit (PSEL) rules. The Medford-Ashland ozone strategy provides a 2000 ton per year (about 5000 kilograms per day) VOC growth cushion by 1987. This VOC growth cushion can be used to accomodate future VOC emission increases.

4.8.1 AMBIENT AIR QUALITY

4.8.1.1 Identification of Study Area

The Medford-Ashland AQMA is located within the Bear Creek Valley of Jackson County, Oregon. It covers about 228 square miles and includes the cities of Ashland, Central Point, Eagle Point, Jacksonville, Medford, Phoenix, and Talent as shown in Figure 4.8-1. The principal industries are logging, wood products manufacturing, agriculture, and tourism.

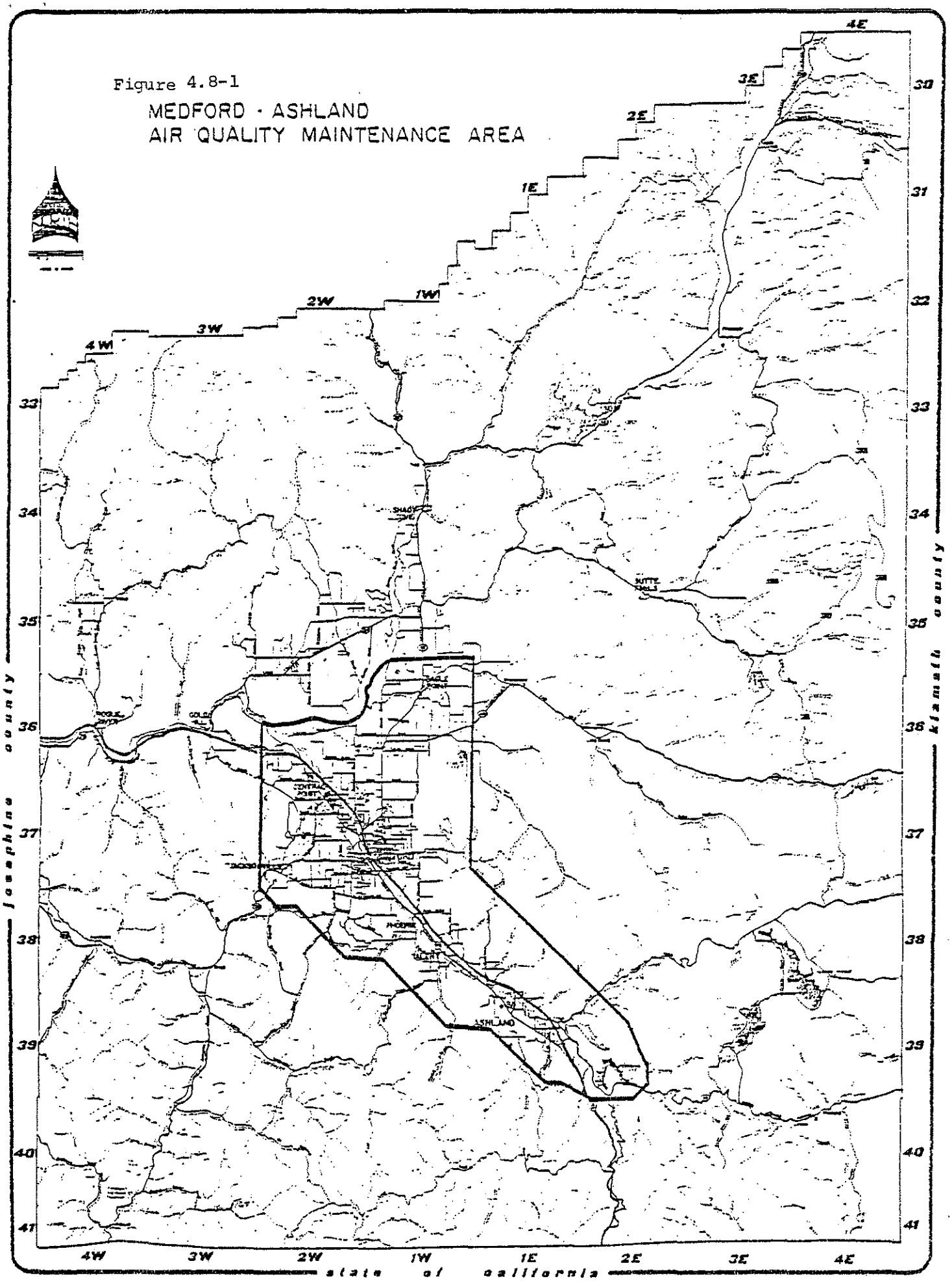
The AQMA is located at an elevation of about 1200 feet in a mountainous valley formed by the Rogue River and its tributary, Bear Creek. The surrounding mountain elevations range from 3000 to 9500 feet.

The climate of the Bear Creek Valley is moderate with marked seasonal changes. The annual average rainfall totals about 20 inches. Winds are normally very light, prevailing from the south during the winter months and from the north during the remainder of the year.

The topography of the area restricts natural ventilation of the valley. Holzworth (1971) identified the southwest interior of Oregon as one of the two areas most prone to air pollution episodes in his study of the meteorological potential for air pollution

Figure 4.8-1

MEDFORD - ASHLAND
AIR QUALITY MAINTENANCE AREA



within the continental United States. The National Weather Service issues Air Stagnation Advisories (ASAs) on about 20 days each year in the Medford-Ashland AQMA.

4.8.1.2 Ambient Monitoring Data

The background ozone site for the Medford-Ashland AQMA is located north of the AQMA on Dodge Road. The primary ozone monitor is located in Phoenix about 8 kilometers south of the central business district and about 18 kilometers south of the White City industrial area. Prior to 1982, the primary ozone monitor was located at the Bear Creek site, about 5 kilometers south of Medford.

Ambient ozone levels in the Medford-Ashland area are summarized in Table 4.8-1. The Medford-Ashland area has been in continuous compliance with the 235 microgram per cubic meter (ug/m^3) ozone standard since 1979.

Table 4.8-1 Summary of Ambient Ozone Levels in the Medford-Ashland AQMA From 1976 to 1982.

Year	Ozone Levels (ug/m^3 hourly average)[a] Maximum	Second Highest	Number of Days Over 235 ug/m^3
1976	357	294	9
1977	270	255	3
1978	247	239	2
1979	186	184	0
1980	225	186	0
1981	223	184	0
1982	196	176	0
1983	195	191	0
1984	199	192	0

a Pre-1979 ozone levels were measured with a different calibration method. The pre-1979 levels should be reduced by 20-25% for comparison with 1979 and later values.

4.8.2 EMISSION INVENTORY

Annual VOC emission inventories are summarized in Table 4.8-2 and outlined in more detail in the Appendix. The highway emissions are based on EPA Mobile 2 emission factors and the point source emissions are based on specific industrial production/emission information for each year.

Table 4.8-2. Medford-Ashland AQMA Volatile Organic Compound Emission Inventories.

	Volatile Organic Compounds Emissions (Tons Per Year)					
Source Category	1977	1980	1981	1982	1983	1987 [a]
Stationary Sources	7359	6558	7375	5734	4941	7338
Mobile Sources	6004	4136	3505	2445	2449	2036
Total	13363	10694	10880	8179	7390	9374

a Projected.

Highway motor vehicle VOC emissions have decreased substantially since 1977 due to the federal motor vehicle emission control program. In addition, traffic volumes decreased in the Medford area from 1977 to 1983 by 9 percent.

Stationary source VOC emissions were initially projected in 1979 to decrease by 9 percent over the 1977-1982 period, based on new control requirements; the actual decrease was 21 percent. The additional emission increase is due to reduced commercial and industrial activity as a result of the economic recession.

Highway motor vehicle emissions are projected to decrease in future years as a result of the federal motor vehicle emission control program.

Stationary source emissions from existing sources are expected to increase as production returns to more normal levels. Increases in stationary source emissions are controlled by the Plant Site Emission Limits.

The VOC emission trend in the Medford-Ashland area is outlined in Figure 4.8-2. The emission points in Figure 4.8-2 represent the annual total VOC emissions from Table 4.8-2.

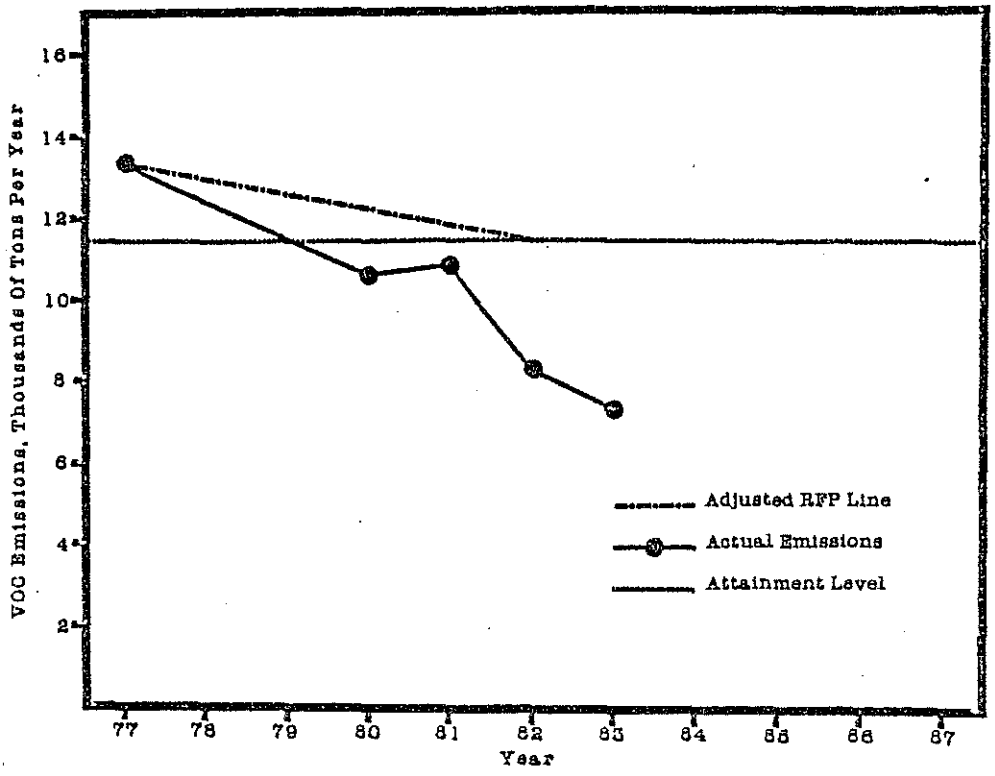


Figure 4.8-2. VOC Emission Trend in the Medford-Ashland AQMA.

The projected 1987 VOC emission inventory is consistent with the growth projections of the Jackson County Comprehensive Plan, the Medford Area Transportation Study, and the 208 Water Quality Planning Program.

4.8.3 CONTROL STRATEGY

4.8.3.1 VOC Control Measures

The primary control measure for the reduction of transportation VOC emissions in the Medford-Ashland area has been the federal motor vehicle emission control program.

Industrial and commercial VOC emissions have been reduced as a result of VOC rules adopted by the Environmental Quality Commission in December 1978 with subsequent revisions. These VOC rules affect gasoline marketing up to the service station underground tanks, prohibit the use of cutback asphalt; control paper coating operations, small degreasers and cold cleaners; and affect roof coating contractors. The level of control required is consistent with the Reasonably Available Control Technology as defined by EPA in its Control Technology Guideline documents. The industrial and commercial VOC rules are summarized in Table 4.8-3.

Table 4.8-3. Summary of Industrial and Commercial VOC Control Rules.

Rule (OAR)	Source Category	Compliance Date
340-22-180	Degreasers	04/01/80
340-22-110	Service Station Loading (Stage I)	04/01/81
340-22-120	Gasoline Delivery Trucks	04/01/81
340-22-130	Bulk Gasoline Terminals	07/31/81
340-22-120	Gasoline Bulk Plants	07/31/81
340-22-220	Dry Cleaners (Perchloroethylene)	01/01/82
340-22-170	Paper and Can Coating	12/31/82
340-22-170	Metal Coating	12/31/82
340-22-140	Cutback Asphalt	04/01/79
340-22-160	Liquid Storage, Second Seals	12/31/81
340-22-210	Printing, Flexographic	07/01/82
340-22-200	Flatwood Coating	12/31/82

4.8.3.2 New Source Review

The new source review rules are outlined in Oregon Administrative Rules (OAR) 340-20-220 to 275. The new source review rules require major new or modified VOC point sources locating in an attainment area to:

1. Provide best available control technology;
2. Demonstrate that the source would not cause violations of any PSD air quality increments or any state or federal ambient air quality standards; and
3. Demonstrate that the source would not impact a designated nonattainment area greater than the significant air quality impact levels.

New or modified VOC sources which would emit 40 tons or more of VOC per year are considered major sources and are subject to the new source review rules.

4.8.3.3 Plant Site Emission Limits

Plant site emission limits rules are outlined in OAR 340-20-300 to 320. These rules establish a baseline allowable emission rate for existing VOC point sources. These rules do not allow significant growth of stationary source emissions unless a growth margin is available or an offset can be obtained.

4.8.3.4 Growth Cushion

The Medford-Ashland ozone control strategy has reduced VOC emissions below the level required for attainment for the ozone standard. The EPA ozone isopleth plotting package (OZIPP) and city-specific version of the empirical kinetic modeling approach (EKMA) were used to estimate the available growth cushion for the Medford-Ashland area. The OZIPP and EKMA analysis and the 1987 VOC projections indicate that VOC emissions in 1987 will be 2000 tons per year (about 5000 kilograms per day) lower than the VOC emission levels required to just meet the ozone standard. The VOC growth cushion calculation procedure is outlined in the Appendix. The projected growth cushion by year is outlined in Table 4.8-4.

Table 4.8-4. Projected VOC Growth Cushion for the Medford-Ashland AQMA.

Year	Projected VOC Growth Increment Tons/Year	Kilograms/Day
1983	320	800
1984	760	1,900
1985	1,160	2,900
1986	1,600	4,000
1987	2,000	5,000

4.8.4 RULES AND REGULATIONS

The Oregon Revised Statutes (ORS) Chapter 468 authorizes the Oregon Environmental Quality Commission to adopt programs necessary to meet and maintain state and federal ambient air quality standard. The mechanisms for implementing these programs are the Oregon Administrative Rules (OAR). Pertinent rules were discussed previously and are summarized in Table 4.8-5.

Table 4.8-5. Summary of Rules Pertinent to the Medford-Ashland Ozone Control Strategy.

Rule (OAR)	Subject
340-20-220 to 275	New Source Review
340-20-300 to 320	Plant Site Emission Limits
340-22-100 to 220	General VOC Emission Standards

4.8.5 PROGRESS MONITORING

The Medford-Ashland area is expected to remain in compliance with the ambient ozone standard in future years. DEQ will review ambient ozone data on a quarterly basis and VOC emission inventories on an annual basis to ensure that compliance with the ambient ozone standard is maintained.

4.8.6 PUBLIC NOTICE AND HEARING

A public hearing on the Medford-Ashland ozone maintenance strategy was held in Medford on December 4, 1984. The public hearing notice was issued 30 days prior to the hearing.

The public hearing notice was distributed for local and state agency review by the A-95 State Clearinghouse 60 days prior to the adoption of the Medford-Ashland ozone maintenance strategy.

AA3975

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 3
Agenda Item No. G
January 25, 1984
EQC Meeting

MEMORANDUM

To: Environmental Quality Commission

From: Merlyn L. Hough

Subject: Report on a Public Hearing Held December 4, 1984 in Medford Regarding the Proposed Redesignation of the Medford-Ashland AQMA as Attainment for Ozone and Revision of the State Implementation Plan

Summary of Procedure

Pursuant to public notice, a public hearing was convened at the Jackson Auditorium located at 10 South Oakdale Avenue in Medford at 7:00 p.m. on December 4, 1984. The purpose of the hearing was to receive testimony regarding the proposed revisions to the Oregon Clean Air Act State Implementation Plan (OAR 340-20-047) which would redesignate the Medford-Ashland area as an attainment area for ozone and replace the current ozone attainment strategy with an ozone maintenance strategy.

Approximately 10 persons attended the hearing. One person submitted oral testimony. The Department received written testimony from 4 persons following the hearing.

Summary of Testimony

Elzy Kees, Jr., 2617 Howard Avenue, Medford, testified on the general issue of Medford air quality. He commented that the Medford air pollution problems were worse in the past and that significant progress has been made. He expressed concern that some of the air pollution in the Medford area was not caused locally, but was coming from areas outside of the valley.

Genevieve Pisarski Sage, Southern Region Director, Oregon Lung Association, submitted written testimony dated December 7, 1984. She indicated that the Oregon Lung Association is in favor of the proposed redesignation and rule changes as proposed in the Department's rulemaking statement. She suggested that the reasons for the success for the ozone control strategy

could provide useful insights into resolving the continuing problems with carbon monoxide and particulate matter in the Medford area. A copy of her testimony is attached.

Kirk M. Mills, Sr. Environmental Engineer, 3M, submitted written comments dated December 7, 1984. He indicated that 3M supports the Department's recommendation to redesignate the Medford-Ashland area as attainment for ozone. He commented that an ozone management plan including a growth cushion is a prudent measure to insure future ozone compliance in the Medford-Ashland Air Quality Maintenance Area (AQMA). He recommended that the growth cushion be recalculated in the future as new data and procedures become available in order to avoid unnecessarily restricting future development in the Medford-Ashland AQMA. A copy of his written testimony is attached.

Robert E. Royer, Planning Engineer, Oregon Department of Transportation, submitted written testimony dated December 17, 1984. He indicated that the Oregon Department of Transportation agrees with the proposed action to amend the State Implementation Plan and redesignate the Medford-Ashland AQMA as attainment for ozone. A copy of his letter is attached.

Dolores Streeter, Clearinghouse Coordinator, Oregon Intergovernment Relations Division, submitted the conclusions of the Oregon Intergovernmental project review dated December 11, 1984. She indicated that no significant conflict with the plans, policies or programs of state or local government had been identified with the Department's proposed action. A copy of her notification is attached.

Recommendations

The hearing officer makes no recommendations.

Respectfully submitted,

Merlyn L. Hough

Merlyn L. Hough
Hearing Officer

Attachments: 1. Medford Mail Tribune Article dated December 5, 1984.
2. Copies of Written Testimony.

AS936

Medford Mail Tribune
Wednesday, Dec. 5, 1984

DEQ ozone plan quickly reviewed

By BILL MANNY
Mail Tribune Staff Writer

A proposal that would give Medford's air quality the seal of approval for ozone pollution and ease pollution control demands on new industry was received without a hitch Tuesday.

Testimony was brief in a public hearing on the Department of Environmental Quality's proposal to designate the Medford-Ashland area in compliance with standards for ozone.

One citizen testified at the hearing, which lasted less than 30 minutes and included a question-and-answer session on air pollution.

DEQ hearings officer Merlyn L. Hough conceded the hearing was not expected to be controversial or generate much interest. The hearing is part of the formal process for redesignating the Medford area an "attainment area" for ozone pollution.

The area was designated "non-attainment" in 1978 after violations in 1976 and 1977, but ozone pollution levels have met state and federal standards since 1979.

The Medford area remains a non-attainment area for both particulate and carbon monoxide pollution, Hough said. Those are primarily winter pollution problems because the worst climatic conditions — such as air inversions — occur at the worst period for automobile and wood stove pollution.

"Ozone is the one bright spot in the pollution picture for the Medford area," Hough said.

Elzy Kees Jr., of Medford, testified on the broad issue of southern Oregon air quality. He suggested that the Medford area's problems may not all be caused locally.

He said at least part of southern Oregon's air quality problems might be attributed to Japanese industrial pollution spread across the Pacific Ocean by the jet stream or by pollution blown south from the Willamette Valley.

Kees cited studies that he said show air quality problems on Alaska's North Slope are caused in part by pollution blown 6,000 miles from industrial Russia.

Kees also noted that aerosol cans with fluorocarbon propellants were banned in the 1970s, because fluorocarbons contribute to destruction of the earth's protective ozone layer.

He suggested that aerosol cans be brought back in an effort to bring ozone levels down.

"I don't know," he said. "Makes sense to me."

Hough said that the natural ozone layer several miles above the earth is needed to screen the earth from harmful rays from the sun. But he said ozone becomes a pollution problem when it forms close to the earth in the "breathing level," where it can irritate humans and damage plant life.

Ozone is formed by a chemical reaction in the atmosphere between nitric oxide and gaseous hydrocarbons. The pollutants are found in automobile exhaust and some industrial emissions.

Warmth and sunshine are needed for the reaction to occur, so ozone is mostly a summertime pollution problem.

Hough said levels have dropped to the point that ozone pollution could grow an additional 20 percent and still not violate standards.

Those levels have dropped because of pollution controls by industry and in automobiles, Hough said. The continued improvement of automobile pollution controls should keep ozone levels declining, Hough said.

The redesignation also should make it easier and less expensive for industries that emit the pollutants in ozone — volatile organic compounds or VOC — to expand or locate in the Medford area.

The criteria for determining whether new or expanded industry would be subject to review as a new pollution source will become 40 tons of VOC per year rather than the current 20 tons.

The Environmental Quality Commission must consider the ozone redesignation at a hearing in January.

The Environmental Protection Agency also must approve the redesignation before it takes effect.

Written testimony on the proposal will be accepted until week's end by the DEQ, Box 1760, Portland 97207.

Oregon Lung Association, Southern Region
243 South Holly Street
Medford, Oregon 97501
(503) 772-4466

December 7, 1984

Comments by the Oregon Lung Association, Southern Region, Regarding Proposed Redesignation of the Medford-Ashland AQMA as Attainment for Ozone. Prepared by Genevieve Pisarski Sage, Regional Director.

The Lung Association is in favor of the proposed redesignation and rule changes as proposed in the DEQ's Rulemaking Statement.

The emissions monitoring and growth projection data presented make a fairly straightforward case in favor of the proposed redesignation. Along with such data, which is the objective measurement of a favorable situation, however, we might look also at the manner in which the control strategy succeeded and the proposed maintenance strategy will be implemented. This might be useful at this time in light of the fact that we continue to be in nonattainment for TSP and CO.

The Ozone Control Strategy's success resulted from reasonable and appropriate regulations, goodwill and cooperation among the state and local governments and industries involved, and also a little luck in how population growth and economic growth developed. It's success did not rely upon the behavior of individual citizens.

Both TSP and CO attainment will rely very heavily upon individual citizens. The American Lung Association encourages both legislative action and public education by its members, as the two approaches necessary to achieving acceptable air quality. Individual citizens need to understand how the regulatory process can work and be successful in order to assure better compliance by them, both compliance with regulations, where the most benefit will be realized, and also for any additional benefit that might be realized from voluntary action.

It is very important at this time to make very clear that the Ozone attainment redesignation is not some arbitrary sleight-of-hand, but the planned result of federal government regulation of motor vehicle emissions, state and local government action, and local industry compliance with controls. Furthermore, both now and when the maintenance strategy is in effect, DEQ should make it a point to publicize the ongoing plant site emissions limit and monitoring efforts, new source reviews, and the maintaining of a growth cushion, perhaps a rather conservative one, because of the nature of this airshed.

The successful completion of the Ozone Attainment Strategy is an opportunity for DEQ to reaffirm its role as the credible monitoring, regulatory and enforcement agency.

Environmental Engineering and Pollution Control/3M

PO Box 33331
St. Paul, Minnesota 55133
612/778 4791

December 7, 1984

Subject: 3M Comments on Proposed Redesignation of Medford-Ashland AQMA as Attainment for Ozone

Certified Mail

Mr. Merlyn Hough
Air Quality Division
Oregon Dept. of Environmental Quality
P. O. Box 1760
Portland, Oregon 97207

Dear Mr. Hough:

Attached are 3M's comments on the proposed redesignation of the Medford-Ashland Air Quality Maintenance Area (AQMA) as attainment for ozone (O_3). Thank you for the opportunity to comment on this subject and for your consideration of these comments.

3M's comments support the DEQ's recommendation to redesignate the Medford-Ashland AQMA as attainment for ozone and the key points are summarized below:

1. The Medford-Ashland AQMA has been in compliance with the current state and federal ozone standard since 1977. Since the USEPA defines an attainment area as having averaged less than one violation of the air quality standard per year over the last three years, by definition, the Medford-Ashland AQMA has been an attainment area since the end of 1979. Therefore, the AQMA should be officially redesignated as attainment.

2. An ozone management plan including a growth cushion is a prudent measure to ensure future ozone compliance in the AQMA.

3. Due to the imprecise state of the art in ozone level prediction on which the current growth cushion is based, the growth cushion should be recalculated in the future as new data and procedures become available. Otherwise future development in the Medford-Ashland AQMA may be unnecessarily restricted.

Once again, thank you for the opportunity to comment on this subject. If you have any questions on these comments, please contact Kirk Mills at (612)778-4397 or Jeff Muffat at (612)778-4450.

Sincerely,

Kirk M. Mills
Sr. Environmental Engineer

KMM/mb

Attachment

3M Company Comments on Proposed Redesignation of Medford-Ashland AQMA as Attainment for Ozone

December 7, 1984

Prepared by: Kirk Mills, Environmental Engineering Services
Jeff Muffat, Environmental Regulatory Affairs

INTRODUCTION

The enclosed comments are submitted on behalf of the 3M Office Systems Division manufacturing plant at White City, Oregon. These comments are offered in response to proposals by the Oregon Department of Environmental Quality (DEQ) for redesignation of the Medford-Ashland AQMA as attainment for ozone, and for revision of the State Implementation Plan.

The 3M Office Systems Division manufacturing plant at White City is owned and operated by 3M, an integrated, multi-divisional manufacturing company headquartered at St. Paul, Minnesota. The plant produces several lines of sophisticated, high quality coated papers and films that are used throughout the world by government, industry, and medical institutions. These unique products are shipped directly from the 3M plant in White City to users throughout the United States and in more than 60 other countries around the world. The plant provides employment for 350 residents of Jackson and Josephine Counties and has an annual payroll of more than $10 million.

This plant is a stationary source of volatile organic compound (VOC) emissions because volatile organic compounds are a necessary component in the coating formulations. As long ago as 1969, the first of several VOC emission control strategies was initiated at the plant. One of the latest VOC control improvements was the installation of a multi-million dollar thermal oxidizer which, along with other process modifications, provides a significant reduction in VOC emissions to the atmosphere.

Because of its continuing interest in the control of VOC (one of the precursors to the formation of ozone), the 3M plant also has an interest in the DEQ proposal to redesignate the Medford-Ashland airshed to attainment status for ozone.

For reasons stated below, the 3M plant strongly supports the DEQ recommendation to the Oregon Environmental Quality Commission (EQC) that the Medford-Ashland AQMA be redesignated, and that the DEQ continue to administer the new source review program (NSR) using the updated growth cushion. However, 3M believes that because of the imprecise state of the art in predicting ozone levels and the lack of good emission, precursor, and meterological data for the AQMA, the updated growth cushion may be more restrictive than is necessary to ensure continued ozone attainment in the Medford-Ashland AQMA. Therefore, as new ozone data and prediction methods become available, 3M believes the growth cushion should be reviewed to ensure that it is not unnecessarily restrictive to growth in the AQMA.

AIR QUALITY DATA AND REGULATORY IMPLEMENTATION

In late 1976 DEQ began monitoring the ozone levels in the Medford-Ashland AQMA to determine if they met the National Ambient Air Quality Standard (NAAQS). At that time both the state and the federal standards were 0.08 ppm. Some of the levels measured in the AQMA during 1976 exceeded the standard.

In 1977 Congress adopted the 1977 Clean Air Act Amendments which required states to: 1) designate nonattainment areas (those areas of the state that did not meet a NAAQS), 2) adopt Reasonably Available Control Technology (RACT) regulations to reduce emissions from existing sources in nonattainment areas, and 3) submit State Implementation Plans (SIP's) to U.S.EPA to demonstrate how the state was going to bring those nonattainment areas into attainment.

After designating the Medford-Ashland AQMA as nonattainment, DEQ continued to monitor ozone in the AQMA and found violations of the 0.08 state and federal standards in 1977 and 1978. The DEQ then adopted initial RACT VOC rules in December, 1978. In February, 1979, EPA adopted a new federal NAAQS for ozone of 0.12 ppm. The EQC initially elected to retain the more stringent 0.08 ppm state ozone standard. However, in January, 1982, the EQC voted in favor of adopting the 0.12 ppm federal standard as the state standard.

Table I compares the ozone data for the Medford-Ashland AQMA with the current state and federal Ambient Air Quality Standard and clearly demonstrates the 0.12 ppm ozone standard has not been exceeded since 1978.

TABLE I

MONITORED EXCEEDANCES OF 0.12 PPM OZONE STANDARD

	1976	1977	1978	1979	1980	1981	1982	1983
Number of Days	9	3	2	0	0	0	0	0
Highest Reading	0.18	0.14	0.13	0.09	0.11	0.11	0.11	N/A
Second Highest Reading	0.16	0.13	0.12	0.09	0.09	0.11	0.09	N/A

It is important to recognize, however, the U.S.EPA changed the calibration method for ozone in 1979 due to deficiencies in the old method. It is generally accepted that the true ozone levels of pre-1979 data are a minimum of 15% to a maximum of 25% less than the monitored values. Thus, if a minimum correction factor of 15% is applied to the pre-1979 data the resultant reduction in ozone levels in the Medford-Ashland AQMA is significant (see Table II). With the pre-1979 data corrected only two days in 1976 and none after 1976 exceed the 0.12 ppm standard. Table II shows the Medford-Ashland AQMA may never have had a serious problem meeting a 0.12 ppm ozone standard.

TABLE II

MONITORED EXCEEDANCES OF THE 0.12 PPM OZONE STANDARD
WHEN PRE-1979 VALUES ARE REDUCED BY 15%

	1976	1977	1978	1979	1980	1981	1982	1983
Number of Days	2	0	0	0	0	0	0	0
Highest Reading	0.15	0.12	0.11	0.09	0.11	0.11	0.11	N/A
Second Highest Reading	0.14	0.11	0.10	0.09	0.09	0.11	0.09	N/A

VOC REDUCTION TIMETABLE

As a result of the nonattainment classification for the Medford/Ashland AQMA, the DEQ was required to adopt and implement RACT Rules. Later, on November 18, 1983, Mr. Michael Downs (Acting Director of DEQ) sent a memorandum to the EQC outlining the anticipated VOC reductions which were projected to occur and those actually achieved. The purpose of this memo was to submit information to the EQC relative to DEQ's proposal to redesignate the Medford/Ashland AQMA to an ozone attainment area because the area "has been in continuous compliance with the ambient ozone standard since 1979."

Table 4.8-3 of that same attachment (reprinted below) showed VOC compliance dates for "new control requirements." Based on the DEQ's September 30, 1983, RFP (Reasonable Further Progress) Report submitted to the U.S.EPA, there were no reductions in VOC emissions in the Medford/Ashland AQMA attributable to Cutback Asphalt, and the total amount attributed to Degreasers was insignificant (28 tons in 1980). Therefore, none of the stationary source VOC control regulations had any impact on VOC emissions until after January, 1981, at the earliest.

REPRINT OF TABLE 4.8-3

SUMMARY OF INDUSTRIAL AND COMMERCIAL VOC CONTROL RULES

Rule (OAR)	Source Category	Compliance Date
340-22-180	Degreasers	04/01/80
340-22-110	Service Station Loading (Stage I)	04/01/81
340-22-120	Gasoline Delivery Trucks	04/01/81
340-22-130	Bulk Gasoline Terminals	07/31/81
340-22-120	Gasoline Bulk Plants	07/31/81
340-22-220	Dry Cleaners (Perchloroethylene)	01/01/82
340-22-170	Paper and Can Coating	12/31/82
340-22-170	Metal Coating	12/31/82
340-22-140	Cutback Ashphalt	04/01/79
340-22-160	Liquid Storage, Second Seals	12/31/81
340-22-210	Printing, Flexographic	07/01/82
340-22-200	Flatwood Coating	12/31/82

When the air quality data presented earlier in this 3M report is taken into consideration, it is evident the AQMA was already in attainment with the 0.12 ppm standard before any industrial RACT VOC control measures were implemented. It is important to note that compliance was maintained during some of the highest levels of VOC emissions in the air shed (see 1978 and 1979 from Table III). By January, 1982, when the state adopted the federal ozone standard, there were three consecutive years with absolutely no violations. The AQMA was already in attainment with the new state standard at the time the standard was adopted, and even before any industrial VOC control requirements were implemented.

TABLE III

MEDFORD/ASHLAND AQMA VOC EMISSIONS IN TONS

	1976	1977	1978	1979	1980	1981	1982	1983
Stationary Sources	5600[1]	7359[2]	7777[1]	8315[1]	6551[2]	7375[2]	5734[2]	4941[1]
Mobile Sources	6630[1]	6004[2]	5380[1]	4760[1]	4136[2]	3505[2]	2445[2]	2449[2]
Total	12230[1]	13363[2]	13157[2]	13075[2]	10694[2]	10880[2]	8179[2]	7390[2]

[1] Estimated by 3M.
[2] Published by DEQ.

REVIEW OF MEDFORD-ASHLAND AQMA GROWTH CUSHION RECALCULATION

In 1982, DEQ staff in conjunction with U.S.EPA staff recalculated an ozone growth cushion for the Medford AQMA using the City Specific Empirical Kinetic Modeling Approach (EKMA) and Ozone Isopleth Plotting Package (OZIPP). While the atmospheric chemistry that produces photochemical smog and ozone is not well understood, this procedure is the currently accepted method for predicting ozone levels. This procedure models days with a set of good precursor (pollutants carried into the AQMA) data, which, when combined with appropriate meteorological and emission inputs, will result in the model simulating the photochemical reaction process. The test of the accuracy of this method is the precision of the fit between the model predicted ozone and the ozone actually measured on the model day. However, the U.S.EPA has admitted that "accuracy in simulating the base case days was important and that any days which could not be simulated within plus or minus 30% should not be used to calculate control requirements." In effect, air quality and economic growth is being controlled with a procedure that is considered acceptable if it is within plus or minus 30%.

Added to this inherent imprecision is the lack of good emission, precursor, and meteorological data for the Medford-Ashland AQMA. Due to these data limitations, DEQ staff could not match all the input data for many of the days used to calculate the growth cushion. So many assumptions and much mixing of data were necessary to obtain the data base for the computer program.

With the imprecision and data limitations of the EKMA/OZZIP procedure, DEQ staff must perform a worst case, ultra-conservative analysis and thus arrive at a growth cushion much smaller than is actually necessary for the AQMA to comply with the ozone standard. Using this procedure, the daily emission limit was calculated to be 28.3 metric tons per day.

DEQ staff estimated daily emissions to be in excess of 30 metric tons per day in 1977-1979. As previously mentioned, in these years the AQMA was likely complying with the current ozone standard. Figure 1 (DEQ Division of Air Quality Recalculation of the Medford Growth Increment For Volatile Organic Compounds - 10/82) shows this discrepancy between VOC emissions and ozone levels. Figure 1 also shows a large unexplained reduction in ozone between 1976 and 1977 even though there was only a small reduction in emissions. Similarly between 1979 and 1980 there was a large drop in emissions and inexplicably no change in ozone levels.

From 3M's review it appears the growth cushion, due to the imprecision of the procedure and the conservative analysis, is likely much smaller than necessary to ensure compliance with the ozone standard. Therefore, the growth cushion should be recalculated by the DEQ as new data becomes available and new computer models and analysis procedures are developed.

REDESIGNATION ALTERNATIVES

DEQ lists three alternatives regarding the proposed redesignation of the Medford-Ashland AQMA in their November 18, 1983, staff report to the EQC. Those alternatives along with the pros and cons of adopting each alternative are as follows:

Alternative #1: The DEQ could retain the ozone nonattainment status for the Medford-Ashland AQMA and the DEQ could continue to administer the new source review program using the existing growth cushion.

Pros: There does not appear to be any positive aspects of continuing to maintain the ozone nonattainment designation for the Medford-Ashland airshed when the official monitoring data clearly demonstrates the area is in compliance with the 0.12 ppm standard.

Cons: This alternative, by retaining the ozone nonattainment status for the Medford-Ashland AQMA, would require DEQ to maintain unnecessary and possibly costly restrictions on the location or expansion of VOC sources in the AQMA. In a nonattainment area new source review (NSR) is required for a new or modified source with a significant emission increase of more than 20 tons of VOC per year versus 40 tons per year in an attainment area. In a nonattainment area the most stringent pollution control is required to achieve Lowest Achievable Emission Rate (LAER). However, in an attainment area slightly less stringent and more cost effective, pollution control, Best Available Control Technology (BACT), is required.

Public policy, as expressed in the Clean Air Act, calls for attainment of the primary air quality standards as expeditiously as practicable. DEQ air monitoring data demonstrates that the Medford-Ashland AQMA has attained the state and federal air quality standard for ozone. Therefore, the State of Oregon has a public and legal obligation to redesignate the Medford-Ashland AQMA as an attainment area for ozone. Failure to act could result in reduced economic opportunity, legal challenges, and citizen suits against the state.

Alternative #2: The EQC could redesignate the Medford-Ashland AQMA as attainment for ozone and the DEQ could continue to administer the new source review program using the updated growth cushion.

Pros: This alternative would ease the current restrictions on new or modified sources of VOC in the Medford-Ashland AQMA while allowing DEQ to use the growth cushion to ensure the AQMA remains in attainment in the future.

By definition, the Medford-Ashland AQMA is an attainment area for ozone and should be designated as such. Redesignation would allow easier and less costly expansion of existing VOC sources and/or location of new VOC sources. This would be due to the significant emission increase to initiate NSR changing from 20 to 40 tons of VOC per year and the requirement of BACT versus the more stringent and costly LAER.

While redesignation would provide greater opportunity for industrial growth and a stronger economy in the Medford-Ashland AQMA, the continued administration of NSR with a growth cushion would ensure continued attainment status of the AQMA in the future. Proposed emission increases from new or modified sources would only be allowed if they do not exceed the available growth cushion. Alternative #2 would provide increased opportunity for growth while ensuring the continued attainment status of the Medford-Ashland AQMA.

Cons: Continued DEQ administration of NSR with a growth cushion may put a limit or cap on economic growth in the AQMA. If a business looking to locate or expand in the AQMA has proposed emissions in excess of the available growth cushion, it would have to look elsewhere.

Alternative #3: The EQC could redesignate the Medford-Ashland area as attainment for ozone and the DEQ could administer the new source review program without the growth cushion concept.

Pros: The advantages of this alternative are the same as the pros in Alternative #2. In addition, there would not be any restriction on the addition of the number of VOC sources or the increase in total tonnage of VOC emission into the airshed which could further improve the economic climate in the airshed.

Cons: The major disdavantage of this alternative is the fact that if the growth cushion is eliminated, DEQ control over emissions in the AQMA would be reduced and this could jeopardize the future attainment status of the Medford-Ashland AQMA.

Summary and Recommendations

As a result of the 3M review of the air quality data, VOC emissions, and regulatory history of the Medford-Ashland AQMA, the following conclusions have been reached:

1. The Medford-Ashland AQMA has been in compliance with the current state and federal standard since at least 1979 and quite possibly earlier. Therefore, the AQMA should be redesignated as attainment for ozone.

2. Current air quality data and computer analysis of this data indicate some sensitivity to ozone in the AQMA. Therefore, it is prudent to continue an ozone maintenance strategy with a growth cushion to ensure future ozone compliance for the AQMA.

3. Due to the imprecise state of the art in predicting ozone levels, the current growth cushion for the AQMA may be much smaller than is necessary to protect ozone compliance. Therefore, as better data and new ozone prediction methods become available, the growth cushion should be reviewed to ensure it is not unnecessarily restrictive to growth in the AQMA.

This review and analysis of the history of the Medford-Ashland AQMA clearly supports Alternative #2, as described and recommended by the DEQ staff. 3M supports this recommendation and urges the EQC to redesignate the Medford-Ashland AQMA as attainment and implement the proposed ozone maintenance plan and growth cushion described in Alternative #2. 3M also supports the official revision of the SIP to reflect the redesignation and ozone maintenance strategy and submittal of the revised SIP to U.S.EPA for approval.

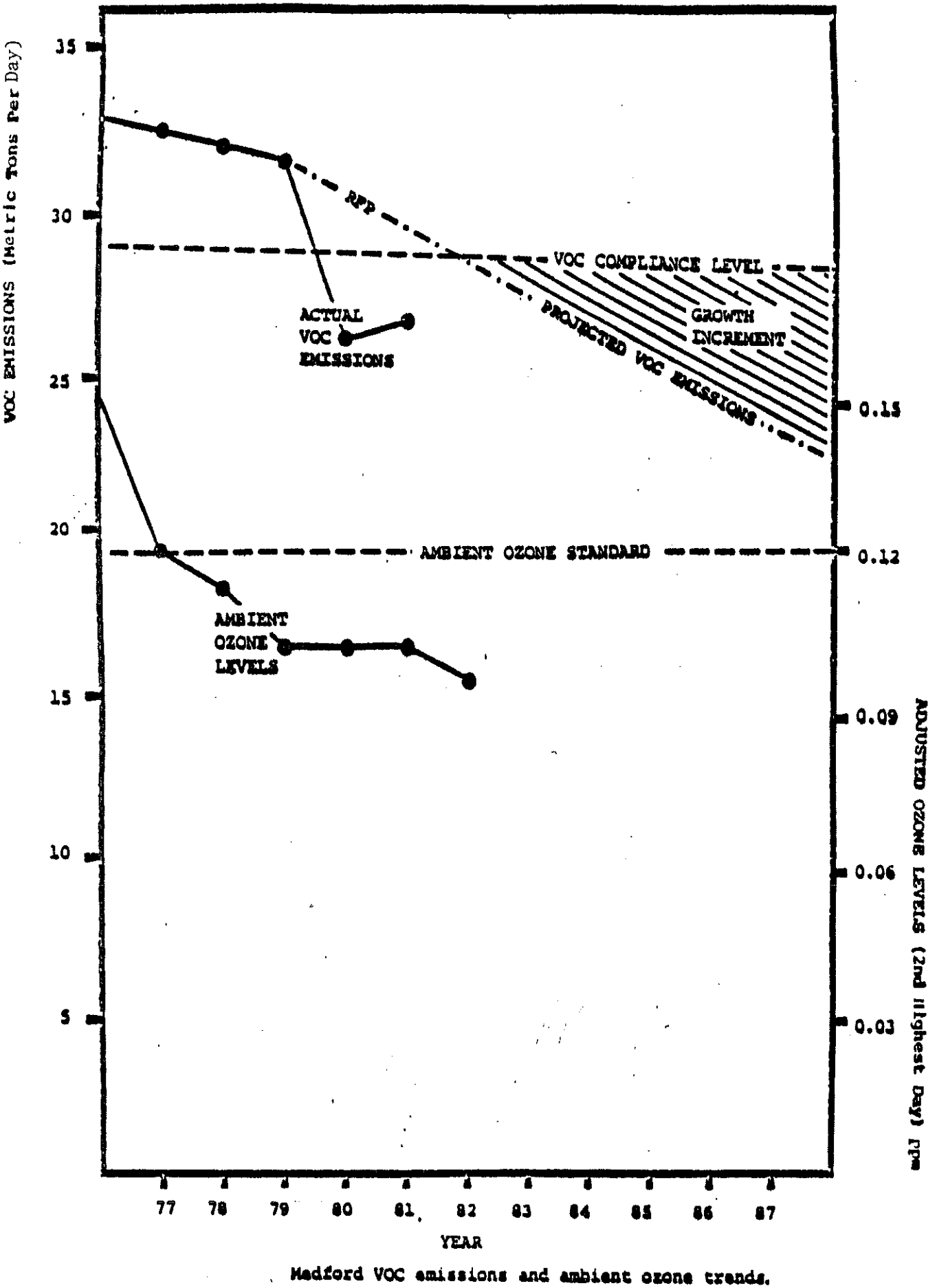


FIGURE 1. (from "Recalculation of the Medford Growth Increment" - Rev. 10/82 by DEQ)

VICTOR ATIYEH
GOVERNOR

Department of Transportation
HIGHWAY DIVISION
TRANSPORTATION BUILDING, SALEM, OREGON 97310

(503) 378-8272

In Reply Refer to
File No.:

December 17, 1984

PLA 19-4

Merlyn Hough
Department of Environmental
Quality
Air Quality Division
P.O. Box 1760
Portland, Oregon 97207

The Oregon Department of Transportation agrees with the proposed regulation to amend OAR 340-20-047, the Oregon Clean Air Act State Implementation Plan and redesignating the Medford-Ashland Air Quality Maintenance Area as attainment for ozone.

Thank you for the opportunity to comment on this proposal.

Sincerely,

Robert E. Royer
Planning Engineer

MH:dpy

OREGON INTERGOVERNMENTAL PROJECT REVIEW

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED
DEC 12 1984
AIR QUALITY CONTROL

State Clearinghouse
Intergovernmental Relations Division
155 Cottage Street N. E.
Salem, Oregon 97310

Phone (503)378-3732 or Toll Free in Oregon 1-800-422-3600

C O N C L U S I O N S

APPLICANT: DEQ

PROJECT TITLE: CLEAN AIR ACT IMPLEMENTATION PLAN-MEDFORD ASHLAND AQMA

DATE: December 11, 1984

The State of Oregon (and local clearinghouses if listed) has reviewed your project and reached the following conclusions:

[X] No significant conflict with the plans, policies or programs of state or local government have been identified.

[ ] Relevant comments of state agencies and/or local governments are attached and should be considered in the final design of your proposal.

[ ] Potential conflicts with the plans and programs of state and/or local government:

- [ ] may exist.
- [ ] have been identified and remain unresolved. The final proposal has been reviewed and the final comments and recommendations are attached.
- [ ] have been satisfactorily resolved. No significant issues remain.

A copy of this notification and attachments, if any, must accompany your application to the federal agency.

FEDERAL CATALOG #_____

NOTICE TO FEDERAL AGENCY

THE FOLLOWING IS THE OFFICIALLY ASSIGNED STATE IDENTIFIER NUMBER:

OR 841101-002-6

Dolores Streeter
Clearinghouse Coordinator

IPR #3

cc:EPA Seattle

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, January 25, 1985, EQC Meeting

Request for a Variance by International Paper Company, Gardiner, Oregon, from Emission Limits for Total Reduced Sulfur (TRS) Compounds from Kraft Mill Recovery Furnaces and Lime Kilns, OAR 340-25-165(1)(a) and (b), and OAR 340-25-630(2)(b) and (e).

Background and Problem Statement

International Paper Company owns and operates an unbleached Kraft pulp and paper mill near Gardiner, Oregon. This facility presently cannot maintain full-time compliance with the Department's rules which apply to the emission of total reduced sulfur compounds (TRS) from Kraft mill recovery furnaces and lime kilns. The specific rules which apply are OAR 340-25-165(1)(a) and (b) (Kraft Pulp Mills) and OAR 340-25-630(2)(b) and (e) (Standards of Performance for Kraft Pulp Mills). Specific facilities involved include the two recovery furnaces, No. 1 (CE) and No. 3 (B&W) and the lime kiln. The company has submitted compliance schedules and requested a variance until these problems can be corrected in 1986 (Attachment No. 4).

As a matter of reference, TRS compounds are the cause of rotten egg-like odors historically associated with Kraft pulp mills. In considering this variance request, it is important to note that the violations at the Gardiner facility are of intermittent frequency, relatively low in magnitude and not known to be causing adverse impacts in the surrounding area. Generally, the facility presently complies with limitations for new plants 80 to 90 percent of the time and would comply with less restrictive limitations for older plants almost all of the time.

During the latter half of 1983 the company installed $185,000 worth of new TRS monitoring equipment on the stack serving both recovery furnaces and the lime kiln stack. The more accurate monitoring system was used to

determine if compliance could be achieved by improved operating procedures. This approach had promise because TRS control in both recovery furnaces and lime kilns requires efficient combustion to destroy these compounds via oxidation. In an April 17, 1984 submittal, the company committed to submit compliance schedules if physical modifications of the recovery boilers or lime kiln became necessary based on engineering studies (Attachment No. 2). The company also submitted compliance schedules for the B&W smelt dissolving tank vent (SDTV) particulate control and recovery furnace opacity monitoring. The opacity monitor and SDTV scrubber are now installed and operating satisfactorily.

By letter dated August 28, 1984, the company advised the Department that the engineering studies indicated that modifications and additional equipment were required for the lime kiln and recovery furnace No. 3. Recovery furnace No. 1 would be base loaded at a rate within which compliance would be maintained. Although compliance schedules including increments of progress were not submitted at that time due to uncertainties stemming from a strike which started August 14, 1984, time requirements of 18 months for the lime kiln/causticizing plant and 22 months for the recovery furnace were requested. These timelines would commence when the strike ended. This letter also stated that pre-engineering and other design work which could be done at other company locations was being initiated and that several interim measures to minimize TRS emissions were being implemented (Attachment No. 3).

The strike ended on November 19, 1984, and the variance request containing the compliance schedules was submitted in a letter dated December 10, 1984 (Attachment No. 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, or special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause.

Alternatives and Evaluation

The only alternative available to the company for achieving immediate compliance is a production curtailment which would be in the 10 to 20 percent range. Production curtailment of this magnitude would have an adverse impact on the economic viability of the plant and might cause work force reductions. Such action is considered unwarranted because of the nature of the violations, i.e., low magnitude/frequency and no known adverse impacts.

After reviewing the proposed strategy for the recovery furnaces and lime kiln, the staff believes the problems will be resolved. Basically, the strategy involves improving combustion in the recovery furnaces and lime kiln in conjunction with eliminating the need to periodically use weak

wash water in the lime kiln scrubber. The lengthy time frame is considered necessary because portions of the mill must be shut down to complete the modifications and/or installation of equipment.

International Paper Company has indicated that it intends to comply within the variance period. The company commenced its efforts by completing some internal modifications of the lime kiln during the Christmas shutdown in December 1984.

The statutes provide for granting variances only if certain conditions are met. The condition most applicable here is that strict compliance would result in substantial curtailment or closing down of a business, plant or operation since this is the only means to attain immediate compliance. Another condition which would be considered applicable is that special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause. The special circumstances are the intermittent low magnitude violations and minimal adverse environmental impacts.

Appropriate conditions for a variance would include compliance schedules for the recovery furnaces and lime kiln as set forth in Attachment No. 1, employing all practical means to minimize TRS emissions, submission of quarterly progress reports until compliance is achieved, and revocation if International Paper Company does not comply with conditions of the variance or if unforeseen deterioration of air quality occurs.

Summation

1. The recovery furnaces and lime kiln at International Paper Company's unbleached Kraft mill presently cannot maintain full-time compliance with TRS emission regulations.

2. The violations are of intermittent frequency, low in magnitude and not known to be causing adverse impacts.

3. The company has submitted acceptable compliance strategies and schedules to correct the problems and requested a variance from applicable TRS regulations.

4. The recovery furnaces will be able to comply with OAR 340-25-165(1)(a) and OAR 340-25-630(2)(b) no later than September 18, 1986.

5. The lime kiln will be able to comply with OAR 340-25-165(1)(b) and OAR 340-25-630(2)(e) no later than May 18, 1986.

6. Immediate compliance which can only be achieved by substantial curtailment of operation is unwarranted because of the low magnitude and intermittent nature of the violations.

Director's Recommendation

Based on the findings in the Summation, it is recommended that the Commission approve the compliance schedules set forth in Attachment No. 1 and grant a variance to International Paper Company, Gardiner, from OAR 340-25-165(1)(a) and -630(2)(b) until September 18, 1986 and from OAR 34025-165(1)(b) and -630(2)(e) until May 18, 1986 with the following conditions:

1. The operating improvements which have been implemented shall be employed during the period of this variance as a means of minimizing TRS emissions.

2. Quarterly progress reports shall be submitted to the Department until compliance is achieved.

3. This variance may be revoked if the Department determines that these conditions are not being met or if unforeseen deterioration of air quality occurs.

Michael Downs
for
Fred Hansen

Attachments
1. Proposed Permit Addendum.
2. Proposal to Conduct Engineering Study of Recovery Furnaces and Lime Kiln
3. Proposed Control Strategies for Recovery Furnaces and Lime Kiln.
4. Proposed Compliance Schedules for Recovery Furnaces and Lime Kiln and Request for Variance.

F. Skirvin:s
229-6414
January 11, 1985

AS969

Permit Number: 10-0036
Expiration Date: 07/01/85
Page 1 of Pages

PROPOSED ADDENDUM TO

AIR CONTAMINANT DISCHARGE PERMIT

Department of Environmental Quality
522 SW Fifth, Portland, OR 97204
Mailing Address: Box 1760, Portland, OR 97207
Telephone: (503) 229-5696

Issued in accordance with the provisions of ORS 468.310

ISSUED TO:

International Paper Company
Gardiner Paper Mill
PO Box 854
Gardiner, OR 97441

REFERENCE INFORMATION:

Letter dated December 10, 1984

PLANT SITE:

Gardiner, Oregon

ISSUED BY DEPARTMENT OF ENVIRONMENTAL QUALITY

_____ _____
Fred Hansen, Director **Date**

ADDENDUM NO. 3

In accordance with OAR Chapter 340, Section 14-040, Air Contaminant Discharge Permit No. 10-0036, Conditions 19 and 20 now read as follows:

19. The permittee shall provide controls for the emission of TRS compounds from Recovery Furnace Nos. 1 and 3 in accordance with the following schedule:

    a. By no later than April 18, 1985, the permittee shall submit detailed plans and specifications to the Department of Environmental Quality for review and approval.

    b. By no later than June 15, 1985, the permittee shall issue purchase orders for the process modification work.

c. By no later than June 15, 1985, the permittee shall initiate on-site construction or process modification work.

d. By no later than April 18, 1986, the permittee shall complete the on-site construction or process modification work.

e. By no later than September 18, 1986, the permittee shall notify the Department that the recovery furnaces can operate in continuous compliance with Condition 2a by submitting the results of emission tests performed in accordance with the testing procedures on file with the Department or in conformance with applicable standard methods approved in advance by the Department.

f. Within seven (7) days after each item, a through e above, is completed the permittee shall inform the Department in writing that the respective item has been accomplished.

20. The permittee shall provide controls for the lime kiln in accordance with the following schedules:

a. By no later than February 15, 1985, the permittee shall submit a final control strategy, including detailed plans and specifications to the Department of Environmental Quality for review and approval.

b. By no later than March 1, 1985, the permittee shall issue purchase orders for the process modification work.

c. By no later than March 1, 1985, the permittee shall initiate the on-site construction or process modification work.

d. By no later than December 18, 1985, the permittee shall complete the on-site contruction or process modification work.

e. By no later than May 18, 1986, the permittee shall notify the Department that the lime kiln can operate in continuous compliance with Condition 3c by submitting the results of emission tests performed in accordance with the testing procedures on file with the Department or in conformance with applicable standard methods approved in avanced by the Department.

f. Within seven (7) days after each item, a through e above is completed the permittee shall inform the Department in writing that the respective item has been accomplished.

Attachment No. 2 - Proposal to
Conduct Engineering Study of
Recovery Furnaces and Lime Kiln
Agenda Item No. H
January 25, 1985, EQC Meeting

INTERNATIONAL PAPER COMPANY

GARDINER PAPER MILL, P.O. BOX 864, GARDINER, OREGON 97441, PHONE 503 271-

April 17, 1984

Oregon Dept. of Environmental Quality
Air Quality Division
P. O. Box 1760
Portland, OR 97207

Attn: Mr. F. A. Skirvin, P. E.

Dear Mr. Skirvin:

During the past month I have assigned my staff to develop a compliance plan which addresses all of the items noted in your letter dated March 7, 1984. We are totally committed to resolving these problems and propose the following timetables for their solution.

B & W Dissolving Tank Particulate Emissions

We have ordered a venturi scrubber for this source on April 17, 1984. Delivery is expected by September 4, and installation completed by September 24, 1984. Startup and compliance testing would begin on October 1, 1984.

Recovery Boiler Opacity Monitor

The existing Lear Siegler monitor is obsolete and no longer serviceable due to long delivery times for spare parts. We will order a Contraves monitor by May 1, 1984. Delivery is expected by July 2 and installation completed by July 30, 1984. Startup and certification of the monitor would begin August 6, 1984.

Recovery Boiler TRS Emissions

The certification testing on the STI TRS monitor was started on April 16, 1984. Once this work is completed we will make every effort to operate the recovery boilers in compliance. In order to insure continuous compliance we will conduct a detailed engineering study of boiler operation. This study should begin by May 21, 1984 and be completed within eight weeks.

Based on this study a compliance schedule will be negotiated with your department should physical modification of the boiler be required to assure compliance.

Lime Kiln TRS Emissions

The STI TRS monitor will be installed by May 7, however, certification will not be attempted until the unit has operated at least one month and stable

operation achieved. In conjunction with developing a better TRS monitoring capability we will conduct a detailed engineering study of the kiln operation and emissions. This study will coincide with the recovery boiler study and will begin by May 21, 1984 and be completed within eight weeks. A compliance schedule will be negotiated with your department should physical modification of the kiln be required.

In the interim period we will install a new oil gun to increase our combustion efficiency. We will begin testing our lime mud and venturi scrubber make-up water for sulfides in an effort to determine the source of suspected TRS emissions. This testing will begin April 23, 1984.

We appreciate your patience in working with us on resolving these problems. A Notice of Construction along with plans and specificaitons will be submitted to your office where appropriate.

If you have any questions concerning these matters please call me or Mr. David Eckelman.

Sincerely,

C. B. Vickrey, Jr.

CBV:kr

c: G. Grimes, SW Region, DEQ
B. Hammon, Coos Bay Branch, DEQ
L. Kostow, Portland, DEQ

Attachment No. 3 - Proposed
Control Strategies for
Recovery Furnaces & Lime Kiln
Agenda Item No. H
January 25, 1985, EQC Meeting

INTERNATIONAL PAPER COMPANY

GARDINER PAPER MILL

POST OFFICE BOX 854, GARDINER, OREGON 97441

PHONE (503) 271-2184

August 28, 1984

Mr. Fred Hanson, Director
Oregon Department of
Environmental Quality
P. O. Box 1760
Portland, OR 97207

Dear Mr. Hanson:

Since submitting our air compliance plan to your office last spring, we have been working diligently to implement it. I am pleased to inform you that the new continuous opacity monitor for the recovery furnace stack has been installed ahead of schedule and certification testing has been successfully completed. Work on the venturi scrubber for the B&W smelt dissolving tank was progressing on schedule, however, we experienced a work stoppage on August 14, and installation of the scrubber by October 15 is uncertain due to the strike.

Because of the uncertainty in when this labor dispute will be resolved, I am unable to provide you with a time schedule for controlling TRS from the lime kiln and recovery furnaces. We do, however, have a firm plan which outlines all necessary steps which must be taken to comply with the TRS emission limits in our permit. This plan was derived from the engineering study performed by Ekono Inc., which we received on August 15. On the basis of this engineering study of the recovery boiler and lime kiln operations, we have developed a strategy for reducing TRS emissions from these sources. Details of our plan are outlined below. Unfortunately however, I cannot give you specific increments of progress at this time.

Lime Kiln TRS Emission Control Plan

Three major problems were identified by the engineering study which impact TRS emissions. These include:

1. Stack gas contacting the contaminated condensate in the scrubber;

2. Dregs carryover causing excessive dead load and burning problems in the kiln;

3. Low excess oxygen conditions resulting in poor combustion and TRS generation.

To eliminate the contact of stack gases with the contaminated condensates, it is proposed to add a scrubber clarifier to allow recirculation of scrubber water while removing the mud solids. This will allow a small amount of fresh water to be used for make up with the condensates used elsewhere. The condensates will be used at the mud washer, controlled by level in the weak wash tank thus disposing of the condensates without causing TRS problems or wastewater BOD. To improve dregs removal, a new green liquor mix tank will be added. This will improve the operation of the clarifiers and settling of dregs by providing a uniform feed. All of the above steps will reduce the dead load to the kiln allowing it to be operated at lower feed rates. To further improve operations, a brick dam and lifters will be installed. Also feed end draft, mid-point temperature, and kiln drive amperage measurement and recording will allow better operation of the kiln. This will prevent conditions where overloading the kiln results in incomplete combustion and high TRS.

Recovery Boiler TRS Emission Plan

As a result of the engineering study, a number of improvements to the number 3 recovery boiler have been proposed to reduce TRS emissions. All of these improvements are designed to improve combustion efficiency in the furnace which will ensure minimization of TRS generation. Improvements to the B&W recovery furnace include installation of a new forced draft fan and drive to increse the amount of secondary and tertiary air provided to the boiler. This work also includes ducting, air heater and wind box modifications. Installation of a larger induced draft fan and drive will result in increased combustion oxygen and adjustable air ports will be installed to give the operators better control. Carbon monoxide analyzers will be installed in both recovery furnaces to prevent oxygen starved conditions from occurring. The CE recovery boiler will be base loaded at a firing rate consistent with maintaining TRS emissions within permit limitations.

Schedule

Modifications to the lime kiln and caustisizing plant are expected to take up to 18 months. While work on the recovery boiler improvements would take 22 months. This time requirement is from the end of the work stoppage and does not include the time required for compliance testing. Because of the length of time necessary to make these substantial capital improvments, a number of interim measures have been initiated which are designed to minimize TRS emissions while construction is underway. These interim measures include increased operator awareness concerning kiln temperature profile and excess oxygen requirements to minimize TRS emission generation. Real time, TRS emission feedback is now provided the operator via the STI monitor and will be a very helpful tool in optimizing kiln performance.

Interim measures to minimize TRS emissions from the recovery boilers are very limited. Every effort, however will be made to ensure operator awareness to minimize TRS generation by maximizing combustion efficiency. Use of the new STI/TRS monitor as an operating tool by the operators will result in minimum TRS emissions during this period. Currently the boilers are very nearly in compliance with permit limits and strides have been made to reduce the TRS emissions from the kiln in recent weeks.

Although the control plan will result in a significant capital expenditure, it is felt that these measures will result in more efficient operation of the mill while maintaining compliance with all emission requirements contained in our permit.

A compliance schedule with specific increments of progress will be submitted to your office within 30 days of settlement of the labor dispute. I am interested in seeing both these projects through to an early completion as they will insure compliance with your rules and are beneficial to the mill's overall efficiency. Consequently, I have requested that pre-engineering and other design work which can be done at other company locations be initiated immediately.

We look forward to working with your staff in implementing this plan and will submit the appropriate Notice of Construction forms along with plans and specifications as each step is implemented. If you have any questions concerning these matters, please call me or Mr. David Eckelman.

Sincerely,

C. B. Vickrey, Jr.
Mill Manager

CBV:kr

c: T. Bispham (Portland DEQ)
G. Grimes (SW Region DEQ)
B. Hammon (Coos Bay Branch DEQ)
F. Skirvin (Portland DEQ)

Attachment No. 4 - Proposed
Compliance Schedules for
Recovery Furnaces & Lime Kiln
and Request for Variance
Agenda Item No. H
January 25, 1985, EQC Meeting

INTERNATIONAL PAPER COMPANY

GARDINER PAPER MILL

POST OFFICE BOX 854, GARDINER, OREGON 97441

PHONE (503) 271-2184

December 10, 1984

Mr. Fred Hansen, Director
Oregon Department of Environmental Quality
P. O. Box 1760
Portland, OR 97207

Dear Mr. Hansen:

I am pleased to report that our labor problems have been resolved, and as promised in my August 28th letter to you, I am submitting a compliance schedule for controlling TRS emissions from the lime kiln and recovery boilers. Because both compliance schedules extend into 1986, I am requesting a variance from applicable rules and permit conditions as provided by Oregon Revised Statute, Chapter 468.345. We feel special circumstances render strict compliance unreasonable and impractical due to the physical condition of the lime kiln and recovery boilers.

As you know, Oregon's TRS regulations are equivalent to the Federal New Source Performance Standards (NSPS) for these sources. Until recently, we believed these units could comply with the TRS emission limitations contained in our permit. With the installation of the STI TRS continuous monitors, we have found that neither source is capable of comploying continuously; further, neither the CE recovery boiler or the lime kiln system were designed to achieve this level of performance. The emission control plans proposed for the lime kiln and recovery boilers, we believe, will make these units capable of complying with the applicable TRS emission requirements. Strict compliance during this interim period would result in substantial curtailment of our production capability and would jeopardize the continued operation of the mill. The compliance schedules are as follows:

Lime Kiln TRS Emission Control Project Compliance Schedule

(a) Submit detailed engineering plans and specifications by February 15, 1985.

(b) Commence construction of the new facilities by February 15, 1985.

(c) Complete construction of the new facilities by December 18, 1985.

(d) Conduct compliance testing and attain operational status by May 18, 1986.

Recovery Boiler TRS Emission Control Project Compliance Schedule

(a) Submit detailed engineering plans and specifications by April 18, 1985.

(b) Commence construction of the new facilities by June 15, 1985.

(c) Complete construction of the new facilities by April 18, 1986.

(d) Conduct compliance testing and attain operational status by September 18, 1986.

Although both schedules are rather lengthy, we do not feel that significant environmental harm will occur as a result of this variance. Indeed, the interim measures outlined in my August letter have proven very effective, and both units have been in compliance for much of the time during recent months as shown in our recent monthly reports to your office.

I appreciate your patience and that of your staff in working with us on these problems. If you have any questions concerning these matters, please call me or Mr. David Eckelman.

Sincerely,

C. B. Vickrey, Jr.
Mill Manager

c: T. Bispham (Portland DEQ)
G. Grimes (Southwest Region DEQ)
B. Hammon (Coos Bay Branch DEQ)
F. Skirvin (Portland DEQ)

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. I , January 25, 1985, EQC Meeting

Status Report: Noise Rule Exemption for Alcohol and Nitromethane Top Fuel Drag Racing Vehicles

Background

The noise control rules for motor sports (racing) require the use of mufflers and establish noise emission limits for most categories of race vehicles. However, one major category of drag race vehicle is exempt from these requirements. The "top fuel" drag race vehicle category is exempt from muffler requirements because it was determined that reasonable muffler control technology did not exist when these rules were adopted on November 21, 1980. The rules do anticipate that technology advances will, at some time, allow reasonable noise standards for this class of vehicle. Thus, the rules state that "no later than January 31, 1985, the Department shall report to the Commission on progress toward muffler technology development for this vehicle class and propose any necessary recommendations to amend this exemption." (OAR 340-35-040(11(b)).

Discussion

The "top fuel" exemption from the muffler requirements is limited by Definition 62 (OAR 340-35-015(6)) to drag racing vehicles that operate using more than fifty percent alcohol or nitromethane as an operating fuel and commonly known as "top fuel" and "funny" cars. Under virtually all drag racing activities in Oregon, this exemption only applies to National Hot Rod Association (NHRA) classes of "Top Fuel," "Funny Car," "Top Alcohol Dragster" and "Top Alcohol Funny Car." These four classifications are the only categories of NHRA-sanctioned drag race vehicles meeting the criteria of Definition 62 in the noise control rules, and therefore, all other drag race classes are expected to operate with mufflers. The "top fuel" classes are reserved for professional racing teams who are seeking national point standings and national speed records.

In addition to the "top fuel" drag race vehicles, several other race vehicle categories may use engines that are similar to these. Specifically, some boat racing and truck pulling categories operate with alcohol and nitromethane fuels. As necessary, the Department is able to provide exceptions to the muffler requirements on a case-by-case basis under the criteria of Section (12) of the rule. Exceptions may be granted by the Director for a "class of vehicles whose design or mode of operation makes operation with a muffler inherently unsafe or technically unfeasible." This section also allows exceptions under "special motor racing event" criteria, which allows the Department to grant variances from the muffler requirements when the event has national significance, and thus, competitors would not likely attend an event with local requirements that could be viewed as unreasonable or unduly burdensome. Staff believes progress has been made toward national noise standards for some categories of racing. For example, most motorcycle and go-kart racing sanctioned by the major national body is conducted under decibel standards. For 1985 events the Sports Car Club of America has approved a national decibel limit. However, little, if any, progress in noise control has been made by the national sanctioning bodies for drag racing.

The second criterion for exceptions that may be considered applicable for "top fuel" categories of drag racing and other racing is lack of technically feasible mufflers. This criterion is adequate to address those racing activities that are not eligible for the "special event" exception but do have legitimate problems in applying the required mufflers.

Three major drag racing facilities operate in Oregon. Portland International Raceway is located in West Delta Park of North Portland. This facility is owned by the City of Portland, who rents the track to promoters and event sponsors. Local drag racing, fully compliant with the noise rules, is held weekly, except during winter months. A limited number of major drag race events meeting the "special event" criteria are held each year. In 1984, four of these events (6 days) were scheduled at this track.

In 1985, one event (3 days) is anticipated. The residential neighborhood near the track is south of the facility, approximately 2,500 feet. The remaining major noise issue affecting this neighborhood is caused by unmuffled racing. Due to local concerns, the City of Portland has placed restrictions on their facility that prohibits unmuffled drag racing past 9:30 p.m. The Department rules provides a nighttime curfew of 10:00 p.m. on weekdays and 11:00 p.m. on weekends. The City of Portland is also investigating the installation of a noise barrier to shield the community from the track.

The Woodburn Dragstrip is located several miles west of Woodburn. This facility is privately owned and operated. In 1984, this facility scheduled five major events with "top fuel" category vehicles. Only one of these events was scheduled past 5:00 p.m. which also resulted in a noise complaint to the Department. A residential area is located directly north

of the track, and a few farms with homes are also scattered around the facility.

The third major drag racing facility is Jackson County Sports Park located near White City. This facility is owned by Jackson County and is operated by its Parks and Recreation Department. During 1984, two events (4 days) were held that featured "top fuel" category vehicles. The major residential area near this track is approximately 2500 feet north of the starting line. Many of these residents receive the benefit of a noise barrier that reduces noise impacts by as much as 10 decibels for those fully shielded.

Although the Department has provided exceptions from the muffler requirements for major race events, it has been able to mitigate impacts using various administrative controls. The most often used control is an approval condition which ensures the noisy event is completed prior to the normal 11:00 p.m. weekend curfew provided in the rules. Other administrative controls include rescheduling of activities within the race-day, reducing the number of noisy events per season, and encouraging incentive prizes for the quietest vehicle within an excepted class.

Staff has not found evidence of any progress in muffling the exhaust noise of engines operated on nitromethane fuel. Attachment 1 provides a report on this issue brought to the Commission on May 18, 1984, in response to issues raised by a citizen during the April 6, 1984 EQC meeting. It may be possible to adapt some existing muffler technology to these engines that would be compatible with the explosive nature of this fuel. However, as virtually all these vehicles are from other states, and the cost of muffler development would be prohibitively expensive for the Department, muffler technology for these vehicles using this fuel must occur elsewhere.

There is some hope that development of engines producing adequate power without the use of nitromethane fuel would help resolve the noise issue. Some have experimented with the use of turbocharged engines for drag racing. These engines can develop high power output on gasoline fuel but have not been too successful in drag racing as the power advantages are not realized until the engine reaches a high speed. Further development may overcome this problem.

There is some experience in muffling engines operating on alcohol fuel. Some slower classes of drag race vehicles operating on alcohol are muffled, and there is some experience with mufflers on race boats fueled with alcohol. Therefore, although data is not conclusive, it appears that mufflers are feasible on all race vehicles operated on alcohol fuel and therefore, the "top fuel" exemption for this class of drag race vehicle is no longer valid under the claim of unavailable control technology.

Virtually all drag race events with vehicles meeting the "top fuel" definition for alcohol fuel (NHRA classes of Top Alcohol Dragster and Top Alcohol Funny Car) also meet the criteria for "special event" exceptions. Thus, these events could apply for exceptions from the muffler requirements be-

cause of the national significance of the event. Although some race boats and truck pulling categories operate with engines very similar to the alcohol fueled "top fuel" drag race vehicles, these vehicles should be expected to comply with the muffler requirements unless the event meets the "special event" criteria and is granted an exception.

Future noise control progress for many categories for racing will be tied to the actions of national motor racing sanctioning bodies toward this issue. Most sanctioning bodies recognize noise is an issue that can adversely affect their sport. A number of them have adopted national noise standards that effectively insure compliance with Oregon's standards. Others are developing or investigating noise standards. For example, the 1985 drag racing rules of the NHRA includes the following statement:

> "Consistent with its endeavors to maintain drag racing's acceptance as a recognized sport and recreation, NHRA is experimenting with muffling devices and may in time require use of such equipment in certain environmental control areas."

Although NHRA has been experimenting with muffling since at least 1975, they have yet to develop muffler requirements on even those categories of vehicles for which muffling device technology has been well proven and readily available.

Summation

The following facts and conclusions are presented:

1. Four "top fuel" classes of drag race vehicles are exempt from the noise control muffler requirements due to the lack of control technology.

2. Three Oregon drag race tracks feature "top fuel" vehicles at a limited number of events annually.

3. As necessary, administrative controls, such as restricted racing hours, have been imposed to mitigate noise impacts from "top fuel" race events.

4. Oregon's most sensitive drag strip, Portland International Raceway, has seen a reduction from four major drag races in 1984 to one major event in 1985. These events have, for the most part, been replaced with other major racing events that produce substantially less noise in the neighborhood.

5. Although the data is not conclusive, it appears that all race categories using alcohol fuel should be capable of meeting muffler requirements. However, muffler technology has not yet been shown to be feasible on vehicles fueled with nitromethane.

6. New engine technology, primarily turbocharging, may in the future eliminate the need for nitromethane fuel and thus provide some reduction in noise emissions or allow the use of more conventional muffling devices.

7. Oregon-only requirements affecting the design of, and fuel used by, the nitromethane category of drag race vehicles would most likely result in the boycott of this category of racing in Oregon, and affected facilities could claim economic hardship.

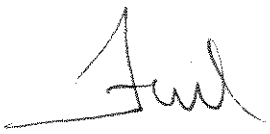
Recommendation

It is recommended that the Commission concur in the following:

1. The exemption for nitromethane-fueled drag race vehicles is necessary until further engine or muffler development indicates noise controls are technically feasible.

2. The Department should initiate rulemaking to remove the exemption for alcohol-fueled drag race vehicles as mufflers appear feasible. This class of vehicles, however, could continue to be eligible for exceptions from muffler requirements for national events.

3. The Department should report to the Commission prior to January 31, 1987 on muffler technology for top fuel drag race vehicles.



Fred Hansen

Attachments 1. EQC May 18, 1984 Breakfast Meeting Report on Drag Racing.

John Hector:s
229-5989
January 2, 1985

AS951

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 Hector, Noise Control Program

Subject: May 18, 1984, EQC Breakfast Meeting

Response to Comments of Mr. James B. Lee During the Public Forum on April 6, 1984, EQC Meeting

Background

During the public forum portion of the April 6, 1984, Commission meeting, Mr. James B. Lee addressed the issue of motor racing noise. He is concerned that the Department of Environmental Quality noise control rules for motor racing exempts "top fuel" drag race vehicles from any muffler requirements. These vehicles are likely the loudest drag race vehicle category and are the subject of many citizen complaints. The rule does require, however, that this exemption be reviewed before the Commission prior to January 31, 1985.

Discussion

The following discussion numerically lists the major points made by Mr. Lee and provides a response by the Department:

Point 1. The chief concern of people living near the Portland dragstrip, Portland International Raceway (PIR), is the noise caused by the unlimited, top fuel, class drag vehicles that are exempt from DEQ's muffler rule.

Staff believes several categories of race vehicles are still a problem. The rules provide for "exceptions" (Department granted variances) for race events that include a significant number of out-of-state competitors and thus, have some national significance. These events normally include several categories of vehicles that range from 10 to 20 decibels above standards. The exempted top-fuel vehicles typically are included in national event programs and exceed the 105 db standard by 15 to 20 decibels. In 1984, the Department granted muffler requirement exceptions to four major drag race events (6-days) at PIR. These events include top fuel vehicles, as well as other categories of unmuffled vehicles, competing for national point standings.

Several major road course races have also received muffler exceptions at PIR for 1984 events. These include two major events; the CART races, sponsored by the Rose Festival Association and the IMSA races, sponsored by G.I. Joe's.

The majority of races at PIR strictly comply with the muffler rules. Approximately 30 drag race days and approximately 25 road race days comply with these rules and cause only minor noise impacts to the neighborhood.

The top fuel category of drag race car was exempt from these standards because no technology to muffle them was available when the rule was adopted on November 21, 1980. However, this exemption states: "no later than January 31, 1985, the Department shall report to the Commission on progress toward muffler technology development for this vehicle class and propose any necessary recommendations to amend this exemption." [OAR 340-35-040(11)(b)]

Point 2. The policy of all DEQ noise rules is to control noise in a progressive manner with cooperation among all concerned parties (OAR 340-35-005). This policy is not being met in the racing rules except for the review of the top fuel exemption scheduled prior to January 31, 1985.

The statement of purpose in the motor racing rules includes "a policy of continuing participation in standards development through the active cooperation of interested parties is adopted" [OAR 340-35-040(1)(b)]. Following are examples of progress achieved since the January 1, 1982, effective date of these rules:

a. April 1983 rule amendments increased the membership of the Motor Sports Advisory Committee by adding an acoustical engineer and an attorney.

b. The Sports Car Club of America has adopted national noise control standards, identical to Oregon's, that will be effective in 1985. These standards will result in strict compliance for several additional events, including the Trans-Am and Super-Vee national professional road race categories of vehicles.

c. The International Karting Federation, the sanctioning body for go-kart racing, has approved standards more stringent than Oregon's (97 db) to be effective in 1985.

d. A phase-in of mufflers at major PIR events for all gasoline powered (non-nitro and alcohol) drag race vehicles in 1985. A summertime curfew at PIR major drag race events of 9:30 p.m. from July through September has been established by the City of Portland.

e. A line of communication has been established between the Department and the National Hot Rod Association, the sanctioning body for virtually all drag race events in Oregon.

f. The resolution of compliance issues has been reached for drag race events at Jackson County Sports Park and for Rogue River boat races sanctioned by the Cal-Ore Marathon Association.

Point 3. Mr. Lee disagrees with the DEQ presumption that there is no currently feasible technology to muffle top fuel drag race cars.

The issue of muffler technology for this category of race vehicle will be reviewed by the Department and brought to the Commission prior to January 31, 1985. Staff recommends this issue not be reviewed at this time, but wait until the later part of this year.

Point 4. The nitromethane (nitro) mixture fuel is very explosive and excess fuel exploding in the exhaust systems would destroy mufflers.

We agree with this assessment and, therefore, have been persuaded to believe that current technology mufflers would not be feasible on top fuel cars. Mr. Lee also suggests that reduction or elimination of nitro fuel would allow mufflers. However, staff is reluctant to establish fuel requirements for these vehicles as they are in an "unlimited" racing class and attempting to set national records rather than just vehicle-to-vehicle competition. Oregon fuel mixture requirements could eliminate top fuel class racing in Oregon.

Point 5 The top fuel cars will soon be replaced by different engines that do not use a nitro fuel mixture.

Staff is hopeful that new technology will replace nitro fueled vehicles. However, the phase-out of nitro has been widely predicted since 1975 and has not yet occurred. This phase-out has mostly been predicted due to the high cost of nitro fuel; although a recent price reduction brings the cost to about $23 per gallon.

New engine types, not using nitro fuel, have been developed, but none are competitive with the present engines. Until such non-nitro engines are developed, that are competitive with present engines, it is not likely that nitro fuel engines will disappear from "top fuel" class drag racing.

Point 6. The "top fuel" exemption in the DEQ rules is a sellout to the worst noise polluter.

The rules exempted top fuel vehicles as no technology was available to control these vehicles. It was recognized that this vehicle class is very loud and thus, the rules included a January 31, 1985 review date to reevaluate the technology question within a reasonable timeframe.

One alternative that was rejected by the Department was to prohibit all top fuel vehicles from Oregon racing. It should be stressed that these vehicles are the "featured attraction" of these spectator events and without them, it is not likely that major drag race events would be held. It also may be found that income from the major drag race events determines

the viability of this business. For example, the two major events held at the Jackson County drag strip in 1983 netted $11,000 and $18,000 as compared to the other weekend events that ranged from a net income of $1,700 to a loss of $29. The decision to prohibit "top fuel" class vehicles could therefore result in requests for economic hardship variances.

Another item to be considered is the dragstrip ownership. PIR and Jackson County Sports Park are owned and operated by units of local government. The other major drag strip in Oregon, the Woodburn Dragstrip, is privately owned and operated. Staff believes that local government has some responsibility for race noise impacts. Their land use decisions have allowed establishment of both the tracks and the noise sensitive property impacted by the tracks. At the two tracks directly operated by local government, local officials have the ability to limit or eliminate objectionable events, if they believe the adverse noise impacts outweigh the economic and recreational benefits to the community.

Point 7. Mr. Lee recommends the rules be amended to require "top fuel" class vehicles be placed on a schedule to reduce noise emission levels by 5 decibels per year until they reach the 105 decibel standard established for other race vehicle categories.

Staff believes this recommendation should be evaluated in the review of the "top fuel" class exemption scheduled prior to January 31, 1985.

Summation

The following facts and conclusions are presented:

1. The "top fuel" category of drag race vehicle, exempt from the muffler requirements of the motor race noise control rules, are 15 to 20 decibels in excess of the desired emission standard of 105 decibels.

2. The "top fuel" exemption will be reviewed before the Commission prior to January 31, 1985.

3. The racing community, the Department and others have cooperated since the motor racing rules became effective to further mitigate racing noise impacts.

4. The "top fuel" exemption was based upon the lack of adequate control technology when the rules were approved on November 21, 1980.

5. Without the "top fuel" exemption, major drag race events would likely not be scheduled in Oregon and economic hardship could be claimed by track operators.

Recommendation

It is recommended that the scheduled review of the "top fuel" exemption, prior to January 31, 1985, is a reasonable timeframe to completely review this issue.

John Hector

Attachments 1. Transcript of EQC Public Forum

JH:s
AS27
229-5989
April 30, 1984

EQC PUBLIC FORUM
April 6, 1984

Comments on Motor Racing Noise Control Rule

PETERSEN:
This is the time for the public forum for anyone who wants to address the Commission on an item that's not on our agenda. Is there anyone who would like to do that? Apparently we have someone, we are clarifying the issue here. We have, also, copies of all of our agenda items out on the table in case you missed one, describing each agenda. Mr. James B. Lee, of Portland, wishes to comment on motor racing regulations and noise problems. Mr. Lee.

LEE:
Thank you Mr. Chairman. The reason for my appearing here today in a public forum is because of the very serious problems which I am sure are all aware of, have arisen with respect to the City of Portland, the Rose Festival Association, and certain racing promoters with respect to the noise problem at Portland International Raceway. As you will recall, there is a law suit filed in Federal Court with respect to this. Let me give a brief history, a personal history. As it says on the sheet, I resided at 2514 S.E. Ankeny Street in Portland. Ten years ago when many of the Department's noise regulations were being drafted, I was a member of the Oregon Environmental Council's Noise Committee and with other members of that committee, we put in a great deal of work seeing that our ideas of regulation were given a fair hearing, we made any number of suggestions which were, in fact, incorporated into the noise regulations at that time. In particular, was my suggestion for the industrial and commercial regulations to use the octave band measuring technique which has since proved very effective and very successful. Noise control is not my main field - my main field is room acoustics and the design of sound systems. I do occasional research in noise study and occasional publication in that field. Now, however, I am speaking for myself as an informed private citizen, concerned that the regulations promulgated by the Commission and enforced by the Department be fair, reasonable and above all, address real problems in the world of noise pollution. My concern today, as I said, is about noise for motor racing. Particularly, the relation between the state's regulatory approach and the City's problems with Portland International Raceway. These two problems are very strongly linked. I attended a meeting in North Portland last Tuesday night, as did many others, including a representative of the Department of Environmental Quality. The chief concern of the citizens of North Portland, and this concern is aptly documented by continuing noise studies, including the one that was presented at this meeting, a study funded by the City, is the unlimited class drag racing. The citizens of North Portland have no quarrel with the local racers who are, in fact, are very amenable to regulation, I won't say enthusiastic about it, but they have reacted in a very responsible way. There is no bad blood between the local drag racers and the citizens of North Portland. Likewise, the Portland study shows there is really not that much of a noise problem with respect to the so-called CART racing, the Championship Auto Racing Teams which, as we know, is scheduled for Portland International Raceway as an

event for the Rose Festival this year. They are a little bit worse than the local drag racers, but not that much worse. The chief concern of the citizens of North Portland is the unlimited class drag racing which has been a tremendous problem for them out there for the last ten years, which happens to be totally exempt from regulation for OAR 340-35-040, which, of course, is the regulations as amended April 1983. Section 11(b) on page 11 of the regulations gives the total exemption for these unlimited class drag racers. I want to attend primarily to OAR 340-34-005 page 1 which is under the policy statement. And this reads as follows: "Item 3. To develop a program for the control of excessive noise sources which shall be undertaken in a progressive manner and each of its objectives shall be accomplished by cooperation among all parties observed." ["observed" should be "concerned"] Well, with the lawsuit in Federal Court, I think we can say quite accurately that that policy objective has not been met. It has also not been met in a progressive manner because further on in the regulations, no place in the regulations is there any promise that this will be met in a progressive manner. The only further item which I was able to find which said that the subject will be reviewed for technical feasibility before the 31st of March 1985. [Date is actually January 31, 1985]. This really represents a complete failure with respect of the noise regulations for motor vehicle racing to the most important problem in the state. In fact, as was pointed out at that meeting, it's the most important problem in racing noise on the West Coast because there is no other city that has a facility like PIR within 1/2 mile of a substantial residential area which is what exists out there. The DEQ's position is that the top fuel on the so-called "funny car" dragsters must be exempt because there is no currently feasible technology for mufflers. As to why the pleasure of a few out-of-state racers should take preference over the excessive noise exposure of 12,000 citizens of North Portland for ten years, I can't say. But I can say that the DEQ's presumption of infeasibility of muffling the offending vehicle's engines is wholly in error. I happen to know personally because I am one of the fortunate few people to own a prototype of one of these engines and that engine is very well muffled, indeed. A bit of history of the technology will explain this. All these racing engines that are used in these top fueled dragsters and funny cars are derivitives of the redoubtable, hemispherical, cross-valve Chrysler V-8 engines of the 1950's. Mine resides in the chassis for which it was originally designed where it displaces about 354 cubic inches, developes 280 horsepower through a 4-barrel carburetor, has a dual exhaust system, is in original condition and it will still propel the 5,000 pound car at a speed so far in excess of 55 mph that it doesn't bear thinking about. Now, if you take the derivitive of this, say the one operated by the redoubtedly Mrs. Shirley Muldowney, you will find that hers is made by a gentleman by the name of Kieth Black, the engine displaces about 500 cubic inches, developes 2800 horsepower, has a huge supercharger, 8 small straight pipes, about that long, and will propel her 2,000 pound car to a speed of approximately 250 mph in less than 6 seconds. If Shirley and I were to take our Hemi's out for a Sunday drive, I'd go about 100 miles and spend about $6 or $7 for fuel, six or seven cents per mile. Shirley would drive about one mile, she'd make four runs and she'd spend about $1,000 for fuel. I get 17 miles per gallon, she gets about 17 gallons per mile, and her propellent costs about $50 per gallon. The difference is in the fuel.

Early dragsters and other racers used a mixture of alcohol and nitromethane in a ratio of about 20-1, favoring the alcohol. Over the years, this was gradually built up to the point where these people now are running 1-20, 95% nitromethane in these engines. In my days at the Propulsion Development Department of the Naval Weapons at China Lake, California, we would have called this stuff (CH_3NO_2) a mono propellent and if you look in Webster's Third International Dictionary you will find it is called the rocket mono propellent. What it does, it carries the fuel and the oxidizer in one substance, as do other nitrogen base compounds - TNT, for example - nitrocellulose - so it's both fuel and oxidizer in one substance, in one liquid. And the reason DEQ says we can't muffle the Hemi's has nothing to do with the engine, but rather the propellent. Puddles of the unburned propellent collect in the hot exhaust system and explode and this destroys mufflers. Nothing mechanical, it's purely a chemical problem. In fact, this is what exactly occurs inside the engine, because once an engine is running on 95% nitro, it needs no electrical ignition at all. There have been circumstances well documented when the ignition systems of these machines cut out before they actually hit the throttle and they will just run like a diesel straight down the track and the stuff is actually exploding in the cylinders themselves. Some of the unburned fuel collects and continues to explode and creates shrapnel of any muffler system. Now to be able to apply a muffler, all you have to do really, is to reduce the ratio of that nitromethane to alcohol down to something more reasonable. You will lose power, that's true, but you will be able to apply a muffler. These things are really technological dinosaurs. These supercharged nitromethane burning engines, there are fewer and fewer of them each year, they are on their way out, and the fact they are not, per unit engine size, they are no longer the most powerful engines available. That honor goes to the turbocharged Formula One engines which run on aviation gas. If you could scale those things up to dragster size, you would have about a 3500 horsepower engine which ought to be enough to satisfy anyone. There are some technical problems as far as acceleration is concerned but those can, and have been solved, in many ways, and people are looking into building just this kind of engine for drag racing, and have been for about the past 4 or 5 years. Ultimately, it ought to be faster. So the reluctance, therefore, is not a matter of power, or not a matter of technology, but the matter of showbusiness and reluctance to tamper with a proven formula. The DEQ staff seems to have bought the dragster's line completely. It is, I don't think the term "sellout" is too strong to use and to one party and it's the worse noise polluters in the state who are getting the benefit of this. Certainly not a progressive and cooperative approach. The progressive and cooperative approach would be as follows: to reduce the noise from these top fuel dragsters by 5 dB each year until there is no difference between them and the current standards which apparently apply to all other racers in this state, regardless, and that's 105 dBA at 50 feet. They should also employ more accurate measuring standards, such as the ones in the commercial and industrial regulations, octave bands or super bands. And they should eliminate the dichotomy that exists between the 105 dB rule and elsewhere in the rules where you see that 55 dB Ldn (that's pretty complicated to explain) at a noise sensitive property line that's talked about. Basically, with regard to new facilities, they say you can't have more than 55 dB Ldn at a noise sensitive property line. And also they say that any racing facility more than two miles from a noise sensitive

property line should be exempt under the regulations. PIR is one-half a mile, 2500 feet. To give you an example of what 105 dBA from one car means, you would reach this 55 dB noise sensitive limit not at a distance of two miles but about five miles, assuming standard conditions which is what the City of Portland did in its noise study. Now, five miles from PIR, well that impacts a lot of interesting property, not many people have a straight view of PIR, but you might be interested to know that one very substantial piece of property in this city does. Pittock Mansion is located on a crow's nest, crow's line of about 4.9 miles from PIR and one sports car out there, even a 105 dB car, would generate about 51 dB under ideal atmospheric conditions at the Pittock Mansion. Pretty loud and pretty far. So, I think what ought to be done, both for the piece of mind to the people of North Portland and possibly from hearing of drivers, is that we ought to take another look at these regulations. Admittedly, they haven't worked. I would like to make one further recommendation which is perhaps out of line, but I want to say this because it has puzzled me for about ten years I've been familiar with the DEQ noise program. I think one of the real problems we have with the noise regulation is that it's under the Division of Air Quality. I think it deserves a separate division. Doesen't have to be a big one but I think it would improve lines of communication a great deal if you could have a separate division rather than have it under Air Quality. There is really no technical overlap, they both use air but there is absolutely no technical overlap here. I think the noise people could do a much better job in that case. There is one more thing I want to read from the regulations here, bearing in mind also that exemption of these top fuel dragsters, you will see why the City of Portland has been mouse trapped into this lawsuit. This is definition 30 of part whatever it is of the regulation, is on page 4 anyway. It says "Motor sports facility owner means an owner or operator of a motor sports facility or an agent or designee of the owner or operator. When a racing event is held on public land, the event organizer, i.e., the promoter, shall be considered the motor sports facility owner for the purposes of these rules." Now you see the people in North Portland had no choice. They have to sue the City, they have to sue Championship Auto Racing Team, they have to sue the promoter in the State of Washington who actually promotes the drag race. So we have the appalling situation where an internationally recognized sactioning body, one of the most important in the sport which the citizens of Portland, especially the Rose Festival Association, who has worked hard and long to get here, as soon as they sign up they get slapped with a lawsuit in Federal Court. It's right there, it was obviously not the intention but that's the way it has worked out and I think that the Commission ought to open again for review these amended rules in order to try to solve this problem. Politicians, certain politicians, Commissioner Jordan in particular, who was at that Tuesday night meeting, is walking an absolute tightrope on this. His report accepted basically the DEQ regulations. He accepted the dragster regulations and exemption in his report and he virtually has to do this. Theoretically, the City can pass stricter regulations in the state, but in practice, unless they have very substantial support from the state regulatory agency, the City really can't do anything, anything more. So what I am asking you to do sometime in the near future, the sooner the better, is to reopen hearings into these regulations for motor vehicle racing with a view to eliminating these awful problems that have been provoked. This is really a nasty lawsuit. Very nasty. Thank you very much.

PETERSEN:
Thank you, Mr. Lee. That was very interesting. I learned an awful lot about these funny cars. I'm sure Mr. Hector would approve of your recommendation that the Noise Department be a separate division. To my knowledge the only division in State government with one employee in it. Are there any questions of Mr. Lee? I think that this question of drag racing has come before us recently in the Medford situation and we addressed it down there in a variance proceeding and I, for one, and I think the Department knows I'm very keenly interested in noise and concerned that we don't have sufficient in my view budget allocations to do an adequate job in the noise area because it is a form of pollution definitely that we tended to ignore, I think. I think we tend to focus on what we can see and smell and have tended to ignore those things that affect our hearing.

HANSEN:
Mr. Chairman, if you would like, we can take a look at it at the Department of the comments made and report back to the Commission and be able to give you, at least, some sense from it.

COMMISSIONER BRILL:
Do you feel one of the biggest problems has to do with the exemptions that has to do with the ORS deal?

LEE:
It has to do with the exemption. There was a very stirring speech out there made by a gentleman by the name of Steve Rosso, a long-time North Portland resident and there really is no anomosity between the local drag racers who drive ordinary cars and are subject to our, actually something in advance of the regulations in trying to comply because this business of enjoyment of property and outdoor and that's a common thing that everybody can relate to but it's this other business. When the City of Portland's study, which was presented at that time, shows the difference between lines, contour lines between what the various vehicles do and there is no doubt that those top fuelers and funny cars just about get all of North Portland in there. They get about 12,000 people.

PETERSEN:
Do you ever take that car of yours out on the road at all?

LEE:
It's now back in Colorado being restored.

PETERSEN:
So you might take it out on the road?

LEE:
Yeah, I've often thought about taking it out to [?]. It's the slowest one in the world.

PETERSEN:
Thank you Mr. Lee. We appreciate it. We are going to look into that.

Any other items on public forum?

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. U, January 25, 1985, EQC Meeting

Proposed Adoption of Amendments to Hazardous Waste Rules to Provide That Only Those Liquid Organic Hazardous Wastes Which Can Be Beneficially Used Will be Banned From Landfilling After January 1, 1985

Background

The Environmental Quality Commission, at its April 20, 1984 meeting, adopted comprehensive Hazardous Waste Rules. Those rules dealt with a series of practices affecting all aspects of hazardous waste management from generation of such wastes to their eventual disposal. The disposal of hazardous waste is regulated under state law and closely monitored under the Department's regulations and supervision. A key approach to the management of hazardous waste has been the intent to find ways to handle hazardous wastes in the most environmentally sound fashion.

The Hazardous Waste Rules adopted by the Commission are identical in most regards to the federal law. There are, however, several areas which the Department felt were particularly significant to protect Oregon's environment but which the federal program did not address. Therefore, the Department recommended, and the Commission agreed, that these additional areas should be addressed within the Oregon Hazardous Waste Rules. One of those areas dealt with prohibiting the landfilling of certain liquid organic hazardous wastes. The Department was, and is, of the firm belief that the most desirable methods, in order of preference, to properly manage hazardous waste are as follows: (1) non-production, (2) substitution of nonhazardous materials in the manufacturing process, (3) reuse or recycle, (4) treatment to render nonhazardous, (5) incineration, and (6) land disposal.

The landfilling of liquid organics is particularly critical due to three concerns. First, as a result of their liquid nature, there is a greater potential that those hazardous wastes can migrate through the soil to contaminate groundwater and surface waters. Second, many organic materials do not break down in the environment and, once put into a landfill, pose a continuing threat of release. Third, liquid organic materials are most likely to contribute to an early deterioration of synthetic liners.

As a result of these concerns, the Department recommended, and the Commission adopted, a prohibition on the landfilling of certain liquid organics as of January 1, 1985. The purpose and intent behind the Department-recommended action was based on the fact that whenever there is a realistic potential for either (1) beneficially using hazardous wastes or (2) disposing of them in a more environmentally sound fashion than

landfilling, then those options should be pursued. Since the time of the adoption of the Hazardous Waste Rules in April, several important developments have taken place.

1. There have been no additional hazardous waste incinerators authorized to operate in the United States. Consequently, the existing three commercial hazardous waste incinerators located in Texas, Arkansas, and Illinois have had trouble keeping up with the amount of waste desired to be incinerated.

2. As the mandate of January 1, 1985, approached, new data were developed on what alternatives were available to landfilling. From this additional information came the conclusion that certain organic liquids, particularly those that are mixtures of chlorinated and nonchlorinated solvents, may not be able to be beneficially used. Consequently, the options available to industrial generators of these liquid organics would be to send them either (1) to one of the three incinerators for permanent destruction, or (2) to another hazardous waste landfill.

   Generally speaking, those companies which will seek to have liquid organics incinerated will do so whether or not there is the opportunity to landfill them at Arlington. They have chosen not to risk the long-term liability which exists with landfilling. The Department expects this pattern to continue whether or not the ban at Arlington is in effect. For those companies, however, which are willing to landfill as long as landfilling is possible, the current ban merely causes shipment to landfills in Idaho, Nevada or California.

   The Department believes that a ban which simply shifts landfilling from one state to another is unsound. This is particularly the case when that shift will entail transportation of hazardous wastes across additional miles of highway, possibly through population centers, with the inherent hazards of spills.

3. The U. S. Congress enacted amendments to the Resource Conservation and Recovery Act (signed by the President on November 8, 1984) which, among other things, provide for a phased ban of all liquid hazardous wastes going to landfills within 24 months. These amendments appear to require the Environmental Protection Agency to evaluate the feasibility of banning the landfilling of listed hazardous waste, liquid and solids, over a 66-month period.

The Department, in evaluating the breadth of the current ban, has concluded that certain liquid organics which were banned from landfilling after January 1, 1985, will merely be transported to other landfills.

Consequently, the intent of the Department to seek more appropriate environmental disposal options will not be realized. The Department believes that such a shift to other landfills is not a responsible action.

A public hearing on amending the rules was authorized by the Commission on December 14, 1984. The hearing was held in Portland on January 2, 1985; 18 people attended, one testified. Four written testimonies were also received. There was no clear-cut consensus; comments ranged from keeping the present rule to repealing the present rule and adopting the proposed

rule (see Attachment IV). Included in one testimony was information on a potential recycling/fuel use option for certain chlorinated organic wastes via shipment to a California treatment facility.

Evaluation and Alternatives

The Department recognizes that the costs of beneficial use or other treatment alternatives, including incineration, will in some cases be greater than the present cost of landfilling. However, the Department strongly believes that those costs are, in the long run, highly preferable to landfilling, given the associated liability and risks.

The Department also recognizes that new markets will develop for the beneficial use of some hazardous wastes and that greater capacity for the destruction of other hazardous wastes through incineration will probably be developed. As these options develop, the Department believes that more and more hazardous wastes should be prohibited from being landfilled.

As a result of the public hearing, the Department believes three alternative actions exist:

1. Do nothing, leave Hazardous Waste Rules as presently written. If this option is pursued, we continue to believe a local option for fuel use exists for most ignitable wastes, while chlorinated wastes will probably be shipped to out-of-state disposal sites at this time.

2. Adopt a modified prohibition. Retain the present ban on the landfilling of ignitable liquid wastes which can, in many instances, be used as fuel supplements, and grant the Department authority to ban from landfilling other hazardous wastes which can be used beneficially or where there is a more desirable disposal option on a case-by-case basis.

3. Eliminate the ban completely. Allow the continued landfilling of hazardous waste until the federal prohibitions take effect on a national basis.

Having considered the hearing record and based on other information received before the hearing, the Department believes the second alternative is the most practicable at this time. By retaining the ban on ignitables, the Department hopes to encourage beneficial use of certain liquid organics, for example, as fuel supplements. For that reason, we are proposing to retain the portion of existing rule 340-104-317 which places a prohibition on the landfilling of hazardous wastes identified or listed solely on the basis of ignitability.

Relative to other hazardous wastes, however, alternative treatment or disposal options are less certain. Therefore, we are also proposing that any ban be extended to other wastes through an enabling rule that would require case-by-case evaluation, rather than by existing rule 340-104-317(2)(a) and (b). This is because the existing rule has caused considerable confusion in the regulated community as to exactly which wastes fell under the prohibition. The proposed rule, 340-104-318, should mitigate this confusion since it requires the Department to identify alternatives and provide notice on an individual basis to generators and

owners and operators of disposal facilities. The review of wastes and alternatives will be incorporated into our existing disposal request procedure.

Summation

1. The Environmental Quality Commission, at its April 20, 1984 meeting, adopted rule 340-104-317, a ban on the landfilling of certain hazardous wastes.

2. This ban has caused confusion in the regulated community as to exactly which wastes were affected by the ban.

3. The regulated community has experienced difficulty in finding alternatives to landfilling the affected wastes.

4. The Department is proposing to modify the present ban, rule 340-104-317, to pertain only to liquid, ignitable hazardous wastes for which it believes adequate disposal alternatives exist.

5. The Department is also proposing an enabling rule to ban on a case-by-case basis those hazardous wastes which can be beneficially used or for which there is a more desirable disposal option.

6. Comments received at a public hearing ranged from retaining rule 340-104-317 to repealing rule 340-104-317 and adopting rule 340-104-318.

Director's Recommendation

It is recommended that the Environmental Quality Commission adopt amendments to OAR Chapter 340, Division 104, as presented in Attachment V, to retain the present landfill ban on ignitable liquids and to allow the Department to determine which other hazardous wastes should be banned from landfilling at Arlington on a case-by-case basis.

Fred Hansen

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

Fred Bromfeld:c
ZC1977
229-6210
January 8, 1985

Attachment I
Agenda Item No. J
1/25/85 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF MODIFYING OAR CHAPTER 340 DIVISION 104	))	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 Department seeks to amend the hazardous waste rules by retaining the ban on the landfilling of liquid ignitable wastes and adopting an enabling rule permitting it to ban the land disposal of any hazardous waste which, in the Department's judgment, can be disposed of in a more environmentally sound manner. It is believed that such an individual approach can serve the needs of the regulated community and the environment better than the present land disposal ban on specific wastes.

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:

The proposed modified rule 340-104-317, since it is less encompassing, will be less costly to implement than the present version. The proposed rule 340-104-318 is an enabling one, so the hazardous wastes to which it will apply, and hence the regulatory costs, are not known at this time. However, the Department believes that acceptance of its proposal to modify rule 340-104-317 and adopt rule 340-104-318 will be no more costly than retaining the present rule 340-104-317. Likewise, the small business impact is expected to be no greater than it is for present rule 340-104-317.

FSB:c
ZC1685.1

Attachment II
Agenda Item No. J
1/25/85 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF MODIFYING	)	STATEMENT OF LAND USE
OAR CHAPTER 340 DIVISION 104	)	CONSISTENCY

The proposal described appears to be consistent with all statewide planning goals. Specifically, the modifications comply with Goal 6 because they minimize the amount of hazardous waste disposed, and thereby provide protection for air, water and land resource quality.

The modifications 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 January 25, 1985, as part of the agenda of a regularly scheduled Commission meeting.

FSB:c
ZC1685.2

Attachment III
Agenda Item No. J
1/25/85 EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Public Hearing on Amendments to the Hazardous Waste Rules

Date Prepared: December 4, 1984
Hearing Date: January 2, 1985
Comments Due: January 2, 1985

WHO IS AFFECTED:

Persons who manage hazardous waste including generators and owners and operators of hazardous waste 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 repealing the specific ban on the land disposal of certain pesticide, ignitable and listed wastes (OAR 340-104-317) and adopting the following rule:

"340-104-318 The Department may prohibit the land disposal of any hazardous waste if in the Department's judgment there are more environmentally sound beneficial use or disposal options. In making such a decision, the Department shall consider but not be limited to storage, transportation and other appropriate risks."

WHAT ARE THE HIGHLIGHTS:

The Department is seeking authority to ban the land disposal of hazardous wastes on an individual basis rather than on a class basis.

HOW TO COMMENT:

A public hearing is scheduled for oral comments on:

Wednesday, January 2, 1985
9:00 a.m.
DEQ Portland Headquarters
Room 1400
522 S.W. Fifth Avenue

Written comments can be submitted at the public hearing or sent to DEQ, PO Box 1760, Portland, Oregon, 97207, by January 2, 1985.

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 January 25, 1985.

B4045
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. J
1/25/85 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 Adoption of Amendments to Hazardous Waste Rules to Provide That Only Those Liquid Organic Hazardous Wastes Which Can Be Beneficially Used Will be Banned From Landfilling After January 1, 1985

Pursuant to notice, a hearing was held on January 2, 1985, in the offices of DEQ in Portland, Oregon, to receive testimony on the Department's proposal to modify the hazardous waste management rules, OAR Chapter 340, Division 104. Eighteen persons attended; only Tom Donaca, Associated Oregon Industries, testified.

Mr. Donaca proposed any of the following alternatives (testimony attached):

1. Retain the present rule (340-104-317) but explain better to the regulated community;

2. Repeal the present rule and adopt the proposed rule (340-104-318) with some suggested changes; or

3. Repeal the present rule but tie the repeal to the RCRA reauthorization landfill ban.

Written testimony was submitted by Jim Brown, Tektronix; Robert Hall, PGE; John Millison, Baron-Blakeslee; and Ken Wenzel, McCloskey Varnish (also attached).

Mr. Brown suggested the alternatives of either a proposal similar to Mr. Donaca's alternative no. 2 or of making the present rule effective March 30, 1986.

Mr. Hall supported repealing the present rule and adopting the proposed rule.

Mr. Millison had no objection to adopting the proposed rule but wanted the present ban on halogenated solvents to remain.

Mr. Wenzel did not want a total ban on ignitables because of the difficulty he would face in disposing of ignitables with high solids content.

ZC1977.1
Attachments

PUBLIC HEARING

LANDFILL BAN AMENDMENTS: OAR 340-104-317 and -318.
9:00 a.m. Jan 2, 1985, Rm 1400

Name	Representing
Bob Torgerson	Transco Industries INC
Mead Lefland	Transco Industries Inc
JOHN SPENCER	Riedel ENVIRONMENTAL SVC. Co-
John Millison	Baron Blakeslee, Inc.
GARY HAHN	McCall / GREAT WESTERN
Diane g Stockton	OMARK Ind
DIXIE DARROW	Chem Securities
Jim Brown	TEKTRONIX
Jim McDaniel	Hewlett-Packard.
Mike Abbott	Burlington Northern R.R.
Bill VanDyke	DISTRICT SALES MGR - CSSI
JOHN HARLAND	INTEL
Charles Farrell	Hill P.U.D
Ron Graham	Independent Resource Service
Gene Jenkins	Wescamp Inc.
J. E. Cormacle	Crown Zellerbach
TED MOLINARI	PRAEGITZER INDUSTRIES
TOM DONACA	ASSOC. OREGON INDUSTRIES

Testimony of Associated Oregon Industries on the proposed rule to amend the Hazardous Waste Rules relating to the ban on landfilling of certain hazardous wastes after January 1,1985.

January 2,1985

I am Thomas C. Donaca, General Counsel of the association, and I appear today on behalf of the Hazardous Waste Committee of the association, many members of which are or may be affected by the existing rule OAR 340-104-317 which purports to ban certain hazardous wastes resulting from manufacturing activities from landfilling after January 1, 1985.

Some confusion has attended this rule. While we have reviewed Mr. Reiter's interoffice memorandum of December 27, 1984 which clarifies the matter greatly, non the less the only hazardous waste disposal site operator in Oregon notified all its clients some time ago that after December 15, 1984 it would no longer accept wastes classified under OAR 340-101-033(3)(a) (namely, manufacturing process wastes greater than 3% or 10% of the 340-101-033(6) or (7) which are the P and U lists).

Point 3 of Mr. Reiter's letter relating to EPA equivalency raises a serious question - that being, can the Department adopt the proposed rule and maintain the equivalency with EPA on the universe of waste regulated? If the answer to that question is yes, then we can proceed to an examination on of the proposed rule.

The language contained in proposed OAR 340-104-318 provides almost total discretion to the Department to make judgements as to whether Oregon generators and others can or cannot landfill their hazardous wastes. We are sure the Department does not intend to create another uncertainty in the uncertain world of hazardous waste regulation, and we will suggest some language later in our testimony to provde the needed certainty to all affect parties.

As to the specific language: (1) we assume that the words "judgement" and "decision" are intended to be synonymous; (2) we assume that in the second sentence that the "risks" of storage and transportation along with "other appropriate risks" is intended but we wonder if cost is not a risk to be considered; and (3) we also assume that in making a "judgement" that there is a more sound beneficial use or disposal option, that if the treater or collector that would receive the waste, rather than a disposal site, were deemed by the generator to be unsafe due to the management practices used, such as at Caron Chemical and Western Processors that became superfund sites, that such alternatives would not be demed environmentally sound.

As for the language to make the proposed language more definite it is essential for generators who may only store waste for 90 days. Time delays and uncertainty must be avoided. We therefore suggest a new paragraph to read:

"Any hazardous waste that had been authorized to be landfilled prior to January 1, 1985 may continue to be land filled after that date unless the Department, in writing, notifies a generator that landfilling of the generators waste must cease. Such notice shall indicate the waste affected, using the manifest designation of the waste; indicate the alternative means of disposal or beneficial use that the decision was based on; and provide that the notice is effective for the wastes listed 90 days after receipt."

The 90 day period is to provide adequate time, within the time constraints already placed on generators, to provide alternative means to dispose of or beneficially use the waste or to appeal the notice.

The staff report on Agenda Item K of the Dec.14, 1984 Commision meeting listed three alternatives -

1. Do nothing, leave the hazardous waste rules as presently written.

2. Accept the Departments recommendation.

3. Eliminate the ban completely.

We can accept alternative 1, if as we now assume, there is clear understanding as to the interpretation of OAR 340-104-317 and related rules. If this course of action is adopted then the site operator should be notified so that he may accept liquid wastes that were never intended to be banned from landfilling. In addtion, no further Commission action would be required.

We can accept alternative 2 if language similar to that which we have already suggested is incorporated in the proposed rule. However, we do note that rulemaking takes time and a ban will be in effect for over a month and a half for many generators which is versing on a hardship situation. And this assume the Commission acts favorably at the January Commission meeting.

The last alternative, to eliminate the ban completely, would only be acceptable if tied to the RCRA reauthorization time lines for banning the landfilling of liquids. In the main they call for new EPA rules within 15 months and this will require a thorough review of whatever rule is the outcome of this hearing at that time. This concludes my testimony.

Tektronix
COMMITTED TO EXCELLENCE

Tektronix, Inc.
Tektronix Industrial Park
P.O. Box 500
Beaverton, Oregon 97077

Phone: (503) 627-7111
TWX: 910-467-8708
Telex: 151754

January 3, 1985

Mr. Fred Bromfeld
Hearings Officer
DEQ
PO Box 1760
Portland, OR 97207

Re: Proposed Adoption of OAR 340-104-318

Dear Mr. Bromfeld:

After attending the January 2, 1985 public hearing on the DEQ's proposal to adopt OAR 340-104-318, I feel additional items need to be entered into the Hearings record, pertaining to the proposed rule.

First, the specific applicability of OAR 340-104-317 is at best unclear. The rule must either be re-written to provide clarity as to specific applicability or deleted from the rules, as the adoption of OAR 340-104-318 contemplates.

Secondly, the proposed wording of OAR 340-104-318 provides the DEQ with total discretion as to which wastes may continue to be disposed of at Arlington and which wastes may be banned. The rule provides the generator of hazardous wastes no indication whatsoever as to the Department's probable determination on any given waste. Nor does the rule provide any time frame or procedural apparatus for a generator to appeal a potential ban or to find an alternative treatment or disposal method, should the Department determine that banning a specific waste is necessary.

One of the purposes of attending yesterday's hearing was to find out what procedural steps would be taken by the DEQ in deciding to ban a heretofore acceptable waste at Arlington. The Department was unable at that time to shed any light on what those procedural steps might be. In fact, when specifically questioned on those matters, Department personnel said that there were presently no in house mechanisms in place to make those determinations.

This uncertainty over the Department's procedural decision-making processes creates additional uncertainty in the amophous world of hazardous waste generation and regulation.

Considering the significant and substantial penalties which can arise from improper disposal of hazardous wastes, we request the Department to reconsider the proposed wording of OAR 340-104-318 to provide better clarity as to how the Department will make its determinations. Also, due to the 90 on-site storage limitations for most hazardous waste generators, it is advisable to tie notice provisions in an amended rule to that 90 limitation. I would suggest that the rules be amended to read as follows:

"Any hazardous waste that had been authorized to be landfilled prior to January 1, 1985 may continue to be landfilled after that date, unless the Department notifies the generator and disposal facility, in writing, that further landfilling of the generated waste must cease. Such notice shall indicate the specific waste affected by name and manifest designation classification. It shall also indicate the alternative means of disposal or beneficial use the Department deems to be more environmentally sound. The Department shall provide that the prohibition is effective for the waste listed in the notice 90 days after receipt of notice. The notice shall be considered an Order of the Department and the generator shall have the right to an administrative hearing on the matter if he so requests within 20 days of receipt of notice."

Lastly, in lieu of the Department's proposed rule, it could amend OAR 340-104-317 to incorporate the newly enacted '84 RCRA land disposal bans, thereby bringing the Oregon ban into conformity with the new national land disposal bans. This proposal was previously submitted to Mr. Hansen by Associated Oregon Industries on 16 November 1984. That letter is attached and incorporated by reference to these comments.

The proposed amended form of OAR 340-104-317 is as follows:

340-104-317
(1) Except as may be permitted by section (3) of this rule or by rules 340-104-314(2)(b) to (d) after [January 1,1985] <u>March 30,1986</u> an owner or operator shall not place in a landfill any liquid waste or free-liquid portion of any liquid/solid waste mixture if such mixture contains in excess of 20% free liquid, if the waste was initially generated as a liquid or as a liquid/solid mixture and is identified in section (2) of this rule.
(2)(a) Organic wastes identified in rules 340-101-033(1) to (3) as acutely hazardous (H) or toxic (T);
(b) Organic pesticides or organic pesticide manufacturing residues identified in rule 340-101-034(1)(a);and

(c) Wastes that are hazardous only because the characteristic of ignitable .

(3) The owner or operator may apply for an exemption from section (1) of this rule for a specific waste of he can demonstrate that:

(a) The disposal will not pose a threat to public health or the environment due to the properties or quantity of the waste, characteristics of the landfill, the proposed disposal procedure and other relevant circumstances; and

(b) The waste generator has taken all practicable steps to eliminate or minimize the generation of then waste and to recover, concentrate , or render the waste non-hazardous. (Comment: This rule does not pertain to liquids which have become mixed with soil or other debris as the result of a spill.)

Thank you for considering these comments in preparing your report to the EQC on the results of the January 2, 1985 hearing.

Sincerely,

James C. Brown
Environmental Compliance Coordinator

Portland General Electric Company

December 21, 1984

Fred Bromfeld
Oregon Dept. of Environmental Quality
PO Box 1760
Portland OR 97207

Subject: Proposed changes to
Hazardous Waste Rules
OAR 340-104-318

Dear Mr. Bromfeld:

PGE has reviewed the proposed Rule OAR 340-104-318 and supports the adoption of the proposed rule as it is published.

PGE is of the opinion that better decisions are usually made concerning environmental permits or actions when information is based on an individual rather than a general class basis. We believe this rule will help streamline the process of disposing of hazardous waste while keeping our environment safe for future generations.

We would like to thank you for the opportunity to comment.

Sincerely,

Robert E. Hall
Public Affairs Representative

121 S.W. Salmon Street, Portland, Oregon 97204

Baron·Blakeslee·Inc.
a subsidiary of Purex Industries, Inc.

REPLY TO:
5920 N.E. 87TH
PORTLAND, OREGON 97220
AREA CODE 503—252-3468
SEATTLE, WASHINGTON
AREA CODE 206—382-0823

January 2, 1985

Department of Environmental Quality
P.O. Box 1760
Portland, Oregon 97207

Attention: Mr. Fred Bromfield

Dear Mr. Bromfield:

This testimony is being submitted in written form to avoid aspects of commercialism at the public hearing of this date receiving oral testimony.

Baron-Blakeslee, Inc., a subsidiary of Purex Industries, Inc., is the largest recycler of chlorinated and fluorinated solvents in the United States. Our Portland Solvent Center is located at 5920 N.E. 87th Avenue in Portland and is fully permitted and licensed by the necessary authorities.

With regards to the proposed ammendment to OAR 340-104-317 involving the disposal of hazardous wastes, we have no objection to the ammendment being instituted, with the omission of chlorinated and fluorinated solvent wastes.

As recyclers of these waste products, we strive to provide the best possible service for our customers. Therefore, through our network we have developed a technique for futher processing wastes generated by our distillation system in a multiplate fructionating still with ultimate disposal through incineration. This is accomplished through no additional cost to our customers.

Baron·Blakeslee

January 2, 1985

We provide this recycling service to hazardous waste generators whether or not they purchase their solvents from Baron-Blakeslee. The customer is credited back for the recoverability and is "off the hook" as a hazardous waste generator by having Baron-Blakeslee consume the waste stream in our system, thereby avoiding long term liability in the "cradle to grave" responsibility that exists with placing waste products in a land fill.

Our intention is to inform the EQC of the services available to chlorinated and fluorinated solvent users and to let you know that by omitting these waste streams from the proposed ammendment there will be no adverse effects on our operation or customer base now or in the future.

Respectfully submitted,

John W. Millison
Sales & Operations Supervisor
Baron-Blakeslee, Inc.
5920 N.E. 87th Avenue
Portland, Oregon 97220

McCloskey®
VARNISH COMPANY
Of The Northwest

Manufacturers of Alkyd Resins • Varnishes • Emulsions • Sealers and Natural Wood Finishes

January 2, 1985

To: DEQ
P.O. Box 1760
Portland, OR 97207

From: Kenneth Wenzel,
Plant Engineer

Subject: OAR 340-104-318

We at McCloskey Varnish Co. feel that from a practical standpoint, we cannot live with a total ban on landfilling ignitable wastes.

Under normal conditions most of our waste is suitable for incineration. But due to the nature of our products we have, on occasion, had material that was too thick to be handled as a liquid and not thick enough to be called solid. This material may contain enough organic solvent to be called flammable. This law should be written to allow case by case exceptions, because the technology is not available currently to incinerate this type of waste.

Sincerely,

Kenneth Wenzel

Kenneth Wenzel
Plant Engineer

KW:kg

4155 N.W. YEON AVE., PORTLAND, OR 97210-1491 • TELEPHONE 503/226-3751

Attachment V
Agenda Item No. J
1/25/85 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF MODIFYING) PROPOSED MODIFICATIONS
OAR CHAPTER 340 DIVISION 104)

1. Modify rule 340-104-317 as follows:

340-104-317 (1) Except as may be permitted by sections (2) and (3) of this rule or by rules 340-104-314(2)(b) to (d), [after January 1, 1985,] an owner or operator shall not place in a land[fill] disposal unit any liquid waste or the free-liquid portion of any liquid/solid waste mixture if such mixture contains in excess of 20% free liquid, if the waste was initially generated as a liquid or as a liquid/solid mixture and is identified [in section (2) of this rule.]

[(2)(a) Organic wastes identified in rules 340-101-033(1) to (3) as acutely hazardous (H) or toxic (T);]

[(b) Organic pesticides or organic pesticide manufacturing residues identified in rule 340-101-034(1)(a); and]

[(c) Wastes that are] as a hazardous waste only because [they] it is listed on the basis of or meets the characteristic of ignitab[le]ility (I).

(Comment: These wastes include but are not limited to those having EPA Hazardous Waste Numbers D001, F003, U001, U002, U008, U031, U055, U056, U057, U092, U110, U112, U113, U117, U124, U125, U154, U161, U171, U186, U213 and U239).

[(3)] (2) The generator and owner or operator may apply for an exemption from section (1) of this rule for a specific waste if he can demonstrate that:

(a) The disposal will not pose a threat to public health or the environment due to the properties or quantity of the waste, characteristics of the landfill, the proposed disposal procedure and other relevant circumstances; [and]

(b) The waste generator has taken all practicable steps to eliminate or minimize the generation of the waste and to recover, concentrate or render the waste non-hazardous[.] ; and

(c) There is no reasonably available means of beneficial use, reuse, recycle, reclamation or treatment.

(3) Upon receipt of a request for an exemption, the Department shall make a tentative determination to approve or deny the request within thirty (30) days of receipt. The generator and owner or operator shall have thirty (30) days from the date of tentative denial to appeal the denial to the Department. The Department shall make a final determination within ninety (90) days of the original request if a timely appeal has been filed.

(Comment: This rule does not pertain to liquids which become mixed with soil or other debris as the result of a spill.)

2. Adopt rule 340-104-318 as follows:

340-104-318 (1) The Department may prohibit the land disposal of any hazardous waste if in the Department's judgment there are more environmentally sound beneficial use, reuse, recycle, reclamation, treatment or disposal options. In making such a judgment, the Department shall consider but not be limited to storage, transportation and other appropriate risks.

(2) For wastes identified under section 1 of this rule, the Department shall notify any affected generators and land disposal owners or operators, in writing, that land disposal of a specified waste is

prohibited. Such notice shall indicate the specific waste affected by name and EPA Hazardous Waste Number, and shall also indicate the alternative means of beneficial use, reuse, recycle, reclamation, treatment or disposal deemed to be more environmentally sound. The Department shall provide that the prohibition is effective for the waste listed in the notice 90 days after receipt of notice. The generator or disposal facility shall have 30 days from receipt of the notice to appeal the prohibition to the Department. The Department shall make a final determination within 60 days of the original notice if a timely appeal has been filed.

FSB:b
ZB4045.1

VICTOR ATIYEH
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310-0590 PHONE (503) 378-4926

MEMORANDUM

January 24, 1985

To: Members of the Environmental Quality Commission

FROM: James F. Ross, Director

SUBJECT: Agenda Item E, January 25, 1985, EQC Meeting

Public Hearing and Proposed Adoption of Amendments to the Rule Regulating Use of Cesspools and Seepage Pits, OAR 340-71-335.

Thank you for the opportunity to testify on this matter of importance to mid-Multnomah County and the Portland Region. This testimony of the Department of Land Conservation and Development reaches toward these objectives: to support the EQC's efforts to halt the increase of sanitary waste disposal into the subsurface environment of mid-Multnomah County; to preserve the much needed economic stimulus to be derived from continued development; and to enlarge upon the proposed amendment in order to move toward eventual elimination of subsurface sewage disposal in this target area.

1. The DLCD is mindful of the long-standing concern over degradation to subsurface water quality resulting from heavy reliance upon cesspools and seepage pits for disposal of sewage. Scientific documentation of this problem prepared by your department and other entities is extensive and persuasive, providing strong evidence of serious pollution to subsurface water. We all wrestled with this problem in 1979-80 when considering the Multnomah County comprehensive plan for acknowledgment of compliance with statewide land use planning goals. Since then new evaluations of the problem, new statutory powers and greater preparedness to install new sanitary facilities have occurred. The proposal before you today is an important part of the local government and DEQ commitment toward corrective action. We support this proposed amendment by the EQC which would end increases to the amount of waste released into the subsurface of mid-Multnomah County. We concur as well that the amendment is preferable to a prohibition on new cesspool and seepage pit permits pending EQC action on a proposal to solve the problem.

2. The Department is also concerned about the proposed amendment's potential affect on development opportunities. Every effort feasible today should be taken to protect development opportunities consistent with the necessary corrective measures.

Statewide Planning Goal 14 (Urbanization) and related Oregon statutes indicate that lands within urban growth boundaries are considered urban lands and subject to urbanization. Goal 10 (Housing) requires local governments to provide adequately for needed housing. Needed housing could be prevented from development by the proposed amendment. The "consistency statement" does not address these issues. The statement comments on the relationship between the proposed amendment and Goals 6 (Water Quality) and 11 (Public Facilities Services) and observes "the proposed amendments do not appear to conflict with the other goals."

We could recommend therefore that the Land Use Consistency Statement be expanded to consider Goals 10 and 14. If, as a result of this consideration, a moratorium on development is justified, that justification should be included in the Statement. (ORS 197.505-540 is a reasonable standard for making such a justficiation.)

You may also wish to consider a modification of the proposed amendment along the lines presented by the development community and others, i.e., allocate an annual number of new permits for development based upon available information on anticipated sewer hookups. This would allow a more flexible approach to development while maintaining reasonable assurances that further groundwater contamination would not occur.

The DLCD supports whatever additional action can be taken by the EQC and local governments to increase the number of sewer system hookups and the use of alternative treatment systems during the effective time of the proposed amendment. The DLCD staff are available to assist your Department and Commission in making any needed revisions.

JFR:CG:JS:sp
2653D/3B

Fred – Home builders proposal as of 4/30 ~~Advance~~ Draft

Subject to change

MEMORANDUM

TO: ENVIRONMENTAL QUALITY COMMISSION 1/25/85

FROM: HOME BUILDERS ASSOCIATION OF METROPOLITAN PORTLAND

RE: PROPOSED AMENDMENT TO OAR 370-71-335 (2)

We recommend that OAR 340-71-335 (2) as amended by the temporary rule adopted by the Commission on December 14, 1984 be further amended as follows:

340-71-335

(2) Prohibitions. Except as allowed in subsections (2)(a) and (2)(b) of this rule, the agent shall not issue favorable site evaluation reports or construction-installation permits for cesspool or seepate pit systems.

(a)Except as allowed in subsection (2)(b) of this rule, seepage pit systems shall be used only to replace existing failing seepage pits and cesspool systems on lots that are inadequate in size to accomodate a standard system or other alternative on-site sewage systems. A construction-installation permit allowing replacement of the failing system shall not be issued if a sewerage system is both legally and physically available as described in OAR 340-71-160 (5) (f).

(b)((c))[Effective January 1, 1985,] Unless and until the Environmental Quality Commission [EQC] takes final action on the proposal to find a threat to drinking water in Mid-Multnomah County, installation of cesspool and seepage pit sewage disposal systems shall [only] be allowed within the affected area of three (3) sewage treatment plan basins (Inverness, Columbia, and Gresham, as described in Appendix 3 of the document entitled Threat to Drinking Water Findings June, 1984).subject to the following conditions:

(A) A cesspool or seepage pit system to serve a new sewage load may be permitted only [only be installed] if an equivalent sewage load into [loading of sewage to] an existing cesspool [(or cesspools)] or seepage pit within the affected area is[has been] [removed from discharge to the groundwater] eliminated by connection to a [sewer] public sewerage facility.

(B) [A cesspool or seepage pit system may be installed to repair.]A permit to replace an existing failing cesspool or seepage pit system may be issued only if [connection to a sewer is not practicable and no other alternative is available.] sewers are not physically available (refer to OAR 340-71-160 (5) (f)) and there is insufficient area available to install either a standard

or other alternative system.

(C) Any new or repair cesspool or seepage pit system installed shall be located between the structure and the location of the point where connection to a sewer will eventually be made so as to minimize future disruption and costs of sewer connection.

(D) Cesspool or seepage pit systems shall not be [allowed] authorized on any lot that is large enough to [accomodate] install a standard or other alternative on-site system.

(E) [Any new subdivision or development] After the effective date of this rule, any land development that involves the construction of streets, and all subdivisions plated after the effective date shall be required to install dry sewers at the time of development[.] if ~~suf-~~ existing ~~ficient~~ engineering data can be provided by the agent to allow such dry lines to be later connected to a sewer. When insufficient data are available, the person applying for a construction-installation permit may, as an alternative, post a bond or deposit for the cost of the remaining sewer construction needed to connect the affected buildings to a public sewerage facility. The agent of the Department of Environmental Quality may defer or temporarily reduce street construction standards in such cases if the costs of such later required improvements are included in the aforementioned bond or deposit.

Fix for Probable non Problem — another option would be a "Variance" if facts warranted.

(F) The system for collection of additional funds for each cesspool installation [System Development Charge) enacted by the jurisdictions in the affected area prior to October 1, 1982, shall be maintained.

(c)(d) Subsection (2)(b) of this rule shall be administered in a manner so [as to preclude any net increase in] that the net cesspool or seepage pit discharges into the ground on December 31, 1985 are not significantly greater than such discharges on January 1, 1985. To insure that such discharge goals are met, the agent of the Department of Environmental Quality may issue construction-installation permits not to exceed 200 Equivalent Dwelling Units for new cesspools or seepage pits during 1985. If discharges greater than 200 Equivalent Dwelling Units are eliminated by connection to a pubic sewerage facility during 1985, the total construction-installation permits issued during the year may be increased to equal the discharge load which has been eliminated. The agent of the Department of Enviromental Quality responsible for implementation of on-site sewage disposal rules in Multnomah County shall, prior to issuing any further cesspool or seepage pit construction-installation permits, develop and implement a system to account for

But 4 Mult Co Rd. are at 125 - not 200

discharges removed, cesspools and seepage pits properly abandoned, and new permits issued. Accounting shall be on an equivalent single-family dwelling unit (EDU) basis. The accounting system shall be submitted to DEQ for approval. Monthly reports shall be submitted to DEQ on or before the 5th day of the following month.

CITY OF
PORTLAND, OREGON
BUREAU OF ENVIRONMENTAL SERVICES

Dick Bogle, Commissioner
John Lang, Administrator
1120 S.W. 5th Ave.
Portland, Oregon 97204-1972
(503) 796-7169

January 22, 1985

TO: Mayor Bud Clark
Commissioner Dick Bogle
Commissioner Mike Lindberg
Commissioner Margaret Strachan
Commissioner Mildred Schwab

FROM: John Lang, Administrator
Bureau of Environmental Services

SUBJECT: Council Calendar Item No. 130

The attached resolution is on tomorrow's Council calendar. It's purpose is to allow a representative of the Portland Homebuilders Association, Charles Hale, to comment to the Council on the Oregon Environmental Quality Commission's proposed rule to not allow an increase in the total number of cesspools now existing in east Portland and mid-Multnomah County. The Homebuilders Association is concerned this will prevent development in the area.

DEQ is currently proposing that new cesspools in 1985 be limited to the number of existing cesspools removed from service in 1985. This will stabilize the groundwater pollution until final plans are prepared for the cost and installation schedule of sewers for the area.

City staff have supported this moratorium of cesspools for the following reasons:

- The City has requested EQC to determine if a threat to groundwater exists from cesspool drainage in the area. EQC has concluded such a threat exists and will be ordering sewers to be installed. The City is supporting this action and it is consistent to support the moratorium on cesspool numbers.

- Each new cesspool built costs $2,000-$3,000. The expenditure of this amount can cause a property owner financial inconvenience and create objections when they must connect to a public sewer in the near future.

Margaret Mahoney, County staff and I have met with Mr. Hale and reached a satisfactory solution we are proposing to the DEQ staff this afternoon. Our proposal is:

1. To estimate the number of cesspools that will be taken out of service through connections to public sewers in 1985. (This is conservatively estimated to be 125.)

2. To estimate the number of new cesspools needed in 1985 to accomodate development. (This is conservatively estimated to be less than 200. Approximately 110-120 were needed in 1984.)

3. To recognize that approximately 75 additional cesspool permits were issued by the County in December, 1984 after EQC announced the moratorium would go into effect January 1, 1985. (These permits were probably obtained by developers for use in 1985.)

4. To recognize the estimated 125 disconnects in 1985 and the 75 permits obtained in late December, 1984 will allow 200 new cesspools to be installed in 1985.

5. To allow 200 new cesspools in 1985.

It is recommended the Council "file" the resolution after providing Mr. Hale the opportunity to speak. This recommendation is made because:

1. The determination of how much pollution to allow in mid-County is most appropriately an EQC responsibility.

2. It appears Mr. Hale is in agreement with the above proposal and, with City staff, can recommend it to DEQ staff and the EQC.

I may be reached at 796-7169 if further information is needed.

JML:al
21:council-cess

cc: Margaret Mahoney, Bureau of Buildings

RESOLUTION No.

WHEREAS, the Environmental Quality Commission (EQC), at its December 14 meeting, adopted a temporary Administrative Rule allowing a new cesspool installation in the unsewered area in mid-Multnomah County only if an existing cesspool receiving an equivalent sewage load is removed from service and abandoned; and

WHEREAS, the temporary rule was adopted as a compromise measure in lieu of an existing permanent rule which would have prohibited any new cesspool installations in the unsewered area; and

WHEREAS, the EQC agreed to take final action on the temporary rule on January 25, 1985, to replace the temporary rule with a permanent rule which would be effective until additional plans are submitted to the EQC in July, providing for the installation of sewers in mid-County; and

WHEREAS, the Homebuilders Association is concerned that the temporary rule, if made permanent, is too restrictive on development activities;

NOW, THEREFORE, BE IT RESOLVED, that the Council will hear the concerns of the Homebuilders Association at its regularly scheduled meeting on Wednesday, January 23, and will discuss the issues at that time.

Adopted by the Council,

Commissioner Dick Bogle
January 18, 1985
JML:al

JEWEL LANSING
Auditor of the City of Portland

By

Deputy

MEMORANDUM **D.E.Q.**

DATE: January 24, 1985

TO: Fred Hansen

FROM: Harold Sawyer

SUBJECT: Cesspool Rule

We have obtained the following information from the jurisdictions:

1. Number of existing Equivalent Dwelling Units (EDU) adjacent to sewers but not yet connected -- still on cesspools:

   a. Portland --- estimated at 680
   b. Multnomah County --- estimated at 300
   c. Gresham --- no estimate

2. Number of cesspools abandoned in 1984:

   a. Portland --- 3 in last 2 months (est 10/yr)
   b. Mult. Co (Inverness) --- 28
   c. Gresham --- 11

3. Number of EDU sewer connections projected for 1985:

   a. Portland --- 85 for Woodland Park Hospital + 10 Misc. New sewers will serve more than 500 properties in the next 1.5 years in PDX and Inverness.
   b. Mult. Co (Inverness) --- 20 approx.
   c. Gresham --- 10 approx. Light Rail Sewer ready for connections on Gresham end.

Portland and Multnomah County (at least some in the county) do not want to see the load to groundwater increase. However, they would support a change in the accounting system to make administration easier.

Portland and Multnomah County are proposing to be allowed to make commit up to 125 new cesspool installations in anticipation of their conservative projection of 125 EDU cesspools to be abandoned in 1985. If more are abandoned, more than 125 permits could be issued -- on a 1 for 1 basis. Under their proposal, accounting would be in balance at the end of the year, but not necessarily on a day to day basis. They expect the lag time between permit issuance and occupancy of the structure to take 6 months or more -- thus allowing abandonments to occur after

permit issuance without resulting in a net load increase.

The 125 new permits plus an estimated 75 outstanding from December issuance would allow for about 200 new starts in 1985.

They indicate that about 186 cesspool permits were issued in 1984 for new structures. About than 85 of these were issued in December in anticipation of a ban on new permits. They estimate that 110 new EDU's were started in the affected area in 1984.

The Home Builders were supposedly in agreement with this, but now appear to be abandoning the unified stance in favor of pushing for more cesspools and a net increase in loading.

Rec'd 11/25/85
Item F

Before the Environmental Quality Commission

of the

State of Oregon

In the matter of the request for adoption of rules for granting water quality standards compliance certification pursuant to requirements of section 401 of the Federal Clean Water Act	))))))	TESTIMONY OF **OSCC** AND **NEDC**

My name is Jack Douglas Smith, residing at 6980 SW 68th Avenue, Portland, OR 97223. I am testifying for and on behalf of the **Oregon Shores Conservation Coalition** and the **Northwest Environmental Defense Center** at the Northwestern School of Law at Lewis and Clark University.

We concur, at least in part, with the statement of Lynn Frank in his January 3 letter appended to the DEQ staff report as Attachment F that "This is an issue of great importance to the state and its citizens. In order for the state to play a meaningful role in the federal decision making process on hydroelectric facilities, the state must have an effective instrument for coordinated review of these facilities. We believe that section 401 certification is such an instrument." Mr. Frank's portrayal of section 401 as "an effective instrument for coordinated review" in fact greatly understates the "meaningful role" that section 401 provides the state of Oregon in the federal decision making process on hydroelectric facilities.

The first paragraph in section 401 of the Federal Clean Water Act states bluntly that "No (federal) license or permit shall be granted if certification has been denied by the State..." The final paragraph in section 401 ends with the specification that "Any certification provided under this section shall set forth any effluent limitations and other limitations.... necessary to assure that any applicant for a Federal license or permit will comply with.....(applicable sections of the Clean Water Act).....and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section." Section 401 is not simply an instrument for review of federal licensing and permitting activities; it is <u>the</u> instrument available to the state for completely controlling, to the point of absolutely denying, those activities affecting the waters of the state which are subject to federal license or permit.

This is the reason we have been and continue to be so interested in this particular proposal for rules. We believe that DEQ should be responsible for the exercise of a far more aggressive role in asserting the state's interests in federal licensing and permitting activities affecting the state's waters than the presently proposed rules indicate. The burden in section 401 is not placed on the state to provide certification; the burden is on the applicant for the federal license or permit to obtain the necessary certification of compliance from the state, and thereby to provide the state with convincing information and arguement as to why the state should not deny this certification.

In the DEQ staff report, on page 5, you will notice that NEDC requested "extensive information relating to the Department's certification reviews during the past 5 years" and that we were "informed that the material is in the department files and is available for (our) review at DEQ offices." We have availed ourselves of and have reviewed this information at the DEQ offices. We have reviewed the files of over 200 applications for certification of Federal Energy Regulatory Commission (FERC) hydroelectric licenses dating from this week back through 1982. In all these applications, we found two which had been denied. One was the Gold Hill Project on the Rogue River (FERC 3210), which was denied because the Oregon Legislature had specifically withdrawn hydroelectric development as a beneficial use for that section of the Rogue River (ORS 538.270). The second was the Lava Diversion Project on the Deschutes River (FERC 5205), which was denied until the project applicant adequately addresses some specific water quality impacts identified by DEQ and until the project applicant obtains a land use compatability statement from Deschutes County officials. Certifications for all the remaining FERC applications were found to have been either waived or granted outright with a generally amiable one-page letter stating that "the proposed project is not likely to cause any significant change in existing water quality" or similar language. The only application file we found that included any identifiable public notification was that for the Lava Diversion Project. That was also the only application file which contained an evaluation report more comprehensive than the one-page letters waiving or granting the requested certifications. In only the Gold Hill Project denial of certification was there any recognition that the designated uses of the state's waters might be a consideration in the evaluation of certification applications.

Of the five specifically cited provisions of the Federal Clean Water Act with which section 401 requires applicants to provide certification, section 303 includes the broadest representation of the state's interests in its waters. It is section 303(c)(2), for example, which defines the state's water quality standards to consist not only of water quality criteria but also and first the designated <u>uses</u> of the waters involved. It is this section that states: "Such standards shall be such as to protect the public health or welfare, and.....shall be established taking into consideration their use and value for.....propagation of fish and wildlife, recreational purposes.....and other purposes, and also taking into con-

sideration their use and value for navigation."

It is our observation that DEQ has historically simply waived its opportunity or obligation to deny certification of compliance of FERC license applications with the water use requirements of section 303. Its most recent consideration of such applications, e.g., the Lava Diversion Project on the Deschutes River, was narrowly concerned with impacts on water quality criteria: dissolved oxygen, temperature, turbidity, etc., rather than the broader and more fundamental questions of impact on the use of the affected waters.

A second crucial part of section 303 is the requirement that the state establish the allowable "total maximum daily load" for pollutants based on the water quality needs of the affected waters. The reason for being concerned with this requirement in the 401 certification (or denial) process is that the establishment of any allowable pollutant load will necessarily be a function of streamflow or streamflow conditions. Lower streamflow or impounded flow, for example, will translate generally into a lesser allowable pollutant load; higher streamflow will translate into a higher allowable pollutant load (more available dilution, for example). It is difficult to see how a (FERC or any other) project which proposes to change streamflow conditions can very easily be certified to comply with an established allowable pollutant load when the changed streamflow conditions will change the allowable pollutant load. Certification of compliance with this particular section of the Federal Clean Water Act would seem to require the simultaneous establishing of a new and different "total maximum daily load" for pollutants. We anticipate providing more extensive testimony to the Commission regarding the Department's compliance or lack of compliance with this part of section 303 of the Clean Water Act when the Department's proposed revised water quality standards come eventually before the Commission for adoption.

We hope these comments and observations make clear to the Commission why we are concerned about the adequacy of the proposed rules for section 401 certification of federally licensed or permitted activities. The rules as proposed do not clearly enough indicate or recognize the broad authority granted to the state by section 401 to assert the state's interests in protecting the uses of its waters from such federally licensed or permitted activities. The following are some specific recommendations for changes or additions to the rules presently proposed as Attachment A to the DEQ staff report which we believe will strengthen somewhat these rules.

The first paragraph on page 1 of the staff report speaks of certification of "any such discharge or activity." The Summation section on page 5 of the staff report speaks of a requirement to review and to certify "the proposal" and of "requirements for the protection of public waters." Under the description of Purpose on page 1 of Attachment A is language about certification "for projects." On page 2 of Attachment A, however, under Certification Required is the more narrowly construed description of a

certification of "any such discharge." We recommend that this phrase be changed from "any such discharge" to the more broadly construed any such activity.

On page 2 of Attachment A under the information requirements listed as 340-48-020(2), we recommend the addition of the following subsection: (i) Information and evidence demonstrating that the project is compatable and consistent with all designated beneficial uses of the affected waters.

Also on page 2 of Attachment A under 340-48-020(3), to the end of the sentence presently ending with the phrase "project impacts on water quality" we recommend the addition of the words or designated beneficial uses of the affected waters.

On page 4 of Attachment A under Issuance of a Certificate, the last sentence under 340-48-025(1) should be stricken in its entirety and replaced with the sentence: The applicant shall be notified promptly that until the Department completes action on the application for certification the certification shall be considered to be denied.

Also on page 4 of Attachment A under 340-48-025(2), we recommend the addition of the following subsection: (i) Findings that the project is compatable and consistent with all designated beneficial uses of the affected waters.

It is our belief that these recommended changes and additions will make more clear the role that section 401 provides to the State of Oregon in controlling federally licensed or permitted activities affecting the waters of the state and the responsibility that DEQ has in affirmatively exercising that role. On behalf of both the **Oregon Shores Conservation Coalition** and the **Northwest Environmental Defense Center**, I thank you for your attention and consideration.

JDS:pc
1/25/85