EQCMeeting1of1DOC19851122

11/22/1985

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS

DEQ

State of Oregon
Department of Environmental Quality

OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

November 22, 1985

Eugene City Council Chambers
City Hall
777 Pearl Street
Eugene, Oregon

A G E N D A

8:30 a.m. CONSENT ITEMS

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

A. Minutes of September 27, 1985, EQC meeting.

B. Monthly Activity Report for August and September, 1985.

C. Tax Credits.

8:40 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 plastics recycling tax credit rules.

E. Request for authorization to conduct a public hearing on CERCLA matching account fee scheduled, OAR 340-105-120.

F. Request for authorization to conduct a public hearing on proposed rule changes which would allow regional air pollution authorities to set a permit fee scheduled for sources within their jurisdictions.

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. G. Contested case review - DEQ v. David Bielenberg (09-AQ-FB-83-04)

10:45 a.m. H. Contested case review - DEQ v. Hayworth Farms, Inc. and John W. Hayworth (50-AQ-FB-82-09)

I. Proposed adoption of rule amendments regarding Notice of Violation for hazardous waste program requirements, OAR 340-12-040.

J. Proposed adoption of additions to New Source Review Rule regarding visibility impacts exemptions (OAR 340-20-276(1)(2)) as a revision to the State Implementation Plan.

K. Proposed adoption of rule formalizing the suspension of the motorcycle noise testing requirments, OAR 340-24-311.

L. Proposed approval of amendments to Lane Regional Air Pollution Authority rules concerning standards of performance for new stationary sources.

M. Request for adoption of rules for granting water quality standards compliance certification pursuant to requirements of Section 401 of the Federal Clean Water Act.

N. Petition for declaratory ruling by Braizer Forest Products as to the applicability of ORS 459.005 to 459.285 and OAR Chapter 340, Division 61 to its storage pile of sawmill residual materials.

O. Variance Review for Brookings Energy Facility, Curry County.

P. Informational Report: Review of principal recyclable materials list.

Q. Informational Report: Yard debris as a principal recyclable material in the Portland, Washington, Multnomah, Clackamas and proposed West Linn wastesheds.

WORK SESSION

On Thursday, November 21, the Commission will conduct a work session on hazardous waste enforcement guidelines, from 2:00 p.m. - 4:00 p.m. From 4:00 p.m. to 6:00 p.m. the Commission will convene a special meeting on the Analysis of issues raised by the City of Klamath Falls in their petitions for declaratory ruling and rulemaking. The location will be South Harris Hall, Lane County Courthouse, 125 East 8th in Eugene.

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 8:30 am to avoid missing any item of interest.

The Commission will have breakfast (7:00 a.m.) at the Eugene Hilton Hotel and Conference Center, 100 East Sixth Avenue. Agenda items may be discussed at breakfast. The Commission will lunch at the Lane County Courthouse in rooms B and C off the Cafeteria.

The next Commission meeting will be January 31, 1986 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.

DOR19
EQC.AG (5/83)

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

NOTICE

OF

WORK SESSION AND SPECIAL MEETING

November 21, 1985

South Harris Hall
Lane County Courthouse
125 E. Eighth
Eugene

WORK SESSION
2:00 pm-4:00 pm

Hazardous Waste Enforcement Guidelines.

SPECIAL MEETING
4:00 pm-6:00 pm

Analysis of issues raised by the City of Klamath Falls in their petitions for declaratory ruling and rulemaking.

The Commission may take action on this item at this time, or may postpone action until their regular meeting on November 22, 1985.

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE WORK SESSION AND SPECIAL MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

November 21, 1985

On Thursday, November 21, 1985, the Oregon Environmental Quality Commission conducted a work session and special meeting in the Lane County Courthouse, 125 E. Eighth, Eugene, Oregon. Present were Commission Chairman James Petersen and Commissioners Mary Bishop and Sonia Buist. Commissioners Wallace Brill and Arno Denecke were absent. Present on behalf of the Department were its Director, Fred Hansen, and several members of the Department staff.

WORK SESSION

The purpose of this work session was for the Department to review with the Commission the Department's proposed Enforcement Guidelines and Procedures for the Hazardous Waste Program.

Al Goodman of the Department's Hazardous and Solid Waste Division reviewed for the Commission the background and history of this matter. In addition, Mr. Goodman said the consequences of mismanagement in the hazardous waste program are greater than in the air and water programs. In those programs the problems stop when the facility closes, however that is not the case in hazardous waste. These Enforcement Guidelines are meant to provide guidance for Department staff to aid in consistent enforcement statewide. They are also meant to help staff prioritize efforts and resolve violations at the lowest possible level.

Mr. Goodman then walked through the proposed Guidelines with the Commission. The Guidelines contain general principles; definitions of Class I, II and III violations; enforcement options for each class of violation; definitions of enforcement actions; and a matrix of civil penalty amounts.

Chairman Petersen asked how these Guidelines would enhance hazardous waste management. Mr. Goodman replied that the Guidelines set the Department's top priorities for field staff, helping them to act consistently statewide.

Tom Donaca, Associated Oregon Industries, said the Guidelines were acceptable in the way the Department was proposing to use them. They had testified at the public hearings on whether or not these guidelines should really be rules. He said the regulated community was willing to see whether these guidelines would be cited or relied upon in enforcement actions. He said the same sort of policy need not be applied to the air and water programs as their circumstances were different.

Frank Deaver, Tektronix, commented the the Department had been fair so far in enforcement actions. He also said he considered that some of the Class II violations should really be Class I. At Chairman Petersen's request, Mr. Deaver said he would provide a list.

James Brown, Tektronix, said closure cost estimates were unrealistic. Closure may be far in the future therefore accurate costs estimates are only educated guesses. Also, a well managed facility would have different costs than others. Mr. Deaver said the while he agreed the closure costs were probably unrealistic, the purpose was to be sure the money was available for cleanup in case something should happen to the company. Mr. Deaver also said recyclers should be more heavily regulated. Chairman Petersen commented that perhaps the closure costs should be reviewed to be sure they are relevant.

Dick Bach, Stoel, Rives, Boley, Fraser & Wise, said the Guildelines were necessary. His clients want to know what type of enforcement actions to expect for violations. In regard to the issue of whether or not these Guidelines should be made rules, Mr. Bach said they would not be inclined to use the rules versus guideline issue in a civil penalty situation unless absolutely necessary. Mr. Bach asked for clarification of "unauthorized disposal of hazardous waste" under Class I violations. He asked if this would include an inadvertent spill. Mr. Hansen replied that if the company used good management practices and notified the Department promptly of the spill, no penalty would likely be assessed. Mr. Goodman said that unauthorized disposal was not a spill.

Commissioner Bishop asked if the Department would anticipate changes to these proposed Guidelines. Mr. Goodman replied that they were likely to change over time, but the Department would return to the Commission with any major changes and be sure to go back to the regulated community with those changes. Commissioner Bishop and Chairman Petersen emphasized remembering to work with the regulated community.

The Commission indicated agreement with the proposed Guidelines.

SPECIAL MEETING

Analysis of Issues Raised by the City of Klamath Falls in Their Petitions for Declaratory Rulings and Rulemaking

On September 20, 1985, the City of Klamath Falls submitted a Petition for Declaratory Ruling as to nonapplicability of laws, regulations and standards to Section 401 Certification of Salt Caves Project; Petition for Rulemaking; Request for Hearing; Request for Stay; and a Demand for Hearing. On October 18, 1985 the Consolidated Conservation Parties submitted a response to the City of Klamath Falls.

At the Commission's October 18, 1985 meeting, it denied petitions from the City of Klamath Falls and requested the Department to prepare an analysis of the points raised in the petitions and make appropriate recommendations for consideration at the November meeting.

On October 28, 1985, the City of Klamath Falls withdrew their application for 401 Certification for the Salt Caves Project. They indicated their intent to file a new application in early 1986. They also indicated withdrawal of their application for a Federal Energy Regulatory Commission (FERC) license.

Peter Glaser, attorney with the firm Duncan, Weinberg & Miller in Washington, D.C., appeared on behalf of the City of Klamath Falls, proponent of the Salt Caves Hydroelectric Project and of the two petitions before the Commission. He said the first petition asked the Commission to declare that its water quality standards for the Klamath River between Keno Dam and the Oregon-California border not be applied to the City's application for Certification of the Salt Caves Project under Section 401 of the Federal Clean Water Act. The petition also asked the Commission to declare that no land use requirements or other "related requirements" be considered in judging the City's Section 401 application and to declare whether the Commission or the Department is the agency that will take final action on the City's application. The second petition asked the Commission to institute rulemaking proceedings to establish rules to be applied to the City's 401 application.

At this meeting, Mr. Glaser said, they would comment on the Department's staff report and the water quality issues raised in the City's petitions. At the Commission's regular meeting the next day, Mr. Glaser intended to address what the Department characterized as "procedural" issues.

Mr. Glaser said they agreed the Commission's water quality standards should be designed to protect the wild trout population in the Klamath River. However, they disagreed with the Department on whether those standards are unnecessarily overbroad in achieving the goal of protecting that trout population.

The petitions argue, Mr. Glaser said, that Section 401 did not give the Commission the authority to outright ban significant dams and reservoirs on the Klamath River. In fact, he said, the City does not concede that Section 401 gives the Commission any authority to regulate the construction of dams that create reservoirs. The language of Section only gives authority to regulate activities causing "discharges."

Mr. Glaser said they did not believe it was necessary to have standards that preclude construction of thermally stratifying reservoirs in order to protect the wild trout population in the Klamath River. He said it should not be assumed that such reservoirs will cause harm to fish. They emphasized that standards can and should be promulgated that would allow the proponent of a reservoir to demonstrate that the reservoir would help and not hinder fish.

Regarding the concerns raised by the Consolidated Conservation parties, Mr. Glaser said that he believed the parties misread the extent of authority that Section 401 gives to the Commission. He said they did not believe Congress intended to vest plenary authority over such dams in state agencies without mentioning such intent in the Act or its legislative history. Also, Mr. Glaser believed the Conservation Parties make a number of inaccurate statements as to why the use of the Klamath River for fish and the use of the River for hydropower dam and reservoir are mutually exclusive.

Mr. Glaser said the the Commission's water quality standards were clearly developed for running water, and the effect on fish of running water and of reservoirs is different. He said it was inappropriate to have one standard applied in the same way to both situations. He urged the Commission to recognize this fact and adopt regulations that would allow a proponent of a reservoir to demonstrate the project will not harm fish.

Mr. Glaser concluded by asking the Commission to grant their petition.

Chairman Petersen asked how the temporary withdrawal of the FERC application would affect the Commission's proceedings. Mr. Glaser replied it should not have any impact as the City has stated that the withdrawal of the FERC application is temporary and the City intends to reapply for a license and to the Department for 401 Certification.

Chairman Petersen asked what the reason was for withdrawing the application. Mr. Glaser replied it was decided it would be necessary to do further studies both in the area of water quality (including monitoring) and in the area of archeology.

Chairman Petersen asked for an explanation of how the Commission rules would ban reservoirs. Mr. Glaser said they were contending that the rules in effect ban reservoirs principally because there would be no way a reservoir could be built to meet the standards for dissolved oxygen and temperature.

Mary Holt, Sierra Club, testified they did not think there was any question that Section 401 clearly gives the state the authority to implement it's water quality standards with respect to hydropower projects.

Chairman Petersen said it had been the Commission's decision that the Department had been delegated the authority to grant 401 Certification. Any appeal of the granting or denying of that Certification would come to the Commission for resolution. He said the Commission was not presently of a mind to change that process. Chairman Petersen also said the Department should not delegate that responsibility to any other agency in the state. The issue was not whether the Department had the authority, he continued, but what should be considered in the process.

Jack Smith, Northwest Environmental Defense Center, said it seemed to him that the City of Klamath Falls was arguing that their project would not affect the uses of the water. He said he could not agree with this position.

Chairman Petersen was not sure the Director's Recommendation was appropriate. The Commission had already denied the petition, he said, so no further formal action was needed unless they were to reverse themselves. In addition, the rulemaking process the Commission would go through at its formal meeting the next day would deal with issues of authority. Chairman Petersen also asked why it would be necessary to reaffirm the water quality standards for the Klamath River.

Director Hansen said that during the last Commission meeting the Department asked the Commission to reject the petitions both for substantative reasons and because of the time constraints. He said there would be no reason to reaffirm if, after hearing the substantative reasons, the Commission stood on their previous decision.

Director Hansen said the Department was standing by the standards as they are. He said there was no questions that the intent of the Commission and the Department at the time of the adoption of the standards was that they apply to reservoirs. And yet, upon review by Counsel, there is some clarification that would help make that intent clearer, he continued. The Department does not believe there is any question about the intent or the desires of the Commission at the time the rules were adopted.

Chairman Petersen said the Department had standards that are designed to protect fish. The Department is claiming that if this project is built, fish are going to die. The applicant is saying they do not think that would happen and want an opportunity to show that fish were not going to die if their project is built.

Glen Carter, of the Department's Water Quality Division explained that at the time standards were developed for the Lower Klamath River the Department was taking advantage of the natural and manmade conditions in the area. The upper river above Keno was in bad condition because of the natural decomposing organics. Once the river got below John Boyle Dam and into the area of the proposed Salt Caves Project, there was the advantage of a tremendous groundwater influx that improved the quality of the water and kept it suitable for the last of the native rainbow trout fishery. Mr. Carter said there were not the beneficial uses identified then that there are now, such as rafting. The area's beneficial uses were largely for recreational fishery and wildlife. He said the standards were set to protect those uses at that time.

Mr. Carter said the applicant believes they can build their project without injuring the fish. However, the experience of the fishery people with the three other reservoirs in the area has shown that in those reservoirs the fish stocks have not reproduced in the fashion

they do in the open river channel, and there is no reason to believe they can do so if the Salt Caves Project was built. Chairman Petersen asked if that was because of water quality. Mr. Carter said water quality would be a significant factor, but it would also be a major habitat change from a running stream to a reservoir-type habitat.

Mr. Carter said most of the fish were planted in those reservoirs, and occasionally a big trout would be found, but high-quality fish production has not been sustained in those reservoirs. The Department has done extensive electroshocking for fish in the John Boyle reservoir and have not turned up any trout.

Chairman Petersen said he was inclined in this matter to take no action regarding changing denial of the Petition for Rulemaking and Petition for Declaratory Ruling and proceed to rulemaking at the Commission's regular meeting; and to have the applicant, when they are ready, continue the 401 Certification process with the Department, and depending on the results of that process, exercise whatever appeal rights they want to bring before the Commission. He felt that any clarification of the rules at this time would be in effect changing goal posts on the applicant. He thought the applicant was entitled to continue under the rules in effect when they first applied. Commissioner Buist commented she was satisfied with the Director's recommendation. Commissioner Bishop said she was uncomfortable taking action at this time for the same reasons Chairman Petersen mentioned.

Director Hansen stressed the Department did not feel the suggested changes they would have proposed had the Commission authorized rulemaking would in any way have changed what the intent or purpose of the existing rules are. Rather, they would have removed two items that may have been litigated. The only changes would have been to clarify existing rules.

The Commission took no action of this item.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Carol Splettstaszer

Carol Splettstaszer
EQC Assistant

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE ONE HUNDRED SIXTY-EIGHTH MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

November 22, 1985

On Friday, November 22, 1985, the one hundred sixty-eighth meeting of the Oregon Environmental Quality Commission convened in the Eugene City Council Chambers, 777 Pearl Street, Eugene, Oregon. Present were Commission Chairman James Petersen, Vice Chairman Arno Denecke, and Commission members Mary Bishop, Wallace Brill and Sonia Buist. Present on behalf of the Department were its Director, Fred Hansen, and several members of the Department staff.

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

BREAKFAST MEETING

All Commission members were present at the breakfast meeting.

1. Willamette Valley Regional Managers Report

   David St. Louis, manager of the Willamette Valley Region Office briefed the Commission of Department Activities in the region.

2. Informational Report: Review of Portland International Airport's Noise Impacts During Westerly Departures.

   John Hector presented a report on the investigation of concerns expressed by residents of Hayden Island regarding excessive aircraft noise due to westerly departures from Portland International Airport. The report concluded that noise impacts could be reduced if the westerly noise abatement departure procedure was strictly adhered to by all aircraft. John Newell, noise abatement officer for the airport, described his concern that the departure procedure cannot be enforced by the Port of Portland as flight operations are controlled by the Federal Aviation Administration. He also described several programs being developed to encourage the use of the noise abatement procedure. Discussion by the Commission led to the recommendation that the Director meet with Port of Portland

officials to assess possible amendments to the departure procedure that would hopefully reduce overflight of Hayden Island.

3. Status on Meeting EQC Request for Additional Information on the Threat to Drinking Water in East Multnomah County.

Lydia Taylor of the Department's Management Services Division reported on staff efforts to address the Commission's need for additional information. She said a contractor would be selected soon and it was expected the contractor's report on the plan would be completed by early January. Carolyn Young, the Department's Public Information Officer discussed notice to the public.

FORMAL MEETING

AGENDA ITEM A: Minutes of the September 27, 1985, EQC Meeting

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

AGENDA ITEM B: Monthly Activity Report for August and September, 1985

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

AGENDA ITEM C: Tax Credit Applications

It was MOVED by Commissioner Bishop, seconded by Commissioner Brill and passed unanimously that the tax credit applications including the amendment to approve the Freres Lumber Company application, be approved.

PUBLIC FORUM

No one appeared.

As some people waiting to testify on agenda items were needing to leave the meeting early, Chairman Petersen took some agenda items out of order.

AGENDA ITEM F: Request for authorization to conduct public hearing on proposed rule changes which would allow regional air pollution authorities to set a permit fee schedule for sources within their jurisdictions.

The Lane Regional Air Pollution Authority (LRAPA) has requested that the Commission amend its rules to allow LRAPA to adopt a permit fee schedule that is different from the Department's schedule. Such a rule change would potentially allow LRAPA to increase fee revenues to offset decreases in contributions from local government sources.

Director's Recommendation:

It is recommended that the Commission authorize a public hearing to receive testimony on proposed rule revisions concerning authorizing regional air pollution authorities to adopt a permit fee table that is different from the Department's.

Chairman Petersen asked why the Department's schedule was not adequate. Don Arkell, Director of LRAPA, replied that the current permit fee system did not give LRAPA enough revenue needed to stabilize its operations. The LRAPA Board had instructed Mr. Arkell to look at all potential sources of revenue. He said that they do not intend to recover 100 percent of costs but would like a higher percentage than they recover now. The Commission must authorize the use of fees other than those in its rules. Mr. Arkell also said that LRAPA wanted to consider adjusting fees for all source categories. He said that some fees were to high now for some categories but overall they would propose that the fees would be higher.

Chairman Petersen was concerned about inconsistent fee schedules throughout the state and was worried that there might be a perception of competitive advantage.

It was moved by Commissioner Bishop, seconded by Commission Buist and passed unanimously that the Director's recommendation be approved.

AGENDA ITEM M: Request for adoption of rules for granting Water Quality Standards Compliance Certification pursuant to requirements of Section 401 of the Federal Clean Water Act.

At the Commission's July 19, 1985 meeting, issues surrounding 401 certification were discussed. The Commission authorized the Department to go back to public hearings on proposed procedural rules for 401 certification. The hearing was held October 8, 1985. The Department summarized the testimony and prepared analysis of the significant issues raised. Amendments to the rules taken to public hearing were proposed.

Director's Recommendation:

Based on the Summation of the staff report the Director recommends that the Commission adopt the rules OAR 340-48-005 to 340-48-040.

Peter Glaser appeared representing the City of Klamath Falls. He said that Section 340-48-015 differed from Section 401 in that the proposed new rule would add one comma and delete three commas and substitute the word "activity" for "discharge". He said deletion of the commas makes "which may result in any discharge" apply to only the first part of the paragraph. He saw this as a significant language change showing the Department intended to broaden regulatory authority that did not exist. Chairman Petersen asked if Mr. Glaser understood that there was no requirement that the rules be identical to Section 401. Mr. Glaser replied that they were only concerned that the substance be the same.

Mr. Glaser then commented on Section 340-48-020(2)(h). He said that Section 401 did not give the Commission the right to require land use compatibility statements and therefore urged this proposed rule not be adopted.

Mr. Glaser also objected to proposed rule OAR 340-48-025(2) which sets forth findings the Department must make before issuing a Water Quality Certification. He said the only findings the Department was authorized to make under Section 401 were that a proposed discharge meet the required applicable provisions in Sections 301, 302, 303, 306 and 307 of the Federal Clean Water Act. The proposed rule would go beyond the specific water quality authorizations which are granted in Section 401. Therefore, Mr. Glaser said the rule should not be adopted.

Mary Holt appeared representing the Sierra Club. She testified that in general the Sierra Club supported the adoption of the proposed rule and only requested the Commission to examine one change proposed by staff in 340-48-020(7). This particular staff proposal would change the word "will" to the word "may" in this section. Ms. Holt urged the Commission to retain the word "will" in order to make this rule consistent with OAR 340-48-026(2)(f). She said that if the word "will" was eliminated the Commission would be permitting staff to eliminate beneficial uses and other considerations.

Jack Smith representing the Northwest Environmental Defense Center (NEDC) testified that they also supported the rules in general but he wanted to make a couple of clarifications on the staff report. On page 4 of the staff report in the last paragraph, Dr. Smith said, it states that the testimony of NEDC and others raised the issue of the degree to which 401 certification should be based on factors other than water quality. Dr. Smith said that was not NEDC's contention. He said they had not been a party which had been arguing for factors other than water quality. Their contention was, Dr. Smith continued, that the Department and the Commission was basing 401 certification on inadequate considerations of water quality. Then on page 6 of the staff report, Dr. Smith said, the first sentence in the fifth paragraph states that the water quality standards adopted by the EQC are intended to assure water quality to support the beneficial uses designated by the Water Resources Commission. It was NEDC's contention that the EQC should protect not those uses

designated by the Water Resources Commission but the uses designated by the EQC themselves as part of the federally approved water quality standards of the State of Oregon. Dr. Smith also urged the retention of the word "will" in OAR 340-48-020(7).

Chairman Petersen said that he did not think either the Commission or the Department had ever suggested that water quality should be considered in a vacuum because obviously water quality must relate to some use of the water. Traditionally the Department and the Commission had taken the position that the Water Resources Commission was charged statutorily with deciding how the waters of the state are to used. Chairman Petersen continued that the Commission had not intended to either attempt to overrule or to quarrel with that process. The Water Resources Commission decides how the water is used. The Environmental Quality Commission then decides what standards are appropriate for that use and then regulates that use and enforces those standards. Dr. Smith agreed that within state law the uses designated by the EQC ought to be consistent with the uses designated by the Water Resources Commission. However, he continued, Section 401 speaks to certification of compliance with Section 303 of the Federal Clean Water Act and within Section 303 of that act, the task of designating beneficial uses of the waters is given to the EQC. Dr. Smith said it was only the Commission that would be able to make the determination of compliance with beneficial uses. If the Commission does not address designated beneficial uses, no matter who has designated them, Dr. Smith said, those uses do not get addressed in the 401 process because the Water Resources Commission is not a part of that process.

Director Hansen asked if Dr. Smith's concern was that the decision on beneficial uses was not being made by a body that could make it or was it that structurally Dr. Smith felt that the designation had to happen with the EQC for reasons beyond whether or not the Water Resources Commission would make that decision. Dr. Smith replied that first of all it would be an improvement if the somebody in the state of Oregon made the determination of impact on uses and preferably that somebody should be the agency responsible for water quality impact in the state. He said that had been delegated to DEQ and the EQC and it was not a water allocation question but a water quality question.

Michael Huston of the Attorney General's Office explained that Section 303 of the Federal Clean Water Act requires that the states rules include both a listing of the designated uses as well as technical water quality criteria designed to protect those uses. Where the Department and Dr. Smith differ is that Dr. Smith contends that in the 401 review the Department would have to go back and directly measure the impact on those beneficial uses. Mr. Huston said the language of Section 303 did not say that, and there was no historical obligation for the state agency to do more than examine the water quality criteria. Mr. Huston reminded the Commission that both the specific issue on beneficial uses as well as the land use

issues were currently pending in the Court of Appeals and that at some point in time the Commission would have judicial guidance on those issues.

Commissioner Bishop asked if it would make any difference if the word "will" were retained in OAR 340-48-020(7). Director Hansen replied that if "will" was retained in the rule, unless the findings section were also amended to ensure findings were actually made relative to those issues, the Commission would not have the basis on which to make findings on use. Mr. Huston said the word "will" in subsection 7 seemed to be representing a mandatory commitment to include in every 401 certification an evaluation of impact on uses as Dr. Smith had asked. However, Mr. Huston said, the Department's rules were not consistent with that and that it was not the Department's desire. Commissioner Bishop asked how much work would be involved if the mandatory "will" were to be retained in the rule. Harold Sawyer of the Department's Water Quality Division replied that the amount of work involved would depend on the specific project. When the Department was discussing changes to this subsection, they realized that whatever findings were required under Section 48-025, subsection 2, the Department would have to do no matter what. The intent was not to limit the Department in whatever it must do to make those findings. Mr. Huston said he had looked at subsection 7 as it previously stood with the word "will" and as he read it it would clearly require the Department to review for the potential impact on beneficial uses which was contrary to his understanding of the Department's position. Mr. Huston said the Department did not feel it was its responsibility to determine the impact on uses but that it was the responsibility of the Water Resources Commission.

Chairman Petersen asked if the Department would comment on the substitution of the word "activity" for "discharge". Mr. Sawyer replied that the Department chose the word "activity" because it felt it more accurately reflected the types of projects before the Department for certification. Mr. Sawyer said the majority of those projects were Corps of Engineer permits or Coast Guard permits. These projects mostly involve activities where there may be an impact on water quality but not necessarily a discharge. Commissioner Denecke asked that if by changing the word "discharge" to "activity" did the Department intend to extend authority beyond what was contained in the Clean Water Act. Mr. Sawyer replied that was certainly not the Department's intent; it was only an attempt to clarify what appeared to be some confusing language.

Chairman Petersen said he personally had some concerns about Section 48-020(i). He agreed with Mr. Glaser concerns about this section and he did not think it was good policy under the Commission's responsibilities under Section 401 of the Clean Water Act to require a statement of local land use compatability. Chairman Petersen said it was difficult for him to believe that Section 401 would allow essentially every local jurisdiction to have what would amount to veto power over a 401 project if they refuse to issue a land use compatability statement. Therefore, he recommended that subsection

be deleted. Director Hansen said the Department's position on this matter had been raised well in the Benham Falls matter which came before the Commission previously. He asked Mr. Huston to summarize the legal basis by which the Department felt that requiring land use compatability statements was appropriate. Mr. Huston said the legal basis was that there are state land use laws on the books that say that any time a state agency takes any action that effects land use it is obligated to ensure compliance with local comprehensive plans and statewide planning goals. Mr. Huston said the issue here was whether or not the Federal Clean Water Act and the Federal Power Act preempted those state laws. He said this was an extremely tight legal issue which was now in the Court of Appeals. Chairman Petersen suggested then that this requirement be deleted until the Court of Appeals decision.

Commissioner Buist offered that it might be possible to ask the local jurisdiction to give the Department their view on how the project fits into the land use plan without making land use compatibility statements a requirement. This would allow the Department to use that information in their project review. Chairman Petersen said that as long as it was not a requirement, taking the local planning agency's views into consideration was appropriate and he was comfortable with it.

It was MOVED by Chairman Petersen, seconded by Commissioner Bishop and passed with Commission Brill voting no that Section 340-025(2)(f) be deleted and that Section 48-020(2)(i) be amended as follows:

> (i) A statement from the appropriate local government whether the project is compatible with the acknowledged local comprehensive plan and land use regulations or that the project complies with statewide planning goals if the local plan is not acknowledged. If the project is not compatible or in compliance, the statement shall include reasons why it is not. If a local government is the applicant for a project for which it has also made the land use compatibility determination, the State Land Conservation and Development Department may be asked by DEQ to review and comment on the local government's compatibility determination.

It was MOVED by Commissioner Bishop that in of 340-48-020(7) the word "will" be retained. The motion failed for lack of a second.

It was MOVED by Commissioner Bishop, seconded by Commissioner Denecke and passed unanimously that the following amendment be made to Section 48-025.

> 340-48-025 (1) Within thirty (30) days from the time the Department determines an application is complete, it shall so notify the applicant by certified mail. 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.

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

Director Hansen asked that if along with these motions the Department would be directed to renegotiate its agreement with the Land Conservation and Development Commission. Chairman Petersen replied that yes; to the extent the Department felt it was necessary.

AGENDA ITEM H: Appeal of Hearing Officer's Findings of Fact, Conclusions of Law, and Final Order in DEQ v. Hayworth, Case No. 50-AQ-FB-82-09

John Hayworth and Hayworth Farms appeal to the Environmental Quality Commission asks for reversal of the Hearings Officer's decision which found liability for a $1,000 civil penalty.

Mr. J. W. Walton of the firm of Ringo, Walton, Eves, and Stuber appeared representing John Hayworth and Hayworth Farms, Inc. Mr. Walton said that Mr. Hayworth had been cited for a violation of the regulatory provision to actively extinguish fires. On the day Mr. Hayworth was cited, he had ignited his fields well within the time permitted and had done so pursuant to a proper permit registration. During the course of burning this field, the fire jumped several yards and ignited a fence adjacent to another farmers field. This created a critical situation for Mr. Hayworth in light of present liability laws for the spread of fire on to the land of another. This emergency required Mr. Hayworth to take the time to contain and prevent the spread of the fire along the property line, which caused him to use a great deal of his water in fighting the wild fire and prevented him from finishing burning his original 38-acre field fire prior to the fires-out time. Given the circumstances which existed at the time and the few remaining unburned acres left, Mr. Hayworth felt an into-the-wind strip burn was the best means to extinguish the existing fire. Mr. Walton said that such a method also produces far less smoke then extinguishing the fire with water. Mr. Hayworth also had a fire burning on a 90-acre field which he left burning in order to extinguish the wild fire on the 38-acre field. Both Mr. Hayworth and his son felt that the 90-acre field would burn itself out and would not be dangerous due to the lack of fuel on the field. Mr. Hayworth was not able to return to the 90 acre field until after the fires-out time, at which time it was necessary to refill his water trucks. Mr. Walton concluded by saying that Mr. Hayworth had demonstrated the reasonableness of his efforts to actively extinguish his two fields and therefore the Commission should substitute its judgment for that of the Hearing's Officer and find that Mr. Hayworth's acts were reasonable under the circumstances and that he is not liable for a civil penalty.

Michael Weirich, Assistant Attorney General, appeared on behalf of the Department. He said the Department agreed with the Hearing Officer's Findings of Fact, Conclusion of Law and Final Order. Hayworth Farms and John Hayworth were charged with two counts of late burning in violation of OAR 340-26-010(5). It was the Department's argument that Mr. Hayworth was responsible for the late burns either through his negligent or intentional actions because he was trying to burn too much acreage, too far apart, in too little time. Mr. Hayworth left the 90 acre field smoldering, and unattended because he was in a hurry to burn as much other acreage as possible. He had no excuse, Mr. Weirich said, for the fact that the field continued to burn and in fact was not extinguished until almost two hours after the fires-out time. Mr. Hayworth lit the 38 acre field so late in the day that it would have had to burn out completely within 10 minutes in order to be extinguished by the fires-out time. Clearly Mr. Weirich continued, the 10 minute burn time allowed by Mr. Hayworth for the 38 acre field was unrealistic. The Department requested that the Hearing Officer order be affirmed.

Commissioner Bishop said it appeared that too much had been tried to be done in too little time and therefore she was MOVING to affirm the Hearing Officer's order. The motion was seconded by Commissioner Brill and passed unanimously.

AGENDA ITEM G: Appeal of the Hearings Officer Findings of Fact, Conclusions of Law, and Final Order in DEQ v. Bielenberg, Case No. 09-AQ-FB-83-04.

David Bielenberg has asked the Environmental Quality Commission to review the Hearings Officer's decision upholding a $300 civil penalty against him.

Mr. Bielenberg appeared saying he was not contesting the Hearings Officer's decision but he was seeking a reduction or elimination of the fine as he was not in any financial condition to pay it.

It was MOVED by Commissioner Brill, seconded by Commissioner Buist and passed unanimously that the Hearings Officer's Findings of Fact, Conclusions of Law, and Final Order be affirmed but that the fine be lowered to $50.

AGENDA ITEM D: Request for authorization to conduct a public hearing on Plastics Recycling Tax Credit Rules, OAR Chapter 340 Division 17.

This item proposes adoption of rules to implement 1985 plastics recycling legislation. The Legislature specifically gave the EQC the authority to adopt rules establishing filing and processing fees and providing guidance to calculation of the percent allocable to investments in plastics recycling equipment. The rules would also provide guidance for applying and qualifying for tax credit.

Director's Recommendation:

Based on the Summation in the staff report, it is recommended that the Commission authorize a public hearing to take testimony on the proposed plastics recycling tax credit rules, Chapter 340 Division 17.

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

AGENDA ITEM E: Request for authorization to conduct a public hearing on proposed Hazardous Waste Management Fees, OAR 340-105-120.

The 1985 Legislative Assembly passed House Bill 2146 to create a permanent financing mechanism for the state match required for federal Superfund clean-ups. The bill imposes a $10 per ton fee on operators of hazardous waste and polychlorinated biphenyl (PCB) incineration and disposal facilities in Oregon effective January 1, 1986. Currently only the Arlington Hazardous Waste Disposal Facility will be subject to this new fee.

Director's Recommendation:

Based on the Summation in the staff, it is recommended that the Commission authorize a public hearing to take testimony on proposed rule OAR 340-105-120.

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

AGENDA ITEM I: Proposed adoption of rule amendments regarding Notice of Violation for Hazardous Waste Program requirements, OAR 340-12-040.

The proposed amendment of OAR 340-12-040 is brought about by a recent revision of Oregon Statutes by the 1985 Legislature. Specifically, ORS 468.125 was revised to drop the requirement for 5-day notice prior to the assessment of civil penalty for hazardous waste violations. The Department is requesting the Commission to adopt an amendment to its Notice of Violation rule, OAR 340-12-040 to ensure its consistency with the statutory revision.

Director Hansen pointed out that although there would no longer be a legal requirement for notice prior to civil penalty assessment for hazardous waste violations, as a matter of practice the Department would still intend to provide notice with limited exceptions.

Director's Recommendation:

Based on the Summation in the staff report, it is recommended that the Commission adopt a proposed amendment of OAR 340-12-040.

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

AGENDA ITEM J: Proposed adoption of additions to New Source Review Rule regarding visibility impact exemptions, OAR 340-20-276(1)(a), as a revision to the State Implementation Plan.

At the Commission's September 27, 1985 meeting it directed staff to review the wording of the visibility impact exemptions section of the New Source Review Rule (OAR 340-20-276(1)(a) to include a Department commitment to complete assessments exempted by the rule. The Department has worked with Oregon Environmental Council and legal staff to draft proposed wording acceptable to all parties. This item proposes adoption of the additional wording as a revision to the New Source Review Rule and the Implementation Plan.

Director's Recommendation:

Based on the Summation in the staff report, it is recommended that the Commission adopt the proposed addition to the rule OAR 340-20-276(1)(a).

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

AGENDA ITEM K: Proposed adoption of rules formalizing the suspension of motorcycle noise testing requirements OAR 340-24-311.

On June 7, 1985, the Commission adopted a temporary rule suspending the motorcycle noise test requirements. That temporary rule expires at the end of 1985. At the time of the rule adoption the Commission also authorized a public hearing which was held September 17, 1985.

At the hearing there was support expressed for the continued suspension of the motorcycle noise testing. There was also support expressed for implementation of motorcycle noise testing at this time. However, those expressing support for noise testing offered no alternatives to the legislative fiscal impediments that currently prevent the Department from implementing this program.

The Department recommends that the Commission adopt the temporary rule as a permanent rule. This will continue the suspension of the motorcycle noise testing program. With this action the rules remain and can become effective when budget issues are resolved.

Director's Recommendation:

Based on the Summation in the staff report, it is recommended that OAR 340-24-311(6) be adopted making the temporary rule permanent.

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

Commissioner Bishop emphasized that the Commission was still concerned with noise and Chairman Petersen expressed the hope that the Department would continue to press the legislature for fiscal authority. Director Hansen said the original petitioners were now working with police chiefs of local jurisdictions to see if noise testing could be done through the police departments.

AGENDA ITEM L: Proposed approval of amendments to Lane Regional Air Pollution Authority Rules concerning Standards of Performance for New Stationary Sources.

The Lane Regional Air Pollution Authority (LRAPA) has revised its Standards of Performance for New Stationary Sources rule. State statutes require the Commission to approve such rules provided they are no less stringent than state rules. Staff has reviewed the new LRAPA rules and finds them to be at least as stringent as the Department rules.

Director's Recommendation:

It is recommended that the Commission approved LRAPA's rule revision concerning standards of performance for new stationary sources.

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

AGENDA ITEM N: Petition for Declaratory Ruling by Brazier Forest Products as to the applicability of ORS 459.005 to 459.285 and OAR 340 Division 61 to its storage pile of sawmill residual material.

Several months ago Department staff discovered what appeared to be a typical wood waste disposal site at a sawmill located near Molalla in Clackamas County. The facility is operated by Brazier Forest Products of Oregon, Inc. The disposal site consists of sawdust, bark, scrap wood, soil, rock and tires and metal covering about 1 acre and measuring from 2 feet to 12 feet in depth. A company representative stated that the site has been used since the early 1970's.

The Department has asked Brazier Forest Products to obtain a solid waste disposal permit for this site. The company in response has petitioned the Commission for Declaratory Ruling on this matter. The company contends that a permit should not be required.

John Caldwell, attorney, appeared on behalf of Brazier Forest Products. He said the company contends that the material stored is not waste or solid waste because it has economic value. However, he continued, if the materials stored should be determined to be a

waste (which they deny) the storage site is exempt from the requirements of a permit pursuant to OAR 340-61-020(d). He said they were requesting a Declaratory Ruling to eliminate any necessity on the part of the company to obtain a permit for solid waste storage. This would allow the company a way to comply with rules without violations and the need of a contested case hearing.

Donalda Porter, is a neighbor of the Brazier site. She testified that contrary to what the staff report stated, the waste pile could not have been started until late 1978 or 1979. Her concern was that there might be some sort of a grandfather right which would allow the stock pile to continue. Ms. Porter testified that several farms in the area take water from what is known as the Mollala Irrigation Company ditch and she was concerned about leaching from the stock pile because it contained not only wood waste but other things. Ms. Porter also said that the company's trucks which dump at the stock pile do so at very early hours and the noise is very annoying.

Director's Recommendation:

Based on the Summation in the staff report, it is recommended that the Commission not issue a Declaratory Ruling to Brazier Forest Products of Oregon, Inc.

In response to the Commission, Michael Huston, Assistant Attorney General, stated the decision before the Commission was whether or not to accept the petition for declaratory ruling. If the petition were to be granted, it would essentially be a contested case process which would result in a ruling of legal issues. The matter would ultimately come back before the Commission and the opinion would be binding on the company and appealable to the courts.

Commissioner Denecke noted the Company was going through Chapter 11 bankruptcy. He said he did not see anything to be lost by granting the petition for declaratory ruling.

It was MOVED by Commissioner Denecke, seconded by Commissioner Buist and passed unanimously that the Petition for Declaratory Ruling be granted.

AGENDA ITEM O: Variance review for Brookings Energy Facility, Curry County.

On September 27, 1985, the Commission reviewed the performance of the Brookings Energy Facility during the 1 year variance from OAR 340-21-027(2). Prior to that meeting, John Mayea, Chairman of the Curry County Board of Commissioners, requested that action regarding the variance be postponed until the November 22nd, so that a Curry County Commissioner could attend and submit testimony. The Commission heard testimony from representatives of Brookings Energy Facility and from the Department on September 27, 1985. The Commission then

extended the variance until November 22, 1985 in response to the Curry County request and to give Brookings Energy Facility an opportunity to reassess its position.

In addition, the Commission was made aware of a petition for rulemaking submitted on November 8, 1985 by Mr. John Coutrakon on behalf of Brookings Energy Facility. The petitioner asked to amend OAR 340-21-027 regarding municipal waste incineration in coastal areas. Under the time restrictions in OAR 340-11-047 the Commission had the option at this meeting to initiate the requested rulemaking, defer action to deny or accept the petition until a conference call in December or request the petitioner withdraw the petition and resubmit it for the January 1986 Commission meeting.

Director's Recommendation:

It is recommended that the Commission terminate the variance from OAR 340-21-028(2) for the Brookings Energy Facility and require that the temperature recording equipment be installed an operated as required by the rule without delay.

It is further recommended that the Commission endorse the following Departmental plan of action. The Department proposes to require Brookings Energy Facility to:

1. Conduct a test of the temperature capabilities of the incinerators within 60 days. The test shall be conducted according to plan approved in advance by the Department and at a time which will enable a Department representative to present.

2. Prior to establishment of a compliance schedule (established in number 3 below) make every attempt to operate in compliance with the required minimum exhaust gas temperatures. At a minimum this shall include adequately preheating the generators using auxiliary fuel prior to charging with garbage to ensure adequate combustion of garbage and using auxiliary fuel when necessary to maintain minimum exhaust gas temperatures and residence times between 1800 degrees Fahrenheit for 1 second or 1700 degrees Fahrenheit for 2 seconds.

3. Follow a compliance program to be established by the Department if the required testing shows that the facility is not able to comply with the temperature requirements. Such a compliance program would include but not be limited to a final date for achieving compliance, interim operating procedures, and measures to be used to achieve compliance. Final compliance may be based on facility modifications, rule revisions, revising the operating schedule to minimize the need to operate the incinerators in a start-up mode, or other actions.

In addition to developing the compliance program described above, if it is necessary, the Department would take enforcement actions

against Brookings Energy Facility based on currently existing regulations if Brookings Energy Facility fails to perform these actions in a timely manner.

John Coutrakon appeared on behalf of Brookings Energy Facility. He said he had reviewed the transcripts of the previous meeting. As the company was in the process of purchasing the equipment to install steam boilers to generate energy which would include the temperature recording devices the Department asks for, Mr. Coutrakon asked that a variance be extended until the company had a chance to retrofit the facility. Mr. Coutrakon also asked that rulemaking be initiated to amend the coastal incinerator rules. The company would like a fresh start to see if a rule can be worked out that would allow the facility to operate in compliance. In the meantime, he asked that they be allowed to maintain the status quo.

Commissioner John Mayea, Curry County, testified that the county could not afford any more money for solid waste disposal. He asked that the variance be extended until the energy recovery system was installed. Commissioner Mayea also asked for the initiation of rulemaking. Chairman Petersen asked what the new equipment would do. Wendy Sims of the Department's Air Quality Division replied that the company was talking about installing steam boilers to generate electricity but the Department did not have details or time tables on the installation of that equipment.

Commissioner Buist said that while the Commission was continually being asked for more variances and more time, the Company had yet to provide the temperature information needed to determine if its units could meet the standard or not. Mr. Coutrakon replied that the units had pyrometers and the temperatures were manually recorded off those pyrometers at 15 minute intervals and this information was provided to the Department. He said the Department had known for a long time the units could not meet the temperature requirements.

Pete Smart, operator of the Brookings Energy Facility, said they had two letters from the manufacturers of the units which stated how the machinery ought to be run. He said the letter from the factory stated that it would take three hours to get up to temperature with cold machinery. On factory recommendation, Mr. Smart continued, they had operated their units at 1600°F. for the last five years. During the approximately nine months the units operated at 1800°F, he said, they have sustained damage to the upper stacks from the higher temperatures. He said that they have since lowered the temperature to 1600°F. to avoid more damage.

Commissioner Buist asked why the testing requested by the Department had not been done. Mr. Smart replied that it would have interferred with their daily operation. In addition, he did not think testing was needed as the Department had proof from the factory that the

Company is operating the machines properly. In response to Commissioner Buist, Mr. Smart said the machines could do what the letter from the factory said they could do.

Commissioner Buist said this was the first time the Commissioner had heard about the higher temperatures damaging the stacks in all the times Mr. Smart had been before the Commission on this matter. Mr. Smart said it took them a while to recognize the problem. He also said the same thing was happening to the stacks at the Coos Bay facility.

It was MOVED by Commissioner Buist, seconded by Commissioner Bishop and passed with Commissioner Brill voting no, that the Director's recommendation be approved.

Chairman Petersen said the Department and Commission was trying to avoid unacceptable air pollution, and they were trying to do that in the most efficient and least expensive manner. He said he understood the Company feared the Department harassing them. Frankly, Chairman Petersen continued, the Department and Commission had bent over backwards in the last year to try to accommodate the Company. Chairman Petersen urged the Department to continue to work with the Company to resolve this problem.

Mr. Coutrakon said he assumed the Commission would take up the request for rulemaking at its next meeting. The Commission indicated agreement.

Direct Hansen said the Department would do its best to complete the testing referred to in the Director's recommendation and have it evaluated before the Commission's January meeting.

AGENDA ITEM P: Informational Report: Review of principal recyclable materials list

OAR 340-60-030 requires the Department to at least annually review the principal recyclable materials list for each wasteshed and to submit any proposed changes to these rules to the Commission. The list of principal recyclable materials for wasteshed is a list of the most common materials which are "recyclable" at some place in the wasteshed.

Director's Recommendation:

It is recommended that with the exception of yard debris in the Clackamas, Multnomah, Portland, Washington and proposed West Linn wastesheds, which will be discussed separately, no changes be made at this time in OAR 340-60-030 to lists of principal recyclable material for each wasteshed.

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

AGENDA ITEM Q: Informational Report: Yard debris as a principal recyclable material in the Portland, Washington, Multnomah, Clackamas and proposed West Linn wastesheds.

The Department has begun the work necessary to determine whether yard debris should be listed as a principal recyclable material in the

Portland Metropolitan wastesheds. If yard debris is listed as a principal recyclable material, then local governments and other affected parties would have to either demonstrate to the department that the material is not a recyclable material at a specific location in the wasteshed or provide a collection system. It is the Department's preliminary assessment that yard debris fits the definition of principal recyclable material and should be listed.

Director's Recommendation:

It is recommended that the Commission direct the Department to meet with the affected parties to determine the comparative costs of processing versus disposal of yard debris within the Portland, Washington, Multnomah, Clackamas and proposed West Linn wastesheds and return to the Commission in January with a request for rulemaking which is based on those findings.

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

There being no further business the meeting was adjourned.

LUNCH MEETING

SB662

Steve Greenwood and Lorie Parker of the Department's Hazardous and Solid Waste Division reviewed for the Commission the timetable for implementation of SB662 which deals with landfill siting.

Future Meeting Dates

The Commission decided on the following meeting dates and locations for

January 31	Portland
February 7	Portland (Special meeting on Metro Waste Reduction Plan and Mid Multnomah County Threat to Drinking Water)
March 14	Portland
April 25	Location to be determined
June 13	Location to be determined
July 25	Salem

Respectfully submitted,

Carol Splettstaszer
EQC Assistant

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE ONE HUNDRED SIXTY-SEVENTH MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

September 27, 1985

On Friday, September 27, 1985, the one hundred sixty-seventh meeting of the Oregon Environmental Quality Commission convened at the Bend School District Building, 520 N.W. Wall Street, Bend, Oregon. Present were Commission Chairman James Petersen, Vice Chairman Arno Denecke, and Commission members Mary Bishop, Wallace Brill and Sonia Buist. Present on behalf of the Department were its Director, Fred Hansen, and several members of the Department staff.

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

BREAKFAST MEETING

All Commission members were present at the breakfast meeting.

1. Future Meeting Dates

October 17	-	Public hearing on plan on sewer East Multnomah County (Portland)
October 18	-	Special meeting and work session on plan to sewer East Multnomah County and Salt Caves Hydro Project Petition (Portland)
November 21	-	Work session on hazardous waste enforcement guidelines and Water Quality Compliance Certification (Eugene) (Scheduled after September 27 meeting was held)
November 22	-	Regular meeting (Eugene)
January 31	-	Regular meeting (Portland)
March 14	-	Regular meeting (Portland)
April 25	-	Regular meeting (Portland)

Director Hansen said the staff would prepare a schedule for the rest of 1986 and submit it to the Commission by mail for their approval.

2. Regional Managers Report

Dick Nichols, Manager of the Department's Central Region Office, briefed the Commission on Department activities in the region.

3. Case Management Practices for Hearings Officers in Contested Cases

Commissioner Denecke presented the following proposed guidelines for Commission Hearings Officers.

> The Commission requests the hearings officers to set the docket for contested cases assigned to them; that is, determine the date at which hearings and other proceedings will be held. The desires of the Department and other parties will be considered and accommodated if this can be done consistent with the expeditious disposition of the case.
>
> The Commission requests the hearings officers decide all cases submitted to them within three months after submission unless prevented by illness or other unexpected event. (This is the time limit imposed by the Legislature on Oregon trial judges; ORS 1.050.)

Commissioner Denecke stressed that there had been no complaints about slowness in rendering decisions, but that the Commission's hearings officer had asked for direction. He said the Attorney General's office, with the agreement of Director Hansen, could accommodate this schedule by assigning cases to more than one Assistant Attorney General. Commissioner Denecke also said that "submitted" means after everything needed was in.

Director Hansen noted that these timeframes would also apply to the Attorney General's Office and the Department as well as the Commission's Hearings Officer.

Linda Zucker, the Commission's Hearing Officer, and Arnold Silver, Assistant Attorney General, said they found the guidance very helpful.

4. Portland International Airport Noise Abatement Plan

John Hector of the Department's Noise Section, summarized a written report concerning a citizen petition regarding Portland International Airport's noise impacts during westerly departures. Mr. Hector said that no enforcement action was needed at this time. The Port of Portland was aware of the problem and were making efforts to improve, but it was impossible to guarantee that no errors would occur.

The Commission postponed discussion to their lunch meeting. Subsequently, the Commission informally asked that this item be returned to them at their next meeting.

5. SB 138 (Toxic Waste Incinerator) Implementation

Bob Danko, of the Department's Hazardous and Solid Waste Division, reported on the implementation of SB138. He discussed the Department's work plan which will result in draft rules being presented to the Commission at its April 25, 1986 meeting. Assisting the staff in rule development will be a policy advisory committee appointed by Director Hansen and a technical advisory group appointed by Michael Downs, Administrator of the Hazardous and Solid Waste Division.

6. EQC Trip to Chem-Securities Hazardous Waste Disposal Facility, Arlington

Mike Downs reviewed the difficulty the Department was having in coordinating the Commissioners schedules for a proposed trip to the Chem-Security Systems, Inc. facility in Arlington in October. As an alternative, it was suggested the Commission participate in a tour with the Joint Legislative Committee on Hazardous Materials of both the Arlington facility and Hanford, Washington on November 12 and 13. This tour was being arranged by the Department of Energy. The Commission agreed to try to attend this tour if their individual schedules would allow.

FORMAL MEETING

AGENDA ITEM A: Minutes of the July 19, 1985, EQC Meeting

Commissioner Bishop asked for the deletion of the following sentence on page 20 of the minutes, under Agenda Item N:

> If you have questions of staff, we have people here from the noise control and water quality programs and a representative from the laboratory that can address their respective areas.

It was MOVED by Commissioner Bishop, seconded by Commissioner Brill, and passed with Commissioner Buist abstaining, that the minutes be approved as corrected.

AGENDA ITEM B: Monthly Activity Report for June and July, 1985

Commissioner Denecke asked why plans had been rejected for two Rajneeshpuram water quality projects. Dick Nichols, Manager of the Department's Central Region Office, replied that because of the litigation on the status of the City of Rajneeshpuram, the City was unable to obtain a Land Use Consistency Statement. Without the statement, the Department cannot process plans.

It was MOVED by Commissioner Denecke, seconded by Commissioner Buist and passed unanimously that the Monthly Activity Report be approved.

AGENDA ITEM C: Tax Credit Applications

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

PUBLIC FORUM

John Churchill presented a written statement contending the Commission bears the sole responsibility for enforcement of water quality standards which includes the mitigation or degradation of water quality standards and the uses authorized in those standards. He said that disinformation surrounding the 401 hydro certifications has clouded the issue and severely damaged the public interest and wasted a lot of people's time.

Jack Smith appeared representing Northwest Environmental Defense Center (NEDC). He sent the Commission a letter before their meeting voicing some of the Center's concerns about its inability to find a forum to make a decision on the matter of administrative rules for the 401 certification process. Dr. Smith said that at the Commission's January 25, 1985 meeting his group attempted to present a number of amendments to proposed 401 certification rules but were unable to reconcile their views with the Department's. Subsequently, when the Commission reviewed the Benham Falls hydro project, Dr. Smith continued, they again tried to assert the argument that the Department and the Commission should be considering impact on uses. At that time NEDC was advised that the Commission was not the appropriate forum and they should take their arguments to the Court of Appeals. Dr. Smith said they had intervened in the Court of Appeals when the Benham Falls developer appealed the Commission's denial; again in an attempt to find a decision on the matter of what Oregon believes the federal definition of water quality standards to be. The Department has now moved to dismiss the Benham Falls appeal on the grounds that there is no controversy between NEDC and the Commission and, that in any event NEDC does not have standing because they were not a party because they did not participate in the Commission's proceedings.

Dr. Smith said that the rules that were being taken to public hearing on October 8, as a result of HB 2290, specifically would exclude the Salt Caves project and they would like some way of including that project in the rules.

Commissioner Denecke asked Representative Tom Throop (who was in the audience) if HB 2990, which Representative Throop primarily drafted and got passed, would adopt the view that Dr. Smith was advocating. Representative Throop said the Legislature did not resolve the issue. They made it clear in the bill they did not feel they had the information, resources, and time to resolve the issue at the time, and did not want to send a message to anyone that the issue was resolved. Essentially, Representative Throop continued, they felt the Commission was probably in a better position to look at the issue and make a determination.

Chairman Petersen asked why the Salt Caves project was specifically excluded from HB 2990. Representative Throop replied it was because the Energy Facility Siting Council and the Water Policy Review Board had been constructing a joint review process for over a year. The Legislature thought the project was too far down the line with that joint review process to have HB 2990 affect it.

Chairman Petersen suggested it might appear the Commission was trying to circumvent the Legislature if they were to adopt interim rules that would apply to the Salt Caves project. Representative Throop said that if the Commission would look at legislative history they would find that the discretion was left entirely to the Commission.

Commissioner Denecke said he would be more comfortable waiting for the formal public hearing and considering the question at that time. He also said he would very much like an opinion by the Attorney General at the time the rules were proposed for adoption, because it was his feeling it was strictly a legal issue.

Chairman Petersen said that neither the Department nor the Commission had ever said that use was not a consideration. However, some have suggested that the interpretation of use ought to be broader than so far the Commission was willing to go along with. Even though it might appear the Commission was ducking the issue, he continued, the Commission was perfectly willing to accept its responsibility, which in the case of 401 was to comply with federal statute. Chairman Petersen said that while the Commission may not agree with every argument that is put before it, it did not mean it was abdicating its responsibility.

Commissioner Buist asked how this matter would move along expeditiously. Director Hansen said that the original application on Salt Caves came to the Department of January 25, 1985 and the Department had one year in which to be able to take action.

Consequently, action on the 401 certification rules would have to take place prior to the completion of the full process involving all state agencies. He also said the Commission and the Department had just received a petition for rulemaking by the applicants which asks the Commission to declare that its present standards do not apply to reservoirs and adopt new standards. That petition must be responded to within 30 days of receipt. The Department had not yet decided what to recommend to the Commission as a way to handle that petition, but one option would be to ask the Commission to reject the petition and direct the Department to proceed with the determination on the 401 process given existing standards. Then, Director Hansen continued, resolution would come at the Commission's November meeting where the hearing record would be reviewed and the Commission might direct the Department to proceed for all future projects.

Chairman Petersen expressed concern about what he considered a very project-directed request, namely the Salt Caves hydro project. He said he was uncomfortable taking any action at this meeting without allowing anyone else involved in that project an opportunity to

address the Commission. Chairman Petersen said he certainly respected Dr. Smith's and Mr. Churchill's many years of combined experience in water quality management, and asked them to be patient with the Commission which has had much less exposure to the problems. Chairman Petersen thanked Dr. Smith and Mr. Churchill for their testimony.

Representative Tom Throop welcomed the Commission to Bend.

Bob Bledsoe appeared and asked why citizens volunteer for the Environmental Quality Commission? He said that government needs volunteers to be an effective government by the people. One of the pitfalls, Mr. Bledsoe said, of some volunteer commissions was to put a blind trust in the staff. He said the Commission should investigate all issues, and that sometimes environmental issues were used as a front for other things. Mr. Bledsoe also urged the Commission to take recommendations of concerned citizens.

As some people waiting to testify on agenda items had travelled a long way and were needing to leave the meeting early, Chairman Petersen took some agenda items out of order.

AGENDA ITEM Q: Water Quality Standards for Nutrients

At the July 17, 1985 meeting, the Commission considered the proposed adoption of amendments to Water Quality Standards Regulations, OAR Chapter 340, Division 41. As a part of that package, the Department proposed that issue papers be prepared by Spring 1986 for additional potential rule amendments. Potential nutrient standards were included as one proposed issue paper.

Testimony was given by representatives of environmental organizations and the Lake Oswego Corporation requesting immediate adoption of nutrient standards. The testimony suggested that nutrient standards were necessary to protect water quality from excessive algae and plant growth and that sufficient information exists to support adoption of standards. The Department indicated that substantial information would have to be assembled but that priorities could be rearranged to accelerate the schedule for nutrient standard development.

The Department suggested one of two basic approaches to better address nutrient standards. The most significant difference between the approaches lies in implementation actions when the standards are exceeded. The first alternative suggests the adoption of chlorophyll a (0.010 mg/l) as a standard for identifying nuisance growth of phytoplankton (floating algae). The second alternative suggests a standard based on "red book" rationale for total phosphorus to address nutrient conditions.

Director's Recommendation:

Based on information developed to date, the Department would propose to proceed immediately to public hearing to consider adoption of Alternative 1 as a nuisance aquatic growth standard.

In addition, the Department would propose to:

1. Develop an issue paper on nutrients that proposes further additions and refinements to this standard for consideration along with other proposed water quality standard revisions in the spring of 1986.

2. Include advisory language in permits that notifies sources of intended new instream standards and the potential for new requirements.

3. Complete the development of a detailed work plan for data collection and management plan revision for the Tualatin Subbasin and secure funding for the work effort. Data collection should begin by no later than January 1986. Preliminary target for management plan update hearings would be in the spring of 1987.

George Stubbert, Soil and Water Conservation Division, Department of Agriculture, testified that there are about 47 Soil and Water Conservation Districts throughout the state, each having about five to seven elected officials. The proposed nutrient standards would have quite an impact on their activities. He asked for an opportunity for all districts to be able to review the proposed rules before adoption. Mr. Stubbert said they supported the Director's Recommendation.

Margaret Kirkpatrick, representing the Lake Oswego Corporation, testified the Corporation would like the Commision to adopt the standards in Alternative 2 in the staff report, and to do it as quickly as possible.

She said that past testimony before the Commission had established that there were serious problems with nuisance aquatic growth, due in large part to high levels of nutrients, both nitrogen and phosphorous in the water bodies. The numbers in Alternative 2, she continued, were derived from the Environmental Protection Agency (EPA) Red Book, which is the product of EPA's years of research and study on this problem. It was the Corporation's feeling that more study would not come up with numbers that are better than those proposed in Alternative 2. She asked that Alternative 2 be adopted at this meeting without further delay.

Ms. Kirkpatrick also said that the idea behind Alternative 1 was good and deserved further consideration. She believed that in the long run it could produce information about the specific environmental circumstances and factors affecting aquatic growth in particular waterways.

Ms. Kirkpatrick thanked the Department staff for their quick work on developing these alternatives.

In response to a question by Commissioner Buist, Ms. Kirkpatrick said that the Lake Oswego Corporation was a private corporation that holds title to the bed and banks of Oswego Lake. The shareholders in the

corporation are the people who own property around Oswego Lake and have lake privileges; that is, the right to boat on the lake, etc. The Corporation is also charged with maintenance of the water quality of the lake. She said that testimony at the Commission's July meeting indicated the Lake Corporation spends about $20,000 to $25,000 a year combating the algal growth problem alone.

Commissioner Buist asked what the urgency was to adopt these standards at this meeting. She said she did not feel fully informed at this point. Jack Smith replied that since 1979 there had been considerable interest in the environmental community in getting nutrient standards established because of increasing problems in many, if not most, of the water bodies of the state. In addition, Dr. Smith complimented the staff on the considerable amount of time they had spent researching this area and on the two alternatives they came up with. He said that Alternative number 1 introduced a creative approach to the state's water quality management program by establishing something comparable to the air quality attainment and nonattainment areas. He suggested the idea could be fleshed out more and clearly ought to be subject to public hearings, more review and thinking. However, he continued, the numbers for phosphorous and nitrogen concentrations are really pretty solidly established and no amount of study or hearings at this time would come up with better numbers than those suggested in Alternative 2. For that reason he urged immediate adoption of Alternative 2.

Commissioner Bishop said she understood Alternative 1 to be a very solid approach, with maybe some additions from Alternative 2. However, she understood Dr. Smith to be saying the opposite and asked how the Unified Sewerage Agency could be asked to spend thousands of dollars to cut down on something that has not been proven to cause a problem in the Tualatin River. Dr. Smith replied that DEQ had an extensive report on the Tualatin River, that was now five to six years old, which documented the problem. He said the Unified Sewerage Agency was going to spend a lot of money in any event. It was in everyone's interest, Dr. Smith continued, to establish some standards so the money spent would be on solving the problem.

Chairman Petersen said that if the Commission adopted Alternative 2 it would be statewide and money would have to be spent to comply. It appeared to him that Alternative 2 was pretty site-specific to an area that had already incurred the cost. Governmental agencies have huge lead time problems, he said, and adopting this alternative at this time might put them at a disadvantage.

Jack Churchill appeared representing the Northwest Environmental Defense Council. In addition, Mr. Churchill said he lived in Lake Oswego and paid Lake Corporation fees, so he was well aware of the problem and the money that had been spent to combat it in Lake Oswego. He wanted to point out that the EPA Red Book standards had been developed by the best scientific minds in this area in the entire Country. He said that all states had had the opportunity to comment on those numbers and they were generally accepted throughout the Country as numbers necessary to achieve the uses. The Northwest Environmental Defense Council asked that the Commission go ahead and

adopt these standards now, however belatedly, putting the Tualatin Basin as a top priority.

Lorrie Skurdahl, appeared representing the Unified Sewerage Agency of Washington County (USA). She testified that algae and algae nutrients are not truly a human health issue; they are a potential fish and aquatic life issue and to a great extent a recreational and aesthetic issue. However, Ms. Skurdahl continued, nuisance algal growth was not really a priority pollution issue when talking about wastewater treatment. USA did not support either Alternative 1 or 2, but preferred Alternative 1 if any were to be adopted at this time. Ms. Skurdahl said they would strongly oppose Alternative 2 because it would be extremely costly to achieve and there was no assurance it could be achieved or that algae growth would be prevented.

Ms. Skurdahl said USA had recently completed a Master Plan update for the next 20 years which included approximately $120 million in capital construction through the year 2005 just to meet the treatment standards in place now, which includes phosphorous removel. USA believes additional capital outlays would be necessary at the treatment plants to achieve either the removal of phosphate proposed in Alternative 2, or to reach the chlorophyll level in Alternative 1.

Ms. Skurdahl acknowledged that USA was a substantial contributor to the phosphate level in the Tualatin River, but said that even if USA's effluent were entirely removed from the River there would still be a level of phosphate that could trigger an algae bloom.

Ms. Skurdahl complimented the staff on taking a fair approach on both proposals by proposing the standards for all waters of the state. USA was concerned, she continued, that its operations in the Tualatin subbasin not be singled out. They were concerned that Washington County could be put at an economic disadvantage if a standard were more strict on the Tualatin River.

In response to a question from Commissioner Buist, Gary Krahmer of the Unified Sewerage Agency, said that they apply chemicals to their effluent which now removed about 75% of the phosphate. He said they could increase that chemical addition to remove more phosphorous and probably get down to 1 milligram per liter instead of the average 2 milligrams per liter removed now. He said they had some information from a New York treatment facility that had been struggling with this problem since 1979, and even with a massive amount of water treatment equipment the best they could achieve was .22 milligrams per liter. He said the report suggests that .1 milligrams per liter could possibly cause algae to bloom. Mr. Krahmer said that as always, USA was prepared to work with Department on a continuing basis to help resolve this matter.

Chairman Petersen asked for a response from staff.

Andy Schaedel of the Department's Laboratories Division, said that the Department was trying to give the Commission a range of options to deal with nuisance aquatic growth that may affect uses. In response to Commissioner Bishop, Mr. Schaedel said that if

Alternative 1 were adopted there may very well be standards set differently for different rivers. For instance, a .5 or .05 for a flowing river going into a lake may not be low enough to affect the nuisance growth and something more stringent may be required.

Commissioner Denecke said he assumed that when looking at a lake whose primary use was fishing more nutrients would be wanted to feed the fish. However, if the lake or stream were to be used for something else where clear water was wanted, a lower nutrient content would be desirable. Mr. Schaedel agreed that would be the case, but it could be taken too far.

Mr. Schaedel said there would be the flexibility to move the phosphorous and nitrogen criteria in Alternative 2 to Alternative 1. Chairman Petersen asked what problems would be created by doing that. Harold Sawyer of the Department's Water Quality Division, replied that it would potentially produce a larger list of areas that would be in nonattainment. Mr. Schaedel said he did a quick assessment of how many water bodies would not meet the suggested chlorophyll a criteria of .010 milligrams per liter and found there were approximately 16 to 19. That number would jump significantly if the annual phosphorous criteria were added. If the summer period total phosphorous only were taken into consideration, the number would be only about 31. Mr. Schaedel pointed out that one of the nearby rivers that would exceed the criteria would be the Metolius which had been tested at about .1 during the winter months.

Mr. Schaedel explained that the Red Book being discussed was a rationale for the development of a criteria; not a national standard. He said there were very few states that had adopted the Red Book criteria.

If Alternative 2 were adopted, Commisioner Buist asked how the Department would deal with USA. Mr. Sawyer replied that the permit for the Durham plant had been drafted and was out on public notice. There had been a request for a hearing, and the Department was in the process of determining whether to go to hearing with the permit. The permit for the Rock Creek plant comes up for renewal at the end of the year. Mr. Sawyer said the Department proposed to issue a permit which imposed some additional monitoring requirements and some additional controls to address the issue of nutrients. If Alternative 2 were adopted, he continued, additional language would be added to the proposed permits. If the USA plants did not meet those permit requirements, they would be treated just like any other noncomplying source and a compliance schedule would be negotiated.

Commissioners Buist and Bishop had questions about a timetable if a standard were adopted at this meeting. Director Hansen replied that if Alternative 1 were adopted there would be about 15-16 water bodies that would not be in compliance, and not all could be brought into compliance at once. He said they would expect that the Tualatin River would be one of the areas the Department would look at first, however the Department would expect to come back to the Commission with a proposal of how it expected to bring the rest of those water bodies into compliance. The Commission could then look at that

proposal and alter it if they wished. The schedule wouldn't necessarily be the topic of a public hearing, but it would be in a public document presented to the Commission and open to public comment in that way. Mr. Schaedel said that it would take about one year for a study on the Tualatin River, other water bodies may take a shorter or longer period of time depending on the complexity of regulation. Director Hansen said that if the Commission was looking for a standard to be able to be imposed upon point sources directly and immediately, Alternative 2 was the only one that would do that. Commissioner Buist was concerned that there was really no definite step being taken to solve the existing problem which is getting very severe in some water bodies, and the best approach would be to come up with a strategy to solve the problem. But practically speaking, she continued, it was going to take a very long time and in the meantime the problem might not be solved at all. Mr. Schaedel said that there was no guarantee if the phosphorous content from the sewage treatment plants were brought down that the problem would be solved, because it could come from nonpoint sources such as stormwater runoff.

It was MOVED by Commissioner Buist, seconded by Commissioner Bishop and passed unanimously that both Alternative 1 and Alternative 2 be taken to public hearing.

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

This agenda item reviews the one-year variance which was granted to Brookings Energy Facility on September 14, 1984. The variance authorized the permittee to record temperatures manually in place of using automatic temperature recorders. The Commission requested this review in granting the variance. The proposed action recommends that the variance be allowed to expire and that the permittee be required to install and begin operating automatic temperature recorders.

Director's Recommendation

Based on the findings in the Summation in the staff report, it is recommended that the Commission allow the variance from OAR 340-21-027(2) for Brookings Energy Facility to expire and that no new variance be issued. The permittee should be instructed to immediately begin proper operation of the facility in accordance with the Commission's rules, including use of the temperature recorders. The permittee should be required to install and operate the temperature recorders within 45 days. During the 45 day installation period, the permittee shall maintain compliance with their Air Contaminant Discharge Permit No. 08-0039, Addendum No. 1, Condition 8. The Commission should instruct the Department to pursue additional enforcement actions if necessary to gain compliance with these requirements.

It is also recommended that the Commision not undertake any reconsideration of OAR 340-21-027 until the Department has reevaluated subsection (2) and prepared its recommendations.

Richard AnFranc, member of the Curry County Budget Committee, testified that the outcome of this matter would have a financial effect on the cost of solid waste disposal in Curry County. He said the County Commissioners would like to have input into the Commission's decision, unfortunately because of other commitments they were unable to attend this meeting. County Commissioner John Mayea asked that the Commission grant an extension of Brookings Energy Facility's variance until the next regular meeting to allow the County Commissioners to testify. Mr. AnFranc submitted a letter from the equipment manufacturer, Consumat, showing that the Brookings Energy Facility was operating in accordance with manufacturer specifications. He said that this letter demonstrated to the county that no emergency exists so extending the variance would be reasonable.

Chairman Petersen expressed concern that the Company was before the Commission a year ago and were granted a variance, contrary to Department recommendation, and it was his understanding the Company had not complied with the terms of that variance. He said he would not be so concerned if it was just a technical problem, but there were in fact violations occurring.

Commissioner Buist commented that it was not clear to her why the temperature was not recorded when it should have been. Bruce Hammon of the Department's Coos Bay Office, replied that the Commission granted the variance in September 1984, and after considerable discussion with the Company recording began in December of 1984. In January of 1985, the facility was inspected and found to be in noncompliance. The Company was informed both verbally and in writing of the violation. Other violations were found after that time. To this date, Mr. Hammon continued, the Department had not seen improvement and asked that the Company be encouraged to comply and install temperature recording devices.

In response to a question from Commissioner Buist, Mr. Hammon said after the Commission granted the variance, the Company was sent a letter explaining the terms. The Company felt it was unreasonable to be required to record for two hours after shutdown. From that point forward, Mr. Hammon continued, the Company was aware of the requirement and simply did not comply.

Tom Bispham of the Department's Air Quality Division, addressed the health concerns. Mr. Bispham said that because of the solid waste disposal problem on the Coast the Department looked into alternatives including incineration. The Department felt it could modify the particulate standard to accommodate incineration and still protect the public and the workers at the site from any exposure to toxic compounds that come from the products of incomplete combustion. He said the carcinogenic aspects of products of incomplete combustion were well documented, and was one of the primary concerns of the federal government at this time.

In 1984 the Commission made modifications to the coastal incinerator rules but took note that temperature needed to be maintained for those incinerators in order to protect against the emission of toxics and public exposure to those toxics. The Department feels strongly that

temperature recorders be required to insure that temperatures and residence times are maintained properly through the burn period for the protection of public health.

Chairman Petersen asked if there would be potential harm to public health if the variance were extended another month. Mr. Bispham replied that that would be difficult to determine, but the Department was concerned that over a long period of time if this situation continued, adverse health effects would occur. Commissioner Buist agreed that a one month extension probably was not going to make much difference in anyone's health.

The Commission agreed that it would be of no benefit to postpone action on this matter until another meeting and proceeded to take testimony.

Pete Smart, operator of the Brookings Energy Facility, testified that this was more than a matter of just installing monitoring devices. He said the Department was asking for a significant change in the way they operate. Mr. Smart said they could install the pyrometers, but it was his belief it would just be a way of putting them out of business.

Mr. Smart said he did not attend the public rulemaking hearings because first, he did not have the time, and second he thought they were going to relax the standards, which was done. In addition, however, the operating temperature was raised from 1600 degrees to 1800 degrees. He said they had tried to comply with 1800 degrees, and do most of the time. He was afraid they would not be able to maintain 1800 degrees during the winter months when there was a larger percentage of water in the garbage.

Mr. Smart maintained that ORS 468.345, the statute authorizing the granting of a variance if special conditions render strict compliance unreasonable, burdensome, or impractical due to special physical conditions or cause, should be applied to them. He said they had lost money on this project and any additional requirements would be financially burdensome on them.

Chairman Petersen asked if Mr. Smart was saying that the garbage they burned did not need to be burned at 1800 degrees. Mr. Smart replied that the manufacturer, Consumat, recommends burning at 1600 degrees. Under ideal conditions, he continued, they can run at 1800 degrees, but he did not want to be fined if they could not always maintain that temperature.

Mr. Smart cited conditions in his old permit, issued in 1978, which allowed what he called a normal warmup time, a normal shutdown time, and running at 1600 degrees. He said his permit now required different warmup and shutdown times, and running at 1800 degrees.

When he received the permit, Mr. Smart said he did not have time to read it carefully and did not think the permit requirements would be strictly enforced. Mr. Smart said he did not want to violate the rule, but if he put the pyrometers on he felt the Department would

not work with him and would issue him violations if he did not meet the temperature requirements. He said he had a job to do and the Department was interfering with it.

Chairman Petersen asked Mr. Smart if he had been informed in writing of the terms of the variance he had been granted in 1984. Mr. Smart replied he had received the terms in writing, but they had not been clear to him until Bruce Hammon explained.

Chairman Petersen asked if other coastal incinerators were having problems meeting 1800 degrees. Mr. Smart replied they were. Mr. Hammon explained that the incinerators at Coos County and Beaver Hill were experiencing difficulties with the startup requirements. But the difference between these facilities and the Brookings Energy Facility is that they operate continuously and have fewer shutdown and startup times than the Brookings Energy Facility. Mr. Smart said it was true that they operate more continuously in Coos County, but when the incinerators were bought in Curry County, it was realized that there was not enough garbage to run continuously. He said they had not had complaints from anyone except DEQ about the startup and shutdown times.

Chairman Petersen asked why the terms of the variance had not been complied with. Mr. Smart replied that he had not realized until some months had gone by that he would be required to stay for two hours after shutdown to record the temperature. When notified that he was not meeting this requirement, Mr. Smart said he was not going to keep someone at the facility for two hours after shutdown to watch the temperature. In answer to Commissioner Petersen, Mr. Hammon said the violations were the failure to monitor two hours post-burn, and the failure to meet the temperature requirements.

Mr. Smart said that after reading the Administrative Rules he found that an exemption was available for incinerators that burn 13 tons or less. He said his facility averages about 9 to 9 1/2 tons per day, so technically they could be exempted from the rule. Mr. Smart said he also found in the rules that they only apply to incinerators that were built in 1979 and after. He said his incinerators were purchased by the County in 1978. Chairman Petersen asked why the additional grounds for exemption were only being brought forward at this time. Mr. Smart replied that at the time of the variance hearing before the Commission in 1984 he had not gone through his permit or the Administrative rules thoroughly and did not realize the permit requirements were going to be strictly enforced. Mr. Smart said he had only recently begun researching.

Chairman Petersen said he was disappointed Mr. Smart had not taken the terms of the permit more seriously. He was not sympathetic to the argument that Mr. Smart had not bothered to read the permit carefully because he thought it would be the same as his previous permit. Chairman Petersen said that a permit was clearly a contract. Chairman Petersen suggested that if Mr. Smart felt he had additional grounds for an exemption, he should either present those arguments himself, or hire a consultant or lawyer to figure out if a legitimate case can be made for an exemption and the Commission would consider

that at its next meeting. The Commission will consider all points raised, Chairman Petersen continued, but once the decision was made, Mr. Smart was going to have to live with it.

Chairman Petersen asked the Department to cooperate fully with Mr. Smart in exploring the areas of possible exemption or areas of variance. However, unless the Company falls within the statutory criteria for a variance, or is exempt from the rule, the Commission has no choice but to enforce all the permit requirements.

Mr. Smart asked if it would be possible to have his old permit back, which required 1600 degrees, and then he would put in the recording devices. Chairman Petersen suggested Mr. Smart take his comments to his attorney, John Coutrakon, to prepare a presentation to the Commission at their next meeting.

Chairman Petersen asked Mr. Smart if he understood that the variance was extended until this matter is resolved, and that the terms of the variance must be met. Mr. Smart replied he had no questions about the terms of the variance. Chairman Petersen also said he would not expect an enforcement action would be taken until a decision was made on this matter.

It was MOVED by Commissioner Buist, seconded by Commissioner Denecke, and passed unanimously that the variance be extended, finding that special circumstances render strict compliance unreasonable, burdensome, or impractical due to special physical conditions or cause.

AGENDA ITEM N: Request for a variance from OAR 340-21-015 and OAR-21-020, boiler visible and particulate matter emissions, and OAR 340-25-315(1)(b), veneer dryer emission limits, for Lang and Gangnes Corporation, dba Medply

This is a variance request from Lang and Gangnes Corporation, dba Medply, a plywood manufacturing plant in White City. They are requesting that a variance be granted from the visible emission standards and particulate discharge limits from their boilers until December 15, 1985. They are also requesting a variance from the veneer dryer emission rules until March 31, 1986.

The Department is recommending that the variance for the boilers be granted and the variance for the veneer dryers be denied.

Director's Recommendation

Based on the findings in the Summation in the staff report, it is recommended that the Commission grant a variance for the Lang and Gangnes Corporation facility at White City, doing business under the name of Medply, from the boiler emission limitations for opacity (OAR 340-21-015) and particulate emission concentration (OAR 340-21-020).

It is further recommended that the Commission deny the request for a variance for the veneer dryers from OAR 340-25-315 and require that compliance be maintained by process control until scrubbers can be installed.

The variance for the boilers should be subject to the following conditions:

1. The two boilers must be permanently shutdown at the earliest possible date prior to December 15, 1985.

2. Interim control measures must be used to reduce boiler emissions to the greatest extent possible, including:

   a. Proper operation and maintenance of the boilers to minimize emissions;

   b. Continuing to operate and maintain the scrubber on the boiler stacks; and

   c. Keeping veneer dryer 4 shutdown.

Douglas Cushing, Attorney for Lang and Ganges, testified that the company was now in bankruptcy. He said the problem would be resolved by December with the delivery of steam from Biomass. This would enable the company to shut down the boilers completely. Mr. Cushing said they now had a compliance schedule they believed they could meet, and will meet it. Mr. Cushing said the company was a good candidate for a successful Chapter 11 bankruptcy. They supported the Director's Recommendation, but would also like to see the variance apply to the dryers as well. He said a 45 day variance on the dryers would be helpful.

Director Hansen said the company had violated standards on an ongoing basis and he was troubled as they had continued to operate in violation while their competitors had to comply with the regulations thus giving Lang and Gangnes an economic advantage. He said he was sympathetic to the problem but felt it could be controlled and requirements should be followed.

Commissioner Buist asked if the plant was in a populated area. Mr. Cushing replied that White City was an industrial area with a population of about 4,000 to 5,000 about eight miles from Medford.

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

AGENDA ITEM D: Request for authorization to conduct a public hearing on the proposed amendment of notice of violation rules, OAR 340-12-040

The Department is proposing to amend rules pertaining to issuance of Notices of Violation for violations of hazardous waste requirements. The amendment would eliminate the existing requirements of OAR 340-12-040 that at least five days notice be provided prior to the assessment of a civil penalty.

Recent revision to Oregon statutes by the 1985 Legislature deleted the prior notice requirement. Therefore, the proposed action merely codifies statutory changes to ORS 468.125.

Director's Recommendation

Based on the Summation, it is recommended that the Commission authorize a public hearing to take testimony on the proposed amendment of OAR 340-12-040.

It was MOVED by Commissioner Denecke, 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 proposed changes in rules relating to the "Opportunity to Recycle" (OAR 340-60-025(1)(c) and OAR 340-60-030(4), to create a West Linn Wasteshed

The Department is requesting authorization to hold a public hearing on a proposed rule change which would identify the City of West Linn as a separate wasteshed. West Linn is presently included in the Clackamas Wasteshed by rule. They have appealed this situation under ORS 459.175(2)(a) and have requested identification as a separate wasteshed.

Director's Recommendation

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

Commissioner Bishop commented that she had seen the program at West Linn and had been very impressed. She said West Linn had been in the forefront of curbside recycling and education.

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist and passed unanimously that the Director's Recommendation be approved. As a part of the motion the Commission asked that a letter be prepared commending the City of West Linn for their model recycling program.

AGENDA ITEM F: Request for authorization to conduct a public hearing on amendments to the State Implementation Plan regarding the Ozone Control Strategy for the Oregon portion of the Portland-Vancouver Interstate AQMA, OAR 340-20-047, Section 4.3, and Growth Increment Allocation, OAR 340-20-241.

This agenda item requests authorization to conduct a public hearing on revisions to the State Implementation Plan that would:

First, update the ozone control plan for the Portland area and provide larger growth cushion for use by new or expanding industries; and

Second, revise the formula for allocating the growth cushion for volatile organic compounds (or VOC) to new or expanding industries in the Portland and Medford areas.

The Department has worked with an advisory committee, the Portland Ozone Task Force, to develop these proposed changes.

Director's Recommendation

Based on the Summation, the Director recommends that the Commission authorize a public hearing to consider public testimony on the proposed addendum updating the ozone control strategy for the Portland area as a revision to the State Implementation Plan (SIP). The proposed SIP revision includes: an addendum to Section 4.3 of the State of Oregon Clean Air Act Implementation Plan (OAR 340-20-047), and revisions to the new source review rules regarding allocation of growth increments (OAR 340-20-241).

If Portland was redesignated as an ozone attainment area in 1987, Commissioner Buist asked, why then can a larger growth cushion be available? Merlyn Hough, of the Department's Air Quality Division, replied that the primary purpose of updating the plan would be to take care of the time between now and 1987 before attainment redesignation is made. He said there was some increase in the growth cushion that could be used between now and 1987, but there was a possible substantial increase upon redesignation using the latest emission information and projections.

Mr. Hough said the primary reason there would be more room is because automobile emissions are decreasing. The recession also had an effect, he said, because there was a certain amount of employment lost during that time which affects traffic projections and automobile emissions.

Commissioner Buist asked what type of industries had asked for use of the growth cushion. Mr. Hough said the two pending requests were the Port of Portland umbrella permit to handle ship painting operations done in Port facilities by different contractors, and Tektronix. He said there had been a previous request by Intel, which produces semiconductors, but that has been withdrawn since they have postponed their expansion plans.

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

AGENDA ITEM G: Request for authorization to conduct a public hearing on amendments to the Volatile Organic Compound Rules, OAR 340-22-100 to 22-220, and Permit Rules, 340-20-155(1), Table 1; as a revision to the State Implementation Plan

Volatile organic compound (VOC) rules, which primarily affect painting and gasoline marketing operations, are a key element in the Department's ozone control strategies.

Over the last five years the Department has found problems with the VOC rules. This agenda item proposes to begin the rule revision process to deal with these problems which include providing relief to smaller companies engaged in surface coating, who have not found feasible technology to comply with the rules, clarifications of several rules to address concerns of EPA, and several housekeeping changes to improve the enforceability of the rules.

In some cases the rules are proposed to be made more stringent where technology is available. These cases include roadway traffic markings paint and low vapor pressure inks.

The rule changes would not significantly affect the Department's ozone control strategies.

Director's Recommendation

It is recommended that the Commission authorize a public hearing to receive testimony on the attached proposed amended permit rule 340-20-155(1) and on VOC rules 340-22-100 to 340-22-2020, as amendments to the State Implementation Plan.

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist and carried unanimously that the Director's Recommendation be approved. Commissioner Brill was absent at the time of the vote.

AGENDA ITEM O: Status of Marion County Solid Waste program and request for extension on closure of Brown's Island Landfill until Marion County/Ogden Martin waste-to-energy facility becomes operational.

At the April 8, 1983, Environmental Quality Commission meeting, Marion County was granted an extension to continue municipal solid waste disposal at the Brown's Island Landfill until May 29, 1986, or until a replacement facility became available, whichever came first.

Marion County is now in an implementation/construction phase to provide new solid waste disposal facilities that will meet both federal and state regulations. Based on current construction status, the replacement facilities may not be fully operational until sometime in early 1987. Marion County has requested approval to continue use of the Brown's Island Landfill until construction of their new facilities are completed. This informational item outlines the county's progress since 1983 and the Department's proposed course of action.

Marion County submitted their recycling report required by Senate Bill 405, "Opportunity to Recycle." Marion County, thus, is the first entity to file the recycling report statewide (due for all wastesheds by July 1, 1986).

Randall Franke, Chair of the Marion County Board of Commissioners, testified in support of the staff report. He said the Department staff did an outstanding report, and told the Commission the County was six weeks ahead of schedule. He invited the Commission to tour the facility when they were in the area.

The Commission accepted the staff report. Chairman Petersen congratulated the County on being the first to submit the Opportunity to Recycle report.

Mr. Franke thanked Chairman Petersen and complimented the Department on its excellent staff.

AGENDA ITEM H: Proposed adoption of modifications to a special groundwater quality protection rule in the Deschutes Basin Water Quality Management Plan, OAR 340-41-580(1), for the LaPine shallow aquifer

At the July 19, 1985 meeting, the Commission authorized the Department to hold a hearing to collect testimony concerning a specific boundary for sewering LaPine. The hearing was held on August 20, 1985. The staff prepared a hearing summary and proposed a rule modification that establishes the boundary. The boundary would designate the area in and around the unincorporated town of LaPine that will be served by a regional sewerage facility. The sewerage facility has been mandated by the EQC to resolve a nitrate problem in the LaPine area groundwater aquifer.

Since the time the staff report was sent to the Commission, staff have double-checked the legal description of the boundary and made some corrections. The boundary is still the same as proposed, only the description has been refined.

Orval D. Boyle, Director of Support Services for the Bend LaPine Public schools, submitted a written statement. He said the School District had recently invested over $150,000 in their sewage treatment and disposal system. Mr. Boyle submitted results of recent lab tests that would seem to indicate the system was operating very satisfactorily. The School District was concerned that after just investing this large amount of money in a system approved by DEQ, they were being asked to abandon it to pay somewhere between $800 and $1600 a month for a core area sewerage system. Several school districts similar in size to the Bend LaPine District had been surveyed to determine the sewerage costs on a per person equivalent, he continued. These costs average $.30 to $.40 per person per month as compared to the cost of $1.96 per person per month that was originally sought. For these reasons, Mr. Boyle said, the District considered the projected costs to be critically out of line with the state average costs and what is currently being required in the Bend area.

Commissioner Bishop asked if the Department knew there was a problem when the School District installed this system. Dick Nichols of the Department's Central Region Office, replied that in order to build the school it needed to be connected to an approved sewage treatment facility. All that was available at that time was a septic tank system. In 1978-79 the Department became aware of a nitrate problem in the LaPine area but did not know how extensive it was. A groundwater study completed in 1981-82 determined that the area needed to be sewered. Mr. Nichols emphasized that septic tanks do not remove nitrate. He also said that the nitrate levels in the lab tests that Mr. Boyle submitted seemed low.

The Department has determined that there is a nitrate problem in the groundwater in LaPine, Mr. Nichols continued, but the problem has not been isolated to show that any particular structure is the contributor and that others are not. Frankly, he said, it would be impossible to make that determination. Mr. Nichols continued that if the Department would have to determine exactly which structures were contributing to the nitrate problem, it would be a very long time before the LaPine core area would be sewered. In addition, Mr. Nichols said that the school was seen by the residents as a major contributor to the problem. The Department would have a credibility problem if the School were not included.

Chairman Petersen disqualified himself as his law firm represents the Bend LaPine School District.

Mr. Nichols then appeared representing Mr. and Mrs. O.H. Lunda. Mr. and Mrs. Lunda had had to leave the meeting earlier because of health problems. The Lundas live on a corner of the existing sanitary district. They apparently got into the sanitary district by error and were now trying to get out. They believe it would be impractical to run the sewer to them. The Lundas have recently installed a system that is working well and their well does not show any nitrates. For these reasons the Lundas believe they should be excluded from the sewer boundary. The Lundas were excluded from the proposed LaPine incorporation boundary which was defeated by the voters in March, 1985.

Mr. Nichols said that when the Department first did the hearing summary on this matter, he proposed that the Lundas be excluded from the system. Subsequently, staff felt it could cause some administrative problems if the Lundas were excluded from the Department's boundary, but were still included in the Sanitary District. Staff felt it would be more appropriate to consider the Lunda's request when the regional sewage plan was reviewed.

Commissioner Brill said it was his feeling to not include the school district at this time, but to include them if a nitrate problem develops. Mr. Nichols said that if the school were not included at this time, there would be no way to include them at a future time. Mr. Nichols said he felt that all sources in the core area should be sewered.

Commissioner Buist asked Director Hansen what the Commission's alternatives were. Director Hansen replied that one alternative would be to accept the boundary as it is, including the school district. As the regional sewage plan is developed, areas could potentially be included or excluded, however, Director Hansen said he felt that was unlikely. The decision would be based on where the nitrate loading was coming from, and whatever boundary is established at this meeting would generally be what the boundary is, with slight individual residence modifications, but probably not the school. The other choice is to exclude the school. Director Hansen said if that happened it would be more difficult to sewer LaPine. Director Hansen said he was concerned that if the sewage system were built without including the school, the system would not be large enough to include the school at a later time.

It was MOVED by Commissioner Buist, seconded by Commissioner Bishop and passed with Commissioner Brill voting no and Chairman Petersen abstaining, that the Director's Recommendation be approved which included the school in the system.

AGENDA ITEM I: Proposed adoption of amendments to establish boundaries and implement a Motor Vehicle Emission Inspection/Maintenance (I/M) program in the Medford/Ashland Air Quality Maintenance Area (AQMA) as a revision to the State Implementation Plan (SIP).

This a request for rules adoption which would implement the provisions of Chapter 22 Oregon Laws 1985 (HB2845). The specific amendments would:

1. Establish the Medford-Ashland AQMA as the inspection program zone. The result of this rule adoption would be to implement the provisions of ORS 481.190. The effect of this action would be that effective January 1, 1986, the Motor Vehicles Division would require that vehicles registered within that area obtain a Certificate of Compliance prior to vehicle resignation renewal.

2. Modify the inspection test procedure for 1974 and older vehicles by deleting the emission equipment portion of the inspection test throughout Oregon's I/M program.

3. Adopt an addendum to the SIP that documents the effectiveness of this aspect of the caron monoxide control strategy to project compliance with the federal ambient health standards by the deadline date of December 31, 1987.

Director's Recommendation

Based upon the Summation in the staff report, it is recommended that OAR 340-24-301, the amendments to OAR 340-24-320 and 325, and the SIP addendum OAR 340-20-047 (section 4.9) be adopted. The effective date of OAR 340-24-301 would be January 1, 1986. The effective date of the remaining actions would be October 1, 1985.

Commissioner Buist asked how people would be informed if they were inside or outside the boundary, and how many more stations would be needed if the whole county were included. Director Hansen replied that the Department of Motor Vehicles would be sending notices to probably a larger area than the actual boundary, but there will be a phone number included for people to find out definitely. The same method is used in the Portland area, because notices are sorted by zip codes that do not necessarily follow boundary lines. Bill Jasper of the Department's Vehicle Inspection Section, said that if the whole county were included, then an additional 10,000 vehicles would be picked up which would require either an additional station or a mobile operation.

Commissioner Buist asked how many vehicles per year did one station inspect. Mr. Jasper replied that it was roughly 300 per day or 42,000 per year.

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

In response to an inquiry by Director Hansen, the Commission declined to discuss the repair cap.

AGENDA ITEM J: Proposed adoption of rules amending standards of performance for New Stationary Sources, OAR 340-25-510 to 25-805, to include new and amended Federal rules and to request delegation from the U.S. Environmental Protection Agency

In the last year, the Environmental Protection Agency has promulgated seven more new source performance standards and amended five others. The Department has committed to bring State rules up-to-date with EPA rules on a once a year basis. Minimal comments were received at a hearing on the proposed rules.

The source classes affected are:

Amended Rules

1. Rod casting at secondary bronze or brass plants
2. Electric arc furnaces at steel mills
3. Kraft pulp mills
4. Gas turbines
5. Leaks at chemical plants

New Rules

6. Argon decarburization at steel mills
7. Lime manufacturing plants
8. Vinyl and urethane coating and painting
9. Leaks at refineries
10. Synthetic fiber plants
11. Petroleum dry cleaners
12. Fiberglass insulation plants

If any of the following exiting sources in Oregon make major modifications, they will be subject to the proposed rules.

1. Steel mills in Portland and McMinnville
2. Ashgrove Cement lime plant in Portland
3. Resin Plants:
   a. Reichhold, White City
   b. Borden, Springfield and La Grande
   c. Georgia Pacific, Albany
4. Large dry cleaning plants using Stoddard solvent

Director's Recommendation

It is recommended that the Commission adopt the proposed attached amendments to OAR 340-25-520 to 340-25-805, rules on Standards of Performance for New Stationary Sources, and direct the Department to request EPA for authority to administer the equivalent Federal Rules in Oregon

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

AGENDA ITEM K: Proposed adoption of revisions to New Source Review Rule related to assessment of visibility impacts of major new or modified sources in Class I areas, OAR 340-20-276, as a revision to the State Implementation Plan

This agenda item concerns adoption of changes to the visibility impact assessment requirements of the New Source Review Rule. These changes are required to insure that the Department's rule is consistent with EPA regulations. The rule proposed for adoption has been modified in response to public comment to clarify the intent of the impact assessment exemption while insuring that visibility impacts from relatively small sources located close to Class I areas will be evaluated.

Director's Recommendation

Based on the summation in the staff report, the Director recommends that the Commission adopt the revised proposed rule (OAR 340-20-220 through -276) as amended.

John Charles and Ann Wheeler-Bartol representing the Oregon Environmental Council, Oregon Chapter of the Sierra Club and the Northwest Environmental Defense Center, submitted a written statement opposing the proposed amendment to OAR 340-20-276 and to the existing exemption language in the rule. By allowing this exemption, they said, the Department was violating the visibility provisions of the Clean Air Act.

John Core of the Department's Air Quality Division, said that many of these issues were brought up in the public hearing. The issue as the Department saw it was one of whether or not the source should be responsible through the rule for analysis of their visibility

impacts or whether the Department should. The decision the Department reached after discussion was that it was appropriate for major sources of 100 tons or 250 tons to be responsible for doing the visibility impact analysis through the rule. Mr. Core said that after reviewing their comments it was determined that smaller sources, those between the significant emission rates of 25 tons per year and up to as much as 250 tons, could have a visibility impact on wilderness areas.

Therefore, the Department opted to include in the staff report a commitment from staff that the Department would do that analysis. Mr. Core said the Department would have no objection to putting this commitment in rule form.

Mr. Core emphasized that the exemption was only for analysis, not from control. Chairman Petersen said that was an important distinction. As long as the analysis was made, whether it was a self-analysis in the case of a large source, or a Department analysis, which they say they intend to do, the regulation is still there, he said.

Commissioner Bishop asked if the analysis could be included as part of the rule. Tom Bispham of the Department's Air Quality Division, said that the Department faced the problem of an EPA requirement to complete adoption of this State Implementation Plan Amendment. Mike Gearheard, U.S. Environmental Protection Agency, Oregon Operations Office, explained that EPA was under a court ordered deadline to promulgate the visibility State Implementation Plan. If the state did not act on this on schedule, then EPA was bound legally to begin its promulgation.

Director Hansen said if the Director's Recommendation were adopted with further instructions to the Department to come back at the next Commission meeting with an amendment to accomplish in rule that which was in the staff report, that will satisfy EPA and the Department would work with the concerned parties on that rule language.

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist and passed unanimously that the Director's Recommendation be approved with the addition in the rule the Department's requirement for assessment as part of the normal permitting process, the exact language of that amendment to be presented at the next meeting.

AGENDA ITEM L: Appeal of subsurface variance denial by Mr. and Mrs. Neil Sponaugle

Mr. and Mrs. Sponaugle are appealing the decision of Mr. Sherman Olson, a department Variance Officer, denying their request for variance from the On-Site Sewage Disposal Rules.

Mr. and Mrs. Sponaugle desire to remodel an existing building on their property into a residence. This may be accomplished only if a method of sewage disposal acceptable to the Department is available to serve the house.

Mrs. Sponaugle informed the Department by letter that she feels denial creates a severe and unreasonable hardship. Her husband has a severe emotional handicap and is unable to work in public. He needs to be in the setting this property affords. Mrs. Sponaugle has had the property since 1971, and knows that it will drain, although there may be three (3) months each year when the drainage may not be everything desirable. She suggests using the septic tank as a holding tank when drainage is a problem, having it pumped as necessary.

Director's Recommendation

Based upon the findings in the summation in the staff report, it is recommended that the Commission adopt the findings of the variance officer as the Commission's findings and uphold the decision to deny the variance.

Mrs. Sponaugle testified asking that they be allowed a gate valve between the septic tank and drainfield which would allow the tank to be used as a holding tank during periods of high water. Sherman Olson, of the Department's On Site Sewage Disposal Section, said that a valve would only work if it is used and it would be difficult to determine when to switch the valve. Also, the Department had experienced problems with the proper maintenance of this type of system. Mr. Olson said this system is generally used in business situations where they can afford to have it maintained.

Mrs. Sponaugle said their only other alternative would be a lagoon, which would also be expensive to maintain. Most of the time on her property, she said, there was too little water. Mrs. Sponaugle felt that the holding tank was the most convenient and most desirable system to maintain.

Commissioner Buist asked what other homes in the area were doing, and if their systems worked. Mrs. Sponaugle replied that the other homes have existing on-site systems, and as far as she knew they worked well. Mr. Olson said this was not a high density area, and there were no regional sewage facilities in the area.

Commissioner Buist said it seemed resonable to look at the septic tank/holding tank alternative because a lagoon did not seem economically feasible. Mr. Olson said that both systems would be costly. A septic tank/holding tank would have to be designed so it would not pop out of the ground when it was pumped, he said.

It was MOVED by Commissioner, seconded by Commissioner Bishop and passed unanimously that the Director's Recommendation be approved which would deny the variance. Commissioner Buist said she was voting for the motion reluctantly.

AGENDA ITEM P: Informational Report: Proposed enforcement guidelines and procedures for the Hazardous Waste Program

The Department has drafted proposed Enforcement Guidelines and Procedures for its hazardous waste program. The guidelines are intended to ensure that enforcement actions are appropriate, timely

and consistent statewide.

DEQ will be soliciting comment on the proposed guidelines prior to finalizing the guidelines. Input from the Commission is also desired.

The guidelines are necessary for the Department to receive Final Authorization from EPA for the state's hazardous waste program.

Director's Recommendation

It is recommended that the Commission: (1) concur with the Department's proposed schedule for development of final guidelines; (2) provide policy direction and comments on the proposed enforcement guidelines to Department staff; and (3) receive testimony from interested persons at this meeting.

At this point in the meeting Chairman Petersen and Commissioner Buist had to leave because of other commitments.

Tom Donaca, Associated Oregon Industries, began to testify, when Vice-Chairman Denecke expressed the concern that he would like the whole Commission to be able to hear this item.

By unanimous consent of the remaining Commission members, this item was deferred to the Commission's next meeting.

This ended the formal meeting.

LUNCH MEETING

All Commission members were present for the lunch meeting.

Lydia Taylor of the Department's Management Services Division, informed the Commission that under the proposed plan for sewering East Multnomah County, the Department was being asked to finance $110 million over a 17 year period. This would be secured by special assessment revenue bonds instead of the usual general obligation bonds the Department uses for security.

John Core of the Department's Air Quality Division, presented a slide show on visibility in wilderness areas.

Several local officials and interested persons attended the Commission's lunch at their invitation.

Respectfully submitted,

Carol Splettstaszer
EQC Assistant

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. B, November 22, 1985, EQC Meeting

August and September 1985 Program Activity Report

Discussion

Attached is the August and September 1985 Program Activity Report.

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

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

The purposes of this report are:

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

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

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

Recommendation

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

Fred Hansen

SChew:y
MD26
229-6484
Attachment

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

August and September, 1985

Table of Contents

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality, Water Quality, Hazardous and Solid Waste Divisions (Reporting Units) — August 1985 (Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans
	Month	FY	Month	FY	Month	FY	Pending
Air							
Direct Sources	7	15	6	8	0	0	25
Small Gasoline Storage Tanks Vapor Controls	-	-	-	-	-	-	-
Total	7	15	6	8	0	0	25
Water							
Municipal	27	42	07	33	0	2	40
Industrial	06	22	08	19	0	0	10
Total	33	64	15	52	0	2	50
Solid Waste							
Gen. Refuse	3	16	3	11	-	-	29
Demolition	1	1	-	-	-	-	2
Industrial	2	6	1	2	-	-	16
Sludge	-	-	-	-	-	-	-
Total	6	23	4	13	-	-	47
Hazardous Wastes	1	3	-	-	-	-	3
GRAND TOTAL	47	105	25	73	0	2	125

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT
DIRECT SOURCES
PLAN ACTIONS COMPLETED

COUNTY	NUMBER	SOURCE	PROCESS DESCRIPTION	DATE OF ACTION	ACTION
UNION	068	BOISE CASCADE CORPORATION	BURLEY WET SCRUBBER	07/30/85	APPROVED
DESCHUTES	069	DAW FOREST PRODUCTS CO	DUST COLLECTOR	08/09/85	APPROVED
DOUGLAS	077	DUCO-LAM INC.	WOOD-FIRED BOILER	08/12/85	APPROVED
DOUGLAS	086	MURPHY PLYWOOD CO.	DRYER & BOILER MOD.	08/20/85	APPROVED
MULTNOMAH	094	OREGON BRASS WORKS	DUCTS AND BAGHOUSE	08/19/85	APPROVED
COOS	096	GEORGIA-PACIFIC RESINS C	DUST COLLECTION SYSTEM	08/21/85	APPROVED

TOTAL NUMBER QUICK LOOK REPORT LINES 6

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — August 1985 (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	3	7	5	6	20		
Existing	2	2	3	4	9		
Renewals	14	23	8	20	118		
Modifications	1	4	10	15	6		
Total	20	36	26	45	153	1203	1232
Indirect Sources							
New	1	6	5	5	7		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	0	0	0	0		
Total	1	6	5	5	7	237	244
GRAND TOTALS	21	42	31	50	160	1440	1476

Number of Pending Permits	Comments
37	To be reviewed by Northwest Region
21	To be reviewed by Willamette Valley Region
18	To be reviewed by Southwest Region
4	To be reviewed by Central Region
6	To be reviewed by Eastern Region
22	To be reviewed by Program Operations Section
41	Awaiting Public Notice
4	Awaiting end of 30-day Public Notice Period
153	

AS1612
MAR.5
SB:p

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
BENTON	PACIFIC HARDWOODS CO	07 7055	00/00/00	PERMIT ISSUED	07/30/85	MOD	N
CROOK	CONSOLIDATED PINE, INC.	07 0003	02/03/85	PERMIT ISSUED	07/30/85	RNW	
JACKSON	DELAH TIMBER	15 0009	05/15/85	PERMIT ISSUED	07/30/85	RNW	
LINN	WOODEX INC.	22 1034	00/00/00	PERMIT ISSUED	07/30/85	MOD	Y
LINN	MORSE BROS INC.	22 6012	00/00/00	PERMIT ISSUED	07/30/85	NEW	
MULTNOMAH	ASH GROVE CEMENT CO	26 1391	03/01/85	PERMIT ISSUED	07/30/85	MOD	Y
MULTNOMAH	MYERS CONTAINER CORP	26 3035	06/26/85	PERMIT ISSUED	07/30/85	MOD	Y
MULTNOMAH	MARTIN MARIETTA ALUMINUM	26 3069	00/00/00	PERMIT ISSUED	07/30/85	MOD	Y
MULTNOMAH	ARC FOUNDRY PRODUCTS	26 3119	10/10/84	PERMIT ISSUED	07/30/85	EXT	
UNION	CRISSTAD ENTERPRISES INC	31 0036	00/00/00	PERMIT ISSUED	07/30/85	MOD	Y
PORT.SOURCE	EMPCO	37 0302	00/00/00	PERMIT ISSUED	07/30/85	MOD	Y
BAKER	ELLINGSON TIMBER COMPANY	01 0004	07/27/84	PERMIT ISSUED	08/05/85	MOD	
DOUGLAS	DOUGLAS COMMUNITY HOSP	10 0102	04/18/85	PERMIT ISSUED	08/05/85	RNW	N
MARION	SIMON FUNERAL CHAPEL	24 9011	02/11/84	PERMIT ISSUED	08/05/85	NEW	
MULTNOMAH	ST. JOHNS FOREST PRODUCTS	26 3549	04/11/85	PERMIT ISSUED	08/05/85	RNW	N
WASHINGTON	CROWN RENDERING CO INCORP	34 1801	02/26/85	PERMIT ISSUED	08/05/85	RNW	
DOUGLAS	GLIDE LUMBER PROD INC.	10 0001	11/25/83	PERMIT ISSUED	08/06/85	MOD	N
JACKSON	PARSONS PINE PRODUCTS	15 0035	05/22/85	PERMIT ISSUED	08/06/85	RNW	
MULTNOMAH	GRAPHIC ARTS CENTER	26 0951	01/04/83	PERMIT ISSUED	08/09/85	EXT	
DESCHUTES	CENTRAL OREGON PUMICE CO	09 0024	12/03/84	PERMIT ISSUED	08/19/85	RNW	
UMATILLA	MID-COLUMBIA ASPHALT CO	30 0003	04/02/84	PERMIT ISSUED	08/19/85	MOD	Y
JACKSON	WEAVER FOREST PROD. INC.	15 0192	06/06/85	PERMIT ISSUED	08/22/85	NEW	
MALHEUR	H H KEIM CO LTD	23 0004	02/07/85	PERMIT ISSUED	08/22/85	EXT	N
PORT.SOURCE	KASLER CORP	37 0337	04/16/85	PERMIT ISSUED	08/22/85	NEW	
PORT.SOURCE	IDAHO SAND & GRAVEL CO. P	37 0340	05/01/85	PERMIT ISSUED	08/22/85	NEW	
MARION	WILCO FARMERS	24 5847	06/19/85	PERMIT ISSUED	08/23/85	RNW	N

TOTAL NUMBER QUICK LOOK REPORT LINES 26

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — August 1985 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources			
Washington	Koll Center Creekside Ph IV, 242 Spaces, File No. 34-8310	08/06/85	Final Permit Issued
Washington	Koll Center Creekside Ph VII, 493 Spaces, File No. 34-8310	8/06/85	Final Permit Issued
Washington	Cornell Oaks Corporate Center-Phase III A, 500 Spaces File No. 34-8307	08/09/85	Final Permit Issued
Washington	Fujitsu Manufacturing Facility, 700 Spaces, File No. 34-8508	08/16/85	Final Permit Issued
Multnomah	Fred Meyer Retail Store, 554 Spaces, File No. 26-8509	08/07/85	Final Permit Issued

MAR.6 (5/79)
AP58

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — August 1985 (Month and Year)

PLAN ACTIONS COMPLETED (15)

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES 07			
Jackson	BCVSA White City Intertie	8-19-85	Provisional Approval
Yamhill	Cove Orchard Service Dist. Collection/Treatment/ Disposal 11,300 gpd	8-22-85	Provisional Approval
Washington	USA (Forest Grove) Odor Pump Station	8-23-85	Approved
Jackson	BCVSA Whetstone Creek Trunk	8-30-85	Provisional Approval
Clackamas	Tri-City Service Dist. Newell Creek Inter- ceptor; Schedules I, II, IIA, and III	9-3-85	Provisional Approval
Clackamas	Tri-City Service Dist. Abernethy Interceptor	9-3-85	Provisional Approval
Clatsop	Westport Service Dist. Collection/Treatment/ Discharge 50,000 gpd	9-5-85	Provisional Approval

JLV:h

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — August 1985 (Month and Year)

PLAN ACTIONS COMPLETED - 15

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES - 08			
Linn	Teledyne Wah Chang Concrete Bottom of Existing Clarifier Albany	8-1-85	Approved
Tillamook	Robert Wassmer Animal Waste Control Facility Tillamook	8-6-85	Approved
Tillamook	Kenneth Jenck Manure Control System Tillamook	8-6-85	Approved
Lane	Weyerhaeuser Company Leachate Control System Springfield	8-6-85	Approved
Tillamook	John DeRuyter Animal Waste Control Facility Tillamook	8-6-85	Approved
Lane	Gamble Farms Manure Control System Junction City	8-9-85	Approved
Washington	Edwin Duyck Manure Control Facilities Cornelius	8-20-85	Approved
Tillamook	Ken Tohl Manure Control Facilities Tillamook	8-29-85	Approved

LDP:h

SUMMRY-F

SUMMARY OF ACTIONS TAKEN
ON WATER PERMIT APPLICATIONS IN AUG 85

4 SEP 85

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	0	0	4	0	0	1	0	0	1	1	3	13	0			
RW	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0			
RWO	0	0	0	3	1	0	1	1	0	3	4	0	21	7	0			
MW	0	0	0	1	0	0	1	0	0	1	0	0	3	1	0			
MWO	0	0	0	1	0	0	1	0	0	1	0	0	7	1	0			
TOTAL	0	0	0	7	5	0	3	2	0	5	5	1	35	22	0	238	146	71
INDUSTRIAL																		
NEW	1	4	4	1	7	6	0	0	1	0	2	4	4	13	5			
RW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
RWO	0	0	0	3	2	0	1	0	0	4	4	0	30	11	0			
MW	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0			
MWO	0	0	0	1	1	0	0	1	0	2	1	0	4	0	0			
TOTAL	1	4	4	5	10	6	1	1	1	6	7	4	39	24	5	168	142	285
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	10	60
GRAND TOTAL	1	4	4	12	15	6	4	3	1	11	12	5	74	46	5	408	298	416

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 31-AUG-85.

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: PLACER MINING									
IND	600	GEN06	NEW	83443	VALENTINE, LEROY		BAKER/ER	08-AUG-85	31-JUL-86
NPDES									
DOM	3582	NPDES	MWO	75541	MAGAR, MAGAR. E.		COLUMBIA/NWR	06-AUG-85	31-OCT-87
DOM	3590	NPDES	MW	25997	EAGLE POINT, CITY OF	EAGLE POINT	JACKSON/SWR	08-AUG-85	31-OCT-87
IND	100105	NPDES	RWO	84820	STAYTON CANNING COMPANY, COOPERATIVE	STAYTON	MARION/WVR	12-AUG-85	31-MAY-90
DOM	100107	NPDES	RWO	90944	U. S. DEPARTMENT OF AGRICULTURE - UMPQUA NATIONAL FOREST	TILLER RGR	DOUGLAS/SWR	21-AUG-85	31-MAR-90
WPCF									
IND	100010	WPCF	MWO	89650	S-C PAVING COMPANY	TILLAMOOK	TILLAMOOK/NWR	06-AUG-85	30-NOV-89
DOM	100104	WPCF	NEW	100068	EAGLE CREST PARTNERS, LTD.	REDMOND	DESCHUTES/CR	08-AUG-85	30-JUN-90
DOM	100106	WPCF	RWO	91000	U. S. ARMY	UMATILLA	UMATILLA/ER	12-AUG-85	31-DEC-89

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — August 1985 (Month and Year)

SUMMARY OF SOLID AND HAZARDOUS WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	FY	Month	FY			
General Refuse							
New	1	2	-	-	3		
Closures	1	2	-	1	6		
Renewals	3	18	2	4	45		
Modifications	-	1	10*	34	1		
Total	5	23	12	39	55	178	178
Demolition							
New	-	-	-	-	-		
Closures	-	-	-	-	2		
Renewals	1	1	1	1	1		
Modifications	-	-	-	-	-		
Total	1	1	1	1	3	12	12
Industrial							
New	1	4	1	1	6		
Closures	-	-	-	-	5		
Renewals	4	9	-	-	21		
Modifications	-	-	-	-	1		
Total	5	13	1	1	33	103	103
Sludge Disposal							
New	-	-	-	-	-		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	-		
Modifications	-	-	-	-	-		
Total	-	-	-	-	-	16	16
Hazardous Waste							
New	-	-	-	-	8		
Authorizations	67	131	67	131	-		
Renewals	-	-	-	-	1		
Modifications	-	-	-	-	-		
Total	67	131	67	131	9	14	18
GRAND TOTALS	78	168	81	172	100	323	327

*Permits amended by the Department, to require a place for collecting source-separated recyclable materials, in accordance with the Opportunity to Recycle Act, ORS 459.250(2).

SB5055.B
MAR.5S (11/84)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — August 1985 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Josephine	Rough & Ready Lumber Existing landfill	8/1/85	Permit renewed
Marion	Salem Airport Landfill Existing demolition site	8/1/85	Permit renewed
Tillamook	Albert Hanenkrat New wood-waste site	8/12/85	Letter authorization issued
Curry	Brookings Energy Facility Existing incinerator site	8/23/85	Permit renewed
Douglas	Canyonville Trnsfr. Sta. Existing facility	8/23/85	Permit amended*
Douglas	Elkton Transfer Station Existing facility	8/23/85	Permit amended*
Douglas	Glendale Trnsfr. Sta. Existing facility	8/23/85	Permit amended*
Douglas	Glide Transfer Sta. Existing facility	8/23/85	Permit amended*
Douglas	Lemolo Trnsfr. Sta. Existing facility	8/23/85	Permit amended*
Douglas	Lookingglass Trnsfr. Sta. Existing facility	8/23/85	Permit amended*
Douglas	Myrtle Creek Trnsfr. Sta. Existing facility	8/23/85	Permit amended*
Douglas	Oakland Trnsfr. Sta. Existing facility	8/23/85	Permit amended*

*Permits amended by the Department, to require a place for collecting source-separated recyclable materials, in accordance with the Recycling Opportunity to Recycle Act, ORS 459.250(2).

SB5055.D
MAR.6 (5/79)

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Douglas	Reedsport Landfill Existing facility	8/23/85	Permit amended*
Douglas	Yoncalla Trnsfr. Sta. Existing facility	8/23/85	Permit amended*
Lane	Sharps Creek Trnsfr. Sta. Existing facility	8/23/85	Permit renewed
Malheur	Ore-Ida Foods Existing landfill	8/23/85	Permit renewed
Union	Boise Cascade, Elgin Existing landfill	8/23/85	Permit renewed

*Permits amended by the Department, to require a place for collecting source-separated recyclable materials, in accordance with the Recycling Opportunity to Recycle Act, ORS 459.250(2).

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Solid Waste Division (Reporting Unit) — August 1985 (Month and Year)

HAZARDOUS WASTE DISPOSAL REQUESTS

CHEM-SECURITY SYSTEMS, INC., GILLIAM CO.

WASTE DESCRIPTION

Date	Type	Source	Quantity Present	Quantity Future
TOTAL REQUEST GRANTED - 77				
OREGON - 28				
8-5	Spent hydrofluoric/ chromic acid solution	Electronic Co.	0	4.05 cubic yards
8-5	Sodium hydroxide	Dept of Agriculture	0	1 drum
8-5	Chrome contaminated solids	Aerospace Co.	0	30-55 gal. drums
8-5	Chromic acid plating solution	Electroplating	0	25 Drums
8-5	Waste hydrofluoric acid	Integrated Circuit manufacture	0	40,000 gal.
8-5	Potassium hydroxide	Foundry	0	120 cu. yds.
8-5	Potassium hydroxide	Foundry	0	81.6 cu. yds.
8-5	Trichlorotrifluoroethane, wax, floor dry	Foundry	0	330 gal.

Date	Type	Source	Quantity	
			Present	Future
8-5	Sulfuric acid, potassium chromate, mercuric sulfate, silver sulfate, water	State agency	0	.42 cu. yds.
8-5	Methylene chloride, chloroform, freon	State agency	0	.28 cu. yds.
8-5	Ortho monitor 4 spray (empty 5 ga cans)	Chemical Co.	5-55 ga pl 91-5 ga pl	0
8-15	Water, hydrofluoric acid, chromic acid, silicon	Electronic Co.	0	4.05 cu. yds.
8-15	Hydrochloric acid, hydrofluoric acid, Chromic acid, water, nitric acid	Plating operation	0	48.51 cu yds.
8-15	Sodium hydroxide, sodium carbonate, sodium metasilicate, epoxy pigments as sludge	Plating	1,500 ga	0
8-15	Cartridge filters contaminated with metals	Electronic Co.	0	28 cu. yds.
8-15	Cartridge filters contaminated with metals	Electronic Co.	0	15 cu. yds.
8-15	Fluoride - chelate system filters	Electronic Co.	0	15 cu. yds.
8-15	Sand and metals	Electronic Co.	0	3 cu. yds.
8-20	Potassium nitrate and nitrite, potassium chloride, sodium nitrate & nitrite, debris	Aerospace Co.	0	40 cu. yds.

Date	Type	Source	Quantity	
			Present	Future
8-20	Straw contaminated w/ 2,4 D herbicide, clay contaminated with 2, 4 D herbicide, cardboard/plastic sheeting contaminated with 2.4 D	Spill	1.08 cu. yards	0
8-20	Natural clay & soil, concrete, water, iron, copper, sulfates, lead	Site Cleanup	400 cu. yards	0
8-20	Iron, solids/dirt, hydrocarbons, cement	Oil Co.	4.05 cu. yards	0
8-22	Silicon fines, trichloroethylene	Electronic Co.	385 ga.	0
8-22	Lagoon removal debris	Site cleanup	0	1100 tons
8-22	Moisture, chromic hydroxide, polymer & calcium chloride	Truck manuf.	0	6600 ga.
8-26	Nickel chloride, hydrochloric acid, water	Plating operation	0	1.62 cu. yds.
8-26	Barium, magnesium oxide, zr metal or mg metal, iron, ammonia	Metal reduction	0	300 drums
8-27	Phenolic contaminated soil	Spill	5.67 cu. yards	0
WASHINGTON - 32				
8-5	Paint booth sludge - solids	Waste Mgmt. Co.	0	405 cu. yds.
8-5	Graphite, fiberglass, kevlar, epoxy resin	Aerospace Co.	0	500 cu. yds.
8-5	Graphite, fiberglass, kevlar, epoxy resin	Aerospace Co.	0	500 cu. yds.

Date	Type	Source	Quantity Present	Quantity Future
8-5	Graphite, fiberglass, kevlar, epoxy resin	Aerospace Co.	0	500 cu. yds.
8-5	Graphite, fiberglass, kavlar, epoxy resin	Aerospace Co.	0	500 cu. yds.
8-5	Graphite, fiberglass, kevlar, epoxy resin	Aerospace Co.	0	500 cu. yds.
8-5	Graphite, fiberglass, kevlar, epoxy resin	Aerospace Co.	0	500 cu. yds.
8-5	PCB contaminated solids	Site Cleanup	0	60 tons (98 cu. yds.)
8-5	Water, sodium hydroxide, petroleum oils, lime, paint pigment	Paint spraying	0	25-55 ga. drums
8-5	PCB contaminated debris	Spill cleanup	0	20 drums (55 ga. ea.)
8-5	Soil contaminated w/lead, copper, cadmium (possible hot spots)	Site cleanup	50 cu yds	0
8-5	Sodium polysulfide compound clay mixture	Chemical Co.	1 ga.	0
8-5	Naphthenic hydro-carbons, olefinics, aromatics, benzene, empty drums	Aluminum Co.	0	50-55 ga. drums
8-15	Paint still bottoms, Safe-T-Sorb	Solvent recycling	0	5000 lbs.
8-15	Paint booth sludge - solids	Waste Mgmt. Co.	0	405 cu. yds.
8-15	Solid phenol formaldehyde & urea formaldehyde resin mixture	Mfg. of synthetic urea	0	30 cu. yds.

Date	Type	Source	Quantity	
			Present	Future
8-15	PCB contaminated fill	Site cleanup	0	150 tons
8-20	Lab pack - flammables	Wood products company	0	.81 cu. yds.
8-20	Lab pack - poison	Wood products company	0	1.62 cu. yds.
8-20	PCB contaminated hydraulic fluid	Aluminum Co.	0	27.00 cu. yds.
8-20	Waste water treatment solids	Waste Mgmt. Co.	0	4000 tons
8-22	TCE contaminated soil	Site cleanup	3500 cu. yards	0
8-26	Heavy metal contaminated filters and solids	Waste Mgmt. Co.	0	27 cu. yds.
8-26	Solid paint sludge & solvent still bottoms	Waste Mgmt. Co.	0	321 cu. yds.
8-26	Malathion, floor sweeping, dirt, debris	Pesticide Production	0	20 drums
8-26	Excavated fill material containing copper solids	Site cleanup	0	500 tons
8-26	Clothing, gloves, rags, dirt, mud, debris w/trichloroethylene, tetracholorethlene, trans dichloroethylene, methylene chloride	Site Investigation	0	1.08 cu. yds.
8-26	Iron oxide Fe_2O_3, Silicon Dioxide SiO_2, aluminum oxide Al_2O_3, calcium oxide CaO	Sandblasting	32.40 cu. yds.	0

Date	Type	Source	Quantity Present	Quantity Future
8-26	Sulfuric acid with heavy metals	Circuit board electroplating	6.75 cu. yds.	0
8-26	Water, soil, trisodium phasphate	Site Remediation	410 ga.	0
8-27	Excavated fill contaminated with oil (oily dirt)	Site cleanup	130 tons	0
8-27	Lab packs - flammable	Waste Mgmt. Co.	0	2000 drums (55 ga. ea)
OTHERS - 17				
8-5	Betz 194 chromate power	Water treatment process	0 ID	3 drums (350 lbs.)
8-5	Waste mercuric nitrate	Research Facility	175 lbs. ID	0
8-5	Ammonium becarbonate, mis. water soluble fillers, adders, flowing agents	Research Facility	0 ID	2 drums
8-5	PCB concrete, soil, & clean-up material	Spill	8 drums	0
8-5	PCB transformer body containing PCB oil	Research Facility	67 cu. ft. ID	0
8-5	Waste Cadmium sulfate solution	Research Facility	0 ID	50 drums (55 ga. ea.)
8-5	Sodium hydroxide, non-hazardous material incl. organo phosphate, polycarboxylic acid, silicate, salt, and water	Research Facility	0 ID	4 drums
8-5	Sulfuric acid solution	Research Facility	0 ID	22 drums

Date	Type	Source	Quantity Present	Quantity Future
8-5	Organic solvent-flammable liquid-ignitable (lab pack)	Dept. of Labor	0 UT	2.42 cu. yds.
8-5	Sodium sulfite	Research Facility	0 ID	.54 cu. yds.
8-5	Misc. rags, non-biodegradable absorbent, dirt, contaminated with Betz 45 chromate corrosive liquid	Spill	0 ID	2.70 cu. yds.
8-5	PCB transformer containing fluid	Research Facility	32.5 cu. ft. ID	0
8-5	PCB contaminated drums	Research Facility	18 cu. ft. ID	0
8-15	Sulfuric acid, spent RO-1000/454) Lab Pack	Dept. of Labor	0 UT	10 drums (30 ga. ea.)
8-15	PCB Transformer	Electric Utility	0 MT	2000 ga.
8-15	Chromic acid water treatment chemical	Research Facility	0 ID	2.70 cu. yds.
8-15	Sulfamic acid	Research Facility	0 ID	.54 cu. yds.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — August, 1985 (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	15	31	3	8	204	192
Airports			0	1	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — August, 1985 (Month and Year)

FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Columbia	Les Darr Trucking Company Quarry, Deer Island	08/85	In Compliance
Multnomah	The Portland Bridge Center, Ka-May Building, Portland	08/85	In Compliance
Marion	River Bend Sand & Gravel, Salem	08/85	No Violation

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1985

CIVIL PENALTIES ASSESSED DURING MONTH OF AUGUST, 1985:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Alex Serdtsev Polk County	SS-WVR-85-111 Performed sewage disposal services without being licensed.	8/15/85	$100	Paid 9/12/85.
Kenneth H. Kinsman Klamath Falls	SS-CR-85-123 Installed an on-site sewage disposal system without obtaining a permit.	8/22/85	$100	Paid 9/4/85.

GB5057

August 1985
DEQ/EQC Contested Case Log

	ACTIONS	LAST MONTH	PRESENT
1	Preliminary Issues	4	2
2	Discovery	0	0
3	Settlement Action	8	6
4	Hearing to be scheduled	0	0
5	Hearing scheduled	8	8
6	HO's Decision Due	0	0
7	Briefing	1	2
8	Inactive	8	8
	SUBTOTAL of cases before hearings officer.	29	26
9	HO's Decision Out/Option for EQC Appeal	6	3
10	Appealed to EQC	2	2
11	EQC Appeal Complete/Option for Court Review	0	1
12	Court Review Option Pending or Taken	1	1
13	Case Closed	3	5
	TOTAL Cases	41	38

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

August 1985

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WAH CHANG	04/78	04/78		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	Current permit in force. Hearing deferred.
WAH CHANG	04/78	04/78		Prtys	03-P-WQ-WVR-78-2012-J NPDES Permit Modification	Current permit in force. Hearing deferred.
SPERLING, Wendell dba/Sperling Farms	11/25/81	11/25/81	03/17/83	Resp	23-AQ-FB-81-15 FB Civil Penalty of $3,000	Commission Order reducing penalty to $200 issued 9/4/85.
~~OLINGER, Bill Inc.~~	~~09/10/82~~	~~09/13/82~~	~~10/20-21/83 11/2-4/83 11/14-15/83 5/24/84~~	~~Dept~~	~~33-WQ-NWR-82-73 WQ-Civil-Penalty of-$1,500~~	Decision issued 8/1/85 No liability.
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	Decision upholding penalty Appealed to EQC.
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	Hearing deferred pending conclusion of court action.
McINNIS ENTERPRISES, LTD., et al.	10/25/83	10/26/83		Prtys	59-SS-NWR-83-33290P-5 SS license revocation	Hearing deferred pending conclusion of court action.

August 1985

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		Dept	57-SW-NWR-PMT-120 SW Permit Appeal	Department to report on case status.
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 related 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 related court action.
MALPASS, David C.	03/26/84	03/28/84	09/13/85	Prtys	05-AQ-FB-83-14 FB Civil Penalty of $500	Hearing scheduled.
~~SIMMONS, Wayne~~	~~03/27/84~~	~~04/05/84~~	~~03/14/85~~	~~Resp~~	~~07-AQ-FB-83-20 FB Civil Penalty of $300~~	Decision upholding penalty not appealed to EQC. Case closed 8/12/85.
BIELENBERG, David	03/28/84	04/05/84	12/11/84	Prtys	09-AQ-FB-83-04 FB Civil Penalty of $300	Decision upholding penalty appealed to EQC.
TRANSCO Industries, Inc.	06/05/84	06/12/84	11/05/85	Prtys	17-HW-NWR-84-45 HW Civil Penalty of $2,500	Hearing scheduled.
TRANSCO Industries, Inc.	06/05/84		11/05/85	Prtys	18-HW-NWR-84-46 HW Compliance Order	Hearing scheduled.

August 1985

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
VANDERVELDE, Roy	06/12/84	06/12/84	08/22/85	Prtys	20-WQ-WVR-84-01 WQ Civil Penalty of $2,500	Post hearing briefing.
WESTERN PACIFIC LEASING CORP., dba/Killingsworth Fast Disposal	06/01/84	07/23/84	10/14/85	Prtys	22-SW-NWR-84 Solid Waste Permit Modification	Hearing scheduled.
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.
LAVA DIVERSION PROJECT	12/14/84	12/27/84		Prtys	25-WQ-CR-FERC-5205 Hydroelectric plant certification	EQC certification denial appealed to Court of Appeals.
UNITED CHROME PRODUCTS, INC.		02/19/85	09/16/85	Prtys	02-HW-WQ-WVR-84-158 $6,000 civil penalty	Hearing scheduled.
~~NOFZIGER, Mark~~	~~03/11/85~~	~~03/11/85~~	~~06/11/85~~	~~Dept~~	~~03-AQ-FB-84-144 Civil Penalty of $500~~	No liability. Decision not appealed to EQC. Case closed 8/29/85.
CATHCART, Channing and Douglas	03/11/85	03/11/85		Prtys	04-AQ-FB-84-137 Civil Penalty of $750	Scheduled hearing postponed for settlement effort.
FUNRUE, Amos	03/15/85	03/19/85	06/20/85	Prtys	05-AQ-FB-84-141 Civil Penalty of $500	Post hearing briefing.

August 1985

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
BLADES, Wallace	03/18/85	03/19/85		Prtys	06-AQ-FB-84-139 Civil Penalty of $750	Scheduled hearing postponed for settlement effort.
DOMES, William	03/20/85	03/21/85	06/18/85	Dept	07-AQ-FB-84-151 Civil Penalty of $300	Department withdrew penalty. Order of Dismissal issued 9/4/85.
~~SMITH, Jack~~		~~03/19/85~~	~~06/25/85~~	~~Resp~~	~~08-AQ-FB-84-136 Civil Penalty of $1,000~~	No appeal to EQC from decision upholding penalty. Case closed 8/28/85.
~~LANG & GANGNES CORP., dba/Medply~~	~~03/20/85~~	~~03/21/85~~	~~07/11/85~~	~~Resp~~	~~09-AQ-SWR-85-15 Permit violation Civil Penalty of $3,050~~	No appeal to EQC from decision upholding penalty. Case closed 8/28/85.
WARRENTON LANDFILL	02/28/85	04/04/85		Prtys	10-57-SW-NWR-83-PMT-120 Landfill closure order	Settlement action.
COOK, Robert	04/10/85	04/16/85		Prtys	11-AQ-FB-84-138 Civil Penalty of $500	Scheduled hearing postponed for settlement effort.
KANGAS, M. R.	05/02/85	05/03/85	10/01/85	Prtys	12-AQ-FB-84-145 Civil Penalty of $500	Hearing scheduled.
JOSEPH FOREST PRODUCTS	05/16/85	05/23/85		Prtys	13-HW-ER-85-29 Hazardous waste disposal Civil Penalty of $2,500	Hearing deferred for informal resolution effort.

August 1985

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
MAIN ROCK PRODUCTS, INC.		05/31/85	10/10/85	Prtys	14-WQ-SWR-85-31 Violation of NPDES permit conditions Civil Penalty of $3,500	Hearing scheduled.
DANT & RUSSELL, INC.	05/31/85	05/31/85		Dept	15-HW-NWR-85-60 Hazardous waste disposal Civil Penalty of $2,500	Department to respond to request to stay proceedings.
GREENE, TIMOTHY	07/10/85	07/11/85	08/12/85	Resp	16-SS-SWR-85-P Denial of Certificate of Satisfactory Completion	Decision issued denying certificate 7/31/85.
ALTHAUSER, GLENN L.	07/08/85	07/16/85	09/20/85	Prtys	17-SW-NWR-85-77 Unauthorized Waste Disposal	Hearing scheduled.
WARNOCK, STEPHEN	07/08/85	07/19/85		Prtys	18-SS-SWR-85-P S.S. Permit Revocation	Order of Dismissal issued 9/4/85.
MERIT OIL & REFINING CO.		07/24/85		Prtys	19-WQ-NWR-85-59 20-WQ-NWR-85-61 WQ Civil Penalty of $1,200	Answer filed 9/5/85.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality, Water Quality, Hazardous and Solid Waste Divisions
(Reporting Units)

September 1985
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans
	Month	FY	Month	FY	Month	FY	Pending
Air							
Direct Sources	4	19	9	17	0	0	20
Small Gasoline Storage Tanks Vapor Controls	-	-	-	-	-	-	-
Total	4	19	9	17	0	0	20
Water							
Municipal	12	54	11	44	0	2	42
Industrial	08	30	07	26	0	0	15
Total	20	84	18	70	0	2	57
Solid Waste							
Gen. Refuse	3	19	1	12	-	-	31
Demolition	-	1	-	-	-	-	2
Industrial	2	8	3	5	-	-	15
Sludge	-	-	-	-	-	-	-
Total	5	28	4	17	-	-	48
Hazardous Wastes	1	4	3	3	-	-	1
GRAND TOTAL	30	135	34	107	0	2	126

MD26.C

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT
DIRECT SOURCES
PLAN ACTIONS COMPLETED

COUNTY	NUMBER	SOURCE	PROCESS DESCRIPTION	DATE OF ACTION	ACTION
DOUGLAS	041	SUN STUDS, INC	CHIP BIN	09/11/85	APPROVED
COLUMBIA	054	BOISE CASCADE PAPERS	MONITORING SYSTEM FOR TRS	02/11/85	APPROVED
MULTNOMAH	058	KAISER CEMENT CORP	MOBILE UNLOADING FACILITY	03/08/85	APPROVED
UNION	095	BOISE CASCADE CORP	HIGH EFFICIENCY SEPARATORS	08/30/85	APPROVED
UMATILLA	098	US GYPSUM CO.	BOILER AND MULTICLONES	09/11/85	APPROVED
WASHINGTON	106	ALLEN FOREST PRODUCTS CO	CYCLONE	09/09/85	APPROVED
JACKSON	107	CORNETT LUMBER CO	RELOC & MOD BLO-HOG SYSTEM	09/05/85	APPROVED
CURRY	108	TIDEWATER CONTRACTORS INC	DEWATERING TANK	09/17/85	APPROVED
YAMHILL	100	PRANGERS PRECUT WOOD PROD	BAGHOUSE AND BIN	08/08/85	APPROVED

TOTAL NUMBER QUICK LOOK REPORT LINES 9

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — September 1985 (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	8	6	12	15		
Existing	1	3	1	5	9		
Renewals	6	29	7	27	117		
Modifications	0	4	4	19	6		
Total	8	44	18	63	147	1289	1313
Indirect Sources							
New	3	9	2	7	8		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	0	0	0	0		
Total	3	9	2	7	8	239	247
GRAND TOTALS	11	53	20	70	155	1528	1560

Number of Pending Permits	Comments
38	To be reviewed by Northwest Region
21	To be reviewed by Willamette Valley Region
18	To be reviewed by Southwest Region
3	To be reviewed by Central Region
5	To be reviewed by Eastern Region
21	To be reviewed by Program Operations Section
37	Awaiting Public Notice
4	Awaiting end of 30-day Public Notice Period
147	

AS1612

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
COOS	WEYERHAEUSER COMPANY	06	0007	00/00/00 PERMIT ISSUED	09/26/85	MOD	Y
COOS	SUN PLYWOOD INC	06	0103	07/05/85 PERMIT ISSUED	08/26/85	NEW	Y
UNION	TIME ENERGY SYSTEMS INC	31	0037	04/24/85 PERMIT ISSUED	08/26/85	NEW	Y
WASCO	MOUNTAIN FIR LUMBER CO	33	0008	06/03/85 PERMIT ISSUED	08/26/85	NEW	Y
JACKSON	CROMAN CORP LUMBER DIV	15	0016	02/23/85 PERMIT ISSUED	08/30/85	RNW	Y
MULTNOMAH	LAKESIDE INDUSTRIES	26	0052	02/13/85 PERMIT ISSUED	08/30/85	EXT	Y
UNION	BOISE CASCADE CORP	31	0002	01/25/84 PERMIT ISSUED	08/30/85	RNW	Y
BENTON	PUBLISHERS PAPER CO	02	7091	00/00/00 PERMIT ISSUED	09/11/85	MOD	Y
DOUGLAS	GREGORY TIMBER RESOURCES	10	0045	04/25/84 PERMIT ISSUED	09/11/85	RNW	Y
LINCOLN	BATEMAN FUNERAL HOME	21	0055	04/11/85 PERMIT ISSUED	09/11/85	NEW	N
MARION	ST PAUL FEED & SUPPLY INC	24	3501	05/21/85 PERMIT ISSUED	09/11/85	RNW	N
MULTNOMAH	PENNWALT CORPORATION	26	0424	02/09/84 PERMIT ISSUED	09/11/85	RNW	Y
MULTNOMAH	OREGONIAN PUBLISHING CO.	26	7045	00/00/00 PERMIT ISSUED	09/11/85	MOD	Y
POLK	H.R. JONES VENEER, INC.	27	3004	04/04/85 PERMIT ISSUED	09/11/85	RNW	N
WASHINGTON	HERVIN COMPANY	34	1895	02/25/85 PERMIT ISSUED	09/11/85	RNW	Y
WASHINGTON	PORTLAND CHAIN MFG CO	34	3666	00/00/00 PERMIT ISSUED	09/11/85	MOD	Y
PORT.SOURCE	STATE OF OREGON HWY DIV	37	0341	06/14/85 PERMIT ISSUED	09/11/85	NEW	Y
PORT.SOURCE	HARVEY POOK & PAVING CO	37	0342	06/13/85 PERMIT ISSUED	09/11/85	NEW	Y

TOTAL NUMBER QUICK LOOK REPORT LINES 18

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — September 1985 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources			
Washington	Costco Wholesale Warehouse, 661 Spaces File No. 34-8510	09/04/85	Final Permit Issued
Washington	Tualatin-Martinazzi 400 Spaces File No. 34-8511	09/30/85	Final Permit Issued

MAR.6 (5/79)
AP58

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — September 1985 (Month and Year)

PLAN ACTIONS COMPLETED (18)

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES 11			
Clackamas	Tri-City I/I Correction	9-13-85	Provisional Approval
Clackamas	Tri-City Gladstone Force Main	9-13-85	Provisional Approval
Clackamas	Tri-City West Linn Force Main and Gravity Sewer	9-12-85	Provisional Approval
Clackamas	Tri-City Willamette Pump Station	9-12-85	Provisional Approval
Coos	North Bend Sewer Separation	9-23-85	Provisional Approval
Coos	North Bend Sewer Rehabilitation	9-23-85	Provisional Approval
Coos	Hill Top Restaurant Recirculating Sand Filter and Drainfield (1100 gpd)	9-23-85	Provisional Approval
Benton	Philomath Sewer System Improvements	9-20-85	Provisional Approval
Linn	Scio Thomas Creek Crossing (Inverted Siphon)	9-12-85	Provisional Approval
Coos	Powers Sewer System Replacement	9-11-85	Provisional Approval
Lincoln	Lincoln City West Devil's Lake Rd/ Hwy 101 Interceptor	9-04-85	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division (Reporting Unit) — September 1985 (Month and Year)

PLAN ACTIONS COMPLETED - 18

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES - 07			
Clackamas	Precision Castparts Corp. Spill Control System Milwaukie	9-3-85	Approved
Clackamas	Portland General Electric Oil Containment System Boones Ferry Substation	9-4-85	Approved
Multnomah	Portland General Electric Oil Containment System Substation E, Front Ave.	9-4-85	Approved
Clackamas	Portland General Electric Oil Containment System Estacada Substation	9-4-85	Approved
Tillamook	Sandra Thunh Chang Manure Control System Tillamook	9-9-85	Approved
Clackamas	Portland General Electric Oil Containment System River Mill Dam	9-9-85	Approved
Polk	Berend Faber Manure Control Facility	9-12-85	Approved

SUMMRY-F

SUMMARY OF ACTIONS TAKEN ON WATER PERMIT APPLICATIONS IN SEP 85

7 OCT 85

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	2	2	0	2	6	0	0	1	0	0	2	1	5	14	0			
RW	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0			
RWO	3	0	0	7	2	0	1	0	0	4	4	0	24	8	0			
MW	0	0	0	1	0	0	1	0	0	2	0	0	2	1	0			
MWO	1	0	0	4	0	0	1	0	0	2	0	0	6	1	0			
TOTAL	6	2	0	14	8	0	3	1	0	8	6	1	38	24	0	237	146	71
INDUSTRIAL																		
NEW	0	1	0	1	7	6	0	2	3	0	4	5	4	11	4			
RW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
RWO	1	2	0	4	4	0	2	1	0	6	5	0	29	12	0			
MW	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0			
MWO	1	0	0	2	2	0	1	0	0	3	1	0	4	1	0			
TOTAL	2	3	0	7	13	6	3	3	3	9	10	5	38	24	4	168	143	286
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	10	60
GRAND TOTAL	8	5	0	21	21	6	6	4	3	17	16	6	76	48	4	407	299	417

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-SEP-85.

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	100095	DOUGLAS, CLAYTON H.	SPRINGFIELD	LANE/WVR	04-SEP-85	31-DEC-85
General: Placer Mining									
IND	600	GEN06	NEW	100096	BARRON, WILLIAM B.		DOUGLAS/SWR	04-SEP-85	31-JUL-86
General: Gravel Mining									
IND	1000	GEN10	NEW	90618	TYGH VALLEY SAND & GRAVEL, INC.	TYGH VALLEY	WASCO/CR	03-SEP-85	31-DEC-86
NPDES									
DOM	3792	NPDES	MWO	60597	NEWBERG, CITY OF	NEWBERG	YAMHILL/WVR	05-SEP-85	30-NOV-88
IND	100108	NPDES	RWO	84088	STADELMAN FRUIT, INC.	ODELL	HOOD RIVER/CR	05-SEP-85	31-AUG-90
IND	100109	NPDES	RWO	9444	BOISE CASCADE CORPORATION	ELGIN	UNION/ER	09-SEP-85	31-AUG-90
DOM	3512	NPDES	MW	55125	MEDFORD, CITY OF	CENTRAL POINT	JACKSON/SWR	10-SEP-85	30-APR-87
DOM	100110	NPDES	RWO	6836	BEAR CREEK VALLEY SANITARY AUTHORITY	CENTRAL POINT	JACKSON/SWR	10-SEP-85	31-MAY-90
IND	3443	NPDES	MWO	96207	WEYERHAEUSER COMPANY	KLAMATH FALLS	KLAMATH/CR	26-SEP-85	31-OCT-86

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	SOURCE ID	LEGAL NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
WPCF									
IND	100111	WPCF	RWO	91015	UNITED STATES GYPSUM COMPANY	PILOT ROCK	UMATILLA/ER	24-SEP-85	30-APR-90
IND	100112	WPCF	NEW	100081	PRECIOUS METAL RECOVERY, INC.	ASHWOOD	JEFFERSON/CR	24-SEP-85	31-JUL-90
IND	100113	WPCF	NEW	90875	UNION PACIFIC RAILROAD COMPANY	THE DALLES	WASCO/CR	24-SEP-85	31-JUL-90
DOM	100114	WPCF	NEW	100042	PALMER, MICHAEL	WARRENTON	CLATSOP/NWR	24-SEP-85	30-JUN-90

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — September 1985 (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	3	1	1	3		
Closures	1	3	-	1	7		
Renewals	3	21	4	8	44		
Modifications	1	2	20*	54	2		
Total	6	29	25	64	56	178	178
Demolition							
New	-	-	-	-	-		
Closures	-	-	-	-	2		
Renewals	-	1	-	1	1		
Modifications	-	-	1	1	-		
Total	-	1	1	2	3	12	12
Industrial							
New	-	4	-	1	6		
Closures	-	-	-	-	5		
Renewals	3	12	1	1	23		
Modifications	-	-	-	-	1		
Total	3	16	1	2	35	103	103
Sludge Disposal							
New	-	-	-	-	-		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	-		
Modifications	-	-	-	-	-		
Total	-	-	-	-	-	16	16
Hazardous Waste							
New	1	1	-	-	9		
Authorizations	62	193	62	193	-		
Renewals	-	-	-	-	1		
Modifications	-	-	-	-	-		
Total	63	194	62	193	10	14	19
GRAND TOTALS	72	240	89	261	104	323	328

*Permits amended by the Department, to require a place for collecting source-separated recyclable materials, in accordance with the Opportunity to Recycle Act, ORS 459.250(2).

SB5128.B
MAR.5S (11/84)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — September 1985 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Baker	Unity Landfill Existing facility	9/3/85	Permit amended*
Benton	Morse Bros. Landfill Existing facility	9/3/85	Permit renewed
Deschutes	Alfalfa Landfill Existing facility	9/3/85	Permit amended*
Deschutes	Bend Demolition Site Existing facility	9/3/85	Permit amended*
Deschutes	Negus Landfill Existing facility	9/3/85	Permit amended*
Gilliam	Arlington Landfill Existing facility	9/3/85	Permit amended*
Grant	Dayville Landfill Existing facility	9/3/85	Permit amended*
Grant	Long Creek Landfill Existing facility	9/3/85	Permit amended*
Grant	Monument Landfill Existing facility	9/3/85	Permit amended*
Lane	Glenwood Transfer Sta. Existing facility	9/3/85	Permit renewed
Lane	Low Pass Transfer Sta. Existing facility	9/3/85	Permit renewed
Lane	Mapleton Transfer Sta. Existing facility	9/3/85	Permit renewed

*Permits amended by the Department, to require a place for collecting source-separated recyclable materials, in accordance with the Recycling Opportunity to Recycle Act, ORS 459.250(2).

SB5129.D
MAR.6 (5/79)

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Lincoln	No. Lincoln Landfill Existing facility	9/3/85	Permit renewed
Malheur	Foothill Landfill Existing facility	9/3/85	Permit amended*
Malheur	Lytle Blvd. Landfill Existing facility	9/3/85	Permit amended*
Umatilla	Pendleton Landfill Existing facility	9/3/85	Permit amended*
Umatilla	Pilot Rock Landfill Existing facility	9/3/85	Permit amended*
Umatilla	Rahn's Landfill Existing facility	9/3/85	Pemrit amended*
Umatilla	Umatilla Tribal Landfill Existing facility	9/3/85	Permit amended*
Union	Elgin Transfer Sta. Existing facility	9/3/85	Permit amended*
Union	Union Transfer Sta. Existing facility	9/3/85	Permit amended*
Wheeler	Mitchell Landfill Existing facility	9/3/85	Permit amended*
Deschutes	Fryrear Landfill Existing facility	9/4/85	Permit amended*
Jefferson	Camp Sherman Transfer Sta. Existing facility	9/5/85	Permit amended*
Baker	Baker Landfill Existing facility	9/16/85	Permit amended*
Malheur	McDermitt Landfill Existing facility	9/16/85	Permit amended*
Clatsop	Astoria Transfer Sta. New facility	9/25/85	Letter authorization issued

*Permits amended by the Department, to require a place for collecting source-separated recyclable materials, in accordance with the Recycling Opportunity to Recycle Act, ORS 459.250(2).

DATE	WASTE TYPE	SOURCE	DISPOSE NOW	DISPOSE ANNUALLY
23-SEP-85	POISON B LAB PACKS.	PRIVATE HOUSEHOLDS	0	28 DRUMS
1 Request(s) approved for generators in Alaska				
04-SEP-85	COPPER SULFATE, SODIUM CHLORIDE, WATER, ALL ABSORBED ON TO FULLERS EARTH.	PETROLEUM REFINING (ASPHALT)	0	125 TONS
18-SEP-85	SOIL AND DITCH SEDIMENTS. MERCURY.	NON-SUPERFUND SITE CLEANUP	22 CUBIC YARDS	0
2 Request(s) approved for generators in British Columbia				
10-SEP-85	LEAD, PAPER, RAGS AND DIRT.	RESEARCH & DEVELOPMENT LABS	0	10 DRUMS (55 GALLONS EACH)
1 Request(s) approved for generators in Idaho				
04-SEP-85	LAB PACKS - PESTICIDES.	LAND & WILDLIFE CONSERVATION	1.08 CUBIC YARDS	0
1 Request(s) approved for generators in Montana				
04-SEP-85	MAGNESIUM METAL, CUTTING OIL, ABSORBENT.	AIRCRAFT PARTS	0	30 DRUMS (55 GALLONS EACH)
04-SEP-85	MEK, 1,1,1 TRICHLOROETHANE, CLOTH, PAPER, FLOOR DRI, PROTECTIVE CLOTHING, RAGS, AND DEBRIS.	AIRCRAFT PARTS	0	100 DRUMS
04-SEP-85	PVC PIPE, LAGOON LINER, DIRT, SAND, COBBLE, DEBRIS.	AIRCRAFT PARTS	0	1100 TONS
04-SEP-85	POTASSIUM CHLORIDE, SODIUM CHLORIDE, DIRT DEBRIS.	AIRCRAFT PARTS	0	12 CUBIC YARDS

DATE	WASTE TYPE	SOURCE	DISPOSE NOW	DISPOSE ANNUALLY
04-SEP-85	ABSORBANT (OIL DRY), IRON, LEAD, SODIUM CHLORATE, WATER, SODIUM HYDROXIDE.	POWER DRIVEN HAND TOOLS	0	15 DRUMS (55 GALLONS EACH)
04-SEP-85	SILICON FINES, TRICHLOROETHYLENE.	SEMICONDUCTORS	385 GALLONS	0
04-SEP-85	PETROLEUM WAX	TRUCKING, EXCEPT LOCAL	0	25 DRUMS (55 GALLONS EACH)
04-SEP-85	PHENOLIC CONTAMINATED SOIL.	LAND & WILDLIFE CONSERVATION	5.67 CUBIC YARDS	0
10-SEP-85	SYNTHETIC RESIN, PIGMENT, WATER.	PAINTS	0	75 DRUMS (55 GALLONS EACH)
10-SEP-85	CARBON AND PAINT REMOVER.	AIRPORTS AND FLYING FIELDS	0	110 GALLONS
10-SEP-85	PROTECTIVE CLOTHING AND GEAR CONTAMINATED WITH LEAD AND CADMIUM.	HAZARDOUS WASTE DISPOSAL SITE	8 DRUMS (55 GALLONS EACH)	0
10-SEP-85	WATER, SULFURIC ACID, PERCHLORIC ACID, HYDROCHLORIC ACID, PHOSPHORIC ACID, NITRIC ACID, POTASSIUM SULFATE.	LAND & WILDLIFE CONSERVATION	0	4 DRUMS (55 GALLONS EACH)
13-SEP-85	DIRT CONTAMINATED WITH TRICHLOROETHYLENE.	RCRA SPILL CLEANUP	1200 TONS	0
13-SEP-85	SULFURIC ACID, WATER ORGANIC CONTAMINATES.	SECURITY BROKERS & DEALERS	3400-3800 GALLONS	0
16-SEP-85	SOLVENT CONTAMINATED SOIL.	OTHER ELECTRONIC COMPONENTS	0	100 DRUMS
18-SEP-85	PHENOXIES, DIRT, RUST.	OTHER AGRICULTURAL CHEMICALS	0	10 DRUMS
18-SEP-85	MERCURY SWITCHES, MERCURY, ABSORBENT.	COOKIES & CRACKERS	1 DRUM	0
18-SEP-85	MOISTURE, CHROMIC HYDROXIDE, POLYMER AND CALCIUM CHLORIDE.	MOTOR VEHICLES & CAR BODIES	0	6600 GALLONS
18-SEP-85	WATER, LUB OIL, CUTTING OILS, HYDROLIC OIL, MINERAL OIL, COOLANT, TRIMSOL, ABSORBANT: SPEEDI DRI; RAGS, DIRT PROTECTIVE CLOTHING, OTHER DE BRIS.	AIRCRAFT PARTS	0	125 DRUMS
18-SEP-85	WATER DEBRIS AND INERTS.	HAZARDOUS WASTE DISPOSAL SITE	0	20000 GALLONS
18-SEP-85	DIRT AND DEBRIS, WATER CEMENT KILN DUST.	HAZARDOUS WASTE DISPOSAL SITE	0	250 CUBIC YARDS

DATE	WASTE TYPE	SOURCE	DISPOSE NOW	DISPOSE ANNUALLY
18-SEP-85	STRYCHNINE ALKALOID INERT INGREDIENTS.	LAND & WILDLIFE CONSERVATION	1250 POUNDS	0
18-SEP-85	SULFURIC ACID, WATER, DIRT.	RCRA SPILL CLEANUP	0	220 GALLONS
23-SEP-85	WATER, SULFATE, ALUMINUM, SODIUM, ACID INSOLUBLE, PHOSPHATE.	PLATING & ANODIZING	30 DRUMS	0
23-SEP-85	WATER, SULFATE, ALUMINUM, ACID INSOLUBLE, SODIUM.	PLATING & ANODIZING	0	20 DRUMS (55 GALLONS EACH)
26-SEP-85	PARAFORMALDEHYDE, PHENOL, ABSORBANT AND RUB.	PLASTICS MATERIALS, SYNTHETICS	1 DRUM (55 GALLONS)	0
26-SEP-85	ASBESTOS, INERT MATERIAL.	COOKIES & CRACKERS	15 DRUMS	0

27 Request(s) approved for generators in Oregon

04-SEP-85	RINSE WATER CONTAMINATED WITH LEAD AND CADMIUM.	HAZARDOUS WASTE DISPOSAL SITE	15 DRUMS (85 GALLONS EACH)	0
04-SEP-85	AQUEOUS COPPER SULFATE SOLUTION.	OTHER ELECTRONIC COMPONENTS	5 DRUMS (55 GALLONS EACH)	0
04-SEP-85	DRY SLUDGE OF COPPER SULFATE FROM SULFURIC ACID AND COPPER SULFATE SOLUTION.	OTHER ELECTRONIC COMPONENTS	5 DRUMS (55 GALLONS EACH)	0
04-SEP-85	LAB PACKS - FLAMMABLE.	INDUSTRIAL INORGANIC CHEMICALS	0	2000 DRUMS (55 GALLONS EACH)
04-SEP-85	WATER, ACTIVATED CARBON, CHROME, COPPER, ZINC, NICKEL, LEAD, CADMIUM.	AIRCRAFT	0	30000 GALLONS
04-SEP-85	LAB PACKS - CORROSIVE.	RESEARCH & DEVELOPMENT LABS	0	16 DRUMS (55 GALLONS EACH)
04-SEP-85	FILL MATERIAL CONSISTING OF SOIL, WOOD CHIPS, ASPHALT RUBBLE, CLEAN UP DEBRIS, (GLOVES, BOOMS, TYVEK, ETC.) CONTAMINATED WITH OIL CONTAINI NG PAH'S.	NON-RCRA SPILL CLEANUP	130 TONS	0
09-SEP-85	UNBURNED CARBON, VOLATILE SULFUR, BALANCE H2O VANADIUM, SODIUM, IRON, NICKEL, CALCIUM MAGNESIUM SILICON, ALUMINUM.	PETROLEUM REFINING (ASPHALT)	0	30 DRUMS

DATE	WASTE TYPE	SOURCE	DISPOSE NOW	DISPOSE ANNUALLY
09-SEP-85	OIL, ASPHALT, HEAVY METALS, DIRT, ROCKS, RAGS, GLOVES.	INDUSTRIAL INORGANIC CHEMICALS	0	800 DRUMS
10-SEP-85	SEE LAB PACK LIST.	RESEARCH & DEVELOPMENT LABS	0	24 DRUMS
10-SEP-85	SEE LAB PACK LIST.	RESEARCH & DEVELOPMENT LABS	0	24 DRUMS (55 GALLONS EACH)
10-SEP-85	MALATHION, INERT INGREDIENTS (WHEAT), PAPER BAGS.	OTHER AGRICULTURAL CHEMICALS	0	20 DRUMS (55 GALLONS EACH)
10-SEP-85	LAB PACKS.	RESEARCH & DEVELOPMENT LABS	0	36 DRUMS (55 GALLONS EACH)
10-SEP-85	SOIL, METAL DRUM FRAGMENTS, CONTAMINATED CLOTHING, PAINT/PLYWOOD FILLER CHUNKS.	NON-SUPERFUND SITE CLEANUP	30 CUBIC YARDS	0
10-SEP-85	SOLID, PCB OIL LESS THAN 500 PPM.	ELECTRIC SERVICES	0	125 CUBIC YARDS
10-SEP-85	1,1,1 TRICHLOROETHANE, REACTION PRODUCTS W/CHLOROSILANES.	OTHER ELECTRONIC COMPONENTS	0	50 DRUMS (55 GALLONS EACH)
10-SEP-85	DDT 5% DUST UNUSED ORIGINAL CONTAINERS.	LAND & WILDLIFE CONSERVATION	4 DRUMS (55 GALLONS EACH)	0
13-SEP-85	METAL (TIN), PAINT RESIDUES, EPOXY RESIDUES, ADHESIVES RESIDUES, RESIN RESIDUES, OIL AND SOLVENT RESIDUES.	INDUSTRIAL INORGANIC CHEMICALS	0	2000 DRUMS (55 GALLONS EACH)
18-SEP-85	CREOSOTE, PENTACHLOROPHENOL, WOOD CHIPS, TRASH, FILTERS, DIRT, COPPER-CHROME ARSENIC FLOOR DRY, MULTICONE ASH.	WOOD PRESERVING	0	10560 GALLONS
18-SEP-85	CAUSTIC SODA, SILICA, SODIUM CHLORIDE, SODIUM SULFIDE, ORTHO PHOSPHATE, FLOOR DRY, MULTICONE ASH.	WOOD PRESERVING	0	50 DRUMS (55 GALLON EACH)
18-SEP-85	SAND, METALLIC COPPER.	OTHER ELECTRONIC COMPONENTS	0	660 GALLONS
18-SEP-85	WATER, FREON, POLYOLS: GP6500, G315, L-550 & DIMETHYLETHANOLAMINE. REMAINING DRUM IS CLAY.	RCRA SPILL CLEANUP	0	55 GALLONS
18-SEP-85	CHROMIUM COMPOUNDS, ABSORBANT, RAGS, METAL CONTAINERS, GLOVES, RAIN GEAR, INERT SOLID AND DIRT.	INDUSTRIAL INORGANIC CHEMICALS	0	600 DRUMS

DATE	WASTE TYPE	SOURCE	DISPOSE NOW	DISPOSE ANNUALLY
18-SEP-85	SOLID SWABS OR SORBENT 1,1,1-TRICHLOROETHANE.	SEMICONDUCTORS	0	220 GALLONS
18-SEP-85	RAGS, PLASTIC BAGS, FLOOR DRI, DIATOMACEOUS EARTH, ACETONE, ISOPROPANOL, WATER, MISC. SPILL DEBRIS, INERT SOLIDS.	SEMICONDUCTORS	0	100 DRUMS
18-SEP-85	WATER, SODIUM HYDROXIDE SLUDGE.	GENERAL AUTOMOTIVE REPAIR SHOP	0	400 GALLONS
18-SEP-85	GRAIN FUMIGANT EMPTY DRUMS.	OTHER AGRICULTURAL CHEMICALS	15 DRUMS	0

27 Request(s) approved for generators in Washington

59 Requests granted - Grand Total

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — September, 1985 (Month and Year)

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated Mo	New Actions Initiated FY	Final Actions Completed Mo	Final Actions Completed FY	Actions Pending Mo	Actions Pending Last Mo
Industrial/ Commercial	10	41	7	15	207	204
Airports			0	1	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — September, 1985 (Month and Year)

FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Multnomah	Benchmark Design, Inc. Portland	9/85	In Compliance
Multnomah	"O" Brothers Auto Body Portland	9/85	In Compliance
Multnomah	Portland General Electric Transformers SE 82nd & Harrison, Portland	9/85	No Violation
Lincoln	Telephone Utilities of Oregon Gleneden Beach	9/85	In Compliance
Marion	Oak Park Church Salem	9/85	In Compliance
Lane	Eugene Water & Electric Board Steam Plant, E. 8th St., Eugene	9/85	In Compliance
Malheur	Don's Frozen Express Nyssa	9/85	In Compliance

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1985

CIVIL PENALTIES ASSESSED DURING MONTH OF SEPTEMBER, 1985:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Robert L. Coats dba/ Deschutes Ready-Mix Sand & Gravel Co. Bend, Oregon	AQ-CR-85-102 Opacity and fugitive emission permit violations.	9/3/85	$1,550	Response to notice due by 10/11/85.
E.J. Bartells Co. Portland, Oregon	AQ/WQ/SW-NWR-85-78 Failure to notify of demolition involving asbestos; improper storage and disposal of asbestos waste.	9/4/85	$10,000	Hearing request and answer filed 10/4/85.
Amcoat, Inc. dba/Amcoat Enameling Portland, Oregon	HW/WQ-NWR-85-85 Unauthorized disposal of hazardous waste.	9/26/85	$5,000	Hearing request and answer filed 10/15/85.
McCloskey Varnish Co. of the Northwest Portland, Oregon	HW-NWR-85-104 Unauthorized disposal of hazardous waste.	9/26/85	$2,500	Paid 10/16/85.

GB5131

September, 1985
DEQ/EQC Contested Case Log

	ACTIONS	LAST MONTH	PRESENT
1	Preliminary Issues	2	2
2	Discovery	0	0
3	Settlement Action	6	3
4	Hearing to be scheduled	0	1
5	Hearing scheduled	8	8
6	HO's Decision Due	0	1
7	Briefing	2	3
8	Inactive	8	5
	SUBTOTAL of cases before hearings officer.	26	23
9	HO's Decision Out/Option for EQC Appeal	3	0
10	Appealed to EQC	2	2
11	EQC Appeal Complete/Option for Court Review	1	1
12	Court Review Option Pending or Taken	1	1
13	Case Closed	5	7
	TOTAL Cases	38	34

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

September 1985

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WAH CHANG	04/78	04/78		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	Current permit in force. Hearing deferred.
WAH CHANG	04/78	04/78		Prtys	03-P-WQ-WVR-78-2012-J NPDES Permit Modification	Current permit in force. Hearing deferred.
SPERLING, Wendell dba/Sperling Farms	11/25/81	11/25/81	03/17/83	Resp	23-AQ-FB-81-15 FB Civil Penalty of $3,000	Commission Order reducing penalty to $200 issued 9/4/85.
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	Decision upholding penalty issued 7/18/85. To be heard Nov. 22, 1985.
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	Hearing deferred pending conclusion of court action.
McINNIS ENTERPRISES, LTD., et al.	10/25/83	10/26/83		Prtys	59-SS-NWR-83-33290P-5 SS license revocation	Hearing deferred pending conclusion of court action.
~~WARRENTON, City of~~	~~8/18/83~~	~~10/05/83~~		~~Dept~~	~~57-SW-NWR-PMT-120 SW-Permit-Appeal~~	Executed stipulation and Final Order submitted 9/17/85. Case closed.

September 1985

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
CLEARWATER IND., Inc.	10/11/83	10/17/83	11/12/85	Prtys	58-SS-NWR-83-82 SS Civil Penalty of $1000	Hearing scheduled.
CLEARWATER IND., Inc.	01/13/84	01/18/84	11/12/85	Prtys	02-SS-NWR-83-103 SS Civil Penalty of $500	Hearing scheduled.
~~MALPASS, David C.~~	~~03/26/84~~	~~03/28/84~~	~~9/13/85~~	~~Prtys~~	~~05-AQ-FB-83-14 FB Civil Penalty of $500~~	EQC approved settlement. Penalty mitigated to $300. Case closed.
BIELENBERG, David	03/28/84	04/05/84	12/11/84	Prtys	09-AQ-FB-83-04 FB Civil Penalty of $300	Decision upholding penalty appealed to EQC. To be heard Nov. 22, 1985.
TRANSCO Industries, Inc.	06/05/84	06/12/84	11/05/85	Prtys	17-HW-NWR-84-45 HW Civil Penalty of $2,500	Hearing scheduled.
TRANSCO Industries, Inc.	06/05/84		11/05/85	Prtys	18-HW-NWR-84-46 HW Compliance Order	Hearing scheduled.
VANDERVELDE, Roy	06/12/84	06/12/84	08/22/85	Resp	20-WQ-WVR-84-01 WQ Civil Penalty of $2,500	Dept's post-hearing brief submitted 9/23/85.
WESTERN PACIFIC LEASING CORP., dba/Killingsworth Fast Disposal	06/01/84	07/23/84	10/14/85	Prtys	22-SW-NWR-84 Solid Waste Permit Modification	Sewer connection made. Appeal withdrawn 10/15/85.

September 1985

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
CLEARWATER INDUSTRIES, INC.	10/11/84	10/11/84	11/12/85	Prtys	24-SS-NWR-84-P Sewage Disposal Service License Denial	Hearing scheduled.
LAVA DIVERSION PROJECT	12/14/84	12/27/84		Prtys	25-WQ-CR-FERC-5205 Hydroelectric plant certification	EQC certification denial appealed to Court of Appeals.
UNITED CHROME PRODUCTS, INC.		02/19/85	10/21/85	Prtys	02-HW-WQ-WVR-84-158 $6,000 civil penalty	Hearing scheduled.
CATHCART, Channing and Douglas	03/11/85	03/11/85	10/8/85	Prtys	04-AQ-FB-84-137 Civil Penalty of $750	Hearing scheduled.
FUNRUE, Amos	03/15/85	03/19/85	06/20/85	Resp	05-AQ-FB-84-141 Civil Penalty of $500	Respondent to file post-hearing reply brief 10/25/85.
~~BLADES, Wallace~~	~~03/18/85~~	~~03/19/85~~		~~Prtys~~	~~06-AQ-FB-84-139 Civil Penalty of $750~~	EQC approved settlement. Penalty mitigated to $600. Case closed.
~~DOMES, William~~	~~03/20/85~~	~~03/21/85~~	~~06/18/85~~	~~Dept~~	~~07-AQ-FB-84-151 Civil Penalty of $300~~	No appeal to EQC made. Case closed.
~~WARRENTON LANDFILL~~	~~02/28/85~~	~~04/04/85~~		~~Prtys~~	~~10-57-SW-NWR-83-PMT-120 Landfill closure order~~	Executed stipulation and Final Order submitted 9/17/85. Case closed.
COOK, Robert	04/10/85	04/16/85	11/15/85	Prtys	11-AQ-FB-84-138 Civil Penalty of $500	Hearing scheduled.

September 1985

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
KANGAS, M. R.	05/02/85	05/03/85	10/01/85	Hrgs	12-AQ-FB-84-145 Civil Penalty of $500	Decision due.
JOSEPH FOREST PRODUCTS	05/16/85	05/23/85		Prtys	13-HW-ER-85-29 Hazardous waste disposal Civil Penalty of $2,500	Appeal request withdrawn. Dept. to present evidence in support of penalty.
MAIN ROCK PRODUCTS, INC.		05/31/85	12/13/85	Prtys	14-WQ-SWR-85-31 Violation of NPDES permit conditions Civil Penalty of $3,500	Hearing postponed to 12/13/85 to allow settlement.
DANT & RUSSELL, INC.	05/31/85	05/31/85		Dept	15-HW-NWR-85-60 Hazardous waste disposal Civil Penalty of $2,500	Department to respond to request to stay proceedings.
~~GREENE, TIMOTHY~~	~~07/10/85~~	~~07/11/85~~	~~08/12/85~~	~~Resp~~	~~16-SS-SWR-85-P Denial of Certificate of Satisfactory Completion~~	No appeal from decision denying certificate. Case closed.
ALTHAUSER, GLENN L.	07/08/85	07/16/85	09/20/85	Resp	17-SW-NWR-85-77 Unauthorized Waste Disposal	Dept's. post-hearing brief filed 10/15/85.
~~WARNOCK, STEPHEN~~	~~07/08/85~~	~~07/19/85~~		~~Prtys~~	~~18-SS-SWR-85-P S.S. Permit Revocation~~	No appeal from Order of Dismissal. Case Closed.

September 1985

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
MERIT OIL & REFINING CO.		07/24/85		Prtys	20-WQ-NWR-85-61 WQ Civil Penalty of $1,200	Settlement action.
E.J. BARTELLS CO.	10/04/85	10/08/85			21-AQ/WQ/SW-NWR-85-78	Preliminary issues.

09

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item C, November 22, 1985 EQC Meeting

TAX CREDIT APPLICATIONS

Background

Attached are staff reports on applications for Pollution Control Tax Credit Certification. Facilities are subject to different statutes depending on the date of completion of construction of the facility.

All pollution control facilities on which construction was completed before January 1, 1984 are subject to the old tax credit laws which require pollution control facilities to have a "substantial" purpose of preventing, controlling or reducing air, water or noise pollution or solid or hazardous wastes or used oil. "Substantial" purpose has been interpreted to mean that a large part of the function of the facility is pollution control. The facility does not need to be used solely for pollution control and does not need to be required by DEQ or EPA.

All pollution control facilities completed on or after January 1, 1984 are subject to the 1983 tax credit law which requires facilities either to have the "principal" purpose of complying with a DEQ or EPA requirement or to have the "sole" purpose of preventing, controlling or reducing a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil. "Principal" purpose has been defined in the tax credit rules to mean the most important or primary purpose. "Sole" purpose is defined in the tax credit rules to mean the exclusive purpose.

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-1731	Ellingson Lumber Co.	Bag Filter
T-1734	Boise Cascade Corp.	Veneer dryer sealing
T-1735	Boise Cascade Corp.	Baghouse fabric filter units
T-1736	Boise Cascade Corp.	Scrubber system
T-1737	Boise Cascade Corp.	Scrubber systems
T-1738	Boise Cascade Corp.	Sanderdust fuel handling system with burner for existing boiler
T-1739	Boise Cascade Corp.	Ventri-rod Scrubber
T-1740	Boise Cascade Corp.	Four veneer dryers
T-1741	Boise Cascade Corp.	Lumber anti-stain control system
T-1744	Boise Cascade Corp.	Three veneer dryer sealings
T-1745	Boise Cascade Corp.	Ionic wet scrubber
T-1750	Conrad Wood Preserving Co., Inc.	Concrete Drip pad with roof and support facilities
T-1764	Teledyne Industries, Inc.	Sulfur dioxide monitoring system
T-1767	GNB Incorporated	Bag filter dust collection system
T-1768	Georgia Pacific Corporation	Bag filter
T-1771	Hillcrest Corp.	Overtree sprinkler system

2. Issue tax credit certificates for facilities subject to the new tax credit laws:

Appl. No.	Applicant	Facility
T-1724	Willamette Industries, Inc.	Bag filter
T-1728	Pope & Talbot, Inc.	Electrostatic precipitator upgrading
T-1732	Praegitzer Industries, Inc.	Heavy metal pretreatment removal system and pH neutralization system
T-1742	International Paper Company	AirPol Venturi Impactor Scrubber
T-1746	Owens-Corning Fiberglas Corporation	Fume incinerator installation
T-1749	Roseburg Lumber	Groundwater monitoring wells
T-1753	International Paper	Continuous Emissions Monitoring Systems
T-1754	Praegitzer Industries	Fume scrubber
T-1755	Willamette Industries	Negative air system and bag filter
T-1756	Willamette Industries	Ducting cyclone exhaust to wet scrubber
T-1770	Far West Fibers, Inc.	Stationary receiver container

Fred Hansen

S. Chew:r
(503) 229-6484
11/8/85
MR33

Proposed November 22, 1985 Totals:

Air Quality	$ 4,765,663.49
Water Quality	159,509.08
Hazardous/Solid Waste	5,569.00
Noise	-0-
	4,930,741.57

1985 Calendar Year Totals before adding tax credits certified at this EQC meeting:

Air Quality	$ 638,465.10
Water Quality	1,018,551.45
Hazardous/Solid Waste	523,489.00
Noise	-0-
	$ 2,180,505.55

SChew
229-6484
11/4/85

Application No. T-1731

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Ellingson Lumber Co.
Isoboard Division
PO Box 866
Baker, OR 97814

The applicant owns and operates a particleboard manufacturing plant at Baker, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is a Model 40-20G2 Clarkes' bag filter to control dust emissions from cyclones and a truck storage/loading bin.

Request for Preliminary Certification for Tax Credit was made on June 10, 1983 and considered to have been issued on August 9, 1983, for reason that specific approval was not granted within the statutory 60 day time limit.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on June 10, 1983 and the facility was completed and placed into operation on October 1, 1983.

Facility Cost: $104,708.74 (Accountant's Certification was provided).

3. Evaluation of Application

Ellingson Lumber Company installed a new particleboard sander and a sanderdust transport and truck storage/loading bin. A Clarkes' bag filter was installed to control sander dust emissions from the bin cyclones.

The operation is in compliance with emission standards.

The gross cost of the baghouse, spark detection systems, dust transport ducts, fans for the cyclones and baghouse was $187,064.99. The company reduced the costs of some items based on reasonable estimates of their contribution to normal operation of the ducts and cyclones as process functions. The resulting claimed cost for pollution control facilities was $104,708.74.

There is no positive economic benefit to the company from the facility. Therefore, the $104,708.74 cost should be allocated at 80 percent or more for pollution control tax credit.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $104,708.74 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1731.

D. Neff:s
AS1817
(503) 229-6480
October 8, 1985

Application No. T-1734

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Boise Cascade Corporation
Timber and Wood Products Group
PO Box 50
Boise, ID 83728

The applicant owns and operates a plywood manufacturing mill at Medford.

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

2. Description of Claimed Facility

The facility described in this application is the sealing of one 14 section Moore veneer dryer (dryer no. 1) to control fugitive emissions.

Request for Preliminary Certification for Tax Credit was made on September 20, 1980 and approved on October 15, 1980.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on November 27, 1980, completed on January 10, 1981, and the facility was placed into operation on January 11, 1981.

Facility Cost: $139,884.00, as adjusted for eligible pollution control costs. (Accountant's Certification was provided).

3. Evaluation of Application

The task of sealing veneer dryer no. 1 was undertaken for the purpose of reducing fugitive emissions. The Department had documented, prior to the project, that fugitive (blue-haze) visible emissions generated by the veneer dryer process exceeded the emission standards in that they were greater than 20 percent opacity. Veneer dryer nos. 2, 3, 4, and 5 were also sealed but under a separate construction and preliminary tax credit approval request.

The sealing of the veneer dryer included the repair or replacement of damaged panels. Door posts, door hangers and doors are straightened or repaired to insure that the seals fit well against the mating surfaces. Controls and monitoring instrumentation were installed to improve equalization of the internal pressure throughout the dryer. Baffles were repaired or adjusted to balance the internal pressure. Seams of the dryer shell were filled with silicon foam. New jacketed door seals were installed.

The sealing project on the dryer was beneficial for reducing fugitive visible emissions to a level of less than 10 percent opacity in compliance with state emission standards.

The claimed cost of the project was $139,984.00 and has been adjusted downward to $139,884.00 as eligible pollution control facilities. The Department believes that the claimed expense of $100 for insulation in the door posts is for the purpose of energy savings rather than pollution control.

There is no measurable benefit in production rate or energy consumption resulting from the sealing project. Therefore the adjusted facility cost is 100 percent eligible for pollution control.

The application was received on June 3, 1985, additional information was received on October 15, 1985.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $139,884.00 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1734.

D. Neff:s
AS1903
(503) 229-6480
November 4, 1985

Application No. T-1735

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Boise Cascade Corporation
Timber & Wood Products Group
P.O. Box 50
Boise, ID 83728

The applicant owns and operates a plywood and dimensional lumber manufacturing complex at Medford.

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

2. Description of Claimed Facility

The facilities described in this application are four baghouse fabric filter units, associated blowers and fire protection system to control wood dust emissions from eight existing cyclones.

Request for Preliminary Certification for Tax Credit was made on June 14, 1977 with subsequent modifications and approved on June 24, 1977 and August 30, 1978.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on November 1, 1977, completed on January 14, 1979, and the facility was placed into operation on January 14, 1979.

Facility Cost: $355,216, as adjusted for $15,000 salvage value of removed existing facility (Accountant's Certification was provided).

3. Evaluation of Application

Boise Cascade Corporation has installed four baghouse fabric filter systems to control wood dust emissions from eight existing cyclones. The project was necessary to comply with the DEQ's air emission standards. The replacement of an existing woodwaste hog (to reduce spark generation), fire detection and suppression systems, and safety facilities were a necessary part of the project. No tax credit has been previously certified for this facility.

The Department considers each installed unit to be in compliance with emissions standards.

The claimed cost for the facilities was $370,216. The adjusted eligible cost is $355,216, after the salvage value of the replaced wood hog was subtracted from the claimed amount.

The recovered woodwaste has an estimated value of about $400 per year. The operation and maintenance of the facilities are estimated at $70,400, which results in a net negative benefit to the company.

The adjusted eligible expenditure of $355,216 should be certified for pollution control for credit of 80 percent or more.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $355,216 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1735.

Donald K. Neff:l
AL520
(503) 229-6480
November 5, 1985

Application No. T-1736

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Boise Cascade Corporation
Timber & Wood Products Group
P.O. Box 50
Boise, ID 83728

The applicant owns and operates a plywood manufacturing plant at Medford, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is a Model B-5 Burley scrubber system to control air emissions from veneer dryer No. 5.

Request for Preliminary Certification for Tax Credit was made on May 15, 1978, and approved on November 8, 1978.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility in September 1978, and was completed and placed into operation in January 1979.

Facility Cost: $103,262 (Accountant's Certification was provided).

3. Evaluation of Application

Boise Cascade Corporation selected Burley Industries scrubbers as a means of controlling air exhaust emissions from veneer dryer No. 5 at the Medford plant. This was a prototype installation for possible similar installations for the other four dryers at the plant. The exhaust stack controls were required to attain compliance with the State veneer dryer emissions standards. Application for tax credit certification was also made for similar pollution control facilities in veneer dryers 1, 2, 3 and 4 has been reviewed as Application No. T-1737.

The project included the hardware and installation of one Model B-5 Burley scrubber with a demister fan, a water clarification tank and end seal systems on the dryer heat section.

Prior to the installation of the scrubber, visible emissions were documented to be greater than the maximum allowable limit of 20 percent opacity. The installation and operation of the scrubber has resulted in certification of the stack emissions to be in compliance with the visible emission standards at less than 10 percent opacity.

The primary purpose of the installations was for air pollution control. There is no known significant benefit to the company from installing and operating the scrubber facility. Therefore, 80 percent or more of the facility cost is properly allocable to pollution control.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $103,262 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1736.

Donald K. Neff:l
AL521
(503) 229-6480
November 4, 1985

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Boise Cascade Corporation
Timber & Wood Products Group
P.O. Box 50
Boise, ID 83728

The applicant owns and operates a plywood manufacturing plant at Medford, Oregon.

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

2. Description of Claimed Facility

The facilities described in this application are four Model B-5 Burley scrubber systems to control air emissions from four veneer dryers.

Request for Preliminary Certification for Tax Credit was made on January 10, 1979, and approved on February 8, 1979.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility in February 1979, and was completed and placed into operation in September 1979.

Facility Cost: $351,430 (Accountant's Certification was provided).

3. Evaluation of Application

Boise Cascade Corporation installed Burley Industries scrubbers as a means of controlling air exhaust emissions from four veneer dryers at their Medford plant. The company claimed these units were the most cost effective for achieving the required pollution control. Exhaust stack controls were required to attain compliance with the State veneer dryer emissions standards. Application for tax credit was also made for a similar pollution control facility on the fifth dryer and has been reviewed as Application No. T-1736.

The project included the hardware and installation of four Model B-5 Burley scrubbers with demister fans, a single water clarification tank and end seal systems on each dryer heat section.

Prior to the installation of the scrubbers, visible emissions were documented to be greater than the maximum allowable limit of 20 percent opacity. The installation and operation of the scrubbers has resulted in certification of the stack emissions to be in compliance with the visible emission standards at less than 10 percent opacity.

The primary purpose of the installations was for air pollution control. There is no known significant benefit to the company from installing and operating the scrubber facilities. Therefore, 80 percent or more of the facilities cost is properly allocable to pollution control.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $351,430 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1737.

Donald K. Neff:l
AL522
(503) 229-6480
November 4, 1985

Application No. T-1738

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Boise Cascade Corporation
Timber and Wood Products Group
PO Box 50
Boise, ID 83728

The applicant owns and operates a plywood and dimensional lumber manufacturing complex at Medford.

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

2. Description of Claimed Facility

The facility described in this application is a sanderdust fuel handling system and burner for an existing hogged fuel boiler.

Request for Preliminary Certification for Tax Credit was made on February 17, 1981 and approved on March 3, 1981.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on April 1, 1981, and completed and placed into operation on November 19, 1982.

Facility Cost: $263,614.00 (Accountant's Certification was provided).

3. Evaluation of Application

The facility provides a means of handling and burning sanderdust in an existing boiler separate from the other hogged fuel. The new sanderdust bin eliminates a fugitive emission source. The installation of the sanderdust burner in the boiler results in more efficient burning and fuel control than when this material was fed with the hogged fuel.

The sanderdust handling and boiler emissions are in compliance with required emission standards. Based on a review of the particulate source test results, it is believed that the burning of sanderdust fuel through the new burner unit plays a significant part in good combustion and reduced particulate emissions. However, the installation of a high efficiency scrubber (tax credit application T-1739) is the primary element responsible for reduced particulate emissions from the boiler.

The boiler has been certified in compliance with concentration, mass emission, and visible emission standards. There is an estimated 10 percent gain in efficiency in burning of the sanderdust fuel through the new facility. The net annual savings based on 1,100 tons/year at $12/ton is $13,200/year. The net operating costs after subtracting the operating expenses of $13,250/year is $50. Therefore, 80 percent or more of the claimed cost is allocable to pollution control.

The application was received on June 4, 1985, additional information was received on October 18, 1985.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $263,614.00 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1738.

D. Neff:s
AS1899
(503) 229-6480
November 4, 1985

Application No. T-1739

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Boise Cascade Corporation
Timber and Wood Products Group
PO Box 50
Boise, ID 83728

The applicant owns and operates plywood and dimensional lumber manufacturing complex at Medford.

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

2. Description of Claimed Facility

The facility described in this application is a Riley ventri-rod scrubber for the existing boiler stacks.

Request for Preliminary Certification for Tax Credit was made on January 10, 1979 and approved on January 24, 1979.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on September 20, 1979, completed on January 4, 1980, and the facility was placed into operation on January 4, 1980. Additional improvements were made and completed on July 23, 1981.

Facility Cost: $591,513.87 (Accountant's Certification was provided).

3. Evaluation of Application

Boise Cascade Corporation installed a Riley ventri-rod scrubber and associated water clarification recirculation system to control particulate emissions from the two hogged fuel fired boilers at their Medford wood products manufacturing complex. The scrubber was installed at a claimed cost of $591,513.87 for the purpose of complying with State emission standards.

A particulate source test performed on the scrubber controlled boiler stack has verified compliance with the 0.05 gr/dscf emission standard. The estimated net particulate emission reduction is 75 tons per year. The only function of the facility is for pollution control. There are no identified economic benefits from installing and operating this facility. Therefore, 100 percent of the cost should be eligible for pollution control.

The application was received on June 4, 1985, additional information was received on October 17, 1985.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $591,513.87 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1739.

D. Neff:s
AS1906
(503) 229-6480
November 4, 1985

Application No. T-1740

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Boise Cascade Corporation
Timber and Wood Products Group
PO Box 50
Boise, ID 83728

The applicant owns and operates a plywood manufacturing mill at Medford.

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

2. Description of Claimed Facility

The facility described in this application is the sealing of four veneer dryers (nos. 2, 3, 4 and 5) to control fugitive emissions.

Request for Preliminary Certification for Tax Credit was made on February 3, 1981 and approved on February 23, 1981.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility in February 1981, and completed and placed into operation on May 15, 1981.

Facility Cost: $559,717.73, as adjusted to eligible pollution control facility expenses. (Accountant's Certification was provided).

3. Evaluation of Application

The task of sealing veneer dryer nos. 2, 3, 4 and 5 was undertaken for the purpose of reducing fugitive emissions. The Department had documented, prior to the project, that fugitive (blue-haze) visible emissions generated by the veneer drying process exceeded the 20 percent opacity emission standard. Veneer dryer no. 1 was also sealed but under a separate construction and preliminary tax credit approval request.

The sealing of the veneer dryers included the repair or replacement of damaged panels. Door posts, door hangers and doors are straightened or repaired to insure that the seals fit well against the mating surfaces. Controls and monitoring instrumentation were installed to improve equalization of the internal pressure throughout the dryers. Baffles were repaired or adjusted to balance the internal pressure. Seams of the dryer shell were filled with silicon foam. New jacketed door seals were installed.

The sealing project on the dryer was beneficial for reducing visible fugitive emissions to a level of less than 10 percent opacity in compliance with state emission standards.

The claimed cost of the project was $560,117.73 and has been adjusted downward by $400 to $559,717.73 as eligible pollution control facilities. The Department believes that the claimed expense of $400 for insulation in the door posts is for the purpose of energy savings rather than pollution control.

There is no measurable benefit in production rate or energy consumption as the result of the sealing project. Therefore the adjusted facility cost is 100 percent eligible for pollution control.

The application was received on June 4, 1985, additional information was received on October 15, 1985.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $559,717.73 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1740.

D. Neff:s
AS1904
(503) 229-6480
November 4, 1985

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Boise Cascade Corporation
Timber and Wood Products Group
P. O. Box 50
Boise, ID 83728

The applicant owns and operates a lumber mill at White City, 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 an upgraded lumber antistain control system consisting of the following items:

1. Green chain concrete drip pad (120' x 26-1/2' x 4") with approximately 11" high curbs.
2. 1,000 gallon concrete collection tank.
3. Modified green chain sections and support facilities.

Request for Preliminary Certification for Tax Credit was made December 23, 1981 and approved December 23, 1981 . Facility is subject to the 1981 tax credit law. Construction was initiated on the claimed facility December 26, 1981 , completed April 30, 1982 and the facility was placed into operation April 30, 1982.

Facility Cost: $49,032.05. (Accountant's Certification was provided).

The Accountant's Certification showed a facility cost of $51,032.05. The Certification included a new 2,000 gallon dip tank at a cost of $2,000.00. Since the dip tank is a piece of process equipment and not a pollution control device, its cost was subtracted to result in a revised Facility Cost of $49,032.05 ($51,032.05 - $2,000 = $49,032.05). This action was discussed and agreed upon with the company.

3. Evaluation of Application

Prior to installation of the facilities, the green chain tetrachlorophenol antistain dip system was inadequately controlled. A galvanized metal drip pan was used to catch drippage from the outfeed side of the dip tank. However, the pan was badly deteriorated and there was no secondary containment for the dip tank. In addition to the miscellaneous loss of

antistain chemical onto the ground, the potential existed for a major release of the toxic chemical. The new dip tank, collection sump, chemical return pump, and contaminated green chain sections are all located over the new concrete drip pad which is sloped to the collection sump. All drippings are collected and returned to the dip tank. The new outfeed sections of green chain are steeply sloped to enhance the drippage of excess antistain chemical. The entire green chain facility is located under a roof. There has been no return on investment from this facility.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $49,032.05 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1741.

Larry D. Patterson:m
WM539
(503) 229-5374
September 11, 1985

Application No. T-1744

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Boise Cascade Corporation
Timber & Wood Products Group
P.O. Box 50
Boise, ID 83728

The applicant owns and operates a plywood mill at White City.

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

2. Description of Claimed Facility

The facility described in this application is the sealing of three veneer dryers to control fugitive emissions.

Request for Preliminary Certification for Tax Credit was made on July 15, 1981 and approved on December 23, 1981.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility in January 1982, completed in November 1982, and the facility was placed into operation on March 1, 1983.

Facility Cost: $484,413.70 (Accountant's Certification was provided).

3. Evaluation of Application

Sealing of the three veneer dryers for the purpose of reducing fugitive emissions was undertaken at Boise Cascade's plywood plant in White City. The Department had documented, prior to the project, that fugitive visible emissions (blue-haze) generated by the veneer drying process exceeded the 20 percent opacity state emission standard.

The sealing of veneer dryers is a comprehensive task which includes making repairs and replacing damaged panels, door posts, and deteriorated sections of floors. This work is necessary to insure that sealing material fits well against the mating surfaces. To balance the internal pressure and minimize leakage of contaminated air out of the ends of the dryers, recirculating air baffles were repaired and air curtains with controls and monitoring instrumentation were installed. Seams of the shell are sealed with silicone foam and all door seals were replaced.

The sealing project on the three dryers was beneficial for reducing visible fugitive emissions to a level of less than 10 percent opacity in compliance with state emission standards.

There is no measurable benefit in production rate or energy consumption resulting from the sealing project. There may be some benefit to the company in that certain repairs could extend the life of the dryers. Historically, the Department has considered that all non-major repair work associated with sealing of veneer dryers is reasonably necessary to accomplish the reduction of fugitive emissions and is allocable as pollution control.

The total claimed cost of the project of $486,413.70 is properly allocable to pollution control.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $486,413.70 with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1744.

D. NEFF:a
AA5060
(503) 229-6480
November 5, 1985

Application No. T-1745

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Boise Cascade Corporation
Timber & Wood Products Group
P.O. Box 50
Boise, ID 83738

The applicant owns and operates a plywood manufacturing plant at White City, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is an ionic wet scrubber system (Ceilcote IWS 500) to control air emissions from three veneer dryers.

Request for Preliminary Certification for Tax Credit was made on January 10, 1979, and approved on February 7, 1979.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility in October 1, 1979, completed in November 1982, and placed into operation on March 1, 1983.

Facility Cost: $612,562.97 (Accountant's Certification was provided).

3. Evaluation of Application

Boise Cascade Corporation operates three veneer dryers at their plywood manufacturing plant located at White City.

To achieve compliance with the State emission standards, the company elected to install Ceilcote ionic wet scrubbers (IWS). Pilot testing had demonstrated that these units were capable of controlling both visible and mass emissions to the required standard. Other emission control systems were evaluated by the company but were not considered as effective as the Ceilcote IWS on wood fired veneer dryers.

The project had an extraordinarily long construction period. The project was expanded to include connecting the scrubber to a new (No. 3) dryer. The mill did not operate for several months after the project was completed because of the suppressed market for plywood.

The control system (IWS) consists of a prescrubber, and two ionizers, and charged particle scrubbers operating in series. A recirculation tank with a residue skimmer supplies water to the scrubbers.

Prior to the installation of the scrubber, visible emissions were documented to be greater than the maximum allowable limit of 20 percent opacity. The installation and operation of the scrubber has resulted in certification of the stack emissions to be in compliance with the visible emission standards at less than 10 percent opacity. The scrubber exhaust stack was source tested and demonstrated compliance with mass emission limits for direct wood-fired veneer dryers.

There are no economic benefits from operation of the emission control system. The primary purpose of the project was to accomplish air pollution control, therefore, 80% or more of the $612,562 97 cost is allocable to pollution control.

The revised application was received on October 21, 1985, and considered complete on October 24, 1985.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a $612,562.97 Pollution Control Facility Certificate with 80% or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1745.

D. Neff:l
AL525
(503) 229-6480
November 5, 1985

Application No. 1750
Date: October 11, 1985

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Conrad Wood Preserving Co., Inc.
1221 N. Bayshore Drive
Coos Bay, OR 97420

The applicant owns and operates a wood pressure treating facility at Hauser, 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 43' x 120' concrete drip pad, and associated 60' x 130' roof and support facilities.

Request for Preliminary Certification for Tax Credit was made September 24, 1979, and approved October 10, 1979. Facility is subject to the 1981 tax credit law. Construction was initiated on the claimed facility April 1, 1980, completed December 15, 1980, and the facility was placed into operation December 15, 1980.

Facility Cost: $47,536 (Accountant's Certification was provided).

3. Evaluation of Application

The applicant came to the Department in 1979 with a proposal to build a new wood pressure treating facility in Hauser, Oregon. Because of surface and groundwater problems at existing pressure treating facilities, the Department required this operation to install a paved, roofed drip pad to provide a minimum of 24 hours storage of freshly treated lumber. After removal of the wood from the treating cylinders, excess chemical on the surface of the wood is removed with a water spray system. The bundles of treated wood are then stored on the pad for 1 to 2 days until all signs of dripping have stopped. The drippings flow into a collection system where they are used as makeup water for the water based treating chemicals. Even though the volume of recovered drippings is small, it could have had a major impact on the surrounding environment if left uncontrolled. The control system has worked quite well.

In comparison to the volume of water used in the process, the volume of recovered drippings is quite small. Theoretically, the value of the returned drippings could provide a return on investment. However, it is the Department's best professional judgement that the cost of pumping the drippings back to the process system far outweighs their value. Figures are not available for the volume of drippings recovered or the electrical usage of the return pump.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $47,536 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1750.

L.D. Patterson:y
(503) 229-5374
October 11, 1985

WY1010

Application No. T-1764

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Teledyne Industries, Inc.
Teledyne Wah Chang Albany
PO Box 460
Albany, OR 97321

The applicant owns and operates a zirconium, hafnium, tantalum, titanium, and niobium production plant at 1600 Old Salem Road, Albany.

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

2. Description of Claimed Facility

The facility described in this application consists of a sulfur dioxide monitoring system.

Request for Preliminary Certification for Tax Credit was made on 02/28/78 and approved on 04/17/78. A subsequent modification was requested on 01/08/79 and approved on 01/29/79.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility in June, 1979, completed in June, 1979, and the facility was placed into operation in June, 1979.

Facility Cost: $14,049 (Complete Documentation by copies of invoices was provided.)

3. Evaluation of Application

The claimed facility consists of a sulfur dioxide monitoring system to determine sulfur dioxide (SO_2) levels in the zirconium oxide kiln stack.

The claimed facility was required by the Department to reduce SO_2 emissions resulting from improper or upset scrubber operation as determined by elevated levels of SO_2. Whenever levels of 400 ppm SO_2 are detected an audible and visual alarm alerts personnel and

allows corrective action to modify scrubber performance. Additionally, the claimed facility provides a record of actual concentration versus time. Exceedances of the standard are reported monthly to the Department.

The Department routinely receives SO_2 data from the claimed facility which is adequate for Agency needs. In addition, Teledyne Wah Chang reports that the claimed facility is 100 percent effective in reducing SO_2 emissions from abnormal scrubber performance.

The claimed facility, which was installed solely for air pollution control, produces no economic benefit. Therefore, there is no return on the investment in the facility and 80 percent or more of the facility cost is allocable to pollution control.

The application was received on 09/18/85 and the application was considered complete on 09/18/85.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $14,049 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1764.

W. J. Fuller:s
AS1797
(503) 229-5749
November 4, 1985

Application No. T-1767

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

GNB Incorporated
Automotive Battery Division
PO Box 64100
St. Paul, MN 55164

The applicant owns and operates a lead acid battery manufacturing plant at 576 Patterson Avenue, NW, Salem, Oregon.

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

2. Description of Claimed Facility

The facility described in this application consists of a bag filter dust collection system.

Request for Preliminary Certification for Tax Credit was made on October 18, 1979 and approved on November 20, 1979.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility in December 1979, completed in May 1980, and the facility was placed into limited operation on April 21, 1980, prior to completion.

Facility Cost: $34,047 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility, consisting of a bag filter dust collector, fan, motor, ducting and hoods, was required to control lead oxide emissions from the lead pots located in the grid casting addition.

The claimed facility, which was designed to collect 98.2 percent of the lead oxide particulate from the melting pots, has been inspected by Department personnel and has been found to be operating in compliance with Department regulations and permit conditions.

All material collected is sent to a lead smelter for recovery of metallic lead. Approximately 1,600 lbs/year, having a value of $0.0975/lb is collected annually. This represents a return on the investment in the facility of approximately $156.00 per year. This amount is insignificant, based upon a 12.5 year useful life and a facility cost of $34,047. The portion of costs allocable to pollution control using the method outlined in the "Pollution Control Tax Credit Handbook" would not be reduced. Therefore, the percent of actual cost of the claimed facility allocable to pollution control is 80 percent or more.

The application was received on September 30, 1985, additional information was received on October 15, 1985, and the application was considered complete on October 15, 1985.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $34,047 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1767.

W. J. Fuller:s
AS1901
(503) 229-5749
October 17, 1985

Application No. T-1768

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Georgia Pacific Corporation
Prairie Road Plant, Eugene Division
PO Box 1618
Eugene, OR 97440

The applicant owns and operates a plywood manufacturing plant in Eugene.

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

2. Description of Claimed Facility

The facility described in this application is a 144-RJ96 Carter Day bag filter to control sanderdust emissions.

Plans and specifications were reviewed and approved by Lane Regional Air Pollution Authority.

Request for Preliminary Certification for Tax Credit was made on June 7, 1983 and approved on September 14, 1983.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on June 7, 1983, completed on September 27, 1983, and the facility was placed into operation on September 29, 1983.

Facility Cost: $59,301.24, as adjusted for pollution control elements. (Accountant's Certification was provided).

3. Evaluation of Application

Increased production at Georgia Pacific's Prairie Road plant resulted in excessive emissions from the sanderdust pneumatic transport system. To correct the problem the company installed a bag filter to replace an existing cyclone.

The company had initially claimed $91,457.49 for the total project of modifying the sanderdust collection and transport system. The Department evaluated the dust pickup ducts and conveyors as part of the manufacturing operation, rather than pollution control at 100 percent tax credit allocable. Subsequently, Georgia Pacific supplied necessary detailed cost information and adjusted their claim to $59,301.24, which included only the bag filter and directly associated costs.

In addition to the specific revised detailed cost breakdown for the bag filter system, the company claimed an "add on" amount of 10 percent for the difference between the bag filter system and the total sanderdust facility cost as originally claimed. The company stated

that this claim of $3,215.58 was for "processing time, CPA fee's and realistic additional costs incurred for added material and equipment directly related to the necessary changes made." The Department recommends that this claim not be included with the certified amount because of its non-specific basis.

Preliminary tax credit certification was granted for this facility, as well as for a revision of a hogged residue conveyance facility, as part of a total project for pollution control. They submitted a separate application for tax credit for the residue conveyors (T-1773). The independent public accountants cost certification required as part of the application for tax credit was for the total project with a breakdown of individual costs for the two facilities.

The facility is now in compliance with the required emission limits. There is no net economic benefit to the company from operating the facility. Therefore, the revised facility cost of $59,301.24 is 100 percent eligible as pollution control.

The application was received on October 1, 1985, additional information was received on October 21, 1985, and the application was considered complete on October 21, 1985.

4. Summation

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

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

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

d. The facility is necessary to satisfy the intents and purposes of ORS 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 $59,301.24 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1768.

D. Neff:s
AS1916
(503) 229-6480
November 5, 1985

Application No. T-1771

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Hillcrest Corp.
1218 Third Avenue, Suite 2303
Seattle, WA 98101

The applicant owns and operates a pear orchard at 3285 Hillcrest Road, Medford, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is an overtree sprinkler system used for both irrigation and frost protection in the orchard. The costs are:

	Material	Labor	Total
Water Storage Pond	$15,753.94	$ 3,212.66	$18,966.60
Overtree Sprinkler System	48,250.53	14,832.02	63,082.55
			$82,049.15

Request for Preliminary Certification for Tax Credit was made on March 27, 1978 and approved on April 18, 1978 for the water storage pond, and made on January 22, 1979 and approved on February 14, 1979 for the overtree sprinkler system.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on April 23, 1979, completed in April 1980, and the facility was placed into operation in April 1980.

Facility Cost: $82,049.15 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed overtree sprinkler system provides frost protection to approximately 24.5 acres of orchard, by replacing 596 oil-fired orchard heaters. The sprinkler system consists of a new water storage

pond, 2 main water lines, 2 electric pumps and the necessary sprinkler heads on risers to provide overtree sprinkling. The sprinkler system also replaces an existing undertree irrigation system.

The orchard farmers desire a secure long-range solution to frost control that reduces or eliminates the smoke and soot nuisance produced by orchard heaters. The Environmental Quality Commission has previously certified six overtree sprinkler systems in the Medford area as pollution control facilities. Of these, four were for existing orchards with irrigation capabilities. These situations were essentially similar to that being considered in this application.

The percent of the cost allocable to pollution control is based upon the estimated annual percent return on the investment in the facility where the return on the investment is determined by the savings resulting from not having to use fuel oil for frost protection.

The fuel cost to operate the orchard heaters is shown on the application to be $18,536.46 at $0.89 per gallon fuel oil cost in 1980.

The pumping utility cost for overtree sprinklers is $500 per year. Other differences in operating expenses are considered insignificant. The savings of $18,036.46 is the net income. The useful life of the facility is 20 years. The percent of the actual cost of the claimed facility allocable to pollution control is determined by the method used by the Department in 1982:

1. Factor of Internal Rate of Return = $\frac{\$82,049}{\$18,036} = 4.55$

2. Rate of Return for 4.55 factor (20 years) from Table 2 of method = 21.6%

The Rate of Return is related to five percentage ranges of the percent of the actual cost of the claimed facility allocable to pollution control by a Table 1 of the 1982 method. The applicable range is shown below:

	Rate of Return		Percent of Actual Cost of Claimed Facility Allocable to Pollution Control
3.	19% to 24.99%	=	20% or more but less than 40%

The application was received on October 9, 1985, additional information was received on October 15, 1985, and the application was considered complete on October 16, 1985.

4. Summation

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

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

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

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

e. The portion of the facility cost that is properly allocable to pollution control is 20 percent or more but less than 40 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 $82,049.15 with 20 percent or more but less than 40 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1771.

R. Potts:s
AS1902
(503) 229-5186
November 5, 1985

Application No. T-1724

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Willamette Industries, Inc.
Korpine Division
2800 First Interstate Tower
Portland, OR 97201

The applicant owns and operates a particleboard manufacturing plant at Bend.

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

2. Description of Claimed Facility

The facility described in this application is a Carter-Day bag filter and portion of an expanded material metering bin on process line 2.

Request for Preliminary Certification for Tax Credit was made on December 21, 1983, and approved on February 15, 1984.

The facility is subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on December 21, 1983, completed and placed into operation on January 26, 1984.

Facility Cost: $42,914 as adjusted (Accountant's Certification was provided).

3. Evaluation of Application

To correct the discharge of excessive wood-dust emissions which occurred during frequent plug-ups of a cyclone on a process material metering bin, Willamette Industries made a major modification to this phase of the operation. They installed a larger metering bin for receiving and dispensing of board furnish material. A Carter-Day bag filter was installed on the bin to collect wood dust emissions from venting of the material transport air.

The company initially claimed the total cost of $71,306.20 for the project which included the expansion and moving of a used bin and installation of a new bin vent filter. The Department recognizes that a larger bin could have reduced cyclone plug-ups and emissions had the original cyclone material entry configuration been retained. However, the larger bin is believed to be primarily production related rather than pollution control. The bin vent filter used on the replacement bin had an item cost of $5,210. The installation of this filter on the original bin would not have been a viable solution to the problem.

To resolve this matter, the Department requested that the company provide a cost increment of the bin size which would be necessary to accommodate the bag filter. This requirement had also been noted in the preliminary certification approval by the Department.

The company responded with a cost proposal for installing a Western Pneumatics air filter on the original bin and cyclone as an alternate to the enlarged bin and bag filter. The cost of equipment, materials and installation was estimated at $42,914.

The Statutes allow the Commission to consider alternative methods, equipment and cost for achieving the same pollution control objective. The vendor supplied cost estimate of installing a bag filter on the existing bin is an alternative believed to be a reasonable value for the pollution control portion of the actual constructed facility. Therefore, the $42,914 cost determined by the alternative analysis should be allocated as 100 percent pollution control.

The quantitative reduction in mass particulate matter is unknown. The facility is now in compliance with visible particulate emission standards.

The application was received on February 5, 1985, additional information was received on April 25, 1985 and October 16, 1985.

4. Summation

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

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

c. The facility is designed for and is being operated for the principal purpose of preventing, controlling or reducing pollution and was required by the Department.

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 $42,914.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $42,914 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1724.

Donald K. Neff:a
AL529
(503) 229-6480
November 4, 1985

Application No. T-1728

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Pope & Talbot, Inc.
PO Box 400
Halsey, OR 97348

The applicant owns and operates a pulp and paper manufacturing plant utilizing the Kraft process at 30470 American Drive, Halsey, Oregon.

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

2. Description of Claimed Facility

The facility described in this application consists of an electrostatic precipitator upgrading.

Request for Preliminary Certification for Tax Credit was made on 04/04/84 and approved on 05/09/84

The facility is subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on 05/07/84, completed on 06/19/84, and the facility was placed into operation on 06/19/84.

Facility Cost: $1,021,058.21 of which $309,401.02 is eligible. (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility is an upgrading of an existing electrostatic precipitator for which tax credit had been received. The upgrading consists of enlarging the existing precipitator by increasing the height of the collecting surface from 24 feet to 32 feet 10 inches, installation of pneumatic rappers, addition of a second transformer rectifier to the outlet field and replacement of wire electrodes with new mast electrodes.

The claimed facility was required by the Department to reduce particulate emissions which were being discharged at a rate close to permit levels and occasionally in excess of permit levels. Emissions were reduced from 1,633 lbs/day to 545 lbs/day--a net reduction of 1,088 lbs/day.

The claimed facility has been inspected by Department personnel and was found to be operating in compliance.

Since the existing precipitator had received tax credit the eligible facility costs are limited. The eligible facility costs consist of the costs associated with the second transformer rectifier on the

second field and that portion of the remaining claimed facility cost that is attributable to the increased collecting surface.

Second Transformer Rectifier Costs -- $24,060.18

*Costs Attributable to Increased Collection Surface --

$$\text{Percent increase} = \frac{\text{new height - original height}}{\text{new height}}$$

$$\text{Percent increase} = \frac{32.83 \text{ ft} - 24.00 \text{ ft}}{32.83 \text{ ft}} = \frac{8.83 \text{ ft}}{32.83 \text{ ft}} = 0.2862$$

* = 0.2862 (claimed facility cost - transformer rectifier costs)
* = 0.2862 ($1,021,058.21 - $24,060.18)
* = 0.2862 ($996,998.03) = $285,340.84

Eligible Facility Cost = $24,060.18 + $285,340.84 = $309,401.02.

The value of the additional amount of saltcake (sodium sulfate) collected is estimated to be $26,518.20 annually, based on a value of $137.40 per ton.

Based on an eligible facility cost of $309,401.02, an annual cash flow of $26,518.20 and a useful life of 15 years, the portion of the eligible facility cost allocable to pollution control based on the "Pollution Control Tax Credit Handbook" is 84 percent.

The application was received on 04/22/85, additional information was received on 07/16/85, and the application was considered complete on 07/16/85.

4. Summation

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

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

c. The facility is designed for and is being operated for the principal purpose of preventing, controlling or reducing pollution and was required by the Department.

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 eligible facility cost that is properly allocable to pollution control is 84 percent.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the eligible cost of $309,401.02 with 84 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1728.

W. J. Fuller:s
AS1816
(503) 229-5749
November 5, 1985

STATE OF OREGON - DEPARTMENT OF ENVIRONMENTAL QUALITY

Tax Relief Application Review Report

---

1. Applicant

Praegitzer Industries, Inc.
1270 Monmouth Cutoff
Dallas, OR 97338

The applicant owns and operates a printed circuit board manufacturing facility in Dallas, 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 heavy metal (copper, nickel, and gold) pretreatment removal system and pH neutralization system.

Request for Preliminary Certification for Tax Credit was made March 8, 1984 and approved April 25, 1984.

The facility is subject to the 1983 tax credit legislation.

Construction was initiated on the claimed facility April 1984, completed June 1984, and the facility was placed into operation June 1984.

Facility Cost: $70,606.50. (Accountant's Certification was provided).

3. Evaluation of Application

In early 1984, Praegitzer Industries, Inc., constructed a new specialty printed circuit board process line. Since the existing wastewater treatment system did not have adequate capacity to serve the new line, it was decided to construct a new treatment system to serve the new line. The treatment facility consists of electrolytic metal removal equipment, flocculation and settling facilities to remove heavy metals. Settled metal sludges are dewatered in a filter press and barrelled for final disposal at Arlington. Historically, about 1 to 2 barrels of sludge are generated per month. Copper and nickel removed by the electrolytic processes results in a sludge of some value. To date, nickel sludges have been sent to Arlington and copper sludges have been stored on-site. As yet there has been no sale of copper sludge. Although the electrolytic process generates a

3. Evaluation of Application (Continued)

metal sludge which is recoverable, the electrical cost to run this system far outweighs the value of the recoverable metals. The treated effluent from this facility flows to the City of Dallas sewerage system. The Environmental Protection Agency established federal pretreatment standards in July, 1983, which requires metal finishing facilities (including printed circuit board manufacturing) to meet specific effluent limits prior to discharging to publicly owned municipal sewerage systems. The Department has an ongoing program to work with municipalities to insure compliance with these pretreatment requirements. The facility has consistently met the pretreatment requirements of the city and of the Environmental Protection Agency. 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 for the principal purpose of preventing, controlling or reducing water pollution and was required by U. S. EPA.

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $70,606.50, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1732.

Larry D. Patterson/m
229-5374
September 18, 1985
WM540

Application No. T-1742

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

International Paper Company
Industrial Packaging Group
77 West 45th Street
New York, NY 10036

The applicant owns and operates a pulp and paper mill utilizing the Kraft process at Gardiner, Oregon.

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

2. Description of Claimed Facility

The facility described in this application consists of an AirPol Venturi Impactor Scrubber.

Request for Preliminary Certification for Tax Credit was made on May 17, 1984 and approved on June 5, 1984.

The facility is subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on October 1, 1984, completed on October 15, 1984, and the facility was placed into operation on October 15, 1984.

Facility Cost: $152,380.96 (Accountant's Certification was provided).

3. Evaluation of Application

The applicant has installed an AirPol Venturi Impactor Scrubber to control emissions from the smelt dissolving tank vent (SDTV) #3. The scrubber functions by exposing the flue gas to a counter-current flow of weak wash prior to emission. The claimed facility replaces an obsolete demister pad system which was used for several months in an effort to achieve compliance. The demister system was never certified as an air pollution control facility.

The claimed facility was source tested upon completion to determine compliance. The source test results indicated that the SDTV #3 particulate emissions were reduced to 100 lbs/day or less, significantly below the 230 lbs/day permit limit. Prior to installation of the claimed facility, emissions were in excess of 300 lbs/day.

The claimed facility was required by the Department to reduce SDTV #3 emissions to achieve compliance with Department regulations and permit conditions.

Sodium carbonate is removed and converted to green liquor by the weak wash, the main scrubbing media. Recovery of this material results in a $366.00 per month saving on sodium carbonate cost or $4,392.00 per year. Annual operating expenses total $14,688.03 and are broken down as follows:

Utilities	$11,507.00
Maintenance	64.00
Property tax	2,393.17
Insurance	723.86
Total	$14,688.03

Since the annual operating expenses exceed the savings resulting from recovery of sodium carbonate, there is no return on the investment in the facility and 100% of the claimed facility cost is allocable to pollution control.

The application was received on June 5, 1985, additional information was received on September 30, 1985, and the application was considered complete on September 30, 1985.

4. Summation

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

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

c. The facility is designed for and is being operated for the principal purpose of preventing, controlling or reducing pollution and was required by the Department.

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%.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $152,380.96 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1742.

William J. Fuller:p
AP202
(503) 229-5749
October 1, 1985

Application No. T-1746

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Owens-Corning Fiberglas Corporation
Trumbull Asphalt Division
Fiberglas Tower
Toledo, OH 43659

The applicant owns and operates an asphalt flux processing plant utilizing air blowing in vertical stills at 3605 NW 35th Street, Portland, Oregon.

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

2. Description of Claimed Facility

The facility described in this application consists of a fume incinerator installation.

Request for Preliminary Certification for Tax Credit was made on April 24, 1984 and approved on July 31, 1984.

The facility is subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility in May 1984, completed on July 31, 1984, and the facility was placed into operation on July 31, 1984.

Facility Cost: $97,745 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility consisting of a fume incinerator, induced fan, controls and ducting was required to control fumes from the asphalt blowing process. The excessive emissions occurred as a result of a drastic change in boiler firing rate resulting from a process change which reduced plant steam requirements from 20,000-25,000 lbs/hr to 3,000 lbs/hr. This adversely affected incineration of the fumes in the boiler resulting in complaints and the Department requiring corrective action.

The claimed facility has been inspected and has been found to be operating in compliance with Department regulations and permit conditions. There has been no further complaints and source test results indicate emissions are well below allowable levels.

The waste heat from the fume incinerator is recovered by a waste heat boiler, which is not a part of the claimed facility, resulting in an average monthly fuel saving of approximately $2,400 for an annual saving of approximately $28,800. Operating expenses for the claimed facility exclusive of depreciation, taxes and fuel is $24,123. A breakdown of this amount is as follows:

Maintenance	-	$15,000
Electrical	-	3,708
Chemicals	-	5,415
		$24,123

Therefore, the applicant realizes an annual net savings of $4,677 ($28,800 - $24,123) from operation of the claimed facility.

Based upon an annual cash flow of $4,677, 10 year useful life and a facility cost of $97,745, the portion of costs allocable to pollution control using the method outlined in the "Pollution Control Tax Credit Handbook" is 100 percent.

The application was received on June 17, 1985, additional information was received on October 4, 1985, and the application was considered complete on October 4, 1985.

4. Summation

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

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

c. The facility is designed for and is being operated for the principal purpose of preventing, controlling or reducing pollution and was required by the Department.

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 $97,745 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1746.

W. J. Fuller:s
AS1900
(503) 229-5749
October 17, 1985

STATE OF OREGON - DEPARTMENT OF ENVIRONMENTAL QUALITY

Tax Relief Application Review Report

---

1. Applicant

Roseburg Lumber
P. O. Box 1088
Roseburg, OR 97470

The applicant owns and operates a lumber, particle board, and plywood manufacturing facility in Dillard, 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 system of 5 groundwater monitoring wells. The wells consist of 2" diameter schedule 80 PVC casings with steel security caps.

Request for Preliminary Certification for Tax Credit was made September 5, 1984 and approved October 4, 1984.

The facility is subject to the 1983 tax credit legislation.

Construction was initiated on the claimed facility October 10, 1984, completed October 27, 1984, and the facility was placed into operation October 27, 1984.

Facility Cost: $41,366.58. (Accountant's Certification was provided).

3. Evaluation of Application

Roseburg Lumber Company operates an industrial solid waste disposal site near Dillard. The site is operating under a permit from the Department and is authorized to receive boiler ash and log deck cleanup materials. Due to concerns about possible contamination of industrial solvents (methyl isobutyl ketone) which may have been disposed in the landfill, the Environmental Protection Agency required a groundwater monitoring program under RCRA 3013 Order dated March 27, 1984. The waste disposal site is east of the South Umpqua River in Dillard. The 5 monitoring wells were placed downgradient of the site, between the site and the river. The company is currently gathering groundwater data to determine the extent of any environmental impact. This facility was required by the federal government. 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 for the principal purpose of preventing, controlling or reducing water pollution, and was required by U. S. EPA.

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $41,366.58, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1749.

Larry D. Patterson:m
229-5374
September 11, 1985
WM541

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

International Paper Company
Gardiner Paper Mill
Industrial Packaging
77 West 45th Street
New York, NY 10036

The applicant owns and operates a pulp and paper mill utilizing the Kraft process at Gardiner, Oregon.

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

2. Description of Claimed Facility

The facility described in this application consists of two continuous emissions monitoring systems and associated equipment.

Request for Preliminary Certification for Tax Credit was made on August 3, 1983 and approved on August 10, 1983.

The facility is subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on August 15, 1983, and considered complete on December 6, 1984.

Facility Cost: $207,853.09 (Accountant's Certification was provided), of which $187,853.09 is eligible.

3. Evaluation of Application

The claimed facility consisting of two Standard Technology Inc. (STI) monitoring systems, diluent analyzer and data processor was installed to monitor emissions from the lime kiln stack and from the stack serving two recovery boilers. The claimed facility, which monitors total reduced sulfur (TRS), sulfur dioxide (SO_2) and oxygen levels, replaced two Barton analyzers, which were certified as pollution control facilities on certificate nos. 123 and 127. The Barton analyzers were replaced because a plant modification resulted in the addition of monitors meeting federal New Source Performance Standards. The previous Barton monitors exhibited inadequate resolution of TRS and SO_2 levels below permitted levels and consistent operating problems resulting in undesirable amounts of void or unreliable data. The data collected is required by the Department to determine compliance. The applicant also uses the data to determine operating problems in sufficient time to avoid exceedance of permitted levels and to minimize emissions.

The claimed facility has been subjected to certification tests by independent contractors retained by the applicant. The certification tests demonstrate compliance with EPA Standards of Performance for continuous monitoring of TRS and SO_2 at Kraft mills. The claimed facility has also been inspected by Department personnel and has been found to be meeting Department and EPA requirements for collection of TRS and SO_2 data.

Since the replaced Barton analyzers had received tax credit and the certificates for both previous facilities have expired, i.e., all of the tax credit has been used, the claimed facility cost must be reduced by the like-for-like replacement cost of the original facilities per OAR 340-16-025(3)(f)(A). Therefore, the claimed facility cost of $207,853.09 must be reduced by $20,000 the like-for-like replacement cost of the original facility to arrive at the eligible cost of $187,853.09. The claimed facility produces no economic benefit. Therefore, there is no return on the investment in the facility and 100 percent of the eligible facility cost is allocable to pollution control.

4. Summation

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

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

c. The facility is designed for and is being operated for the principal purpose of preventing, controlling, or reducing pollution and was required by the Department and the EPA.

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 of the eligible cost.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $187,853.09 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1753.

W. J. Fuller:s
AS1992
(503) 229-5749
November 8, 1985

Application No. T-1754

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Praegitzer Industries, Inc.
1270 Monmount Cut-Off Road
Dallas, OR 97338

The applicant owns and operates an electronics plant fabricating printed circuit boards at 1270 Monmouth Cut-Off Road, Dallas, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is a fume scrubber installation.

Request for Preliminary Certification for Tax Credit was made on October 29, 1984, and approved on December 12, 1984.

The facility is subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on March 1, 1985, completed on June 19, 1985, and the facility was placed into operation on June 19, 1985.

Facility Cost: $92,016.00 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility, consisting of a fume scrubber, ducting, associated wiring, and fresh and waste water plumbing, was installed by the applicant to reduce acidic and caustic fumes emitted from plating, etching and stripping operations. Prior to installation of the claimed facility these fumes were being discharged uncontrolled into the atmosphere adjacent to an expanding residential area.

The installation was inspected by Department personnel and was found to be operating in compliance with Department regulations. All discharge water from the scrubber is routed to the sanitary sewer after treatment.

The claimed facility, which is used solely for air pollution control, produces no income. The reported annual cost for operation of the claimed facility is $21,000. Therefore, 100 percent of the claimed facility cost is allocable to pollution control.

4. Summation

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

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

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

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

e. The portion of the facility cost that is properly allocable to pollution control is 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 $92,016.00 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1754.

W J. Fuller:s
AS1993
(503) 229-5749
November 8, 1985

Application No. T-1755

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Willamette Industries, Inc.
Duraflake Division
3800 First Interstate Tower
Portland, OR 97201

The applicant owns and operates a particleboard manufacturing plant at Albany.

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

2. Description of Claimed Facility

The facility described in this application is a negative air system and bag filter for controlling fugitive wood dust emissions from the dry material storage building.

Request for Preliminary Certification for Tax Credit was made on May 19, 1983 and approved on September 12, 1983.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on July 1, 1983 completed on September 20, 1983, and the facility was placed into operation on July 15, 1983.

Facility Cost: $33,587.73 (Accountant's Certification was provided).

3. Evaluation of Application

The loading and unloading of dry wood chips in a raw material storage building stirs up wood dust which exits through openings in the building as fugitive dust emissions. Ambient air monitoring in the plant vicinity has documented violations of the particulate ambient air emission standards.

To reduce the dust emissions from the building, Willamette Industries installed a negative air system which pulls the dust laden air into a bag filter for collection of the wood fines. The system consists of a Carter Day 144 RJ-72 bag filter, a fan and connecting ducting.

The Department considers the control of emissions from this source to be a factor in maintaining ambient air compliance in the vicinity. The facility is designed for and is being operated to a substantial extent for the purpose of reducing air pollution.

The cost of operation is estimated at about $8,492 per year. There is no significant income from the wood dust material collected. Therefore, the facility is 100 percent eligible as a pollution control facility.

4. Summation

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

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

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

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

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

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $33,587.73 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1755.

D. Neff:s
AS1984
(503) 229-6480
November 8, 1985

Application No. T-1756

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Willamette Industries, Inc.
Duraflake Division
3800 First Interstate Tower
Portland, OR 97201

The applicant owns and operates a particleboard manufacturing plant at Albany.

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

2. Description of Claimed Facility

The facility described in this application consists of adding the cyclone exhaust from a newly installed wood material refiner to an existing modified Rotoclone wet scrubber.

Request for Preliminary Certification for Tax Credit was made on April 10, 1984 and approved on February 28, 1984.

The facility is subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983.

Construction was initiated on the claimed facility on April 25, 1984, completed on April 30, 1984, and the facility was placed into operation on May 1, 1984.

Facility Cost: $44,964.24 (Accountant's Certification was provided).

3. Evaluation of Application

Willamette Industries installed a second raw material refiner at their Duraflake particleboard plant at Albany. The air exhaust from the material transport system cyclone was ducted to a wet scrubber to control dust emissions. The wet scrubber was an existing unit in service to control emissions from the cyclone on refiner no. 1.

The cost claimed included expanding the Rotoclone scrubber to service two refiners and ducting the exhaust air to the scrubber.

The Department has certified the installation in compliance with the emission standards. There is no economic benefit to the company for installing and operating the scrubber. The scrubber and associated ducting has a sole purpose to reduce pollution. Therefore, the claimed facility is 100 percent eligible as a pollution control facility.

4. Summation

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

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

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

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

e. The portion of the facility cost that is properly allocable to pollution control is 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 $44,964.24 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1756.

D. Neff:s
AS1987
(503) 229-6480
November 7, 1985

Application No. T-1770

STATE OF OREGON - DEPARTMENT OF ENVIRONMENTAL QUALITY

Tax Relief Application Review Report

---

1. Applicant

Far West Fibers, Inc.
P.O. Box 503
Beaverton, OR 97075

The applicant owns and operates a waste paper recycling facility at Beaverton, Oregon.

Application was made for tax credit for a solid waste recycling facility.

2. Description of Claimed Facility

The facility described in this application is a Force Northwest stationary receiver container model Nol. C40 to receive loose cardboard for recycling.

Request for Preliminary Certification for Tax Credit was made April 30, 1985 and approved May 31, 1985.

The facility is subject to the 1983 tax credit legislation.

Construction was initiated on the claimed facility July 1, 1985, completed August 8, 1985, and the facility was placed into operation August 8, 1985.

Facility Cost: $5569. Copies of the invoice and cancelled check were provided.

3. Evaluation of Application

The sole purpose of the container is to receive loose cardboard from a compactor located at united Grocers Warehouse for transfer to a cardboard bailer at the Far West Fibers Warehouse for recycling. Approximately 50 tons of cardboard will be recycled monthly. A request for the Tax Credit Certification by United Grocers for the compacter is pending. Average annual cash flow was estimated at $590. Return on investment factor = $5569 divided by $590 or 9.44. using the return on Investment Table 1 in OAR 340-16-030 for a 10 year life a 1.00% ROI was established. From Table 2 a reference % return of 19.90 was found. Percent allocable was obtained by $\frac{\text{RROI - ROI}}{\text{RROI}}$ X 100 or

$$\frac{19.90 - 1.00}{19.90} \times 100 = 95\%$$

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

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

(1) The sole purpose of the facility is to utilize material that would otherwise be solid waste, by chemical process use of materials which have useful physical properties and which may be used for the same or other purposes.

(2) The end product of the utilization, other than a usable source of power, is competitive with an end product produced in another state; and

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

c. Facility is designed for and is being operated for the sole purpose of preventing, controlling or reducing a substantial quantity of solid waste.

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

e. The portion of the facility cost that is properly allocable to pollution control is 95%.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $5569, with 95% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1770.

Ernest A. Schmidt:f
229-5157
October 25, 1985
SF453

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: Addendum to Agenda Item C, Nov. 22,1985 EQC Meeting

Tax Credit Applications

Director's Recommendations

It is recommended that the Commission take the following action:

1. Revoke Pollution Control Facility Certificates 822, 830, 1018, 1019, 1022, 1336, 1339, and 948 issued to Champion International Corporation and reissue them to Freres Lumber Company. (letters attached)

Fred Hansen

SChew
229-6484
11/20/85

State of Oregon
Department of Environmental Quality

REISSUANCE OF POLLUTION CONTROL FACILITY CERTIFICATES

1. Certificates issued to:

   Champion International Corporation
   Champion Building Products
   PO Box 10228
   Eugene, OR 97440

   The certificates were issued for air, water, and solid waste pollution control facilities.

2. Summation:

   The Environmental Quality Commission has issued 8 certificates to the Champion International Corporation in Lebanon and Idanha, Oregon. These facilities have subsequently sold to Freres Lumber Co. The certificates were issued in 1977, 1978, 1979, and 1981. (Copies attached) Champion has notified the Department of the sale of their mill and Freres has requested a reissuance of the certificates under their name. (letters attached)

3. It is recommended that Pollution Control Certificate Nos.822, 830, 1018, 1019, 1022, 1336, 1339, and 948 be revoked and reissued to Freres Lumber Company; the certificates to be valid only for the time remaining from the date of the first issuance.

SChew
229-6484
11/20/85

Timberlands
P.O. Box 849
Eugene, Oregon 97440
503 687-4647

Champion
Champion International Corporation

November 18, 1985

Freres Lumber Company
Box 312
Lyons, OR 97358

Gentlemen:

The pollution control certificates listed below are available for use as a deduction from Oregon Income Tax. If you wish to use the remaining credit, you must ask the DEQ in Portland to transfer the certificates to Freres Lumber Co. I have notified the DEQ that Lebanon and Idanha have been sold to Freres Lumber Co., and listed the certificates available for transfer.

Certificate No.	Credit Remaining 1/1/85	Yearly Credit	Used By CBP	Remaining 1985 Credit
822 2/3 of Cert.	$ 14,814	$ 7,409	$1,852	$ 5,557
830	1,486	743	186	557
1018	19,217	4,805	1,201	3,604
1019	10,054	2,514	629	1,885
1022	30,386	7,597	1,899	5,698
1336	10,720	1,787	447	1,340
1339	145,409	24,235	6,059	18,176
948	30,420	10,140	2,535	7,605

Because Champion operated the mills for three months in 1985, we will take one-fourth of the credit available for 1985. Copies of the certificates are enclosed for reference.

Very truly yours,

Wm. F. Rapp

Marvin F. Rapp

MFR/se
Enclosures
cc W. O. Larson

Freres
LUMBER CO., Inc.

P. O. Box 312 / Lyons, Oregon 97358-0312
503-859-2121

November 20, 1985

Ms. Maggie Conley
Department of Environmental Quality
522 S.W. Fifth Avenue
Portland, OR 97204

Dear Ms. Conley:

Freres Lumber Co., Inc. purchased Champion International's Lebanon and Idanha facilities on September 30, 1985. We request transfer of the enclosed pollution control certificates to our firm for use as a deduction from Oregon Income Tax.

If I may be of any assistance I may be contacted at 859-2121.

Sincerely,

Robert Freres, Jr.

Robert Freres, Jr.
Vice President

Certificate No. 822

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 9-23-77

Application No. T-905

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: *Champion International Corporation* Champion Building Products *Division* P. O. Box 10228 Eugene, Oregon 97401	Location of Pollution Control Facility: Lebanon, Oregon
As: ☐ Lessee ☒ Owner XX	

Description of Pollution Control Facility:

Buffalo No. B-48-20 baghouse filter system on cyclones #37 and #38; LEBANITE
Buffalo No. B-96-20 baghouse filter system on cyclones #44 and #45;
Buffalo No. B-80-20 baghouse filter system on cyclones #24, #25 and #27

Type of Pollution Control Facility: ☒ Air ☐ Water ☐ Solid Waste

Date Pollution Control Facility was completed: February 1972 Placed into operation: February 1972

Actual Cost of Pollution Control Facility: $ 285,970.00

Percent of actual cost properly allocable to pollution control: 80% or more

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.

Signed _____

Title Joe B. Richards, Chairman

Approved by the Environmental Quality Commission on the 23rd day of September, 19 77

DEQ/TC-6 1-76

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 830

Date of Issue 9-23-77

Application No. T-914

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: *Champion International Corporation* Champion Building Products *Division* P. O. Box 10228 Eugene, Oregon 97401	Location of Pollution Control Facility: Lebanon, Oregon Linn Co
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Glue waste recirculation

Type of Pollution Control Facility: ☐ Air ☒ Water ☐ Solid Waste

Date Pollution Control Facility was completed: October 1973 Placed into operation: October 1973

Actual Cost of Pollution Control Facility: $ 14,859.00

Percent of actual cost properly allocable to pollution control: 80% or more

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.

Signed _____

Title Joe B. Richards, Chairman

Approved by the Environmental Quality Commission on the 23rd day of September, 19 77

DEQ/TC-6 1-76

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 1018

Date of Issue 11/16/79

Application No. T-1122

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Champion International Corp. Champion Building Products P. O. Box 10228 Eugene, Oregon 97440	Lebanon, Oregon
As: ☐ Lessee ☒ Owner	
Description of Pollution Control Facility: Two (2) baghouses to control wood dust emissions from cyclones #39 and #47.	
Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil	
Date Pollution Control Facility was completed: 7/1/77	Placed into operation: 8/3/77
Actual Cost of Pollution Control Facility: $ 96,094.00	
Percent of actual cost properly allocable to pollution control: 80% or more	

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 Joe B. Richards

Title Joe B. Richards, Chairman

Approved by the Environmental Quality Commission on the 16th day of November 19 79

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 1019

Date of Issue 11/16/79

Application No. T-1123

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Champion International Corporation Champion Building Products P. O. Box 10228 Eugene, Oregon 97440	Lebanon, Oregon
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Veneer dryer washdown water recirculation system.

Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 10/15/77 **Placed into operation:** 11/28/77

Actual Cost of Pollution Control Facility: $ 50,276.00

Percent of actual cost properly allocable to pollution control:

80% or more

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 Joe B. Richards

Title Joe B. Richards, Chairman

Approved by the Environmental Quality Commission on the 16th day of November, 1979

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 1022

Date of Issue 11/16/79

Application No. T-1127

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Champion International Corporation Champion Building Products P. O. Box 10228 Eugene, Oregon 97440	Lebanon, Oregon
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Clarke Baghouse for control of sanderdust emissions.

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: 7/1/77 Placed into operation: 7/15/77

Actual Cost of Pollution Control Facility: $ 151,937.00

Percent of actual cost properly allocable to pollution control: 80% or more

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 16th day of November, 1979

DEQ/TC-6 10/79

SP*54311-340

Certificate No. 1336

Date of Issue 12/4/81

Application No. T-1430

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Champion International Corporation Building Products Division P. O. Box 10228 Eugene, OR 97440	Lebanon, Oregon
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

A wastewater recirculation system consisting of a Liquatex separator with a 1 1/2 Hp pump, a 15 Hp recirculation pump, piping, an 8'x8'x8' concrete sump with a Brill oil skimmer and a 5 Hp pump.

Type of Pollution Control Facility: ☐ Air ☐ Noise ☒ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: Nov. 1979 Placed into operation: Nov. 1979

Actual Cost of Pollution Control Facility: $ 35,735.00

Percent of actual cost properly allocable to pollution control: 80% or more

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, 1981.

Certificate No. 1339

Date of Issue 12/4/81

Application No. T-1433

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Champion International Corp. Building Products Division P. O. Box 10228 Eugene, OR 97440	Location of Pollution Control Facility: Lebanon, Oregon
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Ducting of veneer dryer exhaust gases from six dryers to a hogged fuel boiler for incineration.

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: May 1978 Placed into operation: Sept. 1, 1978

Actual Cost of Pollution Control Facility: $ 484,699.00

Percent of actual cost properly allocable to pollution control: 80% or more

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, 1981.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 948

Date of Issue 12/15/78

Application No. T-1026

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Champion International Corporation Champion Building Products P.O. Box 10228 Eugene, Oregon 97440	P.O. Box 248 Idanha, Oregon 97350
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Hog fuel preparation system consisting of (1) Lamb Grays Harbor Hammer Hog (s/n 76115-1), electric motor and related equipment, and (2) Peerless 42.5 unit mono bin, conveyors and related equipment.

Type of Pollution Control Facility: ☐ Air ☐ Noise ☐ Water ☒ Solid Waste

Date Pollution Control Facility was completed: September 1, 1977 Placed into operation: Sept. 1, 1977

Actual Cost of Pollution Control Facility: $202,800.32

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 or water facility was constructed on or after January 1, 1967, the solid waste facility was under construction on or after January 1, 1973, or the noise facility was constructed on or after January 1, 1977, and the facility is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water, noise or solid waste pollution, and that the facility is necessary to satisfy the intents and purposes of ORS Chapter 459, 467 or 468 and the regulations 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.

Signed _____

Title Joe B. Richards, Chairman

Approved by the Environmental Quality Commission on the 15th day of December, 1978.

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 E, November 22, 1985

Request for Authorization to Conduct a Public Hearing on Proposed Hazardous Waste Management Fees OAR 340-105-120

Background

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (also known as CERCLA or Superfund) established a national program for cleaning up uncontrolled hazardous waste sites. Funded by a combination of taxes on petroleum products, forty-two industrial chemicals, and federal tax dollars, CERCLA also requires state matching funds before a federally funded cleanup can begin. For a site located on private land, the state match is 10% of the construction costs and first year operating costs. For a site on publicly-owned land, the state match is 50%. After the first year, the operating and maintenance requirements must be fully funded by the state.

Over the last five years, five Oregon sites have been placed on the National Priorities list for possible detailed investigation and/or remedial action under the federal Superfund program. The five sites are:

Site/City	Principal Contaminant	Project Status	Probable Funding of Remedial Action
United Chrome, Corvallis	Hexavalent chrome	Remedial Investigation/ feasibility study completed	Federal funds
Gould Battery, Portland	Lead	Remedial Investigation/ feasibility study underway	Responsible party (Gould)
Martin Marietta, The Dalles	Cyanide	Remedial investigation/ feasibility study underway	Responsible party (Martin Marietta)
Umatilla Army Depot, Hermiston	Nitrates	Preliminary Assessment completed	Responsible Party (Department of Defense)
Teledyne Wah Chang, Albany	Radio-activity	Preliminary Assessment completed	Responsible party (Teledyne Wah Chang)

Based on the Remedial Investigation/Feasibility study completed for United Chrome, the remedial action may cost 2 million dollars to implement. The preferred alternative is yet to be selected, therefore, final plans and cost estimates have yet to be prepared. Since the City of Corvallis owns the land upon which the leased facility sits, the state's share is at least 50% or one (1) million dollars. The cost may be more since several of the alternatives include a 3-10 year program for treating groundwater which would require 100% state funding after the first year. Faced with a declining market for its services (United Chrome was heavily dependent on the wood products industry for business) and escalating cleanup liability costs, United Chrome voluntarily dissolved recently.

In anticipation of several federally funded cleanup projects being undertaken in Oregon, the Department approached the 1985 Legislature with a bill (HB 2146) to create a permanent financing mechanism for a State CERCLA matching account. Although originally patterned similar to the industry fees in the federal CERCLA program (a tax on petroleum products and industrial chemicals), after extensive debate a tax on hazardous waste and polychlorinated biphenyl (PCB) disposal was adopted. Chapter 733, Oregon Laws 1985 became effective September 20, 1985 and imposes a $10 per dry weight ton fee on operators of hazardous waste and PCB incineration and disposal facilities. At this time only one facility in Oregon, the Arlington Hazardous Waste Disposal facility, will be subject to this fee requirement. The hazardous waste management fees collected will be deposited in Oregon's CERCLA matching account.

Section 19 of Chapter 733 further directs that the fees shall be calculated in the same manner as provided in Section 231 of CERCLA (see Attachment VI). Since Section 231 per se does not include any formula for calculating the fee, inquiries were made to the federal Internal Revenue Service (the agency designated to collect the fees) and the Environmental Protection Agency. Neither agency has developed any guidance on how to determine "dry weight ton." The EPA representative indicated that they tried in 1983, but because of the heterogenous nature of hazardous waste could not develop a practical definition. The EPA representative further indicated that should Congress reauthorize this provision, it sunseted on September 30, 1985, Congress is prepared to change "dry weight ton" to "wet weight ton." Wet weight would be defined as the weight in tons as measured at the time of delivery to a disposal site.

Considering there is no guidance available from either EPA or the federal IRS, its incumbent upon Oregon to adopt a rule setting out the procedure to calculate the proposed hazardous waste management fee.

Therefore, the proposed rule OAR 340-105-120, is the subject of this agenda item.

Discussion

The Department proposes to amend OAR 340 - Division 105 by adding a new rule OAR 340-105-120 relating to hazardous waste management fees.

Alternatives and Evaluation

The proposed amendment to OAR 340- Division 105 is a codification of statutory changes contained in Section 19(1) of Chapter 733, Oregon Laws 1985 and includes a definition of dry weight ton. In the absence of any federal guidance on calculating fees under CERCLA, and considering EPA's inability to define "dry weight ton" in 1983, the Department proposed

that "dry weight ton" mean actual weight as measured at the time of delivery. Since Chem-Security Systems, Inc. has previously installed a truck scale, they are capable of implementing this proposed rule on January 1, 1986 without any capitol expenditure being required.

The Department proposes to solicit public comments (Attachment IV) on the proposed rule prior to presenting a final recommendation to the Commission.

Summary

1. The federal Superfund program (CERCLA) currently requires a state match in order for a federal funded hazardous waste cleanup project to be undertaken in a state.

2. Section 19(1) of Chapter 733, Oregon Laws 1985 established a State CERCLA matching account to be financed by a $10 per dry weight ton fee on hazardous waste and PCB incinerated or disposed of.

3. Section 19(1) further directs that the fee shall be calculated in the same manner as provided in Section 231 of CERCLA.

4. Since neither EPA or federal IRS defined "dry weight ton" the Department must come up with its own definition. The Department proposed that dry weight ton mean actual weight as measured at time of delivery to the Arlington disposal site.

5. The attached proposed rule, OAR 340-105-120 codifies Section 19(1) of Chapter 733, Oregon Laws 1985 and defines how to calculate the hazardous waste management fee.

Director's Recommendation

Based on the summation, it is recommended that the Commission authorize a public hearing to take testimony on proposed rule OAR 340-105-120.

Michael Downs for
Fred Hansen

Attachments I. Statement of Need for Rule
II. Statement of Land Use Consistency
III. Proposed Rule OAR 340-105-120
IV. Draft Public Notice of Rule
V. Chapter 733, 1985 Oregon Laws (HB 2146)
VI. Section 231 of CERCLA

Richard P. Reiter:f
229-5774
October 29, 1985
ZF462

Attachment I
Agenda Item No. E
11-22-85 EQC Meeting

Before the Environmental Quality Commission of the State of Oregon

In the Matter of	)	Statement of Need for
Proposed Rule	)	Proposed Rule and Fiscal
OAR 340-105-120	)	and Economic Impact

Statutory Authority

Section 19(1) of Chapter 733, Oregon Laws 1985 imposes a $10 per dry weight ton fee on hazardous waste and PCB incinerated and disposed of.

Section 5(3) of Chapter 733, Oregon Laws 1985 directs the Environmental Quality Commission to adopt any rules necessary to carry out the provisions of Chapter 733.

Need for the Rule

Proposed rule OAR 340-105-120 codifies Section 19(1) of Chapter 733, Oregon Laws 1985 and defines dry weight ton. In the absence of any EPA or federal IRS guidance, dry weight ton is defined to be actual weight as measured at the time of delivery to a disposal facility.

Principal Documents Relied Upon

Chapter 733, Oregon Laws 1985
Comprehensive Environmental Response, Compensation and Liability Act of 1980

Fiscal and Economic Impact

A $10 a ton increase in disposal charges at the Arlington Disposal Site would raise the average per ton disposal costs from $200 to $210 or about 5%. In calendar year 1983, approximately 32,000 tons of wastes were disposed of at the Arlington Disposal site. Approximately 30% of that came from Oregon companies or about 9600 tons. At 9600 tons, Oregon companies would have payed $96,000 into the Oregon CERCLA matching account. Out-of-state companies utilizing the Arlington Disposal site would have paid $224,000 into the CERCLA matching Account.

With the exception of small quantity generators, the burden would fall evenly on all generators in proportion to the weight of hazardous waste or PCBs incinerated or disposed of. Small quantity generators disposing of exempted quantities at local landfills would not be affected since the fee is payable only by operators of facilities subject to the interim status or permitting requirements of the hazardous waste program.

ZF462.I

Attachment II
Agenda Item E
11-22-85 EQC Meeting

Before the Environmental Quality Commission of the State of Oregon

In the Matter of Proposed Rule OAR 340-105-120) Land Use Consistency

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

ZF462.II

Attachment III
Agenda Item E
11-22-85 EQC Meeting

Proposed Rule
OAR 340-105-120

Hazardous Waste Management Fee

340-105-120 1) Except as provided by subsection (2) of this section, beginning January 1, 1986, every person who operates a facility for the purpose of disposing of hazardous waste or polychlorinated biphenyl (PCB) that is subject to interim status or a license issued under ORS 459.410 to 459.450 and 459.460 to 459.690 shall pay a monthly hazardous waste management fee by the 45th day after the last day of each month in the amount of $10 per dry weight ton of hazardous waste or PCB brought into the facility for treatment by incinerator or for disposal by landfill at the facility.

2) When the balance in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund reaches $500,000 minus any moneys approved for obligation under subsection 3 of Section 20 of Chapter 733, Oregon Laws 1985, payment of fees required by subsection (1) of this section shall be suspended upon written notice from the Department. Payment of fees shall resume upon written notice from the Department when approval of funds by the Legislative Assembly or the Emergency Board decrease the balance in the fund to $150,000 or lower.

3) The term hazardous wastes includes any residue or hazardous waste as defined in OAR 340 - Division 101 or 40 CFR Part 261 handled under the authority of interim status or a management facility permit.

4) The term PCB shall have the meaning given to it in OAR 340 - Division 110.

5) The term "ton" means 2000 pounds.

6) The term "dry weight ton" means weight of waste, including containers, in tons determined at the time of receipt at a hazardous waste or PCB management facility.

7) In the case of a fraction of a ton, the fee imposed by subsection (1) of this section shall be the same fraction of the amount of such fee imposed on a whole ton.

8) Every person subject to the fee requirement of subsection 1 of this section shall record actual weight of any hazardous waste and PCB received for treatment by incinerator or disposal by landfilling. Beginning January 1, 1986, the scale shall be licensed in accordance with ORS Chapter 618 by the Weights and Measures Division of the Department of Agriculture.

9) Accompanying each monthly payment shall be a detailed record identifying the basis for calculating the fee that is keyed to the monthly waste receipt information report required by OAR 340-104-075(2)(c) and (2)(d).

10) All fees shall be made payable to the Department of Environmental Quality. All fees received by the Department of Environmental Quality shall be paid into the State Treasury and credited to the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund.

ZF462.3

Attachment IV
Agenda Item E
11-22-85 EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Rule Regarding Hazardous Waste Management Fees

Date Prepared: October 28, 1985
Hearing Date: January 6, 1986
Comments Due: January 6, 1986

WHO IS AFFECTED:

Persons who operate hazardous waste and PCB incinerators and disposal sites and their customers.

BACKGROUND

Chapter 733, Oregon Laws 1985, Section 19(1) requires the Department to collect a $10 per dry weight ton fee on all hazardous waste and PCB incinerated or land disposed of in the state. The collected fees will be used to create an Oregon Comprehensive Environmental Response, Compensation and Liability Act Matching Fund to be used to meet the state's match on federally funded superfund cleanups.

WHAT IS PROPOSED:

A rule, OAR 340-105-120, to implement Section 19(1) Chapter 733 Oregon Laws 1985. Collection of the hazardous waste management fee would begin January 1, 1986.

WHAT ARE THE HIGHLIGHTS:

- Every operator of a facility incinerating or land disposing of hazardous waste and PCBs shall pay a $10 per dry weight ton hazardous waste management fee beginning January 1, 1986.
- "Ton" shall mean 2,000 pounds
- "Dry weight ton" means weight of waste, including containers, in tons determined at the time of receipt at a hazardous waste or PCB management facility.
- Hazardous waste and PCB received by a facility shall be weighed as a basis for calculating the monthly fee.

HOW TO COMMENT:

A public hearing to receive oral comments is scheduled for:

Monday, January 6, 1986
10:00 a.m.
DEQ Portland Headquarters
Room 1400
522 S.W. Fifth Avenue

P.O. Box 1760
Portland, OR 97207

8/16/84

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 1-800-452-4011.

Written comments should be submitted at the public hearing or sent to DEQ, Hazardous and Solid Waste Division, Attn: Richard Reiter, P.O. Box 1760, Portland, OR 97207 by January 6, 1986.

For more information, or to receive a copy of the proposed rules, contact:

Richard Reiter at 229-5774 or toll-free at 1-800-452-4011.

WHAT IS THE NEXT STEP:

After the pubic hearing, DEQ will evaluate the comments, prepare response to comments, and make a recommendation to the Environmental Quality Commission on January 31, 1986.

ZF462.IV

amount contributed by that person or political committee.

(C) More than $50 to a political committee supporting or opposing both a candidate for state-wide office or a state-wide measure and a candidate for other than state-wide office or a measure other than a state-wide measure, and the total amount contributed by that person or political committee.

The statement may list as a single item the total amount of other contributions, but shall specify how those contributions were obtained. [*As used in this paragraph, "address" includes street number, and name or rural route number, city and state.*]

(b) Under expenditures, all expenditures made, showing the amount and purpose of each. Each expenditure in an amount of more than $50 shall be vouched for by a receipt or canceled check or an accurate copy of the receipt or check. A statement filed under ORS 260.058, 260.063, 260.068 or 260.073 shall list the name of any person to whom expenditures were made totaling $100 or more, and the total amount of all expenditures.

(c) Separately, all contributions made by the candidate or political committee to any other candidate or political committee.

(d) All loans, whether repaid or not, made to the candidate or political committee. The statement shall list the name and address of each person shown as a cosigner or guarantor on a loan and the amount of the obligation undertaken by each cosigner or guarantor. The statement also shall list the name of the lender holding the loan.

(2) Anything of value paid for or contributed by any person shall be listed as both a contribution and an expenditure by the candidate or committee for whose benefit the payment or contribution was made.

(3) Expenditures made by an agent of a political committee on behalf of the committee shall be reported in the same manner as if the expenditures had been made by the committee itself.

(4) As used in this section, "address" includes street number and name or rural route number, city and state.

SECTION 6. ORS 260.993 is amended to read:

260.993. (1) Except as provided in subsections (2) to (6) of this section, violation of any provision of this chapter is a Class A misdemeanor.

(2) The penalty for violation of ORS 260.532 is limited to that provided in subsections (5) and (7) of that section.

(3) Violation of ORS 260.555, 260.575, 260.615, 260.645 or 260.715 is a Class C felony.

(4) Violation of ORS 260.705 is a Class B misdemeanor.

[*(5) Violation of ORS 260.585 is a Class C misdemeanor.*]

[*(6)*] **(5)** Violation of ORS 260.560 or 260.685 (1) is punishable by a fine of not more than $250.

[*(7)*] **(6)** Violation of any provision of Oregon Revised Statutes relating to the conduct of any election or to nominations, petitions, filing or any other matter preliminary to or relating to an election, for which no penalty is otherwise provided, is punishable by a fine of not more than $250.

SECTION 7. ORS 260.585 is repealed.

Approved by the Governor July 13, 1985
Filed in the office of Secretary of State July 15, 1985

CHAPTER 733

AN ACT HB 2146

Relating to environment; creating new provisions; amending ORS 401.025 and 468.070; repealing ORS 468.810; and appropriating money.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 20 of this Act:

(1) "Barrel" means 42 U.S. gallons at 60 degrees Fahrenheit.

(2) "Cleanup" means the containment, collection, removal, treatment or disposal of oil or hazardous material; site restoration; and any investigations, monitoring, surveys, testing and other information gathering required or conducted by the department.

(3) "Cleanup costs" means all costs associated with the cleanup of a spill or release incurred by the state, its political subdivision or any person with written approval from the department when implementing ORS 459.685, 468.800 or sections 1 to 20 of this Act.

(4) "Commission" means the Environmental Quality Commission.

(5) "Department" means the Department of Environmental Quality.

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

(7) "Hazardous material" means one of the following:

(a) A material designated by the commission under section 6 of this Act.

(b) Hazardous waste as defined in ORS 459.410.

(c) Radioactive waste and material as defined in ORS 469.300 and 469.530 and radioactive substances as defined in ORS 453.005.

(d) Communicable disease agents as regulated by the Health Division under ORS chapters 431 and 433.

(e) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(8) "Oils" or "oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

(9) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state and any agency or commission thereof and the Federal Government and any agency thereof.

(10) "Remedial action" means a permanent action taken to prevent or minimize the future spill or release of oil or hazardous material to prevent the oil or hazardous material from migrating and causing substantial danger to present or future public health, safety, welfare or the environment. "Remedial action" includes but is not limited to:

(a) Actions taken at the location of the spill or release such as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of spilled or released oil or hazardous materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavation, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure protection of the public health, safety, welfare or the environment.

(b) Offsite transport of oil or hazardous material.

(c) The storage, treatment, destruction or secure disposal offsite of oil or hazardous material under section 11 of this Act.

(11) "Reportable quantity" means one of the following:

(a) A quantity designated by the commission under section 5 of this Act.

(b) The lesser of:

(A) The quantity designated for hazardous substances by the United States Environmental Protection Agency pursuant to section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(B) The quantity designated for hazardous waste under ORS chapter 459;

(C) Any quantity of radioactive material, radioactive substance or radioactive waste;

(D) If spilled into waters of the state, or escape into waters of the state is likely, any quantity of oil that would produce a visible oily slick, oily solids, or coat aquatic life, habitat or property with oil, but excluding normal discharges from properly operating marine engines; or

(E) If spilled on land, any quantity of oil over one barrel.

(c) Ten pounds unless otherwise designated by the commission under section 5 of this Act.

(12) "Respond" or "response" means:

(a) Actions taken to monitor, assess and evaluate a spill or release or threatened spill or release of oil or hazardous material;

(b) First aid, rescue or medical services, and fire suppression; or

(c) Containment or other actions appropriate to prevent, minimize or mitigate damage to the public health, safety, welfare or the environment which may result from a spill or release or threatened spill or release if action is not taken.

(13) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of the state, as defined in ORS 468.700, except as authorized by a permit issued under ORS chapter 454, 459, 468 or 469 or federal law or while being stored or used for its intended purpose.

(14) "Threatened spill or release" means oil or hazardous material is likely to escape or be carried into the air or into or on any land or waters of the state.

SECTION 2. Subject to policy direction by the commission, the department may:

(1) Conduct and prepare independently or in cooperation with others, studies, investigations, research and programs pertaining to the containment, collection, removal or cleanup of oil and hazardous material.

(2) Advise, consult, participate and cooperate with other agencies of the state, political subdivisions, other states or the Federal Government, in respect to any proceedings and all matters pertaining to responses, remedial actions or cleanup of oil and hazardous material and financing of cleanup costs, including radioactive waste, materials and substances otherwise subject to ORS chapters 453 and 469.

(3) Employ personnel, including specialists, consultants and hearing officers, purchase materials and supplies and enter into contracts with public and private parties necessary to carry out the provisions of sections 1 to 20 of this Act.

(4) Conduct and supervise educational programs about oil and hazardous material, including the preparation and distribution of information regarding the containment, collection, removal or cleanup of oil and hazardous material.

(5) Provide advisory technical consultation and services to units of local government and to state agencies.

(6) Develop and conduct demonstration programs in cooperation with units of local government.

(7) Perform all other acts necessary to carry out the duties, powers and responsibilities of the department under sections 1 to 20 of this Act.

SECTION 3. Nothing in sections 1 to 20 of this Act is intended to grant the Environmental Quality Commission or the Department of Environmental Quality authority over any radioactive substance regulated by the Health Division under ORS chapter 453, or any radioactive material or waste regulated by the Department of Energy or Energy Facility Siting Council under ORS chapter 469.

SECTION 4. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission shall adopt an oil and hazardous material emergency response master plan consistent with

the plan adopted by the Interagency Hazard Communications Council pursuant to the provisions of chapter 696, Oregon Laws 1985 (Enrolled House Bill 3005), and after consultation with the Interagency Hazard Communications Council, the Oregon State Police, the Oregon Fire Chiefs Association and any other appropriate agency or organization.

(2) The master plan adopted under subsection (1) of this section shall include but need not be limited to provisions for ongoing training programs for local government and state agency employes involved in response to spills or releases of oil and hazardous material. The department may coordinate its training programs with emergency response training programs offered by local, state and federal agencies, community colleges and institutes of higher education and private industry in order to reach the maximum number of employes, avoid unnecessary duplication and conserve limited training funds.

SECTION 5. In accordance with applicable provisions of ORS 183.310 to 183.550, the commission may adopt rules including but not limited to:

(1) Provisions to establish that quantity of oil or hazardous material spilled or released which shall be reported under section 7 of this Act. The commission may determine that one single quantity shall be the reportable quantity for any oil or hazardous material, regardless of the medium into which the oil or hazardous material is spilled or released.

(2) Establishing procedures for the issuance, modification and termination of permits, orders, collection of recoverable costs and filing of notifications.

(3) Any other provision consistent with the provisions of this Act that the commission considers necessary to carry out this Act.

SECTION 6. (1) By rule, the commission may designate as a hazardous material any element, compound, mixture, solution or substance which when spilled or released into the air or into or on any land or waters of the state may present a substantial danger to the public health, safety, welfare or the environment.

(2) Before designating a substance as hazardous material, the commission must find that the hazardous material, because of its quantity, concentration or physical or chemical characteristics may pose a present or future hazard to human health, safety, welfare or the environment when spilled or released.

SECTION 7. Any person owning or having control over any oil or hazardous material who has knowledge of a spill or release shall immediately notify the Emergency Management Division as soon as that person knows the spill or release is a reportable quantity.

SECTION 8. Any person owning or having control over any oil or hazardous material spilled or released or threatening to spill or release shall be strictly liable without regard to fault for the spill or release or threatened spill or release. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the spill or release of oil or hazardous material was caused by:

(1) An act of war or sabotage or an act of God.

(2) Negligence on the part of the United States Government or the State of Oregon.

(3) An act or omission of a third party without regard to whether any such act or omission was or was not negligent.

SECTION 9. (1) Any person liable for a spill or release or threatened spill or release under section 8 of this Act shall immediately clean up the spill or release under the direction of the department. The department may require the responsible person to undertake such investigations, monitoring, surveys, testing and other information gathering as the department considers necessary or appropriate to:

(a) Identify the existence and extent of the spill or release;

(b) Identify the source and nature of oil or hazardous material involved; and

(c) Evaluate the extent of danger to the public health, safety, welfare or the environment.

(2) If any person liable under section 8 of this Act does not immediately commence and promptly and adequately complete the cleanup, the department may clean up, or contract for the cleanup of the spill or release or the threatened spill or release.

(3) Whenever the department is authorized to act under subsection (2) of this section, the department directly or by contract may undertake such investigations, monitoring, surveys, testing and other information gathering as it may deem appropriate to identify the existence and extent of the spill or release, the source and nature of oil or hazardous material involved and the extent of danger to the public health, safety, welfare or the environment. In addition, the department directly or by contract may undertake such planning, fiscal, economic, engineering and other studies and investigations it may deem appropriate to plan and direct clean up actions, to recover the costs thereof and legal costs and to enforce the provisions of this Act.

SECTION 10. (1) If the commission finds that a proposed remedial action cannot meet any of the requirements of ORS chapter 459 or 468 or any rule adopted under ORS chapter 459 or 468, the commission may issue a variance.

(2) The commission may issue a variance under subsection (1) of this section if:

(a) Special conditions exist that render strict compliance unreasonable, burdensome or impractical;

(b) Strict compliance would result in substantial delay or preventing a remedial action from being undertaken; or

(c) The public health, safety, welfare and the environment would be protected.

SECTION 11. The director may allow a person to store, treat, destroy or dispose of offsite oil or hazardous material in lieu of other remedial action if the director determines that:

(1) Such actions are more cost effective than other remedial actions; or

(2) Are necessary to protect the public health, safety, welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of oil or hazardous material.

SECTION 12. (1) In order to determine the need for response to a spill or release or threatened spill or release under this Act, or enforcing the provisions of this Act, any person who prepares, manufactures, processes, packages, stores, transports, handles, uses, applies, treats or disposes of oil or hazardous material shall, upon the request of the department:

(a) Furnish information relating to the oil or hazardous material; and

(b) Permit the department at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material.

(2) In order to carry out subsection (1) of this section, the department may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present.

SECTION 13. (1) In order to determine the need for response to a spill or release or threatened spill or release under this Act, any person who prepares, manufactures, processes, packages, stores, transports, handles, uses, applies, treats or disposes of oil or hazardous material shall, upon the request of any authorized local government official, permit the official at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material.

(2) In order to carry out subsection (1) of this section a local government official may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present.

(3) As used in this section, "local government official" includes but is not limited to an officer, employe or representative of a county, city, fire department, fire district or police agency.

SECTION 14. (1) The Oil and Hazardous Material Emergency Response and Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury. As permitted by federal court decisions, federal statutory requirements and administrative decisions, after payment of associated legal expenses, moneys not to exceed $2.5 million received by the State of Oregon from the Petroleum Violation Escrow Fund of the United States Department of Energy that is not obligated by federal requirements to existing energy programs shall be paid into the State Treasury and credited to the fund.

(2) The State Treasurer shall invest and reinvest moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund in the manner provided by law.

(3) The moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund are appropriated continuously to the Department of Environmental Quality to be used in the manner described in section 15 of this Act.

SECTION 15. Moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund may be used by the Department of Environmental Quality for the following purposes:

(1) Training local government employes involved in response to spills or releases of oil and hazardous material.

(2) Training of state agency employes involved in response to spills or releases of oil and hazardous material.

(3) Funding actions and activities authorized by section 9 of this Act, ORS 459.685, 468.800 and 468.805.

(4) Providing for the general administration of sections 1 to 20 of this Act including the purchase of equipment and payment of personnel costs of the department or any other state agency related to the enforcement of this Act.

SECTION 16. (1) If a person required to clean up oil or hazardous material under section 9 of this Act fails or refuses to do so, the person shall be responsible for the reasonable expenses incurred by the department in carrying out section 9 of this Act.

(2) The department shall keep a record of all expenses incurred in carrying out any cleanup projects or activities authorized under section 9 of this Act, including charges for services performed and the state's equipment and materials utilized.

(3) Any person who does not make a good faith effort to clean up oil or hazardous material when obligated to do so under section 9 of this Act shall be liable to the department for damages not to exceed three times the amount of all expenses incurred by the department.

(4) Based on the record compiled by the department under subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (1) or (3) of this section for the amount of damages, not to exceed treble damages, and the expenses incurred by the state in carrying out the action authorized by this section. The order may be appealed in the manner provided for appeal of a contested case order under ORS 183.310 to 183.550.

(5) If the amount of state incurred expenses and damages under this section are not paid by the responsible person to the department within 15 days after receipt of notice that such expenses are due and owing, or, if an appeal is filed within 15 days after the court renders its decision if the decision affirms the order, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount specified in the notice of the director.

SECTION 17. (1) In addition to any other penalty provided by law, any person who violates a provision of sections 1 to 20 of this Act, or any rule or order entered or adopted under sections 1 to 20 of this Act, may incur a civil penalty not to exceed $10,000. Each day of violation shall be considered a separate offense.

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.125, except that a penalty collected under this section shall be deposited to the fund established in section 14 of this Act.

SECTION 18. Violation of a provision of this Act or of any rule or order entered or adopted under this Act is punishable, upon conviction, by a fine of not more than $10,000 or by imprisonment in the county jail for not more than one year or both. Each day of violation shall be considered a separate offense.

SECTION 19. (1) Except as provided by subsection (2) of this section, beginning on January 1, 1986, every person who operates a facility for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a license issued under ORS 459.410 to 459.450 and 459.460 to 459.690 shall pay a monthly hazardous waste management fee by the 45th day after the last day of each month in the amount of $10 per dry-weight ton of hazardous waste or PCB brought into the facility for treatment by incinerator or for disposal by landfill at the facility. Fees under this section shall be calculated in the same manner as provided in section 231 of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended.

(2) When the balance in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund established in section 20 of this Act reaches $500,000 minus any moneys approved for obligation under subsection (3) of section 20 of this Act, payment of fees under subsection (1) of this section shall be suspended. Payment of fees shall resume upon approval of funds by the Legislative Assembly or the Emergency Board to the department sufficient to decrease the balance in the fund to $150,000 or lower.

(3) If payment of fees is to be suspended or resumed under subsection (2) of this section, the department shall give reasonable notice of the suspension or resumption to every person obligated to pay a fee under subsection (1) of this section.

SECTION 20. (1) The Comprehensive Environmental Response, Compensation and Liability Act Matching Fund is established separate and distinct from the General Fund in the State Treasury. All fees received by the Department of Environmental Quality under section 19 of this Act shall be paid into the State Treasury and credited to the fund.

(2) The State Treasurer may invest and reinvest moneys in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund in the manner provided by law.

(3) The moneys in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund are appropriated continuously to the department to be used as provided in subsection (4) of this section and for providing the required state match for planned remedial actions financed by the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, subject to site by site approval by the Legislative Assembly or the Emergency Board.

(4) Up to 15 percent of the moneys appropriated under subsection (3) of this section may be used for investigating and monitoring potential and existing sites which are or could be subject to remedial action under the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended.

SECTION 21. ORS 401.025 is amended to read:

401.025. As used in ORS 401.015 to 401.105, 401.260 to 401.325 and 401.355 to 401.580, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Emergency Management Division.

(2) "Beneficiary" has the meaning given that term in ORS 656.005 (3).

(3) "Division" means the Emergency Management Division of the Executive Department.

(4) "Emergency" includes any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills **or releases** of oil or [*other substances*] **hazardous material as defined in section 1 of this 1985 Act**, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, sabotage and war.

(5) "Emergency management agency" means an organization created and authorized under ORS 401.015 to 401.105, 401.260 to 401.325 and 401.355 to 401.580 by the state, county or city to provide for and assure the conduct and coordination of functions for comprehensive emergency program management.

(6) "Emergency program management" includes all the tasks and activities necessary to coordinate and maintain an emergency services system including, but not limited to, program development, fiscal management, coordination with nongovernmental agencies and organizations, public information, personnel training and development and implementation of exercises to test the system.

(7) "Emergency program manager" means the person administering the emergency management agency of a county or city.

(8) "Emergency service agency" means an organization within a local government which performs essential services for the public's benefit prior to, during or following an emergency. This includes, but is not limited to, organizational units within local governments, such as law enforcement, fire control, health, medical and sanitation services, public works and engineering, public information and communications.

(9) "Emergency service worker" means an individual who, under the direction of an emergency service agency or emergency management agency, performs emergency services and:

(a) Is a registered volunteer or independently volunteers to serve without compensation and is accepted by the division or the emergency management agency of a county or city; or

(b) Is a member of the Oregon National Guard Reserve acting in support of the emergency services system.

(10) "Emergency services" includes those activities provided by state and local government agencies with emergency operational responsibilities to prepare for and carry out any activity to prevent, minimize, respond to or recover from an emergency. These activities include, without limitation, coordination, preplanning, training, interagency liaison, fire fighting, [*hazardous substance management*] **oil or hazardous material spill or release clean up as defined in section 1 of this 1985 Act**, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, warning and public information, damage assessment, administration and fiscal management, and those measures defined as "civil defense" in section 3 of the Act of January 12, 1951, P.L. 81-920 (50 U.S.C. 2252).

(11) "Emergency services system" means that system composed of all agencies and organizations involved in the coordinated delivery of emergency services.

(12) "Injury" means any personal injury sustained by an emergency service worker by accident, disease or infection arising out of and in the course of emergency services or death resulting proximately from the performance of emergency services.

(13) "Local government" means any governmental entity authorized by the laws of this state.

(14) "Major disaster" means any event defined as a "major disaster" by the Act of May 22, 1974, P.L. 93-288.

(15) "Search and rescue" means the acts of searching for, rescuing or recovering, by means of ground or marine activity, any person who is lost, injured or killed while out of doors. However, "search and rescue" does not include air activity in conflict with the activities carried out by the Aeronautics Division of the Department of Transportation.

(16) "Sheriff" means the chief law enforcement officer of a county.

SECTION 22. ORS 468.070 is amended to read:

468.070. (1) At any time, the department may refuse to issue, modify, suspend, revoke or refuse to renew any permit issued pursuant to ORS 468.065 if it finds:

(a) A material misrepresentation or false statement in the application for the permit.

(b) Failure to comply with the conditions of the permit.

(c) Violation of any applicable [*provision*] **provisions** of this chapter **or sections 1 to 20 of this 1985 Act.**

(d) Violation of any applicable rule, standard or order of the commission.

(2) The department may modify any permit issued pursuant to ORS 468.065 if it finds that modification is necessary for the proper administration, implementation or enforcement of the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, **sections 1 to 20 of this 1985 Act** and this chapter.

(3) The procedure for modification, suspension, revocation or refusal to issue or renew shall be the procedure for a contested case as provided in ORS 183.310 to 183.550.

SECTION 23. ORS 468.810 is repealed.

SECTION 24. (1) In addition to and not in lieu of any other appropriation or moneys made available by law or from other sources, there hereby is appropriated to the Department of Environmental Quality, for the biennium beginning July 1, 1985, out of the General Fund, the sum of $200,000 for the purposes described in section 4, subsection (3) of section 9 of this Act and section 15 of this Act.

(2) In addition to the uses allowed under section 15 of this Act, when the commission determines that a sufficient amount of moneys is available from moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund created in section 14 of this Act, but not later than six months after the receipt of such funds, the commission first shall reimburse the General Fund, without interest, in an amount equal to the amount from the General Fund appropriated under subsection (1) of this section.

Approved by the Governor July 13, 1985
Filed in the office of Secretary of State July 15, 1985

Attachment VI
Agenda Item E
11-22-85 EQC Meeting

the Secretary determines to be catastrophic.

(C) ADVANCES FOR OTHER COSTS.—The maximum aggregate amount advanced to the Response Trust Fund which is outstanding at any one time for the purpose of paying costs other than costs described in section 111(a)(1), (2), or (4) shall not exceed one-third of the amount of the estimate made under subparagraph (A).

(D) FINAL REPAYMENT.—No advance shall be made to the Response Trust Fund after September 30, 1985, and all advances to such Fund shall be repaid on or before such date.

(3) REPAYMENT OF ADVANCES.—Advances made pursuant to this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Trust Fund to which the advance was made. Such interest shall be at rates computed in the same manner as provided in subsection (b) and shall be compounded annually.

Subtitle C—Post-Closure Tax and Trust Fund

SEC. 231. IMPOSITION OF TAX.

(a) IN GENERAL.—Chapter 38, as added by section 211, is amended by adding at the end thereof the following new subchapter:

"Subchapter C—Tax on Hazardous Wastes

"Sec. 4681. Imposition of tax.
"Sec. 4682. Definitions and special rules.

"SEC. 4681. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on the receipt of hazardous waste at a qualified hazardous waste disposal facility.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) shall be equal to $2.13 per dry weight ton of hazardous waste.

"SEC. 4682. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) HAZARDOUS WASTE.—The term 'hazardous waste' means any waste—

"(A) having the characteristics identified under section 3001 of the Solid Waste Disposal Act, as in effect on the date of the enactment of this Act (other than waste the regulation of which under such Act has been suspended by Act of Congress on that date), or

"(B) subject to the reporting or recordkeeping requirements of sections 3002 and 3004 of such Act, as so in effect.

"(2) QUALIFIED HAZARDOUS WASTE DISPOSAL FACILITY.—The term 'qualified hazardous waste disposal facility' means any facility which has received a permit or is accorded interim status under section 3005 of the Solid Waste Disposal Act.

"(b) TAX IMPOSED ON OWNER OR OPERATOR.—The tax imposed by section 4681 shall be imposed on the owner or operator of the qualified hazardous waste disposal facility.

"(c) TAX NOT TO APPLY TO CERTAIN WASTES.—The tax imposed by section 4681 shall not apply to any hazardous waste which will not remain at the qualified hazardous waste disposal facility after the facility is closed.

"(d) APPLICABILITY OF SECTION.—The tax imposed by section 4681 shall apply to the receipt of hazardous waste after September 30, 1983, except that if, as of September 30 of any subsequent calendar year, the unobligated balance of the Post-closure Liability Trust Fund exceeds $200,000,000, no tax shall be imposed under such section during the following calendar year.".

(b) CONFORMING AMENDMENT.—The table of subchapters for chapter 38 is amended by adding at the end thereof the following new item:

"SUBCHAPTER C—Tax on Hazardous Wastes.".

SEC. 232. POST-CLOSURE LIABILITY TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Post-closure Liability Trust Fund", consisting of such amounts as may be appropriated, credited, or transferred to such Trust Fund.

(b) EXPENDITURES FROM POST-CLOSURE LIABILITY TRUST FUND.—Amounts in the Post-closure Liability Trust Fund shall be available only for the purposes described in sections 107(k) and 111(j) of this Act (as in effect on the date of the enactment of this Act).

(c) ADMINISTRATIVE PROVISIONS.—The provisions of sections 222 and 223 of this Act shall apply with respect to the Trust Fund established under this section, except that the amount of any repayable advances outstanding at any one time shall not exceed $200,000,000.

TITLE III—MISCELLANEOUS PROVISIONS

REPORTS AND STUDIES

SEC. 301. (a)(1) The President shall submit to the Congress, within four years after enactment of this Act, a comprehensive report on experience with the implementation of this Act, including, but not limited to—

tive and reporting burdens on Government and industry, and the extent to which the tax burden falls on the substances and parties which create the problems addressed by this Act. In preparing the report, the President shall consult with appropriate Federal, State, and local agencies, affected industries and claimants, and such other interested parties as he may find useful. Based upon the analyses and consultation required by this subsection, the President shall also include in the report any recommendations for legislative changes he may deem necessary for the better effectuation of the purposes of this Act, including but not limited to recommendations concerning authorization levels, taxes, State participation, liability and liability limits, and financial responsibility provisions for the Response Trust Fund and the Post-closure Liability Trust Fund;

(H) an exemption from or an increase in the substances or the amount of taxes imposed by section 4661 of the Internal Revenue Code of 1954 for copper, lead, and zinc oxide, and for feedstocks when used in the manufacture and production of fertilizers, based upon the expenditure experience of the Response Trust Fund;

(I) the economic impact of taxing coal-derived substances and recycled metals.

(2) The Administrator of the Environmental Protection Agency (in consultation with the Secretary of the Treasury) shall submit to the Congress (i) within four years after enactment of this Act, a report identifying additional wastes designated by rule as hazardous after the effective date of this Act and pursuant to section 3001 of the Solid Waste Disposal Act and recommendations on appropriate tax rates for such wastes for the Post-closure Liability Trust Fund. The report shall, in addition, recommend a tax rate, considering the quantity and potential danger to human health and the environment posed by the disposal of any wastes which the Administrator, pursuant to subsection 3001(b)(2)(B) and subsection 3001(b)(3)(A) of the Solid Waste Disposal Act of 1980, has determined should be subject to regulation under subtitle C of such Act, (ii) within three years after enactment of this Act, a report on the necessity for and the adequacy of the revenue raised, in relation to estimated future requirements, of the Post-closure Liability Trust Fund.

(b) The President shall conduct a study to determine (1) whether adequate private insurance protection is available on reasonable terms and conditions to the owners and operators of vessels and facilities subject to liability under section 107 of this Act, and (2) whether the market for such insurance is sufficiently competitive to assure purchasers of features such as a reasonable range of deductibles, coinsurance provisions, and exclusions. The President shall submit the results of his study, together with his recommendations,

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. F, November 22, 1985, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Rule Changes Which Would Allow Regional Air Pollution Authorities to Set a Permit Fee Schedule for Sources Within Their Jurisdiction

Background

The Lane Regional Air Pollution Authority (LRAPA) has operated in Lane County since 1968. State law provides for the formation of regional authorities to exercise the same functions within their areas of jurisdiction as the Commission and Department on air quality matters, except that certain emission source categories continue to fall under state regulatory control (automobiles, agricultural, and forestry operations).

For areas where regional authorities exist, the Commission, through the Department, maintains a general oversight role to assure that organization and funding are sufficient, and that the programs conform to state and federal laws.

Through the years, LRAPA has maintained several funding mechanisms, including state and federal grants, contributions from local participating cities and Lane County, permit fees, and fees for service. A number of factors having significant economic effects on government revenue sources have created large uncertainties in LRAPA's funding in recent years.

There is a continuing high level of local support for LRAPA from the community and the participating governing entities. Because of the increasing potential of program disruption due to a downturn in the local economy, there is a clear need to develop a revenue base that is less vulnerable to short-term adverse fluctuations in local economies. One of the candidate strategies being considered to stabilize the revenue base is to adjust the permit fees to more adequately cover the cost of the program. LRAPA now uses fee Table 1 contained in state regulations (OAR 340-20-155).

Fees for permits issued by LRAPA are retained locally. A review of administrative and inspection costs associated with the present program showed that current permit fees do not cover the costs of the source compliance program. There appears to be ample basis for adjusting the overall fee schedule to correct current inequities and recover a greater percentage of costs.

In a letter dated October 11, 1985 (see Attachment 1), Don Arkell, Director of LRAPA, requested that a rule revision be initiated which would allow Regional Air Pollution Authorities to set permit fees for sources within their jurisdiction.

Problem Statement

ORS 468.535 sets out the general functions of regional authorities and establishes powers and limitations. Included in the general functions are those of ORS 468.065, "Issuance of permits; content; fees; use." ORS 468.555 allows the Commission to authorize, by rule, the issuance of permits by regional authorities.

OAR 340-20-185 authorizes local permit programs, pursuant to ORS 468.555. Current regulations do not allow LRAPA to establish its own fee schedule. Before the LRAPA Board of Directors can begin its own process to consider amending the permit fee schedule within its jurisdiction, there must be authorization from the Commission to do so.

One simple way to provide this authorization is a rule change to allow regional authorities to adopt permit fees different than the amounts contained in the Department's rules in accordance with ORS 468.065(2). OAR 340-20-165 could be amended to create a new subsection (12) to read and provide as follows:

> "(12) pursuant to ORS 468.535, a regional authority may adopt fees in different amounts than set forth in Table 1 provided such fees are adopted by rule and after hearing and in accordance with ORS 468.065(2)."

Analysis of LRAPA Budget

LRAPA is presently the only regional air pollution authority in Oregon. The proposed rule change would only affect the operation of LRAPA.

In order to illustrate the financial implications for LRAPA, the current agency budget is presented as follows:

Total Budget	$533,500
Revenue Sources:	
Local Government Contributions	$195,000
Federal Grants	151,000
State Special Payment	59,000
Permit Fees	41,000
Cash Forward (from Capital Reserve)	58,500
Service Contracts and Miscellaneous	29,000
Operating Budget:	
Personal Services	$343,500
Materials/Supplies	160,000
Capital	-0-
Other (Ending Balance)	30,000

A fiscal evaluation of the LRAPA permit program has been made. The cost associated with the permit program is approximately $68,000 per year. This amount covers the direct and indirect costs incurred to issue, monitor, and maintain compliance for about 180 permitted sources. Other field activities, such as complaint response and regulation of open burning, are not included in the $68,000 permit program costs. The revenue generated from the permit program using the current fee schedule is approximately $41,000. LRAPA would not anticipate adjusting the fee schedule to fully cover the current shortfall of $27,000; but there is a need to recover a significant portion in order for the permit program to be as nearly self-supporting as possible.

In addition to an overall fee adjustment to more adequately recover costs, LRAPA would anticipate some redistribution of the fees within the table to account for specific regional compliance priorities. The designation of the Eugene-Springfield area as a nonattainment area for particulate has necessitated greater emphasis on certain emission source categories. The redistribution of fees is necessary to maintain equity within the fee schedule.

Fiscal Impact

The proposed rule change would in itself have no fiscal impact, but would authorize LRAPA's Board to adopt a fee table with different amounts than those adopted by the Commission. Procedurally, LRAPA would perform its own costs analyses for its permit program, and would base its fee table on anticipated costs as provided by statute. The format, including the types of fees assessed, would be the same as that of the Department. Each source holding a permit would be assessed fees which reflect the actual costs of filing and evaluating permit applications, and of an inspection program to assure and maintain compliance with permit conditions. The Commission would have the opportunity to review and approve any fee schedule that might be adopted by LRAPA's Board when those revised rules are submitted for incorporation into the State Implementation Plan.

Summary

1. LRAPA is a regional authority which exercises most of the functions of the Department and Commission in Lane County as authorized by the Commission.

2. The community and participating local governmental entities have consistently provided strong and enthusiastic support for LRAPA.

3. LRAPA has experienced uncertainty in its funding from local governments, due to the economic downturn, and seeks to add stability in this area through a variety of means.

4. One such means under consideration is adjustment of permit fees to recover a larger percentage of actual costs of administering the permit program.

5. In order to further consider that option, LRAPA needs authorization from the Commission to set a different fee schedule, pursuant to statutory provisions of ORS 468.065. Authorization is requested to allow regional authorities to adopt, by rule, different fees than the state. A revision to OAR 340-20-165 is proposed.

6. The Commission may grant such authorization, in accordance with ORS 465.535.

Director's Recommendation

It is recommended that the Commission authorize a public hearing to receive testimony on the attached proposed rule revision concerning authorizing Regional Air Pollution Authorities to adopt a permit fee table that is different from the Department's.

Fred Hansen

Attachments
1. Letter of October 11, 1985, from Don Arkell, Director, LRAPA
2. Proposed Rule Revision (OAR 340-20-165(12))
3. Proposed Notice of Public Hearing
4. Rulemaking Statement

L. Kostow:s
229-5186
October 25, 1985

AS1874

Attachment 1
Agenda Item
November 22, 1985
EQC Meeting

LANE REGIONAL
AIR POLLUTION AUTHORITY

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

Donald R. Arkell, Director

October 11, 1985

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 15 1985
OFFICE OF THE DIRECTOR

Fred Hansen, Director
Dept. of Environmental Quality
P. O. Box 1760
Portland, OR 97207

Re: Authorization to Change Permit Fees

Dear Fred:

As I'm sure you are aware, LRAPA's financial picture has been somewhat tenuous, due primarily to reductions in revenues from our local sponsoring entities. To combat this state of affairs, we have a continuing program to institute cost-cutting measures and have been continuing to expand and diversify the revenue base for LRAPA. Our long-term goal is to provide greater financial stability for the program. During the course of this effort, a number of candidate strategies to cut costs and raise revenues have been developed and implemented.

One of the developing revenue strategies is to increase cost recovery in the permit program through increased permit fees. Even though we are in the preliminary stages of developing this strategy, we have encountered a legal problem. According to Michael Huston of the state's Attorney General's office, Oregon Revised Statutes require that, in order for regional authorities to conduct permit programs, there must be explicit authority granted by rule from the Commission. While OAR provides adequate authority to operate a program, it apparently does not provide sufficient authority to set our own fee amounts. Our legal counsel, Tim Sercombe, agrees with this interpretation. The difficulty, of course, is that this places limits on the options available to stablize our local revenue, and we cannot proceed further unless the Commission's rules allow it.

On behalf of the LRAPA Board of Directors, I am requesting that LRAPA be authorized to establish separate permit fee amounts than those established by the Commission. In discussing the matter with the staff of the Air Quality Division, it appears that the most appropriate mechanism for this would be to amend state rules.

It is understood that the purpose of this request is to allow LRAPA some flexibility within the statutory constraints to establish its own permit fee amounts, and that actual implementation of a separate fee schedule would require a separate rulemaking by the LRAPA Board.

Your support on this issue is appreciated. We believe there has been, overall, a complimentary relationship between LRAPA's air program and that of DEQ. There is strong local support, and an expressed desire to maintain

maximum local jurisdiction on air quality matters in Lane County. While we recognize that the idea of permit fee adjustment may not have universal appeal, particularly among the regulated industries, we believe that the local option should still be available.

I have provided appropriate background material to the Air Quality Division staff for technical review. If there are any questions, we will be pleased to respond.

Thank you for your consideration.

Sincerely,

Donald R. Arkell
Director

DRA/mjd

c: Michael Huston
Tim Sercombe
Tom Bispham

Attachment 2
Agenda Item
November 22, 1985
EQC Meeting

Proposed Rule Revision

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 20 — DEPARTMENT OF ENVIRONMENTAL QUALITY

Fees

340-20-165 (1) All persons required to obtain a permit shall be subject to a three part fee consisting of a uniform non-refundable filing fee of $75, an application processing fee, and an annual compliance determination fee which are determined by applying Table 1. The amount equal to the filing fee, application processing fee, and the annual compliance determination fee shall be submitted as a required part of any application for a new permit. The amount equal to the filing fee and the application processing fee shall be submitted with any application for modification of a permit. The amount equal to the filing fee and the annual compliance determination fee shall be submitted with any application for a renewed permit.

(2) The fee schedule contained in the listing of air contaminant sources in Table 1 shall be applied to determine the permit fees, on a Standard Industrial Classification (SIC) plant site basis.

(3) Modifications of existing, unexpired permits which are instituted by the Department or Regional Authority due to changing conditions or standards, receipts or additional information, or any other reason pursuant to applicable statutes and do not require refiling or review of an application or plans and specifications shall not require submission of the filing fee or the application processing fee.

(4) Applications for multiple-source permits received pursuant to OAR 340-20-160 shall be subject to a single $75 filing fee. The application processing fee and annual compliance determination fee for multiple-source permits shall be equal to the total amounts required by the individual sources involved, as listed in Table 1.

(5) The annual compliance determination fee shall be paid at least 30 days prior to the start of each subsequent permit year. Failure to timely remit the annual compliance determination fee in accordance with the above shall be considered grounds for not issuing a permit or revoking an existing permit.

(6) If a permit is issued for a period less than one (1) year, the applicable annual compliance determination fee shall be equal to the full annual fee. If a permit is issued for a period greater than 12 months, the applicable annual compliance determination fee shall be prorated by multiplying the annual compliance determination fee by the number of months covered by the permit and dividing by twelve (12).

(7) In no case shall a permit be issued for more than ten (10) years.

(8) Upon accepting an application for filing, the filing fee shall be non-refundable.

(9) When an air contaminant source which is in compliance with the rules of a permit issuing agency relocates or proposes to relocate its operation to a site in the jurisdiction of another permit issuing agency having comparable control requirements, application may be made and approval may be given for an exemption of the application processing fee. The permit application and the request for such fee reduction shall be accompanied by:

(a) A copy of the permit issued for the previous location; and

(b) Certification that the permittee proposes to operate with the same equipment, at the same production rate, and under similar conditions at the new or proposed location. Certification by the agency previously having jurisdiction that the source was operated in compliance with all rules and regulations will be acceptable should the previous permit not indicate such compliance.

(10) If a temporary or conditional permit is issued in accordance with adopted procedures, fees submitted with the application for an air contaminant discharge permit shall be retained and be applicable to the regular permit when it is granted or denied.

(11) All fees shall be made payable to the permit issuing agency.

"(12) pursuant to ORS 468.535, a regional authority may adopt fees in different amounts than set forth in Table 1 provided such fees are adopted by rule and after hearing and in accordance with ORS 468.065(2)."

Attachment 3
Agenda Item
November 22, 1985
EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Changes in Authority for Regional Air Pollution Authorities to Establish Permit Fees
NOTICE OF PUBLIC HEARING

Date Prepared: November 1, 1985
Hearing Date: January 15, 1986
Comments Due: January 22, 1986

WHO IS AFFECTED:

Industrial air pollution sources in Lane County.

WHAT IS PROPOSED:

The Department of Environmental Quality is proposing to amend OAR 340-20-165 to allow Regional Air Pollution Authorities to set permit fees for industrial sources within their jurisdiction that are different from the Department's fees.

WHAT ARE THE HIGHLIGHTS:

- Industrial permit fees for sources under the jurisdiction of the Lane Regional Air Pollution Authority (LRAPA) are currently the same as the fees for sources regulated by DEQ.
- LRAPA has requested authority to set fees that are different from DEQ's.
- This proposed rule change would not change fees but would establish the authority for LRAPA's Board to do so in Lane County.

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 Lane Regional Air Pollution Authority. For further information contact Lloyd Kostow at 229-5186.

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

1:00 p.m.
January 15, 1986
Springfield City Hall
Conference Room 2

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 January 22, 1986.

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

WHAT IS THE NEXT STEP:

After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The adopted rules will be submitted to the U. S. Environmental Protection Agency as part of the State Clean Air Act Implementation Plan. The Commission's deliberation should come on March 14, 1986, 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.

AS1874.A

Attachment 4
Agenda Item
November 22, 1985
EQC Meeting

RULEMAKING STATEMENTS

for

Proposed Changes in Industrial Permit Fee Rules For Regional Air Pollution Authorities

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 340-20-165. It is proposed under authority of ORS 465.065(2) and ORS 468.535.

Need for the Rule

Lane Regional Air Pollution Authority (LRAPA) has requested authority to establish an industrial permit fee schedule that is different from DEQ's. The need for this authority is based on the differing revenue needs of LRAPA compared to DEQ.

Principal Documents Relied Upon

1. Letter from Don Arkell, Director of LRAPA, dated October 11, 1985.

FISCAL AND ECONOMIC IMPACT STATEMENT:

This proposed rule change has no direct economic impact. The proposed change would allow the LRAPA Board of Directors to modify the Air Contaminant Discharge Permit fees assessed on industrial sources in Lane County.

LAND USE CONSISTENCY STATEMENT:

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

AS1874.B

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

STATE OF OREGON

MEMORANDUM

Date: November 1, 1985

TO: Environmental Quality Commission

FROM: Linda K. Zucker

SUBJECT: Agenda Item G

Appeal of Hearing Officer's Findings of Fact, Conclusion of Law and Final Order in DEQ v Bielenberg, Case No. 09-AQ-FB-83-04, November 22, 1985.

This matter is before the Commission on David Bielenberg's request for review of the hearing officer's decision that he is liable for a civil penalty of $300 for unlawful field burning.

Enclosed for the Commission's review are:

1. Hearing Officer's Findings of Fact, Conclusions of Law and Final Order
2. Bielenberg's exceptions
3. Copies of Bielenberg's 1981 through 1983 Federal Income Tax Returns

TS:y
RY2047
Enclosure

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON, Department, v. David Bielenberg, Respondent.	HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER NO. 09-AQ-FB-83-04 Marion County

BACKGROUND

David Bielenberg (Respondent) has appealed from Department's Notice of Assessment of Civil Penalty which alleged that on August 2, 1983 Respondent violated a provision of the agency's open field burning rules by failing to actively extinguish all flames and major smoke sources when prohibition conditions were imposed by the Department. Department levied a civil penalty of $300, the minimum penalty established by the penalty schedule adopted by the Commission.

Respondent denied liability and requested a hearing. Respondent contended that his financial condition justified penalty mitigation.

A hearing was conducted on December 11, 1984. Neither Department nor Respondent was represented by counsel.

FINDINGS OF FACT

In 1983 Respondent registered 45 acres of perennial grass seed for burning under Department's smoke management program. The acreage is located in Zone 3, Marion County, Oregon, and consists of two fields, one approximately 12 acres and the other 33 acres in size. On August 2, 1983 Respondent wanted to burn these fields if field burning was authorized by Department. At around noon Respondent placed his brother, Chris

Bielenberg, in charge of the fields with instructions that if he saw other fields burning in the area he should call the fire district and request authorization.

At approximately 3:30 p.m. Chris Bielenberg saw plumes in the area and called the Silverton Fire District permit clerk who acted for Department in issuing burning permits. He was given authorization to burn both fields and was told that the "fires-out" time was 5 p.m. Mr. Bielenberg burned the smaller of the two fields first. The field took less than 45 minutes to burn.

At approximately 5 p.m. Mr. Bielenberg called the permit agent to report the completed burn and to confirm authorization for burning the second field. The permit agent told him that the "fires-out" time had been extended to 6 p.m. and approved burning 24 acres of the second field.

Mr. Bielenberg lighted the field at approximately 5:10 by first lighting the borders at the far end of the field to protect neighbor's fields and then by strip lighting the interior. The fire burned rapidly and effectively until it reached the northwest corner which was significantly damper than the rest of the field. This area, about one and one-half acres in size, has both tree and ground cover which increases the field moisture content and acts as a wind barrier. The presence of moisture and the absence of a good draft resulted in the fire coming to an almost complete halt when it reached the northwest corner. Mr. Bielenberg had to decide whether to continue burning this difficult area or to extinguish the fire. He knew it was getting late but was not wearing a watch and did not know the exact time. Based on his observation of other smoke plumes in the area and with the knowledge that the "fires-

out time" had been repeatedly extended that day (from 3 to 4 p.m., from 4 to 5 p.m., and finally from 5 to 6 p.m.), he assumed burning time remained and made the conscious decision to continue the burn. The time was approximately 6 p.m.

Department's field inspector arrived at the field at approximately 6:40, 40 minutes after the announced "fires-out time." The northwest corner of the field was still burning to the extent that it supported minimal flames and the damp grass was smoldering and putting up considerable smoke. No effort was being made to actively extinguish the fire. The field inspector directed Mr. Bielenberg to extinguish the fire, which he did immediately.

Economic evidence presented was sufficient to show Respondent suffered a significant net loss of income from his farming operations in 1983. A similar loss was also established for the years 1981 and 1982.[1] Respondent has had to refinance his farm property and is now selling some of his holdings to stay in business. The penalty assessed is probably equal to or greater than the net annual income derived from the acreage found to have been burning late.

Respondent burns fewer than 100 acres a year.

The fire would not normally have continued for five days.

CONCLUSIONS OF LAW

1. The Commission has personal and subject jurisdiction.

---

[1]Respondent submitted copies of his 1981, 1982 and 1983 federal tax returns (Schedule F-Farm Income and Expenses). These returns are part of the case record, but are not included for publication in this order.

2. On August 2, 1983 Respondent violated OAR 340-26-010(5)[2] by failing to actively extinguish all open field burning flames and major smoke sources when prohibition conditions were imposed by Department.

3. Respondent is liable for a civil penalty for violation of this rule. The penalty range for this violation is $300 to $10,000. The penalty assessed, $300, is the minimum penalty which can be imposed for this violation. OAR 340-26-025(2)(b). Because the case facts support liability, Respondent is liable for the penalty assessed.

4. In imposing a penalty the Commission is directed to consider Respondent's history of taking all feasible steps or procedures necessary or appropriate to correct a violation; Respondent's prior violations; and Respondent's economic and financial condition. ORS 468.130(2). The Commission has the authority to mitigate penalties below the mimimums established by schedule and may do so on such terms and conditions as it considers proper and consistent with the public health and safety. ORS 468.130(3).

OPINION

There is no real dispute that Respondent's field was still burning at 6 p.m., the announced "fires-out time." The purpose of this appeal was to seek reduction of the assessed penalty. The violation was not alleged to have involved consideration of aggravating factors and the penalty imposed was the minimum penalty set by agency rule schedule, OAR 340-26-025(2)(b).

---

[2]OAR 340-26-010(5) was renumbered as 340-26-010(6) in May 1984.

ORS 468.130(1) directs the Commission to adopt schedules establishing amounts of civil penalties which may be imposed for particular violations. The Commission adopted OAR 340-26-025(2)(b) which sets a penalty range of $300 to $10,000 for violation of the active extinguishment rule.

In authorizing the adoption of schedules, the Legislature also perscribed factors for the Commission to apply in imposing a penalty. ORS 468.130(2) provides:

> In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:
> (a) The past history of the person incurring a penalty and taking all feasible steps or procedures necessary or appropriate to correct any violation.
> (b) Any prior violations of statutes, rules, orders and permits pertaining to water or air pollution or air contamination or solid waste disposal.
> (c) The economic and financial conditions of the person incurring a penalty. (Emphasis supplied.)

By rule the Commission has imposed on Respondent the burden of proof and the burden of coming forward with evidence concerning economic and financial condition. OAR 340-12-045(3).

The Legislature also granted the Commission the authority to reduce the penalty. ORS 468.130(3) provides:

> The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.

The facts of this case establish that the penalty assessed poses a substantial financial burden on this Respondent. Respondent's economic and financial condition were not considered by the Director in assessing

the penalty as that information was not available to him. The penalty imposed in this case was the minimum the Director could impose under the schedule. However, ORS 468.130(3) provides that the Commission may act to mitigate penalties. If the Commission wishes to mitigate this penalty, it has the authority to do so.

OAR 340-11-132(2)(a) provides that the Hearings Officer's Final Order shall be the final order of the Commission unless it is appealed to the Commission and allows any party or a member of the Commission to appeal the hearings officer's decision. In such an appeal to the Commission, the Commission may substitute its judgment for that of the hearings officer in making any particular finding of fact, conclusion of law, or order. OAR 340-11-132(4)(i).

ORDER

WHEREFORE IT IS ORDERED THAT Respondent is liable for a civil penalty of $300 and that the State of Oregon have judgment therefor.

Dated this 30th day of May, 1985.

Linda K. Zucker
Hearings Officer

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

June 26,1985

Environmental Quality Commission
Box 1760
Portland, OR 97207

Re: DEQ v. Bielenberg
No. 09-AQ-FB-83-04
Marion County

Dear Sir:

I request a review of my case by the Environmental Quality Commission.

The only issue I take with the hearing officer's findings is on lines 16 and 17 of page 3 concerning the severity of the penalty. The penalty does not only exceed the annual net income derived from the acreage found to have been burning late, but it exceeds the net income of the whole parcel on which the acreage burning late is included.

I have presented my case and the hearings officer has found that the penalty poses a substantial financial burden on me.

Since only the Commission can lower or eliminate the penalty below the schedule, I request the Commission's consideration.

I would like to point out again that the people in charge of the burn cooperated with the inspector. We did not have a watch and were monitoring other plumes that day. The 'fires out' time was changed several times that day. I was not a flagrant violator and have had no trouble burning fields with the DEQ or my local fire department.

Sincerely,

David J. Bielenberg

Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** **1981**

RE

For the year January 1–December 31, 1981, or other tax year beginning , 1981, ending , 19 — OMB No. 1545-0074

Use IRS label. Otherwise, please print or type.

DAVID & MARGARET BIELENBERG

16425 HERIGSTAD RD. N.

SILVERTON OREGON 97381

Your social security number: 544 62 5978

Spouse's social security no.: 542 54 5049

Your occupation ▶ FARMER

Spouse's occupation ▶ PHYSICAL THERAPY

Presidential Campaign Fund

Do you want $1 to go to this fund? — Yes | XX | No

If joint return, does your spouse want $1 to go to this fund? — Yes | XX | No

Filing Status Check only one box.

For Privacy Act and Paperwork Reduction Act Notice, see Instructions.

1 [ ] Single

2 [XX] Married filing joint return (even if only one had income)

3 [ ] Married filing separate return. Enter spouse's social security no. above and full name here ▶

4 [ ] Head of household. If qualifying person is your unmarried child, enter child's name ▶

5 [ ] Qualifying widow(er) with dependent child (Year spouse died ▶ 19).

Exemptions Always check the box labeled Yourself. Check other boxes if they apply.

6a [XX] Yourself [ ] 65 or over [ ] Blind

b [XX] Spouse [ ] 65 or over [ ] Blind

Enter number of boxes checked on 6a and b ▶ 2

c First names of your dependent children who lived with you ▶ RACHEL

Enter number of children listed on 6c ▶ 1

d Other dependents. (1) Name	(2) Relationship	(3) Number of months lived in your home	(4) Did dependent have income of $1,000 or more?	(5) Did you provide more than one-half of dependent's support?

Enter number of other dependents ▶

Add numbers entered in boxes above ▶ 3

e Total number of exemptions claimed

Income Please attach Copy B of your Forms W-2 here. If you do not have a W-2, see page 5 of Instructions.

7	Wages, salaries, tips, etc.		21305.
8a	Interest income (attach Schedule B if over $400 or you have any All-Savers interest)	1224.	
b	Dividends (attach Schedule B if over $400)		
d	Exclusion		
e	Subtract line 8d from the total of lines 8a and 8b (but not less than zero)		1224.
9	Refunds of State and local income taxes		
10	Alimony received		
11	Business income or (loss) (attach Schedule C) ▶		
12	Capital gain or (loss) (attach Schedule D)		4196.
13	40% of capital gain distributions not reported on line 12 (See page 9 of Instructions)		
14	Supplemental gains or (losses) (attach Form 4797)		
15	Fully taxable pensions and annuities not reported on line 16		
16a	Other pensions and annuities. Total received		
b	Taxable amount, if any, from worksheet on page 10 of Instructions		
17	Rents, royalties, partnerships, estates, trusts, etc. (attach Schedule E)		
18	Farm income or (loss) (attach Schedule F) ▶		(79898.)
19a	Unemployment compensation (Insurance). Total received		
b	Taxable amount, if any, from worksheet on page 10 of Instructions		
20	Other income ▶		
21	Total income. Add amounts in column for lines 7 through 20 ▶		(53173.)

Please attach check or money order here.

Adjustments to Income (See instructions on page 11)

22	Moving expense (attach Form 3903 or 3903F)		
23	Employee business expenses (attach Form 2106)		
24	Payments to an IRA (enter code from page 11 .....)		
25	Payments to a Keogh (H.R. 10) retirement plan		
26	Interest penalty on early withdrawal of savings		
27	Alimony paid		
28	Disability income exclusion (attach Form 2440)		
29	Other adjustments—see page 12 ▶		
30	Total adjustments. Add lines 22 through 29 ▶		
31	Adjusted gross income. Subtract line 30 from line 21 ▶		(53173.)

Adj. Gr. Inc.

Tax Computation (See instructions on page 12)

32a	Amount from line 31 (*adjusted gross income*)	32a	(53173.)
32b	If you do not itemize deductions, enter zero If you itemize, complete Schedule A (Form 1040) and enter the amount from Schedule A, line 41 **Caution:** If you have unearned income and can be claimed as a dependent on your parent's return, check here ▶ ☐ and see page 12 of the Instructions.	32b	1863.
32c	Subtract line 32b from line 32a	32c	
33	Multiply $1,000 by the total number of exemptions claimed on Form 1040, line 6e	33	3000.
34	Taxable Income. Subtract line 33 from line 32c	34	(3000.)
35	Tax. Enter tax here and check if from ☒ Tax Table, ☐ Tax Rate Schedule X, Y, or Z, ☐ Schedule D, ☐ Schedule G, or ☐ Form 4726	35	
36	Additional Taxes. Enter here and check if from ☐ Form 4970, ☐ Form 4972, ☐ Form 5544, or ☐ Section 72(m)(5) penalty tax	36	
37	**Total.** Add lines 35 and 36 ▶	37	

Credits (See instructions on page 13)

38	Credit for contributions to candidates for public office	38	
39	Credit for the elderly (*attach Schedules R&RP*)	39	
40	Credit for child and dependent care expenses (*attach Form 2441*)	40	
41	Investment credit (*attach Form 3468*)	41	
42	Foreign tax credit (*attach Form 1116*)	42	
43	Work incentive (WIN) credit (*attach Form 4874*)	43	
44	Jobs credit (*attach Form 5884*)	44	
45	Residential energy credit (*attach Form 5695*)	45	
46	Total credits. Add lines 38 through 45	46	
47	Balance. Subtract line 46 from line 37 and enter difference (but not less than zero) ▶	47	

Other Taxes (Including Advance EIC Payments)

48	Self-employment tax (*attach Schedule SE*)	48	
49a	Minimum tax. Attach Form 4625 and check here ▶ ☐	49a	
49b	Alternative minimum tax. Attach Form 6251 and check here ▶ ☐	49b	
50	Tax from recomputing prior-year investment credit (*attach Form 4255*)	50	
51a	Social security (FICA) tax on tip income not reported to employer (*attach Form 4137*)	51a	
51b	Uncollected employee FICA and RRTA tax on tips (*from Form W-2*)	51b	
52	Tax on an IRA (*attach Form 5329*)	52	
53	Advance earned income credit (EIC) payments received (*from Form W-2*)	53	
54	Total tax. Add lines 47 through 53 ▶	54	

06

Payments Attach Forms W-2, W-2G, and W-2P to front.

55	Total Federal income tax withheld	55	3527.
56	1981 estimated tax payments and amount applied from 1980 return	56	
57	Earned income credit.	57	
58	Amount paid with Form 4868	58	
59	Excess FICA and RRTA tax withheld (two or more employers)	59	
60	Credit for Federal tax on special fuels and oils (*attach Form 4136 or 4136-T*)	60	24.
61	Regulated Investment Company credit (*attach Form 2439*)	61	
62	Total. Add lines 55 through 61 ▶	62	3551.

Refund or Balance Due

63	If line 62 is larger than line 54, enter amount **OVERPAID** ▶	63	3551.
64	Amount of line 63 to be **REFUNDED TO YOU** ▶	64	3551.
65	Amount of line 63 to be applied to your 1982 estimated tax ▶ 65		
66	If line 54 is larger than line 62, enter **BALANCE DUE.** Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number and "1981 Form 1040" on it. ▶ (Check ▶ ☐ if Form 2210 (2210F) is attached. ▶ $	66	

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Your signature Date ▶ Spouse's signature (if filing jointly, BOTH must sign even if only one had income)

Paid Preparer's Use Only

Preparer's signature ▶ Date 2/27/82 Check if self-employed ▶ ☐ Preparer's social security no. 540 40 8904

Firm's name (or yours, if self-employed) and address ▶ EARL A. DUMAN CPA, 2 PROGRESS WAY, WOODBURN OR E.I. No. ▶ 93-0645881 ZIP code ▶ 97071

OMB NO. 1545-0074

SCHEDULE F FARM INCOME AND EXPENSES 1981

16

DAVID BIELENBERG 544-62-5978

FARM NAME & ADDRESS DAVID BIELENBERG ID NUMBER:

PART 1 FARM INCOME--CASH METHOD

A. DESC	B. AMOUNT	C. COST
1. LIVESTOCK HOGS	263830.	70077.
2. OTHER ITEMS		
3. TOTALS 3.	263830.	70077.
4. PROFIT OR LOSS 4.		193753.

SALES OF LIVESTOCK & PRODUCE

KIND		AMOUNT
5. CATTLE AND CALVES	5.	
6. SHEEP	6.	
7. SWINE	7.	
8. POULTRY	8.	
9. DAIRY PRODUCTS	9.	
10. EGGS	10.	
11. WOOL	11.	
12. COTTON	12.	
13. TOBACCO	13.	
14. VEGETABLES	14.	36538.
15. SOYBEANS	15.	
16. CORN	16.	
17. OTHER GRAIN	17.	82416.
18. HAY AND STRAW	18.	120.
19. FRUITS AND NUTS	19.	
20. MACHINE WORK	20.	15351.
21A. PATRONAGE DIV	21A.	1682.
21B. NONINC. ITEMS	21B.	
21C. NET PATRONAGE DIV.	21C.	1682.
22. PER-UNIT RETAINS	22.	
23. NONPATRON DIST	23.	
24. AGRI PROG PMTS	24.	
24A. CASH	24A.	2381.
24B. MATERIAL, SERV	24B.	
25. CREDIT LOANS	25.	
26. FED GAS CREDIT	26.	13.
27. STATE GAS REF	27.	
28. CROP INSUR PROCEEDS	28.	
29. OTHER	29.	
FEED		3121.
RENT		150.
30. ADD L5 THRU 29	30.	141772.
31. GROSS PROFITS	31.	335525.

PART 2 FARM DEDUCTIONS--CASH & ACCRUAL

ITEMS		AMOUNT
32A. LABOR HIRED	32A.	19659.
32B. JOBS CREDIT	32B.	
32C. WIN CREDIT	32C.	
32D. TOTAL CREDITS	32D.	
32E. BALANCE	32E.	19659.
33. REPAIRS	33.	18138.
34. INTEREST	34.	54728.
35. RENT OF PASTURE	35.	28933.
36. FEED PURCHASED	36.	177959.
37. SEEDS PURCHASED	37.	3370.
38. CHEMICALS	38.	37513.
39. MACHINE HIRE	39.	5688.
40. SUPPLIES PURCHASED	40.	325.
41. BREEDING FEES	41.	
42. VETERINARY FEES	42.	1712.
43. GAS, FUEL, OIL	43.	11999.
44. STORAGE	44.	
45. TAXES	45.	3829.
46. INSURANCE	46.	2076.
47. UTILITIES	47.	3762.
48. FREIGHT	48.	
49. CONSERVATION EXP	49.	
50. LAND CLEARING	50.	
51. PENSION & PROFIT SHARING	51.	
52. EMPLOYEE BENEFIT PROGRAMS	52.	
53. OTHER	53.	
SEED CLEANING		8398.
MISC		681.
ACCOUNTING		510.
PERMITS		437.
SUBSCRIPTIONS		202.
HEDGING		4400.
54. ADD L32E THRU 53	54.	384319.
55. DEPRECIATION	55.	31104.
56. TOTAL DEDUCTIONS	56.	415423.
57. NET FARM PROFIT OR (LOSS)	57.	-79898. *

58. IF A LOSS, DO YOU HAVE AMOUNTS FOR WHICH YOU ARE NOT "AT RISK" IN THIS BUSINESS? Y ! N
! X

* will see explanation

RD

Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** **1982**

For the year January 1–December 31, 1982, or other tax year beginning , 1982, ending , 19 . OMB No. 1545-0074

Use IRS label. Otherwise, please print or type.

DAVID & MARGARET BIELENBERG

16425 HERIGSTAD RD. N.

SILVERTON OREGON 97381

Your social security number: 544 62 5978

Spouse's social security no.: 542 54 5045

Your occupation ▶ FARMER

Spouse's occupation ▶ PHYSCL THRPY

Presidential Campaign Fund

Do you want $1 to go to this fund? Yes XX No

If joint return, does your spouse want $1 to go to this fund? Yes XX No

Filing Status Check only one box.

For Privacy Act and Paperwork Reduction Act Notice, see Instructions.

1 Single

2 XX Married filing joint return (even if only one had income)

3 Married filing separate return. Enter spouse's social security no. above and full name here ▶

4 Head of household. If qualifying person is your unmarried child, enter child's name ▶

5 Qualifying widow(er) with dependent child (Year spouse died ▶ 19).

Exemptions Always check the box labeled Yourself. Check other boxes if they apply.

6a	XX	Yourself	65 or over	Blind	Enter number of boxes checked on 6a and b ▶	2
b	XX	Spouse	65 or over	Blind		

c First names of your dependent children who lived with you ▶ RACHAEL, NICOLE, ERIC — Enter number of children listed on 6c ▶ 3

d Other dependents: (1) Name	(2) Relationship	(3) Number of months lived in your home	(4) Did dependent have income of $1,000 or more?	(5) Did you provide more than one-half of dependent's support?

Enter number of other dependents ▶

Add numbers entered in boxes above ▶ 5

e Total number of exemptions claimed

Income Please attach Copy B of your Forms W-2 here. If you do not have a W-2, see page 5 of Instructions.

7	Wages, salaries, tips, etc.	7	15,07[illegible]
8	Interest income (attach Schedule B if over $400 or you have any All-Savers interest)	8	
9a	Dividends (attach Schedule B if over $400) 1,285. , 9b Exclusion 200.	9c	1085.
c	Subtract line 9b from line 9a	10	1325.
10	Refunds of State and local income taxes	11	
11	Alimony received	12	
12	Business income or (loss) (attach Schedule C) ▶	13	5120.
13	Capital gain or (loss) (attach Schedule D)	14	
14	40% capital gain distributions not reported on line 13 (See page 9 of Instructions)	15	
15	Supplemental gains or (losses) (attach Form 4797)	16	
16	Fully taxable pensions, IRA distributions, and annuities not reported on line 17		
17a	Other pensions and annuities. Total received 17a		
b	Taxable amount, if any, from worksheet on page 10 of Instructions	17b	
18	Rents, royalties, partnerships, estates, trusts, etc. (attach Schedule E)	18	
19	Farm income or (loss) (attach Schedule F) ▶	19	(2290[illegible]
20a	Unemployment compensation (insurance). Total received 20a		
b	Taxable amount, if any, from worksheet on page 10 of Instructions	20b	
21	Other income ▶	21	
22	Total income. Add amounts in column for lines 7 through 21 ▶	22	(9[illegible]

Please attach check or money order here.

Adjustments to Income (See Instructions on page 11)

23	Moving expense (attach Form 3903 or 3903F)	23	
24	Employee business expenses (attach Form 2106)	24	
25	Payments to an IRA. You must enter code from page 11 ( )	25	
26	Payments to a Keogh (H.R. 10) retirement plan	26	
27	Penalty on early withdrawal of savings	27	
28	Alimony paid	28	
29	Deduction for a married couple when both work	29	
30	Disability income exclusion (attach Form 2440)	30	
	( )		
31	Total adjustments. Add lines 23 through 30 ▶	31	
32	Adjusted gross income. Subtract line 31 from line 22 ▶	32	(9[illegible]

Adj. Gr. Inc.

Preparer's Edition 39-0964777 NTF [illegible]

Tax Computation (See instructions on page 12)

33	Amount from line 32 (*adjusted gross income*)	33	(91.)
34a	If you itemize, complete Schedule A (Form 1040) and enter the amount from Schedule A, line 30	34a	259.
	Caution: If you have unearned income and can be claimed as a dependent on your parent's return, check here ▶ ☐ and see page 12 of the Instructions.		
34b	If you do not itemize, complete the worksheet on page 13. Then enter the allowable part of your charitable contributions here	34b	
35	Subtract line 34a or 34b, whichever applies, from line 33	35	
36	Multiply $1,000 by the total number of exemptions claimed on Form 1040, line 6e	36	5000.
37	Taxable Income. Subtract line 36 from line 35	37	
38	Tax. Enter tax here and check if from ☒ Tax Table, ☐ Tax Rate Schedule X, Y, or Z, or ☐ Schedule G	38	
39	Additional Taxes. Enter here and check if from ☐ Form 4970, ☐ Form 4972, ☐ Form 5544, or ☐ section 72 penalty taxes	39	
40	**Total.** Add lines 38 and 39 ▶	40	

Credits (See instructions on page 13)

41	Credit for the elderly (*attach Schedules R&RP*)	41	
42	Foreign tax credit (*attach Form 1116*)	42	
43	Investment credit (*attach Form 3468*)	43	
44	Partial credit for political contributions	44	
45	Credit for child and dependent care expenses (*attach Form 2441*)	45	
46	Jobs credit (*attach Form 5884*)	46	
47	Residential energy credit (*attach Form 5695*)	47	
48	Other credits ▶	48	
49	**Total credits.** Add lines 41 through 48	49	
50	**Balance.** Subtract line 49 from line 40 and enter difference (but not less than zero) ▶	50	

Other Taxes (Including Advance EIC Payments)

51	Self-employment tax (*attach Schedule SE*)	51	
52	Minimum tax (*attach Form 4625*)	52	
53	Alternative minimum tax (*attach Form 6251*)	53	
54	Tax from recapture of investment credit (*attach Form 4255*)	54	
55	Social security (FICA) tax on tip income not reported to employer (*attach Form 4137*)	55	
56	Uncollected employee FICA and RRTA tax on tips (*from Form W-2*)	56	
57	Tax on an IRA (*attach Form 5329*)	57	
58	Advance earned income credit (EIC) payments received (*from Form W-2*)	58	
59	**Total tax.** Add lines 50 through 58	59	

06

Payments Attach Forms W-2, W-2G, and W-2P to front.

60	Total Federal income tax withheld	60	1563.	
61	1982 estimated tax payments and amount applied from 1981 return	61		
62	Earned income credit.	62		
63	Amount paid with Form 4868	63		
64	Excess FICA and RRTA tax withheld (two or more employers)	64		
65	Credit for Federal tax on special fuels and oils (*attach Form 4136*)	65	17.	
66	Regulated Investment Company credit (*attach Form 2439*)	66		
	( )			
67	**Total.** Add lines 60 through 66 ▶	67		1580.

Refund or Amount You Owe

68	If line 67 is larger than line 59, enter amount **OVERPAID** ▶	68	1580.
69	Amount of line 68 to be **REFUNDED TO YOU** ▶	69	1580.
70	Amount of line 68 to be applied to your 1983 estimated tax ▶ 70		
71	If line 59 is larger than line 67, enter **AMOUNT YOU OWE.** Attach check or money order for full amount payable to Internal Revenue Service. Write your social security number and "1982 Form 1040" on it. ▶	71	
	(Check ▶ ☐ if Form 2210 (2210F) is attached.) ▶ $		

Please Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Your signature Date ▶ Spouse's signature (if filing jointly, BOTH must sign)

Paid Preparer's Use Only

Preparer's signature ▶		Date 2/15/83	Check if self-employed ▶ ☐
Preparer's social security no.		540 40 890-	
Firm's name (or yours, if self-employed) and address ▶	EARL DOMAN CPA #2 PROGRESS WAY WOODBURN OREGON	E.I. No. ▶	93-0645861
		ZIP code ▶	97071

SCHEDULE F — FARM INCOME AND EXPENSES — 1982

16

DAVID BIELENBERG — 544-62-5978

FARM NAME & ADDRESS: DAVID BIELENBERG — ID NUMBER:

PART 1 FARM INCOME--CASH METHOD

A. DESC	B. AMOUNT	C. COST
1. LIVESTOCK HOGS	169396.	19773.
2. OTHER ITEMS		
3. TOTALS 3.	169396.	19773.
4. PROFIT OR LOSS 4.		149623.

SALES OF LIVESTOCK & PRODUCE

KIND		AMOUNT
5. CATTLE AND CALVES	5.	
6. SHEEP	6.	
7. SWINE	7.	
8. POULTRY	8.	
9. DAIRY PRODUCTS	9.	
10. EGGS	10.	
11. WOOL	11.	
12. COTTON	12.	
13. TOBACCO	13.	
14. VEGETABLES	14.	
15. SOYBEANS	15.	
16. CORN	16.	49509.
17. OTHER GRAIN	17.	27747.
18. HAY AND STRAW	18.	125.
19. FRUITS & NUTS	19.	
20. MACHINE WORK	20.	10122.
21A. PATRONAGE DIV	21A.	
21B. NONINC. ITEMS	21B.	
21C. NET PATRONAGE DIV.	21C.	
22. PER-UNIT RETAINS	22.	
23. NONPATRON DIST	23.	
24A. AG PGM CASH	24A.	3036.
24B. AG PGM MATERIAL,SER	24B.	
25. CREDIT LOANS	25.	
26. FED GAS CREDIT	26.	24.
27. STATE GAS REF	27.	
28. CROP INSUR PROCEEDS	28.	
29A. SEED	29A.	60091.
29B. RENT	29B.	7140.
29C. CASH DISCOUNTS	29C.	996.
30. ADD L5 THRU 29	30.	158790.
31. GROSS PROFITS	31.	308413.

PART 2 FARM DEDUCTIONS--CASH & ACCRUAL

ITEMS		AMOUNT
32A. LABOR HIRED	32A.	17576.
32B. JOBS CREDIT	32B.	
32C. L32A MINUS L32B	32C.	17576.
33. REPAIRS	33.	20887.
34. INTEREST	34.	60086.
35. RENT	35.	17113.
36. FEED PURCHASED	36.	86976.
37. SEEDS PURCHASED	37.	6007.
38. CHEMICALS	38.	37602.
39. MACHINE HIRE	39.	7912.
40. SUPPLIES PURCHASED	40.	1113.
41. BREEDING FEES	41.	
42. VETERINARY FEES	42.	2524.
43. GAS,FUEL,OIL	43.	15397.
44. STORAGE	44.	
45. TAXES	45.	6743.
46. INSURANCE	46.	2215.
47. UTILITIES	47.	4147.
48. FREIGHT	48.	
49. CONSERVATION EXP	49.	
50. LAND CLEARING	50.	
51. PENSION/PROF SHARE	51.	
52. EMPLOYEE BENEFIT	52.	
53A. SEED CLN&BRNG	53A.	7160.
53B. MISC	53B.	427.
53C. ACCOUNTING	53C.	200.
53D. BANK CHRGES	53D.	122.
53E. SUBSCRPTNS	53E.	131.
53F. ADDL EXP: SEE ATTCHD	53F.	36984
54. ADD L32C THRU 53	54.	331322.
55. DEPRECIATION	55.	
56. TOTAL DEDUCTIONS	56.	331322.

57. NET FARM PROFIT OR (LOSS) — 57. -22909.

58. IF A LOSS, DO YOU HAVE AMOUNTS FOR WHICH YOU ARE NOT "AT RISK" IN THIS BUSINESS? — Y ! N — ! X

RC

Form 1040 U.S. Individual Income Tax Return 1983

Department of the Treasury—Internal Revenue Service

For the year January 1-December 31 1983, or other tax year beginning , 1983, ending , 19 OMB No. 1545-0074

Use IRS label. Otherwise, please print or type.

DAVID & MARGARET BIELENBERG

16425 HERIGSTAD RD. N.

SILVERTON, OREGON 97381

Your social security number 544 62 5978

Spouse's social security number 542 54 5049

Your occupation FARMER

Spouse's occupation PHYSCL THRPY

Presidential Campaign Fund — Do you want $1 to go to this fund? Yes XX No. If joint return, does your spouse want $1 to go to this fund? Yes XX No. Note: *Checking "Yes" will not increase your tax or reduce your refund.*

For Privacy Act and Paperwork Reduction Act Notice, see Instructions.

Filing Status

Check only one box.

1 XX Single

2 Married filing joint return (even if only one had income)

3 Married filing separate return. Enter spouse's social security no. above and full name here.

4 Head of household if qualifying person is your unmarried child, enter child's name

5 Qualifying widow(er) with dependent child (Year spouse died ▶ 19).

Exemptions

Always check the box labeled Yourself. Check other boxes if they apply

6a XX Yourself — 65 or over — Blind

b XX Spouse — 65 or over — Blind

Enter number of boxes checked on 6a and b ▶ 2

c First names of your dependent children who lived with you MICHAEL, HEIDI, ERIC

Enter number of children listed on 6c ▶ 3

d Other dependents: (1) Name	(2) Relationship	(3) Number of months lived in your home	(4) Did dependent have income of $1,000 or more?	(5) Did you provide more than one-half of dependent's support?

Enter number of other dependents ▶

Add numbers entered in boxes above ▶ 5

e Total number of exemptions claimed

Income

Please attach Copy B of your Forms W-2, W-2G, and W-2P here.

If you do not have a W-2, see page 5 of Instructions.

Please attach check or money order here.

7	Wages, salaries, tips, etc.	7	1033.
8	Interest income *(also attach Schedule B if over $400 or you have any All-Savers interest)*	8	170.
9a	Dividends *(also attach Schedule B if over $400)* 9a, 9b Exclusion 25.		
c	Subtract line 9b from line 9a and enter the result	9c	
10	Refunds of State and local income taxes, from worksheet on page 10 of Instructions	10	
11	Alimony received	11	
12	Business income or (loss) *(attach Schedule C)* ▶	12	
13	Capital gain or (loss) *(attach Schedule D)*	13	3941.
14	40% capital gain distributions not reported on line 13 (See page 10 of Instructions)	14	
15	Supplemental gains or (losses) *(attach Form 4797)*	15	
16	Fully taxable pensions, IRA distributions, and annuities not reported on line 17	16	
17a	Other pensions and annuities, including rollovers. Total received 17a		
b	Taxable amount, if any, from worksheet on page 10 of Instructions	17b	
18	Rents, royalties, partnerships, estates, trusts, etc. *(attach Schedule E)*	18	2731.
19	Farm income or (loss) *(attach Schedule F)* ▶	19	(52637.)
20a	Unemployment compensation (insurance) Total received 20a		
b	Taxable amount, if any, from worksheet on page 11 of Instructions	20b	
21	Other income	21	
22	**Total income.** Add amounts in column for lines 7 through 21 ▶	22	(31558.)

Adjustments to Income

(See Instructions on page 11)

23	Moving expense *(attach Form 3903 or 3903F)*	23	
24	Employee business expenses *(attach Form 2106)*	24	
25a	IRA deduction, from the worksheet on page 12	25a	
b	IRA payments made in 1984 included in line 25a ▶		
26	Payments to a Keogh *(H.R. 10)* retirement plan	26	
27	Penalty on early withdrawal of savings	27	
28	Alimony paid	28	
29	Deduction for a married couple when both work *(attach Schedule W)*	29	
30	Disability income exclusion *(attach Form 2440)*	30	
31	**Total adjustments.** Add lines 23 through 30 ▶	31	
32	**Adjusted gross income.** Subtract line 31 from line 22. ▶	32	(31558.)

Adj. Gr. Inc.

Tax Computation (See Instructions on page 13)	33	Amount from line 32 (adjusted gross income)	33	(71558.) X
	34a	If you itemize, complete Schedule A (Form 1040) and enter the amount from Schedule A, line 28	34a	
		Caution: If you have unearned income and can be claimed as a dependent on your parent's return, check here ▶ ☐ and see page 13 of the Instructions.		
	34b	If you do not itemize deductions on Schedule A (Form 1040), complete the worksheet on page 14. Then enter the allowable part of your charitable contributions here	34b	
	35	Subtract line 34a or 34b, whichever applies, from line 33	35	
	36	Multiply $1,000 by the total number of exemptions claimed on Form 1040, line 6e	36	5000.
	37	Taxable Income. Subtract line 36 from line 35	37	
	38	Tax. Enter tax here and check if from ☒ Tax Table, ☐ Tax Rate Schedule X, Y, or Z, or ☐ Schedule G	38	0.
	39	Additional Taxes. (See page 14 of Instructions.) Enter here and check if from ☐ Form 4970, ☐ Form 4972, ☐ Form 5544, or ☐ section 72 penalty taxes	39	
	40	**Total.** Add lines 38 and 39 ▶	40	0.
Credits (See Instructions on page 14)	41	Credit for the elderly *(attach Schedules R&RP)*	41	
	42	Foreign tax credit *(attach Form 1116)*	42	
	43	Investment credit *(attach Form 3468)*	43	
	44	Partial credit for political contributions	44	
	45	Credit for child and dependent care expenses *(attach Form 2441)*	45	
	46	Jobs credit *(attach Form 5884)*	46	
	47	Residential energy credit *(attach Form 5695)*	47	
		[Other credits]		
	48	**Total credits.** Add lines 41 through 47	48	
	49	**Balance.** Subtract line 48 from line 40 and enter difference (but not less than zero) ▶	49	0.
Other Taxes (including Advance EIC Payments)	50	Self-employment tax *(attach Schedule SE)*	50	
	51	Alternative minimum tax *(attach Form 6251)*	51	
	52	Tax from recapture of investment credit *(attach Form 4255)*	52	
	53	Social security tax on tip income not reported to employer *(attach Form 4137)*	53	
	54	Uncollected employee social security tax and RRTA tax on tips *(from Form W-2)*	54	
	55	Tax on an IRA *(attach Form 5329)*	55	
06	56	**Total tax.** Add lines 49 through 55 ▶	56	0.
Payments Attach Forms W-2, W-2G, and W-2P to front	57	Federal income tax withheld	57	870.
	58	1983 estimated tax payments and amount applied from 1982 return	58	
	59	Earned income credit. If line 33 is under $10,000, see page 16	59	
	60	Amount paid with Form 4868	60	
	61	Excess social security tax and RRTA tax withheld (two or more employers)	61	
	62	Credit for Federal tax on special fuels and oils *(attach Form 4136)*	62	17.
	63	Regulated Investment Company credit *(attach Form 2439)*	63	
		[ ]		
	64	**Total payments.** Add lines 57 through 63 ▶	64	887.
Refund or Amount You Owe	65	If line 64 is larger than line 56, enter amount **OVERPAID** ▶	65	887.
	66	Amount of line 65 to be **REFUNDED TO YOU** ▶	66	887.
	67	Amount of line 65 to be applied to your 1984 estimated tax ▶ 67		
	68	If line 56 is larger than line 64, enter **AMOUNT YOU OWE.** Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number and "1983 Form 1040" on it ▶	68	
		(Check ▶ ☐ if Form 2210 (2210F) is attached. See page 17 of Instructions.) $		

Please Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature ▶ _____ Date _____ Spouse's signature (if filing jointly, BOTH must sign) ▶ _____

Paid Preparer's Use Only

Preparer's signature ▶ _____ Date 7/20/84 Check if self-employed ☐ Preparer's social security no. [illegible]

Firm's name (or yours, if self-employed) and address ▶ [illegible] E.I. No. [illegible] ZIP code [illegible]

OMB No. 1545-0074

SCHEDULE F FARM INCOME AND EXPENSES 1993

13

DAVID BIELENBERG 544-32-5978

IF YOU DISPOSED OF COMMODITIES RECEIVED UNDER THE PIK PROGRAM
CHECK THE BOX(ES) THAT APPLY ID NUMBER:

FEED FOR LIVESTOCK SOLD AND REPORTED IN INCOME

PART 1 FARM INCOME--CASH METHOD

A. DESC	B. AMOUNT	C. COST
1. LIVESTOCK HOGS	125129.	42349.
2. OTHER ITEMS		
3. TOTALS	3. 125129.	42349.
4. PROFIT OR LOSS	4. 82780.	

SALES OF LIVESTOCK & PRODUCE

KIND		AMOUNT
5. CATTLE AND CALVES	5.	
6. SHEEP	6.	
7. SWINE	7.	
8. POULTRY	8.	
9. DAIRY PRODUCTS	9.	
10. EGGS	10.	
11. WOOL	11.	
12. COTTON	12.	
13. TOBACCO	13.	
14. VEGETABLES	14.	47202.
15. SOYBEANS	15.	
16. CORN	16.	
17. OTHER GRAIN	17.	15651.
18. HAY AND STRAW	18.	4865.
19. FRUITS & NUTS	19.	
20. MACHINE WORK	20.	11424.
21A. PATRONAGE DIV	21A.	3156.
21B. NONINC. ITEMS	21B.	
21C. NET PATRONAGE DIV.	21C.	3156.
22. PER-UNIT RETAINS	22.	
23. NONPATRON DIST	23.	
24A. AG PGM CASH	24A.	9316.
24B. AG PGM MATERIAL,SERV	24B.	
25. CREDIT LOANS	25.	
26. FED GAS CREDIT	26.	17.
27. STATE GAS REF	27	
28. CROP INSUR PROCEEDS	28.	
29A. SEED	29A.	42992.
29B. IRS	29B.	3391.
29C.	29C.	
30. A" LS THRU 29	30.	119759.
31. GROSS PROFITS	31.	202539.

PART 2 FARM DEDUCTIONS--CASH & ACCRUAL

ITEMS		AMOUNT
32A. LABOR HIRED	32A.	12580.
32B. JOBS CREDIT	32B.	
32C. L32A MINUS L32B	32C.	12580.
33. REPAIRS	33.	7559.
34. INTEREST	34.	32906.
35. RENT	35.	31946.
36. FEED PURCHASED	36.	55455.
37. SEEDS PURCHASED	37.	6442.
38. CHEMICALS	38.	4220.
39. MACHINE HIRE	39.	2499.
40. SUPPLIES PURCHASED	40.	490.
41. DRESSING FEES	41.	
42. VETERINARY FEES	42.	287.
43. GAS,FUEL,OIL	43.	10106.
44. STORAGE	44.	
45. TAXES	45.	2935.
46. INSURANCE	46.	3269.
47. UTILITIES	47.	3076.
48. FREIGHT	48.	
49. CONSERVATION EXP	49.	
50. LAND CLEARING	50.	
51. PENSION/PROF SHARE	51.	
52. EMPLOYEE BENEFIT	52.	
53. DEPRECIATION	53.	31172. X
54A. SEED CLN&DRNG	54A.	4571.
54B. MISC	54B.	546.
54C. OFFICE EXP	54C.	214.
54D. DUES & FEES	54D.	1449.
54E.	54E.	
54F.	54F.	
55. TOTAL DEDUCTIONS	55.	255171.
56. NET FARM PROFIT OR (LOSS)	56.	-52637. X

57. IF A LOSS,DO YOU HAVE AMOUNTS FOR WHICH YOU ARE NOT "AT RISK" IN THIS BUSINESS? Y | N
! X

SCHEDULE F PAGE 1 CONTINUED

21

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

Date: November 1, 1985

TO: Environmental Quality Commission

FROM: Linda K. Zucker

SUBJECT: Agenda Item H

Appeal of Hearings Officer's Findings of Fact, Conclusions of Law and Final Order in DEQ v Hayworth, Case No. 50-AQ-FB-82-09, November 22, 1985.

This matter is before the Commission on a request for review of the hearing officer's decision that Hayworth Farms, Inc. and John Hayworth are liable for a civil penalty of $1,000 in connection with unlawful field burning.

Enclosed for the Commission's review are:

1. Hearing Officer's Findings of Fact, Conclusions of Law and Final Order.
2. Hayworth's exceptions and brief.
3. DEQ's brief.
4. Hayworth's reply brief.
5. Transcript of hearing.
6. Exhibits.

TS:y
RY2046
Enclosures

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON, Department, v. HAYWORTH FARMS, INC. AN OREGON CORPORATION, and JOHN W. HAYWORTH, Respondent.	HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER NO. 50-AQ-FB-82-09 Linn County

BACKGROUND

Hayworth Farms, Inc. and John W. Hayworth have appealed from a Notice of Assessment of Civil Penalty issued by the Department of Environmental Quality (DEQ). The notice alleged failure to actively extinguish all flames and major smoke sources in two perennial grass seed fields when burning was prohibited. DEQ assessed a civil penalty of $1,000. Hayworth and Hayworth Farms, Inc. denied liability and affirmatively alleged that:

1. A portion of their late burning was a necessary precaution to control a wild fire;
2. That same emergency had forced them to leave a late burning field unattended; and
3. Late burning was common practice agreed to by DEQ.

A hearing was conducted on April 4, 1984 and April 11, 1984. The record closed on December 15, 1984. DEQ was represented by Michael Weirich, Assistant Attorney General. Hayworth and Hayworth Farms, Inc. were represented by J. W. Walton, their attorney.

////

////

FINDINGS OF FACT

1. John Hayworth is the owner with his wife of Hayworth Farms, Inc. He is a grass seed grower who farms 5,000 acres and participates in the field burning smoke management program administered by DEQ.

2. At approximately 2:30 p.m. on September 3, 1982, Hayworth received authorization to open field burn 200 acres of grass seed fields near Harrisburg, Oregon. At that time, he was told that fires would have to be extinguished by 3:45 p.m., the fires-out time.

3. First, Hayworth successfully burned the 90 acre southern half of field 4125-5. Then he tried to burn the northern half. When it would not ignite beyond its perimeter, he took his crew and left the field while it was still smoldering because, as he explained:

> ". . .we were very closely pressed for time to get down there and burn the other fields; we didn't want to use our water; we thought the fire was going out; we didn't think it was going to burn there. We used the time to get down there and try to burn these other fields before the 3:45 closing time."

It would have taken about 10 minutes to extinguish the field with water.

4. Part of the crew was sent to a 50 acre field. The crew burned this field uneventfully in about 30 minutes and then joined Hayworth at a 38 acre field (4124-5).

5. At approximately 3:40 p.m., while this 38 acre field was being burned, a gust of wind carried flames into a fence row on the edge of the field. This "wild fire" was a low level emergency which was controlled in approximately 10-15 minutes. Some time was then spent widening the back fire for safety.

6. After the wild fire was controlled and the back fire widened, Hayworth decided to burn the remaining 11 to 12 acres of the 38 acre field rather than applying water to extinguish the fire. His stated reasons were that he believed he did not have enough water to do the job, and he believed it would have taken longer and created more smoke to extinguish the field with water than to burn it.

7. Hayworth's fire fighting equipment was the best in the area and included a fire rig with a 3600 gallon water capacity and a tank truck with a 1500 gallon capacity. When he ignited the 38 acre field, Hayworth had as much as 3200 gallons of water available. After putting out the wild fire, he had between 1500 and 1800 gallons left, although he was required to leave some water in the tanks or lose his prime. Additional water was available from an irrigation pump at Hayworth's farm 5 miles away, and from the Harrisburg Fire Department, 1-1/2 miles away. It takes 15 minutes to fill a truck. It would have taken another 15 to 20 minutes to eliminate the flames in the field by extinguishing them with water.

8. At 4:10 p.m. Hayworth was still actively lighting the 38 acre field.

9. At 4:19 p.m. flames were observed and photographed in the 38 acre field.

10. After replenishing his water supply, Hayworth returned to the northern 90 acre field. This field had visible flames 4 to 5 inches high and was still smoldering. Hayworth extinguished the field with water in 10 to 15 minutes, finishing by about 5:30 p.m.

11. Hayworth acknowledged he tried to burn too many acres in too short a time.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction.

2. On September 3, 1982 Hayworth violated OAR 340-26-010(5) by failing to actively extinguish all flames and major smoke sources when prohibition conditions were imposed by DEQ.

3. Hayworth has not proved any defense to liability for this violation.

4. Hayworth is liable for a civil penalty of $1,000 as assessed.

OPINION

The rule under which Hayworth was cited provides:

> OAR 340-26-010(5) Any person open field burning under these rules shall actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department.

The case record establishes that fields 4124-5 and 4125-5 were burning and producing flames and significant smoke after prohibition conditions were imposed by DEQ.

Despite this late burning, Hayworth disputes liability under the rule. Hayworth contends that OAR 340-26-010(5) must be read as including an implied term of reasonableness in time and manner of compliance. He reasons that the term "actively extinguish" must be construed because it is not defined, and urges a construction which requires a grower to do only what is "practical" and "reasonable." Using this construction, he argues that the rule allows a grower to ignite his field after fires-out time if he believes this to be good smoke management practice. In his case, Hayworth contends ignition of the field was good management practice because it quickly exhausted the fuel source--straw--and caused the fire to go out.

Not every term used in a regulation must be defined. If a term is clear and unambiguous it does not require or allow interpretation. Schoen v. University of Oregon, 21 Or App 494, 535 P2d 1378 (1975). In the context of the smoke management rules, the meaning of the term "extinguish" is clear and unambiguous. The Random House Dictionary of the English Language, The Unabridged Edition (1973), defines "extinguish":

> 1. to put out (a fire, light, etc.); put out the flame of (something burning or lighted): to extinguish a candle.
> 2. to put an end to or bring to an end; wipe out of existence; annihilate: to extinguish hope.
> 3. to obscure or eclipse as by superior brilliancy: Her beauty extinguished that of all other women.
> 4. Law. to discharge (a debt), as by payment. (Emphasis in original.)

Ignite is defined as follows:

> 1. to set on fire; kindle.
> 2. Chem. to heat intensely; roast.
> 3. to take fire; begin to burn.

Using these definitions, a flame cannot be extinguished--put out--by igniting it--setting it on fire. The term "extinguish" is clearly defined and needs no interpretation.

However, even if this regulation were ambiguous, and susceptible to interpretation, it would be construed under the guide that words of common usage are to be given their natural, plain and obvious meaning, Perez v. State Farm Mut. Auto Ins. Co., 289 Or 295, 613 P2d 32 (1980); and would be construed to avoid absurd or unreasonable results. State v. Linthwaite, 295 Or 162, 170, 655 P2d 863 (1983). The natural, plain and obvious meaning of this regulation is that burning is to stop. In the context of the field burning program, Hayworth's interpretation would lead to

the unreasonable result of delegating to the regulated individuals the authority to regulate themselves. That is, each grower would be allowed to determine when it would be desirable to put out fires and when it would be desirable to ignite them. It does not appear that the legislature or the agency intended this result.

An additional approach in determining the regulation's meaning is to examine its context, background circumstances and purpose; and to read it in its entirety. Peters v. McKay, 195 Or 412, 238 P2d 225, rehearing denied 195 Or 412, 246 P2d 585 (1952). The obvious purpose of this regulation, and of the entire program, is to give DEQ the ability to control the time when burning can take place. Although not embodied in a rule, the agency's interpretation of its regulation is clearly set out in the field burning permits which are employed in program operation: Item 2.f. on the reverse side of the permit says:

> "The permittee shall monitor and burn in accordance with Department open field burning radio announcements and shall immediately cease igniting and actively extinguish all fires as rapidly as possible when a stop burning order is issued by the Department."

There is nothing in DEQ's construction of its rule which conflicts with the ordinary meaning of the words it uses. A grower is required to immediately cease igniting and actively extinguish all fires as rapidly as possible when a stop burning order is issued by DEQ.

Hayworth has misconstrued Sullivan v. Mountain States Power Co., 139 Or 282, 9 P2d 1038 (1932), in citing it as support for authority to ignite the remainder of his field. In Sullivan, the language of the regulation being construed specifically required the use of "every possible

effort." The Sullivan court did not engraft a "best efforts" clause onto every regulation; it merely construed a regulation already containing such a clause. The case has no application to Hayworth's circumstances.

Hayworth had read the permit condition requiring a grower to "immediately cease igniting and actively extinguish all fires" under prohibition conditions. Nonetheless, he claimed that he was authorized by smoke management program personnel to ignore the literal regulatory directive and to use his judgment whether to stop burning. Hayworth was vague about the terms of this authority. He did not recall present program management authorizing late burning. Asked when he had been told it was "okay" to actively ignite a field after the fires-out time, Hayworth said he had been told by a previous program administrator:

> ... Back in the days when he administered the program. I cannot tell you what day. We've had problems on different fires, he said use your judgment. Different people that are paid in the program--smoke management--we have suggested that we expedite the fire, use our judgment. We've gone over with our torches and helped neighbors that were caught in similar situations.

Hayworth's claim of authority to violate the rule is not borne out by the case record. Under the circumstances described by Hayworth, a reasonable person participating in a highly regulated activity would not rely on the described "authorization" to burn when the regulations required him to stop burning. A reasonable person would not rely on it years later under changed program management and after receipt of a permit containing the recited language.

Hayworth argues that DEQ's issuance of a permit to burn 200 acres created a presumption that it was reasonable to burn all 200 acres that

day. Hayworth's interpretation of the permit's effect is refuted by the terms of the permit itself. The permit said: "The grower ... is authorized to open burn the fields listed on the reverse side hereof, subject to the following conditions and terms ..." What followed were the essential terms and conditions of the field burning program operation. Among these terms was the previously cited requirement that the permittee immediately cease igniting and actively extinguish all fires as rapidly as possible when a stop burning order was issued by DEQ. It is hard to see how that requirement is consistent with the creation of a presumption that issuance of the permit authorizes violation of its terms.

Hayworth contends that his conduct constituted active extinguishment of all flames and major smoke sources under the circumstances existing at the time. The day's events provide the best test of that contention. Hayworth argues that his conduct should be viewed under the standard that one may not be held liable for a mistake of judgment when it is formed in or under the stress of an emergency. Despite the many discrepancies in Hayworth's witnesses testimony regarding the time and circumstances of the day's burning, the fact of the wildfire is accepted. When it was controlled, Hayworth had to decide what to do about the remaining unburned acres. By all accounts, this decision was made after fires out time. As Hayworth explained in his Answer:

> "A small fire was set after prohibition conditions were imposed based upon the respondent's judgment that such a method was a more expeditious way to extinguish the fire."

Once the wildfire was controlled there was no longer an emergency. Thus, the standard proposed has no application to Hayworth's circumstances.

Hayworth further argues that "(i)f the circumstances dictate that it is quicker to let the fire burn out with the help of a wind-aided strip burn, rather than dousing the flames with water, then that method should not be penalized as a regulatory violation." In his case, he believed that continued burning rather than water extinguishment was the best way to extinguish all flames and major smoke sources as quickly as possible. This contention presents a broader issue--the extent to which a regulated party may examine the wisdom of a regulation and determine for himself whether to comply with it.

The authority to determine field burning practice is given to the regulator not to grass seed growers. See ORS 468.450. If an administrative order is authorized by statute its reasonableness will be presumed. Sunshine Dairy v. Peterson, 183 Or 305, 93 P2d 543 (1946). While the case record contains testimony both supporting and refuting the merits of continued burning versus water extinguishment as smoke management tools, it is no more the job of the reviewer than of the individual grower to name the victor in that debate. The decision is a policy judgment made by the Environmental Quality Commission and embodied in the administrative rules which guide the conduct of the smoke management program and its participants. OAR 340-26-010(5) says extinguish fires. Thus, growers are required to extinguish fires. They are not authorized to continue burning in the supposed hope of diminishing the adverse environmental effect of the fires they may have started.

Hayworth's conduct illustrates the folly of leaving the decision to the grower. The case record does not support the contention that continued burning was a significantly faster way to expedite the conclusion

of the fire.

Hayworth's earlier decision to leave his 90 acre field showed similar indifference to program requirements. He justified this decision as one made on the basis of many years of grass seed farming judgment and supported by community practice. He conceded, however, that it was an error in judgment to believe that the field would not continue burning, and described his mistake as a reasonable one made in good faith.

The rule under which Hayworth was cited states an absolute obligation to extinguish fires on time. Even if the rule provided relief from liability for reasonable conduct, Hayworth would not be excused from liability. First, it was not reasonable to leave the 90 acre field smoldering with the potential for reignition when he could have extinguished it in ten minutes. Second, when confronted with a choice, Hayworth elected to complete burning the 38 acre field and risk exceeding his legal authority. The case facts do not support a finding that Hayworth did everything possible to comply with the regulation at issue. Rather, he did what was expedient in an effort to burn as much as possible.

Hayworth is a member of the Oregon Seed Council. The Council has a significant role in the smoke management program. See ORS 468.485(3). Hayworth is well-placed to argue for practical changes in agency rules. In the meantime he is required, along with other program participants, to exercise the restraint and judgment that will assure compliance with the rules as written.

////

////

////

ORDER

IT IS ORDERED THAT Hayworth Farms, Inc. and John Hayworth are liable for a civil penalty of $1,000 and that the State of Oregon have judgment for that amount.

Dated this 18th day of July, 1985.

Linda K. Zucker
Hearings Officer

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

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON, Department, vs. HAYWORTH FARMS, INC., an Oregon corporation, and JOHN W. HAYWORTH, Respondents.	)	No. 50-AQ-FB-82-09 Linn County WRITTEN EXCEPTIONS AND BRIEF

The respondents, Hayworth Farms, Inc. and John Hayworth, hereby objects to the following findings of fact and conclusions of law of the Hearing Officer in the above-entitled case.

1. Findings of Fact Numbers 3 through 11.

2. Conclusions of Law Numbers 2, 3 and 4.

See below for respondents' reasoning.

PROPOSED ALTERNATIVE FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

Findings of Fact

1. John Hayworth and his wife own Hayworth Farms, Inc., a corporation. He is a grass seed grower who farms 5,000 acres and participates in the field burning smoke management program administered by DEQ.

2. At approximately 2:30 p.m. on September 3, 1982, Mr. Hayworth received authorization to open field burn 200 acres of grass seed fields near Harrisburg, Oregon. At that time,

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

he was told that fires would have to be extinguished by 3:45 p.m.

3. Mr. Hayworth initially attempted to burn a 90-acre bluegrass field at approximately 3:00 p.m. (Tr. 16). After igniting the field's perimeter, Mr. Hayworth sent part of his crew to a 50-acre field at approximately 3:15 p.m. (Tr. 374). At approximately 3:25 p.m. Mr. Hayworth, unable to ignite the remainder of the 90-acre field, left for another 38-acre field. (Tr. 35, 375).

4. Mr. Hayworth left the 90-acre field while it was still smoldering because he believed it would burn itself out and not be dangerous because of: (1) A lack of combustible materials in the field; (2) the fact the field consisted of green stubble blue grass which smolders and does not burn; and (3) the fact that the perimeter was well burnt. (Tr. 398, 406, 420, 476).

5. The crew sent to the 50-acre field burned this field successfully and arrived at the 38-acre field between 3:30 p.m. and 3:35 p.m. (Tr. 379-80).

5. The 38-acre field was lit around 3:35 p.m. (Tr. 380). Within minutes of lighting the fire on this field, a gust of wind carried flames into the fencerow on the northern edge of the field. (Tr. 216). A fire truck in use by the Hayworth crew spent about fifteen minutes controlling this wildfire by lighting a backfire. (Tr. 216). During this time, the remainder of the backfire on this 38-acre field continued to burn.

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

(Tr. 439). When the wildfire was controlled, sometime between 3:55 and 4:05 p.m., the crew continued backfiring and rapidly burned the remaining unburned portion of the field, roughly 10-11 acres. (Tr. 45, 417, 424).

7. Mr. Hayworth ignited the remaining 10-11 acres on this 38-acre field for four reasons:

(1) He had been told by the former coordinator of the Department's field burning program, Mr. Scott Freeburn, that it was proper to ignite the remainder of a burning field after the 'fires-out' time if that would cause the fire to burn itself out faster and with less smoke than dousing it with water. (Tr. 445, 490).

(2) Mr. Hayworth and his crew believed that a rapid burn of the remaining 10-11 acres would extinguish the fire quicker and with less smoke than dousing it with water. (Tr. 203, 213-14).

(3) After controlling the wildfire, Mr. Hayworth's fire trucks were low on water. Extinguishing the fire in the 38-acre field would have required refilling the trucks and then returning to douse the fire which would have taken over one-half hour. He believed it would be quicker and less smoky to rapidly burn the remaining acreage on the 38-acre field.

(4) It was common practice among grass seed growers in the area to extinguish a fire by rapidly burning the remaining crops in a field so that the fire would not have anything to burn. (Tr. 470-71, 74-75).

8. At approximately 4:10 p.m. Mr. Hayworth learned that the 90-acre field was still smoldering. (Tr. 362). Very shortly after 4:19 p.m. Mr. Hayworth sent a crew to the 50-acre field to insure it was extinguished. (Tr. 363). He took his two fire trucks to refill them with water and then drove to the 90-acre field, arriving there at roughly 5:22 p.m. (Tr. 100,

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

427). He then proceeded to extinguish any remaining fire at the 90-acre field, finishing shortly after 5:30 p.m. (Tr. 364).

9. That defendant acted reasonably under the circumstances then existing and was not negligent.

Conclusions of Law

1. The Commission has jurisdiction.

2. OAR 340-26-010(5), as in effect on September 3, 1982, must be construed as including an implied term of reasonableness in the time and manner of compliance.

3. Defendant did not violate OAR 340-26-010(5) by rapidly burning the remaining portion of a burning field when that burning created less smoke and caused the fire to extinguish more rapidly than dousing it with water.

4. Defendant did not violate OAR 340-26-010(5) by leaving a smoldering field without completing extinguishing it when he had a reasonable belief that the field would burn itself out because it had a burned perimeter, little remaining combustible material and a crop which did not burn readily.

5. The respondent is not liable for a civil penalty.

Final Order

It is ordered that the respondent did not violate OAR 340-26-010(5) and is not liable for a civil penalty.

ARGUMENT

Introduction

Under OAR 340-11-132(4)(i) the Commission may substitute its judgment for that of the Hearings Officer in making any

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

particular finding of fact, conclusion of law, or order. The respondent maintains that the above proposed alternative findings of fact, conclusions of law and final order are supported in the record and best reflect an effort to reasonably implement the state's policy concerning field burning.

A. Required conduct under administrative regulation OAR 340-26-010(5) must be read as including an implied term of reasonableness in time and manner of compliance.

Respondent was cited for failing to "Actively extinguish all flames and major smoke sources" upon imposition of prohibitation conditions. OAR 340-26-010(5). Absent definitions clarifying what is meant by the term "actively extinguish," the regulation must be construed.

A basic tenet of statutory construction is that a statute or regulation is to be construed so as to avoid absurd or unreasonable results. State v. Linthwaite, 295 Or 162, 170, 655 P2d 863 (1983); Stovall v. Perius, 61 Or App 650, 654, 659 P2d 393 (1983).

An analagous statutory provision existing in 1932 made it unlawful for anyone accidently setting a fire to fail in using every "possible" effort to extinguish it. In construing the statutory language the court held the provision to require nothing more than what is practicable and reasonable under the circumstances. Sullivan v. Mountain States Power Co., 139 Or 282, 9 P2d 1038 (1932). The court's reasoning is instructive.

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

> "We come now to the defendant's criticism of the word 'possible'. Generally, an absurdity can be created in the requirements of any legislation by placing upon the meaning of some word found in the act its most extreme meaning, and then pushing the selected interpretation to its furthermost limit. But the courts, in construing an enactment, presume that the legislature intended no absurd consequences and strive for a meaning that will prevent hardship and injustice: . . . . It seems clear that the legislature by the use of the single word 'possible' did not intend to demand that those subject to the act should do things that were neither reasonable nor practicable. . . . It is our opinion that the words 'every possible effort' exact everything that is practicable and reasonable, but no more." 139 Or supra at 307-308.

The Sullivan court, faced with undefined statutory language, inferred a term of reasonableness for a person charged for violating the statutory duty to use "every possible effort" in extinguishing a fire.

The administrative regulation at issue here expresses a duty to "actively extinguish," yet provides no time or specific manner in which to do so. Based upon the Sullivan analysis and fundamental principles of statutory construction, there is a term of reasonableness for complying with the regulation herein. Hence, to avoid an absurd result, OAR 340-26-010(5) should be read to require a person to actively extinguish all flames and major smoke sources within a reasonable time and manner.

The testimony of the Department's field burning coordinator, Sean O'Connell, made it clear that the Department's regulations do not require that fires be extinguished by water. (Tr. 310). The rules merely state that fires shall be actively extinguished.

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

The phrase "actively extinguish" is not defined in any Departmental regulation and so is subject to interpretation.

The Department points to the field burning permit for authority that "actively extinguish" is defined to mean to 'put out a fire with water.' There is no evidence, however, that the language on the field burning permit is the result of a departmental promulgation or exercise of its rule making authority. The meaning of "actively extinguish", therefore, remains open to interpretation.

The respondent testified that the coordinator of the Department's field burning program prior to Sean O'Connell, Scott Freeburn, told him on several occasions that it was proper to ignite the remainder of a burning field after the 'fires out' time if that would cause the fire to burn itself out faster than dousing it with water. (Tr. 445, 490). The Hearings Officer stated that Mr. Hayworth should not have relied upon this representation. In contrast to the Hearing Officer's opinion, it is submitted that a reasonable grass seed farmer with many years of experience could properly rely on this representation. This is especially true when the representation is consistent with the grass seed farmer's own experience. Respondent's witnesses also testified that to their knowledge this practice was common practice among grass seed farmers. (Tr. 213, 237, 352-53, 471).

Respondent's interpretation of actively extinguish is entirely logical and reasonable under these circumstances. A

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

burning grass seed field will extinguish when it has burned all the available fuel on that field. If the unburned portion of field is relatively small, its rapid ignition will exhaust the fire's fuel source and cause the fire to go out. The respondent's actions were a common sensical, logical and acceptable solution to the problem of rapidly extinguishing a field in these circumstances.

B. Respondent's conduct constituted active extinguishment of all flames and major smoke sources under the circumstances existing at the time.

38-acre Field

On the day Mr. Hayworth was cited for a violation of the regulatory provision, he had ignited his fields well within the time permitted and had done so pursuant to a proper permit registration. During the course of the burn and prior to the time restrictions, the fire on the 38-acre field identified as Reg. #4124-5-38 jumped several yards and ignited a fence row adjacent to another farmer's field.

Burning of the fence row along the property line created a critical situation for respondent in light of present liability laws for the spread of fire onto the land of another. Property owners have been held liable for damages of fire spreading from their premises to those of another since early common law. 45 C.J. Negligence, p. 850, §272. Today's liability principles are even more harsh. In recognition of the inherent risks associated with field burning, the Oregon Supreme Court

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

has imposed strict liability a farmer who allows a fire on his premises to escape and burn an adjacent person's land. Koos v. Roth, 293 Or 670, 652 P2d 1255 (1982). Due to such strict liability provisions, as well as safety considerations, immediate attention to the fence row fire was required and justified.

This emergency required respondent to take time to contain and prevent the spread of the fire along the property line. This dangerous distraction resulted in two important facts: (1) the respondent used a great deal of his water in fighting the wildfire and (2) it prevented him from finishing burning the 38-acre field prior to 3:45 p.m.

An actor may not be held liable for a mistake of judgment when it is formed in or under the stress of an emergency. Brown v. Spokane P. & S. Ry. Co., 248 Or 110, 123, 431 P2d 817 (1967). Parallel to that rule is the common law principle that the standard of care of one to prevent the spread of fire, is the care that would be exercised by a reasonably prudent person under the same or similar circumstances. Dippold v. Cathlemet Timber Co., 111 Or 199, 206, 225 P 202 (1924). That is the standard upon which respondent's conduct must be viewed.

Respondent not only had to be concerned with putting out the fence row fire and avoiding its spread onto his neighbor's property, but he also had to ascertain the most expeditious means of extinguishing the fire and smoke from the 38-acre field which, at the time, was twelve acres short of being

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

burned. A small fire was set after prohibition conditions were imposed based upon the respondent's judgment that such a method was a more expeditious way to extinguish the fire. Respondent's water truck was low due to attempts to put out the fence row fire. Therefore, to extinguish the main fire line would have required the water truck to leave the scene, fill up with water and return. To then douse the flames with water would have created excessive low altitude smoke for a substantial period of time. Respondent's actions were therefore the best way to accomplish DEQ's purpose of extinguishing all flames and major smoke sources as quickly as possible. Indeed, Richard Peterson, Mayor of Harrisburng, former Chief of the Harrisburg Rural Fire Department and the operator of respondent's fire truck that day, testified that burning the remainder of the field caused the fire to extinguish faster and with less smoke than dousing it with water. (Tr. 203, 213-14).

Given the circumstances existing at the time and the few remaining unburned acres left, an into the wind strip burn was the best means to extinguish the existing fire. Such a method produces far less smoke as the Department recognizes in its own regulations, see OAR 340-26-005(17). An "into the wind strip burn" maximized plume rise, and reduces burning time thereby minimizing the adverse environmental impact of the smoke source. It is more in conformance with the stated policy guidelines of the DEQ. It was a technique which respondent determined would produce a condition "as free from air pollution

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

as practicable" under the circumstances. OAR 340-23-025; see also ORS 468.455.

The administrative regulation at issue requires that the extinguishment of flames and smoke sources be accomplished, presumably within a reasonable time frame. It does not set forth any particular means of accomplishing that purpose. If the circumstances dictate that it is quicker to let the fire burn out with the aid of an into the wind strip burn rather than dousing the flames with water, then that method should not be penalized as a regulatory violation. Respondent's conduct constituted the active extinguishment of all flames and major smoke sources under the circumstances.

90-Acre Field

The respondent demonstrated the reasonableness of leaving this field unattended at 3:20 p.m. Both the respondent and his son testified that they felt the field would burn itself out and would not be dangerous due to the lack of fuel in the field, the nature of the crop being burned and the fact the perimeter was well burnt. (Tr. 398, 406, 420). It should be stressed that the respondent has been grass seed farming since 1950 and his son for five years. (Tr. 33, 344). The respondent's expert witness, Donald Estergard, has grass seed farmed for 25 years. (Tr. 469). Mr. Estergard stated that based on the testimony concerning this particular field, he would have done the same as the respondent. (Tr. 483). Richard Peterson, Mayor of Harrisburg and former Chief of the Harrisburg Rural

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

Fire Department, also testified that he believed it was safe to leave this field unattended. (Tr. 235).

The respondent did not take an 'extra' ten minutes to insure this field was out because of his decision, based on 30 years experience, that the field would go out on its own accord. The respondent also knew that any smoldering areas that did not immediately go out would not be dangerous due to the field's extensive perimeter burn. The field consisted of green stubble which normally just smolders and will not burn. (Tr. 476-77).

The wildfire in the 38-acre field prevented the respondent from returning to the 90-acre field before 5:20. Because of the water used to fight this wildfire and wet down the perimeter of the fields burnt that day, it was necessary to refill the respondent's fire trucks before returning to the 90-acre field. It is not disputed that the respondent's fire trucks were low on water by the time the respondent learned the 90-acre field was still burning. It was therefore prudent and reasonable for the respondent to refill them before going to investigate and douse the 90-acre field. (Tr. 427).

The respondent's actions upon learning of the continued smoldering of the 90-acre field are even more reasonable when contrasted to the Department's original argument. The Department argues that the respondent should have used water to extinguish the fire in the 38-acre field after controlling the wildfire. It is undisputed that the respondent would have needed to

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

spend a minimum of 20 minutes refilling his fire trucks to do this. After this time and the time needed to douse and extinguish the fire in the 38-acre field, the respondent would have needed to refill his fire trucks again before heading over to the 90-acre field. The respondent's course of action allowed him to extinguish the fire in the 38-acre field with a minimum amount of smoke and without the delay of filling his fire trucks. He was then able to proceed to the 90 acre field after stopping to fill his fire trucks as a reasonable precautionary measure.

CONCLUSION

The respondent has demonstrated the reasonableness of his efforts to actively extinguish his two fields. The Department's regulations do not specify what method must be used to actively extinguish a fire and allow for a flexibility of methods based on the circumstances. Respondent's actions were based on 30 years experience as a farmer and were supported by the testimony of three witnesses with many cumulative years experience in farming. It is submitted that the respondent has shown that the actions at the 38-acre field actually resulted in less smoke and a quicker extinguishment of the fire. For the above reasons, the Commission should adopt the alternative proposed

***

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

findings of fact, conclusions of law and final order as set forth by the respondent.

Respectfully submitted,

RINGO, WALTON, EVES & STUBER, P.C.
Attorneys for Respondent

By /s/ J. W. Walton
J. W. Walton
OSB No. 53108

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

CERTIFICATE OF MAILING

I certify that I served the foregoing Written Exceptions and Brief on the following by depositing a true, full, and exact copy thereof in the United States Post Office at Corvallis, Oregon, on September 6, 1985, enclosed in a sealed envelope, with postage paid, addressed to:

Linda K. Zucker, Hearings Officer, Environmental Quality Commission, P.O. Box 1760, Portland, OR 97207

David B. Frohnmayer, State Attorney General and Michael T. Weirich, Ass't Attorney General, Dept. of Justice, 100 Justice Bldg., Salem, OR 97310

/s/ J. W. Walton
J. W. Walton
One of Attorneys for Respondents

* * * * * * * * * * *

CERTIFICATE OF TRUE COPY

I certify that the foregoing Written Exceptions and Brief is a true, exact, and full copy of the original.

DATED this 6th day of September, 1985.

J. W. Walton
Of Attorneys for Respondents

* * * * * * * * * * * * * * * *

RINGO, WALTON, EVES & STUBER, P.C.
Attorneys at Law
605 SW Jefferson St.
P.O. Box 1067
Corvallis, OR 97339

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY of the State of Oregon, Department, v. HAYWORTH FARMS, INC., an Oregon corporation, and JOHN W. HAYWORTH, Respondents.	No. AQ-FB-82-09 DEPARTMENT'S ANSWERING BRIEF

The Department of Environmental Quality ("department") agrees with the findings of fact, conclusions of law and final order of the hearings officer. Accordingly, the department hereby incorporates by reference such findings, conclusions and final order. (A copy of the order is attached hereto, and marked as Exhibit A). Furthermore, the department adopts by reference its own closing argument earlier filed in this matter. (A copy of the argument is attached hereto and marked as Exhibit B).

The department in its answering brief will address the points and issues made by respondents in their filed exceptions. The department will first address selected suggested findings submitted by respondents. The department will then comment on the legal issue concerning OAR 340-26-010(5) raised by respondents.

COMMENTS ON SELECTED FINDINGS PROPOSED BY RESPONDENTS

1. As its proposed Finding No. 3, respondent states:

//

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

"3. Mr. Hayworth initially attempted to burn a 90-acre bluegrass field at approximately 3:00 p.m. (Tr. 16). After igniting the field's perimeter, Mr. Hayworth sent part of his crew to a 50-acre field at approximately 3:15 p.m. (Tr. 374). At approximately 3:25 p.m. Mr. Hayworth, unable to ignite the remainder of the 90-acre field, left for another 38-acre field. (Tr. 35, 375)."

The department agrees with this finding except for the underlined portion. The cited transcript pages do not support the statement that respondent was "unable to ignite the remainder of the 90-acre field." In fact, the respondent's own testimony is that he left the 90-acre field burning and smoldering. (Tr. 434-435).

2. Respondent's Finding No. 4 provides:

"4. Mr. Hayworth left the 90-acre field while it was still smoldering because he believed it would burn itself out and not be dangerous because of: (1) A lack of combustible materials in the field; (2) the fact the field consisted of green stubble blue grass which smolders and does not burn; and (3) the fact that the perimeter was well burnt. (Tr. 398, 406, 420, 476)."

The department disagrees that this finding is supported by the evidence found at the cited transcript pages. The transcript at page 398 only provides testimony that it was rare for respondent to leave a field and return to find it burning. The reason for this, according to respondent, is because "the fields burn up, or they don't burn at all." (Emphasis added).

The transcript at page 406 only provides testimony that there was not enough fuel at the 90-acre field to make a wildfire.

The transcript at page 420 provides testimony from respondent that he was not concerned about leaving the field unattended

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

because "there was no fuel there to really make a fire hardly burn, other than a flame maybe 3 inches high." (Emphasis added).

Finally, the testimony of Mr. Estergard at page 476 supports the general statement that green stubble blue grass smolders but does not burn. However, the witness concedes on the same page of the transcript that he had no personal knowledge of the field in question or the state of ignition it was in when left by respondent.

Thus, the pages of transcript cited by respondent do not support his proposed finding of fact. On the contrary, these same pages only support a finding that respondent left the 90-acre field in a state of ignition. The department's position, as endorsed by the hearings officer, is that respondent left the field while it was ignited and smoldering because, as respondent testified, he was in a hurry to burn his other fields several miles away. (Tr. 435, 456; Hearings Officer Finding # 3).

3. Respondent's Finding No. 6 (mislabeled as 5) provides:

> "The 38-acre field was lit around 3:35 p.m. (Tr. 380). Within minutes of lighting the fire on this field, a gust of wind carried flames into the fencerow on the northern edge of the field. (Tr. 216). A fire truck in use by the Hayworth crew spent about fifteen minutes controlling this wildfire by lighting a backfire. (Tr. 216). During this time, the remainder of the backfire on this 38-acre field continued to burn. (Tr. 439). When the wildfire was controlled, sometime between 3:55 and 4:05 p.m., the crew continued backfiring and rapidly burned the remaining unburned portion of the field, roughly 10-11 acres. (Tr. 45, 417, 424)." (Emphasis added).

The department agrees with this finding with the exception of the underlined portions. The first underlined portion of finding is incorrect in that the testimony on page 216 of the

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

transcript states only that the fire got out of control within one and one-half minute of being lit.

The second underlined portion is incorrect in two respects. First, if the fire was lit at 3:35 p.m. and the wildfire commenced at approximately 3:37 p.m. and was controlled within 15 minutes (compare Tr. 26: 10-15 minutes), then the time of day when the fire was under control was approximately 3:52 p.m.

Furthermore, the finding that the crew "rapidly burned" the remaining acreage at the 38-acre field is not supported by the evidence. Respondent did initially testify that, when he lit the head fire at 4:10 p.m., it only took "3 or 4 minutes" for the remaining acreage to burn. (Tr. 44-45). However, this testimony occurred before respondent had reviewed Exhibits 5 and 6, aerial photos of the field taken at 4:19 p.m. by Brian Finneran. After reviewing these photos, respondent admitted that the field had not burned as quickly as he earlier estimated. (Tr. 452). Indeed, respondent revised his "3-4 minute" estimated burn time for the remaining acreage to the "15 to 20 minutes" testimony found on transcript page 417 cited in respondent's exceptions. Inspector Lebens testified, however, that he still observed smoke from the field at 4:45 p.m. - approximately one hour after the wildfire was controlled and the 3:45 p.m. extinguishment time. (Tr. 162). Clearly, the remaining acreage was not "rapidly burned" as asserted in proposed Finding No. 6.

4. Respondent's Finding No. 7 provides:

"7. Mr. Hayworth ignited the remaining 10-11 acres on this 38-acre field for four reasons:

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

"(1) He had been told by the former coordinator of the Department's field burning program, Mr. Scott Freeburn, that it was proper to ignite the remainder of a burning field after the 'fires-out' time if that would cause the fire to burn itself out faster and with less smoke than dousing it with water. (Tr. 445, 490).

"(2) Mr. Hayworth and his crew believed that a rapid burn of the remaining 10-11 acres would extinguish the fire quicker and with less smoke than dousing it with water. (Tr. 203, 213-214).

"(3) After controlling the wildfire, Mr. Hayworth's fire trucks were low on water. Extinguishing the fire in the 38-acre field would have required refilling the trucks and then returning to douse the fire which would have taken over one-half hour. He believed it would be quicker and less smoky to rapidly burn the remaining acreage on the 38-acre field.

"(4) It was common practice among grass seed growers in the area to extinguish a fire by rapidly burning the remaining crops in a field so that the fire would not have anything to burn. (Tr. 470-71, 74-75)."

The department disagrees with this finding in the following respects, the numbers corresponding to respondent's paragraph numbers.

(1) The cited testimony at page 445 only contains respondent's recollection that a former field burn program manager told him that it was "okay" to ignite a field after the extinguishment time. There is no evidence in the transcript, even from respondent's memory, to the effect that it was proper to ignite the remainder of a burning field as a means to extinguish the field.

(2) The proposed finding may accurately state respondent's allegation but it is not supported by the testimony found at the cited transcript pages.

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

(3) There is no cited testimony to support this finding. The hearings officer's findings state that the trucks were only one and one-half miles from a water source. In addition, the trucks were only one-half empty and therefore could be filled in seven and one-half minutes. (Hearings officer Finding # 7). Respondent's finding also ignores the fact that respondent could have commenced extinguishment operations with one water truck while sending the second truck to be refilled. The second truck could have then finished up the watering if necessary or proceeded directly on to the burning 90-acre field.

(4) Respondent's suggested finding is supported generally by the testimony from grower Estergard at transcript pages 470-71. (The other cited transcript pages, 74-75, are inapplicable and irrelevant). However, the testimony from Estergard does not state that it is common practice among growers to actively "ignite to extinguish" after fires out time. In fact, Estergard stated that he had never been cited for a late burn himself and had never had a fire burning longer than an hour after the extinguishment time. (Tr. 486). The witness is not personally qualified to say what is common extinguishment practice for a late burn. The finding at paragraph (4) is not meaningful in that it does not address common practice among grass seed growers in extinguishing late burns.

In any event, the department decrees what the "extinguishment practice" shall be for burns. "Common practice" which is not in accordance with the department's requirements is unlawful and without effect.

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

5. Respondent's Finding No. 8 provides:

> "8. At approximately 4:10 p.m. Mr. Hayworth learned that the 90-acre field was still smoldering. (Tr. 362). Very shortly after 4:19 p.m. Mr. Hayworth sent a crew to the 50-acre field to insure it was extinguished. (Tr. 363). He took his two fire trucks to refill them with water and then drove to the 90-acre field, arriving there at roughly 5:22 p.m. (Tr. 100, 427). He then proceeded to extinguish any remaining fire at the 90-acre field, finishing shortly after 5:30 p.m. (Tr. 364).

The department disagrees with the underlined portion of this finding in the following respects.

The underlined sentence states that the respondent sent a crew to the 50-acre field shortly after 4:19 p.m. The cited transcript page, containing testimony from respondent's son, makes no mention of the time of day at which the crew left. In fact, the testimony from the same witness on the preceding transcript page states that the witness thought that the 35-acre field was burned out at 4:10 p.m. or 4:15 p.m. (Tr. 362). As discussed, Exhibits 5 and 6, photographs taken of this field at 4:19 p.m., conclusively show that the field was burning strongly at that time. The witness's recollection is therefore suspect and his testimony does not establish the finding stated. There is no clear evidence from respondent concerning when the fire at the 38-acre field was extinguished and the crews departed. The department's evidence on this issue, testimony from Inspector Leben's, shows that the area was still smoking at 4:45 p.m. (Tr. 162).

6. Respondent's Finding No. 9 provides:

> "9. That defendant acted reasonably under the circumstances then existing and was not negligent."

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

The department disagrees with this finding because it constitutes a conclusion of law and not a finding of fact.

"ACTIVELY EXTINGUISH" DOES NOT INCLUDE IGNITION OF FIELD

The rule under which respondent was cited provides that:

> "Any person open field burning under these rules shall actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the department." OAR 340-26-010(5) (emphasis added).

Respondent argues that the term "actively extinguish" may be construed to include extinguishment by flame as well as by water. Under this interpretation, respondent argues that his actions at the 38-acre field are excused.

Before discussing respondent's suggested legal interpretation of OAR 340-26-010(5), it is important to separate the relevant issues surrounding the application of this rule to the present case. As stated in its closing argument, it is the department's position that respondent was initially negligent in attempting to burn the 38-acre field so close to the extinguishment time. This act of negligence occurred irrespective of respondent's subsequent unlawful act of "extinguishment by flame."

As the record shows, respondent initially lit the field at 3:35 p.m. This late lighting only allowed respondent 10 minutes to completely burn his field before the 3:45 p.m. extinguishment time. Even assuming that a "wildfire" occurred at the site, respondent's own testimony confirms that the fire was controlled by 3:50 to 3:55 p.m. (Tr. 26). The photos taken at 4:19 p.m.

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

(Exhibits 5 and 6) show that a good portion of the field is still unburned 25 to 30 minutes after the "wildfire" was controlled. Thus, it is the department's position that respondent was initially negligent in allowing only 10 minutes to burn the field. Accordingly, whether OAR 340-26-010(5) may be interpreted to allow "extinguishment by fire" is not relevant to respondent's liability in this case. Furthermore, even assuming interpretation of this rule is relevant to respondent's liability on the 38-acre burn, resolution of this issue does not relieve respondent of his liability for late burn of the 90-acre field.

Turning to the merits of respondent's claim concerning OAR 340-26-010(5), the department directs the commission's attention to the hearings officer's discussion found at pages 5 to 11 of her order. The department agrees with this discussion and would only add that the term "extinguishment" has also been defined by leading legal authorities to mean:

> "to put out, quench, stifle, as to extinguish fire or flame." See 35 CJS "Extinguish" 352 (1960); Black's Law Dictionary 524 (5th ed 1979).

Respondent's suggested interpretation is unreasonable, unsupported and inconsistent with the purposes and practices of the field burning program.

CONCLUSION

The department will not burden the commission by restating both the findings and conclusions in the hearings officer's order and its own earlier filed closing argument. The commission is

//

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

requested to read both these documents in lieu of an argument in this brief. The department requests that the penalty ordered by the hearing's officer be reaffirmed by the commission.

Respectfully submitted,

DAVE FROHNMAYER
Attorney General

Michael T. Weirich
Assistant Attorney General

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 1985, I served the foregoing Department's Answering Brief upon the parties of record, by depositing in the United States Post Office at Salem, Oregon, a full, true and correct copy thereof, addressed to the said parties, to-wit:

Linda K. Zucker
Hearings Officer
Environmental Quality
Commission
P. O. Box 1760
Portland, OR 97207

J. W. Walton
Attorney at Law
P. O. Box 1067
Corvallis, OR 97339

with postage prepaid.

Michael T. Weirich
Assistant Attorney General

cert

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY OF THE STATE OF OREGON, Department, v. HAYWORTH FARMS, INC. AN OREGON CORPORATION, and JOHN W. HAYWORTH, Respondent.	HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER NO. 50-AQ-FB-82-09 Linn County

BACKGROUND

Hayworth Farms, Inc. and John W. Hayworth have appealed from a Notice of Assessment of Civil Penalty issued by the Department of Environmental Quality (DEQ). The notice alleged failure to actively extinguish all flames and major smoke sources in two perennial grass seed fields when burning was prohibited. DEQ assessed a civil penalty of $1,000. Hayworth and Hayworth Farms, Inc. denied liability and affirmatively alleged that:

1. A portion of their late burning was a necessary precaution to control a wild fire;
2. That same emergency had forced them to leave a late burning field unattended; and
3. Late burning was common practice agreed to by DEQ.

A hearing was conducted on April 4, 1984 and April 11, 1984. The record closed on December 15, 1984. DEQ was represented by Michael Weirich, Assistant Attorney General. Hayworth and Hayworth Farms, Inc. were represented by J. W. Walton, their attorney.

////

////

Exhibit A

FINDINGS OF FACT

1. John Hayworth is the owner with his wife of Hayworth Farms, Inc. He is a grass seed grower who farms 5,000 acres and participates in the field burning smoke management program administered by DEQ.

2. At approximately 2:30 p.m. on September 3, 1982, Hayworth received authorization to open field burn 200 acres of grass seed fields near Harrisburg, Oregon. At that time, he was told that fires would have to be extinguished by 3:45 p.m., the fires-out time.

3. First, Hayworth successfully burned the 90 acre southern half of field 4125-5. Then he tried to burn the northern half. When it would not ignite beyond its perimeter, he took his crew and left the field while it was still smoldering because, as he explained:

> ". . .we were very closely pressed for time to get down there and burn the other fields; we didn't want to use our water; we thought the fire was going out; we didn't think it was going to burn there. We used the time to get down there and try to burn these other fields before the 3:45 closing time."

It would have taken about 10 minutes to extinguish the field with water.

4. Part of the crew was sent to a 50 acre field. The crew burned this field uneventfully in about 30 minutes and then joined Hayworth at a 38 acre field (4124-5).

5. At approximately 3:40 p.m., while this 38 acre field was being burned, a gust of wind carried flames into a fence row on the edge of the field. This "wild fire" was a low level emergency which was controlled in approximately 10-15 minutes. Some time was then spent widening the back fire for safety.

6. After the wild fire was controlled and the back fire widened, Hayworth decided to burn the remaining 11 to 12 acres of the 38 acre field rather than applying water to extinguish the fire. His stated reasons were that he believed he did not have enough water to do the job, and he believed it would have taken longer and created more smoke to extinguish the field with water than to burn it.

7. Hayworth's fire fighting equipment was the best in the area and included a fire rig with a 3600 gallon water capacity and a tank truck with a 1500 gallon capacity. When he ignited the 38 acre field, Hayworth had as much as 3200 gallons of water available. After putting out the wild fire, he had between 1500 and 1800 gallons left, although he was required to leave some water in the tanks or lose his prime. Additional water was available from an irrigation pump at Hayworth's farm 5 miles away, and from the Harrisburg Fire Department, 1-1/2 miles away. It takes 15 minutes to fill a truck. It would have taken another 15 to 20 minutes to eliminate the flames in the field by extinguishing them with water.

8. At 4:10 p.m. Hayworth was still actively lighting the 38 acre field.

9. At 4:19 p.m. flames were observed and photographed in the 38 acre field.

10. After replenishing his water supply, Hayworth returned to the northern 90 acre field. This field had visible flames 4 to 5 inches high and was still smoldering. Hayworth extinguished the field with water in 10 to 15 minutes, finishing by about 5:30 p.m.

11. Hayworth acknowledged he tried to burn too many acres in too short a time.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction.

2. On September 3, 1982 Hayworth violated OAR 340-26-010(5) by failing to actively extinguish all flames and major smoke sources when prohibition conditions were imposed by DEQ.

3. Hayworth has not proved any defense to liability for this violation.

4. Hayworth is liable for a civil penalty of $1,000 as assessed.

OPINION

The rule under which Hayworth was cited provides:

> OAR 340-26-010(5) Any person open field burning under these rules shall actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department.

The case record establishes that fields 4124-5 and 4125-5 were burning and producing flames and significant smoke after prohibition conditions were imposed by DEQ.

Despite this late burning, Hayworth disputes liability under the rule. Hayworth contends that OAR 340-26-010(5) must be read as including an implied term of reasonableness in time and manner of compliance. He reasons that the term "actively extinguish" must be construed because it is not defined, and urges a construction which requires a grower to do only what is "practical" and "reasonable." Using this construction, he argues that the rule allows a grower to ignite his field after fires-out time if he believes this to be good smoke management practice. In his case, Hayworth contends ignition of the field was good management practice because it quickly exhausted the fuel source--straw--and caused the fire to go out.

Not every term used in a regulation must be defined. If a term is clear and unambiguous it does not require or allow interpretation. Schoen v. University of Oregon, 21 Or App 494, 535 P2d 1378 (1975). In the context of the smoke management rules, the meaning of the term "extinguish" is clear and unambiguous. The Random House Dictionary of the English Language, The Unabridged Edition (1973), defines "extinguish":

> 1. to put out (a fire, light, etc.); put out the flame of (something burning or lighted): to extinguish a candle.
> 2. to put an end to or bring to an end; wipe out of existence; annihilate: to extinguish hope.
> 3. to obscure or eclipse as by superior brilliancy: Her beauty extinguished that of all other women.
> 4. Law. to discharge (a debt), as by payment. (Emphasis in original.)

Ignite is defined as follows:

> 1. to set on fire; kindle.
> 2. Chem. to heat intensely; roast.
> 3. to take fire; begin to burn.

Using these definitions, a flame cannot be extinguished--put out--by igniting it--setting it on fire. The term "extinguish" is clearly defined and needs no interpretation.

However, even if this regulation were ambiguous, and susceptible to interpretation, it would be construed under the guide that words of common usage are to be given their natural, plain and obvious meaning, Perez v. State Farm Mut. Auto Ins. Co., 289 Or 295, 613 P2d 32 (1980); and would be construed to avoid absurd or unreasonable results. State v. Linthwaite, 295 Or 162, 170, 655 P2d 863 (1983). The natural, plain and obvious meaning of this regulation is that burning is to stop. In the context of the field burning program, Hayworth's interpretation would lead to

the unreasonable result of delegating to the regulated individuals the authority to regulate themselves. That is, each grower would be allowed to determine when it would be desirable to put out fires and when it would be desirable to ignite them. It does not appear that the legislature or the agency intended this result.

An additional approach in determining the regulation's meaning is to examine its context, background circumstances and purpose; and to read it in its entirety. Peters v. McKay, 195 Or 412, 238 P2d 225, rehearing denied 195 Or 412, 246 P2d 585 (1952). The obvious purpose of this regulation, and of the entire program, is to give DEQ the ability to control the time when burning can take place. Although not embodied in a rule, the agency's interpretation of its regulation is clearly set out in the field burning permits which are employed in program operation: Item 2.f. on the reverse side of the permit says:

> "The permittee shall monitor and burn in accordance with Department open field burning radio announcements and shall immediately cease igniting and actively extinguish all fires as rapidly as possible when a stop burning order is issued by the Department."

There is nothing in DEQ's construction of its rule which conflicts with the ordinary meaning of the words it uses. A grower is required to immediately cease igniting and actively extinguish all fires as rapidly as possible when a stop burning order is issued by DEQ.

Hayworth has misconstrued Sullivan v. Mountain States Power Co., 139 Or 282, 9 P2d 1038 (1932), in citing it as support for authority to ignite the remainder of his field. In Sullivan, the language of the regulation being construed specifically required the use of "every possible

effort." The Sullivan court did not engraft a "best efforts" clause onto every regulation; it merely construed a regulation already containing such a clause. The case has no application to Hayworth's circumstances.

Hayworth had read the permit condition requiring a grower to "immediately cease igniting and actively extinguish all fires" under prohibition conditions. Nonetheless, he claimed that he was authorized by smoke management program personnel to ignore the literal regulatory directive and to use his judgment whether to stop burning. Hayworth was vague about the terms of this authority. He did not recall present program management authorizing late burning. Asked when he had been told it was "okay" to actively ignite a field after the fires-out time, Hayworth said he had been told by a previous program administrator:

> ... Back in the days when he administered the program. I cannot tell you what day. We've had problems on different fires, he said use your judgment. Different people that are paid in the program--smoke management--we have suggested that we expedite the fire, use our judgment. We've gone over with our torches and helped neighbors that were caught in similar situations.

Hayworth's claim of authority to violate the rule is not borne out by the case record. Under the circumstances described by Hayworth, a reasonable person participating in a highly regulated activity would not rely on the described "authorization" to burn when the regulations required him to stop burning. A reasonable person would not rely on it years later under changed program management and after receipt of a permit containing the recited language.

Hayworth argues that DEQ's issuance of a permit to burn 200 acres created a presumption that it was reasonable to burn all 200 acres that

day. Hayworth's interpretation of the permit's effect is refuted by the terms of the permit itself. The permit said: "The grower ... is authorized to open burn the fields listed on the reverse side hereof, subject to the following conditions and terms ..." What followed were the essential terms and conditions of the field burning program operation. Among these terms was the previously cited requirement that the permittee immediately cease igniting and actively extinguish all fires as rapidly as possible when a stop burning order was issued by DEQ. It is hard to see how that requirement is consistent with the creation of a presumption that issuance of the permit authorizes violation of its terms.

Hayworth contends that his conduct constituted active extinguishment of all flames and major smoke sources under the circumstances existing at the time. The day's events provide the best test of that contention. Hayworth argues that his conduct should be viewed under the standard that one may not be held liable for a mistake of judgment when it is formed in or under the stress of an emergency. Despite the many discrepancies in Hayworth's witnesses testimony regarding the time and circumstances of the day's burning, the fact of the wildfire is accepted. When it was controlled, Hayworth had to decide what to do about the remaining unburned acres. By all accounts, this decision was made after fires out time. As Hayworth explained in his Answer:

> "A small fire was set after prohibition conditions were imposed based upon the respondent's judgment that such a method was a more expeditious way to extinguish the fire."

Once the wildfire was controlled there was no longer an emergency. Thus, the standard proposed has no application to Hayworth's circumstances.

Hayworth further argues that "(i)f the circumstances dictate that it is quicker to let the fire burn out with the help of a wind-aided strip burn, rather than dousing the flames with water, then that method should not be penalized as a regulatory violation." In his case, he believed that continued burning rather than water extinguishment was the best way to extinguish all flames and major smoke sources as quickly as possible. This contention presents a broader issue--the extent to which a regulated party may examine the wisdom of a regulation and determine for himself whether to comply with it.

The authority to determine field burning practice is given to the regulator not to grass seed growers. See ORS 468.450. If an administrative order is authorized by statute its reasonableness will be presumed. Sunshine Dairy v. Peterson, 183 Or 305, 93 P2d 543 (1946). While the case record contains testimony both supporting and refuting the merits of continued burning versus water extinguishment as smoke management tools, it is no more the job of the reviewer than of the individual grower to name the victor in that debate. The decision is a policy judgment made by the Environmental Quality Commission and embodied in the administrative rules which guide the conduct of the smoke management program and its participants. OAR 340-26-010(5) says extinguish fires. Thus, growers are required to extinguish fires. They are not authorized to continue burning in the supposed hope of diminishing the adverse environmental effect of the fires they may have started.

Hayworth's conduct illustrates the folly of leaving the decision to the grower. The case record does not support the contention that continued burning was a significantly faster way to expedite the conclusion

of the fire.

Hayworth's earlier decision to leave his 90 acre field showed similar indifference to program requirements. He justified this decision as one made on the basis of many years of grass seed farming judgment and supported by community practice. He conceded, however, that it was an error in judgment to believe that the field would not continue burning, and described his mistake as a reasonable one made in good faith.

The rule under which Hayworth was cited states an absolute obligation to extinguish fires on time. Even if the rule provided relief from liability for reasonable conduct, Hayworth would not be excused from liability. First, it was not reasonable to leave the 90 acre field smoldering with the potential for reignition when he could have extinguished it in ten minutes. Second, when confronted with a choice, Hayworth elected to complete burning the 38 acre field and risk exceeding his legal authority. The case facts do not support a finding that Hayworth did everything possible to comply with the regulation at issue. Rather, he did what was expedient in an effort to burn as much as possible.

Hayworth is a member of the Oregon Seed Council. The Council has a significant role in the smoke management program. See ORS 468.485(3). Hayworth is well-placed to argue for practical changes in agency rules. In the meantime he is required, along with other program participants, to exercise the restraint and judgment that will assure compliance with the rules as written.

////

////

////

ORDER

IT IS ORDERED THAT Hayworth Farms, Inc. and John Hayworth are liable for a civil penalty of $1,000 and that the State of Oregon have judgment for that amount.

Dated this 18th day of July, 1985.

Linda K. Zucker
Hearings Officer

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

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL, of the State of Oregon, Department,	)	No. AQ-FB-82-09
v.	)	CLOSING ARGUMENT
HAYWORTH FARMS, INC., an Oregon corporation, and JOHN W. HAYWORTH, Respondents.	)	

In accordance with the hearing officer's instructions, the department will delete the statement of facts and proceed directly to closing argument.

I. Theme of Case

The respondents, Hayworth Farms and John W. Hayworth, hereinafter referred to as respondent, are charged with two counts of late burning in violation of OAR 340-26-010(5). It is the Department's general argument that respondent is responsible for the late burns, either through his negligent or intentional actions, because he was trying to burn too much acreage, too far apart, in too little time. Respondent concedes that he was "pushing it" on the day in question. (Tr. 456).

II. The Late Burn at the 90-Acre Field

The evidence presented at the hearing indicates that the 90-acre field was lit at approximately 3 p.m. and was left smoldering by respondent at approximately 3:20 p.m. Respondent testified that it would have taken him about 10 minutes to

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

Exhibit B

extinguish the field before he left. (Tr. 435). He chose instead to leave his field in its half-lit condition in order to hurry to burn other fields several miles away. (Tr. 456). At approximately 4:10 p.m., while burning the 38-acre field, defendant learned that the 90-acre field was still burning and putting out smoke. Instead of immediately sending part of his crew to inspect the 90-acre field, respondent continued with his burn of the 38-acre field. After the 38-acre field was burned, respondent then sent half his crew to check another field while the remaining crew filled up both water trucks before returning to the 90-acre field. While the exact time is unclear, approximately one hour elapsed between the time defendant first learned that his 90-acre field was still burning and the time his crew arrived at that field.

Exhibits 7 through 10, photographs taken of the 90-acre field at approximately 5:22 p.m., clearly show that the field is burning and putting forth considerable smoke. The field was not extinguished entirely, using water, until sometime after 5:30 p.m. Thus, it is not in dispute that the 90-acre field was burning and putting forth smoke for approximately two hours after the 3:45 p.m. extinguishment time.

These facts show that respondent was negligent in the following particulars:

1. In leaving the burning field unattended;

2. In leaving the burning field unattended in order to burn other fields;

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

3. In not immediately sending at least part of his crew to extinguish or check on the field after he learned it was still burning; and

4. In taking the time to fill both water trucks before returning to the 90-acre field rather than sending one truck on ahead to commence extinguishment operations.

Respondent argues that he is excused for the late burn of the field because he did not think it would continue to burn and because an alleged "wildfire" at the 38-acre field unexpectedly delayed his return. The facts show, however, that the alleged "wildfire" was under control by no later than 3:55 p.m. Respondent could have easily sent part of his crew to the unattended 90-acre field by 4 p.m. to make sure that it was in fact no longer burning.

The key fact to keep in mind, however, is that respondent did not have to leave to chance his ability to return to the 90-acre field. Respondent could have safely avoided the late burn entirely by simply taking the 10 minutes to extinguish the slow burning field before departing. Even respondent's "expert grower witness," Donald Estergard, conceded that, in order to minimize smoke from burns, growers should take a few minutes extra time to extinguish a field before departing. (Tr. 484).

III. Late Burn of the 38-Acre Field

A. Field was Burning at Least 35 Minutes or More Past Extinguishment Time

The only evidence available, respondent and his crew's testimony

JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

indicates that defendant initially lit the 38-acre field sometime between 3:30 and 3:35 p.m. Photographs (Exs. 5, 6) show that the field is still burning strongly and giving off considerable smoke at 4:19 p.m. It is unclear when the fire at the 38-acre field was finally extinguished. Defendant initially testified, before viewing Exhibits 5 and 6, that the field was essentially extinguished by 4:20 p.m. (Tr. 48). After viewing the photographs taken at 4:19 p.m., however, respondent admitted that he thought the field was further along in its burn by that time. (Tr. 452). This is to be compared with Russell Hayworth's, the respondent's son, testimony to the effect that he considers exhibits 5 and 6 to show a field which is essentially out. (Tr. 388). Inspector Lebens testified, however, that at 4:45 p.m. he could still see, from a distance, smoke coming from the 38-acre field. (Tr. 162).

In any event, respondent's 38-acre field was clearly not extinguished, and in fact was burning strongly, at least 35 minutes after the extinguishment time.

B. Evidence Does Not Establish a "Wild Fire" at the 38-acre Field

As an excuse for the late burn of the 38-acre field, respondent argues that he was delayed by a "wild fire" which unexpectedly occurred. This self-serving allegation is suspect for several reasons.

The first time respondent informed anyone from the department of this "wild fire" was in respondent's answer to the department's

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

notice of proposed penalty. Respondent did not mention the "wild fire" to Inspector Lebens when Lebens issued respondent a preliminary notice of violation shortly after the "wild fire" had been "controlled." Respondent did not tell Brian Finneran of the "wild fire" when Finneran called on behalf of the department approximately three weeks after the incident in order to determine whether the department should further pursue the matter. When respondent was asked at the hearing why he did not mention the "wild fire" to Inspector Lebens, he could only respond "I don't know that he asked me." (Tr. 453-54).

In addition, Inspector Lebens, observing from the ground, and Brian Finneran, viewing the field from the air, both testified that they did not see any evidence that a "wild fire" had occurred. By defendant's own testimony, and that of Mr. Petersen, the hoseman on the water truck, whatever did occur at the field was not so serious that it could not be handled by a two-man crew operating a water truck.

Thus, respondent's evidence does not support his allegation that a "wild fire" occurred at the 38-acre field. At best the evidence indicates that, as respondent himself put it, a "low level emergency" occurred and was quickly controlled by respondent's two-man water truck crew.

C. Assuming a "Wild Fire" Did Occur, it Simply Made a Late Burn Later

Assuming some type of emergency did occur as respondent testifies, the surrounding facts show that it is not an adequate

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

excuse for the late burn of the 38-acre field. Respondent testified that he thought he could burn the field in 7 to 10 minutes. According to respondent's testimony, the "wild fire" was controlled by approximately 3:50 to 3:55 p.m. Respondent then continued to burn the field as planned. Inspector Lebens testified that he observed respondent's crew lighting a "head fire" at 4:10 p.m., however, and it is unclear what occurred in the 15 to 20 minutes between the time the wild fire was controlled and Inspector Lebens' observations. It is clear that respondent could not even burn that portion of the field which remained after the "wild fire" in this 15 to 20-minute time period. Equally clear are the photographs taken at 4:19 p.m., exhibits 5 and 6, which show that a good portion of the field is still unburned 9 minutes after the head fire was lit. Respondent's initial assertion, later supported by his son's testimony, that only "spot fires" remained at 4:20 p.m. is completely inconsistent with the photographs.

Accordingly, even giving respondent the benefit of the doubt that some type of emergency occurred at the field, the field was still burning at least 30 minutes after the emergency was controlled. Clearly, the field could not be burned in the 7 to 10 minutes which respondent allotted for it on his busy day of field burning.

D. "Actively extinguish" Does Not Include Ignition of Field

Respondent argues that his continued lighting and burning of the 38-acre field after the 3:45 p.m. extinguishment time

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

complies with OAR 340-26-010(5)'s requirement that "any person open field burning under these rules shall actively extinguish all flames in major smoke sources when prohibition conditions are imposed by the department." (Emphasis added). It is the department's position that whether respondent's ignition of the field after the fire's out time complies with the rule is a moot issue because respondent was negligent in trying to burn the 38-acre field so close to the extinguishment time. Thus, respondent is liable for the late burn of the 38-acre field, through his sloppy, hurried burning practices that day, regardless of whether he can show that torching the field to extinguish it is an acceptable practice under the department's rule.

Assuming that respondent's culpability rests on this issue, however, it is the department's position that "actively extinguish" means to extinguish with water not flame. Sean O'Connell, manager of the field burning program, testified that all inspectors are told that "extinguish" means to put water on the field. (Tr. 253). Mr. O'Connell also stated that the growers are made aware of this policy through their burning permit, exhibit 14, which provides that when a stop burning order is issued the growers "shall immediately cease igniting and actively extinguish all fires." These permits are sent to the growers and respondent concedes that he received his permit, read the prohibition concerning ignition, understood what it meant and chose not to follow it. (Tr. 448-49).

//

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

The department contends that it is not within the respondent's discretion to choose to ignore their rules, policies and practices. Respondent's "rule of reason" argument, which implies that he knows more than the department about field burning, would also allow him to claim that he is justified in ignoring all the deparement's rules and policies if he believes them to be "unreasonable." Respondent is clearly not above the law and if he chooses to ignore the department's prohibitions he must accept the consequences.

On a practical level, respondent's ignition method of extinguishment simply does not make sense. Carried to its logical conclusion, respondent's method of extinguishment would always allow growers to continue to burn and ignite fields after the fires out time when, in their judgment, such a method would be the best way to extinguish the field. Such a practice would obviously undermine the objectives of the field burning program.

IV. Past Practies of the Department Do Not Allow Growers Unbridled Flexibility In Extinguishing Burns

As part of his answer, respondent alleges that the department consistently allows late burners "great flexibility" in the time required to extinguish fires. Respondent presents no evidence, however, to support this position. Evidence presented by the department shows that it does not purposely allow growers leeway in extinguishing fires. It was shown at the hearing that the field burning program operated with only four inspectors for the entire valley during the summer of 1982, and growers with

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

late burns were cited as was possible with the department's limited manpower. Respondent's claim on this issue is without merit.

V. Conclusion

In brief, the evidence presented shows that respondent tried to burn too much acreage, too fast, with too little time to complete the burn. Respondent left the 90-acre field smoldering unattended, itself a dangerous practice, because he was in a hurry to burn as much other acreage as possible. Respondent has no excuse for the fact that the field continued to burn and in fact was not extinguished until almost two hours after the fires out time.

Respondent lit the 38-acre field so late in the day that it would have to have been burned out completely within 10 minutes in order to be extinguished by the 3:45 p.m. fires out time. Even assuming that a "wild fire" occurred, the evidence shows that respondent was unable to burn the portions of the field remaining after the wild fire within 30 minutes. Clearly, the 10-minute burn time allowed by respondent for the 38-acre field was completely unrealistic.

Respondent used negligent, dangerous and sloppy practices in order to try to burn as much acreage as possible within the limited time allowed for burning. From the evidence presented, it is even possible to conclude that respondent's actions were a calculated, intentional effort to burn more than he knew was possible in the limited time available. The department requests

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

that respondent be fined in accordance with the amount stated in the proposed notice of assessment.

Respectfully submitted,

/s/ Michael T. Weirich

Michael T. Weirich
Assistant Attorney General

DEPARTMENT OF JUSTICE
JUSTICE BUILDING
SALEM, OREGON 97310
PHONE 378-4400

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY of the State of Oregon, Department, vs. HAYWORTH FARMS, INC., an Oregon corporation, and JOHN W. HAYWORTH, Respondents.	)	No. AQ-FB-82-09 REPLY BRIEF

Findings of Fact

Despite the Department of Environmental Quality's (department) attempt to refute the respondent's Findings of Fact, the respondent contends that the record supports the following findings:

(1) The respondent left the 90 acre field at approximately 3:25 p.m. because he believed the few smoldering fires on the field would soon burn out due to the lack of dry, combustible material.

(2) The respondent's expert witness testified that the respondent's actions in leaving this field were reasonable. It is submitted that this expert witnesse's lack of personal knowledge of the field in question is irrelevant. Expert witnesses may give testimony based upon facts made known to them at or prior to a hearing. (OEC Rule 703).

(3) The respondent did not finish burning the 38 acre field in question prior to the 'fires-out' time due to a wildfire.

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

(4) Once the wildfire was contained, the respondent determined that an into the wind burn would extinguish the 38 acre field sooner than using water.

(5) The respondent had been told by a former coordinator of the department's field burning program that it was proper to ignite the remainder of a burning field after the 'fires-out' time if that would cause the fire to burn itself out faster and with less smoke than dousing it with water.

(6) The respondent extinguished the 90 acre field as soon as possible upon learning it was still burning.

Argument

The respondent does not dispute the department's use of the definition "to put out, quench, stifle, as to extinguish fire or flame," for the term extinguishment. The respondent points out that this definition does not limit the method by which a fire may be put out or stifled. Assuming that "quench" refers to extinguishment by water, the words "put out" and "stifle" must allow alternative methods of extinguishment. Indeed, it is common practice when extinguishing forest fires to ignite large areas of timber so as to burn up the fire's available fuel so it will go out. The respondent's acts were analogous to this practice. In addition, the respondent was acting in such a way so as to limit the amount of smoke created. Extinguishing the fire in the 38 acre field with water would have created a dense cloud of low-lying smoke.

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

Finally, the department incorporates its closing argument and the Hearings Officer's findings and opinion into its answering brief. The Hearings Officer refers to the policy judgments which are embodied in the administrative rule in question. The respondent maintains that an additional policy judgment which must be considered is the legislature's decision that administrative rules should not unduly hinder the operation of small businesses in Oregon. See, ORS 183.540 et seq. A grass seed farmer is the owner/operator of a small business. Farming is a difficult business in the best of times. Farming has been beset recently by chronically low prices and continued high operating costs. The Commission should consider the economic impact on grass seed farmers when weighing the competing policy judgments inherent in this case.

Conclusion

The Commission should substitute its judgment for that of the Hearings Officer and find that the respondent's acts were reasonable under the circumstances and that he is not liable for a civil penalty.

Respectfully submitted,

RINGO, WALTON, EVES & STUBER, P.C.
Attorneys for Respondents

By 
J. W. Walton
OSB No. 53108

RINGO, WALTON, EVES & STUBER, P.C.
ATTORNEYS AT LAW
605 S.W. JEFFERSON STREET
CORVALLIS, OR 97333
PHONE (503) 757-1213

CERTIFICATE OF MAILING

I certify that I served the foregoing Reply Brief on the following by depositing a true, full, and exact copy thereof in the United States Post Office at Corvallis, Oregon, on October 21, 1985, enclosed in a sealed envelope, with postage paid, addressed to:

Linda K. Zucker, Hearings Officer, Environmental Quality Commission, P.O. Box, 1760, Portland, OR 97207

David B. Frohnmayer, State Attorney General and Michael T. Weirich, Ass't Attorney General, Dept. of Justice, 100 Justice Bldg., Salem, OR 97310

J. W. Walton
One of Attorneys for Respondents

* * * * * * * * * * *

RINGO, WALTON, EVES & STUBER, P.C.
Attorneys at Law
605 SW Jefferson St.
P.O. Box 1067
Corvallis, OR 97339

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. I, November 22, 1985, EQC Meeting

Proposed Adoption of Rule Amendments Regarding Notice of Violation for Hazardous Waste Program Requirements, OAR 340-12-040.

Background

The Resource Conservation and Recovery Act of 1976 (RCRA) established a national program for hazardous waste management. RCRA further provides for delegation of implementing authority, termed "authorization", to states to operate equivalent state hazardous waste management programs. Once authorized, a state program operates in lieu of the federal program.

RCRA sets forth the following six statutory standards which state programs must meet in order to qualify for Final Authorization:

1. Equivalent Program
2. No less Stringent Program
3. Consistent Program
4. More Stringent Program (allowable)
5. Adequate Enforcement
6. Notice and Hearing in the Permit Process.

These standards are further interpreted by the Environmental Protection Agency (EPA) in regulations at 40 CFR Part 271.

On June 1, 1984, the Department of Environmental Quality (DEQ) submitted on behalf of the State of Oregon, an application for Final Authorization to EPA. In subsequent comments, EPA raised a strong concern with the state's ability to impose equivalent penalties and thereby provide for adequate enforcement (RCRA standards # 1 and 5). EPA took issue with the requirement in Oregon Revised Statutes (ORS) 468.125(1) that five days

advance notice be given prior to the assessment of a civil penalty. The five-day notice would allow a violator at least five days after receipt of the notice to correct a violation before a penalty could be assessed . In general, if the violation is corrected, a penalty could not be assessed. In contrast, EPA's national enforcement response policy requires that penalties be assessed for violators with Class I[1] violations (called High-Priority Violations by EPA). EPA concluded that ORS 468.125 would preclude the state from taking an equivalent enforcement action in those cases where a Class I violation is corrected within five days after receipt of the notice.

A related issue identified by EPA pertained to the state's authority to recover civil penalties for each day of violation. EPA viewed ORS 468.125 as precluding the Department from recovering penalties for each day of violation prior to the notice, as well as for each day of the prescribed five-day notice period. Again, EPA's conclusion was that ORS 468.125 constrained the state's ability to take equivalent enforcement actions.

The Department maintained that it had adequate and equivalent enforcement authority. DEQ's response to EPA's concerns included three major points. First, the Class I violation category (as defined by EPA) contained violations of the type which generally could not be corrected within five days. Hence, as a matter of practicality, the Department would not be precluded from assessing penalties subsequent to a five-day notice. Second, ORS 468.125 allows for civil penalties without prior notice if violations are intentional or involve unauthorized disposal of hazardous waste. Last, DEQ pointed out that ORS 459.995(2) provided that penalties could be assessed for each day of a violation.

EPA was not swayed by DEQ and in November 1984 formally advised DEQ that statutory amendments to ORS 468.125 would need to be sought to ensure the state program was equivalent to the federal program and could qualify for Final Authorization.

---

[1]Class I violations, as defined in the Department's proposed Enforcement Guidelines and Procedures are violations which:

- Create a likelihood for harm or for significant environmental damage, or have caused actual harm or environmental damage;
- Involve the unauthorized disposal of hazardous waste;
- Result in the failure to assure that groundwater will be protected or that proper closure and post-closure activities will be undertaken; or
- Involve the failure to establish and maintain financial assurance mechanisms.

Accordingly, the Department pursued the needed legislation during the 1985 Oregon Legislative Assembly. House Bill 2145 (Attachment V), as amended by the House Committee on Environment and Energy, proposed to amend ORS 468.125(2) to eliminate the requirement for five days advance notice prior to a penalty when it is assessed for a violation of ORS 459.410 to 459.450 and 459.460 to 459.690 (i.e., hazardous waste program requirements). HB 2145 was subsequently passed by the Legislature and signed by the Governor.

Although HB 2145 became effective September 19, 1985, the Department of Justice advised the Department that OAR 340-12-040, regarding Notice of Violation for civil penalty assessment, should be amended to conform to the statutory change in ORS 468.125(2). Therefore, the proposed amendment of OAR 340-12-040 is the subject of this agenda item.

Discussion

The Department proposes to amend OAR 340-12-040 (Attachment III). The proposed change to section (1) of 340-12-040 is a technical correction of existing improper references in the phrase "subsection (3) of this section..." to "...section (3) of this rule..." A change to 340-12-040(3)(b) would replace the word "where" with the phrase "under sections (1) and (2) of this rule if:" to conform to the change in statutory wording of ORS 468.125(2).

Finally, a new subparagraph (F) would be added to 340-12-040(3)(b) to specify that no advance notice is required if "the penalty to be assessed is for a violation of ORS 459.410 to 459.450 and 459.460 to 459.690 or rules adopted or orders or permits issued pursuant thereto."

Pursuant to notice (Attachment IV), a public hearing on the proposed amendment of OAR 340-12-040 was held on October 16, 1985. Although seven persons attended the hearing, no testimony was offered (see Hearing Officer's Report, Attachment VI). One letter, supporting the proposed rule amendment, was received.

The final rule amendment (Attachment III) is unchanged from the amendment proposed.

Alternatives and Evaluation

The proposed amendment to OAR 340-12-040 is merely a codification of statutory changes to ORS 468.125. Although ORS 468.125 is effective on its own, since OAR 340-12-040 codifies the existing provisions of ORS 468.125, a conforming change to the rule is necessary to ensure consistency between statute and rule. Additionally, since the Department's rules (as opposed to statutes) are used generally by the regulated community and public as a reference for DEQ requirements and procedures, it is important that the rules be kept up to date with statutory changes.

Not adopting the proposed rule amendment would cause an inconsistency between the statute, ORS 468.125, and its implementing rule, OAR 340-12-040. This inconsistency could cause confusion among potentially affected parties. Additionally, not amending OAR 340-12-040 could jeopardize the Department's receipt of final authorization from EPA.

Summary

1. The DEQ presently operates a comprehensive state hazardous waste management program.

2. The Department desires and has been advised by the public, regulated community and legislature to seek RCRA Final Authorization, which requires an equivalent state program that provides for adequate enforcement.

3. EPA has advised DEQ that an equivalent state program must provide for assessment of civil penalties for each day of violation including prior to and during any notice period.

4. Recently enacted statutory changes to ORS 468.125 eliminate the requirement for five days notice prior to assessment of civil penalties for violations of hazardous waste program requirements. The statutory change was determined by EPA to be necessary for the state to be able to qualify for Final Authorization.

5. Opportunity for public comment was provided through written notice to approximately 1,000 persons and conduct of a hearing. No objections have been received.

6. The attached proposed amendment to OAR 340-12-040 codifies the recent changes to ORS 468.125 and is necessary: 1) to ensure consistency between the statute and implementing rule, and 2) for the Department to receive final authorization for its hazardous waste program.

Director's Recommendation

Based on the Summation, it is recommended that the Commission adopt the proposed amendment of OAR 340-12-040.

Fred Hansen

Attachments
I. Statement of Need for Rules
II. Statement of Land Use Consistency
III. Proposed Amendment of OAR 340-12-040
IV. Draft Public Notice of Rule Amendment
V. Oregon Law 1985 C. 735 (HB 2145)
VI. Hearing Officer's Report

Alan S. Goodman:f
229-5254
ZF208

ATTACHMENT I
Agenda Item No. I
11/22/85 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF AMENDING OAR CHAPTER 340, RULE 340-12-040	)))	STATEMENT OF NEED FOR RULE AMENDMENT AND FISCAL AND ECONOMIC IMPACT

Statutory Authority:

ORS 459.995(2) and (3) provide that:

2. In addition to any other penalty provided by law, any person who violates ORS 459.410 to 459.450 and 459.460 to 459.690, a license condition or any commission rule or order pertaining to the generation, treatment, storage, disposal or transportation by air or water of hazardous waste, as defined by ORS 459.410, shall incur a civil penalty not to exceed $10,000 for each day of the violation.

3. The civil penalty authorized by subsections (1) and (2) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed and collected under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS Chapter 468.

ORS 468.125, as amended by Oregon Law 1985, c. 735 states:

1. No civil penalty prescribed under ORS 468.140 shall be imposed until the person incurring the penalty has received five days' advance notice in writing from the department or the regional air quality control authority, specifying the violation and stating that a penalty will be imposed if a violation continues or occurs after the five-day period, or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed.

2. No advance notice shall be required under subsection (1) of this section if:
   a. The violation is intentional or consists of disposing of solid waste or sewage at an unauthorized disposal site or constructing a sewage disposal system without the department's permit.
   b. The water pollution, air pollution or air contamination source would normally not be in existence for five days, including but not limited to open burning.
   c. The water pollution, air pollution or air contamination source might leave or be removed from the jurisdiction of the department or regional air quality control authority, including but not limited to ships.
   d. The penalty to be imposed is for a violation of ORS 459.410 to 459.450 and 459.460 to 459.690.

Need for the Rules:

Existing 340-12-040 codifies the provisions of ORS 468.125 which were in effect prior to Oregon Law 1985, c.735. The changes to ORS 468.125 made by the 1985 Oregon Legislative Assembly necessitate a conforming revision of OAR 340-12-040. Adoption of the proposed amendment would ensure consistency between ORS 468.125 and OAR 340-12-040.

Principal Documents Relied Upon:

ORS 468.125 as amended by Oregon Law 1985, c.735;
ORS 459.995; and OAR 340-12-040.

Fiscal and Economic Impact:

The proposed rule amendment does not affect the substantive or administrative requirements pertaining to hazardous waste handlers and therefore will have no measurable fiscal or economic impact.

The small business impact is similar to that noted above.

ZF208.I

ATTACHMENT II
Agenda Item No. I
11/22/85 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF AMENDING OAR CHAPTER 340 RULE 340-12-040	)	LAND USE CONSISTENCY

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

ZF208.II

Attachment III
Agenda Item No. I
11/22/85 EQC Meeting

Proposed Amendment to
OAR 340-12-040

(Deleted material is in brackets [ ] and new material to be added is underlined).

Notice of Violation

340-12-040 (1) Except as provided in [sub]section (3) of this [section] rule, prior to the assessment of any civil penalty the Department shall serve a Notice of Violation upon the respondent. Service shall be in accordance with rule 340-11-097.

(2) A Notice of Violation shall be in writing, specify the violation and state that the Department will assess a civil penalty if the violation continues or occurs after five days following receipt of the notice.

(3)(a) A Notice of Violation shall not be required where the respondent has otherwise received actual notice of the violation not less than five days prior to the violation for which a penalty is assessed.

(b) No advance notice, written or actual shall be required [where] under sections (1) and (2) of this rule if:

(A) The act or omission constituting the violation is intentional;

(B) The violation consists of disposing of solid waste [hazardous waste] or sewage at an unauthorized disposal site;

(C) The violation consists of constructing a sewage disposal system without the Department's permit;

(D) The water pollution, air pollution, or air contamination source would normally not be in existence for five days; [or]

(E) The water pollution, air pollution or air contamination source might leave or be removed from the jurisdiction of the Department[.]; or

(F) The penalty to be imposed is for a violation of ORS 459.410 to 459.450 and 459.460 to 459.690, or rules adopted or orders or permits issued pursuant thereto.

Attachment IV
Agenda Item No. I
11/22/85 EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Amendment to Rule Regarding Notice of Violation

Date Prepared: August 28, 1985
Hearing Date: October 16, 1985
Comments Due: October 16, 1985

WHO IS AFFECTED:

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

BACKGROUND

- Existing 340-12-040 implements provisions of Oregon Revised Statutes (ORS) 468.125 regarding advance notice prior to assessment of civil penalties by the Department.
- ORS 468.125 was amended by the 1985 Oregon Legislative Assembly to eliminate the notice requirement for hazardous waste violations.

WHAT IS PROPOSED:

The Department of Environmental Quality (DEQ) proposes to amend OAR 340-12-040, regarding Notice of Violation for Violations of the DEQ's hazardous waste management rules, to ensure consistency with ORS 468.125 as amended.

WHAT ARE THE HIGHLIGHTS:

- The rule amendment would eliminate the existing requirement of OAR 340-12-040 that the Department provide five-days notice prior to assessing civil penalties.
- The rule amendment would allow the Department to assess civil penalties without prior notice for violations of hazardous waste:
  - statutes,
  - rules adopted by the Environmental Quality Commission,
  - Commission orders, and
  - permits (licenses)

HOW TO COMMENT:

Public Hearing to receive oral comments is scheduled for:

Tuesday, October 16
9:30 a.m.
DEQ Portland Headquarters
Room 1400
522 S.W. Fifth Avenue

Written comments should be submitted at the public hearing or sent to DEQ, Hazardous and Solid Waste Division, Attn: Alan Goodman, P.O. Box 1760, Portland, OR 97207, by October 16, 1985.

For more information, or to receive a copy of the proposed rules contact Alan Goodman at 229-5254.

WHAT IS THE NEXT STEP:

After the public hearing, DEQ will evaluate the comments, prepare response to comments and make a recommendation to the Environmental Quality Commission on November 22, 1995.

P.O. Box 1760
Portland, OR 97207

8/16/84

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 1-800-452-4011.

CHAPTER 735

AN ACT HB 2145

Relating to hazardous waste; creating new provisions; amending ORS 459.455 and 468.125; and repealing ORS 459.455.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 459.455 and 459.695 are added to and made a part of ORS 459.460 to 459.690.

SECTION 2. ORS 459.455 is amended to read:

459.455. The commission and the department are authorized to perform or cause to be performed any act necessary to gain interim and final authorization of a hazardous waste regulatory program under the provisions of the Federal Resource Conservation and Recovery Act, P.L. 94-580 [*as amended*] **and P.L. 98-616**, and federal regulations and interpretive and guidance documents issued pursuant to P.L. 94-580 **and P.L. 98-616**. The commission may adopt, amend or repeal any rule or license and the commission or department may enter into any agreement necessary to implement this section.

SECTION 3. ORS 468.125 is amended to read:

468.125. (1) No civil penalty prescribed under ORS 468.140 shall be imposed until the person incurring the penalty has received five days' advance notice in writing from the department or the regional air quality control authority, specifying the violation and stating that a penalty will be imposed if a violation continues or occurs after the five-day period, or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed.

(2) No advance notice shall be required[, *however, where*] **under subsection (1) of this section if:**

(a) The violation is intentional or consists of disposing of solid waste[, *hazardous waste*] or sewage at an unauthorized disposal site[,] **or** constructing a sewage disposal system without the department's permit. [*or where*]

(b) The water pollution, air pollution or air contamination source would normally not be in existence for five days, including but not limited to open burning. [*or where*]

(c) The water pollution, air pollution or air contamination source might leave or be removed from the jurisdiction of the department or regional air quality control authority, including but not limited to ships.

(d) The penalty to be imposed is for a violation of ORS 459.410 to 459.450 and 459.460 to 459.690.

SECTION 4. (1) ORS 459.455 is repealed.

(2) The repeal of ORS 459.455 by this section does not become operative until July 1, 1987.

Approved by the Governor July 13, 1985

Filed in the office of Secretary of State July 15, 1985

Attachment VI
Agenda Item No. I
11/22/85 EQC Meeting

MEMORANDUM

To: Environmental Quality Commission

From: Alan Goodman, Hearings Officer Alan Goodman

Subject: Hearing Officer's Report

Summary of Public Testimony on Proposed Amendment of Notice of Violation Rule, OAR 340-12-040.

Background

Pursuant to notice, a hearing was conducted on October 16, 1985 in Room 1400 of the Department's offices in Portland, Oregon, to receive testimony on the proposed amendment of OAR 340-12-040. The hearing was authorized by the Environmental Quality Commission on September 27, 1985.

Seven persons attended the hearing. No verbal or written testimony was presented during the hearing.

One written comment supporting the proposed rule amendment was received prior to the hearing and is attached.

ZF456
Attachment

Department of Environmental Quality
Hazardous and Solid Waste Division
P.O. Box 1760
Portland, Oregon 97207

October 4, 1985

John C. Neely, Jr.
1600 Horn Lane
Eugene, OR 97404

Attention: Mr. Alan Goodman

Re: Agenda Items No.s D and P - A chance to comment on - Hearing Date: Oct. 16, '85

No. D. WHAT ARE THE HIGHLIGHTS: "... eliminate the existing requirement in OAR 340-12-040 that the Department provide five-days notice prior to assessing civil penalties." is not fulfilled in "Proposed Amendment to OAR 340-12-040" for all of the potential violators in disposal of hazardous wastes. Have the civil assessment be the Notice of Violation and the amount of the civil assessment be graduated as prorate of volume, concentration, type of toxic and unintentional or intentional be the deciding composite applicable factors. No "ifs", "ands" or any other type of gobble-de-gook loopholes. Keep it simple and direct.

No. P. BACKGROUND's: "As a requirement for Final Authorization, DEQ must develop guidelines which identify how the Department will enforce the state hazardous waste program." should be based in United States Code, 1982, Title 30, Volume thirteen, paragraph 1252, subparagraph (2); this on the basis that hazardous wastes are toxic wastes which eventuate into the food and water suplies for animals - including humans. As presently understood, the U.S. EPA requires the more stringent of state or federal regulations/requirements shall apply. This has made no affective difference to EPA Region X and to DEQ. This pertains to Agenda Items No.s D and P, based in references as next follow:

1. The Eugene NPDES Permit No. 1941-J and the Springfield NPDES Permit No. 1942-J were signed by a DEQ Director in 1975 and both permits had the S2 Special Requirement to secondary treat all wastes collected during the wet seasons by no later than July 31, 1983. This was after the extent of federal funding became generally known from U.S.P.L. 92-500/Clean Water Act and before the Eugene-Springfield-Lane County area officials had formed the MWMC to receive federal funds for a 'regional' sewer plant.

2. Just 25 days past July 31, 1983 a DEQ Director did, on August 25, 1983, sign the new 'regional' sewer plant's NPDES Permit No. 3721-J with only OAR 340-41-445 in its Schedule A, 2, being a controlling parameter, which does not require secondary treating all wastes collected during the wet seasons. OAR 340-41-455 does require secondary treating all wastes collected during wet seasons BUT OAR 340-41-455 IS NOT ON THIS No. 3721-J permit. This change has accurred AFTER THE FEDERAL FUNDS and local funds HAVE BEEN SPENT OR COMMITTED TO SPENDING or misspending. Federal funding has been based in representations to have obtained the federal funds. The representations include local officials and DEQ to EPA, upon which EPA has placed reasonable reliance, then came NPDES Permit No. 3721-J with a change in the representation. These three elements establish estoppel in Oregon. The DEQ was estopped from making this downgrading of treatment from secondary during the wet seasons. This downgrading of treatment has not been made available to the property owners who voted for the local bonding. The local officials and DEQ have the necessity to speak to those voters. Their silence when speaking is necessary, when the local officials and DEQ have had their professional opportunities to know, violates Oregon's Clean Hands Doctrine which essentially requires the violator to lose all standing in equity. This should establish that the local voters and the EPA are qualified on demand to have those funds returned at interest.

3. The MWMC's August 9, 1984 meeting packet's in-house BCS/MWMC memorandums July 31, 1984 pertaining to M61-6 and August 2, 1984 contain sufficient evidence opposing the representations made to the voters and EPA to substantiate their demands. The MWMC staff was concerned, before it occurred, for the factor-of-six-increase-in-wet-seasons-flow-over-dry-seasons-flow. Their concerns were well-founded when the new sewer plant bypassed to the river on November 27, 1984 - as EXPECTED. This says the city and DEQ officials had their professional opportunities to know this would occur from excessive infiltration. Both cities had completed their MINOR SEWER REHAB. and Eugene's MAJOR SEWER REHAB. prior to this August 2, 1984 memo. Therefore, inflow should have been corrected. Springfield now projects $25,000,000 to repair or replace its sewer lines on the basis that wet seasons flow is 10 percent sewage and 90 percent infiltration. Both cities should have eliminated the infiltration before applying for federal funds. Infiltration in wet seasons is the source of exfiltration in dry seasons. This exfiltrating raw sewage does not get to the plant to be treated at all. This violates the U.S. Code cited in para. 2; the groundwater is not protected IN ANY AREA HAVING CENTRALIZED SEWAGE COLLECTION.

4. MWMC's IAC produced a bar graph showing extensive hazardous/toxic wastes increase more then the domestic dilution increase for industries self-monitoring. Is Oregon to rely on DEQ as unimpeachable enforcing agent? NO! John C. Neely, Jr.

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 J, November 22, 1985, EQC Meeting

Proposed Adoption of Additions to New Source Review Rule Regarding Visibility Impacts Exemptions, OAR 340-20-276(1)(a), as a Revision to the State Implementation Plan.

Background

At the September 27, 1985 meeting of the Commission, comments were presented by the Oregon Environmental Council (OEC) requesting that the wording of the visibility impact assessment exemption should be changed to include a Department commitment to complete visibility impact assessments exempted by the Rule. The Commission directed staff to develop wording acceptable to OEC and Department legal counsel.

Problem Statement

The Department's commitment to complete visibility impact assessments for sources exempted by section 276(1)(a) of the Rule was contained in the staff report to the Commission rather than in the Rule. The OEC felt that the commitment should be in the Rule to insure its implementation.

Alternatives and Evaluation

Two alternatives are possible. These are: (a) to deny adoption of the proposed addition to the Rule, leaving the impact assessment commitment in the staff report, or (b) to add the wording to the rule.

Rule Development

The Commission directed the Department to develop acceptable wording for inclusion in the Rule that would commit the Department to conduct impact analysis for sources exempt from the Rule requirements. A one sentence addition to the Rule incorporating wording acceptable to OEC, the

Department and Department's legal counsel, reads as follows: "The visibility impact assessment for sources exempted under this section shall be completed by the Department."

Summation

(1) At the September 27, 1985 meeting of the Commission, the Oregon Environmental Council requested that the wording of the visibility impact exemption (OAR 340-20-276(1)(a)) be changed to include a Department commitment to complete assessments exempted by the Rule.

(2) The Department, in consultation with the OEC and legal counsel, has drafted proposed wording acceptable to all parties.

Director's Recommendation

Based on the Summation, the Director recommends that the Commission adopt the proposed addition to the Rule (OAR 340-20-276(1)(a)).

Fred Hansen

J. Core:s
229-5380
October 29, 1985

AS1928

340-20-276 - Visibility Impact

New major sources or major modifications located in Attainment, Unclassified or Nonattainment Areas shall meet the following visibility impact requirements:

(1) Visibility Impact Requirements and Analysis.

(a) The owner or operator of a proposed major source or major modification shall demonstrate that the potential to emit any pollutant at a significant emission rate (OAR 340-20-225, definition (22)) in conjunction with all other applicable emission increases or decreases (including secondary emissions) permitted since January 1, 1984, shall not cause or contribute to significant impairment of visibility within any Class I area.

Proposed sources which are exempted under OAR 340-20-245(3), excluding section (3)(a)(A) are not required to complete a visibility impact assessment to demonstrate that the sources do not cause or contribute to significant visibility impairment within a Class I area. <u>The visibility impact assessment for sources exempted under this section shall be completed by the Department.</u>

(b) The owner or operator of a proposed major source or major modification shall submit all information necessary to perform any analysis or demonstration required by these rules pursuant to OAR 340-20-230(1).

(2) Air Quality Models

All estimates of visibility impacts required under this rule shall be based on the models on file with the Department. Equivalent models may be substituted if approved by the Department. The Department will perform visibility modeling of all sources with potential emissions less than 100 tons/year of any individual pollutant and locating closer than 30 Km to a Class I area, if requested.

(3) Determination of Significant Impairment

The results of the modeling must be sent to the affected land managers and the Department. The land managers may, within 30 days following receipt of the source's visibility impact analysis, determine whether or not impairment of visibility in a Class I area would result. The Department will consider the comments of the Federal Land Manager in its consideration of whether significant impairment will result. Should the Department determine that impairment would result, a permit for the proposed source will not be issued.

AS1942

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. K, November 22, 1985, EQC Meeting

Proposed Adoption of Rules Formalizing the Suspension of Motorcycle Noise Testing Requirements OAR 340-24-311.

Background and Problem Statement

At the EQC Meeting of June 7, 1985, the Commission adopted emergency rules suspending the motorcycle noise testing requirements. The suspension delayed the implementation of motorcycle noise testing. A copy of that report on the emergency rules adoption is included as Attachment D.

The Legislative Subcommittee on Ways and Means had not authorized the Department's supplemental budget request. The items contained in that budget request were necessary to conduct the motorcycle noise testing program. Because of the lack of budget approval, the Department could not operate a program. As the rule was in place requiring motorcycle noise inspection, it was necessary that an emergency rule repealing or suspending that action be adopted. The Commission chose to suspend the implementation. The emergency rule expires at the end of the year.

At the time of the emergency rule adoption, the Commission also authorized a public hearing. The purpose of the hearing was to take testimony on making permanent, the emergency rule adopted at the June 7, 1985 EQC meeting. A hearing was held September 17, 1985. A copy of the hearing officer's report is included as Attachment C. The proposed rule, statement of need, and hearing notice are included as Attachments A and B.

Alternatives and Evaluations

Motorcycle noise inspection, if implemented, would require all motorcycles, scooters, and mopeds to comply with State noise criteria in order to obtain registration from the Oregon Motor Vehicles Division. The inspection requirement would not apply to vehicles that are not registered for highway use including off-road motorcycles and ATV's (all terrain vehicles). The Commission's emergency action, suspending the motorcycle noise testing requirement expires at the end of the year. The options that were offered in the June staff report remain the same; repeal, suspend, or implement motorcycle noise testing.

The temporary rule adopted by the Commission was offered for public comment. Comments from the hearing can be divided into three categories:

1. Support for the proposal to continue the suspension of the motorcycle noise inspection rules;

2. Support for the implementation of compulsory motorcycle noise inspection at this time; and

3. Suggestions for procedural changes that relate to inspection procedures for Harley-Davidson motorcycles.

The roadblock to implementing the motorcycle noise inspection program continues to be the inability to accept or expend funds to hire the necessary staff due to the lack of legislative budget authorization. No change in the approved budget is expected at this time.

Testimony supporting the implementation of noise testing for motorcycles centered upon the noise impact on their neighborhoods. They cited lack of police resources to deal with the problem and the need to have motorcycles tested so that excessively noisy motorcycles could be identified. The testimony did not, however, offer any new options on how to obtain the required fiscal authorization.

Those in favor of continued suspension of the rule based their support primarily upon the need to resolve technical inspection test procedure issues. It was their opinion that the noise test as it is currently defined unfairly measures Harley-Davidson motorcycles noise levels. Those in favor of continued suspension indicated that they might support a procedure that was fairer, but would rather not have any inspection.

The staff is aware of the technical problems relating to the testing of some Harley-Davidson motorcycles. The staff has investigated alternative procedures to address these concerns. If and when motorcycle noise testing is implemented, these modifications would be incorporated into the rule package for the Commission's consideration. However, since it is the recommendation of the staff that the suspension of motorcycle noise inspection be continued, no additional rules providing for implementation are proposed.

A third option, repeal of these noise testing rules, is still an alternative that the Commission could consider. The June 7, 1985 staff report, Attachment D, recommended repeal.

Summation

Continued suspension until further direction by the Commission as provided by OAR 340-24-311(6) will continue the status quo. The Department will report to the Commission when and if a change in the current situation takes place. At that time the Department would submit rule amendments proposing repeal of the suspension. Test procedure changes would be proposed at that time.

Director's Recommendation

Based upon the summation, it is recommended that OAR 340-24-311(6) be adopted, making the temporary rule permanent.

Michael Downs for
Fred Hansen

Attachments:

Attachment A: Proposed Rule OAR 340-24-311.
Attachment B: Statement of Need and Notice of Public Hearing.
Attachment C: Hearing Officer's Report, September 17, 1985.
Attachment D: Agenda Item No. O; June 7, 1985; EQC Meeting.

William P. Jasper:y
(503) 229-5081
11-05-85
VY999

MOTORCYCLE NOISE EMISSION CONTROL TEST METHOD

340-24-311

(1) The vehicle is to be in neutral gear with the brake engaged. If the vehicle has no neutral gear, the rear wheel shall be at least 2 inches clear of the ground.

(2) The engine is to be accelerated to a speed equal to 45 percent of the red line speed. Red line speed is the lowest numerical engine speed included in the red zone on the motorcycle tachometer. If the red line speed is not available, the engine shall be accelerated to 50 percent of the speed at which the engine develops maximum rated net power.

(3) If it is judged that the vehicle may be emitting propulsion exhaust noise in excess of the noise standards of rule 340-24-337, adopted pursuant to ORS 467.030, then a noise measurement is to be conducted and recorded while the engine is at the speed specified in Section (2) of this rule. A reading from each exhaust outlet shall be recorded at the raised engine speed.

(4) If it is determined that the vehicle complies with the standards of rule 340-24-337, then, following receipt of the required fees, the vehicle emission inspector shall issue the required certificates of compliance and inspection.

(5) No Certificate of Compliance or inspection shall be issued unless the vehicle complies with all requirements of these rules and those applicable provisions of ORS 468.360 to 468.405, 481.190 to 481.200, 483.800 to 483.825 and 467.030.

(6) This rule and subsection (2) of rule 340-24-337 shall become effective upon further action of the Environmental Quality Commission.

Attachment B
Agenda Item No. K
November 22, 1985
EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Suspension of Motorcycle Noise Inspection Requirements
NOTICE OF PUBLIC HEARING

Date Prepared: July 15, 1985
Hearing Date: September 17, 1985
Comments Due: September 17, 1985

WHO IS AFFECTED: Residents, motorcycles owners, and people engaged in the business of selling or repairing motorcycles in the greater Portland metropolitan area (Metropolitan Service District) will be affected by this proposal.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend OAR OAR 340-24-311, formally suspending the motorcycle noise inspection requirement pending further action by the Environmental Quality Commission.

WHAT ARE THE HIGHLIGHTS: The Department of Environmental Quality is proposing to formally amend OAR 340-24-311 to be consistent with the Commission emergency action of June 7, 1985. The noise emission standards and test methods for in-use motorcycles are proposed to be suspended until further direction of the Commission.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from the Department of Environmental Quality, Vehicle Inspection Program, P.O. Box 1760, 522 Southwest Fifth Avenue, Portland, Oregon 97201. For further information contact William P. Jasper at 229-6235 or John Hector at 229-6085.

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

10:00 a.m.
September 17, 1985
DEQ Hearing Room, Room 1400
522 S.W. Fifth Avenue
Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Vehicle Inspection Program, P.O. Box 1760, Portland, OR 97207, but must be received by no later than 5:00 p.m., September 17, 1985.

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

WHAT IS THE NEXT STEP:

After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation should come on November 15, 1985 as part of the agenda of a regularly scheduled Commission meeting to be held in Portland.

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

AS1558

PROPOSED SUSPENSION OF MOTORCYCLE NOISE INSPECTION REQUIREMENTS
RULEMAKING STATEMENTS

STATEMENT OF NEED FOR RULEMAKING

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

LEGAL AUTHORITY

This proposal amends OAR 340-24-311. It is proposed under authority of ORS 468.370.

NEED FOR THE RULE

The proposed amendment is needed to replace a temporary rule which expires December 31, 1985. Legislative budget approval for motorcycle noise inspection was not received and this action suspends the requirement under ORS 481.190, for the Oregon Motor Vehicles Division to require a Certificate of Compliance for motorcycle registration or renewal of registration.

PRINCIPAL DOCUMENTS RELIED UPON

1. DEQ Budget for FY 1985-87

2. EQC Staff Report and Director's Statement, June 7, 1985

3. EQC Minutes of Meeting, June 7, 1985

FISCAL AND ECONOMIC IMPACT STATEMENT

As this action amends OAR 340-24-311 before its effective date, there is no fiscal or economic impact.

LAND USE CONSISTENCY STATEMENT

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

AS1558.A

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: Hearings Officer

Subject: Motorcycle Noise Inspection Public Hearing September 17, 1985

On September 17, 1985 at 10 a.m. a public hearing was held to receive testimony on an amendment suspending the motorcycle noise testing requirement. This hearing was authorized by the Commission when it adopted emergency rules suspending motorcycle noise requirements June 7, 1985.

Four individuals offered testimony at the hearing.

Dave Scandiffio spoke about the motorcycle noise standards. He stated he owned a 1975 Harley-Davidson with a stock exhaust system and it measured 106 dBA. He indicated that the test method does not fairly measure sound levels from Harley-Davidson motorcycles because it does not take into account muffler placement.

Gary Vinson, Northeast Portland Chapter Coordinator of the ABATE Oregon, would like to see the noise rule for motorcycles suspended permanently. Mr. Vinson had test sheets showing several Harley-Davidson motorcycles with new mufflers consistently failing the DEQ noise test. Mr. Vinson stated that the cost of new exhaust systems is very high and having to continually replace these systems places an unfair burden on Harley-Davidson owners. Mr. Vinson suggested that either the standard be raised or the entire program be abolished. He stated that if DEQ had a noise program for motorcycles this would effectively raise prices of used motorcycles.

Jacob Morgan stated that he was a past state coordinator of ABATE and a Harley-Davidson mechanic. Mr. Morgan expressed his opinion that the DEQ noise test does not accurately measure noise. He stated that the DEQ noise test does not distinguish between different noise frequencies and that frequency was a factor in how far sound carries. He stated that the test was unfair. He indicated that some of his customers would circumvent the noise requirement. He also stated that the noise test RPM used at DEQ stations was too high, since normal Harley-Davidson's RPM readings in city traffic was about 2000 RPM. He also mentioned that some of the motorcycle noise could be considered safety protection for the rider.

John Edwards, State Coordinator for ABATE, stated that he represents 900 people. He stated that the noise standards are so tight that 3/4 of ABATE members would have to buy mufflers. If the procedure was changed to be fairer, it would be an improvement.

In addition to the oral testimony, written testimony was received from Lennart A. Swenson, Karen Upton and John Hilley. Copies of those letters are attached.

Mr. Swenson stated that the noise inspection program was necessary and should not be suspended.

Karen Upton supports compulsory noise compliance for motorcycles and does not support the continued suspension of the noise measure requirements for motorcycles.

John Hilley supports the noise inspection program for motorcycles. He cited statistics indicating the magnitude of the motorcycle noise problem. He stated that there was no equity if cars should be inspected but not motorcycles. He questioned why the Emergency Board would not allow a self-funding program to operate.

William P. Jasper

AD2256
Attachments: Letter from Lennart A. Swenson
Letter from Karen Upton
Letter from John Hilley

William P. Jasper:d
229-5081
October 1, 1985

Aug. 27, 1985

DEQ Vehicle Inspection Program
P.O. Box 1760
Portland, Oregon 97207

Dear Sir,

I am concerned about the proposal to suspend the motorcycle noise inspection requirement. It must be evident to every sensible person residing or working in the Portland area that the illegal noisy motorcycles are a terrible detriment to the environment. Only an inspection program will control the problem.

Please enter into the record of your hearing scheduled for Sept. 12, 1985 my opposition to suspension of the program.

Yours truly,

Lennart A. Swenson
38909 E. Crown Pt. Hwy.
Corbett, OR 97019

6401 S. E. Thiessen
Milwaukie, OR 97267
September 15, 1985

DEQ Inspection Program
P. O. Box 1760
Portland, OR 97207

Gentlemen:

I would like to comment on the proposed suspension of noise emission testing of motorcycles.

DEQ estimates (and their estimates are usually conservative) that 25% of 30,000 motorcycles in the metropolitan area will fail noise emissions tests. If 7,500 non-compliant cycles roar past 1,000 homes daily (a conservative estimate on average), the people in those 1,000 homes experience 7,500,000 impacts of deleterious (health affecting) noise that ranges from somewhat bothersome to truly devastating levels day after day after day. Unlike air pollution, pollution from vehicles (noise and fumes alike) is not dispersed throughout a wide area; rather, vehicular pollution is concentrated along major traffic routes. Probably fewer than 10% of the people endure 95% of our poorly controlled vehicle noise. I have known housewives on the verge of nervous breakdowns, their conditions a result of young cyclists who rode all day, day after day after day, in a given neighborhood. My point? A need for control exists.

It seems to me there is no equity under law if cars are to be muffled yet cycles can produce as much noise as their macho-imaged (shades of Rambo) riders can achieve. We live in a society so crime ridden that the crime of producing horrendous noise is ignored by the police. Such a general condition (minor crimes ignored) is precisely why we have so much major crime. So many laws are broken or ignored that breaking the law becomes a major way of life.

I feel puzzled about two things:

> Why did the Emergency Board not approve the DEQ proposal to monitor motor vehicle noise if the process was to prove self-supporting through testing fees?
>
> Why does the DEQ need more testimony when they have already received essentially reams of testimony (within the last year) that would convince any fair-minded person that uncontrolled vehicle noise is a major problem to a significant portion of the public?

Perhaps time will see a resolution of some of the obstacles blocking implementation of a relatively practical solution to yet another unanswered social problem.

Sincerely,

John Hilley

8-27-85

Department of Environmental Quality

Re:

A chance to comment on...
proposed suspension of
motorcycle Noise Requirements

Sirs:

1. I believe testing for excessive motorcycle noise is appropriate because:

   a. Although noise ordinances are in place here in the city of Portland, police are too busy to enforce them. a DEQ facility would be an inexpensive way to enforce laws already in place. I have personally experienced police inability to respond.

   b.

b.1. Motorcycles are not a necessity as are other noisy machines such as lawn mowers.

- over -

Transportation can be accomplished by motor scooter or other quiet inexpensive means. Thus, it seems reasonable to exact the funding for testing from the riders themselves! Why civalize the general public any more than one does for other idiosyncratic needs?

b.2. The sellers of motorcycles are selling to a populace with a discretionary income sufficient to purchase the nonessential machine. Surely those funds can also make it a quiet machine because?

c. One person's noise destroys the individual's right for peace and quiet - in fact many individuals. It is simply unfair to do so. Many early mornings I'm awakened to the roar of a cycle (and sometimes unlawfully mufflered cars, too, of course) zooming by. The damage is done. My sleep

is broken.
This is an application of the idea that when one's activity infringes upon the rights of another it should cease.

d. It is extremely difficult to pinpoint vehicles creating excess noise. They may drive by at very early or late hours. They may randomly use their recreational vehicle. Thus one must play detective with sometimes little hope of figuring out who is at fault. This is another personal experience of mine.
The DEQ stations are an excellent way to enforce this aspect of the law - finding vehicles at fault.

Thank you for this opportunity to comment.

Since I work I cannot attend the meeting.

Karen Upton

Karen Upton
Goose Hollow Village
535 SW Clay
apt. 304
Portland, Oregon
97201-2527

Phone: 222-5803

Please note that the above is a new address for:

Kenneth and Karen Upton
formerly of
11175 SE 30th Avenue
Milwaukie
Oregon
97222

Phone: 659-0271

Attachment D
Agenda Item No. K
November 22, 1985
EQC Meeting

EXCERPT FROM

ENVIRONMENTAL QUALITY COMMISSION MINUTES

June 7, 1985

AGENDA ITEM O: Emergency repeal of motorcycle noise testing requirements for the Vehicle Inspection Program, OAR 340-24-311 and 24-337(2).

On November 2, 1984, the Commission adopted rules incorporating noise testing of motorcycles into the inspection program with an effective date of July 1, 1985. As directed by the Commission, the Department sought supplemental budget authority to carry out the motorcycle inspection task. Budget approval was not granted by the Legislature and thus, the Department is not now in a position to test and inspect motorcycles.

ORS 481.190 directs the Motor Vehicles Division not to renew the vehicle registration of a vehicle which does not have a Certificate of Compliance attesting to conformance with the noise control and emission standards adopted under ORS 468.370. Thus, after July 1, 1985, motorcycle owners who live in the Portland Metropolitan area would be severely prejudiced by not being able to renew their motorcycle registrations.

The Commission is being asked to:

1. Enter a finding that failure to act promptly will result in serious prejudice to the public interest because motorcycle owners within the Portland area would not be able to re-register their motorcycles;

2. Issue an emergency repeal or suspension of OAR 340-24-311 and 24-337(2); and

3. Authorize the Department to hold public hearings on this matter.

Since the signing of this report, the Director was asked to reconsider his recommendation to repeal this rule. In light of the public support for motorcycle noise inspection, the Director was persuaded

to recommend an emergency rule amendment that would suspend rather than repeal this rule. This proposed rule amendment reads as follows:

Proposed Amendment to Rule 340-24-311
Motorcycle Noise Emission Control
Test Method

(6) This rule and subsection (2) of rule 340-24-337 shall become effective upon the approval of necessary budget limitations and staff by the Oregon Legislative Assembly.

This amendment will allow the motorcycle standards, that have been approved after considerable public testimony, to remain in the rules and become effective after budget issues are resolved.

Chairman Petersen noted that the Commission had received additional written testimony on this matter from John Broome, Tualatin; Chad Metzger, Lake Oswego; Jane Cease, District 10 Senator; and Else Coleman, Commissioner Mike Lindberg's office.

Carolyn Johnson, Citizen's Association of Portland, testified that her group's purpose was to protect and enhance the livability of Portland neighborhoods. They felt it was imperative to reduce noise pollution from all sources, including motorcycles, heavy trucks and buses. They were opposed to the omission of any category of vehicle from the noise inspection program.

Jim Owens, President of Oregon Environmental Council (OEC), said that the compromise rule amendment proposed by the Director was acceptable. The OEC did not want to see motorcycle noise testing deleted and asked that the Commission do whatever was necessary to implement motorcycle noise inspection along with all other vehicles. Mr. Owens continued that OEC would support the Department asking for Emergency Board approval for funding to conduct motorcycle noise testing. He asked if it was possible to implement the program with existing resources.

Commissioner Denecke asked if the legislative Ways and Means Committee had taken any position on this matter. Director Hansen replied that the Ways and Means Subcommittee had not approved the supplemental budget request the Department submitted which contained funding for motorcycle noise testing. He felt the subcommittee clearly thought the program was a bigger regulatory burden than they were willing to approve.

It was Mr. Hansen's belief that by the full Legislature approving the Department's budget, they also approved the actions of the Ways and Means Subcommittee, and the Legislature would not expect the program to go ahead as presented in the Department's supplemental budget request. If the Department were to ask for Emergency Board approval, it would have to be in a different form.

Director Hansen said the options were to ask for Emergency Board approval, or wait until the next Legislative session and present the matter again.

Chairman Petersen commented that he thought the Commission had the statutory authority to regulate motorcycle noise.

Commissioner Denecke asked about revenue from fees. Director Hansen replied that the Department could collect fees, but had to have authority from the Legislature to spend those fees and hire the personnel necessary to conduct the testing. He said the Commission could direct the Department to go ahead with the testing, understanding with no additional personnel the testing time per vehicle would be slower. However it was his feeling that going ahead in any fashion at this time would not be appropriate in view of the Legislature's action.

Chairman Petersen said he was not sure the Legislature had sent a clear message not to conduct the program; only that they would not fund it.

Linore Allison, Livable Streets Coalition, testified that her group did not want to see a repeal of motorcycle testing as it was really important to the public. She said something needed to be done soon; people could not wait forever. Ms. Allison was not convinced the full legislative assembly felt the same way the Ways and Means Subcommittee did, as all the legislators she spoke with were supportive of the program. She expressed willingness to work with the Department to implement the program and to lobby the Legislature. In response to Commissioner Denecke, Ms. Allison said it was probably too late in the session to get Ways and Means to reverse its decision on this matter. She said Senator Jane Cease had recommended keeping the rule as it stands and asking for Emergency Board approval to implement the program.

Molly O'Riley suggested that if testing was started, the different circumstances would be created which could be taken to the E-Board.

The Commission discussed the ramifications and it was decided that to maintain good relations with the legislature, patience should be exercised.

It was MOVED by Commissioner Denecke, seconded by Commissioner Bishop and passed unanimously that the effective date of July 1, 1985 be suspended to some later date when the Commission shall take action.

Michael Huston, Assistant Attorney General, reminded the Commission this was a temporary rule which would be in effect for 180 days.

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. O , June 7, 1985, EQC Meeting

Emergency Repeal of Motorcycle Noise Testing Requirements for the Vehicle Inspection Program, OAR 340-24-311 and 24-337(2)

Background and Problem Statement

At the EQC meeting of November 4, 1984, rules were adopted which added vehicle noise testing requirements to the vehicle inspection program test procedures. The rule adoption incorporating passenger cars and light duty truck noise testing was effective April 1, 1985. On that date, compliance with the noise inspection requirement became compulsory in addition to the emission test requirements. At that same meeting, the Commission directed that motorcycle noise testing be included with an effective date of July 1, 1985; and that necessary funding to accomplish that task be obtained.

At the Commission's direction, the Department submitted a supplemental budget proposal. The budget proposed would have provided for three full time equivalent (FTE) positions and provided for an increase in fees received due to the 30,000 projected motorcycles and mopeds which would be tested and purchasing Certificates of Compliance. The supplemental budget request was specifically rejected by the Joint Subcommittee on Regulation and the full Committee on Ways and Means; and was not included in the budget passed by the Legislature and submitted to the Governor.

ORS 481.190 provides that "motor vehicles registered within the boundaries, designated in ORS 268.125, of the metropolitan service district formed under ORS Chapter 268 for the metropolitan area, as defined in subsection (3) of ORS 268.020, which includes the City of Portland, Oregon, shall be equipped with a motor vehicle pollution control system and shall comply with the motor vehicle pollutant, noise control and emission standards

adopted by the Environmental Quality Commission pursuant to ORS 468.370." The Commission, pursuant to ORS 468.370, adopted motorcycle noise standards OAR 340-24-311 and 340-24-337(2). ORS 481.190 further directs that the Motor Vehicle Division shall not issue a registration or renewal of registration for a motor vehicle subject to these requirements unless the division receives, with the registration or renewal of registration, a completed Certificate of Compliance. Without budget authority, the Department is not now in a position to test motorcycles and mopeds and issue Certificates. The motorcycling public, therefore, would be severely prejudiced by not being able to renew their motorcycle registrations.

If the Department were to utilize its existing resources, and incorporate motorcycle noise testing, existing levels of service to the public would be severely affected and the Department would be taking an action specifically disapproved during the Legislative budget hearings. If no action is taken, potentially both the Department and the Motor Vehicles Division could be open to citizen suit.

Alternatives and Evaluations

The motorcycle noise testing rules previously adopted by the Commission are effective July 1, 1985. The program is now required, but does not have specific legislative budget authorization. There are four major options open for Commission consideration:

1. Issue an emergency repeal of OAR 340-21-311 and OAR 340-24-337(2) and authorize public hearings on a permanent repeal of the rule;

2. Issue an emergency rule change of the effective date of implementation of OAR 340-24-311 and 24-337(2), and direct the Department to seek fiscal approval for positions and revenue from the State Emergency Board so that motorcycle testing may be started at a later date;

3. Direct the Department to implement motorcycle and moped noise testing on schedule without legislative budget approval and thus directly impact our service levels to the motoring public; or

4. Take no action.

ORS 183.335 provides for emergency adoption, suspension, or repeal of administrative rules when failure to act promptly would result in serious prejudice to the public interest. Emergency actions expire 180 days after implementation, requiring finalization through the standard rulemaking process.

Summation

Emergency repeal or suspension of the rules which provide for motorcycle noise testing is necessary to prevent serious prejudice to the public interest because the Oregon Legislature has withheld budget approval for that aspect of the inspection program operation. Prompt emergency action is required because a July 1, 1985 start-up date is incorporated in the noise testing rules. If no action is taken to repeal or suspend the rules, the Motor Vehicles Division is directed by ORS 481.190 to demand a Certificate of Compliance prior to motorcycle registration. If the Department began testing motorcycles and issuing Certificates , it would be operating outside of its legislatively approved budget. These alternatives are unacceptable.

Director's Recommendation

Based upon the summation, it is recommended that:

1. The Commission enter a finding that failure to act promptly will result in serious prejudice to the public interest. The specific reason for this prejudice is that if no action is taken, motorcycle owners within the Portland area would not be able to re-register their motorcycles.

2. The Commission issue an emergency repeal of OAR 340-24-311 and OAR 340-24-337(2) under its authority contained in ORS 183.335 and 468.370.

3. The Commission authorize the Department to hold public hearings on a formal repeal of OAR 340-24-311 and OAR 340-24-337(2).

Fred Hansen

Attachments: 1. OAR 340-24-311 and 340-24-337
2. Statement of Need for Rulemaking

William Jasper:p
AP73
229-5081
May 21, 1985

[MOTORCYCLE NOISE EMISSION CONTROL TEST METHOD

340-24-311

(1) The vehicle is to be in neutral gear with the brake engaged. If the vehicle has no neutral gear, the rear wheel shall be at least 2 inches clear of the ground.

(2) The engine is to be accelerated to a speed equal to 45 percent of the red line speed. Red line speed is the lowest numerical engine speed included in the red zone on the motorcycle tachometer. If the red line speed is not available, the engine shall be accelerated to 50 percent of the speed at which the engine develops maximum rated net power.

(3) If it is judged that the vehicle may be emitting propulsion exhaust noise in excess of the noise standards of rule 340-24-337, adopted pursuant to ORS 467.030, then a noise measurement is to be conducted and recorded while the engine is at the speed specified in Section (2) of this rule. A reading from each exhaust outlet shall be recorded at the raised engine speed.

(4) If it is determined that the vehicle complies with the standards of rule 340-24-337, then, following receipt of the required fees, the vehicle emission inspector shall issue the required certificates of compliance and inspection.

(5) No Certificate of Compliance or inspection shall be issued unless the vehicle complies with all requirements of these rules and those applicable provisions of ORS 468.360 to 468.405, 481.190 to 481.200, 483.800 to 483.825 and 467.030.]

MOTOR VEHICLE PROPULSION EXHAUST NOISE STANDARDS

340-24-337

(1) Light duty motor vehicle propulsion exhaust noise levels not to be exceeded as measured at no less than 20 inches from any opening to the atmosphere downstream from the exhaust ports of the motor vehicle engine:

Vehicle Type	Maximum Allowable Noise Level
Front Engine	93 dBA
Rear and Mid Engine	95 dBA

[(2) Motorcycle propulsion exhaust noise levels not to be exceeded as measured at no less than 20 inches from any opening to the atmosphere downstream from the exhaust ports of the motorcycle engine:

Model Year	Maximum Allowable Noise Level
Pre-1976	102 dBA
1976 and later	99 dBA]

(2) [(3)] The Director may establish specific separate standards, differing from those listed in subsections (1) and (2), for vehicle classes which are determined to present prohibitive inspection problems using the listed standard.

Attachment 2
Agenda Item No. O
June 7, 1985
EQC Meeting

STATEMENT OF NEED FOR RULEMAKING

for

Emergency Rules to Vehicle Inspection Program Rules

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

Legal Authority

This proposal repeals OAR 340-24-311 and OAR 340-24-337(2). It is proposed under authority of ORS 468.370.

Need for the Rule

The emergency repeal is necessary to prevent prejudice to the public interest because some motorcycles will not be able to renew, as required by ORS 481.190, their motorcycle registration after July 1, 1985 because the Legislature withheld budgetary authority to implement these referenced rules.

Fiscal and Economic Impact Statement

As this action repeals or suspends OAR 340-24-311 and 24-337(2) before its effective date, there is no fiscal or economic impact.

Land Use Consistency Statement

This action does not affect land use as defined in the Department's coordination program approved by the Land Use Conservation and Development Commission.

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. L, November 22, 1985, EQC Meeting

Proposed Approval of Amendments to Lane Regional Air Pollution Authority Rules Concerning "Standards of Performance for New Stationary Sources"

Background

The Lane Regional Air Pollution Authority (LRAPA) revised its "Standards of Performance for New Stationary Sources" rules at its September 10, 1985 meeting. The revision consisted of rewriting the first 14 standards to improve readability, adding 21 standards not previously adopted, and renumbering the section from 37 to 46.

Problem Statement

State statute, ORS 468.535(2), requires that LRAPA rules must not be less strict than State rules. This statute also requires that the Environmental Quality Commission (EQC) must approve LRAPA's rules because these rule revisions and additions are emission standards.

LRAPA is requesting that these rules be part of an amended State Implementation Plan. However, the Environmental Protection Agency's (EPA) Region X office has recently clarified that under the Clean Air Act, EPA has no authority to approve and enforce State or LRAPA Standards of Performance for New Stationary Sources (NSPS) as a State Implementation Plan Revision. Rather, the Clean Air Act requires establishment of a federal program (and federal rules) which can be delegated to the State and to LRAPA to enforce if they have comparable rules. Only programs which the State and LRAPA adopt to address ambient air quality standards are allowed to be adopted and enforced by EPA under the Clean Air Act as a State Implementation Plan Revision. The proper procedure for DEQ to follow in this case would be to request delegation of the pertinent NSPS Rules for administration by LRAPA.

Evaluation

The Department has determined that LRAPA's new title 46 rules are as strict as the State's rules. Indeed, they are identical to state and federal rules. The Department will request EPA to delegate its authority to administer these rules to LRAPA after the Commission approves the attached LRAPA rules.

Summation

1. Lane Regional Air Pollution Authority (LRAPA) has revised its "Standards of Performance for New Stationary Sources," rules (Title 46).

2. Statute requires both that LRAPA air quality standard rules must not be less strict than State rules, and that the EQC must approve such LRAPA standards. The Department has reviewed LRAPA's rule revision and finds that it is no less stringent than State rules.

3. The Department will seek delegation from EPA for LRAPA to administer these rules in Lane County after the Commission approves the new LRAPA rules.

Director's Recommendation

It is recommended that the EQC approve LRAPA's rule revisions concerning "Standards of Performance for New Stationary Sources."

Michael Downs
for
Fred Hansen

Attachments: LRAPA's revised rules, Title 46

P. B. Bosserman:s
(503) 229-6278
November 6, 1985

AS1911

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 46

Standards of Performance for New Stationary Sources

Section 46-005 Applicability

This rule shall be applicable to stationary sources identified in Sections 46-025 through 46-195, for which construction or modification has been commenced after the effective dates of these rules.

Section 46-010 General Provisions

Title 40, CFR, Part 60, Subpart A, as promulgated prior to August 2, 1985, is by this reference adopted and incorporated herein. Subpart A includes paragraphs 60.1 through 60.16 which address, among other things, definitions, performance tests, monitoring requirements, and modification.

Section 46-020 Federal Regulations Adopted by Reference

Title 40, CFR, Parts 60.40 through 60.154 and 60.250 through 60.685, as established as final rules prior to August 2, 1985, are by this reference adopted and incorporated herein. As of August 2, 1985, the federal regulations adopted by reference set emission standards for the new stationary source categories enumerated in Sections 46-025 through 46-195. (These are summarized here for easy screening, but testing conditions, the actual standards, and other details will be found in the Code of Federal Regulations.)

Section 46-025 Standards of Performance for Fossil-Fuel-Fired Steam Generators

1. The pertinent federal rules are 40 CFR 60.40 through 60.46, also known as Subpart D.

2. The following emission standards, summarizing the federal standards set forth in subpart D, apply to each fossil-fuel-fired and to each combination wood-residue, fossil-fuel-fired generating unit of more than 73 megawatts (250 million Btu/hr.) heat input.

   A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which:

      (1) Contain particulate matter in excess of 43 nanograms per joule heat input (0.10 lb./million Btu) derived from fossil fuel or fossil fuel and wood residue.

      (2) Exhibit greater than 20 percent opacity except for one six-minute period per hour of not more than 27 percent opacity.

   B. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which contain sulfur dioxide in excess of:

(1) 340 nonograms per joule heat input (0.80 lb./million Btu) derived from liquid fossil fuel or liquid fossil fuel and wood residue.

(2) 520 nanograms per joule heat input (1.20 lb./million Btu) derived from solid fossil fuel or solid fossil fuel and wood residue.

(3) When different fossil fuels are burned simultaneously in any combination, the applicable standard shall be determined by proration using the following formula:

$$SO_2 = \frac{y\ (340) + z\ (520)}{y + z}$$

where:

(a) y is the percentage of total heat input derived from liquid fossil fuel; and

(b) z is the percentage of total heat input derived from solid fossil fuel, and

(c) SO_2 is the prorated standard for sulfur dioxide when burning different fuels simultaneously, in nanograms per joule heat input derived from all fossil fuels and wood residue fired.

(4) Compliance shall be based on the total heat input from all fossil fuels burned, including gaseous fuels.

C. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which contain nitrogen oxides, expressed as NO_2 in excess of:

(1) 86 nanograms per joule heat input (0.20 lb./million Btu) derived from gaseous fossil fuel or gaseous fossil fuel and wood residue.

(2) 130 nanograms per joule heat input (0.30 lb./million Btu) derived from liquid fossil fuel or liquid fossil fuel and wood residue.

(3) 300 nanograms per joule heat input (0.70 lb./million Btu) derived from solid fossil fuel or solid fossil fuel and wood residue (except lignite or a solid fossil fuel containing 25 percent, by weight, or more of coal refuse).

(4) When different fossil fuels are burned simultaneously in any combination, the applicable standard shall be determined by proration using the following formula:

$$PNO_x = \frac{w(260) + x(86) + y(130) + z(300)}{w + x + y + z}$$

where:

(a) PNO_x is the prorated standard for nitrogen oxides when burning different fuels simultaneously, in nanograms per joule heat input derived from all fossil fuels and wood residue fired; and

(b) w is the percentage of total heat input derived from lignite; and

(c) x is the percentage of total heat input derived from gaseous fossil fuel; and

(d) y is the percentage of total heat input derived from liquid fossil fuel; and

(e) z is the percentage of total heat input derived from solid fossil fuel (except lignite).

(5) When a fossil fuel containing at least 25 percent, by weight, of coal refuse is burned in combination with gaseous, liquid or other solid fuel or wood residue, 46-025(2)(C).

(6) Section 46-025(2) does not apply to Electric Utility Steam Generating Units for which construction is commenced after September 18, 1978. These units must comply with the more stringent 46-055.

Section 46-030 Standards of Performance for Incinerators

1. The pertinent federal rules are 40 CFR 60.50 through 60.54, also known as Subpart E.

2. The following emission standards, summarizing the federal standards set forth in subpart E, apply to each incinerator whose charging rate is more than 45.36 metric tons (50 tons) per day:

   A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere any gases which contain particulate matter in excess of 0.18 g/dscm (0.080 gr/dscf) corrected to 12 percent CO_2.

Section 46-035 Standards of Performance for Asphalt Concrete Plants

1. The pertinent federal rules are 40 CFR 60.90 through 60.93, also known as Subpart I.

2. The following emission standards, summarizing the federal standards set forth in Subpart I, apply to each asphalt concrete plant:

   A. No owner or operator subject to the provisions of this rule shall cause the discharge into the atmosphere from any affected facility any gases which:

      (1) Contain particulate matter in excess of 90 mg/dscm (0.040 gr/dscf).

      (2) Exhibit 20 percent opacity or greater.

Section 46-040 Standards of Performance for Storage Vessels for Petroleum Liquids

1. The pertinent federal rules are 40 CFR 60.110 through 60.115a, also known as Subparts K and Ka.

2. The following requirements, summarizing the federal requirements set forth in Subparts K and Ka, apply to each storage vessel for petroleum liquids

which has a storage capacity greater than 151,412 liters (40,000 gallons). These requirements do not apply to storage vessels for petroleum or condensate stored, processed and/or treated at a drilling and production facility prior to custody transfer. "Petroleum liquids" means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery, but does not mean Number 2 through Number 6 fuel oils as specified in ASTM-D-396-69, gas turbine fuel oils Numbers 2-GT through 4-GT as specified in ASTM-D 2880-71, or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM-D-975-68.

A. The owner or operator of any storage vessel to which this section applies shall store petroleum liquids as follows:

(1) If the true vapor pressure of the petroleum liquid as stored is equal to or greater than 78 mm Hg (1.5 psia), the storage vessel shall be equipped with a floating roof, a vapor recovery system, or an equivalent.

(2) If the true vapor pressure of the petroleum liquid as stored is greater than 570 mm Hg (11.1 psia), the storage vessel shall be equipped with a vapor recovery system or its equivalent.

(3) If construction is commenced after May 18, 1978, vessels in category 46-040(2)(A)(1) above shall have double seals if external floating roof vessels, and comply with 40 CFR 60.110a to 115a.

(4) If construction is commenced after May 18, 1978, vapor recovery systems allowed by (1) and (3) above, and required by (2) above shall be designed so as to reduce Volatile Organic Compounds emissions to the atmosphere by at least 95 percent by weight.

Section 46-045 Standards of Performance for Iron and Steel Plants

1. The pertinent federal rules are 40 CFR 60.140 through 60.144, also known as Subpart N.

2. The following emission standards, summarizing the federal standards set forth in Subpart N, apply to each basic oxygen process furnace in iron and steel plants subject to this rule:

A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which:

(1) Contain particulate matter in excess of 50 mg/dscm (0.022 gr/dscf), and

(2) Exit from a control device and exhibit 10 percent opacity or greater, except that an opacity of greater than 10 percent but less than 20 percent may occur once per steel production cycle.

Section 46-050 Standards of Performance for Sewage Treatment Plants

1. The pertinent federal rules are 40 CFR 60.150 through 60.154, also known as Subpart O.

2. The following emission standards, summarizing the federal standards set forth in Subpart O, apply to each incinerator which burns the sludge produced by municipal sewage treatment facilities:

   A. No owner or operator of any sewage sludge incinerator subject to the provisions of this rule shall cause the discharge into the atmosphere of:

      (1) Particulate matter at a rate in excess of 0.65 g/Kg (1.30 lb./ton) dry sludge input;

      (2) Any gases which exhibit 20 percent opacity or greater.

Section 46-055 Standards of Performance for Electric Utility Steam Generating Units

1. The pertinent federal rules are 40 CFR 60.40a through 60.49a, also known as Subpart Da.

2. The following emission standards, summarizing the federal standards set forth in Subpart Da, apply to each electric utility steam generating unit that is capable of combusting more than 73 megawatts (250 million Btu/hour) heat input of fossil fuel (either alone or in combination with any other fuel) and for which construction commenced after September 18, 1978.

   A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which contain particulate matter in excess of:

      (1) 13 ng/J (0.030 lb./million Btu) heat input derived from the combustion of solid, liquid, or gaseous fuel,

      (2) 1.00 percent of the potential combustion concentration when combusting solid fuel, and

      (3) 30 percent of the potential combustion concentration when combusting liquid fuel;

      (4) An opacity of 20 percent, except for one six-minute period per hour of not more than 27 percent opacity.

   B. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which contain sulfur dioxide in excess of:

      (1) 520 ng/J (1.20 lb./million Btu) heat input for solid fuel or solid-derived fuel and 10 percent of the potential combustion concentration (90 percent reduction), or

      (2) 30 percent of the potential combustion concentration (70 percent reduction), when emissions are less than 260 ng/J (0.60 lb./million Btu) heat input for solid fuel or solid-derived fuel.

      (3) 340 ng/J (0.80 lb./million Btu) heat input from liquid or gaseous fuels and 10 percent of the potential combustion concentration (90 percent reduction), or

(4) When emissions are less than 80 ng/J (0.20 lb./million Btu) heat input from liquid or gaseous fuels, 100 percent of the potential combustion concentration (zero percent reduction),

(5) 520 ng/J (1.20 lb./million Btu) heat input from any affected facility which combusts 100 percent anthracite or is classified as a resource recovery facility.

C. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which contain nitrogen oxides in excess of:

(1) 86 ng/J heat input for gaseous fuels except for coal-derived gaseous fuels;

(2) 130 ng/J heat input for liquid fuels except for coal-derived or shale oil;

(3) 210 ng/J heat input for coal-derived gaseous, liquid, and solid fuels; for shale oil; or for subbituminous coal;

(4) 260 ng/J heat input from bituminous and anthracite coal; from lignite except as noted in (5) below; from all other solid fossil fuels not specified elsewhere in this rule;

(5) 340 ng/J heat input from any solid fuel containing more than 25 percent by weight of lignite mined in the Dakotas or Montana, and combusted in a slag tap furnace;

(6) No limit for any solid fuel containing more than 25 percent by weight of coal refuse.

Section 46-060 Standards of Performance for Coal Preparation Plants

1. The pertinent federal rules are 40 CFR 60.250 through 60.254, also known as Subpart Y.

2. These standards, summarizing the federal standards set forth in Subpart Y, for particulate matter and for visible emissions, apply only to coal preparation plants which process more than 200 tons of coal per day. An owner or operator shall not cause to be discharged into the atmosphere from:

A. Any thermal dryer gases which

(1) Contain particulate matter in excess of 0.070 g/dscm (0.031 gr/dscf);

(2) Exhibit 20 percent opacity or greater;

B. Any pneumatic coal cleaning equipment, gases which

(1) Contain particulate matter in excess of 0.040 g/dscm (0.018 gr/dscf);

(2) Exhibit 10 percent opacity or greater.

Section 46-065 Standards of Performance for Ferroalloy Production Facilities

1. The pertinent federal rules are 40 CFR 60.260 through 60.266, also known as Subpart Z.

2. These standards, summarizing the federal standards set forth in Subpart Z, for ferroalloy plants are applicable only to electric submerged arc furnaces and to dust handling equipment, built or modified after October 21, 1974.

   A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any electric submerged arc furnace any gases which:

      (1) Exit from a control device and contain particulate matter in excess of 0.45 Kg/MW-hr (0.99 lb./MW-hr) while silicon metal, ferrosilicon, calcium silicon, or silicomanganese zirconium is being produced;

      (2) Exit from a control device and contain particulate matter in excess of 0.23 Kg/MW-hr (0.51 lb./MW-hr) while high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, calcium carbide, ferrochrome silicon, ferromanganese silicon, or silvery iron is being produced;

      (3) Exit from a control device and exhibit 15 percent opacity or greater;

      (4) Escape the capture system at the tapping station and are visible for more than 40 percent of each tapping period, except a blowing tap is exempted.

   B. No owner or operator subject to the provisions of these rules shall cause to be discharged into the atmosphere from any dust-handling equipment any gases which exhibit 10 percent opacity or greater.

   C. No owner or operator subject to the provisions of these rules shall cause to be discharged into the atmosphere from any electric submerged arc furnace any gases which contain, on a dry basis, 20 or greater volume percent of carbon monoxide.

Section 46-070 Standards of Performance for Steel Plants: Electric Arc Furnaces

1. The pertinent federal rules are 40 CFR 60.270 through 60.276a, also known as Subpart AA and AAa.

2. These standards, summarizing the federal standards set forth in Subpart AA and AAa, for steel plants are applicable only to electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling equipment, built or modified after October 21, 1974.

   A. No owner or operator shall cause to be discharged into the atmosphere from an electric arc furnace any gases which:

      (1) Exit from a control device and contain particulate matter in excess of 12 mg/dscm (0.0052 gr/dscf);

(2) Exit from a control device and exhibit 3.0 percent opacity or greater;

(3) Exit from a shop and, due solely to operations of any electric arc furnaces or argon-oxygen decarburization vessels, exhibit 6 percent or greater shop opacity except that, if constructed before August 7, 1983, the shop opacity must be only less than 20 percent during charging periods and only less than 40 percent during tapping periods.

B. No owner or operator shall cause to be discharged into the atmosphere from dust-handling equipment any gases which exhibit 10 percent opacity or greater.

Section 46-075 Standards of Performance for Kraft Pulp Mills

1. The pertinent federal rules are 40 CFR 60.280 through 60.286, also known as Subpart BB.

2. The standards for kraft pulp mills' facilities, summarizing the federal standards set forth in Subpart BB, are applicable only to a recovery furnace, smelt dissolving tank, lime kiln, digester system, brown stock washer system, multiple-effect evaporator system, black liquor oxidation system, and condensate stripper system built or modified after September 24, 1976.

A. No owner or operator shall cause to be discharged into the atmosphere particulate matter:

(1) From any recovery furnace

(a) in excess of 0.10 g/dscm (0.044 gr/dscf) corrected to 8 percent oxygen; or

(b) exhibit 35 percent opacity or greater;

(2) From any smelt dissolving tank in excess of 0.10 g/Kg black liquor solids, dry weight, (0.20 lb./ton);

(3) From any lime kiln

(a) in excess of 0.15 g/dscm (0.067 gr/dscf) corrected to 10 percent oxygen, when gaseous fossil fuel is burned;

(b) in excess of 0.30 g/dscm (0.13 gr/dscf) corrected to 10 percent oxygen, when liquid fossil fuel is burned.

B. No owner or operator shall cause to be discharged into the atmosphere Total Reduced Sulfur compounds (TRS), which are hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide:

(1) From any digester system, brown stock washer system, multiple-effect evaporator system, black liquor oxidation system, or condensate stripper system in excess of 5.0 ppm by volume on a dry basis, corrected to the actual oxygen content of the untreated gas stream;

(2) From any straight kraft recovery furnace in excess of 5.0 ppm by volume on a dry basis, corrected to 8 percent oxygen;

(3) From any cross recovery furnace in excess of 25 ppm by volume on a dry basis, corrected to 8.0 percent oxygen;

(4) From any smelt dissolving tank in excess of 0.0084 g/Kg black liquor solids, dry weight (0.0168 lb./ton);

(5) From any lime kiln in excess of 8.0 ppm by volume on a dry basis, corrected to 10 percent oxygen.

Section 46-080 Standards of Performance for Glass Manufacturing Plants

1. The pertinent federal rules are 40 CFR 60.290 through 60.296, also known as Subpart CC.

2. The following particulate matter standard, summarizing the federal standard set forth in Subpart CC, applies to each glass-melting furnace which commenced construction or modification after June 15, 1979 at glass manufacturing plants, but does not apply to hand glass-melting furnaces, furnaces with a design capacity of less than 4,550 kilograms of glass per day, or to all-electric melters.

   A. No owner or operator of a glass melting furnace subject to this rule shall cause to be discharged into the atmosphere from a glass-melting furnace particulate matter exceeding the rates specified in 40 CFR 60.292.

Section 46-085 Standards of Performance for Grain Elevators

1. The pertinent federal rules are 40 CFR 60.300 through 60.304, also known as Subpart DD.

2. The following emission standards, summarizing the federal standards set forth in Subpart DD, apply to any grain terminal elevator (over 2.5 million bushel storage capacity) or any grain storage elevator (over 1 million bushel storage capacity) which commenced construction, modification, or reconstruction after August 3, 1978.

   A. On and after the 60th day of achieving the maximum production rate, but no later than 180 days after initial startup, no owner or operator shall cause to be discharged into the atmosphere any gases or fugitive dusts which exhibit opacity greater than:

      (1) Zero percent opacity from any column dryer with column plate perforation exceeding 2.4 mm (0.094 inch) diameter,

      (2) Zero percent opacity from any rack dryer in which exhaust gases pass through a screen filter coarser than 50 mesh,

      (3) 5.0 percent opacity from any individual truck unloading station, railcar unloading station, or railcar loading station,

      (4) Zero percent opacity from any grain handling operation,

      (5) 10.0 percent opacity from any truck loading station,

      (6) Any barge or ship loading station which exhibits greater than 20 percent opacity.

B. After initial startup, no owner or operator shall cause to be discharged into the atmosphere from any affected facility, except a grain dryer, any process emission which:

(1) Contains particulate matter in excess of 0.023 g/dscm (0.010 gr/dscf),

(2) Exhibits greater than zero percent opacity.

C. The owner or operator of any barge or ship unloading station shall operate as follows:

(1) The unloading leg shall be enclosed from the top (including the receiving hopper) to the center line of the bottom pulley and ventilation to a control device shall be maintained on both sides of the leg and the grain receiving hopper.

(2) The total rate of air ventilated shall be at least 32.1 actual cubic meters per cubic meter of grain handling capacity (ca. 40 ft^3/bu).

(3) Rather than meet the requirements of subparagraphs (1) and (2) of this paragraph, the owner or operator may use other methods of emission control if it is demonstrated to the Authority's satisfaction that they would reduce emissions of particulate matter to the same level or less.

Section 46-090 Standards of Performance for Gas Turbines

1. The pertinent federal rules are 40 CFR 60.330 through 60.335, also known as Subpart GG.

2. The following emission standards, summarizing the federal standards set forth in Subpart GG, apply to any stationary gas turbine with a heat input at peak load equal to or greater than 10.7 gigajoules per hour (1,000 HP) for which construction was commenced after October 3, 1977.

A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any stationary gas turbine, nitrogen oxides in excess of rates specified in 40 CFR 60.332.

B. Owners or operators shall:

(1) Not cause to be discharged into the atmosphere from any gas turbine any gases which contain sulfur dioxide in excess of 150 ppm by volume at 15 percent oxygen, on a dry basis; or

(2) Not burn in any gas turbine any fuel which contains sulfur in excess of 0.80 percent by weight.

Section 46-095 Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations

1. The pertinent federal rules are 40 CFR 60.390 through 60.398, also known as Subpart MM.

2. The following emission standards, summarizing the federal standards set forth in Subpart MM, apply to automobile or light-duty truck assembly plants surface coating operations:

   A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility VOC emissions in excess of:

      (1) 0.16 kilograms of VOC per liter of applied coating solids from each prime coat operation;

      (2) 1.40 kilograms of VOC per liter of applied coating solids from each guide coat operation;

      (3) 1.47 kilograms of VOC per liter of applied coating solids from each topcoat operation.

Section 46-100 Standards of Performance for Nitric Acid Plants

1. The pertinent federal rules are 40 CFR 60.70 to 60.74, also known as Subpart G.

2. The following emission standards summarizing the federal standards set forth in Subpart G apply to each nitric acid plant which produces "weak nitric acid," which is 30 to 70 percent in strength by either the pressure or atmospheric pressure process.

   A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which:

      (1) Contain nitrogen oxides, expressed as NO_2, in excess of 1.5 Kg/metric ton of acid produced (3.0 lb./ton), the production being expressed as 100 percent nitric acid;

      (2) Exhibit 10 percent opacity or greater.

Section 46-105 Standards of Performance for Sulfuric Acid Plants

1. The pertinent federal rules are 40 CFR 60.80 through 60.85, also known as Subpart H.

2. The following emission standards summarizing the federal standards set forth in Subpart H, apply to each sulfuric acid production unit but do not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

   A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which:

      (1) Contain sulfur dioxide in excess of 2.0 Kg/metric ton of acid produced (4.0 lb./ton), the production being expressed as 100 percent H_2SO_4.

B. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which:

(1) Contain acid mist expressed as H_2SO_4, in excess of 0.075 Kg/metric ton of acid produced (0.15 lb./ton), the production being expressed as 100 percent H_2SO_4.

(2) Exhibit 10 percent opacity or greater.

Section 46-110 Standards of Performance for Secondary Lead Smelters

1. The pertinent federal rules are 40 CFR 60.120 through 60.123, also known as Subpart L.

2. The following emission standards, summarizing the federal standards set forth in Subpart L, apply to the following facilities subject to this rule in secondary lead smelters: Pot furnaces of more than 250 Kg. (550 lb.) charging capacity, blast (cupola) furnaces, and reverberatory furnaces.

   A. No owner or operator subject to the provisions of this rule shall cause the discharge into the atmosphere from a blast (cupola) or reverberatory furnace any gases which:

   (1) Contain particulate matter in excess of 50 mg/dscm (0.022 gr/dscf);

   (2) Exhibit 20 percent opacity or greater.

   B. No owner or operator subject to the provisions of this rule shall cause the discharge into the atmosphere from any pot furnace any gases which exhibit 10 percent opacity or greater.

Section 46-115 Standards of Performance for Secondary Brass and Bronze Production Plants

1. The pertinent federal rules are 40 CFR 60.130 through 60.133, also known as Subpart M.

2. The following emission standards, summarizing the federal standards set forth in Subpart M, apply to the following affected facilities in secondary brass or bronze production plants subject to this rule: Reverberatory and electric furnaces of 1000 Kg. (2205 lb.) or greater production capacity and blast (cupola) furnaces of 250 Kg/hr. (550 lb./hr) or greater production capacity.

   A. No owner or operator subject to the provisions of this rule shall cause the discharge into the atmosphere from a reverberatory furnace any gases which:

   (1) Contain particulate matter in excess of 50 mg/dscm (0.022 gr/dscf);

   (2) Exhibit 20 percent opacity or greater.

   B. No owner or operator subject to the provisions of this rule shall cause the discharge into the atmosphere from any blast (cupola) or electric furnace any gases which exhibit 10 percent opacity or greater.

Section 46-120 Standards of Performance for Metal Furniture Surface Coating

1. The pertinent federal rules are 40 CFR 60.310 through 60.316, also known as Subpart EE.

2. The following emission standard, summarizing the federal standard set forth in Subpart EE, applies to metal furniture surface coating operations in which organic coatings are applied which use 1,000 gallons of coating per year or more and commenced construction, modification, or reconstruction after November 28, 1980:

   A. No owner or operator shall cause to be discharged into the atmosphere Volatile Organic Compounds in excess of 0.90 kilograms per liter of coating solids applied.

Section 46-125 Standards of Performance for Lead-Acid Battery Manufacturing Plants

1. The pertinent federal rules are 40 CFR 60.370 through 60.374, also known as Subpart KK.

2. The following standards, summarizing the federal standard set forth in Subpart KK, apply to any lead-acid battery manufacturing plant that produces or has the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 5.9 Mg (6.5 tons), for which construction or modification of any facility affected by the rule commenced after January 14, 1980.

   A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere:

      (1) From any grid casting facility any gases that contain lead in excess of 0.40 milligram of lead per dry standard cubic meter of exhaust (0.000176 gr/dscf);

      (2) From any paste mixing facility any gases that contain in excess of 1.00 milligram of lead per dry standard cubic meter of exhaust (0.00044 gr/dscf);

      (3) From any three-process operation facility any gases that contain in excess of 1.00 milligram of lead per dry standard cubic meter of exhaust (0.00044 gr/dscf);

      (4) From any lead oxide manufacturing facility any gases that contain in excess of 5.0 milligrams of lead per kilogram of lead feed (0.010 lb./ton);

      (5) From any lead reclamation facility any gases that contain in excess of 4.50 milligrams of lead per dry standard cubic meter of exhaust (0.00198 gr/dscf);

      (6) From any other lead-emitting operation any gases that contain in excess of 1.00 milligram per dry standard cubic meter of exhaust (0.00044 gr/dscf);

      (7) From any affected facility other than a lead reclamation facility any gases with greater than 0 percent opacity;

(8) From any lead reclamation facility any gases with greater than 5 percent opacity.

Section 46-130 Standards of Performance for Publication Rotogravure Printing

1. The pertinent federal rules are 40 CFR 60.430 through 60.435, also known as Subpart QQ.

2. The following emission standard, summarizing the federal standard set forth in Subpart QQ, applies to publication rotogravure printing presses, but not proof presses, which commenced construction, modification, or reconstruction after October 28, 1980.

   A. No owner or operator subject to the provisions of this rules shall cause to be discharged into the atmosphere Volatile Organic Compounds in excess of 16 percent of the total mass of Volatile Organic Compounds solvent and water used at that facility during any one performance-averaging period.

Section 46-135 Standards of Performance for Tape and Label Surface Coating

1. The pertinent federal rules are 40 CFR 60.440 through 60.447, also known as Subpart RR.

2. The following emission standard, summarizing the federal standard set forth in Subpart RR, applies to each coating line used in the manufacture of pressure-sensitive tape and label materials which commenced construction, modification, or reconstruction after December 30, 1980.

   A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere Volatile Organic Compounds in excess of 0.20 kilograms per kilogram of coating solids applied, averaged over a calendar month.

Section 46-140 Standards of Performance for Large Appliance Surface Coating

1. The pertinent federal rules are 40 CFR 60.450 through 60.456, also known as Subpart SS.

2. The following emission standard, summarizing the federal standard set forth in Subpart SS, applies to large appliance surface coating lines which commenced construction, modification, or reconstruction after December 24, 1980.

   A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere Volatile Organic Compounds in excess of 0.90 kilograms per liter of coating solids applied.

Section 46-145 Standards of Performance for Metal Coil Surface Coating

1. The pertinent federal rules are 40 CFR 60.460 through 60.466, also known as Subpart TT.

2. The following emission standard, summarizing the federal standard set forth in Subpart TT, applies to each prime coating operation, and/or to each finish coating operation, at a metal coil surface coating facility, which commenced construction, modification, or reconstruction after January 5, 1981.

A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere more than:

(1) 0.28 kilogram VOC per liter (kg VOC/l) of coating solids applied for each calendar month for each affected facility that does not use an emission control device(s); or

(2) 0.14 kg VOC/l of coating solids applied for each calendar month for each affected facility that continuously uses an emission control device(s) operated at the most recently demonstrated overall efficiency; or

(3) 10 percent of the VOC's applied for each calendar month (90 percent emission reduction) for each affected facility that continuously uses an emission control device(s) operated at the most recently demonstrated overall efficiency; or

(4) A value between 0.14 (or a 90 percent emissions reduction) and 0.28 kg VOC/l of coating solids applied for each calendar month for each affected facility that intermittently uses an emission control device operated at the most recently demonstrated overall efficiency.

Section 46-150 Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture

1. The pertinent federal rules are 40 CFR 60.470 through 60.474, also known as Subpart UU.

2. The following emission standards, summarizing the federal standards set forth in Subpart UU, apply to each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants. The standards apply to facilities commenced after November 18, 1980.

A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any saturator:

(1) Particulate matter in excess of:

(a) 0.04 kilograms of particulate per megagram of asphalt shingle or mineral-surfaced roll roofing produced; or

(b) 0.4 kilograms per megagram of saturated felt or smooth-surfaced roll roofing produced;

(2) Exhaust gases with opacity greater than 20 percent; and

(3) Any visible emissions from a saturator capture system for more than 20 percent of any period of consecutive valid observations totaling 60 minutes.

B. No owner or operator shall discharge or cause to be discharged into the atmosphere from any blowing still:

(1) Particulate matter in excess of 0.67 kilograms of particulate per megagram of asphalt charged to the still when a catalyst is added to the still; and

(2) Particulate matter in excess of 0.71 kilograms of particulate per megagram of asphalt charged to the still when a catalyst is added to the still and when No. 6 fuel oil is fired in the afterburner; and

(3) Particulate matter in excess of 0.60 kilograms of particulate per megagram of asphalt charged to the still during blowing without a catalyst; and

(4) Particulate matter in excess of 0.64 kilograms of particulate per megagram of asphalt charged to the still during blowing without a catalyst and when No. 6 fuel oil is fired in the afterburner; and

(5) Exhaust gases with an opacity greater than 0 percent unless an opacity limit for the blowing still when fuel oil is used to fire the afterburner has been established by the Authority.

C. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any asphalt storage tank exhaust gases with opacity greater than 0 percent, except for one consecutive 15-minute period in any 24-hour period when the transfer lines are being blown for clearing. The control device shall not be bypassed during this 15-minute period.

D. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any mineral handling and storage facility emissions with opacity greater than 1 percent.

Section 46-155 Standards of Performance for VOC Leaks from Synthetic Organic Chemical Manufacturing

1. The pertinent federal rules are 40 CFR 60.480 through 60.489, also known as Subpart VV.

2. The emissions standards, summarizing the federal standards set forth in Subpart VV, apply to VOC leaks from the following equipment which commenced construction of modification after January 5, 1981:

   A. The affected facilities are those in the Synthetic Organic Chemicals Manufacturing Industry with a design capacity of 1000 Mg/yr (1102 tons/yr) or greater:

      (1) Pumps in light liquid service;

      (2) Compressors;

      (3) Pressure relief devices in gas/vapor service;

      (4) Sampling connection systems;

      (5) Open-ended valves or lines;

      (6) Valves;

      (7) Closed-vent systems and control devices.

B. The detailed standards are found in seven pages of federal rules, along with the record-keeping and reporting requirements.

Section 46-160 Standards of Performance for Beverage Can Surface Coating

1. The pertinent federal rules are 40 CFR 60.490 through 60.496, also known as Subpart WW.

2. The following emission standard, summarizing the federal standard set forth in Subpart WW, applies to beverage can surface coating lines which commenced construction, modification, or reconstruction after November 26, 1980.

   A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere Volatile Organic Compounds (VOC) that exceed the following volume-weighted calendar month average emissions:

      (1) 0.29 kilograms of VOC per liter of coating solids from each two-piece can exterior base coating operations, except clear base coat;

      (2) 0.46 kilograms of VOC per liter of coating solids from each two-piece can clear base coating operation and from each overvarnish coating operation; and

      (3) 0.89 kilograms of VOC per liter of coating solids from each two-piece can inside spray coating operation.

Section 46-165 Standards of Performance for Bulk Gasoline Terminals

1. The pertinent federal rules are 40 CFR 60.500 through 60.506, also known as Subpart XX.

2. The following emission standard, summarizing the federal standard set forth in Subpart XX, applies to each gasoline tank truck loading rack at a Bulk Gasoline Terminal, which commenced construction, modification, or reconstruction after December 17, 1980.

   A. The emission to the atmosphere from the vapor collection system due to the loading of liquid product into gasoline tank trucks are not to exceed 35 milligrams of total organic compounds per liter of gasoline loaded, except as noted in section B of this rule.

   B. For each affected facility equipped with an existing vapor processing system, the emissions to the atmosphere from the vapor collection system due to the loading of liquid product into gasoline tank trucks are not to exceed 80 milligrams of total organic compounds per liter of gasoline loaded.

Section 46-170 Standards of Performance for Lime Manufacturing Plants

1. The pertinent federal rules are 40 CFR 60.340 through 60.344, also known as Subpart HH.

2. The following standards set forth in Subpart HH apply to each rotary lime kiln used in the manufacture of lime, except those at kraft pulp mills, for which construction or modification of any facility affected by the rule commenced after May 3, 1977.

A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any rotary lime kiln any gases which:

(1) Contain particulate matter in excess of 0.30 kilogram per megagram (0.60 lb/ton) of stone feed;

(2) Exhibit greater than 15 percent opacity when exiting from a dry emission control device.

Section 46-175 Standards of Performance for Flexible Vinyl and Urethane Coating and Printing

1. The pertinent federal rules are 40 CFR 60.580 through 60.585, also known as Subpart FFF.

2. The following emission standards set forth in Subpart FFF apply to each rotogravure printing line used to print or coat flexible vinyl or urethane products, for which construction, modification, or reconstruction was commenced after January 18, 1983.

A. Each owner or operator subpart to this subpart shall either:

(1) Use inks with a weighted average VOC content of less than 1.0 kilogram VOC per kilogram ink solids, or

(2) Reduce VOC emissions to the atmosphere by 85 percent.

Section 46-180 Standards of Performance for Synthetic Fiber Plants

1. The pertinent federal rules are 40 CFR 60.600 through 60.604, also known as Subpart HHH.

2. The following emission standards, summarizing the standards set forth in Subpart HHH, apply to each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year, that commenced construction or reconstruction after November 23, 1982.

A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere, from any process, VOC in excess of:

(1) 10 kilograms of VOC per megagram of solvent fed to the spinning solution preparation system or precipitation bath for processes producing acrylic fibers, or producing both acrylic and non-acrylic fiber types;

(2) 17 kilograms of VOC per megagram of solvent feed if producing only non-acrylic fiber types.

Section 46-185 Standards of Performance for Petroleum Dry Cleaners

1. The pertinent federal rules are 40 CFR 60.620 through 60.625, also known as Subpart JJJ.

2. The following work practice standards, summarizing the standards set forth in Subpart JJJ, apply to petroleum dry cleaning plants with a total dryer

capacity equal to or greater than 38 kilograms (84 pounds), for which construction or modification was commenced after December 14, 1982.

A. Each dryer shall be a solvent recovery dryer;

B. Each filter shall be a cartridge filter, which shall be drained in its sealed housing for at least eight (8) hours prior to its removal;

C. Dryers, washers, filters, stills, and settling tanks shall have a leak repair instruction posted on the unit and printed in the operating manual by the manufacturer.

Section 46-190 Standards of Performance for Fiberglass Insulation Manufacturing

1. The pertinent federal rules are 40 CFR 60.680 through 60.685, also known as Subpart PPP.

2. The following emission standard, summarizing the standard set forth in Subpart PPP, applies to each rotary spin wool fiberglass insulation manufacturing line for which construction, modification, or reconstruction was commenced after February 7, 1984.

   A. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from an affected facility any gases which contain particulate matter in excess of 5.5 kg/Mg (11.0 lb./ton) of glass pulled.

Section 46-195 Standards of Performance for Nonmetallic Mineral Processing Plants

1. The pertinent federal rules are 40 CFR 60.670 through 60.676, also known as Subpart 000.

2. The following standards, summarizing the federal standards set forth in Subpart 000, apply to affected facilities in fixed or portable nonmetallic mineral processing plants which commenced construction, modification, or reconstruction after August 31, 1983. Exempted from these standards are fixed sand and gravel plants and crushed stone plants with capacities less than or equal to 25 tons per hour, portable sand and gravel plants and crushed stone plants with capacities less than or equal to 150 tons per hour, and common clay plants and pumice plants with capacities less than or equal to 10 tons per hour.

   A. On and after the date on which the required performance test is completed, no owner or operator of an affected facility shall cause to be discharged into the atmosphere any stack emissions which contain particulate matter in excess of 0.05 g/dscm.

   B. On and after the 60th day after achieving the maximum production rate at which the facility will be operated, but not later than 180 days after initial startup, no owner or operator of an affected facility shall cause to be discharged into the atmosphere fugitive emissions which exceed opacity limits defined in Subpart 000.

Section 46-200 Compliance

Compliance with standards set forth in this rule shall be determined by performance tests and monitoring methods as set forth in the federal regulation adopted by reference in Section 46-010 and 46-020.

Section 46-205 More Restrictive Regulations

If at any time there is a conflict between Authority or Oregon Department of Environmental Quality rules and the federal regulation (40 CFR, Part 60), the more stringent shall apply.

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. M, November 22, 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 specific procedural rules regarding certification.

At the EQC meeting on September 24, 1984, the Commission authorized the Department to hold a hearing on proposed procedural rules for granting water quality standards compliance certification pursuant to the requirements of Section 401 of the Federal Clean Water Act. The hearing was held on November 28, 1984.

At the January 25, 1985 meeting, the Department returned to the Commission with a proposal to adopt rules as modified in response to hearing testimony. The Commission received additional public testimony and, after discussion, voted to defer action on the proposed rules pending further discussion.

At the EQC meeting on July 19, 1985, the Commission again considered proposed rules. In the intervening period, the Commission had considered the appeal of the denial of the 401 certification of the Lava Diversion Hydroelectric Project on the Deschutes River south of Bend. In addition, the legislature considered 401 certification issues and enacted HB 2990

(Chapter 569, Oregon Laws 1985) which sets forth requirements for hydroelectric projects.

The July 19, 1985 staff report (See Attachment B) presented discussion of several issues for Commission discussion as well as proposed revised rules.

The Commission received public comment, discussed the issues presented, and authorized the Department to go to public hearing on the revised proposed rules.

Notice of the hearing was given by publishing in the Secretary of State's Bulletin, September 1, 1985, and by mailing to the Department's water quality rule-making mailing list on August 19, 1985. A hearing was held at 10:00 a.m., October 8, 1985. The record remained open until October 10, 1985, at 5:00 p.m. The hearings officer's report is attached as Attachment C.

Discussion and Evaluation of Testimony

The testimony presented at the hearing focused on a number of specific issues. The summary and analysis which follows is presented by issue to facilitate discussion.

Activity vs. Discharge

Proposed Rule 340-48-015 identifies the situations where 401 certification is required from the Department. The Department chose to paraphrase the language of Section 401(a)(1) of the Federal Clean Water Act to achieve greater simplicity and clarity.

Testimony of the City of Klamath Falls argues that reference to "activities" in this section is inappropriate because 401 certification requirements apply only to discharges and that the federal law does not extend coverage to activities.

The Department does not agree with the City of Klamath Falls. Section 401 begins, "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 into the navigable waters, shall provide the licensing or permitting agency a certification from the state in which the discharge originates.....that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this act." [emphasis added]. This section starts referring to "activity including but not limited to...discharge" and ends referring to "discharge".

The Department believes that the broader term "activity" is certainly appropriate and has therefore proposed to use activity in lieu of discharge for greater clarity. It is also noted that most of the applications for 401 certification that the Department processes relate to construction activities in or adjacent to waterways where the construction activities

themselves impact water quality. In some cases, the operation of facilities constructed may have a continuing impact on water quality.

No change from the proposed language taken to hearing is recommended.

Waiver of Certification

Proposed Rule 340-48-025(1) paraphrased the language of Section 401 of the Federal Clean Water Act to note that the certification requirement is waived if the Department fails to act within one year of an applicant's request for certification. This rule also provides that the Department shall serve written notice of granting or denial of certification within 90 days of receiving a complete application. The Department may extend the 90 day time period but the total time allowed shall not exceed 1 year.

Testimony from Representative Carl Hosticka suggested that the rules be modified to reflect the intent of HB 2990 to not allow the Department to waive certification. Section 7 of HB 2990 begins, "The Director of the Department of Environmental Quality shall approve or deny certification...".

The proposed rule was intended to direct the Department to act to issue or deny within 90 days under most circumstances and within 1 year in those cases where more time was required. The rule also noted the fact of federal law the certification requirement is waived if the state fails to act within 1 year of an applicants request.

The Department's proposed rule was intended to be consistent with both then federal law and the intent of HB 2990. This may not be as clear as it should be. Alternatives would be to either delete the last sentence of 340-48-025(1) which refers to the federal waiver provision, or add additional wording to further emphasize that the Department shall act to grant or deny in all cases.

The Department would propose to delete the last sentence as the means to clarify the intent.

Relationship to Energy Facility Siting Council Site Certification Process

Testimony of the city of Klamath Falls incorporates their petitions for declaratory ruling and rule-making by reference. One of the issues in the petition for declaratory ruling was a request for clarification of whether the Energy Facility Siting Council (EFSC) statute preempts DEQ certification authority for projects which require an EFSC site certificate and clarification of the role of DEQ and EQC in the certification process.

Testimony of the Department of Energy suggests that applicants meet all EFSC siting standards before they are granted a 401 certification.

The Department believes it is clear that DEQ is the agency of the State of Oregon designated to implement the provisions of the Clean Water Act. (See ORS 468.730 and HB 2990) The proposed rules set forth the process where the

director or the director's authorized representative makes the decision to grant or deny certification in accordance with timetables and procedures established in the rules. The director's decision may be appealed by the applicant to the EQC. The Department believes that the procedures for acting on an application are clear.

The EFSC statute is intended to provide a one-stop process for facilities that are covered by the EFSC law. The statute provides that if a site certificate is issued, state and local agencies shall issue the necessary permits and approvals to implement the site certificate. DEQ permits and approvals are covered by this act.

DEQ must generally find a way to comply within the EFSC law without being in conflict with federal requirements. In the case of 401 certification, the most difficult issue is timing of a 401 certification decision.

Section 401 establishes a period of 1 year from the request for certification as the outer limit for a decision (otherwise the requirement is waived). The Federal Energy Regulatory Commission (FERC) recently proposed rules that would establish a reasonable deadline for 401 certification to be 90 days from FERC publication of notice of an application or 1 year from the state's receipt of a request from the applicant, whichever comes first.

The chances of EFSC completing action on an application for a site certificate within the timetable proposed by FERC appears very slim. Similarly, it would be very difficult to determine that all EFSC siting standards are met before the deadline for acting on a 401 certification request expires.

The Department concludes that it must proceed to grant or deny a request for certification within the timeframes allowed by the federal agencies. In order to clarify procedures, comply with the provisions of HB 2990, and be consistent with the EFSC law, any granted certification should be conditioned to be effective upon receipt of an EFSC site certificate where one is required. Any certification denied may also be subject to reconsideration if EFSC later issues a site certificate.

The Department proposes to modify the rules to require granted certificates contain a condition for obtaining an EFSC site certificate.

<u>Degree of Consideration of Factors Other Than Water Quality, Including Land Use Compliance, Other Agency Requirements, and Beneficial Use Impacts Other Than Water Quality</u>

Testimony of the Northwest Environmental Defense Center (NEDC), the City of Klamath Falls, and the Department of Energy (DOE) raise the issue of the degree to which 401 certification should be based upon factors other than water quality.

NEDC continues to stress the view that certification should be denied if beneficial uses noted in DEQ rules are adversely impacted by a project even though water quality is not adversely affected and water quality standards (criteria) are not violated.

Klamath Falls argues in their petition for declaratory ruling (incorporated in their testimony by reference) that it is inappropriate to consider land use compliance or any other requirements of state and local law that the director determines are appropriate pursuant to Section 401 of the Clean Water Act.

The DOE suggests that 401 certification should not be granted without first determining that all EFSC siting standards are met.

HB 2990 clearly indicates that for hydroelectric projects, DEQ should enter findings that a proposed project is consistent with standards established by the Water Resources Commission and EFSC to implement the hydroelectric policy enacted in HB 2990. This bill also requires findings that the proposed project is consistent with standards of other state and local agencies that the director determined are other appropriate requirements of state law according to Section 401 of the Federal Water Pollution Control Act, PL 92-500, as amended.

The Department interprets the Federal Clean Water Act to allow the state to consider factors other than water quality that are requirements of state law when it acts on a 401 certification application. The Department does not interpret the Clean Water Act to require consideration of anything but compliance with the water quality standards (criteria) necessary to protect identified beneficial uses. Therefore, the rules adopted should establish the policy to be followed by DEQ.

The Department has identified several areas where other "requirements of state law" are closely related to water quality and are considered appropriate for reference in the rules.

ORS 197.180 requires state agencies to have an approved coordination agreement with the Land Conservation and Development Commission. The statute also requires agency actions to be compatible with local comprehensive plans and land use regulations and in compliance with state planning goals. The DEQ's approved coordination program identifies a 401 certification decision as an action which requires a determination of compatibility or consistency. The proposed rules (OAR 340-48-020(2)(h)) require a land use compatibility statement from the appropriate local government to be filed as part of an application for 401 certification. The rules also require certification to contain findings that the project is compatible with the local comprehensive plan (OAR 340-48-025(2)(f)).

In some cases, the local comprehensive plan may allow a proposed use subject to a conditional use or similar land use permit being obtained. Experience has shown that the local government may not be able to complete a statement of compatibility in such cases within the time frames necessary

for a decision by DEQ. Rule language has been added to OAR 340-48-025(2)(f) to allow conditional issuance of a 401 certification in such an instance if the local government certifies that the project is allowable under their plan subject to issuance of the local permit. The conditional 401 certification would require that compatibility with the local comprehensive plan be established by issuance of the required local permit prior to initiating any activity.

As previously noted, HB 2990 requires the Department to enter findings that a proposed hydroelectric project complies with the standards established in Sections 3 and 5 of the act and rules adopted by the Water Resources Commission and Energy Facility Siting Council to implement such standards. The proposed rules reflect this requirement in OAR 340-48-025(2)(g)(C).

The Department interprets state law to require the Water Resources Commission to determine which beneficial uses are appropriate in various waters of the state and to resolve conflicts between competing or conflicting beneficial uses.

The Department also notes that the Energy Facility Siting Council is required to evaluate and balance a broad array of beneficial use interests for those projects where it must make a decision on a site certificate.

The water quality standards adopted by the EQC are intended to assure water quality to support the beneficial uses designated by the Water Resources Commission. Specific water quality standards (criteria) have been established for the most significant parameters relative to the identified beneficial uses. Thus, the initial step in evaluation of a 401 certification application is to determine compliance with those standards. To assure water quality to support identified beneficial uses however, it may be necessary for the Department to evaluate water quality impacts from a proposed project or activity based upon other factors or additional parameters for which specific water quality standards (criteria) have not been established. OAR 340-48-020(7) has been modified to preclude any conflict with the responsibilities of other agencies and still not restrict the extent of water quality evaluation undertaken by the Department. This section has also been modified to clearly note that the purpose of the Department's evaluation of an application is to be able to make the findings required by OAR 340-48-025(2) prior to issuance of a 401 certification.

In order to assure that the 401 certification is timely and properly reflects beneficial use determinations required by other agencies pursuant to state law, the Department proposes to modify the rules to add OAR 340-480-025(2)(h) which would require a 401 certification to be conditioned upon obtaining a site certificate from the Energy Facility Siting Council or a water appropriation permit from the Water Resources Commission where such are required by state law.

The Department has not identified any other "requirements of state law" appropriate for incorporation in these proposed rules.

Miscellaneous Comments

Representative Hosticka recommended that DEQ provide notice of 401 certification requests to adjacent property owners. HB 2990 imposes such a requirement upon the Water Resources Commission and EFSC. To implement such a request, DEQ proposes to modify the rules to require applicants to provide the names and addresses of adjacent property owners as part of its application. DEQ would then add such names to the notice mailing list for the application.

The Department of Water Resources recommended that the rules refer to the Water Resources Commission rather than the Water Policy Review Board to be consistent with 1985 legislation. They also recommended that a reference to counties as an applicant be broadened to include cities as well. The Department agrees with the changes recommended by the Department of Water Resources.

The Department of Land Conservation and Development recommended that "local planning agency" or "county" be changed to "local government" in several places in the rules. They also suggested that "consistent" or "compatibility" be replaced in some places with "complies" or "compliance" as it relates to land use requirements. The Department reviewed the proposed rules and adjusted references to be consistent with statutory language.

Baker County requested a change in the wording of the proposed rules for land use compatibility "...to allow the jurisdiction to sign off compatibility for more than one competing application without that signature indicating any preference as to which application will be awarded the FERC license. Otherwise, when a jurisdiction is one of the applicants, the land use authority of that jurisdiction is in a position of conflicting interest."

The DEQ has since determined through discussion with staff of the Department of Land Conservation and Development that compatibility statements for competing applications can be satisfactorily produced without need of added regulatory language. Competing projects may each be compatible, but that determination must be made by the local government.

Summation

1. Section 401 of the Clean Water Act requires states to review proposals for federal licenses or permits and to certify that the proposals will meet federal and state requirements for the protection of public waters.

2. The Department has been operating since 1973 without specific procedural rules for 401 certification. The staff has relied upon established procedures and statuory requirements.

3. After notice and hearing, rules were presented to the Commission for adoption at the January 25, 1985, EQC meeting. In response to additional testimony at the EQC meeting, the Commission deferred action pending further discussion.

4. At the meeting of the EQC on July 19, 1985, the major issues were brought before the Commission for further discussion. The Commission authorized the Department to go to hearing on modified proposed rules.

5. Notice of hearing was published in the Secretary of State's Bulletin on September 1, 1985. Notice was also mailed to the Department's water quality rule-making mailing list on August 19, 1985. The hearing was held on October 8, 1985.

6. The testimony has been evaluated and changes to the proposal taken to hearing are recommended.

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
Director

Attachments:

A - Proposed Rule OAR, Chapter 340, Division 48
B - Agenda Item L, July 19, 1985, EQC Meeting
C - Public Hearing Regarding Revisions of Proposed Rules...memo dated 10/30/85

WM670
Charles K. Ashbaker:m
229-5325
November 12, 1985

Note: The rules presented below are new rules proposed for adoption. Modifications indicated by underlining and brackets reflect changes from the draft taken to the public hearing.

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 activity 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 a 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) Names and addresses of immediately adjacent property owners.

(e) [(d)] A complete description of the project proposal, using written discussion, maps, diagrams, and other necessary materials.

(f) [(e)] Name of involved waterway, lake, or other water body.

(g) [(f)] Copies of the environmental background information required by the federal permitting or licensing agency or such other environmental background information as may be necessary to demonstrate that the proposed project or activity will comply with water quality requirements.

(h) [(g)] Copy of any public notice and supporting information, issued by the federal permitting or licensing agency for the project.

(i) [(h)] A statement from the appropriate local government [planning agency] that the project is compatible with the acknowledged local comprehensive plan and land use regulations or that the project [is consistent] complies with statewide planning goals if the local plan is not acknowledged. If a local government [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 by DEQ to review and comment on the local government's [County's] compatibility determination.

(j) Specific detailed documentation of compliance with the hydroelectric project standards established in Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules adopted by the Water Resources Commission and Energy Facility Siting Council implementing such standards.

(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) 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. Notice will be mailed to adjacent property owners as cited in the application. The notice shall tell of public participation 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 specifically solicit comments from affected state agencies. 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 new information may be produced thereby, 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 assuring compatibility with the local comprehensive plan or [consistency] compliance with statewide planning goals.

(7) In order to make findings required by OAR 340-48-025(2), the [The] Department's evaluation of an application for project certification [will] may include but need 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.

(i) The project's compliance with standards [to be] established in Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and [by the] rules adopted by the Water Resources Commission [Policy Review Board] and the Energy Facility Siting Council implementing such standards [for hydroelectric projects pursuant to HB2990.]

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) Findings that the project is compatible with the local comprehensive plan or complies with [and/or the] statewide planning goals, except for those projects for which the Division of State Lands coordinates the response. If a local government certifies that the proposed project is allowable under their plan subject to issuance of a conditional use or similar land use permit, in lieu of findings, 401 certification may be granted subject to the condition that compatibility with the land use plan be established by issuance of the required permit.

(g) Findings that the proposed project is consistent with:

(A) Rules adopted by the EQC on Water Quality;

(B) Provisions of Section 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, PL 92-500, as amended;

(C) For hydroelectric projects, standards established in Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules adopted by the Water Resources Commission [Policy Review Board] and Energy

Facility Siting Council implementing such standards; [to implement the state hydroelectric policy enacted by the 1985 legislature in HB2990;]

(D) Standards of other state and local agencies that the director determines are other appropriate requirements of state law according to Section 401 of the Federal Water Pollution Control Act, PL 92-500, as amended.

(h) For projects requiring a site certificate from the Energy Facility Siting Council or a water appropriation permit from the Water Resources Commission, DEQ shall include a condition requiring such certificate or permit to be obtained prior to initiating the activity for which 401 certification is granted.

(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:h
WT245.A
Revised 10/30/85

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. L, July 19, 1985, EQC Meeting

Consideration of Proposed Rules for Granting Water Quality Standards Compliance Certification Pursuant to Requirements of Section 401 of the Federal Clean Water Act

Background

At the EQC meeting on January 25, 1985, the department proposed adoption of procedural rules for granting of water quality standards certification pursuant to the requirements of Section 401 of the Federal Clean Water Act. (See Attachment D) The department had previously held a public hearing on the proposed rules on November 28, 1984, after receiving commission authorization for such a hearing at the September 24, 1984 EQC meeting.

The commission heard additional testimony at the January 25, 1985 meeting from Jack Smith, Jack Churchill, and John Charles. The essence of their testimony was that DEQ is viewing 401 certification much too narrowly by looking at water quality impacts only. DEQ should be more aggressive in the 401 certification process, should establish maximum allowable pollutant loadings and consider impacts upon them, should look at overall impacts on water uses rather than just water quality, and should allow a process for the aggrieved public to appeal DEQ and EQC decisions. They suggested several specific amendments to the proposed rules. (See Attachment B)

After some discussion, the Commission voted to defer action on the proposed rules pending further discussion.

Since that time, the commission has considered the appeal of the departments denial of 401 certification for the Lava Diversion Hydroelectric Project on the Deschutes River south of Bend. The EQC upheld the department's denial action. The EQC decision has now been appealed to the Oregon Court of Appeals by the applicant. The Northwest Environmental Defense Center has filed as cross petitioner seeking judicial review of the Commission's decision. The petition asserts that the Commission failed to consider the petitioner's position on beneficial use impacts as advanced by petitioner's Vice President, Jack Smith, during rule making proceedings and at the public forum prior to the contested case hearing.

There has also been significant discussion on the 401 certification issue before the Joint Water Committee of the Oregon Legislature. HB 2990, enacted by the legislature establishes a state policy regarding new hydroelectric generating facilities. Sections 6, 7 and 8 of this bill require the department to withhold certification to projects that do not comply with the new hydro policy and rules of the Department of Energy and Water Policy Review Board that are intended to implement that new policy. (See Attachment C)

Before procedural rules can be adopted regarding 401 certification, the issues outlined in the next section need to be discussed and resolved.

Discussion of Issues

ISSUE -- In acting on a request for 401 certification, does the Federal Clean Water Act (1) prohibit; (2) require; or (3) allow DEQ to consider matters other than the impact of a proposed project or activity on water quality?

Discussion -- The department has taken the position that Section 401 requires consideration of the impact of a proposed project on water quality but also allows (does not prohibit and does not require) the state to consider other factors that are requirements of state law.

ORS 468.735 authorizes the commission to establish water quality standards that are in accordance with the policy set forth in ORS 468.710 and are "...consistent with policies and programs for the use and control of the water resources of the state adopted by the Water Policy Review Board...".

ORS 468.710, in part, declares it to be the policy of the state "... to protect, maintain and improve the quality of the waters of the state for public water supplies, for the propogation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses...".

It seems clear under both federal and state law that projects which alter water quality in a manner which adversely impacts recognized beneficial uses do not qualify for certification.

Testimony presented has asserted that the words "water quality standard" have a different meaning under state law than under federal law. Under state law, a "standard" is adopted to describe the specific level of a quality criterion that is necessary to protect a designated "use". It has been suggested that Section 303 of the Federal Clean Water Act requires the state to adopt standards, which consist of a "use" and the "criteria" to protect the use, i.e. STANDARD = USE + CRITERIA. Thus, the testimony argues that a state "standard" is equivalent to a federal "criteria". The testimony further argues that compliance with a federal water quality standard means that the designated use is protected and further that the water quality criteria are not violated. For example, the testimony suggests that reduction of stream flow by

diversion of water for out of stream use such that instream uses for aquatic life, recreation, or visual enjoyment are reduced violates federally required standards, even though water quality is not measurably altered, (i.e. the use is violated, therefore the standard is violated).

The department does not agree with this interpretation of federal law. Section 101(g) of the Federal Clean Water Act provides that "...the authority of each state to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act." This section was enacted in 1977 to preclude using the federal clean water act as justification for efforts to block the granting of water rights for out of stream use under state law. State law gives the Water Resources Department responsibility for water use and allocation decisions, and DEQ responsibility for assuring that water quality is adequate to support the designated uses. The passage of HB 2990 by the 1985 legislature further clarifies the intent with respect to hydroelectric projects. The Water Policy Review Board (WPRB) and the Energy Facilities Siting Council (EFSC) are the principal agencies responsible for implementing state policy regarding the impact of hydroelectric generation on other uses of the state water resources. DEQ actions are expected to reinforce WPRB/EFSC decisions consistent with federal requirements.

Water Quality Standards adopted by the EQC have been approved by EPA as meeting the requirements of Section 303 relative to water quality standards. The EQC rules identify the uses that are to be protected and the standards (quality criteria) that must be met in order to support the uses. Compliance with the standards is considered to be evidence of use protection.

Based on the above discussion, it seems clear that any project which causes a water quality criteria or standards (adopted to assure protection of a beneficial use) to be violated does not qualify for certification. It further seems clear that a project which alters stream flow but does not cause a change in water quality is not precluded by federal law from certification.

An additional component of this issue is whether the Federal Clean Water Act allows DEQ flexibility to consider specific requirements of state law other than those specifically and narrowly related to water quality as it makes a 401 decision. As noted, the department believes that the state is afforded discretion in this area. The appeal of the Lava Diversion Project denial to the Court of Appeals will add some clarity to this area of interpretation.

ISSUE -- Is it necessary to establish or modify maximum allowable pollutant loadings before a determination can be made on a 401 certification application?

Discussion --- 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 best practicable control technology (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) of the Federal Clean Water Act.

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.

The department believes that pollutant loadings are appropriately considered in the process of evaluating proposed projects for 401 certifications. The vast majority of projects considered for certification do not involve ongoing discharges. They involve temporary impacts during construction. Where discharges are involved, impacts of discharges must be considered in conjunction with other discharges in the area. If evaluation shows that a proposed addition of a discharge would cause water quality standards to be violated or beneficial uses to be impaired by a change in water quality, certification would be denied.

For example, assume that stream flow is reduced by a diversion of water pursuant to a state water right and the reduced stream flow results in existing discharges downstream causing water quality standards to be exceeded. If a federal permit or license were required for the project which diverts the water, the department would be required to deny 401 certification, because the project would cause an alteration in water quality which would impair beneficial use (standards violation). However, if no federal permit or license was required, and the matter was governed only by state law, DEQ would be required to impose more stringent discharge requirements on the downstream discharges to restore water quality. This is an example of the difference in results when the decision is governed by federal and state laws.

ISSUE -- Should the EQC by rule allow the public to appeal department decisions to the commission although state statutes only require that the applicant be allowed to appeal?

Discussion -- This issue has been considered by the commission before. The commission has previously elected not to extend the administrative appeal process to the general public by rule. Instead, the commission has relied on the courts as the vehicle available for the public to challenge an action of the department or commission.

This is a valid issue that applies to far more than the 401 certification process. The commission may want to direct the department to prepare a discussion paper on this issue for further commission consideration.

In addition to the above issues, there were other recommendations in testimony that the department has considered.

The department has proposed some amendments to the rules presented to the Commission for adoption at the January 25, 1985 meeting. The amendments are intended to further clarify the proposed rules, and address the specific requirements of HB 2990.

Proposed further amendments are as follows:

340-48-015 - replace the word "discharge" with the word "activity" as recommended by Mr. Smith.

340-48-020(2)(f) - expand the language to more clearly require the applicant to provide background environmental information to demonstrate that the proposed project will comply with water quality requirements.

340-48-020(4) - a sentence has been added to require specific request for comments from affected state agencies in response to the provisions of HB 2990.

340-48-020(5) - modify the wording in an effort to tighten the language as requested by Chairman Petersen.

340-48-020(7) - language has been expanded to reference the new hydro-electric policy and requirements established in HB 2990.

340-48-025(2) - paragraphs (f) and (g) were replaced with an adaptation of language taken from HB 2990.

The department does not propose modifications suggested to (1) deny certification based on impacts on beneficial use outside the area of water quality (with exception for specific state law requirements); (2) extend appeal rights; or (3) notify applicants that their application is denied until certification is granted.

The specific rule amendments are underlined in the proposed rules presented in Attachment A.

Summation

1. The department proposed adoption of rules regarding 401 certification at the January 25, 1985 EQC meeting.

2. The commission considered additional testimony and deferred action pending further deliberations.

3. The legislature has enacted HB 2990 which impacts the 401 certification process.

4. The preceding report presents discussion of several issues regarding the 401 certification process.

Director's Recommendation

Based on the summation, it is recommended that the commission discuss the rules as proposed, make changes as appropriate based on the discussion, and authorize the Department to take the draft contained in Attachment A, as modified, back out to public hearing.

Fred Hansen

Attachments: A. Proposed Rules
B. January 25, 1985 Testimony of J. D. Smith
C. HB 2990
D. January 25, 1985 Staff Report to EQC

Harold L. Sawyer:m
WM329
229-5324
July 19, 1985

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] activity 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 or such other environmental background information as may be necessary to demonstrate that the proposed project or activity will comply with water quality requirements.

(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. 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.

(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) 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 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 specifically solicit comments from affected state

agencies. 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] new 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 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.

(i) The project's compliance with standards to be established by the Water Policy Review Board and the Energy Facility Siting Council for hydroelectric projects pursuant to HB2990.

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.]
(f) [(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.
(g) Findings that the proposed project is consistent with:
(A) Rules adopted by the EQC on Water Quality;
(B) Provisions of Section 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, PL 92-500, as amended;
(C) For hydroelectric projects, standards established by the Water Policy Review Board and Energy Facility Siting Council to implement the state hydroelectric policy enacted by the 1985 legislature in HB2990;
(D) Standards of other state and local agencies that the director determines are other appropriate requirements of state law according to Section 401 of the Federal Water Pollution Control Act, PL 92-500, as amended.

(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:h
WT245.A
Revised 6/25/85

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

63rd OREGON LEGISLATIVE ASSEMBLY--1985 Regular Session

HOUSE AMENDMENTS TO HOUSE BILL 2990

By JOINT COMMITTEE ON WATER POLICY

May 31

Amended Summary

[*Declares state policy to protect natural resources and other beneficial uses of water in process of permitting activity that uses waters of this state. Prohibits Water Policy Review Board or Energy Facility Siting Council from issuing permit, license or site certificate for project that impacts certain natural resources without finding of need for additional power.*]

Requires Director of Department of Environmental Quality to make certain findings before certifying federally licensed or permitted project. Makes related changes.

[*Declares emergency, effective on passage.*]

Declares state policy to permit siting of hydroelectric power projects subject to strict standards to protect natural resources. Prescribes minimum standards for consideration by Water Policy Review Board and Energy Facility Siting Council. Requires Department of Environmental Quality certifications under Federal Clean Water Act to be consistent with specified standards. Requires notification of landowners potentially affected.

Prescribes October 1, 1985, effective date.

On page 1 of the printed bill, line 2, delete "543.150," and insert "543.135, 543.220 and" and delete "and".

Delete line 3 and insert "; and prescribing an effective date.".

Delete lines 5 through 26 and pages 2 through 7 and insert:

"**SECTION 1.** Sections 2 and 3 of this Act are added to and made a part of ORS 543.010 to 543.620.

"**SECTION 2.** The Legislative Assembly declares that it is the policy of the State of Oregon:

"(1) To protect the natural resources of this state from possible adverse impacts caused by the use of the waters of this state for the development of hydroelectric power.

"(2) To permit siting of hydroelectric projects subject to strict standards established to protect the natural resources of Oregon.

"(3) To require the Water Policy Review Board, the Energy Facility Siting Council, the Department of Environmental Quality and other affected state agencies to participate to the fullest extent in any local, state or federal proceedings related to hydroelectric power development in order to protect the natural resources of Oregon.

"**SECTION 3.** (1) In order to carry out the policy set forth in section 2 of this 1985 Act, the following minimum standards shall apply to any action of the Water Policy Review Board relating to the development of hydroelectric power in Oregon:

"(a) The anadromous salmon and steelhead resources of Oregon shall be preserved. The board shall not approve activity that may result in mortality or injury to anadromous salmon and steelhead resources or loss of natural habitat of any anadromous salmon and steelhead resources except when an applicant proposes to modify an existing facility or project in such a manner that can be shown to restore, enhance or improve anadromous fish populations within that river system.

"(b) Any activity related to hydroelectric development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program providing for the protection, mitigation and enhancement of the fish and wildlife resources of the region as adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to Public Law 96-501.

"(c) Except as provided in this paragraph, no activity may be approved that results in a net loss of wild game fish or recreational opportunities. If a proposed activity may result in a net loss of any of the above resources, the board may allow mitigation if the board finds the proposed mitigation in the project vicinity is acceptable. Proposed mitigation which may result in a wild game fish population or the fishery the wild game fish population provides, being converted to a hatchery dependent resource is not acceptable mitigation. A water dependent recreational opportunity must be mitigated by another water dependent recreational opportunity. Mitigation of water dependent recreational opportunities which, in the judgment of the board, are of state-wide significance with a recreational opportunity that is readily available on other waters of this state is not acceptable mitigation. In deciding whether mitigation is acceptable, the board shall consult with other local, state and federal agencies.

"(d) Other natural resources in the project vicinity including water quality, wildlife, scenic and aesthetic values, historic, cultural and archaelogical sites, shall be maintained or enhanced. No activity may be approved which, in the judgment of the board after balancing gains and losses to all affected natural resources, may result in a net loss of natural resources. In determining whether the proposed activity may result in a net loss of natural resources, the board may consider mitigation if the board determines the proposed mitigation in the project vicinity is acceptable. Mitigation may include appropriate measures considered necessary to meet the net loss standard. In determining whether mitigation is acceptable the board shall consult with appropriate state, federal and local agencies.

"(2) The board shall adopt all necessary rules to carry out the policy set forth in section 2 of this 1985 Act and to implement the minimum standards set forth in subsection (1) of this section. In the absence of implementing rules, any action of the board relating to hydroelectric development shall comply with the standards as set forth in this section. In adopting rules under this subsection, the board shall consult with the Energy Facility Siting Council in order to coordinate rules adopted under this section with rules adopted by the Energy Facility Siting Council under section 5 of this 1985 Act.

"SECTION 4. Section 5 of this Act is added to and made a part of ORS 469.300 to 469.570.

"SECTION 5. (1) In order to carry out the policy set forth in section 2 of this 1985 Act, the following minimum standards shall apply to any action of the Energy Facility Siting Council relating to the development of hydroelectric power projects in excess of 25 megawatts in Oregon:

"(a) The anadromous salmon and steelhead resources of Oregon shall be preserved. The council shall not approve activity that may result in mortality or injury to anadromous salmon and steelhead resources or loss of natural habitat of any anadromous salmon and steelhead resources except when an applicant proposes to modify an existing facility or project in such a manner that can be shown to restore, enhance or improve anadromous fish populations within that river system.

"(b) Any activity related to hydroelectric development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program providing for the protection, mitigation and enhancement of

the fish and wildlife resources of the region as adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to Public Law 96-501.

"(c) Except as provided in this paragraph, no activity may be approved that results in a net loss of wild game fish or recreational opportunities. If a proposed activity may result in a net loss of any of the above resources, the council may allow mitigation if the council finds the proposed mitigation in the project vicinity is acceptable. Proposed mitigation which may result in a wild game fish population or the fishery the wild game fish population provides, being converted to a hatchery dependent resource is not acceptable mitigation. A water dependent recreational opportunity must be mitigated by another water dependent recreational opportunity. Mitigation of water dependent recreational opportunities which, in the judgment of the council, are of state-wide significance with a recreational opportunity that is readily available on other waters of this state is not acceptable mitigation. In deciding whether mitigation is acceptable, the council shall consult with other local, state and federal agencies.

"(d) Other natural resources in the project vicinity including water quality, wildlife, scenic and aesthetic values, historic, cultural and archeological sites shall be maintained or enhanced. No activity may be approved which, in the judgment of the council, after balancing gains and losses to all affected natural resources, may result in a net loss of natural resources. In determining whether the proposed activity may result in a net loss of natural resources, the council may consider mitigation if the council determines the proposed mitigation in the project vicinity is acceptable. Mitigation may include appropriate measures considered necessary to meet the net loss standard. In determining whether mitigation is acceptable the council shall consult with appropriate state, federal and local agencies.

"(2) The council shall adopt all necessary rules to carry out the policy set forth in section 2 of this 1985 Act and to implement the minimum standards set forth in subsection (1) of this section. In the absence of implementing rules, any action of the council relating to hydroelectric development shall comply with the standards as set forth in this section. In adopting rules under this subsection, the council shall consult with the Water Policy Review Board in order to coordinate rules adopted under this section with rules adopted by the Water Policy Review Board under section 3 of this 1985 Act.

"SECTION 6. Sections 7 and 8 of this Act are added to and made a part of ORS 468.700 to 468.778.

"SECTION 7. The Director of the Department of Environmental Quality shall approve or deny certification of any federally licensed or permitted activity related to hydroelectric power development, under section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended. In making a decision as to whether to approve or deny such certification, the director shall:

"(1) Solicit and consider the comments of all affected state agencies relative to adverse impacts on water quality caused by the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

"(2) Approve or deny a certification only after making findings that the approval or denial is consistent with:

"(a) Rules adopted by the Environmental Quality Commission on water quality;

"(b) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

"(c) Standards established in sections 3 and 5 of this 1985 Act and rules adopted by the Water Policy Review Board and the Energy Facility Siting Council implementing such standards; and

"(d) Standards of other state and local agencies that are consistent with the standards of sections 3 and 5 of this 1985 Act and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

"SECTION 8. Within 60 days after the Department of Environmental Quality receives notice that any federal agency is considering a permit or license application related to a change to a hydroelectric project or proposed hydroelectric project that was previously certified by the director of the Department of Environmental Quality according to section 401 (1) of the Federal Water Pollution Control Act P.L. 92-500, as amended:

"(1) The director shall:

"(a) Solicit and consider the comments of all affected state agencies relative to adverse impacts on water quality caused by changes in the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

"(b) Approve or deny a certification of the proposed change after making findings that the approval or denial is consistent with:

"(A) Rules adopted by the Environmental Quality Commission on water quality;

"(B) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

"(C) Standards established in sections 3 and 5 of this 1985 Act and rules adopted by the Water Policy Review Board and the Energy Facility Siting Council implementing such standards; and

"(D) Standards of other state and local agencies that are consistent with the standards of sections 3 and 5 of this 1985 Act and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

"(2) On the basis of the evaluation and determination under subsection (1) of this section, the director shall notify the appropriate federal agency that:

"(a) The proposed change to the project is approved; or

"(b) There is no longer reasonable assurance that the project as changed complies with the applicable provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, because of changes in the proposed project since the director issued the construction license or permit certification.

"SECTION 9. Sections 10 to 12 of this Act are added to and made a part of ORS 543.010 to 543.620.

"SECTION 10. (1) Whenever the Water Resources Department receives an application to appropriate water for hydroelectric power under ORS 537.140 to 537.320 or for a hydroelectric permit or license under ORS 543.010 to 543.620, the department shall determine whether the impacts of the project would be cumulative with:

"(a) Impacts of other proposed hydroelectric projects for which an application is pending before the department or before the Energy Facility Siting Council under ORS 469.320 to 469.440; or

"(b) Existing hydroelectric projects in the same river basin.

"(2) If the department determines that there is no possibility that the hydroelectric projects proposed in pending applications or existing projects may have cumulative effects, the department shall issue an order setting

forth the department's determination that there are no cumulative effects and the department's decision that consolidated review is not required.

"(3) If the department determines that pending applications or existing projects may have cumulative effects, the department shall conduct a consolidated review before approving any application in the affected river basin. A consolidated review process shall be conducted as a contested case hearing under the applicable provisions of ORS 183.310 to 183.550 and shall include a study of the individual and cumulative effects of proposed hydroelectric projects for which applications are pending before the department or the Energy Facility Siting Council and existing hydroelectric projects. In its final order on an application, the department shall include its findings on cumulative impacts. The findings of the department under this section must be sufficient to support the department's decision to approve or deny an application.

"(4) Any application for a project in the same river basin filed after the department begins a consolidated review contested case hearing shall not be reviewed until the department has issued final findings on cumulative effects for all projects included in the consolidated review proceeding.

"(5) At the request of an applicant for a permit to appropriate water for hydroelectric purposes under ORS 537.140 to 537.320 or for a permit or license under ORS 543.010 to 543.620, the department may immediately upon receiving such application begin the consolidated review proceeding under subsection (3) of this section.

"SECTION 11. The Water Resources Department shall immediately initiate rulemaking proceedings according to the applicable provisions of ORS 183.310 to 183.550 to implement the consolidated review process under section 10 of this 1985 Act. Before adoption of the rules, the department shall submit the rules to the Joint Legislative Committee on Water Policy for review and recommendation.

"SECTION 12. Any application pending before the Water Resources Department for which the record for the hearing under ORS 537.170 or 543.225 has not been closed on or before the effective date of this Act shall be subject to the consolidated review process set forth in section 10 of this 1985 Act and to rules adopted by the Water Policy Review Board under section 11 of this 1985 Act.

"SECTION 13. Sections 14 to 16 of this Act are added to and made a part of ORS 469.300 to 469.570.

"SECTION 14. (1) Whenever the Energy Facility Siting Council receives an application for a site certificate for a hydroelectric project under ORS 469.320 to 469.440, the council shall determine whether the impacts of the project would be cumulative with:

"(a) Impacts of other proposed hydroelectric projects for which an application is pending before the council or before the Water Resouces Department under ORS 537.140 to 537.320 or 543.010 to 543.620; or

"(b) Existing hydroelectric projects in the same river basin.

"(2) If the council determines that there is no possibility that the hydroelectric projects proposed in pending applications or existing projects may have cumulative effects, the council shall issue an order setting forth the council's determination that there are no cumulative effects and the council's decision that consolidated review is not required.

"(3) If the council determines that pending applications or existing projects may have cumulative effects, the council shall conduct a consolidated review before issuing any site certificate for a hydroelectric project in the affected river basin. A consolidated review process shall be conducted as a contested case hearing under the

applicable provisions of ORS 183.310 to 183.550 and shall include a study of the individual and cumulative effects of proposed hydroelectric projects for which applications are pending before the council or the Water Policy Review Board and existing hydroelectric projects. In its final order on a site certificate, the council shall include its findings on cumulative impacts. The findings of the council under this section must be sufficient to support the council's decision to issue or deny a site certificate.

"(4) The council shall not issue a site certificate for any application for a project in the same river basin filed after the council begins a consolidated review contested case hearing until the council issues final findings on cumulative effects for all projects included in the consolidated review proceeding.

"(5) At the request of an applicant for a site certificate for a hydroelectric project under ORS 469.320 to 469.440, the council may immediately upon receiving such application begin the consolidated review proceeding under subsection (3) of this section.

"(6) The time limits for review of the applications provided by ORS 469.370 are not applicable to applications for site certificates subject to this section.

"SECTION 15. The Energy Facility Siting Council shall immediately initiate rulemaking proceedings according to the applicable provisions of ORS 183.310 to 183.550 to implement the consolidated review process under section 14 of this 1985 Act. Before adoption of the rules, the council shall submit the rules to the Joint Legislative Committee on Water Policy for review and recommendation.

"SECTION 16. Any application pending before the Energy Facility Siting Council for which the record for the hearing under ORS 469.370 has not been closed on or before the effective date of this Act shall be subject to the consolidated review process set forth in section 14 of this 1985 Act and to rules adopted by the council under section 15 of this 1985 Act.

"SECTION 17. ORS 469.370 is amended to read:

"469.370. (1) The council shall hold public hearings in the affected area and elsewhere, as it deems necessary, on the application for a site certificate. At the conclusion of its hearings the council shall either approve or reject the application. The council must make its decision by the affirmative vote of at least four members, approving or rejecting any application for a certificate.

"(2) Rejection or approval of an application, together with any conditions that may be attached to the certificate, shall be subject to judicial review as provided in ORS 469.400 (1).

"(3) The council shall either approve or reject an application for a site certificate:

"(a) Within 24 months after filing an application for a nuclear installation, or for a thermal power plant, other than that described in paragraph (b) of this subsection, with a name plate rating of more than 200,000 kilowatts;

"(b) Within nine months after filing of an application for a site certificate for a combustion turbine power plant, a geothermal-fueled power plant or an underground storage facility for natural gas;

"(c) Within six months after filing an application for a site certificate for an energy facility, if the application is:

"(A) To expand an existing industrial facility to include an energy facility;

"(B) To expand an existing energy facility to achieve a nominal electric generating capacity of between 25,000 and 50,000 kilowatts; **or**

"(C) To add generating capacity to an existing dam; or

"(d) Within 12 months after filing an application for a site certificate for any other energy facility.

"(4) The council shall reject an application for a site certificate for a hydroelectric project if the council finds the project does not comply with the standards set forth in section 5 of this 1985 Act or rules adopted by the council under section 5 of this 1985 Act.

"SECTION 18. ORS 537.160 is amended to read:

"537.160. (1) Subject to the provisions of subsections (2) and (3) of this section, and of ORS 537.170 to 537.190, the Water Resources Director shall approve all applications made in proper form which contemplate the application of water to a beneficial use, unless the proposed use conflicts with existing rights.

"(2) No application for a permit to appropriate waste or seepage water, which is to be carried through an existing ditch or canal not owned wholly by the applicant, shall be approved until the applicant has filed with the director an agreement between the applicant and the owner of the ditch or canal, authorizing its use by the applicant to carry the water.

"(3) The director shall reject every application for a permit to appropriate water in excess of a flow of 10 cubic feet per second, concerning which the applicant has failed, after 30 days' notice and demand from the director, to furnish proof satisfactory to [*him*] **the director** of the applicant's ability to construct the proposed project, and of [*his*] **the applicant's** intention in good faith to construct it with due diligence.

"(4) The director shall reject every application for a permit to appropriate water to develop hydroelectric power if the director finds that the proposed project does not comply with the standards set forth in section 3 of this 1985 Act or rules adopted by the board under section 3 of this 1985 Act.

"SECTION 19. ORS 537.170 is amended to read:

"537.170. (1) If, in the judgment of the Water Resources Director, the proposed use may prejudicially affect the public interest, or is to develop hydroelectric power in excess of 100 theoretical horsepower, the **Water Policy Review** Board shall hold a public hearing on the application on proper notice to the applicant and to anyone objecting thereto.

"(2) If applicable, an application to appropriate water for the generation of electricity submitted under ORS 537.140 shall be included in the consolidated review and hearings process under section 10 of this 1985 Act.

"(3) If, in the opinion of the board, sufficient information is not available to enable the board to determine whether or not the proposed use would impair or be detrimental to the public interest, the board may enter an interim order continuing the hearing for a period not to exceed three years, unless extended by the board, in order to afford all interested persons an opportunity to complete investigations to obtain the required information. The interim order may specify in particular the information required for the determination by the board.

" [*(2)*] **(4)** If, after the hearing, the board determines that the proposed use **does not comply with the standards set forth in section 3 of this 1985 Act or rules adopted by the board under section 3 of this 1985 Act or** would **otherwise** impair or be detrimental to the public interest, it shall enter an order rejecting the application or

requiring its modification to conform to the public interest, to the end that the highest public benefit may result from the use to which the water is applied. If, after the hearing, the board determines that the proposed use would not impair or be detrimental to the public interest, it shall enter an order approving the application. An order approving an application or requiring its modification may set forth any or all of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

" [*(3)*] **(5)** In determining whether the proposed use would impair or be detrimental to the public interest, the Water Policy Review Board shall have due regard for:

"(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

"(b) The maximum economic development of the waters involved.

"(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

"(d) The amount of waters available for appropriation for beneficial use.

"(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

"(f) All vested and inchoate rights to the waters of this state or to the use thereof, and the means necessary to protect such rights.

"(g) The state water resources policy formulated under ORS 536.300 to 536.350 and 537.505 to 537.525.

" [*(4)*] **(6)** After the entry of the order specified in subsection [*(2)*] **(4)** of this section, the application for a permit shall be referred to the Water Resources Director for [*such*] further proceedings [*as are not inconsistent therewith*] **consistent with the order.**

"SECTION 20. ORS 543.225 is amended to read:

"543.225. (1) The Water Resources Director shall refer any application or amended application for a preliminary permit or for a license for a major project of more than 100 theoretical horsepower to hearing, and shall also refer to hearing, an application for preliminary permit or license for a minor project of less than 100 theoretical horsepower if the board concludes it is in the public interest to do so.

"(2) The board shall hold a public hearing on an application referred under subsection (1) of this section, on proper notice to the applicant and to each protestant, if any. If, after the hearing, the board determines that the proposed project **does not comply with the standards set forth in section 3 of this 1985 Act or rules adopted by the board under section 3 of this 1985 Act, or** would **otherwise** impair or be detrimental to the public interest so far as the coordinated, integrated state water resources policy is concerned, it shall enter an order rejecting the application or requiring its modification to conform to such public interest, to the end that the highest public benefit may result from the proposed project. The order may set forth any or all of the provisions or restrictions to be included in a preliminary permit or license concerning the use, control and management of the water to be

appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

"(3) In determining whether the proposed project would impair or be detrimental to [*such*] **the** public interest, the board shall have due regard for:

"(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

"(b) The maximum economic development of the waters involved.

"(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

"(d) The amount of waters available for appropriation for beneficial use.

"(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

"(f) All vested and inchoate rights to the waters of this state or to the use thereof, and the means necessary to protect such rights.

"(g) The state water resources policy formulated under ORS 536.300 to 536.350 and 537.505 to 537.525.

"(4) After the entry of the order specified in subsection (2) of this section, the application for a preliminary permit or for a license shall be referred to the Water Resources Director for such further proceedings as are not inconsistent therewith.

"SECTION 21. Section 22 of this Act is added to and made a part of ORS 537.140 to 537.230.

"SECTION 22. (1) Whenever an application is made for a permit to appropriate water for hydroelectric purposes, the board shall give written notice of the filing of the application to the owner of any land that is:

"(a) Adjacent to any portion of the stream in which the quantity of water will be decreased by the project; or

"(b) Adjacent to the site of the proposed hydroelectric project.

"(2) The board shall also publish notice of the application once each week for at least four successive weeks and for such further time, if any, as the board shall determine, in a newspaper of general circulation in each county in which the project covered by the application is located.

"SECTION 23. ORS 543.220 is amended to read:

"543.220. (1) Whenever an application is made for a preliminary permit and after said application has been referred to hearing, the board shall give written notice of the filing of the application to:

"**(a)** Any municipality or other person or corporation which, in the judgment of the board, is likely to be interested in or affected [*thereby,*] **by the proposed project;** and

"(b) The owner of any land that is:

"(A) Adjacent to any portion of the stream in which the quantity of water will be decreased by the project; or

"(B) Adjacent to the site of the proposed project.

"**(2) The board** shall also publish notice of the application once each week for at least four successive weeks and for such further time, if any, as the board shall determine, in a newspaper of general circulation in each county in which the project covered by the application is located.

" [*(2)*] **(3)** No application for the appropriation or use of water for the development of 1,000 theoretical horsepower or more shall be granted until at least six months after the application for a preliminary permit has been filed.

"SECTION 24. ORS 543.135 is amended to read:

"543.135. (1) In any case where a hydroelectric project has been licensed by the Federal Power Commission, as of March 16, 1961, and said project has been constructed and is in operation without license under ORS 543.010 to 543.620, 543.705 to 543.830 and 543.990, or when such a federally licensed project comprises more than one hydroelectric plant, as soon as each hydroelectric plant in said license has been constructed and is in operation, the Water Resources Director may, upon application made therefor as provided in ORS 543.010 to 543.620, 543.705 to 543.830 and 543.990 and without public hearing, grant a license for such project, waiving and modifying such of the terms, conditions and requirements of ORS 543.010 to 543.620, as the Water Resources Director, by order, after full investigation, finds to be in conflict with the license issued by the Federal Power Commission, except the period for which license may be issued and the annual charge as determined by the Water Resources Director under ORS 543.300 (5). An application for license under this section shall not be subject to referral to the Water Policy Review Board under provisions of ORS 543.225 and shall not be subject to the provisions of ORS 543.220 [*(2)*] **(3)**.

"(2) Nothing in this section is to be construed to authorize any person, firm or corporation to begin or construct any water power project before obtaining a license for such project.

"SECTION 25. The landowner notification requirements under ORS 543.220 and section 22 of this Act shall apply to any application for a permit to appropriate water for hydroelectric purposes under ORS 537.140 to 537.230 or for a preliminary permit under ORS 543.220 for which a hearing has not yet been held before the Water Policy Review Board, or, if for less than 100 theoretical horsepower, has not yet been acted upon by the Water Resources Director on or before the effective date of this Act.

"SECTION 26. This Act shall apply to any of the following applications for which the hearing record has not been closed on or before the effective date of this Act:

"(1) An application for a permit to appropriate water for hydroelectric purposes under ORS 537.140 to 537.211.

"(2) An application for a preliminary permit or license for a hydroelectric power project under ORS 543.010 to 543.620.

"(3) An application for a site certificate for a hydroelectric power project under ORS 469.300 to 469.570.

"SECTION 27. Nothing in this Act applies to any hydroelectric project in excess of 25 megawatts for which funding has been approved by the governing body of a city on or before May 15, 1985.

"SECTION 28. This Act takes effect on October 1, 1985.".

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

ATTACHMENT B

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

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

ATTACHMENT C

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

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

-D15-

=B43=

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

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Environmental Quality Commission DATE: October 30, 1985

FROM: Kent Ashbaker, Hearings Officer

SUBJECT: PUBLIC HEARING REGARDING REVISIONS OF PROPOSED RULES WHICH ESTABLISH DEPARTMENT PROCEDURES FOR CERTIFICATION OF FEDERAL LICENSES OR PERMITS PURSUANT TO SECTION 401 OF THE FEDERAL CLEAN WATER ACT.

The draft rules were originally proposed and presented at a public hearing November 28, 1984. Since that hearing, the Legislature promulgated HB 2990 (now Chapter 569, Oregon Laws 1985), which defines certain requirements regarding the review of hydroelectric projects. Sections were added to the proposed rules to address the requirements of HB 2990.

Because of the significant changes made in the proposed rules, another hearing was scheduled and held on October 8, 1985. The hearing was held in Room 1400 of the Yeon Building at 10:00 a.m. There were five persons who attended the hearing, as follows:

Jake Szramek	Department of Water Resources
Cyndy Mackey	Northwest Environmental Defense Center
Stan Katkansky	Portland General Electric Company
Hunter Emerick	Attorney, Klamath Falls
Ken Carlson	Beak Consultants, Portland

Cyndy Mackey, representing NEDC, was the only one who gave oral testimony. Written testimony was received from the following:

Cyndy Mackey	NEDC
City of Klamath Falls	
Representative Carl Hosticka	
Department of Land Conservation and Development	
Baker County	
Water Resources Department	
Department of Energy	

With only one person testifying, the hearing was closed at 10:30 a.m. The record was left open until October 10 at 5:00 p.m. to receive written testimony.

Summary of Individual Testimony

Cyndy Mackey, representing NEDC, testified that they have no difficulty with the way the 401 rules are written. They want some assurance that the DEQ staff will interpret the rules such that they comply with the intent of the Clean Water Act; specifically, to the consideration of designated use and water quality criteria. They also presented for the record a series of issues and answers sent them by EPA in response to specific questions regarding designated uses.

Through their attorneys, the City of Klamath Falls submitted written documents which object to certain parts of the rules. They challenge the use of the term "activity" in Section 340-48-015. They contend that Section 401 of the Clean Water Act only pertains to discharges, not activities. Further, they contend that certain sections of the rules, namely 340-48-020(2)(h) and 340-48-025(2)(f) which require land use compatibility certification, and 340-48-025(2)(g)(D) which requires a project to be consistent with standards of other state and local agencies, are invalid with regard to the Salt Caves Project. They incorporate by reference the City's September 20, 1985, "Petition for Declaratory Ruling as to Non-Applicability of Laws, Regulations and Standards to Section 401 Certification of Salt Caves Project; Petition for Rulemaking; Request for Hearing; Request for Stay."

Representative Carl Hosticka suggested two changes to bring the proposed rules into conformance with HB 2990. First, that for hydroelectric projects, notification of adjacent property owners be made part of the public notice procedures and, second, that the language of HB 2990 does not allow the Department to waive certification of hydroelectric projects. They must be certified or denied.

Jim Knight of the Department of Land Conservation and Development submitted a marked up copy of the proposed rules, with some minor housekeeping changes.

Baker County requested that the rules contain language which allow the land use jurisdictions to sign off compatibility for more than one competing application without indicating preference as to which application will be awarded the FERC license. They indicated that that should avoid a conflict of interest if the land use agency is one of the applicants.

The Water Resources Department suggested two minor changes in the rules:

340-48-020(2)(h)

> Cities that make application for hydrolicenses should be treated the same as counties in that the land use compatibility question will be determined by LCDC,

340-48-020(7)(i) and 025(2)(g)(c)

> Change the reference of Water Policy Review Board to the Water Resources Commission

The Department of Energy stated that to be consistent with current interagency agreements, all applicants who require both a 401 certification and a site certificate should meet the siting standards before they are granted a 401 certification.

CKA:m
WM671

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 N, November 22, 1985, EQC Meeting

Petition for Declaratory Ruling by Brazier Forest Products as to the Applicability of ORS 459.005 to 459.285 and OAR Chapter 340, Division 61 to its Storage Pile of Sawmill Residual Material.

Background

Several months ago, Department staff discovered what appeared to be a typical woodwaste disposal site at a sawmill located near Molalla, in Clackamas County. The facility is operated by Brazier Forest Products of Oregon, Inc. (hereafter referred to as "Brazier"). The "disposal site" consists of sawdust, bark, scrap wood, soil, rock and some tires and metal, covering about one acre and measuring from two feet to twelve feet in depth. A company representative stated that the site has been used since the early 1970's.

By letter dated July 15, 1985, the Department notified Brazier that the "disposal site" required a solid waste disposal facility permit, in accordance with ORS 459.205. Brazier was asked to submit an application for a permit by September 15, 1985.

In response, the Department received a petition for Declaratory Ruling, dated September 17, 1985, from John C. Caldwell, on behalf of Brazier (copy attached). The petition seeks a ruling with respect to the applicability of ORS 459.005 to 459.285 and OAR Chapter 340, Division 61 to Brazier's pile of sawmill residual materials. The petition contends that the material is not "waste" or "solid waste" because it has economic value. Futhermore, that if the material should be determined to be solid waste, that the pile is exempt from the permit requirement, by virtue of OAR 340-61-020(2)(d). This citation exempts "facilities which receive only source separated, recyclable materials excluding putrescible materials." The specific ruling requested by the petition is that Brazier is not required to obtain a permit from the Department.

Pursuant to ORS 183.410 and OAR 340-11-062, the Commission may, at its discretion, issue a declaratory ruling with respect to the applicability, to any person, property or state of facts, of any rule or statute enforceable by the Department or Commission. The procedure for making such

a ruling is to first conduct a hearing on the matter. The Department's rules require that, within 30 days after a petition is filed, the Department must notify the petitioner of the Commission's decision to not issue a Declaratory Ruling or notify the petitioner that a hearing has been scheduled. In this case, the petitioner (Brazier) has agreed to waive this 30-day time limit, since the Commission was not scheduled to meet within 30 days of the date when the petition was filed. A copy of this waiver is attached.

The terms "solid waste", "waste", "disposal site" and "resource recovery" are defined in ORS 459.005 as follows:

1. "Solid waste" means "all putrescible and nonputrescible wastes, including but not limited to...industrial...wastes...."

2. "Waste" means "useless or discarded materials."

3. "Disposal site" means "land and facilities used for the disposal, handling or transfer of or resource recovery from solid waste...."

4. "Resource recovery" means "the process of obtaining useful material or energy from solid waste...."

ORS 459.205 requires each person owning or controlling a solid waste disposal site to obtain a permit from the Department.

Woodwaste from Oregon's wood products industries began to be a solid waste management issue in the late 1960's and early 1970's. Prior to that time, woodwaste was typically burned in "wigwam" burners. With the passage of the Clean Air Act and other air pollution control legislation, however, these burners were phased out and woodwaste disposal sites began to appear throughout the state.

The disposal sites soon became a concern to the Department for a variety of reasons. Woodwaste was often dumped indiscriminantely and many disposal sites received little or no attention. Water quality problems were created when leachate or contaminated drainage from woodwaste entered public waters. The leachate has a significant chemical oxygen demand and contains lignins, tannins and other contaminants that can affect the color, taste, odor and hardness of water. The leachate from Western Red Cedar bark is toxic to fish fry in only very small quantities. Poorly compacted woodwaste landfills have also been sources of spontaneous fires and landslides.

The Department's rules have required permits for industrial waste disposal sites since the early 1970's. Currently, there are 103 industrial waste sites under permit statewide. Ninety of these receive woodwaste, either

exclusively or in combination with lesser amounts of other mill waste. The woodwaste typically consists of sawdust, bark and small, irregular pieces of wood contaminated with soil and rock. In a few cases, metals, chemical residues and other contaminants may also be present.

Evaluation

The basic issues in this matter are (1) at what point does a material become "waste" and (2) to what degree should the Department regulate beneficial uses of waste. These issues are not new and have been considered by the Commission on at least three previous occasions. On January 22 and March 5, 1982, the Department requested policy guidance from the Commission concerning beneficial uses of solid waste. The primary issue was whether or not a fence constructed of used automobile tires constituted a "disposal site" and, if so, whether or not a permit from the Department was required. However, the discussion included beneficial uses of solid waste in general. On June 29, 1984, the commission adopted amendments to the Department's solid waste management rules concerning the regulation of facilities which receive only source separated recyclable materials. Copies of the staff reports for those meetings are attached.

Brazier's first contention is that the material in question is not "waste" because it has or may have economic value. Brazier admits that the material currently is "not immediately marketable" but they contend that it will have value for horticulture or landscaping purposes, if it is first allowed to decompose naturally.

As part of its investigation into the tire fence matter in 1981-1982, the Department obtained a formal legal opinion from the Attorney General (copy attached). This opinion clearly indicates that in determining whether or not a material is a "waste", the economic value of the material (if any) is irrelevant. In the opinion of the Attorney General, a material is a "waste" if it has "lost its value for the purposes for which it was intended by the prior owner and is now fit only (if for anything) for remanufacture into something else or some other use which differs substantially from its original use." In addition, this legal opinion states that land and facilities used to receive and store waste materials, from which saleable products will be made or extracted, including source separated recyclable material, constitute a "disposal site" as defined in ORS 459.005.

In this case, Brazier obtains logs for the purpose of manufacturing lumber. The residual bark, sawdust and small, irregular wood pieces, contaminated with soil and rock, are worthless for the purpose of making lumber and have value or potential value only for horticulture or landscaping purposes. Therefore, in accordance with the Attorney General's opinion, the material is "solid waste" and the area where it is stockpiled is a "disposal site."

On March 3, 1982, the Commission voted to concur with the Department's proposal to "regulate the storage of solid waste in cases where waste is stored for more than six months and there is no clear evidence that the waste will be used productively or where the nature, amount or location of the stored waste is such that, in the Department's opinion, it constitutes a potential environmental problem." Brazier indicates that its storage pile has been in existence since the early 1970's and they have presented no evidence that any of the material has ever been marketed.

Brazier's second contention is that the storage site is exempt from the permit requirement, in accordance with OAR 340-61-020(2)(d), because it receives only source separated recyclable materials which presumably are not putrescible. It appears to the Department that Brazier has made no attempt to separate these wastes from other wastes or from contaminants. The wastes are simply scooped up as they are produced and then dumped at the disposal site. A review of the staff report for the Commission's June 29, 1984 meeting, at which this rule was adopted, indicates that the intent was only to exempt recycling depots or related facilities that pose no significant threat to the environment.

The Brazier site is located within about 30 feet of a watercourse and within 1/4 to 1/2 mile of several residences. Neighbors have expressed interest in the site and concern that it be appropriately regulated. Leachate has been observed at the site and there is a potential for surface water or groundwater contamination. Brazier's activities are typical of the many other sawmill residue disposal sites of concern to the Department and regulated by permit, and should not be exempted. Regulation by permit would not necessarily prevent any future beneficial uses of the waste materials.

The Commission may, at its discretion, authorize a hearing and issue a Declaratory Ruling as to the applicability of the statutes and rules to Brazier. The Department believes that such an action is unnecessary. Brazier's situation is not unique and there are no new issues to be considered. Brazier's "storage site" is typical of 90 others currently under permit. The two primary issues in this case have previously been considered by the Commission and the Attorney General. The Commission has previously agreed with the Department's policy concerning the regulation of storage sites. Accordingly, the Department recommends denial of Brazier's request for a Declaratory Ruling.

Summation

1. Brazier Forest Products of Oregon, Inc. (Brazier) operates a sawmill near Molalla, Oregon. The operation generates residual materials which the company is accumulating on a one-acre site on its property. This practice has been occurring since the early 1970's.

2. State law defines the terms "solid waste" and "disposal site" and requires that operators of solid waste disposal sites obtain a permit from the Department.

3. Brazier has petitioned the Commission for a Declaratory Ruling as to the applicability of the statutes and the Department's solid waste management rules to its practices. Brazier contends that a permit from the Department should not be required.

4. The Commission may issue a Declaratory Ruling, at its discretion, in accordance with ORS 183.410 and OAR 340-11-062.

5. The Commission has considered the issue of regulation of beneficial uses of solid waste on at least three previous occasions. In addition, the Attorney General has previously issued a formal legal opinion on this matter.

6. The Department believes that there are no new issues to consider and that Brazier's situation is not unique. It is typical of 90 other woodwaste facilities currently under permit. Accordingly, the Department believes that going through the Declaratory Ruling process would be futile.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission not issue a Declaratory Ruling to Brazier Forest Products of Oregon, Inc.

Michael Downs for
Fred Hansen

Attachments I. Petition for a Declaratory Ruling, dated September 17, 1985, from John C. Caldwell
II. Agenda Item O, January 22, 1982 EQC meeting
III. Agenda Item J, March 5, 1982 EQC meeting
IV. Legal Opinion from Attorney General Dave Frohnmayer, dated October 26, 1981
V. Agenda Item K, June 29, 1984 EQC meeting
VI. Waiver letter from John C. Caldwell, dated October 18, 1985

ZF455
William H. Dana:f
229-6266
October 29, 1985

Attachment I
Agenda Item N
November 22, 1985 EQC Meeting

HIBBARD, CALDWELL, BOWERMAN, SCHULTZ & HERGERT
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
OFFICE ADDRESS: 1001 MOLALLA AVENUE, SUITE 200
MAILING ADDRESS: P.O. BOX 667 • OREGON CITY, OREGON 97045
PHONE: 503-656-5200

ESTABLISHED 1897 AS
U'REN AND SCHUEBEL

CLARK I. BALFOUR
H. THOMAS BECK
DONALD B. BOWERMAN
JOHN C. CALDWELL
RONALD E. HERGERT
GEORGE L. HIBBARD
EDWARD A. LANTON * †
MARY DICK LONERGAN
PAUL D. SCHULTZ
NANCY S. TAUMAN
NELSON L. WALKER

* ALSO ADMITTED IN MINNESOTA
† L.L.M. IN TAXATION

September 17, 1985

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Mr. Fred Hansen, Director
Department of Environmental Quality
Post Office Box 1760
Portland, Oregon 97207

RE: Brazier Forest Products/Donalda Porter
Our File No. 05337-013

Dear Mr. Hansen:

Enclosed please find a Petition for Declaratory Ruling with regard to the above-referenced matter.

Very truly yours,

John C. Caldwell

JCC/lm

Enclosure
Petition

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

of the

State of Oregon

In the matter of the application of Brazier Forest Products of Oregon, Inc., an Oregon corporation, for a declaratory ruling as to the applicability of ORS 459.005 to 459.285 and Chapter 340, Division 61, OAR to the storage of residual materials from its sawmill	PETITION FOR DECLARATORY RULING

1. Petitioner, Brazier Forest Products of Oregon, Inc. is a corporation with mailing address of P. O. Box 330, Molalla, Oregon 97038.

2. Petitioner maintains a sawmill near Molalla in Clackamas County, Oregon. Said sawmill, in the course of manufacturing of lumber, produces sawdust, barkchips, and dust and other small irregular items of wood which are not immediately marketable. Petitioner stores said material on its property. As the wood material breaks down from natural action, it becomes valuable for horticultural purposes. There is a regular market for the by-products of sawmills, such as sawdust, barkchips and the like for horticultural and landscaping purposes.

3. A claim has been made that said materials constitute waste as defined in ORS 459.005 to 459.285 and in Chapter 340, Division 61 OAR. Petitioner seeks a declaratory ruling with respect to the applicablity of said statutes and regulations to its storage pile of sawmill residual products.

4. Petitioner contends that the material stored is not waste

HIBBARD, CALDWELL, BOWERMAN, SCHULTZ & HERGERT, P.C.
ATTORNEYS AT LAW • P.O. BOX 867, OREGON CITY, OREGON 97045 • (503) 656-5200

or solid waste because it has economic value. In the alternative, petitioner contends that if the materials stored should be determined to be waste (which is specifically denied by petitioner), that the storage site is exempt from the requirement of a permit pursuant to OAR 340-61-0202(d). The declaratory ruling requested will eliminate any necessity on the part of petitioner to obtain a permit for solid waste storage if favorable to petitioner.

5. The specific ruling requested by petitioner is that petitioner is not required to obtain a permit under OAR 340-61-020(1) for the above-referred to storage site.

6. Donalda Porter whose address is c/o John Lowe, Attorney at Law, 2941 Warner Milne Road, Oregon City, Oregon 97045 has a special interest in the requested declaratory ruling as shown by a letter from Mr. Lowe written on her behalf dated February 4, 1985 to the Department.

DATED this 17th day of September, 1985.

HIBBARD, CALDWELL, BOWERMAN,
SCHULTZ & HERGERT

By _____
John C. Caldwell, OSB # 50015
Clark I. Balfour, OSB #79152
Of Attorneys for Petitioner

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 O, January 22, 1982, EQC Meeting
Informational Report: Attorney General's Opinion Concerning Solid Waste Disposal and Resource Recovery from Solid Waste

Background

The following report is being presented at the Department's initiative to inform the Commission of a recent Attorney General's opinion and to seek the Commisssion's concurrence with the Department's intended course of action relative to this opinion.

ORS 459.005 broadly defines both "Solid Waste" and "Solid Waste Disposal" to include virtually all discarded materials and a wide range of waste management activities. For example, the definition of "Disposal Site" includes not only landfills, incinerators, etc., but also facilities where recycling, salvaging or reuse of solid waste occurs. Traditionally, however, the Department has limited its regulatory activities to the more conventional forms of solid waste disposal and has only attempted to regulate productive uses of solid waste where there is some clear threat to public health or the environment.

Recently the Department has received a number of complaints concerning an individual in Yamhill County, William C. Remoir, who is constructing a fence around his farm with scrap automobile tires. Also, the Solid Waste Division recently received several inquiries from entrepreneurs and regional staff regarding permit requirements for facilities which are producing fuel or other marketable commodities from scrap tires and for sites at which tires are being stored for such purposes. In addition, there has been a long standing debate concerning the degree to which the Department should regulate recycling and resource recovery from municipal solid waste in general.

In order to clarify legislative intent in these areas the Department requested and obtained a formal legal opinion from the Attorney General (copy attached). The opinion confirms that the Department has broad authority in the area of solid waste management and potentially could greatly increase both the number and types of activities which it regulates. For example, the Department apparently could regulate such things as newspaper collection boxes, the entire waste paper and scrap metal industry, the collection and reprocessing of beverage containers under the Bottle Bill, second hand or resale shops, Goodwill Industries, etc. In addition, the Department was advised that it could prohibit the landfilling of materials which are readily recyclable or reusable.

The Department obviously does not intend to exercise the full range of authority which this legal opinion suggests may be available. The opportunity to use discretion in the application of regulatory authority is well documented in legal precedent. Specifically, the Department intends to continue the current policy of routinely regulating the more conventional forms of "disposal" such as landfilling, open burning and incineration and not regulating productive uses of solid waste (i.e., "Resource Recovery" as defined in ORS 459.005) unless there is a potential threat to public health or the environment. For example, a facility processing municipal garbage would normally be regulated, but a paper baling operation would normally not be regulated.

In regard to the tire situation in Yamhill County, staff of the Willamette Valley Regional Office have inspected the site and confirmed that the accumulated tires are in fact being used to construct a fence by stacking and interlacing (some complainants initially alleged that Mr. Remoir was merely accepting tires for a fee and had no intention of constructing a fence). Also, the staff noted that the location of the property is such that tires are not likely to escape to public waters.

The staff did not observe mosquito breeding or any evidence that rodents were using the tires for harborage. This is not to say that such activities won't occur. It is the staff's opinion, however, that there are many other natural sources of mosquito breeding and rodent harborage in the area that would be equally attractive to vectors. In short, the staff do not believe that the presence of vectors in itself is cause for DEQ action. Nor is the fact that the tires, if ignited, can burn persistently and generate dense smoke necessarily a cause for DEQ action. Traditionally, vector control and fire control have been the responsibility of local agencies and/or other state agencies.

In general, the Department views the tire fence as a matter of land use and aesthetics rather than environmental quality. While we may sympathize with neighbors who find the fence unsightly and fear that it may adversely affect property values and/or be an additional source of vector problems, we have not found that the fence poses any significant threat to the environment. Therefore, we are proposing not to initiate any enforcement action against Mr. Remoir at this time, particularly in view of recent staff reductions.

Finally, Yamhill County recently adopted an ordinance specifically to regulate tire fences. We understand that Mr. Remoir applied for a permit to extend his fence under this ordinance and that the application was denied. We also understand that the county is not proposing to make Mr. Remoir remove or alter his existing fence.

For reasons similar to those related above, the Department is also proposing not to routinely require permits from other individuals who are using solid waste for productive purposes. The decision to regulate or not to regulate will be made on a case-by-case basis with environmental impact being the major consideration.

In regard to storage, the Department proposes to continue to consider the long term (more than six months) accumulation of solid waste of any type to constitute "disposal," unless the property owner or person in control of the waste can reasonably demonstrate that the material is being or will be used productively. Short-term accumulation of solid waste may also be subject to regulation if the nature, amount or location of the accumulated waste is such that, in the Department's opinion, it constitutes a potential environmental problem. In either case, such " disposal sites" may be required to obtain a permit or to otherwise comply with the Department's rules as circumstances so warrant. For example, at a site where tires are being accumulated and where there is no clear evidence that the tires will be used productively, the Department would typically require that some spacing be provided for fire protection and that the tires ultimately be buried or removed.

The issue of prohibiting the landfilling of readily recyclable solid waste is one that the Department is not prepared to deal with at this time. This concept is one that deserves considerable thought and deliberation. It is the Solid Waste Division's intent to explore it with industry, local government, our citizen's advisory group and others before proposing a course of action. The Department may be returning to the Commission in the near future to discuss this matter in greater detail.

Director's Recommendation

It is recommended that the Commission concur in the following course of action to be pursued by the Department:

1. Continue to regulate solid waste disposal in its traditional sense, including but not limited to landfilling, open burning, incineration and composting.

2. Continue to regulate "Resource Recovery" as defined in ORS 459.005 only where there is a potential threat to public health or the environment.

3. Not initiate any enforcement action at this time against Mr. William C. Remoir for construction of a tire fence, based on the information currently available to the Department.

4. Continue to regulate the storage of solid waste in cases where waste is stored for more than six months or where the nature, amount or location of the stored waste is such that, in the Department's opinion, it constitutes a potential environmental problem.

5. Explore the concept of prohibiting the disposal of certain readily recyclable materials at landfill sites with affected parties and report back to the Commission in the future.

Bill

William H. Young

Attachment: Attorney General's Opinion No. 8069

W. H. Dana:hc
SH202
229-6266
January 6, 1982

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. J, March 5, 1982, EQC Meeting

Information Report: Supplemental Material Concerning Attorney General's Opinion on Resource Recovery from Solid Waste.

Background

At the Commission's January 22, 1982 meeting, the staff reported on a recent Attorney General's opinion concerning resource recovery from solid waste.

The staff described the possible implications of this opinion and presented a proposed course of action for dealing with small scale resource recovery/recycling activities. Because of the wide range of activities and facilities that could fall within this broad definition, the staff proposed that the Department would normally regulate only those practices and facilities which clearly posed a potential threat to public health or the environment. In addition, several citizens testified to the Commission and requested that the Department take action against an individual who had constructed a fence from used automobile and truck tires.

The Commission accepted the staff's report and asked the staff to report back at this meeting with more detailed information on the implications of attempting to regulate resource recovery facilities.

Discussion

Under Oregon law (ORS 459.005), "Solid Waste Disposal Site" means "land and facilities used for the disposal, handling or transfer of, or resource recovery from solid wastes . . . " Under the same statute, "Resource Recovery" is defined to include:

(a) "Energy recovery," which means "recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material."

(b) "Material recovery," which means "any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose."

(c) "Recycling," which means "any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity;" and,

(d) "Reuse," which means "the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity."

ORS 459.205, requires that no person shall establish, operate or maintain a "Solid Waste Disposal Site" without first obtaining a permit from the Department. Accordingly, the Department could initiate enforcement action against a wide range of individuals and facilities who are using or dealing in used goods. In an attempt to quantify the potential impact of such action, the staff has made a brief survey of known low technology "Resource Recovery" facilities. The results of that survey are as follows:

1. There are currently 267 recycling depots and markets around the state registered with the Department's Recycling Information Office, including 157 in the Portland metropolitan area. In addition, there are innumerable newpaper drop-off boxes located around the state.

2. Statewide there are five firms, three in Portland, one in Eugene and one in the Coos Bay area that receive scrap tires and process them into fuel or other usable products.

3. The Oregon Gasoline Dealer's Association estimates that there are between 1,800 and 1,900 service stations statewide. Pacific Northwest Bell's Business to Business Yellow Pages lists 102 tire dealers in Oregon. It is the staff's experience that virtually all such facilities have accumulations of scrap tires that range in number from a few to several hundred. At least two of the larger tire centers, the Les Schwab facility in Prineville and the Steve Wilson facility in White City, have accumulations substantially greater than 10,000.

4. Tires are commonly used by farmers statewide as weights to hold down silage covers and as barriers around corrals and livestock holding areas. The number of tires used on a farm may vary from a few to several hundred. As reported to the Commission in January, one farmer in Yamhill County has constructed a livestock control fence involving 30,000 or more tires. Staff has also observed similar, but less extensive fences, on farms in Benton and Clatsop Counties. An article in the December 1981 issue of Solid Waste Management magazine reports that the Oklahoma Rubber Fence Company, Inc. has installed 350,000 feet of rubber fencing, consisting of strips cut from old tires, in six states since October 1980.

5. Staff has observed two auto wrecking yards, one near Hillsboro and one near Willamina, that have fences constructed from old automobile wheels and tires, respectively. Also, near Hermiston, a farmer has constructed a fence out of old appliances (stoves, refrigerators, etc.)

6. An article in the fall 1981, issue of Exxon USA magazine reports that Tire Playground, Inc., a New Jersey firm, has placed approximately 60,000 scrap tires in 200 playgrounds around the country. In Oregon, innumerable playgrounds, school yards and parks use tires as part of their recreational equipment.

7. Klamath County operates a large tire storage site in an isolated cinder pit. Many thousands of tires are involved. The county has been trying to find a productive use for the tires, but is prepared to bury them if necessary.

8. Tires are commonly used around the state at marinas, wharfs, loading docks, auto race tracks, etc. as bumpers and barriers.

Clearly, there are thousands of "Resource Recovery Facilities" in Oregon, if one wishes to strictly interpret the law. The staff, however, believes that DEQ regulation of more than a few such facilities is not practicable. Facilities which receive mixed municipal refuse (containing food wastes, hospital wastes, small quantities of chemicals, etc.) obviously should be regulated. These wastes clearly constitute a potential threat to public health and the environment if improperly managed.

Other wastes, such as wood, glass, metals, rubber, plastics, etc. are essentially inert, except that bark and some metals may leach in a saturated environment. Accordingly, the staff believes that accumulations or reuse of such materials should not be a matter of DEQ concern, except where there may be a threat to water quality. It is a fact that these relatively inert materials may, because of their shape or form, trap rain water and, therefore, serve as a medium for mosquito breeding or may provide incidental harborage (not a food source) for rodents. There are innumerable structures, man-made and natural, which also serve as breeding places for mosquitoes or harborage for rodents. In the staff's opinion, however, vector control should be a priority concern of this Department only where putrescible wastes (rapidly decomposing organic matter, such as food scraps, animal waste, sewage sludge, etc.) are involved.

This discussion of the Department's appropriate regulatory role in the area of resource recovery was precipitated largely because of the persistent complaints we have received concerning one tire fence in Yamhill County. In this regard, it is important to note that the Department has received virtually no complaints about any of the other Resource Recovery Facilities described above, including the other tire fences which were observed.

As the Commission is well aware, the Department's budget has been substantially reduced and we are now facing further reductions. As a result, we have had to eliminate many worthwhile activities which we were doing or would like to do. In view of all these facts, we do not believe that there is sufficient justification for taking on the additional burden of routinely regulating small scale Resource Recovery Facilities at this time.

Conclusion

At the Commission's request, the staff has further evaluated and reconsidered the proposed policy which was presented at the Commission's January 22, 1982 meeting. As a result of this additional study, the staff continues to believe that the regulation of Resource Recovery Facilities should be on a case-by-case basis only, due to the large number of facilities which potentially could be involved, the apparent lack of public concern about all but a few such facilities and the recent reductions in the Department's staff and budget. Therefore, the Department again proposes the following course of action:

1. Continue to regulate solid waste disposal in its traditional sense, including but not limited to landfilling, open burning, incineration and composting.

2. Continue to regulate "Resource Recovery" as defined in ORS 459.005 only where there is a potential threat to public health or the environment and leave the regulation of vector control, aesthetic nuisances and land use to local agencies.

3. Continue to regulate the storage of solid waste in cases where waste is stored for more than six months and there is no clear evidence that the waste will be used productively or where the nature, amount or location of the stored waste is such that, in the Department's opinion, it constitutes a potential environmental problem.

Bill

William H. Young

William H. Dana:o
229-6266
February 11, 1982
SO202 (2)

DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

STANTON F. LONG
DEPUTY ATTORNEY GENERAL

Attachment IV
Agenda Item N
November 22, 1985
E.Q.C. Meeting

DEPARTMENT OF JUSTICE
100 State Office Building
Salem, Oregon 97310
Telephone: (503) 378-4400

October 26, 1981

No. 8069

This opinion is issued in response to questions presented by William H. Young, Director, Department of Environmental Quality.

FIRST QUESTION PRESENTED

Do land and facilities used for preparation for and construction of a livestock control fence consisting of used motor vehicle tires constitute a "disposal site" as defined by ORS 459.005(4)?

ANSWER GIVEN

Probably. The commission may make the determination in a contested case proceeding.

SECOND QUESTION PRESENTED

Do land and facilities used to receive and collect used tires from the public for use as raw material for the production of salable products from the used tires, constitute a "disposal site" as defined in ORS 459.005(4)?

ANSWER GIVEN

Yes.

THIRD QUESTION PRESENTED

Do land and facilities used to collect used cardboard, glass containers, metal cans and newspapers from the public, and to make salable products from these materials, constitute a "disposal site" as defined in ORS 459.005(4)?

ANSWER GIVEN

Yes.

FOURTH QUESTION PRESENTED

Do land and facilities used to receive loads of mixed used materials, such as cardboard, glass containers and metal cans, to sort the materials to extract the materials having economic value for sale, and to ship the residue to a permanent disposal site constitute a "disposal site" as defined by ORS 459.005(4)?

ANSWER GIVEN

Yes.

FIFTH QUESTION PRESENTED

Does the burden belong to the Department of Environmental Quality (department) and Environmental Quality Commission (commission) or to the operator of a site such as described in questions 1 to 4, to prove that a material received by the operator at the site is or is not solid waste?

ANSWER GIVEN

The department and commission, in order to exercise their regulatory authority over solid waste, must be prepared to prove that the material in question is solid waste and that the site in question is a disposal site. However, any person relying upon an exclusion from a definition relating to solid waste has the burden of proving qualification for the exclusion.

SIXTH QUESTION PRESENTED

Do the department and commission have authority to prohibit landfills from receiving materials which are readily recyclable or reusable, on the ground that

landfilling is not the best available management practice for those materials?

ANSWER GIVEN

Yes.

DISCUSSION

We are first asked whether land and facilities used for preparation for and construction of a livestock control fence from used motor vehicle tires constitute a "disposal site" as defined by ORS 459.005(4).

ORS 459.205 requires that a permit be obtained from the department before a disposal site may be established. "Disposal Site" is defined by ORS 459.005(4), which provides:

> "'Disposal site' means land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, and composting plants; but the term does not include a facility subject to the permit requirements of ORS 468.740; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site licensed pursuant to ORS 481.345." (Emphasis added.)

The definition includes land and facilities used for the disposal, handling or transfer of solid waste or for resource recovery from solid waste. Resource recovery is the process of obtaining useful material or energy from solid waste. ORS 459.005(9).

The definition of the term "solid waste" is not an easy task. ORS 459.005(11) provides:

> "'Solid Waste' means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid wastes, dead animals and other wastes; but the term does not include:
>
> "(a) Hazardous wastes as defined in ORS 459.410.
>
> "(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals." (Emphasis added.)

"Solid waste" is a subcategory of "waste." "Waste," as defined at ORS 459.005(14), consists of "useless or discarded material." (Emphasis added.) All materials categorized as "solid waste," as defined in ORS 459.005(11), must necessarily be "useless or discarded." 39 Op Atty Gen 772 (1979).

Though the phrase "useless or discarded" is used to define the term "waste," it is nowhere itself defined. In Springfield Education Assn. v. Springfield School District No. 19, 290 Or 217, 621 P2d 547 (1980), the court described three classes of statutory terms and discussed the authority of agencies to interpret terms of each class. The three classes are:

> "1.) Terms of precise meaning, whether of common or technical parlance, requiring only factfinding by the agency and judicial review for substantial evidence;

"2.) Inexact terms which require agency interpretation and judicial review for consistency with legislative policy; and

"3.) Terms of delegation which require legislative policy determination by the agency and judicial review of whether that policy is within the delegation." Id. at 223.

We believe that the term "useless" is at least of the second class, and possibly of the third. The term "discarded" is probably of the first class, but possibly of the second. In discussing the second class of terms the court said:

". . . Where the applicability of the term is not certain, its meaning is not a question of lexigraphy, but rather a question of the policy which is incorporated in the legislative choice of that word. The processes of administrative application of such terms and judicial review must be performed to effectuate the complete legislative policy judgment which such terms represent." Id. at 226.

In discussing the third class of terms the court said:

". . . The task of the agency administering such a statute is to complete the general policy decision by specifically applying it at retail to various individual fact situations. . . .

". . . .

". . . The discretionary function of the agency is to make the choice and the review function of the court is to see that the agency's decision is within the range of discretion allowed by the more general policy of the statute. . . ." Id. at 228-229.

Though the breadth of permissible agency interpretation and the scope of judicial review varies from class to class, under Springfield, the touchstone remains the policy behind the legislation. The legislature has sought to explain the policies behind ORS 459.005 - 459.285 in ORS 459.015. The commission is

in a far better position to assess and apply these policies than are we. As an aid to the commission in defining the term "solid waste," however, we make the following observations.

Generally, the term "waste" includes manufactured articles which are useless for the original purpose for which they were made and are fit only for either: (1) remanufacture into something else; or (2) some other use which differs substantially from their original use for which they are no longer fit. Studner v. United States, 300 F Supp 1394 (Cust Ct 1969). There is of course a third category, of articles which are useless for their original and any other purpose.

In Studner, a customs case, the defendant was involved in the importation of used print rollers. The print rollers were to be used not for their original purpose, but rather as bases for a variety of objects including lamps, trophies and smoking stands. Before being imported, one end of the rollers was straight cut. Before use as bases for these objects, another straight cut was usually required. The defendant sought to have the print rollers classified as "waste" in order that their import would be subject to a lower tariff than if they were classified as wholly or partially manufactured goods.

The Customs Court held that the blocks were "waste" and should not have been taken out of that classification merely because they could be used for another purpose without remanufacture. In coming to this conclusion, the court stated:

"In the instant case, the print blocks were incapable of use for their original purpose and were 'waste' as far as their use in printing was concerned. They would have been considered 'waste' if another use had been found for them that involved remanufacture. The use to which they are in fact put differs substantially from their original use. . . . It would be illogical to hold that 'old waste', such as this merchandise, has been taken out of the classification, waste, merely because it can be used for another purpose without remanufacture." Id. 1398.

We believe that it is with reference to the prior owner, not the operator of the alleged disposal site, that uselessness is probably determined. In Kirksey v. City of Wichita, 103 Kan 761, 175 P 974 (1918), the court stated that:

"The words 'rejected' and 'waste,' as used in connection with garbage material, carry practically the same implication, indicating material that has lost its value for the purposes for which it was handled by the owner and been cast aside." (Emphasis added.)

We recommend that in order for a material item to be classified as "useless and discarded," it be established that:

1. The item has lost its value for the purposes for which it was intended by the prior owner; and

2. It is fit only (if for anything) for:

a. remanufacture into something else; or

b. some other use which differs substantially from its original use.

Thus, in order to classify material as "solid waste," it must be:

1. "Useless or discarded"; and

2. Included within the list of items set forth at the beginning of ORS 459.005(11), or a like item; and

3. Not fall within the exceptions specified in ORS 459.005(11)(a) or (b).

Applying these tests to the tires in question, we find on the facts presented to us that the tires are "waste." They probably do not have value as recappable tires and are therefore "useless" for their originally intended purpose, that is, as vehicle tires, and in any event they have been "discarded" for that or any similar use. Use as a livestock control fence is certainly substantially different from the original use.

The second test is whether they are "solid waste" as defined in ORS 459.005(11). In our opinion, a tire is a vehicle part, essential to its operation to the same extent as an engine, transmission or axle, and thus specifically within the definition when discarded or abandoned. Even if held to be not a "part" but an "accessory," if there is a difference, the statute covers items "including but not limited to" discarded vehicle parts. The word "including" in a statute is a word of enlargement, or of illustrative application, as well as of limitation. Premier Products Co. v. Cameron, 240 Or 123, 400 P2d 227 (1965). Thus under the rule of ejusdem generis, the definition extends to discarded tires which are clearly of the same type or general class as any other discarded vehicle part. See State v. Brantley, 201 Or 637, 271 P2d 668 (1954); Skinner v. Keeley, 47 Or App 751, 615 P2d 382 (1980).

The third test is applicability or nonapplicability of the exceptions set forth in ORS 459.005(11)(a) or (b). The only possibly applicable exception is use of the tires for "productive purposes . . . in . . . the raising of fowls or animals." ORS

459.005(11)(b). An exception from a statutory definition is generally to be narrowly construed. Jensen v. Garvison, 241 F Supp 523 (D Or 1965); Aaker v. Kaiser Co., 74 F Supp 55 (D Or 1947). It would be a very broad construction of ORS 459.005(11)(b) to interpret it to exclude discarded or abandoned vehicles or parts thereof (or any of the other listed wastes) if used as livestock fencing. The commission may conclude that such a use would be inconsistent with the policies behind ORS 459.005 to 459.285.

The term "productive purposes" in this context appears to be an inexact term, the second category in Springfield Education Assn v. Springfield School District No. 19, supra, which requires agency interpretation consistent with legislative policy. As the statute is worded, the legislative policy appears to have been to exempt waste materials which produce crops or livestock, (i.e., are used as fertilizer, feed or the like) from the category of "solid wastes." Within the context of the statute, the term "productive" does not seem to include the use of tires for a fence to confine livestock. Tires therefore probably ought not to be exempt from solid waste classification when used for this purpose.

Inexact terms may be defined by the agency within the scope of a contested case proceeding. Prior rulemaking is not required. Springfield Education Assn., supra, 290 Or at 226. It is therefore appropriate for the agency to interpret the statute in such a contested case proceeding, to determine the meaning the

legislature intended for the term "productive" and to determine whether livestock fencing was intended to be included as a "productive" use.

If, however, after examining the available evidence as to legislative intent, the agency determines that the legislature may have intended or did intend to delegate to the agency authority to make its own determination as to what is a productive use, the agency may under ORS 183.355(5) nevertheless do so in the contested case proceeding without delay for rulemaking.

ORS 183.355(5) provides that:

> ". . . if an agency, in disposing of a contested case, announces in its decision the adoption of general policy applicable to such case and subsequent cases of like nature the agency may rely upon such decision in disposition of later cases."

This clearly contemplates that contested cases need not be held up because of a conclusion, in a borderline case, that the legislature has placed policy-making discretion in the agency which should be exercised by rule. A rule should always be adopted first, if it comes to the attention of the agency that such a delegation to it has been made. This is not always possible, however. It is recommended, although not statutorily required, that such a policy decision made in the course of a contested case hearing be followed up by adoption of a confirming rule.

It may not be necessary in the particular case to determine whether use as livestock fencing is or is not a "productive

purpose" within the legislative intent, or whether the legislature intended to delegate responsibility to the agency to decide the question. It is represented to us that in the particular case as many as 200,000 tires, for which disposal fees have been received, are involved; and that the use as "livestock fencing" is merely a subterfuge. If the agency so finds on the basis of the evidence, it would be unnecessary for it to determine the scope of the term "productive purpose."

Should the commission conclude that the used tires are within the definition of "solid waste," it follows that the land and facilities used for their disposal, handling or transfer, or for recovery of resources from them, would be a "disposal site" unless the site falls within the exceptions listed in ORS 459.005(4). The exceptions, however, are not applicable under the facts involved in this question.

The fact that tire disposal fees are sometimes collected by individuals apparently is not determinative in answering the first question. The same answer would probably be reached whether or not a fee is collected for the disposal of the used tires. A disposal charge, at most, is a further indication that the materials are useless or discarded and are solid waste.

We do not reach, in this opinion, the question of applicability of the statute to land and facilities used for disposal, handling and transfer of "trade in" tires. The former owner may or may not have received a "trade in" allowance on the price of new tires purchased. A tire may be reusable, perhaps

after repair, or it may be recappable, and thus not "useless" because still fit for its original or a similar purpose. Other tires may be useless as tires, and therefore "useless." The status of many of the tires may not have been determined by the owner. In such a context, it seems likely that it would be held to be the agency's responsibilty to adopt rules consistent with the legislative policy to determine whether or when such tires are to be deemed to be or to become useless, and thus solid waste. That is to say, the term "useless" in such a context is a term of delegation under Springfield Education Assn v. Springfield School District No. 19, supra. Of course, once the tires are factually determined to have been rejected for any future use as tires, they are "discarded" and outside any such delegation of discretionary rulemaking power.

The above discussion is, for the most part, applicable to the second question presented as well. It asks whether land and facilities used by a firm to receive and collect used tires for use as raw material for the production of salable products constitute a "disposal site." We conclude that they do because they are used for disposal, handling, transfer of and recovery of resources from tires no longer fit for vehicle use. The exceptions in ORS 459.005(11)(a) and (b) are clearly inapplicable.

The third and fourth questions presented can be handled similarly. The third question asks whether land and facilities used to collect used cardboard, glass containers, metal cans and

newspapers from the public and to make salable products from these materials is a "disposal site." The fourth question presented asks whether land and facilities used to receive similar loads of mixed used materials, to sort the materials, extracting those of value for sale and shipping the residue to a permanent disposal site is itself a "disposal site." We believe both are disposal sites.

We note that such groups and firms sometimes pay the public for these materials, in recognition of their salvage value. This does not necessarily mean that the materials are not essentially useless to or discarded by the disposers. The materials may still be classified as solid waste.

Our answers to questions three and four are not intended to cover the case in which reusable and repairable clothes, appliances, furniture and other items are solicited and received. In such cases most of the material is still intended to be used for its original purposes, and much of it can again be used for its original purposes. The donors' intention may be to discard, or it may be no more to discard than in the case of a donation of money. Some and perhaps much of the material will in fact be useless. We suggest that as applied to this situation the term "discarded" would again be a term of delegation, in the third category under Springfield Education Association.

The answers to the first four questions are not different if the receivers of the solid waste merely accumulate it in anticipation of eventually finding a use or market for it.

Fifth, we are asked whether the department and the commission or the operator of an alleged disposal site has the burden of proving the character of alleged solid waste received by the operator at the site. The general rule is that the burden of proof rests on the party who has the affirmative of the issue. Gibson v. Gibson, 216 Or 622, 340 P2d 190 (1959). The burden falls on the party that would be unsuccessful if no evidence at all were presented. Pacific Portland Cement Co. v. Food Machinery and Chemical Corp., 178 F2d 541 (9th Cir 1949). Generally, this is the plaintiff. McCaffrey v. Glendale Acres, Inc., 250 Or 140, 440 P2d 219 (1968), held, in accordance with the general rule, that a party has the burden of proof as to those issues as to which it has the affirmative, although plaintiff has the burden of proof as to all the elements of its claim or cause of action.

The department and commission, constituting a regulatory agency of the state, can only exercise such authority as is granted to them by law. Morse v. Oregon Division of State Lands, 34 Or App 853, 856-857, 581 P2d 520 (1978) aff'd 285 Or 197, 590 P2d 709 (1979). Thus, to regulate, the agency must be prepared to demonstrate such authority, including proof that the subjects sought to be regulated come within the definitions in the laws authorizing regulation by the agency.

Persons seeking to avail themselves of exclusions from legal definitions, however, are in a better position to prove affirmatively the facts allegedly qualifying them for the

exclusion than is the regulatory agency to prove the negative of such facts, especially when these facts are uniquely within the knowledge of such persons seeking to so qualify. Therefore, the law places the burden of proof on the persons seeking qualification under the exclusion from the definition.

Sixth, we are asked whether the department and commission have authority to prohibit landfills from receiving materials which are readily recyclable or reusable on the ground that landfilling is not the best available management practice for these materials. ORS 459.015 declares as state policy the establishment of a comprehensive statewide program for solid waste management which will promote means of preventing or reducing at the source, materials which otherwise would constitute solid waste; and application of resource recovery systems which preserve and enhance the quality of air, water and land resources. ORS 459.015(9), (10); see ORS 459.057 (presenting an example of the implementation of such policies).

The commission is required to adopt reasonable and necessary solid waste management rules governing the accumulation, storage, collection, transportation and disposal of solid wastes. ORS 459.045. Landfills are specifically included in the statutory definition of "disposal sites" in ORS 459.005(4), and disposal sites are subject to regulation by department permits. ORS 459.205.

We conclude that the commission, by rule consistent with legislatively declared state policy, and the department, by

permit regulation pursuant to commission rules, may prohibit landfills from receiving materials that are readily recyclable or reusable on the ground that landfilling is not the best available management practice for those materials. Any such rule must contain clear standards as to what materials landfills may not receive, in order that the rule may be effectively implemented.

Dave Frohnmayer
Attorney General

DF:RPU:jo

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, June 29, 1984, EQC Meeting

Proposed Adoption of a Rule Exempting Certain Classes of Disposal Site from the Solid Waste Permit Requirements, OAR 340-61-020(2)

Background

At its April 6, 1984 meeting, the Commission granted the Department authority to conduct a public hearing on the proposed exemption of certain classes of disposal sites from the solid waste permit requirements. The Department proposes to exempt recycling and salvage facilities and refuse collection vehicles that serve as mobile transfer stations. On the advice of legal counsel, the Department is formalizing existing informal policy, with one exception. None of the facilities that are proposed to be exempted have ever been required to obtain a permit. The exception is that one class of disposal site, known as reload facilities, will now be required to obtain solid waste disposal permits. A copy of Agenda Item F, for the April 6, 1984 Commission meeting is attached.

Pursuant to public notice, a hearing was held in Portland, on May 17, 1984. Copies of the Hearing Officer's report and the Department's Response to Public Comment are attached. As a result of the public comment, the proposed rule has been changed slightly. The Department now requests adoption of the proposed rule (Attachment 4). The Commission is authorized to adopt such a rule by ORS 459.215. Statements of Need, Statutory Authority, Fiscal Impact and Principal Documents Relied Upon are included in Attachment 5. A Land Use Consistency Statement is Attachment 6.

Alternatives and Evaluation

Four people attended the May 17, 1984 public hearing. Two of these people testified. In addition, seven people submitted written testimony. All testimony received was given consideration. The Hearing Officer's report is Attachment 2. Several issues came to light during the rule development and public comment periods. These are described in the attached copies of Agenda Item F, for the April 6, 1984 Commission meeting and the Department's Response to Public Comment. The four most significant issues are summarized below.

First, is the issue of whether or not the Department should regulate single-company reload facilities. These facilities are private transfer stations used by the refuse collection industry. They are not open for use by the general public. The industry contends that there is no demonstrated need to regulate such facilities and points to the fact that the Department previously exempted two such facilities as a matter of policy. It is the Department's position that these facilities can receive substantial amounts of solid waste and pose a potential threat to public health, safety and the environment. Also, the recent proposed construction of several of these facilities in Columbia, Washington and Yamhill Counties has created planning problems for the local government and revealed a need for additional state regulatory attention.

Second, is the issue of whether or not existing reload facilities should be exempted. Industry argues that at least two facilities were built with DEQ approval and with the understanding that no permit would be required. They say the Department is obligated to continue this previous, informal exemption. The Department's legal counsel has advised, however, that the previous informal exemption of reload facilities by Department staff was improper. Therefore, that decision should not be binding. We now believe that such facilities should be under permit and do not agree that existing facilities should be granted a special exemption.

Third, is the issue of whether or not local solid waste management program approval should be required as part of the permit application for a reload facility. Industry argues that local solid waste programs needlessly duplicate the state program and that local approval adds unnecessary extra review to the permitting process. The Department finds clear statutory directives that encourage local solid waste management programs and require local input in the permitting process, if such programs exist.

Fourth, is the issue of whether or not legislative intent has changed with the passage of the Recycling Opportunity Act (SB 405) such that recycling depots should no longer be considered to be "solid waste disposal sites" (i.e., that recycling facilities should be exempted by definition). This question demands a legal interpretation of the statutes. The Department has asked counsel for an opinion, but has not yet received a response. As a practical matter, we believe it is best to adopt the proposed rule amendment relating to recycling facilities now and to resolve this issue later. Failure to do so would subject existing recycling depots to permit fees on July 1, 1984. Also, this action would assure that recycling depots are exempted, which is what the Department and recyclers want, regardless of how legal counsel interprets the law.

A final, minor issue concerns the wording of the proposed exemption for recycling facilities. Comments from Portland Recycling suggest that the term "material" be substituted for the term "waste." This change would make the rule consistent with the language in the statute, as amended by SB 405. The Department agrees that change is proper and has amended the proposed rule accordingly.

Summation

1. On the advice of legal counsel, the Department is proposing to formally exempt, from the solid waste permit requirements, certain classes of disposal sites that were previously informally exempted. Facilities to be exempted include recycling and salvage operations and refuse collection vehicles that serve as mobile transfer stations.

2. The Department proposes to require permits for reload facilities, which were previously exempted, due to environmental and public health considerations and because of demonstrated need for solid waste management planning consideration by local and state government.

3. A public hearing on the proposed rule was held in Portland on May 17, 1984. All testimony received has been evaluated and one minor change was made in the proposed rule. The Department now seeks adoption of the proposed rule.

4. The Commission is authorized to exempt classes of disposal sites from the permit requirements by ORS 459.215.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission adopt the proposed rule, OAR 340-61-020(2).

Fred Hansen

Attachments 1. Agenda Item F, April 6, 1984, EQC Meeting
2. Hearing Officer's Report
3. Department's Response to Public Comment
4. Proposed Rule, OAR 340-61-020(2)
5. Statement of Need and Fiscal Impact
6. Land Use Consistency Statement

William H. Dana:b
229-6266
June 6, 1984
SB3506

Attachment 1
Agenda Item K
June 29, 1984 EQC Meeting

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. F, April 6, 1984, EQC Meeting

Request for Authorization to Conduct a Public Hearing on a Proposed Rule Amendment Relating to the Exemption of Certain Classes of Disposal Sites from the Solid Waste Permit Requirements, OAR 340-61-020(2).

Background & Problem Statement

Operators of solid waste disposal sites are required to obtain permits from the Department. The term "disposal site" is defined by ORS 459.005 and OAR 340-61-010 to include "land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes . . ." The term "transfer station" is defined to include both "fixed or mobile" facilities and the term "resource recovery" is defined to include "recycling."

Traditionally, the Department has exercised discretion and has not strictly enforced the permit requirement for "disposal sites" that receive only source separated recyclable materials (i.e., salvage businesses and recycling depots). With an increase in the number of recycling facilities anticipated, as a result of the new Opportunity to Recycle Act (SB 405), and with permittees now being required to pay fees for permits, it is appropriate to clarify the status of such facilities and either formally exempt them or put them under permit.

In addition, a new form of transfer station that is used only by refuse collectors and is not open to the public has recently appeared. With several more of these facilities now being proposed, it is also appropriate to make a decision as to whether those operations should be permitted or exempted.

We have discussed this matter with legal counsel and have been advised that any proposed exemptions should be in the form of a rule amendment. Accordingly, the Department has drafted proposed amendments to OAR 340-61-020(2) which would formally exempt certain classes of disposal sites from the Department's permit requirements. The Department now requests authority to conduct a public hearing to receive testimony on this matter. ORS 459.215 provides that, by rule, the Commission may exclude classes of disposal sites from the permit requirement.

Alternatives and Evaluation

Salvage/recycling operations have traditionally been excluded from routine regulation by the Department, because the potential environmental and public health impacts of such facilities are typically minimal. Normally, source separated recyclable wastes do not include putrescibles (i.e., rapidly decomposing materials) which may cause malodors, and which may serve to attract or sustain disease vectors such as flies and rodents. It is true that some recycling or salvage operations may be unsightly, but this is a subjective matter that is best dealt with by local agencies. Accordingly, the Department believes that its limited resources should more appropriately be restricted to the regulation of more significant sources. A few recycling operations do accept food scraps and the like for composting. Such facilities may pose a threat to public health, and we therefore do not propose to exempt them from permit requirements.

Another factor to consider is that the recently adopted schedule of fees for Solid Waste Disposal Permits may serve as a disincentive to the establishment of conveniently located recycling depots, unless an exemption is granted. The Department expects and encourages an increase in the number of such facilities as Oregon's new Opportunity to Recycle Act (SB 405) is implemented.

During January and March, 1982, the Commission discussed the issue of regulating recycling/salvage operations as the result of an Attorney General's opinion that the Department had received on this matter. At its March 5, 1982 meeting, the Commission directed the Department to, among other things, "regulate resource recovery as defined in ORS 459.005 only where there is a potential threat to public health or the environment and leave the regulation of vector control, aesthetic nuisances and land use to local agencies." The Department believes that the proposed exemption of recycling/salvage facilities merely confirms this existing policy. A copy of Agenda Item J, March 5, 1982, EQC Meeting is attached.

Transfer stations are facilities at which solid waste is "transferred" from one vehicle to another to provide more efficient and cost effective transport of wastes. For example, at a typical public-use transfer station, wastes from many small vehicles (i.e., cars, pickups, etc.) are transferred to large 45 or 50 cubic yard containers which, when full, are loaded onto trucks and taken to a disposal site. The greater the distance to the disposal site, the more cost effective such a system becomes. Transfer stations may be fixed or mobile and may or may not be open to public use.

For many years, refuse collectors have used a private, mobile transfer system which employs what they call a "mother truck." In this system, a large truck receives wastes from several smaller trucks at various locations along the collection route. While the large truck goes to the

disposal site or to a fixed transfer station, the smaller trucks are able to continue collecting refuse. These facilities, of course, are for the use of the refuse collector only and are not available for direct use by the public. Traditionally, the Department has not attempted to regulate these private, mobile transfer operations. They simply have not been a problem, except for some occasional leakage, spillage or noise. Also, as a practical matter, mobile facilities are inherently difficult to monitor and there may be large numbers of these systems in operation around the state. The Department now proposes to formally exempt mobile, private-use transfer vehicles from the permit requirement.

Recently, some collectors have proposed building fixed transfer stations, using 45-50 cubic yard containers, for their own use. One has been constructed (with DEQ oversight) in Marion County, two are proposed in Yamhill County, two are proposed in Washington County and three have been proposed in Columbia County. In each case, the existing local solid waste management plan does not address such facilities, which are known in the trade as "reload facilities." Potentially, refuse collectors could circumvent local solid waste management plans and thus interfere with the orderly implementation of those plans. DEQ regulation would pull these facilities back into the system by requiring that the permit applicant obtain local approval and demonstrate that the proposal is compatible with the local solid waste management plan.

In addition to these planning considerations, it is the Department's position that these fixed, private-use reload facilities pose some of the same potential impacts on public health and the environment as do public-use facilities. We believe that these potential problems are primarily a function of waste type and volume rather than ownership or public access. In both cases large amounts of putrescible wastes may be stored for up to seven days in a single location. This circumstance creates a significant potential for malodors, litter, the attraction and sustenance of disease vectors (i.e., insects and rodents) and related nuisance conditions for neighbors if improperly located or managed. Some of the proposed single company reload facilities are quite large. The proposed Hillsboro Garbage Disposal, Inc. facility, for example, would receive an estimated 150 cubic yards of refuse a day. In addition, a Washington County corporation, consisting of four refuse collection companies, has requested an exemption on the basis that it is essentially a single company, private-use operation. This proposed facility would receive an estimated 180 cubic yards of refuse per day. Such a broad interpretation could allow other large facilities to avoid regulation, if an exemption is granted to "single company" reload facilities. Accordingly, the Department is now proposing to <u>not</u> exempt fixed reload facilities from the permit requirement, design review and subsequent inspection.

The Department considered, but rejected, the idea of excluding reload facilities that receive less than some specific amount of waste per unit of time. Our reason for rejection is that this type of facility is new and, at this time, we have no experience upon which to establish a minimum level

of waste flow for regulatory purposes. We would be willing to reconsider this matter based on future experience.

Summation

1. The Department proposes to formalize existing policy and exempt salvage and scrap material businesses, recycling depots and mobile, private-use transfer stations from the permit requirement.

2. The Department proposes to not exempt fixed, private-use transfer stations (reload facilities), including "single company" facilities, because of the potential for environmental, public health and nuisance problems.

3. The Department has drafted a proposed rule amendment and requests authorization to conduct a public hearing.

4. The Commission is authorized to exempt classes of disposal sites from the permit requirement by ORS 459.215.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission authorize a public hearing to take testimony on the proposed exemption of certain classes of disposal sites from the Department's permit requirements, OAR 340-61-020(2).

Fred Hansen

Attachments I. Agenda Item J, March 5, 1982, EQC Meeting
II. Draft Statement of Need and Fiscal Impact
III. Draft Hearing Notice
IV. Draft Land Use Consistency Statement
V. Draft Rule OAR 340-61-020(2)

William H. Dana:b
229-6266
March 8, 1984
SB3099

Attachment 4
Agenda Item K
June 29, 1984, EQC Meeting

OAR 340-61-020(2) is proposed to be amended as follows:

340-61-020(2) Persons owning or controlling the following classes of disposal sites are specifically exempted from the above requirements to obtain a permit under these rules, but shall comply with all other provisions of these rules and other applicable laws, rules, and regulations regarding solid waste disposal:

(a) Disposal sites, facilities or disposal operations operated pursuant to a permit issued under ORS 459.505, 459.510 or 468.740.

(b) A landfill site used exclusively for the disposal of soil, rock concrete, brick, building block, tile or asphalt paving.

Note: Such a landfill may require a permit from the Oregon Division of State Lands.

(c) Composting operations used only by the owner or person in control of a dwelling unit to dispose of food scraps, garden wastes, weeds, lawn cuttings, leaves, and prunings generated at that residence and operated in a manner approved by the Department.

(d) Facilities which receive only source separated, recyclable materials excluding putrescible materials.

(e) Solid waste collection vehicles, operated by commercial solid waste collection companies or government agencies, which serve as mobile and roving transfer stations that are not available for direct use by the general public and do not stay in one location for a period to exceed 24 hours.

SB3099.5

Attachment VI
Agenda Item N
November 22, 1985
EQC Meeting

HIBBARD, CALDWELL, BOWERMAN, SCHULTZ & HERGERT
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
OFFICE ADDRESS: 1001 MOLALLA AVENUE, SUITE 200
MAILING ADDRESS: P.O. BOX 667 • OREGON CITY, OREGON 97045
PHONE: 503-656-5200

ESTABLISHED 1897 AS
U'REN AND SCHUEBEL

CLARK I. BALFOUR
H. THOMAS BECK
DONALD B. BOWERMAN
JOHN C. CALDWELL
RONALD E. HERGERT
GEORGE L. HIBBARD
EDWARD A. LANTON * †
MARY DICK LONERGAN
PAUL D. SCHULTZ
NANCY S. TAUMAN
NELSON L. WALKER

* ALSO ADMITTED IN MINNESOTA
† L.L.M. IN TAXATION

October 18, 1985

Mr. Ernest A. Schmidt
Department of Environmental Quality
Post Office Box 1760
Portland, Oregon 97207

RE: Brazier Forest Products
Our File No. 05337-013

Dear Mr. Schmidt:

This will confirm our telephone conversation in which I advised you the petitioner waives the requirement that a decision be made promptly on whether the Commission will accept the petition for declaratory ruling. We consent that the matter be taken up at the Commission meeting scheduled for November 22, 1985.

We look forward to receiving a copy of the staff report which I understand will be available about two weeks before the meeting date.

Please advise of the time and place for the meeting. If possible, I would like to know about when the matter is expected to come up on the agenda.

Very truly yours,

John C. Caldwell

JCC/lm

cc: Mr. Luther Steinhauer

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 O, November 22, 1985, EQC Meeting

Variance Review for Brookings Energy Facility, Curry County

Background and Problem Statement

On September 27, 1985, the Environmental Quality Commission reviewed the performance of the Brookings Energy Facility (B.E.F.) during the one year variance from OAR 340-21-027(2). (See Attachment 1, Agenda Item M for the September 27, 1985 EQC meeting.) Prior to the September 27, 1985 meeting, Mr. John Mayea, Chairman of the Curry County Board of Commissioners, requested that action regarding the variance be postponed until the November 22, 1985 meeting so that a Curry County Commissioner could attend and submit testimony. The Environmental Quality Commission heard testimony from representatives of B.E.F. and from the Department on September 27, 1985. The Commission then extended the variance until November 22, 1985 in response to the Curry County request and to give B.E.F. an opportunity to reassess its position. This report addresses issues which have been raised since the previous report was prepared. Many of these issues are beyond the scope of the particular variance being reviewed, but are addressed because they were raised.

Evaluation

Possible Exemption from OAR 340-21-027

Mr. Pete Smart of Brookings Energy Facility testified that B.E.F. could be exempted from OAR 340-21-027(1)(a) and (b) on the grounds that the average throughput of each of the 24 ton per day design capacity units is about 9 to 9 1/2 tons each day and the units were purchased in 1978. The relevant subsection, OAR 340-21-027(4), exempts only "Municipal waste incinerators in coastal areas, installed between 1970 and 1982, of 13 tons/day capacity or less...." Since the rule is based on the physical capacity of the units, and the capacity of the B.E.F. units is over 13 tons/day, B.E.F. is clearly subject to the rules.

Original Air Contaminant Discharge Permit Requirements

Mr. Smart asked if he could request a variance to operate under the requirements of the permit issued on July 30, 1979. While the original permit required an operating temperature of 1600°F rather than 1800°F, it also required the recording devices necessary to record secondary chamber temperatures. The same type of recorders are now required under OAR 340-21-027. Further, the original permit limited particulate emissions to 0.1 grains per dry standard cubic foot (gr/dscf) rather than the current limit of 0.2 gr/dscf. To the Department's knowledge, no particulate emissions tests have been conducted on the B.E.F. units. However, data from similar facilities show that this type of equipment is not capable of achieving compliance with a 0.1 gr/dscf emission limit without the addition of particulate emission control equipment. The rule relaxation from 0.1 gr/dscf to 0.2 gr/dscf and the adoption of higher operating temperature requirements was intended to minimize toxic air pollutant emissions without requiring the installation of the costly controls.

Consumat Systems, Inc. Criteria

At the last meeting of the Commission, a letter from Consumat Systems, Inc. to Mr. Pete Smart was submitted for the Commission's consideration. As suggested in that letter and affirmed in additional communications between Consumat Systems, Inc. and the Department, the units owned by B.E.F. can be operated with a secondary chamber set-point temperature of 1800°F. For units with energy recovery, 1800°F is the minimum set-point used by Consumat. Since the units owned by B.E.F. were installed without energy recovery, the original set-point was established at 1600°F to minimize the usage of auxiliary fuel in the secondary chamber.

Auxiliary Fuel Usage

Auxiliary fuel is used in Consumat incinerators principally to maintain the set-point temperature in the secondary chamber. Auxiliary fuel is also used in the primary chamber during start up. The annual reports submitted by B.E.F. show the following usage of auxiliary fuel:

Year	gallons/ton of garbage	
(1979)	(28.5)	initial installation used auxiliary fuel only
1980	3.4	
1981	1.1	
1982	.19	
1983	.55	
1984	fuel usage data not submitted	

These figures show that the permittee has reduced auxiliary fuel usage in an apparent attempt to minimize operating costs. Minimal auxiliary fuel usage is one of the reasons for low start up and shutdown temperatures.

Start Up Requirements

As discussed in the staff report for the September 27, EQC meeting, the Department intends to reevaluate the start up requirements for coastal incinerators. The permittee was requested to perform a demonstration of the start up capabilities of the B.E.F. units. This demonstration has not yet been conducted, so the Department has not been able to proceed with its review.

A demonstration of the start up capabilities of the units should be coordinated with the Department and conducted within sixty days. The demonstration should be designed to show the heating capabilities of the auxiliary fuel burners prior to the introduction of municipal solid waste and the amount of time needed to raise the temperature from 1600°F to 1800°F after the first waste is charged. During operation, the temperature in the secondary chambers should be maintained at a minimum of 1800°F from 30 minutes (subject to reevaluation) after the introduction of municipal solid waste until the final load is charged, and then at a minimum 1600°F for two hours. Auxiliary fuel should be used as necessary to maintain these temperatures. The permittee should explore schedule options with the County and/or the Department which could reduce the number of start ups without incurring significant added cost, and report to the Department on this issue within sixty days.

Operation of B.E.F. Since September 27, 1985, EQC Meeting

B.E.F. was inspected by the Department on October 17, 1985. Operation of the facility had improved but remained out of compliance with some of the permit and variance requirements. The facility was generally operating for two shifts per day. Since approximately October 7, 1985, the temperatures have been recorded for the required two hours after the final charge. However, the recordings show that the temperatures are dropping below the required 1600°F point during this two hour period. Further, many of the recordings show monitoring at 30 minute intervals throughout the second shift, rather than the required 15 minutes intervals.

Summation

1. Brookings Energy Facility (B.E.F.) has a one year variance from OAR 340-21-027(2) which requires municipal waste incinerators to use continuous recorders to record combustion temperatures.

2. The Department has recommended that this variance not be extended and that B.E.F. be required to install the temperature recorders as soon as possible.

3. The Department has requested B.E.F. to conduct a test of the existing incinerator units to document the temperature capabilities of the incinerators. This test would include a review of start up capabilities, auxiliary fuel usage requirements, and operating schedule. This testing has not yet been conducted.

Director's Recommendation

It is recommended that the Commission terminate the variance from OAR 340-21-027(2) for the Brookings Energy Facility and require that the temperature recording equipment be installed and operated as required by the rule without delay.

It is further recommended that the Commission endorse the following Departmental plan of action. The Department proposes to require Brookings Energy Facility to:

1. Conduct a test of the temperature capabilities of the incinerators within sixty days. The test shall be conducted according to a plan approved in advance by the Department and at a time which will enable a Department representative to be present.

2. Prior to establishment of a compliance schedule (established in No. 3 below) make every attempt to operate in compliance with the required minimum exhaust gas temperatures. At a minimum this shall include adequately preheating the incinerators using auxiliary fuel prior to charging with garbage to ensure adequate combustion of garbage and using auxiliary fuel when necessary to maintain minimum exhaust gas temperatures and residence times between 1800°F for one (1) second or 1700°F for two (2) seconds.

3. Follow a compliance program to be established by the Department if the required testing shows that the facility is not able to comply with the temperature requirements. Such a compliance program would include, but not be limited to, a final date for achieving compliance, interim operating procedures, and measures to be used to achieve compliance. Final compliance may be based on facility modifications, rule revisions, revising the operating schedule to minimize the need to operate the incinerators in a start up mode, or other actions.

In addition to developing the compliance program described above, if it is necessary, the Department would take enforcement actions against Brookings Energy Facility based on currently existing regulations if Brookings Energy Facility fails to perform these actions in a timely manner.

Fred Hansen

Attachments
1. Agenda Item No. M, September 27, 1985, EQC Meeting

W. Sims:s
229-6414
November 13, 1985
AS1921

VICTOR ATIYEH
GOVERNOR

Attachment 1
Agenda Item No. O
November 22, 1985
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: Director

Subject: Agenda Item No. M, September 27, 1985, EQC Meeting

Variance Review for Brookings Energy Facility, Curry County

Background and Problem Statement

On September 14, 1984, the Environmental Quality Commission granted a one year variance from OAR 340-21-027(2) for the Brookings Energy Facility (B.E.F.) (Attachment A-Agenda Item No. J of the September 14, 1984 Commission Meeting). As a provision of that action, the Commission requested that the performance of the permittee during the variance period be reviewed at the end of the one year period.

The variance request was precipitated by the Commission's adoption of OAR 340-21-027, Municipal Waste Incinerators in Coastal Areas on January 6, 1984. The rule allows an increased total particulate emission rate for coastal incinerators and requires that continuous temperature recorders be operated and that specified minimum operating temperatures be met. Toxic organic compounds, such as dioxins and furans, can be emitted from waste combustion operations if adequate temperatures are not maintained.

The rule was adopted to provide control of toxic organic compound emissions while eliminating the need for variances from the particulate emission standards or for expensive pollution control equipment. B.E.F. received notification of the proposed rulemaking and public hearing but did not submit written or oral testimony.

The variance granted to B.E.F. allowed manual recording of operating temperatures instead of the automatic recording specified by the rule. In approving Alternative 2 as presented in the September 14, 1984 staff report, the Commission authorized manual recording for one year. During the Commission's consideration of the variance request, the Commission confirmed that the readings would be required at five minute intervals during warm-up and at fifteen minute intervals during the combustion phase. The variance deals only with the method and frequency of obtaining permanent temperature records. The variance did not exempt the permittee from meeting the temperature and other operating requirements in the rule.

The Commission acted on the basis of ORS 468.345(1)(b). This statute authorizes the granting of a variance if "special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause." The cost of obtaining and installing the required recording equipment was considered to be an applicable special circumstance. Cost estimates were not submitted by the permittee, but based on information submitted for a similar facility in Coos County, the Department estimated the cost of compliance to be approximately one thousand dollars.

During the past year, the permittee has failed to fully comply with the variance requirements. The Department provided the permittee with forms for recording temperatures by letter of October 22, 1984 (Attachment B). A draft permit addendum specifying the variance requirements was sent on October 25, 1984. In response, the Department received a letter from Mr. Pete Smart, President of B.E.F., on November 15, 1984 (Attachment C). Mr. Smart had not yet implemented the manual temperature recording. In his letter he professed to be unaware of the Commission's instructions and the frequency requirements for manual recording. Mr. Smart's view that a two hour interval for monitoring is sufficient for temperature monitoring particularly concerned the Department. On December 17, 1984 Permit Addendum No. 1 was finalized (Attachment D). The permittee began to manually record temperatures shortly thereafter.

The facility was inspected by the Department on January 11, 1985. While the incinerators were not in operation at the time, temperature recording sheets were available and were reviewed. These recordings showed violations of the temperature and recording requirements. Specifically, the permittee had failed to record the temperatures for the required two hour period after the last charges were loaded and to follow the specified warm-up schedule. A typical warm-up period appears to be four hours, or about half the daily operating time, rather than the specified thirty minutes. B.E.F. personnel typically leave the site shortly after loading the last charge making further manual recording during the burndown phase impossible. The facility appears to be operating at temperatures lower than those required for more than half of the daily operating cycle. These violations were discussed with the facility operator during the inspection and with Mr. Smart on January 15, 1985.

Subsequent record sheets have not shown a trend toward resolving these problems. Conditions had not changed when inspections were conducted on April 3 and June 19, 1985. On July 23, 1985, a Notice of Violation was issued for temperature violations and recording violations observed during the inspection in June (Attachment E). At the request of Mr. John Coutrakon, attorney for B.E.F., Air Quality and Regional staff met with Mr. Coutrakon, Mr. Smart, and other representatives of B.E.F. on August 12, 1985. Attachments F, G, and H relate to that meeting. Responses to questions raised by Mr. Coutrakon are included as Attachments I and J.

Current Status

B.E.F. and the Department continue to disagree about the need for specified operating temperatures and the need to monitor and record those temperatures. B.E.F.'s attorney has requested that Commission consideration of the variance be deferred, pending further analysis of the need for these requirements. This report is being presented in response to the Commission's expressed intention of reviewing the variance at this time.

In July of 1985, the Department learned of plans to convert B.E.F. to an energy recovery facility. Mr. Tom Bradley, a consultant and professor at Oregon Institute of Technology, has been retained to implement the conversion and Mr. Smart has referred the Department to Mr. Bradley for all questions regarding the conversion project. As a part of the project, a temperature recorder for each unit has been ordered and delivered to Mr. Bradley. The Department is awaiting an answer to a request for cost data on the recorders. On August 20, 1985, Mr. Bradley informed the Department that the recorders are ready for installation at any time. The Department further understands that a power sales contract has been obtained by B.E.F. from the Coos Curry Electric Cooperative and that all equipment has either been obtained or placed on order. Installation is expected to proceed in the near future.

During the past year, representatives of B.E.F. have expressed, verbally and in writing, the desire to be allowed to operate the facility in conformance with the original Air Contaminant Discharge Permit issued in 1979 prior to the adoption of the Coastal Incinerator rules by the Commission. That permit required a secondary chamber temperature of 1600°F, a more stringent particulate emissions rate of 0.1 grains per dry standard cubic foot or less, and the operation of temperature recorders. The permittee was cited for failure to install and operate temperature recorders as required in that permit in a Notice of Violation and Intent to Assess Civil Penalty (AQ-SWR-82-40) on May 5, 1982. The primary arguments the permittee has presented in support of allowing the lower operating temperature are the improvement the incinerators provide over the previous practice of open burning of the waste and the continued authorization of open burning at other locations, such as at Powers. The Department believes that the B.E.F. and Coos County incinerators (the two facilities that are subject to the rule) did not operate in compliance with those earlier permit conditions and for that reason proposed the adoption of the Coastal Incinerators rules in 1983.

The Coastal Incinerator Rules (OAR 340-21-027) were adopted on the basis of technical reports on municipal solid waste incineration and the destruction of toxic organic compounds. A large body of information is available on these topics. Additional technical literature reviewed by the Department since the adoption of those rules firmly supports the residence time and temperature requirements. However, subsection 340-21-027(b)(A) specifies the minimum temperatures required during burner warm-up. This subsection was adopted to ensure that garbage is not introduced to a cold unit and to ensure that the temperature is rapidly brought up to 1800°F once garbage is

introduced. This subsection is currently under review by the Department, as the operators of both B.E.F. and the Coos County incinerators have questioned the feasibility of the start up requirements. The Department is delaying further enforcement action of this subsection until additional data can be collected, provided that this is done within a reasonable time frame. Both permittees have been asked to document the maximum achievable start-up temperature profile. Neither permittee has done this to date, although Coos County officials have recently agreed to do so. Review of subsection (2) has not changed the Department's support of the provisions of OAR 340-21-027 which require the use of automatic temperature recorders and operation at 1800°F after the specified warm-up period.

Alternatives and Evaluations

The variance granted by the Commission on September 14, 1984 has effectively expired unless further action is taken. The Commission has the following alternatives:

Alternative 1

The Commission could simply let the variance expire since the variance was adopted for a one year period, which has now ended. There are numerous factors which support this course of action. For one, the original basis for the variance no longer exists.

The variance was granted on the grounds that the permittee could not afford to obtain the required instrumentation. Since that time, temperature recorders have been obtained, although they are not yet installed. This alternative would, in effect, mandate expeditious installation and operation of the recorders.

In addition, the permittee has failed to comply with the variance requirements. One provision of OAR 340-21-027 specifies that recording be continued until two hours after the last load is charged. Since the variance provided relief only of the means of recording and not the periods of recording, the permittee's failure to record during this burn-down phase is a violation of the variance.

Throughout the variance period the permittee violated other provisions of the Air Contaminant Discharge Permit culminating in the issuance of a Notice of Violation on July 23, 1985.

Use of the recorders would also be required if B.E.F. is converted to an energy recovery facility. Now would seem to be an appropriate time to ensure that the facility can be operated in accordance with the regulations, rather than extending the problems to an expanded facility.

Alternative 2

The Commission could extend the variance for some period. This alternative would allow the permittee to continue with manual recording of the secondary chamber temperature, as specified in the September 14, 1984 variance approval. This variance was highly unsuccessful in that the permittee failed to comply with all of the Commission's directions and was issued a Notice of Violation for failing to comply with a variance provision and related operating requirements. The variance was adopted because the cost of obtaining and installing the required temperature recorders represented an economic hardship, as allowed for in ORS 468.345(1)(b). The temperature recorders have since been ordered and are available for installation as part of an energy recovery conversion, so the economic hardship basis is no longer viable. The Commission would have to discover some other basis to support a variance before an extension could be issued.

The Commission may be presented with a request to exempt B.E.F. from other provisions of OAR 340-21-027 or to rescind some or all of the rule. Since this agenda item does not anticipate any such action by the Commission, those alternatives are not listed. The Department has continued to review the basis for the rule and, with the exception of the start up provisions which are still under review, finds no basis for its relaxation in this or any other case. The Department finds the permittee's reluctance to commit to operating at the required temperature to be contradictory with the permittee's progress in converting to energy recovery. The temperatures specified in the rules will be essential to the successful operation of an energy recovery facility.

Summation

1. On September 14, 1984 the Commission granted to Brookings Energy Facility a one year variance from OAR 340-21-027(2) to allow manual, rather than automatic, temperature recording.

2. During the variance period, the permittee repeatedly violated provisions of the variance and Air Contaminant Discharge Permit and a Notice of Violation was issued on July 23, 1985.

3. The basis on which OAR 340-21-027 was adopted, control of toxic organic compounds by operating at 1800°F with a gas retention time of one second, has continued to be supported by technical reports published since the rule was adopted. The Department considers these operating conditions and the use of automatic temperature recorders essential to insure that toxic air pollutant emissions from incomplete combustion of refuse are minimized.

4. The basis on which the variance was authorized, economic hardship, is no longer valid since the permittee has ordered and has available the required equipment.

5. Unless a basis for a continued variance is established, the Commission should find that a further variance is not warranted and the use of automatic temperature recorders should be required.

Director's Recommendation

Based on the findings in the Summation, it is recommended that the Commission allow the variance from OAR 340-21-027(2) for Brookings Energy Facility to expire and that no new variance be issued. The permittee should be instructed to immediately begin proper operation of the facility in accordance with the Commission's rules, including use of the temperature recorders. The permittee should be required to install and operate the temperature recorders within 45 days. During the 45 day installation period, the permittee shall maintain compliance with their Air Contaminant Discharge Permit No. 08-0039, Addendum No. 1, Condition 8. The Commission should instruct the Department to pursue additional enforcement actions if necessary to gain compliance with these requirements.

It is also recommended that the Commission not undertake any reconsideration of OAR 340-21-027 until the Department has re-evaluated subsection (2) and prepared its recommendations.

Fred Hansen

Attachments:
A. 09/14/85 Agenda Item No. J
B. DEQ letter of 10/22/85
C. BEF letter of 11/09/84
D. Permit Addendum #1 with issuance letter
E. Notice of Violation, NOV-AQ-SWR/C-85-72, July 23, 1982
F. W. L. Sims memo to file
G. 08/15/85 letter to Fred Hansen from John Coutrakon
H. 08/15/85 letter to Wendy Sims from John Coutrakon
I. DEQ letter of 08/22/85
J. DEQ letter of 08/30/85

Wendy Sims:s
229-6414
September 12, 1985

AS1656

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. J, September 14, 1984, EQC Meeting

Request for a Variance From OAR 340-21-027(2) for Brookings Energy Facility, Curry County

Background & Problem Statement

On July 18, 1984, a variance request was received from Mr. Pete Smart, President of the Brookings Energy Facility (Attachment A). This facility incinerates municipal solid waste from Curry County in two modular incinerators under the authority of Air Contaminant Discharge Permit 08-0039. Mr. Smart has requested that a variance from Conditions 8 and 10 of that permit (Attachment B) be granted to the Brookings Energy Facility (BEF). These conditions require the installation and operation of a continuous temperature recorder (pyrometer) pursuant to Oregon Administrative Rule 340-21-027(2).

The above cited rule was adopted by the Environmental Quality Commission on January 6, 1984. OAR 340-21-025 was amended at the same time. As a result of these new rules, the maximum allowable particulate emission rate for small coastal municipal waste incinerators changed from from 0.1 to 0.2 grains/dry standard cubic foot and minimum exhaust gas temperatures/gas residence times were established. The operator of an incinerator was further required to install a temperature recording pyrometer. This requirement is to insure a continuous temperature level capable of destroying toxic air pollutants.

Comments on the new rule were solicited from both the BEF and the Curry County Board of Commissioners. A public hearing was held on November 21, 1983. An announcement of the hearing containing the hearing notice and the complete proposed rules package was mailed to both parties on October 4, 1983 (Attachments C,D). An additional hearing announcement was sent to the Brookings Energy Facility on October 20, 1983. The proposed temperature monitoring requirements were prominently mentioned in all of the documents. No written testimony was received from either party, nor was either represented at the public hearing.

After expiration of the previous Air Contaminant Discharge Permit, a proposed renewal permit was sent to BEF on April 4, 1984. The proposed permit incorporated the temperature recorder requirement from the new rules. The final date for submission of written comments on the proposed permit was May 15, 1984. On May 16 and May 18 respectively, comments were received from BEF and the Curry County Board of Commissioners (see Attachment A). Both requested deletion of the temperature recorder requirement in favor of manual recording. Similar comments were received from the City of Brookings on May 29, 1984. After considering the comments that were received, the Department issued the Air Contaminant Discharge Permit on May 25, 1984 without changes from the proposed permit.

The Department does not have the authority to revise the permit conditions as requested because the conditions are based on the Commission's rules. The Department advised the permittee that a variance could be requested from the Commission (Attachment E).

Alternatives and Evaluations

Several alternatives are available to the Commission. The variance request can be approved, approved with conditions concerning manual recording, approved with reinstatement of the previous particulate emissions limitation, or denied.

Under ORS 468.345(1), the Commission is authorized to grant variances from any rule if any of the following conditions are met:

(a) Conditions exist that are beyond the control of the persons granted such variance; or

(b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause; or

(c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or

(d) No other alternative facility or method of handling is yet available.

Subparts (b) and (c) are claimed by the permittee as reasons for the variance request. It is the responsibility of the permittee to supply documentation to support these claims.

Subpart (b), as noted above, applies in cases where special physical conditions make compliance unreasonable, burdensome, or impractical. Both incinerators at Brookings are already equipped with primary and secondary chamber temperature probes and gauges. Space is not unduly restricted at the site, so the addition of a recorder does not present any

physical problem. A recorder could be mounted on each incinerator or the wires could be extended to allow for installation at a location more convenient to the operator. Space requirements could be further reduced by the use of a multi-channel recorder which could simultaneously record temperatures from both incinerators. In his letter of August 15, 1984 (Attachment H), Mr. Smart maintains that environmental conditions can constitute special physical conditions. The Commission considered the environmental conditions in making its decision to adopt the coastal incinerator rules. The Department believes that a less restrictive rule would increase the potential for emissions of toxic air contaminants.

Subpart (c) applies in cases where compliance is not economically feasible. The permittee has stated that enforcement of the rule "could very possibly" cause closing down of the operation. The Department requested that the BEF supply economic data including financial reports and temperature recorder cost estimates (Attachments E,F). In response, an earnings statement for 1983 was submitted (see Attachment H). This statement indicates that Brookings Energy Facility incurred a net loss of $5,740.33 on income revenues totalling $317,405.26 in 1983. According to Item M on page 3 of Attachment H, representatives of the Brookings Energy Facility do not have any data on the cost of temperature recorders. Based on a cost estimate submitted for the Coos County incinerators (see Attachment G), the Department estimates the cost of compliance to be approximately one thousand dollars.

The permittee maintains that since he is discussing cost reduction possibilities with Curry County officials, additional costs would jeopardize the operation. Disposal costs are generally a small portion of the total cost of handling solid waste, with collection and hauling contributing the major share. Even if compliance resulted in a small increase in disposal rates, the Department would not expect an appreciable increase in the customer billing rate.

While recognizing the net loss incurred at the BEF in 1983, the Department can find no justification for the permittee's request for a variance based on subparts (b) or (c). Subparts (a) and (d), which the permittee did not request consideration under, are not applicable.

ORS 468.345(4) requires consideration of the equities involved and the advantages and disadvantages to residents and to the operator of the BEF. The only other facility subject to the temperature recorder rule is the Coos County incinerator installation at Beaver Hill. This facility had a variance from the particulate emissions limitation which was withdrawn after adoption of the relaxed limits. This facility is required to install and operate temperature recorders. No other facilities burn municipal solid waste in Oregon. A permit issued for the proposed facility in Marion

County, which would be much larger than the coastal incinerators, also requires continuous temperature recording.

The capital expenditure needed to comply with the rule appears to be slight, so there is little probability of a facility closure. If closure occurred, an alternate means of disposal would have to be developed and would most likely offset job losses. Similarly, any outcome of the variance request review is unlikely to affect the competitive position of the facility, since it is not in a competitive market.

Residents of the areas surrounding the facility could be affected by increased emissions of toxic air pollutants and by a change in garbage collection fees. The need for high temperatures to destroy potential toxic air pollutants is not at issue in this variance request, rather the means of documenting the actual operating temperatures. The more reliable and accurate the means, the lower the possibility of increased toxic air pollutant emissions.

A temperature recorder has the advantage of providing a continuous readout. Accuracy is maintained by performing maintenance and calibration checks at an interval appropriate to the specific instrument.

In contrast, manual recording is much less reliable in terms of frequency of recording and accuracy. Human error is not the only disadvanatage. Further problems are caused by the variable nature of municipal solid waste. BTU value, moisture content, ash content, and other variables which affect combustion fluctuate. Data must be collected often enough to insure that the proper temperatures are maintained at all times.

The superior ventilation along the Oregon coast assists in removal of pollutants from the ambient air. However, this may not be adequate in the case of toxic contaminants. Effects from toxic air pollutants may result from very low concentrations. Concerns have been raised that these effects may not be seen for many years during which time some pollutants may accumulate in body tissues.

The potential for deviations in temperature control and toxic air pollutant emissions are compared below for each alternative.

Alternative 1: Approval of Variance Request

The request, as submitted, would be a permanent variance. Any impacts from granting the variance would continue for the lifetime of the facility. In addition, the variance request and other communications received from Mr. Pete Smart propose that the temperatures be manually recorded, at times yet to be specified, during the daily operating schedule. No detail on these

specified times or identification of how or by whom the times would be chosen is given.

This alternative has the highest probability of temperature deviations and adverse air pollution effects. Since the variance would be permanent, the effects would continue indefinitely.

Alternative 2: Approval of Modified Variance

Under this alternative, the facility operator would be allowed to manually record temperatures for a specified time period, such as one year from the date of approval. Temperatures would be recorded at each incinerator at five minute intervals during warm-up and at fifteen minute intervals during the combustion phase.

This alternative is a compromise between the rule and the variance request. It provides ample time for the permittee to procure the necessary capital for the recorders. The frequency of manual data collection should help to guard against lengthy temperature drops. The possibility of human error is not diminished, however.

Altermative 3: Approval With Particulate Emissions Limitations

This alternative would allow manual temperature recording and reduce the particulate emissions limit from 0.2 grains per standard cubic foot of exhaust gases to the previous limit of 0.1. Since gaseous toxic air pollutants tend to adsorb onto particulate matter, the loss of control over operating temperature would be compensated for by the increased removal of toxics-laden particulate matter.

Adequate control of toxic emissions would be achieved under this option. However, particulate emission control equipment would probably have to be installed. Coos County estimated that such equipment would cost over $500,000 for the Coos County facility. Since the cost of this equipment would far exceed the cost of temperature recorders, there does not seem to be an advantage to this alternative.

Alternative 4: Denial of Variance Request

Denial of the variance request would provide the intended control of toxic air pollutant emissions and the associated protection of the public health. Any fluctuation in temperature, either above or below 1800° F, could be readily detected.

This alternative has additional benefits to the incinerator operator. By correlating incinerator temperature and auxiliary fuel usage with other

operating parameters, such as the mix of garbage charged, the need for auxiliary fuel could be minimized. The cost of auxiliary fuel was a major issue raised at the November 21, 1983 hearing. In addition, an employee would be freed from having to manually record the temperatures.

Summary

1. The operator of the Brookings Energy Facility is seeking a variance from OAR 340-21-027(2) which requires the installation of temperature recorders at coastal municipal waste incinerators.

2. OAR 340-21-025 was modified in January 1984 to allow for increased particulate emissions from coastal municipal waste incinerators. OAR 340-21-027 was simultaneously adopted to establish combustion temperature and residence time requirements. The temperature/time requirements are integral to controlling toxic air pollutant emissions at the higher particulate emission rates. The use of temperature recorders was required to insure and document compliance with the temperature requirements.

3. Manual temperature recording would be less effective than automatic recording given the variable composition of municipal solid waste and the possibility of operator error.

4. The president of the Brookings Energy Facility and the Curry County Board of Commissioners did not comment during the public comment period or the public hearing concerning the adoption of OAR 340-21-025 and -027. Objections to the proposed Air Contaminant Discharge Permit requirement of temperature recorders were received from both parties after the permit was re-drafted to include the rule requirements.

5. The applicant has requested the variance on the basis of ORS 468.345(1)(b) and (c) for special physical conditions and cost implications. The applicant has not adequately documented either consideration.

6. Approval of the variance request could result in increased ambient concentrations of toxic air pollutants, due to deviations from the required operating temperatures.

7. The Department has been unable to establish any basis for granting the variance request.

Director's Recommendation

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

Fred Hansen

Attachments:
A. Request for Variance From Mr. Pete Smart, Brookings Energy Facility
B. Air Contaminant Discharge Permit 08-0039, Brookings Energy Facility
C. Letter to Board of Commissioners, Curry County, October 4, 1983
D. Letter to Pete Smart, October 4, 1983
E. Letter to Pete Smart, June 22, 1984
F. August 3, 1984 letter from DEQ to Mr. Pete Smart
G. Testimony from J.R. Perkins, Public Works Director, County of Coos
H. Letter from Pete Smart to EQC, August 13, 1984

WENDY L. SIMS:a
229-5259
August 15, 1984
AA4612

ATTACHMENT 6

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JUL 20 1984

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JUL 18 1984
OFFICE OF THE DIRECTOR

BROOKINGS ENERGY FACILITY
BOX 1240
BROOKINGS, OR 97415

July 14, 1984

Environmental Quality Commission
P. O. Box 1760
Portland, OR 97207

Dear Commissioners:

The purpose of this letter is to request a variance to certain "special conditions" of Air Quality Permit No. 08-0039 as provided by ORS 468.345, subsections 1-a, b, c and 4.

About April 10, 1984 we received a letter with a copy of the proposed permit attached from LLoyd Kostow. This letter was in response to an earlier application from us for renewal of Permit no. 08-0039 and was dated April 4, 1984. In this letter Mr. Kostow invited written comments which were to be considered before final issuance of the permit. We submitted a letter of comment, objecting to two special conditions of the proposed permit. Letters from the Curry County Commission and the city of Brookings (site of the facility) were also sent to Mr. Kostow requesting a variance from those same two special conditions. A letter, dated May 25, 1984, was received from Mr. Kostow informing us that the permit would not be changed. He cited OAR 340-21-027(2) and attached a copy of Permit No. 08-0039 identical to the draft copy received in April. Mr. Kostow also informed us that we may appeal to a representative of the Environmental Quality Commission. This prompted us to send such an appeal to Fred Hansen, Director. We have just received a letter from Mr. Hansen, dated June 22, 1984, from which we quote: "An exemption from the rules would require a variance which can only be granted by the E Q C." Copies of all the above mentioned letters are attached and we would like for their content to be a part of this appeal for variance.

We are requesting a variance to Special Conditions 8 and 10 of Permit No. 08-0039, which conditions require installation and operation of continuous recording pyrometers according to a specific time frame. We propose that we be allowed to manually record lower and upper chamber temperatures at specified times during the daily operating schedule. This request is primarily based on information that has already been detailed in letters to Lloyd Kostow and Fred Hansen (attached and marked).

We believe that the geographic, demographic, and economic situations of Curry County and Brookings Energy Facility are such that a variance should be granted according to ORS 468.345, subsections 1-4. This ORS states that a specific variance shall be granted if the commission finds (1-b) "that strict compliance with the rule or standard is inappropriate because: special circumstances render strict compliance unreasonable, burdensome, or impractical. ." Also (4), "The commission . . . shall consider. . . the advantages and disadvantages to residents and to the person conducting the activity for which the variance is sought." We believe the evidence to show that in this case "strict compliance" to the rules to be unreasonable, burdensome, and impractical when all conditions are considered. We also believe that strict compliance would work to the disadvantage of the residents of Curry County and to B E F, the entity that disposes of the solid waste for the residents.

We urgently request careful consideration of marked sections of all the attached material. Granting of this variance will allow us to continue with the job at hand (disposing of solid waste in a safe and reasonable manner). We are presently discussing possible methods by which disposal costs may be reduced with county officials. Any additional cost could very possibly cause the whole operation to fit into a category to which ORS 368.345, subsection 1c could apply.

We have been operating for some five years in the same spot and even now many residents of the area do not know where the facility is. That should say something about the the lack of pollution of the operation.

Respectfully Yours,

P Smart

Pete Smart, President
Brookings Energy Facility

issue an order, the failure shall be considered a determination that the construction may proceed. The construction must comply with the plans, specifications and any corrections or revisions thereto or other information, if any, previously submitted.

(5) Any person against whom the order is directed may, within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the director of the department. The hearing shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

(6) For the purposes of this section, "construction" includes installation and establishment of new air contamination sources. Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source. [Formerly 449.712]

468.330 Duty to comply with laws, rules and standards. Any person who complies with the provisions of ORS 468.325 and receives notification that construction may proceed in accordance therewith is not thereby relieved from complying with any other applicable law, rule or standard. [Formerly 449.739]

468.335 Furnishing copies of rules and standards to building permit issuing agencies. Whenever under the provisions of ORS 468.320 to 468.340 rules or standards are adopted by either the commission or a regional authority, the commission or regional authority shall furnish to all building permit issuing agencies within its jurisdiction copies of such rules and standards. [Formerly 449.722]

468.340 Measurement and testing of contamination sources. (1) Pursuant to rules adopted by the commission, the department shall establish a program for measurement and testing of contamination sources and may perform such sampling or testing or may require any person in control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section. Whenever samples for air or air contaminants are taken by the department of analysis, a duplicate of the analytical report shall be furnished promptly to the person owning or operating the air contamination source.

(2) The department may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature, extent, quantity and degree of air contaminants which are emitted as the result of operation of the source.

(3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department.

(4) All sampling and testing performed under this section shall be conducted in accordance with applicable safety rules and procedures established by law. [Formerly 449.702]

468.345 Variances from air contamination rules and standards; delegation to local governments; notices. (1) The commission may grant specific variances which may be limited in time from the particular requirements of any rule or standard to such specific persons or class of persons or such specific air contamination source, upon such conditions as it may consider necessary to protect the public health and welfare. The commission shall grant such specific variance only if it finds that strict compliance with the rule or standard is inappropriate because:

(a) Conditions exist that are beyond the control of the persons granted such variance; or

(b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause; or

(c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or

(d) No other alternative facility or method of handling is yet available.

(2) The commission may delegate the power to grant variances to legislative bodies of local units of government or regional air quality control authorities in any area of the state on such general conditions as it may find appropriate. However, if the commission delegates authority to grant variances to a regional authority, the commission shall not grant similar authority to any city or county within the territory of the regional authority.

(3) A copy of each variance granted, renewed or extended by a local governmental body or regional authority shall be filed with the commission within 15 days after it is granted. The commission shall review the variance and the reasons therefor within 60 days of receipt of the copy and may approve, deny or modify the variance terms. Failure of the commission to act on the variance within the 60-day period shall be considered a determination that the variance

granted by the local governmental body or regional authority is approved by the commission.

(4) In determining whether or not a variance shall be granted, the commission or the local governmental body or regional authority shall consider the equities involved and the advantages and disadvantages to residents and to the person conducting the activity for which the variance is sought.

(5) A variance may be revoked or modified by the grantor thereof after a public hearing held upon not less than 10 days' notice. Such notice shall be served upon all persons who the grantor knows will be subjected to greater restrictions if such variance is revoked or modified, or are likely to be affected or who have filed with such grantor a written request for such notification. [Formerly 449.810]

468.350 Air and water pollution control permit for geothermal well drilling and operation; enforcement authority of director. (1) Upon issuance of a permit pursuant to ORS 522.115, the director shall accept applications for such appropriate permits under air and water pollution control laws as are necessary for the drilling of a geothermal well for which the permit has been issued and shall, within 30 days, act upon such application.

(2) The director shall continue to exercise enforcement authority over a permit issued pursuant to this section; and shall have primary responsibility in carrying out the policy set forth in ORS 468.280, 468.710 and rules adopted pursuant to ORS 468.725, for air and water pollution control at geothermal wells which have been unlawfully abandoned, unlawfully suspended, or completed. [1975 c.552 §34]

468.355 Open burning of vegetative debris; local government authority. (1) The Environmental Quality Commission shall establish by rule periods during which open burning of vegetative debris from residential yard cleanup shall be allowed or disallowed based on daily air quality and meteorological conditions as determined by the department.

(2) After June 30, 1982, the commission may prohibit residential open burning in areas of the state if the commission finds:

(a) Such prohibition is necessary in the area affected to meet air quality standards; and

(b) Alternate disposal methods are reasonably available to a substantial majority of the population in the affected area.

(3)(a) Nothing in this section prevents a local government from taking any of the following actions if that governmental entity otherwise has the power to do so:

(A) Prohibiting residential open burning;

(B) Allowing residential open burning on fewer days than the number of days on which residential open burning is authorized by the commission; or

(C) Taking other action that is more restrictive of residential open burning than a rule adopted by the commission under this section.

(b) Nothing in this section affects any local government ordinance, rule, regulation or provision that:

(A) Is more restrictive of residential open burning than a rule adopted by the commission under this section; and

(B) Is in effect on August 21, 1981.

(c) As used in this subsection, "local government" means a city, county, other local governmental subdivision or a regional air quality control authority established under ORS 468.505. [1981 c.765 §2]

MOTOR VEHICLE POLLUTION CONTROL

468.360 Definitions for ORS 468.360 to 468.405. As used in ORS 468.360 to 468.405:

(1) "Certified system" means a motor vehicle pollution control system for which a certificate of approval has been issued under ORS 468.375 (3).

(2) "Factory-installed system" means a motor vehicle pollution control system installed by the manufacturer which meets criteria for emission of pollutants in effect under federal laws and regulations applicable on September 9, 1971, or which meets criteria adopted pursuant to ORS 468.375 (1), whichever criteria are stricter.

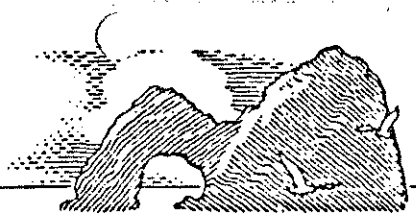
(3) "Motor vehicle" includes any self-propelled vehicle used for transporting persons or commodities on public roads and highways, but does not include a motor vehicle of special interest as that term is defined in ORS 481.205 (6)(c).

(4) "Motor vehicle pollution control system" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle, or a system or engine adjustment or modification which causes a reduction of pollutants emitted from the vehicle. [Formerly 449.949; 1975 c.670 §4]

CURRY COUNTY OREGON BOARD OF COMMISSIONERS

Donald K. Buffington Kelly G. Ross John Glenn Mayea

BOX 746 GOLD BEACH, OREGON 97444 (503) 247-7011



Mack Arch on the Curry Coast

May 15, 1984

Department of Environmental Quality
Lloyd Kostow, Manager
P.O. Box 1760
Portland, Oregon 97207

RE Brookings Energy Facility No. 9047 -- Discharge Permit No. 8-0039.

Dear Lloyd:

We respectfully request that you consider deleting items 8 and 10, page 3, from the proposed Air Contaminant Discharge Permit. We feel that the ~~same results could be obtained by a manual recording by the permittee~~ at specified times in the operating schedule.

Curry County leases the equipment to B.E.F. and ~~any impact on them will result in a like impact on Curry County~~. Under present budget constraints any additional costs would be very difficult for us to cope with. We live in a sparsely populated area with our own ~~"built in air conditioning system"~~ and we feel this is ~~not necessary~~ for the efficient operation of this facility.

Thank you for your consideration in this matter of great concern to us.

Very truly yours,

John Glenn Mayea

John Glenn Mayea
Chairman

JGM:db
pc: B.E.F.
Commissioner Ross
Commissioner Buffington
City of Brookings

ATTACHMENT A-4

Phone (503) 469-2163

CITY OF BROOKINGS

898 Elk Drive
Brookings, Oregon 97415

The Home of Winter Flowers

May 25, 1984

Department of Environmental Quality
LLoyd Kostow, Manager
P.O. Box 1760
Portland, Oregon 97207

REFERENCE: Brookings Energy Facility No. 9047
Discharge Permit No. 8-0039

Dear Lloyd:

We realize that our comments are past the May 15, 1984 deadline for comments, but we ask you to consider our comments.

The City staff supports and agrees with the Curry County request for deletion of items 8 and 10 on page 3 of the Discharge Permit No. 8-0039.

Continuous monitoring is needed in an urban setting and/or where air inversions exist, but the Brookings Energy Facility is in a rural area and no air inversion exists. The prevailing winds continuously cleanse the air in the area, and the winds prevail toward a large, forested area.

Continuous monitoring equipment certainly requires more maintenance and accomplishes little toward the daily operations. The proposed alternative of manually recording the maximum and minimum temperatures is a reasonable alternative.

The Brookings Energy Facility proposal may not be ideal but certainly appears to be adequate and could suffice until energy sales reach a sufficient level to purchase the pyrometer.

Curry County and the Brookings Energy Facility budgets will be overly burdened to purchase this equipment. We feel that the operator will make the manual reading alternative work and the plant is designed to reduce pollutants to a minimum.

Thank you for your consideration in this matter.

Respectfully,

Leo Lightle

Leo Lightle
Engineering Technician

LL/dmvn

cc: Brookings Energy Facility
Curry County Commissioners

4/4/84

ATTACHMENT A-3

VICTOR ATIYEH
Governor

Department of Environmental Quality

522 SOUTHWEST 5TH AVE. PORTLAND, OREGON

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

April 4, 1984

Brookings Energy Facility, Inc.
P.O. Box 1240
Brookings, OR 97415

Final Date for Submission
of Written Comments:
May 15, 1984

Re: Application No. 9047
Proposed Air Contaminant
Discharge Permit No. 08-0039

Gentlemen:

Your application for renewal of your Air Contaminant Discharge Permit has been reviewed by the Department of Environmental Quality and proposed air contaminant discharge permit provisions have been drafted. You are invited to review the attached copy and submit any comments you may have in writing by the final submission date noted above. If the proposed permit is satisfactory, no response to this notice is necessary.

Enclosed for your information is a copy of the public notice concerning your permit. This notice is published in the Secretary of State's bulletin and distributed to the media and interested individuals.

All comments received will be evaluated by the Department of Environmental Quality and action on your application will be taken in the near future.

Sincerely,

Lloyd Kostow

Lloyd Kostow, Manager
Program Operations
Air Quality Division

JO:a
AA4297
Enclosures
cc: Coos Bay Branch, DEQ
Southwest Region, DEQ

a. Prior to the initial charge of wastes and for the first 30 minutes of incineration of the initial charge, 1600° F for 1 second.

b. For the period beginning 30 minutes after the initial charge of wastes to the time of the final charge, 1800° F for 1 second or 1700° F for 2 seconds or a temperature and corresponding residence time linearly interpolated between the aforementioned two points.

c. For a 2 hour period after the final charge of waste, 1600° F for 1 second.

8. The permittee shall install, calibrate, maintain, and operate according to manufacturer's specifications a continuous recording pyrometer. The pyrometer shall be located at a point within the incinerator exhaust system which has been approved by the Department.

9. The permittee shall not incinerate any materials which may emit potentially poisonous or toxic substances. Materials which are not to be incinerated should include any significant identifiable quantities of pesticides and herbicides, electrial switching gear, or heavy metals such as zinc, cadmium, lead and mercury.

Compliance Demonstration Schedule

10. The permittee shall provide for recording pyrometers as specified in Condition 8 in accordance with the following schedule:

a. By no later than 60 days after issuance of this permit, the permittee shall submit detailed plans and specifications, to the Department of Environmental Quality for review and approval.

b. By no later than 120 days after issuance of this permit, the permittee shall complete the installation of and place in operation the recording pyrometers.

c. Within seven (7) days after item b above is completed, the permittee shall inform the Department in writing that the item has been accomplished.

Monitoring and Reporting

11. The permittee shall effectively inspect and monitor the operation and maintenance of the plant and associated air contaminant control facilities. A record of all such data shall be maintained for a period of two years and be available at the plant site at all times for inspection by the authorized representatives of the Department. At least the following parameters shall be monitored and recorded at the indicated interval.

BROOKINGS ENERGY FACILITY
BOX 1240
BROOKINGS, OR 97444

ATTACHMENT A-7
5/14/84

RE: APPLICATION NO. 9047
DISCHARGE PERMIT NO8-0039

YD KOSTOW, PROGRAM OP. MGR.
AIR QUALITY DIVISION, D E Q
P O BOX 1760
PORTLAND, OR 97207

DEAR SIR:

YOUR LETTER OF APRIL 4, WITH THE ENCLOSED DRAFT OF THE PROPOSED DISCHARGE PERMIT NO. 08-0039 HAS BEEN RECEIVED AND REVIEWED. IT IS CLEAR THAT D E Q STAFF HAS APPLIED MUCH TIME AND EFFORT IN THE DEVELOPMENT OF THE PROPOSED PERMIT WITH REGARD TO BOTH GENERAL AND SPECIFIC AIR QUALITY CONTROLS. WE APPRECIATE THE NEED OF MINIMIZING POLLUTION FOR THE OVERALL LIVEABILITY OF OUR STATE AND FOR SAFETY AND WELFARE OF THE PEOPLE.

THERE ARE, HOWEVER, AT LEAST TWO SPECIFICS OF THE PROPOSED PERMIT WHICH, IF APPLIED TO THE OPERATION OF THE B E F INCINERATORS, WOULD SEVERELY IMPACT BOTH THE OPERATORS OF THE FACILITY AND THE PEOPLE OF CURRY COUNTY; THIS WITHOUT ANY APPRECIABLE BENEFIT TO THE LIVEABILITY OF THE AREA OR THE HEALTH AND WELFARE OF THE CITIZENS. THESE THINGS ARE DETAILED ON PAGE 3 OF THE PROPOSED PERMIT, ITEMS 6 AND 10.

WE RESPECTFULLY REQUEST THAT THESE TWO ITEMS BE DELETED IN THEIR ENTIRETY FROM THE PERMIT. WE PROPOSE TO REPLACE THEM WITH A REQUIREMENT THAT THE PERMITTEE MANUALLY RECORD LOWER AND UPPER CHAMBER TEMPERATURES AT SPECIFIED TIMES DURING THE OPERATING SCHEDULE.

DUE TO A COMBINATION OF FACTORS THE INSTALLATION, MAINTENANCE AND OPERATION OF

A. INCINERATION EQUIPMENT IN USE IS TO . SIMILAR EQUIPMENT IS IN USE IN THIS STATE, IN OTHER STATES, AND IN OTHER COUNTRIES, .

B. B E F INCINERATORS ARE LOCATED IN A RELATIVELY OF A .

C. INSTALLATION OF THESE PYROMETERS IS NOT WARRANTED SINCE MINUS THE AUTOMATIC RECORDING FEATURE .

D. COASTAL OF STAGNANT AIR IN THE POPULATED AREAS.

E. IN PRIOR YEARS D E Q STAFF HAS INDICATED BOTH VERBALLY AT THE SITE AND BY LETTER THAT SUCH EQUIPMENT WAS UNNECESSARY.

2. INSTALLATION AND OPERATION OF SUCH EQUIPMENT [PAGE 3, ITEM 8] IS AND WOULD .

A. INCINERATION EQUIPMENT WAS PURCHASED BY CURRY COUNTY AND IS BEING OPERATED BY B E F BY A LEASE PURCHASE AND CONTRACT. ANY IMPACT ON THE OPERATOR WILL ALSO .

B. CURRY COUNTY AND B E F ARE "PARTNERS" IN THE SOLID WASTE DISPOSAL BUSINESS. UP TO NOW ARE BEING GENERATED BY THE OPERATION OF THE INCINERATION EQUIPMENT. THERE CAN BE NO REDUCTION IN MARGIN OF PROFIT SINCE PURCHASE OF IS MORE THAN B E F OR THE PEOPLE OF CURRY COUNTY CAN AFFORD UNDER PRESENT ECONOMIC AND BUDGETARY CONDITIONS.

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

May 25, 1984

Mr. Pete Smart, President
Brookings Energy Facility, Inc.
PO Box 1240
Brookings, OR 97415

Re: Renewal of Air Contaminant
Discharge Permit No.: 08-0039
Application No.: 9047

Dear Mr. Smart:

The Department of Environmental Quality has completed processing your permit application. Based upon the material contained in your application, the additional submissions and comments made by you and the comments received in response to the public notice, the Department has issued the enclosed Air Contaminant Discharge Permit. This permit was issued to you pursuant to Oregon Revised Statutes 468.310 and 468.320 and Oregon Administrative Rules, Chapter 340, Divisions 14-005 through 14-050, and 20-140 through 20-185.

Comments on the proposed permit were received from you and from the Chairman of the Curry County Board of Commissioners. Both parties requested that conditions 8 and 10 of the proposed permit, requiring continuous recording pyrometers, be deleted in favor of manual temperature control verification.

Continuous recording pyrometers are required at the Brookings Energy Facility in accordance with Oregon Administrative Rule 340-21-027(2). This regulation was promulgated by the Environmental Quality Commission on January 6, 1984, as part of a package of regulations for small municipal waste incinerators in coastal areas. Prior to adoption, a public hearing on the proposed regulations was held on November 21, 1983. Written comments were also solicited.

DEQ notified you of the proposed rulemaking and the opportunity for comment in a letter dated October 4, 1983. However, DEQ received no comments, either written or oral, on the proposed regulations from any party associated with the Brookings Energy Facility. In particular, no objection to the requirement that continuous recording pyrometers be installed at Brookings was received.

In addition to the pyrometer requirement, the regulations adopted on January 6, 1984 relax the maximum allowable particulate emissions rate. This change was made in recognition of some of the factors highlighted in your letter, including the meteorological and population density characteristics of the coastal areas, and the difficulty in attaining the existing standard with the type of equipment in use along the coast. Temperature requirements were added to insure that the relaxed particulate standards would not result in increased emission of toxic organic compounds, such as dioxin. The continuous recording pyrometers are a necessary tool for insuring compliance with the temperature requirements and, as a result, preventing excessive emissions of organic compounds. On this basis, the contributution of the recording pyrometers to preventing the deterioration of air quality cannot be dismissed.

Continuous recording pyrometers are the most effective way of collecting the required temperature data. They can provide continuous, accurate, and reliable data at an operating cost lower than that which would likely result from effective manual data collection. As a result, the requirement for installation of this equipment is retained in the enclosed permit.

If you wish to appeal any of the conditions or limitations contained in the permit, you may request a hearing before the Environmental Quality Commission or its ~~authorized representative~~, pursuant to OAR, Chapter 340, Divisions 14-025(5), and 11-005 through 11-140, and ORS Chapter 183. If you have any questions, please contact John Odisio at 229-5057.

You are urged to carefully read the permit and to take all possible steps to comply with the conditions contained therein so as to minimize degradation to the environment of Oregon.

Sincerely,

Lloyd Kostow, Manager
Program Operations
Air Quality

WS:s
AS113
Enclosure

cc: Southwest Regional Office
Coos County Branch Office
EPA

ATTACHMENT A-9

BROOKINGS ENERGY FACILITY
BOX 1240
BROOKINGS, OR 97444

DISCHARGE PERMIT NO8-0039

FRED HANSEN, DIRECTOR
P O BOX 1760
PORTLAND, OR 97207

DEAR SIR:

DURING THE PAST SEVERAL WEEEKS WE HAVE BEEN COMMUNICATING WITH VARIOUS PERSONS IN YOUR AGENCY BOTH BY LETTER AND BY TELEPHONE CONCERNING OUR DISCHARGE PERMIT NO. 08-0039. IN REPLY TO A LETTER FROM LLOYD KASTOW DATED APRIL 4, 1984 WE SUBMITTED CERTAIN COMMENTS WITH REGARD TO THE ABOVE MENTIONED PERMIT [COMMENTS ATTACHED]. [redacted] AND THE [redacted]. ALL OF THESE COMMENTS [redacted] OF THE PROPOSED PERMIT. AS WRITTEN, THE PROPOSED PERMIT REQUIRED CONTINUOUS RECORDING PYRO-METERS [PG 3, PP 8, 10]. ALL THOSE COMMENTING FROM THIS AREA REQUEST-ED THAT BEF BE ALLOWED TO MANUALLY RECORD EXHAUST TEMPERATURES. WE RECEIVED RENEWAL OF OUR PERMIT NO. 08-0039 WITH AN ATTACHED LETTER FROM MR. KOSTOW DATED MAY 25, 1984. THIS LETTER DENIED THE REQUESTS, RETAINING PP 8 AND 10 IN THE PERMIT.

WE DO NOT FEEL THAT THOSE SPECIFIC CONDITIONS SHOULD BE A PART OF THIS RENEWED PERMIT. PRIOR TO JANUARY 1, 1983, AS A CONCLUSION TO NEGOTIA-TIONS WITH AIR QUALITY OFFICIALS, OUR PERMIT WAS AMENDED ALLOWING US TO MANUALLY MONITOR AND RECORD THE UPPER AND LOWER CHAMBER TEMPERATURE AT SPECIFIED TIMES AND REPORT THEM ANNUALLY. WE ARE REQUESTING THAT YOU, AS THE [redacted], CONSIDER OUR REQUEST AND GRANT THE [redacted]. SOME REASONS FOR THIS REQUEST CAN BE FOUND IN OUR LETTER OF MAY 14 TO MR. KOSTOW [COPY ATTACHED]. WE HAVE ESPECIALLY MARKED SOME STATEMENTS ON THAT COPY. WE ARE SUPPLYING ADDITIONAL INFORMATION AND EXPLANATION AS FOLLOWS:

[redacted]. THIS HAS BEEN AT LARGE INITIAL EXPENSE AS WELL AS LARGE CONTINUING OPERATION EXPENSE TO BOTH THE COUNTY AND THE OPERATORS. ONLY FIVE YEARS AGO ALL WASTE DISPOSAL IN THE COUNTY WAS IN OPEN BURNING DUMPS ["MATCH IN THE CANYON METHOD"]. THEY WERE ALWAYS FILLED WITH SMOKE, WASTE PILES PROVIDING A BREEDING PLACE FOR RATS, SKUNKS, AND ALL OTHER TYPES OF VECTORS. [redacted] CURRY COUNTY [redacted] WE ARE PROUD OF THESE ACCOMPLISHMENTS. EVERY RESOURCE THAT WE AND THE COUNTY CAN AFFORD IS BEING USED TO MAINTAIN A HIGH LEVEL OPERATION. FROM OUR VIEWPOINT, THE [redacted] IS EXTREMELY UNWISE, [redacted]. WHAT WE NEED IS SOME "BREATHING ROOM" TO [redacted].

2. THE INCINERATOR PLANT HAS BEEN IN OPERATION FOR ABOUT FIVE YEARS WITH NO APPRECIABLE COMPLAINT FROM RESIDENTS IN THE AREA OF THE PLANT. SOME COMPLAINTS ABOUT ODOR AND SMOKE REGISTERED JUST AFTER OUR STARTUP WERE TRACED TO ILLEGAL OPEN BURNING BY RESIDENTS IN THE GENERAL AREA. MANY RESIDENTS OF THE AREA DO NOT EVEN KNOW THE LOCATION OF THE PLANT.

3. [redacted] TO KEEP EMISSIONS AT A MINIMUM BY [redacted] IN THE MACHINES. THIS IS ACCOMPLISHED BY [redacted].

4. DEQ PERSONNEL INSPECT THE PLANT REGULARLY AND CHECK OPERATING TEMPERATURES OF BOTH THE UPPER AND LOWER CHAMBERS. THESE INSPECTIONS [redacted].

5. WE WERE CRITICIZED BY MR. KOSTOW FOR NOT ATTENDING PUBLIC HEARING HELD LAST NOVEMBER CONCERNING RULES FOR MODULAR PLANTS LIKE OURS. WE WERE NOTIFIED OF THE MEETINGS, HOWEVER, THE MATERIAL SENT TO US AND [redacted] AND WE RECALL [redacted]. SINCE THE EMPHASIS WAS ON RELAXATION OF RULES WE SAW NO NEED TO COMMENT AT THOSE HEARINGS.

WE UNDERSTAND THAT ACCORDING TO DEQ RULES WE NEED TO REQUEST A HEARING FROM THE AUTHORIZED REPRESENTATIVE OF THE AGENCY WITHIN A CERTAIN TIME FRAME. AS THAT REPRESENTATIVE, WE TRUST THAT YOU WILL REVIEW THIS INFORMATION AND TAKE WHAT ACTION IS NECESSARY SO THAT WE CAN CONTINUE TO OPERATE UNDER OUR PERMIT WITH THE SAME PROCEDURES AS IN THE PAST WITH REGARD TO TEMPERATURE MONITORING, RECORDING, AND REPORTING. WE UNDERSTAND THAT THIS LETTER MAILED JUNE 3, 1984 DOES MEET THAT DEADLINE FOR APPEAL.

SINCERELY,

PETE SMART, PRESIDENT
BROOKINGS ENERGY FACILITY, INC.

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

June 22, 1984

Mr. Pete Smart, President
Brookings Energy Facility, Inc.
PO Box 1240
Brookings, OR 97444

Re: Air Contaminant Discharge
Permit 06-0039

Dear Mr. Smart:

I have reviewed your letter of June 9, 1984 regarding Air Contaminant Discharge Permit 08-0039 for the Brookings Energy Facility. The letter requested that an amendment or variance be made regarding the permit requirement for continuous temperature recorders.

As the Air Quality staff has informed you, under Oregon Adminsitrative Rules (OAR) 340-14-025(5), a permittee can appeal the conditions or limitations of a permit by presenting to the Director a written request for a hearing. However, deletion of permit conditions 8 and 10 regarding recording pyrometers would be a violation of OAR 340-21-027(2), and is consequently beyond the authority of the Director. An exemption from the rules would require a variance, which can only be granted by the Environmental Quality Commission.

The Commission considers specific variance requests in accordance with Oregon Regulatory Statute 468.345 (enclosed). A permittee must demonstrate that compliance with the rule being contested is inappropriate for one of the special circumstances listed in subsections (a) through (d) of the statute. If the variance request is being justified in part or in whole on financial grounds, cost information and other economic data must be provided.

Please note that variances may be limited in time. Historically, the Commission has granted variances only in cases where the permittee demonstrates a need for additional time to meet the permit conditions.

Condition 10 of permit 08-0039 contains a timetable for installation of the recording pyrometer. This condition is enforceable unless a request for a variance is pending before the Commission. Any request for a variance should be presented to the Commission, at the address given above, with the time frame required for submittal of pyrometer plans and specifications.

Sincerely,

Fred Hansen
Director

FH:s
AS173
Enclosure
cc: Air Quality Division
Southwest Regional Office

DEQ/LRAPA Guidance to Applicants for
Air Quality Control Variances

State statutes authorize the EQC and LRAPA Board of Directors to deny, grant, modify or revoke specific variances to air contamination rules and standards, subject to the conditions and limitations of ORS 468.345.

The following requirements and criteria are applicable to all air program variance requests:

First, any variance must meet the conditions of ORS 468.345. If the Commission or Board approves a variance request, it must make a finding, based on the evidence presented, that strict compliance is inappropriate due to any of the conditions below:

a) Conditions exist that are beyond the control of the persons granted such variance: or

b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause; or

c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or

d) No other alternative facility or method of handling is yet available.

The information, data, reports and documentations supporting at least one of these specific assertions must be submitted by the applicant.

If economic hardship is the basis for requesting a variance, to the extent practicable, the following information should be submitted:

1. Complete copy of most recent financial statement.

   At a minimum, this should include a balance sheet and income statement, but any related schedules also should be obtained. (e.g., Statement of changes in financial position, supplemental schedule of administrative expenses, etc.)

2. Complete copies of financial statements for the prior two or three years.

3. Copies of tax returns for the prior two or three years.

4. Detail of ownership. (i.e., Is company owned by a single individual; a family; a wide variety of individuals; another company?)

5. Do the owners of the company in question own any other related companies/ If so, obtain financial statements and tax returns for all such entities.

6. Name and phone number of company's accountant or chief financial officer.

7. Name and phone number of company's outside accountants.

8. A clear, written evaluation and statement by the applicant of the financial consequences of failure to obtain the requested variance.

Secondly, in considering the merits of the request, the Commission or Board must evaluate the equities involved, the advantages and disadvantages to residents affected by the emissions, and to the person conducting the activity for which the variance is sought. The following criteria are typically used to make that evaluation:

a) Demonstration of good-faith effort to comply prior to applying for the variance;

b) How the situation of the applicant presents an unusual hardship in comparison with similar sources in the same general area;

c) What alternate or interim control measures are to be implemented throughout the variance period;

d) Whether the variance is properly conditioned to protect air quality to the fullest extent, including requirements for inter-

mediate compliance steps, and submittal of plans, specifications and progress reports;

e) If the requested variance period is the shortest time practicable and compliance will be achieved at the end of it.

The information, data, reports and documentation pertaining to the operation for which the variance is sought must be submitted by the applicant.

The DEQ, or LRAPA staff report will also address these criteria and air quality impact, public health and welfare impacts, equities, advantages and disadvantages.

Under LRAPA rules, variances cannot be for a period of time longer than twelve months from the date of issuance.

Requests for variance must be filed, in writing, with the appropriate DEQ Regional Office, DEQ Headquarters or LRAPA Offices. The information contained in the written request should address the appropriate requirements and criteria listed above as fully as practicable. The request should include supporting documents, data, reports, or correspondence sufficient in scope to allow the Commisison/Board to make a specific finding as required by ORS 468.345 and to rule on the request.

The DEQ or LRAPA Director will review the request and, based on the information and supporting material contained therein, will present recommendations including, but not limited to, approval, conditional approval, or denial of the request. The requestor should be prepared to appear at a regularly scheduled EQC or LRAPA Board meeting to support his request to the Commission or Board.

ATTACHMENT B

Permit Number: 08-0039
Expiration Date: 2-1-89
Page 1 of 5 Pages

AIR CONTAMINANT DISCHARGE PERMIT

Department of Environmental Quality
522 Southwest 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:

Brookings Energy Facility, Inc.
P.O. Box 1240
Brookings, OR 97415

INFORMATION RELIED UPON:

Application No. 9047

Date Received: 1-13-84

PLANT SITE:

3/4 of a mile off of Highway 101
on Carpenterville Road,
Brookings, Oregon

ISSUED BY DEPARTMENT OF ENVIRONMENTAL QUALITY

Fred Hansen

FRED HANSEN, Director

May 25, 1984
Dated

Source(s) Permitted to Discharge Air Contaminants:

Name of Air Contaminant Source	Standard Industry Code as Listed
Incinerator - 1000 pounds per hour and greater capacity	4953

Permitted Activities

The permittee is herewith allowed to discharge exhaust gases containing air contaminants only in accordance with the permit application and the limitations contained in this permit. Until such time as this permit expires or is modified or revoked, the permittee is herewith allowed to discharge exhaust gases from those processes and activities directly related or associated thereto in accordance with the requirements, limitations, and conditions of this permit from the air contaminant source(s) listed above.

The specific listing of requirements, limitations and conditions contained herein does not relieve the permittee from complying with all other rules and standards of the Department, nor does it allow significant levels of emissions of air contaminants not limited in this permit or contained in the permit application.

Performance Standards

1. The permittee shall at all times maintain and operate all air contaminant generating processes and all contaminant control equipment at full efficiency and effectiveness, such that the emissions of air contaminants are kept at the lowest practicable levels.

2. Particulate emissions from each incinerator shall not exceed 0.2 grains per standard cubic foot corrected to 12% CO_2.

3. Visible emissions from either incinerator shall not equal or exceed an opacity of twenty percent (20%) for a period aggregating more than three (3) minutes in any one (1) hour.

4. The permittee shall not use any distillate fuel oil containing more than:

   a. 0.3 percent sulfur by weight for ASTM Grade 1.

   b. 0.5 percent sulfur by weight for ASTM Grade 2.

5. The permittee shall minimize fugitive dust emission by:

   a. Oiling, watering, or paving, or otherwise treating vehicular traffic areas of the plant site under the control of the permittee.

   b. Soaking the ash from the incinerators with water prior to disposal in the landfill trench.

Plant Site Emission Limit (PSEL)

6. Emissions from the sources listed shall not exceed the following:

Source	Particulate lbs/hr	Particulate tons/yr	CO tons/yr	NO_x tons/yr	VOC tons/yr	SO_x tons/yr
Burner #1	10.2	11.8	59	5.1	2.6	4.2
Burner #2	10.2	11.8	59	5.1	2.6	4.2
Fugitives	Negligible		-	-	-	-
Totals	20.4	23.7	118	10.1	5.1	8.5

Special Conditions

7. The permittee shall maintain minimum exhaust gas temperatures and residence times as follows:

a. Prior to the initial charge of wastes and for the first 30 minutes of incineration of the initial charge, 1600° F for 1 second.

b. For the period beginning 30 minutes after the initial charge of wastes to the time of the final charge, 1800° F for 1 second or 1700° F for 2 seconds or a temperature and corresponding residence time linearly interpolated between the aforementioned two points.

c. For a 2 hour period after the final charge of waste, 1600° F for 1 second.

8. The permittee shall install, calibrate, maintain, and operate according to manufacturer's specifications a continuous recording pyrometer. The pyrometer shall be located at a point within the incinerator exhaust system which has been approved by the Department.

9. The permittee shall not incinerate any materials which may emit potentially poisonous or toxic substances. Materials which are not to be incinerated should include any significant identifiable quantities of pesticides and herbicides, electrial switching gear, or heavy metals such as zinc, cadmium, lead and mercury.

Compliance Demonstration Schedule

10. The permittee shall provide for recording pyrometers as specified in Condition 8 in accordance with the following schedule:

a. By no later than 60 days after issuance of this permit, the permittee shall submit detailed plans and specifications, to the Department of Environmental Quality for review and approval.

b. By no later than 120 days after issuance of this permit, the permittee shall complete the installation of and place in operation the recording pyrometers.

c. Within seven (7) days after item b above is completed, the permittee shall inform the Department in writing that the item has been accomplished.

Monitoring and Reporting

11. The permittee shall effectively inspect and monitor the operation and maintenance of the plant and associated air contaminant control facilities. A record of all such data shall be maintained for a period of two years and be available at the plant site at all times for inspection by the authorized representatives of the Department. At least the following parameters shall be monitored and recorded at the indicated interval.

Parameter	Minimum Monitoring Frequency
a. The amount of solid waste incinerated	Monthly
b. Fuel consumption (total)	Monthly
c. Secondary chamber temperature	Continuous

12. The permittee shall report to the Department by January 15 of each year this permit is in effect the following information for the preceding calendar year:

    a. Quantity of solid waste incinerated on annual basis.

    b. Maximum quantity of solid waste incinerated per day (calculated or actual).

    c. Quantities and types of fuels used on annual basis.

    d. Maximum quantity of fuel used per day.

Fee Schedule

13. The Annual Compliance Determination Fee for this permit is due on January 1 of each year this permit is in effect. An invoice indicating the amount, as determined by Department regulations, will be mailed prior to the above date.

General Conditions and Disclaimers

G1. The permittee shall allow Department of Environmental Quality representatives access to the plant site and pertinent records at all reasonable times for the purposes of making inspections, surveys, collecting samples, obtaining data, reviewing and copying air contaminant emission discharge records and otherwise conducting all necessary functions related to this permit.

G2. The permittee is prohibited from conducting open burning except as may be allowed by OAR Chapter 340, Sections 23-025 through 23-115.

G3. The permittee shall notify the Department in writing using a Departmental "Notice of Construction" form, or Permit Application Form, and obtain written approval before:

a. Constructing or installing any new source of air contaminant emissions, including air pollution control equipment, or

b. Modifying or altering an existing source that may significantly affect the emission of air contaminants, or

c. Making any physical change which increases emissions, or

d. Changing the method of operation, the process, or the fuel use, or increasing the normal hours of operation to levels above those contained in the permit application and reflected in this permit and which result in increased emissions.

G4. The permittee shall notify the Department at least 24 hours in advance of any planned shutdown of air pollution control equipment for scheduled maintenance that may cause a violation of applicable standards.

G5. The permittee shall notify the Department by telephone or in person within one (1) hour of any malfunction of air pollution control equipment or other upset condition that may cause a violation of the applicable standards or within one (1) hour of the time the permittee knew or reasonably should have known of its occurrence. Such notice shall include the nature and quantity of the increased emissions that have occurred and the expected duration of the breakdown. The Departmental telephone numbers are:

Portland	229-5263	Medford	776-6010
Salem	378-8240	Pendleton	276-4063
Bend	388-6146		

G6. The permittee shall at all times conduct dust suppression measures to meet the requirements set forth in "Fugitive Emissions" and "Nuisance Conditions" in OAR Chapter 340, Sections 21-050 through 21-060.

G7. Application for a modification of this permit must be submitted not less than 60 days prior to the source modification. A Filing Fee and an Application Processing Fee must be submitted with an application for the permit modification.

G8. Application for renewal of this permit must be submitted not less than 60 days prior to the permit expiration date. A Filing Fee and an Annual Compliance Determination Fee must be submitted with the application for the permit renewal.

G9. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

G10. This permit is subject to revocation for cause as provided by law.

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

October 4, 1983

Board of Commissioners
Curry County
Curry County Courthouse
Gold Beach, OR 97444

Re: Public Hearing on Proposed
Coastal Incinerator Rule

Gentlemen:

Enclosed is the announcement of a public hearing on a proposal by the Department of Environmental Quality to adjust its rules for small municipal waste incinerators operated on the coast of Oregon.

The hearing will be considered for authorization at the October 7, 1983 Environmental Quality Commission meeting to be held in Portland at 9:00 a.m. at 522 S.W. 5th, room 1400.

The hearing is set for November 21, 1983 at 12:00 noon, the Monday of Thanksgiving week, in the City Council Chambers at Seaside's City Hall, 851 Broadway. See ATTACHMENT B of the enclosed for details. If you desire to testify at Seaside after 2:00 p.m., please notify the undersigned so that the hearing will not be adjourned before you are able to testify.

Your interest is understood and your comments will be taken into consideration.

Sincerely,

P.B.

Peter B. Bosserman
Senior Environmental Engineer
Air Quality Division

PBB:a
AA3885
Enclosure: Complete Proposed Rule Package
(Agenda Item D)

cc: Coos Bay Office

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

October 4, 1983

Pete Smart
Brookings Energy Facility
Box 1240
Brookings, OR 97415

Re: Public Hearing on Proposed
Coastal Incinerator Rule

Gentlemen:

Enclosed is the announcement of a public hearing on a proposal by the Department of Environmental Quality to adjust its rules for small municipal waste incinerators operated on the coast of Oregon.

The hearing will be considered for authorization at the October 7, 1983 Environmental Quality Commission meeting to be held in Portland at 9:00 a.m. at 522 S.W. 5th, room 1400.

The hearing is set for November 21, 1983 at 12:00 noon, the Monday of Thanksgiving week, in the City Council Chambers at Seaside's City Hall, 851 Broadway. See ATTACHMENT B of the enclosed for details. If you desire to testify at Seaside after 2:00 p.m., please notify the undersigned so that the hearing will not be adjourned before you are able to testify.

Your interest is understood and your comments will be taken into consideration.

Sincerely,

Peter B. Bosserman
Senior Environmental Engineer
Air Quality Division

PBB:a
AA3885
Enclosure: Complete Proposed Rule Package
(Agenda Item D)

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

June 22, 1984

Mr. Pete Smart, President
Brookings Energy Facility, Inc.
PO Box 1240
Brookings, OR 97444

Re: Air Contaminant Discharge
Permit 08-0039

Dear Mr. Smart:

I have reviewed your letter of June 9, 1984 regarding Air Contaminant Discharge Permit 08-0039 for the Brookings Energy Facility. The letter requested that an amendment or variance be made regarding the permit requirement for continuous temperature recorders.

As the Air Quality staff has informed you, under Oregon Administrative Rules (OAR) 340-14-025(5), a permittee can appeal the conditions or limitations of a permit by presenting to the Director a written request for a hearing. However, deletion of permit conditions 8 and 10 regarding recording pyrometers would be a violation of OAR 340-21-027(2), and is consequently beyond the authority of the Director. An exemption from the rules would require a variance, which can only be granted by the Environmental Quality Commission.

The Commission considers specific variance requests in accordance with Oregon Regulatory Statute 468.345 (enclosed). A permittee must demonstrate that compliance with the rule being contested is inappropriate for one of the special circumstances listed in subsections (a) through (d) of the statute. If the variance request is being justified in part or in whole on financial grounds, cost information and other economic data must be provided.

Please note that variances may be limited in time. Historically, the Commission has granted variances only in cases where the permittee demonstrates a need for additional time to meet the permit conditions.

Condition 10 of permit 08-0039 contains a timetable for installation of the recording pyrometer. This condition is enforceable unless a request for a variance is pending before the Commission. Any request for a variance should be presented to the Commission, at the address given above, with the time frame required for submittal of pyrometer plans and specifications.

Sincerely,

Original Signed by
Fred Hansen

JUN 2 8 1984

Fred Hansen
Director

FH:s
AS173
Enclosure
cc: Air Quality Division
Southwest Regional Office

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

August 3, 1984

Mr. Pete Smart, President
Brookings Energy Facility
PO Box 1240
Brookings, OR 97415

Dear Mr. Smart:

Your request for a variance from certain conditions of Air Contaminant Discharge Permit 08-0039 has been received by the Department. The request will be submitted to the Environmental Quality Commission for the September 14, 1984 meeting in Bend. You will be given the opportunity to provide comments to the Commission at that time.

A report is enclosed which explains the process used by the Commission to evaluate a variance request. It also highlights the responsibilities of the applicant for providing supporting information. Pages 2 and 3 detail the information which should be submitted if the basis for the variance request is economic hardship. Note that Item 8 requires an explanation of the financial consequences of not obtaining the variance, i.e., the cost of obtaining and installing the required equipment. The letter of June 22, 1984 from Fred Hansen, Director of DEQ, to you mentioned that this information is required.

You have also cited 468.345 (1)(b) in the variance request. This subsection applies to "special physical conditions." It would be helpful if you could document precisely what special physical conditions exist at your facility. In other words, what is the space restriction or other physical problem which prevents installation of the required equipment?

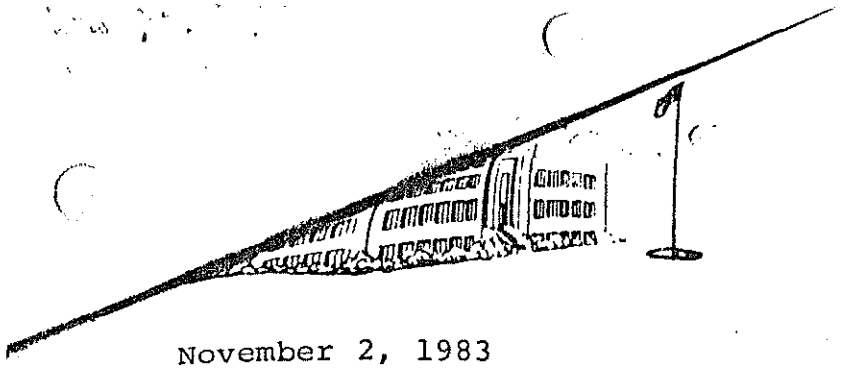
The information just described must be available to the Commission if they are to make an informed decision on your request. Failure to submit the information would not seem to be to your benefit. Because of the scheduling deadlines involved, it is important that we receive any further input from you by August 15, 1984.

If you have any further questions, please contact Wendy Sims of the Air Quality Division at 229-5259 or Reuben Kretzschmar of the Coos Bay Branch Office at 269-2721.

Sincerely,

Lloyd Kostow, Manager
Program Operations
Air Quality Division

WS:s
AS351
Enclosure
cc: Coos Bay Branch Office
Southwest Region Office



County of Coos

HIGHWAY DEPARTMENT
COOS COUNTY COURTHOUSE
COQUILLE, OREGON 97423

November 2, 1983

Department of Environmental Quality
Attn: Peter B. Bosserman
Senior Environmental Engineer
Air Quality Division
522 S.W. Fifth Avenue
Box 1760
Portland OR 97207

RE: Proposed Amended Rule

Dear Mr. Bosserman:

The Coos County Solid Waste Department supports the proposed change in the emission limits and requirements. The increase to .2 grains per cubic foot will allow us to operate without a variance to the permit.

The proposed requirements regarding temperature and time should present no problems as we are currently operating at these levels. The units are now equipped with pyrometers but not recorders.

A requirement for continuous recording would necessitate purchasing and installing this extra equipment. While this is not a great cost (est. of $500.00 per unit x 4) it along with the continuing service and maintenance, does add another cost to the facility. We would therefore propose a requirement for the plant operator to log the temperatures, each 1/2 hour on start up and shut down, each hour during continuous operation.

Sincerely,
COOS COUNTY HWY DEPT.

J. R. Perkins,
Public Works Director

JRP/de

c.c. County Counsel
Board of Commissioners

Brookings Energy Facility
Post Office Box 1240
Brookings, OR 97415

August 13, 1984

Environmental Quality Commission
Post Office Box 1760
Portland, OR 97207

Dear Commissioners:

This letter is continuing our urgent request for a variance as described in our letter of July 14, 1984 (attached as Exhibit A).

Due to being allowed only a few days to submit certain information in preparation for your meeting September 14, 1984 in Bend (Exhibit K) we are forced to abbreviate this letter by referring to prior correspondence by "Exhibits." (copies all attached) We do this since we have no way to know that you have all the information we have sent previously.

Our request is being made on the basis of (1) Common sense, (2) ORS 468.345 subsections 1-4, and (3) Economic Hardship. These three items will be addressed individually although at certain points the discussion will overlap.

(1)Common sense: It is unreasonable to assume that the legislature meeting in air conditioned rooms in Salem or D E Q staff working in similar quarters can know more about the quality of the air in rural Curry County than the people who live, work, and breathe here every day. This facility has been in operation for five years yet no visitor to Brookings from anywhere has ever registered any complaint about pollution of the air. We see no need to change something that is working so well. (See Exhibits C and D). Also see page 2, Exhibit A, underlined in red. Please also note marked sections of Exhibit G. We repeat our statement of July 14, 1984 (borrowed from ORS 358.345); We believe that strict compliance to the rules of D E Q in this case to be unreasonable, burdensome, and impractical. . . "

(2)ORS 368.345: This statute gives authority to grant variances to OAR 340-21-027 to the Evironmental Quality Commission if it finds strict compliance to be inappropriate. We believe subsection (1)(b) to apply particularly to Curry County's position and situation, with regard to both "common sense" and "economic hardship": see Exhibit B. Mr Kostow, in his letter (Exhibit K) interprets "physical" to mean "space restriction". We do not agree with that limited definition of "physical"condition." It could also be applied to environmentsl conditions which are also physical.
Subsection (4) has a bearing on Curry county&s situation in that it obligates the body authorized to grant variances to give consideration to equities invelved and to weigh advantages and disadvantages to residents of the area. At this point the discussion of ORS 368.345 certainly crosses into the economic situation.

(5) Economic hardship: As Commissioner Mayea explains in his letter to D E Q (Exhibit C) the arrangement for solid waste disposal in Curry County is a cooperative effort of public and private entities. At present county funds pay about 70% of solid waste disposal costs, meaning that increased costs could affect costs by all residents of the county. The impending shut-down of one of the largest employers in Curry County will make increased costs in the future even harder to take. As now operating, the system is doing the job well, particularly when compared to the situation only a few years ago (see Exhibit I, page 1-red marked). Brookings Energy Facility has continually operated a a loss even with everyone involved "chipping in". Anyone who has closely observed the operation can testify that it is run using the least expense as possible. If A N Y expense is added, everyone- - - Curry residents, Curry County Agencies, and operators of B E F will feel it. A negative margin of profit simply means that there is no room for any non-profit making expenditures. We know that the added equipment we are being asked to install and maintain and operate is not designed or expected to make any profit for anybody.

Since our time is limited (we work in solid waste disposal and do not have an office staff and secretaries), we will curtail our remarks here except to respectfully request that the commission carefully consider all the attached Exhibits. Our accountant is Jeff Kemp who may be reached at 247-7216 in Gold Beach. The County Commissioners can be reached in Gold Beach at 247-7011.

We will make every effort to be in attendance at your meeting in Bend although that could be difficult since we have no travel budget or replacement personnel for our everyday jobs. We have also asked county officials to attend.

Respectfully Yours,

Pete Smart

Pete Smart, President
Brookings Energy Facility

LIST OF ATTACHED EXHIBITS

		Location in Staff Report*
A.	letter to EQC from BEF-7/14/84	see Attachment A
B.	ORS 468.345	see Attachment A
C.	letter to DEQ from Curry County Commissioners-5/14/84	see Attachment A
D.	letter to DEQ from City of Brookings-5/25/84	see Attachment A
E.	letter to BEF from DEQ-4/4/84	see Attachment A
F.	page 3 of Permit #08-0039	Attachment B
G.	letter to DEQ from BEF-5/14/84	see Attachment A
H.	letter to BEF from DEQ-5/25/84	see Attachment A
I.	letter to DEQ (Hansen) from BEF-6/?/84	see Attachment A
J.	letter from DEQ to BEF-6/22/84	Attachment E
K.	letter from DEQ to BEF-8/3/84	Attachment F
L.	Earnings statement for BEF 1983	attached
M.	Detail of cost of purchase, installation, and maintenance did not reach us intime--can be supplied later	

* This column added by DEQ

Exhibit L

BROOKINGS ENERGY FACILITY
EARNINGS STATEMENT
1/ 1/83 TO 12/31/83

	QUARTER $	QUARTER %	YEAR-TO-DATE $	YEAR-TO-DATE %
REVENUE				
COUNTY ADVANCES	$ 57,179.57	63.3%	$ 228,409.21	75.9%
TIPPING FEES	32,396.66	35.9	71,450.78	23.7
CARDBOARD SALVAGE	790.32	0.9	1,104.08	0.4
TOTAL REVENUE	$ 90,366.55	100.0%	$ 300,964.07	100.0%
OPERATING EXPENSES				
WAGES & SALARIES EXP	$ 16,147.13	17.9%	$ 65,868.09	21.9%
PAYROLL TAXES EXP	1,388.85	1.5	6,580.21	2.2
SUPPLIES EXPENSE	1,038.98	1.1	1,639.16	0.5
REPAIRS-MAINTENANCE	6,130.71	6.8	2,941.03	1.0
ADVERTISING EXPENSE	48.01	0.1	58.01	0.0
UTILITIES EXPENSE	926.02	1.0	3,527.90	1.2
PROFESSIONAL FEES	729.00	0.8	1,804.00	0.6
VEHICLE EXPENSE	24.85	0.0	241.25	0.1
INSURANCE EXPENSE	2,042.69	2.3	7,270.02	2.4
TELEPHONE EXPENSE	1,154.39	1.3	2,432.00	0.8
DUES, LICENSES, FEES	340.00	0.4	360.00	0.1
PROPERTY TAXES EXP.	178.20	0.2	178.20	0.1
FACILITY LEASE $1331	5,324.00	5.9	17,303.00	5.7
OFFICE EXPENSE	15.10	0.0	85.84	0.0
TRAVEL EXPENSE			235.00	0.1
RENT EXPENSE	750.00	0.8	750.00	0.2
FUEL EXPENSE			16.09	0.
PROPANE	268.39	0.3	897.38	0.3
EMPLOYEE BENEFITS			600.00	0.2
HOUSING	750.00	0.8	2,970.00	1.0
LAND LEASE	1,350.00	1.5	5,400.00	1.8
TIRES	1,494.92	1.7	3,767.53	1.3
ORGANIZATION EXPENSE	(134.00)	0.1		
FREIGHT			353.92	0.1
TOTAL OPERATING EXPENSES	$ 39,967.24	44.2%	$ 125,278.63	41.6%
OPERATING PROFIT (LOSS)	$ 50,399.31	55.8%	$ 175,685.44	58.4%
OTHER INCOME				
SAIF DIVIDEND			$ 85.00	0.0%
W.C. DISPOSAL FEES	2,145.50	2.4	9,855.19	3.3
HORTON OVERCHARGE	6,501.00	7.2	6,501.00	2.2
TOTAL OTHER INCOME	$ 8,646.50	9.6%	$ 16,441.19	5.5%
OTHER EXPENSE				
INTEREST EXPENSE	$ 1,081.30	1.2%	$ 56,636.96	18.8%
BEF HAULING ASH	600.00	0.7	2,400.00	0.8
STATE EXCISE TAX	10.00	0.0	10.00	0.0
W.C. HAULING	1,525.00	1.7	6,100.00	2.0
W.C. LABOR	2,550.00	2.8	10,200.00	3.4
W.C. CAT WORK	1,625.00	1.8	6,500.00	2
W.C. SUPERVISION	675.00	0.7	2,700.00	0.
DEPRECIATION EXPENSE	28,195.00	31.2	112,780.00	37.5
ORGANIZATION EXP.	272.00	0.3	540.00	0.2
TOTAL OTHER EXPENSE	$ 36,533.30	40.4%	$ 197,866.96	65.7%
NET PROFIT (LOSS)	$ 22,512.51	24.9%	$ (5,740.33)	1.9%

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

SOUTHWEST REGION — Coos Bay Branch Office

490 NORTH SECOND STREET, COOS BAY, OREGON 97420 PHONE (503) 269-2721

WLS file

Attachment B

October 22, 1984

Pete Smart, President
Brookings Energy Facility
Post Office Box 1240
Brookings, Oregon 97415

RE: AQ-Curry County
Air Contaminant Discharge
Permit No. 08-0039

As you are aware, on September 14, 1984 the Environmental Quality Commission approved a modified variance for the Brookings Energy Facility. An addendum to the Air Contaminant Discharge Permit for the Facility will be issued shortly to reflect the variance conditions.

Alternative 2, as adopted by the Commission, allows for manual recording of incinerator temperatures for a period of one year. At the end of that year, the variance will be re-evaluated by the Commission. As described on Page 5 of Agenda Item J, September 14, 1984, the staff report regarding your variance, Alternative 2 requires that the temperatures be recorded at fifteen-minute intervals during combustion of waste, except during warm-up, when the recording interval is to be five minutes. Since the variance went into effect upon approval by the Commission, manual temperature recording should have commenced immediately and should now be in practice.

The enclosed form is to be used for the required temperature recordings. As noted on the form, a copy of each completed form must be maintained at the Brookings Energy Facility until further notice. These forms shall be available for inspection by authorized Department personnel at all times. The original copy of each completed form shall be sent to the Department by the fifth day of the following month. Directions for completing the form are included on the temperature record.

If you have questions on the conditions or requirements of the variance, please contact our office.

Ruben Kretzschmar
Branch Manager

RK:dmr
encls
cc: Air Quality
Southwest Region Office

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
OCT 24 1984
AIR QUALITY CONTROL

DEQ/RO-601

61

BROOKINGS ENERGY FACILITY
Box 1240
Brookings, OR 97415

file 08-0039

Attachment C

LLoyd Kostow
Dept. of Environmental Quality
Box 1760
Portland, OR 97207

November 9, 1984

Dear Sir:

We have received your letter of October 25, 1984 with the proposed addendum to Air Contaminant Discharge Permit No. 08-0039. You stated that the addendum becomes effective 20 days from the date of the letter unless comments are received by the department.

We do have some comments to make concerning the addendum. We were appalled when we read the detail of the addendum. We were present at the E Q C meeting in Bend when the variance was granted. This addendum is not recognizable as what we thought was granted. We were not told of a lengthy staff report which included on Page 5 an "Alternative 2". We received a letter from the Coos Bay office telling us of this "alternative 2" and how that it described our variance. Why wasn't that information presented for our information at the meeting? If it had been we would have insisted that it be discussed then. We still do not know anything else of what is in the report. The requirements of recording temperatures at "5" and "15" minute intervals and for "2 hours" after the final charge of waste is loaded are unbelievable. These details successfully defeat the whole purpose of the requested variance. We had in mind something more like two recordings in the first hour and then a recording every 2 hours until the last waste is loaded. Anyone who really knows what is involved in operation of these incinerators could tell by a graph formed from those recordings what was going on.

We are hopeful that a compromise can be worked out with the staff. We can not even start to operate by those unworkable detailed rules.

Truly Yours,

Pete Smart

Pete Smart, President
Brookings Energy Facility

PS:tvs
cc:Coos Bay Branch Office
Curry County Commissioners

Permit Number: 08-0039
Expiration Date: 2-1-89

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:

Brookings Energy Facility, Inc.
PO Box 1240
Brookings, OR 97415

REFERENCE INFORMATION:

Enviromental Quality Commission
action of September 14, 1984

PLANT SITE:

3/4 of a mile off of Highway 101
on Carpenterville Road,
Brookings, Oregon

ISSUED BY DEPARTMENT OF ENVIRONMENTAL QUALITY

Fred Hansen, Director

October 25, 1984
Date

ADDENDUM NO. 1

In accordance with OAR Chapter 340, Section 14-040, Air Contaminant Discharge Permit No. 08-0039, Conditions 8 and 10 now read as follows:

8. The permittee shall provide a record of the operating temperature of each unit as described below:

   a. The permittee shall maintain a written record of the temperature in the secondary chamber of each unit during the combustion of waste, starting at the time when the initial charge is loaded and continuing until at least 2.0 hours have elapsed since the final charge was loaded. Temperatures must be recorded at each incinerator at five minute intervals during warm-up and at fifteen minute intervals during the combustion phase. The record shall be maintained on forms provided by the Department. The original copy of each completed form shall be sent to the Department by the 5th day of the following month. A copy of the original shall be maintained at the plant site until futher notice and shall be available at all times for inspection by the authorized representatives of the Department.

b. At a meeting on or before its first meeting after September 14, 1985, the Environmental Quality Commission will review the performance of the permittee under Condition 8(a). At that time, the Commission may continue, alter, or revoke the variance from OAR 340-21-027(2), granted on September 14, 1984. A revocation of the variance would result in the permittee being required to install, calibrate, maintain and operate a continuous recording pyrometer for each incinerator.

10. Deleted.

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

December 10, 1984

Mr. Pete Smart, President
Brookings Energy Facility
PO Box 1240
Brookings, OR 97415

Re: Air Contaminant Discharge
Permit No. 08-0039

Dear Mr. Smart:

Having reviewed your letter of November 9, 1984 to Mr. Lloyd Kostow, the Air Quality Division finds no reason to delay implementation of the addendum to Air Contaminant Discharge Permit (ACDP) 08-0039 issued on October 25, 1984. Failure to immediately implement the temperature recording requirements of the permit addendum will be considered to be a permit violation by the Department.

On January 6, 1984, after a public hearing was announced and conducted, the Environmental Quality Commission (EQC) adopted Oregon Administrative Rule (OAR) 340-21-027(2), which requires the installation and operation of a continuous temperature recorder and operation at specified temperatures for each municipal waste incinerator in a coastal county. On May 25, 1984, ACDP 08-0039 for the Brookings Energy Facility (BEF) was renewed with the requirements for maintaining minimum operating temperatures and installing temperature recorders. At your request, on September 14, 1984, the EQC granted BEF a temporary variance from the temperature recorder requirement provided that temperature recording be conducted manually at 5 minute intervals during warm-up and at 15 minute intervals during the combustion phase.

A draft permit addendum reflecting the variance approval by the EQC was sent to you on October 25, 1984. Your comments on the draft permit were received on November 15, 1984, and have been reviewed by the Air Quality Division. You acknowledge that you were present at the September 14, 1984 EQC meeting at which your variance request was considered. A partial transcription of the tape made during the EQC's consideration of that request is enclosed. It clearly shows that the variance approved by the EQC requires that temperatures be recorded at 5 minute intervals during warm-up and at 15 minute intervals during the combustion phase. A copy of the staff report describing Alternative 2 was provided for you. If you have not retained it for your files, an additional copy can be made available.

Mr. Ruben Kretzschmar of the Coos Bay office of DEQ will be in contact with you to verify the compliance status of the Brookings Energy Facility. Enforcement action will be initiated by the Department if the facility is not found to be in compliance. If you no longer wish to conduct manual temperature recording, you do have the option of installing the temperature recording equipment required under OAR 340-21-027(2).

Sincerely,

Original Signed By
Fred Hansen

DEC 7 1984

Fred Hansen
Director

FH:s
AS833
Enclosure
cc: Environmental Quality Commission
Curry County Commissioners
Coos Bay Branch Office, DEQ
Southwest Region Office, DEQ
Solid Waste Division, DEQ
Air Quality Division, DEQ

Attachment E

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

SOUTHWEST REGION — Coos Bay Branch Office

490 NORTH SECOND STREET, COOS BAY, OREGON 97420 PHONE (503) 269-2721

July 23, 1985

CERTIFIED MAIL NO. P489681890
RETURN RECEIPT REQUESTED

Pete Smart, President
Brookings Energy Facility, Inc.
Post Office Box 1240
Brookings, Oregon 97415

John Mayea, Chairman
Curry County Commissioners
Post Office Box 746
Gold Beach, Oregon 97444

RE: AQ-Curry County
Brookings Energy Facility
Permit No. 08-0039
NOV-AQ-SWR/C-85-72

On June 19, 1985, the Department conducted an inspection of the modular incinerators serving Brookings Energy Facility, Inc. near Brookings, Oregon. The purpose of this visit was to assess the extent of compliance with the Air Contaminant Discharge Permit (ACDP) issued for this facility. The report prepared as a result of this visit is enclosed for your information and action.

At the time of this inspection the two modular incinerators were functioning in compliance with the visual opacity requirements contained in the Air Contaminant Discharge Permit. During this visit it was determined the facility was not operating in compliance with other permit requirements, specifically:

1) Upon inspecting the municipal garbage to be incinerated it was noted that medical laboratory waste was commingled with the refuse. These potentially pathogenic wastes are expressly prohibited in Schedule A(1) of the Solid Waste Disposal Permit (No. 321) issued for this facility, as well as ACDP Condition 9. We require that your company take the appropriate action to ensure these wastes are not disposed of at this site;

2) A review of the monitoring reports indicates initial start up temperatures are not being met pursuant to Special Condition 7(a). Initial start up temperatures prior to the initial charge of wastes and for the first 30 minutes of incineration are significantly less than the required 1600°F for 1 second in the secondary chamber.

   In the past you have contended this permit condition cannot be met due to your method of operation and the physical limitations of incinerators. The Department has taken your position on this matter under advisement, and is currently evaluating the feasibility of this

requirement. Until a final determination is made this permit condition remains in effect. Therefore, we require your company make every possible effort to comply with the condition;

3) At the time of this inspection the two consumat CS-1200 incinerators were functioning at the required temperature in the secondary chamber. We note, however, that a review of the facility's monitoring records reveals the facility is not in compliance with this requirement during the extended start-up phase of the burn.

   ACDP Special Condition 7(G) states, "For the period beginning 30 minutes after the initial charge of wastes to the time of final charge, 1800°F for 1 second or 1700°F for 2 seconds. . ." Because of the extended start phase the required temperatures are not being met until three or four hours after the initial charge;

4) Special Condition 7(c) of your ACDP states, "For a 2 hour period after the final charge of waste, 1600°F for 1 second." A review of the company's handwritten documented temperature recordings reveals that the last temperature recording is for the final charge of municipal garbage into the incinerator. After the final charge the temperature recordings stop. Therefore, it is not possible to assess compliance with this condition due to insufficient monitoring. In order to provide the necessary data to determine compliance with this condition additional monitoring is necessary. You are required to continue logging temperature recordings for two hours after the final charge to ensure compliance with this condition.

   On September 14, 1984, the Environmental Quality Commission (EQC) granted your company a one-year variance from continuous recording pyrometer requirements contained in Condition 8 of the ACDP. We would like to take this opportunity to point out that the variance is a limited duration exception that expires September 14, 1985. During the regularly scheduled meeting of the Environmental Quality Commission to be held in Bend, Oregon, on September 27, 1985, the Commission will review the status of your variance. At that time, the EQC may continue, alter, or revoke the variance that was granted September 14, 1984. If you have questions or comments on the variance please contact Wendy Sims of our Air Quality Division in Portland. Written comments must be received by the Department prior to August 23, 1985, for inclusion in the staff report to the Commission.

A reinspection of the facility will be schedule within the next 30 to 60 days to assess the compliance status on the above items.

In the event questions arise on the above, or the Air Contanminant Discharge Permit, please feel free to contact this office for assistance.

Sincerely,

Bruce A. Hammon
Environmental Analyst

BAH:dmr
encl
cc: Air Quality Division (Sims/Kostow)
Southwest Region (Gary Grimes)

DEPARTMENT OF ENVIRONMENTAL QUALITY
SOURCE INSPECTION FORM

WQ ☐ SW ☐ AQ ☒ NC ☐

COUNTY: CURRY

PETTY SMART 469 2425

SOURCE NAME: BROOKINGS ENERGY FACILITY

SOURCE ADDRESS: CARPENTERVILLE ROAD BROOKINGS

OFFICIAL CONTACTED: PETE SMART

ENTIRE SOURCE 000

TABLE A PARA	PREP. TIME	TRANS TIME	INSPECTION TIME	PAPER TIME
4 4 A	4	30	20	5

PERMIT NUMBER CO.	PERMIT NUMBER SOURCE	POINT	ACTION NO.	ACTION TYPE	DATE SCHEDULED MO.	DATE SCHEDULED DAY	DATE SCHEDULED YR.	DATE ACHIEVED MO.	DATE ACHIEVED DAY	DATE ACHIEVED YR.	RESULT	INSPEC. NO.
08	0039	000	27	7	07	05	01	85	06	14	85	C X	J 110

8.1 REFUSE INCINERATORS (CONSUMMATI @ 1200) OPERATING IN COMPLIANCE WITH VIS-
8.2 VAL OPACITY LIMITS (<5% BOTH UNITS); FACILITY NOT IN COMPLIANCE WITH
8.3 STARTUP TEMPERATURE REQTS OR POST BURN MONITORING REQUIREMENTS
8.4 AND COMPLIANCE WITH VIOL REQTS; IN COMPLIANCE WITH REPORTING REQTS

COMPLIANCE STATUS (RESULT CODE)

	IN COMP.	NOT IN COMPLIANCE	ON SCHEDULE
All permit conditions	Q		
Permit emission limits	R	A	I
Emission standards	S	B	J
Performance reqts.	T	X	K
Monitoring & Reporting	U	D	L
Open burning limits	V	E	M
Procedural Reqts.	W	F	N
Fugitive emissions	X	G	O
Other	Y	H	P

TREATMENT/PROCESS EQUIPMENT — ADDITIONAL REMARKS — OPERATING CONDITIONS

PATH WASTES IN GARBAGE ON FLOOR - OPERATOR NEEDS TO CONTACT
PATH WASTE SOURCES AND REQUIRE STOPPAGE OF PLACING THESE WASTES
IN DUMPSTERS ETC.
2 DIESEL 25-50 GALLONS PER DAY -
22 TO 24 TONS PER DAY CHARGING
BURNING 5 DAYS x 60 TO 65 HRS/WEEK / 52 WEEKS/YR & SUMMER FLOW
(BOTH UNITS) Y UP TO 60 HRS PER/WK MAY GREATER

SOURCES IN VIOLATION & LIMITS VIOLATED

SPECIAL CONDITIONS (GAS TEMP)	CAPACITY LIMITS ON EMISSION SOURCES IN COMPLIANCE WITH PERMIT
7.(a)	PERFORMANCE REQUIREMENTS (a)(c) NOT IN COMPLIANCE (RECENTLY UNDER
7.(c) RECENTLY NOT MONITORING	REVIEW BY DEQ)
9. PATH WASTES	CURRENTLY OPERATING @ 1800° 2° CHAMBER TEMPERATURE
	SEE COPY FOLLOWING LETTER TO FILE

SIGNATURE OF INSPECTOR AND DATE

FILE REGION COPY

SIGNATURE OF PERSON INTERVIEWED AND DATE

DEQ/RO-1701 (4/80)

Attachment F

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: File 08-0039 DATE: August 26, 1985

FROM: Wendy L. Sims

SUBJECT: Brookings Energy Facility Meeting

On August 12, 1985, Bruce Hammon (CBBO) and I met in Coos Bay with Pete Smart and T. V. Skinner of B.E.F., John Coutrakon, attorney for B.E.F., and Doug Horrie, an interested party attending on behalf of B.E.F. The meeting was arranged in response to a request by Mr. Coutrakon and to facilitate preparation of a staff report on the B.E.F. ACDP variance.

A N.O.V. was issued to B.E.F. on July 23, 1985. The violations cited dealt primarily with failures to operate at the required temperatures and to properly maintain the required temperature logs.

Three main topics were discussed at the meeting: the planned conversion of the incinerators to energy recovery and electricity production, the EQC review of the variance in September, and the justification for implications of OAR 340-21-027. Since B.E.F. personnel and Department staff had previously discussed the vast majority of what was discussed in this meeting, the primary benefit was the familiarization of Mr. Coutrakon with the issues.

On the planned energy conversion, Mr. Smart referred us to Tom Bradley. Mr. Bradley was hired by B.E.F. as a consultant on the energy recovery retrofit. While we had requested that Mr. Bradley be asked to attend, his participation apparently was not possible given the short notice on which the meeting was set up. In a July 17 discussion with me, Mr. Bradley stated that the power contract had been secured, temperature recorders were on order, and numerous maintenance deficiencies at the facility had been corrected. One problem he had detected and corrected was a burned-out pump in the fuel line for the secondary chamber of Unit #1. The length of time the unit had been operating without auxilliary fuel, which is essential under certain conditions for temperature control, was not determined. Mr. Bradley also traced the slagging problems in the ash removal rams to the method of operation of the incinerators.

The one-year variance to allow manual, rather than automatic, temperature recording is due to be discussed at the September 27 EQC meeting. Bruce and I strongly concur that the Department should recommend that the variance be terminated. Our position is based upon the reasons the Department originally recommended that the variance request be denied, compounded by the failure of the B.E.F. staff to meet the permit requirements under the variance.

Mr. Smart confirmed that temperature recorders had been ordered. However, he apparently does not intend to use the recorders in lieu of seeking further relief from the OAR 340-21-027. The recorders were ordered by Mr. Bradley as part of the energy recovery conversion, not to comply with the regulation.

The bulk of this 2 1/2 hour meeting was spent in discussions of OAR 340-21-027. Mr. Coutrakon and Mr. Horrie were interested in the technical basis for the rule. Discussion topics included the need for control of toxic organic emissions, the temperature required for control, the merit of allowing increased total particulate emissions at the required temperature in coastal areas instead of lower particulate emissions without temperature restrictions, the "trade-off" between toxics control and increased auxilliary fuel usage, and more. Mr. Coutrakon requested written documentation of the need for the 1800°F requirement. Very little of this information is contained in the staff report for the rule adopted on January 6, 1984. I invited Mr. Coutrakon to review the extensive collection of material we have in the Air Quality office. It is unfortunate that a review of the need and methods for toxics control was not prepared during the rulemaking process.

Mr. Smart and Mr. Skinner rehashed their complaints on the manner in which the rule and variance were adopted. However, B.E.F. was provided with the appropriate public notices and rulemaking packages. Both Mr. Smart and Mr. Skinner attended the EQC meeting at which the variance was granted and discussed the meaning of the variance afterwards with T. R. Bispham and myself. Any fault attributable to these complaints does not seem to lay with the Department.

Mr. Smart adamantly maintained that he should be allowed to operate under the provisions of the original ACDP issued for B.E.F. in 1979. In support of his position, he cited the improvement over the former practice of open burning Curry County's garbage and the Department's continued authorization of open burning elsewhere, particularly at Powers. Mr. Smart also reiterated his contention that his units are unable to achieve the 1800°F specification when burning the waterlogged garbage typical of the winter months. Repeating a suggestion made last year, we requested that Mr. Smart document this condition by presenting a record of the waste handled, auxilliary fuel use, and secondary chamber temperature during a low temperature burn.

Mr. Smart would like to raise these issues with the EQC with the apparent intention of obtaining permanent relief from any requirements to operate above 1600 F or record temperatures. However, the staff does not view the costs of complying with the regulation, principally increased expenditures for auxilliary fuel, as outweighing the benefits of compliance. Accordingly, it will be recommended in the forthcoming staff report that the current variance be revoked and that B.E.F. be required to comply with OAR 340-21-027. In addition, if B.E.F. does operate as planned as an energy recovery facility, the 1800°F temperature required by the rule will become essential for proper operation of the boiler.

WLS:s
AS1630
cc: B. A. Hammon, CBBO
T. R. Bispham, AQD
L. Kostow, AQD

Attachment G

JOHN R. COUTRAKON, P.C.
JOHN C. BABIN, P.C. *

* ALSO LICENSED IN CALIFORNIA

COUTRAKON & BABIN
PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW

P.O. BOX 1600
(517 CHETCO AVENUE)
BROOKINGS, OREGON
97415-0600
TELEPHONE
(503) 469-5331

August 15, 1985

Fred Hansen, Director
Department of Environmental Quality
522 S.W. Fifth Avenue
P. O. Box 1760
Portland, OR 97207

Re: Brookings Energy Facility

Dear Mr. Hansen:

As you are undoubtedly aware, as a result of our recent correspondence a meeting was held in Coos Bay on August 12, 1985. Those in attendance were Bruce Hammon, Wendy Sims, Pete Smart, T. V. Skinner, their employee Doug, and myself.

I felt the meeting was productive in learning of the concerns of your department as well as "honing-in" on issues which concerned my client. There were undoubtedly a few rough edges exposed in the meeting; however, as a whole, I was appreciative of your personnel taking the time to meet with us.

As indicated in my prior correspondence to you, my client wished to submit a list of statements and concerns for consideration of the Commission regarding suggested modifications of the present permit so that the operations of my client's facilities could realistically meet the rules and guidelines. Both Mr. Hammon and Ms. Sims felt that the only issue which should be presented to the Commission's meeting in September be that involved with the variance previously granted, and due to expire, in reference to the pyrometers.

My clients' are quite concerned with the requirements contained within OAR 340-21-027. Section 1 thereof pertains to both particulate emissions and minimum exhaust gas temperatures; and, Section 2 deals with pyrometers. Mr. Hammon and Ms. Sims felt that these were separate issues, which should be considered separately by the Commission; however, I and my client believe that the issues are interrelated and should be presented together.

Therefore, my client would request that the consideration of the pyrometer variance which is set on the agenda at this upcoming Commission meeting be tabled and considered at a future Commission meeting when both my client and the DEQ can present a position on the particulate emission and gas temperature requirements. I believe it a fair statement that all parties felt that this latter issue could not be researched or prepared in time to be presented at the September Commission meeting.

By this letter, my client does desire to formally be put on the agenda of an upcoming Commission meeting to consider the nature and application of OAR 340-21-027, in general and in reference to the facility at Brookings Energy Facility in Brookings, Oregon. I am requesting some information from Ms. Sims which will help me in analyzing the contents of that rule and its inclusion in the present permit. The above referenced request for a set-over of the pyrometer requirement determination is not for the purpose of delay but simply to present in an all encompassing fashion all concerns which we have with the requirements under OAR 340-21-027.

Very truly yours,

COUTRAKON & BABIN, P.C.'s

John R. Coutrakon

JRC:alb
cc: Client
Bruce Hammon
Wendy Sims

Attachment H

JOHN R. COUTRAKON, P.C.
JOHN C. BABIN, P.C. *

* ALSO LICENSED IN CALIFORNIA

COUTRAKON & BABIN
PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW

P.O. BOX 1600
(517 CHETCO AVENUE)
BROOKINGS, OREGON
97415-0600
TELEPHONE
(503) 469-5331

August 15, 1985

Wendy L. Sims
Senior Environmental Engineer
Air Quality Division
Department of Environmental Quality
P. O. Box 1760
Portland, OR 97204

Re: Brookings Energy Facility/Air Contaminant Discharge Permit

Dear Ms. Sims:

Thank you for meeting with us last Monday. Enclosed please find a copy of a letter to Mr. Hansen which I have this day written.

As we somewhat discussed at our meeting, I would be most appreciative if you could send me some information. Specifically, would you please forward the source documents and data in reference to provision number 6 of the permit (and as such pertains to the attached plant-site emissions detail sheet). I would like to review your reference material in formulation of this data, including what is stated thereon, being the 3/81 source test at Bandon and the A.P.-42.

Could you also forward to me any reference documentation detailing what standards or guidelines your department uses in setting forth permissible emission standards, whether in general or in particular in reference to the Brookings Energy Facility, indicating the standards for acceptable minimum levels of pollution emissions.

Any information you can send me on the background of the development and drafting of OAR 340-21-027 would be helpful and appreciated.

As indicated in my letter to Mr. Hansen, my client would desire to present to the Commission a proposal for either modification of the rule or a reasonable variance therefrom as befits the specific circumstances of the Brookings Energy Facility; however, we are certainly open to dialogue and, if at all possible, would like to see if this matter can be resolved between your

office and my office to resolve the problems we are having, which of course, would govern to a large degree what matters would need to be presented to the Commission.

Very truly yours,

COUTRAKON & BABIN, P.C.'s

John R. Coutrakon

JRC:alb
cc: Client

August 22, 1985

Mr. John Coutrakon
Coutrakon & Babin
P. O. Box 1600
Brookings, OR 97415

Re: Air Contaminant Discharge
Permit No. 08-0039

Dear Mr. Coutraken:

In response to your letter to me of August 15, 1985, I am enclosing some of the requested information. I am sending this now, rather than delaying a more detailed response, so as to facilitate your preparation for the September 27, 1985 EQC meeting.

Please find enclosed the following items:

1. Summary, March 1981 source test on Consumat CS-2000 incinerators at Bandon, Oregon.
2. AP-42 emission factors for refuse Incinerations.
3. Relevant portions of OAR Chapter 340 (latest version).
4. Agenda Item No. P, October 7, 1983, EQC Meeting.
5. Agenda Item No. F, January 6, 1984, EQC Meeting.

The OAR are the primary standards the Department uses in setting emission limits. Authority for these rules is derived principally from ORS Chapter 468. In addition to the rule being questioned by Mr. Smart, two rules which are particularly applicable to B.E.F. are: OAR 340-20-001, Highest and Best Practicable Treatment and Control Required, and OAR 340-20-300 to -310, Plant Site Emission Limits. Ambient Air Quality standards are specified in Division 31.

In addition to sending a copy of the background documents on OAR 340-21-027, I will be referring your request to Mr. Pete Bosserman of the Planning and Development Section, Air Quality Division. He may be able to provide you with additional material.

As I stated at our meeting on August 12, the Department has an extensive amount of information regarding toxic organic emissions from municipal solid waste incineration and the need to maintain proper pemperatures/gas residence times. This includes technical reports and test results on emissions from other incinerators, background information of polychlorinated dibenzo-p-dioxins and dibenzofurans, health effects reports, and EPA and other government agency reports on incinerator emission controls. Since it is not possible to provide all of this to you without incurring significant expenses for photocopying and staff time, I again urge that you or an associate review this material at our

office in Portland. The single document which may be of greatest use to you is Air Pollution Control at Resource Recovery Facilities, published May 24, 1984 by the California Air Resources Board. CARB is sending a copy of this to you.

Before closing, I would like to remind you that the regulations clearly require prior Department approval before any modifications are commenced which could affect emissions. (See OAR 340-20-155(2) - 175(1)) From discussions with Mr. Tom Bradley, who is preparing the permit modification request, I am concerned that these rules have already been violated as part of the energy recovery retrofit. The exact current status of the construction should be clarified and the permit modification request submitted post haste.

Please contact me if you have any questions on these topics.

Sincerely,

Wendy L. Sims, P. E.
Senior Environmental Engineer
Program Operations
Air Quality Division

WLS:ahe
Attachments

cc: Mr. Pete Smart, B. E. F.
Hazardous & Solid Waste Division, DEQ
Coos Bay Branch, DEQ
Pete Bosserman, Air Quality Division, DEQ

Attachment J
(Draft)

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

August 30, 1985

Mr. John Coutrakon
Coutrakon & Babin
PO Box 1600
Brookings, OR 97415

Re: ACDP 08-0039

Dear Mr. Coutrakon:

The Department is preparing a staff report to the Environmental Quality Commission on Brookings Energy Facility. The report will discuss activity relating to the facility during the period from the variance authorization on September 14, 1984 to the present, including your letter to me of August 15, 1985. This report will be presented at the September 27, 1985 meeting of the Commission in Bend.

As Mr. Hammon and Ms. Sims informed you, the purpose of the Commission action would be to review the one year variance allowing manual temperature recording. In authorizing the variance, the Commission requested that the Department present a review of the variance at the end of the one year period. It would not be appropriate for the Department to defer the Commission review of the variance.

The Department intends to present information related to the operation of the facility to the extent that it is indicative of the facility operation during the variance period. At this time, the Department intends to recommend that the Commission consider only the questions concerning the variance and defer any reconsideration of the Coastal Incinerator rules (OAR 340-21-027) to a later meeting.

I understand that Ms. Sims has already responded to your request for information concerning the background for the Coastal Incinerator rules. A copy of the staff report for the September 27, 1985 Commission meeting will be sent to both you and the Brookings Energy Facility shortly.

Sincerely,

Fred Hansen
Director

FH:s
AS1668

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 P, November 22, 1985, EQC Meeting

Informational Report: Review of Principal Recyclable Materials Lists.

Background

OAR 340-60-030 requires the Department to at least annually review the principal recyclable material list for each wasteshed and to submit any proposed changes to these rules to the Commission. This report addresses the principal recyclable material lists for all wastesheds, and for all potential recyclable materials except yard debris. A separate staff report addresses identification of yard debris as a principal recyclable material in the Portland, Multnomah, Clackamas, Washington, and proposed West Linn wastesheds.

The list of principal recyclable material for a wasteshed is a list of the most common materials which are "recyclable material" at some place in the wasteshed. Attachment A includes the list of principal recyclable materials for each wasteshed (OAR 340-60-030). Early in the process of developing the Oregon Recycling Opportunity Act requirements, the Department staff used the list as a starting point for determining what was to be considered recyclable material in each city where on-route collection of recyclable material is required and at each disposal site. The Department staff has since gone beyond the general list and preliminarily designated which items on each wasteshed's list are recyclable at each of these cities and disposal sites. The affected persons in each wasteshed will be using the Department's preliminary determination and their own knowledge of the local costs of recycling and disposal to determine which items are recyclable in the wasteshed, and will be reporting their determination in the Recycling Report due July 1, 1986.

Since the EQC identified the principal recyclable material for each wasteshed in 1984, both the cost of disposal of solid waste and the market price for certain materials have changed. The cost of disposal has increased in many communities throughout Oregon. See attachment B for examples. The Department expects the cost of disposal to continue to increase as landfills become filled and communities are forced to site new landfills, transport further distances, and use more expensive methods of disposal. On the other hand, the price received for recyclable materials

has also fluctuated since 1984, with a significant decline in the price of paper products, aluminum, and used motor oil. Attachment C illustrates market fluctuations over the past ten years. Some of the recent decline is due to short term cyclic price fluctuation and some is due to a long-term reduction in the value of the material related to general economic conditions. In the equation of disposal versus recycling costs that defines "recyclable material" in the statute, the increase in disposal costs partially offsets the decline in the market price of recyclables.

The staff recommends that at this time there be no changes as to the materials listed as principal recyclable materials for each of the wastesheds. The list of principal recyclable material still serves as a good starting point for determining the recyclable material at each location where the opportunity to recycle is required. It would be inappropriate to revise the rules and drop or add principal recyclable materials every time there is a short-term decline or increase in the market price of materials. Materials should be dropped from the list only when the EQC finds that conditions have changed substantially so that the material is not expected to meet the definition of "recyclable material" in the long run at <u>any</u> location in the wasteshed. The staff believes that for each wasteshed, the materials presently on that wasteshed's list of principal recyclable materials will over the long term continue to meet the statutory criterion of "recyclable" at some place in the wasteshed.

Similarly, materials should be added to the list only when the EQC wishes to emphasize that a new material will in the long term be recyclable, and that the material should be evaluated at each specific location where the "opportunity to recycle" is required to determine whether or not it meets the statutory definition of "recyclable material" at that location. Since the market price of most recyclables is comparatively low at this time, the Department believes that with the exception of yard debris in the Portland metropolitan wastesheds, this is not an appropriate time to add more materials to the principal recyclable material lists.

<u>Director's Recommendation</u>

It is recommended that, with the exception of yard debris in the Clackamas, Multnomah, Portland, Washington, and proposed West Linn wastesheds, which will be discussed in a separate staff report, no changes be made at this time in OAR 340-60-030, the lists of principal recyclable material for each wasteshed.

Michael Downs
for
Fred Hansen

Attachment A: List of Principal Recyclable Materials for Each Wasteshed.
Attachment B: Examples of Disposal Cost Increases
Attachment C: Market Price of Recyclable Materials, 1975-1985

Peter Spendelow:f
229-5253
November 5, 1985
ZF454

Attachment A. List of Principal Recyclable Materials for Each Wasteshed

Principal Recyclable Material

340-60-030 (1) The following are identified as the principal recyclable materials in the wastesheds as described in sections (4) through (8) of this rule:

(a) Newspaper;
(b) Ferrous scrap metal;
(c) Non-ferrous scrap metal;
(d) Used motor oil;
(e) Corrugated cardboard and kraft paper;
(f) Container glass;
(g) Aluminum;
(h) Hi-grade office paper;
(i) Tin cans.

(2) In addition to the principal recyclable materials listed in section (1) of this rule, other materials may be recyclable materials at specific locations where the opportunity to recycle is required.

(3) The statutory definition of "recyclable material" (ORS 459.005(15)) determines whether a material is a recyclable material at a specific location where the opportunity to recycle is required.

(4) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (i) of this rule:

(a) Benton and Linn wasteshed;
(b) Clackamas wasteshed;
(c) Clatsop wasteshed;
(d) Columbia wasteshed;
(e) Hood River wasteshed;
(f) Lane wasteshed;
(g) Lincoln wasteshed;
(h) Marion wasteshed;
(i) Milton-Freewater wasteshed;
(j) Multnomah wasteshed;
(k) Polk wasteshed;
(l) Portland wasteshed;
(m) Umatilla wasteshed;
(n) Union wasteshed;
(o) Wasco wasteshed;
(p) Washington wasteshed;
(q) Yamhill wasteshed.

(5) In the following wastesheds, the principal recyclable materials are those listed in subsection (1)(a) through (g) of this rule:

(a) Baker wasteshed;
(b) Crook wasteshed;
(c) Jefferson wasteshed;
(d) Klamath wasteshed;
(e) Tillamook wasteshed.

(6) In the following wastesheds, the principal recyclable materials are those listed in subsection (1)(a) through (h) of this rule:

(a) Coos wasteshed;
(b) Deschutes wasteshed;
(c) Douglas wasteshed;
(d) Jackson wasteshed;
(e) Josephine wasteshed.

(7) In the following wastesheds, the principal recyclable materials are those listed in subsection (1)(a) through (e) of this rule:

(a) Curry wasteshed;
(b) Grant wasteshed;
(c) Harney wasteshed;
(d) Lake wasteshed;
(e) Malheur wasteshed;
(f) Morrow wasteshed;
(g) Wallowa wasteshed.

(8) In the following wastesheds, the principal recyclable materials are those listed in subsection (1)(a) through (d) of this rule:

(a) Gilliam wasteshed;
(b) Sherman wasteshed;
(c) Wheeler wasteshed.

(9)(a) The opportunity to recycle shall be provided for each of the principal recyclable materials listed in sections (4) through (8) of this rule and for other materials which meet the statutory definition of recyclable material at specific locations where the opportunity to recycle is required;

(b) The opportunity to recycle is not required for any material which a recycling report, approved by the Department, demonstrates does not meet the definition of recyclable material for the specific location where the opportunity to recycle is required.

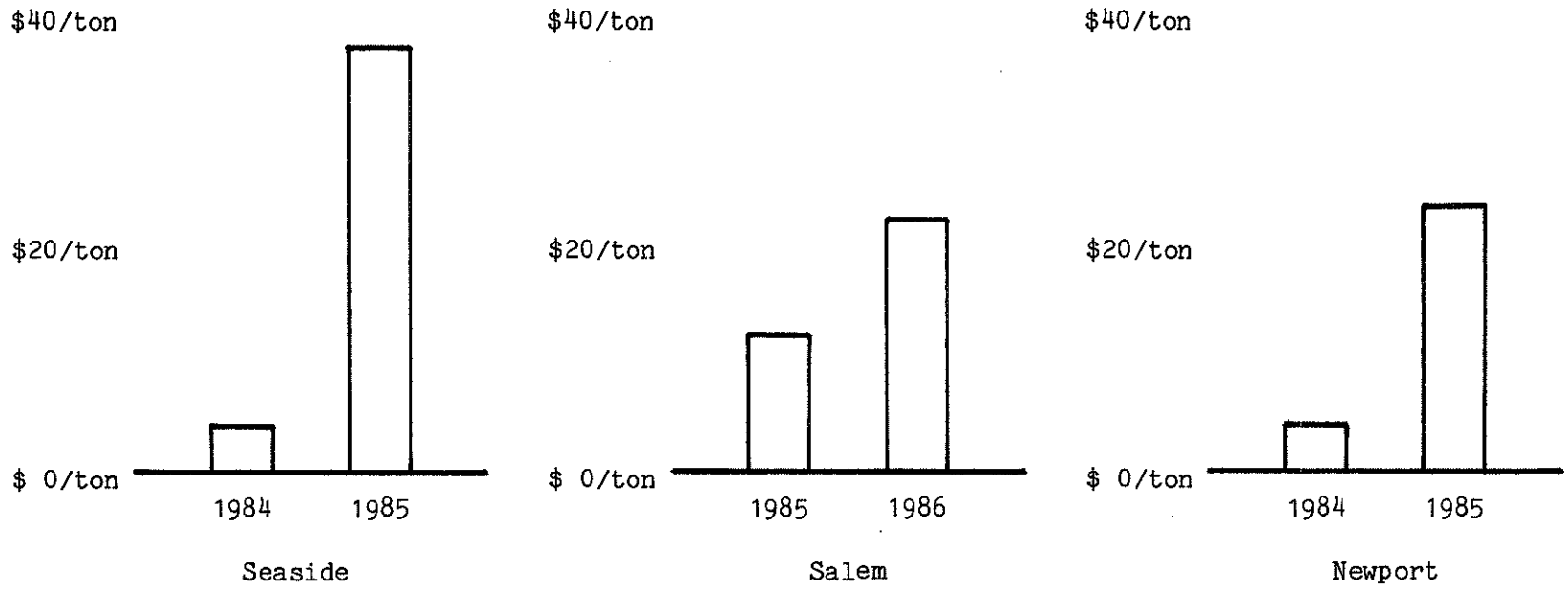
(10) Between the time of the identification of the principal recyclable materials in these rules and the submittal of the recycling reports, the Department will work with affected persons in every wasteshed to assist in identifying materials contained on the principal recyclable material list which do not meet the statutory definition of recyclable material at some locations in the wasteshed where the opportunity to recycle is required.

(11) Any affected person may request the commission modify the list of principal recyclable material identified by the Commission or may request a variance under ORS 459.185.

(12) The Department will at least annually review the principal recyclable material lists and will submit any proposed changes to the Commission.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 26-1984, f. & ef. 12-26-84

Attachment B. Examples of recent large changes in disposal costs.



Disposal costs are based on tipping fees at the disposal site or transfer station.

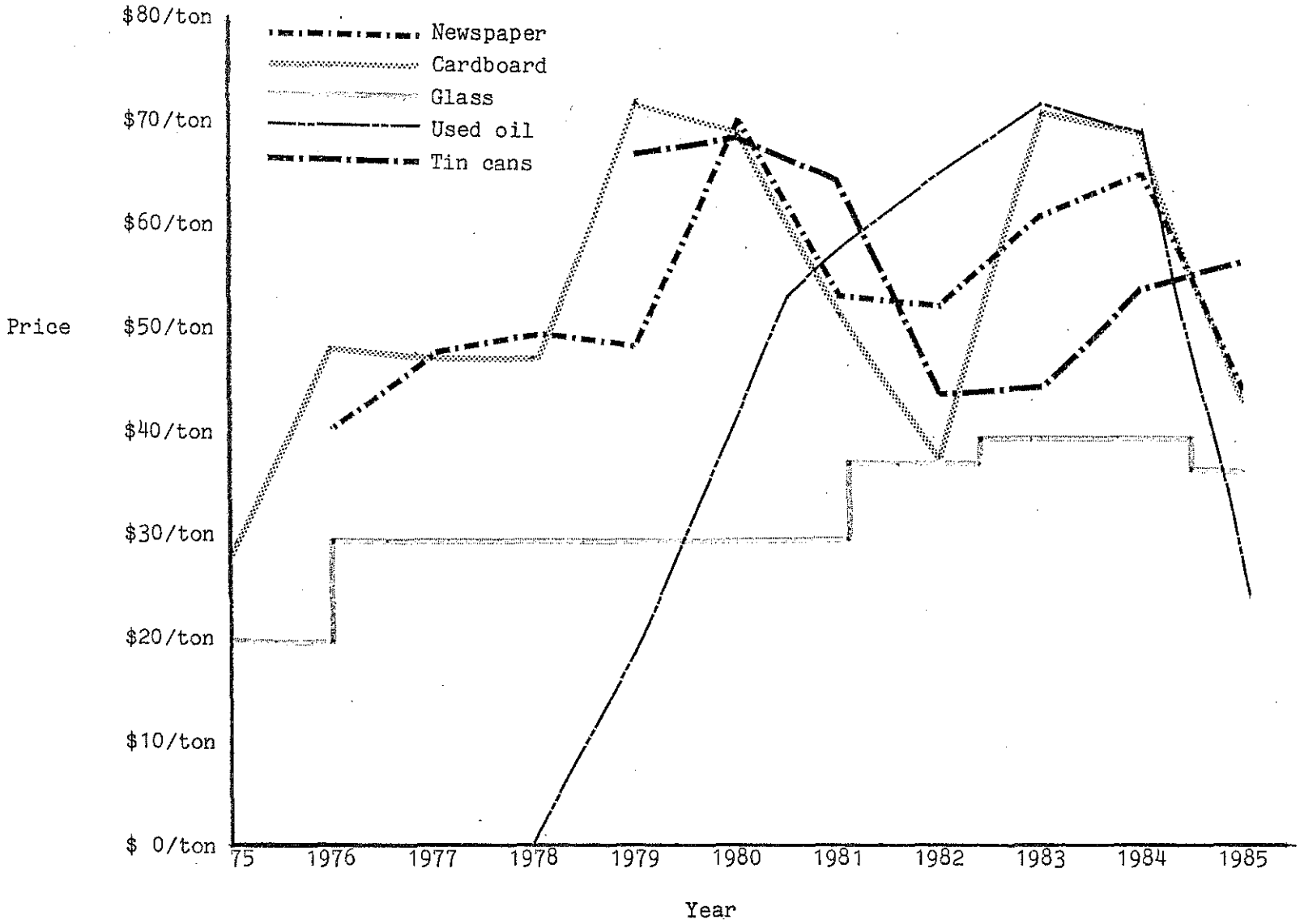
Reasons for cost increases:

Seaside: closure of open burning dump ("virtually free disposal"). Presently truck garbage to transfer station in Astoria, where it is re-loaded and trucked 60 miles (one-way) to Raymond, Washington.

Salem: opening of Brooks Energy Recovery Facility (expected cost of $20-$24/ton in 1986 with new facility

Newport: change of open dump to "bale-fill" (all garbage now baled for disposal)

Attachment C. Market price of recyclable materials 1975-1985.



Newspaper: Price at seller's dock on the West Coast (source: Data Resources Inc.)
Cardboard: Price at seller's dock on the West Coast (source: Data Resources Inc.)
Glass: Price of color-sorted glass delivered to Owens-Illinois, Portland
Used oil: Averages street price paid by collectors to large generators (source: DEQ surveys)
Tin: Price of post-consumer scrap tin paid to Oregon collector by MRI Inc, Seattle

Attachment C
Agenda Item P
11/22/85, EQC Meeting

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item Q, November 22, 1985, EQC Meeting

Informational Report: Yard debris as a Principal Recyclable Material in the Portland, Washington, Multnomah, Clackamas, and proposed West Linn Wastesheds.

Background

On December 14, 1984, the Environmental Quality Commission adopted rules relating to implementation of the Oregon Recycling Opportunity Act. At that meeting, the Commission directed staff to return in one year with a recommendation on identification of yard debris as a principal recyclable material.

OAR 340-60-030 identifies the principal recyclable materials in each wasteshed. A principal recyclable material is a material which is a "recyclable material" at some place where the opportunity to recycle is required in a wasteshed. Identification of a material as a principal recyclable material shifts the burden of proof of whether a material is recyclable to the local governments and affected parties. A "recyclable material" is any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

Yard debris is roughly 50% leaves and grass and 50% woody material. It is processed into hog fuel, ground cover and soil amendments. Yard debris appears to meet the definition of "recyclable material" at some locations where the opportunity to recycle is required within each of the metropolitan wastesheds.

Yard debris represents the largest single component (13%-20%) of the solid waste stream presently going to disposal in the Portland metropolitan area. This area is faced with a necessity to reduce the waste entering land disposal sites. The Commission is now directly involved in the process of siting a new disposal site and approval of a comprehensive waste reduction program for all of the wastesheds in the metropolitan area. If yard debris is treated as a principal recyclable material, then each wasteshed must determine whether yard debris is a recyclable material. If it is, systems for the collection and recycling of source separated yard debris must be

established. This would result in a significant reduction in waste disposal at land disposal sites.

In December, 1984, staff determined that source separated yard debris was a recyclable material in the Portland Wasteshed when it was delivered by the generator to a disposal site or processing facility and collection cost was not a consideration. At that time, collection and processing systems were not well enough established to provide sufficient information to determine if source separated yard debris was a recyclable material if both collection and processing costs were considered.

Since December 1984, improvements have occurred in the processing of source separated yard debris. Yard debris diversion from disposal to processing has increased. The two major processors in the area have grown approximately 30% each year since 1983. They now receive about 170,000 cubic yards of material annually, approximately 15% of the total yard debris generated in the area. In 1985, 90,000 cubic yards will be processed to produce about 8,000 cubic yards of marketable products. If all of the yard debris generated in the area were processed, 100,000 cubic yards of fuel, soil amendments and ground cover would be produced annually.

The major factor limiting the processing of yard debris is the lack of a large scale collection and delivery system. On-route or on-call collection of source separated yard debris is available only in a limited number of locations. Collection systems have not improved significantly over the last year. The area now has one on-route and two on-call systems for regular collection of yard debris. There are a variety of for-hire yard debris removal services available with costs close to those of regular garbage collection service.

No systematic analysis of collection service options and costs has been performed for the area. However, demonstration projects funded by METRO established that household collection and disposal at processing sites is less expensive than landfilling. These projects included on-route and on-call collection, and neighborhood clean-ups in several communities in the area. The findings of the demonstration projects concluded that "with an adequate collection system, the recycling of yard debris was a publicly acceptable and feasible system for recovery of yard debris in the Portland metropolitan area." These projects suggest that source separated yard debris is a "recyclable material."

The two processors in the area charge a tipping fee to accept material. For small loads or self haul, this tipping fee, which is based on a volume measure, is less than the cost of disposal at a transfer station or disposal site. Large compacted loads are also cheaper to deliver to a processor than to dispose of at a landfill. However, for large loose loads, which are measured by weight at disposal sites, the tipping fee is greater at the processor than at a disposal site.

Attached is a background document prepared by METRO which more extensively discusses yard debris within the Portland metropolitan area (Attachment I).

Alternatives and Evaluation

If yard debris is identified as a principal recyclable material, it will have to be considered as a recyclable material to be collected on-route within the urban growth boundary of the Metropolitan Service District. However, because the yard debris waste stream is seasonally generated and must be collected differently than other recyclable material, the Department will consider allowing alternative collection methods to monthly curbside collection. Options for collection could range from on-route weekly collection to on-call and seasonal service.

The establishment of a collection system would cause a substantial increase in material recycled and diverted from disposal. If the opportunity to recycle were not provided voluntarily, it could be required by the Commission.

The identification of yard debris as a principal recyclable material would place increased emphasis on recovery of this material. It is a clear message that a program to collect and process this material should be undertaken by the public and private agencies charged with implementation of both SB 405 and SB 662.

If the material is not identified as a principal recyclable material and no other action is taken, there would continue to be slow growth in the amount of material processed but systematic collection systems would not develop.

Offering substantial economic incentives through disposal rate structures or banning disposal of yard debris are alternative regulatory actions which could force the material out of area disposal sites and encourage provision of collection systems. Such actions could be required by the METRO Waste Reduction Program or be taken by the Commission by identifying a higher and better use of yard debris and restricting its disposal in landfills or burners.

Based on the facts known to the Department at this time, the Department believes that yard debris meets the definition of a principle recyclable material. However, the Department recognizes that it does not have all the necessary facts, and wants to involve the various affected parties in determining those facts prior to proceeding to rulemaking. Local governments and affected parties within each of the metropolitan wastesheds should be given the opportunity to share with the Department any information they have on the cost of collection and processing of yard debris as compared to the cost of collection and landfilling. It is this comparative cost analysis which will determine whether yard debris is a

recyclable material. Local governments and affected persons should also be involved in discussing the best methods for providing the collection and processing of yard debris.

Director's Recommendation

It is recommended that the Commission direct the Department to meet with the affected parties to determine the comparative costs of processing versus disposal of yard debris within the Portland, Washington, Multnomah, Clackamas, and proposed West Linn wastesheds, and return to the Commission in January with a request for rulemaking which is based on those findings.

Michael Downs for
Fred Hansen

Attachments: I. Yard Debris Section of DRAFT Metro Waste Reduction Program

Lorie Parker:b
229-5826
October 29, 1985
YB5173

YARD DEBRIS PROCESSING

PROBLEM STATEMENT

> Approximately 100,000 tons of yard debris is currently landfilled in the Portland metropolitan area each year. This represents 13.4% of the total material landfilled. If this material could be recycled, landfill life could be significantly extended.

Although no comprehensive data base exists concerning volumes and disposal patterns for yard debris, a series of studies concerning the problem have been done. In 1979 the Department of Environmental Quality (DEQ) conducted a survey of single family dwellings (SFD) to determine the volumes generated and disposal patterns by method. The results of the survey indicated that 676,066 cubic yards of material was generated by SFD. Using an average cubic yard weight of 200 lbs, this translates into 67,606 tons of material generated by SFD. The survey estimated that slightly more than half of the material generated was being landfilled, while an additional 13% was being burned.

The DEQ survey was intended to provide data to determine the effect of a ban on backyard burning. To estimate the total amount of material being generated in the area, METRO has applied national estimates of waste stream composition and estimated that approximately 127,000 tons or 1,270,000 cubic yards are generated from all sources for the region.

In December of 1980 the DEQ imposed a ban on the burning of yard debris for the Portland metropolitan area. METRO received an air pollution control program grant in February, 1981 to study acceptable disposal alternatives to burning. Due to the lack of disposal alternatives and political pressure, the ban was lifted in March, 1981.

METRO developed a demonstration program over the next year and a half to examine collection, processing, and product marketing systems for yard debris. The program goal was "To demonstrate publicly acceptable and feasible alternatives for the recovery of yard debris in the Portland metropolitan area and to recommend an implementable regional yard debris recovery program." As a result of the program, a variety of collection and processing alternatives were demonstrated.

In the area of collection, six separate techniques were demonstrated:

1) on-route scheduled collection by city crews,
2) on-route scheduled collection by franchised haulers,
3) on-route scheduled collection by non-franchised haulers,
4) on-call collection by city crews,
5) on-call collection by franchised haulers, and
6) city and neighborhood cleanups sponsored by local governments.

Material was also diverted at the St. Johns Landfill for processing.

While some local governments processed material locally, most of the year debris collected was routed to one of four regional processors. Two of the processors used mobile grinders or shredders, and two used stationary hammermill systems to process materials. The products rendered from these systems included hog fuel, mulch and soil amendments.

Throughout the project, a variety of education and promotion techniques were used to stimulate participation. These included t.v., radio, and newspaper advertisements which directed people to contact the Recycling Information Center for more information.

The findings of the project concluded generally that with an adequate collection system the recycling of yard debris was a "publicly acceptable and feasible alternative for the recovery of yard debris in the Portland metropolitan area." The cost of processing material was demonstrated to be less than that of landfilling, and three processors were regionally located which could process the total amount of material generated. A number of recommendations were delineated for local jurisdictions to follow for adequate collection systems.

Processing

Subsequent to the demonstration project, evolution of the processing system has progressed slowly. The number of processors has decreased from four to two. A number of factors are responsible for this decline. One is the technical difficulty in processing a non-homogeneous material. Yard debris is roughly 50% leaves and grass and 50% woody material. The equipment used

to process the material must be able to handle both, which usually requires processing prior to grinding or shredding. The ground product often must be re-ground to meet final product specifications or to facilitate composting.

The material received also must be relatively free of contamination. While the equipment used for processing is capable of handling minor amounts of contaminants, equipment wear is substantial and processing time is increased when contaminants are present. The two remaining processors have strict policies concerning the material they receive. Contamination was cited by two processors who received material from the St. Johns landfill, as one of the reasons for stopping further material from this source. It is these technical difficulties which are most frequently cited by the remaining processors for the relatively slow pace of processing discussed below.

The two main processors in the region are located in Oregon City and Tualatin. Both utilize hammermills to process material. Data has been kept since 1983 for regional processors. In that year there were four processors and by the end of the year two remained. For 1983 a total of 114,758 cubic yards of material was received, of which about 47,000 cubic yards (or 41%) were processed. In 1984, 141,395 cubic yards were received, which represents an increase of 23%. The amount processed was about 65,000 cu. yds. (or 46%). The amount processed from 1983 to 1984 represents a percentage increase of 38%, but as a percentage of the amounts received it has increased only 5%.

For the first 6 months of 1985, 88,266 cubic yards of yard debris have been received at the two sites. This represents a 40% increase over the first six months of 1984. The amount processed was about 38%.

The pattern which emerges from the above analysis is that the two regional processors have been successful in attracting increased quantities of source separated yard debris, most of which is brought by private individuals. While one of the processors has been successful in processing all material received, one has not. Thus significant quantities of unprocessed material have accumulated in the system.

It should be kept in mind that METRO estimates that as much as a million cubic yards may be available for further processing. The current processing system would have to expand dramatically to handle this amount of material.

In addition to regional processors, a network of small processors exists to service individuals. These consist of individual entrepreneurs with mobile chippers or trailers which will come to the home. The average charge is about $50 per hour. Chipped material is left at the home, or hauled to a landfill or process-

or. The DEQ survey of 1980 estimated that about 15,000 cubic yards of material are disposed in this manner.

Marketing

The material processed by the two regional firms has three basic markets: soil amendments, ground cover and hog fuel. The process for making soil amendment and ground cover products are basically the same. Yard debris is ground, composted, and sized. Smaller material is used for soil amendment by one firm which mixes the material with rotted sawdust, while another firm markets the small and medium sized material as a ground cover. Hog fuel is made by grinding and sizing material to users specifications without a composting step.

Compost or soil amendment products has been a successful product for one area processor, bringing prices only slightly below those of virgin material equivalents. No long- term tests have been conducted to determine consistent nutrient content, but preliminary results are promising. Marketing is accomplished through contacts with existing clients who have purchased bark products. Retail markets have yet to be explored.

Ground cover products are currently the largest selling products made from yard debris in the region. Although the color and consistency differs from traditional "beauty bark" cover, one firm has been able to build an ongoing clientele by replacing a similar virgin material product which has the same dark color as yard debris products. The yard debris ground cover is sold at prices similar to virgin cover material prices.

Experiments with making hog fuel from yard debris have encountered problems due to moisture content and price. The moisture content of yard debris hog fuel approaches 50%, while that made from mills is closer to zero. It therefore takes about twice as much of the product to get the same amount of BTU's. The price of hog fuel traditionally has been too low to substitute a yard debris product. Hog fuel prices have risen recently with mill closures, and one firm which consumes large quantities has contacted METRO to explore substituting yard debris. It would take substantial price declines to make yard debris a viable hog fuel product, especially given the higher prices the ground cover and amendment products command.

Collection

Efforts aimed at collecting yard debris have occurred on regional, community and household levels. The main regional collection network consists of deliveries to processors by individuals. In 1984, there were almost 46,000 individual deliveries to two area processors. Since both sites are located substantial distances from the City of Portland, one would assume

that individual deliveries of source separated materials could increase substantially with additional processors located in this area.

The St. Johns landfill currently has an area for source separated material. The area was developed during the demonstration program to act as a storage area for a processor located in North Portland. This processor stopped accepting the material in July, 1983. It is estimated that the area currently contains about 15,000 cubic yards of material. Since the material is continually compacted, it is estimated that approximately 50,000 cubic yards have been delivered to the yard debris area in the last two years. The site is not currently promoted since METRO has not instituted a processing program, although some material was hauled to a regional processor during a recent experiment. The material delivered was too contaminated to continue this method. METRO is now obtaining a trommel to clean the material.

Two methods have been used at the community level to collect source separated yard debris. The first is the neighborhood or city cleanup approach. Sites are designated for the collection of a variety of debris, and drop boxes are used to collect the material. A particular box or boxes are often designated for source separated yard debris only, and these boxes are then hauled to processors. This method has encountered problems with contamination, usually due to the lack of a spotter to examine the material as it is dropped off. The result has been the rejection of loads by processors.

A variation of the above method is an ongoing drop off point located at the city or community level. The City of West Linn used this approach in 1985 to collect approximately 300 cubic yards per month. The drop off center is provided by the city and run by nonprofit groups which split the fees collected with the city. Material is then chipped by a subcontractor and composted. The city provides a front end loader to manage the compost pile. Finished compost will then be sold to residents.

Household collection systems have been used in various forms throughout the METRO area and the nation in general. Two cities in Clackamas County currently provide on-route collection, and a third city recently operated a pilot project. The two basic methods are regularly scheduled pickups and on-call pickups.

Regularly scheduled pickups are currently used in one city locally. A packer truck (smaller than ones used for solid waste collection) makes weekly pickups and loads are currently landfilled, although a regional processor has been used in the past. A recent pilot project used scheduled pickups on a bi-monthly basis, and a per-pickup charge. This latter method was dis-

continued due to poor participation. During the METRO demonstration project regular pickups proved successful.

On-call service is currently available in two cities. In one city, the city crews perform pickups while the other uses the franchised hauler. One of these programs is scheduled to continue next year. The demonstration program also used this method.

The costs of household collection of source separated yard debris in relation to landfilling the material seems to vary from community to community. While no systematic analysis has been performed for the area, the demonstration project did estimate that household collection and disposal at processing sites is less expensive than landfilling. Household collection in Davis, California has demonstrated similar results, when tipping fees are adjusted to reflect Portland area rates. Recent experiments with household collection have met with opposite results.

Promotion and Education

Promotion and education efforts increase the amount of the yard debris recycled. This has been demonstrated by monitoring Recycling Information Center (RIC) statistics. In the Spring of 1985 METRO undertook a comprehensive yard debris recycling campaign which included multimedia advertising, the distribution of educational materials, and composting workshops. Inquiries received by RIC concerning yard debris increased 44% over the same period the previous year. Similar results have been recorded for seasonal campaigns such as Christmas tree disposal.

PROJECT DESCRIPTION

The METRO yard debris recycling program described below presents options for increasing recycling rates at the household, community, and regional levels. Techniques for accomplishing this increase include a mix of fiscal, operational, administrative, and marketing methods. Some of the options presented are currently outside the control of METRO and would require intergovernmental cooperation, while others rely on market forces to accomplish increased recycling.

Recycling yard debris at the household level includes both on site composting and delivering source separated, uncontaminated material to a processor. The most efficient method for recycling is to compost as much material on site and return the finished material to the soil. It is recommended that METRO continue to promote this method, and to work with local governments to increase on site composting. This method is most effective for leaves, grass, garden and non-meat food waste.

For woody material mechanical processing is usually necessary, whether this includes buying or renting a chipper for the home, or taking the material to a processor. METRO currently provides information to the public on the availability of different methods and will continue to do so. The most efficient method for increasing the amount of material recycled, however, is to have source separated material picked up at the household. Methods for accomplishing this include:

1) fiscal incentives to local governments or processors, and
2) action by DEQ to have the material picked up by the hauler.

Recycling at the local level should be impacted in two ways. First, since the city or county regulates solid waste collection, the local government can encourage the collection of yard debris by haulers. METRO could in turn encourage local governments to have haulers collect the material by

1) providing recycling grants which stipulate such programs,
2) providing technical information on how to design recycling programs effectively,
3) providing subsidies to processors which lower the fees charged haulers, or
4) charging haulers which do not offer pickups of yard debris for recycling higher tipping fees at METRO facilities.

The second focus at the local level should be increasing the convenience of recycling yard debris by

1) providing local sites for yard debris collection with or without local processing
2) use of neighborhood cleanups with centrally located sites, or
3) the establishment of a permanent local collection and processing site.

The use of neighborhood cleanups was recommended by the City of Portland's Yard Debris Task Force as an interim measure. METRO could provide

1) information and training on setting up such sites,
2) subsidies, or
3) higher disposal fees for communities which fail to provide such programs.

It should be noted that contamination and a lack of transportation are major barriers to be overcome with this strategy.

Regional collection and processing centers must be in place for any large scale yard debris recycling efforts to succeed. This conclusion is based on the amount of space and the size of equipment necessary to process the volumes of material available, and the economies of scale associated with large scale processing and marketing operations. The current regional network lacks collection and processing centers in the Portland,

Beaverton and Gresham areas. METRO will acquire equipment to clean contaminated material received at the St. Johns landfill and actively promote this site as a yard debris collection point. METRO will then evaluate the economics of on-site processing, determine whether existing processors can handle the increased volumes generated at this site, and decide whether to do on-site processing. In addition, METRO will collect source separated yard debris at the Washington Co. Transfer Station for transport to either St. Johns or a regional processor.

In order to stimulate processing at existing sites METRO could provide technical assistance to processors, and consider providing diversion credits for each unit of processed material. This should have the effects of both stimulating processing and lowering tipping fees thereby increasing the amount of material received. METRO could purchase processed material to stimulate demand, if necessary.

Currently processors are still refining their processing methods and equipment to deal with increasing volumes of material. If processors are unwilling or unable to process additional material, METRO should acquire the equipment necessary to process material from St. Johns. Processed material would then be used as an amendment for final landfill cover, with excess material marketed.

Detailed Program Description

1) Regional Level-METRO Role

METRO has five specific options at the regional level to affect yard debris recycling. These are discussed in detail below.

a. Develop an active large scale collection/processing site at the St. Johns Landfill.

METRO will have on site, by October, 1985, a trommel to begin cleaning its current stockpile of yard debris. Cleaned material will either be processed on site or hauled to regional processors. Material handling and storage techniques will be explored to develop an ongoing system for the remaining life of the landfill. The landfill contractor will be required to provide spotting and some material handling services.

On site processing will depend on two factors. First, whether the cost of on site processing is less than transport to haulers. Second, whether regional processors can guarantee prompt processing of materials transferred. Both questions should be answered by the end of 1985.

b. Develop more regional yard debris collection sites.

Washington Transfer and Recycling Center will provide a collection/transfer point for yard debris in Washington Co. The system will be designed to handle a minimum of 50,000 cubic yards per year. The system will be designed during the WTRC design process. Material will be checked by spotters to ensure it is free of contaminants. Depending on the final location of the site and the willingness of the processors, collected yard debris will be transported to St. Johns or Sherwood.

The Clackamas Transfer and Recycling Center will develop an active program of yard debris collection and spotting. A collection system will be incorporated into the existing operation. This system will be capable of handling 25,000 cubic yards per year. Customers will be encouraged by both rate differentials and information provided by attendants to take the material directly to a nearby processor.

Killingsworth Fast Disposal will be required to implement a yard debris diversion program. Depending on the program at St. Johns, material will be shipped to St. Johns or sent to a regional processor, after being collected on site.

One of the processors has indicated an interest in developing satellite collection facilities and material sales centers. METRO could make available through its grants and loans program, capital for starting up such a system if the proposal is deemed feasible.

c. Stimulate processing through diversion credit and material purchases.

METRO could subsidize processing by providing a diversion credit for each unit of material processed. This would essentially lower tipping fees currently charged haulers. The lowering of tipping fees would stimulate the supply of source separated material by increasing the differential between disposal fees and recycling fees. This is especially important for commercial drop boxes which are currently charged more for some loads at processors than at disposal or transfer sites.

METRO has included provisions in its new St. Johns contract for METRO supplied final cover material. This material could be purchased from processors in times of oversupply to stabilize the markets.

d. METRO should continue to supply technical assistance to processors.

Staff research into other state's and country's handling of yard debris recycling should be forwarded to processors.

e. Provide information, education, and promotion services for processors' services.

The Recycling Information Center provided information to 2,444 persons during the March to August period of 1985 about recycling yard debris. This large increase over 1984 levels can be attributed to the publicity and composting campaign undertaken by METRO. These efforts should be expanded in the future on a regional basis, both as part of a yard debris specific effort and incorporated into the public education effort associated with implementation of the Recycling Opportunity Act.

2) Community/Local Programs

Given the current authority structure over solid waste collection, METRO's role is largely supportive of local governments' efforts. Listed below are various options METRO can pursue to influence these levels.

a. METRO should conduct a cost/benefit analysis to determine whether the Environmental Quality Commission should place yard debris on the list of "Principal Recyclables" for pickup at the curbside under the Opportunity to Recycle Act. Given the importance of maintaining uncontaminated material, and the fact that recycling levels are directly linked with convenience, household collection remains the most efficient method of collecting yard debris. METRO's analysis would include both a comparison of costs between source separation with recycling and yard debris collection in mixed waste form for disposal; and seasonal and periodic collection schedules which would minimize costs.

b. METRO could provide incentives for household collection programs through its grants and loans programs by providing funds to local governments which provide on-route collection. Or diversion credits could be given to haulers which offered such a service.

c. METRO could charge higher tipping fees at its facilities for firms which do not offer source separated collection and recycling of yard debris.

d. Through grants and loans, METRO could encourage neighborhood cleanups which provide for yard debris recycling.

e. METRO could use diversion credits and/or loans and grants to establish community level yard debris drop off and/or processing sites.

f. Technical assistance could be provided systematically to local governments in designing yard debris recycling programs.

g. Public Information campaigns could be designed and funded by METRO to promote local government efforts.

POTENTIAL PROGRAM IMPACTS

The amount of yard debris diverted from area landfills will depend on the options selected by the METRO Council for implementation. Given current program direction and projects underway a minimum increase of 100,000 cubic yards is expected in 1986 over 1985 levels.

This increase assumes an operational program at the St. Johns landfill, continuation of the burning ban, and increased processing levels at existing sites.

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

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

ENVIRONMENTAL QUALITY COMMISSION

BREAKFAST MEETING

7:00 am

Eugene Hilton Hotel
100 East Sixth Avenue
Eugene

1.	Willamette Valley Regional Manager's Report.	Dave St. Louis
2.	Informational Report: Review of Portland International Airport's noise impacts during westerly departures.	John Hector
3.	Status on meeting EQC request for additional information on the threat to drinking water in East Multnomah County.	Harold Sawyer/ Lydia Taylor
4.	Schedule of future EQC meetings.	

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: November 22, 1985 EQC Breakfast Agenda

Information Report: Review of Portland International Airport's Noise Impacts During Westerly Departures

Background

Pursuant to Commission rule "Noise Control Regulations for Airports" (OAR 340-35-045), on August 19, 1983, the Environmental Quality Commission approved and ordered a noise abatement plan for Portland International Airport (PDX). On April 19, 1985, the Commission reviewed the status of the PDX abatement plan and approved several amendments to the program.

On August 30, 1985, the Commission Chairman received a letter and petition from residents of Hayden and Tomahawk Islands, the Columbia Slough (houseboats), and areas of Portland on the south bank of the Slough. The petitioners are requesting an investigation of alleged violations of the PDX noise abatement plan for aircraft departing toward the west and creating excessive noise impacts to the residents of these areas. The petitioners believe westerly departures are overflying residential areas with great frequency rather than following a flight track over the center of the Columbia River. They claim less impacts occur when aircraft overfly the center of the river as required by the abatement plan.

This issue was discussed informally at the EQC Breakfast meeting held on September 27, 1985 in Bend. At that time, the Commission agreed that further study was needed prior to any formal action.

Discussion

DEPARTURE PROCEDURE

The westerly departure procedure at PDX is designed to keep aircraft over the Columbia River until they are past the major population areas. The procedure approved in August 1983 for westerly departures of air carrier, business and military aircraft was:

> If departing on Runway 28R or 28L (take-off to the west) maintain initial runway heading (278 degrees, magnetic) for a distance of 8 (nautical) miles or until reaching an altitude of 6,000 feet, whichever occurs first, before turning on course.

On January 1, 1985, a new navigational aid was added to the airport to assist implementation of the noise abatement flight procedure. This device, a Very high frequency Omnidirectional Range station and Distance Measuring Equipment (VOR/DME) is located between runways 28R and 28L as shown in Attachment 2. The VOR provides the pilot information on magnetic headings, and the DME provides distance information from the location of the device on the air field. Prior to the installation of the VOR/DME the pilot used the aircraft compass to maintain a runway heading of approximately 278 degrees and used the 6,000 foot altitude criteria to determine the point to turn on course toward destination.

Subsequent to the installation of the VOR/DME navigational aids the westerly departure procedure was amended to take advantage of this equipment. Instead of following the runway heading (278 degrees) aircraft were instructed to follow the 276 degree radio signal broadcast from the VOR equipment located between the parallel runways. As most commercial aircraft departing to the west use the south runway (28 Left), the 276 degree VOR track is intercepted by turning slightly north (right turn). The original runway headings and new VOR departure flight tracks are shown on Attachment 2. This amendment to the PDX abatement plan was approved by the EQC in its April 1985 review and status report on the program. The VOR 276 track should place aircraft near the center of the Columbia River adjacent to the residential areas of Hayden and Tomahawk Islands.

VISUAL OBSERVATIONS

Department staff has conducted visual observations of aircraft positions during westerly departures from sites on Hayden Island and from a site on the Washington shore located east of the Interstate Highway 5 bridge. As the published flight track would place the aircraft at mid-river near the

I-5 highway bridge, most observations were made to note the aircraft position at the bridge. Observed aircraft positions fell into five classes:

1. Island - Aircraft south of the shoreline and over portions of Hayden Island.

2. South Shore - Aircraft at, or near, the Island shoreline.

3. River South - Aircraft south of an area describing the central portion of the river but not over the south shore.

4. River - A zone centered over the middle of the river and approximately 25 percent of the river width.

5. River North - Aircraft over an area north of the "River" zone but not at the Washington shore.

A summary of 48 air carrier and military jet aircraft observations taken during portions of three days of westerly departures found the following distribution:

	Location	Percent
1.	Island	17
2.	South Shore	31
3.	River South	19
4.	River	31
5.	River North	2

These figures may be consolidated by combining locations 1 and 2 to describe those not meeting the flight track criteria as 48 percent. By combining locations 3, 4 and 5, those meeting the river flight track criteria is 52 percent.

NOISE MEASUREMENTS

A series of noise measurements were taken by Department staff to evaluate the effects of westerly departure flight paths.

An experiment was conducted to determine the amount of decibel reduction that would be realized at a home located near the Hayden Island shoreline if aircraft were at a position near the center of the river instead of overhead. Simultaneous measurements were taken from a site near the Hayden Island shoreline and at a site directly south approximately 1500 feet. Measurements of aircraft overhead of the first site were compared to those from the second site. Results of this study showed aircraft noise levels would be reduced approximately 2 dBA if aircraft flew over the center of the river. This modest reduction in sound level would not be perceptible

to most people. However, any reduction of aircraft noise will be reflected in the position of the noise contours and thus the number of people living within those contours. Many of the homes on Hayden and Tomahawk Islands are exposed to average aircraft noise of approximately Ldn 70 decibels. Residential uses are not compatible with noise exceeding Ldn 65 decibels although approximately 2600 people are now living within this area impacted by PDX. The strict control of departing aircraft to overfly the center of the river could reduce the size of the noise contours and thus result in fewer people exposed to unacceptable levels of aircraft noise.

In August 1979 the Department measured PDX sound levels from a site on Hayden Island west of the I-5 highway (near the Jantzen Beach shopping center) at a mobile home located on the edge of the river. Data was gathered at this location during October 1985 to compare results to the 1979 survey. In 1979 the survey was conducted over five complete days and the 1985 survey covered six complete days. Below is a comparison of the daily Ldn noise level from these two surveys:

	1979 Survey (5-days)	1985 Survey (6-days)	Reduction (1979-1985)
Minimum Ldn	69.0 dB	66.6 dB	2.4 dB
Maximum Ldn	71.9 dB	69.5 dB	2.4 dB
Average Ldn	70.6 dB	67.7 dB	2.9 dB

These data indicate an average reduction in the daily noise level of approximately 3 dB. This reduction is most likely due to the fact that the commercial aircraft fleet has undergone considerable noise abatement during this time period. It was estimated that the commercial fleet was approximately 40 percent compliant with the federal aircraft noise emission standards in 1979. The compliance level at this time for PDX is approximately 95 percent. Thus, the benefits of this program are being realized at this site.

Another data comparison at this site is the evaluation of the amount of time per day aircraft caused the noise level to exceed 75 decibels. This metric, the TA75 descriptor, provides an evaluation of those aircraft that are causing very significant impacts at this location. Below is a comparison:

	1979 Survey (5-days)	1985 Survey (6-days)	Reduction (1979-1985)
Minimum TA75	27.2 minutes/day	18.2 minutes/day	9 minutes/day
Maximum TA75	57.0 minutes/day	34.5 minutes/day	22.5 minutes/day
Average TA75	38.7 minutes/day	22.8 minutes/day	15.9 minutes/day

This summary shows that the amount of time per day of very significant noise impacts (level above 75 dBA) has been reduced an average of 15.9

minutes or a 59 percent reduction in time exposure. Again, it is believed this reduction of impacts is primarily due to the changes in the commercial aircraft fleet rather than any changes in airport operational levels or flight tracks.

DEPARTURE PROCEDURE IMPLEMENTATION

The intent of the westerly departure procedure is to keep departing commercial and military aircraft near the center of the Columbia River when adjacent to the residential areas of Hayden and Tomahawk Islands. The above discussion of noise measurement shows that little noise reduction is achieved by this small adjustment in the flight track; however, the request to keep aircraft from overflying residential areas is justified due to the effect, albeit small, of this procedure in reducing the size of the noise contour.

Since the approval of the PDX noise abatement plan, the Port of Portland has pursued implementation of the westerly departure procedure that is designed to keep aircraft over the river. Initially, implementation was based on aircraft maintaining the runway compass heading of approximately 280 degrees. After the VOR/DME navigational aid was installed in January 1985, the procedure was changed to use this equipment. The benefit of the VOR/DME is the added precision of eliminating the compass heading procedure that does not always keep aircraft on the flight track due to the effects of crosswinds. The VOR/DME also provides the pilot better information on the point (8 nautical miles from the airport) to turn on course toward the destination.

In order to assure pilots were informed of the departure procedure the Port of Portland requested the Federal Aviation Administration (FAA) to approve a new Standard Instrument Departure (SID) for PDX. By May 31, 1985 the new "River One Departure" SID was approved and published. This procedure (Attachment 3) gives the pilot specific instructions to comply with the noise abatement departure procedures. Therefore, the control tower only needs to instruct the pilot to follow the "River One Departure" SID rather than explain the specific procedure elements.

On July 31, 1985, Port of Portland noise abatement officials met with the chief pilots of major airlines to discuss the abatement flight tracks. In addition, representatives of the Airline Pilots Association and the Air Transport Association have used their organizations to ensure that pilots are aware of the PDX abatement procedures.

By mid-September, the Port of Portland installed a large sign near the departure point of Runway 28 Left. This sign (Attachment 4) provides a last minute reminder to pilots departing toward the west about the noise abatement VOR 276 degree flight track.

All of the above measures have been taken to enhance the noise abatement procedures. However, as discussed above, not all aircraft are following the procedure to the extent that residential overflights have been eliminated. The Department's limited visual observations find that approximately 52 percent of the westerly departures by military and commercial jet aircraft meet the "over the river" criteria. The Port of Portland data, based on more extensive monitoring, claims an average compliance rate of approximately 60 percent. Therefore, it is desirable to find methods to increase the number of aircraft that keep their departure tracks near the center of the river.

Port of Portland noise abatement staff are now developing an informational program on the noise abatement plan that will inform pilots of the procedures and current compliance rates on an ongoing basis. This program will place information in each "pilot's ready room" at PDX. This information will describe the departure procedures, and periodic updates of the compliance rate by each air carrier will be published. Additional programs or procedures may be necessary if the above discussed methods do not achieve the desired results.

Port of Portland staff believes it is unlikely that the abatement procedure will ever achieve a 100 percent compliance rate. Many flight procedures are at the discretion of the pilot and FAA control personnel. However, it appears that good cooperation from all concerned has been achieved at PDX. Another factor that will affect the compliance rate is the allowable instrumentation error of the navigational aids. The VOR radio transmitter has an allowable error of 1 degree and the aircraft VOR receiver has an allowable 6 degree error factor. An error of only 4 degrees can move an aircraft over the shoreline from the center of the river near the I-5 highway bridge. Therefore, these instrumentation errors can affect the expected compliance rate.

The Department staff believes the overall compliance rate of westerly departure procedure is not acceptable at the present 50 to 60 percent level. It appears that the Port of Portland agrees that a higher compliance rate is also desirable and effort toward increasing compliance is ongoing. This issue should be monitored on a periodic basis by Department staff to ensure that the westerly departure procedure is being implemented at the highest achievable compliance rate.

Summary

The following facts are offered:

1. The intent of the "River One" westerly departure procedure in the PDX noise abatement program is to keep commercial and military jet aircraft over the Columbia River.

2. Compared to 1979, residential areas of Hayden Island are now experiencing less aircraft noise, primarily due to the noise reduction of the commercial aircraft fleet under the FAA noise program.

3. Only modest noise reductions are realized between departures that are directly overhead and those over the center of the river. However, these reductions will affect the overall numbers of people exposed to unacceptable levels of noise and, therefore, the departure procedure is justified.

4. The current rate of commercial and military jet aircraft achieving the "River One" westerly departure procedure is approximately 50 to 60 percent.

5. The airport proprietor, the Port of Portland, has an ongoing program designed to increase the compliance rate of the "River One" departure procedure.

Recommendations

It is recommended that the Commission concur with the following:

a) The Department shall continue to work with the Port of Portland to increase the rate of compliance with the "River One" westerly departure procedure.

b) The Department shall monitor the compliance rate of the westerly departure procedure.

c) Prior to July 1, 1986, the Department shall report to the Commission on the progress toward full compliance with the River One westerly departure procedure and, if necessary, make recommendations to amend the abatement plan that will achieve a higher compliance rate.

Michael Downs
for
Fred Hansen

Attachments

1. Goldsmith/Richardson letter, dated August 27, 1985
2. PDX Map
3. Departure Procedure--River One Departure SID
4. Runway sign photographs

J. Hector:s
229-5989
November 6, 1985

AS1926

Attachment 1
November 22, 1985
EQC Breakfast Agenda

August 27, 1985

Mr. James E. Peterson
Chairman
Oregon Environmental Quality Commission
835 NW Bond Street
Bend, Oregon 97701

Dear Mr. Peterson:

Transmitted herewith, please find petitions signed by some 255 residents impacted by excessive noise of westerly departing aircraft from Portland International Airport.

The petitions are self-explanatory. While they are directed to the Port of Portland, because it is responsible for PIA and the latter's implementation of its 1983 Noise Abatement Plan, they are being sent to your Commission because of its dominant authority over the adverse conditions of environmental quality involved.

For your information, and in further support of the justification of these petitions, we offer the following:

1. Inquiries for assistance from the local DEQ office over a period of time have brought no investigation. A most recent phone inquiry detailing the problem to the DEQ resulted in no DEQ response, rather, a detailed response by the Port of Portland was made to the DEQ inquiry. (Copy of letter 7/29/85 attached hereto.)

2. The following is from "EQC Adenda Item H", dated August 19, 1983, Page 3:

> "Upon approval of the Plan, the abatement program shall have the force and effect of an order of the Commission. The Commission may also direct the Department to undertake such activity necessary to ensure compliance with the terms of its order."

Page 15:

"4. Approval of this program and these conditions is an order of the Commission and is enforceable pursuant to OAR 340-12-052."

In view of the above, we are perplexed at the DEQ's failure to investigate our complaints and their deferring response to the perpetrating source, the Portland International Airport.

This Port letter states that "we have used all of our authority and influence to not only implement the Plan, but to improve upon procedures that were recommended." If this is true, then the authority and influence of your Commission is needed to authenticate their implementation, as well as arbitrate their expressed accomplishments against the continued over-flights experience by the impacted residents.

3. Data from PIA Noise Abatement Plan, Annual Report 1985, discussed in a May 1985 meeting of the PIA Commission (five months after activation of their VOR/DME) substantiates the continued excess in noise, duration and frequency of noise impact on local neighborhoods. (See Table B, Monitoring Data from the Plan, Annual Report 1985, attached hereto.)

4. To reporter Gordon Oliver (article in Sunday Oregonian, August 4, 1985), John Newell is quoted: "Newell admitted, however, that up to forty percent of commercial pilots did not observe designated routes over the Columbia River that were established to keep noise away from populated areas." Article further quotes Newell: "He estimated that an average of 100 airplanes used the westerly runway each day."

   These PIA statements confirm that the plan in this regard is being only sixty percent implemented. It further establishes that some forty aircraft per day are causing excessive noise impact, and many of these impacts are at night, during sleeping hours when the consequences of the impact are most severe; a very consequential corruption of the quality of the environment of those impacted. (Copy of the Oregonian article attached hereto.)

5. As a justification for this forty percent deficiency in conformance with the Plan, Newell is quoted: "He said some pilots were not regular users of the airport and were unaware of the routes, while others were diverted by adverse weather conditions." Familiarization of first-time pilots would be critical responsibility of all major airports; failure of such pilots to be aware of any airport's flight routes (including local noise-abatement requirement routes) would invite disaster. As for adverse weather, such does not occur in the Portland area during the summer months with any measurable significance or duration to impact a deficiency of this forty percent magnitude.

Please consider the following: The aircraft are, by their nature, the source of the noise; their flight patterns are reasonably adjustable. The land areas and their residents are fixed. Is it not reasonable that the first, and foremost, most fundamental and critical priority in the implementation of an aircraft noise abatement plan be the establishment and regimentation of the most noise abating aircraft flight patterns?

In this regard, the PIA is blessed with the exceptional opportunity of having the Columbia River as a natural uninhabited flyway for departing and arriving flights. The closer flight patterns can be to the center of the river, the less impact on adjacent land areas, the less discomfort to residents, the fewer complaints, the more limited the areas subjected to land use restrictions, building code restrictions and residential sale disclaimers. All these restrictions and limitations of the use and enjoyment of the otherwise uniquely advantaged land areas involved cannot justly be applied without clear, precise and controlled PIA flight patterns. Nor can reliable noise contour maps be drawn.

And the Port admits to a forty percent deficiency in compliance with the Plan's specified westerly departures after having used "all of our authority and influence to not only implement the Plan, but to improve upon the procedures recommended." That is their position, their conclusion, their solution to our continuing excessive aircraft noise impact problem.

6. Another important aspect of this matter, a part of which would concern your Commission, is that of public health and safety. The spent aircraft fuel that forty aircraft a day spread over the decks, outdoor furniture, etc., and introduce to the lungs by direct over-flights, would be much more healthily dispersed over the wide Columbia. And, should an aircraft malfunction and crash, such event over and into the Columbia would limit the disaster to the aircraft and its occupants. Should it happen to one of the forty errant flights over our populated land areas, the disaster would likely include a number of mobile homes, or houseboats, or condominiums, or homes, or one of the major motels, or Jantzen Beach Center, thus creating a catastrophe. And if the aircraft should not be in the prescribed flight pattern, official accounting of serious consequences would appear to be justified.

In conclusion, in the July 29, 1985 letter from the Port's John Newell to Charles Richardson, Newell describes in paragraph two the prescribed and improved flight pattern for westerly departing aircraft, concluding: "This course, when flown, places the aircraft near the center of the Columbia River."

We commend the Port for this effort. This course would negate further complaints. The problem lies between the written prescription and the reality: Aircraft are rarely to be found arriving or departing utilizing

the center of the Columbia, and even the Port admits to a sixty percent conformance, or forty aircraft per day being off course.

The attached petitions represent a portion of the residents impacted; sufficient, we feel, to constitute a worthy appeal for the involvement of your Commission. These petitions and the accompanying data and observations are in support of our request for an in-depth, on site, investigation into this matter, free and independent from the power and influence of the Port of Portland.

Thank you for your consideration. We anxiously await your response.

Submitted by:

Gerson Goldsmith
525 N. Hayden Bay Drive
Portland, Oregon 97217

Charles D. Richardson
255 N. Lotus Beach Drive
Portland, Oregon 97217

Enclosures: Copies of Petition with 255 signatures
(originals available)

cc: Oregon Environmental Comission Commissioners:

Arno Denecke, Vice-Chairman, 3890 Dakota Road, S.E., Salem OR 97302
Mary Bishop, 01520 SW Mary Failing Dr., Portland OR 97219
Wallace Brill, 75 Lozier Lane, Medford OR 97501
Sonia Buist, Oregon Health Sciences University, Room 20, 52 Baird Hall, 3181 SW Jackson Park Road, Portland OR 97201

Neighborhood Associations:

Dee Sholkoff Griffen, Riverhouse Assn., 456 N. Hayden Bay Drive
Bob Hungerford, Marina Riverhouse Assn., 704 N. Tomahawk Island Dr.
Carl Fisher, Hayden Bay Marina Homeowners Assn., 215 N. Lotus Beach Dr.
Stan Scrivner, Riverhouse East Condo Association, 406 N. Hayden Bay Dr.
Mike Goldsmith, Hayden Bay Condos, 525 N. Tomahawk Island Dr.
Doug Kemper, Hayden Island Homeowners and Renters Assn., 2361 N. Menzies Ct.

Port of Portland

Box 3529 Portland, Oregon 97208
503/231-5000
TWX 910-464-6151

July 29, 1985

Mr. Charles Richardson
255 N. Lotus Beach Drive
Portland OR 97217

Dear Charlie:

I am writing in response to your July 12 complaint to the Department of Environmental Quality (DEQ) concerning the Port not complying with provisions of the Airport's Noise Abatement Plan.

Let me assure you that we have used all of our authority and influence to not only implement the Plan, but to improve upon the procedures that were recommended. As an example, for west departures, the Plan states, "Maintain initial runway heading for a distance of 8 miles". Even under ideal conditions, an aircraft flying this pattern will still be along the north bank of Hayden Island. With installation of the navigational aid (VOR/DME), we changed that procedure to "intercept and fly the 276 degree radial." This course, when flown, places the aircraft near the center of the Columbia River.

Yes, some aircraft are still overflying Hayden Island. However, since implementation of the VOR/DME procedures in January, 1985, we have seen a gradual increase in the percentage of aircraft turning to intercept a course over the river. We expect this percentage to grow in the coming months.

The Noise Abatement Plan does not address fuel conservation as you have suggested. In fact, to fly the prescribed noise abatement procedures, has added an estimated $2 million to airline operating costs. Additionally, the Plan does not restrict operations at night or during the early morning hours; however, market demand has limited the number of operations during those noise sensitive hours.

In closing, let me again assure you that we are meeting our commitments to implement and support the Portland International Airport Noise Abatement Plan. We also are continuing to seek solutions to the noise concerns of Hayden Island residents. However, please understand that even with the aircraft on a track up the middle of the river, the noise levels impacting Hayden Island will remain significantly high.

Sincerely,

John Newell
Noise Abatement Officer

cc: John Hector, DEQ

0096N

The following contained in PIA Noise Abatement Plan
Annual Report 1985

TABLE B
MONITORING DATA

Site	# of single events	Threshold dBA	Max dBA	Ave LMax	Ave Time Above Threshold	Ave. LEQ	Comments
1a	38	65	85.3	79.6	22.2	63.5	West departures
1b	15	65	90.2	78.2	24.7	66.9	"
3a	63	65	88.0	74.9	36.3	64.3	East departures
3b	29	65	88.3	79.3	26.1	62.8	"
4a	171	65	102.1	82.4	35.5	71.4	West departures
4b	56	65	99.8	82.1	40.4	68.1	"
4c	9	70	92.5	87.8	35.2	71.2	"
4d	12	60	76.2	69.4	24.4	56.0	"
4e	15	65	92.0	77.2	30.3	62.4	"
5a	26	60	77.0	70.0	35.2	58.8	Cross Wind Dep.
5b	16	65	96.2	84.7	30.4	72.9	"
6a	36	65	95.7	78.7	35.7	58.5	East departures
6b	31	60	91.3	74.6	22.7	60.6	East arrivals
6c	46	60	96.8	72.3	23.4	64.7	East departures
6d	75	60	97.2	75.0	23.7	63.0	"
7a	140	65	98.2	79.1	28.6	66.1	"
7b	11	65	98.2	78.6	16.8	64.3	"
11	9	55	69.8	64.3	19.0	49.0	West departures

NW St Helens Rd

4a - N. Hayden Island Drive (E. of Red Lion)
4b - N. Tomahawk Island Drive
4c - N. Lotus Beach Drive

(Observation: West departures most prevalent departure in late spring, summer and early fall when N.W. winds prevail and when windows are open and residents are frequently outside, thus maximizing aircraft noise impact at all hours.
During these same periods clear weather optimizes visual flying of aircraft over the wide, unpopulated Columbia River.)

PORTLAND

Continuing airport noise rankles island's residents

By GORDON OLIVER
of The Oregonian staff

Hayden Island residents have begun circulating petitions asking the Port of Portland to put its 1983 airport noise-abatement plan into effect, but a Port official said the agency already had done so.

Petition forms have been sent to members of the Hayden Island Homeowners Association Committee for distribution, with copies delivered to the Port of Portland, the East Columbia Neighborhood Association and various city officials.

The form states that the Port's failure to implement part of its 2-year-old noise-abatement plan on Portland International Airport's westerly departure route has caused "excessive and unnecesssary noise impact" on Hayden Island, the Columbia Slough and other areas.

Charles Richardson, a member of the homeowners association committee representing the Hayden Bay Marina Homeowners Association, said many airline pilots were not following flight paths designated in the Port's noise-abatement plan.

> "It's very difficult to get every plane on a narrow path over the river."

"These things are basically like shotgun pellets," Richardson said of the planes that fly over his home. "They're all over the place."

Richardson said the noise problem was worse during periods of westerly winds, including summer months, because planes must take off into the wind.

However, John Newell, the Port's noise-abatement officer, said the noise-reduction plan was already in effect and had even been modified to improve conditions on Hayden Island. He said the most significant step in curbing noise problems came in January when the Port acquired a $200,000 aircraft guidance system to direct pilots on a designated course within 25 miles of the airport.

Newell admitted, however, that up to 40 percent of commercial pilots did not observe designated routes over the Columbia River that were established to keep noise away from populated areas. He said some pilots were not regular users of the airport and were unaware of the routes, while others were diverted by adverse weather conditions.

The Port of Portland is working on new programs to inform pilots of the airport noise-abatement program, and Newell recently met with chief pilots from airlines serving Portland to discuss the noise problem. He conceded the problem would not be easy to solve.

"It's not like driving a car," he said. "It's very difficult to get every plane on a narrow path over the river." He estimated that an average of 100 airplanes used the westerly runway each day.

Aircraft from the Oregon Air National Guard based at Portland International Airport also contribute to the noise problem, said Richardson. He said the military planes were taking unnecessary shortcuts and should be required to remain in the river flight path.

Col. Wilfred Unverricht, base support manager at the Air National Guard Base in Portland, said he believed the base had been successful in implementing the Port's noise-abatement plan. "We've been able to respond to what the Port comes up with," he said.

Unverricht said even a slight drift by aircraft during high winds could affect noise levels over Hayden Island and other populated areas. He predicted continuing noise problems over part of the island because of its proximity to the airport's westerly runway and said planes sometimes appeared to be flying over land even when they were over the river.

"I can't see any great improvement, except that each generation of aircraft that comes out is quieter," he said.

PETITION

July, 1985

We, the undersigned, petition the Port of Portland to immediately implement and enforce that portion of Portland International Airport's noise Abatement Plan which reads: (aircraft) "If departing on Runway 28R or 28L (take-off to the west) maintain the initial runway heading for a distance of 8 miles or until reaching an altitude of 6,000 feet, whichever occurs first, before turning on course".

Failure of the Port to implement this critical specification of its Noise Abatement Plan (now two years old) results in westerly departing aircraft over-flying, with great frequency, the densely populated areas on Hayden Island, the Columbia Slough and areas of Portland southerly adjacent to the Slough. Such disregard for the plan's westerly departure route, causes excessive and unnecessary noise impact on these areas, as the requirement of the $300,000 PIA Noise Abatement Plan anticipated.

The publicized and promised relief via the activation of the VOR/DME at PIA in December 1984 has to date been meaningless. This brought the Port's investment in Plan and special equipment to $500,000.00. The results for our areas? Only the Port prompted passage of a county ordinance with restrictive land use, zoning, building and insulation requirements, but NO AIRCRAFT NOISE ABATEMENT!

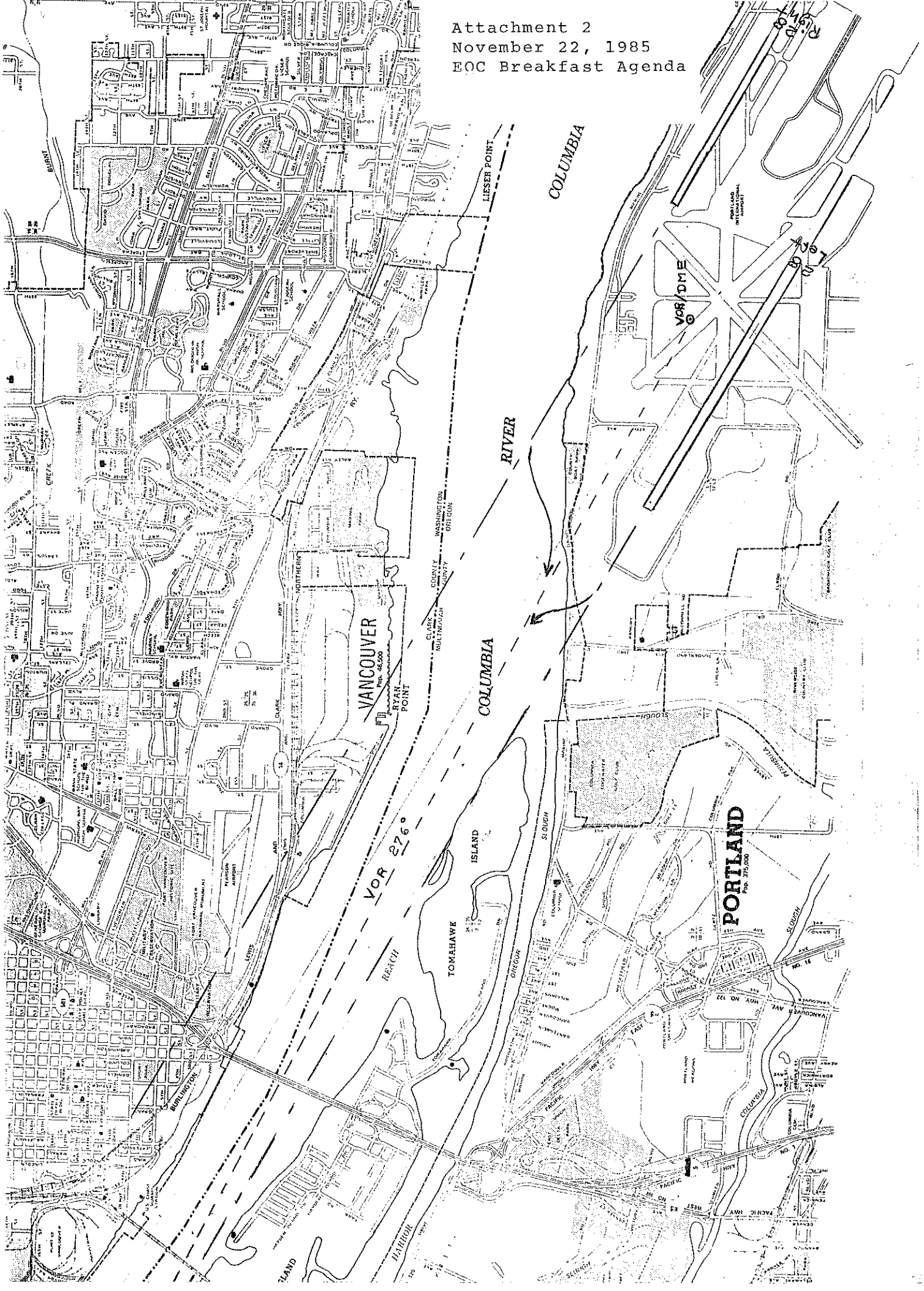
By the Port's own measurements (Noise Abatement Plan Annual Report '85), our area's noise impact exceeds human tolerance thresholds in some instances by over 50%. This impact is further enhanced by increasing occurances of nighttime, sleeping hours, low flying aircraft. A City of Portland, Bureau of Planning report, April, 1985, cites a number of leading authorities who find excesses of such noise tolerence thresholds (65 DBA) as "causing potential adverse psychological or physiological effects".

Since implementation of the prescribed noise-abating westerly flight pattern is a matter of the Port directing and requiring aircraft conformance with this portion of the Plan; since there is no danger or discomfort to such aircraft, crews or passengers; since conformance has immediate and lasting benefit to people and land use in the areas presently adversly impacted, we ask the Port to immediately initiate implementation of the above requirement of it's own Noise Abatement Impact Plan of 1983.

Residents of Noise Impacted Area:

Name	Address
Bette Webb	12462 N. Westshore Dr.
John Webb	same
Ellen Thornton	12271 N West Shore Dr
R. C. Thornton	— SAME —
Jay E. Miller	12261 N. West Shore Dr.
LaVerne Peck	12351 N West Shore Dr.

Attachment 2
November 22, 1985
EOC Breakfast Agenda



Attachment 3
November 22, 1985
EOC Breakfast Agenda

SID

JEPPESEN MAY 31-85 (0-3A) EFFECTIVE

PORTLAND, OREG

PORTLAND INTL

PORTLAND Departure(R) 100°-279° 118.1 280°-099° 119.8

RIVER ONE DEPARTURE (RIVR1.HDR)(VECTOR)

TAKE-OFF
Rwys 10L/R: Turn LEFT, intercept and proceed via Hood R-085, ⓐ EXPECT radar vectors to assigned route. **MAINTAIN 12000'** or assigned altitude. EXPECT filed altitude/flight level 5 minutes after departure.
Rwys 28L/R: Intercept and proceed via Hood R-276, ⓐ EXPECT radar vectors to assigned route. **MAINTAIN 13000'** or assigned altitude. EXPECT filed altitude/flight level 5 minutes after departure.

TATOOSH D (H) 112.2 TOU N48 18.0 W124 37.5
PAINE D (L) 114.2 PAE N47 54.2 W122 17.2
HOQUIAM D (H) 117.7 HQM N46 56.8 W124 08.9
OLYMPIA D (H) 113.4 OLM N46 58.3 W122 54.0
SEATTLE D (H) 116.8 SEA N47 26.1 W122 18.5
EPHRATA D (H) 112.6 EPH N47 22.7 W119 25.4
ASTORIA D (L) 114.0 AST N46 09.7 W123 52.7
YAKIMA D (H) 116.0 YKM N46 34.2 W120 26.6
PORTLAND D (H) 116.6 PDX N45 44.9 W122 35.4
THE DALLES D (H) 112.3 DLS N45 42.8 W121 06.0
Portland Intl 26
276°
085°
NEWBERG D (H) 117.4 UBG N45 21.2 W122 58.6
HOOD D (T) 111.8 HDR N45 35.6 W122 36.3
PENDLETON D (H) 114.7 PDT N45 41.9 W118 56.3
NEWPORT D (H) 117.1 ONP N44 34.5 W124 03.6
N
NOT TO SCALE
EUGENE D (H) 112.9 EUG N44 07.3 W123 13.3
KIMBERLY D (H) 115.6 IMB N44 38.9 W119 42.6
NORTH BEND D (L) 112.1 OTH N43 24.9 W124 10.0
REDMOND D (H) 117.6 RDM N44 15.2 W121 18.1
ROSEBURG (L) 108.2 RBG N43 11.0 W123 21.1
MEDFORD D (H) 113.6 OED N42 28.8 W122 54.7
LAKEVIEW D (H) 112.0 LKV N42 29.6 W120 30.4
KLAMATH FALLS D (H) 115.9 LMT N42 09.2 W121 43.6

LOST COMMUNICATIONS PROCEDURE ONLY
If no contact with ATC upon leaving 3000', continue climb to assigned altitude. Proceed direct to the Portland VORTAC, thence via assigned route.

CHANGES: New chart.

Attachment 4
November 22, 1985
EOC Breakfast Agenda

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

Memorandum

To: Environmental Quality Commission Date: 11/20/85

From: Carol Splettstaszer

Subject: Future Meeting Dates and Tentative Agenda Items

We propose the following dates and places for meetings through 1986 (see attached calendar).

January ?, 1986	Possible special meeting on East Multnomah County Threat to Drinking Water
January 31, 1986	Portland
February ?, 1986	Possible special meeting for public hearing on METRO Waste Reduction Plan, Portland
March 14, 1986	Portland
April 25, 1986	Portland
June 13, 1986	Portland
July 25, 1986	Salem
September 12, 1986	Bend
October 24, 1986	Portland
December 12, 1986	Portland

Also attached is a list of tentative agenda items.

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				

1986

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	X	

X Portland

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	X	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Portland

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	X	26
27	28	29	30			

Portland

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 X
8	9	10	11	12	(13)	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Portland

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		

Salem

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				

Bend

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	

Portland

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			

Portland

1986 Holidays

January 1	New Years Day
January 20	Martin Luther King's Birthday
February 17	President's Day
May 26	Memorial Day
July 4	Independence Say
September 1	Labor Day
November 11	Veterans Day
November 27	Thanksgiving
December 25	Christmas

X - Meeting Dates already set

O - Proposed Meeting Dates

TENTATIVE AGENDA ITEMS

1986

JANUARY, 1986

Air Quality

-Ozone Plan - Rule adoption
-Volatile Organic Compound Rules - adoption
-Amendment of motor sports rules (January or March)
-Coastal incinerator rules (January or March)

Water Quality

-On-Site rule amendments - authorization for hearing
-Nutrient standards
-Mid-County Threat to Drinking Water (may need special meeting)

Hazardous and Solid Waste

-PCB spill cleanup standards - hearing authorization
-Hazardous Waste civil penalty schedule adjustment
-Adoption of hazardous waste management fees for Superfund cleanup
-Adoption of notification rules for underground storage tank program
-Yard debris as a principal recyclable material - hearing authorization
-Recommendations on open burning dumps

FEBRUARY, 1986

Hazardous and Solid Waste

-Special meeting - public hearing on METRO waste reduction plan.

MARCH 14, 1986

Water Quality

-On-Site rule modifications - adoption
-Water quality standards modifications - hearing authorization
-Facility planning rules/permit procedure refinement - hearing authorization

Hazardous and Solid Waste

-Decision on year debris as a principal recyclable material
-Evaluation of Metro Waste Reduction Plan
-Approval of landfill site selection criteria
-Hazardous waste facility siting standards (SB 138) - hearing authorization
-Underground storage tank rules - hearing authorization

APRIL 25, 1986

Water Quality

-North Florence (Clear Lake) aquifer plan implementation rule changes - hearing authorization
-Construction grant priority list - hearing authorization

Hazardous and Solid Waste

-Adoption of hazardous waste facility siting standards (SB 138)
-Adoption of PCB spill cleanup standards
-Adoption of adjustments to hazardous waste schedule of civil penalties
-Adoption of underground storage tank rules
-Spill response rules - hearing authorization

JUNE, 1985

Water Quality

-Facility planning rules - adoption
-Water Quality Standards revisions - adoption
-Groundwater standards - hearing authorization
-Review of the State/EPA Agreement

Hazardous and Solid Waste

-Final decision on METRO waste reduction plan
-Report on Landfill siting study and alternatives
-Report on local land use plan findings re landfill siting
-Adoption of spill response rules
-New federal hazardous waste regulations - hearing authorization

JULY 1986

-Tour newly-completed Marion County garbage burner

SEPTEMBER, 1986

Hazardous and Solid Waste

-Environmental notice rules (HB 2143) - hearing authorization
-Adoption of new federal hazardous waste regulations

OCTOBER, 1986

Hazardous and Solid Waste

-Spill response master plan - hearing authorization
-Staff report and recommendations on landfill sites
-adoption of rules on environmental notice

DECEMBER, 1986

Hazardous and Solid Waste

-Adoption of spill response master plan

OTHER

Legislative/budget discussions

Consumat Systems, Inc. OPERATIONS DIVISION

P. O. BOX 9379 • RICHMOND, VIRGINIA 23227 • PHONE (804) 746-4120

May 29, 1985

Ms. Wendy L. Sims
Senior Environmental Engineer
Department of Environmental Quality
Box 1760
Portland, Oregon 97207

Dear Ms. Sims:

Thank you for your letter dated May 22, 1985 requesting detailed technical information on various Consumat® models. We regret that you have not received a prompt response to your requests in the past but can see why it would be difficult for our representative to supply some of the details requested. We will answer your questions below and will be happy to supply any other details which you might require.

The specific installations you mention are MSW applications. The "CS" models (CS2000 and CS1200) are designed for 24 hour per day operation while the "C" models are designed for 8 - 12 hours loading with an automatic burndown period. Each installation of this size tends to have some slight differences from other installations and the operating and maintenance manuals are assembled specifically for the unit. Two copies are usually supplied with the equipment. Additional copies are assembled for $150 per copy. Our records show the following information.

Unit	L/C Vol., $Ft.^3$	U/C Vol., $Ft.^3$	Aux. Burner, Btu/Hr x 10^6
CS-2000	1600	500	0.5/2.5
CS-1200	1000	210	0.5/2.0
C760M	760	220	0.5/2.0

The installations at Coos Bay and at Brookings are fitted for future addition of energy recovery boilers.

Start-Up Information

The systems are not designed to achieve a pre-set temperature in the secondary prior to loading waste. The units are started with all burners in operation. Interlocks are provided to assure that all burners are in operation prior to loading. The operators are instructed to charge initially with clean, relatively dry waste (cardboard, wood) to aid in rapid start-up. Since on start-up all gases generated in the lower chamber must pass through the full flame of the secondary burner and since these gases are initially low in volume start-up is a relatively clean procedure for an experienced operator. The actual flame temperature of the secondary burner will be in the 3000° F range (about 20% excess air) although the average outlet temperature will read less than 800 - 900° F because of the initially "cool" walls and various losses. It is not practical to operate with the thermocouple directly in the burner flame.

Designing the system to achieve a pre-set average outlet temperature would involve several significant design and operating changes which would increase costs for a not-so-clear result. For example, if the 1600° F temperature were to be achieved with the burners alone, all the refractory heat sink and loss would have to be supplied by fossil fuel. Because the stack opening represents the largest loss, the temperature mentioned cannot be achieved without some type of damper arrangement. Hot gas dampers have always given problems because of the harsh environment. From a practical standpoint, the burner sizes would also have to be increased. The average total heat release rate on a CS-2000 with MSW is about 20 million Btu per hour. To achieve the 1600° F in a reasonable time period with hot gas outlet damper the upper burner would need to be in the 8 million Btu/Hr range. The CS-1200 and C-760M have an average heat release rate in the 10 million Btu/Hr range and would need a burner in the 4 million Btu/Hr range. The controls would also need to be changed to provide the desired interlocks. It is difficult to determine the cost of a retrofit system since a good deal of field work is required. An estimate would be in the $40,000 - $50,000 per unit range. Operating costs would also increase because of the additional fuel consumption.

Once the upper chamber reaches the 1600° F point and waste is charged, a time period in the 30 - 60 minute range is estimated to be needed to achieve an 1800° F outlet. This assumes no precharging and the primary chamber being cool. The overall time and temperature relationship depends somewhat on the maintenance of the equipment. A "tight" system where air infiltration is kept at a minimum will take less time to heat and will be controlled more precisely.

Operating Temperature

Achieving an average flue gas temperature of 1800° F within 30 minutes from the first charge, starting cold and assuming equilibrium, is not attainable for systems of the size being considered here. The heat sink capacity of the refractory precludes equilibrium conditions in this period of time. The actual flame temperature would of course,

be greater than the 1800° F but the walls would be lower and the thermocouple would read lower. Maintaining the preset temperature for a two hour period after the final charge should be achievable provided the system is being run close to the design point with typical MSW or better.

It is difficult to judge the capabilities of an individual system after a period of time. Performance depends on the operator, the maintenance, and the waste. In some of the continuous energy recovery facilities operated by CSI the secondary chamber will be operated in the 1800° F - 2100° F in order to keep the excess air low and the recovery efficiency high. The higher the temperature is in the secondary, the more difficult the working environment. Refractory wears faster, thermocouples burn out, and upper chamber cleaning becomes more difficult. We generally regard typical MSW as being in the 4500 Btu/Lb HHV and in the 25% or less free moisture. Waste with much higher moisture and lower calorific value would have a lower theoretical flame temperature, require less excess air at a given temperature and might require more auxiliary fuel.

Clinker problems are generally associated with primary (lower) chamber operation and are not influenced by secondary chamber. Early in the development cycle of the continuous system design (CS models), we experienced considerable clinker problems. This condition would generally occur near the end of the week when operating on a continuous basis. The clinker formation is associated with localized hot spots which allow molten glass and residue to combine. Once started, clinkers can be substantial. Changes were made in the air injection system, lower chamber component cooling, and shut down procedures which substantially eliminated the clinker problem. Clinker formation has not been considered a problem with the Consumat® for a number of years. The transfer rams have substantial force and can deal with normal ash problems. Large clinkers are not normal and are indicative of other problems.

The lower chamber burner is for ignition only in an MSW system. The burner operates for a pre-set time period, once the upper burner is on, and then is automatically turned off for the remainder of the cycle.

The upper burner is set to operate upon initial start-up and to continue to operate as long as the upper chamber temperature is below set point. The burner modulates (hi-low-off for oil burners) in combination with combustion air requirements. For example, upon start-up the combustion air will be at the minimum setting to prevent excess air into the system and to maintain a high flame temperature. As the temperature approaches the set-point, the combustion air is increased and the burner fuel is decreased. A point is reached when the system is in equilibrium when the auxiliary fuel is off and the temperature is automatically controlled by modulating combustion air. During shutdown, the combusiton air modulates closed to maintain the setpoint temperature. Once the air reaches a minimum point, the upper burner modulates "on" to assist in maintaining the temperature. This continues until the burndown time period is satisfied. For systems which operate on a continuous basis, the burner is off except on start-up and shutdown.

Normal burner maintenance is needed to keep the system operating properly. Flame tube cleaning, electrode cleaning and adjustment, flame sensor cleaning, periodic nozzle changes, and primary relay maintenance are the main considerations.

Shut Down

As mentioned earlier, maintaining the preset temperature for 2 hours after final charge is not believed to present a problem for a properly operating system although we have not collected data to substantiate this. The primary chamber will still be very hot at this point but most of the oxidation will be from the fixed carbon. Since it is not practical to measure burnout at this time period, we have no data to indicate the degree of burnout. The normal burndown period could run for 5 hours or more. Again, determining burnout after 2 hours is of little practical value since the system must cool beyond this time.

You might not be completely familiar with the controlled-air process and I have enclosed a brief description for your information. It is important to the process to maintain the lower chamber in a reducing atmosphere and the secondary chamber in an oxidizing atmosphere. The controlled reducing conditions keep many of the undesirable ash components from vaporizing and entering into the flue gas stream. The low velocity, long solids retention time, and quiet reactions keep solid fly ash entrainment to a minimum. These factors are important from a pollution control standpoint. The secondary chamber utilizes an air jet injection concept to provide the turbulent recirculation patterns necessary for a high combustion (destruction) efficiency. The condition here is an oxidizing atmosphere (excess air).

We are somewhat disturbed by your statement that there has been a history of problems with the Consumat® installations in Oregon and have asked our representative to investigate and to report to us these problems. It is not our intention to allow known problems to continue unresolved.

We sincerely appreciate your letter and look forward to assisting you with your efforts. Hopefully, this discussion has been of some use to you.

Please feel free to contact us if you have any questions.

Very truly yours,

CONSUMAT SYSTEMS, INC.

Robert L. Massey
President

WOW:cw

cc: Thermal Reduction

Enclosure

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

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

May 22, 1985

Mr. Bill Wiley
Consumat Systems, Inc.
P. O. Box 9379
Richmond, VA 23075

Dear Mr. Wiley:

The Consumat installations in Oregon are the source of potential air quality problems. Since April 8, 1985, I have been requesting information from Consumat on the operation of the units in Oregon. As I have not received this information from Consumat or Thermal Reduction Company, your representative in Washington, I am reiterating my request below. Your prompt attention to this matter would assist us in developing parameters under which the Consumat units might be operated in compliance with Oregon regulations.

The particular units information is needed on are: CS2000 #4156 and #4157 (1980 models), C760M #4035 (1978), C760M #2937 (1977) at Beaver Hill, Oregon and the two CS1200 units installed at Brookings, Oregon in 1979. The serial number on one of these units is #4070. Please send operating manuals on these units, if they are available.

Start Up

Our regulations require that exhaust gases be preheated to 1600° F. before waste is introduced. This regulation was developed based on data gathered from various modular incinerator manufacturers, particularly Consumat. However, operators at both facilities report maximum temperatures of about 600° F. using only auxiliary fuel. What are the maximum upper chamber temperatures achievable on auxiliary fuel only? What is the volume of each upper chamber? What are the burner specifications for each upper and lower chamber?

The units have been started by loading the primary chamber with waste before ignition. Were any of these units originally equipped with interlocks to prevent loading of waste before the unit reaches a specifiedtemperature? Can they be retrofitted and, if so, at what cost? For a unit charged with waste as soon as the 1600° F. gas temperature is achieved, what is the time period required to reach 1800° F.?

Operating Temperature

Under Oregon regulations, the flue gases must be brought to at least 1800° F. within 30 minutes of charging with waste and maintained at that temperature until 2 hours after the final charge. The operator of the CS1200 units has represented that those units are incapable of achieving 1800° F. gas temperatures during periods of high moisture content in the waste. He further claims

that clinker production increases at this temperature, causing wear and damage to the ash removal system. Are the CS1200 units capable of maintaining 1800° F. in the secondary while wet municipal waste is being charged? What has been your experience with clinker production? Do the ash removal rams have sufficient hydraulic pressure to clear the clinkers? I should note that these units are being operated on a one shift per day schedule.

In addition, please describe the design operating schedule for each upper and lower chamber burner. What would have to be done to the units to change the temperature set points? What are the maintenance requirements to insure that the burners operate according to specification?

Shutdown

The Oregon regulations further specify that the minimum exhaust gas temperature of 1800° F. be maintained for 2 hours after the final charge of waste. From your experience, should this present any problem? How much of this time would auxiliary fuel be required? What condition would the waste in the primary chamber be in after this two hour period, that is, what fraction would be burned out, how long until complete burnout, etc.?

I realize that assembling this amount and type of information is a time consuming process. However, there has been a history of problems with the Consumate installations in Oregon. We look forward to resolving these latest difficulties so that the unit can be operated in a manner that would both benefit the State of Oregon and be a credit to your firm. I would appreciate an expeditious response.

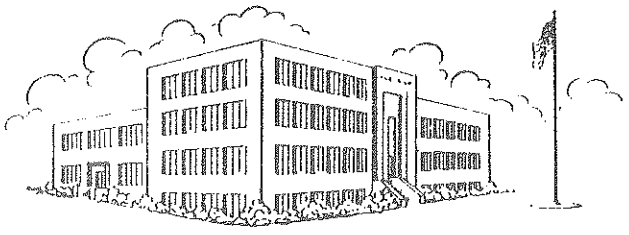
Please contact me at (503) 229-6414 if you have any questions.

Sincerely,

Wendy L. Sims
Senior Environmental Engineer
Air Quality Division

WLS:ahe

cc: Thermal Reduction Company



COOS COUNTY COURTHOUSE
Coquille, Oregon 97423
Phone: (503) 396-3121
Ext. 224, 225

County of Coos

BOARD OF COMMISSIONERS

Doc Stevenson
Jack L. Beebe, Sr.
Robert A. Emmett

November 20, 1985

Environmental Quality Commission
522 S.W. Fifth
Portland, OR 97204

Dear Commissioners:

We petition you to review the Administrative Rules for the operation of solid waste burners in the coastal area. In particular, we are concerned about the requirement to achieve 1800° F. burning temperature during start up, shut down and periods of break-down and repair.

Coos County has found it very difficult to maintain these temperatures, more so during the wet periods of the year. We find, in attempting to achieve these temperatures, we are required to burn large quantities of fuel oil accelerating our cost greatly.

We sincerely believe the regulations can be modified to work much more efficiently without serious harm to air quality. We are putting together further information that we would submit to a hearing on amending the Administrative Rules. We hope that we may have this opportunity to discuss the problem further with the commission or their staff.

Very truly yours,

Doc Stevenson

Doc Stevenson
Coos County Commissioner

jm

November 19, 1985

Mr. James E. Peterson
Chairman
Oregon Environmental Quality Commission
835 N.W. Bond Street
Bend, Oregon 97701

Re: Information Report: Review of Portland International Airport's Noise Impacts During Westerly Departures

Dear Mr. Peterson:

Thank you for providing us with a copy of subject report. We are most appreciative of your follow-through by you, your commissioners and staff. The report was received Friday and, since your next meeting after November 22 is not until January 31, 1986, we are anxious to have the Commission's consideration of an important, particular aspect of the report.

An earlier report by PIA found westerly departing aircraft to be some 40% in non-conformance with the flight path specified under your Commission approved and ordered Noise Abatement Plan of August 19, 1983. Your Department's investigation (subject report) has found that non-conformance to be some 48%. Thus two recent investigations have found the PIA to be in the average some 44% in non-conformance of a Commission noise abatement order of over two year's standing.

We would be curious to know of the Department's or the Commission's record of handling transgressors of Commission orders to the extent or duration of this instance. Take, for example, an industry dumping toxic waste, field burning; a manufacturing plant exceeding ordered noise levels; a rural resident releasing raw sewage into the ground or a stream; or any of the hundred of other cases of transgressions of environmental quality you handle.

Is it historically characteristic, i.e., procedurally established, that a business, an industry, an individual in non-conformance to the extent of 44% of a Commission order of over two years standing be handled by being given an eight months extention of compliance, whereupon the matter will be re-investigated? (see "Recommendations C" subject report.)

Or is it more characteristic for the Department or the Commission to detail the non-conformance, fix a deadline for compliance, along with the potential of a fine or even closure of operations? Is a government operated business functioning under the same standards as the rest?

Subject report contains recommendations to the Commission from the Department. We are very anxious to know of the Commission's decisions to achieve conformance by PIA with its established orders for noise abatement. While we greatly appreciate your investigation of this matter, it certainly does appear that the transgressions have been firmly established and a call for specific action (possibly even fining pilots or airlines) is fully justified, rather than be allowed into a third year of non-compliance.

Thank you for your consideration.

Sincerely,

Gerson Goldsmith
525 N. Hayden Bay Drive
Portland, Oregon 97217

Charles D. Richardson
255 N. Lotus Beach Drive
Portland, Oregon 97217

CITY OF KLAMATH FALLS, OREGON

AN EQUAL OPPORTUNITY EMPLOYER
P.O. Box 237
97601

SISTER CITY
ROTORUA, NEW ZEALAND

November 6, 1985

Mr. James E. Peterson
2031 N W Rimrock ROad
Bend, OR 97701

Dear Mr. Peterson:

I wanted to personally explain the current status of the City's proposed Salt Caves Hydroelectric Project, and to offer staff assistance if you have any questions concerning the project.

As you know, the City of Klamath Falls filed for a Federal Energy Regulatory Commission license last January. Since that time, new state standards and requirements have been adopted. These have propagated additional studies on our part, which will become part of the FERC application. Also, in response to concerns and issues raised, the City has initiated environmental and other ongoing studies, to be completed in the next few months. These additional requirements have complicated the process for all involved: State agencies, FERC and the City.

As such, on Monday, October 28, 1985, the City of Klamath Falls temporarily withdrew its FERC license application for the Salt Caves Hydroelectric project, and will refile that application in May, 1986. As a result of this action, the Energy Facility Siting Council and the Department of Environmental Quality (DEQ) applications have also been temporarily withdrawn. DEQ will be refiled in February. Applications before the Water Resources Commission will continue.

It is our belief that this action will allow for the timely completion of organized studies. As a result, all parties involved in the regulatory process will have an updated and consolidated document with ample time for thorough and meaningful review.

500 KLAMATH AVENUE
MAYOR
CITY MANAGER
883-5318
ASST. CITY MANAGER
883-5317
CITY ATTORNEY
883-5323
FINANCE
(Muni Court, Licenses, Water Service, Bookkeeping)
883-5301

MEMORIAL DRIVE
ANIMAL CONTROL
883-5379
AIRPORT
MUNICIPAL AIRPORT
883-5372

425 WALNUT STREET
POLICE DEPARTMENT
883-5336
143 BROAD STREET
FIRE DEPARTMENT
883-5351

226 SOUTH FIFTH STREET
PARKS, RECREATION AND CEMETERIES
CODE ENFORCEMENT/ BUILDING INSPECTION
883-5371
PLANNING/BUS SYSTEM
883-5360
PUBLIC WORKS
883-5363
WATER & SEWER UTILITIES DEPARTMENT
883-5366

AREA CODE 503

Finally, the City believes that this action will assist in its efforts to provide a more cooperative atmosphere so that a project can be developed that is in the interests of both the State of Oregon and Klamath County residents.

To that end I would like to offer the assistance of the project team in answering any questions or concerns that you may have. We would be happy to meet with you at any time. As the studies come to a close, you will be contacted for a briefing session.

In the meantime, if you have any questions, please give me a call or contact our Salt Caves Project Director, Bill Miller at (503) 885-5320.

Sincerely,

George P. Flitcraft

George Flitcraft
Mayor

HIBBARD, CALDWELL, BOWERMAN, SCHULTZ & HERGERT
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
OFFICE ADDRESS: 1001 MOLALLA AVENUE, SUITE 200
MAILING ADDRESS: P.O. BOX 667 • OREGON CITY, OREGON 97045
PHONE: 503-656-5200

CLARK I. BALFOUR
H. THOMAS BECK
DONALD B. BOWERMAN
JOHN C. CALDWELL
RONALD E. HERGERT
GEORGE L. HIBBARD
EDWARD A. LANTON *†
MARY DICK LONERGAN
PAUL D. SCHULTZ
NANCY S. TAUMAN
NELSON L. WALKER

* ALSO ADMITTED IN MINNESOTA
† L.L.M. IN TAXATION

ESTABLISHED 1897 AS
U'REN AND SCHUEBEL

November 19, 1985

VIA EXPRESS MAIL

Dr. Sonia Buist
Health Sciences Center
3181 S.W. Sam Jackson Park Road
Portland, Oregon 97201

RE: Brazier Forest Products/Declaratory Ruling
Our File No. 05337-013

Dear Dr. Buist:

We are the attorneys for Brazier Forest Products, Inc. A matter will come before you under Agenda Item N at your November 22, 1985 meeting. The undersigned will appear before you at that time concerning this matter.

The enclosure is a written response to the staff report which we assume you have in your material from the Department for the meeting.

We hope that by putting this in writing it will shorten the presentation and answer some questions.

Very truly yours,

John C. Caldwell

JCC/lm

Enclosure (1)
Copy of Response to Staff Report

cc: Mr. Fred Hansen, Director
Mr. Luther Steinhauer
Michael B. Huston, Esq.
(all w/enc.)