

4/25/1986

**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS**



State of Oregon
**Department of
Environmental
Quality**

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- 10:00 a.m. *H. Proposal to Declare a Threat to Drinking Water in a specifically defined area in Mid-Multnomah County pursuant to ORS 454.275 et. seq.--Proposed Final Order.
- I. Proposal to adopt a temporary rule to amend the existing cesspool rules--OAR 340-71-335 and ORS 340-73-080.
- *J. Proposed adoption of amendments to the State Implementation Plan regarding stack heights dispersion techniques, deleting rules OAR 340-20-340 and 340-20-3451; adding replacement rule 340-20-047.
- *K. Proposed adoption of the consolidated and updated State of Oregon Clean Air Act Implementation Plan, OAR 340-20-047.
- *L. Proposed adoption of amendments to Hazardous Waste Management Civil Penalty Schedule, OAR 340-12-068.
- M. Informational Report: Metropolitan Landfill Site Selection Criteria.
- N. Informational Report: Yard debris as a principal recyclable material in the Portland, Washington, Multnomah, Clackamas and West Linn Wastesheds.

WORK SESSION

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

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

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

The next Commission meeting will be June 13, 1986, in Tillamook.

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.

DOR721

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE ONE HUNDRED SEVENTY-FIRST MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

April 25, 1986

On Friday, April 25, 1986, the one hundred seventy-first meeting of the Oregon Environmental Quality Commission convened in the Second Floor Auditorium of the Portland Building, 1120 SW Fifth Avenue, Portland, 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.

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.

BREAKFAST MEETING

All Commission members were present at the breakfast meeting.

1. Harold Sawyer, the Department's Inter/Intra Program Coordinator, presented the Commission with a the following information regarding Mid-Multnomah County sewer assessments:

MID-MULTNOMAH COUNTY SEWER ASSESSMENTS

	Date of Estimate	LOT SIZE		
		5000 Sq. Ft.	7000 Sq. Ft.	10,000 Sq. Ft.
ARGAY TERRACE LID #1				
Engineers Estimate	6/83	2824	3586	4729
Final Cost Estimate	4/86	2118	2690	3547
121st SACRAMENTO LID				
Engineers Estimate	8/85	2293	2927	3877
Final Cost Estimate	4/86	1937	2473	3276
MID-MULTNOMAH COUNTY SEWER IMPLEMENTATION PLAN ESTIMATE	9/85	2250	3150	4500

NOTES:

Engineers Estimate is the cost estimate provided to property owners at the time of LID formation and is based on completed detailed engineering design.

Final Cost Estimate is the latest cost estimate based on actual bid costs plus costs of changes during construction as of the time that construction is essentially complete.

Information provided by City of Portland

2. Tax Credit Program. Maggie Conley, the Department's Tax Credit Program Coordinator, presented the findings of the Tax Credit Advisory Committee which was formed to review the continuation of the Tax Credit Program beyond its 1988 sunset date. Committee members included representatives from the Department of Revenue, Economic Development Division, Associated Oregon Industries, Oregon Environmental Council and each DEQ division.

Ms. Conley gave the Commission a handout which listed the following suggestions of the Committee.

- Retain tax credits for programs where DEQ's standards are more stringent than other states or where DEQ enforces more stringently than other states.
- Retain tax credits for new programs and for monitoring and prevention. Prevention of future pollution is as important as elimination of current problems.
- Eliminate or make optional, preliminary certification. This would cut down on much of what is considered "needless" paperwork by programs with plan review authority. Unfortunately, it would eliminate the opportunity for "up front" review of projects in programs with no plan review authority (e.g., noise; recycling).
- Put a monetary ceiling on pollution control tax credits certified.
- Only certify programs DEQ encourages but does not require, such as:
 - Small businesses that recycle hazardous or solid waste
 - Retrofitting woodstoves
 - Controlling pollution beyond minimum requirements

Ms. Conley said the Department had not necessarily accepted any of the above recommendations.

Industry representatives, Ms. Conley continued, do not feel a change in the program is necessary and would like to see the program continue beyond the 1988 sunset date. Other representatives on the Committee felt it was necessary to get back to the original purpose of the program, which was to provide an incentive for pollution control, instead of an economic development incentive, she said. The Committee also expressed the need to retain the program in areas where DEQ enforces more, and to retain the program for any new pollution control efforts the Department may undertake in the future.

Chairman Petersen said he had mixed feelings about the tax credit program. On the one hand, he said he did not believe in using the tax code for incentives, but on the other hand he would like to see tax credits for things such as retrofitting woodstoves to encourage that action.

Commissioner Brill asked if the cost of borrowing money would be eligible for tax credits. Ms. Conley replied that the Department has requested an Attorney General's opinion on that issue and would get back to the Commission when that opinion was received.

Director Hansen said the Department would not oppose or advocate any change in the tax credit program at the Legislature and he personally felt that government does not function well with entitlement programs.

Ms. Conley said that Associated Oregon Industries would probably go to the Legislature to extend the sunset date, but that any other change in the program would probably be initiated by the Department.

The Commission expressed support for the option of continuing the tax credit program for programs that DEQ encourages but does not require.

3. Tillamook Meeting, June 13, 1986. Director Hansen said the Commission's June meeting in Tillamook would offer an excellent opportunity to see a success story in the area of confined animal feeding and holding operations at dairy farms. He asked the Commission if they would like to tour a dairy operation while in Tillamook. The Commission agreed to a tour Friday afternoon following the meeting.
4. Discussion of Court Order on Lava Diversion Project. Michael Huston, Assistant Attorney General, told the Commission he was still reviewing the recent Court of Appeals Decision on the Lava Diversion Project. Basically, Mr. Huston said, the Court said the Department could not deny the project based on land use requirements. However, the agency has the authority to condition 401 Certifications with any appropriate requirements of state law.

5. Discussion of Possible Landfill Tour. Stan Biles, Assistant to the Director, suggested that the Commission tour the St. Johns Landfill and recycling facilities in the Portland area to better familiarize themselves with the garbage problem. The Commission agreed to a tour after their special meeting on June 27.

FORMAL MEETING

AGENDA ITEM A: Minutes of the March 14, 1986 EQC Meeting

Chairman Petersen made the following correction to the minutes on page 1, the first paragraph under Formal Meeting.

He discovered the [turn was actually farther south than he had anticipated.] 276 degree radial was actually farther south than he had anticipated when abreast of Hayden Island.

It was MOVED by Commissioner Bishop, seconded by Commissioner Brill and passed unanimously that the March 14, 1986 minutes be approved as amended.

AGENDA ITEM B: Monthly Activity Report for February, 1986.

Commissioner Denecke said this was the first time he had noticed so many aircraft items on the report of materials being disposed of at the Chem Security hazardous waste disposal facility at Arlington. He asked if they were coming primarily from Boeing. Michael Downs, Administrator of the Department's Hazardous and Solid Waste Division, reported back at the lunch meeting that the items were indeed from Boeing.

AGENDA ITEM C: Tax Credit Applications

Commissioner Bishop, noting there were an unusually large number of tax credit applications, MOVED that the Director's Recommendation be approved. The motion was seconded by Commissioner Buist and passed unanimously.

Director Hansen explained that the large number of applications was due to a deadline date of December 31, 1985 for certain facilities.

AGENDA ITEM D: Request for Authorization to Conduct a Public Hearing on the Proposed Adoption of a Rule Establishing the Maximum Repair Permit Fee for Linn County.

Linn County has requested authority to adopt a repair permit fee equal to the average amount the County has determined it costs to provide this service. Because the proposed fee exceeds the current fee established by the Commission, approval to charge a higher fee must be done by rule. The first step in the rulemaking process is to request Commission authorization to proceed.

Director's Recommendation

Based upon the summation in the staff report, it is recommended the Commission authorize a public hearing to take testimony on the proposed rule amendments establishing a repair permit fee for Linn County. It is further recommended that the Commission authorize the Director to appoint a Department staff member to serve as Hearings Officer in this matter.

Bob Wilson, Linn County Environmental Health Department, appeared expressing support for the Director's Recommendation.

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

PUBLIC FORUM

No one wished to appear.

AGENDA ITEM E: Consideration of Hearing Authorization Requests by the Environmental Quality Commission

At the Commission's March 14, 1986 meeting, Commissioner Denecke raised the issue of the need or desirability for continued formal Commission approval of rulemaking hearing authorization requests. The Department was asked to review the matter and report back at this meeting. Commission authorization of rulemaking hearings is not required by statute or rule. The Department believes the current practice assures opportunity for the Commission to be informed and provide important input prior to hearing and is therefore recommending that the current practice be continued.

Director's Recommendation

It is recommended that the current practice of specific Commission approval of rulemaking hearing authorization requests be continued.

It is also recommended that the Commission instruct the Department to review the present procedural rules, and propose amendments if appropriate.

Commissioner Denecke was satisfied the practice served a useful purpose and said he was happy to have it continue.

Chairman Petersen noted the hearing authorization process gives the Commission an opportunity to review issues before rules are proposed for adoption. He agreed it was a good idea to continue the practice and expressed his support for the Director's Recommendation.

Director Hansen said it was important to note that this was one way in which the Department worked with the Commission to see that all issues are considered before rule adoption.

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

AGENDA ITEM F: Informational Report: Review of FY 87 State/EPA Agreement and Opportunity for Public Comment

The State/EPA Agreement is the contractual document which outlines what work the state will perform during Fiscal Year 87 supported partially by federal dollars.

Director's Recommendation

It is recommended that the Commission:

1. Provide opportunity for public comment at today's meeting on the draft State/EPA agreement; and
2. Provide staff its comments on the policy implications of the draft agreement.

John Charles, Oregon Environmental Council, testified he wanted the Department to expand their efforts in the area of nonpoint source water pollution control and did not see much in the State/EPA Agreement regarding nonpoint sources. He said that Oregon's assessment of its water quality problems began in the 1970's and 1985 data indicates little or no change in the problems identified earlier. Few areas of the state avoid nonpoint pollution to some degree, he continued. Mr. Charles said the Department had the option of either taking a minimum of \$100,000 from the Federal Environmental Protection Agency to use for nonpoint pollution, or up to 1% of the construction grant funds. In the last two years DEQ has chosen to take the minimum. Mr. Charles said that last year the alternative of 1% of the construction grant funds would have brought the state \$260,000. Mr. Charles suggested it would be wise to get the maximum amount of money for water quality planning in the nonpoint source program with a little less money for construction grants.

Director Hansen said it was the Department's intent to take the maximum money from EPA to deal with nonpoint sources and that had been so noted in the construction grants staff report. He said the problem was not with intent but with a budget note contained in the President's budget which limits the amount of 205J money available. He said the Department's only concern now was with the federal requirement.

Mr. Charles was pleased with Director Hansen's statement, and asked the Department to let him know if he could help.

Chairman Petersen noted that he saw the focus changing from point sources to nonpoint sources and was very interested in getting a handle on the nonpoint source problem.

The Commission accepted the Informational Report.

AGENDA ITEM G: Proposed Adoption of Rules to Establish Chapter 340, Division 120, Siting and Permitting Requirements for Hazardous Waste and PCB Treatment and Disposal Facilities, and to Amend Division 110, Management of PCB.

During the 1985 Session, the Oregon Legislature enacted Senate Bill 138 which requires the Commission to adopt rules to regulate the siting of hazardous waste and polychlorinated byphenyl (PCB) treatment and disposal facilities.. At the Commission's March 14 meeting, they authorized the Department to conduct public hearings on proposed rules. Testimony was received from 23 people at the public hearings and 35 people submitted written testimony.

The proposed rules as presented in Division 120 establish additional siting and permitting requirements. The proposed rules as presented in Division 110 replace the existing rules for managing PCB.

The Department is entering a new area with these rules. Future developments may require the Department to come back before the Commission with rule modifications. It must be ensured that these rules do not act as a roadblock to needed facilities but it must also be ensured that these rules go far enough in protecting the public health and safety of the environment.

Chairman Petersen noted that this was a different approach to regulation in the very important area of hazardous waste and toxic waste. As such, before anyone in industry can site a facility to dispose and treat hazardous waste and PCB, the Commission must come up with rules of the game. He said the statute was unique in terms of the policy decisions made it it. The Legislature stated they did not want any more of this waste in Oregon than can be helped, and specified criteria on how large these sites can be. Recognizing, he continued, that there are agreements with other states on the acceptance of hazardous waste for disposal in Oregon.

Chairman Petersen said the advisory committee did a very good job in wrestling with these issues and have helped to develop the proposed rules.

Commissioner Bishop asked why portable facilities were exempted on time rather than on quantity. Bob Danko, of the Department's Hazardous and Solid Waste Division, said the portable facilities were exempted on time so that a temporary facility did not become a longer-term facility. He said the Department did not want a quasi-permanent facility to be able to take advantage of this exemption. Commissioner Bishop asked why a limit was not put on the amount that could be treated within the time limit. Mr. Danko replied that the Department was not comfortable putting a quantity in the rule, as the Department's experience in this area so far had been limited. He said this issue had been dealt with among staff and the advisory committee and neither could come up with a good number to use.

Mr. Danko said two or three portable facilities have visited Oregon to clean PCB out of transformers. He said this should not be discouraged as it eliminated the transportation of PCBs and so far has worked very well with no problems. In response to Commissioner Bishop, Mr. Danko said portable facilities need Resource Conservation and Recovery Act (RCRA) licenses and must meet the technical permitting requirements to ensure the emissions are environmentally safe. Director Hansen said that the proposed rules deal only with siting. Facilities would also have to meet all other environmental protection requirements.

Judge Jack Beatty, Chair of the Advisory Committee, testified that the Committee concluded that the staff did a good job with the rules and they were as understandable as possible given the statute which had to be implemented and the technical requirements necessary to deal with the problem.

Commissioner Brill asked if the Committee had given any thought to the formation of hydrochloric acid when PCBs were destroyed. Judge Beatty replied that the Advisory Committee was not technically qualified to answer those questions, however they did read literature dealing with incineration and thought it would be fair to state that incineration offers the safest way of dealing with PCBs.

Chairman Petersen asked Judge Beatty if he was convinced the rules did not tread on constitutional prohibitions. Judge Beatty replied that the Committee was aware of the Commerce Clause and also the need to adopt the rules as ordered by the Legislature. It was his lay opinion that the rules were workable and if they are challenged they have a reasonable chance at passing muster under the Commerce Clause. Judge Beatty said that by the time a challenge would get through the Court, the Federal Government would probably have taken some action to clarify the situation.

Chairman Petersen asked for an example of what happens to the PCBs which are filtered out by portable plants. Richard Reiter, of the Department's Hazardous and Solid Waste Division, replied the portable plants use a chemical destruction process in which the PCB molecules are destructed. He said there was a residue left over which is managed as a hazardous waste and is taken to the Chem-Security hazardous waste disposal facility at Arlington. What goes back to the transformer is an oil free of PCBs. In response to Chairman Petersen, Mr. Reiter said the chemical process used by portable plants is effective for concentrations of PCB less than 2500 parts per million. The chemical process has not been perfected for larger concentrations. Commissioner Denecke asked if there was much bulk left over. Mr. Reiter said that if a particularly large transformer is treated there may be a 55 gallon drum of residue.

Referring to proposed rule 340-120-015(3) which states:

"The local government with land use jurisdiction should act on a land use compatibility request within 180 days after a complete request was submitted by the applicant...."

Commissioner Bishop asked what would happen if a local government's findings were different from the Department's. Mr. Danko replied that because this would be considered a Class I permit under the Land Conservation and Development Commission's rules, the Department is ultimately responsible for determining land use compatibility with statewide goals. He said that local governments cover much more in dealing with land use than the Department does in issuing a permit, but the Department is ultimately responsible.

Referring to proposed rule 340-120-001(3) which states:

"Facilities described in (2) (a) of this section that receive less than 50% of waste from off the site may be located inside urban growth boundaries as defined by ORS 197.295 and therefore do not have to meet 340-120-010(d) (A) (i) and 340-120-015(1) (a)."

Chairman Petersen asked how the percentages in this rule were measured. Mr. Danko replied that the rules would require an applicant to look into the future and show where the waste could be coming from. At that time the applicant will have to demonstrate that less or more than 50% is coming from off-site. Because the Department has not gone through this process before it had not yet been determined if a month or a year period is appropriate. Chairman Petersen said it was important to avoid argument on these rules and when an arbitrary percentage is used it could lead to problems later on. He asked if the Department would be willing to commit to a time. Mr. Danko replied that the Department would have no problem with annually. Mr. Reiter said that as far as the 50% goes, the Department would be looking at design capacity.

Chairman Petersen asked what the difference was in the 50% referred to in 340-120-001(2) and the 10% referred to in 340-120-001(5). Mr. Danko said the major difference was that the 50% in (2) refers to off-site facilities and the effect is that if the majority of the waste comes from on-site the facility is allowed to be within the Urban Growth Boundary. The 10% in (5) refers to on-site facilities which according to RCRA definition 100% of the wastes must be generated at the site. Mr. Danko said, the Department did not feel it was appropriate to get that strict with a siting rule.

Chairman Petersen asked how these percentages were measured. Mr. Reiter replied that in the case of (5) it would be 10% of the input to the unit.

Director Hansen said there were certainly other ways to write the rule and the issue of on-site/off-site is significant. It is EPA's definition that on-site means contiguous property. Mr. Danko said there have been instances where a company with an incinerator has disposed of small amounts of waste from neighboring companies as a courtesy, and environmentally that was a good solution. He said the Department would like to have a mechanism to allow that practice to continue.

Chairman Petersen asked why the difference in on-site and off-site facilities. Mr. Danko said staff and the Advisory Committee struggled with this issue for months and evolved to a position where they had to balance the risk of transportation of wastes against the public health, safety and protection of the environment considerations at an on-site facility, and so needed to be sure that the technical standards were enough to provide protection. Then beyond that, he continued, they had to create siting rules to deal with added margins of safety and transportation of wastes. The staff feels that the RCRA standards provide adequate leverage for the Department to ensure protection of the public health, safety and the environment with or without these rules. Mr. Danko said that when treatment is not allowed on-site the waste must be transported and the Department did not want to be in the position of telling industries they could not treat their own wastes and must transport to an off-site facility. Also, off-site facilities would treat more quantities and more varieties of waste than on-site facilities, he said.

Chairman Petersen asked why on-site facilities should be regulated at all. Mr. Danko referred to the table of proposed hazardous waste and PCB treatment and disposal permit application requirements on page 5 of the staff report. He said the public expected that all facilities treating hazardous waste would meet these requirements.

Director Hansen said that part of the RCRA standards are aimed at waste minimization. Industries are beginning to treat their own waste by trying to produce less, recycling it, or providing treatment on site. Congress is moving in the direction of forcing treatment back on-site.

Chairman Petersen agreed. He said it was important to make clear that on-site treatment was a policy decision and not that the risks associated with off-site treatment (i.e. transportation) are any different than on-site. Chairman Petersen said this was contradictory to large commercial facilities who need sufficient volume to make their operations profitable. Director Hansen said that only the larger companies will be able to make the type of investment necessary for an on-site facility. There will still be large numbers of businesses whose only option is off-site disposal.

Referring to 340-120-010(2)(a)(A)(iii) which reads:

"Its operation will significantly lower treatment or disposal costs to Oregon companies, excluding transportation costs within states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management as set forth in ORS 469.930."

Chairman Petersen asked why the transportation costs were excluded. Mr. Danko said the Department was afraid of a leap-frogging effect meaning if transportation costs were included there may be a tendency for applicants to site facilities just because they are close and not necessarily because they are needed.

Chairman Petersen asked if all the items in the need criteria in 340-120-010(2) (a) must be proved. Mr. Reiter replied that the language was directly out of the statute. It was necessary to allow the option for an applicant to show need, but if a similar facility exists, the Department wants the option to say the proposed facility is not needed. Chairman Petersen said that point needed to be clarified.

Director Hansen said the language in determining need was aimed at a showing which must be made by the applicant. One of the clear directions from the Legislature was to limit the number of facilities. What the Department was trying to accomplish with this language was to limit facilities if the capacity is already present somewhere else.

Commissioner Bishop commented she found the rules extremely difficult to follow. Mr. Danko said that was the biggest challenge in writing the rules. They were attempting to make the rule conform in format with other Department rules and tried to make them readable. Mr. Danko said he would keep working on making the rules more readable.

Under 340-120-010(2) (b), Capacity, Chairman Petersen asked where and how much. Mr. Danko said the purpose of that language was to balance the need to limit the number of facilities. If an incinerator was built it should be big enough to incinerate all the waste in the state.

Chairman Petersen proposed the following amendment to 340-120-010(2) (b) (A):

The facility shall not be sized less than what is needed, in conjunction with existing facilities[,] in the compact states to treat or dispose of all hazardous waste or PCB generated....

Mr. Reiter said the Department would support such an amendment and felt it was consistent with what the Legislature wanted.

Chairman Petersen asked what would happen if noncompact states shipped all their wastes to the Chem-Security hazardous waste disposal facility at Arlington and filled it up. Mr. Danko said that the Department hoped the cost of transportation would eliminate that problem. Mr. Reiter said if that happened it may mean that Oregon generators would have to ship their wastes out of the state. He continued that the Department has not seen that happen because of the economics of transportation from outside the compact states.

Chairman Petersen asked if California had an incineration facility. Mr. Reiter replied they did not, but were looking at a rotary kiln that could handle solids as well as liquids. However they have not received approvals under California law. Mr. Danko said there was also a company in Los Angeles that was looking at incineration. Mr. Reiter, in response to Chairman Petersen, said it was not likely that California would take the position of not allowing an incinerator and tell generators to ship to Oregon. Director Hansen said the regulatory atmosphere in California makes it very difficult to obtain permits. Mr. Danko said that Nevada or Utah were also looking at putting in an incinerator to serve California as the regulatory atmosphere was better in those states.

Chairman Petersen asked if the chances were greater that generators would use disposal instead of incineration. Mr. Reiter replied that within the next five years EPA must look at all the waste generated. As a result, he said, there would be a move away from disposal of wastes that can be incinerated. Director Hansen said that land disposal would be prohibited over time.

Chairman Petersen emphasized he was not being critical of the Advisory Committee, but he had some problems with the statute. It was his feeling that 340-120-010(2) (b) (D) was not called for, and violated legislative intent.

340-120-010(2) (b) (D)

If all of the criteria of 340-120-010(2) are met, the Commission shall give preference to a proposed facility which is sized more closely to what is needed to treat or dispose of hazardous waste or PCB generated in Oregon.

Mr. Danko said this section was not specifically in the statute, but was an effort to limit to Oregon wastes. Director Hansen said this language was an attempt to go as far as constitutionally permissible on preference.

Chairman Petersen asked about the property line setback in 340-120-010(2) (e). Mr. Danko said the setback would provide an extra layer of protection. The Department feels its technical standards are sufficient protection, but the property line setback would provide an extra protection for neighbors of a facility. In response to Commissioner Denecke, Mr. Danko said that if the rule were adopted Chem Security would be allowed eight years in which to get an additional setback. Mr. Reiter said Chem Security at Arlington presently has about a 100 foot setback.

Chairman Petersen's next question was about 340-120-020, Community Participation. He agreed that facilities allowed by these rules would have a significant impact on a community and involvement of those communities in the process is very important. He expressed concern about to what extent the Department would be bound by the advice of a local committee. Mr. Danko said the committee would be advisory to the Department. They would not have the time or the technical ability to deal with compliance and enforcement. It is intended the committee would address the broader issues of siting, public participation and local concerns.

Chairman Petersen asked if the advisory committee would be involved in the operation of the facility. Mr. Danko said the committee could provide an important public information vehicle so citizens could have their concerns addressed in an organized manner. It is not intended the committee would inspect a facility, only that they would provide public information.

Commissioner Bishop said it was important for citizens to have a grasp of the situation and a way to voice their concerns.

Director Hansen said the Department did not want to become apologists for a facility. It is the Department's responsibility to be a regulator. If there are conflicts between the community and the operator of a facility, the Department should not become involved. This is where the advisory committee could mediate. As a regulator, the Department needs to assure that regulations are complied with and not to justify the existence of a facility.

Returning to the discussion of off-site and on-site facilities, Director Hansen said the Department was trying to make a distinction between the two. Originally the Department suggested using the word "incidental" for the 10% and then received testimony that that was not precise. Director Hansen said he understood Chairman Petersen's concerns but was not sure with what to replace the distinction of off-site and on-site. In response to Chairman Petersen, Director Hansen said the distinction should be kept to encourage on-site as a more sound environmental way of treatment and as a way to achieve accountability from the manufacturer for their waste. He said the legislation was principally aimed at large commercial off-site facilities, but provided for any type of facilities. In writing the rules, the Department was trying to make that distinction, which it believes is sound.

Mr. Reiter said there was also some liability under Superfund. The Department wants to preserve the opportunity for a generator to treat their own waste. If a company chooses to use the Arlington disposal facility, and Chem Security did not operate that facility well in the future, the generators involved would be in a joint liability.

Chairman Petersen asked if more incentive would be provided if on-site were exempted. Director Hansen referred to the table on page 5 of the staff report, indicating that the issues that an on-site facility must comply with are very limited. Chairman Petersen said he would be in favor of exempting on-site facilities.

After postponing action on this item until the end of the meeting to allow staff time to review proposed amendments, Mr. Danko returned and said it was the staff feeling that even if on-site were exempted, it would still need to be defined, therefore there was nothing to be gained by exempting on-site. If an off-site facility were to be allowed inside an urban growth boundary it would still have to be addressed.

Chairman Petersen said he was persuaded that this was new ground, nothing was locked in concrete, and some time may be needed to see how the rules work. He said he was delighted with the rapport and mutual respect between staff, the Advisory Committee and the regulated community.

The following amendments were proposed:

340-120-001(3)

Facilities described in (2) (a) of this section that receive less than 50% of waste on a weekly basis from off the site may be located inside urban growth boundaries as defined by ORS 197.295 and therefore do not have to meet 340-120-010(d) (A) (i) and 340-120-015(1) (a).

340-120-001(5)

For the purposes of this Division, a facility can receive, with the Department's approval, as much as 10% of waste on a weekly basis from off the site and be an on-site facility.

340-120-010(2)(b)(A)

The facility shall not be sized less than what is needed, in conjunction with existing facilities[,] in the compact states to treat or dispose of all hazardous waste or PCB generated, or reasonably projected to be generated over the next 10 years, in Oregon.

340-120-010(2)(b)(B)

The facility shall not be sized greater than needed to treat or dispose of all hazardous waste or PCB generated...

340-120-010(2)(b)(C)

If the facility is sized to treat or dispose of more hazardous waste[s] or PCB generated...

340-120-015(3)

....The Department is ultimately responsible for determining compliance with state land use goals for the purpose of issuing a permit.

Referencing Chairman Petersen's proposal to delete 340-120-010(2)(b)(D), Director Hansen said in the final analysis what should be the result of that section would be a burden for the applicant to size down a facility to meet the requirement rather than sizing up to meet profitability of the operation. Unless there are unacceptable proposals, he continued, this provision would not come into play because there are too many other factors. Representatives from Chem Security who were in the audience said they would prefer this provision did not exist, but it made no difference to them now.

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

Chairman Petersen expressed his thanks to all who worked on this item.

AGENDA ITEM H: Proposal to Declare a Threat to Drinking Water in a Specifically Defined Area of Mid-Multnomah County Pursuant to ORS 454.275 et. seq.--Proposed Final Order

On March 14 and 17, 1986, the Commission and nine hearings officers received oral argument from persons who petitioned to present argument on the Threat to Drinking Water findings. Written argument was received through March 28, 1986. Transcripts of oral arguments and all written argument received were forwarded to the Commission for review.

The Department has reviewed the oral and written arguments presented and has concluded that nothing has been presented which would cause earlier findings to be modified.

The Department has prepared proposed Findings and Order and recommends that the Commission proceed to adoption at this time.

Director's Recommendation

It is recommended that the Commission adopt final Findings and Order in the matter of the proposal to declare a threat to drinking water in a specifically defined area in Mid-Multnomah County pursuant to ORS 454.275 et. seq. as proposed in the attachment to the staff report.

It is further recommended that the Commission direct the Department to file the Findings and Order with the governing bodies of the local governments in the affected area.

Senator Frank Roberts appeared urging the Commission to take whatever action necessary to ensure that financing provisions will be improved. Senator Roberts said the currently proposed financing plan was unacceptable and the threat was not only from the cash required of residents, but to the equity they have in their homes. He urged more consideration be given to proposals to reduce the financial impact to homeowners and wanted assurances reasonable citizens can depend on. Chairman Petersen thanked Senator Roberts for providing reasonable leadership in this area and bringing these issues to the Commission's attention.

Chairman Petersen said again this was the most difficult decision he had had to face as a Commissioner. However, he continued, in reviewing the most recent testimony he found there were no new arguments. His preception of the problem was balancing protecting the groundwater for future generations against the financing problems. It is hard to ask people to pay for something now that will benefit future generations, but the problem must be addressed and taken care of, Chairman Petersen said. He said the plan had been exhaustively reviewed and the financing plan is the fairest ever to be proposed for the citizens of Oregon. He urged the Legislature to do more in this area.

Chairman Petersen emphasized that if it had not been for all the fine testimony received from people in the area and legislators, then some of the provisions, such as the safety-net, might not have occurred. He said the Commission had gone as far as it could go, the plan was not perfect, but he did not want to postpone action because of the danger of losing federal grant money. Chairman Petersen said he was inclined to accept the Director's Recommendation and pass the Final Order.

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

AGENDA ITEM I: Proposal to Adopt a Temporary Rule to Amend the Existing Cesspool Rules--OAR 340-71-335 and OAR 340-73-080.

Until the Commission makes a decision on the Threat to Drinking Water proceeding, current Commission rules allow cesspool and seepage pit sewage disposal systems to be installed in Mid-Multnomah County provided sewers are not available, the lot is too small to accommodate a standard on-site system and an equivalent sewage load to an existing cesspool or seepage pit is eliminated.

Once a decision is made on the Threat to Drinking Water proceeding, installation of new cesspools will be prohibited and seepage pits can only be used to replace a failing cesspool or seepage pit.

When the present rules were adopted, it was anticipated that a revised rule would be enacted to be compatible with the course of action established by the decision on the Threat to Drinking Water proceeding.

The Department is recommending that the Commission find that failure to act will seriously prejudice the public interest and adopt a temporary rule to extend the current rule provisions pending adoption of a permanent rule for Mid-County.

The Department is also recommending that the Commission authorize a rulemaking hearing on more extensive amendments to the rule to be compatible with the mid-Multnomah County Sewer Implementation Plan.

Director's Recommendation

Based on the findings in the summation in the staff report, it is recommended that the Commission adopt the rule amendments in Attachment A to the staff report as a temporary rule.

It is further recommended that the Commission authorize the Department to proceed to rulemaking hearing with the more extensive rule amendments proposed in Attachment B to the staff report.

Bill Whitfield appeared representing Multnomah County. He presented the following proposed amendment to 340-71-335(2)(b)(E):

The system for collection of additional funds for each cesspool installation (System Development Charge) enacted by the jurisdictions in the affected area prior to October 1, 1982, shall be maintained[.] except for development qualifying under OAR 340-71-335(2)(b)(D).

Mr. Whitfield said this would eliminate the need for a systems development charge when required to install dry sewers. He felt the charge would be overly punitive to development in cases where dry sewers must be installed.

Harold Sawyer, the Department's Inter/Intra Program Coordinator, agreed with the amendment.

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist and passed unanimously that the Director's Recommendation, including the amendment proposed by Mr. Whitfield be adopted. The Commission in this motion also adopted the following findings:

Findings

Failure to act to modify the existing cesspool rules to permit continued construction of cesspools under controlled conditions to serve as interim facilities pending the construction of sewers will seriously prejudice the public interest by curtailing economic development in the area, and by jeopardizing the financing and implementation of the Mid-Multnomah County Sewer Implementation Plan, September 1985, which will, upon implementation, achieve the desired ultimate restoration of groundwater quality.

AGENDA ITEM J: Proposed Adoption of Amendments to the State Implementation Plan Regarding Stack Heights and Dispersion Techniques, Deleting Rules OAR 340-20-340 and 340-20-345, Adding Replacement Rule 340-20-037.

A recent court suit has caused the Environmental Protection Agency (EPA) to revise its stack height and dispersion technique rule. EPA has requested Oregon to revise its stack height rules accordingly in 1986. These revisions do not affect any existing stacks in Oregon.

The only substantive testimony on the proposed rule amendments was from the Oregon Environmental Council who requested the state rule be more stringent in two areas. The Department feels the added stringency would not be cost-effective and may even restrict use of techniques which can lessen ground level concentrations of air pollutants.

Therefore, it is the Department's recommendation that the Commission adopt EPA's amended federal rule by reference into Oregon Administrative Rules, deleting Oregon's present stack height rule, as the most expedient and simplistic approach to meeting EPA requirements.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission adopt the federal stack height rule by reference in OAR 340-20-037 and repeal the present Oregon stack height rule OAR 340-20-340 and 20-345, as amendments to the State Implementation Plan.

There was no discussion on this item.

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 the Consolidated and Updated
State of Oregon Clean Air Act Implementation Plan, OAR
340-20-047.

The Oregon State Implementation Plan (SIP) was first adopted in 1972 in response to requirements of the Clean Air Act of 1970. The Department is proposing to replace the existing SIP with a consolidated and updated document. This action is housekeeping in nature. No new state regulations are created; no existing state regulations are repealed or relaxed.

Concerns were raised during the public hearing process that the SIP may be inadequate because the Conflict of Interest Rules do not apply to the State Board of Forestry. The Environmental Protection Agency, however, has indicated that the rules do meet Clean Air Act requirements; therefore, the Department is proposing the Commission adopt the consolidated and updated SIP as originally proposed.

John Charles, Oregon Environmental Council, commented that the issue of the Conflict of Interest Rules not applying to the Board of Forestry was an interesting policy issue and he felt the letter from George Abel, Chief of the EPA Air Programs Branch, was advisory only and not the official EPA position. He said the statute was clear that the Board of Forestry does issue permits and are part of the SIP as acknowledged by EPA. He thought it was to the public advantage that the Environmental Quality Commission abides by the Conflict of Interest Rules, noting that no one has ever suggested that the Commission members have a conflict of interest. Mr. Charles said the Board of Forestry violated the intent of the Clean Air Act Amendments of 1977 in that more than a majority of the Board represent private interests. He said that has a bearing on how the Smoke Management Plan comes out. Mr. Charles recognized the Commission could not remedy this situation, but said it could recommend to the Governor that he remedy it, or request EPA to use their authority to correct the problem.

Chairman Petersen commented that apparently not everyone in EPA agreed with Mr. Charles on this matter. It appeared, Chairman Petersen said, that Mr. Charles was suggesting that if the Commission comments to EPA then the rules would be amended.

Chairman Petersen said he was concerned about the quality of the Smoke Management Plan. He wanted to be sure there is a coordinated Smoke Management Plan that will benefit both the citizens and industry. The conflict of interest concerns are not within the province of the Commission, Chairman Petersen continued. He asked for a briefing on the current negotiations with the Board of Forestry on the Smoke Management Plan.

Tom Bispham, Administrator of the Department's Air Quality Division, said he had not talked directly to the State Forester but has talked to the Assistant State Forester. Apparently Forestry felt they used a poor choice of words in their July 10, 1985 letter to John Charles. The original Smoke Management Plan was signed by the DEQ Director, the State Forester and

representatives of a number of other agencies. Mr. Bispham understood that what Forestry meant to say in their letter was that the Smoke Management Plan did not require the signatures of the others, but does require the signatures of the DEQ Director and the State Forester. Mr. Charles had maintained that the letter from Forestry stated they did not need DEQ sign-off on the plan which made the imbalance even worse since DEQ did not have partnership in the plan.

Mr. Bispham said the Department was in the process of updating both the Smoke Management Plan and the Visibility Plan. The Department was meeting with Forestry the next week to discuss both plans and to discuss how visibility should be incorporated in the Smoke Management Plan. At the Commission's June 13 meeting,, both those plans will come before the Commission for hearing authorization. Hearings will be held throughout the state and proposed rules will be prepared for the Commission's consideration at their September meeting.

Chairman Petersen said he was happy with the progress of the negotiations. Mr. Bispham commented that it has taken a long time but the Department was also generally pleased with the progress. Director Hansen also expressed pleasure with the progress and said the jurisdictional issue was most appropriately wrestled with by the Legislature.

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

AGENDA ITEM L: Proposed Adoption of Amendments to Hazardous Waste Management Civil Penalty Schedule, OAR 340-12-068.

The Department is proposing to amend the schedule of minimum penalties for hazardous waste violations. The existing schedule, which was adopted in 1982 does not consider violations of more recently adopted rules pertaining to management facilities. By default these violations have a \$100 minimum penalty.

Additionally, the Department proposed to incorporate into rule a civil penalty schedule for destruction of wildlife caused by hazardous waste which was enacted by the 1985 Legislature in SB 873.

Director's Recommendation

Based upon the summation in the staff report, it is recommended that the Commission adopt the amendments to OAR 340-12-068 as proposed in Attachment III to the staff report.

Commissioner Brill asked who had the authority to mitigate penalties below the minimum. Chairman Petersen replied that the Commission had that authority, but the Department did not.

Commissioner Denecke asked why the minimum needed to be raised if there was authority to assess above the minimum in circumstances where aggravating factors are proved. Michael Huston, Assistant Attorney General, said it had been the Department's position that a range of penalties is established by rule and where within that range assessment is made depends on aggravating and mitigating circumstances. He said there were almost always some of those factors to be considered.

Chairman Petersen asked for comment on a letter the Commission had received from Attorney Michael Swaim regarding an alleged conflict between OAR 340-12-068 and its statutory authority--ORS 466.880(1). Mr. Huston said this was an old issue for the Commission. The statute says a violator shall incur a penalty. A number of parties have argued that there is an obligation to impose a penalty. Mr. Huston said his office had consistently advised otherwise. He said there was prosecutorial discretion on behalf of the Commission.

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

AGENDA ITEM M: Informational Report: Development of Landfill Site--Site Selection Criteria.

The intent of this report is to inform the Commission that the Department's landfill siting criteria have been completed, and to provide a listing and brief description of each of the site evaluation and final decision criteria. A third category of criteria, the pass-fail criteria, was reviewed by the Commisison at their March 14 meeting.

The report contains information on the public and peer review process that was a major part of the criteria development program, and identifies the three categories of information upon which the Department will base its recommendation to the EQC of a site or sites.

Those categories are:

1. A numerical score which rates the environmental and technical merits of the site, based upon the final decision criteria.
2. Preliminary estimates of the cost of site acquisition, landfill construction and operation and impact mitigation, and
3. A finding of whether or not the site meets the minimum requirements specified in Senate Bill 662.

Director's Recommendation

It is recommended that the Commssion review the final landfill Siting Criteria report and that it concur in the following course of action to be pursued by the Department.

1. The finalized criteria will be provided to the site selection consultant, and will be used in the site identification and evaluation process.

2. The Department will return to the Commission at their July 25 meeting to present a list of the top 12 to 18 preferred and appropriate sites, and to discuss the process that led to their selection.
3. The Department will return to the Commission at their October 24 meeting to present the top 2 to 4 finalist sites, and to discuss the process that led to their selection. Also, at this meeting, the Department will discuss the detailed procedures which will be followed to further evaluate the 2 to 4 finalist sites.

Discussion of this item took place during the Commission's lunch meeting where they indicated acceptance of the report.

AGENDA ITEM N: Yard Debris as a Principal Recyclable Material in the Portland, Washington, Multnomah, Clackamas and West Linn Wastesheds.

The Department proposes to delay making a recommendation on listing yard debris as a principal recyclable material in the Portland metropolitan wastesheds until the July 25 Commission meeting. The additional time will allow the Department to work with local governments to determine acceptable collection methods, to more specifically define locations within a wasteshed where collection systems would not be required, and to work on market development strategies for yard debris compost products.

The Commission indicated acceptance of this report.

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

LUNCH MEETING

Landfill Siting Criteria Review

The final landfill siting criteria document was reviewed by the Commission during its luncheon meeting. Steve Greenwood of the Department's Hazardous and Solid Waste Division pointed out that there were three categories of criteria and that they had been designed to correspond with the three stages of the site selection process. The Pass-Fail Criteria will be used during the initial site identification process, and were reviewed by the Commission at its March meeting. The site evaluation criteria, that will be used to identify the three most suitable sites, and final decision criteria, that will be used to evaluate and compare those three sites, were the focus of this meeting. Mr. Greenwood pointed out that the criteria will be extremely important since they will provide the ground rules for the selection process, and since selecting a good site is a key factor in the Department's plans to develop a state of the art landfill. Mr. Greenwood also stressed the major role that public involvement had played in the criteria development process.

The Commission members had questions about how the criterion weighting (numerical values from 1 to 10 indicating level of importance) were determined, and about what constituted a state of the art landfill. Mr. Greenwood reported that the criteria consultant (Brown and Caldwell) developed the preliminary weighting primarily on the basis of mitigation difficulty. Those criteria that address potential problems that are more difficult to mitigate (i.e., ground water contamination) were assigned higher weightings. Kent Mathiot of the Department's Hazardous and Solid Waste Division, noted that many of the preliminary weightings were modified on the basis of public comment and the peer review process. Mr. Mathiot also described some of the factors, such as site planning, leachate and gas control systems, odor control, and site screening, that are a part of a state of the art landfill.

Respectfully submitted,



Carol A. Spletstaszer
EQC Assistant

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE ONE HUNDRED SEVENTIETH MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

March 14, 1986

On Friday, March 14, 1986, the one hundred seventieth meeting of the Oregon Environmental Quality Commission convened in room 1400 of the Department of Environmental Quality offices, 522 S. W. Fifth Avenue in Portland, 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 S. W. 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.

The Commission did not hold a breakfast meeting.

FORMAL MEETING

Chairman Petersen gave the rest of the Commission an update on the noise situation at Portland International Airport. Chairman Petersen, a pilot, has been working with the Port of Portland and the Department to help resolve noise complaints from residents of the Hayden Island area. The current Standard Instrument Departure (SID) requires pilots taking a westerly departure to direct their aircraft over the center of the Interstate Bridge. Chairman Petersen said that all kinds of problems have kept pilots from consistently following the SID, and he just learned that the regional Federal Aeronautic Administration (FAA) office would not change the SID. Chairman Petersen has asked for a letter from the FAA with an explanation. Chairman Petersen said he flew the SID in a small plane. He discovered the turn was actually farther south than he had anticipated. John Newell of the Port of Portland will continue to explore the most optimum way to avoid noise impacts on Hayden Island, but it would be difficult to do as it could impact areas in Vancouver, Washington.

AGENDA ITEM A: Minutes of the January 31, 1986 regular meeting, and February 7, 1986 special meeting

It was MOVED by Commissioner Bishop, and seconded by Commissioner Brill that the minutes be approved. The motion passed unanimously with Commissioner Buist abstaining for the January 31, 1986 minutes as she was not in attendance at that meeting.

AGENDA ITEM B: Monthly Activity Report for December, 1985
and January 1986

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

Director's Recommendation

It is recommended that the Commission take the following action:

1. Issue tax credit certificates for facilities subject to old tax credit laws:

<u>Appl.</u>	<u>Applicant</u>	<u>Facility</u>
T-1696	Oregon Cherry Growers, Inc.	Wastewater Pre-treatment System
T-1781	Teledyne Industries, Inc.	Aqueous Ammonia Storage Facility
T-1784	Teledyne Industries, Inc.	Bag Filter Dust Collection System and Containment Area with Sump Pump
T-1798	Hanna Nickel Smelting Co.	Dust Collection and Venturi Scrubber System
T-1799	Graphic Arts Center, Inc.	Vapor Incineration
T-1814	Boise Cascade Corporation	Silencers for No. 8 Recovery Boiler

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

T-1748	Roseburg Forest Products, Inc.	Baghouse
T-1788	Davidson Leasing	Propane Flamer

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

PUBLIC FORUM

William Putney, Clayton-Ward Company, Salem, Oregon, testified regarding the Marion County Wastashed Report required by Oregon's Opportunity to Recycle Act (SB 405). He asked that the Commission instruct the Department to send the report back to Marion County as unacceptable. Mr. Putney explained that the Marion County report also included the City of Salem and he did not think the City was committed to the recycling effort. Mr.

Putney said the City openly causes recyclable material to be deposited in the landfill violating the spirit and intent of SB405. He said it was the City's attitude that if recyclables are taken out of the wastestream then the garbage haulers will have to charge more for collection.

In response to Commissioner Buist, Director Hansen said the Marion County report was presented at the Commission's September meeting. Lorie Parker of the Department's Hazardous and Solid Waste Division, explained that the law did not require the Commission to review recycling reports except in the instance where there may be deficiencies in the report that the Department has been unsuccessful in getting resolved.

Chairman Petersen asked where citizen review of the report would come. Ms. Parker replied that each wasteshed is required to hold public hearings on their draft report before it is submitted and that any comments received be transmitted to the Department. The Department has a transcript of Mr. Putney's testimony at the hearing which was held on the Marion County report.

Commissioner Brill asked how many people in the Marion County wasteshed were involved in garbage collection. Mr. Putney said that there was one large company within the City and about eight smaller companies which also overlap into the County.

Commissioner Denecke said that as a resident of Salem he was familiar with Mr. Putney's business and with garbage collection in the area. He asked that the Department inform him when it was ready to act on the report.

AGENDA ITEM D: Request for Authorization to Conduct a Public hearing on Revisions to OAR Chapter 340, Division 30, Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area concerning Source Testing Requirements as an Amendment of the State Implementation Plan

Oregon Administrative Rules (OAR), Chapter 340, Division 30, Specific Air Pollution Control Rules for the Medford-Ashland Air Quality Maintenance Area (AQMA) were adopted April 7, 1978. Parts of these rules address particulate matter emission limits for specific sources, including woodwaste boilers and charcoal plants. These sources are required to conduct annual source tests to quantify particulate as emitted in discharge gases. For woodwaste boilers and charcoal plants, the rule requires additional quarterly tests subsequent to an emission limit exceedance as demonstrated by the annual source test. The average of all tests is used to demonstrate compliance. Quarterly testing and this averaging aspect of the requirement creates problems for the Department and industry and does not help in the process to achieve and demonstrate compliance. Deleting quarterly testing, while requiring expeditious corrective action subsequent to an annual source test failure, would more readily aid in the objective of achieving compliance.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission authorize a public hearing to consider amending the State Implementation Plan regarding source testing in the Medford-Ashland AQMA. The proposed amendments would omit from the testing regulation the requirement to conduct quarterly source testing on large woodwaste boilers, and charcoal plants subsequent to an emission limit exceedance on an annual test.

Commissioner Buist asked how much variation there was around the average mean. Lloyd Kostow, of the Department's Air Quality Division, replied that there were five sources which would be affected by the rule. Four have been under the standard, one has been slightly over the .05 grains per dry standard cubic foot standard, and the way the rule is presently worded that is not a violation. Commissioner Buist asked how much variation was there from day to day on an individual source. Mr. Kostow replied that source tests tell only the conditions at the time the test is run. However field inspectors do drive-by opacity checks and investigate complaints.

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

AGENDA ITEM E: Request for Authorization to Hold Public Hearing on the Construction Grant Management System and Priority List for FY87

This requests authorization to conduct a public hearing on April 23, 1986 to hear testimony regarding the draft priority list to be distributed to interested persons on March 20. Public testimony is also being solicited concerning a proposed Administrative Rule Amendment which would authorize the Director to set aside 20 percent of the grant funds allocated to the state in any year to capitalize a state revolving loan fund. A priority list must be adopted annually for the State to continue to certify federal construction grant funds for sewage projects.

Director's Recommendation

Based on the summation in the staff report, the Director recommends that the Commission authorize a public hearing to solicit public comment on the FY87 priority list and a proposed amendment regarding the establishment of up to a 20 percent reserve to aid in capitalizing a state revolving fund. The hearing will be held April 23, 1986. All testimony entered into the record by 5:00 pm on April 25, 1986 will be considered by the Commission.

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

AGENDA ITEM F: Request for Authorization to Conduct Public Hearings on Proposed Rules to Establish OAR Chapter 340, Division 120 Siting and Permitting Requirements for Hazardous Waste and Polychlorinated Biphenyl (PCB) Treatment and Disposal Facilities, and to Amend Division 110, Management of PCB

Following Chem Security System Inc.'s request to build a polychlorinated biphenyl (PCB) incinerator at its Arlington hazardous waste disposal site, the 1985 Legislature enacted Senate Bill 138 to govern the siting and permitting of all hazardous waste and PCB treatment and disposal facilities. The Act requires the Commission to adopt implementing rules by the end of April, 1986.

Director's Recommendation

Based upon the Summation in the staff report, it is recommended that the Commission authorize public hearings on the proposed rules establishing siting and permitting requirements for hazardous waste and PCB treatment and disposal facilities (Division 120), and amending existing rules for the management of PCBs (Division 110).

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

Director Hansen complimented the SB 138 Citizen's Advisory Committee for their efforts in this matter.

COMMENTS ON REQUESTS FOR HEARING AUTHORIZATION

Commissioner Denecke commented that the Commissioners spend a lot of time reading hearing authorization staff reports. He asked if the Commission was required to go through the hearing authorization procedure. Chairman Petersen said he could not remember a time when a public hearing was not authorized. Chairman Petersen said he appreciated knowing on controversial issues the direction proposed rules will take and he uses that as a benchmark when rules come back to the Commission for adoption.

Michael Huston, Assistant Attorney General, said there was no requirement that the Commission be consulted in advance of going to hearing. Many state boards are just sent a notice of the hearing by their respective departments. Mr. Huston said it was a long-standing tradition with the Department to request the Commission to authorize hearings, but there was no requirement.

Chairman Petersen asked the Department to examine this question and report back about the advisability of discontinuing the practice. He suggested this could be done at a breakfast or lunch meeting April 25. Director Hansen agreed to prepare the pros and cons of hearing authorizations and report back to the Commission.

AGENDA ITEM G: Proposed Adoption of Rule Changes Which would Allow Regional Air Pollution Authorities to Set a Permit Fee Schedule for Sources Within Their Jurisdiction

The Lane Regional Air Pollution Authority (LRAPA) made a request to the Department to amend state rules to allow regional air pollution authorities to establish separate permit fee amounts greater than those set by the Commission. The proposed rule change was requested as a possible strategy to raise revenues necessitated by reductions in funding from local sponsoring entities. At the November 22, 1985 meeting a public hearing on the proposed rule changes was authorized. The hearing was held in Springfield on January 15, 1986. No testimony opposing the rule changes was received.

Director's Recommendation

Based upon the summation in the staff report it is recommended that the Commission adopt the proposed rule change for OAR Chapter 340, Division 20, Section 165, as a revision to the State Implementation Plan. This rule change would allow regional air pollution authorities to adopt a permit fee table different from that of the Department.

Commissioner Buist asked what the difference was between LRAPA standards and state standards. Don Arkell, Director of the Lane Regional Air Pollution Authority, said their standards were the same or more restrictive than state standards and LRAPA has been using the state fee schedule.

Chairman Petersen said he still had reservations about LRAPA having a different fee schedule than the state. He understood the reason for the fee increase was primarily because of a reduction of revenues from the sponsoring entities. Mr. Arkell said that LRAPA was sponsored by four local entities and also received some revenue from DEQ and some federal funds. As a result of reduction of funds from two of the local entities LRAPA scaled back its program substantially but did not fall below the level of the state program. LRAPA has now recovered almost all of the reduction of revenues and were back up to the same level they were in 1980. The LRAPA board did an extensive study to reduce costs and stabilize revenue sources. Increasing of permit fees is one of their revenue raising strategies.

Commissioner Brill asked what determined the amount of revenue from each entity. Mr. Arkel said that they calculate what revenue is needed each year and then tell the local entities what is needed to balance the budget roughly calculated on a per capita basis. Approximately 40 percent of the operating budget comes from local jurisdictions.

Chairman Petersen was concerned that permit holders in Lane County were going to pay more for permits than others in the state. He asked if Lane County sources would be getting more or better service from LRAPA. Lloyd Kostow, of the Department's Air Quality Division, replied that LRAPA is able to provide a higher level of service than DEQ does elsewhere in the state.

In response to Chairman Petersen's concerns, Mr. Arkell read a letter the Department had received from the Lane Boiler Owners Association which stated support for the fee increase. Tom Donaca, Associated Oregon Industries agreed with the letter indicating support of Lane County industries.

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

AGENDA ITEM H: Proposed Adoption of Nuisance Phytoplankton Growth Rule

At the last Commission meeting, a report and further testimony was received on a proposed Nuisance Phytoplankton Growth Rule. The Commission tabled action but gave the Department the following policy direction:

1. Eliminate a proposed nutrient rule from further consideration; and
2. Reword the Nuisance Phytoplankton Rule to address concerns raised by the City of Portland and the Oregon Environmental Council.

Department staff met with those who testified or were represented at the January Commission meeting to gain input on the rewording. This agenda item contains the modified rule language and requests adoption of the rule OAR 340-41-150.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission adopt the Nuisance Phytoplankton Rule, OAR 340-41-150.

Cyndy Mackey and Helen Kennedy appeared on behalf of the Northwest Environmental Defense Center (NEDC). They presented a letter from NEDC which asked for the adoption of nutrient standards. They did not believe the rules as proposed complied with Section 303 of the Federal Clean Water Act as the rule did not prevent anticipated violations of water quality. Ms. Mackey said the rule contained economic and technical feasibility which was not required under Section 303. She said they wanted to see something done more quickly than studying the problem would accomplish.

Commissioner Buist asked if Section 303 prescribed the maximum amount of pollutants. Director Hansen said that was a point of debate. Michael Huston, Assistant Attorney General, said that the general legal framework established by Section 303 is an obligation for states to establish water quality standards for the protection of beneficial uses. He said Oregon went through that process and adopted administrative rules which have been approved by the Federal government. This is an area of considerable discretion for the agency, he continued. Nothing in Section 303 prescribes any form of standards dealing with nutrients. NEDC contends that the chlorophyll standard has to be consistent with total maximum daily load (TMDL) limits. The staff position is that it is not a real standard.

In response to Chairman Petersen, Director Hansen said that EPA has said that the Department's approach meets their standards. He said Oregon has been fearful that having a maximum pollutant level would encourage maximum discharges to that level. The Department wants the proposed strategy to keep the pressure on point sources to be below the standards.

Ms. Kennedy said it was NEDC's position that the state must have some form of nutrient standards for water quality. She said it was a probability that there are already unacceptable chlorophyll a levels and in the end a total maximum daily load was going to be needed, so why not have those standards to begin with. She requested a nutrient standard which would keep users in compliance without having to go through a two-year study. Nitrogen and phosphorous have been studied for many years, Ms. Kennedy continued, and if continuous discharges are allowed even after the standard is exceeded the problem may be made worse. Ms. Kennedy recommended that if new discharges were to be allowed, then some sort of set nitrogen and phosphorous levels be adopted so staff could make a decision without coming before the Commission with each new discharge request.

Ms. Mackey disagreed with Director Hansen and Mr. Huston's interpretation of Section 303 saying it required the state to establish maximum daily loads. She said NEDC was willing to wait six months for such standards to be developed, but it should have been done already.

Commissioner Buist commented that it is not an ideal world and people must accept that the waters are not pristine. She said the Commission must balance the cost of getting absolute purity and the health effects of the deterioration of water quality. At some point, she continued, you have to say it is too expensive.

Ms. Kennedy said other states have these regulations and did not think that studying the problem further would help. She said the situation can be improved from where it is today and did not see the Department going in that direction.

Commissioner Buist was unable to attend the January EQC meeting, and asked for a summary of the Department's position. Director Hansen said the Department was saying that in any given water body there are potentially different sources of nutrients such as point sources, nonpoint sources and natural causes. The Department is uncertain at this stage the interplay of those potential causes. He said the Department did not believe that a standard which would impose strict limits on specific point sources was necessarily the way to clean up the problem. Mr. Hansen said there was language in the rules to ensure that a problem does not get worse during the study. Chairman Petersen said that adopting a standard without knowing the source of the problem was not responsible and might be extremely expensive for the source, which in the end might not be the problem.

Director Hansen said a portion of the rule requires that studies be conducted as necessary. The chlorophyll a standard will trigger this study. However, he said a major source of funding for these projects was in danger due to federal budget cuts necessitated by the Gramm-Rudman Act

and the Department will not be able to get to all potential study areas. However, the Tualatin River is clearly a top priority, he continued. The Department already has a person on staff working on that study and expects that effort to continue.

Mark Pilliod, City of Tualatin, stated they had had a very productive meeting with the staff after the Commission's January meeting and did not now have as significant concerns as they did in January. Mr. Pilliod said he was not sure the Commission was prepared to address a nuisance as defined by law. He suggested the term "undesirable" instead of nuisance.

In reference to 340-41-150(2) (a) Mr. Pilliod suggested the following change to make it more consistent with the end of 340-41-150(3):

Where natural conditions are responsible for exceedance of the values in OAR 340-41-150(1), or beneficial uses are not significantly impaired....

The reason for this proposed addition, Mr. Pilliod said, is he was unsure of the meaning if the term "significantly" is left out. Also, Mr. Pilliod asked if it was intended that after the Department had determined that particular levels have been exceeded, and after the study has taken place, the Commission would make findings and conclusions before implementing a control strategy. Director Hansen replied that the change of the term "nuisance" to "undesirable" was not a significant issue, and it was clearly the Department's intent that findings and recommendations be brought back to the Commission. Mr. Pilliod said that as long as that was a part of the record he would have no objection.

Chairman Petersen said he did not like "significantly" as a word in rules and suggested that "materially" might be better, but was not arguing one way or another.

Gary Krahmer, Unified Sewerage Agency of Washington County (USA), supported the comments by the City of Tualatin, and expressed a commitment for USA to participate in the study of the Tualatin Basin.

Gene Apple, City of Portland, Bureau of Environmental Services, supported the Director's Recommendation. He congratulated the Department staff on their responsiveness and on their cooperation. He was concerned that NEDC had not brought their concerns forward in meetings the Department had with interested parties. Mr. Apple said there were differences in the levels that would flag a study and in levels that would flag immediate action.

It was MOVED by Chairman Petersen, seconded by Commissioner Bishop and passed unanimously that the Director's Recommendation be approved with the following amendment to 340-41-150(1):

The following average chlorophyll a values shall be used to identify water bodies where phytoplankton may create a nuisance and may impair the recognized beneficial uses:

AGENDA ITEM I: City of Klamath Falls Petition for 401 Certification
Rules Amendment (Salt Caves)

The City of Klamath Falls has petitioned the Commission to reconsider its denial of previous petitions submitted by the City, reconsider the Section 401 rules which the Commission has adopted, and to modify the rules in a manner which would exempt the proposed Salt Caves hydroelectric project from certain sections of the 401 Certification rules.

Director's Recommendation

The Director recommends that the Commission deny the petition and direct the Department to execute a denial order incorporating the findings and reasons of the staff report.

Bruce White, Sierra Club, said they had already submitted comments on the City's request. They were opposed to the motion for reconsideration and felt that the request for rulemaking was not necessary given the fact there is an exemption in HB 2990. Mr. White felt that the Commission was within its discretion in adopting the rules and did not think it would be beneficial for the Commission to change their position at this time. He said the current rules conform to HB 2990 policy directions and the Commission was not entitled to question the legislative intent of HB 2990. He stated support for the Director's Recommendation, but was concerned that the staff had concluded that the City's proposal, which is not yet concrete, would be exempt under HB 2990. He said the question was yet to be determined.

Chairman Petersen asked where Mr. White found this conclusion. Mr. White replied that in the staff report it seemed to him the Director was saying that Salt Caves would be exempt from HB 2990 and at this point it was inappropriate for record to be made on this point. Director Hansen said the language on page one of the staff report was quoted from the statute. At issue was whether or not this newly revised project meets the statutory requirement. Director Hansen said the Department did not intend to address that in this staff report. He suggested it would be best to reword summation no. 4 in the staff report to reflect the language on page one of the staff report.

Peter Glaser, of the law firm of Duncan, Weinberg and Miller, appeared on behalf of the City of Klamath Falls. They were requesting that the Commission reconsider the 401 rules they adopted in November. He asked that the rules be restructured so that the applicant does not have to meet non-water quality requirements. Mr. Glaser said the City of Klamath Falls recently announced a new proposal for the Salt Caves project and hoped they could meet the water quality rules. He was not saying that the Salt Caves project should not have to meet non-water quality requirements imposed by other agencies which apply their rules to the project. The City was concerned about the Department getting away from its traditional water quality expertise, Mr. Glaser continued.

Mr. Glaser said the language of the rule should be clarified to say the Salt Caves project is exempt from additional non-water quality requirements. He said it was necessary to understand going into the process what the requirements are. He was not arguing the exemption of the Salt Caves project from HB 2990 at this time. He stressed it was important to have clarity in the rules.

Mr. Glaser said he agreed with the Sierra Club that rulemaking was not necessary at this time. He suggested the Commission could just act on this proposal without going out to hearing on rulemaking.

Michael Huston, Assistant Attorney General, stated that there may be requirements in Section 401 Administrative Rules which could not legally be applied to the Salt Caves project, but it would be impossible to determine that at this point. The determination depends on legal issues, he said, and in many cases those issues will be resolved in other forums. He said he did not deny Mr. Glaser's issues, but could not resolve them in the abstract. Mr. Huston further indicated that the Department did not agree with Mr. Glaser's argument that projects exempt from the requirement of HB 2990 are also exempt from state statutory requirements to obtain a water appropriation permit or an energy facility site certificate.

Commissioner Denecke MOVED that the Director's Recommendation be approved and indicated he was not making a judgment on whether or not the project was exempt from HB 2990. Commissioner Buist seconded the motion and it was passed unanimously.

AGENDA ITEM J: Informational Report on the Development of Landfill Site-Selection Criteria

This item provides information on the status of the Department's program to develop landfill site-selection criteria. The criteria will be used by the Department to identify a suitable landfill site or sites for the Portland metropolitan area, as authorized by Senate Bill 662.

The report describes the Department and Commission activities that will lead to the Commission's issuance of an order to establish a site by July 1, 1987. It also provides specific information on the group of criteria (pass-fail criteria) that will be applied during the first stage of the site selection process.

Director's Recommendation

It is recommended that the Commission review only the revised pass-fail criteria at its March 14, 1986 meeting, and that it concur in the following course of action to be pursued by the Department:

1. The finalized pass-fail criteria will be provided to the site selection consultant, and will be used in the site identification process (development of the initial list of potential sites).

2. The Department will continue to solicit public comment on the evaluation and final decision criteria. A public hearing will be held on March 27, 1986 and written comments will be accepted until March 31, 1986.
3. The revised evaluation and final decision criteria will be submitted to and reviewed by the EQC before those criteria are used for the evaluation of specific sites. Actual site evaluation is scheduled to begin on or about May 1, 1986.

Commissioner Denecke asked if the Department had been able to use some of the material the Metropolitan Service District (Metro) came up with. Steve Greenwood, of the Department's Hazardous and Solid Waste Division, replied that this criteria took the Metro siting criteria into consideration as well as many others.

Director Hansen said the Department would expect the final evaluation criteria as well as the decision criteria will be back before the Commission at its April 25, 1986 meeting prior to the identification of any potential sites. The criteria needs to be in place before the sites are identified.

Chairman Petersen said this was an excellent report in terms of clarity and was helpful to the Commission as its first pass on a very complex issue. He said the pass-fail criteria made sense and recognized the significant amount of public/advisory committee input. He stressed that the perception that this is an open, fair and equitable process must be maintained.

Brian Lightcap, West Multnomah Soil and Water Conservation District, testified they had reviewed the criteria and sent a letter to Mr. Greenwood outlining their concerns, most of which have been addressed in the staff report. Mr. Lightcap was concerned that people who look at the criteria know the definition of floodway. He said the floodway was restrictive as to development, but the floodway fringe was not. Kent Mathiot, of the Department's Hazardous and Solid Waste Division, replied that the Department was using U.S. Army Corps of Engineers maps which were fairly restrictive. The intent is to avoid the floodway, but not the floodway fringe.

Mr. Lightcap said in his letter to the Department he had requested the Department look at siting multiple landfills. However, he was now rethinking that proposal as several sites with 15 year life will still only last 15 years. He said he would get back to the Department with more input on this proposal.

Director Hansen said the pass-fail criteria will look at a number of matters, but the intent is to narrow the sites on which initial analysis can be done.

The Commission indicated acceptance of the report.

OTHER BUSINESS

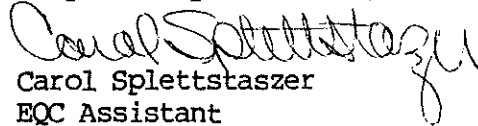
Commissioner Denecke noted the Commission had received the Hearing Officer's Findings of Fact, Conclusions of Law and Final order on DEQ v. Althaus in which the Hearing Officer concluded that "Oregon law does not establish an effective method of imposing a civil penalty for the ... violations because the legislative direction is incomplete and DEQ cannot supply a basic but omitted statutory element." Commissioner Denecke asked that this be the subject of one of the Department's legislative concepts.

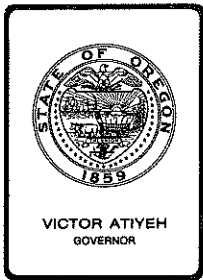
In another matter, the Commission unanimously voted to appoint the following hearing officers for the Threat to Drinking Water hearings to be held March 17, 1986.

Mary Halliburton, Larry Patterson, Krystyna Wolniakowski,
Tom Lucas, Gregg Pettit, Mark Ronayne, Sherman Olson,
John Jackson and Kent Ashbaker

There being no further business the meeting was adjourned.

Respectfully submitted,


Carol Spletstaszer
EQC Assistant



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, April 25, 1986, EQC Meeting

February 1986 Program Activity Report

Discussion

Attached is the February 1986 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: r
MD26
229-6484
Attachment

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

February 1986

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

February 1986
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans Pending
	Month	FY	Month	FY	Month	FY	
<u>Air</u>							
Direct Sources	6	48	3	47	0	0	16
Small Gasoline Storage Tanks Vapor Controls	-	-	-	-	-	-	-
Total	6	48	3	47	0	0	16
<u>Water</u>							
Municipal	13	103	7	114	0	3	28
Industrial	5	59	2	59	0	0	10
Total	18	162	9	173	0	3	38
<u>Solid Waste</u>							
Gen. Refuse	1	26	-	16	3	4	30
Demolition	-	3	-	-	-	-	4
Industrial Sludge	3	21	2	14	-	-	19
Total	4	51	2	30	3	4	54
<u>Hazardous Wastes</u>							
	-	5	-	5	-	-	-
<u>GRAND TOTAL</u>	28	266	14	255	3	7	108

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	104	GREGORY TIMBER RESOURCES	BURLEY SCRUBBER INSTAL	10/07/85	APPROVED
WASHINGTON	123	MARK MANAGEMENT ASSOC	AIRLESS PAINT EQUIPMENT	02/12/86	APPROVED
LINN	128	WILLAMETTE INDUSTRIES	VENEER DRYER MODIFICATIONS	01/28/85	APPROVED
TOTAL NUMBER QUICK LOOK REPORT LINES			3		

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

February 1986
(Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
	<u>Month</u>	<u>FY</u>	<u>Month</u>	<u>FY</u>			
<u>Direct Sources</u>							
New	2	17	1	22	11		
Existing	2	12	1	9	12		
Renewals	15	82	15	100	90		
Modifications	<u>0</u>	<u>5</u>	<u>2</u>	<u>32</u>	<u>7</u>		
Total	19	116	19	163	120	1303	1326
<u>Indirect Sources</u>							
New	0	12	2	18	0		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>		
Total	<u>0</u>	<u>12</u>	<u>2</u>	<u>18</u>	<u>0</u>	<u>250</u>	<u>250</u>
<u>GRAND TOTALS</u>	19	128	21	181	120	1553	1576

Number of
Pending Permits

Comments

27	To be reviewed by Northwest Region
23	To be reviewed by Willamette Valley Region
13	To be reviewed by Southwest Region
3	To be reviewed by Central Region
7	To be reviewed by Eastern Region
14	To be reviewed by Program Operations Section
22	Awaiting Public Notice
<u>11</u>	Awaiting end of 30-day Public Notice Period
120	

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT
DIRECT SOURCES
PERMITS ISSUED

COUNTY	SOURCE	PERMIT NUMBER	APPL. RECEIVED	STATUS	DATE		
					ACHIEVED	APPL.	PSEL
CLATSOP	H E JOHNSON & SONS CNTRHW	04	0029 03/25/85	PERMIT ISSUED	01/28/86	RNW	Y
COOS	COOS COUNTY HIGHWAY DEPT	06	0002 11/19/84	PERMIT ISSUED	01/28/86	RNW	Y
CURRY	PORTSIDE BLD SUPPLY	08	0037 03/06/85	PERMIT ISSUED	01/28/86	RNW	N
JACKSON	HILTON FUEL & SUPPLY CO	15	0095 11/25/85	PERMIT ISSUED	01/28/86	RNW	N
MARION	GERLINGER CASTING CORP.	24	4505 11/25/85	PERMIT ISSUED	01/28/86	RNW	Y
MARION	OGDEN PATN STMS OF MRNINC	24	5398 00/00/00	PERMIT ISSUED	01/28/86	MOD	Y
MULTNOMAH	MULTNOMAH CO JUVENILE HM	26	2329 12/09/85	PERMIT ISSUED	01/28/86	RNW	N
MULTNOMAH	GEORGIA PACIFIC CORP	26	2911 07/25/85	PERMIT ISSUED	01/28/86	RNW	N
POLK	MORTON ALDER MILL, INC.	27	6015 04/19/85	PERMIT ISSUED	01/28/86	RNW	N
UMATILLA	PENDLETON FLOUR MILLS INC	30	0054 10/03/85	PERMIT ISSUED	01/28/86	RNW	N
UNION	BOISE CASCADE CORP	31	0002 00/00/00	PERMIT ISSUED	01/28/86	MOD	Y
UNION	R-D MAC, INC	31	0010 10/02/85	PERMIT ISSUED	01/28/86	RNW	N
PORT.SOURCE	HANSON CRUSHING INC	37	0243 00/00/00	PERMIT ISSUED	01/28/86	RNW	Y
COLUMBIA	SCAPPOOSE SAND & GRAVEL	05	2576 02/08/85	PERMIT ISSUED	02/04/86	EXT	Y
COOS	BAYVIEW MANUFACTURING CO	06	0085 05/15/85	PERMIT ISSUED	02/04/86		N
LINCOLN	OCEANLAKE SAND & GRAVEL	21	0030 10/25/85	PERMIT ISSUED	02/04/86	RNW	N
GRANT	JOHN DAY LUMBER CO	12	0024 08/27/85	PERMIT ISSUED	02/05/86	RNW	Y
JACKSON	ORESON ASPHALT INC	15	0190 03/29/85	PERMIT ISSUED	02/05/86	NEW	Y
LINN	FREPES LUMBER CO INC	22	6002 05/10/85	PERMIT ISSUED	02/05/86	RNW	Y

TOTAL NUMBER QUICK LOOK REPORT LINES 19

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

<u>Air Quality Division</u>	<u>February 1986</u>
(Reporting Unit)	(Month and Year)

PERMIT ACTIONS COMPLETED

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

Indirect Sources

Multnomah	Montgomery Park 1,224 spaces File No. 26-8521	02/28/86	Final Permit Issued
Washington	PacTrust Business Center, 846 spaces File No. 34-8601	02/14/86	Final Permit Issued

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

<u>Water Quality</u>	<u>February 1986</u>
(Reporting Unit)	(Month and Year)

PLAN ACTIONS COMPLETED

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

MUNICIPAL WASTE SOURCES 7

Malheur	NYSSA STP Improvements	2-5-86	Provisional Approval
Columbia	Browns Landing (Gerald Blair) Houseboats & Restaurant 7500 gpd on-site system	2-11-86	Preliminary Comments to Designer
Clatsop	Glenwood Village M.H. Park Septic Tank, Rotating Biological System Denitrification, seepage beds 20,000 gpd	2-13-86	Provisional Approval
Clackamas	Wilsonville Boeckman Creek Lift Station Phase II Expansion	2-25-86	Provisional Approval
Curry	Rogue Landing Septic Tanks, Recirculating Gravel Filter and Seepage bed 5250 gpd	2-28-86	Comments to Engineer
Tillamook	Hebo Service District Collection System, Recirculating Gravel Filter and Outfall - 21,780 gpd	3-4-86	Provisional Approval
Clackamas	Tri- City Service District Water Supply Main to STP	3-4-86	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division February 1986
 (Reporting Unit) (Month and Year)

PLAN ACTIONS COMPLETED 9

* County	* Name of Source/Project	* Date	* Status
*	* /Site and Type of Same	* Received	*
*	*	*	*

INDUSTRIAL WASTE SOURCES 2

Tillamook	Robert Hurliman Manure Control System Tillamook	1-28-86	Approved
Wasco	Union Pacific Railroad Ground Water Monitoring Wells The Dalles	2-28-86	Approved

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	1	2	0	3	13	0	0	0	0	1	9	1	5	12	0				
RW	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0				
RWO	1	0	0	14	7	0	0	0	0	5	6	0	29	11	0				
MW	0	0	0	1	0	0	0	0	0	2	0	0	2	1	0				
MWO	0	0	0	9	1	0	0	0	0	5	0	0	6	1	0				
TOTAL	2	2	0	27	21	0	0	0	0	13	15	1	43	25	0	235	152	70	
INDUSTRIAL																			
NEW	1	1	0	3	9	15	2	0	0	2	8	16	4	9	0				
RW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0				
RWO	3	2	1	16	14	1	3	2	0	19	11	0	28	13	1				
MW	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0				
MWO	3	0	1	8	2	2	2	0	0	9	1	1	5	1	1				
TOTAL	7	3	2	27	25	18	7	2	0	30	20	17	38	23	2	168	138	297	
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	1	0	0	0	0	0	1	0	0	0	0				
TOTAL	0	0	0	0	1	0	0	0	0	0	1	0	0	0	0	2	11	58	
GRAND TOTAL	9	5	2	54	47	18	7	2	0	43	36	18	81	48	2	405	301	425	

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 28-FEB-86.

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
<hr/>									
<u>NPDES</u>									
IND	100004	NPDES	MWO	87628	TEKTRONIX, INC.	BEAVERTON	WASHINGTON/NWR	06-FEB-86	31-OCT-89
IND	100145	NPDES	RWO	76844	ROSS ISLAND SAND & GRAVEL CO.	PORTLAND	MULTNOMAH/NWR	06-FEB-86	31-DEC-90
IND	100146	NPDES	RWO	36350	HALTON TRACTOR CO.	PORTLAND	MULTNOMAH/NWR	06-FEB-86	31-DEC-90
IND	100147	NPDES	NEW	100090	TIME ENERGY SYSTEMS OF OREGON, INC.	NORTH POWDER	UNION/ER	06-FEB-86	30-NOV-90
IND	100148	NPDES	NEW	52570	MAIN ROCK PRODUCTS, INC.	COQUILLE	COOS/SWR	06-FEB-86	31-JAN-91
IND	3636	NPDES	MWO	15825	U. S. PLYWOOD CORPORATION	LEBANON	LINN/WVR	28-FEB-86	29-FEB-88
IND	100149	NPDES	RWO	9463	BOISE CASCADE CORPORATION	INDEPENDENCE	POLK/WVR	28-FEB-86	31-JAN-91
<hr/>									
<u>WPCF</u>									
IND	100150	WPCF	RWO	76205	LININGER, M. C. & SONS, INC.	CENTRAL POINT	JACKSON/SWR	28-FEB-86	31-JAN-91
IND	100151	WPCF	RWO	93560	WALLING INVESTMENTS, INC.	SALEM	MARION/WVR	28-FEB-86	31-JAN-91

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

February 1986
(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			
<u>General Refuse</u>							
New	-	3	1	4	-		
Closures	-	4	1	3	6		
Renewals	1	33	5	23	41		
Modifications	1	9	2	63	2		
Total	2	49	9	72	49	179	179
<u>Demolition</u>							
New	-	-	-	-	-		
Closures	-	1	-	-	3		
Renewals	-	1	-	1	1		
Modifications	-	1	-	2	-		
Total	-	3	-	3	4	12	12
<u>Industrial</u>							
New	1	13	1	8	8		
Closures	-	1	2	5	1		
Renewals	3	22	2	8	25		
Modifications	5	6	1	3	4		
Total	9	42	6	24	38	104	104
<u>Sludge Disposal</u>							
New	-	1	-	-	1		
Closures	-	-	-	-	-		
Renewals	-	1	-	-	1		
Modifications	-	-	-	-	-		
Total	-	2	-	-	2	16	16
<u>Hazardous Waste</u>							
New	-	1	-	-	9		
Authorizations	51	490	51	490	-		
Renewals	-	-	-	-	1		
Modifications	-	-	-	-	-		
Total	51	491	51	490	10	14	19
<u>GRAND TOTALS</u>	62	587	66	589	103	325	330

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

February 1986
(Month and Year)

PERMIT ACTIONS COMPLETED

* County	* Name of Source/Project * /Site and Type of Same	* Date of * Action	* Action	*
Marion	Woodburn Landfill Existing facility	12/2/85*	Amendment request withdrawn.	*
Clatsop	Astoria Landfill Closed facility	2/10/86	Closure permit issued.	*
Crook	Clear Pine Mouldings New woodwaste site	2/10/86	Permit issued.	*
Klamath	Merrill Transfer Sta. Existing facility	2/10/86	Permit renewed.	*
Linn	Geil's Pond Landfill Closed woodwaste site	2/10/86	Closure permit issued.	*
Linn	Old Timber Pond Existing woodwaste site	2/10/86	Closure permit issued.	*
Marion	United Disposal Transfer New reload facility	2/10/86	Permit issued.	*
Polk	Garden Grow Co. Existing composting facility	2/10/86	Permit amended.	*
Marion	Marion Forks Hatchery Existing fish carcass disposal site	2/13/86	Letter authorization renewed.	*
Wallowa	Joseph Transfer Sta. Existing facility	2/14/86	Permit renewed.	*
Lane	London Transfer Sta. Existing facility	2/20/86	Permit renewed.	*
Lane	Vida Transfer Sta. Existing facility	2/20/86	Permit renewed.	*
Morrow	Turner Landfill Existing facility	2/20/86	Permit amended.	*
Wasco	Shaniko Landfill Existing facility	2/20/86	Permit renewed.	*
Clackamas	Cascade Utilities Existing woodwaste site	2/28/86	Permit renewed	*

*Not included on December 1985 report.

DATE	WASTE TYPE	SOURCE	DISPOSE NOW	DISPOSE ANNUALLY
11-FEB-86	WASTE GREASE	PULP MILLS	0	0.27 CUBIC YARDS
13-FEB-86	FUNGICIDE WASTE	RCRA SPILL CLEANUP	0	4.32 CUBIC YARDS
19-FEB-86	ARSENIC CONTAMINATED WASTE PARTS	SEMICONDUCTORS	0	6.00 CUBIC YARDS
19-FEB-86	ASBESTOS	AIRCRAFT PARTS	0	100.00 CUBIC YARDS
20-FEB-86	CONTAMINATED SOIL	PAINTS	0	1,135.54 CUBIC YARDS
25-FEB-86	PCB CONTAMINATED SOLID	NON-SUPERFUND SITE CLEANUP	0	10.00 CUBIC YARDS
27-FEB-86	CONTAMINATED RAIN WATER	HAZARDOUS WASTE DISPOSAL SITE	0	50.00 CUBIC YARDS
27-FEB-86	OUTDATED & OFFSET PHOTO CHEMICALS	PHOTOFINISHING LABORATORIES	0	0.97 CUBIC YARDS
27-FEB-86	POISON LAB PACK	LAND & WILDLIFE CONSERVATION	0	0.27 CUBIC YARDS
27-FEB-86	STRYCHNINE TREATED BLOCKS	LAND & WILDLIFE CONSERVATION	0	0.27 CUBIC YARDS

10 Request(s) approved for generators in Oregon

27-FEB-86	INDUSTRIAL ACID NEUTRALIZATION SLUDGE	DEPARTMENT OF DEFENSE	0	5,000.00 CUBIC YARDS
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1 Request(s) approved for generators in Utah

04-FEB-86	PCB ARTICLE DRAINED	ELECTRIC SERVICES	0	2.70 CUBIC YARDS
04-FEB-86	MAGNESIUM CHIPS	AIRCRAFT	0	27.0 CUBIC YARDS
04-FEB-86	NONCHLORINATED SOLVENTS/UST PROGRAM WASTE	AIRCRAFT	0	2,000.00 CUBIC YARDS
04-FEB-86	CHROME CONTAMINATED SOLIDS	AIRCRAFT	0	100.00 CUBIC YARDS
04-FEB-86	CHROME CONTAMINATED SOLIDS	AIRCRAFT	0	100.00 CUBIC YARDS

DATE	WASTE TYPE	SOURCE	DISPOSE NOW	DISPOSE ANNUALLY
04-FEB-86	CHROMATED CONTAMINATED SOLIDS	AIRCRAFT	0	100.00 CUBIC YARDS
04-FEB-86	CHROME CONTAMINATED SOLIDS	AIRCRAFT	0	100.00 CUBIC YARDS
04-FEB-86	CHROME CONTAMINATED SOLIDS	AIRCRAFT	0	100.00 CUBIC YARDS
04-FEB-86	CHROME CONTAMINATED SOLIDS	AIRCRAFT	0	100.00 CUBIC YARDS
04-FEB-86	NONCHLORINATED SOLVENTS/UST PROGRAM WASTE	AIRCRAFT	0	2,000.00 CUBIC YARDS
04-FEB-86	SOLID PAINT WASTE	SHIP BUILDING & REPAIRING	0	135.00 CUBIC YARDS
04-FEB-86	WASTEWATER TREATMENT SLUDGE	PLATING & ANODIZING	0	360.00 CUBIC YARDS
04-FEB-86	OIL/HEAVY METALS CONTAMINATED WASTE	NON-SUPERFUND SITE CLEANUP	0	8,000.00 CUBIC YARDS
10-FEB-86	UST PROGRAM WASTE	HAZARDOUS WASTE DISPOSAL SITE	0	2,000.00 CUBIC YARDS
11-FEB-86	HEAVY METALS CONTAMINATED SOLIDS	AIRCRAFT	0	250.00 CUBIC YARDS
11-FEB-86	HEAVY METAL CONTAMINATED SOLIDS	AIRCRAFT	0	250.00 CUBIC YARDS
11-FEB-86	NONCHLORINATED SOLVENTS/UST PROGRAM WASTE	AIRCRAFT	0	2,000.00 CUBIC YARDS
11-FEB-86	NONCHLORINATED SOLVENTS/UST PROGRAM WASTE	AIRCRAFT	0	2,000.00 CUBIC YARDS
11-FEB-86	CORROSIVE ACID LAB PACK	HAZARDOUS WASTE DISPOSAL SITE	0	54.00 CUBIC YARDS
11-FEB-86	ORGANOTIN PESTICIDE	SHIP BUILDING & REPAIRING	0	6.21 CUBIC YARDS
11-FEB-86	TCE CONTAMINATED SOIL	RAILROADS, LINE-HAUL OPERATING	0	700 CUBIC YARDS
11-FEB-86	BRASS PLATING TANK FILTERS	PLATING & ANODIZING	0	54.54 CUBIC YARDS
13-FEB-86	POLLUTION CONTROL CRT FILTERCAKE WITH HEAVY METALS	HAZARDOUS WASTE DISPOSAL SITE	0	1,000.00 CUBIC YARDS
13-FEB-86	OIL/HEAVY METALS CONTAMINATED WASTE	NON-SUPERFUND SITE CLEANUP	0	8,000.00 CUBIC YARDS
19-FEB-86	MAGNESIUM CHIPS	AIRCRAFT	0	27.00 CUBIC YARDS
19-FEB-86	OIL CONTAMINATED SOLIDS	AIRCRAFT	0	500.00 CUBIC YARDS
19-FEB-86	HEAVY METAL CONTAMINATED SOLID	AIRCRAFT	0	250.00 CUBIC YARDS

DATE	WASTE TYPE	SOURCE	DISPOSE NOW	DISPOSE ANNUALLY
19-FEB-86	HEAVY METAL CONTAMINATED SOLID	AIRCRAFT	0	250.00 CUBIC YARDS
19-FEB-86	HEAVY METAL CONTAMINATED SOLID	AIRCRAFT	0	250.00 CUBIC YARDS
20-FEB-86	COPPER ARSENATE TREATED WOOD	WOOD PRESERVING	0	27.00 CUBIC YARDS
20-FEB-86	OIL CONTAMINATED SOIL	HAZARDOUS WASTE DISPOSAL SITE	0	324.00 CUBIC YARDS
20-FEB-86	OIL CONTAMINATED SOLIDS	HAZARDOUS WASTE DISPOSAL SITE	0	324.00 CUBIC YARDS
20-FEB-86	PCB CONTAMINATED SOLID	PRIMARY PRODUCTION OF ALUMINUM	0	6.94 CUBIC YARDS
20-FEB-86	INDUSTRIAL BURNER RESIDUE WITH HEAVY METALS	METAL SHIPPING BARRELS, DRUMS	0	1,1350.00 CUBIC YARDS
20-FEB-86	SPENT CHLOROFORM LAB PACK	WEAVING MILLS, WOOL	0	0.27 CUBIC YARDS
21-FEB-86	ASBESTOS CONTAMINATED WITH LEAD	ENV. SERVICES CONTRACTORS	0	550.00 CUBIC YARDS
27-FEB-86	SOIL CONTAMINATED WITH CHLORI ORGANICS	ALKALIES & CHLORINE	0	4.05 CUBIC YARDS
27-FEB-86	MECHANICAL ZINC PLATING WASTE	PLATING & ANODIZING	0	1.55 CUBIC YARDS

38 Request(s) approved for generators in Washington

49 Requests granted - Grand Total

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit)	February, 1986 (Month and Year)
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SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated		Final Actions Completed		Actions Pending	
	<u>Mo</u>	<u>FY</u>	<u>Mo</u>	<u>FY</u>	<u>Mo</u>	<u>Last Mo</u>
Industrial/ Commercial	8	78	19	69	190	201
Airports			2	7	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit)	February, 1986 (Month and Year)
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FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Clackamas	Ash Grove Cement West (Oregon Portland Cement), Lake Oswego	02/86	In Compliance
Clackamas	POFCO, Clackamas	02/86	No Violation
Clackamas	Reidel International, Inc., 156th & Hwy 224, Clackamas	02/86	In Compliance
Multnomah	A & A Frame and Body, Gresham	02/86	In Compliance
Multnomah	Albertson's #556, Gresham	02/86	In Compliance
Multnomah	Gorski & Kirks Body Shop, Portland	02/86	In Compliance
Multnomah	Lion Auto Body, Portland	02/86	In Compliance
Multnomah	Malden Court Auto Repair, Portland	02/86	In Compliance
Multnomah	Stark Street Pizza Company, Portland	02/86	In Compliance
Multnomah	Town Square Shopping Center at Mountain Park, Lake Oswego	02/86	In Compliance
Multnomah	Willamette National Cemetary, Mt. Scott, Portland	02/86	No Violation
Washington	Beaverton High School, Beaverton	02/86	In Compliance
Washington	Timberbest, Manning	02/86	Source Closed
Clatsop	Olney (Riekkola) Quarry, Hwy 202, near Astoria	02/86	In Compliance
Linn	Willamette Industries Paper Division, Millersburg	02/86	In Compliance
Marion	A B & I DWV Pipe, Inc., Turner	02/86	In Compliance
Marion	Puentes Bros. Food Company, Salem	02/86	In Compliance
Lane	Miller Dehydrater Company, Eugene	02/86	In Compliance

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit)	February, 1986 (Month and Year)
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FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Deschutes	R. L. Coats Crushing, Coats' Ranch	02/86	No Violation
Linn	Fisher Heliport	01/86	Boundary Approved
Multnomah	Westwood Corporation Heliport	01/86	Boundary Approved

CIVIL PENALTY ASSESSMENTS
 DEPARTMENT OF ENVIRONMENTAL QUALITY
 1986

CIVIL PENALTIES ASSESSED DURING MONTH OF FEBRUARY, 1986:

<u>Name and Location of Violation</u>	<u>Case No. & Type of Violation</u>	<u>Date Issued</u>	<u>Amount</u>	<u>Status</u>
Star Petroleum, Inc. Mt. Angel, OR	WQ-WVR-86-04 Negligent spill of 800 gallons gasoline.	2/11/86	\$2,500	Paid 3/3/86.
Rock Creek Sand & Gravel Co. Clackamas County	WQ-NWR-86-06 Discharged turbid waste water to Clackamas River, in violation of permit.	2/14/86	\$300	Paid 2/27/86
Lang & Gangnes Corp. dba/Medply White City, OR	AQ-SWR-86-12 21 days of unautho- rized boiler opera- tion; 8 days of excessive emissions from boiler.	2/27/86	\$14,300	Awaiting response to notice.

February, 1986
DEQ/EQC Contested Case Log

<u>ACTIONS</u>	<u>LAST MONTH</u>	<u>PRESENT</u>
1 Preliminary Issues	2	1
2 Discovery	0	0
3 Settlement Action	3	1
4 Hearing to be scheduled	0	0
5 Hearing scheduled	4	4
6 HO's Decision Due	5	1
7 Briefing	0	3
8 Inactive	<u>5</u>	<u>5</u>
SUBTOTAL of cases before hearings officer.	19	15
9 HO's Decision Out/Option for EQC Appeal	1	2
10 Appealed to EQC	1	2
11 EQC Appeal Complete/Option for Court Review	0	0
12 Court Review Option Taken	2	2
13 Case Closed	<u>3</u>	<u>2</u>
TOTAL Cases	26	23

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

February 1986

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrl	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.
HAYWORTH FARMS, INC., and HAYWORTH, John W.	01/14/83	02/28/83	04/04/84	Resp	50-AQ-FB-82-09 FB Civil Penalty of \$1,000	Appealed to Court of Appeals.
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.
24 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.
CLEARWATER IND., Inc.	10/11/83	10/17/83	01/13/86	<u>Hrng</u>	58-SS-NWR-83-82 SS Civil Penalty of \$1000	<u>Briefing.</u>
CLEARWATER IND., Inc.	01/13/84	01/18/84	01/13/86	<u>Hrng</u>	02-SS-NWR-83-103 SS Civil Penalty of \$500	<u>Briefing.</u>

February 1986

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrl	Hrng Date	Resp Code	Case Type & No.	Case Status
VANDERVELDE, Roy	06/12/84	06/12/84	08/22/85	Dept	20-WQ-WVR-84-01 WQ Civil Penalty of \$2,500	<u>Appeal to EQC filed more than 30 days after hearing officer's decision is issued.</u>
CLEARWATER Industries, Inc.	10/11/84	10/11/84	01/13/86	Hrng	24-SS-NWR-84-P Sewage Disposal Service License Denial	<u>Hearing request withdrawn. Order of dismissal to be issued.</u>
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		Hrgs	02-HW-WQ-WVR-84-158 \$6,000 civil penalty	<u>Order affirming \$5,000 penalty issued 2/18/85.</u>
FUNRUE, Amos	03/15/85	03/19/85	06/20/85	Resp	05-AQ-FB-84-141 Civil Penalty of \$500	Appeal filed 2/5/86.
JOSEPH-FOREST PRODUCTS	05/16/85	05/23/85		Ptys	13-HW-ER-85-29 Hazardous-waste disposal Civil-Penalty-of \$2,500	<u>No appeal to EQC. Case closed.</u>
MAIN-ROCK		05/31/85		Prtys	14-WQ-SWR-85-31 Violation-of-NPDES permit-conditions Civil-Penalty-of \$3,500	By stipulated order EQC reduced \$3,500 civil penalty to \$625. <u>Case Closed.</u>

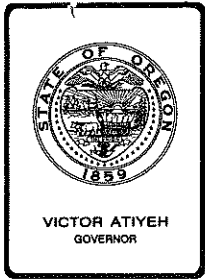
25

February 1986

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrl	Hrng Date	Resp Code	Case Type & No.	Case Status
DANT & RUSSELL, INC.	05/31/85	05/31/85	<u>03/21/86</u>	Prtys	15-HW-NWR-85-60 Hazardous waste disposal Civil Penalty of \$2,500	<u>Hearing rescheduled.</u>
ALTHAUSER, GLENN L.	07/08/85	07/16/85	09/20/85	Hrgs	17-SW-NWR-85-77 Unauthorized Waste Disposal	<u>Decision issued 3/5/86.</u>
MERIT OIL & REFINING CO.		07/24/85	11/19/85	Prtys	20-WQ-NWR-85-61 WQ Civil Penalty of \$1,200	Settlement action.
E.J. BARTELLS CO.	10/04/85	10/08/85	02/27/86	Prtys	21-AQ/WQ/SW-NWR-85-78 \$10,000 Civil Penalty	Hearing scheduled.
AMCOAT, INC.	10/15/85	10/23/85	<u>04/04/86</u>	Prtys	22-HW/WQ-NWR-85-85 \$5,000 civil penalty	<u>Hearing rescheduled.</u>
BRAZIER FOREST PRODUCTS	11/22/85	12/12/85	02/10/86	Prtys	23-HSW-85 Declaratory Ruling	<u>Briefing.</u>
NULF, DOUG	01/10/86	01/13/86		Prtys	01-AQFB-85-02 \$500 Civil Penalty	Preliminary issues.
DOERFLER, RICHARD	01/24/86	01/31/86	<u>04/11/86</u>	Prtys	02-AQFB-85-03 \$300 Civil Penalty	<u>Hearing scheduled.</u>

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Environmental Quality Commission

Mailing Address: BOX 1760, PORTLAND, OR 97207

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

MEMORANDUM

To: Environmental Quality Commission
From: Director
Subject: Agenda Item C, April 25, 1986, EQC Meeting

TAX CREDIT APPLICATIONS

The Tax Credit program is governed by ORS 468.150 through 468.190. In 1983 the Legislature made substantial changes to the program which took effect January 1, 1984. These effect the types of facilities eligible, the amount of tax credit available and requirements with which an applicant must comply. Attached is a brief summary of the statutes and rules applying to facilities completed before and after December 31, 1983. This summary is intended to assist in the evaluation of the tax credit staff reports.

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-1760	James A. Metcalfe	Manure Control System
T-1765	GNB Incorporated	Acid Spill Control System
T-1766	GNB Incorporated	Pretreatment System
T-1780	Teledyne Industries, Inc.	Modified pH Neutralization System
T-1782	Teledyne Industries, Inc.	Vaughn Lagoon Pumper System
T-1792	Freres Lumber	Hot Water Recycling System

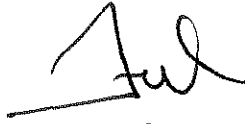
<u>Appl. No.</u>	<u>Applicant</u>	<u>Facility</u>
T-1794	Medford Corporation	Bag Filter Dust
T-1795	Medford Corporation	Log Yard Waste Wood Handling System
T-1803	Pacific Power and Light	Oil Spill Containment System
T-1805	Pacific Power and Light	Oil Spill Containment System
T-1806	Pacific Power and Light	Oil Spill Containment System
T-1807	Teledyne Industries, Inc.	Oil/Water Separator
T-1808	Teledyne Industries, Inc.	Waste Oil Storage Tank
T-1809	Teledyne Industries, Inc.	Concrete Containment Sump
T-1810	Teledyne Industries, Inc.	Flow Meter and Sampler
T-1811	Purdy Corporation	Baghouse
T-1812	Medford Corporation	Sealing Three Veneer Dryers
T-1813	Medford Corporation	New Paint Line to Reduce VOC's
T-1816	Bracelin & Yeager Asphalt Co.	Venturi Wet Scrubber

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

<u>Appl. No.</u>	<u>Applicant</u>	<u>Facility</u>
T-1776	Kenneth M. Jenck	Manure Control Facility
T-1777	Norman Miller	Manure Control Facility
T-1788	Sam Oberg	Manure Control Facility
T-1789	International Paper Company	Spill Control System
T-1793	Intel Corporation	pH Neutralization System
T-1802	Pacific Power and Light	Oil Spill Containment System

EQC Agenda Item C
April 25, 1986
Page 3

3. Revoke Certificate No. 181 issued August 13, 1971 to Publishers Paper Company. The sulfite pulping process at the Newberg Division has been permanently shut down. (Letter attached.)

A handwritten signature in dark ink, appearing to read 'Fred Hansen', written over a horizontal line.

Fred Hansen

S. Chew:y
(503) 229-6484
MY2543
Attachment
April 10, 1986

Proposed April 25, 1986 Totals:

Air Quality	\$1,257,800.00
Water Quality	1,766,369.41
Hazardous/Solid Waste	991,935.00
Noise	<u>-0-</u>
	\$4,016,104.41

Proposed Tax Credits Subject to the 1983 Tax Credit Law:	\$1,410,509.76
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Proposed Tax Credits Not Subject to the 1983 Tax Credit Laws:	\$2,605,594.65
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1986 Calendar Year Totals not
including Tax Credits Certified
at this EQC Meeting:

Air Quality	\$1,376,653.80
Water Quality	898,099.81
Hazardous/Solid Waste	138,388.22
Noise	<u>18,387.00</u>
	\$2,431,528.83

Summary of Pollution Control Tax Credit Program Requirements

Facilities completed after December 31, 1983 are subject to 1983 legislation. Facilities built before December 31, 1983 are subject to the law in effect when the facility is built.

	<u>Facilities completed after December 31, 1983</u>	<u>Facilities completed before January 1, 1984</u>
II. Application Deadlines		
1. Preliminary Certification Application.	Must be submitted 30 days before commencement of construction, unless DEQ finds application complete and notifies applicant that he/she may proceed.	Must be submitted before commencement of construction.
2. Final Certification Application.	A completed application must be received by DEQ within 2 years of substantial completion of the facility.	A completed application must be submitted to DEQ by January 1, 1986.
III. Certification Requirements		
1. Purpose.	<p>The principal purpose of the facility is to comply with a requirement imposed by DEQ, EPA or a regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or</p> <p>The sole purpose of the facility is to prevent, control or reduce 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.</p>	A substantial purpose of the facility is the prevention, control or reduction of air, water, or noise pollution or solid waste, hazardous wastes or used oil.

Summary of Pollution Control Tax Credit Program Requirements

Facilities completed after December 31, 1983 are subject to 1983 legislation. Facilities built before December 31, 1983 are subject to the law in effect when the facility is built.

Facilities completed after
December 31, 1983

Solid waste facilities must also have the following:

1. The substantial purpose of the facility is to utilize material that would otherwise be solid waste;
2. The end product of the utilization is a usable source of power or other item of real economic value;
3. The end product of the utilization, other than a usable source of power, is competitive with an end product produced in another state; and
4. Oregon law regulating solid waste imposes standards at least substantially equivalent to federal law.

Facilities completed before
January 1, 1984

Solid waste facilities must also have the following:

1. The substantial purpose of the facility is to utilize material that would otherwise be solid waste;
2. The end product of the utilization is a usable source of power or other item of real economic value;
3. The end product of the utilization, other than a usable source of power, is competitive with an end product produced in another state; and
4. Oregon law regulating solid waste imposes standards at least substantially equivalent to federal law.

In addition, solid waste facilities commenced after December 31, 1980, but completed prior to December 31, 1983 shall only be certified if they meet the following additional criteria.

Summary of Pollution Control Tax Credit Program Requirements

Facilities completed after December 31, 1983 are subject to 1983 legislation. Facilities built before December 31, 1983 are subject to the law in effect when the facility is built.

Facilities completed after
December 31, 1983

Facilities completed before
January 1, 1984

1. The facility is necessary to assist in solving a severe or unusual solid waste, hazardous wastes, or used oil problem;
2. The facility will provide a new or different solution to a solid waste, hazardous wastes or used oil problem than has been previously used, or the facility is a significant modification and improvement of similar existing facilities; or
3. The Department has recommended the facility as the most efficient or environmentally sound method of solid waste, hazardous wastes, or used oil control.

2. Percent allocable

The percent allocable is certified in one percent increments from 1 to 100 percent.

The percent allocable is certified in the following increments:

- 80 percent or more, 60 percent or more and less than 80 percent, 40 percent or more and less than 60 percent, 20 percent or more and less than 40 percent, or less than 20 percent.

STATE OF OREGON - DEPARTMENT OF ENVIRONMENTAL QUALITY

Tax Relief Application Review Report

1. Applicant

James A. Metcalfe
J & L Dairy
3700 Possetti Road
Tillamook, OR 97141

The applicant owns and operates a dairy farm at Tillamook, 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 manure control system consisting of 1) Two 6' high concrete retaining walls, 2) A 70' x 60' dry storage area and 3) A 75' x 95' galvanized metal roof.

Request for Preliminary Certification for Tax Credit was made April 7, 1982, and approved May 7, 1982. Facility is subject to the 1981 tax credit law. Construction was initiated on the claimed facility June 1982, completed August 1982 and the facility was placed into operation August 1982. The application was received on September 9, 1985, and found to be complete on December 31, 1985. Applications for those facilities completed before January 1, 1984, must be submitted by January 1, 1986. This requirement is, therefore, met.

Facility Cost: \$36,534.75 (Accountant's Certification was provided).

The accountant's certification showed a total project cost of \$36,534.75. The U.S. Department of Agriculture Stabilization and Conservation Service reimbursed the applicant \$26,593.00. This amount will be subtracted by the applicant from the amount of tax credit for which he is eligible when he files his state income tax form.

3. Evaluation of Application

Prior to installation of the claimed facility, inadequate manure storage areas forced the applicant to spread manure onto saturated fields during wet winter months. Contaminated runoff would enter the Kilchis River. Occasionally when the river flooded, water would back up into the manure storage area causing additional contamination of the river. The barn is located on the bank of the Kilchis River. The

concrete retaining walls and covered dry storage facility contain the manure and effectively separate it from the river. Manure is now only spread on the land during dry periods of the year. There is no significant return on investment from this project. The sole purpose of these facilities is to control wastes from the farm operation to reduce contamination of the Tillamook Bay Drainage Basin.

The Department conducted water quality surveys in Tillamook Bay during 1979 - 1980. The surveys concluded that dairy operations were a major cause of high bacterial contamination in the drainage basin which threatened the oyster industry. The Department required the development of a Tillamook Bay Drainage Basin Agricultural Non-Point Source Pollution Abatement Plan which was incorporated into the North Coast Basin Water Quality Management Plan by the Environmental Quality Commission on August 28, 1981.

4. Summation

- a. Facility was constructed in accordance with the requirements of ORS468.175, 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 \$36,534.75, with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1760.

L.D. Patterson:c
(5030) 229-5374
April 3, 1986
WC368

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates a lead battery manufacturing facility at Salem, 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 16' x 17' acid-brick lined concrete pad, sump, pump and associated piping.

Request for Preliminary Certification for Tax Credit was made October 15, 1979, and approved November 20, 1979. Facility is subject to the 1981 tax credit law. Construction was initiated on the claimed facility November 15, 1979, completed April 15, 1980, and the facility was placed into operation April 15, 1980.

Final tax credit applications for facilities completed before January 1, 1984 must be submitted to DEQ by January 1, 1986. The application was submitted by January 1, 1986. This requirement has, therefore, been met.

Facility Cost: \$51,945.00 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to installation of the claimed facility, acid storage and mixing was conducted in tanks located over soil with no spill control facilities provided. Spills could contaminate soils and groundwater. The new facility collects spills in a brick-lined sump (within a brick-lined spill containment pad) where the acid is pumped to a waste water neutralization system. Neutralized effluent flows to the City of Salem's system. This facility is a spill control system which protects soils and groundwater. There has been no return on investment.

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 \$51,945.00 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1765.

Larry D. Patterson:l
(503) 229-5374
April 9, 1986
WC82

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates an automotive battery manufacturing facility at Salem, 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 pretreatment neutralization system consisting of:

- a. 2 - 1500 Gallon Tanks,
- b. 2 - 1/2 HP Mixers,
- c. Acid Resistant Pumps and Sump,
- d. Lime Slurry Mixer and Feeder,
- e. Electrical Control Components, and
- f. Concrete Block Building Enclosure.

Request for Preliminary Certification for Tax Credit was made October 22, 1979, and approved November 20, 1979. Facility is subject to the 1979 tax credit law. Construction was initiated on the claimed facility November 1979, completed May 1980, and the facility was placed into operation May 1980.

Final tax credit applications for facilities completed before January 1, 1984 must be submitted to DEQ by January 1, 1986. The application was submitted by January 1, 1986. This requirement has, therefore, been met.

Facility Cost: \$45,610.00 (Accountant's Certification was provided).

3. Evaluation of Application

Due to the discharge of low pH waste water to the City of Salem's sewerage system, the City required the installation of an improved neutralization system. Waste water is collected in an acid resistant sump where it is pumped to mixing tanks. Lime slurry is metered into the tanks until the proper pH is obtained. Upon reaching an

acceptable pH, each tank is released to the sewer on a batch basis. This facility has consistently met the pretreatment requirements of the City. 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.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$45,610.00 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1766.

Larry D. Patterson:y
(503) 229-5374
April 9, 1986
WY2578

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates a zirconium, hafnium, tantalum, titanium, and niobium production plant at Albany, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is an improvement to an existing waste water pH neutralization system consisting of piping, valves, electrical equipment and instrumentation.

Request for Preliminary Certification for Tax Credit was made February 3, 1977, and approved January 16, 1978. Facility is subject to the 1975 tax credit law. Construction was initiated on the claimed facility April 1977, completed December 27, 1978, and the facility was placed into operation December 27, 1978. The application was submitted by January 1, 1986. Applications for those facilities completed before January 1, 1984, must be submitted by January 1, 1986. This requirement is, therefore, met.

Facility Cost: \$24,162 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to installation of the claimed equipment, waste water was neutralized with waste hydrofluoric acid. Not only did this add fluoride to the water, it did not prove to be a reliable neutralization system because the strength of the acid varied widely. This resulted in wide fluctuations in effluent pH which often caused violations of the NPDES permit. The new system relies on dilute sulfuric acid to neutralize the waste water. Since the strength of the acid is very consistent, the modified neutralization system has proven to be much more reliable. Although hydrofluoric acid is now recycled, the applicant purchases new sulfuric acid for use in the neutralization system. The cost of recycling the waste hydrofluoric acid and of purchasing the sulfuric acid out weigh the value of the recovered acid. There is no return on investment from the claimed 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 \$24,162 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1780.

L.D. Patterson:c
(503) 229-5374
April 4, 1986
WC377

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Teledyne Industries, Inc.
Teledyne Wah Chang Albany
P. O. Box 460
Albany, Oregon 97321

The applicant owns and operates a zirconium, hafnium, tantalum, titanium, and niobium Production Plant at Albany, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is a Vaughn Lagoon Pumper System, floats, 100 hp motor, chopper pump, electrical cable, wire rope and electrical winch, and piping.

Request for Preliminary Certification for Tax Credit was made January 10, 1980, and approved January 15, 1980. Facility is subject to the 1981 tax credit law. Construction was initiated on the claimed facility February 1980, completed September 15, 1980, and the facility was placed into operation September 15, 1980. The application was received on December 3, 1985 and found to be complete on December 12, 1985. Application for those facilities completed before January 1, 1984, must be submitted by January 1, 1986.

Facility Cost: \$31,149.00 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to installation of the claimed facility, waste water was bypassed around the settling ponds during dredging. This occasionally resulted in suspended solid concentrations which exceeded the NPDES permit limits. Dredging consisted of moving the sludge with fire hoses and a dragline to a fixed sludge pump. This did not prove to be an effective system for solids removal. The new facility consists of a floating pumper system with a deep draft intake which can be moved from shore. The system can remove solids without interrupting the operation of the settling ponds. Solids removed from the ponds are pumped for disposal to the "Farm Ponds" north of the plant site. There is no return on investment from this facility.

4. Summation

- a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.
- b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).
- c. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling, or reducing water pollution.
- d. The facility is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.
- e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$31,149.00 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1782.

L.D. Patterson:c
(503) 229-5374
WC253
March 4, 1986

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates a plywood veneer manufacturing facility at Lyons, 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 hot water recycling system for peeler block conditioning. The system consists of:

- a. Effluent collection sump,
- b. Two stainless steel pumps,
- c. 18 inch diameter stainless steel insulated piping,
- d. Heat exchanger, and
- e. Miscellaneous valves and piping.

Request for Preliminary Certification for Tax Credit was made May 18, 1981, and approved July 6, 1981. Facility is subject to the 1981 tax credit law. Construction was initiated on the claimed facility July 6, 1981, completed March 15, 1982, and the facility was placed into operation March 15, 1982. Final tax credit application for facilities completed before January 1, 1984 must be submitted to DEQ by January 1, 1986. The application for the facility was received by DEQ on December 23, 1985. This requirement has, therefore, been met.

Facility Cost: \$74,230.00 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to installation of the claimed facility, steam was used to soften wood blocks to aid in peeling to make veneer. Once the steam condensed it was discharged to the log pond which periodically overflowed to the North Santiam River. The discharge of log conditioning waters is prohibited by federal standards. The new

system recirculates hot water through a closed heat exchanger prior to reuse for softening the wood blocks. As the hot water leaves the softened wood blocks, it is collected in a sump where it is screened and pumped back through the heat exchanger. The screenings are sold as hog fuel, but the income is far outweighed by the expense of operating the recycle system. The recirculation system has eliminated all discharges of log conditioning water. There is no return on investment from this facility.

4. Summation

- a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.
- b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).
- c. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling, or reducing water pollution.
- d. The facility is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.
- e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$74,230.00 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1792.

L.D. Patterson:c
(503) 229-5374
WC358

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Medford Corporation
Selply
P.O. Box 550
Medford, OR 97501

The applicant owns and operates a decorative wood panel processing plant at 8th & Avenue "G", 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 consists of a Carothers type bag filter dust collection system.

Request for Preliminary Certification for Tax Credit was made on March 19, 1978 and approved on April 18, 1978.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983 since the facility was completed before January 1, 1984.

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

The application was received on December 23, 1985 and the application was considered complete on December 23, 1985. Final tax credit application for facilities completed before January 1, 1984 must be submitted to DEQ by January 1, 1986. This requirement is therefore met.

Facility Cost: \$139,835 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility consists of a Carothers, model 460, bag filter dust collector. This facility was required by the Department to control particulate emissions from all of their cyclones.

The facility has been inspected by Department personnel numerous times since installation and has been found to be operating in continuous compliance since installation.

Approximately 200 tons of sawdust and sanderdust is collected by the baghouse annually. This wood waste, which has an economic value of approximately \$2,000, is used as a fuel source. The annual operating expenses are reported by the applicant to be \$33,547 and are as follows:

Utilities	\$27,747
Labor	1,200
Maintenance	1,200
Property Tax	2,000
Insurance	<u>1,400</u>
Total	\$33,547

Since the operating expenses exceed the economic value of the recovered wood waste, there is no return on the investment in the facility and 80 percent or more of the 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 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 \$139,835 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1794.

W.J. FULLER:a
AA5298
(503) 229-5749
March 28, 1986

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Medford Corporation
Rogue River
P.O. Box 550
Medford, OR 97501

The applicant owns and operates a veneer plant at Rogue River, Oregon.

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

2. Description of Claimed Facility

The facility described in this application consists of a handling system for log yard waste wood. Major items include:

Blacktop	\$906,932
Hammer Hogs	25,000
Fines Bin	40,000
Chip feeder	8,276
International Tractor Loader	<u>11,650</u>
	\$991,935

Request for Preliminary Certification for Tax Credit was made on June 26, 1978, and approved on March 19, 1979 (a request for additional information was sent to the applicant on July 13, 1978 - information was received on February 27, 1979).

Construction was initiated on the claimed facility on July 6, 1978, completed in March 1981, and the facility was placed into operation in March 1981. Final tax credit certification applications for facilities completed before January 1, 1984 must be submitted to DEQ by January 1, 1986. The application for this facility was received on December 23, 1985. The requirement is, therefore, met.

Facility Cost: \$991,935 (Accountant's Certification was provided).

3. Evaluation of Application

The major portion of this tax credit application consists of log yard paving (nine acres). Prior to paving the wood and bark was contaminated with dirt and rock and was landfilled. Paving has eliminated 3,500 units per year from landfill, reduced dust emissions and substantially reduced the need for locating new landfill sites.

Construction was started prior to December 31, 1980, therefore, the 1979 tax credit laws apply. Prior to December 31, 1980, log yard paving was considered an eligible solid waste facility. The initial log yard paving certification (T-860 - copy attached) granted in

June, 1977, established procedures for processing such facilities. The essential element established was that income from recovered material (at time of final application) must exceed cost savings for operation to meet the "substantial" requirement in the law.

Cost savings analysis for the Medford Corporation, Rogue River by paving follows:

1. Annual cost savings

Annual rock replacement	\$ 19,230
Yard clean-up costs	87,200
Annual equipment maintenance	<u>36,000</u>
	\$142,430

2. Annual cost of paving

Interest expense of 10 years at 10%	\$ 70,000
Pavement maintenance	15,000
Property taxes @ 19.12/M	13,384
Depreciation 10 year S.L.	<u>70,000</u>
	\$168,384

Pre-tax savings (cost savings - cost of paving)	(\$ 25,954)
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Net after tax savings	(\$ 12,977)
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Value of the recovered wood product for fuel is estimated at \$17,500 per year. Based on the criteria established in T-860, the facility would meet the substantive definition (value of recovered waste exceeds operational savings).

The facility is exempt from percentage allocable (solid waste facilities constructed prior to January 1, 1984 are 100% eligible).

4. Summation

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

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

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

- (2) The end product of the utilization is a usable source of power; and
 - (3) The Oregon law regulating solid waste imposes standards at least substantially equivalent to the federal law.
- c. The facility is necessary to satisfy the intents and purposes of ORS Chapter 459, and the rules adopted under that chapter.
 - d. 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 \$991,935 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1795.

E.A. Schmidt:b
(503) 229-5157
February 14, 1986
SB5335

Date June 22, 1977

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Bohemia, Inc.
P. O. Box 1819
Eugene, Oregon 97401

The applicant owns and operates a veneer and lumber mill and a bark extraction plant at Coburg in Lane County, Oregon.

2. Description of Facility

The facility claimed in this application consists of 600,000 square feet of black top paving over the plant log storage, handling and scaling yard.

The construction of claimed facility started in July 1975 and was completed in November 1976.

Certification is claimed under the 1973 Act as amended in 1975 with 100 percent of the cost allocated to pollution control for utilization of solid waste.

Facility costs: \$473,247.67 (accountant's certification was attached to application).

3. Evaluation of Application

Bohemia, Inc. submitted a Request for Preliminary Certification for Tax Credit to the Department, which was approved on July 2, 1976.

Prior to the paving of the Bohemia Coburg plant log yard 21,000 tons per year of wood waste, mud and rock was landfilled. The paving eliminated the mud problem, dust emissions and landfill disposal of solid waste. The clean recoverable portion of the waste is now picked up off the yard and fed into Bohemia's wood products utilization facility, to be utilized as raw bark for the bark extraction plant or hog fuel.

Bohemia, Inc. submitted to the Department on June 13 and 16, 1977, full, up-to-date information, prepared from 1976 operational data. The new cost saving analysis prepared by Bohemia, Inc. indicates that value of the bark (\$33,771) recovered from paved Coburg log yard is greater than annual operational savings (\$26,021).

The Department requested its legal counsel for informal opinion on the following issues as related to this application:

1. Whether or not "The Substantial Purpose of Claimed Facility" as defined in the ORS 468.165 can be measured through cost benefits analysis.
2. Whether the circumstances prior to construction of claimed facility or the circumstances at the time of final application preparation are governing.

The legal counsel agreed with the Department's interpretation of ORS 468.165(1)(b)(A) and confirmed the interpretation of "The Substantial Purpose of Claimed Facility" can be measured through cost benefits analysis. Furthermore, it is legal counsel's opinion that circumstances at the time of final application preparation are governing.

In future applications for paved log yards, the Department will require cost saving analysis similar to those prepared by Bohemia, Inc. for Coburg log yard as follows:

1. Annual Cost Savings

a. Annual Rock Replacement	\$33,600
b. Annual Clean-up Cost	89,048
c. Annual Equipment Maintenance	<u>26,348</u>
TOTAL	\$148,996

2. Annual Cost of Paving

a. Interest Expense 10 Years at 9 percent (Average)	\$26,605
b. Pavement Maintenance 20¢ per sq/yd	13,333
c. Property Taxes	10,262
d. Depreciation 10 Years Straight Line 5 Percent Salvage	<u>45,278</u>
TOTAL	\$95,478

Pre-tax Savings (cost savings - cost of paving) \$53,518

Corporation Income Taxes at 51.38 percent \$27,497

Net after Tax Savings \$26,021

In conclusion the claimed facility eliminated generation of 21,000 tons per year of solid waste, mud problems, dust emissions, and substantially reduced the need for new landfill sites. Considering that the value of the recovered bark is greater than the annual operational savings, it appears that the substantial purpose for the construction of the claimed facility was pollution control and utilization of solid wastes.

The Department concludes that the claimed facility does meet the requirements of ORS 468.165(1)(b) and is therefore eligible for certification.

4. Director's Recommendation

It is recommended that a Pollution Control Facility Certificate be issued pursuant to ORS 468.165(1)(b) for the claimed facility in Application T-860, such certificate to bear the actual cost of \$473,247.67.

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Pacific Power & Light Company
920 S.W. 6th Avenue
Portland, OR 97204

The applicant owns and operates the Dixonville electrical substation near Roseburg, 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 oil spill containment system consisting of:

- a. A 5000 square foot gunite lined oil/water separation pond with an 18-inch inverted outlet,
- b. A 38.5' x 11' x 4.5' concrete containment basin, and
- c. Two concrete tank support pads.

Request for Preliminary Certification for Tax Credit was made June 22, 1983, and approved June 29, 1983. Facility is subject to the 1981 tax credit law. Construction was initiated on the claimed facility October 1, 1983, completed November 18, 1983, and the facility was placed into operation November 18, 1983. Final tax credit applications for facilities completed before January 1, 1984 must be submitted to DEQ by January 1, 1986. The application was submitted by January 1, 1986. This requirement has, therefore, been met.

Facility Cost: \$40,510.71 (Accountant's Certification was provided).

3. Evaluation of Application

The Dixonville substation is situated on a hillside above Deer Creek. Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with requirements of the federal government, the applicant installed oil spill containment facilities at the substation. A 5000 ft² gunite

lined pond was constructed at the low end of the substation to provide oil/water separation capabilities. Runoff flowing through the inverted syphon enters Deer Creek. A concrete secondary containment sump was constructed under an existing 10,000 gallon oil storage tank, and two other existing 2,500 gallon oil tanks were relocated on new concrete support pads where spillage would enter the gunite separation pond. This facility provides containment capabilities for any oil spills which could occur from the tanks and transformers at the substation. There is no return on investment from this facility.

4. Summation

- a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.
- b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).
- c. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling, or reducing water pollution.
- d. The facility is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.
- e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$40,510.71 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1803.

L.D. Patterson:h
(503) 229-5374
March 31, 1986
WH691

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Pacific Power & Light Company
920 S.W. 6th Avenue
Portland, OR 97204

The applicant owns and operates a hydroelectric generating plant (Prospect #2) near Prospect, 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 oil spill containment system consisting of angle iron, ABS drain pipe, and a 2,000 gallon oil/water separator.

Request for Preliminary Certification for Tax Credit was made June 29, 1981, and approved July 17, 1981. Facility is subject to the 1981 tax credit law. Construction was initiated on the claimed facility March 1982, completed June 1982, and the facility was placed into operation June 1982. The application was submitted by January 1, 1986. Applications for those facilities completed before January 1, 1984, must be submitted by January 1, 1986. This requirement is, therefore, met.

Facility Cost: \$13,744.96 (Accountant's Certification was provided).

3. Evaluation of Application

The Prospect #2 hydroelectric plant is located on the bank of the north fork of the Rogue River. Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with requirements of the federal government, the applicant installed oil spill containment facilities in the powerhouse. Angle iron was fixed around the perimeter of the existing transformer foundations to direct any oil leakage through a new 2,000 gallon oil/water separator. With this system in place, all drainage from the transformer area is controlled prior to entering the Rogue River. There is no return on investment from this facility.

4. Summation

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

- b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).
- c. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling, or reducing water pollution.
- d. The facility is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.
- e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$13,744.96 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1805.

L.D. Patterson:c
(503) 229-5374
April 3, 1986
WC370

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Pacific Power & Light Company
920 S.W. 6th Avenue
Portland, OR 97204

The applicant owns and operates a hydroelectric generating plant (Prospect #3) near Prospect, 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 oil spill containment system consisting of angle iron, ABS drain pipe, and a 2,000 gallon oil/water separator.

Request for Preliminary Certification for Tax Credit was made June 29, 1981, and approved July 17, 1981. Facility is subject to the 1981 tax credit law. Construction was initiated on the claimed facility March 1982, completed June 1982, and the facility was placed into operation June 1982. The application was submitted by January 1, 1986. Applications for those facilities completed before January 1, 1984, must be submitted by January 1, 1986. This requirement is, therefore, met.

Facility Cost: \$4,136.23 (Accountant's Certification was provided).

3. Evaluation of Application

The Prospect #3 hydroelectric plant is located on the bank of the middle fork of the Rogue River. Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with requirements of the federal government, the applicant installed oil spill containment facilities in the powerhouse. Angle iron was fixed around the perimeter of the existing transformer foundations to direct any oil leakage through a new 2,000 gallon oil/water separator. With this system in place, all drainage from the transformer area is controlled prior to entering the Rogue River. There is no return on investment from this facility.

4. Summation

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

- b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).
- c. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling, or reducing water pollution.
- d. The facility is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.
- e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$4,136.23 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1806.

L.D. Patterson:c
(503) 229-5374
April 3, 1986
WC371

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates a zirconium, hafnium, tantalum, and niobium production plant at Albany, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is an oil/water separator for the Boring Mill.

Request for Preliminary Certification for Tax Credit was made November 22, 1978, and approved February 21, 1979. Facility is subject to the 1979 tax credit law. Construction was initiated on the claimed facility March 1979, completed June 21, 1979, and the facility was placed into operation June 21, 1979. The application was submitted by January 1, 1986. Applications for those facilities completed before January 1, 1984, must be submitted by January 1, 1986. This requirement is, therefore, met.

Facility Cost: \$12,136.

3. Evaluation of Application

Prior to installation of the claimed facility, metal chips from the Boring Mill were stored on the ground. During rainfall events, oil on the chips would be washed off resulting in the discharge of contaminated storm runoff. The chips are now stored on a paved area where the drainage is collected and conveyed through the claimed oil/water separator. The effluent from the separator is plumbed to the plants waste water treatment system. A waste oil recycler periodically removes the contents of the oil/water separator for reclamation of the oil. Since the recycler charges for pumping water (as opposed to paying for used oil), the applicant sees no income from selling used oil from this facility. The facility has eliminated the discharge of oils from the Boring Mill. There is no return on investment from this facility.

4. Summation

- a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.
- b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).
- c. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling, or reducing water pollution.
- d. The facility is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.
- e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$12,136 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1807.

L.D. Patterson:h
(503) 229-5374
April 7, 1986
WH711

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates a zirconium, hafnium, tantalum, and niobium production plant at Albany, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is a 6000 gallon steel underground waste oil storage tank.

Request for Preliminary Certification for Tax Credit was made August 3, 1979, and approved September 19, 1979. Facility is subject to the 1979 tax credit law. Construction was initiated on the claimed facility November 6, 1979, completed February 27, 1980, and the facility was placed into operation February 27, 1980. The application was submitted by January 1, 1986. Applications for those facilities completed before January 1, 1984, must be submitted by January 1, 1986. This requirement is, therefore, met.

Facility Cost: \$9,217.

3. Evaluation of Application

Prior to installation of the claimed facility, waste oil was stored in barrels throughout the plant site. This resulted in periodic leaks and spills onto the ground which caused contamination of soil and allowed oil losses to the waste water treatment system. The new system consists of a single 6000 gallon underground tank which stores waste oil until it is collected by a waste oil recycler. Although the applicant does receive income from selling the used oil, the income is the same as when the oil was stored in the barrels. This facility has greatly reduced the miscellaneous spills of used oil around the plant site and has not resulted in any increased return on investment for the waste oil facilities.

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 \$9217 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1808.

L. D. Patterson:h
(503) 229-5374
April 7, 1986
WH710

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates a zirconium, hafnium, tantalum, and niobium production plant at Albany, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is a 71'-6" x 16'-0" reinforced concrete containment sump for two existing sulfuric acid tanks.

Request for Preliminary Certification for Tax Credit was made March 30, 1979, and approved April 16, 1979. Facility is subject to the 1979 tax credit law. Construction was initiated on the claimed facility July 1979, completed September 10, 1979, and the facility was placed into operation September 10, 1979. The application was submitted by January 1, 1986. Applications for those facilities completed before January 1, 1984, must be submitted by January 1, 1986. This requirement is, therefore, met.

Facility Cost: \$9,484.

3. Evaluation of Application

Prior to installation of the claimed facility, dilute sulfuric acid was stored in two large horizontal tanks which had no secondary containment devices. Spillage could potentially have contaminated soil and ground water. The claimed facility consists of a large concrete sump which was constructed under and around the existing tanks. In the event of any spillage, it is contained and conveyed to the waste water neutralization system. There is no return on investment from this facility.

4. Summation

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

- b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).
- c. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling, or reducing water pollution.
- d. The facility is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.
- e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$9,484 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1809.

L.D. Patterson:h
(503) 229-5374
April 7, 1986
WH712

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates a zirconium, hafnium, tantalum, and niobium production plant at Albany, Oregon.

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

2. Description of Claimed Facility

The facility described in this application is a flow meter and flow proportional composite sampler.

Request for Preliminary Certification for Tax Credit was made July 31, 1979, and approved August 13, 1979. Facility is subject to the 1979 tax credit law. Construction was initiated on the claimed facility September 1979, completed March 1980, and the facility was placed into operation March 1980. The application was submitted on January 1, 1986. Applications for those facilities completed before January 1, 1984, must be submitted by January 1, 1986. This requirement is, therefore, met.

Facility Cost: \$3,000.

3. Evaluation of Application

Prior to installation of the claimed facility, final effluent from the applicant's waste water treatment system was monitored by a float activated flow meter and a timed composite sampler. Occasionally, debris would lodge against the float which would produce erroneous flow data. The old composite sampler only worked off a timer and was not capable of obtaining flow proportional samples. The new flow meter is a flush mounted flow meter which has proven to be much more reliable. In addition, the new flow proportional sampler provides data more representative of actual discharges. These devices have improved the monitoring capabilities of the waste water treatment system. There is no return on investment from this facility.

4. Summation

- a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.
- b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).
- c. Facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling, or reducing water pollution.
- d. The facility is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.
- e. The portion of the facility cost that is properly allocable to pollution control is 80 percent or more.

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$3,000 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1810.

L.D. Patterson:h
(503) 229-5374
April 7, 1986
WH713

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Purdy Corporation
P.O. Box 03097
Portland, OR 97203

The applicant owns and operates a paint brush and paint roller manufacturing plant at 13201 N. Lombard, 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 is an American Air Filter baghouse, model no. 12-192-3079, serial no. F 800074 (15,000 cubic feet per minute air flow).

Request for Preliminary Certification for Tax Credit was made on February 27, 1980 and approved on April 22, 1980.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983 since construction was completed before January 1, 1984.

Construction was initiated on the claimed facility in July 1980, completed in October 1980, and the facility was placed into operation in October 1980.

Facility Cost: \$91,000.00 (Accountant's Certification was provided).

The application was submitted by January 1, 1986. Final tax credit applications for facilities completed by January 1, 1984 must be submitted to DEQ by January 1, 1986. The requirement is therefore met.

3. Evaluation of Application

The company built a new plant. The new dust collection system includes dust pick-up ductwork and a cyclone like in the old plant plus a baghouse to remove fine particulate. The exhaust air from the baghouse is returned to the work area to conserve heat during cold weather.

The dust pick-up ductwork and cyclone are not considered an air pollution control facility; the baghouse is. Both are served by one pair of fans. The installed cost of the complete dust collection system was \$91,000. The cost of the baghouse and its portion of the fans cost were supplied by subcontractors and were:

Baghouse	\$38,166.00	
Collector Bags 192 each	2,879.00	
Concrete Pad 10' x 30'	630.00	
6' High Cyclone Fence w/Wood Slate	<u>504.00</u>	
Subtotal		\$42,179.00
Fans	\$1,700.00	
Portion of Fan Pressure Drop Across Baghouse	<u>62%</u>	
Subtotal Electric Fan Cost		<u>\$ 1,054.00</u>
Total Cost		\$43,233.00

The baghouse cost of \$43,233 is 48% of the total system cost of \$91,000.

The potential heating cost saving obtained by returning the baghouse exhaust air back into the building was calculated by the Department and is about \$4,000 per year. The applicant's reported cost to operate the system is just over \$8,000 per year. Since the heating cost savings are about half of the operating cost, there is no return on investment on the baghouse. Since the baghouse cost 48% of the dust collection system cost, the portion of the claimed facility cost properly allocable to pollution control is 40% or more but less than 60%.

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 40 percent or more, but less than 60 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 \$91,000 with 40 percent or more, but less than 60 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1811

RAY POTTS:a
AA5191
(503) 229-6093
April 8, 1986

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Medford Corporation
So. Ply Division
PO Box 550
Medford, OR 97501

The applicant owns and operates a Douglas fir plywood plant at 605 Southwest "J" Street, Grants Pass, 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 sealing three (3) veneer dryers.

Request for Preliminary Certification for Tax Credit was made on January 17, 1980 and approved on February 6, 1980.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983 since it was completed before January 1, 1984.

Construction was initiated on the claimed facility in January 1980, completed in July 1980, and the facility was placed into operation in July 1980.

The application was submitted by January 1, 1986. Final tax credit applications for facilities completed by January 1, 1984 must be submitted to DEQ by January 1, 1986. The requirement is therefore met.

Facility Cost: \$135,272 (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility consisted of sealing three (3) veneer dryers. The sealing was accomplished by rebuilding all door parts and door openings to achieve a better fit with new door seals which were installed. In addition, a portion of the outside skin on the dryers was replaced. A sealer was also pumped into all wall openings to fill doors, walls and ceilings to further eliminate leakage wherever an indication of external leakage was observed.

The claimed facility was required to eliminate fugitive emissions which were resulting in opacity violations. Numerous inspections since installation of the claimed facility has shown no violation from the veneer dryers. The latest inspection was performed October 15, 1985.

The applicant indicated no economic benefit from salvage of parts removed and no annual income derived from the facility. However, there are some benefits to the applicant that are not readily quantifiable such as reduced maintenance, small amounts of energy savings and longer life. Annual operating expenses are \$5,500.00 broken down by the applicant as follows:

Labor	- \$1,800.00
Maintenance	- 1,800.00
Property Tax	- <u>1,900.00</u>
Total	- \$5,500.00

The applicant has indicated that 50 percent of the claimed facility cost of \$135,272 is allocable to pollution control. This amount is in the correct magnitude and appears very reasonable when compared to similar facilities throughout the industry that have previously been certified. Therefore, based on information submitted, 40 percent or more but less than 60 percent 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 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 40 percent or more but less than 60 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 \$135,272 with 40 percent or more but less than 60 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1812.

W. J. Fuller:s
AS2610
(503) 229-5749
April 8, 1986

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Medford Corporation
Diamond Cabinets Division
P.O. Box 550
Medford, OR 97501

The applicant owns and operates a kitchen cabinet manufacturing plant in Grants Pass, 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 new paint line which reduces volatile organic compounds (VOC) emissions by approximately 50%. The equipment and cost are:

<u>Equipment</u>	<u>Cost</u>
Paint room building	\$258,805
Paint room equipment	536,798
Paint room electrical	40,657
Paint room sprinklers	<u>27,913</u>
Total	864,173

In this system, the paint is atomized by a spinning "bell" and given an electrostatic charge which is attracted to the wood panel with the opposite charge. The wood panel conducts electricity due to the preceding staining operation and the controlled humidity atmosphere.

Request for Preliminary Certification for Tax Credit was made on June 21, 1979 and approved on August 22, 1979.

Request for Preliminary Certification for Tax Credit was made on June 21, 1979 and approved on August 22, 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 July 1979, completed in December 1979, and the facility was placed into operation in December 1979.

Applications for facilities completed before January 1, 1984 must be submitted to DEQ by January 1, 1986. The application was submitted by January 1, 1986. This requirement is therefore met.

Facility Cost: \$864,173 (Accountant's Certification was provided).

3. Evaluation of Application

The new paint line was installed to finish various components of kitchen cabinets. Previously, these components were finished in a conventional manner using airless spray equipment. The new system results in a reduction of "overspray" of about 50% with a corresponding reduction in paint usage and VOC emissions. The new system also uses high solids - low solvent type finishes. The applicant calculated a reduction of 172 tons per year of VOC based on a similar line at their Hillsboro, Oregon plant.

A substantial purpose for installing the new line was to reduce VOC emissions. The lower paint usage (50%) also results in lower cost to the company. Another cost savings that results from essentially eliminating overspray is the cost of maintaining the air filter pads used to collect the overspray solids in the old system. The applicant's calculations show a decrease in solids usage of 15 tons per year. The cost savings given on the application is \$265,255 per year. This is a 30% return on the investment of \$864,173. The annual operating expenses submitted on the application are not considered applicable to pollution control because the old system would have similar operating expenses.

Due to the good business investment rate of return, the portion of the cost properly allocable to pollution control is less than 20 percent.

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 less than 20%.

Application No. T-1813

Page 3

5. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$864,173 with less than 20 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1813.

RAY POTTS:a

AA5192

(503) 229-6093

April 9, 1986

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Bracein & Yeager Asphalt Co.
3055 Ocean Blvd.
Coos Bay, OR 97420

The applicant owns and operates a portable asphaltic concrete paving plant.

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 Shearer/Valley J.V. Venturi Wet Scrubber Pollution Control System.

Request for Preliminary Certification for Tax Credit was made on April 4, 1983, and approved on December 20, 1983.

The facility is not subject to the provisions of the new tax credit law, Chapter 637, Oregon Law 1983 since the facility was completed before January 1, 1984.

Construction was initiated on the claimed facility in April 1983, completed in April 1983, and the facility was placed into operation in April 1983.

The application was submitted by January 1, 1986. Final tax credit applications for facilities completed before January 1, 1984 must be submitted to DEQ by January 1, 1986. This requirement is therefore met.

Facility Cost: \$27,520. (Accountant's Certification was provided).

3. Evaluation of Application

The claimed facility consists of a Shearer/Valley J.V. Venturi Wet Scrubber model "VWS." Prior to installation, the asphalt plant drum-mixer was operating uncontrolled and unable to meet DEQ grain loading standards. Particulate performance testing was accomplished after the scrubber installation and indicates that the facility is capable of

complying with the emission standards. The sole purpose of a Venturi Wet Scrubber is for the control of air pollution, therefore, the portion of the facility cost that is properly allocable to pollution control is 80% or more.

4. Summation

- a. The facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.
- b. The facility is designed for and is being operated to a substantial extent for the purpose of preventing, controlling, or reducing air pollution.
- c. The facility is necessary to satisfy the intents and purposes of ORS Chapter 468 and the rules adopted under that chapter.
- d. 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 \$27,520 with 80 percent or more allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1816.

R. Harris:s
AS2677
(503) 229-5186
April 9, 1986

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Kenneth M. Jenck
3555 Gienger Road
Tillamook, OR 97141

The applicant owns and operates a dairy farm in Tillamook, 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 animal waste manure control facility consisting of the following:

- (a) Dry manure storage areas.
 - 72' x 48' and 47' x 33' concrete slabs with 6' concrete retaining walls.
 - 26 Ga. galvanized steel roofs (with gutters) and associated structural support facilities.
- (b) 20' diameter x 8' liquid manure storage tank.
- (c) 57 linear feet of concrete curbs.
- (d) 3262 linear feet of gutters and downspouts.
- (e) 790 feet of 4" tile.

Request for Preliminary Certification for Tax Credit was made July 12, 1985 and approved August 6, 1985. Facility is subject to the 1983 tax credit law. Construction was initiated on the claimed facility July 30, 1985, completed October 3, 1985 and the facility was placed into operation October 3, 1985. Final tax credit applications for facilities completed after December 31, 1983 must be submitted to DEQ within 2 years of completion of the facility. The application was received by DEQ November 14, 1985. This requirement has, therefore, been met.

Total Facility Cost: \$69,588.33 (Accountant's Certification was provided).

The accountant's certification showed a total project cost of \$69,588.33. The U. S. Department of Agriculture Stabilization and Conservation Service reimbursed the applicant \$50,000. The amount will be subtracted by the applicant from the amount of tax credit for which he is eligible when he files his state income tax forms.

3. Evaluation of Application

Prior to installation of the claimed facilities, waste manure was stored outside the barn where rain would wash it off the site as contaminated storm runoff. The dry manure storage system allows the storage of manure for over 100 days. The roofs over the new manure storage areas and the roof over the existing concrete confinement area divert rainfall to minimize the contamination of runoff water. The collected storm water is conveyed to suitable discharge areas (away from the manure storage areas) through 4" tile. These facilities have allowed the spreading of manure during dry months when the fields are not saturated. This system has greatly reduced the quantity of contaminated runoff entering the nearby surface waters. There is no significant return on investment from this project. The sole purpose of these facilities is to control wastes from the farm operation to reduce the contamination of the Tillamook Bay Drainage Basin.

The Department conducted water quality surveys in Tillamook Bay during 1979 - 1980. The surveys concluded that dairy operations were a major cause of high bacterial contamination in the drainage basin which threatened the oyster industry. The Department required the development of a Tillamook Bay Drainage Basin Agricultural Non-Point Source Pollution Abatement Plan which was incorporated into the North Coast Basin Water Quality Management Plan by the Environmental Quality Commission on August 28, 1981.

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 sole purpose of preventing, controlling, or reducing water pollution and was required by DEQ.
- 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 these requirements.
- 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 \$69,588.33 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1776.

L.D. Patterson:c

WC79

(503) 229-5374

1/9/86

State of Oregon
Department of Environmental Quality
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Norman Miller
4930 101 South
Tillamook, OR 97141

The applicant owns and operates a dairy farm in Tillamook, 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 animal waste manure control facility consisting of a 32 foot diameter x 10' liquid storage tank.

Request for Preliminary Certification for Tax Credit was made January 10, 1983 and approved February 15, 1983. Facility is subject to the 1983 tax credit law. Construction was initiated on the claimed facility July 18, 1985, completed October 21, 1985 and the facility was placed into operation October 21, 1985. Final tax credit applications for facilities completed after December 31, 1983 must be submitted to DEQ within two years of completion of construction. The application for the facility was received by DEQ on November 22, 1985. This requirement has, therefore, been met.

Total Facility Cost: \$17,334

The submitted invoices showed a total project cost of \$17,334.00. The U. S. Department of Agriculture Stabilization and Conservation Service reimbursed the applicant \$13,021. This amount will be subtracted by the applicant from the amount of tax credit for which he is eligible when he files his state income tax form.

3. Evaluation of Application

Prior to installation of the claimed facilities, waste manure was spread onto saturated fields during the winter months due to the lack of manure storage facilities. Contaminated runoff would enter Anderson Creek. The manure storage tank allows the storage of manure for over 100 days. This facility has allowed the spreading of manure

during dry months when the fields are not saturated. This system has greatly reduced the quantity of contaminated runoff entering the surface water. There is no significant return on investment from this project. The sole purpose of these facilities is to control wastes from the farm operation to reduce the contamination of the Tillamook Bay Drainage Basin.

The Department conducted water quality surveys in Tillamook Bay during 1979 - 1980. The surveys concluded that dairy operations were a major cause of high bacterial contamination in the drainage basin which threatened the oyster industry. The Department required the development of a Tillamook Bay Drainage Basin Agricultural Non-Point Source Pollution Abatement Plan which was incorporated into the North Coast Basin Water Quality Management Plan by the Environmental Quality Commission on August 28, 1981.

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 sole purpose of preventing, controlling, or reducing water pollution and was required by DEQ.
- 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 these requirements.
- 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 \$17,334 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1777.

L.D. Patterson:c
WC61
(503) 229-5374
1-6-85

STATE OF OREGON - DEPARTMENT OF ENVIRONMENTAL QUALITY

Tax Relief Application Review Report

1. Applicant

Sam Oberg
4930 Kings Valley Dallas Hwy.
Dallas, Oregon 97338

The applicant owns and operates a beef cattle rearing facility near 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 manure control facility consisting of a roofed 26' x 60' dry storage shed with 6' concrete sidewalls.

Request for Preliminary Certification for Tax Credit was made July 25, 1984, and approved July 31, 1984.

The facility is subject to the 1983 tax credit legislation.

Construction was initiated on the claimed facility July 31, 1984, completed September 4, 1984, and the facility was placed into operation November, 1985. Final tax credit applications for facilities completed after December 31, 1983 must be submitted to DEQ within 2 years of completion of the facility. The application was received on December 12, 1985. This requirement is, therefore, met.

Facility Cost: \$9,015.00.

The submitted invoices showed a total project cost of \$9,015.00. The U. S. Department of Agriculture Stabilization and Conservation Service reimbursed the applicant \$3,500.00. This amount will be subtracted by the applicant from the amount of tax credit for which he is eligible when he files his state income tax form.

3. Evaluation of Application

Prior to construction of the claimed facility, manure was piled outside the confined animal feeding area where it could result in contaminated runoff. Runoff from the site enters Fern Creek which is a tributary of the Luckiamute River. The new facility provides a covered concrete storage facility where manure can be held for several months. During the summer, manure is loaded into a mechanical

spreader and distributed on pasture land. The sole purpose of the facility is pollution control. There is no return on investment from the storage 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. The facility is designed for and is being operated for the sole purpose of preventing, controlling or reducing a substantial quantity of water pollution.
- 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 \$9,015.00, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1788.

L. D. Patterson:c
(503) 229-5374
March 4, 1986
WC255

STATE OF OREGON - DEPARTMENT OF ENVIRONMENTAL QUALITY

Tax Relief Application Review Report

1. Applicant

International Paper Company
Gardiner Paper Mill
77 West 45th Street
New York, New York 10036

The applicant owns and operates a pulp and paper mill in Gardiner, 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 spill control system consisting of pumps, conductivity controllers, piping, a backup sewer system, and six sidehill screens.

Request for Preliminary Certification for Tax Credit was made April 5, 1983, and approved April 13, 1983.

The facility is subject to the 1983 tax credit legislation.

Construction was initiated on the claimed facility July 1, 1983, completed November 15, 1985, and the facility was placed into operation November 15, 1985. Final tax credit application for facilities completed after December 31, 1983 must be submitted to DEQ within 2 years of completion of the facility. The application was received on December 18, 1985. This requirement is, therefore, met.

Facility Cost: \$931,999.30 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to installation of the claimed facility, the applicant periodically exceeded the BOD-5 limitations of their NPDES permit. The internal waste water control facilities were designed to capture and reuse the wastes to the degree necessary to comply with the permit limits. However, once spilled wastes entered the sewer system, there was no method to provide any further control of the quality of the waste waters. The new system relies on conductivity controllers and pumps in various sewer sumps which are automatically activated when the conductivity of the water is beyond a predetermined level. The new sump pumps transfer the more contaminated waters to a new separate

sewer system which flows to the spill control tank. At a later time, wastes in the spill control tank can then be metered back to the main process sewer in quantities that should comply with permit limits.

The spill control tank is the mills original primary clarifier. To enable the use of the clarifier as a spill control facility, the Department required the installation of alternative solids removal equipment in the paper mill sewer. Six sidehill screens were installed to remove fiber which is lost to the paper mill sewer. About a ton of fiber is recovered during each day of mill operation. The fiber is returned to the paper mill as raw product. Although the recovered fiber annually is worth about \$39,760, the cost to operate the system far exceeds this amount. There is no return on investment from these spill control facilities which were required by the Department.

Experience has shown the spill control system also has not resulted in continuous compliance with the NPDES permit limits. The applicant has recently finished construction of a biological secondary treatment facility. To prevent shock loadings to the biological system, the new spill control system has become an integral part of the overall waste treatment system. The biological treatment system is not a portion of this request for tax credit.

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 the Department.
- 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 permit conditions.
- 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 \$931,999.30, with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1789.

L. D. Patterson:c
(503) 229-5374
March 4, 1986
WC259

STATE OF OREGON - DEPARTMENT OF ENVIRONMENTAL QUALITY

Tax Relief Application Review Report

1. Applicant

Intel Corporation
Oregon Site
3585 S.W. 198th Avenue
Aloha, Oregon 97007

The applicant owns and operates a semiconductor manufacturing facility in Aloha, 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 pretreatment pH neutralization system consisting of chemical feed pumps, caustic storage tank, electrical controls, instrumentation, piping, utility trenches, and alarms.

Request for Preliminary Certification for Tax Credit was made September 13, 1983 and approved November 18, 1983.

The facility is subject to the 1983 tax credit legislation.

Construction was initiated on the claimed facility January 11, 1984, completed June 15, 1984, and the facility was placed into operation June 15, 1984. Final tax credit applications for facilities completed after December 31, 1983 must be submitted to DEQ within two years of completion of construction. Application for the facility was received by DEQ on December 23, 1985. This requirement has, therefore, been met.

Facility Cost: \$257,882 (Accountant's Certification was provided).

3. Evaluation of Application

Prior to installation of the claimed facility, the applicant maintained a pH neutralization system which proved to be unreliable. The system discharged to the Unified Sewerage Agency's - (USA) sewer system and frequently violated USA's pretreatment requirements. The claimed equipment was adapted to the existing neutralization system to provide a more consistent, failsafe treatment system. The newly expanded facility has been able to consistently comply with USA's pretreatment requirements. These modifications were required by USA and EPA. There is no return on investment from this facility.

4. Summation

- a. Facility was constructed in accordance with the requirements of ORS 468.175, regarding preliminary certification.
- b. Facility was constructed on or after January 1, 1967, as required by ORS 468.165(1)(a).
- c. Facility is designed for and is being operated 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 \$257,882, with 100 % allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1793.

L. D. Patterson:c
229-5374
(March 27, 1986)
WC350

STATE OF OREGON - DEPARTMENT OF ENVIRONMENTAL QUALITY

Tax Relief Application Review Report

1. Applicant

Pacific Power & Light Company
920 S.W. 6th Avenue
Portland, Oregon 97204

The applicant owns and operates an electrical transformer storage repair facility in Medford, 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 oil spill containment system consisting of two oil/water separators with oil stop valves, concrete flooring, curbs, sump housing, PCB containment oil storage tanks, concrete lined tank storage area, paving and berms.

Request for Preliminary Certification for Tax Credit was made October 11, 1983, and approved October 28, 1983.

The facility is subject to the 1983 tax credit legislation.

Construction was initiated on the claimed facility November 8, 1983, completed March 16, 1984, and the facility was placed into operation March 16, 1984. Final tax credit applications for facilities completed after December 31, 1983 must be submitted to DEQ within two years of completion of construction. The application for the facility was received by DEQ on January 2, 1986. This requirement has, therefore, been met.

Facility Cost: \$124,691.13 (Accountant's Certification was provided).

3. Evaluation of Application

The transformer storage and repair facility contained several yard drains which flowed to the City of Medford storm sewer system. There were no facilities to contain transformer oil spills, nor any facilities to separate PCB oil from non-PCB oil. The new facility includes paving and curbing to direct runoff to two oil/water separators which were installed in the yard drains. The separators each contain an oil stop valve which close in the presence of oil

products. PCB oils are now handled separately from non-PCB oils. PCB oils are now confined to the shop or the PCB tank storage building, both of which drain to a sump with no outlet. This system greatly reduced the possibility of a PCB oil spill, and provides treatment and control devices for spills or releases of non-PCB oils.

There is no return on investment from the claimed facilities. This system was installed to comply with federal requirements.

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 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 \$124,691.13, with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1802.

L.D. Patterson:h
229-5374
April 1, 1986
WH693

State of Oregon
Department of Environmental Quality

REVOCATION OF POLLUTION CONTROL FACILITY CERTIFICATE

1. Certificate issued to:

Publishers Paper
4000 Kruse Way Place
Lake Oswego, OR 97034

The certificate was issued for an air pollution control facility.

2. Summation:

The Environmental Quality Commission issued a certificate to Publishers Paper August 13, 1971. (A copy of the certificate is attached.) The Department has been notified by the company that their facility has been shut down. (Letter attached.)

3. It is recommended that Pollution Control Facility Certificate No. 181 be revoked.

SC:y
MY2550
Attachment



January 31, 1986
Management Services Div.
Dept. of Environmental Quality

RECEIVED
FEB 4 1986

Ms. Sherry Chew
Department of Environmental Quality
P O Box 1760
Portland, OR. 97207

Dear Ms. Chew:

The permanent shutdown of the sulfite pulping process at our Newberg Division prompted a request by Publishers for revocation of two pollution control facility tax credit certifications (12/26/85 letter to S. Chew). In addition to these two 10-year certifications, a 20-year certification for which we made an irrevocable election to take ad valorem tax relief should also be revoked. We request revocation of Certificate #181 issued August 13, 1971, for \$6,405,622 (reduced to \$6,305,622 on 11/21/80 because of equipment removal).

This is the only instance in which we elected the 20-year ad valorem tax relief option, and in my previous review I overlooked this longer term certificate. I am sorry for the separate action required of the staff and the Environmental Quality Commission because of this oversight

Please call if you have any questions.

Respectfully submitted,

A handwritten signature in cursive script that reads 'R.A. Schmall'.

R. A. Schmall
Corporate Manager,
Environmental & Energy Services

RAS:sjb

cc: Maggie Conley, DEQ
Fritz Skirvin, DEQ - Salem
Russ Smith, Dept. of Revenue
G. Norton
W. Barlow
W. Buxton



OREGON C.U.P. AWARD
Publishers Paper Co. was named in 1972 as the first recipient of the Oregon C.U.P. (Cleaning Up Pollution) Award for outstanding achievements in protecting the environment.

4000 KRUSE WAY PLACE, LAKE OSWEGO, OREGON 97034 PH: (503) 635-9711

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY**POLLUTION CONTROL FACILITY CERTIFICATE**

Issued To: Publishers Paper Company Newberg Division Newberg, Oregon 97132	Asst. Owner	Location of Pollution Control Facility: South end of Wyooski Street Newberg, Oregon Yamhill County
Description of Pollution Control Facility: a) Pulp washing & liquor collection & concentration system consisting of a blow tank, pressure knoter, 3-stage pulp washing system, liquor collection & storage equipment & related pumps, piping, motors, controls & instrumentation. b) Spent sulfite liquor evaporation & incineration system consisting of evaporators, furnace & chemical recovery equipment with related tanks, piping, pumps, motors, controls, instrumentation, electrical & support facilities.		
Date Pollution Control Facility was completed and placed in operation: December 18, 1970		
Actual Cost of Pollution Control Facility: \$6,405,622.00 \$6,305,622.00** (11/21/80)		
Percent of actual cost properly allocable to pollution control: Certified under 1967 Act. Principal purpose for pollution control.		

In accordance with the provisions of ORS 449.605 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 449.605 and that the facility was erected, constructed, or installed on or after January 1, 1967, and on or before December 31, 1978, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air or water pollution, and that the facility is necessary to satisfy the intents and purposes of ORS Chapter 449 and 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:

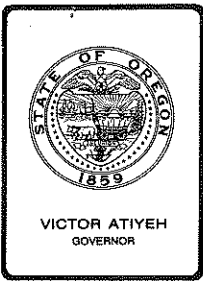
1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing water pollution.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, 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.

**Certified costs reduced 11/21/80 because certain portions of certified facilities were taken out of service.

Signed Title B. A. McPhillips, Chairman

Approved by the Environmental Quality Commission

on the 13th day of August 1971



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, April 25, 1986, EQC Meeting

Request for Authorization to Conduct a Public Hearing on the Proposed Adoption of a Rule Establishing the Maximum Repair Permit Fee for Linn County

Background and Problem Statement

ORS 454.745(4) provides that the Commission, at the request of the Director or any Contract County, may by rule increase fees to conduct on-site sewage disposal program services above the maximum levels established in Subsection (1) of ORS 454.745. Fee increases permitted by the Commission shall be based upon actual costs for efficiently conducted minimum services as developed by the Director or Contract County. Under ORS 454.745(3), the total amount of fees collected by a local unit of government cannot exceed the total cost of the program to provide the on-site sewage disposal services and issue permits.

Linn County has requested it be allowed the ability to establish a repair permit fee equal to the average amount the County has determined it incurs in providing this service. The amount requested is greater than the \$35 repair permit fee adopted by the Commission in 1983. Based on a time study of on-site services provided by the County, on the average they expend four and seventeen hundredths (4.17) hours on each residential repair permit. During the period of their study, the average rate of income for all permit related activities was \$23.87 per hour, whereas the overall hourly cost of the County to provide technical services to conduct the on-site program was determined to be \$39 per hour. The average repair permit costs Linn County \$163 -- (4.17 hours x \$39). Since the County may not charge more than \$35 at this time, the difference is subsidized by the County general fund. Attachment "A" contains Linn County's request and the supporting information.

The Department recognizes that the currently established \$35 repair permit fee does not cover the cost of providing technical services for this activity. In 1983, the fee of \$35 was estimated to cover one-half of the cost. The Department believed that by keeping the fee level low, individuals would be encouraged to apply for a repair permit, and thus a greater number of needed repairs of failing or inadequate on-site sewage disposal systems would be made. The Department utilizes general funds to subsidize repair permit activities. The Department wants and intends to reevaluate the adequacy of the statewide repair permit fee, but does not view it as reasonable to postpone Linn County's request until completing the necessary data analyses.

Alternatives and Evaluation

The alternatives are as follows:

1. Authorize the Department to conduct a public hearing on the proposed rule amendment.
2. Do not authorize a public hearing.

Department staff have examined and evaluated the supporting information furnished with the request for a higher repair permit fee for Linn County. The average amount of time spent on each repair activity appears to be consistent with estimates given by other offices. Also, the cost analyses developed by the County to provide technical services for the on-site sewage disposal program appear to offer adequate rationale and support to justify a public hearing on the issue. The total cost for program administration in Linn County for 1985 was \$69,801.58, while the income from fees for the same period was \$37,525. Repair permit activities are heavily subsidized by general fund monies. The County would like to shift more of this burden from the general fund back to the permittee so that an efficient level of program service can be maintained. The Department believes it is desirable to conduct a public hearing on this matter.

Summation

1. The Commission may by rule increase minimum on-site fee established in ORS 454.745 at the request of the Director or any Contract County. At the conclusion of the public hearing process and staff evaluation of testimony, the commission must determine that fee increases are based upon actual costs for efficiently conducted services.
2. Linn County has requested the ability to establish a repair permit fee equal to the average amount the County has determined it incurs in performing repair permit activities.

Director's Recommendation

Based upon the summation, it is recommended the Commission authorize a public hearing to take testimony on the proposed rule amendments establishing a repair permit fee for Linn County. It is further recommended that the Commission authorize the Director to appoint a Department staff member to serve as Hearings Officer in this matter.


Fred Hansen

Attachments (4):

- "A" Linn County's Request for EQC Action
- "B" Public Hearing Notice
- "C" Statement of Need for Rulemaking
- "D" Proposed Rule Amendments

Sherman O. Olson:h
229-6443
March 17, 1986
WH660

LINN COUNTY BOARD OF COMMISSIONERS



VERNON SCHROCK
Commissioner

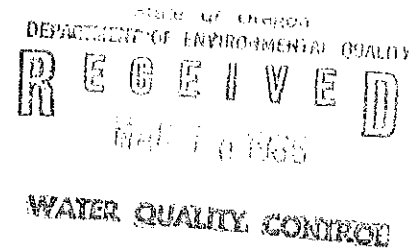
CARL J. STEPHANI
Commissioner

RICHARD STACH
Commissioner

Linn County Courthouse
P.O. Box 100, Albany, Oregon 97321
(503) 967-3825

WILLIAM L. OFFUTT
Administrative Officer

March 4, 1986



Oregon Environmental Quality Commission
C/O Mr. Sherman Olson
Water Quality Division
Department of Environmental Quality
P.O. Box 1760
Portland, OR 97207

Re: On-Site Sewage Disposal Repair Permit Fee

Dear Commission Members:

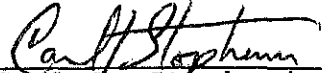
In order to help maintain funding for a viable on-site sewage disposal program, the Linn County Board of Commissioners finds it necessary at this time to consider the adoption of a repair permit fee in excess of \$35. It is our understanding that any fee higher than those specifically authorized under Oregon Administrative Rules 340-71-140 must receive prior approval from the Oregon Environmental Quality Commission. Therefore, the Board hereby requests that this matter be considered by the Commission at its earliest convenience.

The Board is currently considering a repair permit fee of \$75. However, it would be our desire to have the ability to adopt a fee up to the amount justified by this request.

Attached please find documentation prepared by Bob Wilson of our Environmental Health Division which we feel justifies this request. Please let Mr. Wilson know if you will require additional information, or if there will be a hearing that he should attend. We are hopeful that with your support, Linn County can continue to provide this valuable service to our citizens into the foreseeable future.

Yours truly,


LINN COUNTY BOARD OF COMMISSIONERS



Carl J. Stephani, Chairman



Vernon Schrock, Commissioner



Richard Stach, Commissioner

klb
Attachments

JUSTIFICATION FOR AN INCREASE IN REPAIR
PERMIT FEES PURSUANT TO ORS 454.745(4)

Prepared for Submission to the
Environmental Quality Commission

By: Bob Wilson, Director
Linn County Environmental Health Division

March, 1986

JUSTIFICATION FOR AN INCREASE IN REPAIR
PERMIT FEES PURSUANT TO ORS 454.745(4)

In the past few years, the on-site sewage disposal program in Linn County has experienced a steady decline in the number of applications for new sites and new permits, while the number of repair permits and sewage related complaints has remained relatively constant (Attachment I). Since there are no fees for complaint investigations, and repair permits are heavily subsidized by the county; this trend has resulted in an increasing burden on the county general fund.

In order to evaluate possible alternatives to help reverse this trend, a six month time study of on-site sewage activities was conducted. A summary of the results as they relate to the fee generating activities has been attached (Attachment II). The most significant discovery was the extent to which repair permits are subsidized by the county. Repairs require approximately 27 percent of our staff time while producing only 8.7 percent of the revenue.

Fees for all of the on-site activities have been evaluated by comparing the fee for a specific application to the average amount of technical (sanitarian) time required for processing each application. For example, the fee for a site evaluation is \$150, and the average time for processing a single application is 4.21 hours. Therefore, the average income to the county for processing a site evaluation is \$35.60 per hour.

By comparison, the average income to the county for processing a repair permit is \$8.40 per hour. Using the fee for site evaluations as a standard, an increase in the repair permit fee by a factor of 4.24 ($\$35.60/\text{hr.} \div \$8.40/\text{hr.}$) can be justified--from \$35 to \$148.

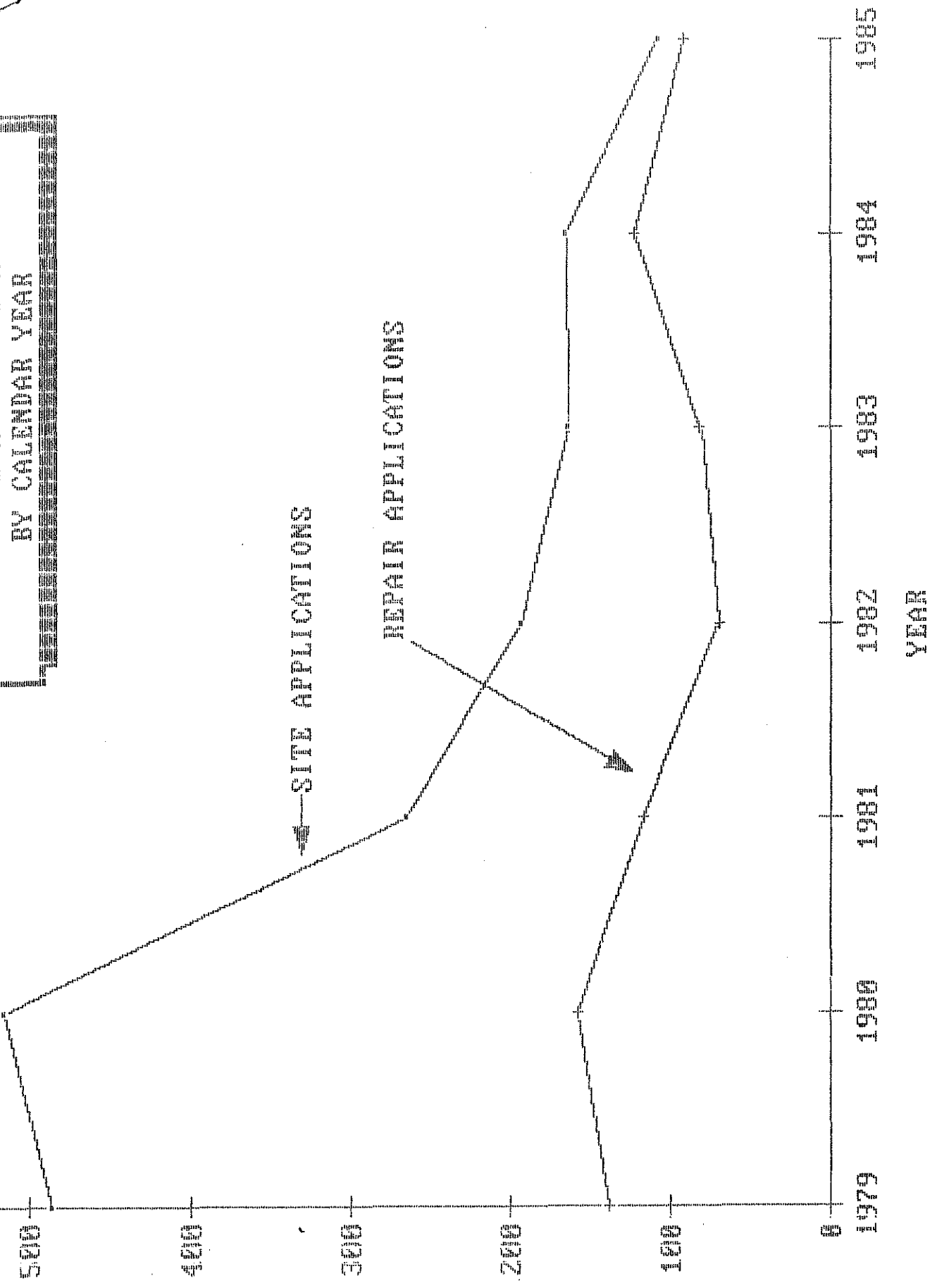
For reference, the overall county cost per hour to provide technical services in the on-site sewage disposal program has been calculated to be \$39 per hour (Attachment III). This figure includes administration, training, record keeping, reporting, and consultative services which cannot always be charged to an applicant. If we used the \$39 per hour figure, however, the average 4.17 hours spent on a repair permit would cost \$163.

One of the reasons repair permits require so much time is that we are often dealing with severe site limitations. The property owner must be consulted during the process in order to deal with special concerns such as the location of water lines and financial ability. Many times several options have to be considered before the most cost effective solution can be determined.

A breakdown of how technical time is spent on a typical repair permit has been attached for review (Attachment IV). This time is extremely important in terms of benefit to property owners when a cost effective solution to a nagging sewage problem is achieved. An increase in the repair permit fee would shift the burden from the county general fund to the actual recipient of the service, and is therefore justified.

LAMM COUNTY ENVIRONMENTAL HEALTH
 COMMISSION OF SITE AND
 REPAIR APPLICATIONS
 BY CALENDAR YEAR

S I T E A P P L I C A T I O N S



REVIEW OF ON-SITE SEWAGE DISPOSAL FEE ACTIVITIES

July 1 to December 31, 1985

	No. of Apps.	Fee (\$)	Revenue (\$)	Total San. Time (hrs.)	Avg. San. Time/App. (hrs.)	Avg. Rate of Income/App.
Annual Evaluations	50 1	10 35	500 35 <u>535</u>	27.50	.50	\$19.50/hr.
Alteration Permits	6	95	570	21.25	3.53	26.80/hr.
Authorization Notices	53 23	60 10	3,180 230 <u>3,410</u>	101.25	1.33	33.70/hr.
New Permits Standard Capping Fill Sand Filter Holding Tank Tile Dewatering Seepage Trench Renewal	32 3 2 2 1 1 5	95 240 280 120 120 120 10	3,040 720 560 240 120 120 50 <u>4,850</u>	176.00	3.83	27.60/hr.
Site Evaluations	54	150	8,100	227.25	4.21	35.60/hr.
Repair Permits (Renewals)	47 2	35 10	1,645 20 <u>1,665</u>	204.75	4.27	8.40/hr.
TOTALS			\$19,130	758.00		

CALCULATION OF LINN COUNTY'S HOURLY COST FOR
TECHNICAL SERVICES IN THE ON-SITE SEWAGE PROGRAM

Each hour of technical time (Sanitarian III) requires the following:

.25 hour - Director	- Administrative and technical support.
.65 hour - Office Specialist I	- Counter coverage, permit processing, record keeping, microfilming.
.50 hour Office Specialist II	- Back-up counter coverage, reporting, correspondence, bookkeeping.

Annualizing these costs, then:

Personal Services

1.0 FTE (Sanitarian III)	= \$25,710	
.25 FTE (Director)	= 7,653	
.65 FTE (Office Specialist I)	= 8,307	
.50 FTE (Office Specialist II)	= 7,728	
	\$49,398	
32% for Fringes & Payroll	15,807	
	<u>\$65,205</u>	Subtotal

Materials & Services

Materials & Supplies	3,600	
Motor Pool Services (15,000 mi. @ .25/mi.)	3,750	
	<u>7,350</u>	Subtotal

TOTAL	<u>\$72,555</u>
-------	-----------------

There are approximately 1,950 work hours per year:

(21.67 days/mo. x 7.5 hr./day x 12 mo.)

Subtract 75 hours for holidays (7.5 hrs./day x 10 days)
22.5 hours for training (7.5 hrs./day x 3 days)

1,950 hours - 97.5 hours = 1,852.5 hours/year

Therefore each hour of technical services in the on-site program costs

\$72,555 divided by 1,852.5 hours = \$39/hour

BREAKDOWN OF TECHNICAL TIME FOR PROCESSING
A TYPICAL REPAIR PERMIT

	Time (hr.)	
	Average	Range
I. First Field Visit		
A. Round trip travel	.5	.25 - 4.0
B. Site investigation	1.333	.75 - 2.0
II. Office Time		
A. Consultation with owner, installer, realtor, etc.	.333	0 - 2.0
B. Preparation of permit specifications and plot plan	.5	.25 - .75
III. Second Field Visit		
A. Round trip travel	.5	.25 - 4.0
B. Precover inspection and preparation of as-built drawing	1.0	.75 - 1.5
<u>TOTALS</u>	<u>4.17</u>	<u>2.25 - 14.25</u>

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PUBLIC HEARING ON PROPOSED RULE ESTABLISHING THE MAXIMUM FEE LINN COUNTY MAY CHARGE FOR A RESIDENTIAL SEWAGE DISPOSAL SYSTEM REPAIR PERMIT

Date Prepared: March 14, 1986
 Hearing Date: May 16, 1986
 Comments Due: May 16, 1986

**WHO IS
AFFECTED:**

Persons that must repair their failing on-site sewage disposal systems in Linn County.

**WHAT IS
PROPOSED:**

DEQ is proposing to establish by rule the maximum fee Linn County may charge applicants for a permit to repair a failing on-site sewage disposal system serving a single family dwelling. On the average, it costs Linn County \$163.00 to process each repair permit.

**HOW TO
COMMENT:**

Public Hearing

(TIME): 11:00 a.m.

(DATE): May 16, 1986

(PLACE): Miller Room A-1
 Old Albany Armory Building
 Fourth and Lyons
 Albany, Oregon

A Department of Environmental Quality staff member will be appointed to preside over and conduct the hearing. Written comments should be sent to DEQ, Water Quality Division, Sewage Disposal Section, P.O. Box 1760, Portland, Oregon 97207. The comment period will end on Friday, May 16, 1986, at 5:00 p.m.

Any questions or requests for information or copies of the proposed rule amendment should be directed to Mr. Sherman Olson, Sewage Disposal Section, 229-6443 or toll free, 1-800-452-4011.

**WHAT IS THE
NEXT STEP:**

Once public testimony has been received and evaluated, the proposed amendments will be revised, if necessary, and be presented to the Environmental Quality Commission for adoption. Upon making the determination as to whether the proposed fee increases are based on actual costs for efficiently conducted services, the Commission may adopt rule amendments identical to the proposed rule amendments, adopt modified rule amendments, or decline to adopt rule amendments. The Commission's deliberation may come in June as part of the agenda at a regularly scheduled meeting. A Statement of Need, Fiscal and Economic Impact Statement, and Land-use Consistency Statement are attached to and made a part of this notice.



P.O. Box 1760
 Portland, OR 97207

8/16/84

WH660.1

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.

STATEMENT OF NEED FOR RULE MAKING

Pursuant to ORS 183.335(2), this statement provides information on the Environmental Quality Commission's intended action to adopt rules.

(1) Legal Authority

ORS 454.745(4) provides that the Commission, at the request of the Director or any Contract County, may by rule increase fees above the maximum levels established in Subsection (1) of ORS 454.745. Fee increases permitted by the Commission shall be based upon actual costs for efficiently conducted minimum services as developed by the Director or Contract County.

ORS 454.625, which authorizes the Environmental Quality Commission to adopt rules pertaining to on-site sewage disposal.

(2) Need for the Rule

Linn County has requested it be allowed the ability to establish a repair permit fee for residential sewage disposal systems equal to the average amount it costs the County to provide this service. This will allow the County to continue to maintain the present level of service by shifting the program funding more to fees collected with less general fund support.

(3) Principle Documents Relied Upon in This Rulemaking

Letter from the Linn County Board of Commissioners, to the Oregon Environmental Quality Commission, dated March 4, 1986.

FISCAL AND ECONOMIC IMPACT

The proposed amendments are not expected to have a significant or adverse fiscal or economic impact. Persons applying for permits to repair failing on-site sewage disposal systems serving single family dwellings in Linn County will be paying for more of the costs incurred by the County in processing repair permits. This will reduce a portion of the County general fund support for this activity. No impact upon small business is expected.

LAND USE CONSISTENCY STATEMENT

This proposed rule does not affect land use as defined in the Department's coordination program approved by the Land Conservation and Development Commission (LCDC).

PROPOSED RULE AMENDMENTS

Amend OAR 340-71-140(2) as follows:

- (2) Contract County Fee Schedules. Pursuant to ORS 454.745(4), fee schedules which exceed maximum fees in ORS 454.745(1), and Section (1) of this rule, are established for Contract Counties as follows:
- (a) Lane County: See OAR 340-72-050.
 - (b) Clackamas County: See OAR 340-72-060.
 - (c) Multnomah County: See OAR 340-72-070.
 - (d) Jackson County: See OAR 340-72-080.
 - (e) Linn County: See OAR 340-72-090.

Amend OAR 340 Division 72 by adding a new rule as follows:

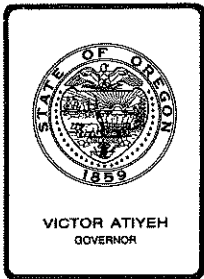
Linn County

340-72-090 Linn County is authorized to establish fees for permits to repair failing on-site sewage disposal systems in amounts not to exceed the following:

- (1) System serving a single family dwelling . . . \$163.
- (2) System serving a commercial facility . . . The appropriate fee identified in OAR 340-71-140(1)(b)(A) and (B).

Sherman O. Olson:h
WH660.3

Note: Underlined material is new.
Bracketed [] material is deleted.



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, April 25, 1986, EQC Meeting

Consideration of Hearing Authorization Requests by the Environmental Quality Commission

Background

At the Environmental Quality Commission meeting on March 14, 1986, Commissioner Denecke raised the issue of the need or desirability of continued formal EQC approval of rulemaking hearing authorization requests. The Commission asked the department to review the matter and report back at the next meeting.

This report briefly summarizes the statutory requirements for rulemaking hearings, reviews current EQC and DEQ practice, and presents alternatives for EQC consideration in the event that a change in practice is desired by the EQC.

Legal Requirements for Rulemaking

Primary legal authority for rulemaking by the Environmental Quality Commission is found in ORS 468.020 which reads as follows:

468.020 Rules and standards. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Commission shall adopted such rules and standards as it considers necessary and proper in performing the functions vested by law in the Commission.

(2) Except as provided in ORS 183.335 (5), the Commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the Commission, any designated member thereof or any person designated by and acting for the Commission.

Note: ORS 183.335 (5) allows adoption without hearing of temporary rules upon finding that failure to act promptly will result in serious prejudice to the public interest.

ORS 183.310 to 183.550, referred to in the above rule, is part of what is commonly referred to as the Administrative Procedures Act. ORS 183.325 to 183.410 dictate minimum requirements for rulemaking, and generally apply to all agencies of the state unless specific statutes dictate otherwise. In particular, notice requirements for rule adoption, and filing of rules so they become effective are covered in detail.

The notice requirements prescribed by ORS 183.335 are significant and are summarized as follows:

- Notice must be published in the Secretary of State's Oregon Administrative Rules bulletin at least 15 days prior to the effective date of the rule.
- Notice must be given in the manner prescribed by rules adopted by the agency. The agency may either adopt the Attorney General's model rules or may adopt alternative rules subject to approval by the Attorney General. The notice procedure must provide a reasonable opportunity for interested persons to be notified of the agency's proposed action.
- Notice must be given to persons who have requested in writing that the agency mail copies of its notices of rulemaking actions.

The rulemaking notice itself must:

- state the subject matter and purpose of the proposed rulemaking action in sufficient detail to inform people who may potentially be affected.
- state the time, place, and manner in which interested persons may present their views on the intended action.
- be accompanied by a citation of the statutory or other legal authority of the agency to act.
- be accompanied by a statement of the need for the rule and a statement of how the rule is intended to meet the need.
- be accompanied by a list of the principal documents relied upon by the agency.
- be accompanied by a statement of anticipated fiscal and economic impact of the rule on state agencies, units of local government, the public, businesses, and in particular, small businesses.

In addition to these requirements of ORS 183.335, the proposed rule must be submitted to the Energy Facility Siting Council if it relates to energy development pursuant to ORS 469.520. Rulemaking actions also must be consistent with land use goals pursuant to ORS Chapter 197.

After adoption, the proposed rule must be submitted to Legislative Counsel and filed with the Secretary of State.

Environmental Quality Commission Rules

The Environmental Quality Commission has adopted procedural rules to comply with the requirements of the Administrative Procedures Act. OAR 340-11-010 to 340-11-035 cover notice of rulemaking, conduct of rulemaking hearing, presiding officers report, and action of the Commission.

The rules on notice refer to and expand upon the statutory requirements of ORS 183.335. In particular, notice must:

- also comply with applicable federal laws and rules.
- be furnished to such news media as the Director may deem appropriate.
- contain a copy of the proposed rule where practicable and appropriate, or if not practicable, identify the time, place, and manner in which a copy may be obtained.
- identify whether the Presiding Officer will be a hearings officer or a member of the Commission.
- described the manner in which persons not planning to attend the hearings may offer written testimony for the record.

Summary of Current Practice

The normal rulemaking practice followed by the Department begins with preparation of the proposed rule and supporting documents required by the statute and EQC rules. These include:

- Proposed Rule language (new, amendment, repeal)
- Supporting Documentation, to include:
 - Statement of Need for the Proposed Rule
 - Legal Authority to Act
 - List of Documents Relied Upon
 - Fiscal and Economic Impact Statement
 - Land Use Compatibility Statement
- Memorandum to the Environmental Quality Commission which describes the problem or need, evaluates alternatives for meeting the need, proposes specific rulemaking action, and requests authorization to conduct a rulemaking hearing. This document is distributed to the public as an elaboration on the official Statement of Need and therefore serves a dual purpose.

The proposal is then presented to the Environmental Quality Commission at a regular meeting. Generally, after hearing authorization, notice is forwarded to the Secretary of State for publication, and mailed to department mailing lists. The hearing is generally held before a department staff member acting as hearings officer. Current rules define the presiding officer to include persons designated by the Commission or Director. Testimony is then summarized and evaluated, and a report and recommendation for final action is prepared and presented to the Environmental Quality Commission.

On occasion, special problems have necessitated proceeding to a rulemaking hearing before authorization could be granted by the Commission as an agenda item at a scheduled meeting. In such cases, the practice has been to poll individual EQC members by telephone for concurrence to proceed with the hearing.

Evaluation and Discussion

There is nothing in statute or rule which requires the Environmental Quality Commission to authorize rulemaking hearings. Rather, it is a matter of practice that has evolved over the years.

The benefits of the existing practice are:

- The materials developed for presentation to the Commission also serve to explain the proposal to the interested public. (If the EQC eliminated their action for hearing authorization, we would still produce virtually the same documents as we do now.)
- It helps make clear that the Commission is in control of the general policy setting and rulemaking process as specified in the statute.
- There is an opportunity for the Commission to ask questions of the department, to seek clarification of intent, and to make sure that the hearing process addresses Commission concerns.

A review of the minutes of the Commission meetings between July 1984 and January 1986 indicates that 28 hearing authorizations were proposed by the department. Questions or discussions prior to action were recorded on at least 13 of these proposals. While most discussion was a matter of clarification, the discussion helped the department to assure that concerns were addressed through the hearing process. A recent example is the LRAPA proposal seeking authority for that entity to establish alternative permit fees for sources in Lane County. The concern expressed by Chairman Petersen regarding the fairness and equity of different fees for different areas of the state led to development of specific information in the hearing record to address the concern.

In the case of the "nutrient standards" issue, the department identified two alternatives, and recommended a rulemaking hearing on one of them. The Commission preferred to go to hearing on both alternatives and directed

the department to do so. Although this agenda item was somewhat different than the normal hearing authorization agenda item, the process of seeking authorization for hearing does allow the Commission to have direct input on the proposal or proposals taken to hearing.

In another case, as part of a work session discussion of water quality standards with respect to the Klamath River and the proposed Salt Caves Hydroelectric project, the department suggested that it may be appropriate to institute rulemaking to clarify the wording of existing rules to better reflect historic intent and interpretation. The Commission rejected the suggestion and elected to not initiate the process to modify existing rule language. Again, this was not a formal rulemaking proposal, but indicates the importance of the Commission having the opportunity to review a proposal and make some basic strategy and policy direction decisions prior to any public hearing on rulemaking.

Alternative Approaches to Hearing Authorization

There are several approaches that can be pursued for making a decision to proceed to a rulemaking hearing. These are discussed as follows:

1. Continue the current practice of specific EQC action to authorize rulemaking hearings.

This alternative would continue the strong EQC influence on rulemaking actions and provide the opportunity for questions to be raised and subsequently answered in the hearing process. The staff report prepared for the Commission consideration would continue to double as a public information document on the proposed rulemaking action.

2. Authorize the director to act on behalf of the Commission to authorize rulemaking hearings.

Under this option, all current efforts to prepare a proposal would be undertaken. The same information prepared to present to the Commission would be prepared for public information purposes, although the format for the information presently included in the EQC staff report would likely be modified. The activity report could be expanded to advise the Commission of hearings authorized.

This alternative could speed up the rulemaking process in some cases by avoiding the delay caused by timing of Commission meetings. However, it would reduce the early opportunity for Commission input in the rulemaking process. The Commission would have less agenda material to review prior to a meeting, but staff work would not be reduced. A possible negative effect could be a greater frequency of rule adoption agenda items being carried over to a subsequent meeting to allow more time to address concerns not able to be raised

at the hearing authorization step. If this procedure were adopted, existing rules should be amended to reflect this authority delegated to the Director.

3. Present all hearing authorization proposals under a single consent agenda item in a manner similar to the activity report.

Under this proposal, the materials prepared by the department would be similar to alternative 2. However, the attachments to the consent agenda item could be reduced to the minimum to describe the proposed rule making action. This would reduce the material to be reviewed by the Commission but still provide the opportunity for the Commission to ask questions in so far as the summary documents provided sufficient information for the Commission to understand the policy, controversial and strategic issues. This significance of individual proposals for rulemaking would tend to be minimized by this process, however, and may be a disadvantage.

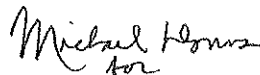
The department believes that any of these alternatives would meet legal requirements and would be workable. However, the department would recommend that the current practice be continued so as to assure opportunity for Commission to be informed and provide input prior to public hearings on any proposed rulemaking action.

Regardless of which alternative is selected, it may be desirable to review and update the present administrative rules regarding rulemaking, and consider amendments that may be appropriate to implement the Commission's decision in this matter.

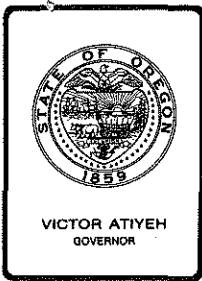
Director's Recommendation

It is recommended that the current practice of specific Commission approval of rulemaking hearing authorization requests be continued.

It is also recommended that the Commission instruct the department to review the present procedural rules, and propose amendments if appropriate.


for
Fred Hansen

H. L. Sawyer:r
DOR701
229-5776
April 8, 1986



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 25, 1986, EQC Meeting

Informational Report: Review of FY 87 State/EPA Agreement and
Opportunity for Public Comment

Background

Each year the Department and the Environmental Protection Agency (EPA) negotiate an agreement whereby EPA provides basic program grant support to the air, water and hazardous and solid waste programs in return for commitments from the Department to perform planned work on environmental priorities of the state and federal government.

Commission review of the annual grant application materials is intended to achieve two purposes:

1. Commission comment on the strategic and policy implications of the program descriptions contained in the draft State/EPA Agreement; and,
2. Opportunity for public comment on the draft Agreement.

Further public comment is being provided under federal A-95 clearinghouse procedures and a public notice containing a brief synopsis of the Agreement was mailed to persons who have expressed an interest in Department activities.

An Executive Summary of the Agreement is attached to this report. A draft copy of the complete agreement has been forwarded to the Commission under separate cover. It may be reviewed by interested persons at the DEQ headquarters office in Portland, or at the DEQ regional offices.

EQC Agenda Item No. F
April 25, 1986
Page 2

Director's Recommendations

It is recommended that the Commission:

1. Provide opportunity for public comment at today's meeting on the draft State/EPA Agreement; and
2. Provide staff its comments on the policy implications of the draft agreement.



Fred Hansen

Attachment: State/EPA Agreement Executive Summary

Sherry Chew
MY2542
229-6484
April 2, 1986

DRAFT

STATE/EPA AGREEMENT
STATE FISCAL YEAR 1987
JULY 1, 1986 TO JUNE 30, 1987

BETWEEN

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

EXECUTIVE DOCUMENT

OREGON STATE/EPA AGREEMENT

FY 1987

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FY 1987

STATE/EPA AGREEMENT

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

AND

U.S. ENVIRONMENTAL PROTECTION AGENCY

REGION 10

The undersigned, for the Oregon Department of Environmental Quality (DEQ) and the U.S. Environmental Protection Agency, Region 10 (EPA), enter into this agreement to manage programs which protect and enhance Oregon's environment in the following areas:

Air Quality
Water Quality

Hazardous Waste Control and
Disposal

The agreement, known as the Oregon State/EPA Agreement (SEA), describes priorities, tasks, and resources which comprise the cooperative federal and state environmental management program in Oregon during fiscal year 1987. This agreement includes required work plans and is the application for consolidated EPA program grants to Oregon under provisions of the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, and Safe Drinking Water Act (for underground injection control).

The SEA consists of two documents, which are incorporated as part of this agreement. They are:

- Section I - An Executive Document including this agreement -- to provide the public and agency program managers with the formal agreement, a clear overview of environmental issues, program priorities, and major tasks for the fiscal year.
- Section II - A Program Document -- to provide detailed workplans to be carried out by each program during the fiscal year. This document also contains the FY 87 consolidated grant application.

This agreement covers the period of time from July 1, 1986 through June 30, 1987. The two agencies hereby agree to cooperatively work towards achieving environmental results and comply with the provisions set forth herein.

FOR THE STATE OF OREGON:

Frederic J. Hansen, Director Date
Department of Environmental Quality

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Ralph R. Bauer, Acting Regional Administrator Date
Environmental Protection Agency, Region 10

INTRODUCTION

TERMS AND CONDITIONS

The Oregon State/EPA Agreement (SEA) describes environmental program commitments, priority problems, and solutions which the State of Oregon (represented by the Department of Environmental Quality) and the U.S. Environmental Protection Agency, Region 10, have agreed to work on during Fiscal Year 1987 (July 1, 1986, to June 30, 1987). The programs include:

Air Quality
Water Quality

Hazardous Waste Control
and Disposal

The state will operate the programs discussed and EPA will support these commitments with program grants and technical assistance. All program commitments, grants, and assistance are subject to approval of the State Legislature and funding by congressional appropriations.

This agreement for mutual federal and state problem-solving and assistance is the primary mechanism to coordinate federal and state programs to achieve a comprehensive approach to managing Oregon's environment. The SEA has been written to accomplish two purposes:

1. Effective and efficient allocation of limited federal and state resources.
2. Achievement and maintenance of established environmental standards.

This Executive Document is intended to facilitate use of the SEA by state and federal program managers and by the public. The Policy Direction Agreement, which follows this introduction, sets forth Oregon's environmental goals and priorities for FY 87. Following the Policy Direction Agreement are short FY 87 program strategies for air, water, and hazardous waste. Each strategy profiles existing environmental conditions and summarizes FY 87 tasks and expected outcomes. The Executive Document closes with a budget summary table showing both state and federal resources.

In addition to specific program plans and commitments, there are several cross-cutting elements on which DEQ and EPA agree to provide continued emphasis, as follows:

Public Participation. All Oregonians are affected by and, therefore, interested in environmental programs described in the FY 87 State/EPA Agreement. A public participation plan was prepared and conducted to encourage public input to this SEA. The plan and a detailed Public Responsiveness Summary is included as an appendix to the Program Document (Section II).

Compliance Assurance/Enforcement. As regulatory agencies, ensuring compliance with environmental standards and requirements is a fundamental mission of both EPA and DEQ. Enforcement action in cases of persistent or serious violations is recognized as a necessary step to ensuring a consistently high level of compliance with state and federal laws.

EPA recognizes that DEQ has prime responsibility to assure compliance in federally-delegated program areas and is, therefore, committed to provide technical assistance and back-up enforcement as appropriate. DEQ acknowledges the need for EPA to be kept advised of detailed compliance status within the programs and to be regularly informed by DEQ of state progress to resolve priority violations.

The relative roles and responsibilities of each agency to support this goal are outlined in specific program-by-program compliance assurance agreements. The agreements for the air, water, and hazardous waste programs have been signed and are updated each year, as needed, to reflect the most recent policy on state/federal enforcement responsibilities. The compliance assurance agreement for water is included in Section IV of this SEA, and the agreement for air is currently being negotiated and will be included in Section IV when it is signed. For hazardous waste, the compliance assurance agreement is embodied in the DEQ/EPA Hazardous Waste Program Memorandum of Agreement, with appendices, which is currently being renegotiated. Both agencies agree to complete negotiations on the air and hazardous waste agreements as soon as possible, to review and modify the agreements as needed by July 1, 1987, and to implement the agreements in a firm, fair, and even-handed way.

Following are terms and conditions of this agreement:

State/EPA Coordination. Implementing this agreement requires extensive coordination between DEQ and EPA. The role of "Agreement Coordinator" has been put into effect. For EPA, the coordinator is the Director, Oregon Operations Office; for DEQ, the coordinator is the Administrator of Management Services. Coordinators have responsibility to plan and schedule agreement preparation and public participation, assure compliance with all grant terms, establish a format and agenda for agreed-to performance reviews, resolve administrative problems, and assure that this agreement is amended as needed if conditions change.

The Director, Oregon Operations Office, is the primary EPA official in Oregon with the authority to issue, interpret, and coordinate EPA program directives to the DEQ. The Director of the Oregon Operations Office is the EPA official responsible to facilitate continued informal program contact between federal and state agencies and to resolve problems which may arise in the course of implementing this agreement.

The parties to this agreement acknowledge that improved coordination of state programs with each EPA program results in major benefits for both agencies, and that conflicts or unanticipated requirements may undermine the plans and purposes of this agreement. Program contact between respective agency staffs will continue on a frequent and voluntary basis. The exchange

of operating information among respective program staffs in air, water, and waste management will be encouraged to ensure that problems which might occur can be readily resolved.

Local Government Coordination. DEQ has been assigned a strong leadership role in managing and enhancing Oregon's environment. EPA and DEQ recognize that interested and affected local governments play a vital role in planning, decision making, and implementing environmental management programs. For example, the Lane County Air Pollution Authority has the primary role for regulating most air pollution sources in Lane County, consistent with state and federal regulations.

The policy of DEQ and EPA is to assure maximum effective participation of local governments in operating and implementing local environmental management programs consistent with statewide program goals and objectives. EPA will work to facilitate effective DEQ/local government relations, and to avoid direct EPA/local government decisions which contradict this policy.

Fiscal Reporting. DEQ and EPA agree that budget and fiscal reports for work planned under the provisions of this agreement shall continue to be by program (air, water, hazardous waste) and by category (personal services, services and supplies, and capital outlays). Resource estimates for program accomplishments have been included in the Program Document to describe priorities and program emphases, to help assure that adequate resources will be available to achieve commitments, and to forecast resource needs in future fiscal years.

State Primacy. It is federal policy that the state environmental agency should be the primary manager of environmental programs operated within the state. In Oregon, DEQ is primary manager of environmental programs. DEQ emphasizes that it will continue this responsibility to the fullest extent of its resources.

As part of its commitment to implement this agreement, EPA will endeavor to improve federal oversight operations to accomplish more effective state program results, improve assistance and advice to DEQ, and reduce paperwork and duplication of efforts between the two agencies. Furthermore, EPA will provide DEQ with advance notice when conducting work with local governments and industry in Oregon, and will coordinate these efforts with DEQ as appropriate.

Performance and Evaluation. Both DEQ and EPA will commit their best efforts to assure that the terms, conditions and provisions contained or incorporated in this agreement are fully complied with. To the extent that DEQ does not fulfill provisions of this agreement as related to the award of grants being applied for herein, it is understood that EPA will not be precluded from imposing appropriate sanctions under 40 CFR Part 30, including withholding of funds, and termination or annulment of grants.

To improve oversight and grant management, EPA developed in coordination with the states a policy on oversight and performance-based grants which includes procedures and mechanisms for conducting effective oversight of

state programs in Region 10. Existing oversight and grant management procedures are conducted in accordance with the new policy.

The tasks and expected results contained in this agreement reflect information known and objectives identified at the time of its signing. Both agencies recognize that events outside the control of the parties of this agreement (e.g., changes in authorizing legislation or levels of resources) may affect the ability of either party to fulfill the terms of the agreement. Therefore, both parties agree that a system for review and negotiated revision of work plans is central to this agreement.

Performance evaluations will be conducted quarterly by DEQ, and will be the means to identify problems and propose revisions. Exceptions in meeting work plans will be reported to EPA. A joint DEQ/EPA evaluation will be conducted semi-annually in the offices of DEQ. The Agreement Coordinators are responsible to schedule this evaluation and prepare the agenda. The Coordinators may, at their discretion, schedule extraordinary general or special topic evaluations when performance issues or changed conditions appear to warrant such an evaluation.

A brief written progress report will be produced following the semi-annual evaluation. This report will emphasize, by exception, the policy and/or performance issues that require executive review and action. Such issues shall be resolved by respective agency executives.

FY 1987
POLICY DIRECTION FOR THE
OREGON STATE/EPA AGREEMENT

Each year the Department of Environmental Quality (DEQ) and the Environmental Protection Agency (EPA) negotiate an agreement whereby EPA provides grant resources in support of program commitments from DEQ. The agreement, called the State/EPA Agreement (SEA), describes in detail the work planned for the coming fiscal year by the state and federal environmental agencies to address environmental priorities in Oregon. Developing the SEA is a multi-step process, including several opportunities for public review and comment, leading to a signed agreement by July first of each year.

The first step in the process is tentative identification by EPA and DEQ of the major priorities to be addressed in the SEA and in the coming year. This initial document, entitled "Policy Direction for the Oregon State/EPA Agreement," provides guidance for development of the full FY 1987 SEA, and may be revised as a result of public review and staff refinement.

The major state and federal environmental priorities for Oregon for the coming year are preliminarily identified below.

MAINTENANCE OF ONGOING PROGRAMS

Much of the environmental effort by DEQ and EPA is directed to operation of the ongoing activities of the air, water, solid and hazardous waste programs, e.g., regulation development, permits issuance, source inspection, monitoring, etc. While these activities are not specifically discussed in this policy direction document, they do constitute a significant portion of both agencies' priority work. The full FY 1987 SEA, which will be available in draft form for public review and comment in March and April 1986, will include detailed discussions of outputs and commitments for these ongoing programs.

As a focus for the ongoing programs, the priorities listed below are tentatively agreed to be of special importance during FY 1987.

SUPERFUND PROGRAM DEVELOPMENT

The 1985 Oregon Legislature authorized establishment of a \$10 per ton disposal fee at the Arlington hazardous waste facility to support Oregon's share of remedial cleanup costs at sites listed on the Superfund National Priority List (NPL). Rules and procedures needed to implement this state fund are in place and fees are now being collected.

As Superfund activities in Oregon increase at both NPL and non-NPL sites, it is becoming clear that additional DEQ staff and financial resources are needed. State involvement at sites where EPA has lead responsibility and work at sites of primary concern to DEQ has grown significantly over the past year. DEQ and EPA intend to work together in FY 87 to build the state's institutional and financial capability to respond to this increased Superfund workload. Specific Superfund priorities in Oregon for the year include:

1. Establish DEQ Superfund contact with lead responsibility for coordinating state Superfund activities in Oregon.
2. DEQ will participate, as resources allow, in site discovery and preliminary assessment/site investigation (PA/SI). For federal-lead sites on the NPL, DEQ will seek to participate through Management Assistance Cooperative Agreements. DEQ will consider taking lead responsibility for newly listed NPL sites.
3. DEQ will work to develop improved state funding capability for carrying out Superfund program activities and meeting state-match requirements.

GROUNDWATER PROGRAM DEVELOPMENT

Over 800,000 people in the State of Oregon depend on groundwater for domestic, commercial, industrial, and agricultural uses. While the quality of groundwater in Oregon is generally good, concern is growing over increasing evidence of contamination. Groundwater contamination has been caused by sewage disposal practices, industrial and solid waste disposal site leachate, agricultural practices, leaking underground tanks and lines, and spills.

The Oregon Environmental Quality Commission's 1981 Groundwater Quality Protection Policy provides a good base for building a comprehensive state groundwater program. Aquifer protection plans consistent with the policy have been developed by DEQ with federal assistance and adopted by the Commission for several contaminated aquifers, including Clatsop Plains, North Florence, La Pine, the River Road/Santa Clara area near Eugene, and mid-Multnomah County. Work continues to address known contamination from industrial or solid waste disposal sites. In FY 1986 the state initiated an underground storage tank program consistent with new state and federal guidelines.

Emphasis on improving protection of groundwater aquifers in Oregon will continue in FY 87 with federal assistance. In FY 87, the DEQ will develop a comprehensive groundwater protection strategy. The strategy will not only address DEQ's ongoing source control programs, but also establish a detailed framework outlining responsibilities, objectives, and tasks of various state agencies.

A major new priority in Oregon is growing evidence that aquifers throughout the state may be contaminated by pesticide use. Assessing the extent of the problem and developing appropriate remedies will require close coordination between EPA, DEQ, and federal and state health and agricultural agencies subject to the availability of resources. During FY 87 DEQ and EPA will focus on developing close working arrangements with other appropriate agencies involved in the pesticide and groundwater area.

HAZARDOUS WASTE PROGRAM IMPLEMENTATION

With final authorization under the Resource Conservation and Recovery Act, which was granted to Oregon in FY 86, the hazardous waste program focus for EPA and DEQ will shift to achieving a smooth transition from federal to state responsibility for program implementation. The following program areas will receive priority attention in FY 87:

Permit Issuance. DEQ will place emphasis on meeting the 1988 permit issuance deadline for operating land disposal facilities, addressing environmentally significant facilities and addressing new facilities. The DEQ will participate with EPA in facility management planning to define State/EPA roles and actions and to optimize the permitting process through full participation of the facility management team.

Compliance Assurance. DEQ will conduct an aggressive compliance monitoring program which, at a minimum, meets the national inspection scheme for a "core" compliance program as outlined in the FY 86 RCRA Implementation Plan. DEQ will initiate timely and appropriate enforcement, with special emphasis on significant noncompliers.

Program Development and Enhancement. DEQ will maintain and enhance program capabilities and revise the program as necessary to maintain authorization for base (pre-1984) requirements.

ASBESTOS

Exposure to airborne asbestos can lead to very serious illness. Asbestos is present in a wide variety of products, making it very difficult to prevent exposure completely. Insulation for furnaces and heating ducts has been one of the major asbestos applications, and demolition or renovation activities in buildings has the potential for causing exposures. DEQ has adopted rules to minimize exposures from such activities. The rules require companies to notify DEQ prior to the demolition/renovation activities, to take certain precautions during the work, and to dispose of the asbestos in approved landfills. It has become clear that many firms are not reporting to DEQ or following the prescribed work practices.

In FY 87 DEQ will act to significantly improve reporting and work practices by firms operating in Oregon. As one means of doing this, DEQ will evaluate the feasibility of imposing certification requirements on all firms doing asbestos applications or removal. DEQ also plans to consider expanding the scope of current rules to include individual residences as a means of protecting homeowners from improper asbestos work.

EPA has proposed a ban on the manufacturing, importing, and processing of asbestos in certain products. The ban will be effective immediately where alternatives to asbestos are available and will be phased in over ten years where alternatives must be developed. The ban will not, however, address exposure due to asbestos now existing in buildings and products. During FY 87, DEQ will study all current state, federal, and local asbestos control programs in Oregon to identify gaps in existing protection from exposure.

PRETREATMENT

Oregon's NPDES pretreatment program was approved by EPA in March 1983. Currently, DEQ maintains oversight of local pretreatment programs by requiring local sewage agencies to submit an annual pretreatment report, reviewing these reports, assisting local agencies on an as needed basis, and taking enforcement action if a local sewage agency violates its NPDES permit and industrial users contribute to the violation. In FY 87, DEQ will strengthen the effectiveness of these functions based on the results of the program audit conducted by EPA. Program improvements should include expansion of DEQ's oversight activities to provide on-site evaluations of local pretreatment programs.

AIR TOXICS

Unregulated release of toxic air contaminants is an issue of growing national concern. While controls for conventional pollutants have controlled many toxic emissions, many remain. During FY 87, DEQ will evaluate the results of the emission inventory completed in FY 86 and develop an overall state air toxics program. Particular emphasis in this program will be placed on strengthening review of new sources, addressing priority sources of volatile organic and particulate toxicants, preventing accidental releases of toxic substances, and responding to accidents that may occur.

EPA Region 10 is developing and will implement an air toxics policy designed to assist and complement state activity. Key elements of the strategy will include technical assistance, grant support, monitoring state activity, and public education. Nationally, EPA will expand regulation of hazardous air pollutants.

MEDFORD AIR SHED

The area around Medford is located in a valley surrounded by high mountains. Air inversions are common in this area, and frequently result in conditions of air stagnation. As a result, pollutants from automobiles, industrial sources, domestic woodstoves, and other sources tend to build up to high levels. The air quality standards for suspended particulates and carbon monoxide are exceeded more frequently in the Medford area than any other area of the state. DEQ has developed control strategies projected to bring the area into attainment with the standards and will closely monitor progress towards attainment and will develop additional control measures if they appear to be necessary. The main control strategies that will be monitored include controls of industrial sources, abatement of woodstove smoke, and the inspection and maintenance program for motor vehicles.

NPDES PERMITS

All municipalities are required to meet the water quality compliance levels set forth in the Clean Water Act, whether or not they receive federal funds, by July 1, 1988. DEQ will reissue NPDES permits as they expire with appropriate compliance schedules for all major and minor publicly-owned wastewater treatment facilities that are contributing significantly to impairment of water quality. This will ensure achievement of the national goal of obtaining compliance at publicly-owned (municipal) treatment facilities as soon as possible, and no later than July 1, 1988.

DEQ will also reissue NPDES permits as they expire with appropriate effluent limitations for all major and non-major industrial dischargers that contribute significantly to impairment of water quality.

NONATTAINMENT AREAS

DEQ has made good progress in reducing levels of conventional pollutants including suspended particulates, carbon monoxide, and ozone. Most areas of the state are in attainment with the federal/state standards, and strategies have been developed or are being prepared for nonattainment areas. Principal strategies include regulation of industrial emissions, traffic controls,

inspection/maintenance programs for motor vehicles, regulation of new woodstoves, and the federal program regulating emissions from new motor vehicles. DEQ will closely monitor implementation of strategies and progress in reducing pollution levels to ensure that standards are met statewide as soon as reasonably possible.

DEQ will also continue monitoring key areas for fine particulate matter. When EPA promulgates standards for fine particulates, DEQ will determine which areas of the state may not attain the standards and develop and implement appropriate strategies for meeting the standards in a time period consistent with EPA regulations.

WOODSTOVES

Air quality studies conducted by DEQ have shown that domestic woodstoves are responsible for a large fraction of the suspended particulates, especially the fine particulates, in Oregon cities. Woodstoves, along with motor vehicles, have also been identified as a major source of carbon monoxide in residential areas. Accordingly, DEQ has taken action to abate woodstove smoke. Under authority provided by the Oregon Legislature in 1983, DEQ has developed rules that will greatly limit smoke from woodstoves. Beginning in July 1986, new units must meet stringent limits before they can be sold or advertised in Oregon. The limits become tighter in July 1988. Over the long term, the woodstove program is projected to achieve significant reductions in pollution and is a critical element for meeting air quality standards in Portland, Medford, and Eugene-Springfield. To ensure successful implementation of the program, DEQ will closely monitor the testing and sale of new stoves, and provide public information on the proper use of new and old units.

CONSTRUCTION GRANTS MANAGEMENT AND DELEGATION

The 1985 State Legislature approved DEQ's budget package for delegation of the construction grants program. DEQ and EPA are working together to complete an updated study on management and delegation of the program and plan to sign the initial delegation agreement by April 1986. Once signed, federal funds will be available from the sewerage works construction grants allocation to support the state's delegated management function.

Also, planned amendments to the Clean Water Act are expected to establish a federal revolving fund from which loans may be made for future sewage works construction. DEQ has begun planning for the administration of the revolving fund, including giving consideration to possible needed legislative authority to implement the fund in Oregon. Funding for sewage works construction could be available in some form of revolving fund as early as FY 87.

PRIORITY WATER QUALITY AREAS

As part of its overall water quality management effort, DEQ identifies priority issues and/or geographic areas needing special attention to prevent or solve water quality problems. Such issues/areas may include an area of rapid unplanned industrial growth, widespread and continuing contamination of an aquifer by domestic sewage, or an area where heavy fertilizer or pesticide use is contaminating groundwater. DEQ has developed a current list of priority water quality concerns which is reviewed and updated periodically.

For each issue or area to be addressed in FY 87, a short profile of the problem and a discussion of the approach to solving it will be prepared. In FY 86, for example, DEQ began a study to evaluate current wasteload and develop an updated water quality management plan for the Tualatin Basin. The FY 87 workplan will identify the priority areas and appropriate state and EPA activities for the coming year. EPA will provide resources as available to help DEQ carry out the identified workplans.

ENFORCEMENT/COMPLIANCE ASSURANCE

As regulatory agencies, ensuring compliance with environmental standards and requirements is a fundamental mission of both EPA and DEQ. Enforcement action in cases of persistent or serious violations is recognized as a necessary step to ensuring a consistently high level of compliance with state and federal laws.

EPA recognizes that DEQ has prime responsibility to assure compliance in federally delegated program areas and is, therefore, committed to provide technical assistance and back-up enforcement as appropriate. DEQ acknowledges the need for EPA to be kept advised of detailed compliance status within the programs and to be regularly informed by DEQ of state progress to resolve priority violations.

The relative roles and responsibilities of each agency to support this goal are outlined in specific program-by-program compliance assurance agreements. The agreements for the air, water, and hazardous waste programs are in place and are reviewed annually to reflect the most recent policy on state/federal enforcement responsibilities. Both agencies agree to modify, as needed, and finalize the compliance assurance agreements by July 1 of each year, and to implement the agreements in a firm, fair, and even-handed way. This year, EPA and DEQ agree to make needed modifications in the water compliance agreement by July 1, 1986.

AIR

Program Goals:

- Achieve and maintain air quality standards statewide.
- Prevent significant deterioration of air quality where air is now clean.

Profile:

Oregon's air quality is generally very good. There are, however, areas of concern which require priority attention. These are shown in Figure #1.

The Portland, Salem, Eugene/Springfield, Grants Pass, and Medford areas have been officially designated as nonattainment areas, since they are not in compliance with specific National Ambient Air Quality Standards:

Portland/Vancouver:	Carbon monoxide, Ozone (primary standards) Total suspended particulates (secondary standard only)
Salem:	Carbon monoxide, Ozone (primary standards)
Eugene/Springfield:	Carbon monoxide (primary standard) Total suspended particulates (secondary standard)
Grants Pass:	Carbon monoxide (primary standard)
Medford/Ashland:	Carbon monoxide (primary standard) Total suspended particulates (primary and secondary standards)

Although an official designation of nonattainment has not been made, exceedances of the lead standard have been recorded in Portland. By the end of 1986, it is expected that the lead standard will be attained.

The Grants Pass area has recently been designated as nonattainment for carbon monoxide. During FY 87, DEQ will develop an attainment strategy and adopt an approvable SIP revision for the area.

Air quality in nonattainment areas has a potentially adverse effect on public health and welfare. Therefore, planning and implementing air quality control strategies are being given top priority in these areas. Significant emission sources are shown in Figure #2.

Recent studies have shown that air pollution caused by industrial sources has been substantially reduced, particularly in Oregon's major urban areas. Oregon industries have invested heavily in pollution control equipment. However, these benefits could be lost unless (1) new sources are controlled with the best available technology, and (2) monitoring, surveillance, and enforcement activities are maintained at a high level.

Conversion to residential wood heating has been identified as one of the important sources of air pollution in Oregon's urban areas. Wood fires are a source of particulates, carbon monoxide, and some toxic organic pollutants. Other areawide sources, such as road dust and vehicular emissions, are also prominent. New, socially acceptable ways of controlling these sources can be developed through research studies and demonstration projects.

Several years time is needed for nonattainment areas to meet federal air quality standards. Managing growth until standards have been met and, after, will require continued implementation of new, cost-effective management tools such as emission offset and banking programs, parking and circulation plans, and processes for airshed allocation.

Field burning effects in the Eugene/Springfield area are being minimized by implementation of continued improvements to the smoke management plan. Field burning and slash burning remain significant sources of air pollution in Oregon. Better efforts are needed here to (1) identify actual air quality impact, (2) improve smoke management practices, and (3) develop control techniques such as increased productive use of forest slash in lieu of burning. Field burning and slash burning contribute to visibility impairment of scenic areas in Oregon and strategy development to reduce their impact is currently underway.

Strategy:

During FY 86, DEQ will continue to implement Part D State Implementation Plan (SIP) revisions. DEQ will continue to monitor impacts of human activities on visibility impairment in completing a long-range Statewide Visibility Control Plan. Monitoring for and assessment of attainment/nonattainment for a new PM₁₀ (particulate matter 10 microns or less) standard will proceed.

DEQ will continue to implement its New Source Review Rule, including detailed growth management (offset and banking) provisions. DEQ will also have full responsibility for operating the Prevention of Significant Deterioration (PSD) Major New Source Review Program, and for all NSPS and NESHAPS pertinent to Oregon. DEQ plans to develop and implement a formal program for better assessing and controlling toxic and hazardous emissions.

Compliance assurance activities for volatile organics and particulate sources will continue. Air monitoring and quality assurance procedures will fully meet EPA requirements for SLAMS & NAMS air monitoring sites. Air source compliance and enforcement activities will be carried out under current rules including the current air contaminant discharge permit program. The compliance assurance agreement with EPA will be reviewed and revised as is appropriate.

DEQ will expand the current asbestos program. The major problem identified in the program is that many contractors are not properly reporting to DEQ or following other DEQ rules. A new position will be used to identify nonreporters and ensure rules implementation. DEQ will also explore the feasibility of adopting a mandatory certification program for asbestos contractors, combined with a self funding worker training program to ensure the technical competency of asbestos workers.

Vehicle Inspection/Maintenance (I/M) including anti-tampering inspections will continue for the Portland Metropolitan Service District area. An I/M program with anti-tampering inspections began in Medford in January 1986, and will continue.

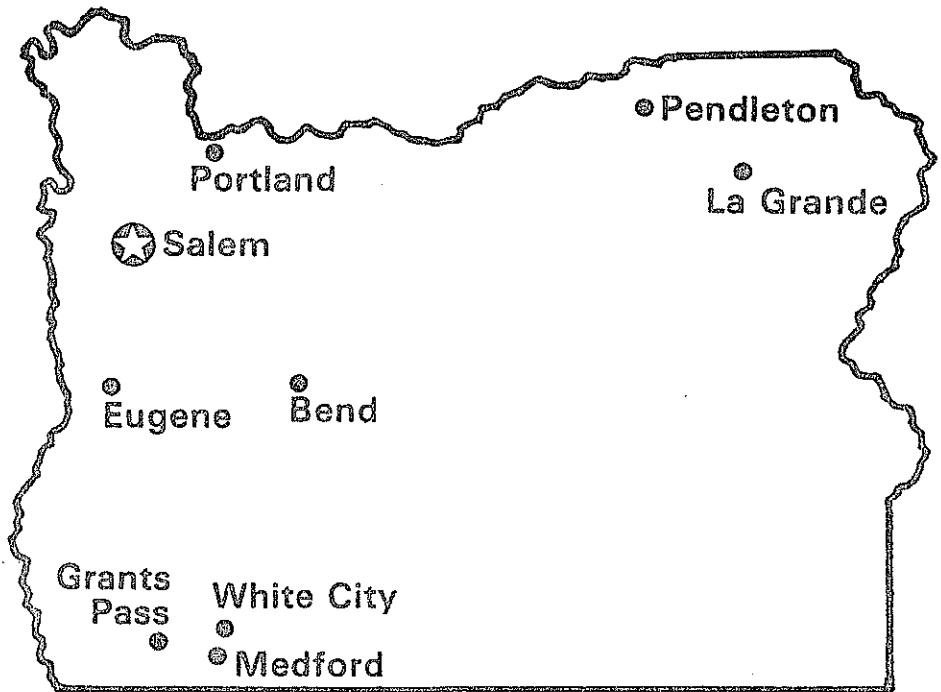
DEQ will continue implementation of a woodstove control program as authorized by the 1983 Legislature.

DEQ will continue to gather data on possible visibility impacts in scenic areas due to air pollution, and develop regulations to reduce impairment.

DEQ will assist the City of Grants Pass to develop a carbon monoxide attainment strategy, and make appropriate revisions to the State Implementation Plan.

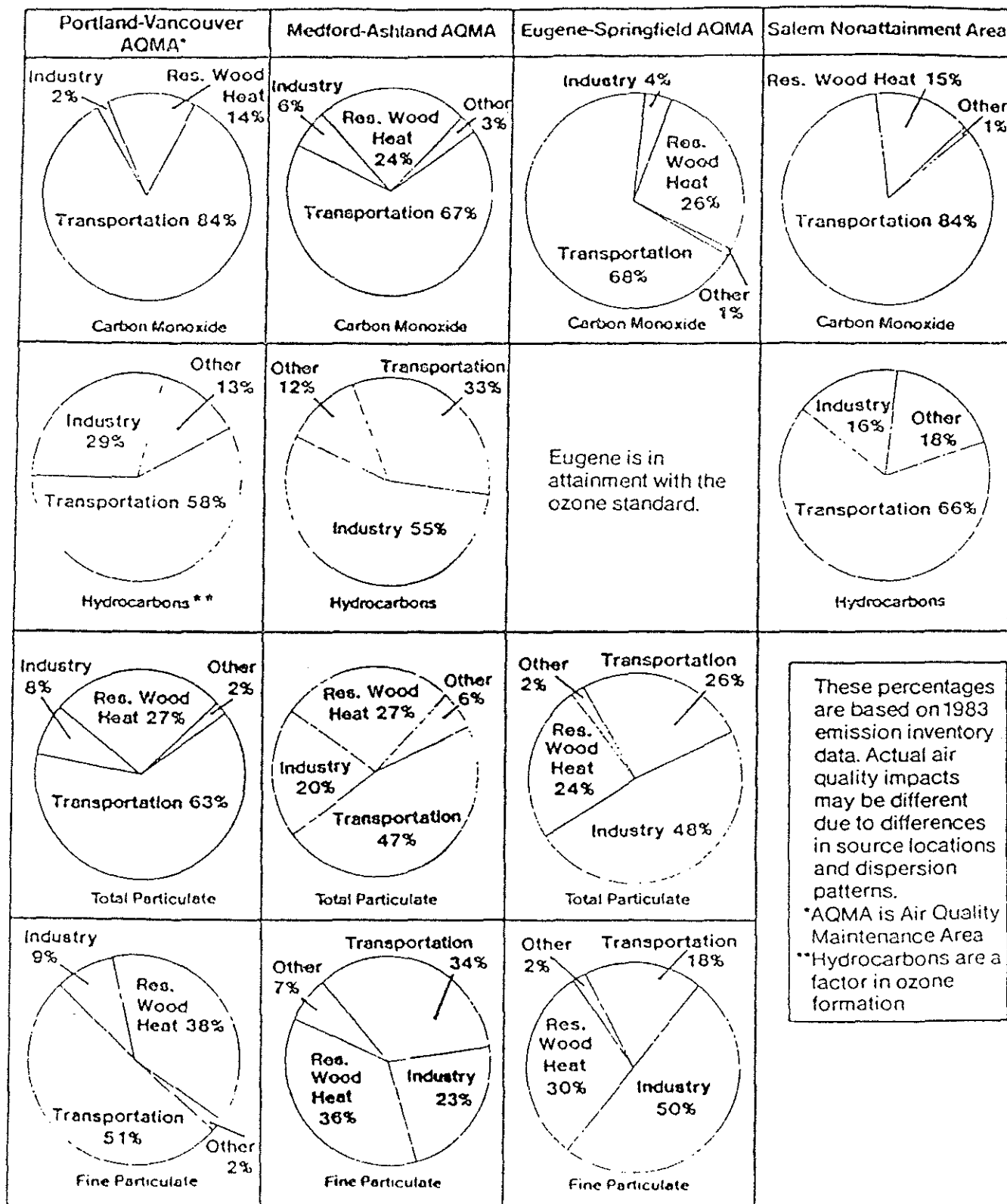
Figure 1
 OREGON CITIES EXCEEDING
 AIR QUALITY STANDARDS
 IN 1985

LEGEND			
TSP	Total Suspended Particulates		
CO	Carbon Monoxide		
O ₃	Ozone		
	TSP	CO	O ₃
Bend	2	-	-
Eugene	9	1	-
Grants Pass	5	13	-
LaGrande	6	-	-
Medford	39	33	-
Pendleton	8	-	-
Portland	13	2	2
Salem	2	4	0
White City	13	-	-



Number of Days Exceeding Standards (Primary or Secondary) For the Pollutant Indicated

Sources of Emissions in Nonattainment Areas



OREGON FY-87 PRIORITIES

Air Quality Management

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	State assumption of federal program.	Request delegation of recent New Source Performance Standards.	Oregon will request delegation of remaining applicable and appropriate NSPS during first quarter of FY-86 (July - September).	Statewide
1		Request delegation of new NESHAPS.	Oregon will request delegation of applicable and appropriate NESHAPS during first quarter of FY-85, and ensure complete implementation of the standards.	Statewide
1		Implement the Prevention of Significant Deterioration program.	Sources constructed or modified in attainment areas will not significantly degrade air quality.	Attainment areas
1	Ensure adequate progress toward attainment of National Ambient Air Quality Standards.	Track Reasonable Further Progress (RFP) and revise control strategies as necessary.	State and local agencies will collect, summarize, and report data (on an annual basis) that documents RFP toward attainment of NAAQS. For stationary sources, data will be in the form of emissions inventory. For mobile sources, progress in implementing TCMs and VMT reductions should be emphasized. Newly discovered nonattainment areas will be so designated.	Nonattainment areas
1	Attain National Ambient Air Quality Standards for carbon monoxide in Grants Pass	Assist the City of Grants Pass in the development of an attainment strategy for carbon monoxide.	A SIP revision will be submitted to EPA and the Grants Pass area will attain the carbon monoxide standard.	Grants Pass
1	Broaden implementation of the asbestos standards	Ensure that asbestos contractors follow required procedures for reporting and removing asbestos. Pursue implementation of a contractor certification program in Oregon.	Exposure to asbestos will be minimized.	Statewide

OREGON FY-87 PRIORITIES

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Rapid increases in wood stove emissions are jeopardizing attainment and maintenance of TSP air quality standards in several areas.	Continue implementing control strategies for wood burning stoves as well as public education program.	DEQ will implement certification procedures for new wood stoves.	Statewide
1	Attain National Ambient Air Quality Standards (NAAQS) for carbon monoxide in Medford.	Continue implementing a mandatory I/M program in Medford.	The Medford area will attain the carbon monoxide standard in 1987.	Medford
1	Attain new particulate standard.	Assess existing particulate data, monitoring, and strategies for conformance with new standard and make modifications as necessary.	EPA has proposed a new particulate standard. EPA will provide guidance on monitoring, data assessment, modeling, and strategy development. EPA anticipates that Oregon's data base for the new standard will be adequate and that the state will begin development of revised control strategies for nonattainment areas during FY-87 including such things as preliminary modeling analysis, monitoring network installation, development of alternative strategies, development of an emission inventory, and determination of needed emission reductions. Completion of SIP revisions will occur on a schedule consistent with EPA regulations.	Fine Particulate Nonattainment areas.
1	Visibility needs to be protected, especially in Class I areas.	Continue implementing the monitoring and new source review portions of the Phase I Visibility SIP. Adopt the remaining portions of the Phase I SIP by December 1986.	Visibility in Class I areas will be protected and enhanced.	Class I areas

OREGON FY-87 PRIORITIES

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Toxic pollutants need to be controlled.	Develop and implement a formal program for better assessing and controlling toxic and hazardous emissions.	Toxic pollutants not currently regulated by NESHAPS will be better controlled.	Statewide
1	Management of field burning program.	Provide smoke management during field burning season. Provide enforcement for field burning rule violations. Monitor smoke impacts. Provide a research program to reduce field burning.	Smoke impacts on air quality will be minimized. Smoke intrusions on major population centers will be nearly eliminated. Alternatives to field burning will be developed.	Willamette Valley

Air Permits/Compliance

	1	Operation of I/M Program in Portland.	Maintain I/M test facilities in Portland. Provide certification of tested vehicles that meet emission and anti-tampering rules.	Automotive-caused air pollution will be reduced. Ambient air standards for carbon monoxide and ozone will be attained in Portland.	Portland
NO	1	To implement and maintain emission control strategies, it is necessary to continue existing compliance assurance efforts.	States and locals maintain compliance program, including inspection, surveillance, complaint investigations, enforcement actions, and source testing. State and EPA update and implement the compliance assurance agreement. EPA will assist state and local compliance programs and, where necessary, will take direct action to ensure compliance.	Sources out of compliance will come into compliance; complying sources will maintain compliance.	Statewide
	1		DEQ will evaluate the test procedures of sources that monitor their own emissions, and ensure that the monitoring data have satisfactory reliability and accuracy.	Excess emissions from self monitoring sources will be minimized.	Statewide

OREGON FY-87 PRIORITIES

Ambient Air Monitoring

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Effective management of an air quality program requires the generation of ambient data of known and appropriate quality and adequate quantity.	Operate and maintain the existing ambient monitoring program in concert with the approved quality assurance plan, performing modifications as appropriate to achieve conformance with applicable new or revised EPA regulations and to respond to new or revised program requirements. Program curtailments resulting from intervening resource constraints will be determined on a priority basis in agreement with EPA.	All NAMS and SLAMS will be operated to produce data of appropriate quality and to meet requirements of 40 CFR 58. Air quality and precision and accuracy data will be submitted to EPA. PSI program will be maintained for Portland. The monitoring program will be revised as needed to meet EPA requirements for lead, particulates, etc.	Statewide
1	Ensure that all state monitoring and measurement activities comply with QA requirements imposed by 40 CFR 30.	Develop and implement QA project plans for all data generation activities.	All data generation activities comply with EPA QA requirements.	Statewide

WATER QUALITY PROGRAM

Program Goals:

- Protect recognized beneficial uses of water through attainment and maintenance of Water Quality Standards.
- Develop programs to protect groundwater.
- Reduce bacterial contamination in 1) shellfish producing estuaries; and 2) freshwaters where the body contact recreation is not fully supported.
- Improve knowledge and control of toxics.
- Work with other state agencies to develop process for balancing the state's water resources, considering quantity and quality.

Background:

During the past 25 years, Oregon experienced rapid population growth. Future growth may be lower than that experienced previously but growth is expected to continue. This means more wastes will be generated which will require adequate treatment and disposal in order to maintain and protect surface and groundwater quality. Just maintaining current conditions will require a substantial investment by the public and development of innovative waste management and treatment methods.

Efforts will continue to be directed to correction of localized water pollution problems and nuisance conditions, replacement, and rehabilitation of aging pollution control facilities, and proper operation and maintenance of facilities to assure that effluent limits are met on a continuing basis.

Profile of Water Quality

Surface Water Quality

Overall, Oregon's water quality is quite good. Of 90,000 stream miles, nearly 28,000 miles have been catalogued. Designated uses are supported in 73 percent, partially supported in 37 percent, and not supported in 6 percent of the streams assessed. (See Table 1.) Of nearly 200,000 acres of lakes assessed, designated uses are supported in 59 percent, partially supported in 39 percent, and not supported in 2 percent. In the majority of shellfish-producing estuaries, water quality does not fully support the use. The primary pollutant preventing full support of uses in surface waters is fecal coliform bacteria and low flow. In Oregon, bacterial contamination results from different source types including: 1) nonpoint sources -- land runoff from failing on-site septic tanks and drainfield systems, inadequately managed animal waste disposal operations, and cattle grazing areas; 2) point sources -- bypasses and discharges of inadequately treated sewage from municipal sewerage systems; and 3) natural sources.

Groundwater Quality

Shallow, unconfined aquifers supply the bulk of groundwater to the over 800,000 Oregonians who rely on groundwater for drinking water. Therefore, it is not surprising that many existing urban centers and new developments are located above these aquifers. In several areas of the state, groundwater pollution has been documented. Elevated nitrate-nitrogen concentrations and bacterial contamination have been two primary indicators of wastes seeping underground. Recently, however, data has been collected which suggests the need to investigate toxic chemical and hydrocarbon contamination in groundwater.

Strategy

In FY 87, DEQ will continue to operate its historic program of preventing the creation of new water quality problems. To accomplish this, DEQ will continue to carefully regulate existing and new sources of water and waste generating activities. Efforts to assure the protection of beneficial uses will be furthered by the reduction of bacterial contamination through controls of both point and nonpoint sources of fecal coliform. In the groundwater program, the DEQ will develop a comprehensive groundwater protection strategy outlining responsibilities, objectives, and tasks of all state agencies involved in groundwater protection activities. Increasing emphasis will be placed on the impact pesticides have on groundwater quality. Efforts will continue to monitor identified groundwater pollution areas and to sewer those areas where groundwater pollution has been identified. The DEQ will direct activities toward toxics pollution by evaluating data collected in toxics screening surveys, oversee pretreatment of municipal wastes, and define areas where technical assistance is needed. DEQ completed the initial phase of delegation of the construction grants program covering certain pre-Step 3 activities. In FY 87, the DEQ will request legislative approval for additional resources to assume full delegation of the construction grants program in FY 88. This will include possible state legislative authority to implement federal revolving funds from which loans may be made for future sewerage works construction. At the same time, remaining pre-Step 3 activities and the review and recommendation of Step 3 grant awards will be delegated to DEQ.

TABLE 1
ASSESSMENT OF
USE SUPPORT FOR RIVERS AND STREAMS

1986
Use Support Assessment
(miles)

Stream Name	Miles Catalogued	Uses Supported	Uses Partially Supported	Uses Not Supported
North Coast Basin/L. Columbia	1129	169	71	
Mid Coast Basin	878	265	45	
South Coast Basin	1381	182	141	
Umpqua Basin	2007	390	68	15
Rogue Basin	2232	383	54	27
Willamette Basin	4057	792	295	33
Sandy Basin	387	80		
Hood Basin	402	38		
Deschutes Basin	2574	332	181	
Grande Ronde Basin	1835	272		
Umatilla Basin	1140	32	57	
Klamath Basin	1183	25	31	70
Owyhee Basin	481			18
Malheur Lake Basin	1918		11	
Malheur River Basin	1595			110
John Day Basin	2288	301	688	2
Powder River Basin	802	15	158	
STATEWIDE TOTAL	27,715	3,278 73%	1,673 37%	275 6%

OREGON FY 87 PRIORITIES

Water Quality Management

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Identify stream segments for further efforts.	Evaluate priority water quality limited segments identified in the status assessment process to reassess present water quality management strategies.	Assure cost-effective control strategies to achieve acceptable water quality.	Statewide
2		Complete development of a plan to protect shellfish growing areas.	Assure protection of shellfish growing areas.	Yaquina Bay
2		Complete the follow-up survey to evaluate effectiveness of Best Management Practices.	Assure protection of shellfish growing areas.	Tillamook Bay

OREGON FY 87 PRIORITIES

Construction Grants

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Achieve appropriate delegation of Construction Grants program.	Provide positive cooperative program framework to facilitate delegation to state.	Transfer program to state according to schedule.	Statewide
1	Continue effective EPA/State/Corps partnership in management of the Construction Grants program. Initiate appropriate phase-out of Corps in construction grants program in FY 88.	<p>a. Cooperatively negotiate and implement respective roles in achieving commitments in Office of Water Accountability System.</p> <p>b. Manage projects to meet obligation schedules; outlay projections; provide priority list data for and make use of Grants Information Control System; and manage projects to achieve timely completion, project closeout, and audit.</p>	<p>Efficient program management to achieve expected commitment.</p> <p>Specific project completion schedules met.</p>	Statewide
1	Assure that grant funds are allocated to projects that provide significant water quality or public health benefits pursuant to applicable laws and appropriate regulations.	<p>a. Continue to fund projects which provide significant benefit to water quality and public health.</p> <p>b. Manage priority list to fund highest ranked projects and assure timely use of all funds.</p> <p>c. EPA, with input from DEQ, will identify potential EIS candidate projects and initiate appropriate actions to assure that NEPA processes (FONSI's and EIS's) are completed in a timely way so as not to delay projects.</p>	<p>Most significant water quality and public health problems are solved.</p> <p>Efficient use of funds. Maximize waste treatment and water quality improvement with available funds.</p> <p>Projects will be environmentally sound and not delayed.</p>	Statewide
2				Statewide

OREGON FY 86 PRIORITIES

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Implement special state revolving fund authorized by the 1986 Clean Water Act.	Begin the process including perhaps state legislative action or other special legal arrangements of establishing special state revolving fund.	Efficient program development of special state revolving funds.	Statewide
1	Assure that facility plans are completed in a timely way, and address requirements necessary to qualify for Step 3 or Step 4 funding.	a. Assure that facility plans for projects which are scheduled for funding in the next 3 years are appropriately completed and meet applicable requirements for design and/or construction funding.	Selected alternative is fundable and implementable.	Statewide
2		b. Assure that new facility plans which are developed without Step 1/2 funding (planning/design) will evaluate appropriate options including innovative and alternative technologies and will meet all requirements for Step 3 or Step 4 funding.	Projects are not denied for reason of failure to plan or design properly.	Statewide

OREGON FY 87 PRIORITIES

Water Monitoring/Quality Assurance

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Gather ambient water quality data to identify quality of Oregon's public waters; assure that data is of known and appropriate quality.	Maintain minimal ambient monitoring network to provide accurate, representative data on the most significant streams (including 13 BWMP stations), estuaries, lakes, and groundwater.	Data to track basic quality and trends on significant water studies; support planning decisions.	Statewide
2		Ensure quality of data by implementing quality assurance program.	Data of known and appropriate quality for use by users.	Statewide
2	Assess potential toxics problems.	Expand baseline information by collecting samples for metals and organics at several key locations.	Identification of toxic problem areas if any. Provide basis for saying toxic pollutants are or are not a problem in Oregon waters.	Statewide
1	Assess water quality status and identify current water quality needs by analyzing, interpreting, displaying, and reporting data gathered from the monitoring network.	Develop, operate, and maintain a user oriented ADP based data system.	More effective use of data with less manpower required.	Statewide
1	As identified in the 1984 305(b) Report, Tualatin River has water quality problems.	Conduct selective, intensive water monitoring in Tualatin River to help provide basis for evaluating problems and developing protection plans.	Final report completed by 12/31/87 (as shown in preliminary draft workplan dated March 5, 1986).	Tualatin River

OREGON FY 87 PRIORITIES

NPDES Permits/Compliance

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	National priority is placed on improvement of compliance levels of POTWs including those constructed using federal grant funds provided under PL 92-500.	<p>Continue existing state inspection and compliance assurance program for POTWs, including:</p> <p>a. Provide technical assistance including site visits to identify and correct problems.</p> <p>b. O&M inspection of at least 1/3 of all POTWs (triennial coverage).</p> <p>c. Take appropriate enforcement action to resolve cases of sustained non-compliance.</p>	<p>Reduce effluent violations by identifying and resolving O&M problems before they result in effluent violations.</p>	Statewide
		<p>Complete development of and implement cooperative compliance data tracking system (PCS) for all POTWs, which provides routine 92-500 compliance status to replace present manual system.</p>	<p>Capability to determine level of effluent compliance and identify problem POTWs.</p>	Statewide
1	Expired NPDES permits need to be reissued.	Reissue expired major permits for all POTW and industrial facilities.	All expired major municipal and industrial permits reissued.	Statewide
1	Maintain permit compliance	Fully carry out the DEQ/EPA Compliance Assurance Agreement.	Acceptable levels of compliance are maintained.	Statewide

OREGON FY 87 PRIORITIES

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
2	Implement program to assure pretreatment of certain industrial discharges to municipal sewerage systems.	DEQ will continue to assist cities to implement pretreatment programs which satisfy state and federal requirements.	Individual city pretreatment programs are implemented as approved by DEQ.	Statewide

OREGON FY 87 PRIORITIES

Groundwater/Underground Injection Control Program

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Continue to implement groundwater protection activities including Underground Injection Control Program.	Develop comprehensive groundwater protection strategy including assessing impact pesticides has on groundwater quality.	Groundwater protected from pollution.	Statewide

Hazardous Waste Management Program

HAZARDOUS WASTE

Program Goal:

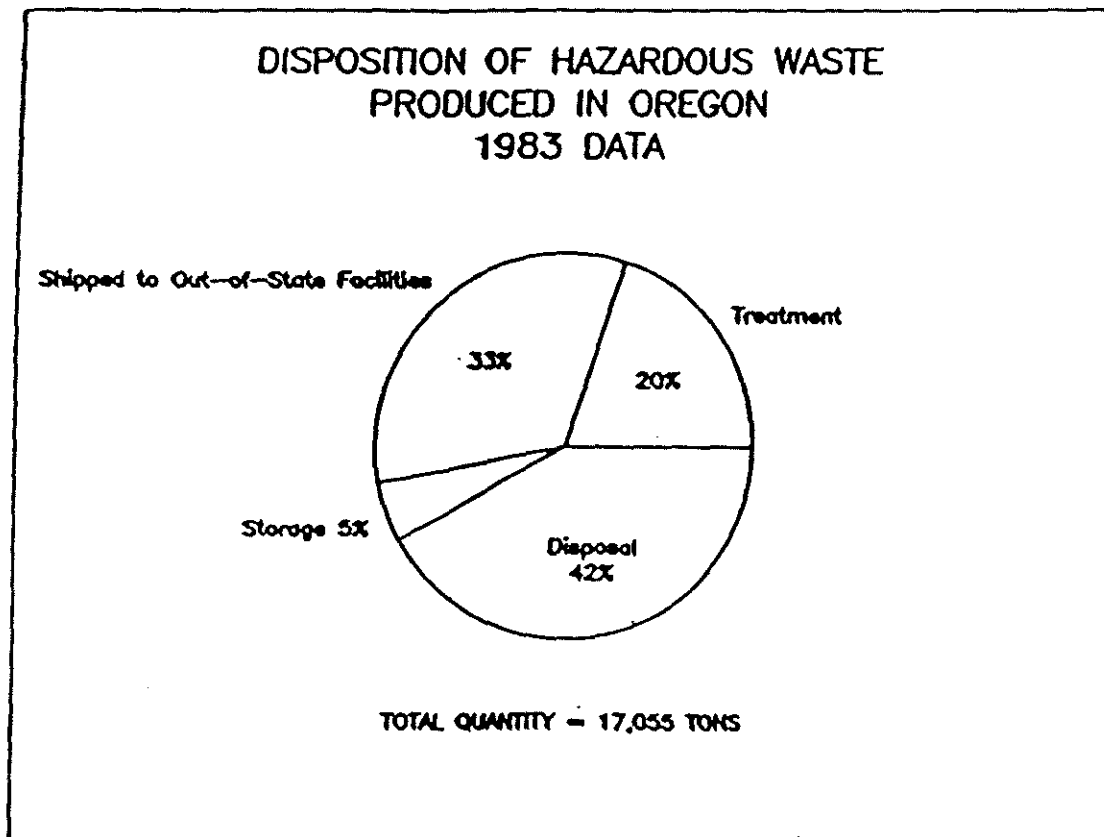
Ensure the safe management of hazardous wastes to protect the environment of Oregon and the public health of its citizens.

Profile:

Hazardous wastes, as defined by the Environmental Quality Commission, are produced by a variety of industrial and commercial operations. Approximately 200 facilities in Oregon generated hazardous wastes in 1983.

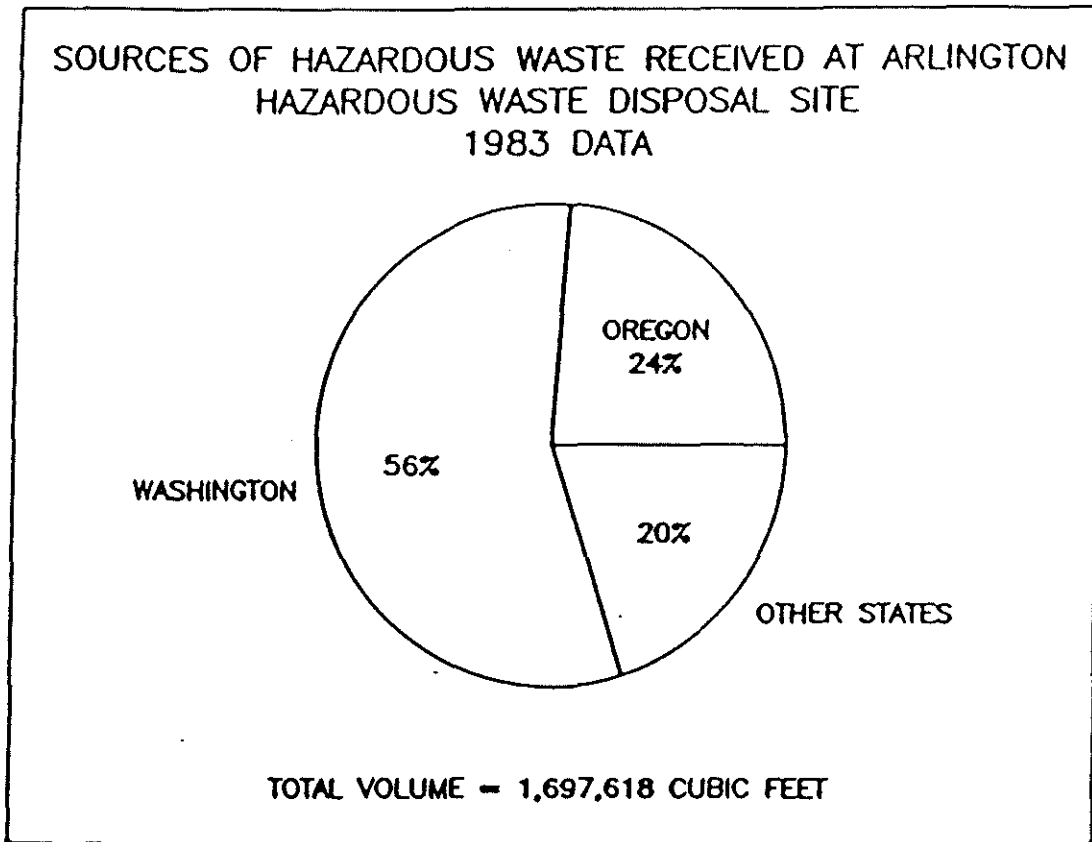
The disposition of hazardous wastes generated in Oregon is illustrated in Figure 3 below.

Figure 3



A state-licensed hazardous waste disposal site is located in Arlington and operated by a private licensee. This site provides the state with a basic tool to implement its comprehensive hazardous waste regulatory program. The Arlington site receives wastes from sources outside of Oregon as well as from Oregon companies, as shown in Figure 4.

Figure 4



Since 1971, the Oregon Legislature has improved and expanded the Department of Environmental Quality's authority and regulatory tools for hazardous waste management. Today, a comprehensive regulatory framework exists and provides "cradle-to-grave" control over hazardous wastes.

Under the Resource Conservation and Recovery Act of 1976 (RCRA), state hazardous waste programs may be approved by the federal government to operate in lieu of the federal program. Oregon was granted Final Authorization for the base hazardous waste program on January 31, 1986.

Strategy:

Department of Environmental Quality, through the issuance of permits and conduct of an extensive compliance inspection, monitoring and enforcement program, will continue to implement the state program in FY 87. Under Final Authorization, the state program will operate in lieu of the base federal program for those requirements promulgated prior to the Hazardous and Solid Waste Act Amendments of 1984.

OREGON FY 87 PRIORITIES

Hazardous Waste (RCRA Subtitle C)

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Permits incorporating minimum standards will be issued to hazardous waste management facilities, with emphasis on land disposal and environmentally significant facilities.	DEQ will issue permits under authorized program or DEQ & EPA will issue joint permits.	In addition to compliance with administrative rules, facilities will be given site-specific standards with which to ensure environmentally safe operation.	Statewide
1	Assurance of proper hazardous waste management practices.	<p>(a) Compliance inspections of and enforcement actions at HW generators, transporters and TSD facilities will be carried out under authorized state programs.</p> <p>(b) Priority will be given to ensure TSD facilities are in compliance with groundwater monitoring, financial assurance, insurance and closure/post-closure requirements.</p> <p>(c) Assure compliance with manifest requirements by all inspected facilities.</p> <p>(d) State will identify "non-notifiers" and assure such facilities are managed under state HW program.</p>	Compliance with standards will be carried out and assure that facilities out of compliance will be brought into compliance.	Statewide

OREGON FY 87 PRIORITIES

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Document implementation of final authorized program.	DEQ will provide reports and information necessary for EPA to fulfill its oversight responsibilities.	EPA will be assured state program meets minimum objectives.	Statewide
1	Emergency spills require prompt, effective response to prevent environmental impact and ensure cleanup.	Respond to all significant hazardous substance or waste spills.	Reduce impact on environment and ensure prompt resolution, give notification to EPA.	Statewide
2	Public must be aware and supportive of state hazardous waste management activities.	DEQ will ensure that public participation in program is carried out.	Public understanding and support, leading to state program which receives Final Authorization, will be ensured.	Statewide
2	Ensure that all state monitoring and measurement activities meet Region 10 Quality Assurance Plan requirements.	Develop and secure laboratory capability including quality assurance to implement RCRA.	Monitoring and measurement activities that satisfy Region 10 quality assurance requirements.	Statewide

OREGON FY 87 PRIORITIES

Superfund*

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Increased Superfund activity in Oregon.	DEQ will designate Superfund contact.	State contact with lead responsibility for program coordination in Oregon.	Statewide
1	The Superfund statute requires the state to submit its priority hazardous waste sites for remedial action on an annual basis to EPA. Based on submissions by the State, EPA will assemble a national list of at least 400 high priority sites for action under Superfund. This list will be updated periodically.	State and EPA will jointly prioritize potential Superfund sites on an annual basis or more frequently pursuant to national policy.	State will meet statutory requirement to submit potential Superfund sites to EPA.	Statewide
1	EPA enforcement procedures seek to secure Superfund site cleanup responsible parties -- in lieu of fund use -- whenever appropriate privately financed cleanup can be undertaken in a timely fashion.	(a) State and EPA will work closely together to develop and implement site-specific strategies to secure private and voluntary cleanup. (b) EPA will assist the state to monitor responsible and third party cleanup of hazardous waste sites.	Successful site-specific strategies to generate cleanup by responsible parties will serve to conserve the fund. When appropriate, site cleanup actions will be secured via state and/or EPA order. State and EPA are assured that the threat to the environment, public health and/or welfare at hazardous waste sites is removed.	Statewide Statewide

*Within the Superfund section, "Superfund site" means both sites eligible for Superfund action and uncontrolled sites that may not be eligible.

OREGON FY 87 PRIORITIES

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
For sites on the National Priority List where Superfund dollars will be used:				
1	Superfund statute requires the state to share the costs of remedial response at Superfund sites -- 10% of the remedial response costs for privately owned sites and 50% for publicly owned sites.	EPA will assist the state to identify and secure resources for the state's cost-share requirements.	State will meet statutory requirement to share remedial response costs at Superfund sites.	Statewide
1	Assurance of coordination between the state and EPA in the area of enforcement including determinations of responsible parties and cost recovery actions.	EPA will keep the state informed of progress and provide opportunity for state input to case/project development. The state will assist EPA: (a) In identifying responsible parties and determining enforcement potential at Superfund sites. (b) In determining an enforcement strategy for each Superfund site identified. (c) In compiling a profile of previous enforcement history at each Superfund site. (d) In notifying responsible parties. (e) Where possible, in cost-recovery actions.	Timely determination of responsible parties and appropriate funding procedures. An effective enforcement strategy which occurs timely and cost-effective cleanup of each Superfund site. A thorough enforcement profile for each Superfund site. Timely and clear opportunity for responsible party to take action before Superfund dollars are spent. Timely and effective cost-recovery actions.	Statewide

OREGON FY 87 PRIORITIES

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Assurance of funding and coordination in use of Superfund money for remedial actions.	(a) EPA will assist State in development of a cooperative agreement. (b) Cooperative agreement will detail specific tasks, timetables, dollar amounts and working arrangements between EPA and DEQ.	Execution of a cooperative agreement. Implementation of cooperative agreement terms and conditions.	Satewide Statewide

Summary of Program Resources

FY 87

SUMMARY OF PROGRAM RESOURCES

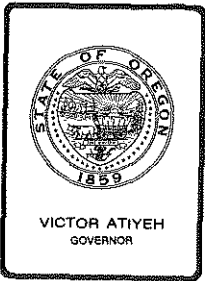
(July 1, 1986 - June 30, 1987)

<u>PROGRAM</u>	<u>RESOURCES</u>			
	Federal Grant Funds Requested	Non-Federal	Total	Staff-Years
Air Quality Program	\$1,629,115 (1,449,508)	\$2,079,620 (2,183,168)	\$3,708,735 (3,632,676)	65.0 (65.0)
Water Quality Program				
Section 106	\$ 766,604 (926,232)	\$1,529,447 (1,529,447)	\$2,296,051 (2,455,679)	48.5 (51.9)
Section 106 (GW)	\$ 82,675 (217,425)	-0- -0-	\$ 82,675 (217,425)	1.0 (3.0)
Underground Injection Control (SDWA)	\$ 95,450 (100,000)	\$ 38,841 (38,841)	\$ 134,291 (138,841)	3.0 (3.0)
Water Quality Planning (Section 205(j))	\$ 276,360 (100,000)	-0- -0-	\$ 276,360 (100,000)	6.0 (2.0)
Construction Grants (Section 205(g))	\$ 622,960 (367,046)	-0- -0-	\$ 622,960 (367,046)	8.0 (8.0)
Willamette Basin	-0- (160,783)	-0- -0-	-0- (160,783)	-0- (4.0)
Hazardous Waste Program (RCRA)	\$ 619,361 (475,639)	\$ 154,840 (460,416)	\$ 774,201 (936,055)	15.3 (18.5)
HW Permits	-0- (49,361)	-0- (49,362)	-0- (98,723)	-0- (2.0)
Pilot Project	-0- (20,000)	-0- (2,223)	-0- (22,223)	-0- (.1)
FY 87 Totals	\$4,092,525* (3,865,994)	\$3,802,748 (4,263,457)	\$7,895,273 (8,129,451)	146.8 (157.5)

(FY 86 figures are in parentheses.)

The amounts shown in the left-hand column above are federal funds requested by DEQ to fully fund the related FY 87 (July 1, 1986, to June 30, 1987) workplan commitments presented in the Program Document (Section II). The requested federal amounts are consistent with available EPA guidance. Final FY 87 federal grant resources are not yet available. Once a budget is adopted and Congress appropriates funds, grant amounts and, as necessary, program commitments will be reviewed and adjusted accordingly.

*Gramm-Rudman Reductions and other Congressional actions could considerably reduce this figure.



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item G, April 25, 1986, EQC Meeting

Proposed Adoption of Rules to Establish Chapter 340, Division 120, Siting and Permitting Requirements for Hazardous Waste and PCB Treatment and Disposal Facilities, and to Amend Division 110, Management of PCB

Background

During the 1985 session, the Oregon Legislature enacted Senate Bill 138. Later to be known as Oregon Laws 1985--Chapter 670 (see Attachment 8), this legislation establishes siting standards for hazardous waste and polychlorinated biphenyl (PCB) treatment and disposal facilities. Chapter 670 directs the Environmental Quality Commission to adopt implementing rules within 270 days of its effective date -- by April 9, 1986.

During the consideration of the legislation, the Department testified that 270 days was a tight period for it to draft and the Commission to adopt implementing rules. The Department expressed its intent to do its best to meet the 270 day requirement, but given the Commission's meeting schedule, the Department pointed out that the requirement might have to be exceeded. The legislative committee reviewing the bill did not change the 270 day requirement, but recognized that the Department might be unable to comply with this provision.

Chapter 670 requires the Commission and Department to address several new areas when considering an application for a hazardous waste or PCB treatment or disposal facility. These include the size and location of the facility, the origin of the waste, the need for the facility, transportation of waste to the facility and the applicant's qualifications. The Act also requires that PCB treatment and disposal be regulated as stringently as other hazardous waste.

During the past six months, the Department worked with a policy advisory committee, a technical advisors group and the general public to develop draft rules implementing Chapter 670 (SB 138). Prior to the recent public hearings, Department staff held 11 public information meetings around the state to solicit public input and focus attention on the rulemaking process. In addition, staff met with 12 county commissions to discuss facility siting.

The SB 138 policy advisory committee (PAC), appointed by the Director to assist the Department in drafting rules, prepared a report summarizing its recommendations. The report provides background on hazardous waste management in Oregon and these proposed rules. The committee addressed the major policy questions raised by Chapter 670 and strongly influenced the concepts and content of the proposed rules. The report of the PAC is attached (see Attachment 3).

A notice of the public hearings on the proposed rules was published in the Secretary of State's Bulletin of March 1, 1986. Additional notices for the public hearings and the written comment period were mailed to interested parties on February 13 and March 21, 1986. A news release announcing the public hearings and written comment period was mailed to all Oregon media. Personal telephone contact was made with the media in cities where the public hearings were scheduled.

Public hearings on the proposed rules were held in Portland, Baker, Arlington, Medford, and Bend during the week of March 17, 1986. Ninety-three people attended these public hearings and twenty-two testified. Most of the testimony and interest occurred at the Baker and Arlington hearings. This is due to local interest in a possible hazardous waste incinerator in Baker County and the existing Chem-Security Systems, Inc. (CSSI) site near Arlington.

Much of the testimony at the Baker hearing focused on the possible incinerator site near Lime, Oregon. While Department representatives were careful to describe the purpose of the hearing to the Baker media before the hearing and to those attending the hearing, the public wanted to go on record opposing an incinerator at Lime. Other testimony focused on concerns about hazardous waste transportation.

At the Arlington hearing, the public generally focused on the application of the proposed rules to the existing CSSI facility. Much of the testimony supported the recommendations contained in the PAC report and called for the proposed community participation rule to apply to the existing CSSI facility.

Only two people testified at the Portland hearing, one testified at the Medford hearing and none testified at the Bend hearing. Summaries of the public hearings, prepared by the hearings officers, are attached (see Attachment 5).

Written testimony was submitted by 35 people prior to the hearings period closure on March 28, 1986. In addition to letters from citizens, the Department received written comments from specific interests such as CSSI, Oregon State Public Interest Research Group (OSPIRG), Riedel Environmental Services, Concerned Oregonians for Proper Waste Disposal (COPWD), the State Department of Land Conservation and Development (DLCD), and Oregon Environmental Council (OEC). These comments generally address particular parts of the proposed rules. A summary of the written testimony is attached (see Attachment 6).

The Department has attempted to respond to each comment on the proposed rules raised by the public in verbal or written testimony. The Department's detailed Response to Testimony is in Attachment 4. A "Statement of Need for Rulemaking" is contained in Attachment 7. Oregon Laws 1985, Chapter 670, Section 44 requires the Environmental Quality Commission to adopt rules to carry out the provisions of that Act. ORS 466.020 authorizes the Commission to adopt rules to govern the management of hazardous waste.

Alternatives and Evaluation

Attachments 1 and 2 present the proposed rules as modified by the Department after studying verbal and written comments received during the public hearings. Discussed below are the key issues raised by the verbal and written testimony. The other issues are discussed in the Response to Testimony summary.

1. Where to Place the Rules

Existing hazardous waste management regulations are contained in Divisions 100 through 108 and PCB management regulations are contained in Division 110. At first, the staff proposed amending these existing divisions. The PAC recommended separating the proposed rules from the existing rules so the PAC could focus its efforts only on the proposed rules. Proposed Division 120 includes the siting standards as a separate division and is attached (see Attachment 1).

Divisions 100 through 108 principally incorporate federal rules by reference and occasionally include rules when the state program is different from the federal program. On the other hand, Division 110 (the PCB management rules) reprints most of the federal rules of 40 CFR 761 while including a few additional state rules. To make Division 110 consistent with Divisions 100-108, the Department is proposing to repeal the present Division 110 language and replace it with new language, which would adopt 40 CFR 761 by reference and include a few additional rules when the state program is different from the federal program. The rules would include provisions for PCB management as required by Chapter 670. The proposed amended Division 110 and 40 CFR 761 are attached (see Attachment 2 and 9).

2. Alternatives for Implementing Chapter 670

The rules would expand upon and clarify Chapter 670. One of the Department's rule making objectives is to create a procedure for siting that implements the law smoothly and understandably. Another objective is to gain public confidence in the procedure. A third objective is to reject inappropriate proposals or sites at the earliest possible date so that the applicant, the Department and local government do not expend unnecessary resources on an unacceptable proposal.

Two basic alternatives exist for implementing Chapter 670. Rules could provide fixed exclusionary standards that an applicant must meet. Or, rules could require an applicant to demonstrate through an environmental impact analysis that the proposed facility site adequately protects the public health and safety and the environment.

The draft rules blend the two approaches. A few exclusionary standards would be part of the first step of the application procedure. Several additional criteria are to be considered by local government in the second step of the application procedure to show land use compatibility. However, exceptions to these additional criteria could occur if the applicant demonstrates that public health and safety and the environment are adequately protected. The limited testimony received on this matter generally favored strict exclusionary standards.

3. On-Site and Off-Site Facilities

Chapter 670 allows the Commission to determine the classes of hazardous waste and PCB treatment and disposal facilities which shall be subject to these new rules. Note that the hazardous waste management rules of Division 100 to 110 (the technical standards) would continue to apply to all hazardous waste and PCB treatment and disposal facilities.

Section (2) of Rule 340-120-001 would make treatment and disposal facilities off the site of waste generation, and land disposal facilities on the site of waste generation, subject to all of the provisions of Division 120. Off-site facilities are typically large commercial facilities that serve many generators. Section (4) of Rule 340-120-001 would make hazardous waste and PCB facilities, except land disposal facilities, on the site of waste generation subject to only these Division 120 provisions:

Technology and Design	340-120-010(2)(c)
Property Line Setback	340-120-010(2)(e)
Owner and Operator Capability	340-120-010(2)(g)
Compliance History	340-120-010(2)(h)
Community Participation	340-102-020
Permit Application Fee	340-10-030

On-site facilities are noncommercial facilities where waste generators manage their own waste.

The Department has developed a table summarizing the requirements of Division 120 which would have to be met to obtain treatment or disposal permits for on-site and off-site facilities. The table is presented on the following page.

PROPOSED HAZARDOUS WASTE AND PCB TREATMENT
AND DISPOSAL PERMIT APPLICATION REQUIREMENTS

DIVISION 120 REQUIREMENTS	NEW FACILITY			EXISTING FACILITY	
	Off-Site(1)	On-Site Land Disposal	Other On-Site	Off-Site	On-Site
Application Procedure					
Step 1. Authorization to Proceed	Y(2)	Y			
Step 2a Expanded Land Use Compatibility Determination	Y	Y			
Step 2b Land Use Compatibility Determination (Existing requirement)	Y	Y	Y	Y	Y
Step 3. Technical (RCRA Part B) permit (Existing requirement)	Y	Y	Y	Y	Y
Mandatory criteria that must be met, to be considered by the Department					
Need	Y	Y		Y	
Capacity	Y	Y		Y	
Technology and design	Y	Y	Y	Y	
Location	Y	Y			
Property line setback	Y	Y	Y	Y	Y
Groundwater protection	Y	Y			
Owner & operator capability	Y	Y	Y	Y	
Compliance history	Y	Y	Y	Y	
Mandatory Criteria (with an exceptions procedure) that must be met, to be considered by local government:					
Separation from urban growth boundaries and several features	Y	Y			
Emergency services & medical care availability	Y	Y			
Two transportation highways and route safety to a facility	Y	Y			
Mandatory review committee	Y	Y	(3)	(3)	(3)
Respond to spills within 50 miles of the facility	Y	Y		Y	

(1) If the majority of waste treated or disposed of at an off-site facility is generated at the facility site, the facility can be located inside urban growth boundaries.
(2) A "Y" means the facility must meet this requirement.
(3) Optional, at the discretion of the Director.

Comments suggested that Division 120 should apply equally to on-site and off-site facilities since off-site facilities may have no greater impact on public health and safety and the environment than on-site facilities. However, the PAC recommended and the Department agrees that on-site treatment should be encouraged if the public health and safety and the environment are adequately protected. On-site facilities eliminate the transportation of waste from these facilities; would be supplemental to other manufacturing activities already operating; and generally handle smaller volumes and fewer types of waste than off-site facilities. On-site facilities would remain subject to the technical waste management requirements of Division 100 to 110.

Having considered the testimony, the Department has concluded that its original proposal is still valid. All of the siting rules, the three-step application procedure, including the Authorization to Proceed step, and the more detailed land use compatibility findings apply only to off-site facilities. The Department drafted these requirements to apply to the large, commercial off-site facilities. Applying them all to on-site facilities at this time would not be appropriate.

This does not mean that the Department is not concerned about the possible impacts of on-site treatment. The Department must ensure the protection of the public health and safety and the environment when permitting both off-site and on-site facilities. We recognize that a strong argument can be made for applying the siting standards equally to both off-site and on-site facilities. The Department plans to closely monitor the types of on-site treatment and the associated risks when these facilities are proposed. If necessary, the Department will come back to the Commission to amend these rules so more of them apply to on-site facilities.

Also, in its original draft, the Department attempted to handle the circumstance of a single company treating: a) waste generated at several plant sites at one location, or b) "incidental" quantities of waste generated at nearby industries. In Oregon, Tektronix currently operates a treatment facility at Beaverton that does both.

While most of the waste is now generated on-site, Tektronix testimony revealed that in the future significant quantities of waste treated at its Beaverton facility could come from other Tektronix plants and occasionally from nearby industries. If these off-site wastes were not treated at Beaverton, they would be transported to either the CSSI facility near Arlington or out-of-state for treatment or disposal. Other companies with multiple plant locations and/or nearby industries with compatible wastes may wish to operate facilities similar to the one at Tektronix (Beaverton) in the future. Because of our preference for treatment instead of disposal and the general lack of treatment alternatives available at this time, the Department believes that these treatment opportunities should be allowed inside urban growth boundaries, as long as the other requirements of the Division 120 are met.

Based on a recommendation from the PAC, the Department had proposed to allow "incidental" quantities of waste from off the site to be treated at a facility without jeopardizing its on-site status for the purposes of Division 120. This provision would allow a facility to assist other industries with occasional treatment needs. Testimony favored deleting "incidental" or replacing it with a more clear term.

After weighing the testimony, the Department has deleted the comment in the proposed rules concerning receiving incidental quantities of waste from off-site and has added the following to the proposed rules:

340-120-001(3)

(3) Facilities described in (2)(a) of this section that receive less than 50% of waste from off the site may be inside urban growth boundaries as defined by ORS 197.295 and therefore do not have to meet 340-120-010(d)(A)(i) and 340-120-015(1)(1).

340-120-001(5)

(5) For the purposes of this Division and with Department approval, a facility can receive as much as 10% of waste from off the site and be an on-site facility.

The effect of Section (3) is that an off-site facility can be located inside urban growth boundaries if 50 percent or more of the waste it treats is generated at the facility site. The effect of Section (5) is that an on-site facility that receives 10 percent or less of waste from off the site can remain an on-site facility for the purposes of these rules.

4. Three Step Application Procedure

Rule 340-120-005 would establish an additional step in the application procedure for facilities required to meet all of the siting provisions.

Presently, an applicant must obtain a land use compatibility statement, usually from local government, and then submit a detailed technical application to the Department. The additional step (requesting an Authorization to Proceed) would be the first step. It is a screen to eliminate inappropriate sites or proposals from further consideration. The Department believes this screening step will save time, resources and frustration for the applicant, local government and the Department. The screen contains several criteria that must be met to obtain an Authorization to Proceed. The screen provides an extra layer of protection for public health and safety and the environment and includes many of the provisions of Chapter 670.

The Department was careful to not use the word "approval" at the first step. Concern has been voiced that the applicant and public might assume that passing the first step would mean a permit would be granted. Obtaining an Authorization to Proceed does not in any way imply that an applicant will receive land use approval or a technical permit. Testimony supported this three step application procedure.

5. Initial Application Period

Rule 340-120-005 would also establish a period for the Department to accept applications, as required by Chapter 670. The Act allows the Commission to wait as long as 270 days after rule adoption to begin the application period. The PAC recommended and the Department agreed that the application process should begin as soon as possible so potential applicants are not needlessly delayed.

The initial period for an applicant to submit an Authorization to Proceed request would open May 15, 1986 and would close January 1, 1987. After the closure, the Department and Commission could act on any of the requests received. Following the initial period, the Department could not accept a new request until the Commission determines that there is a need for an additional facility. A prospective applicant would be expected to provide the information upon which the Commission could make its determination of need. No testimony was received on the proposed application period.

6. Permit Reapplication and Modification

Section 8 of proposed rule 340-120-005 would have required that most of the criteria of the Authorization to Proceed apply to existing facilities upon permit reapplication (renewal) and permit modification. Comments were received stating that permit modifications occur regularly, and the criteria should not have to be applied each time.

The Department generally agrees with the comments. The intent should be to apply the requirements listed in 340-120-005(8)(a) or (b) only upon a permit renewal. If a facility modification includes changing the type of treatment or disposal, then all of the provisions of Division 120 should apply. For example, all the siting and permitting requirements of Division 120 should apply to a proposal to add an incinerator at a facility that presently utilizes land disposal. In response to the comments, the Department has deleted the reference to modification in 340-120-005(8) and added a definition for a new facility in 340-120-001(6) to include adding a different type of treatment or disposal at an existing facility.

7. Setback for the Existing CSSI Facility

Chapter 670 prohibits the implementing rules adopted by the Commission from applying to Chem-Security during its permit renewal now underway. This permit could be issued for a maximum of ten years, although its duration has not yet been determined. Therefore, the PAC chose eight years as a realistic period to delay applying the Property Line Setback criterion to Chem-Security. This eight year period would give the company time to either acquire additional land or replan the use of its existing site. The Department proposed rule 340-120-005(9) which gives CSSI eight years to meet the setback requirements.

CSSI commented that that proposed Section 9 is inappropriate in the rules and incorrect if it implies that the next permit will be issued for eight years. That determination should be part of CSSI's permit proceeding and not part of these rules. The Department has responded to CSSI's testimony by adding a comment to the proposed rule stating that the duration of CSSI's next permit is not tied to the eight year period.

8. Capacity

Rule 340-120-010 contains the criteria which would have to be met to obtain an Authorization to Proceed. The criteria are Need, Capacity, Technology and Design, Location, Property Line Setback, Groundwater Protection, Owner and Operator Capability, and Compliance History. The Capacity criterion generated the most discussion within the PAC and is the most difficult one to address.

Much of the concern about Chem-Security's proposed PCB incinerator focused on its service area. Waste originating in states west of the Mississippi was to be brought to the facility via the company's Kettleman Hills, California facility. The Legislature did not want facilities in Oregon serving that large a service area.

The Commerce Clause of the U.S. Constitution limits each state's ability to restrict the free movement of commerce between states. For example, Oregon probably could not prevent waste originating in another state from coming to a facility located in Oregon, if legally challenged. However, the Commerce Clause and federal law do not require states to have facilities to serve waste originating in other states.

It makes sense to approach hazardous waste treatment and disposal on a regional basis since only a few facilities are needed to handle the existing and projected demand for service. Congress recently ratified the Northwest Interstate Compact on Low-Level Radioactive Waste Management (Northwest Compact) which addresses radioactive waste disposal among eight northwest states. Congressional action is necessary to exempt compacts from the Commerce clause. An interstate compact specifically for hazardous waste and ratified by Congress may be the best method to meet the needs of generators in the Pacific Northwest.

Proposed rule 340-120-010(2)(b) addresses the capacity of a proposed facility. A facility must be sized large enough to at least serve the needs of Oregon businesses. Also, a facility must not be sized larger than needed to serve the needs of businesses in states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management. Once built, theoretically any person could ship waste to a facility.

The Department received comments stating that the proposed upper limit on the size of a facility was both too tight and too lenient. Commenters argued that an off-site commercial facility such as an incinerator would likely be sized at the upper limit and all eight compact states would be served. To discourage facilities being sized at the upper limit

automatically, the Department has added this proposed language to 340-120-010(2)(b), Capacity:

(C) If the facility is sized to treat or dispose of more hazardous waste or PCB generated outside of Oregon than generated in Oregon, the applicant must demonstrate that the additional size is needed to make the proposed facility economically feasible.

Meanwhile, Riedel Environmental Services commented that proposed rule 340-120-010(2)(b) favored the CSSI site for an incinerator. This rule would have allowed the Commission to give preference to a proposed facility which is sized to minimize the risk of transporting waste in Oregon. Riedel believes it will be difficult to find a suitable location closer to the Portland metropolitan area than CSSI's Arlington site.

The Department proposed the language to address the likelihood of a facility in Oregon serving all eight Northwest Compact states. The language would allow the Commission to choose the facility more closely sized to the needs of Oregon generators if more than one facility is under consideration. The Department agrees that the proposed rule could be interpreted as Riedel did, however, and has modified the proposed preference language as follows:

(D) If all of the criteria of 340-120-010(2) are met, the Commission shall give preference to a proposed facility which is sized more closely to what is needed to treat or dispose of hazardous waste or PCB generated in Oregon.

The proposed language of (C) and (D) strikes a balance between providing a feasible market area for a facility while preventing an applicant from automatically sizing a proposed facility for the eight Northwest Compact states.

8. Property Line Setback

The Property Line Setback criterion would provide a buffer between waste management activities and surrounding land. A 250 foot separation distance would be required for on-site treatment or disposal facilities. This distance would apply to an on-site incinerator as well.

The rules had proposed that off-site facilities, except land disposal facilities, have at least a 500 foot separation distance. For example, an off-site commercial incinerator, such as the one proposed by Chem-Security would have at least this separation distance. Land disposal facilities, such as the disposal facility operated by Chem-Security, would have at least a 1,000 foot separation distance.

The primary objective for a separation distance is to provide an extra margin of safety for an accident. The separation distance also protects adjacent land uses. Some PAC and technical group members believe draft rule separation distances are not great enough. Since Oregon will likely host no more than a couple facilities at most, a greater separation distance for new facilities might be appropriate.

One comment stated that the setback distances are arbitrary and under the circumstances, should be 1,000 feet in all cases.

Because the setback provides an added margin of safety for unanticipated accidents, the Department cannot say that 500 feet is adequate for an incinerator but not for a landfill. Therefore, the Department believes it is prudent to have a setback requirement of 1,000 foot for all off-site facilities and has changed proposed rule 340-120-010(2)(e) to reflect this.

9. Mandatory Versus Flexible Land Use Criteria

Rule 340-120-015 would list the criteria that must be considered as part of the findings for land use compatibility. Several criteria must be addressed to implement Chapter 670 and to maximize protection of public health and safety and the environment. Many of these criteria are already defined in local comprehensive plans so they have been included in the land use compatibility step.

Before issuing a permit, the Department is ultimately responsible for determining if a proposed hazardous waste or PCB facility is compatible with the statewide land use goals and the local comprehensive plan. However, the Department expects local government to determine the compatibility and to make findings supporting its decision. This process is governed by OAR Chapter 660, Division 31, State Permit Compliance and Compatibility.

Rule 340-120-015 would give local government the opportunity to consider the listed criteria when findings are made to support a compatibility decision. If local government does not address the criteria during its land use compatibility review, the Department would consider the criteria and make appropriate findings. The criteria of this rule would not be fixed and exceptions to the criteria would be allowed.

The Department received comments requesting the criteria of 340-120-015 to be met, not considered. The Department's original intent was to require the criteria of 340-120-015 to be met, but to allow an exceptions procedure if the public health and safety and the environment are adequately protected. In reviewing all the comments on this issue, the Department has concluded that our intent would be best expressed if the criteria were mandatory and the exceptions procedure were more clear. Therefore, the proposed rule has been modified to make the criteria mandatory (for example, all the shoulds have been changed to "shalls") and the exceptions procedure of 340-120-015(2) has been enhanced. While the Department believes this change is one of perception only, the new language better expresses our intent.

10. Distance From an Urban Growth Boundary

Rule 340-120-015(1)(a) would separate a proposed off-site facility from an urban growth boundary to minimize the potential for public exposure. A one to three mile separation would be required depending on the population inside the boundary.

The Department received comments favoring all off-site facilities being at least three miles from urban growth boundaries. Others commented that the separation distance of three miles recommended for urban growth boundaries around larger cities in effect eliminates any facility siting in the Willamette Valley.

From a planning perspective, the separation distance from urban growth boundaries around larger cities should be even greater than three miles to assure future low density populations near facilities. But the Department had to balance this need with the desire to not exclude most of the Willamette Valley from consideration. Greater separation distances from larger cities would tend to do just that. Thus, no change has been made in proposed rule.

11. Community Participation

Rule 340-120-020 would require community participation during an off-site facility application review. Meaningful involvement by the host community is essential to gain local acceptance and approval. The Department and PAC reviewed several studies and reports which emphasized the importance of community participation. These documents generally concluded:

- a. Residents near a proposed facility must be involved in the permitting process from the very start;
- b. These residents often believe that government is not looking out for their interests;
- c. A local committee may be the best method to provide a forum for citizen questions and concerns;
- d. The local community should receive benefits to offset the perceived actual liability of hosting a facility.

Early in this rule drafting process, the Department and the PAC recognized the need to have citizens living near a proposed treatment or disposal facility be part of the Department's application review process. Local community participation appears essential if Oregon is to site a new facility.

Proposed rule 340-120-020 requires the Director to appoint a locally based committee to review a proposal to site a new off-site commercial facility. The proposed rule gives the Director the option but does not require a committee for a new on-site facility or an existing facility.

Much of the citizen testimony received at the Arlington hearing favored requiring a committee for the existing CSSI facility. However, CSSI questioned the Department's and Commission's authority to allow a committee to be appointed by the Director even as an option.

The Director does not need specific legislative authority to appoint these committees. Because local community participation is so important in the siting of facilities, the Department proposes to require a committee when new facilities are being considered. However, the Department does not support requiring committees for existing facilities. In some cases a committee may not be needed, so requiring a committee in all cases is not appropriate. Although the Department appreciates the comments received from CSSI, OEC and several citizens of Gilliam County, no change in the proposed Community Participation rule has been made.

12. Applicant/Local Government Agreement

Rule 340-120-020(5) would recommend that local government and an applicant consider negotiating an agreement to address a proposed facility's potential impact. A community is usually reluctant to host a facility because often its residents believe they are assuming a burden for the benefit of others. Unless this burden is addressed, residents near a proposed site may not accept a facility under any circumstances.

An agreement between the applicant and local government could address those things that might need change or improvement because of the facility's real or perceived burden on a local community. An agreement could address the adequacy of or need for fire, police and health department training and equipment, special community monitoring, and transportation safety. These have and will continue to be of significant public concern when a new facility is proposed and an agreement is one way to address them in a positive and constructive manner.

The Department and Commission do not have clear statutory authority to require an agreement between applicants and local government. Therefore, Section (5) of Rule 340-120-020 would only recommend that such an agreement be negotiated.

Comments were submitted stating that the proposed rule is outside of the Commission's jurisdiction. The Department does not agree. The proposed rule is a recommendation that an agreement be considered by an applicant and local government when a new facility is proposed. The Department and Commission cannot lose sight of the importance of providing a mechanism for siting needed facilities. Local community concerns will have to be addressed. The Department believes it is very important to get those concerns on the table and hopefully resolved early in the siting process. Trying to hide or ignore those concerns may lead to local rejection of the siting proposal later in the process.

The Department believes the recommendation is appropriate and does not support deleting it. Language has been added to 340-120-020 to state the Department's intention to address the issues discussed in this rule or similar issues in the permitting process if needed to protect the public health and safety and the environment.

13. Hazardous Waste Transportation

Rule 340-120-025 addresses the transportation of waste. Based upon public input to date, the transportation of waste is of greater concern than any other facility siting issue. Rule 340-120-025 would require a facility owner or operator to own or contract for a spill response team to respond to spills within 50 miles of the facility. If a transporter bringing waste to the facility failed to arrange for a spill cleanup anywhere in the state, the facility owner or operator would have had to arrange for the cleanup under the proposed rule.

The Department received eight comments from citizens stating that proposed rule 340-120-025, does not go far enough in regulating hazardous waste transportation and ensuring immediate spill cleanup. CSSI commented that the proposed rule is completely unacceptable because it assigns responsibility to a facility owner for a spill the owner did not cause and over which the owner has no control. If the rule is adopted, CSSI states that it will be forced to accept only waste transported by its own transporters in order to avoid unlimited liability for third party spills.

After reviewing its ability to regulate the transportation of hazardous waste, the Department has modified proposed rule 340-120-025 by deleting the last sentence. While the Department believes it is crucial that a hazardous waste spill be adequately cleaned up, we likely do not have the authority to require a facility owner to clean up spills not under its control, traveling to but not near a facility.

Proposed rule 340-120-025 has been changed by removing the last sentence:

(1) An emergency response team owned by or under contract to the owner or operator of the facility shall be located within 25 miles of the facility. The team shall be capable of immediately responding to spills, occurring within 50 miles of the facility, of waste traveling to the facility. [If the transporter of any waste traveling to the facility and within the state fails to cleanup any spill occurring within the state to the Department's satisfaction, the facility owner shall immediately arrange for such cleanup upon a request by the Department].

14. PCB Management Rules

PCB disposal is currently regulated by Division 110. The proposed rules would entirely delete the Division 110 text as it now exists, incorporate the federal rules of 40 CFR 761 by reference, and add language to implement Chapter 670.

Rule 340-110-070 would require an incinerator designed to dispose of PCB to also incinerate hazardous waste. Chapter 670 requires a PCB incinerator to incinerate a reasonable ratio of hazardous waste. The Department considered two alternatives to implement Chapter 670. The ratio of hazardous waste could be set in a rule. Or, the Commission could determine a reasonable ratio for each proposed facility. The Department favors establishing a minimum ratio of 50 percent now.

Both Rules 340-110-070(5) and 075(2) would require an application for PCB disposal to include the same information already required for hazardous waste incineration and disposal.

15. Future Changes in These Proposed Rules

The Department is entering a new area with these proposed rules to regulate the siting of hazardous waste and PCB treatment and disposal facilities. These rules are the Department's best effort to implement Chapter 670 (Senate Bill 138). However, we recognize that future developments may require the Department to come back to the Commission with proposed rule modifications. We must ensure that these rules do not act as a roadblock to the construction and operation of needed facilities, but we must also ensure that these rules go far enough in protecting the public health and safety and the environment. The Department will closely monitor the implementation of these rules and propose rule amendments as necessary.

Summation

1. The Commission is required to adopt implementing rules for Oregon Laws 1985--Chapter 670 by April 9, 1986.
2. Chapter 670 requires the Department and Commission to address several new areas when considering an application for a hazardous waste or PCB treatment or disposal facility. These include the size and location of the facility, the origin of the waste, the need for the facility, transportation of waste to the facility, and the applicant's qualifications.
3. The Department proposes that the Commission adopt a new division containing siting and permitting requirements for hazardous waste and PCB treatment and disposal facilities.
4. The Department proposes that the entire existing rule division managing PCB be replaced with a rule division which primarily references the federal rules of 40 CFR 761.
5. All hazardous waste and PCB facilities off the site of waste generation and land disposal facilities on the site of waste generation would be subject to all of the new siting and permitting requirements. Other than land disposal facilities, facilities on the site of waste generation would be subject to only some of the new requirements. All facilities must still meet the Department's technical standards that are already contained in Divisions 100 through 110.
6. An additional step in the application procedure would be established to eliminate inappropriate proposals or sites from further consideration. This screening step, called an "Authorization to Proceed", mandates that certain criteria be met before applying for local land use approval or a technical permit from the Department.

7. An initial application period for proposed facilities would be established, beginning May 15, 1986 and ending January 1, 1987. Applications accepted after January 1, 1987, must be preceded by a Commission finding that a need exists for a new facility.
8. A facility would not be sized less than what is needed, in conjunction with existing facilities, to treat or dispose of waste generated, or projected to be generated over the next ten years, in Oregon. A facility would not be sized greater than needed to treat or dispose of waste generated, or reasonably projected to be generated over the next ten years, in states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management.
9. The Commission shall give preference to a proposed facility which is sized more closely to what is needed to treat or dispose of hazardous waste or PCB generated in Oregon.
10. A property line setback of 250 feet would be required for on-site treatment and disposal facilities, except land disposal facilities. A 1000 foot setback would be required for off-site facilities and on-site land disposal facilities.
11. A property line setback would be required for existing facilities. The Chem-Security Systems, Inc. disposal facility would have to meet the property line setback requirement in eight years from the effective date of these rules.
12. Land use compatibility findings would have to consider several additional criteria to protect public health and safety and the environment.
13. A site-specific citizen advisory committee would be appointed by the Director to encourage community participation during a facility application review. A committee could be continued by the Director to provide a forum for the public during the facility's operation.
14. An agreement between an applicant and local government is recommended to address a proposed facility's potential local impact and perceived burden.
15. An incinerator licensed to burn PCB would have to burn more hazardous waste than PCB.
16. Five public hearings on the proposed rules were held during the week of March 17, 1986. Notice of the hearings was published in the Secretary of State's Bulletin on March 1, 1986. Supplemental notices were mailed to interested parties and the Oregon media.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission adopt rules establishing siting and permitting requirements for hazardous waste and PCB treatment and disposal facilities (Division 120), as proposed in Attachment 1, and replacing the existing rules for the management of PCB (Division 110) with new language, as proposed in Attachment 2.



Fred Hansen

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| Attachments 1. | Proposed Division 120 |
| 2. | Proposed Amended Division 110 |
| 3. | The Report of the Hazardous Waste (SB 138) Policy
Advisory Committee |
| 4. | The Department's Response to Testimony |
| 5. | Hearings Officer's Reports |
| 6. | Summary of Written Testimony |
| 7. | Rulemaking Statements |
| 8. | Oregon Laws 1985 -- Chapter 670 (SB138) |
| 9. | Federal PCB rule (r0 CFR 761) |
| 10. | Northwest Interstate Compact on Low-Level Radioactive
Waste Management. |
| 11. | Agenda Item F, March 14, 1986 EQC Meeting |

Bob Danko:f
Phone: 388-6146
March 27, 1986

PROPOSED

DIVISION 120

HAZARDOUS WASTE MANAGEMENT

Additional Siting and Permitting Requirements for Hazardous Waste and PCB
Treatment and Disposal Facilities

- | | |
|-------------|--|
| 340-120-001 | Purpose and Applicability. |
| 340-120-005 | Permitting Procedure. |
| 340-120-010 | Contents of an Authorization to Proceed Request. |
| 340-120-015 | Land Use Compatibility Findings. |
| 340-120-020 | Community Participation. |
| 340-120-025 | Off-Site Transportation Emergencies. |
| 340-120-030 | Permit Application Fee. |

Authority: Oregon Laws 1985, Chapter 670; ORS 468, including 468.020; ORS 466, including 466.020; and ORS 183.

Purpose and Applicability

340-120-001(1) To protect the public health and safety and the environment, the Commission finds that it is in the state's best interest to more fully regulate and review proposals to treat or dispose of hazardous waste and PCB. The purpose of this Division is to establish a supplemental siting and permitting procedure for most types of hazardous waste and PCB treatment and disposal facilities.

(Comment: Under Federal law hazardous waste incineration and other treatment techniques are considered "treatment" and PCB incineration and other treatment techniques are considered "disposal." To be consistent, Division 120 utilizes the same definitions).

(2) All parts of this Division apply to new:

(a) Hazardous waste and PCB treatment and disposal facilities located off the site of waste generation (off-site); and

(b) Hazardous waste and PCB land disposal facilities located on the site of waste generation (on-site).

(3) Facilities described in (2)(a) of this section that receive less than 50% of waste from off the site may be located inside urban growth boundaries as defined by ORS 197.295 and therefore do not have to meet 340-120-010(d)(A)(i) and 340-120-015(1)(a).

(4) New hazardous waste and PCB treatment and disposal facilities, other than land disposal facilities, located on the site of waste

generation (on-site), are only subject to these parts of Division 120:

340-120-010(2)(c)	Technology and Design;
340-120-010(2)(e)	Property Line Setback;
340-120-010(2)(g)	Owner and Operator Capability;
340-120-010(2)(h)	Compliance History;
340-120-020	Community Participation;
340-120-030	Permit Application Fee.

(5) For the purposes of this Division, a facility can receive, with the Department approval, as much as 10% of waste from off the site and be an on-site facility.

(6) For the purposes of this Division, a new facility means:

(a) A facility for which an original permit application was submitted after the effective date of this Division, or

(b) A facility where a different type of treatment or disposal is being proposed (i.e., adding incineration at a facility utilizing disposal, or changing from chemical treatment to biological treatment at a facility).

(7) This Division does not apply to:

(a) Portable hazardous waste and PCB treatment and disposal facilities that are located on a single site of generation (on-site) less than 15 days each year;

(b) Hazardous waste and PCB treatment or disposal sites involved in remedial action under ORS 466 or closing under Divisions 100 through 110 of this chapter;

(c) Facilities treating hazardous waste pursuant to the recycling requirements of 40 CFR 261.6;

(d) Emergency permits issued by the Director according to 40 CFR 270.61; and

(e) Facilities permitted by the Department to manage municipal or industrial solid waste, if the hazardous waste the facilities treat or dispose of is excluded from regulation by 40 CFR 261.5.

(8) The requirements of this Division are supplemental to those of Divisions 100 through 110 of this Chapter. The definitions of 340-100-010 and 340-110-003 apply to this Division.

Permitting Procedure

340-120-005(1) A three step permitting procedure is required for facilities listed in 340-120-001(2). The three steps are:

(a) Submit a request for and obtain an Authorization to Proceed from the Department;

(b) Submit a request for and obtain a Land Use Compatibility Statement from the local government with land use jurisdiction or as applicable, from the Department; and

(c) Submit a complete application for and obtain a treatment or disposal permit pursuant to Divisions 105, 106 and 110 of this Chapter from the Department, or as applicable, from the Commission.

(2) An initial period is established during which the Department shall accept requests for an Authorization to Proceed. The initial period begins May 15, 1986 and ends January 1, 1987. The Department shall wait until at

least the end of the initial period before approving or denying any of the requests.

(3) Requests for an Authorization to Proceed received by the Department after January 1, 1987 must include information to allow the Commission to find there is a need for a new facility. The Department cannot approve an Authorization to Proceed request received after January 1, 1987 until the Commission makes this finding.

(4) Each request for an Authorization to Proceed will be reviewed for completeness by the Department within 90 days of its receipt. If an applicant fails to correct deficiencies within 90 days of written notice from the Department, the Department may deny the request.

(5) After obtaining an Authorization to Proceed and a Land Use Compatibility Statement, an applicant may apply for a hazardous waste or PCB treatment or disposal permit pursuant to Divisions 105, 106 and 110 of this Chapter.

(6) To retain an Authorization to Proceed, an applicant shall:

(a) Submit a request to the appropriate planning jurisdiction for the Land Use Compatibility Statement within 90 days of issuance of the Authorization to Proceed;

(b) Submit an application for a treatment or disposal permit to the Department within 6 months of issuance of the Land Use Compatibility Statement.

(7) If the Department or Commission denies the permit, the Authorization to Proceed is revoked.

(8) The owner of an existing facility with an effective permit must reapply according to the provisions of 340-105-010(4) before the expiration of the existing permit. Upon reapplication:

(a) The applicant of a facility described in 340-120-001(2) shall demonstrate the criteria of 340-120-010(2)(a)(A), (b)(B), (b)(C), (c), (e), (g) and (h) and 340-120-025 are being met. (b) The applicant of a facility described in 340-120-001(4) shall demonstrate that the Property Line Setback criterion of 340-120-010(2)(e) is being met.

(9) The property Line Setback criterion of 340-120-010(2)(e) shall apply to the existing Chem-Security Systems, Inc. hazardous waste and PCB disposal facility eight years from the effective date of this rule.

(Comment: Section 9 of this rule does not pertain to or determine the duration of any permit issued by the Commission to Chem-Security in response to the application for a permit pending before the Commission on the effective date of this rule.)

Contents of an Authorization to Proceed Request.

340-120-010(1) An Authorization to Proceed request shall demonstrate that the proposed facility meets the criteria presented in 340-120-010(2).

If the facility does not meet all of the criteria, the Department shall deny the request.

(2) Criteria that must be met to obtain an Authorization to Proceed:

(a) Need.

(A) The facility is needed because:

(i) Of a lack of adequate current treatment or disposal capacity to handle hazardous waste or PCB generated by Oregon companies; or

(ii) Its operation would result in a higher level of protection of the public health and safety or environment; or

(iii) Its operation will significantly lower treatment or disposal costs to Oregon companies, excluding transportation costs within states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management as set forth in ORS 469.930.

(B) The facility shall significantly add to the range of the hazardous waste or PCB handled or to the type of technology already employed at a permitted treatment or disposal facility in states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management.

(C) The Department may deny an Authorization to Proceed request if the Department finds that capacity at other treatment or disposal facilities negate the need for a particular facility in Oregon.

(b) Capacity.

(A) The facility shall not be sized less than what is needed, in conjunction with existing facilities, to treat or dispose of hazardous waste or PCB generated, or reasonably projected to be generated over the next 10 years, in Oregon.

(B) The facility shall not be sized greater than needed to treat or dispose of hazardous waste or PCB generated, or reasonably projected to be generated over the next 10 years, in states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management.

(C) If the facility is sized to treat or dispose of more hazardous wastes or PCB generated outside Oregon than hazardous waste or PCB generated in Oregon, the applicant must demonstrate to the Department that the additional size is needed to make the proposed facility economically feasible.

(D) If all of the criteria of 340-120-010(2) are met, the Commission shall give preference to a proposed facility which is sized more closely to what is needed to treat or dispose of hazardous waste or PCB generated in Oregon.

(c) Technology and Design. The facility shall use the best available technology as determined by the Department for treatment and disposal of hazardous waste and PCB. The facility shall use the highest and best practicable treatment and/or control as determined by the Department to protect public health and safety and the environment.

(d) Location.

(A) The facility shall be sited at least one mile from:

(i) Areas within urban growth boundaries as defined by ORS 197.295;

(ii) Wilderness, parks, and recreation areas as designated or identified (if appropriate) in the applicable local comprehensive plan or zoning maps;

(iii) Schools, churches, hospitals, nursing homes, retail centers, stadiums, auditoriums and residences except those owned by the applicant and necessary for the operation of the facility.

(B) The Department may consider a lesser distance for (A)(ii) and (A)(iii) if the applicant demonstrates that the lesser distance adequately protects the public health and safety and the environment.

(e) Property Line Setback.

(A) Hazardous waste and PCB treatment and disposal facilities, other than land disposal facilities, on the site of waste generation shall have at least a 250 foot separation between active waste management areas and facilities, and property boundaries.

(B) Hazardous waste and PCB treatment and disposal facilities off the site of waste generation and land disposal facilities on the site of waste generation shall have at least a 1,000 foot separation between active waste management areas and facilities, and property boundaries.

(f) Groundwater Protection.

(A) Using the Groundwater Quality Protection Evaluation Matrix as shown in Table 2 of this Division:

(i) Surface impoundments, land treatment facilities and waste piles shall only be located on an area rated as 2 or 3;

(ii) Landfills shall only be located on an area rated as 3.

(B) Hazardous waste and PCB facilities not listed in (A)(i) or (A)(ii) need not meet this criterion to obtain an Authorization to Proceed.

(g) Owner and Operator Capability. The owner, any parent company of the owner and the operator must demonstrate adequate financial and technical capability to properly construct and operate the facility. As evidence of financial capability, the following shall be submitted:

(A) Financial statements of the owner, any parent company of the owner, and the operator audited by an independent certified public accountant for three years immediately prior to the application;

(B) The estimated cost of construction and a plan detailing how the construction will be funded; and

(C) A three year projection, from the date the facility is scheduled to begin operating, of revenues and expenditures related to operating the facility. The projection should have sufficient detail to determine the financial capability of the owner, any parent company of the owner and the operator to properly operate the facility.

(h) Compliance History.

(A) The compliance history in owning and operating other similar facilities, if any, must indicate that the owner, any parent company of the owner and the operator have an ability and willingness to operate the proposed facility in compliance with the provisions of ORS 466 and any permit conditions that may be issued by the Department or Commission. As evidence of ability and willingness, the following shall be submitted:

(i) A listing of all responses to past actual violations identified by EPA or the appropriate state regulatory agency within the five years immediately preceding the filing of the request for an Authorization to Proceed at any similar facility owned or operated by the applicant, owner, any parent company of the owner or operator during the period when the actions causing the violations occurred; and

(ii) Any written correspondence from EPA and the appropriate state regulatory agency which discusses the present compliance status of any similar facility owned or operated by the applicant, owner, any parent company of the owner or operator.

(B) Upon request of the Department, the applicant shall also provide responses to the past violations identified prior to the five years preceding

the filing of an Authorization to Proceed and the specific compliance history for a particular facility owned or operated by the applicant, any parent company of the owner or operator.

Land Use Compatibility Findings.

340-120-015(1) For facilities listed in 340-120-001(2), the land use compatibility statement of 340-105-013 must include findings that at least considered the following criteria:

(a) To assure low density populations around a facility, the facility shall be sited at least the following distances from an acknowledged urban growth boundary:

(A) One mile from areas within an urban growth boundary containing a population of 2500 people or less;

(B) Two miles from areas within an urban growth boundary containing a population between 2500 and 10,000 people; and

(C) Three miles from areas within an urban growth boundary containing a population of 10,000 people or greater.

(b) The facility shall be sited at least one mile from the following, as designated or identified (if appropriate) in the comprehensive plan or on zoning maps:

(A) Schools, churches, hospitals, nursing homes, retail centers, stadiums, auditoriums or residences not owned by the applicant;

(B) Wilderness, parks, and recreation areas;

(C) Scenic view sites;

(D) Federal and State scenic waterways;

(E) Destination resorts;

(F) Rural communities and rural residential areas;

(G) Public airports.

(c) The facility shall be sited at least one quarter mile from the following, as designated or identified (if appropriate) in the comprehensive plan or on zoning maps;

(A) Perennial surface water (including rivers, streams, lakes, oceans, and reservoirs), estuaries and wetlands;

(B) Historic and cultural areas;

(C) Ecologically and scientifically significant natural areas;

(D) Municipal watersheds;

(E) Flood hazard areas;

(F) Slide hazard areas;

(G) Willamette River Greenway;

(H) Coastal shorelands, beaches and dunes.

(I) Active seismic faults.

(d) The proposed facility is allowable in the applicable zone and will comply with all applicable development standards in the local land use regulations.

(e) The facility shall not prevent the use of adjacent lands for uses permitted or otherwise allowed in the applicable zone.

(f) Emergency services, including medical care, to respond to and address emergencies and accidents at the facility or involving wastes traveling on local transportation routes to the facility have been identified and their adequacy has been assessed.

(g) The facility shall have more than one transportation highway to it.

(h) The appropriate city, county and state highway or transportation departments have reviewed the local transportation routes to the facility for safety and their recommendations for improvements shall be implemented prior to first waste receipt at the facility.

(2) The findings made by the local government with land use jurisdiction according to Section (1) shall state if the applicant requested an exception to any criteria, or if the local government did not consider any of the criteria. An exception may be approved by the local government or by the Department if the applicant demonstrates that the public health and safety and the environment are adequately protected by allowing the exception or if the exception provides substantially equivalent protection as compared to the criterion. The findings shall give a detailed justification for each exception allowed by local government or the Department.

(3) The local government with land use jurisdiction should act on a land use compatibility request within 180 days after a complete request was submitted by the applicant. If local government does not wish to act on the compatibility request or address any of the criteria of Section (1) of this rule, the Department shall act on the request or prepare findings for the criteria. The Department is ultimately responsible for determining compliance with state land use goals the purpose of issuing a permit.

Community Participation.

340-120-020(1) The Commission finds that local community participation is important in the siting and in reviewing the design, construction and operation of hazardous waste and PCB treatment and disposal facilities.

(2) To encourage local participation in the siting of a proposed facility described in 340-120-001(2), the Director shall appoint and utilize a committee comprised at least partly of residents living near to, or along transportation routes to, the facility site. The committee shall be appointed as soon as feasible after the Department receives an Authorization to Proceed request. At least one half of the appointments shall be from a list of nominees submitted by the local government with land-use jurisdiction. The Director shall appoint the chairperson of the committee.

(3) The Director may appoint a committee to review a proposed facility described in 340-120-001(3).

(4) The Director may continue a committee authorized in Section (2) and (3) or appoint a new committee to review the operation of a facility once it is located and constructed.

(Comment: The committee shall provide a forum for citizen comments, questions and concerns about the site and facility and promote a dialogue between the community of the proposed facility and the company interested in siting the facility. The committee shall prepare a written report

summarizing local citizen concerns and the manner in which the company is addressing these concerns. The report shall be considered by the Department and Commission and local government during the consideration of the proposed facility).

(5) The Department recommends that the local government and applicant consider negotiating an agreement appropriate for the proposed facility's potential local impact. The agreement might consider these and other issues:

(a) Training and equipping local fire, police and health department personnel to respond to accidents, spills and other emergencies;

(b) Special monitoring both on and off-site for worker and community health status;

(c) Road improvements and maintenance to assure safe transportation of waste to the site;

(d) Possible changes in property values near the site due to the proposed facility;

(e) A plan to resolve conflicts or disagreements that might develop between the facility operator and the community.

(6) When issuing a treatment or disposal permit pursuant to Divisions 105, 106 and 110 of the Chapter, the Department, or as applicable, the Commission, may impose requirements addressing the issues described in Section (5) of this rule or other similar issues to protect the public health and safety and the environment.

Off-Site Transportation Emergencies

340-120-025(1) An emergency response team owned by or under contract to the owner or operator of the facility shall be located within 25 miles of the facility. The team shall be capable of immediately responding to spills, occurring within 50 miles of the facility, of waste traveling to the facility.

Permit Application Fee

340-120-030(1) The intent of the permit application fee is to cover the Department's costs, in investigating and processing the application. For new hazardous waste and PCB treatment and disposal facilities, the maximum application processing fee is \$70,000. For existing facilities, the maximum fee is \$50,000. These fees include the fees required by Table 1 of Division 105.

(2) Any portion of the application processing fee for a treatment and disposal facility which exceeds the Department's expenses in reviewing and processing the application shall be refunded to the applicant.

(3) The fee described in Section (1) is payable upon submission of an Authorization to Proceed request, if such a request is required, or a permit application.

TABLE 1

Matrix Legend

Uppermost Aquifer - The first body of saturated rock, alluvium, or other naturally occurring material that contains sufficient permeability to store, transmit, and yield sufficient quantities of water to wells or springs so that the wells can serve as a practical source of water.

Unconfined aquifer - Unconfined is synonymous with water table. A saturated geologic unit where the hydrostatic pressure at the upper surface of the water body is atmospheric.

Confined Aquifer - Confined is synonymous with artesian. A saturated geologic unit that contains water under sufficient hydrostatic pressure to cause the water level in a well to stand above the bottom of the overlying confining layer.

Aquitard - A saturated geologic unit which yields inappreciable quantities of water compared to an aquifer but through which appreciable leakage of water is possible.

Aquiclude - A saturated geologic unit which yields inappreciable quantities of water compared to an aquifer but through which appreciable leakage of water is not possible.

Hydraulic Conductivity (K) - The quantity of groundwater flowing through a waterbearing material in one unit of time through a unit cross-sectional area under a driving force of one unit of hydraulic head change per unit length. This is usually expressed as gallons per day per foot squared (gpd/ft²), or feet per day (ft/day). This is an expression of a geologic unit's ability to transmit a fluid. In the matrix, K values refer to both the unsaturated zone above the aquifer and the saturated aquifer. High K's refer to formations which are rapidly draining, such as, gravels, sand, karst limestone, permeable basalt, and other fractured igneous and metamorphic rocks. Medium K's refer to formations with some permeability such as clays, glacial tills, shales and unfractured metamorphic and igneous rocks. General K values would be:

High K - $\geq 1 \times 10^3$ gal/day/ft²,

Medium K - Between 1×10^3 and 1×10^{-3} gal/day/ft², and

Low K - $\leq 1 \times 10^{-4}$ gal/day/ft².

Sole Source Aquifer - An aquifer which provides the only source of drinking water. No other ground or surface water supplies are available.

TABLE 2. *(a) Hazardous Waste and PCB Facility Site Preliminary Groundwater Quality Protection Evaluation Matrix
Uppermost Aquifer *(c)

Aquifer Type	Uppermost Aquifer *(c)				
	Unconfined Aquifer			Confined Aquifer	
Beneficial uses within one mile downgradient	High Hydraulic conductivity and Productivity	Medium Hydraulic Conductivity and Productivity	Low Hydraulic Conductivity and Productivity	Aquitard	Aquiclude
Public/private Sole Source Aquifer *(b)	1	1	1	1	3
Present or potential public/private drinking water and/or livestock water supply and irrigation	1	1	2	2	3
Aquifer discharges to fresh or salt water wetlands or marshes.	1	2	3	2	3
Aquifers discharges to surface water body with established uses.	1	1	2	1	3
Industrial	1	2	3	3	3
Treatment required for drinking or industrial use.	2	2	3	3	3
Total dissolved solid level naturally greater than 10,000 mg/L; no identified uses. Does not meet drinking water standards	3	3	3	3	3

Protection Levels: 1. Proposed facility site does not meet groundwater protection criterion.
2. Proposed facility site meets initial groundwater protection screening criterion but the site has limitations which must be addressed in detail in the Part B application.
3. Proposed facility site meets initial groundwater protection screening criterion.

*(a) Table 1 defines terms of the matrix.

*(b) Unless otherwise noted groundwater meets drinking water standards without treatment.

*(c) Uppermost Aquifer and other Aquifers hydraulically interconnected.

Note: Existing Division 110 will be entirely replaced by Division 110, as proposed in this attachment.

Attachment 2
Agenda Item G
April 25, 1986

PROPOSED

DIVISION 110

HAZARDOUS WASTE MANAGEMENT

Polychlorinated Biphenyls (PCB)

- 340-110-001 Purpose, Scope and Applicability.
- 340-110-003 Definitions.
- 340-110-020 Manufacturing, Processing, Distribution in Commerce and Use of PCB and PCB Items.
- 340-110-040 Marking of PCB and PCB Items.
- 340-110-060 Treatment and Disposal.
- 340-110-065 Storage for Disposal.
- 340-110-070 Incineration.
- 340-110-075 Landfilling.
- 340-110-077 Permits.
- 340-110-080 Records and Monitoring.

Authority: ORS Chapter 468, including 468.020; ORS 466, including 466.020 and 466.505 to .530; and ORS 183.

Purpose, Scope and Applicability.

340-110-001 (1) The purpose of this Division is to establish requirements for the storage, treatment, disposal and marking prior to disposal of PCB and PCB items.

(2) These regulations are in addition to and do not preempt any local, state or federal statutes or regulations.

(3) This Division incorporates, by reference, PCB management regulations of the federal program, included in 40 CFR Part 761, into Oregon Administrative Rules. Persons must consult 40 CFR Part 761 in addition to this Division to determine all applicable PCB management requirements. Persons must also consult Division 120 of this chapter for additional siting and permitting requirements for PCB disposal.

Definitions.

340-110-003 (1) The definitions of the following sections are added to 40 CFR 761.3.

(2) The definitions of OAR 340-100-010.

(3) For the purpose of this Division:

"Agency's Regional Administrator in the EPA Region in which the PCBs are located" means the Department.

"Agency" means the Department.

"Approve" means permit.

"Approved" means permitted.

"Approval" means permit.

"Assistant Administrator for Pesticides and Toxic Substances" means the Department.

"Appropriate Regional Administrator" means the Department.

"Chemical Waste Landfill" means PCB landfill.

"Environmental Protection Agency" and "EPA" mean the Department.

"Initial Report" means application.

"Receive Written Approval" means obtain a permit.

"Regional Administrator" means the Department.

Manufacturing, Processing, Distribution in Commerce and Use of PCB and PCB Items.

340-110-020(1) The provisions of 40 CFR 761.20 through 761.39 are deleted.

(Comment: The requirements of these parts are administered by the U.S. Environmental Protection Agency and not the Oregon Department of Environmental Quality).

Marking of PCB and PCB Items.

340-110-040(1) The provisions of 40 CFR 761.40 through 761.59 are applicable only as they relate to items removed from service for disposal.

Treatment and Disposal.

340-110-060(1) Sections (2) through (4) of this rule are added to the provisions of 40 CFR 761.60(a).

(2) "PCB disposal facility" includes a facility for treatment or disposal of PCB or PCB items.

(3) No person shall treat or dispose of PCB or PCB items except at a PCB disposal facility permitted by the Department.

(4) No person shall establish, construct or operate a PCB disposal facility without a permit issued by the Department.

340-110-061 (1) The provisions of 40 CFR 761.60(d)(1) are replaced by Section (2) of this rule.

(2) Spills. Spills, leaks and other uncontrolled discharges of PCB constitute disposal of PCB and shall be reported and managed in accordance with Division 108.

(3) Section (4) of this rule is added to the provisions of 40 CFR 761.60(e).

(4) The permit shall be issued in accordance with Divisions 106 and 120 and may contain conditions and provisions as the Department deems appropriate.

(5) Section (6) of this rule is added to 40 CFR 761.60.

(6) Waste Oil. The use of waste oil that contains any detectable concentration of PCB as a sealant coating or dust control agent is prohibited. Prohibited uses include, but are not limited to, road oiling, general dust control, use as a pesticide carrier and use as a rust preventative on pipes.

Storage for Disposal.

340-110-065 (1) The provisions of 40 CFR 761.65(c)(7)(ii) are replaced by Section (2) of this rule.

(2) The owners or operators of any facility using containers described in 40 CFR 761.65(c)(7)(i) shall prepare and implement a Spill Prevention Control and Countermeasure (SPCC) plan as described in 40 CFR Part 112. In complying with 40 CFR Part 112, the owner or operator shall read "oil(s)" as "PCB(s)" whenever it appears.

Incineration.

340-110-070(1) The Commission shall not issue a permit for any facility designed to dispose of PCB by incineration unless: a) the facility is also equipped to incinerate hazardous waste; and b) the applicant has received all federal and state permits required to operate a hazardous waste incinerator.

(2) An incinerator that disposes of PCB or PCB items must incinerate more hazardous waste than PCB. Any permit issued by the Commission for the incineration of PCB or PCB items shall contain a condition requiring the incineration of at least this level of hazardous waste.

(3) An incinerator used for the incineration of PCB or PCB items shall be permitted by the Department pursuant to Divisions 106 and 120.

(Comment: The owner or operator of an incinerator may also have to obtain an Air Contaminant Discharge Permit from the Department and such permit may establish standards and requirements more stringent than those of 40 CFR 761.70 or this Division).

(4) Section (5) of this rule is added to the provisions of 40 CFR 761.70(d)(1).

(5) Information which shows that Subparts B, C, D, F, G and H of 40 CFR 264 will be met when applied to the incineration of PCB and PCB items.

(6) The provisions of 40 CFR 761.70(d)(8) are replaced by Section (7) of this rule.

(7) Transfer of Property. The permit is personal to the permittee and is nontransferable. A new owner or operator shall comply with 340-105-010(2)(d)(B)(iv) of this Chapter.

Landfilling.

340-110-075(1) Section (2) of this rule is added to the provisions of 40 CFR 761.75(c)(1).

(2) Information which shows that Subparts, B, C, D, F, G, H and N of 40 CFR 264 will be met when applied to PCB landfills.

(3) The provisions of 40 CFR 761.75(c)(7) are replaced by Section (4) of this rule.

(4) Transfer of property. The permit is personal to the permittee and is nontransferable. A new owner or operator shall comply with 340-105-010(2)(d)(B)(iv) of this chapter.

Permits.

340-110-077(1) The procedures and requirements of Divisions 105 and 120 shall be followed by an applicant for a PCB disposal facility permit.

(2) The procedures of Divisions 106 and 120 will be followed when issuing permits required by this Division.

Records and Monitoring.

340-110-080 (1) The provisions of 40 CFR 761.180(a)(3) are deleted.

(2) Data reported to the Department as required by 40 CFR 761.180 shall be in both pounds and kilograms.

(3) The provisions of 40 CFR 761.185 through 761.193 are deleted.

MARCH 1986

REPORT OF THE HAZARDOUS WASTE
ADVISORY COMMITTEE TO THE
DEPARTMENT OF ENVIRONMENTAL QUALITY

INTRODUCTION

This committee was appointed by the Director of the Department of Environmental Quality to advise the Department on development of rules for the siting of hazardous waste and PCB treatment and disposal facilities. Committee members are listed in Appendix A to this report.

In Senate Bill 138, Chapter 670, Oregon Laws 1985, the Legislative Assembly established general state policy on siting hazardous waste facilities and directed the Environmental Quality Commission to adopt rules implementing that policy by April 1986. This committee was appointed and first met in October 1985. It has held ten meetings.

In the course of its work, the committee has reviewed literature on the siting and regulation of hazardous waste facilities, visited the Chem Securities and Tektronix facilities, heard testimony from interested parties, and reviewed a series of drafts of the proposed rules. In this process, committee members have engaged in a constant discussion of policy and specific rules among themselves and with the Department's staff. The rules now proposed by the Department are, in the judgment of the committee, consistent with the overall policy established by the Legislative Assembly and reflect sound public policy on the treatment and

disposal of hazardous waste. We have the following comment and make certain observations, which may assist the public and the Legislature to identify the policy questions involved and the reasons which underlie the rules proposed.

1. Hazardous Waste as a Component of Industrial Society. Hazardous waste by Legislative definition excludes radioactive materials which in this state are regulated by the Energy Facility Siting Council. Generally, all other wastes derived from industrial activity which can be deleterious to human health and safety and the environment if not properly managed are the subject of the Department's responsibility. PCBs are referred to separately in both the legislation and the proposed rules for legal reasons arising from Federal law but are discussed here as a specific variety of hazardous waste. Hazardous waste is produced in this state and other states in large quantities by hundreds of industrial and commercial activities large and small. While some particular kinds of waste can be avoided by substituting other processes or products, we have to accept as a fact that hazardous waste is a by-product of our current society and that it cannot be wholly eliminated. It therefore becomes critically important that such waste be properly managed.

2. The Management of Hazardous Waste as a Public Responsibility of Government. To leave management of hazardous waste uncontrolled is to invite human disaster and

long term environmental degradation ultimately costing billions of dollars. Only careful planning and thoughtful regulation can identify and manage hazardous waste efficiently and economically. Moreover, the increasing economic liability to which industry is exposed arising out of improper management of hazardous waste will make a state which develops and supports sound treatment and disposal regulation and economic facilities an attractive location for new industrial activity. No business enterprises of the kind we want in Oregon are interested in the liability associated with Love Canals. The committee therefore believes that these rules and the facilities to be sited under them are essential to the economic and human health of the state.

3. The Ways of Dealing with Hazardous Waste. Hazardous waste can be managed in several ways: by substituting non-hazardous material in the production process; by recycling hazardous material in the production process; by consuming the waste in the manufacture of another product; by treating the waste in a manner which renders it non-hazardous; and by disposal of the waste in a manner which will contain and minimize the hazard. The re-refining of engine oil is an example of recycling. Incinerating wastes at high temperatures is an example of treatment. Burying waste in containers in a landfill is an example of disposal. The management of waste can occur on the site where it is produced, or waste can be transported to another location for

recycling, treatment or disposal, for example, by the Chem Securities facility near Arlington.

4. Policy Preference in Dealing with Hazardous Waste.

The committee believes that public policy and these rules should (1) encourage recycling and reuse of waste wherever this is economically feasible; (2) encourage on-site treatment by the producer wherever this can be safely and economically accomplished to avoid transporting hazardous waste on public roads; and (3) should encourage treatment of all waste whether on-site or off-site to render it harmless in preference to disposal in landfills where the hazard is simply contained for the future rather than eliminated.

5. The Technical Methods of Managing Hazardous Waste.

Just as evolving industrial activity has created and will create new waste products which must be managed, so evolving technology has created and will create new and better ways of reusing and treating such wastes. Public policy and these rules should encourage those who generate, treat and dispose of hazardous waste to employ the best available technology to reuse or treat waste. However, that same public policy must recognize that technology requires heavy capital investment. If we want those who generate, treat or dispose of waste to make substantial investment in technology, they must be allowed reasonable periods of time over which such investments can be amortized. The goal is to achieve the best available technological management, not to set

economically impossible standards which will have the effect of inhibiting proper management.

6. The Number and Capacity of Waste Disposal Facilities. Under the statute and these rules, the Department has the responsibility for determining the number and capacity of hazardous waste facilities. The Legislative Assembly in considering Senate Bill 138 focused its attention almost exclusively on large off-site treatment and disposal facilities for dealing with hazardous waste (and PCBs). The legislative history and the somewhat convoluted language of the statute make clear the legislative desire to have the least possible number of such facilities necessary. Certain factors must be recognized and reconciled in connection with that desire.

First, under the Federal Constitution, Oregon as a state cannot prohibit a treatment facility in this state from receiving out of state generated waste. Second, under the Northwest Interstate compact, Oregon has agreed to receive hazardous waste from Washington, and Washington has agreed to receive nuclear waste from Oregon. It is important, now that the Compact has been ratified by Congress, that Oregon enter into negotiation at once with other states in the compact to ensure a sensible and fair distribution of waste management facilities among the compact states. Third, certain types of hazardous waste facilities require a threshold volume of waste to be economic. Hence it may be necessary, in

balancing all the factors, to obtain sufficient volume using out of state waste to accomplish the best technological treatment of Oregon generated waste. Put another way, Oregon should not continue to landfill hazardous waste instead of destroying that waste by methods of treatment including incineration simply to avoid receiving sufficient out of state waste to make treatment feasible. Fourth, because we believe sound policy makes on-site treatment by generators preferable to off-site treatment at a central facility where it can be safely accomplished on site, the Legislative desire to limit the number of facilities should recognize and accommodate that policy preference. These considerations are equally applicable to the other compact states which emphasizes the desirability that all compact states coordinate their hazardous waste management.

7. The Application Process for Siting Off-Site Facilities. These rules provide a three step process for siting an off-site hazardous waste facility which accepts for treatment or disposal waste generated by commercial and industrial generators. This process recognizes the interest of the site community, the role of local government, the role of the Department and the Commission and the differences between a central off-site facility and a generator on-site facility. The first step requires the applicant to obtain an authorization to proceed from the Department. At this stage the Department determines whether the applicant can satisfy

certain basic criteria with respect to need and certain basic exclusions with respect to site. If the Department finds the applicant cannot, it refuses the authorization. This will save the applicant, the local government and the Department the expense of handling the subsequent more complicated and expensive application steps. The second step requires the applicant to obtain approval from the local governmental body with land use jurisdiction. Incidentally, no comprehensive land use plans in the state presently provide for hazardous waste facilities, and any siting will require amendment of an affected county's plan. Recommended criteria for that decision are provided in the rules. The third step provides that an applicant which has received the necessary local land use approval must then satisfy the Department of Environmental Quality with respect to the public safety requirements, other criteria set forth in the rules, and its ability to meet existing technical standards for management of hazardous waste.

8. Application Process for Siting On-Site Facilities.

On-site treatment by a generator of hazardous waste ordinarily involves far smaller quantities and limited kinds of hazardous waste. In Paragraph 4 above, the Committee stated its policy preference for such on-site treatment, where technological and safety requirements can be met, to avoid transportation to distant off-site facilities. To encourage such dealing with waste at the source, the

Committee proposes and the Rules provide a streamlined two step application process. The authorization to proceed step is eliminated and the buffer requirement and a discretionary citizen committee are incorporated into the final RCRA Part B application to the Department of Environmental Quality after the applicant has obtained approval for a facility from the local governmental body with land use jurisdiction.

9. Community Involvement in the Siting Process. As we have noted above, we believe public policy requires and must encourage the establishment and continued operation of hazardous waste facilities, both on-site and off-site. We also recognize that every community in which such a facility is located or for which a facility is proposed will have a special and intense local interest in the impact which the operation of such a facility may have upon the health and economy of that locality. Consequently, the rules provide a community involvement process through a Citizen Advisory Committee which is mandatory for off-site facilities and discretionary for on-site facilities. In either case, the mechanism for initial and continuing community involvement is in place. Moreover, the structure of such committees is carefully balanced. Half the members are to be nominated by the local government with land use jurisdiction and half are to be nominated by the Department Director who appoints the Chairman from among the members of the committee. In addition, the Committee recommends that the Department seek

legislation which authorizes the Director to expend funds in limited amount from the application fee for independent technical and legal advice (exclusive of litigation) upon request of a citizen committee where in the Director's discretion it will facilitate the citizen committee's work. We believe these provisions will ensure a sound and informed local community when a facility is proposed, and a continuing subsequent relationship between facility and community where one is approved. The committee also recommends that such a committee be established for the Chem Securities facility.

10. Continuing Supervision of Hazardous Waste Facilities Once Approved and in Operation. Current rules provide for Department supervision of facilities in operation. Moreover Federal Environmental Law and regulation also apply to such facilities. However, the reality of supervision to insure compliance depends largely on whether Congress and the Legislative Assembly provide sufficient funds to enable effective supervision to occur. As we move toward methods of treatment including incineration as opposed to landfill containment, we must establish and fund reliable mechanisms to monitor the effectiveness of the process under varying weather and operating conditions and ensure that we can measure the level of any discharge or emission which occurs and its effects upon the food chain and human health. Close attention must be paid to these factors in the siting process.

11. The Chem Securities Facility. In connection with the existing hazardous waste facility operated by Chem Securities, the committee recommends that the Department review the present monitoring arrangements to determine their adequacy. The committee also concluded that the buffer zone requirements it recommends for new waste management facilities should be required when the Chem Securities facility near Arlington comes up for renewal in eight years. The Committee suggests that the Department study possible legislation authorizing the use of eminent domain should the facility be unable to negotiate purchase of sufficient land for the required buffer, and be otherwise qualified in all respects for renewal of its permit.

12. Expedition of Legal Proceedings Relating to Siting. The committee believes it is important to have clear and concise rules for siting and to provide reasonably rapid procedure for making siting decisions. Undue delay means greatly increased expense to the applicant and to the local and state agencies concerned. It also defers essential decisions on handling hazardous waste. The proposed rules provide reasonable and expeditious time lines. However, court challenges can delay such decisions for years. We simply cannot afford this kind of delay in handling hazardous waste. The committee proposes that the Legislative Assembly direct that trials and appeals of hazardous waste

* * *

applications and decisions be expedited on the court dockets concerned.

13. Inventory of Present Hazardous Waste and Planning for Future Hazardous Waste. This state needs a formal plan for dealing with hazardous waste. At the present time, it is impossible to say how much hazardous waste has been generated in Oregon and not yet identified, nor do we really know how much hazardous waste is currently being generated and not identified. The Department needs to carefully examine all state industrial activity and inventory all past and current sources of hazardous waste and it must have adequate funding to do this. The present duplicative roles of the State and Federal Government in this field create some problems. But our judgment is that Oregon should move ahead consistent with federal law to control its own environment and not be inhibited by delay or inability on the part of the Federal Government to fund and carry out the Federal law, or to make decisions under that law. Specifically, Oregon should move to treatment including incineration in lieu of landfill disposal at the earliest possible date.

14. Spill Response. Accidents are going to occur despite every precaution in handling hazardous waste. Human error can be reduced, but not eliminated. The rules can insure prompt response to on-site accidents or accidents on or adjacent to facilities. More difficult is response to spills which occur in transportation largely by truck over public

highways which may be due to weather conditions, defective equipment, driver negligence, or unforeseen road hazards. The responsibility for minimizing such accidents and for responding to them is presently divided among local and state governments and several agencies. The Executive Branch should take the lead in developing a coordinated plan to insure safety and emergency response to spills on public highways. House Bill 214, enacted by the 1985 Legislature, provides funds for this planning and the Committee trusts it will be done as quickly as possible. The added cost of training and equipping strategically located spill response teams should be borne by the state as a whole out of the general fund and not be imposed upon the local governments through which the highways happen to pass on which the waste must travel.

CONCLUSION

The Advisory Committee believes the Department has a firm grasp on the duties which the Legislature has delegated to it. It has had substantial practical experience in dealing with hazardous waste, and it has demonstrated a willingness to listen to the concerns of the public, and to those of this committee. It is not enough, however, to listen to the concerns of the public. The public must be informed of the extent of the hazardous waste problem, of the necessity of its solution, and familiarized with the scientific and technical procedures for managing it. It is

the responsibility of the Legislature and the Executive Branch to increase public knowledge and awareness in this respect and to provide the resources in order to carry out the public policy called for by Senate Bill 138 and embodied in these Rules which we commend to the commission.

Respectfully submitted,

Donna Brunello
Jim Brown
Mike Caldwell
Louis Carlson
Frank Deaver
Jack Fellman
Alice Harper
Wes Kvarsten
Bob Riggs
Dan Saltzman
E. J. Weathersbee
John C. Beatty, Jr., Chairman

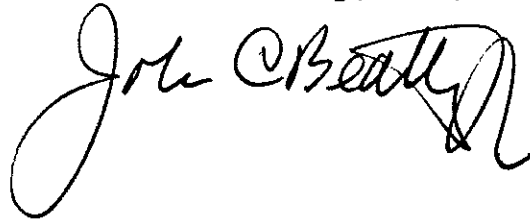
A handwritten signature in black ink, appearing to read "John C. Beatty, Jr.", with a large, stylized flourish at the end.

EXHIBIT A

Members of the SB 138 Policy Advisory Committee

JOHN C. BEATTY, JR., is Chairman of the Advisory Committee and Senior Circuit Judge for Multnomah County.

DONNA BRUNELLO is a Portland resident interested in hazardous waste management issues and was active in the proposal of Riedel Environmental Services to locate a hazardous waste storage site in Portland.

JIM BROWN of Hood River is active in state natural resource issues and directed the Hood River Conservation Project.

MIKE CALDWELL is a Union County Commissioner and Captain of the Oregon Army National Guard and he operates an excavating and contracting business in La Grande.

LOUIS CARLSON is a Morrow County rancher and wheat farmer, President of the Port of Morrow Commission and past President of the Oregon Wheat Farmers League.

FRANK DEAVER is Corporate Environmental Service Manager of Tektronix and active in the American Electronics Association.

JACK FELLMAN is a full professor of biochemistry at Oregon Health Sciences University.

ALICE HARPER is a fourth generation Gilliam County rancher and is interested in issues relating to hazardous waste management and use of farm chemicals.

WES KVARSTEN is Director of the Land Resources Division of the Bonneville Power Administration and former Director of the Oregon Land Conservation and Development Commission.

BOB RIGGS is a small business owner and Mayor of Redmond.

DAN SALTZMAN is an environmental engineer for CH2M Hill and a former aide for energy and environmental issues for Congressman Wyden.

JACK WEATHERSBEE is retired after heading the Oregon Department of Environmental Quality's Air Quality Division and working for 34 years in all the state's environmental programs.

opposes this rule and if adopted, CSSI will be forced to accept only waste transported by its own transporters in order to avoid unlimited liability for third parties' spills.

ORS 466.645(2), (HB 2146), authorizes the Department to clean up the spill or contract for such clean up if the spiller does not clean it up. The proposed rule ignores this legislative determination of responsibility for spills and clean ups.

Response

Proposed rule 340-120-025 addresses hazardous waste spill response and cleanup, areas which the Department has authority to regulate. However, the the Department has modified proposed rule 340-120-025 by deleting the requirement that upon a Department request, the facility owner contract to clean up a spill beyond 50 miles from the facility if the transporter does not. The language requiring spill response and cleanup inside 50 miles has been retained.

Director does not need specific legislative authority to utilize advisory committees. The Department does not believe any purpose would be served by removing the language of proposed rule 340-120-020(4).

42. Comment (Secord, Davis, OEC, Ruark, Committee Report)

The Department should propose legislation if necessary so that part of the permit application fee for a proposed facility could go to a committee described in proposed rule 340-120-020.

Response

Both the Department and the Joint Legislative Interim Committee on Hazardous Material plan to consider this recommendation as they discuss proposed legislation.

43. Comment (Petersen, Borisofi, Carter, Broadwell, Secord, Crampton, Becker, Hinton)

Proposed rule 340-120-025, Off-Site Transportation Emergencies, does not go far enough in regulating hazardous waste transportation.

Response

Throughout the state, the public wants tighter controls on the transportation of hazardous waste. The volume of hazardous waste hauled on the state's highways is likely less than one tenth of the hazardous materials being hauled. So any tighter controls must address hazardous materials if the controls are to appreciably improve the existing situation.

The Department of Environmental quality does not have authority to regulate the transportation of hazardous materials or waste. This authority has been given to the state Public Utility Commissioner. For example, Sections 35 and 36 of Senate Bill 138 increases the authority of the Public Utility Commissioner to regulate hazardous materials and waste. The Department encourages citizens concerned about the safety of hazardous materials transportation to work with the Public Utility Commissioner.

44. Comment (OEC)

Proposed rule 340-120-025 is important and should be retained. It is complimentary to HB 2146, which directs the Department to prepare a statewide spill response master plan and cost recovery system for cleaning up spills when the spiller does not. The facility should be able to get reimbursed for any spill cleanup work.

45. Comment (CSSI)

The proposed rule should be completely unacceptable to any facility owner because it assigns responsibility to a facility owner for a spill the owner did not cause and over which the owner has no control. CSSI strongly

not require that one be appointed in every case. Furthermore, proposed rule 340-120-020(5) recommends that the local government and the applicant consider negotiating an agreement appropriate for the proposed facility's potential local impact. An agreement may not be appropriate for an existing facility. Negotiating an agreement is only a recommendation by the Department anyway. No changes in the proposed rule have been made.

40. Comment (CSSI)

Proposed rule 340-120-020(5) recommends that the local government and applicant consider negotiating an agreement appropriate for the proposed facility's potential local impact. This is clearly outside of the Commission's jurisdiction and should be left to be resolved between the applicant and local government. This treats hazardous waste different than any other business. Actual local impacts can be mitigated through permit conditions or enforcement actions. If the applicant was required to meet paragraphs (a) through (e) of this proposed rule, the applicant would in effect become a local government.

Response

The proposed rule is a recommendation that an agreement be considered by an applicant and local government when a new facility is proposed. The Department and Commission cannot lose sight of the importance of providing a mechanism for siting needed facilities. Local community concerns will have to be addressed. The Department believes it is very important to get those concerns on the table and hopefully resolved early in the siting process. Trying to hide or ignore those concerns may lead to local rejection of the siting proposal later in the process.

Paragraphs (A), the adequacy of local police, fire and health departments, (b), possible health impacts on workers and community residents, (c) transportation of waste on local roads, (d), possible changes in property values near the site, and (e) facility operator and community communication, of 340-120-020(5) cannot be ignored if a community is going to accept a hazardous waste facility.

The Department believes the recommendation is appropriate and does not support deleting it. A section has been added to state the Department's authority to impose requirements to address the issues discussed in the rule.

41. Comment (CSSI)

Senate Bill 138 does not directly give the Director the authority to appoint a committee to review the operation of a facility as rule 340-120-020(4) proposes.

Response

The Department agrees with the comment. However, the committee is advisory only and has no legal authority or responsibilities. The Director utilizes advisory committees to encourage public participation in many areas. The

36. Comment (CSSI)

Proposed rule 340-120-020(1) is as follows:

(1) The commission finds that local community participation is important in the siting and in reviewing the design, construction and operation of hazardous waste and PCB treatment and disposal facilities.

"Operation" should be removed from this finding. The Legislature did not authorize the Department to create advisory committees to oversee a facility's operation.

Response

The Department believes the controversial nature of hazardous waste and PCB facilities dictates that local community participation is generally crucial for a facility's acceptance in a community. No change has been made in the proposed rule.

37. Comment (CSSI)

The committee appointed by the Director under proposed rule 340-120-020(2), Community Participation, should have at least a majority of its members representing local interests, should allow participation by local residents employed by the applicant, and should have a chairperson nominated by local government.

Response

The committee outlined in the proposed rule is an advisory committee to the Department to encourage local participation. The committee will not have any legal authority or responsibilities. The proposed rule does not prevent employees of the applicant from being appointed on the committee. Depending on the circumstances, the other recommendations could be accommodated, but we do not wish to limit the Director's discretion in appointing a committee more than the proposed rule already does.

38. Comment (Hicks, Harper, Secord, Yosemite, Kleinback)

The proposed rules should apply to existing sites as well as new sites, especially proposed rule 340-120-020, Community Participation.

39. Comment (OEC)

The community advisory committee should be on-going during the life of the facility.

Response

The Community Participation rule requires the Director to appoint a committee to encourage local participation in the siting of new facilities. A committee may not be needed for an existing facility so the rule would

32. Comment (OSPIRG)

Proposed rule 340-120-015(1)(a) should be amended so that all facilities will be at least three miles from urban growth boundaries. All Oregonians should be provided the same protection.

33. Comment (French)

The separation distance of three miles recommended for urban growth boundaries around larger cities in effect eliminates any facility siting in the Willamette Valley.

Response

The purpose of proposed rule 340-120-015(1)(a) is to ensure future low density populations around a facility during unanticipated or unusual events at the facility. Urban Growth boundaries around larger cities will likely expand faster than those around smaller cities. From a planning perspective, the separation distance from urban growth boundaries around larger cities should be even greater than three miles to ensure future low density populations near facilities. But the Department had to balance this need with the desire to not exclude most of the Willamette Valley from consideration. Greater separation distances from larger cities would tend to do just that.

Proposed rules 340-120-010(2)(d), Location, and (e), Property Line Setback, provide the extra layer of protection for the public and apply equally anywhere in the state. No change has been made in the proposed rule.

34. Comment (T. Bloomer, Pearce)

Proposed rule 340-120-015(1)(c)(A) recommends a one quarter mile separation distance from a facility to surface water. This should be one mile.

Response

Taken with the technical requirements for a facility and proposed rule 340-120-010(2)(f), Groundwater Protection, the one quarter mile distance is satisfactory to assure protection of surface water.

35. Comment (OSPIRG)

Proposed rule 340-120-015(1)(g) should be amended so that both transportation routes are equally accessible, safe and maintained.

Response

All facilities should have an alternate transportation route to them in case the primary route is blocked. However, the alternate route need not be of the same quality as the primary route because its use would likely be very short-term.

Therefore, the Department has modified the proposed rule to require an initial submission of the past five years of responses to violations with the option of the Department requesting earlier responses on a case-by-case basis.

29. Comment (Knieser)

The recent violations at the Chem-Security disposal facility will not allow the company to meet proposed rule 3140-120-010(2)(h), Compliance History, in the future.

Response

Under the proposed rule, compliance history will not be reviewed until a permit reapplication (renewal) or modification is submitted.

30. Comment (Harper, Secord, Gigler, Becker Committee Report)

The Department should review its present monitoring around the CSSI site and require thorough soil and food web monitoring around any incinerator.

Response

The Department will review the present monitoring at and around the CSSI site. Monitoring requirements will be included in any permit issued for a proposed incinerator. The Department agrees that this type of monitoring should occur.

31. Comment (DLCD, OEC)

The criteria of 340-120-015 should be met, not considered. There does not appear to be any reason to require mandatory criteria as part of the Authorization to Proceed and discretionary criteria as part of making land use compatibility findings.

Response

The Department proposed that the criteria at the land use compatibility step not be fixed to allow flexibility in the siting process. Earlier comments from county planning directors indicated four wanted discretionary criteria and one wanted mandatory criteria.

The Department's original intent was to require the criteria of 340-120-015 to be met, but to allow an exceptions procedure if the public health and safety and the environment is adequately protected. In reviewing all the comments on this issue, the Department has concluded that our intent would be best expressed if the criteria were mandatory and the exceptions procedure was more clear. Therefore, the proposed rule has been modified to make the criteria mandatory (for example, all the shoulds have been changed to shalls) and the exceptions procedure of 340-120-015(2) has been enhanced. While the Department believes this change is one of perception only, the new language better expresses our intent.

26. Comment (OEC)

OEC opposes allowing limited uses within the setback but supports allowing the facility to obtain an easement from an adjoining property owner for part of the setback distance, as long as no development occurs within the easement.

Response

The Department agrees that an easement might be satisfactory for part of the setback. However, defining what uses could occur in the easement is not easy. The Department believes having the setback be part of the facility owner's property is the most desirable situation and will lead to the least problems. The proposed rule was not changed to allow easements.

27. Comment (Kniesner)

Proposed rule 340-120-010(2)(f), Groundwater Protection, should include incinerators.

Response

Incinerators do not treat or dispose of hazardous waste in the ground. The technical requirements ensure that the facility is constructed to prevent spills from entering the soil. The extra layer of protection for groundwater provided by proposed rule 340-120-010(2)(f) is not necessary for incinerators.

28. Comment (CSSI)

Proposed rule 340-120-010(2)(h), Compliance History, should be clarified to require the listing of violations which were caused during the ownership of the owner, the parent company of the owner or the operator of the new facility. A limit should be placed on how far back the responses to violations should go to ensure that the responses are meaningful to the Department's determination of current ability and willingness to operate. Also (A) should be modified to ensure violations were actual violations and not allegations. Finally the term "compliance history" in (B) is too broad and should be revised to require the applicant to produce specific aspects of the compliance history as needed by the Department.

Response

The Department agrees with the comment about listing violations, not allegations, only during the time when the facility was owned by the owner, the parent company of the owner, or the operator of the proposed facility. The Department also agrees with the comments about the broadness of the term "compliance history." The proposed rules were modified as recommended by the comment.

The Department does not agree with the comment that only three years of compliance history should be reviewed to determine an ability and willingness to comply. However, the Department agrees that some limit should be placed on how far back the applicant initially needs to go.

distance on a case-by-case basis or rules could provide a strict criterion of a certain distance and allow no case-by-case determination. The proposed rule sets a distance of one mile but gives an applicant a chance to demonstrate that a lesser distance will protect the public health and safety and the environment. This best achieves a balance of the two approaches available to the Commission.

25. Comment (OEC)

The setback distances of proposed rule 340-120-010(2)(e), Property Line Setback, are arbitrary and there is no way to conclusively show that one width is better than another. Under these circumstances, the setback requirement should be 1,000 feet in all cases.

Response

This argument is similar to CSSI's argument that off-site and on-site facilities have the same potential impact on public health and safety and the environment (see Comment 7 and Response). The Department continues to support a setback distance of 250 feet for on-site facilities. The proposed rules have been modified (see Comment 5 and Response) so that on-site facilities will truly be on-site facilities. We want to provide the opportunity for on-site facilities if they can protect the public health and safety and the environment. The 250 foot setback and the technical requirements ensure that this is the case.

Off-site facilities will generally be larger and capable of handling a greater variety of waste than on-site facilities so the Department favors a greater setback for off-site facilities. The proposed rule had a 500 foot setback for off-site facilities other than land disposal facilities (such as surface impoundments and incinerators) and a 1,000 foot setback for land disposal facilities. This difference is more difficult to justify.

A greater separation distance for land disposal might encourage treatment as an alternative. However, few off-site facilities will likely be proposed in Oregon and the 500 foot versus 1,000 foot setback will likely not be the major factor determining whether a particular facility will be sited.

Because the setback provides an added margin of safety for unanticipated accidents, we cannot say that 500 feet is adequate for an incinerator but not for a landfill. Therefore, the Department believes it is prudent to have a setback requirement of 1,000 feet for all off-site facilities and has changed proposed rule 340-120-010(2)(e) to reflect this.

The siting separation distance helps ensure low density populations near a facility. It is difficult to anticipate the Department's specific comments on encroachment into this one-mile separation distance. At this time, the Department would not oppose encroachment that maintained low density development and populations near a facility.

21. Comment (Quast, Crampton, Gerry)

The one mile siting separation distance of proposed rule 340-120-010(2)(d)(A), location, should be much greater.

Response

The Department believes its technical standards governing facilities are adequate and the one mile siting separation distance provides a satisfactory extra margin of safety.

22. Comment (D. Bloomer)

Proposed rule 340-120-010(2)(d)(A) requires a siting separation distance of at least one mile to public lands. There are very few places in eastern Oregon that are not near public lands.

Response

The proposed rule has been changed (see Comment 19. and Response).

23. Comment (DLCD)

Proposed rule 340-120-010(2)(d)(B), Location, contains no standards for departing from the one-mile separation distance. Should there even be an exception procedure at all?

24. Comment (OSPIRG)

Proposed rule 340-120-010(d)(B) should be deleted. A one mile separation distance is prudent to protect public health and safety and the environment.

Response

The Department agrees that generally a one-mile separation is prudent but it is possible that topography or the type of facility may cause the public health and safety and the environment to be adequately protected by a lesser distance. The proposed rule puts the burden on the applicant to demonstrate that adequate protection exists before a lesser distance can be accepted.

Chapter 670 uses the term "sufficient distance" and not a specific distance. Rules could allow the Commission to address a sufficient

17. Comment (Riedel)

Proposed rule 340-120-010(2)(b)(C) favors siting an incinerator at the CSSI facility near Arlington because it will be virtually impossible to site an incinerator closer to the Portland metropolitan area.

Response

The intent of the proposed rule is to allow the EQC to give preference to a facility sized more closely to what is needed to serve only Oregon generators. The intent is not to favor one part of the state over another when reviewing proposed sites. The proposed rule has been rewritten to reflect this intent and to be more clear.

18. Comment (OEC)

The term "environmental quality" in 340-120-010(2)(c), Technology and Design, should be replaced with "public health and safety and the environment."

Response

The recommended change has been made.

19. Comment (D. Bloomer, DLCD)

Proposed rule 340-120-010(2)(d)(A)(ii) could be confusing and may not be designated in comprehensive plans. For instance, public open space could be confused with public lands.

Response

The Department agrees with the comments. The proposed rule has been modified by referencing wilderness, parks and recreation areas to match the language in Chapter 670. While the meaning of this language could be open to interpretation, the Department believes decision-making on a case-by-case basis is appropriate in this instance.

20. Comment (DLCD)

Proposed rule 340-120-010(2)(d), Location, does not address encroachment within the separation distance after a facility is sited. Will the Department oppose local actions allowing encroachment?

Response

The one-mile siting separation distance ensures that the facility does not impact upon existing uses and structures. Once a facility is sited, this separation distance is not required by these rules. The Department believes the technical standards for facilities along with the on-going requirement for a property line setback adequately protect the public health and safety and the environment.

serve the eight states included in the Northwest Interstate Compact on Low Level Radioactive Waste Management (Northwest Compact) would negate the push for a hazardous waste compact by other states.

However, Article IV, Section V of the Northwest Compact requires states with hazardous waste facilities to allow access to those facilities by generators in other states of the compact. While we would not be denying access to these states by limiting capacity to only Oregon's needs, we could be accused of indirectly violating the intent of the Northwest Compact. Also, creating and ratifying a new compact would take years.

To balance these conflicting points, the Department has modified proposed rule 340-120-010(2)(b)(B). The modified language requires an applicant to demonstrate and justify the need for a facility size, if the facility is projected to serve more out-of-state waste than waste from within the state. The modified language would allow the Department to deny an Authorization to Proceed if a facility size is based more on out-of-state waste than in-state waste.

15. Comment (CSSI)

The proposed rule limiting the size of a facility is simply a refinement of invalid laws in other states and attempts to do indirectly what cannot be done directly. Courts have invalidated laws that attempted to impose barriers to the free movement of waste between states. The rule should be modified so that all states are treated equally until Congress determines otherwise.

Response

The Department has been advised by the Oregon Department of Justice that limiting capacity likely would not violate the Commerce Clause of the U.S. Constitution. The Department is proposing to implement Chapter 670's requirements and objectives and limiting capacity helps accomplish this implementation.

16. Comment (OEC)

The Commission should formally request the state's Congressional delegation to introduce legislation to create an interstate compact specifically for hazardous waste.

Response

The Department plans to consider if the promotion of an interstate compact is appropriate.

12. Comment (CSSI)

Proposed rule 340-120-010(2)(a), Need, goes beyond legislative intent and defines need for an Oregon facility based on facilities and technologies of the Northwest Compact states. Chapter 670 makes absolutely no mention of facilities in the other seven compact states negating the need for a facility in Oregon. Also, several minor changes in the proposed rule are necessary to comply with Chapter 670.

Response

The Department does not believe it has gone beyond legislative intent in proposing to tie the need for a facility in Oregon to what already exists in the states which are a part of the Northwest Compact. The Commission must limit the number of hazardous waste and PCB treatment and disposal facilities in Oregon. Facilities in nearby states already providing service to Oregon companies should be considered when addressing need for a new facility in Oregon. Proposed rules 340-120-010(2)(a)(B) and (C) would not apply upon reapplication or permit modification. The Department has incorporated in the proposed rule the minor changes recommended by the comment.

13. Comments (French)

Proposed rule 340-120-010(2)(b), capacity, may create the need for additional facilities because the size is based only on a ten year projection.

Response

The Department agrees with the comment. However, future waste generation rates are very unpredictable. Once a facility is built, the Department cannot exclude waste coming from anywhere in the country to it. We must be careful to assure that a facility does not have significant excess capacity over what is needed to manage Oregon's waste, while still allowing the applicant to plan for possible increases in the waste generation rate in the future. Allowing a ten year planning period best achieves this balance in the Department's opinion.

14. Comment (Harper, Secord, Larvik, Roeder, Gigler)

Proposed rule 340-120-010(2)(b), Capacity, should be modified to limit capacity to waste generated in Oregon until an interstate compact specifically for hazardous waste is ratified.

Response

The Department conceptually agrees with this comment. We believe an interstate compact for hazardous waste is a necessary part of waste management in the northwest. Allowing a facility to be designed to

8. Comment (CSSI)

Proposed rule 340-120-005(8), requirements upon reapplication or modification, applies to all modifications of existing permits. EPA rules state that the suitability of a facility location will not be considered at the time of permit modification.

9. Comment (Tek)

Modifications at the Tektronix facility occur periodically and these should not bring Tek under the siting standards each time.

Response

The Department generally agrees with the comments. The intent is to apply the requirements listed in 340-120-005(8)(a) or (b) only to permit renewals. However, changes in the type of treatment on disposal should fall under the siting rules. For example, all Division 120 should apply to a proposed incinerator at an existing disposal facility. The Department has deleted "modification" from 340-120-005(8) and added a definition for new facility in 340-120-001(6) to include changing treatment or disposal types at a facility.

10. Comment (CSSI)

The criterion of 340-120-010(2)(a)(B), part of the Need criterion, is not applicable to reapplication and should not be considered during reapplication.

Response

The Department agrees. That requirement has been removed from the proposed rule.

11. Comment (CSSI)

Proposed rule 340-120-005(9) applies the Property Line Setback criterion to the existing CSSI facility in eight years. This is inappropriate in the rules and incorrect. This implies that the next permit will be issued for eight years and that determination should be part of CSSI's permit proceeding and not part of these rules.

Response

The Department has added a comment to the proposed rule stating the eight year period does not pertain to or determine the duration of the company's next permit.

(2) All parts of this Division apply to new:
(a) Hazardous waste and PCB treatment and disposal facilities located off the site of waste generation (off-site): and
(b) Hazardous waste and PCB land disposal facilities located on the site of waste generation (on-site).

(3) Facilities described in (2)(a) that receive less than 50% of waste from off the site may be inside urban growth boundaries as defined by ORS 197.295 and therefore do not have to meet 340-120-010(d)(A)(i) and 340-120-015(1)(a).

The Department considered making (3) a comment but chose a rule instead as being more appropriate. To be consistent, the Comment formerly discussing incidental quantities as shown above will become 340-120-001(5) of the proposed rules and section numbers following that are changed accordingly.

6. Comment (OSPIRG)

Proposed rule 340-120-001(4)(a), exemption for portable facilities, should be deleted. Citizens near portable facilities deserve the same siting protection as those near permanent facilities.

7. Comment (OEC)

The exemption for portable facilities should be modified to include other factors besides the 15-day limit. A cap on the amount of waste treated and a requirement for best available technology should be included.

Response

The Department believes that the technical licensing standards that both portable and permanent facilities must meet are stringent enough to protect the public health and safety and the environment and generally ensure the use of best available technology. The proposed rule exempts from Division 120 only those portable facilities that are located at a site for less than 15 days per year. That ensures that a portable facility does not become a semi-permanent facility. To impose the siting standards on these short-term activities would probably result in the waste being transported off-site instead. The Department is also reluctant to place a cap on quantities without a better feel for what the cap should be.

The only portable facilities operating in the state so far that would qualify for the exemption from Division 120 are portable PCB treatment units. These units are capable of removing PCB from transformers through a chemical treatment and recirculation process. The Department believes siting rules should not apply to this form of short-term, in-place treatment. The Department will closely monitor the portable exemption and modify this rule as necessary, but at this time has made no changes in the proposed rule.

4. Comment (CSSI)

The comment in the proposed rules following 340-120-001(3) should be deleted. "Incidental" quantities of waste should not be allowed to come to an on-site facility from off the site.

5. Comment (Tektronix)

Tektronix (Beaverton) may receive significant quantities of waste from its other facilities. Since both the Department and Tektronix considers the Beaverton facility as on-site treatment, the word "incidental" should be dropped. Department approval should only be required to allow waste from off the site and still be considered an on-site facility.

Response

The Department has considered the Tektronix (Beaverton) facility as on-site treatment because we thought only "incidental" quantities of waste came from off the site. If significant quantities of waste came from off the site, the Department would consider the Tektronix treatment facility as an off-site facility.

Both CSSI and Tektronix argue that off-site waste should be allowed to go to an on-site facility if the waste is generated by the owner of the facility. This fits the present Tektronix example. However, the Department has difficulty justifying special treatment for on-site facilities if a significant quantity of waste comes from off the site, no matter the owner.

The Department does not desire to require true on-site facilities with meeting more siting and permitting requirements than proposed. Also, the Department wants to avoid stretching the on-site facility meaning to include significant quantities coming from off the site. Therefore, we propose to modify the comment following proposed rule 340-120-001(3) from:

(Comment): With Department approval, a facility can receive incidental quantities of waste from off the site and be an on-site facility.)

To: For the purposes of this Division, a facility can receive as much as 10% of waste from off the site with Department approval and be an on-site facility.

To allow treatment and disposal facilities that treat or dispose waste primarily generated at the waste facility site, the Department proposes excluding these facilities from the requirement that they be located outside urban growth boundaries. The Department proposes to accomplish this by adding a new 340-120-001(3) after (2).

facility's permit application fee for community participation (see Comment 42); 2) the Legislature direct the courts to expedite trials and appeals on hazardous waste applications; 3) the Department study possible legislation authorizing the use of eminent domain if necessary to establish buffers at existing facilities; and 4) the Department initiate formal planning efforts for hazardous waste management and move to treatment, including incineration, in lieu of land disposal.

2. Comment (CSSI)

Proposed rule 340-120-001(2) and (3) should be modified so Division 120 applies to only land disposal.

Response

The Department does not support applying proposed Division 120 to only land disposal. Recall that Chapter 670 (SB 138) was passed by the legislature following CSSI's proposal for an incinerator.

3. Comment (CSSI)

Division 120 should apply equally to on-site and off-site facilities since off-site facilities will have no greater impact on public health and safety and the environment than on-site facilities. The Department supports more strict standards for off-site facilities to encourage on-site facilities and less transportation of waste, but the Department does not have the authority to regulate hazardous waste transportation.

Response

The Department is directed to protect the public health and safety and the environment when siting and permitting facilities. Keeping waste off the state's highways must be a part of our decision making.

The existing Resource Conservation and Recovery Act (RCRA) technical standards apply equally to on-site and off-site facilities. In addition, these criteria of proposed Division 120 apply to both:

- Technology and Design
- Property Line Setback
- Owner and Operator Capability
- Compliance History
- Community Participation

The three-step application procedure, including the Authorization to Proceed step, and the more detailed land use compatibility findings apply only to off-site facilities. The Department drafted these requirements to apply to the large, commercial off-site facilities. Applying them to on-site facilities which usually are supplemental to manufacturing activities and which generally treat less volumes and types of waste, would not be appropriate.

Agenda Item
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Edith Welp
Richard Harper and Les Ruark, COPWD
Della Heideman, CSSI
Sara Laumann, OSPIRG
John G.L. Hopkins, Riedel Environmental Services, Inc.
Dan L. Kniesner
Mrs. Richard Lien
Delberta and Earl Walker
James and Evelyn Morris
Earl and Dorothy Spivey (and others)
Michael Baker
Clarence and Blanche Pearce
Alan and Bonnie Bahn
Jo Broadwell
Miriam Feder, Tektronix (Tek)
Donald Haagensen, CSSI
Janet Whitworth, Dept. of Environmental Quality (DEQ)
Laurence Rasmussen
Choe Larvik
Ralph Crampton
John Charles, Oregon Environmental Council (OEC)
James Ross, Oregon Dept. of Land Conservation
and Development (DLCD)
Martha Kimler
Nancy Slusher Roeder
Andrew Gigler
Kifar Yosemite
Les Ruark
Darl Eves Kleinbach
Mark Becker
C.R. Gerry
Pat Hinton

Verbal and written testimony is summarized in Attachments 5 and 6. In this memorandum, the Department responds to those comments that related directly to the proposed rules.

Response to Comments

1. Comment (N.J. and D. Welp, E. Welp, Yutzie, Hicks, Davis, Morris, Ruark)

The recommendations of the Hazardous Waste (SB 138) Policy Advisory Committee should be followed.

Response

Since the Department worked very closely with the advisory committee, the proposed rules generally reflect the committee's recommendations. In addition to these rules, the committee recommends: 1) the Department seek legislation authorizing use of part of a proposed

TO: Environmental Quality Commission

FROM: Director

SUBJECT: Department Response to Testimony on Proposed Rules Establishing
Division 120 and Amending Division 110.

Public Hearing Testimony

<u>Date</u>	<u>Location</u>	<u>Name and Affiliation (if any)</u>
3/17/86	Portland	Sara Laumann, OSPIRG John Hopkins, Riedel Environmental Services, Inc.
3/17/86	Baker	Dennis Quast Susan Petersen, International Fellowship Michael Borisofi Barry Carter Ralph Crampton Ted Bloomer Dan Martin, Baker Peace Group Dorothy Bloomer Jo Broadwell, Hanford Education Action League Ray French, State Legislator C.R. Gerry Chloe Larvik
3/18/86	Arlington	Della Heideman, Chem-Security Systems, Inc.(CSSI) Gloria Davis Catherine Hicks Richard Harper, Concerned Oregonians for Proper Waste Disposal (COPWD) Michael Yutzie Les Ruark, COPWD Pam Secord
3/19/86	Medford	Erick Dittmer, Rogue Valley Council of Governments
3/20/86	Bend	None

Written Testimony

Name and Affiliation (If Any)

Chloe Larvik
N.J. and Diane Welp
Pamela Secord
Michael Yutzie

TO: Environmental Quality Commission

FROM: Richard Reiter, Hearings Officer



SUBJECT: Hearings Officer's Report

Summary of Public Testimony on Proposed Rules to Establish Chapter 340, Division 120, Siting and Permitting Requirements for Hazardous Waste and PCB Treatment and Disposal Facilities, and to Amend Division 110, Management of PCB.

Background

Hearings were held in Portland, Oregon on March 17, 1986 at 9:00 a.m. in Room 1400, 522 S.W. Fifth Avenue; in Baker, Oregon on March 17, 1986 at 7:00 p.m. in Room 1 of the Fair Board Extension Service Building, 2610 Grove Street; and in Arlington, Oregon on March 18, 1986 at 7:00 p.m. in the Arlington Elementary School Cafetorium, 1400 Main Street. Below is a summary of each hearing.

Portland Hearing

Thirteen people attended this hearing and two testified.

Sara L. Laumann, representing Oregon State Public Interest Research Group (OSPIRG), suggested the proposed rules be amended in four areas:

1. Proposed rule 340-120-010(2)(d)(B) which allows consideration of a siting separation distance less than one mile, should be deleted. If a facility is located closer than one mile to a residence, etc., then the public health and safety and the environment would be afforded less protection than is prudent.
2. Proposed rule 340-120-001(4)(a), the exemption for portable facilities, should be deleted. The possibility for an accident at a portable facility is at least as likely as an accident at a permanent facility. People living near a temporary site should be afforded the same protection as people living near a permanent site.
3. Proposed rule 340-120-015(1)(a), the separation distance from urban growth boundaries, should be amended so all facilities will be at least three miles from an urban growth boundary. Oregonians living in Baker or Arlington should not be closer to an incinerator than those living in Portland. All Oregonians should be provided the same protection.

4. Proposed rule 3140-120-015(1)(g), requiring an alternative transportation route to a facility, should be amended so both transportation routes are equally accessible, safe and maintained. The less traveled route should not fall into disrepair.

John G.L. Hopkins, representing Riedel Environmental Services, Inc., stated that proposed rule 340-120-010(2)(b)(C) seems to favor the siting of an incinerator at the Chem-Security Systems, Inc. facility near Arlington. The proposed language would eliminate genuine competition since it will be virtually impossible to site another incinerator closer to the Portland metropolitan area than Arlington.

Baker Hearing

Forty four people attended this hearing and twelve testified. Bob Danko and I spent nearly an hour answering questions before the testimony began.

Much of the testimony and questions concerned the possibility of incinerating hazardous waste in an existing, but now closed, cement kiln near Lime, Oregon, between Baker and Ontario along I-84. Riedel Environmental Services has investigated the feasibility of using the rotary kiln at the cement plant as a hazardous waste incinerator. Riedel recently announced that it was not pursuing development of an incinerator at Lime. Still, nearly everyone attending the Baker hearing was concerned about that possibility.

Several comments also addressed the transport of nuclear waste and the Hanford nuclear facility. I have addressed only those comments that pertain at least indirectly to the proposed rules.

Dennis Quast stated that the Lime facility would be closer than one mile to public lands and one quarter mile to a river. He favored on-site treatment and disposal and a buffer zone to residences of as much as 100 miles.

Susan Petersen, representing the International Fellowship, spoke on the rule addressing off-site transportation emergencies. She was concerned about shipping containers (are they safe?) and waste being shipped from out-of-state.

Michael Borisofi was concerned about transportation of waste.

Barry Carter wanted better identification of waste, escort vehicles for each truck carrying hazardous waste and large signs on each truck notifying the public that hazardous waste is aboard. The escort vehicle drivers should be trained in spill response and cleanup. Also, the regulations should be tightened as technology evolves so Oregon's rules are always the most stringent.

Ralph Crampton favored a much greater buffer zone, perhaps as large as 40 miles. Also, the Lime facility is an inappropriate site. He opposed the majority of waste disposed of coming from out-of-state.

Ted Bloomer supported on-site treatment so off-site commercial facilities would not be necessary. He favored changing the separation distance for rivers and streams from one-quarter mile to one mile.

Dan Martin representing the Baker Peace Group, favored rules requiring the state, not private industry, to operate a treatment or disposal facility.

Dorothy Bloomer was concerned about the impact of disposal facilities on public lands.

Jo Broadwell, representing the Hanford Education Action League, favored better signing on trucks hauling hazardous waste.

Ray French, state representative for District 59, was concerned that the required distance from urban growth boundaries in effect eliminated any siting in the Willamette Valley. He also was concerned that capacity which is based on a 10 year projection may not be big enough and may cause the need for additional facilities in the future.

C.R. Gerry believed that trucks carrying hazardous waste could be operated much safer than they are now.

Chloe Larvik supported locating treatment and disposal facilities close to the industries producing the waste.

Allan McCullough was concerned about human error when operating an incinerator. He believes one large off-site incinerator is safer than many on-site incinerators.

Arlington Hearing

Thirty one people attended the Arlington hearing and seven testified.

Bob Danko and I answered questions for about a half hour before testimony began.

Della Heideman, representing Chem-Security Systems, Inc. (CSSI), stated that CSSI will submit detailed written comments at a later date on several parts of the rules. She focused her testimony on the rule addressing community participation.

CSSI recommended that the committee appointed under rule 340-120-020(2) be comprised of a majority of local interests. Also, the rule should allow participation by local residents employed by the applicant. The chairperson should be a local person nominated by the local government.

CSSI opposed rule 340-120-020(4) which allows the Director to appoint a committee to review the operation of the facility. This should be left to the discretion of the local government. The Legislature authorized the Director to establish a committee for siting but did not authorize a committee to oversee the operation of a facility. If local government determines a need exists for a local committee, then a community information committee should be formed.

Ms. Heideman summarized CSSI's community relations plan and its implementation in her testimony.

Gloria Davis, supported reuse and recycling of hazardous waste at the site of generation. She endorsed the report of the Hazardous Waste Policy Advisory Committee. Facilities reapplying for treatment or disposal licenses should have to meet all the requirements that new facilities must meet. She supported the buffer zone requirements applying to existing facilities at some later date, so existing facilities could begin planning now for it.

Catherine Hicks supports the report of the Hazardous Waste Policy Advisory Committee and applying all of Division 120 to existing facilities after a reasonable period of time.

Richard Harper, representing Concerned Oregonians for Proper Waste Disposal (COPWD), supported rule 340-120-020, Community Participation, and its application to existing sites. COPWD favored the alternative language limiting capacity to waste generated in Oregon until an interstate compact specifically for hazardous waste is ratified. COPWD supported the Property Line Setback criterion and recommended a requirement for soil and food web monitoring be added for incinerators.

Michael Yutzie supported the report of the Hazardous Waste Policy Advisory Committee and specifically proposed rule 340-120-020, Community Participation. He favored better hazardous waste planning.

Les Ruark supported the proposed draft rules and will be submitting written testimony.

Pamela Secord supported the proposed rules generally but particularly favored rule 340-120-020(2), Community Participation, applying to existing as well as new sites. She favored the Department of Environmental Quality seeking legislation to allow part of the application fee for a facility to be given to a local review committee. She favored limiting the size of a facility to what is needed to treat or dispose of waste generated in Oregon. Also, she recommended that the property line setback requirement apply to the existing CSSI site and that any incinerator site should have to conduct detailed soil and plant monitoring. She favored more control over the transportation of hazardous materials than proposed rule 340-120-025 provides.



STATE OF OREGON

INTEROFFICE MEMO

Attachment 5
Agenda Item G
April 25, 1986

TO: Environmental Quality Commission

DATE: March 24, 1986

FROM: Richard Nichols, Hearings Officer

SUBJECT: Summary of Public Testimony on Proposed Rules to Establish Chapter 340, Division 120, Siting and Permitting Requirements for Hazardous Waste and PCB Treatment and Disposal Facilities, and to Amend Division 110, Management of PCB.

A public hearing was held at 7:00 p.m. on March 20, 1986 in the Cascade Natural Gas Community Room, 334 NE Hawthorne, Bend, Oregon. Four people attended the hearing but no one testified. Three of those attending represented the Bend media and one represented Chem-Security Systems, Inc. The public hearing was adjourned when no one expressed an interest in testifying.

MEMORANDUM

To: Environmental Quality Commission
From: Gary L. Grimes, Hearings Officer
Subject: Hearings Officer's Report



Summary of Public Testimony on Proposed Rules to Establish Chapter 340, Division 120, Siting and Permitting Requirements for Hazardous Waste and PCB Treatment and Disposal Facilities, and to Amend Division 110, Management of PCB.

Background

Pursuant to Notice, a public hearing was called to order at 7:00 p.m. on March 19, 1986 in the Medford City Council Chambers, Medford, Oregon.

Hearing Summary

Eric Dittmer, Rogue Valley Council of Governments, was the sole party offering testimony. Mr. Dittmer supports the Environmental Quality Commission's efforts to establish siting criteria for hazardous waste treatment and disposal facilities in Oregon. The reason cited was that easier access to a facility would lead to more proper disposal.

As a sideline, Mr. Dittmer supports the Department's efforts in the establishment of spill response and contingency plans along with training for spill response personnel. Mr. Dittmer feels that this is a necessary activity should more hazardous waste disposal facilities be established in Oregon and the volumes of hazardous waste in shipment be increased. Mr. Dittmer cited a truck accident and spill on I-5 in Jackson County which resulted in the release of the hazardous material tri-chloroethane. The trucking company is now bankrupt and cleanup has reached and apparently will exceed the limits of the liability protection insurance. Mr. Dittmer thinks that the EQC should give consideration to raising liabilities for carriers and look for recourse from other than a property owner, who may be non-responsible for the release of hazardous materials.

No other party wishing to testify came forward following Mr. Dittmer's testimony. A discussion was held with other parties present for the hearing on transportation related problems. Transportation related problems seemed to be the highest interest of all present.

The public hearing was adjourned at 7:30p.m. since no other interested parties wished to testify.

GG:fs

Attachment 6
Agenda Item G
April 25, 1986

TO: Environmental Quality Commission

FROM: Bob Danko

SUBJECT: Summary of Written Testimony on Proposed Rules to Establish Chapter 340, Division 120, Siting and Permitting Requirements for Hazardous Waste and PCB Treatment and Disposal Facilities, and to Amend Division 110, Management of PCB.

Background

The Department received written comments from 35 people during the comment period which ended March 28, 1986. Several comments were read into the public hearing record and those are discussed in the memorandum summarizing public testimony. The remaining written testimony is summarized below. Copies of the written testimony are available upon request.

N.J. and Diane Welp support the recommendations of the Policy Advisory Committee regarding formation of the committee in proposed rule 340-120-020. They express their support for this entire proposed rule relating to community participation.

Pamela Secord read her written comments into the public hearing record at the Arlington hearing.

Michael Yutzie read his written comments into the public hearing record at the Arlington hearing.

Edith L. Welp supports the Policy Advisory Committee's report. She feels the state is charged with the responsibility of protecting the public health, safety and the environment. Hazardous waste monitoring reminds her of an ant trying to monitor an elephant's activities. Therefore the state must pay the strictest attention to monitoring the CSSI site.

Richard Harper, representing Concerned Oregonians for Proper Waste Disposal, read his written comments into the public hearing record at the Arlington hearing.

Della Heideman, representing Chem-Security Systems, Inc., read her written comments into the public hearing record at the Arlington hearing.

Sara Laumann, representing Oregon State Public Interest Research Group, read her written comments into the public hearing record at the Portland hearing.

John G.L. Hopkins, representing Riedel Environmental Services, Inc., read his written comments into the public hearing record at the Portland hearing.

Dan L. Kniesner strongly urges that rule 340-120-010(2)(f), Groundwater Protection, be expanded to include incinerators. He believes that accidental leaks from tanks and pipes associated with an incinerator could threaten groundwater. He also comments that Chem-Security could hardly have an acceptable compliance history if proposed rule 340-120-010(2)(h) was followed. Mr. Kniesner attached an article from the Oregonian dated February 7, 1986 which discussed recent civil penalties at the disposal facility.

Mrs. Richard Lien opposes hazardous waste treatment or disposal in eastern Oregon.

Delberta and Earl Walker oppose an incinerator at Lime, Oregon.

James and Evelyn Morris support the report of the Hazardous Waste Policy Advisory Committee and the proposed Community Participation rule and its application to existing facilities.

Earl and Dorothy Sprivey, oppose Lime, Oregon, as a site for a hazardous waste treatment or disposal facility.

Michael Baker, generally supports the consideration of Baker County for a hazardous waste facility but has several questions concerning the consideration.

Clarence and Blanche Pearce support changing proposed rule 340-120-015(1)(c), site separation from surface water, to one mile from one-quarter mile.

Alan and Bonnie Bahn do not want a hazardous waste disposal site in Baker County.

Jo Broadwell opposes any siting or permitting of facilities until a company can show it will assume all liability. She is concerned about the "midnight dumping" of waste and supports stringent penalties for those caught. She urges more monitoring and agency coordination before permitting any facilities. She favors including nuclear waste and food irradiation materials as hazardous waste.

Miriam Feder, representing Tektronix, Inc., urges the Department to amend proposed rule 340-120-005(8), which requires existing facilities to meet some of the requirements of Division 120 upon reapplication or permit modification. Feder argues that Tektronix's hazardous waste treatment permit will be modified periodically and applying even some of Division 120's requirements during each permit modification is not helpful to the Department or the public and would be onerous to Tektronix. He

states that the proposed rule is confusing because it requires existing facilities to categorize themselves based on definitions for new facilities. Feder comments that, under this proposed rule, Tektronix finds itself governed by subpart (8)(b), requirements for on-site facilities, which would force the company to address the issue of Property Line Setback each time it sought to modify its permit.

Tektronix also urges the Department to delete the word "incidental" from the comment to Section (3) of proposed rule 340-120-001. This language allows a facility, with Department approval, to receive incidental quantities of waste from off the site and be an on-site facility. Tektronix prefers that the Department make an independent judgment on a case-by-case basis as to whether the quantity coming from off the site is suitable for the facility.

As an alternative, Feder recommends language that requires an on-site facility to treat only waste generated by the facility owner or be allowed to treat not more than 10% of the total waste from off the site.

Donald A. Haagensen, representing Chem-Security Systems, Inc., (CSSI), recommends 13 proposed rule changes.

1. Proposed rule 340-120-001(2) and (3) should be modified so that all of Division 120 applies to only land disposal facilities. Other facilities (both on-site and off-site) should meet the subparts listed in section (3). The comment following section (3) discussing incidental quantities of waste would not be needed.
2. The comment following proposed rule 340-120-001(3) should be deleted entirely and the Commission should only exempt facilities treating or disposing of completely on-site wastes. As an alternative, any waste coming from off site should only be allowed at on-site facilities if the waste is coming from off-site properties owned by the same person owning the on-site facility.
3. Proposed rule 340-120-005(8) should be revised so that the listed criteria only apply upon reapplication or permit modification where new information or standards indicate the existence of a threat to human health or the environment unknown at the time of permit issuance.
4. The criterion of 340-120-010(2)(a)(B) should not apply in a reapplication situation. The range of waste handled or the type of technology employed should not be required to change unless the facility is modified.
5. Proposed rule 340-120-005(9) requires the CSSI facility to meet the Property Line Setback requirement eight years from the date of rule adoption. This should be modified to apply upon the expiration date of CSSI's permit issued from its pending permit application.

6. Proposed rule 340-120-010(2)(a), Need, should not refer to the Northwest Compact states. "Oregon" should replace the Northwest Compact in subpart (A)(iii). The reference to the Northwest Compact should be deleted from subpart (B), and subpart (C) should be deleted entirely.
7. Proposed rule 340-120-010(2)(b), Capacity, should be modified by deleting subparts (B) and (C). Limiting capacity indirectly violates the Commerce Clause of the U.S. Constitution limiting each state's ability to restrict the free movement of commerce.
8. Proposed rule 340-120-010(2)(h) should be modified so that subpart (A) refers to actual violations, not allegations. This rule should only address violations within three years preceding the filing of the application and only if the facility was owned or operated by the applicant, owner, or any parent company of the owner during the period when the actions causing the violations occurred. Subpart (B) should be modified so that the Department must request the compliance history for a particular facility before the applicant must provide it.
9. Proposed rule 340-120-020(1) should be modified to exclude "operation" because Chapter 670 refers to a committee for the selection of a facility, not for the operation of a facility.
10. Proposed rule 340-120-020(2) should be modified so that greater than one half of the appointments are from local government's list of nominees. Also, the list of nominees should be able to include local residents employed by the applicant, and the chairperson of the committee should be appointed by the local government.
11. Proposed rule 340-120-020(4) should be deleted. The legislature authorized a committee for the purpose of reviewing the siting of a facility, not for the purpose of reviewing the operation of a facility.
12. Proposed rule 340-120-020(5) should be deleted. The commission has no authority to even recommend that paragraphs (a) through (e) be addressed.
13. Proposed rule 340-120-025(1) should be modified in two ways. The spill response team and the owner and operator of the facility should not be held liable under Oregon law for actions when complying with this section. Also, the last sentence of this section should be deleted. The facility should not be involved in cleaning up transporter spills for several reasons, including that the Department does not have the authority over the land transportation of waste.

Jan Whitworth, the manager of the Department of Environmental Quality's Hazardous Waste Section, submitted these comments:

1. The use of "remedial action" in 340-120-001(4)(b) may not be appropriate because it applies to only Superfund sites. Other sites may be required to close in place too.
2. Proposed rule 340-120-001(4) should include research and development facilities.
3. The word "modification" in 340-120-005(8) should be defined as major and minor modifications as already done in RCRA.
4. Proposed rule 340-120-010(2)(b)(C) is unclear.
5. Should faults be included in 340-120-015(1)(c)?
6. Proposed rule 340-120-020(2) should state at what time in the permitting process the committee would be formed.

Laurence Rasmussen strongly opposes any hazardous waste and PCB treatment or disposal facility at Lime, Oregon.

Chloe Larvik favors modifying proposed rule 340-120-015 to require an incinerator to be located in an industrial zone near the generators of hazardous waste. She also supports limiting the size of an incinerator to Oregon's needs only.

Ralph Crampton favors modifying proposed rule 340-120-025, Off-Site Transportation Emergencies, to require larger signs on trucks carrying hazardous materials listing the contents of what's inside. He supports oscillating lights on the front and rear of the trucks.

John Charles, representing Oregon Environmental Council, addressed eight parts of the proposed rules:

1. Proposed rule 340-120-001(4)(a), an exemption for portable facilities, should be modified to include other factors besides the 15-day limit at a particular site. The amount of waste treated may be more important than the time on the site. A cap on the amount treated and a requirement for best available technology should be added.
2. The Commission should formally request the state's Congressional delegation to introduce legislation to create an interstate compact specifically for hazardous waste.
3. In proposed rule 340-120-010(2)(c), Technology and Design, "environmental quality" should be replaced with "public health, safety and the environment" to be consistent.

4. Proposed rule 340-120-010(2)(e), Property Line Setback, should be modified so that the setback is 1,000 feet in every case. Language should allow an easement from an adjoining landowner to be part of the 1,000 feet.
5. The criteria of proposed rule 340-120-015, Land Use Compatibility Findings, should be required, not considered to adequately protect the surrounding community.
6. Proposed rule 340-120-015(1)(f) requires that emergency services be identified and assessed. Adequate emergency services should be ensured.
7. Proposed rule 340-120-020, Community Participation, should be modified so that the committee continues during the life of the facility. Funding is necessary to make the committee truly viable so the Department should approach the legislature to allow application fees to support the committee.
8. Proposed rule 340-120-025(1), Off-Site Transportation Emergencies, should be retained. If read along side of HB 2146, the facility owner would be reimbursed for cost of cleanup.

James F. Ross, Director of the Department of Land Conservation and Development, recommends several changes in the proposed rules.

1. 340-120-010, Authorization to Proceed Request.
 - a. The mandatory criteria here and the descretionary criteria of 340-120-015 are confusing. Both should be mandatory.
 - b. It is not clear what is expected to demonstrate adherence to the locational factors under -010(2)(d).
 - c. Proposed rule -010(2)(d) apparently allows encroachment within the separation distance. How should this be handled?
 - d. How does the applicant proceed if the comprehensive plan does not identify some of the listed features of -010(2)(d)(A)(ii)?
 - e. The term, "public open space," could be confusing in -010(2)(d)(A)(ii).
 - f. Should there be an exception to the one-mile separation distance of -010(2)(d)(B)?
 - g. Proposed rule -010(2)(e)(A-C) should be reworded to clarify that the setback distances are internal distances.

- h. Proposed rule -010(2)(g) should ensure bonding and liability in the event the applicant could no longer operate the facility.
 - i. The Authorization to Proceed should require public disclosure of the nature of the disposal activities intended at the site.
2. 340-120-015, Land Use Compatibility Findings.
- a. The rule should address if the same or different findings are required if the comprehensive plan has been acknowledged or not.
 - b. The reference to findings in -015(1) should reference obtaining local land use approvals.
 - c. The rule should indicate that separation distances are minimums and larger ones could be required.
 - d. The concerns of 1a., 1c., 1d., 1e., and 1f. are noted here too.
 - e. Proposed rule -015(1)(b) should recognize major rural industrial uses such as a cannery.
 - f. The separation distance of -015(1)(c) seem insufficient.
 - g. The term "wetlands" in -015(1)(c)(A) may be confusing. It should be tied to the Division of State Lands definition.
 - h. Proposed rule -015(1)(c) should list faults and non-aquatic habitat for wildlife.
 - i. Proposed rule -015(1)(d) should assure that the zone allowing the facility has been applied to the site of the facility.
 - j. The language of -015(1)(e) may invite abuse by surrounding landowners.
 - k. The reference to transportation route in -015(1)(g) should be changed to highway.
 - l. Proposed rule -015(1)(h) is too vaguely worded.
 - m. The language of -015(3) may not address local government making a negative compatibility finding or weak positive findings. This section should indicate that a hazardous waste facility is a Class A permit under OAR 660-31. The Department has the ultimate responsibility for determining goal compliance but an equal responsibility to act compatibility with comprehensive plans.

3. Propose rule 340-120-020(2-4) should reference the jurisdiction's adopted citizen involvement program and committee for citizen involvement.

Martha Kimler supports the proposed three-step application procedure and tight rules to protect public health and the environment.

Nancy Roeder supports limiting the hazardous waste treatment and disposal facilities to servicing Oregon companies only.

Andrew Gigler recommends more monitoring of hazardous waste treatment and disposal and believes DEQ's monitoring so far has been "highly, criminally inadequate." He supports limiting the facilities to waste generated in Oregon and more emphasis on reuse and recycling at the point of generation.

Kifar Yosemite supports meaningful community participation and making an agreement between local government and the applicant mandatory.

Les Ruark supports the draft rules and the work of the policy advisory committee. He specifically favors: (1) The 1987 Legislature authorizing DEQ to allow parts of the application fee for a proposed facility to pay the expenses of a local committee required by proposed rule 340-120-020; and (2) The Legislature requiring a committee for the existing CSSI facility.

Darl Eves Kleinbach supports having a local committee as required by proposed rule 340-120-020 and a committee at existing sites too.

Mark Becker favors independent monitoring at treatment and disposal sites. He believes landowners should be compensated if impacted by a facility. He also supports monitoring along transportation routes.

C.R. Gerry supports proposed rule 340-120-025, Off-Site Transportation Emergencies, and recommends that it be strictly enforced. He favors the committee concept as required in 340-120-020. He opposes on-site hazardous waste treatment and disposal and recommends a separation distance of fifteen miles from off-site facilities. He opposes any facility at the old cement kiln near Lime.

Pat Hinton opposes an incinerator at Lime. Also, the proposed rules allow too many variances. More regulation of transporters is needed to ensure adequate spill response and cleanup. The facility should pay for ensuring adequate emergency response, fire departments, medical care and technical advice to the local government. Historic areas and areas of primary farming and recreation should be exempt from consideration for a site.

RULEMAKING STATEMENTS

for

Rules to establish new Siting and Permitting Requirements for Hazardous Waste and PCB Treatment and Disposal Facilities, and to Manage PCB.

STATEMENT OF NEED:

Pursuant to ORS 183.335(7), these statements provide information on the Environmental Quality Commission's intended action to adopt and amend rules.

(1) Legal Authority

Oregon Laws 1985, Chapter 670, Section 44 requires the Environmental Quality Commission to adopt rules to carry out the provisions of that Act. ORS 466.020 authorizes the Commission to adopt rules to govern the management of hazardous waste.

(2) Need for the Rule

Prior to the passage of Oregon Laws 1985, Chapter 670, the Department and Commission considered only the technical merits of a proposal to treat or dispose of hazardous waste or PCB. Through Chapter 670, the State Legislature ordered the Department and Commission to consider the broader implications of locating a facility to treat or dispose of hazardous waste or PCB. The proposed rules implement Chapter 670 by establishing standards that must be met when locating such a facility. Until rules are adopted, the Department cannot receive and process applications for new hazardous waste or PCB treatment or disposal facilities.

(3) Principal Documents Relied Upon

Oregon Laws 1985, Chapter 670
ORS 466.015 through 466.065
ORS 466.250 through 466.350
Resource Conservation and Recovery Act, Subtitle C, and 40 CFR 260 through 270.
Toxic Substances Control Act, Section 6, and 40 CFR 761
Article IV(5) of ORS 469.930 (The Northwest Interstate Compact on Low-Level Radioactive Waste Management)
The Federal Interstate Commerce Clause

FISCAL AND ECONOMIC IMPACT:

Presently, only two licensed hazardous waste or PCB treatment or disposal facilities exist in the state. The proposed rules directly affect only these two facilities and any proposed facilities in the future. Most of the rules pertain to proposed facilities only.

It is difficult to project the overall economic impact of the proposed rules. Because of a more detailed permitting procedure, the costs for a successful applicant would likely increase. However, the proposed rules contain a screening process as the first step in the permitting procedure. The screening process should exclude poor proposals or poor sites for hazardous waste or PCB treatment or disposal from further consideration. Thus a potentially unsuccessful applicant will not have the significant costs of preparing a technical application and the Department will not have the costs of reviewing it. The screening process will also exclude poor proposals or sites before local government incurs significant costs in its review process.

The small business impact of the proposed rules should not be significant. Because treatment and disposal facilities may have added costs, generators of hazardous waste or PCB who use these facilities may have these additional costs passed on to them. However, additional standards are proposed to protect the public health and safety and the environment. These standards address many of the concerns that the public has when these facilities are considered. Thus, the proposed rules should increase the opportunity to locate hazardous waste and PCB treatment or disposal facilities in the state. Additional facilities should benefit generators of hazardous waste and PCB.

The fiscal impact on the Department should not be significant. The legislature increased permit application processing fees to minimize the fiscal impact to the Department when it reviews proposals for facilities.

LAND USE CONSISTENCY:

The Department has concluded that the proposed rules conform with the Statewide Planning Goals and Guidelines.

Goal 6 (Air, Water and Land Resources Quality): The proposed rules are designed to minimize the impact of hazardous waste and PCB treatment and disposal facilities on the environment by assuring protection of air, water and land resources.

Goal 11 (Public Facilities and Services): The proposed rules would guide an orderly and efficient siting of hazardous waste and PCB treatment and disposal facilities to meet the public's needs.

This rule does not appear to conflict with other goals.

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 the Statewide Planning Goals within their expertise and jurisdiction. Local government planning departments are especially requested to review the proposed rules.

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

CHAPTER 670

AN ACT

SB 138

Relating to environment; creating new provisions; amending ORS 459.410, 459.445, 459.505, 459.590, 459.635, 459.640, 468.220 and 767.457; repealing ORS 459.530; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 459.410 is amended to read:

459.410. As used in ORS 453.635 and 459.410 to 459.450 and 459.460 to 459.690, unless the context requires otherwise:

(1) "Commission" means the Environmental Quality Commission.

(2) "Department" means the Department of Environmental Quality.

(3) "Director" means the Director of the Department of Environmental Quality.

(4) "Dispose" or "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that the hazardous waste or any hazardous constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the state as defined in ORS 468.700.

(5) "Generator" means the person, who by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.

(6) "Hazardous waste" does not include radioactive material or the radioactively contaminated containers and receptacles used in the transportation, storage, use or application of radioactive waste, unless the material, container or receptacle is classified as hazardous waste under paragraph (a), (b) or (c) of this subsection on some basis other than the radioactivity of the material, container or receptacle. Hazardous waste does include all of the following which are not declassified by the commission under ORS 459.430 (3):

(a) Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.

(b) Residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues are classified as hazardous by order of the commission, after notice and public hearing. For purposes of classification, the commission must find that the

residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(c) Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in paragraphs (a) and (b) of this subsection.

(7) "Hazardous waste collection site" means the geographical site upon which hazardous waste is stored.

(8) "Hazardous waste disposal site" means a geographical site in which or upon which hazardous waste is disposed.

(9) "Hazardous waste treatment site" means the geographical site upon which or a facility in which hazardous waste is treated.

(10) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.

(11) "PCB" has the meaning given that term in ORS 468.900.

[(11)] (12) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

[(12)] (13) "Store" or "storage" means the containment of hazardous waste either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.

[(13)] (14) "Transporter" means any person engaged in the transportation of hazardous waste by any means.

[(14)] (15) "Treat" or "treatment" means any method, technique, activity or process, including but not limited to neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render the waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

SECTION 2. Sections 3 to 33 and 43 of this Act are added to and made a part of ORS 459.410 to 459.450.

SECTION 3. (1) The Legislative Assembly finds it is in the interest of public health and safety and environment to protect Oregon citizens from the potential harmful effects of the transportation and treatment or disposal of hazardous waste and PCB within Oregon.

(2) Therefore, the Legislative Assembly declares that it is the purpose of ORS 459.410 to 459.450 and 459.460 to 459.690 to:

(a) Protect the public health and safety and environment of Oregon to the maximum extent possible;

(b) Exercise the maximum amount of control over actions within Oregon relating to hazardous waste and PCB transportation and treatment or disposal;

(c) Limit to the extent possible the treatment or disposal of hazardous waste and PCB in Oregon to materials originating in the states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management under ORS 469.930; and

(d) Limit to the extent possible the size of any hazardous waste or PCB treatment or disposal facility in Oregon to a size that is appropriate to treat or dispose of waste or PCB originating in Oregon and, if capacity permits, to waste or PCB originating in those states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management under ORS 469.930.

SECTION 4. In order to carry out the provisions of ORS 459.410 to 459.450 and 459.460 to 459.695, the commission shall:

(1) Limit the number of facilities disposing of or treating hazardous waste or PCB;

(2) Establish classes of hazardous waste or PCB that may be disposed of or treated;

(3) Designate the location of a facility designed to dispose of or treat hazardous waste or PCB; and

(4) Limit to the extent otherwise allowed by law, the hazardous waste or PCB accepted for treatment or disposal at a facility first to hazardous waste or PCB originating in Oregon, or if the capacity of the facility as established under section 5 of this 1985 Act allows, or it is necessary for the commission to receive and maintain state authorization of a hazardous waste regulatory program under P.L. 94-580 and P.L. 98-616, to states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management as set forth in ORS 469.930.

SECTION 5. Before issuing a license for a new facility designed to dispose of or treat hazardous waste or PCB, the commission must find, on the basis of information submitted by the applicant, the department or any other interested party, that the proposed facility meets the following criteria:

(1) The proposed facility location:

(a) Is suitable for the type and amount of hazardous waste or PCB intended for treatment or disposal at the facility;

(b) Provides the maximum protection possible to the public health and safety and environment of Oregon from release of the hazardous waste or PCB stored, treated or disposed of at the facility; and

(c) Is situated sufficient distance from urban growth boundaries, as defined in ORS 197.295, to protect the public health and safety, accessible by transportation routes that minimize the threat to the public health and

safety and to the environment and sufficient distance from parks, wilderness and recreation areas to prevent adverse impacts on the public use and enjoyment of those areas.

(2) Subject to any applicable standards adopted under section 9 of this 1985 Act, the design of the proposed facility:

(a) Allows for treatment or disposal of the range of hazardous waste or PCB as required by the commission; and

(b) Significantly adds to:

(A) The range of hazardous waste or PCB handled at an already licensed treatment or disposal facility; or

(B) The type of technology employed at already licensed treatment or disposal facilities.

(3) The proposed facility uses the best available technology for treating or disposing of hazardous waste or PCB as determined by the department or the United States Environmental Protection Agency.

(4) The need for the facility is demonstrated by:

(a) Lack of adequate current treatment or disposal capacity to handle hazardous waste or PCB generated by Oregon companies;

(b) A finding that operation of the proposed facility would result in a higher level of protection of the public health and safety or environment; or

(c) Significantly lower treatment or disposal costs to Oregon companies.

(5) The proposed hazardous waste or PCB treatment or disposal facility has no major adverse effect on either:

(a) Public health and safety; or

(b) Environment of adjacent lands.

SECTION 6. As a condition to the issuance of a renewal license under ORS 459.410 to 459.450 and 459.460 to 459.690, the commission may require the applicant to comply with all or some of the criteria set forth in section 5 of this 1985 Act.

SECTION 7. Before issuing a license for a facility designed to treat or dispose of hazardous waste or PCB, the license applicant must demonstrate, and the commission must find, that the owner and operator meet the following criteria:

(1) The owner, any parent company of the owner and the operator have adequate financial and technical capability to properly construct and operate the facility; and

(2) The compliance history of the owner including any parent company of the owner and the operator in owning and operating other similar facilities, if any, indicates an ability and willingness to operate the proposed facility in compliance with the provisions of ORS 459.410 to 459.450 and 459.460 to 459.690 or any condition imposed on the licensee by the commission.

SECTION 8. The Environmental Quality Commission may, by rule, designate classes of facilities designed

to treat or dispose of hazardous waste or PCB that shall be subject to the provisions of sections 4 to 27 of this 1985 Act.

SECTION 9. The commission may impose specific standards for the range and type of hazardous waste or PCB treated or disposed of at a facility in order to protect the public health and safety and environment of Oregon.

SECTION 10. Whenever the Environmental Quality Commission finds there is a need for an additional hazardous waste or PCB treatment or disposal facility according to the criteria established in section 5 of this 1985 Act, the commission shall establish an application period during which persons may apply for a PCB disposal facility license according to the provisions of sections 15 to 20 of this 1985 Act or a hazardous waste disposal facility license under ORS 459.410 to 459.450 and 459.460 to 459.690.

SECTION 11. (1) Upon request, the department shall furnish an application form to any person interested in developing or constructing a hazardous waste or PCB treatment or disposal facility. Each such form shall contain:

- (a) The name and address of the applicant.
- (b) A statement of financial condition of the applicant, including assets, liabilities and net worth.
- (c) The experience of the applicant in construction, management, supervision or development of hazardous waste or PCB treatment or disposal facilities and in the handling of such substances.

(2) The department shall also require the submission of such information relating to the construction, development or establishment of a proposed hazardous waste or PCB treatment or disposal site and facilities to be operated in conjunction therewith, and such additional information, data and reports as it deems necessary to make a decision on granting or denying a license.

(3) If the application is for a new license to operate a new hazardous waste or PCB treatment or disposal facility, the application shall be accompanied by a fee in an amount sufficient to cover the department's costs in investigating and processing the application, but which shall not exceed \$70,000, which shall be continuously appropriated to the department for payment of the department's administrative expenses incurred in the process of licensing the treatment or disposal facility. Any portion of the fee that exceeds the department's administrative expenses shall be refunded to the applicant.

(4) If the application is for the renewal of an existing license, the application shall be accompanied by a fee in an amount estimated by the department to be sufficient to cover the department's costs in investigating and processing the renewal application. If the department incurs expenses in excess of the estimated fee, the applicant shall pay the excess fees. Under no circumstances shall the renewal fee exceed a total of \$50,000. Any

portion of the fee that exceeds the department's administrative expenses shall be refunded to the applicant. Such fees shall be continuously appropriated to the department for payment of the department's administrative expenses incurred in the process of renewing the license for a treatment or disposal facility.

SECTION 12. (1) To aid and advise the director and the commission in the selection of a hazardous waste or PCB treatment or disposal facility or the site of such facility, the director shall establish citizen advisory committees as the director considers necessary. The director shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The director or a designee shall be a nonvoting member of each committee.

(2) The advisory committees appointed under subsection (1) of this section shall review applications during an application period established under section 10 of this 1985 Act and make recommendations on the applications to the commission.

SECTION 13. As used in sections 13 to 33 of this 1985 Act, "PCB disposal facility" includes a facility for the treatment or disposal of PCB.

SECTION 14. (1) No person shall treat or dispose of any PCB anywhere in this state except at a PCB disposal facility licensed pursuant to sections 4 to 33 of this 1985 Act.

(2) No person shall establish, construct or operate a PCB disposal facility without a license therefor issued under sections 4 to 33 of this 1985 Act.

SECTION 15. The department shall:

(1) Provide for the administration, enforcement and implementation of sections 4 to 33 of this 1985 Act and may perform all functions necessary:

- (a) To regulate the operation and construction of a PCB disposal facility; and
- (b) For the licensing of a PCB disposal facility in consultation with the appropriate county governing body or city council.

(2) Coordinate and supervise all functions of state and local governmental agencies engaged in activities subject to the provisions of sections 4 to 33 of this 1985 Act.

SECTION 16. In accordance with applicable provisions of ORS 183.310 to 183.550, the commission shall:

(1) Adopt rules and issue orders, including but not limited to establishing minimum requirements for the disposal of PCB, minimum requirements for operation, maintenance, monitoring, reporting and supervision of disposal facilities, and requirements and procedures for selection of such facilities.

(2) Adopt rules and issue orders relating to the procedures of the department with respect to hearings,

filing of reports, submission of plans and the issuance, revocation and modification of licenses issued under ORS 468.900 to 468.921.

SECTION 17. (1) In adopting rules under section 16 of this 1985 Act regulating the disposal of PCB including, but not limited to, rules for the operation and maintenance of a PCB disposal facility, the commission shall provide for the best practicable disposal of the PCB in a manner that will minimize the possibility of adverse effects on the public health and safety or environment.

(2) The department shall investigate and analyze in detail the disposal methods and procedures required to be adopted by rule under section 16 of this 1985 Act and subsection (1) of this section and shall report its findings and recommendations to the commission.

SECTION 18. License applications submitted to the department for managing, operating, constructing, developing or establishing a PCB disposal facility must contain the following:

(1) The management program for the operation of the facility including the person to be responsible for the operation of the facility and a resume of the person's qualifications, the proposed method of disposal, the proposed method of pretreatment or decontamination of the facility, if any, and the proposed emergency measures to be provided at the facility.

(2) A description of the size and type of facility to be constructed, including the height and type of fencing to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used, the type of drainage and waste treatment facilities and maximum capacity of such facilities, the location and source of each water supply to be used and the location and the type of fire control facilities to be provided at the facility.

(3) A preliminary engineering sketch and flow chart showing proposed plans and specifications for the construction and development of the disposal facility and the waste treatment and water supply facilities, if any, to be used at the facility.

(4) The exact location and place where the applicant proposes to operate and maintain the PCB disposal facility, including the legal description of the lands included within the facility.

(5) A geologist's survey report indicating land formation, location of water resources and direction of the flows thereof and the geologist's opinion relating to the potential of contamination of water resources including but not limited to possible sources of such contamination.

(6) The names and addresses of the applicant's current or proposed insurance carriers, including copies of insurance policies then in effect.

SECTION 19. Upon receipt of an application for a PCB disposal facility license, the department shall cause copies of the application to be sent to affected state agencies, including the Health Division, the Public Util-

ity Commissioner, the State Fish and Wildlife Commission and the Water Resources Director. Each agency shall respond within the period specified by the department by making a written recommendation as to whether the license application should be granted. Recommendation from other agencies shall be considered in determining whether to grant the license.

SECTION 20. (1) Prior to holding hearings on a PCB disposal facility license application, the commission shall cause notice to be given in the county or counties where the proposed facility is to be located in a manner reasonably calculated to notify interested and affected persons of the license application.

(2) The notice shall contain information regarding the approximate location of the facility and the type and amount of PCB intended for disposal at the facility, and shall fix a time and place for a public hearing. In addition, the notice shall contain a statement that any person interested in or affected by the proposed PCB disposal facility shall have opportunity to testify at the hearing.

SECTION 21. The commission shall conduct a public hearing in the county or counties where a proposed PCB disposal facility is located and may conduct hearings at other places as the department considers suitable. At the hearing the applicant may present the application and the public may appear or be represented in support of or in opposition to the application.

SECTION 22. (1) At the close of the application period under section 10 of this 1985 Act, the department shall examine and review all PCB disposal facility license applications submitted to the commission and make such investigations as the department considers necessary, and make a recommendation to the commission as to whether to issue the license.

(2) After reviewing the department's recommendations under subsection (1) of this section, the commission shall decide whether or not to issue the license. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated in the application. The decision of the commission is subject to judicial review under ORS 183.480.

SECTION 23. The Environmental Quality Commission may not issue a license under section 22 of this 1985 Act for any facility designed to dispose of PCB by incineration unless:

(1) The facility is also equipped to incinerate hazardous waste; and

(2) The applicant has received all federal and state licenses required to operate a hazardous waste incinerator.

SECTION 24. (1) The department shall investigate any complaint made to it by any person that the operation of any PCB disposal facility is unsafe or that the opera-

tion is in violation of a condition of the operator's license or any provisions of sections 4 to 31 of this 1985 Act or the rules adopted under sections 4 to 33 of this 1985 Act. Upon receiving a complaint, the department shall furnish a copy of the complaint to the person holding the license to operate the PCB disposal facility.

(2) If, after making an investigation under subsection (1) of this section, the department is satisfied that sufficient grounds exist to justify a hearing upon the complaint, it shall give 10 days' written notice of the time and place of the hearing and the matters to be considered at the hearing. Both the complainant and the respondent are entitled to be heard, produce evidence and offer exhibits and to require the attendance of witnesses at the hearing.

(3) The commission or a hearings examiner appointed by the commission shall hear the matter. Within 30 days after the date of the hearing and after considering all evidence and testimony submitted, the commission shall make a specific order as it considers necessary. Any order issued by the commission under this subsection shall be subject to judicial review in the manner provided by ORS 183.480 for judicial review of orders in contested cases. The costs of reporting and of transcribing the hearing for the purpose of judicial review shall be paid by the party seeking judicial review.

SECTION 25. The department shall establish and operate a monitoring, inspection and surveillance program over all PCB disposal facilities or may contract with any qualified public or private agency other than the owner or licensee to do so. Owners and operators of a PCB disposal facility must allow necessary access to the PCB disposal facility and to its records, including those required by other public agencies, for the monitoring, inspection and surveillance program to operate.

SECTION 26. (1) Whenever, in the judgment of the department, there is reasonable cause to believe that a clear and immediate danger to the public health or safety or to the environment exists from the continued operation of the facility, without hearing or prior notice, the department shall order the operation of the facility halted by service of the order on the facility operator or an agent of the operator.

(2) Within 24 hours after the order is served, the department must appear in the appropriate circuit court to petition for the equitable relief required to protect the public health or safety or the environment and may begin proceedings to revoke the license if grounds for revocation exist.

SECTION 27. (1) As a condition of issuance of a PCB disposal facility license, if PCB waste disposal is to be by landfilling, the licensee must deed to the state the real property in or upon which the PCB waste will be permanently landfilled. If the state is required to pay the licensee just compensation for the real property deeded to it, the licensee shall pay the state annually a fee in an

amount determined by the department to be sufficient to make the real property self-supporting and self-liquidating.

(2) In addition to the requirement under subsection (1) of this section, each PCB disposal facility licensee under sections 4 to 33 of this 1985 Act shall be required to do the following as a condition to holding the license:

(a) Proceed expeditiously with and complete the project in accordance with the plans and specifications approved and the rules adopted under sections 4 to 33 of this 1985 Act.

(b) Commence operation, management or supervision of the PCB disposal facility on completion of the project and not to permanently discontinue the operation, management or supervision of the facility without the approval of the department.

(c) Maintain sufficient liability insurance or equivalent financial assurance in such amounts as determined by the department to be reasonably necessary to compensate for damage to the public health and safety and environment.

(d) Establish emergency procedures and safeguards necessary to prevent accidents and reasonably foreseeable risks.

(e) Restore, to the extent reasonably practicable, the area of the facility to its original condition when use of the area is terminated as a facility.

(f) Maintain a cash bond or other equivalent financial assurance in the name of the state, and in an amount estimated by the department to be sufficient to cover any costs of closing the facility and monitoring it or providing for its security after closure, to secure performance of license requirements and to provide for any remedial action by the state necessary to protect the public health and safety and the environment following facility closure. The financial assurance shall remain on deposit for the duration of the license and until the end of the post-closure period, except as the assurance may be released or modified by the department.

(g) Report periodically to the department on the volume and types of PCB received at the facility, their manner of disposition and the fees collected therefor.

(h) Maintain other plans and exhibits pertaining to the facility and its operation as determined by the department to be reasonably necessary to protect the public health or safety or the environment.

(i) Grant the commission the first opportunity to purchase the PCB disposal facility if the licensee offers the facility for sale.

(j) Maintain records of any PCB identified under provisions of sections 4 to 33 of this 1985 Act which is stored, treated or disposed of at the facility and the manner in which the PCB was stored, treated, transported or disposed of. The records shall be retained for the period of time determined by the commission.

(k) Assure that all personnel who are employed by the licensee are trained in proper procedures for handling,

transfer, transport, treatment, disposal and storage of PCB including but not limited to familiarization with all contingency plans.

(L) If disposal is by incineration, the facility must also incinerate a reasonable ratio of hazardous waste.

SECTION 28. An annual fee may be required of every PCB disposal facility licensee under sections 4 to 33 of this 1985 Act. The fee shall be in an amount determined by the commission to be adequate to carry on the monitoring, inspection and surveillance program established under section 25 of this 1985 Act and to cover related administrative costs. All such fees are continuously appropriated to the department to pay the cost of the program under section 25 of this 1985 Act.

SECTION 29. The commission may acquire real property for the disposal of PCB by instituting condemnation proceedings therefor to be conducted in accordance with ORS chapter 35.

SECTION 30. (1) If the commission revokes a PCB disposal facility license under ORS 459.620, the commission may:

- (a) Close the existing PCB disposal site or facility; or
- (b) Direct the department to acquire an existing facility or site for the disposal or treatment of PCB according to the provisions of subsection (2) of this section.

(2) The department may, upon direction from the commission and after payment of just compensation, acquire and own an existing facility for use in the disposal of PCB. In order to secure such a facility, the commission may modify or waive any of the requirements of this chapter, but not ORS 469.375 or 469.525, if the commission finds that waiver or modification:

- (a) Is necessary to make operation of the facility economically feasible; and
- (b) Will not endanger the public health and safety or the environment.

SECTION 31. (1) The department may limit, prohibit or otherwise restrict the treatment or disposal of PCB at a disposal facility if appropriate to protect public health and safety or the environment.

(2) The department shall monitor the origin and volume of PCB received at a disposal facility acquired and regulated under section 30 of this 1985 Act, and may curtail or reduce the volume of the PCB that may be accepted for disposal as necessary to:

- (a) Protect public health and safety or the environment; or
 - (b) Assure that the operation of the facility is economically feasible.
- (3) The department shall not accept any PCB at a disposal facility owned by the state from a state that is not a party to the Northwest Interstate Compact on Low-

Level Radioactive Waste Management as set forth in ORS 469.930.

SECTION 32. (1) The PCB disposal facility license shall require a fee based either on the volume of PCB accepted at the facility or a percentage of the fee collected, or both. The fees shall be calculated in amounts estimated to produce over the facility use period a sum sufficient to:

- (a) Secure performance of license requirements;
- (b) Close the facility;
- (c) Provide for any monitoring or security of the facility after closure; and
- (d) Provide for any remedial action by the state necessary after closure to protect the public health and safety and the environment.

(2) The amount so paid shall be held in a separate account and when the amount paid in by the licensee together with the earnings thereon equals the amount of the financial assurance required under subsection (2) of section 27 of this 1985 Act, the licensee shall be allowed to withdraw the financial assurance.

(3) If the facility is closed before the fees reach an amount equal to the financial assurance, appropriate adjustment shall be made and the reduced portion of the financial assurance may be withdrawn.

SECTION 33. (1) At the time a PCB disposal facility is closed, the person licensed under sections 4 to 33 of this 1985 Act to operate the facility must obtain a post-closure license from the department.

(2) A post-closure license issued under this section must be maintained until the end of the post-closure period established by the commission by rule.

(3) In order to obtain a post-closure license the licensee must provide post-closure care which shall include at least the following:

- (a) Monitoring and security of the PCB disposal facility; and
- (b) Any remedial action necessary to protect the public health and safety and environment.

(4) The commission may by rule establish a post-closure license application fee.

SECTION 34. Section 35 of this Act is added to and made a part of ORS chapter 767.

SECTION 35. (1) In addition to any other enforcement measure allowed, if a person violates the provisions of ORS 459.450 or 767.457 or rules adopted by the commissioner under ORS 459.450 or 767.457, the commissioner may impound the person's vehicle transporting, about to transport or that has transported hazardous waste, PCB or hazardous substance within the state. The commissioner may charge a reasonable fee for the costs of impoundment and storage, if any, before releasing any vehicle to its owner.

(2) As used in this section and ORS 767.457:

(a) "Hazardous substance" includes any substance defined by the commissioner as hazardous.

(b) "Hazardous waste" has the meaning given that term in ORS 459.410.

(c) "PCB" has the meaning given that term in ORS 468.900 when the PCB is a waste product of an industrial, commercial or other activity.

SECTION 36. ORS 767.457 is amended to read:

767.457. (1) The commissioner shall adopt rules setting standards for the safe transportation of hazardous waste, [as defined in ORS 459.410,] **hazardous substance and PCB** by all transporters.

(2) The authority granted under this section:

(a) Is in addition to any other authority granted the commissioner.

(b) Does not supersede the authority of the Energy Facility Siting Council to regulate the transportation of radioactive materials under ORS 469.530.

(3) In addition to any other penalty for violation of a rule adopted under this section, the commissioner, after hearing, may impose a civil penalty of not more than \$10,000 for violation of a rule adopted under this section. Each day of noncompliance with a rule is a separate violation.

SECTION 37. ORS 459.445 is amended to read:

459.445. (1) The commission may, by rule, require generators of hazardous waste to:

(a) Identify themselves to the department, list the location and general characteristics of their activity and name the hazardous waste generated;

(b) Keep records that accurately identify the quantities of such hazardous waste, the constituents thereof, and the disposition of such waste;

(c) Furnish information on the chemical composition of such hazardous waste to persons transporting, treating, storing or disposing of such waste;

(d) Use a department approved manifest system to assure that all such hazardous waste generated are destined for treatment, storage or disposal in treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated) which are operating pursuant to lawful authority; and

(e) Submit reports to the department setting out quantities of hazardous waste generated during a given time period and the disposition of all such waste.

(2) The generator of a hazardous waste shall be allowed to store a hazardous waste produced by that generator on the premises of that generator for a term not to exceed that set by rule without obtaining a hazardous waste collection site license. This shall not relieve any generator from complying with any other rule or standard regarding storage of hazardous waste.

(3) The commission by rule may exempt certain classes or types of hazardous waste generators from part or all of the requirements upon generators adopted by the

commission. Such an exemption can only be made if the commission finds that, because of the quantity, concentration, methods of handling or use of a hazardous waste, such a class or type of generator is not likely either:

(a) To cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or

(b) To pose a substantial present or potential threat to human health or the environment.

(4) **The commission by rule may provide for a special license for the treatment of hazardous waste on the premises of a generator. Such a special license may be established only if such treatment has no major adverse impact on:**

(a) **Public health and safety; or**

(b) **The environment of adjacent lands.**

SECTION 38. ORS 459.505 is amended to read:

459.505. (1) Except as provided in ORS 459.445 (2), no person shall:

(a) Store a hazardous waste anywhere in this state except at a licensed hazardous waste treatment, collection or disposal site;

(b) Establish, construct or operate a hazardous waste collection site in this state without obtaining a hazardous waste collection site license issued pursuant to this chapter; or

(c) Establish, construct or operate a hazardous waste treatment site in this state without obtaining a hazardous waste treatment site license issued under ORS 459.410 to 459.450 and 459.460 to 459.690.

(2) The commission may exempt certain classes of hazardous waste collection or treatment sites from part or all of the licensing requirements for these sites. Such an exemption can only be made if the commission finds that, because of the quantity, concentration or type of waste or duration of storage, such a class of collection or treatment site is not likely to endanger the public health, welfare or safety or the environment.

(3) If the director finds an emergency condition to exist, the director may authorize the short-term storage or treatment of a hazardous waste anywhere in the state as long as such temporary storage or treatment shall not constitute a hazard to public health, welfare or safety or to the environment.

(4) Hazardous waste collection sites operating on June 30, 1977, shall be required to obtain a hazardous waste collection site license not later than January 1, 1978.

(5) Hazardous waste treatment sites operating on October 3, 1979, shall be required to obtain a hazardous waste treatment site license not later than July 1, 1980.

SECTION 39. ORS 459.590 is amended to read:

459.590. (1) As a condition of issuance of a hazardous waste disposal site license, the licensee must deed to the state all that portion of the hazardous waste disposal site

in or upon which hazardous wastes shall be disposed of. If the state is required to pay the licensee just compensation for the real property deeded to it, the licensee shall pay the state annually a fee in an amount determined by the department to be sufficient to make such real property self-supporting and self-liquidating.

(2) Each hazardous waste disposal site licensee under ORS 459.410 to 459.450 and 459.460 to 459.690 shall be required to do the following as a condition to holding the license:

(a) Proceed expeditiously with and complete the project in accordance with the plans and specifications approved therefor pursuant to ORS 459.410 to 459.450 and 459.460 to 459.690 and the rules adopted thereunder.

(b) Commence operation, management or supervision of the hazardous waste disposal site on completion of the project and not to **permanently** discontinue such operation, management or supervision of the site without the approval of the department.

(c) Maintain sufficient liability insurance or equivalent financial assurance in such amounts as determined by the department to be reasonably necessary to protect the environment, and the health, safety and welfare of the people of this state.

(d) Establish emergency procedures and safeguards necessary to prevent accidents and reasonably foreseeable risks.

(e) Restore, to the extent reasonably practicable, the site to its original condition when use of the area is terminated as a site.

(f) Maintain a cash bond or other equivalent financial assurance in the name of the state and in an amount estimated by the department to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure, to secure performance of license requirements and to provide for any remedial action by the state necessary to protect the public health, welfare and safety and the environment following site closure. The financial assurance shall remain on deposit for the duration of the license and until the end of the post-closure period, except as the assurance may be released or modified by the department.

(g) Report periodically on the volume of material received at the site and the fees collected therefor.

(h) Maintain other plans and exhibits pertaining to the site and its operation as determined by the department to be reasonably necessary to protect the public health, welfare or safety or the environment.

(i) **In addition to the requirement of subsection (l) of this section, grant to the Environmental Quality Commission the first opportunity to purchase the hazardous waste disposal facility or site if the licensee offers the site for sale.**

SECTION 40. ORS 459.635 is amended to read:

459.635. *[The legislature finds that there is an urgent need for an Oregon site for the disposal of hazardous*

chemical wastes and that such a site should be regulated but not operated by the Department of Environmental Quality.] (1) **If the commission revokes a license under ORS 459.620, the commission may:**

(a) **Close an existing hazardous waste disposal site or facility; or**

(b) **Direct the department to acquire an existing facility or site for the disposal or treatment of hazardous waste according to the provisions of subsection (2) of this section.**

(2) **The department may, upon direction of the commission and upon payment of just compensation, acquire and own an existing facility or site for use in the disposal or treatment of hazardous waste.** In order to secure such a site, the commission may modify or waive any of the requirements of this chapter, but not ORS 469.375 or 469.525, if it finds that such waiver or modification:

[(1)] (a) **Is necessary to make operation of the facility or site economically feasible; and**

[(2)] (b) **Will not endanger the public health and safety or the environment.**

SECTION 41. ORS 459.640 is amended to read:

459.640. (1) The department may limit, prohibit or otherwise restrict the **treatment or disposal** of certain hazardous *[wastes]* waste at a hazardous waste **treatment or disposal site** *[owned by the state]* if *[necessary]* **appropriate** to protect public health, welfare or safety or the environment or to prolong the useful life of the hazardous waste disposal site.

(2) The department shall monitor the origin and volume of hazardous waste received at a hazardous waste **treatment or disposal site** and may curtail or reduce the volume of the wastes that may be accepted for disposal as necessary to prolong the useful life of the site.

SECTION 42. ORS 468.220 is amended to read:

468.220. (1) The department shall be the agency for the State of Oregon for the administration of the Pollution Control Fund. The department is hereby authorized to use the Pollution Control Fund for one or more of the following purposes:

(a) To grant funds not to exceed 30 percent of total project costs for eligible projects as defined in ORS 454.505 or sewerage systems as defined in ORS 468.700.

(b) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (a) of this subsection in an amount not to exceed 100 percent of the total project costs for eligible projects.

(c) To acquire, by purchase, or otherwise, other obligations of any city that are authorized by its charter in an amount not to exceed 100 percent of the total project costs for eligible projects.

(d) To grant funds not to exceed 30 percent of the total project costs for facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities.

(e) To make loans or grants to any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, for planning of eligible projects as defined in ORS 454.505, sewerage systems as defined by ORS 468.700 or facilities for the disposal of solid waste, including without being limited to, transfer and resource recovery facilities. Grants made under this paragraph shall be considered a part of any grant authorized by paragraph (a) or (d) of this subsection if the project is approved.

(f) To acquire, by purchase, or otherwise, general obligation bonds or other obligations of any municipal corporation, city, county, or agency of the State of Oregon, or combinations thereof, issued or made for the purpose of paragraph (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(g) To advance funds by contract, loan or otherwise, to any municipal corporation, city, county or agency of the State of Oregon, or combination thereof, for the purpose of paragraphs (a) and (d) of this subsection in an amount not to exceed 100 percent of the total project costs.

(h) To pay compensation required by law to be paid by the state for the acquisition of real property for the disposal by storage of environmentally hazardous wastes.

(i) To dispose of environmentally hazardous wastes by the Department of Environmental Quality whenever the department finds that an emergency exists requiring such disposal.

(j) To acquire for the state real property and facilities for the disposal by landfill, storage or otherwise of solid waste, including but not limited to, transfer and resource recovery facilities.

(k) To acquire for the state real property and facilities for the disposal by incineration or otherwise of hazardous waste or PCB.

(2) The facilities referred to in paragraphs (a) to (c) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(3) The facilities referred to in paragraphs (d), (f) and (g) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts, grants from the Federal Government, user charges, assessments and other fees.

(4) The real property and facilities referred to in [paragraph (j)] paragraphs (j) and (k) of subsection (1) of this section shall be only such as conservatively appear to the department to be not less than 70 percent self-supporting and self-liquidating from revenues, gifts,

grants from the Federal Government, user charges, assessments and other fees.

(5) The department may sell or pledge any bonds, notes or other obligations acquired under paragraph (b) of subsection (1) of this section.

(6) Before making a loan or grant to or acquiring general obligation bonds or other obligations of a municipal corporation, city, county or agency for facilities for the disposal of solid waste or planning for such facilities, the department shall require the applicant to demonstrate that it has adopted a solid waste management plan that has been approved by the department. The plan must include a waste reduction program.

(7) Any grant authorized by this section shall be made only with the prior approval of the Joint Committee on Ways and Means during the legislative sessions or the Emergency Board during the interim period between sessions.

(8) The department may assess those entities to whom grants and loans are made under this section to recover expenses incurred in administering this section.

SECTION 43. No new PCB disposal facility shall be constructed on or after January 1, 1985, without first complying with sections 4 to 33 of this 1985 Act.

SECTION 44. Within 270 days after the effective date of this Act, the Environmental Quality Commission shall adopt rules according to the applicable provisions of ORS 183.310 to 183.550 to carry out the provisions of sections 4 to 33 of this Act.

SECTION 45. (1) The Environmental Quality Commission shall establish an application period under section 10 of this Act and first begin to receive applications for operation of a PCB disposal facility not later than 270 days after the commission first adopts rules under section 16 of this Act.

(2) This section is repealed July 1, 1987.

SECTION 46. Except as provided in section 48 of this Act, the provisions of this Act control application for licenses made to the Environmental Quality Commission under ORS 459.410 to 459.450 and 459.460 to 459.695 after January 31, 1984, but not yet approved on the effective date of this Act.

SECTION 47. Notwithstanding section 46 of this Act, an individual licensed under ORS 459.410 to 459.450 and 459.460 to 459.690 as of the day immediately preceding the effective date of this Act, who is subject to ORS 459.410 to 459.450 and 459.460 to 459.690 on and after the effective date of this Act, need not obtain a license under ORS 459.410 to 459.450 and 459.460 to 459.690 as amended by this Act until the license issued to the individual before the effective date of this Act under ORS 459.410 to 459.450 and 459.460 to 459.690 has expired. The individual is considered to be licensed under and

subject to ORS 459.410 to 459.450 and 459.460 to 459.690 on and after the effective date of this Act, according to the nature and character of the business conducted by the individual, until the expiration of the license. Any person operating under a license issued under ORS 459.410 to 459.450 and 459.460 to 459.690 whose license expires after the effective date of this Act but before the commission adopts rules under section 44 of this Act may continue to operate according to the terms of the expired license until such time as the commission has adopted rules to carry out the provisions of this Act and either issues or denies a renewal license according to the provisions of ORS 459.410 to 459.450 and 459.460 to 459.690 as amended by this Act.

SECTION 48. Notwithstanding any other provision of this Act, the commission shall process any application submitted to the commission on or before January 31, 1984, for renewal of a license to operate a PCB or hazardous waste disposal facility operating on the effective date of this Act, according to the provisions of ORS 459.410 to 459.450 and 459.460 to 459.690 as those sections read before the effective date of this Act. A license for which an application to renew the license was submitted according to the criteria of this section shall continue in full force and effect until the commission either issues or denies a renewal license.

SECTION 49. ORS 459.530 is repealed.

SECTION 50. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Approved by the Governor July 13, 1985
 Filed in the office of Secretary of State July 15, 1985

CHAPTER 671

AN ACT

SB 170

Relating to support; creating new provisions; amending ORS 23.170, 23.175, 23.760, 23.765, 23.789, 109.015, 109.175, 109.252, 109.254, 109.256, 109.258, 237.201, 239.261, 416.400, 416.405, 416.410, 416.415, 416.425, 416.430, 416.435, 416.440, 416.455 and 416.470; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

ARTICLE I.

INCOME WITHHOLDING AND PAYMENT RECORDS

SECTION 1. ORS 23.170 is amended to read:

23.170. All pensions granted to any person in recognition by reason of a period of employment by or service for the government of the United States, or any state, or political subdivision of any state, or any municipality, person, partnership, association or corporation, shall be exempt from execution and all other process, mesne or final, except executions or other process arising out of a support obligation or an order or notice entered or issued pursuant to ORS 23.777 to 23.783, **section 4 of this 1985 Act, ORS 416.445 or 419.515.** Such exemption shall be effective without necessity of claim thereof by the pensioner.

SECTION 2. ORS 23.175 is amended to read:

23.175. As used in this section, [*and*] ORS 23.185 and **section 4 of this 1985 Act:**

(1) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amounts required to be withheld by law.

(2) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(3) "Employer" means any entity or individual who engages a person to perform work or services for which compensation is given in periodic payments or otherwise, even though the relationship of the person so engaged to the employer may be as an independent contractor for other purposes.

[(3)] (4) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt. "Garnishment" **does not include the procedure authorized by section 4 of this 1985 Act, ORS 23.777, 23.783, 416.445 and 419.515.**

NOTE: Section 3 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 4. (1) In addition to any other remedy provided by law for the enforcement of support, when a support order is or has been issued in Oregon by the circuit court or the administrator, as defined in ORS 416.400, or has been registered in Oregon, and current support payment records are being maintained by the Department of Human Resources, then so much of an obligor's disposable earnings must be withheld in accordance with subsections (2) to (14) of this section as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required. Withholding shall occur without the need for any amendment to the support order involved or for any further action, other than those actions required under this section, by the court or administrator.

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Sec. Subpart D—Storage and Disposal

- 761.60 Disposal requirements.
- 761.65 Storage for disposal.
- 761.70 Incineration.
- 761.75 Chemical waste landfills.
- 761.79 Decontamination.

Subpart E—Exemptions

- 761.80 Manufacturing, processing, and distribution in commerce exemptions.

Subparts F-1—[Reserved]

Subpart J—Records and Reports

- 761.180 Records and monitoring.
- 761.185 Certification program and retention or records by importers and persons generating PCBs in excluded manufacturing processes.
- 761.187 Reporting importers and by persons generating PCBs in excluded manufacturing processes.
- 761.193 Maintenance of monitoring records by persons who import, manufacture, process, distribute in commerce, or use chemicals containing inadvertently generated PCBs.

AUTHORITY: Secs. 6, 8, and 12, Toxic Substances Control Act, 15 U.S.C. 2605, 2607, and 2611.

Subpart A—General

§ 761.1 Applicability.

(a) This part establishes prohibitions of, and requirements for, the manufacture, processing, distribution in commerce, use, disposal, storage, and marking of PCBs and PCB Items.

(b) This part applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items. Substances that are regulated by this rule include, but are not limited to, dielectric fluids, contaminated solvents, oils, waste oils, heat transfer fluids, hydraulic fluids, paints, sludges, slurries, dredge spoils, soils, materials contaminated as a result of spills, and other chemical substances or combination of substances, including impurities and by-products and any byproduct, intermediate or impurity manufactured at any point in a process. Most of the provisions of this part apply to PCBs only if PCBs are present in concentrations above a specified level. For example,

PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS

Subpart A—General

- Sec.
- 761.1 Applicability.
 - 761.3 Definitions.
 - 761.19 References.

Subpart B—Manufacturing, Processing, Distribution in Commerce, and Use of PCBs and PCB Items

- 761.20 Prohibitions.
- 761.30 Authorizations.

Subpart C—Marking of PCBs and PCB Items

- 761.40 Marking requirements.
- 761.45 Marking formats.

Environmental Protection Agency

Attachment 9
Agenda m
March 14, 1986

§ 761.3

Subpart D applies generally to materials at concentrations of 50 parts per million (ppm) and above. Also certain provisions of Subpart B apply to PCBs inadvertently generated in manufacturing processes at concentrations specified in the definition of "PCB" under § 761.3. No provision specifying a PCB concentration may be avoided as a result of any dilution, unless otherwise specifically provided.

(c) Definitions of the terms used in these regulations are in Subpart A. The basic requirements applicable to disposal and marking of PCBs and PCB Items are set forth in Subpart D—Disposal of PCBs and PCB Items and in Subpart C—Marking of PCBs and PCB Items. Prohibitions applicable to PCB activities are set forth in Subpart B—Manufacture, Processing, Distribution in Commerce, and Use of PCBs and PCB Items. Subpart B also includes authorizations from the prohibitions. Subparts C and D set forth the specific requirements for disposal and marking of PCBs and PCB Items.

(d) Section 15 of the Toxic Substances Control Act (TSCA) states that failure to comply with these regulations is unlawful. Section 16 imposes liability for civil penalties upon any person who violates these regulations, and the Administrator can establish appropriate remedies for any violations subject to any limitations included in section 16 of TSCA. Section 16 also subjects a person to criminal prosecution for a violation which is knowing or willful. In addition, section 17 authorizes Federal district courts to enjoin activities prohibited by these regulations, compel the taking of actions required by these regulations, and issue orders to seize PCBs and PCB Items manufactured, processed or distributed in violation of these regulations.

(e) These regulations do not preempt other more stringent Federal statutes and regulations.

(f) Unless and until superseded by any new more stringent regulations issued under EPA authorities, or any permits or any pretreatment requirements issued by EPA, a state or local government that affect release of PCBs to any particular medium:

(1) Persons who inadvertently manufacture or import PCBs generated as unintentional impurities in excluded manufacturing processes, as defined in § 761.3, are exempt from the requirements of Subpart B of this part, provided that such persons comply with Subpart J of this part, as applicable.

(2) Persons who process, distribute in commerce, or use products containing PCBs generated in excluded manufacturing processes defined in § 761.3 are exempt from the requirements of Subpart B provided that such persons comply with Subpart J of this part, as applicable.

(3) Persons who process, distribute in commerce, or use products containing recycled PCBs defined in § 761.3, are exempt from the requirements of Subpart B of this part, provided that such persons comply with Subpart J of this part, as applicable.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

144 FR 31542, May 31, 1979, as amended at 49 FR 28189, July 10, 1984)

§ 761.3 Definitions.

For the purpose of this part: "Administrator" means the Administrator of the Environmental Protection Agency, or any employee of the Agency to whom the Administrator may either herein or by order delegate his authority to carry out his functions, or any person who shall by operation of law be authorized to carry out such functions.

"Agency" means the United States Environmental Protection Agency.

"Byproduct" means a chemical substance produced without separate commercial intent during the manufacturing or processing of another chemical substance(s) or mixture(s).

"Capacitor" means a device for accumulating and holding a charge of electricity and consisting of conducting surfaces separated by a dielectric. Types of capacitors are as follows:

(1) "Small capacitor" means a capacitor which contains less than 1.36 kg (3 lbs.) of dielectric fluid. The following assumptions may be used if the actual weight of the dielectric fluid is unknown. A capacitor whose total volume is less than 1,639 cubic centi-

meters (100 cubic inches) may be considered to contain less than 1.36 kgs (3 lbs.) of dielectric fluid and a capacitor whose total volume is more than 3,278 cubic centimeters (200 cubic inches) must be considered to contain more than 1.36 kg (3 lbs.) of dielectric fluid. A capacitor whose volume is between 1,639 and 3,278 cubic centimeters may be considered to contain less than 1.36 kg (3 lbs.) of dielectric fluid if the total weight of the capacitor is less than 4.08 kg (9 lbs.).

(2) "Large high voltage capacitor" means a capacitor which contains 1.36 kg (3 lbs.) or more of dielectric fluid and which operates at 2,000 volts (a.c. or d.c.) or above.

(3) "Large low voltage capacitor" means a capacitor which contains 1.36 kg (3 lbs.) or more of dielectric fluid and which operates below 2,000 volts (a.c. or d.c.).

"Chemical substance", (1) except as provided in paragraph (2) of this definition, means any organic or inorganic substance of a particular molecular identity, including: any combination of such substances occurring in whole or part as a result of a chemical reaction or occurring in nature, and any element or uncombined radical.

(2) Such term does not include: any mixture; any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured, processed, or distributed in commerce for use as a pesticide; tobacco or any tobacco product; any source material, special nuclear material, or byproduct material (as such terms are defined in the Atomic Energy Act of 1954 and regulations issued under such Act); any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or section 4221 or any provisions of such Code); and any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

"Chemical waste landfill" means a landfill at which protection against

risk of injury to health or the environment from migration of PCBs to land, water, or the atmosphere is provided from PCBs and PCB Items deposited therein by locating, engineering, and operating the landfill as specified in § 761.75.

"Commerce" means trade, traffic, transportation, or other commerce:

(1) Between a place in a State and any place outside of such State, or

(2) Which affects trade, traffic, transportation, or commerce described in paragraph (1) of this definition.

"Disposal" means intentionally or accidentally to discard, throw away, or otherwise complete or terminate the useful life of PCBs and PCB Items. Disposal includes spills, leaks, and other uncontrolled discharges of PCBs as well as actions related to containing, transporting, destroying, degrading, decontaminating, or confining PCBs and PCB Items.

"Distribute in commerce" and "Distribution in Commerce" when used to describe an action taken with respect to a chemical substance, mixture, or article containing a substance or mixture means to sell, or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of the substance, mixture, or article; or to hold or the holding of, the substance, mixture, or article after its introduction into commerce.

"Excluded manufacturing process" means a manufacturing process in which quantities of PCBs, as determined in accordance with the definition of inadvertently generated PCBs, calculated as defined, and from which releases to products, air, and water meet the requirements of paragraphs (1) through (5) of this definition, or the importation of products containing PCBs as unintentional impurities, which products meet the requirements of paragraph (1) and (2) of this definition.

(1) The concentration of inadvertently generated PCBs in products leaving any manufacturing site or imported into the United States must have an annual average of less than 25 ppm, with a 50 ppm maximum.

(2) The concentration of inadvertently generated PCBs in the components of detergent bars leaving the manufacturing site or imported into the United States must be less than 5 ppm.

(3) The release of inadvertently generated PCBs at the point at which emissions are vented to ambient air must be less than 10 ppm.

(4) The amount of inadvertently generated PCBs added to water discharged from a manufacturing site must be less than 100 micrograms per resolvable gas chromatographic peak per liter of water discharged.

(5) Disposal of any other process wastes above concentrations of 50 ppm PCB must be in accordance with Subpart D of this part.

"Fluorescent light ballast" means a device that electrically controls fluorescent light fixtures and that includes a capacitor containing 0.1 kg or less of dielectric.

"Impurity" means a chemical substance which is unintentionally present with another chemical substance.

"Incinerator" means an engineered device using controlled flame combustion to thermally degrade PCBs and PCB Items. Examples of devices used for incineration include rotary kilns, liquid injection incinerators, cement kilns, and high temperature boilers.

"Leak" or "leaking" means any instance in which a PCB Article, PCB Container, or PCB Equipment has any PCBs on any portion of its external surface.

"Manufacture" means to produce, manufacture, or import into the customs territory of the United States.

"Manufacturing process" means all of a series of unit operations operating at a site, resulting in the production of a product.

"Mark" means the descriptive name, instructions, cautions, or other information applied to PCBs and PCB Items, or other objects subject to these regulations.

"Marked" means the marking of PCB Items and PCB storage areas and transport vehicles by means of applying a legible mark by painting, fixation of an adhesive label, or by any

other method that meets the requirements of these regulations.

"Mixture" means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include any combination which occurs, in whole or in part, as a result of a chemical reaction if none of the chemical substances comprising the combination is a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

"Municipal solid wastes" means garbage, refuse, sludges, wastes, and other discarded materials resulting from residential and non-industrial operations and activities, such as household activities, office functions, and commercial housekeeping wastes.

"PCB" and "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. Refer to § 761.1(b) for applicable concentrations of PCBs. PCB and PCBs as contained in PCB Items are defined in § 761.3. For any purposes under this part, inadvertently generated non-Arochlor PCBs are defined as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5.

"PCB Article" means any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article" includes capacitors, transformers, electric motors, pumps, pipes and any other manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the PCB Article.

"PCB Article Container" means any package, can, bottle, bag, barrel, drum, tank, or other device used to contain PCB Articles or PCB Equipment, and whose surface(s) has not been in direct contact with PCBs.

"PCB Container" means any package, can, bottle, bag, barrel, drum, tank, or other device that contains PCBs or PCB Articles and whose surface(s) has been in direct contact with PCBs.

"PCB Equipment" means any manufactured item, other than a PCB Container or a PCB Article Container, which contains a PCB Article or other PCB Equipment, and includes microwave ovens, electronic equipment, and fluorescent light ballasts and fixtures.

"PCB Item" is defined as any PCB Article, PCB Article Container, PCB Container, or PCB Equipment, that deliberately or unintentionally contains or has a part of it any PCB or PCBs.

"PCB Transformer" means any transformer that contains 500 ppm PCB or greater.

"PCB-Contaminated Electrical Equipment" means any electrical equipment, including but not limited to transformers (including those used in railway locomotives and self-propelled cars), capacitors, circuit breakers, reclosers, voltage regulators, switches (including sectionalizers and motor starters), electromagnets, and cable, that contain 50 ppm or greater PCB, but less than 500 ppm PCB. Oil-filled electrical equipment other than circuit breakers, reclosers, and cable whose PCB concentration is unknown must be assumed to be PCB-Contaminated Electrical Equipment. (See § 761.30 (a) and (h) for provisions permitting reclassification of electrical equipment containing 500 ppm or greater PCBs to PCB-Contaminated Electrical Equipment).

"Person" means any natural or judicial person including any individual, corporation, partnership, or association; any State or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

"Posing an exposure risk to food or feed" means being in any location where human food or animal feed

products could be exposed to PCBs released from a PCB Item. A PCB Item poses an exposure risk to food or feed if PCBs released in any way from the PCB Item have a potential pathway to human food or animal feed. EPA considers human food or animal feed to include items regulated by the U.S. Department of Agriculture or the Food and Drug Administration as human food or animal feed; this includes direct additives. Food or feed is excluded from this definition if it is used or stored in private homes.

"Process" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce:

(1) In the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or

(2) As part of an article containing the chemical substance or mixture.

"Qualified incinerator" means one of the following:

(1) An incinerator approved under the provisions of § 761.70. Any concentration of PCBs can be destroyed in an incinerator approved under § 761.70.

(2) A high efficiency boiler approved under the provisions of § 761.60(a)(3). Only PCBs in concentrations below 500 ppm can be destroyed in a high-efficiency boiler approved under § 761.60(a)(3).

(3) An incinerator approved under section 3005(c) of the Resource Conservation and Recovery Act (42 U.S.C. 6925(c)) (RCRA). Only PCBs in concentrations below 50 ppm can be destroyed in a RCRA-approved incinerator. The manufacturer seeking to qualify a process as a controlled waste process by disposing of wastes in a RCRA-approved incinerator must make a determination that the incinerator is capable of destroying less readily burned compounds than the PCB homologs to be destroyed. The manufacturer may use the same guidance used by EPA in making such a determination when issuing an approval under section 3005(c) of RCRA. The manufacturer is also responsible for obtaining a reasonable assurance that the incinerator, when burning PCB wastes, will be operated under condi-

tions which have been shown to enable the incinerator to destroy the less readily burned compounds.

"Recycled PCBs" are defined as those intentionally manufactured PCBs which appear in the processing of paper products or asphalt roofing materials as PCB-contaminated raw materials and which meet the requirements of (1) through (5) of this definition.

(1) The concentration of Aroclor PCBs in paper products leaving any manufacturing site or imported into the United States must have an annual average of less than 25 ppm with a 50 ppm maximum.

(2) There are no detectable concentrations of Aroclor PCBs in asphalt roofing materials.

(3) The release of Aroclor PCBs at the point at which emissions are vented to ambient air must be less than 10 ppm.

(4) The amount of Aroclor PCBs added to water discharged from a processing site must at all times be less than 3 micrograms per liter ($\mu\text{g}/\text{l}$) for total Aroclors (roughly 3 parts per billion (3 ppb)).

(5) Disposal of any other process wastes above concentrations of 50 ppm PCB must be in accordance with Subpart D of this part.

"Sale for purposes other than resale" means sale of PCBs for purposes of disposal and for purposes of use, except where use involves sale for distribution in commerce. PCB Equipment which is first leased for purposes of use any time before July 1, 1979, will be considered sold for purposes other than resale.

"Small quantities for research and development" means any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, PCBs, but not for research or analysis for the development of a PCB product.

"Storage for disposal" means temporary storage of PCBs that have been designated for disposal.

"Transport vehicle" means a motor vehicle or rail car used for the trans-

portation of cargo by any mode. Each cargo-carrying body (e.g., trailer, railroad freight car) is a separate transport vehicle.

"Totally enclosed manner" means any manner that will ensure no exposure of human beings or the environment to any concentration of PCBs.

"Waste Oil" means used products primarily derived from petroleum, which include, but are not limited to, fuel oils, motor oils, gear oils, cutting oils transmission fluids, hydraulic fluids, and dielectric fluids.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[49 FR 25239, June 20, 1984, as amended at 49 FR 28189, July 10, 1984; 49 FR 29066, July 18, 1984; 49 FR 44638, Nov. 8, 1984]

§ 761.19 References.

(a) [Reserved]

(b) *Incorporations by reference.* The following material is incorporated by reference, and is available for inspection at the Office of the Federal Register Information Center, Rm. 8301, 1100 L St. NW., Washington, DC 20408. These incorporations by reference were approved by the Director of the Office of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the FEDERAL REGISTER. Copies of the incorporated material may be obtained from the Environmental Protection Agency Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, EPA, Rm. 106, 401 M St., SW., Washington, D.C. 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

References	CFR Citation
ASTM D-93-80 Standard Test Method for Flash Point by Pensky-Martens Closed Tester.	§ 761.60(a)(3)(iii)(B)(6), § 761.75(b)(8)(iii).
ASTM D-129-64 (Reapproved 1978) Standard Test Method for Sulfur in Petroleum Products (General Bomb Method).	§ 761.60(a)(3)(iii)(B)(6).
ASTM D-240-76 (Reapproved 1980) Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuel by Bomb Calorimeter.	§ 761.60(a)(3)(iii)(B)(6).

References	CFR Citation
ASTM D-482-80 Standard Test Method for Ash from Petroleum Products.	§ 761.60(a)(3)(iii)(B)(6).
ASTM D-524-81 Standard Test Method for Ramsbottom Carbon Residue of Petroleum Products.	§ 761.60(a)(3)(iii)(B)(6).
ASTM D-808-81 Standard Test Method for Chlorine in New and Used Petroleum Products (Bomb Method).	§ 761.60(a)(3)(iii)(B)(6).
ASTM D-923-81 Standard Test Method for Sampling Electrical Insulating Liquids.	§ 761.60(g)(1)(ii); § 761.60(g)(2)(ii).
ASTM D-1266-80 (Reapproved 1981) Standard Test Method for Sulfur in Petroleum Products (Lamp Method).	§ 761.60(a)(3)(iii)(B)(6).
ASTM D-1796-83 (Reapproved 1977) Methods for Water and Sediment in Crude Oils and Fuel Oils by Centrifuge.	§ 761.60(a)(3)(iii)(B)(6).
ASTM D-2158-80 Standard Test Method for Residues in Liquefied Petroleum (LP) Gas.	§ 761.60(a)(3)(iii)(B)(6).
ASTM D-2709-88 (Reapproved 1982) Standard Test Method for Water and Sediment in Distillate Fuel by Centrifuge.	§ 761.60(a)(3)(iii)(B)(6).
ASTM D-2784-80 Standard Test Method for Sulfur in Liquefied Petroleum Gases (Oxyhydrogen Burner or Lamp).	§ 761.60(a)(3)(iii)(B)(6).
ASTM D-3176-73 (Reapproved 1979) Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coke and Coal.	§ 761.60(a)(3)(iii)(B)(6).
ASTM D-3276-76 (Reapproved 1982) Standard Test Methods for Flash Point of Liquid by Setflash Closed Tester.	§ 761.75(b)(8)(iii).
ASTM E-258-67 (Reapproved 1982) Standard Test Method for Total Nitrogen Inorganic Material by Modified KJELDAHL Method.	§ 761.60(a)(3)(iii)(B)(6).

[47 FR 22098, May 21, 1982, as amended at 49 FR 29067, July 18, 1984; 49 FR 36648, Sept. 19, 1984]

Subpart B—Manufacturing, Processing, Distribution in Commerce, and Use of PCBs and PCB Items

§ 761.20 Prohibitions.

Except as authorized in § 761.30, the activities listed in paragraphs (a) and (d) of this section are prohibited pursuant to section 6(e)(2) of TSCA. The requirements set forth in paragraphs (b) and (c) of this section concerning export and import of PCBs for purposes of disposal and PCB Items for purposes of disposal are established pursuant to section 6(e)(1) of TSCA. Subject to any exemptions granted

pursuant to section 6(e)(3)(B) of TSCA, the activities listed in paragraphs (b) and (c) of this section are prohibited pursuant to section 6(e)(3)(A) of TSCA. In addition, the Administrator hereby finds, under the authority of section 12(a)(2) of TSCA, that the manufacture, processing, and distribution in commerce of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater present an unreasonable risk of injury to health within the United States. This finding is based upon the well-documented human health and environmental hazard of PCB exposure, the high probability of human and environmental exposure to PCBs and PCB Items from manufacturing, processing, or distribution activities; the potential hazard of PCB exposure posed by the transportation of PCBs or PCB Items within the United States; and the evidence that contamination of the environment by PCBs is spread far beyond the areas where they are used. In addition, the Administrator hereby finds, for purposes of section 6(e)(2)(C) of TSCA, that any exposure of human beings or the environment to PCBs, as measured or detected by any scientifically acceptable analytical method, may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. For purposes of determining which PCB Items are totally enclosed, pursuant to section 6(e)(2)(C) of TSCA, since exposure to such Items may be significant, the Administrator further finds that a totally enclosed manner is a manner which results in no exposure to humans or the environment to PCBs. The following activities are considered totally enclosed: distribution in commerce of intact, nonleaking electrical equipment such as transformers (including transformers used in railway locomotives and self-propelled cars), capacitors, electromagnets, voltage regulators, switches (including sectionalizers and motor starters), circuit breakers, reclosers, and cable that contain PCBs at any concentration and processing and distribution in commerce of PCB Equip-

ment containing an intact, nonleaking PCB Capacitor. See paragraph (c)(1) of this section for provisions allowing the distribution in commerce of PCBs and PCB Items.

(a) No person may use any PCB, or any PCB Item regardless of concentration, in any manner other than in a totally enclosed manner within the United States unless authorized under § 761.30, except that an authorization is not required to use those PCBs or PCB Items resulting from an excluded manufacturing process or recycled PCBs defined in § 761.3, provided all applicable conditions of § 761.1(f) are met.

(b) No person may manufacture PCBs for use within the United States or manufacture PCBs for export from the United States without an exemption except that:

(1) No person may manufacture PCBs for use within the United States or manufacture PCBs for export from the United States without an exemption, except that an exemption is not required for PCBs manufactured in an excluded manufacturing process as defined in § 761.3, provided that all applicable conditions of § 761.1(f) are met.

(2) PCBs at concentrations less than 50 ppm may be imported or exported for purposes of disposal.

(c) No person may process or distribute in commerce any PCB, or any PCB Item regardless of concentration, for use within the United States or for export from the United States without an exemption, except that an exemption is not required to process or distribute in commerce PCBs or PCB Items resulting from an excluded manufacturing process as defined in § 761.3, or to process or distribute in commerce recycled PCBs as defined in § 761.3 provided that all applicable conditions of § 761.1(f) are met.

(1) PCBs at concentrations of 50 ppm or greater, or PCB Items with PCB concentrations of 50 ppm or greater, sold before July 1, 1979 for purposes other than resale may be distributed in commerce only in a totally enclosed manner after that date.

(2) PCBs at concentrations of 50 ppm or greater, or PCB Items with PCB concentrations of 50 ppm or

greater may be processed and distributed in commerce in compliance with the requirements of this Part for purposes of disposal in accordance with the requirements of § 761.60.

(3) PCBs or PCB Items may be exported for disposal until May 1, 1980, if an export notice is submitted at least thirty (30) days before the first shipment in any calendar year leaves the customs territory of the United States. Export notices must be submitted to the Document Control Officer (TS-793), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The generator of the PCB waste material intended for disposal, or an agent acting on his behalf, must certify to the best of his knowledge and belief that the information is complete and accurate. Each notice should contain the following information:

(i) Name, company name, address, and telephone number of the owner of the PCB waste material to be exported and the name and address of any person or agent acting on his behalf;

(ii) Estimated quantity of wastes to be shipped during the calendar year and the estimated number of shipments to be made and the dates when such shipments are expected to leave the customs territory of the United States;

(iii) Description of the PCBs or PCB Items being exported;

(iv) Country(s) of destination for the shipments;

(v) Name and address of facility(s) receiving the shipment and person(s) responsible for receiving the shipment(s).

(vi) Method(s) of disposal and precautions taken to control release into the environment.

(vii) No less than 30 days after the end of each calendar quarter (March 31, June 30, September 30, and December 31) during which PCBs were exported for disposal, each person exporting the PCBs must submit a report to the Document Control Officer (TS-793), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The report shall list the quantity of PCB wastes

in each shipment made during the quarter and include the date when each shipment left the customs territory of the United States and the information specified in paragraphs (c)(3)(i) and (iii) through (vi) of this section. If the quantity of wastes shipped during the calendar year exceeds by 25 percent or more the estimated quantities reported in paragraph (c)(3)(ii) of this section, a special export notice must be submitted to the Document Control Officer (TS-793) at the address given in paragraph (c)(3) at least 30 days before any additional shipments leave the customs territory of the United States and the notice shall include the information specified in paragraphs (c)(3) (i) through (vi) of this section.

(viii) Any person expecting to export PCB wastes for disposal in calendar year 1980 must submit an export notice at least thirty (30) days before the first shipment leaves the customs territory of the United States to the Document Control Officer (TS-793) at the address given in paragraph (c)(3) of this section, and the notice shall contain the information listed in paragraphs (c)(3) (i) through (vi) of this section.

(4) PCBs, at concentrations of less than 50 ppm, or PCB Items, with concentrations of less than 50 ppm, may be processed and distributed in commerce for purposes of disposal.

(d) The use of waste oil that contains any detectable concentration of PCB as a sealant, coating, or dust control agent is prohibited. Prohibited uses include, but are not limited to, road oiling, general dust control, use as a pesticide or herbicide carrier, and use as a rust preventative on pipes.

(Sec. 5, Pub. L. 94-469, 90 Stat. 2020, (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982, and amended at 49 FR 25241, June 20, 1984; 49 FR 28190, July 10, 1984; 49 FR 44638, Nov. 8, 1984]

§ 761.30 Authorizations.

The following non-totally enclosed PCB activities are authorized pursuant to section 6(e)(2)(B) of TSCA:

(a) Use in and servicing of transformers (other than railroad transformers). PCBs at any concentration

may be used in transformers (other than transformers for railroad locomotives and self-propelled railroad cars) and may be used for purposes of servicing including rebuilding these transformers for the remainder of their useful lives, subject to the following conditions:

(1) Use conditions. (i) After October 1, 1985, the use and storage for reuse of PCB Transformers that pose an exposure risk to food or feed is prohibited.

(ii) A visual inspection of each PCB Transformer (as defined in the definition of "PCB Transformer" under § 761.3) in use or stored for reuse shall be performed at least once every three months. These inspections may take place any time during the three month periods; January-March, April-June, July-September, and October-December as long as there is a minimum of 30 days between inspections. The visual inspection must include investigation for any leak of dielectric fluid on or around the transformer. The extent of the visual inspections will depend on the physical constraints of each transformer installation and should not require an electrical shutdown of the transformer being inspected.

(iii) If a PCB Transformer is found to have a leak which results in any quantity of PCBs running off or about to run off the external surface of the transformer, then the transformer must be repaired or replaced to eliminate the source of the leak. In all cases any leaking material must be cleaned up and properly disposed of according to disposal requirements of § 761.60. Cleanup of the released PCBs must be initiated as soon as possible, but in no case later than 48 hours of its discovery. Until appropriate action is completed, any active leak of PCBs must be contained to prevent exposure of humans or the environment and inspected daily to verify containment of the leak. Trenches, dikes, buckets, and pans are examples of proper containment measures.

(iv) Records of inspection and maintenance history shall be maintained at least 3 years after disposing of the transformer and shall be made available for inspection, upon request, by

EPA. Such records shall contain the following information for each PCB Transformer:

(A) Its location.

(B) The date of each visual inspection and the date that a leak was discovered, if different from the inspection date.

(C) The person performing the inspection.

(D) The location of any leak(s).

(E) An estimate of the amount of dielectric fluid released from any leak.

(F) The date of any cleanup, containment, repair, or replacement.

(G) A description of any cleanup, containment, or repair performed.

(H) The results of any containment and daily inspection required for uncorrected active leaks.

(v) A reduced visual inspection frequency of at least once every 12 months applies to PCB Transformers that utilize either of the following risk reduction measures. These inspections may take place any time during the calendar year as long as there is a minimum of 180 days between inspections.

(A) A PCB Transformer which has impervious, undrained, secondary containment capacity of at least 100 percent of the total dielectric fluid volume of all transformers so contained, or

(B) A PCB Transformer which has been tested and found to contain less than 60,000 ppm PCBs (after three months of inservice use if the transformer has been serviced for purposes of reducing the PCB concentration).

(vi) An increased visual inspection frequency of at least once every week applies to any PCB Transformer in use or stored for reuse which poses an exposure risk to food or feed. The user of a PCB Transformer posing an exposure risk to food or feed is responsible for the inspection, recordkeeping, and maintenance requirements under this section until the user notifies the owner that the transformer may pose an exposure risk to food or feed. Following such notification, it is the owner's ultimate responsibility to determine whether the PCB Transformer poses an exposure risk to food or feed.

(2) Servicing conditions. (i) Transformers classified as PCB-Contaminat-

ed Electrical Equipment (as defined in the definition of "PCB-Contaminated Electrical Equipment" under § 761.3) may be serviced (including rebuilding) only with dielectric fluid containing less than 500 ppm PCB.

(ii) Any servicing (including rebuilding) of PCB Transformers (as defined in the definition of "PCB Transformer" under § 761.3) that requires the removal of the transformer coil from the transformer casing is prohibited. PCB Transformers may be serviced (including topping off) with dielectric fluid at any PCB concentration.

(iii) PCBs removed during any servicing activity must be captured and either reused as dielectric fluid or disposed of in accordance with the requirements of § 761.60. PCBs from PCB Transformers must not be mixed with or added to dielectric fluid from PCB-Contaminated Electrical Equipment.

(iv) Regardless of its PCB concentration, dielectric fluids containing less than 500 ppm PCB that are mixed with fluids that contain 500 ppm or greater PCB must not be used as dielectric fluid in any electrical equipment. The entire mixture of dielectric fluid must be considered to be greater than 500 ppm PCB and must be disposed of in an incinerator that meets the requirements in § 761.70.

(v) A PCB Transformer may be converted to PCB-Contaminated Electrical Equipment or to a non-PCB Transformer and a transformer that is classified as PCB-Contaminated Electrical Equipment may be reclassified to a non-PCB Transformer by draining, refilling and/or otherwise servicing the transformer. In order to reclassify, the transformer's dielectric fluid must contain less than 500 ppm PCB (for conversion to PCB-Contaminated Electrical Equipment) or less than 50 ppm PCB (for conversion to a non-PCB Transformer) after a minimum of three months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer. In-service means that the transformer is used electrically under loaded conditions that raise the temperature of the dielectric fluid to at least 50° Centigrade. The Assistant Administrator

may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of in-service use. All PCBs removed from transformers for purposes of reducing PCB concentrations are subject to the disposal requirements of § 761.60.

(vi) Any dielectric fluid containing 50 ppm or greater PCB used for servicing transformers must be stored in accordance with the storage for disposal requirements of § 761.65.

(vii) Processing and distribution in commerce of PCBs for purposes of servicing transformers is permitted only for persons who are granted an exemption under TSCA 6(e)(3)(B).

(b) *Use in and servicing of railroad transformers.* PCBs may be used in transformers in railroad locomotives or railroad self-propelled cars ("railroad transformers") and may be processed and distributed in commerce for purposes of servicing these transformers in a manner other than a totally enclosed manner subject to the following conditions:

(1) *Use restrictions.* (i) After July 1, 1983, the number of railroad transformers containing a PCB concentration greater than 60,000 ppm (6.0 percent on a dry weight basis) in use by any affected railroad organization may not exceed two-thirds of the total railroad transformers containing PCBs in use by that organization on January 1, 1982.

(ii) After January 1, 1984, the number of railroad transformers containing a PCB concentration greater than 60,000 ppm in use by any affected railroad organization may not exceed one-third of the total railroad transformers containing PCBs in use by that organization on January 1, 1982.

(iii) After July 1, 1984, use of railroad transformers that contain dielectric fluids with a PCB concentration greater than 60,000 ppm is prohibited.

(iv) After July 1, 1985, the number of railroad transformers containing a PCB concentration greater than 1,000 ppm (0.1 percent on a dry weight basis) in use by any affected railroad organization may not exceed two-thirds of the total railroad transform-

ers containing PCBs in use by that organization on July 1, 1984.

(v) After January 1, 1986, the number of railroad transformers containing a PCB concentration greater than 1,000 ppm in use by any affected railroad organization may not exceed one-third of the total railroad transformers containing PCBs in use by that organization on July 1, 1984.

(vi) After July 1, 1986, use of railroad transformers that contain dielectric fluids with a PCB concentration greater than 1,000 ppm is prohibited.

(vii) The concentration of PCBs in the dielectric fluid contained in railroad transformers must be measured:

(A) Immediately upon completion of any authorized servicing of a railroad transformer conducted for the purpose of reducing the PCB concentration in the dielectric fluid in the transformer, and

(B) Between 12 and 24 months after each servicing conducted in accordance with paragraph (b)(1)(vii)(A) of this section;

(C) The data obtained as a result of paragraphs (b)(1)(vii) (A) and (B) of this section shall be retained until January 1, 1991.

(2) *Servicing restrictions.* (i) If the coil is removed from the casing of a railroad transformer (e.g., the transformer is rebuilt), after January 1, 1982, the railroad transformer may not be refilled with dielectric fluid containing a PCB concentration greater than 50 ppm;

(ii) After January 1, 1982, railroad transformers may only be serviced with dielectric fluid containing less than 60,000 ppm PCBs, except as provided in paragraph (b)(2)(i) of this section;

(iii) After January 1, 1984, railroad transformers may only be serviced with dielectric fluid containing less than 1000 ppm PCB, except as provided in paragraph (b)(2)(i) of this section;

(iv) Dielectric fluid may be filtered through activated carbon or otherwise industrially processed for the purpose of reducing the PCB concentration in the fluid;

(v) Any PCB dielectric fluid that is used to service PCB railroad transformers must be stored in accordance

with the storage for disposal requirements of § 761.65;

(vi) After July 1, 1979, processing and distribution in commerce of PCBs for purposes of servicing railroad transformers is permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(vii) A PCB Transformer may be converted to a PCB-Contaminated Transformer or to a non-PCB Transformer by draining, refilling, and/or otherwise servicing the railroad transformer. In order to reclassify, the railroad transformer's dielectric fluid must contain less than 500 ppm (for conversion to PCB-Contaminated Transformer) or less than 50 ppm PCB (for conversion to a non-PCB Transformer) after a minimum of three months of inservice use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer.

(c) *Use in and servicing of mining equipment.* PCBs may be used in mining equipment and may be processed and distributed in commerce for purposes of servicing mining equipment in a manner other than a totally enclosed manner until January 1, 1982, subject to the following conditions:

(1) PCBs may be added to motors in mining equipment in mines or mining areas until January 1, 1982;

(2) PCB motors in loader-type mining equipment must be rebuilt as air-cooled or other non-PCB-containing motors whenever the motor is returned to a service shop for servicing;

(3) PCB motors in continuous miner-type equipment may be rebuilt as PCB motors until January 1, 1980;

(4) Any PCBs that are on hand to service or repair mining equipment must be stored in accordance with the storage for disposal requirements of § 761.65;

(5) After July 1, 1979, processing and distribution in commerce of PCBs for purposes of servicing mining equipment is permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(d) *Use in heat transfer systems.* After July 1, 1984, intentionally manufactured PCBs may be used in heat transfer systems in a manner other

than a totally enclosed manner at a concentration level of less than 50 ppm provided that the requirements of paragraphs (d) (1) through (7) of this section are met.

(1) Each person who owns a heat transfer system that ever contained PCBs at concentrations above 50 ppm must test for the concentration of PCBs in the heat transfer fluid of such a system no later than November 1, 1979, and at least annually thereafter. All test sampling must be performed at least three months after the most recent fluid refilling. When a test shows that the PCB concentration is less than 50 ppm, testing under this paragraph is no longer required.

(2) Within six months of a test performed under paragraph (d)(1) of this section that indicates that a system's fluid contains 50 ppm or greater PCB (0.005% on a dry weight basis), the system must be drained of the PCBs and refilled with fluid containing less than 50 ppm PCB. Topping-off with heat transfer fluids containing PCB concentrations of less than 50 ppm is permitted.

(3) After November 1, 1979, no heat transfer system that is used in the manufacture or processing of any food, drug, cosmetic or device, as defined in section 201 of the Federal Food, Drug, and Cosmetic Act, may contain transfer fluid with 50 ppm or greater PCB (0.005% on a dry weight basis).

(4) Addition of fluids containing PCB concentrations greater than 50 ppm is prohibited.

(5) Data obtained as a result of paragraph (d)(1) of this section must be retained for five years after the heat transfer system reaches 50 ppm PCB.

(6) Each person who owns a heat transfer system that contains PCBs must provide workers with gloves made of viton elastomer to protect workers from dermal exposure to PCBs.

(7) All persons who maintain a heat transfer system must wear viton elastomer gloves while doing maintenance work on that system.

(e) *Use in hydraulic systems.* After July 1, 1984, intentionally manufactured PCBs may be used in hydraulic systems in a manner other than a to-

tally enclosed manner at a concentration level of less than 50 ppm provided that the requirements in paragraphs (e) (1) through (7) of this section are met.

(1) Each person who owns a hydraulic system that ever contained PCBs at concentrations above 50 ppm must test for the concentration of PCBs in the hydraulic fluid of each system no later than November 1, 1979, and at least annually thereafter. All test sampling must be performed at least three months after the most recent fluid refilling. When a test shows that the PCB concentration is less than 50 ppm, testing under this paragraph is no longer required.

(2) Within six months of a test under paragraph (e)(1) of this section that indicates that a system's fluid contains 50 ppm or greater PCB (0.005% on a dry weight basis), the system must be drained of the PCBs and refilled with fluid containing less than 50 ppm PCB. Topping-off with hydraulic fluids containing PCB concentrations less than 50 ppm to reduce PCB concentrations is permitted.

(3) Addition of PCBs at concentrations of greater than 50 ppm is prohibited.

(4) Hydraulic fluid may be drained from a hydraulic system and filtered, distilled, or otherwise serviced in order to reduce the PCB concentration below 50 ppm.

(5) Data obtained as a result of paragraph (e)(1) of this section must be retained for five years after the hydraulic system reaches 50 ppm.

(6) Each person who owns a hydraulic system that contains PCBs must provide gloves made of viton elastomer to protect workers from dermal exposure to PCBs.

(7) All persons who maintain a hydraulic system that contains PCBs must wear viton elastomer gloves while doing maintenance work on that system.

(f) *Use in carbonless copy paper.* Carbonless copy paper containing PCBs may be used in a manner other than a totally enclosed manner indefinitely.

(g) *Pigments.* Diarylide and Phthalocyanin pigments that contain 50 ppm or greater PCB may be processed, dis-

tributed in commerce, and used in a manner other than a totally enclosed manner until January 1, 1982, except that after July 1, 1979, processing and distribution in commerce of diarylide or phthalocyanin pigments that contain 50 ppm or greater PCB is permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(h) *Use in and servicing of electromagnets, switches and voltage regulators.* PCBs at any concentration may be used in electromagnets, switches (including sectionalizers and motor starters), and voltage regulators and may be used for purposes of servicing this equipment (including rebuilding) for the remainder of their useful lives, subject to the following conditions:

(1) *Use conditions.* (i) After October 1, 1985, the use and storage for reuse of any electromagnet which poses an exposure risk to food or feed is prohibited if the electromagnet contains greater than 500 ppm PCBs.

(ii) A visual inspection of each electromagnet subject to paragraph (h)(1)(i) shall be performed at least once every week according to the conditions contained in § 761.30(a)(1)(iii) and (iv).

(2) *Servicing conditions.* (i) Servicing (including rebuilding) any electromagnet, switch, or voltage regulator with a PCB concentration of 500 ppm or greater which requires the removal and rework of the internal components is prohibited.

(ii) Electromagnets, switches, and voltage regulators classified as PCB-Contaminated Electrical Equipment (as defined in the definition of "PCB-Contaminated Electrical Equipment" under § 761.3) may be serviced (including rebuilding) only with dielectric fluid containing less than 500 ppm PCB.

(iii) PCBs removed during any servicing activity must be captured and either reused as dielectric fluid or disposed of in accordance with the requirements of § 761.60. PCBs from electromagnets, switches, and voltage regulators with a PCB concentration of at least 500 ppm must not be mixed with or added to dielectric fluid from PCB-Contaminated Electrical Equipment.

(iv) Regardless of its PCB (concentration, dielectric fluids containing less than 500 ppm PCB) that are mixed with fluids that contain 500 ppm or greater PCB must not be used as dielectric fluid in any electrical equipment. The entire mixture of dielectric fluid must be considered to be greater than 500 ppm PCB and must be disposed of in an incinerator that meets the requirements of § 761.70.

(v) An electromagnet, switch or voltage regulator with a PCB concentration of at least 500 ppm may be converted to PCB-Contaminated Electrical Equipment or to a non-PCB classification and PCB-Contaminated Electrical Equipment may be reclassified to a non-PCB classification by draining, refilling and/or otherwise servicing the equipment. In order to be reclassified, the equipment's dielectric fluid must contain less than 500 ppm PCB (for conversion to PCB-Contaminated Electrical Equipment) or less than 50 ppm PCB (for conversion to a non-PCB classification) after a minimum of three months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the equipment. In-service use means the equipment is used electrically under loaded conditions. The Assistant Administrator may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of in-service use. All PCBs removed from this equipment for purposes of reducing PCB concentrations are subject to the disposal requirements of § 761.60.

(vi) Any dielectric fluid containing 50 ppm or greater PCB used for servicing electromagnets, switches, or voltage regulators must be stored in accordance with the storage for disposal requirements of § 761.65.

(vii) Processing and distribution in commerce of PCBs for purposes of servicing electromagnets, switches or voltage regulators is permitted only for persons who are granted an exemption under TSCA 6(e)(3)(B).

(i) *Use in compressors and in the liquid of natural gas pipelines.* PCBs may be used indefinitely in the compressors and in the liquids of natural gas pipelines at a concentration level

of less than 50 ppm provided that they are marked in accordance with § 761.45(a).

(j) *Small quantities for research and development.* PCBs may be used in small quantities for research and development, as defined in § 761.3(ee), in a manner other than a totally enclosed manner, indefinitely. Manufacture, processing, and distribution in commerce of PCBs in small quantities for research and development is permitted only for persons who have been granted an exemption under TSCA section 6(e)(3)(B).

(k) *Microscopy mounting medium.* PCBs may be used as a permanent microscopic mounting medium in a manner other than a totally enclosed manner indefinitely. Manufacture, processing, and distribution in commerce of PCBs for purposes of use as a mounting medium are permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(l) *Use in capacitors.* PCBs at any concentration may be used in capacitors, subject to the following conditions:

(1) *Use conditions.* (i) After October 1, 1988, the use and storage for reuse of PCB Large High Voltage Capacitors and PCB Large Low Voltage Capacitors which pose an exposure risk to food or feed is prohibited.

(ii) After October 1, 1988, the use of PCB Large High Voltage Capacitors and PCB Large Low Voltage Capacitors is prohibited unless the capacitor is used within a restricted-access electrical substation or in a contained and restricted-access indoor installation. A restricted-access electrical substation is an outdoor, fenced or walled-in facility that restricts public access and is used in the transmission or distribution of electric power. A contained and restricted-access indoor installation does not have public access and has an adequate roof, walls, and floor to contain any release of PCBs within the indoor location.

(m) *Use in and servicing of circuit breakers, reclosers and cable.* PCBs at any concentration may be used in circuit breakers, reclosers, and cable and may be used for purposes of servicing this electrical equipment (including re-

building) for the remainder of their useful lives, subject to the following conditions:

(1) *Servicing conditions.* (i) Circuit breakers, reclosers, and cable may be serviced (including rebuilding) only with dielectric fluid containing less than 50 ppm PCB.

(ii) Any circuit breaker, recloser or cable found to contain at least 50 ppm PCBs may be serviced only in accordance with the conditions contained in 40 CFR 761.30(h)(2).

(n) *Microscopy immersion oil.* PCBs may be used as an immersion oil in fluorescence microscopy, in a manner other than a totally enclosed manner indefinitely. Manufacture, processing, and distribution in commerce of PCBs for purposes of use as a low fluorescence immersion oil are permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(o) *Optical liquids.* PCBs may be used as optical liquids in a manner other than a totally enclosed manner indefinitely. Manufacture, processing, and distribution in commerce of PCBs for purposes of use as optical liquids are permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(Approved by the Office of Management and Budget under control number 2070-0003)

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020, 2025 (15 U.S.C. 2605))

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982, and amended at 47 FR 37357, Aug. 25, 1983; 48 FR 135, Jan. 3, 1983; 49 FR 25241 and 25242, June 20, 1984; 49 FR 28190, and 28202, July 10, 1984]

Subpart C—Marking of PCBs and PCB Items

§ 761.40 Marking requirements.

(a) Each of the following items in existence on or after July 1, 1978 shall be marked as illustrated in Figure 1 in § 761.44(a): The mark illustrated in Figure 1 is referred to as M_1 through-out this subpart.

(1) PCB Containers;

(2) PCB Transformers at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal

from use if not already marked. [Marking of PCB-Contaminated Electrical Equipment is not required];

(3) PCB Large High Voltage Capacitors at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal from use if not already marked;

(4) Equipment containing a PCB Transformer or a PCB Large High Voltage Capacitor at the time of manufacture, at the time of distribution in commerce if not already marked, and at the time of removal of the equipment from use if not already marked;

(5) PCB Large Low Voltage Capacitors at the time of removal from use;

(6) Electric motors using PCB coolants (See also paragraph (e) of this section).

(7) Hydraulic systems using PCB hydraulic fluid (See also paragraph (e) of this section);

(8) Heat transfer systems (other than PCB Transformers) using PCBs (See also paragraph (e) of this section);

(9) PCB Article Containers containing articles or equipment that must be marked under paragraph (a) (1) through (8) of this section;

(10) Each storage area used to store PCBs and PCB Items for disposal.

(b) As of October 1, 1978, each transport vehicle shall be marked on each end and side with M_1 as described in § 761.45(a) if it is loaded with PCB Containers that contain more than 45 kg (99.4 lbs.) of PCBs in the liquid phase or with one or more PCB Transformers (See also paragraph (e) of this section).

(c) As of January 1, 1979, the following PCB Articles shall be marked with mark M_1 as described in § 761.45(a):

(1) All PCB Transformers not marked under paragraph (a) of this section [marking of PCB-Contaminated Electrical Equipment is not required];

(2) All PCB Large High Voltage Capacitors not marked under paragraph (a) of this section

(i) Will be marked individually with mark M_1 , or

(ii) If one or more PCB Large High Voltage Capacitors are installed in a protected location such as on a power pole, or structure, or behind a fence;

the pole, structure, or fence shall be marked with mark M_1 , and a record or procedure identifying the PCB Capacitors shall be maintained by the owner or operator at the protected location.

(d) As of January 1, 1979, all PCB Equipment containing a PCB Small Capacitor shall be marked at the time of manufacture with the statement, "This equipment contains PCB Capacitor(s)". The mark shall be of the same size as the mark M_1 .

(e) As of October 1, 1979, applicable PCB Items in paragraph (a) (1), (6), (7), and (8) of this section containing PCBs in concentrations of 50 to 500 ppm and applicable transport vehicles in paragraph (b) of this section loaded with PCB Containers that contain more than 45 kg (99.4 lbs.) of liquid PCBs in concentrations of 50 ppm to 500 ppm shall be marked with mark M_1 as described in § 761.45(a).

(f) Where mark M_1 is specified but the PCB Article or PCB Equipment is too small to accommodate the smallest permissible size of mark M_1 , mark M_2 as described in § 761.45(b), may be used instead of mark M_1 .

(g) Each large low voltage capacitor, each small capacitor normally used in alternating current circuits, and each fluorescent light ballast manufactured ("manufactured", for purposes of this sentence, means built) between July 1, 1978 and July 1, 1998 that do not contain PCBs shall be marked by the manufacturer at the time of manufacture with the statement, "No PCBs". The mark shall be of similar durability and readability as other marking that indicate electrical information, part numbers, or the manufacturer's name. For purposes of this paragraph marking requirement only is applicable to items built domestically or abroad after June 30, 1978.

(h) All marks required by this subpart must be placed in a position on the exterior of the PCB Items or transport vehicles so that the marks can be easily read by any persons inspecting or servicing the marked PCB Items or transport vehicles.

(i) Any chemical substance or mixture that is manufactured after the effective date of this rule and that contains less than 500 ppm PCB (0.05% on a dry weight basis), including PCB

that is a byproduct or impurity, must be marked in accordance with any requirements contained in the exemption granted by EPA to permit such manufacture and is not subject to any other requirement in this subpart unless so specified in the exemption. This paragraph applies only to containers of chemical substances or mixtures. PCB articles and equipment into which the chemical substances or mixtures are processed, are subject to the marking requirements contained elsewhere in this subpart.

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982, and amended at 47 FR 37359, Aug. 25, 1982]

§ 761.45 Marking formats.

The following formats shall be used for marking:

(a) *Large PCB Mark— M_1 .* Mark M_1 shall be as shown in Figure 1, letters and striping on a white or yellow background and shall be sufficiently durable to equal or exceed the life (including storage for disposal) of the PCB Article, PCB Equipment, or PCB Container. The size of the mark shall be at least 15.25 cm (6 inches) on each side. If the PCB Article or PCB Equipment is too small to accommodate this size, the mark may be reduced in size proportionately down to a minimum of 5 cm (2 inches) on each side.

(b) *Small PCB Mark— M_2 .* Mark M_2 shall be as shown in Figure 2, letters and striping on a white or yellow background, and shall be sufficiently durable to equal or exceed the life (including storage for disposal) of the PCB Article, PCB Equipment, or PCB Container. The mark shall be a rectangle 2.5 by 5 cm (1 inch by 2 inches). If the PCB Article or PCB Equipment is too small to accommodate this size, the mark may be reduced in size proportionately down to a minimum of 1 by 2 cm (.4 by .8 inches).

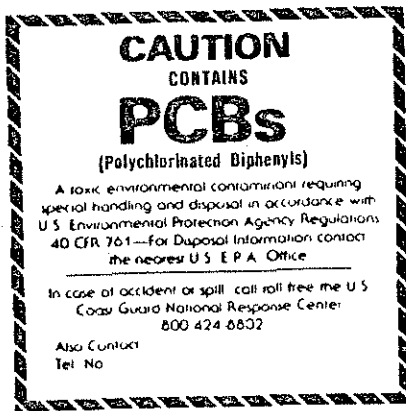


Figure 1

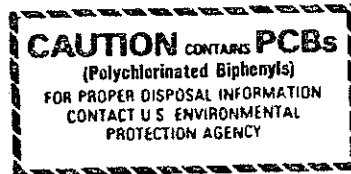


Figure 2

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982]

Subpart D—Storage and Disposal

NOTE: This subpart does not require removal of PCBs and PCB Items from service and disposal earlier than would normally be the case. However, when PCBs and PCB Items are removed from service and disposed of, disposal must be undertaken in accordance with these regulations. PCBs (including soils and debris) and PCB Items

which have been placed in a disposal site are considered to be "in service" for purposes of the applicability of this subpart. This subpart does not require PCBs and PCB Items landfilled prior to February 17, 1978 to be removed for disposal. However, if such PCBs or PCB Items are removed from the disposal site, they must be disposed of in accordance with this subpart. Other subparts are directed to the manufacture, processing, distribution in commerce, and use of PCBs and may result in some cases in disposal at an earlier date than would otherwise occur.

§ 761.60 Disposal requirements.

(a) **PCBs.** (1) Except as provided in paragraphs (a) (2), (3), (4), and (5) of this section, PCBs at concentrations of 50 ppm or greater must be disposed of in an incinerator which complies with § 761.70.

(2) Mineral oil dielectric fluid from PCB-contaminated Electrical Equipment containing a PCB concentration of 50 ppm or greater, but less than 500 ppm, must be disposed of in one of the following:

(i) In an incinerator that complies with § 761.70;

(ii) In a chemical waste landfill that complies with § 761.75 if information is provided to the owner or operator of the chemical waste landfill that shows that the mineral oil dielectric fluid does not exceed 500 ppm PCB and is not an ignitable waste as described in § 761.75(b) (8) (iii);

(iii) In a high efficiency boiler provided that:

(A) The boiler complies with the following criteria:

(1) The boiler is rated at a minimum of 50 million BTU hours;

(2) If the boiler uses natural gas or oil as the primary fuel, the carbon monoxide concentration in the stack is 50 ppm or less and the excess oxygen is at least three (3) percent when PCBs are being burned;

(3) If the boiler uses coal as the primary fuel, the carbon monoxide concentration in the stack is 100 ppm or less and the excess oxygen is at least three (3) percent when PCBs are being burned;

(4) The mineral oil dielectric fluid does not comprise more than ten (10) percent (on a volume basis) of the total fuel feed rate;

(5) The mineral oil dielectric fluid is not fed into the boiler unless the boiler is operating at its normal operating temperature (this prohibits feeding these fluids during either start up or shut down operations);

(6) The owner or operator of the boiler:

(i) Continuously monitors and records the carbon monoxide concentration and excess oxygen percentage in the stack gas while burning mineral oil dielectric fluid; or

(ii) If the boiler will burn less than 30,000 gallons of mineral oil dielectric fluid per year, measures and records the carbon monoxide concentration and excess oxygen percentage in the stack gas at regular intervals of no longer than 60 minutes while burning mineral oil dielectric fluid.

(7) The primary fuel feed rates, mineral oil dielectric fluid feed rates, and total quantities of both primary fuel and mineral oil dielectric fluid fed to the boiler are measured and recorded at regular intervals of no longer than 15 minutes while burning mineral oil dielectric fluid.

(8) The carbon monoxide concentration and the excess oxygen percentage are checked at least once every hour that mineral oil dielectric fluid is burned. If either measurement falls below the levels specified in this rule, the flow of mineral oil dielectric fluid to the boiler shall be stopped immediately.

(B) Thirty days before any person burns mineral oil dielectric fluid in the boiler, the person gives written notice to the EPA Regional Administrator for the EPA Region in which the boiler is located and that the notice contains the following information:

(1) The name and address of the owner or operator of the boiler and the address of the boiler;

(2) The boiler rating in units of BTU/hour;

(3) The carbon monoxide concentration and the excess oxygen percentage in the stack of the boiler when it is operated in a manner similar to the manner in which it will be operated when mineral oil dielectric fluid is burned; and

(4) The type of equipment, apparatus, and procedures to be used to con-

trol the feed of mineral oil dielectric fluid to the boiler and to monitor and record the carbon monoxide concentration and excess oxygen percentage in the stack.

(C) When burning mineral oil dielectric fluid, the boiler must operate at a level of output no less than the output at which the measurements required under paragraph (b)(2)(iii)(B)(3) of this section were taken.

(D) Any person burning mineral oil dielectric fluid in a boiler obtains the following information and retains the information for five years at the boiler location:

(1) The data required to be collected under paragraphs (a)(2)(A) (6) and (7) of this section; and

(2) The quantity of mineral oil dielectric fluid burned in the boiler each month;

(iv) In a facility that is approved in accordance with § 761.60(e). For the purpose of burning mineral oil dielectric fluid, an applicant under § 761.60(e) must show that his combustion process destroys PCBs as efficiently as does a high efficiency boiler, as defined in paragraph (b)(2)(iii) of this section, or a § 761.70 approved incinerator.

(3) Liquids, other than mineral oil dielectric fluid, containing a PCB concentration of 50 ppm or greater, but less than 500 ppm, shall be disposed of:

(i) In an incinerator which complies with § 761.70;

(ii) In a chemical waste landfill which complies with § 761.75 if information is provided to the owner or operator of the chemical waste landfill that shows that the waste does not exceed 500 ppm PCB and is not an ignitable waste as described in § 761.75(b)(8)(iii);

(iii) In a high efficiency boiler provided that.

(A) The boiler complies with the following criteria:

(1) The boiler is rated at a minimum of 50 million BTU/hour;

(2) If the boiler uses natural gas or oil as the primary fuel, the carbon monoxide concentration in the stack is 50 ppm or less and the excess oxygen is at least three (3) percent when PCBs are being burned;

(3) If the boiler uses coal as the primary fuel, the carbon monoxide concentration in the stack is 100 ppm or less and the excess oxygen is at least three (3) percent when PCBs are being burned;

(4) The waste does not comprise more than ten (10) percent (on a volume basis) of the total fuel feed rate;

(5) The waste is not fed into the boiler unless the boiler is operating at its normal operating temperature (this prohibits feeding these fluids during either start up or shut down operations);

(6) The owner or operator of the boiler must:

(i) Continuously monitor and record the carbon monoxide concentration and excess oxygen percentage in the stack gas while burning waste fluid; or

(ii) If the boiler will burn less than 30,000 gallons of waste fluid per year, measure and record the carbon monoxide concentration and excess oxygen percentage in the stack gas at regular intervals of no longer than 60 minutes while burning waste fluid;

(7) The primary fuel feed rate, waste fluid feed rate, and total quantities of both primary fuel and waste fluid fed to the boiler must be measured and recorded at regular intervals of no longer than 15 minutes while burning waste fluid; and

(8) The carbon monoxide concentration and the excess oxygen percentage must be checked at least once every hour that the waste is burned. If either measurement falls below the levels specified in this rule, the flow of waste to the boiler shall be stopped immediately.

(B) Prior to any person burning these liquids in the boiler, approval must be obtained from the EPA Regional Administrator for the EPA Region in which the boiler is located and any persons seeking such approval must submit to the EPA Regional Administrator a request containing at least the following information:

(1) The name and address of the owner or operator of the boiler and the address of the boiler;

(2) The boiler rating in units of BTU/hour;

(3) The carbon monoxide concentration and the excess oxygen percentage in the stack of the boiler when it is operated in a manner similar to the manner in which it will be operated when low concentration PCB liquid is burned;

(4) The type of equipment, apparatus, and procedures to be used to control the feed of mineral oil dielectric fluid to the boiler and to monitor and record the carbon monoxide concentration and excess oxygen percentage in the stack;

(5) The type of waste to be burned (e.g., hydraulic fluid, contaminated fuel oil, heat transfer fluid, etc.);

(6) The concentration of PCBs and of any other chlorinated hydrocarbon in the waste and the results of analyses using the American Society of Testing and Materials (ASTM) methods as follows: carbon and hydrogen content using ASTM D-3178-73 (reapproved 1979), nitrogen content using ASTM E-258-67, sulfur content using ASTM D-2784-80, D-1266-80, or D-129-64, chlorine content using ASTM D-808-81, water and sediment content using either ASTM D-2709-68 or D-1796-83, ash content using D-462-80, calorific value using ASTM D-240-76 (reapproved 1980), carbon residue using either ASTM D-2158-80 or D-524-81, and flash point using ASTM D-93-80.

(7) The quantity of wastes estimated to be burned in a thirty (30) day period;

(8) An explanation of the procedures to be followed to insure that burning the waste will not adversely affect the operation of the boiler such that combustion efficiency will decrease.

(C) On the basis of the information in paragraph (a)(3)(iii)(B) of this section and any other available information, the Regional Administrator may, at his discretion, find that the alternate disposal method will not present an unreasonable risk of injury to health or the environment and approve the use of the boiler;

(D) When burning PCB wastes, the boiler must operate at a level of output no less than the output at which the measurements required under paragraph (a)(3)(iii)(B)(3) of this section were taken; and

(E) Any person burning liquids in boilers approved as provided in paragraph (a)(3)(iii)(C) of this section, must obtain the following information and retain the information for five years at the boiler location:

(1) The data required to be collected in paragraphs (a)(3)(iii)(A) (6) and (7) of this section;

(2) The quantity of low concentration PCB liquid burned in the boiler each month.

(3) The analysis of the waste required by paragraph (a)(3)(iii)(B)(6) of this section taken once a month for each month during which low concentration PCB liquid is burned in the boiler.

(iv) In a facility that is approved in accordance with § 761.60(e). For the purpose of burning liquids, other than mineral oil dielectric fluid, containing 50 ppm or greater PCB, but less than 500 ppm PCB, an applicant under § 761.60(e) must show that his combustion process destroys PCBs as efficiently as does a high efficiency boiler, as defined in § 761.60(a)(2)(iii), or a § 761.70 incinerator.

(4) Any non-liquid PCBs at concentrations of 50 ppm or greater in the form of contaminated soil, rags, or other debris shall be disposed of:

(i) In an incinerator which complies with § 761.70; or

(ii) In a chemical waste landfill which complies with § 761.75.

NOTE: Except as provided in § 761.75(b)(8)(ii), liquid PCBs shall not be processed into non-liquid forms to circumvent the high temperature incineration requirements of § 761.60(a).

(5) All dredged materials and municipal sewage treatment sludges that contain PCBs at concentrations of 50 ppm or greater shall be disposed of:

(i) In an incinerator which complies with § 761.70,

(ii) In a chemical waste landfill which complies with § 761.65; or

(iii) Upon application, using a disposal method to be approved by the Agency's Regional Administrator in the EPA Region in which the PCBs are located. Applications for disposal in a manner other than prescribed in (i) or (ii) of this section must be made in writing to the Regional Administrator. The application must contain informa-

tion that, based on technical, environmental, and economic considerations, indicates that disposal in an incinerator or chemical waste landfill is not reasonable and appropriate, and that the alternate disposal method will provide adequate protection to health and the environment. The Regional Administrator may request other information that he or she believes to be necessary for evaluation of the alternate disposal method. Any approval by the Regional Administrator shall be in writing and may contain any appropriate limitations on the approved alternate method for disposal. In addition to these regulations, the Regional Administrator shall consider other applicable Agency guidelines, criteria, and regulations to ensure that the discharges of dredged material and sludges that contain PCBs and other contaminants are adequately controlled to protect the environment. The person to whom such approval is issued must comply with all limitations contained in the approval.

(6) When storage is desired prior to disposal, PCBs at concentrations of 50 ppm or greater shall be stored in a facility which complies with § 761.65.

(b) PCB Articles—(1) Transformers. (i) PCB Transformers shall be disposed of in accordance with either of the following:

(A) In an incinerator that complies with § 761.70; or

(B) In a chemical waste landfill which complies with § 761.75; *Provided*, That the transformer is first drained of all free flowing liquid, filled with solvent, allowed to stand for at least 18 hours, and then drained thoroughly. PCB liquids that are removed shall be disposed of in accordance with paragraph (a) of this section. Solvents may include kerosene, xylene, toluene and other solvents in which PCBs are readily soluble. Precautionary measures should be taken, however, that the solvent flushing procedure is conducted in accordance with applicable safety and health standards as required by Federal or State regulations.

(2) PCB Capacitors. (i) The disposal of any capacitor shall comply with all requirements of this subpart unless it is known from label or nameplate information, manufacturer's literature

(including documented communications with the manufacturer), or chemical analysis that the capacitor does not contain PCBs.

(ii) Any person may dispose of PCB Small Capacitors as municipal solid waste, unless that person is subject to the requirements of paragraph (b)(2)(iv) of this section.

(iii) Any PCB Large High or Low Voltage Capacitor which contains 500 ppm or greater PCBs, owned by any person, shall be disposed of in accordance with either of the following:

(A) Disposal in an incinerator that complies with § 761.70; or

(B) Until March 1, 1981, disposal in a chemical waste landfill that complies with § 761.75.

(iv) Any PCB Small Capacitor owned by any person who manufactures or at any time manufactured PCB Capacitors or PCB Equipment and acquired the PCB Capacitors in the course of such manufacturing shall be disposed of in accordance with either of the following:

(A) Disposal in an incinerator which complies with § 761.70; or

(B) Until March 1, 1981, disposal in a chemical waste landfill which complies with § 761.75.

(v) Notwithstanding the restrictions imposed by paragraph (b)(2)(iii)(B) or (b)(2)(iv)(B) of this section, PCB capacitors may be disposed of in PCB chemical waste landfills that comply with § 761.75 subsequent to March 1, 1981, if the Assistant Administrator for Pesticides and Toxic Substances publishes a notice in the FEDERAL REGISTER declaring that those landfills are available for such disposal and explaining the reasons for the extension or reopening. An extension or reopening for disposal of PCB capacitors that is granted under this subsection shall be subject to such terms and conditions as the Assistant Administrator may prescribe and shall be in effect for such period as the Assistant Administrator may prescribe. The Assistant Administrator may permit disposal of PCB capacitors in EPA approved chemical waste landfills after March 1, 1981, if in his opinion,

(A) Adequate incineration capability for PCB capacitors is not available, or

(B) The incineration of PCB capacitors will significantly interfere with the incineration of liquid PCBs, or

(C) There is other good cause shown.

As part of this evaluation, the Assistant Administrator will consider the impact of his action on the incentives to construct or expand PCB incinerators.

(vi) Prior to disposal in a § 761.75 chemical waste landfill, all large PCB capacitors, and all small PCB capacitors described in paragraph (b)(2)(iv) of this section, shall be placed in one of the Department of Transportation specification containers identified in § 761.65(c)(6) or in containers that comply with 49 CFR 178.118 (specification 17H containers). Large PCB capacitors which are too big to fit inside one of these containers shall be placed in a container with strength and durability equivalent to the DOT specification containers. In all cases, interstitial space in the container shall be filled with sufficient absorbent material (such as sawdust or soil) to absorb any liquid PCBs remaining in the capacitors.

(3) *PCB hydraulic machines.* PCB hydraulic machines containing PCBs at concentrations of 50 ppm or greater such as die casting machines may be disposed of as municipal solid waste or salvage provided that the machines are drained of all free-flowing liquid and the liquid is disposed of in accordance with the provisions of paragraph (a) of this section. If the PCB liquid contains 1000 ppm PCB or greater, then the hydraulic machine must be flushed prior to disposal with a solvent containing less than 50 ppm PCB under transformer solvents at paragraph (b)(1)(i)(B) of this section and the solvent disposed of in accordance with paragraph (a) of this section.

(4) *PCB-Contaminated Electrical Equipment.* All PCB-Contaminated Electrical Equipment except capacitors shall be disposed of by draining all free flowing liquid from the electrical equipment and disposing of the liquid in accordance with paragraph (a)(2) or (3) of this section. The disposal of the drained electrical equipment is not regulated by this rule. Capacitors that contain between 50 and 500

ppm PCBs shall be disposed of in an incinerator that complies with § 761.70 or in a chemical waste landfill that complies with § 761.75.

(5) *Other PCB Articles.* (i) PCB articles with concentrations at 50 ppm or greater must be disposed of:

(A) In an incinerator that complies with § 761.70; or

(B) In a chemical waste landfill that complies with § 761.75, provided that all free-flowing liquid PCBs have been thoroughly drained from any articles before the articles are placed in the chemical waste landfill and that the drained liquids are disposed of in an incinerator that complies with § 761.70.

(ii) PCB Articles with a PCB concentration between 50 and 500 ppm must be disposed of by draining all free flowing liquid from the article and disposing of the liquid in accordance with paragraph (a)(2) or (3) of this section. The disposal of the drained article is not regulated by this rule.

(6) *Storage of PCB Articles.* Except for a PCB Article described in paragraph (b)(2)(ii) of this section and hydraulic machines that comply with the municipal solid waste disposal provisions described in paragraph (b)(3) of this section, any PCB Article, with PCB concentrations at 50 ppm or greater, shall be stored in accordance with § 761.65 prior to disposal.

(c) *PCB Containers.* (1) Unless decontaminated in compliance with § 761.79 or as provided in paragraph (c)(2) of this section, a PCB container with PCB concentrations at 50 ppm or greater shall be disposed of:

(i) In an incinerator which complies with § 761.70, or

(ii) In a chemical waste landfill that complies with § 761.75; provided that if there are PCBs in a liquid state, the PCB Container shall first be drained and the PCB liquid disposed of in accordance with paragraph (a) of this section.

(2) Any PCB Container used to contain only PCBs at a concentration less than 500 ppm shall be disposed of as municipal solid wastes; provided that if the PCBs are in a liquid state, the PCB Container shall first be drained and the PCB liquid shall be disposed

of in accordance with paragraph (a) of this section.

(3) Prior to disposal, a PCB container with PCB concentrations at 50 ppm or greater shall be stored in a facility which complies with § 761.65.

(d) *Spills.* (1) Spills and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater constitute the disposal of PCBs.

(2) PCBs resulting from the clean-up and removal of spills, leaks, or other uncontrolled discharges, must be stored and disposed of in accordance with paragraph (a) of this section.

(3) These regulations do not exempt any person from any actions or liability under other statutory authorities, including but not limited to the Clean Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(e) Any person who is required to incinerate any PCBs and PCB Items under this subpart and who can demonstrate that an alternative method of destroying PCBs and PCB Items exists and that this alternative method can achieve a level of performance equivalent to § 761.70 incinerators or high efficiency boilers as provided in paragraph (a)(2)(iv) and (a)(3)(iv) of this section, may submit a written request to either the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances for an exemption from the incineration requirements of § 761.70 or § 761.60. Requests for approval of alternate methods that will be operated in more than one region must be submitted to the Assistant Administrator for Pesticides and Toxic Substances except for research and development involving less than 500 pounds of PCB material (see paragraph (i)(2) of this section). Requests for approval of alternate methods that will be operated in only one region must be submitted to the appropriate Regional Administrator. The applicant must show that his method of destroying PCBs will not present an unreasonable risk of injury to health or the environment. On the basis of such information and any available information, the Regional Administrator or Assistant Administrator for Pesti-

cides and Toxic Substances may, in his discretion, approve the use of the alternate method if he finds that the alternate disposal method provides PCB destruction equivalent to disposal in a § 761.70 incinerator or a § 761.60 high efficiency boiler and will not present an unreasonable risk of injury to health or the environment. Any approval must be stated in writing and may contain such conditions and provisions as the Regional Administrator or Assistant Administrator for Pesticides and Toxic Substances deems appropriate. The person to whom such waiver is issued must comply with all limitations contained in such determination.

(f)(1) Each operator of a chemical waste landfill, incinerator, or alternative to incineration approved under paragraph (e) of this section shall give the following written notices to the state and local governments within whose jurisdiction the disposal facility is located:

(i) Notice at least thirty (30) days before a facility is first used for disposal of PCBs required by these regulations; and

(ii) At the request of any state or local government, annual notice of the quantities and general description of PCBs disposed of during the year. This annual notice shall be given no more than thirty (30) days after the end of the year covered.

(iii) The Regional Administrator may reduce the notice period required by paragraph (f)(1)(i) of this section from thirty days to a period of no less than five days in order to expedite interim approval of the chemical waste landfill located in Sedgwick County, Kansas.

(2) Any person who disposes of PCBs under a paragraph (a)(5)(iii) of this section incineration or chemical waste landfilling waiver shall give written notice at least thirty (30) days prior to conducting the disposal activities to the state and local governments within whose jurisdiction the disposal is to take place.

(g) *Testing procedures.* (1) Owners or users of mineral oil dielectric fluid electrical equipment may use the following procedures to determine the

concentration of PCBs in the dielectric fluid:

(i) Dielectric fluid removed from mineral oil dielectric fluid electrical equipment may be collected in a common container, provided that no other chemical substances or mixtures are added to the container. This common container option does not permit dilution of the collected oil. Mineral oil that is assumed or known to contain at least 50 ppm PCBs must not be mixed with mineral oil that is known or assumed to contain less than 50 ppm PCBs to reduce the concentration of PCBs in the common container. If dielectric fluid from untested, oil-filled circuit breakers, reclosers, or cable is collected in a common container with dielectric fluid from other oil-filled electrical equipment, the entire contents of the container must be treated as PCBs at a concentration of at least 50 ppm, unless all of the fluid from the other oil-filled electrical equipment has been tested and shown to contain less than 50 ppm PCBs.

(ii) For purposes of complying with the marking and disposal requirements, representative samples may be taken from either the common containers or the individual electrical equipment to determine the PCB concentration, except that if any PCBs at a concentration of 500 ppm or greater have been added to the container or equipment then the total container contents must be considered as having a PCB concentration of 500 ppm or greater for purposes of complying with the disposal requirements of this subpart. For purposes of this subparagraph, representative samples of mineral oil dielectric fluid are either samples taken in accordance with American Society of Testing and Materials method D-923 or samples taken from a container that has been thoroughly mixed in a manner such that any PCBs in the container are uniformly distributed throughout the liquid in the container.

(2) Owners or users of waste oil may use the following procedures to determine the PCB concentration of waste oil:

(i) Waste oil from more than one source may be collected in a common container, provided that no other

chemical substances or mixtures, such as non-waste oils, are added to the container.

(ii) For purposes of complying with the marking and disposal requirements, representative samples may be taken from either the common containers or the individual electrical equipment to determine the PCB concentration. *Except*, That if any PCBs at a concentration of 500 ppm or greater have been added to the container or equipment then the total container contents must be considered as having a PCB concentration of 500 ppm or greater for purposes of complying with the disposal requirements of this Subpart. For purposes of this paragraph, representative samples of mineral oil dielectric fluid are either samples taken in accordance with American Society of Testing and Materials method D-923-81 or samples taken from a container that has been thoroughly mixed in a manner such that any PCBs in the container are uniformly distributed throughout the liquid in the container.

(h) Requirements for export and import of PCBs for purposes of disposal and PCB Items for purposes of disposal are found in § 761.20.

(i) *Approval authority for disposal methods.* (1) The officials (the Assistant Administrator for Pesticides and Toxic Substances and the Regional Administrators) designated in §§ 761.60 (e) and 761.70 (a) and (b) to receive requests for approval of PCB disposal activities are the primary approval authorities for these activities. Notwithstanding, the Assistant Administrator for Pesticides and Toxic Substances may, at his/her discretion, assign the authority to review and approve any aspect of a disposal system to the Office of Pesticides and Toxic Substances or to a Regional Administrator.

(2) Except for activity authorized under § 761.30(j), research and development (R and D) into PCB disposal methods using a total of less than 500 pounds of PCB material (regardless of PCB concentration) will be reviewed and approved by the appropriate EPA Regional Administrator and research and development using 500 pounds or more of PCB material (regardless of

PCB concentration) will be reviewed by the approval authorities set out in §§ 761.60(e) and 761.70 (a) and (b).

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

(44 FR 31542, May 31, 1979, as amended at 44 FR 54297, Sept. 19, 1979; 45 FR 20475, Mar. 28, 1980. Redesignated at 47 FR 19527, May 6, 1982, and amended at 47 FR 37359, Aug. 25, 1982; 48 FR 5730, Feb. 8, 1983; 48 FR 13185, Mar. 30, 1983; 48 FR 15125, Apr. 7, 1983; 49 FR 28191, July 10, 1984; 49 FR 36648, Sept. 19, 1984)

§ 761.65 Storage for disposal.

This section applies to the storage for disposal of PCBs at concentrations of 50 ppm or greater and PCB Items with PCB concentrations of 50 ppm or greater.

(a) Any PCB Article or PCB Container stored for disposal before January 1, 1983, shall be removed from storage and disposed of as required by this part before January 1, 1984. Any PCB Article or PCB Container stored for disposal after January 1, 1983, shall be removed from storage and disposed of as required by Subpart D of this part within one year from the date when it was first placed into storage.

(b) Except as provided in paragraph (c) of this section, after July 1, 1978, owners or operators of any facilities used for the storage of PCBs and PCB Items designated for disposal shall comply with the following requirements:

(1) The facilities shall meet the following criteria:

(i) Adequate roof and walls to prevent rain water from reaching the stored PCBs and PCB Items;

(ii) An adequate floor which has continuous curbing with a minimum six inch high curb. The floor and curbing must provide a containment volume equal to at least two times the internal volume of the largest PCB Article or PCB Container stored therein or 25 percent of the total internal volume of all PCB Articles or PCB Containers stored therein, whichever is greater;

(iii) No drain valves, floor drains, expansion joints, sewer lines, or other openings that would permit liquids to flow from the curbed area;

(iv) Floors and curbing constructed of continuous smooth and impervious materials, such as Portland cement concrete or steel, to prevent or minimize penetration of PCBs; and

(v) Not located at a site that is below the 100-year flood water elevation.

(c)(1) The following PCB Items may be stored temporarily in an area that does not comply with the requirements of paragraph (b) of this section for up to thirty days from the date of their removal from service, provided that a notation is attached to the PCB Item or a PCB Container (containing the item) indicating the date the item was removed from service:

(i) Non-leaking PCB Articles and PCB Equipment;

(ii) Leaking PCB Articles and PCB Equipment if the PCB Items are placed in a non-leaking PCB Container that contains sufficient sorbent materials to absorb any liquid PCBs remaining in the PCB Items;

(iii) PCB Containers containing non-liquid PCBs such as contaminated soil, rags, and debris; and

(iv) PCB Containers containing liquid PCBs at a concentration between 50 and 500 ppm, provided a Spill Prevention, Control and Countermeasure Plan has been prepared for the temporary storage area in accordance with 40 CFR Part 112. In addition, each container must bear a notation that indicates that the liquids in the drum do not exceed 500 ppm PCB.

(2) Non-leaking and structurally undamaged PCB Large High Voltage Capacitors and PCB-Contaminated Electrical Equipment that have not been drained of free flowing dielectric fluid may be stored on pallets next to a storage facility that meets the requirements of paragraph (b) of this section. PCB-Contaminated Electrical Equipment that has been drained of free flowing dielectric fluid is not subject to the storage provisions of § 761.65. Storage under this subparagraph will be permitted only when the storage facility has immediately available unfilled storage space equal to 10 percent of the volume of capacitors and equipment stored outside the facility. The capacitors and equipment temporarily stored outside the facility shall be checked for leaks weekly.

(3) Any storage area subject to the requirements of paragraph (b) or paragraph (c)(1) of this section shall be marked as required in Subpart C—§ 761.40(a)(10).

(4) No item of movable equipment that is used for handling PCBs and PCB Items in the storage facilities and that comes in direct contact with PCBs shall be removed from the storage facility area unless it has been decontaminated as specified in § 761.79.

(5) All PCB Articles and PCB Containers in storage shall be checked for leaks at least once every 30 days. Any leaking PCB Articles and PCB Containers and their contents shall be transferred immediately to properly marked non-leaking containers. Any spilled or leaked materials shall be immediately cleaned up, using sorbents or other adequate means, and the PCB-contaminated materials and residues shall be disposed of in accordance with § 761.60(a)(4).

(6) Except as provided in paragraph (c)(7) of this section, any container used for the storage of liquid PCBs shall comply with the Shipping Container Specification of the Department of Transportation (DOT), 49 CFR 178.80 (Specification 5 container without removable head), 178.82 (Specification 5B container without removable head), 178.102 (Specification 6D overpack with Specification 2S(§ 178.35) or 2SL(§ 178.35a) polyethylene containers) or 178.116 (Specification 17E container). Any container used for the storage of non-liquid PCBs shall comply with the specifications of 49 CFR 178.80 (Specification 5 container), 178.82 (Specification 5B container) or 178.115 (Specification 17C container). As an alternate, containers larger than those specified in DOT Specifications 5, 5B, or 17C may be used for non-liquid PCBs if the containers are designed and constructed in a manner that will provide as much protection against leaking and exposure to the environment as the DOT Specification containers, and are of the same relative strength and durability as the DOT Specification containers.

(7) Storage containers for liquid PCBs can be larger than the contain-

ers specified in paragraph (c)(6) of this section provided that:

(i) The containers are designed, constructed, and operated in compliance with Occupational Safety and Health Standards, 29 CFR 1910.106, *Flammable and combustible liquids*. Before using these containers for storing PCBs, the design of the containers must be reviewed to determine the effect on the structural safety of the containers that will result from placing liquids with the specific gravity of PCBs into the containers (see 29 CFR 1910.106(b)(1)(f)).

(ii) The owners or operators of any facility using containers described in paragraph (c)(7)(i) of this section shall prepare and implement a Spill Prevention Control and Countermeasure (SPCC) Plan as described in Part 112 of this title. In complying with 40 CFR Part 112, the owner or operator shall read "oil(s)" as "PCB(s)" whenever it appears. The exemptions for storage capacity, 40 CFR 112.1(d)(2), and the amendment of SPCC plans by the Regional Administrator, 40 CFR 112.4, shall not apply unless some fraction of the liquids stored in the container are oils as defined by section 311 of the Clean Water Act.

(8) PCB Articles and PCB Containers shall be dated on the article or container when they are placed in storage. The storage shall be managed so that the PCB Articles and PCB Containers can be located by the date they entered storage. Storage containers provided in paragraph (c)(7) of this section shall have a record that includes for each batch of PCBs the quantity of the batch and date the batch was added to the container. The record shall also include the date, quantity, and disposition of any batch of PCBs removed from the container.

(9) Owners or operators of storage facilities shall establish and maintain records as provided in § 761.80.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982, and amended at 47 FR 37359, Aug. 8, 1982; 49 FR 28191, July 10, 1984]

§ 761.70 Incineration.

This section applies to facilities used to incinerate PCBs required to be incinerated by this part.

(a) *Liquid PCBs*. An incinerator used for incinerating PCBs shall be approved by an EPA Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances pursuant to paragraph (d) of this section. Requests for approval of incinerators to be used in more than one region must be submitted to the Assistant Administrator for Pesticides and Toxic Substances, except for research and development involving less than 500 pounds of PCB material (see § 761.60(i)(2)). Requests for approval of incinerators to be used in only one region must be submitted to the appropriate Regional Administrator. The incinerator shall meet all of the requirements specified in paragraph (a) (1) through (9) of this section, unless a waiver from these requirements is obtained pursuant to paragraph (d)(5) of this section. In addition, the incinerator shall meet any other requirements which may be prescribed pursuant to paragraph (d)(4) of this section.

(1) Combustion criteria shall be either of the following:

(i) Maintenance of the introduced liquids for a 2-second dwell time at 1200°C(±100°C) and 3 percent excess oxygen in the stack gas; or

(ii) Maintenance of the introduced liquids for a 1½ second dwell time at 1600°C(±100°C) and 2 percent excess oxygen in the stack gas.

(2) Combustion efficiency shall be at least 99.9 percent computed as follows:

Combustion efficiency =

$$\frac{Cco_2}{Cco_2 + Cco} \times 100$$

where

Cco₂ = Concentration of carbon dioxide.

Cco = Concentration of carbon monoxide.

(3) The rate and quantity of PCBs which are fed to the combustion system shall be measured and recorded at regular intervals of no longer than 15 minutes.

(4) The temperatures of the incineration process shall be continuously measured and recorded. The combustion temperature of the incineration process shall be based on either direct

(pyrometer) or indirect (wall thermocouple-pyrometer correlation) temperature readings.

(5) The flow of PCBs to the incinerator shall stop automatically whenever the combustion temperature drops below the temperatures specified in paragraph (a)(1) of this section.

(6) Monitoring of stack emission products shall be conducted:

(i) When an incinerator is first used for the disposal of PCBs under the provisions of this regulation;

(ii) When an incinerator is first used for the disposal of PCBs after the incinerator has been modified in a manner which may affect the characteristics of the stack emission products; and

(iii) At a minimum such monitoring shall be conducted for the following parameters: (a) O₂; (b) CO; (c) CO₂; (d) Oxides of Nitrogen (NO_x); (e) Hydrochloric Acid (HCl); (f) Total Chlorinated Organic Content (RCI); (g) PCBs; and (h) Total Particulate Matter.

(7) At a minimum monitoring and recording of combustion products and incineration operations shall be conducted for the following parameters whenever the incinerator is incinerating PCBs: (i) O₂; (ii) CO; and (iii) CO₂. The monitoring for O₂ and CO shall be continuous. The monitoring for CO₂ shall be periodic, at a frequency specified by the Regional Administrator or Assistant Administrator for Pesticides and Toxic Substances.

(8) The flow of PCBs to the incinerator shall stop automatically when any one or more of the following conditions occur, unless a contingency plan is submitted by the incinerator owner or operator and approved by the Regional Administrator or Assistant Administrator for Pesticides and Toxic Substances. The contingency plan indicates what alternative measures the incinerator owner or operator would take if any of the following conditions occur:

(i) Failure of monitoring operations specified in paragraph (a)(7) of this section;

(ii) Failure of the PCB rate and quantity measuring and recording equipment specified in paragraph (a)(3) of this section; or

(iii) Excess oxygen falls below the percentage specified in paragraph (a)(1) of this section.

(9) Water scrubbers shall be used for HCl control during PCB incineration and shall meet any performance requirements specified by the appropriate EPA Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances. Scrubber effluent shall be monitored and shall comply with applicable effluent or pretreatment standards, and any other State and Federal laws and regulations. An alternate method of HCl control may be used if the alternate method has been approved by the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances. (The HCl neutralizing capability of cement kilns is considered to be an alternate method.)

(b) *Nonliquid PCBs.* An incinerator used for incinerating nonliquid PCBs, PCB Articles, PCB Equipment, or PCB Containers shall be approved by the appropriate EPA Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances pursuant to paragraph (d) of this section. Requests for approval of incinerators to be used in more than one region must be submitted to the Assistant Administrator for Pesticides and Toxic Substances, except for research and development involving less than 500 pounds of PCB material (see § 761.60(i)(2)). Requests for approval of incinerators to be used in only one region must be submitted to the appropriate Regional Administrator. The incinerator shall meet all of the requirements specified in paragraphs (b)(1) and (2) of this section unless a waiver from these requirements is obtained pursuant to paragraph (d)(5) of this section. In addition, the incinerator shall meet any other requirements that may be prescribed pursuant to paragraph (d)(4) of this section.

(1) The mass air emissions from the incinerator shall be no greater than 0.001g PCB/kg of the PCB introduced into the incinerator.

(2) The incinerator shall comply with the provisions of paragraphs (a)(2), (3), (4), (6), (7), (8)(i) and (ii), and (9) of this section.

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(c) *Maintenance of data and records.* All data and records required by this section shall be maintained in accordance with § 761.80, Records and monitoring.

(d) *Approval of incinerators.* Prior to the incineration of PCBs and PCB Items the owner or operator of an incinerator shall receive the written approval of the Agency Regional Administrator for the region in which the incinerator is located, or the Assistant Administrator for Pesticides and Toxic Substances. Approval from the Assistant Administrator for Pesticides and Toxic Substances may be effective in all ten EPA regions. Such approval shall be obtained in the following manner:

(1) *Application.* The owner or operator shall submit to the Regional Administrator or the Assistant Administrator an application which contains:

(i) The location of the incinerator;

(ii) A detailed description of the incinerator including general site plans and design drawings of the incinerator;

(iii) Engineering reports or other information on the anticipated performance of the incinerator;

(iv) Sampling and monitoring equipment and facilities available;

(v) Waste volumes expected to be incinerated;

(vi) Any local, State, or Federal permits or approvals; and

(vii) Schedules and plans for complying with the approval requirements of this regulation.

(2) *Trial burn.* (i) Following receipt of the application described in paragraph (d)(1) of this section, the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances shall determine if a trial burn is required and notify the person who submitted the report whether a trial burn of PCBs and PCB Items must be conducted. The Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances may require the submission of any other information that the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances finds to be reasonably necessary to determine the need for a trial burn. Such other information

shall be restricted to the types of information required in paragraphs (d)(1) (i) through (vii) of this section.

(ii) If the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances determines that a trial burn must be held, the person who submitted the report described in paragraph (d)(1) of this section shall submit to the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances a detailed plan for conducting and monitoring the trial burn. At a minimum, the plan must include:

(A) Date trial burn is to be conducted;

(B) Quantity and type of PCBs and PCB Items to be incinerated;

(C) Parameters to be monitored and location of sampling points;

(D) Sampling frequency and methods and schedules for sample analyses; and

(E) Name, address, and qualifications of persons who will review analytical results and other pertinent data, and who will perform a technical evaluation of the effectiveness of the trial burn.

(iii) Following receipt of the plan described in paragraph (d)(2)(ii) of this section, the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances will approve the plan, require additions or modifications to the plan, or disapprove the plan. If the plan is disapproved, the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances will notify the person who submitted the plan of such disapproval, together with the reasons why it is disapproved. That person may thereafter submit a new plan in accordance with paragraph (d)(2)(ii) of this section. If the plan is approved (with any additions or modifications which the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances may prescribe), the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances will notify the person who submitted the plan of the approval. Thereafter, the trial burn shall take place at a date and time to be agreed upon between the Regional Administrator or

the Assistant Administrator for Pesticides and Toxic Substances and the person who submitted the plan.

(3) *Other information.* In addition to the information contained in the report and plan described in paragraphs (d) (1) and (2) of this section, the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances may require the owner or operator to submit any other information that the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances finds to be reasonably necessary to determine whether an incinerator shall be approved.

NOTE: The Regional Administrator will have available for review and inspection an Agency manual containing information on sampling methods and analytical procedures for the parameters required in § 761.70(a) (3), (4), (6), and (7) plus any other parameters he/she may determine to be appropriate. Owners or operators are encouraged to review this manual prior to submitting any report required in § 761.70.

(4) *Contents of approval.* (i) Except as provided in paragraph (d)(5) of this section, the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances may not approve an incinerator for the disposal of PCBs and PCB Items unless he finds that the incinerator meets all of the requirements of paragraphs (a) and/or (b) of this section.

(ii) In addition to the requirements of paragraphs (a) and/or (b) of this section, the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances may include in an approval any other requirements that the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances finds are necessary to ensure that operation of the incinerator does not present an unreasonable risk of injury to health or the environment from PCBs. Such requirements may include a fixed period of time for which the approval is valid.

(5) *Waivers.* An owner or operator of the incinerator may submit evidence to the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances that operation of the incinerator will not present an

unreasonable risk of injury to health or the environment from PCBs, when one or more of the requirements of paragraphs (a) and/or (b) of this section are not met. On the basis of such evidence and any other available information, the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances may in his/her discretion find that any requirement of paragraphs (a) and (b) of this section is not necessary to protect against such a risk, and may waive the requirements in any approval for that incinerator. Any finding and waiver under this paragraph must be stated in writing and included as part of the approval.

(6) *Persons approved.* An approval will designate the persons who own and who are authorized to operate the incinerator, and will apply only to such persons, except as provided in paragraph (d)(8) of this section.

(7) *Final approval.* Approval of an incinerator will be in writing and signed by the Regional Administrator or the Assistant Administrator for Pesticides and Toxic Substances. The approval will state all requirements applicable to the approved incinerator.

(8) *Transfer of property.* Any person who owns or operates an approved incinerator must notify EPA at least 30 days before transferring ownership in the incinerator or the property it stands upon, or transferring the right to operate the incinerator. The transferor must also submit to EPA, at least 30 days before such transfer, a notarized affidavit signed by the transferee which states that the transferee will abide by the transferor's EPA incinerator approval. Within 30 days of receiving such notification and affidavit, EPA will issue an amended approval substituting the transferee's name for the transferor's name, or EPA may require the transferee to apply for a new incinerator approval. In the latter case, the transferee must abide by the transferor's EPA approval until EPA issues the new approval to the transferee.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982, and amended at

48 FR 13185, Mar. 30, 1983; 49 FR 28191, July 10, 1984]

§ 761.75 Chemical waste landfills.

This section applies to facilities used to dispose of PCBs in accordance with the part.

(a) *General.* A chemical waste landfill used for the disposal of PCBs and PCB Items shall be approved by the Agency Regional Administrator pursuant to paragraph (c) of this section. The landfill shall meet all of the requirements specified in paragraph (b) of this section, unless a waiver from these requirements is obtained pursuant to paragraph (c)(4) of this section. In addition, the landfill shall meet any other requirements that may be prescribed pursuant to paragraph (c)(3) of this section.

(b) *Technical requirements.* Requirements for chemical waste landfills used for the disposal of PCBs and PCB Items are as follows:

(i) *Soils.* The landfill site shall be located in thick, relatively impermeable formations such as large-area clay pans. Where this is not possible, the soil shall have a high clay and silt content with the following parameters:

(i) In-place soil thickness, 4 feet or compacted soil liner thickness, 3 feet;

(ii) Permeability (cm/sec), equal to or less than 1×10^{-7} ;

(iii) Percent soil passing No. 200 Sieve, >30;

(iv) Liquid Limit, >30; and

(v) Plasticity Index >15.

(2) *Synthetic membrane liners.* Synthetic membrane liners shall be used when, in the judgment of the Regional Administrator, the hydrologic or geologic conditions at the landfill require such a liner in order to provide at least a permeability equivalent to the soils in paragraph (b)(1) of this section. Whenever a synthetic liner is used at a landfill site, special precautions shall be taken to insure that its integrity is maintained and that it is chemically compatible with PCBs. Adequate soil underlining and soil cover shall be provided to prevent excessive stress on the liner and to prevent rupture of the liner. The liner must have a minimum thickness of 30 mils.

(3) *Hydrologic conditions.* The bottom of the landfill shall be above

the historical high groundwater table as provided below. Floodplains, shorelands, and groundwater recharge areas shall be avoided. There shall be no hydraulic connection between the site and standing or flowing surface water. The site shall have monitoring wells and leachate collection. The bottom of the landfill liner system or natural in-place soil barrier shall be at least fifty feet from the historical high water table.

(4) *Flood protection.* (i) If the landfill site is below the 100-year floodwater elevation, the operator shall provide surface water diversion dikes around the perimeter of the landfill site with a minimum height equal to two feet above the 100-year floodwater elevation.

(ii) If the landfill site is above the 100-year floodwater elevation, the operators shall provide diversion structures capable of diverting all of the surface water runoff from a 24-hour, 25-year storm.

(5) *Topography.* The landfill site shall be located in an area of low to moderate relief to minimize erosion and to help prevent landslides or slumping.

(6) *Monitoring systems.* (i) *Water sampling.* (A) For all sites receiving PCBs, the ground and surface water from the disposal site area shall be sampled prior to commencing operations under an approval provided in paragraph (c) of this section for use as baseline data.

(B) Any surface watercourse designated by the Regional Administrator using the authority provided in paragraph (c)(3)(ii) of this section shall be sampled at least monthly when the landfill is being used for disposal operations.

(C) Any surface watercourse designated by the Regional Administrator using the authority provided in paragraph (c)(3)(ii) of this section shall be sampled for a time period specified by the Regional Administrator on a frequency of no less than once every six months after final closure of the disposal area.

(ii) *Groundwater monitor wells.* (A) If underlying earth materials are homogenous, impermeable, and uniformly sloping in one direction, only three

sampling points shall be necessary. These three points shall be equally spaced on a line through the center of the disposal area and extending from the area of highest water table elevation to the area of the lowest water table elevation on the property.

(B) All monitor wells shall be cased and the annular space between the monitor zone (zone of saturation) and the surface shall be completely back-filled with Portland cement or an equivalent material and plugged with Portland cement to effectively prevent percolation of surface water into the well bore. The well opening at the surface shall have a removable cap to provide access and to prevent entrance of rainfall or stormwater runoff. The well shall be pumped to remove the volume of liquid initially contained in the well before obtaining a sample for analysis. The discharge shall be treated to meet applicable State or Federal discharge standards or recycled to the chemical waste landfill.

(iii) *Water analysis.* As a minimum, all samples shall be analyzed for the following parameters, and all data and records of the sampling and analysis shall be maintained as required in § 761.80(d)(1). Sampling methods and analytical procedures for these parameters shall comply with those specified in 40 CFR Part 136 as amended in 41 FR 52779 on December 1, 1976.

- (A) PCBs.
- (B) pH.
- (C) Specific conductance.
- (D) Chlorinated organics.

(7) *Leachate collection.* A leachate collection monitoring system shall be installed above the chemical waste landfill. Leachate collection systems shall be monitored monthly for quantity and physicochemical characteristics of leachate produced. The leachate should be either treated to acceptable limits for discharge in accordance with a State or Federal permit or disposed of by another State or Federally approved method. Water analysis shall be conducted as provided in paragraph (b)(6)(iii) of this section. Acceptable leachate monitoring/collection systems shall be any of the following designs, unless a waiver is obtained pursuant to paragraph (c)(4) of this section.

(i) *Simple leachate collection.* This system consists of a gravity flow drainfield installed above the waste disposal facility liner. This design is recommended for use when semi-solid or leachable solid wastes are placed in a lined pit excavated into a relatively thick, unsaturated, homogenous layer of low permeability soil.

(ii) *Compound leachate collection.* This system consists of a gravity flow drainfield installed above the waste disposal facility liner and above a secondary installed liner. This design is recommended for use when semi-liquid or leachable solid wastes are placed in a lined pit excavated into relatively permeable soil.

(iii) *Suction lysimeters.* This system consists of a network of porous ceramic cups connected by hoses/tubing to a vacuum pump. The porous ceramic cups or suction lysimeters are installed along the sides and under the bottom of the waste disposal facility liner. This type of system works best when installed in a relatively permeable unsaturated soil immediately adjacent to the bottom and/or sides of the disposal facility.

(8) *Chemical waste landfill operations.* (i) PCBs and PCB Items shall be placed in a landfill in a manner that will prevent damage to containers or articles. Other wastes placed in the landfill that are not chemically compatible with PCBs and PCB Items including organic solvents shall be segregated from the PCBs throughout the waste handling and disposal process.

(ii) An operation plan shall be developed and submitted to the Regional Administrator for approval as required in paragraph (c) of this section. This plan shall include detailed explanations of the procedures to be used for recordkeeping, surface water handling procedures, excavation and backfilling, waste segregation burial coordinates, vehicle and equipment movement, use of roadways, leachate collection systems, sampling and monitoring procedures, monitoring wells, environmental emergency contingency plans, and security measures to protect against vandalism and unauthorized waste placements. EPA guidelines entitled "Thermal Processing and Land Disposal of Solid Waste" (39 FR 29337, Aug.

14, 1974) are a useful reference in preparation of this plan. If the facility is to be used to dispose of liquid wastes containing between 50 ppm and 500 ppm PCB, the operations plan must include procedures to determine that liquid PCBs to be disposed of at the landfill do not exceed 500 ppm PCB and measures to prevent the migration of PCBs from the landfill. Bulk liquids not exceeding 500 ppm PCBs may be disposed of provided such waste is pre-treated and/or stabilized (e.g., chemically fixed, evaporated, mixed with dry inert absorbant) to reduce its liquid content or increase its solid content so that a non-flowing consistency is achieved to eliminate the presence of free liquids prior to final disposal in a landfill. PCB Container of liquid PCBs with a concentration between 50 and 500 ppm PCB may be disposed of if each container is surrounded by an amount of inert sorbant material capable of absorbing all of the liquid contents of the container.

(iii) Ignitable wastes shall not be disposed of in chemical waste landfills. Liquid ignitable wastes are wastes that have a flash point less than 60 degrees C (140 degrees F) as determined by the following method or an equivalent method: Flash point of liquids shall be determined by a Pensky-Martens Closed Cup Tester, using the protocol specified in ASTM Standard D-93-80, or the Setaflash Closed Tester using the protocol specified in ASTM Standard D-3278-78.

(iv) Records shall be maintained for all PCB disposal operations and shall include information on the PCB concentration in liquid wastes and the three dimensional burial coordinates for PCBs and PCB Items. Additional records shall be developed and maintained as required in § 761.80.

(9) *Supporting facilities.* (i) A six foot woven mesh fence, wall, or similar device shall be placed around the site to prevent unauthorized persons and animals from entering.

(ii) Roads shall be maintained to and within the site which are adequate to support the operation and maintenance of the site without causing safety or nuisance problems or hazardous conditions.

(iii) The site shall be operated and maintained in a manner to prevent safety problems or hazardous conditions resulting from spilled liquids and windblown materials.

(c) *Approval of chemical waste landfills.* Prior to the disposal of any PCBs and PCB Items in a chemical waste landfill, the owner or operator of the landfill shall receive written approval of the Agency Regional Administrator for the Region in which the landfill is located. The approval shall be obtained in the following manner:

(1) *Initial report.* The owner or operator shall submit to the Regional Administrator an initial report which contains:

- (i) The location of the landfill;
- (ii) A detailed description of the landfill including general site plans and design drawings;
- (iii) An engineering report describing the manner in which the landfill complies with the requirements for chemical waste landfills specified in paragraph (b) of this section;
- (iv) Sampling and monitoring equipment and facilities available;
- (v) Expected waste volumes of PCBs;
- (vi) General description of waste materials other than PCBs that are expected to be disposed of in the landfill;
- (vii) Landfill operations plan as required in paragraph (b) of this section;
- (viii) Any local, State, or Federal permits or approvals; and
- (ix) Any schedules or plans for complying with the approval requirements of these regulations.

(2) *Other information.* In addition to the information contained in the report described in paragraph (c)(1) of this section, the Regional Administrator may require the owner or operator to submit any other information that the Regional Administrator finds to be reasonably necessary to determine whether a chemical waste landfill should be approved. Such other information shall be restricted to the types of information required in paragraphs (c)(1) (i) through (ix) of this section.

(3) *Contents of approval.* (i) Except as provided in paragraph (c)(4) of this section the Regional Administrator may not approve a chemical waste landfill for the disposal of PCBs and PCB Items, unless he finds that the

landfill meets all of the requirements of paragraph (b) of this section.

(ii) In addition to the requirements of paragraph (b) of this section, the Regional Administrator may include in an approval any other requirements or provisions that the Regional Administrator finds are necessary to ensure that operation of the chemical waste landfill does not present an unreasonable risk of injury to health or the environment from PCBs. Such provisions may include a fixed period of time for which the approval is valid.

The approval may also include a stipulation that the operator of the chemical waste landfill report to the Regional Administrator any instance when PCBs are detectable during monitoring activities conducted pursuant to paragraph (b)(6) of this section.

(4) *Waivers.* An owner or operator of a chemical waste landfill may submit evidence to the Regional Administrator that operation of the landfill will not present an unreasonable risk of injury to health or the environment from PCBs when one or more of the requirements of paragraph (b) of this section are not met. On the basis of such evidence and any other available information, the Regional Administrator may in his discretion find that one or more of the requirements of paragraph (b) of this section is not necessary to protect against such a risk and may waive the requirements in any approval for that landfill. Any finding and waiver under this paragraph will be stated in writing and included as part of the approval.

(5) *Persons approved.* Any approval will designate the persons who own and who are authorized to operate the chemical waste landfill, and will apply only to such persons, except as provided by paragraph (c)(7) of this section.

(6) *Final approval.* Approval of a chemical waste landfill will be in writing and will be signed by the Regional Administrator. The approval will state all requirements applicable to the approved landfill.

(7) *Transfer of property.* Any person who owns or operates an approved chemical waste landfill must notify EPA at least 30 days before transferring ownership in the property or transferring the right to conduct the

chemical waste landfill operation. The transferor must also submit to EPA, at least 30 days before such transfer, a notarized affidavit signed by the transferee which states that the transferee will abide by the transferor's EPA chemical waste landfill approval. Within 30 days of receiving such notification and affidavit, EPA will issue an amended approval substituting the transferee's name for the transferor's name, or EPA may require the transferee to apply for a new chemical waste landfill approval. In the latter case, the transferee must abide by the transferor's EPA approval until EPA issues the new approval to the transferee.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982, and amended at 48 FR 5730, Feb. 8, 1983; 49 FR 28191, July 10, 1984]

§ 761.79 Decontamination.

(a) Any PCB Container to be decontaminated shall be decontaminated by flushing the internal surfaces of the container three times with a solvent containing less than 50 ppm PCB. The solubility of PCBs in the solvent must be five percent or more by weight. Each rinse shall use a volume of the normal diluent equal to approximately ten (10) percent of the PCB Container capacity. The solvent may be reused for decontamination until it contains 50 ppm PCB. The solvent shall then be disposed of as a PCB in accordance with § 761.60(a). Non-liquid PCBs resulting from the decontamination procedures shall be disposed of in accordance with the provisions of § 761.60(a)(4).

(b) Movable equipment used in storage areas shall be decontaminated by swabbing surfaces that have contacted PCBs with a solvent meeting the criteria of paragraph (a) of this section.

NOTE: Precautionary measures should be taken to ensure that the solvent meets safety and health standards as required by applicable Federal regulations.

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982]

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Subpart E—Exemptions

§ 761.80 Manufacturing, processing, and distribution in commerce exemptions.

(a) The Administrator grants the following petitioners an exemption for one year to distribute in commerce PCB small capacitors for purposes of repair:

(1) Advance Transformer Co., Chicago, IL 60618 (PDE-4).

(2) Air Conditioning Contractors of America, Washington, DC 20036 (PDE-7).

(3) Association of Home Appliance Manufacturers, Chicago, IL 60606 (PDE-26.2).

(4) B & B Motor & Control Corp., New York, NY 10012 (PDE-30).

(5) Complete-Reading Electric Co., Hillside, IL 60162 (PDE-48).

(6) Dunham-Bush, Inc., Harrisonburg, VA 22801 (PDE-71).

(7) Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE-84).

(8) Harry Alter Co., Chicago, IL 60609 (PDE-111).

(9) Minnesota Mining and Manufacturing Co., St. Paul, MN 55133 (PDE-157.1).

(10) Motors & Armatures, Inc., Hauppauge, NY 11788 (PDE-161).

(11) National Association of Electrical Distributors, Stamford, CT 06901 (PDE-163).

(12) National Capacitor Corp., Garden Grove, CA 92641 (PDE-165).

(13) Service Supply Co., Phoenix, AZ 85013 (PDE-237).

(14) Wedzeb Enterprises, Inc., Lebanon, IN 46052 (PDE-297).

(15) Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

(b) The Administrator grants the following petitioners an exemption for one year to distribute in commerce PCB equipment containing PCB small capacitors:

(1) Advance Transformer Co., Chicago, IL 60618 (PDE-4).

(2) Coleman Co., Inc., Wichita, KS 67201 (PDE-45.1).

(3) Donn Corp., Westlake, OH 44145 (PDE-63).

(4) Dunham-Bush, Inc., Harrisonburg, VA 22801 (PDE-71).

(5) Emerson Quiet Kool Corp., Woodbridge, NJ 07095 (PDE-84).

(6) Friedrich Air Conditioning & Refrigeration Co., San Antonio, TX 78295 (PDE-93).

(7) Gould, Inc., Electric Motor Division, St. Louis, MO 63166 (PDE-103).

(8) GTE Products Corp., Danvers, MA 01923 (PDE-105).

(9) King-Seeley Thermos Co., Queen Products Division, Albert Lea, MN 56007 (PDE-139).

(10) L.E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE-223).

(11) Minnesota Mining and Manufacturing Co., St. Paul, MN 55133 (PDE-157.3).

(12) National Association of Electrical Distributors, Stamford, CT 06901 (PDE-163).

(13) Royalite Co., Flint, MI 48502 (PDE-231).

(14) Sola Electric, Unit of General Signal, Elk Grove Village, IL 60007 (PDE-246).

(15) Transco, Inc., West Columbia, SC 29169 (PDE-276.1).

(16) Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

(c) The Administrator grants the following petitioners an exemption for one year to process PCB small capacitors and PCB equipment containing PCB small capacitors into other equipment and to distribute in commerce that equipment:

(1) Advance Transformer Co., Chicago, IL 60618 (PDE-4).

(2) Gould, Inc., Electric Motor Division, St. Louis, MO 63166 (PDE-103).

(3) GTE Products Corp., Danvers, MA 01923 (PDE-105).

(4) L.E. Mason Co., Red Dot Division, Boston, MA 02136 (PDE-223).

(5) Westinghouse Electric Corp., Pittsburgh, PA 15222 (PDE-298).

(d) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce PCB-contaminated fluid for purposes of servicing customers' transformers:

(1) Electrical Apparatus Service Association, St. Louis, MO 63132 (PDE-77), except for Ward Transformer Co., Inc.

(2) Ohio Transformer Corp., Louisville, OH 44641 (PDE-173).

(3) T & R Electric Supply Co., Inc., Colman, SD 57017 (PDE-265).

(4) Temco, Inc., Corpus Christi, TX 78410 (PDE-268).

(e) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce PCB-contaminated fluid in buying and selling used PCB-contaminated transformers:

(1) Electrical Apparatus Service Association, St. Louis, MO 63132 (PDE-77), except for Ward Transformer Co., Inc.

(2) Ohio Transformer Corp., Louisville, OH 44641 (PDE-173).

(3) Temco, Inc., Corpus Christi, TX 78410 (PDE-268).

(f) The Administrator grants the following petitioners an exemption for one year to manufacture small quantities of PCBs for research and development:

(1) California Bionuclear Corp., Sun Valley, CA 91352 (ME-13).

(2) Foxboro Co., North Haven, CT 06473 (ME-6).

(3) ULTRA Scientific, Inc., Hope, RI 02831 (ME-99.1).

(g) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce small quantities of PCBs for research and development:

(1) California Bionuclear Corp., Sun Valley, CA 91352 (PDE-38.1).

(2) Chem Service, Inc., West Chester, PA 19380 (PDE-41).

(3) Foxboro Co., North Haven, CT 06473 (PDE-21.1).

(4) PolyScience Corp., Niles, IL 60648 (PDE-178).

(5) ULTRA Scientific, Inc., Hope, RI 02831 (PDE-282.1).

(h) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes:

(1) McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc., Chicago, IL 60616 (PDE-149).

(2) R.P. Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE-181), provided that petitioner stores the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

(i) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce PCBs for use as an immersion oil in low fluorescence microscopy (other than capillary microscopy):

(1) R.P. Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE-181), provided that petitioner stores the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

(j) The Administrator grants the following petitioners an exemption for one year to process and distribute in commerce small quantities of PCBs for use as an optical liquid:

(1) R.P. Cargille Laboratories, Inc., Cedar Grove, NJ 07009 (PDE-181), provided that petitioner stores the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

(k) The Administrator grants the following petitioners an exemption for one year to distribute in commerce previously imported and repaired PCB equipment containing PCB small capacitors:

(1) Honeywell, Inc., Waltham, MA 02154 (PDE-119).

(l) The Administrator grants the following petitioners an exemption for one year to import samples of PCB-containing fluid taken from PCB transformers for purposes of testing and analysis:

(1) Dow Corning Corp., Midland, MI 48460 (ME-31.1).

(m) The Administrator grants the following petitioners an exemption for one year to process and export small quantities of PCBs for research and development:

(1) Chem Service, Inc., West Chester, PA 19380 (PDE-41).

(2) Foxboro Co., North Haven, CT 06473 (PDE-21.1).

(3) PolyScience Corp., Niles, IL 60648 (PDE-178).

(4) ULTRA Scientific, Inc., Hope, RI 02831 (PDE-282.1).

(n) The one-year exemption granted to petitioners in paragraphs (f), (g), (i) and (m) of this section shall be renewed automatically unless a petitioner notifies EPA of any increase in the

amount of PCBs to be manufactured, imported, processed, distributed in commerce, or exported or any change in the manner of manufacture, processing, distribution in commerce, or export of PCBs. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, publish a proposed rule for public comments, and issue a final rule either granting or denying the exemption. Until EPA acts on the renewed exemption petition, the petitioner will be allowed to continue the activities for which it requests exemption.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[49 FR 28171, July 10, 1984]

Subparts F-I—[Reserved]

Subpart J—Records and Reports

§ 761.180 Records and monitoring.

This section contains recordkeeping and reporting requirements that apply to PCBs, PCB Items, and PCB storage and disposal facilities that are subject to the requirements of the part.

(a) *PCBs and PCB Items in service or projected for disposal.* Beginning July 2, 1978, each owner or operator of a facility using or storing at one time at least 45 kilograms (99.4 pounds) of PCBs contained in PCB Container(s) or one or more PCB Transformers, or 50 or more PCB Large High or Low Voltage Capacitors shall develop and maintain records on the disposition of PCBs and PCB Items. These records shall form the basis of an annual document prepared for each facility by July 1 covering the previous calendar year. Owners or operators with one or more facilities that use or store PCBs and PCB Items in the quantities described above may maintain the records and documents at one of the facilities that is normally occupied for 8 hours a day, provided the identity of this facility is available at each facility using or storing PCBs and PCB Items. The records and documents shall be maintained for at least five years after the facility ceases using or storing PCBs and PCB Items in the prescribed

quantities. The following information for each facility shall be included in the annual document:

(1) The dates when PCBs and PCB Items are removed from service, are placed into storage for disposal, and are placed into transport for disposal. The quantities of the PCBs and PCB Items shall be indicated using the following breakdown:

(i) Total weight in kilograms of any PCBs and PCB Items in PCB Containers including the identification of container contents such as liquids and capacitors;

(ii) Total number of PCB Transformers and total weight in kilograms of any PCBs contained in the transformers; and

(iii) Total number of PCB Large High or Low Voltage Capacitors.

(2) For PCBs and PCB Items removed from service, the location of the initial disposal or storage facility and the name of the owner or operator of the facility.

(3) Total quantities of PCBs and PCB Items remaining in service at the end of the calendar year using the following breakdown:

(i) Total weight in kilograms of any PCBs and PCB Items in PCB Containers, including the identification of container contents such as liquids and capacitors;

(ii) Total number of PCB Transformers and total weight in kilograms of any PCBs contained in the transformers; and

(iii) Total number of PCB Large High or Low Voltage Capacitors.

(b) *Disposal and storage facilities.* Each owner or operator of a facility (including high efficiency boiler operations) used for the storage or disposal of PCBs and PCB Items shall by July 1, 1979 and each July 1 thereafter prepare and maintain a document that includes the information required in paragraph (b)(1) thru (4) of this section for PCBs and PCB Items that were handled at the facility during the previous calendar year. The document shall be retained at each facility for at least 5 years after the facility is no longer used for the storage or disposal of PCBs and PCB Items except that in the case of chemical waste landfills, the document shall be maintained at

least 20 years after the chemical waste landfill is no longer used for the disposal of PCBs and PCB Items. The documents shall be available at the facility for inspection by authorized representatives of the Environmental Protection Agency. If the facility ceases to be used for PCB storage or disposal, the owner or operator of such facility shall notify within 60 days the EPA Regional Administrator of the region in which the facility is located that the facility has ceased storage or disposal operations. The notice shall specify where the documents that are required to be maintained by this paragraph are located. The following information shall be included in each document:

(1) The date when any PCBs and PCB Items were received by the facility during the previous calendar year for storage or disposal, and identification of the facility and the owner or operator of the facility from whom the PCBs were received;

(2) The date when any PCBs and PCB Items were disposed of at the disposal facility or transferred to another disposal or storage facility, including the identification of the specific types of PCBs and PCB Items that were stored or disposed of;

(3) A summary of the total weight in kilograms of PCBs and PCB Articles in containers and the total weight of PCBs contained in PCB Transformers, that have been handled at the facility during the previous calendar year. This summary shall provide totals of the above PCBs and PCB Items which have been:

(i) Received during the year;

(ii) Transferred to other facilities during the year; and

(iii) Retained at the facility at the end of the year. In addition the contents of PCB Containers shall be identified. When PCB Containers and PCBs contained in a transformer are transferred to other storage or disposal facilities, the identification of the facility to which such PCBs and PCB Items were transferred shall be included in the document.

(4) Total number of any PCB Articles or PCB Equipment not in PCB Containers, received during the calendar year, transferred to other storage

or disposal facilities during the calendar year, or remaining on the facility site at the end of the calendar year. The identification of the specific types of PCB Articles and PCB Equipment received, transferred, or remaining on the facility site shall be indicated. When PCB Articles and PCB Equipment are transferred to other storage or disposal facilities, the identification of the facility to which the PCB Articles and PCB Equipment were transferred must be included.

NOTE: Any requirements for weights in kilograms of PCBs may be calculated values if the internal volume of containers and transformers is known and included in the reports, together with any assumptions on the density of the PCBs contained in the containers or transformers.

(c) *Incineration facilities.* Each owner or operator of a PCB incinerator facility shall collect and maintain for a period of 5 years from the date of collection the following information, in addition to the information required in paragraph (b) of this section:

(1) When PCBs are being incinerated, the following continuous and short-interval data:

(i) Rate and quantity of PCBs fed to the combustion system as required in § 761.70(a)(3);

(ii) Temperature of the combustion process as required in § 761.70(a)(4); and

(iii) Stack emission product to include O₂, CO, and CO₂, as required in § 761.70(a)(7).

(2) When PCBs are being incinerated, data and records on the monitoring of stack emissions as required in § 761.70(a)(6).

(3) Total weight in kilograms of any solid residues generated by the incineration of PCBs and PCB Items during the calendar year, the total weight in kilograms of any solid residues disposed of by the facility in chemical waste landfills, and the total weight in kilograms of any solid residues remaining on the facility site.

(4) When PCBs and PCB Items are being incinerated, additional periodic data shall be collected and maintained as specified by the Regional Administrator pursuant to § 761.70(d)(4).

(5) Upon any suspension of the operation of any incinerator pursuant to § 761.70(a)(8), the owner or operator of such an incinerator shall prepare a document. The document shall, at a minimum, include the date and time of the suspension and an explanation of the circumstances causing the suspension of operation. The document shall be sent to the appropriate Regional Administrator within 30 days of any such suspension.

(d) *Chemical waste landfill facilities.* Each owner or operator of a PCB chemical waste landfill facility shall collect and maintain until at least 20 years after the chemical waste landfill is no longer used for the disposal of PCBs the following information in addition to the information required in paragraph (b) of this section:

(1) Any water analysis obtained in compliance with § 761.75(b)(6)(iii); and

(2) Any operations records including burial coordinates of wastes obtained in compliance with § 761.75(b)(8)(ii).

(e) *High efficiency boiler facilities.* Each owner or operator of a high efficiency boiler used for the disposal of liquids between 50 and 500 ppm PCB shall collect and maintain for a period of 5 years the following information, in addition to the information required in paragraph (b) of this section:

(1) For each month PCBs are burned in the boiler the carbon monoxide and excess oxygen data required in § 761.60(a)(2)(iii)(A)(8) and § 761.60(a)(3)(iii)(A)(8);

(2) The quantity of PCBs burned each month as required in § 761.60(a)(2)(iii)(A)(7) and § 761.60(a)(3)(iii)(A)(7); and

(3) For each month PCBs (other than mineral oil dielectric fluid) are burned, chemical analysis data of the waste as required in § 761.60(a)(3)(iii)(B)(6).

(f) *Retention of special records by storage and disposal facilities.* In addition to the information required to be maintained under paragraphs (b), (c), (d) and (e) of this section, each owner or operator of a PCB storage or disposal facility (including high efficiency boiler operations) shall collect and maintain for the time period specified in paragraph (b) of this section the following data:

(1) All documents, correspondence, and data that have been provided to the owner or operator of the facility by any State or local government agency and that pertain to the storage or disposal of PCBs and PCB Items at the facility.

(2) All documents, correspondence, and data that have been provided by the owner or operator of the facility to any State or local government agency and that pertain to the storage or disposal of PCBs and PCB Items at the facility.

(3) Any applications and related correspondence sent by the owner or operator of the facility to any local, State, or Federal authorities in regard to waste water discharge permits, solid waste permits, building permits, or other permits or authorizations such as those required by §§ 761.70(d) and 761.41(c).

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605)

[44 FR 31542, May 31, 1979. Redesignated at 47 FR 19527, May 6, 1982, and 47 FR 37360, Aug. 25, 1982; 49 FR 28191, July 10, 1984]

§ 761.185 Certification program and retention of records by importers and persons generating PCBs in excluded manufacturing processes.

(a) In addition to meeting the basic requirements of § 761.1(f) and the definition of excluded manufacturing processes at § 761.3, manufacturers with processes inadvertently generating PCBs and importers of products containing inadvertently generated PCBs must report to EPA any excluded manufacturing process or imports for which the concentration of PCBs in products leaving the manufacturing site or imported is greater than 2 micrograms per gram (2 µg/g, roughly 2 ppm) for any resolvable gas chromatographic peak. Such reports must be filed by October 1, 1984 or, if no processes or imports require reports at the time, within 90 days of having processes or imports for which such reports are required.

(b) Manufacturers required to report by paragraph (a) of this section must transmit a letter notifying EPA of the number, the type, and the location of excluded manufacturing processes in

which PCBs are generated when the PCB level in products leaving any manufacturing site is greater than 2 µg/g for any resolvable gas chromatographic peak. Importers required to report by paragraph (a) of this section must transmit a letter notifying EPA of the concentration of PCBs in imported products when the PCB concentration of products being imported is greater than 2 µg/g for any resolvable gas chromatographic peak. Persons must also certify the following:

(1) Their compliance with all applicable requirements of § 761.1(f), including any applicable requirements for air and water releases and process waste disposal.

(2) Whether determinations of compliance are based on actual monitoring of PCB levels or on theoretical assessments.

(3) That such determinations of compliance are being maintained.

(4) If the determination of compliance is based on a theoretical assessment, the letter must also notify EPA of the estimated PCB concentration levels generated and released.

(c) Any person who reports pursuant to paragraph (a) of this section:

(1) Must have performed either a theoretical analysis or actual monitoring of PCB concentrations.

(2) Must maintain for a period of three years after ceasing process operations or importation, or for seven years, whichever is shorter, records containing the following information:

(i) *Theoretical analysis.* Manufacturers records must include: the reaction or reactions believed to be generating PCBs; the levels of PCBs generated; and the levels of PCBs released. Importers records must include: the reaction or reactions believed to be generating PCBs and the levels of PCBs generated; the basis for all estimations of PCB concentrations; and the name and qualifications of the person or persons performing the theoretical analysis; or

(ii) *Actual monitoring.* (A) The method of analysis.

(B) The results of the analysis, including data from the Quality Assurance Plan.

(C) Description of the sample matrix.

(D) The name of the analyst or analysts.

(E) The date and time of the analysis.

(F) Numbers for the lots from which the samples are taken.

(d) The certification required by paragraph (b) of this section must be signed by a responsible corporate officer. This certification must be maintained by each facility or importer for a period of three years after ceasing process operation or importation, or for seven years, whichever is shorter, and must be made available to EPA upon request. For the purpose of this section, a responsible corporate officer means:

(1) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.

(2) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(e) Any person signing a document under paragraph (d) of this section shall also make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate information. Based on my inquiry of the person or persons directly responsible for gathering information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for falsifying information, including the possibility of fines and imprisonment for knowing violations.

Dated: _____
Signature: _____

(f) This report must be submitted to the U.S. Environmental Protection Agency, Document Processing Center, P.O. Box 2070, Rockville, MD 20852, Attention: PCB Notification. This report must be submitted by October

1, 1984 or within 90 days of starting up processes or commencing importation of PCBs.

(g) This certification process must be repeated whenever process conditions are significantly modified to make the previous certification no longer valid.

(Approved by the Office of Management and Budget under control number 2070-0008)

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

[49 FR 28191, July 10, 1984; 49 FR 33019, Aug. 20, 1984]

§ 761.187 Reporting importers and by persons generating PCBs in excluded manufacturing processes.

In addition to meeting the basic requirements of § 761.1(f) and the definition of excluded manufacturing process at § 761.3, PCB-generating manufacturing processes or importers of PCB-containing products shall be considered "excluded manufacturing processes" only when the following conditions are met:

(a) Data are reported to the EPA by the owner/operator or importer concerning the total quantity of PCBs in product from excluded manufacturing processes leaving any manufacturing site in any calendar year when such quantity exceeds 0.0025 percent of that site's rated capacity for such manufacturing processes as of October 1, 1984; or the total quantity of PCBs imported in any calendar year when such quantity exceeds 0.0025 percent of the average total quantity of such product containing PCBs imported by such importer during the years 1978, 1979, 1980, 1981 and 1982.

(b) Data are reported to the EPA by the owner/operator concerning the total quantity of inadvertently generated PCBs released to the air from excluded manufacturing processes at any manufacturing site in any calendar year when such quantity exceeds 10 pounds.

(c) Data are reported to the EPA by the owner/operator concerning the total quantity of inadvertently generated PCBs released to water from excluded manufacturing processes from any manufacturing site in any calendar

year when such quantity exceeds 10 pounds.

(d) These reports must be submitted to the U.S. Environmental Protection Agency, Document Processing Center, P.O. Box 2070, Rockville, Maryland 20852, Attention: PCB Notification.

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

(Approved by the Office of Management and Budget under control number 2070-0008)

[49 FR 28192, July 10, 1984]

§ 761.193 Maintenance of monitoring records by persons who import, manufacture, process, distribute in commerce, or use chemicals containing inadvertently generated PCBs.

(a) Persons who import, manufacture, process, distribute in commerce, or use chemicals containing PCBs present as a result of inadvertent generation or recycling who perform any actual monitoring of PCB concentrations must maintain records of any such monitoring for a period of three years after a process ceases operation or importing ceases, or for seven years, whichever is shorter.

(b) Monitoring records maintained pursuant to paragraph (a) of this section must contain:

(1) The method of analysis.

(2) The results of the analysis, including data from the Quality Assurance Plan.

(3) Description of the sample matrix.

(4) The name of the analyst or analysts.

(5) The date and time of the analysis.

(6) Numbers for the lots from which the samples are taken.

(Approved by the Office of Management and Budget under control number 2070-0008)

(Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

[49 FR 28193, July 10, 1984]

ENERGY CONSERVATION

469.930

(d) Set a reasonable time schedule for effective implementation of the elements set forth in this section.

(2) The commercial energy audit program submitted under subsection (1) of this section shall specify whether the publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount. [1981 c.708 §§15, 16]

469.890 Publicly owned utility to adopt commercial energy conservation program; fee. (1) Within 365 days after November 1, 1981, the director shall adopt rules governing energy conservation programs prescribed by ORS 469.895, 469.900 (3) and this section and may provide for coordination among electric utilities and gas utilities that serve the same commercial building. Within 180 days of the adoption of rules by the director, each covered publicly owned utility shall present for the director's approval a commercial energy conservation services program which shall, to the director's satisfaction:

(a) Make information about energy conservation available to all commercial building customers of the covered publicly owned utility, upon request;

(b) Regularly notify all customers in commercial buildings of the availability of the services described in this section; and

(c) Provide to any commercial building customer of the covered publicly owned utility, upon request, an onsite energy audit of the customer's commercial building, including, but not limited to, an estimate of the cost of energy conservation measures.

(2) The programs submitted and approved under this section shall include a reasonable time schedule for effective implementation of the elements set forth in subsection (1) of this section in the service areas of the covered publicly owned utility.

(3) The commercial energy conservation services program submitted under subsections (1) and (2) of this section shall specify whether the covered publicly owned utility proposes to charge the customer a fee for the energy audit and, if so, the fee amount. [1981 c.708 §§18, 19]

469.895 Application of ORS 469.890 to 469.900 to publicly owned utility. (1) ORS 469.890, 469.900 (3) and this section apply in any calendar year to a publicly owned utility only if during the second preceding calendar year sales of electric energy by the publicly owned utility for purposes other than resale exceeded 750 million kilowatt-hours. For the purpose of ORS 469.890,

469.900 (3) and this section, a publicly owned utility with sales for nonresale purposes in excess of 750 million kilowatt-hours during the second preceding calendar year shall be known as a "covered publicly owned utility."

(2) ORS 469.890, 469.900 (3) and this section shall not apply to a covered publicly owned utility if the director determines that its existing commercial energy conservation services program meets or exceeds the requirements of those sections.

(3) Before the beginning of each calendar year, the director shall publish a list identifying each covered publicly owned utility to which ORS 469.890, 469.900 (3) and this section shall apply during that calendar year.

(4) Any covered publicly owned utility is exempt from the requirements of ORS 469.880 and 469.885. [1981 c.708 §17]

469.900 Duty of commissioner to avoid conflict with federal requirements. (1) The commissioner shall insure that each electric utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to electric utilities and energy conservation in commercial buildings.

(2) The commissioner shall insure that each gas utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to gas utilities and energy conservation in commercial buildings.

(3) The director shall insure that each covered publicly owned utility's commercial energy conservation services program does not conflict with federal statutes and regulations applicable to covered publicly owned utilities and energy conservation in commercial buildings. [1981 c.708 §§5, 10, 20]

Note: 469.900 (1) and (2) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

NORTHWEST INTERSTATE COMPACT ON LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT

469.930 Northwest Interstate Compact on Low-Level Radioactive Waste Management. The Northwest Interstate Compact on Low-Level Radioactive Waste Management is enacted into law by the State of Oregon and entered into with all other jurisdictions lawfully joining therein in a form as provided for as follows:

ARTICLE I

Policy and Purpose

The party states recognize that low-level radioactive wastes are generated by essential activities and services that benefit the citizens of the states. It is further recognized that the protection of the health and safety of the citizens of the party states and the most economical management of low-level radioactive wastes can be accomplished through cooperation of the states in minimizing the amount of handling and transportation required to dispose of such wastes and through the cooperation of the states in providing facilities that serve the region. It is the policy of the party states to undertake the necessary cooperation to protect the health and safety of the citizens of the party states and to provide for the most economical management of low-level radioactive wastes on a continuing basis. It is the purpose of this compact to provide the means for such a cooperative effort among the party states so that the protection of the citizens of the states and the maintenance of the viability of the states' economies will be enhanced while sharing the responsibilities of radioactive low-level waste management.

ARTICLE II

Definitions

As used in this compact:

(1) "Facility" means any site, location, structure or property used or to be used for the storage, treatment or disposal of low-level waste, excluding federal waste facilities.

(2) "Low-level waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable federal or state standards for unrestricted release. Low-level waste does not include waste containing more than 10 nanocuries of transuranic contaminants per gram of material, nor spent reactor fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable federal regulations.

(3) "Generator" means any person, partnership, association, corporation or any other entity whatsoever which, as a part of its activities, produces low-level radioactive waste.

(4) "Host state" means a state in which a facility is located.

ARTICLE III

Regulatory Practices

Each party state hereby agrees to adopt practices which will require low-level waste shipments

originating within its borders and destined for a facility within another party state to conform to the applicable packaging and transportation requirements and regulations of the host state. Such practices shall include:

(1) Maintaining an inventory of all generators within the state that have shipped or expect to ship low-level waste to facilities in another party state.

(2) Periodic unannounced inspection of the premises of such generators and the waste management activities thereon.

(3) Authorization of the containers in which such waste may be shipped and a requirement that generators use only that type of container authorized by the state.

(4) Assurance that inspections of the carriers which transport such waste are conducted by proper authorities and appropriate enforcement action is taken for violations.

(5) After receiving notification from a host state that a generator within the party state is in violation of applicable packaging or transportation standards, the party state will take appropriate action to assure that such violations do not recur. Such action may include inspection of every individual low-level waste shipment by that generator.

(6) Each party state may impose fees upon generators and shippers to recover the cost of the inspections and other practices under this Article. Nothing in this Article shall be construed to limit any party state's authority to impose additional or more stringent standards on generators or carriers than those required under this Article.

ARTICLE IV

Regional Facilities

(1) Facilities located in any party state, other than facilities established or maintained by individual low-level waste generators for the management of their own low-level waste, shall accept low-level waste generated in any party state if such waste has been packaged and transported according to applicable laws and regulations.

(2) No facility located in any party state may accept low-level waste generated outside of the region comprised of the party states, except as provided in Article V.

(3) Until such time as paragraph (2) of this Article takes effect as provided in Article VI, facilities located in any party state may accept low-level waste generated outside of any of the

party states only if such waste is accompanied by a certificate of compliance issued by an official of the state in which such waste shipment originated. Such certificate shall be in such form as may be required by the host state and shall contain at least the following:

(a) The generator's name and address;

(b) A description of the contents of the low-level waste container;

(c) A statement that the low-level waste being shipped has been inspected by the official who issued the certificate or by an agent of the official or by a representative of the United States Nuclear Regulatory Commission, and found to have been packaged in compliance with applicable federal regulations and such additional requirements as may be imposed by the host state; and

(d) A binding agreement by the state of origin to reimburse any party state for any liability or expense incurred as a result of an accidental release of such waste, during shipment or after such waste reaches the facility.

(4) Each party state shall cooperate with the other party states in determining the appropriate site of any facility that might be required within the region comprised of the party states, in order to maximize public health and safety while minimizing the use of any one party state as the host of such facilities on a permanent basis. Each party state further agrees that decisions regarding low-level waste management facilities in the region will be reached through a good faith process which takes into account the burdens borne by each of the party states as well as the benefits each has received.

(5) The party states recognize that the issue of hazardous chemical waste management is similar in many respects to that of low-level waste management. Therefore, in consideration of the State of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to such facilities by generators within other party states. Nothing in this compact shall be construed to prevent any party state from limiting the nature and type of hazardous chemical or low-level wastes to be accepted at facilities within its borders or from ordering the closure of such facilities, so long as such action by a host state is applied equally to all generators within the region comprised of the party states.

(6) Any host state may establish a schedule of fees and requirements related to its facility to

assure that closure, perpetual care, and maintenance and contingency requirements are met, including adequate bonding.

ARTICLE V

Northwest Low-Level Waste Compact Committee

The governor of each party state shall designate one official of that state as the person responsible for administration of this compact. The officials so designated shall together comprise the Northwest low-level waste compact committee. The committee shall meet as required to consider matters arising under this compact. The parties shall inform the committee of existing regulations concerning low-level waste management in their states and shall afford all parties a reasonable opportunity to review and comment upon any proposed modifications in such regulations. Notwithstanding any provision of Article IV to the contrary, the committee may enter into arrangements with states, provinces, individual generators or regional compact entities outside the region comprised of the party states for access to facilities on such terms and conditions as the committee may deem appropriate. However, it shall require a two-thirds vote of all such members, including the affirmative vote of the member of any party state in which a facility affected by such arrangement is located, for the committee to enter into such arrangement.

ARTICLE VI

Eligible Parties and Effective Date

(1) Each of the following states is eligible to become a party to this compact: Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington and Wyoming. As to any eligible party, this compact shall become effective upon enactment into law by that party, but it shall not become initially effective until enacted into law by two states. Any party state may withdraw from this compact by enacting a statute repealing its approval.

(2) After the compact has initially taken effect pursuant to paragraph (1) of this Article any eligible party state may become a party to this compact by the execution of an executive order by the governor of the state. Any state which becomes a party in this manner shall cease to be a party upon the final adjournment of the next general or regular session of its legislature or July 1, 1983, whichever occurs first, unless the compact has by then been enacted as a statute by that state.

(3) Paragraph (2) of Article IV of this compact shall take effect on July 1, 1983, if consent is given by Congress. As provided in Public Law

96-573, Congress may withdraw its consent to the compact after every five-year period.

ARTICLE VII Severability

If any provision of this compact, or its application to any person or circumstance, is held to be invalid, all other provisions of this compact, and the application of all of its provisions to all other persons and circumstances, shall remain valid; and to this end the provisions of this compact are severable.

[1981 c.479 §1]

469.935 State appointee subject to Senate confirmation. The Oregon appointee to the Northwest Low-Level Waste Compact Committee shall be subject to Senate confirmation pursuant to section 4, Article III of the Oregon Constitution. [1981 c.497 §3]

Note: 469.935 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

469.950 Authority to enter into interstate cooperative agreements to control power costs and rates. The State of Oregon shall pursue and may enter into an interstate cooperative agreement with the states of Washington, Idaho and Montana for the purpose of making collective efforts to control Bonneville Power Administration wholesale power costs and rates by studying and developing a region-wide response to:

(1) Federal attempts to increase arbitrarily the interest rates on federal funds previously used to build public facilities in the Pacific Northwest.

(2) Federal initiatives to sell the Bonneville Power Administration.

(3) Bonneville Power Administration rate increase and budget expenditure proposals in excess of their actual needs.

(4) Regional uses of surplus firm power, including uses by existing or newly attracted Pacific Northwest industries, to provide long-term use of the surplus for job development.

(5) Power transmission intertie access. [1985 c.780 §1]

Note: 469.950 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

469.990 Penalties. (1) In addition to any penalties under subsection (2) of this section, a

person who discloses confidential information in violation of ORS 469.090, wilfully or with criminal negligence, as defined by ORS 161.085, may be subject to removal from office or immediate dismissal from public employment.

(2)(a) Wilful disclosure of confidential information in violation of ORS 469.090 is punishable upon conviction, by a fine or not more than \$10,000 or imprisonment for up to one year, or both, for each offense.

(b) Disclosure of confidential information in violation of ORS 469.090 with criminal negligence, as defined by ORS 161.085, is punishable, upon conviction, by a fine of not more than \$1,000 for each offense.

(3) Any person who violates ORS 469.825 commits a Class A misdemeanor. [1975 c.606 §20; subsection (3) enacted as 1981 c.49 §11]

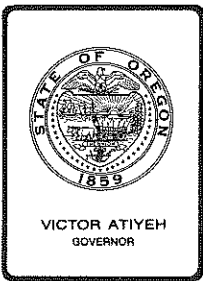
469.992 Civil penalties. (1) A civil penalty in an amount not less than \$1,000 per day nor more than \$25,000 per day for each day of construction or operation in material violation of ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930 or in material violation of any site certificate issued pursuant to ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930 may be assessed by the circuit court.

(2) Violation of an order entered pursuant to ORS 469.550 is punishable upon conviction by a fine of \$50,000. Each day of violation constitutes a separate offense.

(3) A civil penalty in an amount not less than \$100 per day nor more than \$1,000 per day may be assessed by the circuit court for a wilful failure to comply with a subpoena served by the director pursuant to ORS 469.080 (2).

(4) A civil penalty in an amount of not more than \$25,000 per day for each day in violation of any provision of ORS 469.300, 469.530, 469.603 to 469.621 and this section may be assessed by the circuit court upon complaint of the director or of any person injured by the violation. [Formerly 453.994; 1977 c.794 §17; 1981 c.707 §13; 1983 c.273 §4]

469.994 Civil penalty when dealer certificate revoked. (1) The Director of the Department of Energy may impose a civil penalty against a dealer if a final certification or dealer system certification is revoked under ORS 469.180 (1)(b) or (3)(a) or (b). The amount of the penalty shall be equal to the total amount of tax relief estimated to have been provided under ORS 316.116 to purchasers of the system for which a final certificate or dealer's certificate has been



Environmental Quality Commission

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Attachment 11
Agenda Item G
April 25, 1986

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item F, March 14, 1986, EQC Meeting

Request for Authorization to Conduct Public Hearings on Proposed Rules to Establish Chapter 340, Division 120, Siting and Permitting Requirements for Hazardous Waste and PCB Treatment and Disposal Facilities, and to Amend Division 110, Management of PCB.

Background

During the 1985 session, the Oregon Legislature enacted Senate Bill 138. Later to be known as Oregon Laws 1985--Chapter 670, this legislation establishes siting standards for hazardous waste and polychlorinated biphenyl (PCB) treatment and disposal facilities. Chapter 670 also directs the Environmental Quality Commission to adopt implementing rules by April 9, 1986.

Only two licensed hazardous waste or PCB treatment and disposal facilities exist in Oregon. Chem-Security Systems, Inc. operates a hazardous waste and PCB disposal facility about 10 miles southwest of the north-central Oregon town of Arlington. Tektronix operates a hazardous waste treatment facility at its Beaverton complex.

Prior to the 1985 Oregon Legislative session, Chem-Security applied to the Department for a permit to operate an incinerator to destruct PCB at its Arlington site. During preparation of and public hearings on the proposed Air Contaminant Discharge Permit and other permits for the incinerator, it became apparent that the Commission and Department had the legal authority to address only the technical merits of the proposal. The Legislature debated various ways to address the broader aspects and impacts of siting the incinerator, and passed Chapter 670. Subsequently, Chem-Security withdrew its incinerator application.

Chapter 670 requires the Commission and Department to address several new areas when considering an application for a hazardous waste or PCB treatment or disposal facility. These include the size of the facility, the origin of the waste, the facility's need and location, transportation of waste to the facility and the applicant's qualifications. The Act includes several provisions which regulate PCB treatment and disposal and

incorporate PCB into existing state hazardous waste statute. A copy of Oregon Laws--Chapter 670 is attached (see Attachment 5).

The federal Resource Conservation and Recovery Act (RCRA) regulates hazardous waste management. However, RCRA leaves the details of regulating the siting of hazardous waste storage, treatment and disposal facilities to the states. In the last few years, very few facilities have been sited due in part to public fears and what is called the "Not In My Backyard" (NIMBY) syndrome. Because these facilities are needed across the nation, states have developed laws and rules addressing facility siting. Some states have adopted the authority to override local government decision-making when considering proposals to locate facilities.

Several states, particularly eastern states, have spent the last two to four years developing detailed siting processes for hazardous waste facilities. As expected, the process is different in each state but most processes generally include specific locational standards, requirements for environmental impact analysis and extensive public involvement. Most state siting processes are too new to be judged for their success.

Laws and rules that govern the siting of facilities generally seek to provide the public with a layer of protection for public health and safety and the environment in addition to existing pollution control laws and rules. The siting laws and rules also attempt to involve the public living near proposed facilities throughout the permitting process. Most states with siting regulations have concluded that facilities will not be accepted at the local level without an extra layer of protection and extensive public involvement.

As preparation for rule drafting, Department staff researched and reviewed the literature on the siting of hazardous waste facilities. Several reports compare state siting processes and regulations. Others analyze NIMBY and public participation. Most call for innovative approaches so needed facilities can be sited. A list of reports reviewed by the Department is attached (see Attachment 6).

The Department has worked to involve the public and interested parties in drafting these rules. The Chem-Security disposal facility is located in a rural county east of the Cascades, and I-84 and U.S. 97 are major transportation routes for hazardous waste. Therefore, involvement from east of the Cascades has been stressed.

To assist the Department in drafting rules, the Director appointed a 12 person policy advisory committee. Chaired by Judge John C. Beatty, Jr., the committee met eight times totalling over 50 hours. Each meeting was open to the public. The committee considered the major policy questions of Chapter 670, studied information on facility siting and reviewed preliminary rule drafts. A list of the policy advisory committee members is attached (see Attachment 7).

A technical advisors group was also appointed to assist the Department. The group was comprised of technical people from the Department and other state and local agencies. A list of the technical advisors is attached (see Attachment 8).

Department staff held public information meetings around the state to solicit input and focus attention on this rulemaking process. Meetings were held in Portland, The Dalles, Pendleton, La Grande, Ontario, Burns, Klamath Falls, Bend, Eugene, Medford and Roseburg. Department staff met with 12 county commissions to discuss facility siting. More than 300 people asked to be placed on a mailing list for this rulemaking. The Department prepared three fact sheets describing Chapter 670, the rulemaking schedule and proposals for draft rules.

Several interested parties closely followed the Department's and committee's work and have commented throughout the process. Also, every county planning department was asked to review and comment on a preliminary draft of the rules.

Alternatives and Evaluation

Chapter 670 (S.B. 138) requires the Commission to adopt implementing rules. This report summarizes the important elements of what is being proposed and the alternatives considered by the Department and the policy advisory committee. The principal effects of what is being proposed are discussed, where applicable.

1. The Department and the committee addressed where to place the implementing rules. Hazardous waste management regulations are contained in Divisions 100 through 108 and PCB management regulations are contained in Division 110. At first, staff included the proposed rules at several locations in these existing divisions. The committee recommended separating the proposed rules from the existing rules. The proposed rules were then placed in a new division (Division 120) where they would apply both to hazardous waste and PCB treatment and disposal facilities. The proposed Division 120 is attached (see Attachment 1).

Divisions 100 through 108 incorporate federal rules by reference and only include rules when the state program is different from the federal program. However, Division 110 reprints most of the federal rules of 40 CFR 761 while including a few additional rules. Both Division 110 and 40 CFR 761 are attached (see Attachments 9 and 10). To make Division 110 consistent with Divisions 100-108, the proposed PCB management rules would adopt 40 CFR 761 by reference and include only rules when the state program is different from the federal program. The rules would include provisions for PCB management as required by Chapter 670. The proposed amended Division 110 is attached (see Attachment 2).

2. The rules would expand upon and clarify Chapter 670. One objective of the Department in this rule drafting is to create a procedure for siting that implements the law smoothly and understandably. Another objective is to

gain public confidence in the procedure. A third objective is to reject inappropriate proposals or sites at the earliest possible date so that the applicant, the Department and local government do not expend unnecessary resources.

Two basic alternatives exist for implementing Chapter 670. Rules could provide fixed exclusionary standards for a proposed facility site to provide added protection for the public health and safety and the environment. Or, rules could require an applicant to demonstrate through an environmental impact analysis that the proposed facility site provides added protection for public health and safety and the environment as required by Chapter 670.

The draft rules blend the two approaches. A few exclusionary standards would be part of the first step of the application procedure. Several additional criteria would be considered in the second step of the application procedure to show land use compatibility. However, exceptions to these additional criteria could occur if the applicant demonstrates that public health and safety and the environment are adequately protected.

3. Chapter 670 allows the Commission to determine the classes of hazardous waste and PCB treatment and disposal facilities which shall be subject to the implementing rules. Note that the hazardous waste management rules of Division 100 to 110 would continue to apply to all hazardous waste and PCB treatment and disposal facilities. Through the implementing rules of Chapter 670, the Commission can determine which classes of facilities will be subject to the additional requirements of Chapter 670 and Division 120.

Section (2) of Rule 340-120-001 would make treatment and disposal facilities off the site of waste generation and land disposal facilities on the site of waste generation subject to all of the provisions of Division 120. Off-site facilities are typically large commercial facilities that serve many generators. Section (3) of Rule 340-120-001 would make hazardous waste and PCB facilities, except land disposal facilities, on the site of waste generation subject to only these Division 120 provisions: 340-120-010(2)(c), Technology and Design; 340-120-010(2)(e), Property Line Setback; 340-120-010(2)(g), Owner and Operator Capability; 340-120-010(2)(h), Compliance History; 340-102-020, Community Participation; and 340-120-030, Permit Application Fee. On-site facilities are non-commercial facilities where waste generators manage their own waste.

Those who favor applying none or only a few of the provisions of Chapter 670 and Division 120 to on-site facilities say that to minimize transporting waste, on-site facilities should be encouraged. Also on-site facilities would be supplemental to other manufacturing activities and would generally handle lesser volumes of waste than off-site facilities. On-site facilities would remain subject to the extensive waste management requirements of Divisions 100 to 110. Those who favor making on-site facilities subject to all of the Division 120 provisions say that whether a facility is on or off-site does not necessarily determine its environmental impact or public acceptability.

For example, this rule would require on-site chemical treatment like what occurs at Tektronix at Beaverton to meet only those provisions of Division 120 that apply to on-site facilities. The rule would require off-site incinerators like what was proposed by Chem-Security to meet all of the provisions of Division 120. An alternative to Rule 340-120-001 would be to make all facilities subject to all of Division 120.

4. Rule 340-120-005 would establish an additional step in the application procedure for facilities required to meet all of the siting provisions. Presently, an applicant must obtain a land use compatibility statement, usually from local government, and then submit a detailed technical application to the Department. The additional step (requesting an Authorization to Proceed) would be the first step and is a screen to eliminate inappropriate sites or proposals from further consideration. The screen contains several criteria that must be met to obtain an Authorization to Proceed. The screen provides an extra layer of protection for public health and safety and the environment and includes many of the provisions of Chapter 670.

The Department was careful to not use the word "approval" at the first step. Concern has been voiced that the applicant and public might assume that passing the first step would mean a permit would be granted. Obtaining a Authorization to Proceed does not in any way imply that an applicant will receive land use approval or a technical permit.

5. Rule 340-120-005 would also establish a period for the Department to accept applications, as required by Chapter 670. The Act allows the Commission to wait as long as 270 days after rule adoption to begin the application period. The committee recommended and the Department determined that the application process should begin as soon as possible so a potential applicant is not needlessly delayed.

The initial period for an applicant to submit an Authorization to Proceed request would open May 15, 1986 and would close January 1, 1987. After the closure, the Department and Commission could act on any of the requests received. Following the initial period, the Department could not accept a new request until the Commission determines that there is a need for an additional facility. This finding of need is required by Chapter 670.

6. Section 9 of Rule 340-120-005 would require that most of the criteria of the Authorization to Proceed apply to exiting facilities upon permit renewal. Chem-Security expressed a concern to the committee that the Property Line Setback criterion would impact its Arlington facility because present and planned landfills are adjacent to its east property line. Chapter 670 prohibits the implementing rules adopted by the Commission from applying to Chem-Security during its present permit renewal, but the rules could apply during the next permit renewal. The permit can be issued for any period of time to a maximum of ten years.

The duration of Chem-Security next permit has not been determined. Therefore, the policy advisory committee chose eight years as a realistic period to delay applying the Property Line Setback criterion to Chem Securities. This eight year period would give the company time to either acquire additional land or replan the use of its site. Chem-Security's representatives took part in the committee's deliberations on this matter and believe that if additional land cannot be acquired, it would have to significantly modify its disposal plans.

The Property Line Setback criterion would apply upon rule adoption to the treatment facility at Tektronix. However, the company has indicated that the proposed setback is already being met.

7. Rule 340-120-010 contains the criteria which would have to be met to obtain an Authorization to Proceed. The criteria are Need, Capacity, Technology and Design, Location, Property Line Setback, Groundwater Protection, Owner and Operator Capability and Compliance History. The Capacity criterion generated the most discussion within the policy advisory committee. The Capacity criterion implements Section 4(4) of Chapter 670. This is the key section of the Act and perhaps the most difficult one to address.

Much of the concern about Chem-Security's proposed PCB incinerator focused on its service area. Waste originating in states west of the Mississippi was to be brought to the facility via the company's Kettleman Hills, California facility. The Legislature did not want facilities in Oregon serving that large of a service area.

The Commerce Clause of the U.S. Constitution limits each state's ability to restrict the free movement of commerce between states. For example, Oregon probably could not prevent waste originating in another state from coming to a facility located in Oregon. However, the Commerce Clause and federal law do not require the state to have facilities to serve waste originating in other states.

It makes sense to approach hazardous waste treatment and disposal on a regional basis. In December 1985, Congress approved several interstate compacts for groups of states so that low-level radioactive waste disposal could be managed regionally. Congressional approval is needed to exempt the compacts from the Commerce Clause. The compact for eight northwest states prohibits low-level radioactive waste originating outside the compact states from being disposed of at facilities in states that are part of the compact. A copy of the Northwest Interstate Compact on Low-Level Radioactive Waste (Northwest Compact) is attached (see Attachment 11).

Only Article IV, Section 5 of the Northwest Compact applies to hazardous waste. Section 5 requires states with hazardous waste facilities to allow access to those facilities by generators in the other states of the compact. The Commerce Clause likely requires this access anyway.

Rule 340-120-010(b) would place a minimum and maximum size on each off-site commercial facility. The minimum size addresses Chapter 670's direction to the Commission to limit the number of facilities in Oregon. For example a commercial incinerator would have to be designed large enough to treat the identified incinerable waste generated in Oregon.

As drafted in Rule 340-120-010(b), the language governing the maximum size of a facility is as follows:

"The facility shall not be sized greater than needed to treat or dispose of waste generated, or reasonably projected to be generated over the next 10 years, in states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management."

The maximum size addresses Chapter 670's direction to the Commission to limit the size of a facility and where legally possible, its service area. For example, a commercial incinerator could be no larger than needed to treat incinerable waste generated in the states which are parties to the Northwest Compact.

The policy advisory committee discussed an alternative to the draft rule. Several committee members were concerned that language defining maximum capacity would result in only Oregon facilities handling the waste generated in the Northwest Compact states. Alternative language is as follows:

"The facility shall not be sized greater than needed to treat or dispose of waste generated, or reasonably projected to be generated over the next 10 years in Oregon or in states that are parties to a binding interstate compact which includes Oregon, and specifically written for hazardous waste."

This language would limit the size of a facility to what is needed to manage waste generated in Oregon, until a hazardous waste compact is approved by Congress. The language may initiate regional discussions on hazardous waste management and prevent Oregon facilities from being sized to serve other states until a regional approach is agreed upon.

The rule language of 340-120-010(2)(b)(C) would direct the Commission to favor a proposed facility which is sized to minimize the risk of transporting waste in Oregon, if the criteria of 340-120-010(2) are met. Indirectly, this language would encourage applicants to size a proposed facility closer to what is needed to manage Oregon waste rather than what is needed to manage Northwest Compact state waste. This may be very important if the Department and Commission consider competing applications.

The language governing capacity is a key part of the proposed rules. The Department especially encourages comments on the proposed language at the public hearings or in writing during the public comment period.

8. The Property Line Setback criterion would provide a buffer between waste management activities and surrounding land. A 250 foot separation distance would be required for on-site treatment or disposal facilities such as the facility at Tektronix. This distance would apply to an on-site incinerator as well.

Off-site facilities, except land disposal facilities, would have at least a 500 foot separation distance. For example, an off-site commercial incinerator, such as the one proposed by Chem-Security, would have at least this separation distance. Land disposal facilities, such as the disposal facility operated by Chem-Security, would have at least a 1000 foot separation distance.

The primary objective for a separation distance is to provide an extra margin of safety for the unplanned or unpredictable accident. The separation distance also protects adjacent land uses. Some committee and technical group members believe draft rule separation distances are not great enough. Since Oregon will likely host no more than a couple facilities, a greater separation distance for new facilities might be appropriate.

Another alternative could create a greater separation distance but allow some uses within the separation. For example, a quarter or half mile separation could be required for off-site incinerators and disposal facilities but uses other than residential, commercial and/or agricultural uses could occur within the separation.

While the Property Line Setback criterion would be a continuous requirement, the Location criterion would apply only at the time of siting a facility. The committee discussed the problem of development occurring too close to a facility once it is operating, but believed the local land use authority was the proper body to address future development.

9. Rule 340-120-015 would list the criteria that must be considered as part of the findings for land use compatibility. Several criteria must be addressed to implement Chapter 670 and to maximize protection of public health and safety and the environment. Many of these criteria are already defined in local comprehensive plans.

Before issuing a permit, the Department is ultimately responsible for determining if a proposed hazardous waste or PCB facility is compatible with the statewide land use goals and the local comprehensive plan. However, the Department expects local government to determine the compatibility and to make findings supporting its decision. This process is governed by OAR Chapter 660, Division 31, State Permit Compliance and Compatibility.

Rule 340-120-015 would give local government the opportunity to consider the listed criteria when findings are made to support a compatibility

decision. If local government does not address the criteria during its land use compatibility review, the Department would consider the criteria and make appropriate findings.

The criteria of this rule would not be fixed and exceptions to the criteria would be allowed. An alternative would require these criteria to be met, not considered. The Department has chosen the draft language to allow flexibility in the siting process.

Each county planning department was asked to comment on 340-120-015 and particularly whether these criteria should be considered or met. Of the half dozen comments received so far, one planning director favored mandatory criteria while the others were generally comfortable with the flexible criteria.

10. Rule 340-120-015(1)(a) would separate a proposed facility from an urban growth boundary to minimize the potential for public exposure. Originally staff offered a much more limiting rule to the committee. A proposed facility would have been at least three miles from the urban growth boundary and one additional mile for each 20,000 people inside the boundary, to a maximum of 15 miles. This alternative would more likely assure that urban growth does not someday surround a facility. Since this criterion must be considered, not met, the distance could be less if conditions warrant.

The committee supported the present draft rule language because the alternative would exclude much of the Willamette Valley from consideration. The alternative would be difficult to sell to Eastern Oregonians and would be predicting urban growth patterns too distant in the future. Another alternative to this rule would be to limit the siting of a facility to an area that has a population density less than so many people per acre or square mile. This alternative may be difficult to apply.

11. Rule 340-120-020 would require community participation during a facility application review. Meaningful involvement by the host community is essential to gain local acceptance and approval. The Department and policy advisory committee reviewed several studies and reports which emphasized the importance of community participation. These documents generally concluded:

- a. Residents near a proposed facility must be involved in the permitting process from the very start;
- b. These residents often believe that government is not looking out for their interests;
- c. A local committee may be the best method to provide a forum for citizen questions and concerns;
- d. The local community should receive benefits to offset the (perceived) liability of hosting a facility.

Section (2) of Rule 340-120-020 would require a local committee to provide a forum for citizen comments and concerns about a proposed facility and to prepare a written report summarizing these concerns and the manner in which the company is addressing them. The committee would function as an advisory committee to the Department with minor expenses like travel and meal costs paid by the Department.

The local committee would be optional once a facility is sited. An alternative would be to maintain a local committee to provide an ongoing forum for public information, questions and concerns about a facility. Since an ongoing committee will not be needed in every case, the draft rule would allow the Director to continue a committee as needed.

The policy advisory committee debated the function, composition and responsibilities of a local committee. The advisory committee favored giving the local committee as much independence as possible and even its own funding. The advisory committee supported providing funds from the facility's permit application fee and favored limiting the committee's spending of the funds only when it involved litigation. However, the Department does not have the statutory authority to grant funds to an independent local committee.

During the public comment period, the Department is interested in receiving comments on the concept of an independent local committee which is funded by the Department or from some other source. After receiving comments, the Department will study the options available for granting the committee funds and determine if new legislation is desirable for this purpose.

12. Rule 340-120-020(5) would recommend that local government and an applicant consider negotiating an agreement to address a proposed facility's potential impact. A community is usually reluctant to host a facility because often its residents believe they are assuming a burden for the benefit of others. Unless this perceived burden is addressed, residents near a proposed site may not accept a facility under any circumstances.

Some states are attempting to address the perceived burden by requiring mitigating measures in the host community. For example, New Jersey levies a 5% gross receipts fee on waste entering a disposal facility and passes the fee on to the host community. Other states require the applicant and host community to address mitigation before approving a facility. While the approaches may be different, the objective is to create a process that enhances the chance of siting a needed facility.

For example, an agreement between the applicant and local government could address those things that might need change or improvement because of the new facility's real or perceived burden on a local community. An agreement could address the adequacy of or need for fire, police and health department training and equipment, special community monitoring, and transportation safety. These have and will continue to be of significant public concern when a new facility is proposed and an agreement is one way to address them in a positive and constructive manner.

The Department and Commission do not have the statutory authority to require an agreement between applicants and local government. Therefore, Section (5) of Rule 340-120-020 would only recommend that such an agreement be negotiated. The Department would appreciate comments on whether such statutory authority should be sought.

13. Rule 340-120-025 addresses the transportation of waste. Based upon public input to date, the transportation of waste is of greater concern than any other facility siting issue. The Oregon Public Utility Commissioner has primary authority over transportation of hazardous materials and waste. Laws enacted by the 1985 Legislature give the Public Utility Commissioner and the State Department of Transportation new powers to regulate transportation of hazardous materials and waste.

Hazardous waste accounts for less than five percent of the hazardous materials and waste transported on the state's highways. The Department has no authority to regulate waste transporters. Still, the public wants the Department to do what it can to promote safe transportation of waste.

To address this concern and the transportation language of Chapter 670, the Department has drafted 340-120-015(1)(h) and 340-120-025. Rule 340-120-015 lists the criteria to be considered during the determination of land use compatibility. Subsection (1)(h) requires appropriate highway or transportation departments to review routes to a proposed facility for safety. The criterion states that their recommendations for improvements should be implemented before the facility operates. While not defining who would pay for the improvements, the criterion would address highway safety near the facility.

Rule 340-120-025 would require a facility owner or operator to own or contract for a spill response team to respond to spills within 50 miles of the facility. Also, if a transporter bringing waste to the facility fails to arrange for a spill cleanup, the facility owner or operator would have to arrange for the cleanup.

The Department and committee first favored a rule to require each hazardous waste transporter to have a cleanup team under contract. However, the Department does not have the legal authority to regulate waste transporters. Another alternative would be to have the facility operator have a cleanup team under contract for any waste traveling to the facility. Chem-Security objected to this alternative because of its potential increased liability. Rule 340-120-025 would apply to Chem Securities upon its next permit renewal.

14. PCB disposal is currently regulated by Division 110. The proposed rules would entirely delete the Division 110 text as it now exists, incorporate the federal rules of 40 CFR 761 by reference, and add language to implement Chapter 670.

Rule 340-110-070 would require an incinerator designed to dispose of PCB to also incinerate hazardous waste. Chapter 670 requires a PCB incinerator to incinerate a reasonable ratio of hazardous waste. The Department considered two alternatives to implement Chapter 670. The ratio of hazardous waste could be set in a rule. Or, the Commission could determine a reasonable ratio for each proposed facility. The Department favors establishing a minimum ratio of 50% now.

Both Rules 340-110-070(5) and 075(2) would require an application for PCB disposal to include the same information already required for hazardous waste incineration and disposal.

Summation

1. The Commission is required to adopt implementing rules for Oregon Laws 1985--Chapter 670 within 270 days of the effective date of the Act.
2. Chapter 670 requires the Department and Commission to address several new areas when considering an application for a hazardous waste or PCB treatment or disposal facility.
3. The Department proposes that the Commission adopt a new division containing siting and permitting requirements for hazardous waste and PCB treatment and disposal facilities.
4. The Department proposes that the existing rule division managing PCB be replaced with a rule division which primarily references the federal rules of 40 CFR 761.
5. All hazardous waste and PCB facilities off the site of waste generation and land disposal facilities on the site of waste generation would be subject to all of the new siting and permitting requirements. Other than land disposal facilities, facilities on the site of waste generation would be subject to only some of the new requirements.

6. An additional step in the application procedure would be established to eliminate inappropriate proposals or sites from further consideration. This screening step, called requesting an Authorization to Proceed, mandates that certain criteria be met before applying for local land use approval and a permit from the Department.
7. An initial application period for proposed facilities would be established, beginning May 15, 1986 and ending January 1, 1987. Applications accepted after January 1, 1987 must be preceded by a Commission finding that a need exists for a new facility.
8. A facility would not be sized less than what is needed, in conjunction with existing facilities, to treat or dispose of waste generated, or projected to be generated over the next ten years, in Oregon. A facility would not be sized greater than needed to treat or dispose of waste generated, or reasonably projected to be generated over the next ten years, in states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management.
9. A property line setback of 250 feet would be required for on-site treatment and disposal facilities including incinerators. A 500 foot setback would be required for off-site facilities, other than land disposal facilities. A 1000 foot setback would be required for land disposal facilities.
10. A property line setback would be required for existing facilities. The Chem-Security Systems, Inc. disposal facility would have to meet the property line setback requirement eight years from rule adoption.
11. Land use compatibility findings would have to consider several criteria to protect public health and safety and the environment.
12. A site-specific local committee would be appointed to encourage community participation during a facility application review. The committee could be continued by the Director to provide a forum for the public once a facility operates.
13. An agreement between an applicant and the local government is recommended to address a proposed facility's potential local impact and perceived burden.
14. An incinerator licensed to burn PCB would have to burn more hazardous waste than PCB.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission authorize public hearings on the proposed rules establishing siting and permitting requirements for hazardous waste and PCB treatment and disposal facilities (Division 120), and amending existing rules for the management of PCB (Division 110).



Fred Hansen

- | | |
|----------------|---|
| Attachments 1. | Proposed Division 120 |
| 2. | Proposed Amended Division 110 |
| 3. | Rulemaking Statements |
| 4. | Public Hearings Notice |
| 5. | Oregon Laws 1985---Chapter 670 |
| 6. | A List of Reports Reviewed by the Department |
| 7. | Policy Advisory Committee |
| 8. | Technical Advisors |
| 9. | Federal PCB Rule (40 CFR 761) |
| 10. | Oregon Administrative Rules--Division 110 |
| 11. | Northwest Interstate Compact on Low-Level Radioactive Waste |

Bob Danko:f
Phone: 229-5769
February 18, 1986
ZF802

ATTACHED WRITTEN TESTIMONY WAS SUBMITTED DURING PUBLIC HEARING
PERIOD ON PROPOSED RULES ESTABLISHING SITING AND PERMITTING
REQUIREMENTS FOR HAZARDOUS WASTE AND PCB TREATMENT AND DISPOSAL
FACILITIES, AGENDA ITEM G.

Hazardous & Solid Waste Division
Dept. of Environmental Quality

RECEIVED
MAR 11 1986

11644 S.E. Morrison
Portland, OR 97216
March 9, 1986

Bob Danko:

Please accept this letter as my written comment on the proposed Hazardous Waste and PCB Management siting/permitting rules.

I think the rules have been greatly improved.

I want to point out to you again, however, an apparent gaping loophole in groundwater protection by incinerators in rule 340-120-010 (2) (f) (C).

It is reasonable to anticipate accidental leaks from surface or above-ground waste-holding tanks at incinerator facilities. Who will police these leaks? What rule covers this eventuality? Someone should answer this.

Concerning rule 340-120-010 (2) (h) on compliance history, I am submitting an Oregonian, February 7, article for your

files. I think Chem-Security can hardly
prove an acceptable compliance history.

Dan L. Kniesner
Dan L. Kniesner

"Imagineering a cleaner world"

Received
3/17/86
AD

- Portland Division
Foot of N. Portsmouth Ave
P. O. Box 5007
Portland, OR 97208
(503) 286-4656
- St. Louis Division
529 Spirit of St. Louis Blvd.
Chesterfield, MO 63017
(314) 532-7660
- San Francisco Division
230 Cutting Blvd.
Richmond, CA 94802
(415) 234-7400
- Seattle Division
901 Fairview Ave. No.
P. O. Box 1730
Seattle, WA 98111
(206) 622-2900




RIEDEL
ENVIRONMENTAL SERVICES, INC.

March 15, 1986

Dear Sirs:

It is apparent that if adopted as proposed, rule 340-120-010 (2)(b)(C) favors the siting of an incinerator at the Chem-Waste facility near Arlington, Oregon. RES feels that the proposed language will eliminate genuine competition since other provisions of the law make it virtually impossible to site an incinerator closer to the metropolitan or industrialized areas of the State of Oregon. RES urges the Environmental Quality Commission to reconsider this rule and not adopt regulations which would favor the existing facility at Arlington.

Sincerely,


John G.L. Hopkins
Vice President

JGLH:bw



OREGON STATE PUBLIC INTEREST RESEARCH GROUP
027 SW Arthur St.
Portland, OR 97201
(503) 222-9641

Statement of Sara L. Laumann
before the
Oregon Department of Environmental Quality
Suggested Revisions To
The Proposed Rules to Establish Siting Standards and
Permitting Requirements for Hazardous Waste and PCB
Treatment and Disposal Facilities
March 17, 1986

Received
3/17/86
RL

Good morning. I would like to thank the Department of Environmental Quality for the opportunity to submit this statement. My name is Sara Laumann. I am the Staff Attorney for the Oregon State Public Interest Research Group. OSPIRG is Oregon's largest consumer and environmental organization with over 30,000 citizen members and over 45,000 student members.

First, I would like to commend the Policy Advisory Committee and the DEQ staff responsible for promulgating the proposed rules. I attended many of the Policy Advisory Committee meetings and was encouraged to see a diverse group of people and interests represented and cooperating and working with one another to advise the DEQ staff.

Recognizing the extreme danger to human health and the environment from an inevitable spill or leak from a hazardous waste or PCB treatment or disposal facility, OSPIRG suggests that the proposed rules be amended in the following places.

1. Location/Lesser Distance

OSPIRG recommends that proposed Division 340-120-010 (2) (d) (B) be deleted. It seems that if the one mile standard is chosen it should be adhered to. If a facility were indeed sited less than one mile from schools, churches, hospitals, nursing homes, retail centers, stadiums, auditoriums and residences not owned by the applicant, or wilderness, public open space, preserves or parks, private parks,

and recreational trails as designated or identified in the applicable local comprehensive plan or zoning maps - the public health and safety of citizens and the environment would be afforded less protection than is prudent.

2. Portable Hazardous Waste and PCB Treatment Disposal Facilities

While we recognize that the amount of waste treated by a portable unit will undoubtedly be less than that treated by a permanent off-site disposal facility, we believe people who live near a temporary site should be afforded the same protections as people living near a permanent site. We feel that the possibility for an accident at a portable treatment facility is at least as likely as an accident at a permanent facility. Therefore, OSPIRG recommends that portable treatment facilities also conform to the proposed siting rules. OSPIRG recommends that proposed Division 340-120-001(4) (a) be deleted.

3. Distance Requirements

Consider the following examples: if a site were built in the Portland area, with its estimated population of 371,500, the incinerator would be three miles from the urban growth boundary. If a site were built in the Baker area, with an estimated population of 9,510, the incinerator could be only two miles away from the urban growth boundary. Finally, if an incinerator were built in the Arlington area, with its estimated population of 440, the incinerator could be located only one mile from the urban growth boundary. Why should Oregonians living in Baker or Arlington be closer to an incinerator than those living in Portland and so afforded less distance for safety than are Portlanders? Certainly, we are all citizens of Oregon and should be provided the same protections. Again, should not each individual Oregonian be given the same protection

regardless of the school, church they attend or the municipal watershed from which their water comes. OSPIRG has the same concerns for the rules in Division 340-120-015(1) (b) (A-G) and 340-120-015(1) (c) (A-H). OSPIRG recommends that Division 340-120-015 be amended so that all facilities are sited at least three miles from any urban growth boundary or other entity listed in these sections of the proposed rules.

4. Transportation Route

OSPIRG supports the proposed rule which requires more than one transportation route to the facility. However, we are concerned that the lesser traveled route may fall into disrepair. Therefore, we propose that Division 340-120-015(1) (g) be amended so that both transportation routes be at all times equally accessible, safe and maintained.

Thank you. I would be glad to answer any questions you may have regarding my remarks.

3/18/86
DWS

Statement

to the

Oregon Department of Environmental Quality

March 18, 1986

at the Public Hearing in Arlington

Good evening. My name is Della Heideman. I am here this evening representing Chem-Security Systems, Incorporated.

The proposed rules being discussed here this evening are lengthy, comprehensive in nature, and will have a profound impact on the future of hazardous waste and PCB treatment and disposal facilities in the state. CSSI is preparing detailed comments on the entire package of proposed rules and these will be formally submitted to the Department prior to the March 28 deadline. Since our comments are still being developed, I am not prepared to go into detail here tonight, but I will try to present a brief overview of the issues we see emerging and then comment more fully on proposed rule 340-120-020 on Community Participation.

In general, CSSI's comments will address several aspects of the proposed rules. Among them:

1. Whether the need for a new facility, or new technology at an existing facility in Oregon, should be dependent on capacities at existing or planned facilities in other states in the Northwest Interstate Compact on Low-level Radioactive Waste Management,
2. Whether the regulations should exempt certain types of hazardous waste activities and not exempt others if any similar activity has the potential to impact human health or the environment,
3. The degree to which the regulations should prescribe technology rather than define performance limits within which technology must operate,
4. Whether the operator of an existing facility can or should assume the liabilities of others by having to respond to and mitigate emergencies beyond its control, and
5. Other elements including the length of an operating permit and the need for specificity when requests are made for public disclosure of information.

Chem-Security Systems agrees with the Environmental Quality Commission's finding that local community participation is important in the selection of hazardous waste and PCB treatment and disposal facilities.

To encourage local participation in the siting of a proposed facility, the rules would require the Director of the Department of Environmental Quality to appoint and utilize a committee comprised at least partly of residents living near to, or along transportation routes to, the facility site, and that at least one half of the appointments shall be from a list of nominees submitted by the local government with land-use jurisdiction.

Chem-Security Systems strongly supports community participation and believes that it should focus on local participation. The rules should require the Director to appoint a committee comprised of a majority of local interests. This will assure that they have the stronger voice and that outside interests do not control the committee. Additionally, participation by local residents employed by an applicant should be allowed so that the full spectrum of views will be represented on the committee. The chairperson should be a local resident selected from the list of nominees submitted by the local government.

The proposed rule for community participation would allow the Director to continue a committee or appoint a new committee to review the "operation" of a facility once it is located and constructed. Chem-Security Systems strongly believes that the continued utilization of a local committee or the appointment of a new committee should be left to the discretion of the local government body when a majority of local interests and citizens have expressed a desire to establish or maintain such a committee. The Legislature specifically authorizes the Director to establish citizen advisory committees for the purpose of selecting a facility initially, but it did not authorize the Department to establish citizen committees to oversee the operation of hazardous waste and PCB treatment and disposal facilities.

CSSI agrees with the legislature's intentions and feels that local committee participation should revolve around "siting" issues and not oversight matters. These are best left to the regulatory agencies.

When a local committee is viewed by the local government as being in the best interest of the community, then a community information committee should be established and all meetings should be open to the public. The purpose of an information committee should be to provide a forum for local interests and citizens, public officials and management of an existing or proposed facility to exchange information, express interests and concerns and raise pertinent questions.

During the past year, following extensive discussions with local officials and business and public interests, Chem-Security Systems considered several ways to foster and promote community dialogue about operations at our Arlington facility.

We developed a community relations plan which included community meetings and a series of workshops on specific issues of interest to the community. The community relations plan was reviewed and discussed with interested members of the community. Although community interest in reviewing the plan appeared minimal because a relatively few number of citizens attended the meeting, the citizens who did attend provided us with valuable input and good recommendations.

The first workshop we held was to discuss the facility's contingency plan and emergency response procedures. This meeting was well attended, though not by interested citizens per se. We invited those officials, agencies, and emergency services who are directly involved in the contingency plan so that the community would have an opportunity to ask them questions directly. This format also offered the community an opportunity to provide comments and express their interests and concerns to the full body of responsible agencies and officials.

As you probably know, preparing for a community meeting or workshop, mailing letters and notices, and placing public notices in the local paper is time consuming and expensive. A community relations and information program must be developed to meet the specific needs of the community as a whole and we hope that more community members participate in future discussions. Perhaps informal discussions are the preferred mechanism for citizen participation in some communities, rather than formal structured meetings which, in our recent experience, haven't been widely attended.

Concerned Oregonians for Proper Waste Disposal is a public interest group which has and continues to express an interest in our Arlington facility and the company is committed to providing the necessary forum to promote dialogue with them. Richard Zwieg, CSSI general manager, recently spent approximately 5 hours with 3 members of the group on a Sunday afternoon and evening to discuss issues of interest to them. The group has also been invited to tour the facility so that they can get a first-hand look at the facility for themselves. The dialogue has been useful and I'm sure beneficial to both parties. CSSI hopes to continue this dialogue.

CSSI maintains an open door policy and in fact encourages citizens and organizations to visit the facility. We have found that conducting facility tours is an excellent mechanism for promoting discussions about hazardous waste management issues.

We hope this discussion illustrates CSSI's commitment to citizen participation and to further explain why we feel that community advisory committees should not be required or viewed by the Department as the preferred mechanism to promote community participation. It should be left to the community to decide how and when and through what mechanisms they choose to participate.

Thank you for this opportunity to express our views.

CONCERNED OREGONIANS FOR PROPER WASTE DISPOSAL

Star Route Box 58
Arlington, Oregon 97812
(503) 454-2511, 454-2871, 454-2806

3/18/86
AD

March 18, 1986

Mr. Hearings Officer:

My name is Richard Harper. I live six miles east of Olex, and my wife and I are both farmers. Thank you for holding this hearing this evening, and for drafting these proposed draft rules.

As Co-chairperson of Concerned Oregonians for Proper Waste Disposal, I would like to make four specific recommendations from our group regarding the proposed draft rules, Division 120, Hazardous Waste Management.

First, COPWD supports section 340-120-020, the Community Participation section of the draft rules. A non-biased, on-going, local review committee can do nothing but help to establish a better rapport between an applicant and the general public. A committee such as this could also facilitate improved communication and information passed on to the public and local government involved in the siting and review process. This committee is beneficial because it would have a direct, recognized link with the DEQ. It would have a broad representation of committee members which could address the broad spectrum of hazardous waste concerns, and it involves the public at the earliest stages of any proposal. COPWD proposes also, that the provisions of these rules be applied to the sites which currently exist in the state.

Third, COPWD would encourage the DEQ to adopt alternative language regarding capacity. Specifically:

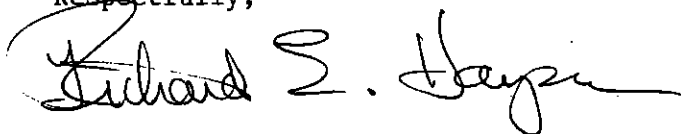
The facility shall not be sized greater than needed to treat or dispose of waste generated, or reasonably projected to be generated over the next 10 years in Oregon or in states that are parties to a binding interstate compact which includes Oregon, and specifically written for hazardous waste.

Fourth, COPWD supports the property line set-back criterion of the draft rules and would like to propose two additions to this section. For future sites employing incineration as a disposal method and for existing sites using the same technology, that along with the required buffer zone, ground monitoring, and food web samples be taken both on and off site to monitor emissions, environmental impact, and human health, concurrent with the operation of said facilities.

Overall, COPWD supports these draft rules and feels they are definitely workable and could be implemented to existing sites within the state.

Finally, I would like to thank the Policy Advisory Committee on Hazardous Waste for the time and effort they put into their recommendations to the DEQ and to the DEQ itself for designing the draft rules and holding this hearing.

Respectfully,

A handwritten signature in cursive script that reads "Richard E. Harper". The signature is written in black ink and is positioned above the printed name.

Richard E. Harper
Co-chair Concerned Oregonians for Proper Waste Disposal

A handwritten signature in cursive script that reads "Les Ruark". The signature is written in black ink and is positioned above the printed name.

Les Ruark
Co-chair Concerned Oregonians for Proper Waste Disposal

RD
3/18/86
MICHAEL D. & CONNIE JO YUTZIE
CEDAR SPRINGS RANCH
ARLINGTON, OR. 97812

DEPARTMENT OF ENVIRONMENTAL QUALITY
ATTN. BOB DANKO
P.O. Box 1760
PORTLAND, OR. 97207

AS RESIDENT FOREMAN OF CEDAR SPRINGS RANCH OF ARLINGTON, OR.,
I HEREBY VOICE MY SUPPORT FOR THE WORK OF THE POLICY ADVISORY
COMMITTEE ON HAZARDOUS WASTE.

THE COMMITTEE'S DRAFT RULES PROPOSAL HAS BROUGHT TO LIGHT
THE INADEQUACY OF OREGON'S PLAN FOR HAZARDOUS WASTE DISPOSAL
BOTH NOW, AND IN THE FUTURE. THUS, SHOWING A DISTINCT NEED FOR
SUCH RULES WRITTEN INTO A COMPLETE PLAN.

I ESPECIALLY ENDORSE THE COMMUNITY PARTICIPATION STATEMENT
(340-120-020). SUCH A COMMITTEE, APPOINTED BY THE DIRECTOR OF
DEQ, WOULD BE RECOGNIZED BY BOTH THE DEPARTMENT, & THE COMPANY
INTERESTED IN SITING A FACILITY, AND IT WOULD PROMOTE A MUCH NEEDED
DIALOGUE BETWEEN THE COMMUNITY, GOVERNMENT AGENCIES, & THE COMPANY.

I URGE YOUR DEPARTMENT TO RECOGNIZE THESE DRAFT RULES
AS NECESSARY TO THE FUTURE OF HAZARDOUS WASTE DISPOSAL IN OUR
STATE. I ALSO URGE YOUR DEPARTMENT TO DO WHAT IS NECESSARY
TO GET THESE RULES IMPLEMENTED IN A TIMELY MANNER.

THANK YOU,
Mike Yutzie
MIKE YUTZIE

3/18/86

DEQ Public Hearing, Arlington, OR
RE: Draft Rules and PAC Recommendations

I am Pamela Secord and I live in Arlington. After having read the draft rules and Policy Advisory committees recommendations I have just a few comments.

First of all, I support the implementing of the draft rules and recommendations.

I would like to see the community participation provisions include existing sites as well as new sites. I personally believe that it would benefit the company as well as the local community in understanding and avoiding conflicts.

I would like to see the DEQ submit an amendment to SB138 in the next legislative session, granting part of the application fee to the citizens advisory committee for technical studies and independent analysis on permit applications.

I support the concept of sizing limits of the facilities to accommodate need, limiting the size to no greater than needed to handle the amount of waste Oregon generates.

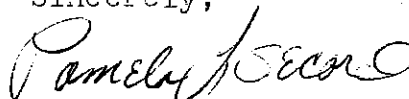
I'd like to see the buffer zone be applied to the current CSSI site, and land use compatibility issues resolved.

I would like to see ground monitoring, both on and off site, be implemented for new and existing sites using incineration as treatment.

I do have one concern that is not really addressed, and that is the transportation of ALL hazardous materials during adverse weather conditions. Is there some way that guidelines or rules could be set to prevent accidents involving these materials, when such accidents could be preventable?

I applaud the hard work the DEQ and the PAC has put into drafting these rules and recommendations. I want you to know that I personally appreciate your efforts and wholeheartedly believe that the adoption of these rules is a giant step toward a safer and hopefully healthier Oregon.

Sincerely,



Pamela Secord

Chloe Larvik - (As correct last
statement ~~is~~ on record)

Instead of on site
I ment to say in
local area. I feel
the disposal method
should be located in
area of industry - not
hundreds of miles away
It should be in an industrial
zone - Not agr. or forest or
rural

Rt. 1, BX 1580
La Grande, OR
March 17, 1986

3/18/86/BD

March 18, 1986

To DEQ Regarding
Advisory Committee Report to DEQ on
Hazardous Waste

Working as a member of Concerned Oregonians
for Proper Waste Disposal I helped formu-
late and signed into law HB 133. I now
support the Policy Advisory Committee's pro-
posed rules for implementing general state
policy on siting hazardous waste facilities
established by HB 133.

I see that Chem. Securities facility is men-
tioned in several instances in the report.
Living only 5 miles from CSSI and being
well informed on their activities, I am
very concerned with their operation and
dubious record. It is my sincere desire
that strict attention be paid to that
facility, its present operation and any
future expansion.

The state is charged with responsi-
bility for persons living in the area and
protection of the surrounding environ-
ment (as well as disposal and manage-
ment of hazardous waste).

The whole hazardous waste proposition
seems much like a act trying to
monitor and elephants activities. That
little ant may well be crushed and an
irreparably damaged area of our beau-
tiful state!

Please do not let this happen.

Sincerely
Edith L. Skelp
Star. R.
Arlington Or
97812

3/18/86 AD

March 18, 1986

Department of Environmental Quality
P.O. Box 1760
Portland, Oregon
97204

This letter is to express our support for the draft rules as proposed on hazardous wastes, particularly those which relate to community participation.

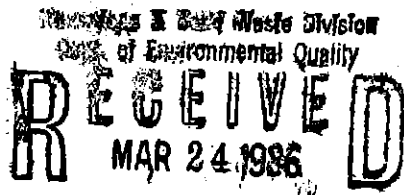
We also support the additional recommendations of the Policy Advisory Committee in regards to the local citizen advisory committee implementation.

As our ranch is within 5 miles of the hazardous waste site at Arlington, we have a long term interest in the proper monitoring of such waste. The aforementioned rules and recommendations help to address our concerns.

N.J. Welp
N.J. Welp

Diane D. Welp
Diane D. Welp

Star Route, Arlington, Or 97812



March 21, 1986

Comment directed to the Proposed Division 120 Hazardous Waste Management Plan
Public Hearing, Baker, Oregon Monday, March 17, 1986

(Please include the following comments along with the spoken testimony.)

Although the present definition of "hazardous waste management" does not include the transportation and storage of radioactive materials, special recognition and precautionary measures should be taken to deal with future dangers. The storage and transportation of radioactive cargo should be included in the new siting and permitting requirements for hazardous materials.

Any industry that is manufacturing, transporting or storing hazardous materials (including radioactive) should be held accountable to state and local governments for injuries. We fully endorse the resolution set forth by the American Public Health Association. (Please see the final page of the enclosed HEAL Packet).

HANFORD

Should Hanford be chosen as the next high level waste repository 77,000 tons of spent fuel would be trucked from plants back East. This equals 173,229 truck/ trailer loads or 22, 465 trainloads. USDOE predicts one truckload of spent fuel arriving every 90 minutes. We presently have a half dozen shipments of spent fuel annually along I- 84, but may have to deal with 5800.

The Sierra Club estimates that at a rate of 1.5 accidents per million miles traveled, there will be an expected 400 to 800 accidents. According to ODOE " Oregon could assume a greater risk of accidents than Washington if fuel rods are delivered by truck." The 210 mile segment of Interstate between Ontario

and Umatilla will have 1.1 million annual miles traveled by high level trucks. Compare this with only thirty miles in Washington, averaging 157,000 vehicle miles. As the travel route begins to funnel and narrow to Hanford, 7.9 million residents are found at the thinning end.

In the state of Oregon alone Baker has been chosen as the most likely site to have a serious radioactive materials spill. Of all radioactive shipments coming into Oregon 90% are I-84. According to William T. Dixon, ODOE's Siting and Regulation Division spokesperson, " a major omission in the DEA was the lack of a thorough consideration of route and site-specific transportation risks." In addition, EPA may have underestimated radiation doses to people during the cross-country delivery trips. When trucks are forced to pull over, radiation exposures are increased to bystanders.

Who is liable? All standard private insurance policies exclude coverage for damages from a nuclear incident. The federal government does not accept unlimited liability in the event of a shipping accident that would show faith in USDOE's claims of safety. Siting and permitting requirements for hazardous waste (including radioactive) should not be issued until an individual or company can prove they shall assume all liability for production, transportation, and storage of their specific hazardous material.

* * * *

Please include the following under Offsite Transportation Emergencies, p. 16

MIDNIGHT DUMPERS

Of the 8.4 million tons of hazardous waste that is transported every year, 8- 10,000 truckloads pass through Union and Baker counties. The Resource Conservation and Recovery Act has authorized a new tracking system to monitor hazardous waste shipments. According to William D. Ruckelshaus of EPA, " It will help

ensure that hazardous waste shipments which may have been dumped or disposed of illegally or indiscriminately are reported to EPA or state officials before they become a threat to the public or the environment."

It has been estimated that 20% of the 8.4 million tons of transported wastes is disposed of illegally by "midnight dumpers". There are 50,000 enterprises that generate wastes; 15,000 transporters and 10,000 facilities that treat, store and dispose of toxic chemicals. (These facts are about 3 or more years old). Any individual or company that is guilty of midnight dumping should be reported, penalized, and lose its privileges for conducting any operation in the state of Oregon for X years. (See "US to track wastes in effort to end dumping")

EFFECTIVE MONITORING PROGRAM and coordination of county, police, fire and emergency services

According to Rich Huggins, a previous Emergency Management Officer for Union County, "Loose state and federal monitoring of hazardous waste transport makes the problem serious in Union County." There is virtually no monitoring of substances carried by truck. Of the 4, 848 annual railroad loads only Class A Explosives are reported to local fire departments. "All other substances, including flammable solids, liquids, compressed gases, radioactive material and corrosive material go unreported to local authorities. "

We feel only when effective coordination of county, police, fire and emergency services is determined, can we then begin siting and permitting transportation through our state. (See "Staff Prepares for radioactivity," 1984 and "Hazardous Materials Poses Risks ")

In addition we would like to have the following concerns addressed:
The cost of precautionary evacuations, cask supplier liability (relating to radioactive transport), coverage for sabotage or theft, state and local expenses for evacuation and emergency response, state and local liability for poorly maintained roads and bridges.

Irradiation Plants and Transportation

If food irradiation becomes a viable industry, in 10 years there may be 1000 food irradiators operating near agricultural areas, cities, airports and seaports. That would be 20 times more facilities using radioactive sources than the current 50 nuclear plants. The Environmental Policy Institute has calculated that the amount of nuclear waste to go in and out of one typical plant every five years would be five times the total volume of low-level nuclear waste produced in the US in 1981.

So far 200 state and local communities have imposed bans or restrictions on nuclear cargo transport because of the growing concern over the federal government's apparent inability to protect communities from hazardous waste.

Since the Purex plant in Hanford is the only place that reprocesses waste into cesium capsules for irradiation facilities, there will be an increase of transportation from all plants to and from Hanford. We would like to ask that this be taken into account and included as a hazardous waste.

Sincerely,

Jo Broadwell

Ms JO BROADWELL
705 DIVISION
LA GRANDE, OREGON
97850

3-24-86

DEQ
Hazardous + Solid Waste

attn: Bob Danko

We do not want hazardous waste in Eastern Oregon. That means waste sites or even being transported through our area on I-84.

It is the greatest danger to all mankind and living things. Eventually hazardous waste will destroy this country. There is no way you can keep it out of our streams, rivers, our environment and eventually it will cause ill-health effects in people everywhere!

Its sad to see that we will just be

^{2.} destroying this earth and everyone in it. Nothing will be safe.

Do something to stop this!
Quit producing hazardous waste.

Again, we do not want hazardous waste in Eastern Oregon.

I'm a land owner and live in Baker County.

Mrs. Richard Lien
Rt. 1 Box 96
Haines, Oregon 97833

Hazardous & Solid Waste Division
Dept. of Environmental Quality
RECEIVED
MAR 27 1986

DEB, Hazardous and
Solid Waste Division,
Bob Danko,
Portland, OR

We do not want Hazardous
Waste dumped at Lime, Oregon.
It is utterly insane to even
consider dumping PCB or any other
hazardous waste so close to a
river and in such a narrow
down hill space.

Please do not even consider
this as a dump site for any
kind of hazardous waste.

Very Sincerely
Delberta Walker
Earl V. Walker Jr.

Hazardous & Solid Waste Division
Dept. of Environmental Quality
RECEIVED
MAR 27 1986

EARL V WALKER
RT. 1 - Box 77
H31F way, OR 97834

March 24, 1986

Department of Environmental Quality
Hazardous and Solid Waste Division
P.O.Box 1760
Portland
Or 97207

ATTN: Bob Danko;

We support the draft rules for Senate Bill 138 as written by the Policy Advisory Committee to the D.E.Q.

We also support the community involvement in the siting process and encourage the establishment of community involvement of existing hazardous waste sites now operating in Oregon.

We wish to thank these citizens who have served on the committee and the D.E.Q. for their time and effort to fulfill Senate Bill 138 policy on the siting of hazardous waste facilities.

Sincerely

James E. Morris

James E. Morris
Evelyn M. Morris
Evelyn M. Morris
JAMES E. MORRIS
MORRIS RANCH
STAR ROUTE
ARLINGTON, OR 97812

Hazardous & Solid Waste Division
Dept. of Environmental Quality

RECEIVED
MAR 27 1986

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED

MAR 2 . 1986

TO DEQ -

BEND DISTRICT OFFICE

I WOULD LIKE TO STATE
MY VIEW ON THE NEW RULES
PROPOSED BY THE DEQ THAT
WILL REGULATE THE BUILDING
OF HAZARDOUS WASTE AND
PCB TREATMENT AND DISPOSAL
FACILITIES, I RECOGNIZE THE
NEED IN OUR SOCIETY FOR
SUCH FACILITIES. WHAT ANNOYS
ME ARE THE PEOPLE WHO
ARE INVOLVED DON'T SEEM TO
CARE ABOUT THE ENVIRONMENT.
POLITICS AND MONEY MAKE
THE RULES, NOT CONCERN FOR
THE ENVIRONMENT AND RESPECT
FOR THE DANGEROUS CHEMICALS
INVOLVED. THEREFORE, I VERY
MUCH SUPPORT THE DEQ'S

325 Hill Wilmington
Bedford

Proposal for the three step
procedure of review. As
a person suffering from
environmental illness, I
see clearly the correlation
between a toxic environment
and ill health. In our
country the situation is
only getting worse, not
better. I only hope that
the rules will be able to
override the power of
politics, money, greed and
lack of concern. There can
be a constructive compromise
if both sides meet halfway,
understanding the need for
disposal as well as the
vital importance of reuse
disposal - and enforcement.

Dear Sirs

March 13, 1986

This toxic waste disposal and hazardous PCP treatment facility which is proposed by the Department of Environmental Protection Agency that is supposed to be located three miles west of Linn Oregon on the road to Huntington, Oregon where the PCP hazardous waste will be put in the ground until Government tells them otherwise.

How many people that you are associated with will be employed in this capacity of which wear the white suits for protection?

What will be the economic impact on Baker County in money when this facility is completed and running?

How many long hauling trucks will be used to haul this Solid Waste and Hazardous material?

I support you in bringing something new in to our County of which is mainly a lumber industry and farming County.

I look forward to hearing from you

Yours truly

Michael Baker

1435 Elm St

Baker, Oregon

97814-3939

Hazardous & Solid Waste Division
Dept. of Environmental Quality

RECEIVED
MAR 17 1986

Klamath Falls, Ore 97601
Rt 5 Box 1048

March 24-1986

Dept of Hazardous Solid Waste Div
P. O. Box 1760
Portland, Ore 97207

Bob Rankin:

We the undersigned would like to protest the dumping
of solid waste in the area around Lemoore, Oregon
we do believe it is too close to the Burnt River
and Snake River areas. Seems like there could be a
place farther away from a River than these.

Thank you.

Earl Dorothy In Spivey

Frances E. Spivey

Gene M. Unruh

Pauline Spivey

Larry Spivey

Hazardous & Solid Waste Division
Dept. of Environmental Quality

RECEIVED
MAR 27 1986

RALPH CRAMPTON

BOX 217

HUNTINGTON, OR. 97907

HAZARDOUS AND SOLID WASTE DIV.

P.O. BOX 1760

PORTLAND, OR. 97206

MR, BOB DANKO,

IN REVEIW OF THE THINGS I HEARD AT THE MEETING IN BAKER OR. , THERE ARE A FEW THINGS I WOULD LIKE TO SEE ON TRANSPERTATION CF HAZARDOUS WASTE MATERIAL.

NUMBER # 1 THAT TRUCKS HAWLING DANGEROIOUS MATERIALS DISPLAY LARGER SIGNS, ON ALL FOUR SIDES. THAT COULD BE EASIER READ AT A DISTANCE TO BE SAFE, IN THE EVENT OF A AXIDENT.

A 16 INCH DISPLAY CARD IS NOT BIG ENOUGH TO READ, BEFORE BEING TO CLOSE TO CONTAMINATED MATERIALS.

BEING A CAR INSPECTOR FOR THE UNION PACIFIC RAILROAD FOR 37 YEARS. I HAVE PASTED AROUND MANY CARS. BUT WE ALWAYS HAD AN INVOICE LIST OF THE DANGEROIOUS MATERIALS.

PEOPLE ARE CURIOUS AT DISASTERS, AND HAVE THAT GREAT POSIBILTY OF CONTACTING FUEMS AND LEAKING SUBSTANCE BEFORE THEY REALIZE IT.

NUMBER # 2 ALSO OSCILLATING LIGHTS FRONT AND REAR WOULD HELP AS A WARNING TO THE GENERAL PUBLIC WHO PASS AND ARE BEENING PASSED ON OUR HIGHWAYS.

I ALSO REALIZE THAT IT HAS BEEN THE DISIRES OF THE D.E.Q. NOT TO ELABORATE ON HOW MUCH HAZARDCUS MATERIALS ARE BEING HALLED ON THE PUBLIC HIGHWAYS. BUT THIS IS NO LONGER YOUR SECRET.

BUT THE GENERAL PUBLIC ARE GETTING CONCERNED. TO MANY WRECKS HAVE BEEN CALLED TO OUR ATTENTION IN EASTERN OREGON.

I REALIZE THAT ABOUT 10% OF THESE DRIVERS ARE HEAVY FOOTED. I BELIVE THAT THERE WOULD^{BE} A NATURAL SLOW DOWN OF THESE TRUCKS IF. THE EYES OF THE PUBLIC WERE UPON THEM.

THE RAILRCADS DONT TAKE CHANCES, BUT THEY DO HAVE PROBLEMS. THEY PLACE SUCH LOADS IN THE TRAIN AS NOT TO INJURE THERE WORKING PERSONNEL. IN THE EVENT OF A DERAILMENT ALL WORKING SUPERVISERS ARE HANDED A I.B.M. LIST OF ALL CARS IN THE TRAIN, AND THEY ARE DISCUSSED.

FROM WHAT I GATHERED AT THE MEETING IN BAKER, IT WAS HARD TO GET ANY IMFORMATION ABOUT AN TRUCK THAT WAS WRECKED OR TURNED OVER.

MAYBE THATS SOMETHING ELSE TO LOCK AT.

THANKING YOU
RALPH CRAMPTON

Ralph Crampton

Hazardous & Solid Waste Division
Dept. of Environmental Quality
RECEIVED
MAR 28 1986

March 24, 1986

DEQ
Hazardous and Solid Waste Division
P.O. Box 1760
Portland, Or. 97207

Dear Mr. Danko,

I have a couple of comments on the proposed rules for the siting of a hazardous waste incinerator in Oregon.

Rule 340-120-015: The incinerator should be sited in an industrial zone central to the generators of hazardous waste in Oregon. The existing rule is written so that the only place an incinerator can be sited is in Eastern Oregon far from generators. The intent of Oregon's zoning law is to prevent this type of scattered development. I suggest rewriting this rule putting emphasis on locating a site in a compatible land use zone. This should be in an industrial zone of a large city and in this context the distance from an urban growth boundary would not be a factor.

Rule 340-120-010: I favor language that will limit the size of an incinerator to Oregon's needs.

Sincerely,

Chloe Larvik

Chloe Larvik

Hazardous & Solid Waste Division
Dept. of Environmental Quality
RECEIVED
MAR 28 1986

P.O. Box 198
Durkee, Oregon
March 24, 1986

D E Q

Hazardous and Solid Waste Division

Attention: Bob Danko

P.O. Box 1760

Portland, Oregon 97207

Dear Mr. Danko,

This letter pertains to the location of a hazardous and solid waste disposable plant.

I feel very strongly that it should be located at a distance of not less than one mile from any river, stream, or body of water. I feel this would be a step toward protecting recreational areas, wildlife, and fish in streams below any disposal site.

Sincerely,

Clarence M. Pearce
Blanche A. Pearce

Hazardous & Solid Waste Division
Dept. of Environmental Quality

RECEIVED
MAR 26 1986

March 25, 86

Dear Bob,

I am very strongly opposed to the proposed hazardous waste and PCB dump at Lime, Oregon. Please don't allow anyone to site one there. Or anywhere else around here.

Thank you,
Laurence Rasmussen
Rt. 1 box 84
Halfway, Or.
97434

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201

Phone: 503/222-1963

March 28, 1986

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Paul Wilson

EXECUTIVE DIRECTOR

John A. Charles

Bob Danko
Department of Environmental Quality
522 SW Fifth
Portland, OR

Dear Bob,

OEC offers the following comments on the proposed rules to establish Chapter 340, Division 120.

OAR 340-120-001(4)(a) - Exemptions

This section allows an exemption for portable hazardous waste and PCB treatment and disposal facilities that are located on a single site of generation (on-site) less than 15 days each year. We wonder if this is the appropriate way to establish exemption parameters. The amount of days (time) is one variable, but it is not the only one or even necessarily the most important one in determining an exemption process. Other variables include types of hazardous waste treated or disposed of, quantities of material, and technology utilized. From a risk standpoint, it might be more important to consider amount of material treated rather than simply days in operation. Theoretically, a facility could be in operation only 14 days but treat a massive quantity of hazardous waste/PCB in a manner that poses significantly greater public health and safety risks than another facility that is in operation 150 days of the year.

I don't think there is any best way to deal with this problem. Perhaps the Department could modify the rules so that there would be 3 elements:

- (1) a time limit, for which the proposed 15 days seems reasonable;
- (2) a cap on the quantity of hazardous waste/PCB, which could be set by the Department at different levels for different categories of materials based on some kind of risk assessment;
- (3) a BAT requirement.

Portable units would have to meet all 3 criteria in order to be exempted from the rest of the Chapter 340, Division 120 rules.

340-120-010(2)(b) - Capacity

As the staff report indicates, the capacity question has been a difficult one for both the legislature and DEQ. The draft rule deals with the issue about as well as could be expected given the federal constitutional limitations.

We would suggest, however, that since the reference in (B) to the Northwest Interstate Compact on Low-Level Radioactive Waste Management is useful only for planning purposes and is not binding in terms of excluding wastes from certain states, the EQC should formally contact the members of the Oregon Congressional delegation and request that legislation be introduced to create a new, interstate compact expressly for the purpose of limiting the obligations of any one state to accept out-of-state hazardous waste or PCB.

340-120-010(2)(c) - Technology and Design

For purposes of consistency, the phrase "environmental quality" at the end of the last sentence should be deleted and replaced with "public health, safety and the environment".

340-120-010(2)(e) - Property Line Setback

The primary objective for a separation distance is to provide a margin of safety in the event of an accident. Parts (A)(B) and (C) of this rule allow for buffers of 250, 500, and 1000 feet for different types of facilities. According to discussions with DEQ staff, all three designations were arbitrary and therefore there is no way to conclusively show that one width is better than another.

Under these circumstances the Department should do what is frequently done in standard-setting where there is scientific uncertainty: adopt a standard that allows for a margin of safety to deal with the unknowns. Setback limits of 250 and 500 feet do not do this. OEC believes that the setback requirements should be at least 1,000 feet in all cases

We would also suggest that the Department allow the applicant to purchase easements from adjacent landowners in lieu of strict compliance with the setback standards. For instance, if an applicant wanted to build within 500 feet of the property line, and obtained an easement from a neighbor for an additional 500 feet, the effect of which was to restrict development in that zone, there would be a 1,000 foot buffer between the facility and neighboring activities, which provides the protection this section intends without necessarily requiring re-location of treatment facilities or purchase of additional land.

However, such easements should not be allowable if the effect of the transaction would be to site the facility too close to any of the specific designations listed in the Land Use Compatibility section, OAR 340-120-015.

With regard to the alternative discussed on page 8 of the staff report -- that of requiring a larger buffer but allowing limited uses within the buffer -- OEC is somewhat skeptical about the usefulness of this approach. Our concern is that under such a scenario, one of the limited uses might be industrial, since an industrial use would seem to be a reasonably compatible use with an adjacent hazardous waste treatment facility.

Unfortunately, this could be even worse than allowing residential development in the buffer because many industrial operations involve large quantities of toxic or potentially dangerous chemicals. Employees in these facilities are already at risk simply by working there, as evidenced by the staggering health insurance and workers compensation costs associated with industrial processes nationwide. Should there be an accident in a nearby hazardous waste/PCB treatment or disposal facility, the chances of uncontrolled toxic or hazardous chemicals entering an industrial plant and mixing synergistically with other on-site chemicals is greater than if the uncontrolled chemicals entered a typical residential household.

Furthermore, an industrial facility may have a large number of workers in a relatively small area, as compared with a residential neighborhood.

Both of these factors suggest to us that allowing limited uses within a buffer, if one such use is industrial, may pose significant risks to the broader community. For that reason OEC believes this would not be a desirable approach.

340-120-015 - Land Use Compatibility Findings

Local government and public input to DEQ must be assured procedurally in order to ensure public participation and eventual public acceptance of the plan. It should be required that local government consider the listed criteria during its land use compatibility review. The criteria must be met, and not just considered in order to adequately protect the surrounding community.

340-120-015(1)(f) - Emergency Services

This section only requires that emergency services be identified and adequacy assessed. It does not require that anything be done to remedy any deficiencies identified during that assessment.

If the department intends that some action be taken to ensure that emergency services are adequate to serve the facility, this section should be re-written to say that. While this section overlaps somewhat with 340-120-025(1), it still serves purposes other than those served in 340-120-025(1) because it does not have a 50 mile limit as does that section. Therefore we believe it should be modified such that it will ensure adequate emergency services.

340-120-020 - Public Participation

OEC commends the recognition for the need for community participation during a facility application review. Formation of a community advisory committee will aid in the community acceptance of the facility. The committee should be on-going during the life of the facility. This will allow for perceived and actual community fears or concerns to be discussed.

However, funding is necessary to make the committee truly viable. If DEQ does not feel that the necessary legislative authorization currently exists to fund the committee from applicant fees, it should approach the 1987 legislature with amendments to SB 138 to remedy this deficiency.

OEC supports the proposed role of DEQ in appointing the advisory committee. While the local community and local government should clearly have a major role in the committee, the siting process itself is the responsibility of DEQ and the agency should make sure that it retains authority to appoint a balanced committee.

340-120-025(1) - Off-Site Transportation Emergencies

This is an important section and should be retained in the rules. At first glance this section may appear to impose a substantial burden on the facility owner. However, this requirement should be read side by side with HB 2146, the so-called Spill Response Fund legislation passed by the 1985 Oregon legislature. That legislation is designed to provide a mechanism for the speedy clean-up of hazardous spills throughout the state. It also provides a means for cost recovery from the responsible party.

Therefore, if a hazardous waste facility owner was required to clean up a spill within 50 miles of the facility, as required by 340-120-025(1), and the department later recovered the costs from the responsible party pursuant to its authority in HB 2146, it's practically inconceivable that the department would not reimburse the facility owner for those costs. This lessens the burden on the owner from this particular section.

Conclusion

Overall the rules are a good first draft of a very complicated legislative mandate. They reflect the quality work of a talented advisory committee and dedicated staff. With the modifications outlined above we believe the rules would provide the necessary framework for the state of Oregon to site hazardous waste/PCB treatment and disposal facilities in a responsible manner.

I hope these comments are helpful. Thank you for the opportunity to review the rules.

Sincerely,



John A. Charles
Executive Director

March 20, 1986

DEQ
Hazardous and Solid Waste Division
ATTN: Bob Danko
P.O. Box 1760
Portland, OR 97207

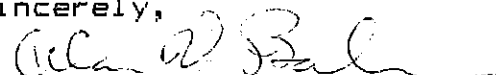
Dear Mr. Danko:

We do not want to see a hazardous waste disposal site in Baker County and certainly not a PCB burning site at the old Lime cement plant. The Burnt River Canyon is narrow and the town of Huntington is in the immediate path of any toxic gases that are released. The residents of this area--Huntington in particular--should not have to face the potential threat this poses to the air they breathe.

In addition, residents of Baker County have been involved in a long, expensive fight with LCDC over whether wildlife has to be given a priority consideration by land developers. The area around Lime is an excellent wildlife area--especially for deer and birds of prey. DEQ should be subject to an even longer and more costly battle, as this project could not avoid having an effect on wildlife.

We would like to receive more information on regulations on hazardous waste disposal sites and on transportation requirements on I-84. We are, and will continue to be, concerned that methods for hazardous waste disposal are acceptable to those who might be affected.

Sincerely,



Bonnie R. Bahn

Alan V. Bahn
Bonnie R. Bahn
P.O. Box 1011
Ebell Creek Rd.
Baker, OR 97814

Hazardous & Solid Waste Division
Dept. of Environmental Quality
RECEIVED
MAR 24 1986

Before the Oregon Department of Environmental Quality

In the Matter of the Adoption)	
of Proposed Administrative)	Proposed Division 120
Rules to Establish Siting)	
and Permitting Requirements)	Comments of Tektronix, Inc.
for Hazardous Waste and)	
PCB Treatment and Disposal)	
Facilities)	

Tektronix makes the following comments for consideration by the Department regarding adoption of proposed Division 120.

Tektronix is in the process of applying for a RCRA Part B permit for its hazardous waste treatment and storage facility near Beaverton, Oregon. It anticipates that within the next year it will receive a ten-year permit that will be modified periodically to accommodate technological advances and changes in Tektronix's processing needs. These modifications should not bring Tektronix into the requirements of this Division, which relates primarily to new facilities.

Under the proposed Rule as currently drafted, existing facilities are subject to the requirements of part (8) of 120-005. That Section is somewhat confusing because it requires existing facilities to categorize themselves based on definitions for new facilities. By reading around this defect, Tektronix finds itself governed by subpart (8)(b), which would require Tektronix to address the issue of Property Line setback each time it sought to modify its permit. This requirement is not helpful to the Department or the public and would be onerous to Tektronix.

The facility setback is not likely to change during the life of the Part B permit and should not be called into question each time that permit is modified. Tektronix urges the Department to amend proposed Part (8) under 340-120-005 so that it only requires application for existing facilities when the permits for those facilities need to be renewed. Tektronix suggests that the last sentence of that Section be changed as follows: "Upon application for permit renewal:"

This change is consistent with the Policy Advisory Committee's consensus that on-site treatment is preferable to off-site treatment. The Department should foster the continued use of the on-site treatment facility at Tektronix, rather than impose unnecessarily burdensome regulations upon Tektronix that provide no real benefit to the public.

Tektronix also urges the Department to delete the word "incidental" from the comment to Section (3) of Rule 120-001. The proposed comment, as currently drafted, creates some confusion for Tektronix that would be alleviated by this change.

Both Tektronix and the Department consider Tektronix's hazardous waste facility to be an "on-site" facility. The Department mentioned Tektronix in this context in its recent memorandum to the Environmental Quality Commission. Tektronix's facility receives significant quantities of waste generated by Tektronix at some of its other manufacturing locations and is authorized by the Department to do so. Since the comment points out that Department approval is required before

an "on-site" facility can receive waste generated off site, there is no need to refer to the amount of such waste in the comment. The Department will make an independent judgment as to whether the quantity is suitable to the facility. The word incidental creates unnecessary confusion.

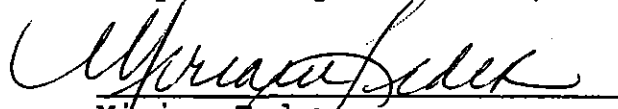
In the alternative, the Department could clarify this Section by changing the comment as follows:

A facility shall be considered an on-site facility even though it treats waste generated off-site if all of the waste treated is generated by the facility owner or not more than 10% of the waste treated is generated off-site.

Tektronix appreciates this opportunity to comment on the Department's proposed Rules.

Dated this 28 day of March, 1986.

Respectfully submitted,



Miriam Feder
Attorney for Tektronix

SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS

ATTORNEYS AT LAW
SUITES 1600-1800, PACWEST CENTER
1211 S. W. FIFTH AVENUE
PORTLAND, OREGON 97204-3795
TELEPHONE (503) 222-9981

CABLE ADDRESS "ROBCAL"
TELEX-151563
TELECOPIER (503) 766-2900

DONALD A. HAAGENSEN

TO: Department of Environmental Quality
Hazardous and Solid Waste Division

FROM: Donald A. Haagensen
For Chem-Security Systems, Inc.

RE: Proposed Rules to Establish Chapter 340, Division 120,
Siting and Permitting Requirements for Hazardous Waste
and PCB Treatment and Disposal Facilities

DATE: March 28, 1986

Chem-Security Systems, Inc. submits the following comments on the proposed rules issued March 14 by the Environmental Quality Commission for the siting and permitting of hazardous waste and PCB treatment and disposal facilities. In these comments the part of the proposed rule at issue is first quoted in full and then followed by a discussion of the proposed rule and suggested changes to the proposed rule with language to be deleted enclosed by brackets and language to be added underlined.

1. Proposed Rule 340-120-001(2) and (3)

"(2) All parts of this Division apply to new:

(a) Hazardous waste and PCB treatment and disposal facilities located off the site of waste generation (off-site); and

(b) Hazardous waste and PCB land disposal facilities located on the site of waste generation (on-site).

"(3) New hazardous waste and PCB treatment and disposal facilities, other than land disposal facilities, located on the site of waste generation (on-site), are only subject to:

340-120-010(2)(c)	Technology and Design;
340-120-010(2)(e)	Property Line Setback;
340-120-010(2)(g)	Owner and Operator Capability;
340-120-010(2)(h)	Compliance History;
340-120-020	Community Participation;
340-120-030	Permit Application Fee.

(Comment: With Department approval, a facility can receive incidental quantities of waste from off the site and be an on-site facility)."

Comment

This proposed rule exempts on-site treatment and disposal facilities (except land disposal) from certain requirements that must be met by off-site treatment and disposal facilities. These on-site facilities are exempt from the standards for need (340-120-010(2)(a)), capacity (340-120-010(2)(b)), location (340-120-010(2)(d)) and groundwater protection (340-120-010(2)(f)). The exemption is granted because these facilities "should be encouraged" in order "to minimize transporting" hazardous waste. (Department Memorandum at 4).

Such a basis for an exemption is not sound and is contradicted by the Department's recognition that: "Hazardous waste accounts for less than five percent of the hazardous materials and waste transported on the state's highways." (Department Memorandum at 11). Further, the Legislature did not direct the Commission to design rules to minimize the transportation of hazardous waste but instead created a carefully crafted plan to deal with such transportation. Chapter 670 in section 5 (codified at ORS 466.055) grants the Commission the authority only to ensure that a proposed facility location is "accessible by transportation routes that minimize the threat to the public health and safety and to the environment." Chapter 670 in section 36 (codified at ORS 767.457) grants all authority over the land transportation of hazardous waste to the Public Utility Commissioner. Chapter 696 directs the Department of Transportation to develop a single plan for the regulation of the transportation of hazardous material and waste in Oregon. The proposed rule's design to minimize hazardous waste transportation ignores this legislative plan.

The thrust of the Commission's rules should be to deal with off-site and on-site treatment and disposal facilities safely and fairly and to discourage disposal in landfills by encouraging all other types of treatment and disposal. The Commission should recognize that treatment and disposal (excluding land disposal) at off-site facilities will have no greater impact on the public health and safety and the environment than treatment and disposal conducted on-site. Similar treatment and disposal techniques will likely be used whether on-site or off-site. In fact, it is

probable that off-site facilities will provide greater protection to the public health and safety and the environment because the operators there are trained in and involved with only treatment and disposal activities (rather than other manufacturing activities) and also because under 340-120-010(2)(e) a greater separation between waste management areas of these facilities and neighboring properties is required.

In order to deal with all treatment and disposal facilities fairly and to discourage disposal in landfills, the Commission should exempt both off-site and on-site treatment and disposal facilities (excluding land disposal) from the standards for need, capacity, location and groundwater protection. If the Commission adopts this suggested change, the comment in OAR 340-120-001(3) about incidental quantities has no significance and should be deleted.

Suggested Change to Proposed
Rule 340-120-001(2) and (3)

"(2) All parts of this Division apply to
new:

~~[(a) Hazardous waste and PCB treatment and disposal facilities located off the site of waste generation (off-site); and]~~

[(b) Hazardous waste and PCB land disposal facilities ~~located on the site of waste generation (on-site)].~~

"(3) New hazardous waste and PCB treatment and disposal facilities, other than land disposal facilities, ~~located on the site of waste generation (on-site);~~ are only subject to:

340-120-010(2)(c)	Technology and Design;
340-120-010(2)(e)	Property Line Setback;
340-120-010(2)(g)	Owner and Operator Capability;
340-120-010(2)(h)	Compliance History;
340-120-020	Community Participation;
340-120-030	Permit Application Fee.

~~[(Comment:--With Department approval, a facility can receive incidental quantities of waste from off the site and be an on-site facility).]~~"

* * * * *

2. Proposed Rule 340-120-001(3)

"(3) New hazardous waste and PCB treatment and disposal facilities, other than land disposal facilities, located on the site of waste generation (on-site), are only subject to:

340-120-010(2)(c)	Technology and Design;
340-120-010(2)(e)	Property Line Setback;
340-120-010(2)(g)	Owner and Operator Capability;
340-120-010(2)(h)	Compliance History;
340-120-020	Community Participation;
340-120-030	Permit Application Fee.

(Comment: With Department approval, a facility can receive incidental quantities of waste from off the site and be an on-site facility.)"

Comment*

Part of the reason expressed for exempting the facilities listed in section (3) above from all of the siting standards designed to protect the public health, safety and welfare and the environment is that facilities located on-site should be encouraged in order "to minimize transporting waste." (Department Memorandum at 4.) Allowing "incidental quantities" from off-site to be received at an on-site facility, however, directly contradicts the reason for the exemption. Allowing off-site wastes to be received at an exempt on-site facility not only encourages transportation of hazardous wastes but also discourages on-site treatment and disposal. The Commission should not adopt the proposed comment in the rule and should grant an exemption to the siting standards only to facilities treating or disposing of completely on-site wastes. In the alternative, if the Commission adopts the proposed comment, incidental quantities of off-site wastes should be allowed only from off-site properties owned by the same person owning the on-site facility in order to prevent an on-site facility from operating as a commercial treatment or disposal facility.

Suggested Change to Proposed Rule 340-120-001(3)
Preferred Change

"(3) New hazardous waste and PCB treatment and disposal facilities, other than land disposal facilities, located on the site

* This comment is moot if the Commission adopts the suggested change to proposed rule 340-120-001(2) and (3) set forth on page 3.

of waste generation (on-site), are only
subject to:

340-120-010(2)(c)	Technology and Design;
340-120-010(2)(e)	Property Line Setback;
340-120-010(2)(g)	Owner and Operator Capability
340-120-010(2)(h)	Compliance History;
340-120-020	Community Participation;
340-120-030	Permit Application Fee.

~~[(Comment:--With Department approval, a
facility can receive incidental quantities of
waste from off the site and be an on-site
facility--)]"~~

Alternative Change

"(3) New hazardous waste and PCB
treatment and disposal facilities, other than
land disposal facilities, located on the site
of waste generation (on-site), are only
subject to:

340-120-010(2)(c)	Technology and Design;
340-120-010(2)(e)	Property Line Setback;
340-120-010(2)(g)	Owner and Operator Capability
340-120-010(2)(h)	Compliance History;
340-120-020	Community Participation;
340-120-030	Permit Application Fee.

(Comment: With Department approval, a
facility can receive incidental quantities of
waste from off the site and be an on-site
facility provided that waste received from off
the site is from individual generation sites
within Oregon owned by the same person owning
the on-site facility.)"

* * * * *

3. Proposed Rule 340-120-005(8)

"(8) The owner of an existing facility
with an effective permit must reapply
according to the provisions of 340-105-010(4)
before the expiration of the existing permit.
Upon reapplication or upon requesting a permit
modification:"

Comment

This proposed rule means that the siting rules will apply to all modifications of existing permits. This contradicts existing federal and Oregon law. The EPA rules regarding modifications to an existing permit provide:

"(c) Facility siting. Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environmental [sic] exists which was unknown at the time of permit issuance."
40 CFR 270.41(c).

This EPA rule has been adopted by the Commission in 340-100-002. The Commission should revise the proposed rule so that it is consistent with the EPA and existing state law for modifications of permits.

Suggested Change to Proposed Rule 340-120-005(8)

"(8) The owner of an existing facility with an effective permit must reapply according to the provisions of 340-105-010(4) before the expiration of the existing permit. Upon reapplication or upon requesting a permit modification where new information or standards indicate the existence of a threat to human health or the environment unknown at the time of permit issuance:"

* * * * *

4. Proposed Rule 340-120-005(8)(a)

"(a) The applicant of a facility described in 340-120-001(2) shall demonstrate the criteria of 340-120-101(2)(a), (b), (c), (e), (g) and (h) and 340-120-025 are being met."

Comment

Under this proposed rule the owner of an existing facility described in 340-120-001(2) must apply for a new permit before expiration of the facility's existing permit and must demonstrate in the application that six criteria are being met. One of the criteria, the criterion in 340-120-010(2)(a)(B), should not apply in a reapplication situation. This criterion requires that: "The facility shall significantly add to the range of the

hazardous waste or PCB handled or to the type of technology already employed at a permitted treatment or disposal facility in states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management." Unless an existing facility is to be modified, it will continue to handle the same range of hazardous waste or PCB and continue to employ the same type of technology authorized under its existing effective permit. If nothing new is proposed to be done, the criterion therefore cannot be met.

Chapter 670 recognizes in section 6 (codified at ORS 466.065) that all of the criteria established for new facilities need not apply to the issuance of a renewal license for an existing facility. Where an existing facility is simply being continued through a new permit, the Commission should determine that 340-120-010(2)(a)(B) does not apply.

Suggested Change to Proposed
Rule 340-120-005(8)(a)

"(a) The applicant of a facility described in 340-120-010(2)(a), (b), (c), (e), (g) and (h) and 340-120-025 are being met, except that the criterion in 340-120-010(2)(a)(B) need not be met for an existing facility that is not proposed to be modified."

* * * * *

5. Proposed Rule 340-120-005(9)

"(9) The Property Line Setback criterion of 340-120-010(2)(e) shall apply to the existing Chem-Security Systems, Inc. hazardous waste and PCB disposal facility eight years from the date the Commission adopts this rule."

Comment

This proposed rule coupled with the discussion on page 6 of the Department Memorandum imply a belief that the next permit for Chem-Security's existing facility should be issued for an eight year period. Such an implication is inappropriate in the rules and incorrect.

Chem-Security's application for its next permit requests that the permit be issued for ten years. Chem-Security has provided support for its request to the Department showing that a ten year length is required to allow an opportunity for recovery of capital investment and to follow the federal congressional and

agency intent that permits be issued for ten years. Further, any shorter period is unnecessary because under Oregon law the Department may order operation of the site halted at any time it determines that a clear and immediate danger to the public health, welfare or safety or the environment exists. ORS 466.200(1). The Department also has the power to revoke Chem-Security's permit at any time if Chem-Security violates any Oregon law or material condition of its permit. ORS 466.170.

The duration of the permit should be considered by the Commission in Chem-Security's permit proceeding and no implied predetermination of the permit length should be included in this generic rulemaking for all facilities. The Commission should delete the proposed rule entirely or modify it as suggested below.

Suggested Change to Proposed
Rule 340-120-005(9)

"(9) The Property Line Setback criterion of 340-120-010(2)(e) shall apply to the existing Chem-Security Systems, Inc. hazardous waste and PCB disposal facility [~~eight-years from~~] upon the expiration of any permit issued by the Commission to Chem-Security in response to the application for a permit pending before the Commission on the date the Commission adopts this rule.

* * * * *

6. Proposed Rule 340-120-010(2)(a)

"(a) Need.

(A) The facility is needed because:

(i) Of a lack of treatment or disposal capacity to handle hazardous waste or PCB generated by Oregon companies; or

(ii) Its operation would result in a significantly higher level of protection of the public health and safety or environment; or

(iii) Its operation will significantly lower treatment or disposal costs to Oregon companies, excluding transportation costs within states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management as set forth in ORS 469.930.

(B) The facility shall significantly add to the range of the hazardous waste or PCB handled or to the type of technology already employed at a permitted treatment or disposal facility in states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management.

(C) The Department may deny an Authorization to Proceed request if the Department finds that capacity at other treatment or disposal facilities negate the need for a particular facility in Oregon."

Comment

This proposed rule adds a requirement to the need standard established by Chapter 670, section 5, that must be met by an applicant for a new or renewal permit for a facility. The proposed rule goes beyond legislative intent and defines need for an Oregon facility based on facilities and technologies for treatment and disposal existing in Alaska, Hawaii, Idaho, Montana, Utah, Washington and Wyoming (the states in the Northwest Interstate Compact on Low-Level Radioactive Waste Management).

The applicant for a new or renewal permit must somehow obtain information from every hazardous waste or PCB treatment or disposal facility in the seven other compact states to show that a facility in those states does not negate the need for the applicant's facility in Oregon. Because much of this information is proprietary, the proposed rule places an applicant in an impossible situation and one that the Oregon Legislature did not intend when it enacted Chapter 670. The need requirements in Chapter 670 (paragraphs (2) and (4) of section 5, codified at ORS 466.055(2),(4)) make absolutely no mention of the existence of facilities in the seven other compact states negating the need for a facility in Oregon. In fact, certain of the standards in Chapter 670 (for example, "a higher level of protection of the public health and safety or environment") establish requirements that can be met solely by an examination of conditions in Oregon without reference to any existing treatment or disposal facilities.

The proposed rule is especially restrictive in view of the fact that when the Legislature enacted Chapter 670 there were existing treatment and disposal facilities in the other compact states. If the legislature had intended that the Commission determine that an existing or new facility in one of those other states could negate the need for a new facility or continuance of a existing facility in Oregon even though the Oregon facility would result in "a higher level of protection of the public health and safety or environment," the Legislature would have said so. Because the Legislature did not, the Commission should revise the

proposed rule to delete the references to the other compact states.*

The proposed rule should also be revised in several minor ways so that it complies with Chapter 670. The Commission should insert the phrase "adequate current" before "treatment or disposal capacity" in 340-120-010(2)(a)(A)(i) to follow the statute. Also, the Commission should delete the word "significantly" from 340-120-010(2)(a)(A)(ii) in order to follow the statute. Chapter 670 uses the word "significantly" to modify "lower treatment or disposal costs" in paragraph (4)(c) of section 5 but not to modify "higher level of protection" in paragraph (4)(b) of section 5.

Suggested Change to Proposed
Rule 340-120-010(2)(a)

"(a) Need.

(A) The facility is needed because:

(i) Of a lack of adequate current treatment or disposal capacity to handle hazardous waste or PCB generated by Oregon companies; or

(ii) Its operation would result in a [~~significantly~~] higher level of protection of the public health and safety or environment; or

(iii) Its operation will significantly lower treatment or disposal costs to Oregon companies, excluding transportation costs within [~~states-that-are-parties-to-the Northwest-Interstate-Compact-on-Low-Level~~

*The possibility that an existing facility in Oregon could be denied a renewal permit under the proposed rule because there was a facility in Alaska, Hawaii, Idaho, Montana, Utah, Washington or Wyoming is also antithetical to the conclusion the Advisory Committee reached in developing the proposed rules. The Committee concluded:

"If we want those who generate, treat or dispose of waste to make substantial investment in technology, they must be allowed reasonable periods of time over which such investments can be amortized. The goal is to achieve the best available technological management, not to set economically impossible standards which will have the effect of inhibiting proper management." Report of the Hazardous Waste Advisory Committee at 4-5.

~~Radioactive Waste Management as set forth in
ORS 469.930] Oregon.~~

(B) The facility shall significantly add to the range of the hazardous waste or PCB handled or to the type of technology already employed at a permitted treatment or disposal facility [~~in states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management~~].

~~[(C) The Department may deny an Authorization to Proceed request if the Department finds that capacity at other treatment or disposal facilities negate the need for a particular facility in Oregon.]"~~

* * * * *

7. Proposed Rule 340-120-010(2)(b)

"(b) Capacity.

(A) The facility shall not be sized less than what is needed, in conjunction with existing facilities, to treat or dispose of hazardous waste or PCB generated, or reasonably projected to be generated over the next 10 years, in Oregon.

(B) The facility shall not be sized greater than needed to treat or dispose of hazardous waste or PCB generated, or reasonably projected to be generated over the next 10 years, in states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management.

(C) If all of the criteria of 340-120-010(2) are met, the Commission shall give preference to a proposed facility which is sized to minimize the risk of transporting waste in Oregon."

Comment

The Department commentary to this proposed rule correctly observes:

"The Commerce Clause of the U.S. Constitution limits each state's ability to restrict the free movement of commerce between

states. For example, Oregon probably could not prevent waste originating in another state from coming to a facility located in Oregon." Department Memorandum at 6.

In fact, both the United States Supreme Court and the United States Court of Appeals for the Ninth Circuit have invalidated state laws that attempted to impose barriers to the free movement of certain types of wastes between states. City of Philadelphia v. New Jersey, 437 US 617, 98 S Ct 2531 (1978) (New Jersey law prohibiting entry of liquid or solid wastes into state); Washington State Bldg & Const. Trades v. Spellman, 684 F2d 627 (9th Cir 1982), cert den, 103 S Ct 1891 (1983) (Washington law prohibiting transportation or storage of out-of-state radioactive waste within the state).

The proposed rule, however, is simply a refinement of what the invalid New Jersey and Washington laws cited above attempted to do, but expanded to cover the seven other states in the Northwest Interstate Compact on Low-Level Radioactive Waste Management. Faced with a federal prohibition against Oregon allowing hazardous wastes from only certain states to come into Oregon for treatment or disposal, the proposed rule attempts to accomplish the same result by restricting the size of any facility in Oregon to no greater than needed to treat or dispose of hazardous wastes from only certain states.

The proposed rule's attempt to do indirectly what cannot be done directly should not be adopted by the Commission because it is the type of protectionist and discriminatory legislation that federal law does not allow a state to adopt.

Congress in certain instances has allowed states to enact such protectionist legislation discriminating against other states. The Northwest Interstate Compact on Low-Level Radioactive Waste Management is an example. For that compact, Congress first passed authorizing legislation, the Low-Level Radioactive Waste Policy Act, Public Law 96-573. The states involved then adopted legislation creating a compact. See ORS 469.930. Finally, Congress consented to the compact in the Low-Level Radioactive Waste Policy Amendments Act of 1985, Public Law 99-240. Only then was the compact valid in spite of the discrimination that it created against non-compact states and their low-level radioactive waste.

None of the required steps have taken place for hazardous waste. The proposed rule presumes that hazardous waste can be dealt with by the same protectionist measures applied to low-level radioactive waste. Further, the proposed rule assumes without any basis that the states in the low-level radioactive waste compact would be the same in any hazardous waste compact. The Commission should revise the proposed rule so that it treats all states equally unless Congress authorizes otherwise.

Suggested Change to Proposed
Rule 340-120-010(2)(b)

"(b) Capacity.

[~~(A)~~] The facility shall not be sized less than what is needed, in conjunction with existing facilities, to treat or dispose of hazardous waste or PCB generated, or reasonably projected to be generated over the next 10 years, in Oregon.

~~[(B)-The facility shall not be sized greater than needed to treat or dispose of hazardous waste or PCB generated, or reasonably projected to be generated over the next 10 years, in states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management.]~~

~~[(C)-If all of the criteria of 340-120-010(2) are met, the Commission shall give preference to a proposed facility which is sized to minimize the risk of transporting waste in Oregon.]"~~

* * * * *

8. Proposed Rule 340-120-010(2)(h)

"(h) Compliance History. The compliance history in owning and operating other similar facilities, if any, must indicate that the owner, any parent company of the owner and the operator have an ability and willingness to operate the proposed facility in compliance with the provisions of ORS 466 and any permit conditions that may be issued by the Department or Commission. As evidence of ability and willingness, the following shall be submitted:

(A) A listing of all responses to past violations identified by EPA or the appropriate state regulatory agency at any similar facility owned or operated by the applicant, owner, any parent company of the owner or operator; and

(B) Any written correspondence from EPA and the appropriate state regulatory agency which discusses the compliance history and

present compliance status of any similar facility owned or operated by the applicant, owner, any parent company of the owner or operator."

Comment

Paragraph (A) of this proposed rule should be clarified in two respects. First, the required listing of violations should include only violations which were caused during the time the owner, any parent company of the owner or the operator owned or operated the similar facility. The listing should not include violations where were not the fault of the owner, any parent company of the owner or the operator because the violations were caused by a previous owner or operator.

Second, paragraph (A) should be revised to ensure that actual violations and not simply allegations need to be reported. Because "violations" have in many cases been simply allegations that were later withdrawn as incorrect, the meaning of violations must be specific. A limit should be placed on how far back an applicant has to go to report responses to violations to ensure that the responses are meaningful to the Department's determination of current ability and willingness to operate.

Paragraph (B) of this proposed rule also should be clarified. The phrase "compliance history" is very broad and could be read to cover correspondence discussing any question or concern the EPA or any state regulatory agency has about any facility. So interpreted, the material required to be supplied would be voluminous and largely irrelevant. The paragraph should be revised to require the applicant to produce the specific aspects of the compliance history the Department needs to review to evaluate an application.

Suggested Change to Proposed
Rule 340-120-010(2)(h)

"(h) Compliance History. The compliance history in owning and operating other similar facilities, if any, must indicate that the owner, any parent company of the owner and the operator have an ability and willingness to operate the proposed facility in compliance with the provisions of ORS 466 and any permit conditions that may be issued by the Department or Commission. As evidence of ability and willingness, the following shall be submitted:

(A) A listing of all responses to past actual violations (not allegations) identified by EPA or the appropriate state regulatory agency within the three years immediately

proceeding the filing of the request for an Authorization to Proceed at any similar facility owned or operated by the applicant, owner, any parent company of the owner or operator during the period when the actions causing the violation occurred; and

(B) Any written correspondence from EPA and the appropriate state regulatory agency which discusses the [compliance history and] present compliance status of any similar facility owned or operated by the applicant, owner, any parent company of the owner or operator. Upon request of the Department for specific compliance history for a particular similar facility, the applicant shall also provide to the Department any written correspondence from EPA and the appropriate state regulatory agency responsive to the request."

* * * * *

9. Proposed Rule 340-120-020(1)

"(1) The Commission finds that local community participation is important in the siting and in reviewing the design, construction and operation of hazardous waste and PCB treatment and disposal facilities."

Comment

The Legislature in ORS 466.050 (Chapter 670, section 12) specifically authorizes the Director of the Department to establish citizen advisory committees "[t]o aid and advise the director and the commission in the selection of a hazardous waste or PCB treatment or disposal facility or the site of such facility." [Emphasis added.] The legislation does not authorize the Department to establish citizen committees to oversee the operation of hazardous waste and PCB treatment and disposal facilities.

The Legislative wisely left the choice of the type and extent of community participation regarding an operating facility to the local community involved. As a part of operation and management of a facility a responsible facility operator will implement a communications/community relations plan which will reach a broader community base than an advisory committee. Communications and interaction will not be restricted to a limited number of citizens on a committee, but instead will involve the entire community. Chem-Security has already implemented such a

communications/community relations plan for its facility at Arlington.

Finally, under ORS 466.185 and 466.305 the Department is required to investigate any complaint made by any person regarding the unsafe operation of a hazardous waste and PCB treatment and disposal facility or regarding operations in violation of the law. If the Department determines that grounds exist for a hearing, it must hold a hearing and provide an opportunity for the complaining party to be heard.

Suggested Change to Proposed
Rule 340-120-020(1)

"(1) The Commission finds that local community participation is important in the siting and in reviewing the design[,] and construction [~~and-operation~~] of hazardous waste and PCB treatment and disposal facilities."

* * * * *

10. Proposed Rule 340-120-020(2)

"(2) To encourage local participation in the siting of a proposed facility described in 340-120-001(2), the Director shall appoint and utilize a committee comprised at least partly of residents living near to, or along transportation routes to, the facility site. At least one half of the appointments shall be from a list of nominees submitted by the local government with land-use jurisdiction. The Director shall appoint the chairperson of the committee."

Comment

Community participation should focus on local participation. A majority of the members of an advisory committee, as well as the chairperson, should reflect local interests so that local interests are assured of a voice on the committee and so that outside interests do not control the committee. Participation by local residents employed by an applicant should be allowed so that the full spectrum of views will be represented on a committee.

Suggested Change to Proposed
Rule 340-120-020(2)

"(2) To encourage local participation in the siting of a proposed facility described in 340-120-001(2), the Director shall appoint and utilize a committee comprised at least partly of residents living near to, or along transportation routes to, the facility site. ~~[At-least]~~ Greater than one half of the appointments shall be from a list of nominees submitted by the local government with land-use jurisdiction. The list of nominees may include local residents employed by the applicant for the proposed facility permit. The Director shall appoint the chairperson of the committee from the list of nominees for the committee submitted by the local government with land-use jurisdiction."

* * * * *

11. Proposed Rule 340-120-020(4)

"(4) The Director may continue a committee authorized in Section (2) and (3) or appoint a new committee to review the operation of a facility once it is located and constructed."

Comment

See the comment on pages 15-16 for proposed rule 340-120-020(1).

Suggested Change to Proposed
Rule 340-120-020(4)

Delete section (4).

* * * * *

12. Proposed Rule 340-120-020(5)

"(5) The Department recommends that the local government and applicant consider negotiating an agreement appropriate for the proposed facility's potential local impact. The agreement might consider these and other issues:

(a) Training and equipping local fire, police and health department personnel to respond to accidents, spills and other emergencies;

(b) Special monitoring both on and off-site for worker and community health status;

(c) Road improvements and maintenance to assure safe transportation of waste to the site;

(d) Possible changes in property values near the site due to the proposed facility;

(e) A plan to resolve conflicts or disagreements that might develop between the facility operator and the community."

Comment

These matters are clearly outside the Commission's jurisdiction and should be left to be resolved between the applicant and the local government. Providing instructions in its rules to local governments in areas outside the Commission's jurisdiction is a step that should not be lightly taken. By putting "recommendations" into the rules, expectations are created that can never be met and in many cases should not be met.

This proposed rule treats hazardous waste management facilities different than any other business and if followed by a local government creates an impossible burden for an applicant. For example, what airport, racetrack, industrial plant or the like has an agreement with the involved local government addressing the "potential local impacts" identified in the proposed rule?

Actual local environmental impacts can be avoided or mitigated by conditions in a permit as well as through the enforcement process. To the extent that the facility requires additional local services, those services should be provided for in the same way any other services are provided for by a local government.

If an applicant were required to meet paragraphs (a) through (e) in the proposed rules, the applicant would in effect become a local government performing many of the functions traditionally reserved to the government. However, unlike a local government, the applicant would have unlimited liability for the performance of those functions. The applicant would not have the limits on total liability and the immunity for discretionary acts provided by the Oregon Tort Claims Act. See ORS 30.270(1), 30.265(3)(c).

Requiring an applicant under paragraph (a) to train and equip local fire, police and health department personnel means an applicant would be responsible not only for training and equipping the personnel but in the final analysis would be responsible for performance of the personnel if anything went wrong. Also, the applicant would be responsible for the safety of any personnel while responding to accidents, spills and emergencies. Certainly a prudent facility operator will assist in training local agencies, and, in fact, federal law requires it. Chem-Security provides such assistance.

Under paragraph (b) "off-site" community health status is limitless. This could require complete physical examinations once a year for every citizen of the community paid for by the applicant.

Under paragraph (c) the applicant would become the local highway department. Further, for public roads that go to a site, the applicant would be sued any time an accident occurred and maintenance or conditions of the road were somehow involved.

Under paragraph (d) the applicant would become a guarantor of property values for the area. How far would the guarantees extend -- next to the site, within a certain distance of the site, or the entire community? For the Arlington area, rather than decreasing property values, Chem-Security's facility has increased property values by providing employment and economic stimulus to the surrounding area.

Suggested Change to Proposed
Rule 340-120-020(5)

Delete section (5).

* * * * *

13. Proposed Rule 340-120-025(1)

"(1) An emergency response team owned by or under contract to the owner or operator of the facility shall be located within 25 miles of the facility. The team shall be capable of immediately responding to spills, occurring within 50 miles of the facility, of waste traveling to the facility. If the transporter of any waste traveling to the facility and within the state fails to cleanup any spill occurring within the state to the Department's satisfaction, the facility owner shall immediately arrange for such cleanup upon a request by the Department."

Comment

The proposed rule should be completely unacceptable to any facility owner because it assigns responsibility to a facility owner for a spill the owner did not cause and over which the owner has no control.

Chem-Security Systems, Inc. strongly opposes this proposed rule. If Chem-Security is made responsible for wastes anywhere in Oregon that are destined for Chem-Security's facility, Chem-Security will be forced to accept only waste transported by its own transporters in order to avoid an unlimited liability for third parties' spills.

The proposed rule also contravenes recent Oregon legislative directives. The 1985 Oregon Legislature enacted Chapter 733 (HB 2146) to assign strict liability and responsibility for cleanup for any spill of a hazardous waste to certain persons. In the legislation any person "owning or having control" over any hazardous material spilled is strictly liable for the spill and responsible for cleanup of the spill. ORS 466.640, 466.645. If the reasonable person does not clean up the spill, the Department may clean up the spill or contract for cleanup of the spill. ORS 466.645(2). The proposed rule is wrong because it ignores this legislative determination of responsibility for spills and cleanups. The rule amends the recent legislation to include as a liable party a party without any ownership or control over a spill -- the owner of the facility to which the hazardous waste is being transported.

This same legislation also requires the Commission to develop a hazardous material emergency response master plan and requires that plan to be consistent with the plan to be adopted by the Interagency Hazard Communications Council by January 1, 1987 dealing with the transportation of hazardous material and waste. ORS 466.620. The proposed rule prejudices the result of the hazardous material emergency response plan.

The proposed rule would likely impose strict liability under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC § 9607) on the owner of the facility once the Department requests that the owner arrange for cleanup.

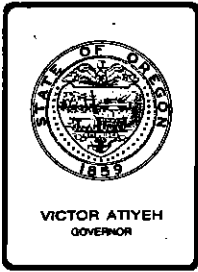
In addition to the above practical obstacles, the Commission should not adopt this rule because it does not have authority over the land transportation of hazardous waste. Under ORS 767.457 the PUC has that responsibility. The Commission in ORS 466.020(5) is given the authority only to adopt rules "relating to the transportation of hazardous waste by air or water."

The proposed rule requires a facility owner to have an emergency response team available for response to spills within 50

miles of the facility. Chem-Security has such a team and will respond to spills within 50 miles of its facility. However, ultimate unlimited liability for spills in this area must not be assigned to the emergency response team. The liability must remain with the party at fault -- the transporter or other third party who caused the spill.

Suggested Changes to Proposed
Rule 340-120-025(1)

"(1) An emergency response team owned by or under contract to the owner or operator of the facility shall be located within 25 miles of the facility. The team shall be capable of immediately responding to spills, occurring within 50 miles of the facility, of waste traveling to the facility. The team as well as the owner and operator of the facility shall not be liable under Oregon law to any person for costs, damages, injuries or expenses incurred that are caused as a result of the team's actions in carrying out a response to, a cleanup of, or a remedial action for a spill of hazardous waste if the actions were required by and in compliance with this section and the facility's permit. [~~if the transporter of any waste traveling to the facility and within the state fails to cleanup any spill occurring within the state to the Department's satisfaction, the facility owner shall immediately arrange for such cleanup upon a request by the Department.~~]"



Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310-0590 PHONE (503) 378-4926

March 27, 1986

Fred Hansen, Director
Department of Environmental Quality
PO Box 1760
Portland, OR 97207

Dear Fred:

The purpose of this letter is to offer DLCD comments and suggestions on your proposed administrative rules pertaining to the siting and permitting requirements for hazardous waste and PCB disposal facilities.

Overall, we like the concept and organization of the three-step permitting procedure for facilities listed in Division 120. Such an approach will, we believe, achieve the purpose of realizing an additional level of protection for health and safety concerns while continuing to allow local jurisdictions a major role in locating these facilities.

You and your staff deserve special credit for an outstanding effort to solicit the views and opinions on the rules from citizens and local governments around the state. These activities coupled with the dedicated work of your policy and technical advisory committees have added much to the credibility and acceptance of your proposals. In this regard, we appreciated your decision to include a representative from DLCD on the technical committee.

Our specific suggestions on the proposed rules pertain only to 340-120; we offer no comment on the amendment to Division 110 on PCB management. The improvements and changes described below are intended for changes for increased clarity, completeness and strengthening the land use compatibility process between DEQ and local government. We are aware of the short time line remaining before final EQC action on the rules and I have asked our staff to provide any follow up assistance your staff may require in responding to our comments.

1. Authorization to Proceed Request (340-120-010)

- a. We are unable to fully understand the reason for requiring mandatory criteria under the authorization while allowing similar items to be treated as discretionary considerations

under 340-120-015--Compatibility Findings. Continuing this difference increases the potential for confusion on the part of both the applicant and the affected jurisdiction. DLCD encourages the adoption of uniform mandatory criteria in both sections -010 and -015.

- b. From the standpoint of the applicant, it is not clear what is expected by DEQ to demonstrate adherence to the locational factors under -010(2)(d). Are you looking for actual maps and locational information or simple declarations expressing the applicant's commitment to satisfy the locational factors?
- c. The rule at -010(2)(d) is not clear about the problems of subsequent local government land use actions (e.g., UGB amendments, zone changes, permit approvals), which could allow designated areas, uses and structures to encroach within the specified one mile separation distance. Would such local actions be allowed, would DEQ oppose such decisions?
- d. The rule at -010(2)(d)(A)(ii) does not appear to give applicant's adequate direction in the event the applicable comprehensive plan does not identify some of the listed features cited in this section. To address this concern, it may be appropriate to require the applicant to verify the absence (or adequate separation) of these items in situations where the comprehensive plan is unclear or does not show these areas.
- e. At -010(2)(d)(A)(ii), the term, "public open space," could be confused with publicly owned land or land recognized in comprehensive plans as open space (under Goal 5), but really comprised of privately held resource land. A different definition may be helpful here.
- f. The rule at -010(2)(d)(B) contains no standards or directions for departing from the one mile separation distance while still protecting public health and safety and the environment. Should there even be an exception procedure at all?
- g. The rule at -010(2)(e)(A-C) should be reworded to clarify that the setback distances referred to are internal distances from the actual disposal facilities themselves and the property lines of the lot or parcel on which the facilities are located.
- h. While this point may have been covered elsewhere, wouldn't the rule at -010(2)(g) indicate what steps are required of the applicant (e.g., bonding, liability, etc.) in the event the applicant is no longer able to operate the facility?

- i. Shouldn't the "Authorization to Proceed" contain requirements for public disclosure of the nature of the disposal activities intended for the site (e.g., materials to be handled, methods of disposal, etc.)?

2. Land Use Compatibility Findings (340-120-015)

- a. While probably presumed by the rule, the rule should indicate whether DEQ expects the same or different local findings if the applicable comprehensive plan has been acknowledged or not. A reference to LCDC permit compliance and compatibility rule (OAR 660-31) might help in this regard.
- b. The reference to "findings" in -015(1) should reference obtaining local land use approvals, including plan and land use regulation amendments and statewide goal exceptions where necessary.
- c. The rule at -015 should indicate that the separation distances are the minimums and local governments can require stricter standards.
- d. The same concerns we noted above under 1a. (mandatory vs. discretionary criteria); 1c. (subsequent local land use actions); 1d. (insufficient information in the comprehensive plan); 1e. (public open space) and 1f. (exceptions procedures) are applicable to section -015 and need to be addressed.
- e. We suggest that the listing at -015(1)(b) be amended to recognize major rural industrial uses engaged in the primary processing of food or agricultural products such as a cannery.
- f. The rule at -015(1)(c) establishes only a one quarter mile separation for the listed areas and features. This to us seems insufficient, for example, where a cultural area could include an Indian reservation or where a municipality's water supply could be significantly affected.
- g. The term, "wetlands" at 015(1)(c)(A) may be a source of confusion as to its meaning. One solution would be for the rule to contain a reference to the wetlands definition used by the Division of State Lands.
- h. The listing of features under -015(1)(c) should include active fault zones under natural hazards. Similarly, this list does not mention special or significant non-aquatic habitats for wildlife that might be affected. We suggest consultation with state Department of Fish and Wildlife on this matter.

- i. The rule at -015(1)(d) should make clearer that the zone allowing the facility actually has been applied to the site upon which the facility is to be located.
- j. The consideration at -015(1)(e) concerning impact on adjacent lands, although certainly appropriate, may be worded to invite abuse by surrounding owners opposed to a facility otherwise appropriately situated.
- k. The reference to transportation route at -015(1)(g) should be modified with the term, "highway."
- l. Item -015(1)(h) is too vaguely worded. Does the term "appropriate" refer to the closest jurisdiction or any community on the way to the site? Does the term, "local" refer to the classification of the route or the ownership? Does "transportation" equate with highway or does it include rail, air and marine modes?
- m. Section -015(3) deals with the issue of the local compatibility findings as a whole and DEQ responsibilities toward them. It's not clear whether the draft language is intended to cover the situations where the local government makes a negative compatibility finding (i.e., denies the applicant's request), as well as the case where the local government has acted favorably, but has prepared weak compatibility findings.

This same section should indicate that a permit for a hazardous waste facility is a Class A permit under OAR 660-31 where DEQ itself is obligated to adopt the appropriate land use compatibility findings.

Finally -015(3) states that DEQ has ultimate responsibility for determining goal compliance. This is correct. However, the agency has an equal responsibility to act compatibly with comprehensive plans. This section of the rule should be more clear about the circumstances where DEQ intends to rely on the local compatibility determination and when DEQ will adopt additional findings of its own.

3. Community Participation (340-120-020)

Under -020(2-4), this section should make reference to the jurisdiction's adopted citizen involvement program and committee for citizen involvement in designing and implementing the local advisory process on the project.

Fred Hansen, Director
March 27, 1986
Page 5

Thank you for the opportunity to review your proposed rules. Please contact Jim Knight of our office if you have any questions about our comments.

Sincerely,


James F. Ross
Director

JR:s1
7809DJBK/10B

cc: Maggie Conley, DEQ
Bob Danko, DEQ
Russ Nebon, Marion County
Bill Zelenka, Crook County
Brent Lake, DLCD
Jim Knight, DLCD
Craig Greenleaf, DLCD
Fred Neal, LOC

Hazardous & Solid Waste Division
Dept. of Environmental Quality

RECEIVED
MAR 31 1986

MARCH 26, 1986

DEQ
HAZARDOUS AND SOLID WASTE DIVISION
PO. BOX 1760
PORTLAND, OR. 97207

ATTENTION BOB DANKO,

I'M A BAKER RESIDENT AND MEMBER OF THE BAKER TREE BOARD. I SPEND A LOT OF MY TIME TRYING TO PROMOTE BAKER AS A TREE CITY USA, RECREATION CENTER, RETIREMENT CENTER, HISTORICAL AREA & GATEWAY TO THE WILDERNESS. A PCB BURNING PLANT IN LIME SCARES ME TO DEATH. I'M IN THE "NOT IN MY BACKYARD GROUP."

BUT MY BIGGEST CONCERNS ARE FOR THE HEALTH RISKS, THAT THE TRANSPORTING OF HAZARDOUS WASTES WOULD GENERATE. WE IN EASTERN OREGON LIVE WITH INADEQUATE HOSPITAL FACILITIES, OUTDATED FIRE DEPARTMENTS, UNDER STAFFED POLICE DEPARTMENTS, AND VERY MINIMAL STATE HIGHWAY MAINTENANCE (THE I-84 ACCIDENT NUMBERS NEAR THE LIME AREA ARE HIGH.)

2.

MY BIGGEST CONCERNS AND COMMENTS ON THE PROPOSED RULES ARE THAT THEY ALLOW FOR TOO MANY VARIANCES (SHOULD A SITE BE PERMITTED) FOR SPILL RESPONSE. I'D LIKE TO SEE SOME REGULATION ON "TRANSPORTERS" REQUIRING THEM TO CONTRACT RESPONSE TEAMS FOR SPILLS ALONG THEIR ENTIRE ROUTE.

I'D LIKE TO SEE MORE SPECIFIC RULES PLACED ON PLANT OPERATORS FOR SPILL RESPONSE INCIDENTS. I'D LIKE PLANT OPERATORS TO BE FINANCIALLY RESPONSIBLE FOR THE TRAINING OF LOCAL FIRE AND POLICE DEPARTMENTS. I'D LIKE THEM TO BE FINANCIALLY RESPONSIBLE FOR EQUIPPING & TRAINING MEDICAL FACILITIES THAT MIGHT HAVE TO TREAT A SPILL INCIDENT, OR MAINTAIN ^{MEDICAL} HELICOPTERS TO TRANSPORT VICTIMS TO PROPER MEDICAL FACILITIES.

I'D LIKE TECHNICAL ADVISORS SUPPLIED AS LIAISONS TO LOCAL COUNTY COMMISSIONS AS THEY DEVELOPE AGREEMENTS WITH APPLICANTS.

I'D LIKE TO SEE HISTORIC AREAS OR AREAS OF PRIMARY FARMING AND RECREATIONAL USE THAT HAVE TRADITIONALLY BEEN FREE OF THE BENEFITS AND OR SIDE AFFECTS OF INDUSTRIAL AREAS TO

BE EXEMPT FROM HAVING THE BURDEN OF HOUSING THE WASTES OF INDUSTRY.

FOR MY FURTHER EDUCATION ON THE SITING OF HAZARDOUS WASTE SITES, I'D LIKE INFORMATION ON HOW TO OBTAIN:

1. PAST ^{OPERATING} PERFORMANCE AND COMPLIANCE HISTORY OF CHEM SECURITIES AT THEIR ARLINGTON & CALIFORNIA PLANTS.
2. LISTS OF SPECIFIC HAZARDOUS WASTES GENERATED IN OREGON THAT WOULD BE COMING TO THE LIME PLANT BESIDES PCB'S.
3. A COPY OF THE "NORTHWEST INTERSTATE COMPACT ON LOW LEVEL RADIOACTIVE WASTE."
4. TECHNICAL DATA ON HOW PCB'S ARE INCINERATED AND WHAT IF ANY SOLID WASTE MUST BE DEALT WITH AT THESE HAZARDOUS WASTE PLANTS.
5. INFORMATION ON HOW TO OBTAIN COPIES OF ALL REPORTS CIRCLED ON THE ATTACHMENT SHEET ENCLOSED.

THANK YOU

FAT HINTON
1336 3RD
BARBER OR 97814
503(523-2927)

Attachment 6
Agenda Item
March 14, 1986 EQC Meeting

A List of Reports on the Siting of Hazardous Waste Management Facilities
Reviewed by the Department

1. Costs and Benefits to Local Government Due to the Presence of a Hazardous Waste Management Facility and Related Compensation Issues, Univ. of North Carolina Institute of Environmental Studies, 1985.
2. Not-In-My-Backyard--Community Reaction to Locally Unwanted Land Use, Univ. of Virginia Institute of Environmental Negotiation, 1985.
3. Siting Hazardous Waste Management Facilities--A Handbook, The Conservation Foundation, 1983.
4. Hazardous Waste Management: A Review of Social Concerns and Aspects of Public Involvement, Alberta Environmental Office, 1985.
5. Should Minnesota Dispose of Its Own Hazardous Waste?--Is It a Moral Issue?, Carver County, Minn. Hazardous Waste Report, 1985.
6. A Survey of Approaches by Other States in Establishing Criteria for the Location of Hazardous Waste Facilities, Ray C. Weston, Inc., for the Alaska Department of Environmental Conservation, 1985.
7. A Citizen's Guide to the Major Hazardous Waste Facilities Siting Act, New Jersey Hazardous Waste Facilities Siting Commission, 1983.
8. Approaches to Hazardous Waste Facility Siting in the United States, Massachusetts Hazardous Waste Facility Site Safety Council, 1984.
9. Review of State Siting Criteria for the Location of Hazardous Waste Land Treatment, Storage and Disposal Facilities, U.S. E.P.A. Office of Solid Waste, 1984.
10. Improvements in Siting Hazardous Waste Facilities, California Office of Planning and Research, 1982.
11. The Keystone Siting Process Handbook--A New Approach to Siting Hazardous Waste Management Facilities, Texas Department of Water Resources, 1984.
12. Charting a Course--Public Participation in the Siting of Hazardous Waste Facilities, Minnesota Waste Management Board, 1981.
13. Hazardous Waste Management Plans of Connecticut, Pennsylvania, Minnesota, Michigan, New Jersey and New York.
14. State Hazardous Waste Facility Siting Laws and/or Rules of Alaska, California, Connecticut, Colorado, Iowa, Maryland, Minnesota, New Jersey, New York, Pennsylvania, Texas, Utah, Virginia, Washington and Alberta.

Attachment 7
Agenda Item
March 14, 1986 EQC Meeting

Policy Advisory Committee

John C. Beatty, Jr. (Chairman)
Portland

Donna Brunello
Portland

Jim Brown
Hood River

Mike Caldwell
La Grande

Louis Carlson
Heppner

Frank Deaver
Beaverton

Dr. Jack Fellman
Portland

Alice Harper
Ione

Wes Kvarsten
Portland

Bob Riggs
Redmond

Dan Saltzman
Portland

E.J. (Jack) Weathersbee
Portland

ZF802.6

East Church St.
P.O. Box 225
Durkee, Oregon - 97905

RECEIVED
MAR 31 1986

Environmental Quality Commission
P.O. Box 1760
Portland, Or. 97204

MAR. 26 - 1986

Gentlemen:

During the public meeting held at Baker, Or. (Mar. 17-86) Transportation failures of the trucking industry while transporting hazardous mtl's. were discussed, mostly in negative terms. I made the following statement,
" There is no reason trucks cannot handle hazardous mtl's. , After 30 yrs. in transportation, I can show you the Railroads did a better Job 12 yrs. ago, than trucks do today in moving hazardous mtl's." I approve of RULE 340-120-025 and recommend it be enforced and believe transportation strictly monitored and spill liability placed upon all carriers. *By least means* -

I approve of Section (2) of Rule 340-120-020 and local committee working under Directors supervision. Do NOT, however, believe this committee should have powers beyond gathering public opinions & working in a advisory capacity with no authority to regulate distances Incinerators are to be placed from waters, wilderness, public lands.

ON SITE facilities are not recommended by me , as burning & disposals are another function and should be treated differently, than production of hazardous. Transportation is a different field also.

I favor Regional (Northwest COMPACT) with incinerators & hazardous wastes treatment locations, placed 15 miles from everything except sage brush & rocks. Build facilities larger and fewer in number. Place them near the source of wastes accumulated as is feasible, and if modern railroads & trucks cannot deliver to disposal locations, lets build a private transportation (rail or roads) to move these mtl's. If planners are 10 times in error above or below amount we dispose of in the next ten yrs. it would be feasible to put our special transport underground or in a tube. Sounds radical but the future huge demands are anyones guess.

I agree with a well planned Buffer Zone for spill protection. This should be monitored & kept up to date.

In reviewing the 3 step plans discussed at Baker public meeting and the idea of allowing PCB burning at old cement plant (Or. Portland Cement Co. site) that not only sits on the bank of BURNT RIVER, it straddles the old river bed clear up the hillsides on North and south of the stream of water that ranges to flooding to mere trickle during 12 months, to me IS REDICULESS. I can see the only fact, that any sensible body of planners or authorized group to negotiate beyond STEP ONE for PERMIT at LIME, Or. would appear to be mentally unsound.

Sincerely, *C.R. Gurn*

DEQ
Hazardous and Solid Waste Division
Attention: Bob Danko
Box 1760
Portland, OR 97207

Hazardous & Solid Waste Division
Dept. of Environmental Quality

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MAR 31 1986

Dear Sir:

Here are some thoughts generated on reading the draft rules for Senate Bill 138:

I see no provisions or guarantees that independent monitoring of public health or an other aspect of contamination will be conducted on an ongoing basis on or off site.

It seems desirable that in addition to inhouse monitoring there should be provisions for a democratically chosen and independently funded commission for control monitoring in the local area.

The State should also be concerned about continuous on and offsite monitoring and research before and after siteing

A strong adversarial monitoring system is vital. Perhaps the controlling commission could be chosen by county commissioners. Each commissioner would name several.

There could be an airshed determined and this could be a district from which the commission could be chosen by election.

The set-back provisions and distance from various land uses should be based on some empirical predictions and provisions should be made to restrict land use in the event of monitoring surprises with provisions for compensation to landowners in the event of loss.

Regular monitoring of transport routes should be provided for.

The clean up of transported wastes seems to vary between 25 and 50 miles.

Coordination with the PUC and LUBA may have to be legislated.

The documents were
surprisingly well arranged.
Thank you for your
consideration.

Mark Becker
60105 STIRLING
BEND, OR 97702

Olex, OR 97812
March 28, 1985

ATTN: Bob Danke
Department of Environmental Quality
P.O. Box 1760
Portland, OR 97207

Hazardous & Solid Waste Division
Dept. of Environmental Quality

RECEIVED
MAR 31 1986

RE: Hazardous Waste Management

Sir,

I was unable to attend the hearing March 18 in Arlington. Please add the following to the record.

We citizens are all responsible for existence of hazardous waste. Few people are well informed of their own liability, however, or even aware of just what hazardous wastes are, or what causes their accumulation. They just know they don't want hazardous waste disposal in their backyard. But people aren't all unreasonable, they just need education.

An answer is information. A citizen's advisory committee at each existing or proposed site can help demystify hazardous and toxic waste disposal. The committee (CAC) can also bridge the credibility gap between the disposal company, the EQC, DEQ, and local citizens. If an accident occurs, the CAC can also act as an information clearing house. (Of course the CAC must be composed to be more than a mouthpiece for the waste disposal company.)

Credibility is the real issue. At this point there are adversaries who have less concern with truth than with grinding their axes. There isn't the good faith necessary for education and briefing. Unfortunately, governmental agencies, particularly in waste disposal, don't have much credibility, either. Where will we find a reliable source of information?

I believe we need an opportunity for citizens to consult a neutral source of information, e.g. not the company, not the angry citizens, not the government. We need a contingency fund to allow independent assessment for which none of us have the expertise,-- for both legal advice and/or scientific advice.

Citizens and government must be responsible about hazardous waste management. We need good faith, dependable sources and good information. If disposal companies and government treat citizens like they're stupid, stupid behavior will ensue.

Very truly yours,



Darl Eves Kleinbach
(Mrs. H.G. Kleinbach)

Les Ruark

Rock-Creek/Star Route Box 58
Arlington, Oregon 97812
(503) 454-2511

26 March 1986

Hazardous & Solid Waste Division
Dept. of Environmental Quality

RECEIVED
MAR 31 1986

Oregon Dept. of Environmental Quality
Hazardous and Solid Waste Division
Attention: Bob Danko
P.O. Box 1760
Portland, Oregon 97207

Re: Draft Rules for SB 138

Although as Co-Chairperson of the group Concerned Oregonians for Proper Waste Disposal I have already, by my signature on COPWD's statement presented March 18 to the DEQ, endorsed the draft rules for SB 138 and COPWD's suggested additions to these rules, I wish by this letter to also offer for the record my personal comment.

I enthusiastically endorse and support adoption of the draft rules as developed by the DEQ's Policy Advisory Committee on SB 138. I firmly agree with the PAC's additional observations and recommendations. I especially agree with the PAC's recommendations that:

1. The 1987 Oregon Legislature should authorize DEQ to expend certain fee funds to pay for technical and legal advice sought by Citizen Advisory Committees set up under SB 138; and
2. The 1987 Oregon Legislature should recognize the need for applying the Community Participation provisions of the draft rules (particularly a Citizens Advisory Committee) to existing facilities such as the Hazardous Waste Disposal site near Arlington operated by Chem-Security Systems, Inc.

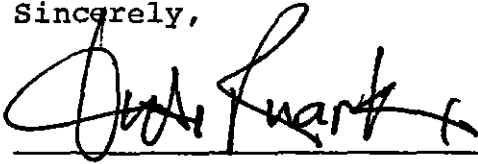
I live and work within five miles of the Arlington site. Those of us who must contend everyday with the operation of this site would feel much better about it if indeed there was a fairly structured, meaningful opportunity for us to help insure its safe and contained operation.

A CAC for the Arlington site, if it is to be effective, must possess the capability to obtain independent analysis of ground water conditions (both on and off the site) and independent legal advice with respect to pertinent land-use matters.

DEQ/Bob Danko
pg 2

Members of the Policy Advisory Committee, especially Alice Harper, Louis Carlson, and Judge John Beatty, Jr., are all to be commended for their diligent and productive work. Fred Hansen, Rich Reiter, Bob Danko and Jo Brooks, of the DEQ, are also to be commended for their open and professional guidance of the PAC's work; Fred Hansen, particularly, for his credible, innovative leadership of the DEQ.

Sincerely,

A handwritten signature in black ink, appearing to read "Les Ruark", written over a horizontal line.

LES RUARK

cc: EQC Chairperson James Peterson
Sen. Pres. John Kitzhaber
Hs. Spk. Vera Katz
Rep. Wayne Fawbush
Rep. Mike McCracken
Gilliam County Judge William Hardie
Alice Harper
Louis Carlson
Judge John Beatty, Jr.

Hamath Falls, Oregon March 27, 1986.

Dear Sirs,

Senate Bill 138 and the implementing of this bill is very dangerous to the citizen of Oregon if and when an incinerator is sited near any population per se.

The other dangerous aspect I'm sure you are aware, would be the transportation of this HAZARDOUS WASTE on the highways and by ways endangering any passenger car, pedestrian, etc. that has the misfortune to be connected up into a mishap.

Senate Bill 138 as I interpret it can let as many incinerators in Oregon and be sited any where in Oregon the board deems necessary. This being a great evil because we in Oregon could possibly be subjected to HAZARDOUS WASTE any where in Oregon a Company could gain permission to build & site a chemical dump. I am quite sure if we in Oregon accept "hazardous waste" from SIX TO EIGHT WESTERN STATES we will not only have a site in ARLINGTON but in all regions of the state of Oregon.

I say no to HAZARDOUS WASTE coming in from out of State. only take care of OREGON'S HAZARDOUS WASTE.

Nancy Roeder

RECEIVED

MAR 31 1986

PUBLIC AFFAIRS

Nancy Roeder Klamath Falls, Oregon March 27, 1986.

My Husband Don Roeder lived for a time in the Bay Area in California and told me of these things when he would come home to Klamath Falls, Oregon on the week-end.

Nancy Roeder.
This will happen in Oregon if we take large
(1.) "Big" rig" filled with ^{volumes of H. Waste.}
HAZARDOUS WASTE wrecked on I5.
I5 closed 6 hours so a cleaning team
could clean road. Team sent without
proper gear and injured from fumes.

(2.) HAZARDOUS WASTE found dumped
on wayside of road.

(3.) One of the Highest CANCER rate
in the state of California in
Contra Costa County due to
HAZARDOUS WASTE. (Could happen at
Arlington)

(4.) "Group" fights HAZARDOUS
WASTE BURNING on ships
off shore near SAN FRANCISCO.

(5.) Those who can afford it only
drink bottled water in bay area.

(6.) Professor testing electrical
properties of water puts electrode
in mineralized water, "light" glows
brightly. Professor puts electrodes
in California city water "lite" glows
full brightness. This had not happened
in 5-10 previous years.

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MAR 31 1986

PUBLIC AFFAIRS

Diarrhea in California, bad water
from pollution, stop drinking Vallejo,
California water only drink bottled
water — no more diarrhea.

Don Feder.

Hazardous & Solid Waste Division
Dept. of Environmental Quality

RECEIVED
MAR 31 1986

Andrew R. Gigler

4230 South Sixth Street

Klamath Falls, Oregon 97603

March 26, 1986

TO: Department of Environmental Quality
Hazardous and Solid Waste Division
ATTN: Bob Danko
P.O. Box 1760
Portland, OR. 97207

SUBJECT: SB 138 Public Comment on Rulemaking Update

My concern with the implementation of S.B. 138, in my opinion, only carries us further into the quagmire and bureaucracy that have so far been a criminal disgrace and a health hazard to the people of Oregon for centuries to come. Of the many mishandled chemical dumps in Oregon, I have to mention that the two worst ones are Alkali Lake and the disgraceful site at Arlington. It is a disaster how these two sites were mishandled by the D.E.Q. and E.P.A.

With the passage of Senate Bill 138, it leaves many loop holes for Chem Security Systems Inc. to continue polluting the air, land, and water of the State of Oregon. The public would have to pick up the tab and future generations would suffer. All the while, Chem Securities could walk off with their profits under the protection of the D.E.Q. and E.P.A.

I will refer to what has happened to the 1.4 billion dollar Super Fund to clean up Chemical Wastes. How about the Mafia mob link to Toxic Wastes in investigations both nationally and locally? What about the Rita Lavelle and Anne Burford's E.P.A. scandal?

D.E.Q.'s monitoring of toxic wastes in Oregon, in my opinion, has been highly, criminally, inadequate. With the incineration of these wastes, the recombinations could create new toxic compounds. Some of these are more toxic and deadly than P.C.B.'s or other chemicals ---- such as emissions of highly toxic chlorinated dibenzodioxins and dibenzoflurans from incinerators are well documented. These chemicals are released into the environment only to accumulate in the soil, the fatty tissue of animals, and in humans. The Oregon D.E.Q. has set no limits on the release of these dangerous compounds that would come from this proposed incinerator and it would leave the door open for burning of other toxic compounds with no restriction on the emissions from this burning. There are other alternatives.

In my opinion, D.E.Q. has not in the past nor can we expect them in the future to properly monitor these Toxic Wastes.

Before any further implementing Senate Bill 138, or before any negotiations with Chem Security at Arlington, I would hope there would be an investigation of Chem Security due to the past violations and discrepancies.

Also, it is ridiculous for Oregon, which is somewhat thought of as being environmentally pristine, to be tied to the Northwest Compact (under Ors. 469.930) which would make a Chemical Dumping Ground of Oregon by ^{accepting waste from} most of the states west of the Mississippi, including Hawaii, Alaska, and who knows where else because of the possible Mafia connection in the hauling of these Wastes.

Hazardous Wastes should be neutralized and recycled at the point of origin. Let the manufacturers build this into the cost of their product. By all means, make them responsible for the crap they produce. These poison chemicals are a number one threat to our environment. I would hope that D.E.Q. and E.P.A. would get turned around and start protecting the environment rather than their being the problem for the very people that are trying to clean up the environment.

Sincerely,

Andrew R. Gigler

Andrew R. Gigler

DEQ
HAZARDOUS and SOLID WASTE DIVISION
ATTN: BOB DANKO
P.O. BOX 1760
PORTLAND, OREGON 97207

DEAR SIR,

I am writing in regards to hazardous waste and PCB treatment and disposal facilities in Oregon.

We must insure the safety and health of ANY community that is chosen as a treatment / disposal site. We must also create a unequivocal safe transportation route along the entire shipping corridor. Furthermore, meaning-ful community involvement is essential with required prior agreement before any specific site is chosen.

Hazardous Waste is a very, very serious matter which MUST be dealt with. Let's deal with it on the side of caution and citizen participation.

Sincerely in Health and Safety,



KIFAR YOSEMITE

Hazardous & Solid Waste Division
Dept. of Environmental Quality
RECEIVED
MAR 31 1986



STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMO

TO: Bob Danko

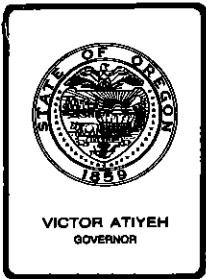
DATE: March 28, 1986

FROM: Jan Whitworth 

SUBJECT: Comments on Proposed Division 120

1. The use of "remedial action" in 340-120-001(4)(b) may not be appropriate because it applies to only Superfund sites. Other sites may be required to close in place too.
2. Proposed rule 340-120-001(4) should include research and development facilities.
3. The word "modification" in 340-120-005(8) should be defined as major and minor modification as already done in RCRA.
4. Proposed rule 340-120-010(2)(b)(C) is unclear.
5. Should faults be included in 340-120-015(1)(c)?
6. Proposed rule 340-120-020(2) should state at what time in the permitting process the committee would be formed.

ZF929



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 H, April 25, 1986, EQC Meeting

Proposal to Declare a Threat to Drinking Water in a Specifically Defined Areas of Mid-Multnomah County Pursuant to ORS 454.275 et. seq. -- Proposed Final Order

Background

On February 7, 1986, the Environmental Quality Commission completed a review of the record to date, and adopted Findings and Recommendations in the matter of the proposal to declare a threat to drinking water in a specifically defined area in Mid-Multnomah County pursuant to ORS 454.275 et. seq. Following such action, ORS 454.300(1) requires the Commission to publish notice of its findings and recommendations in the newspapers used to publish earlier notices in the matter. The purpose of this notice is to advise persons or municipalities affected by the findings and recommendations of the opportunity to petition the Commission to present written or oral argument on the findings and recommendations. Such petitions must be presented within 15 days of publication of the notice.

Summary of Actions Since February 7, 1986

On February 12, 1986, notice of adoption of Findings and Recommendations was published in the Oregonian and Gresham Outlook. These papers were used for publication of earlier notices in this matter. The notice advised that petitions to present oral or written argument in this matter must be postmarked or hand delivered to DEQ offices by 5:00 p.m. on February 28, 1986.

In response to the notice, 1154 timely petitions were received to present oral arguments. An additional 17 timely petitions were received to present written arguments only. Further, 127 petitions were postmarked and received after the deadline and thus were not qualified under the statute as petitioners. Each petition to present oral argument was assigned a number as it was received.

In order to hear from each of the 1154 persons who petitioned to present oral argument, the department, with concurrence of the Commission members, scheduled 10 hearings to receive oral argument. The Commission appointed nine hearings officers, along with itself, to preside at the hearings. Hearings were scheduled to begin at 4:00 p.m. The hearings would recess for dinner between 6 and 7 p.m. Petitioners were scheduled to present argument at locations within the affected area in David Douglas School District facilities as follows:

<u>Date</u>	<u>Pet. Nos.</u>	<u>Hearings Officer</u>	<u>Location</u>
3/14/86	001-100	Env. Quality Comm.	David Douglas Performing Arts
3/17/86	101-220	L. Patterson	David Douglas H.S. Cafeteria
3/17/86	221-340	K. Wolniakowski	David Douglas H.S. Rm 151
3/17/86	341-460	T. Lucas	Alice Ott M.S. Library
3/17/86	461-580	G. Pettit	Alice Ott M.S. Cafeteria
3/17/86	581-700	M. Ronayne	Floyd Light M.S. Room 18
3/17/86	701-820	S. Olson	Cherry Park E.S. Cafeteria
3/17/86	821-940	J. Jackson	Cherry Park E.S. Gymnasium
3/17/86	941-1060	K. Ashbaker	West Powellhurst E.S. Cafeteria
3/17/86	1061-1154	M. Halliburton	David Douglas H.S. Library

Written notice was sent to each petitioner advising of the date, time, and location for them to present their oral argument. The notice advised of procedures to be followed in presenting their argument and specifically advised that oral argument would be limited to 3 minutes in order to provide an opportunity to hear each petitioner. Each petitioner was also advised that written argument could be submitted to supplement oral argument or in lieu of oral argument. The deadline for submitting such written argument was to be postmarked by no later than March 28, 1986 or hand delivered to the Department's officers by 5:00 p.m. on March 28, 1986.

Persons petitioning to present written argument only were notified in writing that written argument must be postmarked by no later than March 28, 1986 or hand delivered to the Department's offices by 5:00 p.m. on March 28, 1986.

Persons who submitted petitions after the legal deadline were advised in writing that they did not qualify as petitioners. The notice further indicated that written comments received by March 28, 1986 would be entered in the record and forwarded to the Commission for review.

The hearings were conducted as scheduled. A total of 19 of the 100 assigned petitioners appeared and presented oral argument to the Environmental Quality Commission on March 14, 1986. Since time was available, the Commission opened the hearing to petitioners who were scheduled to present their argument on March 17, 1986. A total of 17 registered and presented their argument on March 14 rather than on March 17, 1986. A total of 75 petitioners appeared and presented oral argument to the 9 hearings officers on March 17, 1986.

Transcripts were prepared of each hearing and were forwarded to the Commission for review. Copies of all written argument received were forwarded to the Commission for review.

Evaluation

Oral and written argument has been reviewed to determine if information presented would cause the analysis, conclusions and findings previously adopted to be modified. Arguments presented generally made the following points:

- Proof of a threat to drinking water is inadequate.
- No illnesses are reported, no health hazard exists in the area.
- Groundwater quality tests are questionable, data are not adequate to prove a trend.
- Drinking water comes from the Bull Run watershed, not from groundwater in the area.
- Statutory conditions are irrelevant.
- Other sources of potential pollutants (fertilizer) have not been taken into account.
- Drilling of new wells by Portland is evidence that groundwater is not threatened as a source of drinking water.
- Exclusion from the boundary was requested because sewers are unaffordable or are not needed.
- Area boundaries should be expanded to include other areas not on sewers including adjacent area in Clackamas County.
- Alternatives to proposed sewer plan have not been adequately explored, including banning of wells, use of Bull Run water, drilling of deeper wells, moving of wells, treatment to remove nitrate from drinking water, use of cheaper pressure sewers, use of holding tanks, and mandatory construction of trunk sewers with voluntary construction of collector sewers and voluntary connections to sewers.
- Removal of cesspools until less than 50% of the sewage is discharged to cesspools should be considered as an alternative to eliminate the threat.
- Drainage in the area is excellent, cesspools work fine, and the soils adequately filter and treat the waste.
- Affordability of sewers was not considered, sewers are too costly and are unaffordable.
- Cost estimates are not accurate enough, are not guaranteed unchangeable, and do not include inflation.
- Costs should be spread to a larger population through a surcharge on Bull Run water or state funding should be made available.
- Costs of sewers for renters, churches, schools have been ignored.
- People have been denied the right to vote in the area.
- The public is not adequately informed.
- Present residents should not be responsible for protecting the groundwater resource for the future.
- Implementation should be delayed to allow more time to develop financial assistance methods.

- Implementation should be delayed until federal money or other subsidy is available.
- The proposed safety net is unfair and inadequate.
- Homes in the area are not selling, values have dropped.
- The sewer plan is designed to force annexation, get money from unincorporated area residents to support sewers in South Shore and provide profits for Portland and Gresham.
- The unincorporated area is to bear disproportionate share of costs for sewers.
- Sewers should have been required by county when development was approved.
- The county should stop issuing permits for cesspools for new development.
- New development, not existing residents, should pay for sewers.

The record was reviewed to determine whether information was presented to support a change in the previous findings that a threat to drinking water as defined in ORS 454.275(5) exists in the affected area.

ORS 454.275(5) provides as follows:

- "(5) "Threat to drinking water" means the existence in any area of any three of the following conditions:
- (a) More than 50 percent of the affected area consists of rapidly draining soils;
 - (b) The groundwater underlying the affected area is used or can be used for drinking water;
 - (c) More than 50 percent of the sewage in the affected area is discharged into cesspools, septic tanks or seepage pits and the sewage contains biological, chemical, physical or radiological agents that can make water unfit for human consumption; or
 - (d) Analysis of samples of groundwater from wells producing water that may be used for human consumption in the affected area contains levels of one or more biological, chemical, physical or radiological contaminants which, if allowed to increase at historical rates, would produce a risk to human health as determined by the local health officer. Such contaminant levels must be in excess of 50 percent of the maximum allowable limits set in accordance with the Federal Safe Drinking Water Act."

No significant new evidence was presented to provide a basis for modification of the previous analysis, conclusions and findings. Therefore, the department concludes that the previous analysis, conclusions and findings remain appropriate.

The record was reviewed to determine whether information was presented to support a change in the previous findings that the boundary of the affected area, as proposed by the local governing bodies, is appropriate. A substantial number of those petitioning to present oral argument noted a request for exclusion from the affected area. Each was notified (in the written notice of time and place for presenting their oral argument) that they should present evidence to support their request to be excluded from the affected area in their arguments.

ORS 454.305 gives guidance on the factors that could be a basis for modification of the boundaries proposed by the local governing bodies and thereby the basis for excluding any person or area from the affected area. Evidence would have to show that a threat to drinking water exists in only part of the affected area, or that treatment works would remove or alleviate the conditions in only part of the affected area. In addition, the Commission would have to consider whether the exclusion would result in an illogical boundary for the provision of services.

No significant new evidence was presented in the arguments by those requesting exclusion to provide a factual basis for modifying the boundaries in accordance with ORS 454.305. Therefore, the department concludes that the previous analysis, conclusions and findings regarding the boundaries of the affected area remain appropriate.

The record was reviewed to determine whether information was presented to support a change in the previous findings that the treatment works proposed by the local governing bodies can eliminate or alleviate the conditions in the affected area that result in the declaration of a threat to drinking water.

No significant new evidence was presented to suggest that the proposed facilities would not alleviate the conditions that result in the finding of a threat to drinking water. The Department concludes that the previous analysis, conclusions and findings that the treatment works proposed by the local governing bodies can alleviate the conditions in the affected area that result in the declaration of a threat to drinking water remain appropriate.

The record was reviewed to determine whether information was presented to support a change in the previous findings that the treatment works proposed to be implemented by the local governing bodies are the most economical method to alleviate the conditions in the affected area which result in the declaration of a threat to drinking water. The department's analysis concluded that the proposed treatment works is the only implementable alternative that will eliminate or alleviate the conditions which result in a finding of a threat to drinking water, that the proposed treatment works alternative is consistent with the selected cost effective Regional Waste Treatment Management Plan alternative, and therefore, that the treatment works proposed by the local governing bodies are the most economical method to alleviate the conditions in the affected area that result in the declaration of a threat to drinking water.

Argument presented suggested that holding tanks at each residence or property may be a more economical alternative than the proposed sewers. A holding tank is a watertight tank that is installed to receive and store sewage. The tank must be routinely pumped by a septic tank pumping service and the contents hauled to a sewage treatment plant for treatment and disposal. Present rules of the Environmental Quality Commission (OAR 340-71-340) allow holding tanks to be used as a permanent facility for small commercial and industrial buildings where sewers are not available and the sewage flow is less than 200 gallons per day. The rule further allows holding tanks to be used on a temporary basis for residences if a community-wide sewerage system is guaranteed to be available with 5 years. The applicant for a permit to install a holding tank must further provide evidence of a contract for pumping services and an approved location for disposal of the pumpings.

A telephone survey of 6 pumping services in the Portland metropolitan area conducted by department staff on April 14, 1986 indicates that the cost for pumping of holding tanks and disposal of contents ranges from \$0.07 to \$0.15 per gallon pumped. If a residence generates 100 gallons of waste per day, pumping costs alone would range from \$2,555 to \$5,475 per year or \$213 to \$456 per month. The average residence would likely generate more than 100 gallons of waste per day. It is clear that if rules were changed to allow a holding tank option, costs for an individual residence would be substantially larger than the proposed plan. Therefore, use of holding tanks, even if feasible, would not be a more economical method to alleviate the conditions.

Argument presented suggested that implementation of the plan should be delayed until federal money or other funding to subsidize the costs of sewer construction is available in order to make the costs to be borne by property owners more economical. The availability of federal or other funding is not an appropriate consideration in determining whether one proposed plan is more economical than another proposed plan. If federal or other funds are obtained, the costs of the treatment works borne by property owners directly through assessments and charges may be reduced, but the total treatment works costs are not altered. The plan presented by the local governing bodies identifies projects potentially eligible for federal sewerage works construction grants from the U.S. Environmental Protection Agency. The plan further indicates the intent of the local jurisdictions to pursue other potential sources of financial assistance that may become available to help reduce the cost of facilities to property owners in the affected area. While federal grants are expected to continue to be available in the near future, such grants cannot be guaranteed for any future projects in Oregon.

Argument was presented to suggest that a more economical alternative may be to collect the sewage from only a portion of the properties in the affected area and thereby eliminate the threat to drinking water by reducing the percentage of sewage discharged into cesspools, septic tanks or seepage pits in the affected area to less than 50 percent.

It would be unreasonable and contrary to the statute to conclude that treatment works should be terminated as soon as one of the statutory conditions is eliminated. Once the statutory conditions are shown to exist in an area, the statute contemplates that treatment works should be provided for the entire area.

The Department concludes that the previous analysis, conclusions and findings that the treatment works proposed by the local governing bodies are the only implementable alternative that will alleviate the conditions in the affected area that result in the finding of a threat to drinking water and are the most economical method to alleviate the conditions in the affected area that result in the declaration of a threat to drinking water remain appropriate.

In response to the Findings and Recommendations adopted by the EQC on February 7, 1986, the City of Portland has adopted a resolution which seeks to address Commission concerns relative to implementation of a financial safety net, implementation of cost of service rate studies, and assurance that annexation or waiver of the right to remonstrate against annexation will not be required as a condition for sewer service in the unincorporated area (Recommendations 4, 5, and 6). The department has reviewed this resolution and is satisfied that the Commission concerns are addressed.

The City of Gresham has also adopted a resolution to address the Environmental Quality Commission concerns reflected in recommendations 4, 5, and 6. The department has reviewed the resolution and believes that it also addresses the Commission concerns.

Based on the Department's analysis of the arguments presented, proposed Findings and Order have been prepared (see Attachment A). The document incorporates the previous Findings and Recommendations by reference, reaffirms and supplements the earlier findings by adding additional procedural findings relative to actions since February 7, 1986, reaffirms and supplements the earlier findings by additional findings of fact, ultimate findings and reasoning relative to the arguments presented by petitioners, and reaffirms the conclusions of law adopted February 7, 1986. This is followed by proposed language for an order to implement the plan presented by the local governing bodies.

Summation

1. On February 7, 1986, following extensive testimony and analysis, the Environmental Quality Commission adopted Findings and Recommendations in the matter of the proposal to declare a threat to drinking water

in a specifically defined area of Mid-Multnomah County pursuant to ORS 454.275 et. seq.

2. Pursuant to statutory requirements, notice was published on February 12, 1986 advising of the opportunity for affected persons and municipalities to petition to present oral or written argument to the Environmental Quality Commission on the Finding and Recommendations.
3. By the February 28, 1986 deadline for petitioners established pursuant to statute, 1154 persons petitioned to present oral argument. An additional 17 persons petitioned to present written argument only.
4. Ten hearings were scheduled to receive oral argument. Each petitioner was notified of the date and place for receiving their oral argument. The Environmental Quality Commission presided over the first hearing on March 14, 1986. Department staff, appointed by the Environmental Quality Commission, presided over 9 hearings on March 17, 1986. A total of 111 persons presented oral argument at the 10 hearings.
5. All petitioners were advised of the opportunity to present written argument to supplement oral argument or in lieu of oral argument. Written argument was required to be postmarked by March 28, 1986, or hand delivered to the department offices by 5:00 p.m. on March 28, 1986.
6. Transcripts of the 10 hearings and all written argument was forwarded to the members of the Environmental Quality Commission for review.
7. The department has reviewed the hearing transcripts and the written argument and has concluded that nothing has been presented which would counter the earlier findings made by the Commission in relation to a Threat to Drinking Water, the boundaries of the affected area, whether the proposed treatment works can alleviate the conditions in the affected area which led to the finding that a threat to drinking water exists (as defined in ORS 454.275(5)) and whether the proposed treatment works are the most economical method to alleviate the conditions in the affected area which lead to a declaration of a threat to drinking water.

Director's Recommendation

It is recommended that the Commission adopt final Findings and Order in the matter of the proposal to declare a threat to drinking water in a specifically defined area in Mid-Multnomah County pursuant to ORS 454.275 et. seq. as proposed in the attachment to this report.

It is further recommended that the Commission direct the Department to file the Findings and Order with the governing bodies of the local governments in the affected area.



Fred Hansen

Attachments

1. Proposed FINDINGS and ORDER with attachments as follows:
 - a. FINDINGS AND RECOMMENDATIONS, adopted by the Environmental Quality Commission on February 7, 1986 including report entitled "Evaluation of Hearing Record for Proposal to Declare a Threat to Drinking Water in a Specifically Defined Area of Mid-Multnomah County Pursuant to ORS 454.275 et. seq.
 - b. Resolution adopted by the City of Portland.
 - c. Resolution adopted by the City of Gresham.

H. L. Sawyer:r
DOR772
229-5776
April 15, 1986

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF THE)
PROPOSAL TO DECLARE A)
THREAT TO DRINKING WATER) FINDINGS
IN A SPECIFICALLY DEFINED) AND
AREA IN MID-MULTNOMAH) ORDER
COUNTY PURSUANT TO)
ORS 452.275 et. seq.)

I. INTRODUCTION

On February 7, 1986, the Environmental Quality Commission adopted FINDINGS AND RECOMMENDATIONS in the matter of the proposal to declare a threat to drinking water in a specifically defined area in Mid-Multnomah County pursuant to ORS 454.275 et. seq. Those FINDINGS AND RECOMMENDATIONS, together with the report referenced therein, are attached and except as may be modified herein, are incorporated by reference.

The Environmental Quality Commission has since February 7, 1986, published notice of findings and recommendations, accepted petitions to present argument, received oral and written argument on the findings and recommendations, and closed the record in this matter. Following are the additional findings in this matter.

II. ADDITIONAL PROCEDURAL FINDINGS

The previously adopted procedural findings are reaffirmed and supplemented with the following additional findings:

1. Pursuant to ORS 454.300(1), the Commission published notice of issuance of its FINDINGS AND RECOMMENDATIONS in the Oregonian and Gresham Outlook on February 14, 1986. Both of these papers were used to publish notice of earlier hearings in this same matter. The notice advised of the opportunity for any person or municipality affected by the findings and recommendations to petition the Commission to present written or oral argument on the findings and recommendations. The notice further advised that such petition would have to be made in writing and postmarked on or before February 28, 1986 or hand delivered to the offices of the Department of Environmental Quality by 5:00 p.m. on February 28, 1986.

2. In response to the notice, 1154 timely petitions were received to present oral argument. Each petition was assigned a number in the order it was received in the offices of the Department of Environmental Quality. An additional 17 persons petitioned to present written testimony only. One hundred twenty seven (127) petitions were postmarked or hand delivered to the Department of Environmental Quality after the published deadline of February 28, 1986.

3. In order to hear from each of the 1154 persons who petitioned to present oral argument, the Environmental Quality Commission scheduled 10 hearings to receive the arguments. The first 100 petitioners were assigned to present argument before the Environmental Quality Commission at a special hearing held on March 14, 1986 at the Performing Arts Center, David Douglas High School, 1400 S. E. 130th,

Portland, Oregon, beginning at 4:00 p.m. The remaining petitioners were assigned to one of 9 simultaneous hearings scheduled to be held before Commission appointed hearings officers on March 17, 1986 in various school buildings in the David Douglas School District as follows:

David Douglas High School
1001 S.E. 135th, Portland
Library
Cafeteria
Room 151

Alice Ott Middle School
12500 S.E. Ramona, Portland
Library
Cafeteria

Floyd Light Middle School
10800 S.E. Washington, Portland
Room 18

Cherry Park Elementary School
1930 S.E. 104th, Portland
Cafeteria
Gymnasium

West Powellhurst Elementary School
2921 S.E. 116th, Portland
Cafeteria

All hearing locations were within the boundary of the affected area.

4. Each petitioner was notified by mail of the day and place for their opportunity to present oral argument. Ground rules for the hearing to receive oral argument were explained in the notice. Petitioners were advised to appear at the assigned hearing location between 3:45 p.m. and 8:00 p.m. to register. Petitioners would be called to speak

on a first come first serve basis based on order of registration at the door. Petitioners were advised that oral argument would be limited to 3 minutes to permit all petitioners to be heard. Each petitioner was advised that written argument could be submitted either to supplement oral argument, or in lieu of oral argument. Each petitioner was advised that written argument should be postmarked by no later than March 28, 1986, or hand delivered to the Department to Environmental Quality before 5:00 p.m. on March 28, 1986.

5. Those persons who submitted petitions after the February 28, 1986 deadline were notified by mail that they did not qualify as petitioners in the matter. However, they were advised that they could submit written comment by March 28, 1986 if they chose, and that such comment would be made part of the record in the overall proceeding. All written comments received have been forwarded to the Commission and made a part of the record.

6. On March 14, 1986, the Environmental Quality Commission convened the hearing of oral argument from the first 100 petitioners beginning at 4 p.m. at the Performing Arts Center at David Douglas High School. A total of 19 of the scheduled petitioners appeared, registered, and presented their oral argument. The Commission also received argument from 17 qualified petitioners who were assigned to present argument at other hearings on March 17, 1986 but were present at the March 14 hearing and who accepted the invitation to present their

arguments at that time rather than waiting until their scheduled time on March 17, 1986. The Hearing was adjourned shortly after 8:00 p.m. after hearing from all scheduled petitioners who appeared and registered and the 17 petitioners scheduled for the March 17, 1986 but who chose to present their arguments on the March 14, 1986.

7. On March 17, 1986, nine Hearings Officers appointed by the Commission convened hearings at 4 p.m. in various schools located in the David Douglas School District as noted in paragraph 3 above. A total of 75 petitioners appeared and registered between 3:45 p.m. and 8:00 p.m. and presented oral argument. Each hearing was closed shortly after 8:00 p.m. after hearing from all scheduled petitioners who appeared and registered.
8. Transcripts were prepared by court reporters of all ten hearings. Hearings were also tape recorded.
9. Written argument was received from 91 petitioners by the March 28, 1986 deadline established in the notice mailed to petitioners.
10. Documents submitted by 18 persons who were not petitioners were entered into the record between February 7, 1986 and March 28, 1986.

11. Copies of the transcripts of the 10 hearings and the written arguments from petitioners were forwarded to each member of the Environmental Quality Commission and reviewed prior to any further action.
12. Copies of all other written materials submitted for the record after February 7, 1986 were forwarded to each member of the Environmental Quality Commission and reviewed prior to any further action.

III. ADDITIONAL FINDINGS OF FACT, ULTIMATE FINDINGS, AND REASONING

Oral and written argument has been reviewed to determine if information presented would cause the analysis, conclusions and findings previously adopted to be modified. Arguments presented generally made the following points:

- Proof of a threat to drinking water is inadequate.
- No illnesses are reported, no health hazard exists in the area.
- Groundwater quality tests are questionable, data are not adequate to prove a trend.
- Drinking water comes from the Bull Run watershed, not from groundwater in the area.
- Statutory conditions are irrelevant.
- Other sources of potential pollutants (fertilizer) have not been taken into account.
- Drilling of new wells by Portland is evidence that groundwater is not threatened as a source of drinking water.

- Exclusion from the boundary was requested because sewers are unaffordable or are not needed.
- Area boundaries should be expanded to include other areas not on sewers including adjacent area in Clackamas County.
- Alternatives to proposed sewer plan have not been adequately explored, including banning of wells, use of Bull Run water, drilling of deeper wells, moving of wells, treatment to remove nitrate from drinking water, use of cheaper pressure sewers, use of holding tanks, and mandatory construction of trunk sewers with voluntary construction of collector sewers and voluntary connections to sewers.
- Removal of cesspools until less than 50% of the sewage is discharged to cesspools should be considered as an alternative to eliminate the threat.
- Drainage in the area is excellent, cesspools work fine, and the soils adequately filter and treat the waste.
- Affordability of sewers was not considered, sewers are too costly and are unaffordable.
- Cost estimates are not accurate enough, are not guaranteed unchangeable, and do not include inflation.
- Costs should be spread to a larger population through a surcharge on Bull Run water or state funding should be made available.
- Costs of sewers for renters, churches, schools have been ignored.
- People have been denied the right to vote in the area.
- The public is not adequately informed.
- Present residents should not be responsible for protecting the groundwater resource for the future.

- Implementation should be delayed to allow more time to develop financial assistance methods.
 - Implementation should be delayed until federal money or other subsidy is available.
 - The proposed safety net is unfair and inadequate.
 - Homes in the area are not selling, values have dropped.
 - The sewer plan is designed to force annexation, get money from unincorporated area residents to support sewers in South Shore and provide profits for Portland and Gresham.
 - The unincorporated area is to bear disproportionate share of costs for sewers.
 - Sewers should have been required by county when development was approved.
 - The county should stop issuing permits for cesspools for new development.
 - New development, not existing residents, should pay for sewers.
1. The oral and written arguments presented have been reviewed to determine whether information was presented to support a change in the previous findings that a threat to drinking water as defined in ORS 454.275(5) exists in the affected area.

ORS 454.275(5) provides as follows:

"(5) "Threat to drinking water" means the existence in any area of any three of the following conditions:

- (a) More than 50 percent of the affected area consists of rapidly draining soils;
- (b) The groundwater underlying the affected area is used or can be used for drinking water;
- (c) More than 50 percent of the sewage in the affected area is discharged into cesspools, septic tanks or seepage pits and the sewage contains biological, chemical, physical or radiological agents that can make water unfit for human consumption; or
- (d) Analysis of samples of groundwater from wells producing water that may be used for human consumption in the affected area contains levels of one or more biological, chemical, physical or radiological contaminants which, if allowed to increase at historical rates, would produce a risk to human health as determined by the local health officer. Such contaminant levels must be in excess of 50 percent of the maximum allowable limits set in accordance with the Federal Safe Drinking Water Act."

No significant new evidence was presented to provide a basis for modification of the previous analysis, conclusions and findings.

The Commission concludes that the previous analysis, conclusion and findings remain appropriate.

2. The oral and written arguments presented have been reviewed to determine whether information was presented to support a change in the previous finding that the boundary of the affected area, as proposed by the local governing bodies, is appropriate. A substantial number of those petitioning to present oral argument noted a request for exclusion from the affected area. Each was notified (in the written notice of time and place for presenting their oral argument) that they should present evidence to support their request to be excluded from the affected area in their arguments.

ORS 454.305 gives guidance on the factors that could be a basis for modification of the boundaries proposed by the local governing bodies and thereby the basis for excluding any person or area from the affected area. Evidence would have to show that a threat to drinking water exists in only part of the affected area, or that treatment works would remove or alleviate the conditions in only part of the affected area. In addition, the Commission would have to consider whether the exclusion would result in an illogical boundary for the provision of services.

No significant new evidence was presented in the arguments by those requesting exclusion to provide a factual basis for modifying the boundaries in accordance with ORS 454.305. Therefore, the Commission concludes that the previous analysis, conclusions and findings regarding the boundaries of the affected area remain appropriate.

3. The oral and written arguments presented have been reviewed to determine whether information was presented to support any change in the previous findings that the treatment works proposed by the local governing bodies can eliminate or alleviate the conditions in the affected area that result in the declaration of a threat to drinking water.

No significant new evidence was presented to suggest that the proposed facilities would not alleviate the conditions that result in the

finding of a threat to drinking water. The Department concludes that the previous analysis, conclusions and findings that the treatment works proposed by the local governing bodies can alleviate the conditions in the affected area that result in the declaration of a threat to drinking water remain appropriate.

4. The oral and written arguments presented have been reviewed to determine whether information was presented to support a change in the previous finding that the treatment works proposed to be implemented by the local governing bodies are the most economical method to alleviate the conditions in the affected area that result in the declaration of a threat to drinking water. Previous analysis concluded that the proposed treatment works is the only implementable alternative that will eliminate or alleviate the conditions which result in a finding of a threat to drinking water, that the proposed treatment works alternative is consistent with the selected cost effective Regional Waste Treatment Management Plan alternative, and therefore, that the treatment works proposed by the local governing bodies is the most economical method to alleviate the conditions in the affected area that result in the declaration of a threat to drinking water.

Argument presented suggested that holding tanks at each residence or property may be a more economical alternative than the proposed sewers. A holding tank is a watertight tank that is installed to receive and store sewage. The tank must be routinely pumped by a

septic tank pumping service and the contents hauled to a sewage treatment plant for treatment and disposal. Present rules of the Environmental Quality Commission (OAR 340-71-340) allow holding tanks to be used as a permanent facility for small commercial and industrial buildings where sewers are not available and the sewage flow is less than 200 gallons per day. The rule further allows holding tanks to be used on a temporary basis for residences if a community-wide sewerage system is guaranteed to be available within 5 years. The applicant for a permit to install a holding tank must further provide evidence of a contract for pumping services and an approved location for disposal of the pumpings.

A telephone survey of 6 pumping services in the Portland metropolitan area conducted by department staff on April 14, 1986 indicates that the cost for pumping of holding tanks and disposal of contents ranges from \$0.07 to \$0.15 per gallon pumped. If a residence generates 100 gallons of waste per day, pumping costs alone would range from \$2,555 to \$5,475 per year or \$213 to \$456 per month. The average residence would likely generate more than 100 gallons of waste per day. It is clear that if rules were changed to allow a holding tank option, costs for an individual residence would be substantially larger than the proposed plan. Therefore, use of holding tanks, even if feasible, would not be a more economical method to alleviate the conditions.

Argument presented suggested that implementation of the plan should be delayed until federal money or other funding to subsidize the costs

of sewer construction is available in order to make the costs to be borne by property owners more economical. The availability of federal or other funding is not an appropriate consideration in determining whether one proposed plan is more economical than another proposed plan. If federal or other funds are obtained, the costs of the treatment works borne by property owners directly through assessments and charges may be reduced, but the total treatment works costs are not altered. The plan presented by the local governing bodies identifies projects potentially eligible for federal sewerage works construction grants from the U.S. Environmental Protection Agency. The plan further indicates the intent of the local jurisdictions to pursue other potential sources of financial assistance that may become available to help reduce the cost of facilities to property owners in the affected area. While federal grants are expected to continue to be available in the near future, such grants cannot be guaranteed for any future projects in Oregon.

Argument was presented to suggest that a more economical alternative may be to collect the sewage from only a portion of the properties in the affected area and thereby eliminate the threat to drinking water by reducing the percentage of sewage discharged into cesspools, septic tanks or seepage pits in the affected area to less than 50 percent.

It would be unreasonable and contrary to the statute to conclude that treatment works should be terminated as soon as one of the statutory conditions is eliminated. Once the statutory conditions are shown to exist in an area, the statute contemplates that treatment works should be provided for the entire area.

The Commission concludes that the previous analysis, conclusions and findings that the treatment works proposed by the local governing bodies are the only implementable alternative that will alleviate the conditions in the affected area that result in the finding of a threat to drinking water and are the most economical method to alleviate the conditions in the affected area that result in the declaration of a threat to drinking water remain appropriate.

The Legal Criteria, Findings of Fact, Ultimate Findings, and Reasoning adopted February 7, 1986 are reaffirmed.

The Environmental Quality Commission takes notice of Resolutions adopted by the City of Portland and the City of Gresham and attached hereto. These Resolutions address the concerns of the Commission that were reflected in conditions 4, 5, and 6 of the previously adopted recommendations.

IV. ADDITIONAL CONCLUSIONS

The Conclusions of Law adopted February 7, 1986 are reaffirmed.

V. RULING ON MOTIONS

Two Motions were submitted during the process by Henry Kane, acting as attorney for United Citizens, as follows:

October 18, 1985 -- Motion and Brief in Support of Motion (this motion seeks an order allowing additional time for written testimony.)

October 19, 1985 -- Motion to Hire Consultant and Brief in Support of Motion

These motions were denied for the reasons cited in the letter to Mr. Kane dated November 22, 1985.

VI. ORDER

Based on the preceeding Procedural Findings; Legal Criteria, Findings of Fact, Ultimate Findings, and Reasoning; and Conclusions of Law, it is hereby ORDERED as follows:

1. The local governing bodies shall proceed immediately to implement the plan for providing sewer service to the affected area of Mid-Multnomah County as described in the Mid-Multnomah County Sewer

Implementation Plan, September 1985, and related plan documents

referenced therein, as follows:

- a. The City of Gresham shall provide for the construction of the proposed treatment works and provide sewer service to the portion of the affected area that lies within the Gresham Basin as described in Exhibit B of the attached report.
 - b. The City of Portland shall provide for the construction of the proposed treatment works and provide sewer service to the portion of the affected area that lies within the Inverness Basin as described in Exhibit B of the attached report.
 - c. The City of Portland shall provide for the construction of the proposed treatment works and provide sewer service to the portion of the affected area that lies within the Columbia Basin (including the Columbia and Johnson Creek sub-basins) as described in Exhibit B of the attached report.
2. The City of Portland and City of Gresham shall evaluate potential methods for reducing costs for sewer construction during the design process as specified in the Mid-Multnomah County Sewer Implementation Plan, September 1985.
 3. The City of Portland, City of Gresham, and Multnomah County shall file with the Department of Environmental Quality the ordinances and

intergovernmental agreements noted in the Mid-Multnomah County Sewer Implementation Plan, September 1985, as necessary to implement the plan. These include but are not limited to: Mandatory Connection Ordinances and connection enforcement ordinances; changes in policies on extension of sewer service outside city limits; ordinances to affect liens, implement collection procedures, and require payment for sewer service in the unincorporated portion of the affected area; agreements on coordination of project management; and agreements for coordinated implementation of public information and citizen assistance efforts.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of the Proposal to)	FINDINGS AND
Declare a Threat to Drinking Water)	RECOMMENDATIONS
in a Specifically Defined Area in)	
Mid-Multnomah County Pursuant to)	
ORS 454.275 et. seq.)	

I. INTRODUCTION

On June 27, 1984, certified copies of formal resolutions were filed with the Environmental Quality Commission by the governing bodies of Multnomah County Central Country Service District Number 3, the City of Gresham, and the City of Portland. The resolution of each governing body:

1. Adopted a sewerage facilities plan for providing sewer service to the area presently served principally by cesspools within its ultimate sewer service boundary (as designated in the METRO Master Sewerage Plan) and submitted the plan to the Environmental Quality Commission; and

2. Adopted, pursuant to ORS 454.285, preliminary findings of a threat to drinking water; adopted boundaries of the affected area; and submitted the findings and boundaries to the Environmental Quality Commission for review and investigation, and to hold a public hearing to determine whether a threat to drinking water exists in the affected area.

The resolutions were accompanied by the following documents:

- Threat to Drinking Water Findings, June 1984. (This document was referenced in each resolution as Exhibit A or Appendix A.)

- Providing Sewer Service to Mid-Multnomah County: Framework Plan, June 1984. (This document presented a summary of the facility plans of the three jurisdictions.)

Also included were facility planning documents for each jurisdiction which described proposed sewerage facilities, presented preliminary plans, presented cost estimates, and described intended methods of financing construction.

The filing of these resolutions and reports initiated an extensive process of investigation, hearings, and evaluation pursuant to the provisions of ORS 454.275 et. seq., and led to a request by the Environmental Quality Commission in December 1984 for additional information from the local governing bodies.

On August 30, 1985, the local governing bodies submitted a report presenting a revised plan. The revised plan is entitled Mid-Multnomah County Sewer Implementation Plan (Volume I - Report, and Volume II - Appendix), September 1985. The submittal was accompanied by resolutions of each governing adopting the revised plan.

Following submittal of the September 1985 revised plan, an additional hearing was held on October 17, 1985, followed by further evaluation, and

deliberations. The Environmental Quality Commission elected to defer a decision until an independent consultant was selected by the Department of Environmental Quality and presented an evaluation of the technical and engineering aspects of the plan submitted by the local governing bodies. The Environmental Quality Commission also requested an overall summary report from the Department of Environmental Quality.

The attached report, prepared by the Department of Environmental Quality, provides background information on the issue before the Environmental Quality Commission, evaluates information in the record of the proceeding, and presents conclusions.

The Environmental Quality Commission has reviewed the entire record of the proceeding, including the testimony presented by citizens of the affected area in Mid-Multnomah County. The Environmental Quality Commission has also reviewed the special consultant report prepared for the Environmental Quality Commission, and the attached report prepared by the Department of Environmental Quality as staff for the Environmental Quality Commission.

ORS 454.275 et. seq., prescribes procedures to be followed by the Environmental Quality Commission in response to the initial resolutions filed by the local governing bodies. After Notice and hearings, the Environmental Quality Commission must adopt findings and recommendations, publish notice of such findings and recommendations, and allow opportunity for written or oral arguments prior to issuance of an order.

The findings and recommendations required by the statute follow.

II. PROCEDURAL FINDINGS

Section III of the attached report presents a detailed description of procedures followed in this matter. This section is hereby adopted in its entirety by the Environmental Quality Commission as PROCEDURAL FINDINGS.

III. LEGAL CRITERIA, FINDINGS OF FACT, ULTIMATE FINDINGS, AND REASONING

Section IV of the attached report presents the legal criteria that must be met and a detailed evaluation of the record. This section is hereby adopted in its entirety by the Environmental Quality Commission as LEGAL CRITERIA, FINDINGS OF FACT, ULTIMATE FINDINGS, AND REASONING.

IV. CONCLUSIONS OF LAW

Section V of the attached report presents conclusions based on the evaluation of the record. This section is hereby adopted in its entirety by the Environmental Quality Commission as CONCLUSIONS OF LAW.

V. RECOMMENDATIONS

Based on the preceding Procedural Findings; Legal Criteria, Findings of Fact, Ultimate Findings, and Reasoning; and Conclusions of Law, the

Environmental Quality Commission hereby adopts the following recommendations:

1. The local governing bodies shall proceed immediately to implement the plan for providing sewer service to the affected area of Mid-Multnomah County as described in the Mid-Multnomah County Sewer Implementation Plan, September 1985, and related plan documents referenced therein, as follows:
 - a. The City of Gresham shall provide for the construction of the proposed treatment works and provide sewer service to the portion of the affected area that lies within the Gresham Basin as described in Exhibit B of the attached report.
 - b. The City of Portland shall provide for the construction of the proposed treatment works and provide sewer service to the portion of the affected area that lies within the Inverness Basin as described in Exhibit B of the attached report.
 - c. The City of Portland shall provide for the construction of the proposed treatment works and provide sewer service to the portion of the affected area that lies within the Columbia Basin (including the Columbia and Johnson Creek sub-basins) as described in Exhibit B of the attached report.
2. The City of Portland and City of Gresham shall evaluate potential methods for reducing costs for sewer construction during the design

process as specified in the Mid-Multnomah County Sewer Implementation Plan, September 1985.

3. The City of Portland, City of Gresham, and Multnomah County shall file with Department of Environmental Quality the ordinances and intergovernmental agreements noted in the Mid-Multnomah County Sewer Implementation Plan, September 1985, as necessary to implement the plan. These include but are not limited to: Mandatory Connection Ordinances and connection enforcement ordinances; changes in policies on extension of sewer service outside city limits; ordinances to affect liens, implement collection procedures, and require payment for sewer service in the unincorporated portion of the affected area; agreements on coordination of project management; and agreements for coordinated implementation of public information and citizen assistance efforts.

4. Consistent with the affordability and financing provisions of the Mid-Multnomah County Sewer Implementation Plan, the City of Portland, City Gresham, and Multnomah County shall adopt a safety net program that provides property owners in the affected area an opportunity to demonstrate hardship because of sewer costs and to seek deferral or other special assistance. Such program shall be filed with the Department of Environmental Quality by September 30, 1986, and shall include financial support and a hardship review process that includes elected officials or authorized representatives of each local governing body.

5. The City of Portland, City of Gresham, and Multnomah County shall file with the Department of Environmental Quality by September 30, 1986 documentation that connection charges and user charges levied for sewer service in the affected area will be based on the cost of providing service. Such documentation shall include cost of service rate studies.

6. Consistent with the institutional alternatives provisions of the Mid-Multnomah County Sewer Implementation Plan, September 1985, annexation to a city or waiver of the right to remonstrate against annexation shall not be a requirement for receiving sewer service in the affected area.

Note: The full text
of this report is
available from the
Department of
Environmental Quality
upon request.

EVALUATION OF HEARING RECORD
FOR
PROPOSAL TO DECLARE A THREAT TO DRINKING WATER
IN A
SPECIFICALLY DEFINED AREA OF MID-MULTNOMAH COUNTY
PURSUANT TO ORS 454.275 ET SEQ

Department of Environmental Quality

January 30, 1986
February 6, 1986

RESOLUTION No. 34053

WHEREAS, the Environmental Quality Commission has adopted findings that a threat to drinking water exists in mid-Multnomah County and has adopted recommendations to implement the Mid-Multnomah County Sewer Implementation Plan; and

WHEREAS, if the EOC orders the Sewer Plan to be implemented, it is the intent of the City to continue to seek ways to assist property owners in meeting financial obligations associated with sewer costs;

NOW, THEREFORE, BE IT RESOLVED, that if the Environmental Quality Commission orders the Mid-Multnomah County Sewer Implementation Plan to be implemented, and consistent with provisions of the Plan:

1. The City will pursue development and implementation of a financial safety net program for property owners within the affected area who can demonstrate extraordinary financial hardship. Such program may permit the deferral of sewer assessment installment payments, and may provide for other special assistance. The proposed safety net program will be in substantial conformance with the description attached as Exhibit A.
2. The City re-affirms its policy that user charges imposed for sewer service be based on the cost of providing service, consistent with requirements of federal law. The City also re-affirms its policy that connection charges be determined in such a manner as to ensure costs for major sewer facilities are shared by new sewer customers in a fair and equitable manner.
3. Consistent with provisions of the Urban Services Policy, the City will not require annexation as a condition for receiving sewer service in the affected area.

Adopted by the Council, MAR 13 1986

Commissioner Dick Bogle
March 3, 1986
D. Gooley:al
54:dg-resol

JEWEL LANSING
Auditor of the City of Portland

By

Edna Cervera

Deputy

MID-MULTNOMAH COUNTY SEWER IMPLEMENTATION PLAN
SAFETY NET PROGRAM FOR SEWER SYSTEM COSTS
BUREAU OF ENVIRONMENTAL SERVICES STAFF PROPOSAL

The Mid-Multnomah County Sewer Implementation Plan includes a menu of sewer system financing options for property owners within the Affected Area. Among the options are payment deferral programs for senior citizens and connection deferral programs for low income households. Under the senior citizen program, the State will make installment payments on sewer assessments for qualifying homeowners (persons 62 years of age and older, with an annual household income less than \$17,500). The sum of these payments, plus a simple interest charge of 6% per annum, are reimbursed to the State at the time the property is sold.

The low income deferral option allows property owners within Federal HCD income standards (\$15,050 for a family of four) to defer connecting to the public sewer. By deferring connection, these property owners can postpone the private plumbing costs and connection fees associated with hooking up to the sewer system. Connection would eventually be required, when the existing cesspool failed or when the property changed hands.

Additionally, staff recommends that the Sewer Implementation Plan financing menu be modified to allow 20 year loan terms for assessments to all property owners within the affected area. Previously, the Plan assumed that the 20 year pay-back option would be reserved for low-income households only. Offering it to all property owners would reduce monthly payments for owners of typical residential lots by \$10, from \$87 to \$77 per month.

Under these options, senior citizens could defer all of the costs of acquiring sewer service. Low income property owners could defer a portion of the costs, normally in the range of 30% to 50% of the total costs of acquiring sewer services. Finally, all property owners would have access to a longer pay-back period for financing sewer assessments.

The Environmental Quality Commission has requested the Consortium to determine the feasibility of extending these "safety net" options to include 1) an assessment deferral program for low income homeowners under 62 years of age, and 2) a connection deferral program for property owners regardless of income who have unusually high costs for on-site plumbing alterations, making the cost of connection to the sewer prohibitive.

Safety Net Policy Statement

Fundamental to the existing safety net program and to any proposal for expanding it is the fact that sewer costs cannot be subsidized, only deferred. Sewer subsidies have not been a part of safety net proposals for three reasons.

1. The Consortium has not yet secured outside funding to subsidize the costs of installing collection system sewers. This may continue to be the case, especially in view of the Federal deficit problem.
2. Sewer services are a cost of property ownership and ultimately reflect in the value of the property served. Subsidizing property owners would enable those who receive assistance to recover the costs of sewers twice: once when the subsidy was received, and once when the property was sold.
3. Collection system sewers have traditionally been paid for by benefitted properties. Subsidizing Affected Area property owners for sewer costs would be inequitable to other properties which have been previously assessed.

The request to expand the existing safety net program can be broken into two components: 1) extending the option to defer installment payments on sewer assessments to low income property owners under 62 years of age, and 2) extending the connection deferral program to property owners who do not qualify on an income basis, but would experience extraordinary private plumbing costs if required to connect to the sewer. These two proposals are discussed below.

ASSESSMENT DEFERRAL

Extending an assessment deferral program to property owners under the age of 62 will require the creation of a safety net loan fund. The safety net loan fund would make installment payments on sewer assessments for qualifying property owners. The total amount of payments made, plus an interest charge, would be reimbursed to the fund when the property was sold.

The fund could be established as a revolving loan fund, "seeded" by grant funds or borrowed funds; or it could be funded by contributions from an on-going funding source, such as a surcharge on interest rates paid by property owners who finance their assessments. These two approaches could also be combined, creating a revolving loan fund from the sale of bonds, which would be retired from interest surcharge revenues.

As provided for in the State assessment deferral program for senior citizens, properties whose payments are deferred would reimburse the safety net loan fund at the time the property was sold, in addition to an interest charge. The State charges a simple interest rate of 6% per year on the amount deferred. Consortium deferral program planning also assumes a simple interest charge on the amount deferred.

Recommended Safety Net Loan Fund Option

Bureau staff recommends that the safety net revolving loan fund be seeded with borrowed funds, made available from the sale of bonds. The bonds could be serviced by revenues generated from a surcharge on interest paid by property owners who finance their sewer assessments.

Participation in the deferral program would be determined by applying financial hardship criteria. Property owners desiring to defer payments on sewer assessments would be required to file a financial hardship application. Hardship applications that were approved would be reviewed annually to determine if they continued to be eligible for deferral program assistance.

The safety net program would include a process for property owners who did not meet financial hardship criteria to file hardship appeals. Appeals would be heard by a committee appointed by Council. The committee would also review and make recommendations to Council on proposed hardship criteria.

Criteria for assessment deferral eligibility would consider both household income and other forms of personal wealth, such as savings accounts or ownership of real property. Bureau staff have reviewed census data on household income within the Affected Area, but there is no information available on personal asset wealth. Thus, it is difficult to estimate the number of homeowners who may file financial hardship appeals.

As a surrogate measure of financial need within the Affected Area, staff analyzed bonded sewer assessment delinquency rates within Portland. The City is currently experiencing a delinquency rate on bonded sewer assessments of approximately 12%. The delinquency rate for single family homeowners is approximately 3%. The balance of delinquent accounts are owners of vacant land (approximately 7%) and commercial and other properties (2%).

Using Portland's bonded sewer assessment delinquency rates as an indicator of financial hardship, the deferral program would need to serve potentially 12% of property owners. The assistance would be provided on a sliding scale, assuming some property owners could pay a portion of their installment payments on sewer assessments.

In estimating the amount of funds necessary to serve 12% of property owners within the Affected Area, staff have made the conservative assumption that the safety net revolving loan fund would be seeded with bond proceeds. The bonds would be serviced from revenues derived from a surcharge on interest rates applied to financed sewer assessments. The surcharge would represent an extension of the proposed bond self-insurance surcharges that are included within the finance documents of the Sewer Implementation Plan.

The amount of revenues generated from an interest surcharge is dependent on several factors, including the turnover rate in housing within the affected area, the age of deferral program participants, and the level of interest earnings within the revolving loan fund. Based on relatively conservative assumptions (low turnover rates for single family housing, limited use of the State deferral program), staff estimates that a .25% interest surcharge on financed sewer assessments would generate a cashflow stream sufficient to borrow approximately \$10.0 million over the life of the sewer implementation program, or enough funds to defer on a sliding scale between 10% and 15% of all financed sewer assessments for single family homes in the Affected Area.

CONNECTION DEFERRAL

The Sewer Implementation Plan offers a deferral option to low income households allowing eligible property owners to postpone connection to the sewer system when it becomes available. Postponing connection defers the costs of private plumbing alterations and connection fees associated with hooking up to the sewer. Connection is eventually required, when the property is sold, or if the cesspool fails, whichever occurs first.

The connection deferral option could be extended to property owners who could reasonably expect the costs of private plumbing alterations to be prohibitive. An applications process could be provided, similar to the assessment deferral program, and criteria for eligibility established.

The number of connection deferrals which could be allowed would be limited to the extent that connection fee revenues are an integral part of the financing for the Sewer Implementation Plan. Staff estimates that connection deferrals of more than 15% of properties could affect financing of the overall Sewer Plan.

As with the existing low-income connection deferral program offered in the Sewer Implementation Plan, connection to the sewer system, under terms of this extended deferral option, would be required if the existing cesspool failed, or if the property changed hands, whichever occurred first.

56:safety net

RECEIVED
MAR 13 1985

RESOLUTION NO. 12__

A RESOLUTION RELATING TO THE ENVIRONMENTAL
QUALITY COMMISSION ORDER REQUIRING THE CITY
TO PROVIDE SANITARY SEWER SERVICE TO MID-
MULTNOMAH COUNTY

The Gresham City Council Finds:

a. The City of Gresham (City) participated with the City of Portland and the Multnomah County Central Service District in the East County Sanitary Sewer Consortium (Consortium). Environmental Quality Commission (Commission) administrative rules required this Consortium to submit a plan by July 1, 1984 for providing sewer services to the mid-county affected area.

b. The City Council passed Resolution No. 1174 on June 19, 1984 which adopted the Framework Plan and supporting documents, and submitted it to the Commission in compliance with such rules and ORS Chapter 454.

c. The City Council passed Resolution No. 1229 on August 27, 1985 which approved the Mid-Multnomah County Sewer Implementation Plan prepared by the Consortium and submitted it to the Commission.

d. As a result of an extensive process of investigation, hearings and evaluation as provided in ORS 454.275 et. seq., the Commission has adopted findings and recommendations. The Commission will issue an order as provided in ORS 454.305.

e. The Commission has expressed concerns about the financial hardship on property owners in the affected area, a program and method for reducing such hardship, sewer connection and user charges, and the relationship between annexation and sewer service.

f. For many years the City has addressed these concerns for all the property owners served by the City. The City actively implements the State of Oregon senior citizen deferral program under ORS 311.702 et. seq. The City Council passed Resolution No. 1228 on August 6, 1985 which adopted a policy of permitting assessment lien deferral due to hardship regardless of age. This policy provides for special agreements for applicants physically unable to work with a household income

less than the limit set for the state program. In addition, the City Council has approved many special agreements based on individual circumstances which reduce or defer assessment payments.

g. The City has a history of basing sewer user charges on cost of service studies. Brown & Caldwell prepared a "Sewerage System Rate Study" in May 1981. This study provided a method of allocating annual revenue requirements to users in proportion to the costs of conveying, treating, and disposing of the waste loads of each user class. This study has been the basis for all user charges set by the City Council. The City plans an update of this study in conjunction with the current wastewater treatment plant expansion.

h. The City has provided sewer service to customers within its sewer basin but outside its boundaries since 1954. It has never required annexation in order to obtain service. As part of a method of allocating limited wastewater treatment plant capacity, the City Council passed Resolution No. 1026 on March 16, 1982 which required an agreement not to remonstrate against annexation to the City in order connect to the sewer system. This requirement was repealed by City Council Resolution No. 1255 passed on February 18, 1986.

THE CITY OF GRESHAM RESOLVES:

1. The City reaffirms its commitment to a program of assistance for any property owners who demonstrate extraordinary financial hardship, and will continue to make this program available to property owners within the affected area. This program permits deferral of sewer assessment installment payments and connection charges, and special agreements providing for payments according to individual circumstances.

2. The City Council will review the financial impact of sewer assessments and criteria for financial hardship relief. The manager shall examine requests for financial assistance, and determine appropriate deferral of sewer assessment installment payments or other assistance.

3. The City reaffirms its policy to set sewer user charges for sewer service based on the cost of providing such service consistent with appropriate service rate studies. The City also reaffirms its policy to set sewer connection charges to allocate major sewer facilities costs in a fair and equitable manner.

4. The City will not require annexation or waiver of the right to remonstrate against annexation as a condition for receiving sewer service in the affected area.

Yes: _____

No: _____

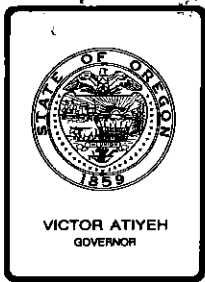
Absent: _____

Abstain: _____

Passed by the Gresham City Council on 1986.

City Manager

Mayor



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, April 25, 1986, EQC Meeting

Proposed Adoption of Amendments to the State Implementation Plan Regarding Stack Heights and Dispersion Techniques, Deleting Rules OAR 340-20-340 and 340-20-345, Adding Replacement Rule 340-20-037

Background

In the past, extremely tall stacks were employed to provide dilution so that air pollution levels would not exceed standards at ground level. Since the practice has been linked to the formation of acid rain, steps were taken to mitigate the use of excessive stack heights as the only emission control strategy.

The Clean Air Act of 1977 forbids the use of excessive stack heights when computing whether ambient air quality standards will be violated when the plume from a stack drifts down to ground level. The Act also forbids using dispersion techniques or temporary shut-down for the same purpose. The Federal Environmental Protection Agency (EPA) stack height rules were written to provide the necessary details and definitions to carry out the law's requirements. The Department adopted a comparable rule in 1983 in order to administer the federal program in Oregon. EPA revised their stack height rule on July 8, 1985 as a result of a recent court decision. The court had found that EPA's rule was inadequate and that more detail was needed to cover additional situations, such as process manipulations to get additional plume rise.

Problem Statement

The Department has completed its comparison of the July 8, 1985 federal rule and the existing Oregon stack height and dispersion technique rule. Oregon's rule has the following differences from the new July 1985 federal rule:

1. The July 1985 federal rule is more stringent because it does not allow excess height to be credited as a way of reducing pollutant impacts caused by elevated terrain unless that terrain begins within 1/2 mile of the stack. The DEQ rule allows consideration of any elevated terrain feature, no matter how distant.

2. The July 1985 federal rule is more stringent for sources emitting 5,000 tons/yr of SO₂ or more because it does not allow the consideration of other factors affecting plume rise (i.e., process manipulation, combining of plume, etc.) in the modeling process. For instance, the new federal rule forbids increasing the final exhaust gas plume rise by combining exhaust gases from several existing stacks into one stack.
3. The July 1985 federal rule added an exemption for using dispersion techniques to control residential woodburning impacts. This exemption is needed to clearly allow federal approval of curtailment programs such as the one for the Medford particulate control strategy. The July 1985 federal rule specifically allows episodic restrictions on residential woodburning.

EPA has reviewed and concurred with the Department's analysis of the deficiencies of the present Oregon rule. EPA has also reviewed the rule proposed for adoption.

EPA's deadline for the states to adopt the changes to the stack height rule is March 27, 1986, if the states desire to retain jurisdiction over this subject. Oregon now has this jurisdiction and is making the required rule revisions to retain it. On January 31, 1986, the Commission authorized the March 17, 1986 public hearing on the attached rule changes. The earliest the Commission can act on these proposed rule changes is the April 25, 1986 meeting. Thus, Oregon will be at least a month late in meeting EPA's deadline. But EPA has agreed to this delay by telephone. This agreement was confirmed in writing by a February 10, 1986 letter from DEQ to EPA.

Authority to Act

Authority for the Environmental Quality Commission to act is statute ORS 468.295(3) as shown in the Rulemaking Statements, appended to the Notice of Public Hearing, Attachment 4.

Rule Development Process

The Commission authorized a public hearing on these proposed stack height and dispersion techniques rule amendments at the January 31, 1986 meeting. Notice of the public hearing was published in The Oregonian newspaper and in the Secretary of State's February 15, 1986 Bulletin. Notices of the public hearing were mailed to over 500 persons on the Department's mailing list. Firms with stacks over the 65 meter federal stack height criteria were mailed the hearing notice and the EQC Agenda Item describing the proposed rule changes.

Hearing Officer's Report and Comment

No one attended the public hearing on March 17, 1986.

The first testimony on the proposed rule amendment was a phone call from David Bray of EPA that there was a typing error (which also occurs in the July 8, 1985 Federal Register) in rule 40 CFR 51.1(hh)(2)(ii)(B) (page 2 of Attachment 1 of this memorandum). The correct date is July 8, 1985, not July 8, 1983.

The second testimony is Oregon Environmental Council's letter, Attachment 5. OEC does not want either excessively tall stacks or dispersion techniques to be used to evade sound pollution control. OEC's requested rule modifications would make Oregon's stack height rule more restrictive than the federal requirement in two ways. First, OEC recommends prohibiting the use of tall stack heights even though a source has complied with modeling and emission control requirements. Secondly, OEC recommends prohibiting use of dispersion techniques (such as injecting heat into stacks) for smaller sources (less than 5,000 tons per year of SO₂), even though the source has complied with emission control requirements.

The Department disagrees with OEC's recommendations. Sources are subject to sound pollution control requirement including Best Available Control Technology (EPA regulation) and Highest Best Practicable Treatment and Control (state requirement). Despite meeting control requirements, OEC's changes would prohibit sources from using two techniques that would further reduce ground level concentrations of air pollutants. In order to meet OEC requirements and still also meet other air quality restrictions, some sources might need to apply additional control measures or limit their production capability. Since all sources must now meet highest and best practicable treatment, additional control costs (for instance, to reach lowest achievable emission rates) would likely be great, as would the economic impact of production restrictions. Based on studies conducted in the state, there is no identified acid rain problem in Oregon and problems are not likely to occur from stacks that would be affected by the OEC proposal. Thus, it does not seem cost-effective to support OEC's position, which is, in essence, to prohibit use of dispersion techniques which are acceptable in other parts of the country and which can be beneficial to reducing ground level concentrations of air pollutants, to below what is required by ambient air standards and other source control rules.

Evaluation and Alternatives

A first alternative would be to amend the Oregon rule wherever it was less stringent and less detailed than the federal rule. This action would result in a rule unique to Oregon. As this is an infrequently used rule in Oregon and considering that such a rule would not be consistent with the EPA rule, it could be quite confusing for those who will have to eventually interpret these rules.

A second alternative would be no action. In that case, EPA would have to retract delegation of review of new sources where stacks over 65 meters high were involved. This would result in dual jurisdiction, with applicants going through two simultaneous reviews. Applicants would need two construction permits. Oregon has sought to avoid such dual jurisdiction.

A third alternative is to adopt EPA's new rule word-for-word and delete Oregon's existing stack height rule. This alternative naturally would have EPA's approval, would avoid the difficulties and confusion of the first-mentioned alternative, and would avoid the dual review of the second-mentioned alternative. However, it burdens the Oregon Administrative Rules with many inapplicable details which apply only to many plants outside Oregon.

A fourth alternative is to adopt the federal rule by reference, deleting the present Oregon stack height and dispersion technique rule. This is a minimal effort alternative and keeps many inapplicable details out of the Oregon rules.

A fifth alternative would be the OEC proposal, which would be to adopt the new federal rule, but make it more stringent in two places.

The adopt-by-reference alternative is recommended because of the rule's minimal use, the likelihood of EPA revision, and the brevity of this solution.

Rule Description

The July 8, 1985 EPA rule and the existing Oregon stack height rules are Attachments 1 and 2. The adopt-by-reference rule is shown in Attachment 3.

The amendments to the stack height rule, made by EPA on July 8, 1985, do not currently affect any existing tall stacks in Oregon. (See the list of Oregon's tallest stacks, Attachment 6.) The amendments generally apply to new stacks, modifications to plants with existing tall stacks, and to one existing plant built after 1970 with a stack greater than 65 meters high. This one existing plant is PGE's Boardman 550 megawatt coal-fired steam-electric plant. Its 656 foot stack complies with the federal rule. These amendments may cause a reduction of about 1,700,000 ton of SO_x per year from power plants and smelters outside of Oregon. Therefore, considerable interest in this rule exists in parts of the United States where most electricity is generated from coal-fired utility boilers, especially in the Ohio Valley. The proposed rule change would cause two needed changes in Oregon's rules and in its State Implementation Plan. First, it would add a needed exemption for episodic restrictions on residential woodburning; and second, it would protect Oregon from excessively tall stack emissions from new plants. The proposed rule change would avert a dual jurisdiction problem caused by Oregon not keeping its own stack height rule up-to-date with EPA's rule.

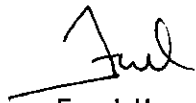
Summation

1. EPA and DEQ stack height and dispersion technique rules forbid excessive stack heights or dispersion techniques in computing compliance with ambient air standards. Stack height rules do not prevent firms from building and using excessively tall stacks.
2. A recent court suit has caused EPA to revise its stack height and dispersion technique rule and EPA requires revisions to State rules in 1986.
3. The Department, in conjunction with EPA, has determined that Oregon's stack height rule is less stringent than EPA's new rule in some respects.
4. The Department prefers to adopt EPA's amended federal rule by reference into Oregon Administrative Rules, deleting the Oregon's present stack height rule as the most expedient and simplistic approach.

5. The Commission's authorized public hearing was held, but no one attended. One typing error in the federal rule was phoned in by EPA's David Bray.
6. The Oregon Environmental Council sent in a letter requesting that Oregon's rule be more stringent than the federal rule in two respects. The Department felt that it was not cost-effective to eliminate an exception for smaller sources and prohibit construction and use of tall stacks on the basis that there was no identified or potential acid rain problem in Oregon and that the rule, as written, would potentially lessen ground level concentrations of air pollutants without excessively costly controls or production curtailments.

Director's Recommendation

Based on the Summation, it is recommended that the Commission adopt the federal stack height rule by reference in OAR 340-20-037 and repeal the present Oregon stack height rule OAR 340-20-340 and -345, as amendments to the State Implementation Plan.



Fred Hansen

- Attachments:
1. Federal Stack Height rule
 2. Existing Oregon Stack Height rule, 340-20-340 and -345
 3. Proposed adopt-by-reference rule 340-20-037
 4. Notice of Public Hearing with attached Rulemaking Statement
 5. Oregon Environmental Council testimony
 6. DEQ letter with list of all Oregon stacks higher than 65 meters.

PETER B. BOSSERMAN:a
229-6278
April 10, 1986
AA5285

FEDERAL STACK HEIGHT RULE

Stack Heights and Dispersion Techniques

Definitions

40 CFR 51.1(ff) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

(gg) "A stack in existence" means that the owner or operator had (1) begun, or caused to begin, a continuous program of physical on-site construction of the stack or (2) entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

(hh) (1) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) Using that portion of a stack which exceeds good engineering practice stack height;

(ii) Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(2) The preceding sentence does not include:

(i) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of exhaust gas streams where:

(A) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(B) After July 8, 1983, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source.

(iii) Smoke management in agricultural or silvicultural prescribed burning programs;

(iv) Episodic restrictions on residential woodburning and open burning; or

(v) Techniques under 51.1(hh)(1)(iii) which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

(ii) "Good engineering practice" (GEP) stack height means the greater of:

(1) 65 meters, measured from the ground-level elevation at the base of the stack;

(2) (i) for stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required under 40 CFR Parts 51 and 52.

$$H_g = 2.5H$$

provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

(ii) For all other stacks.

$$H_g = H + 1.5L,$$

where

H_g = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H_g = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s) provided that the EPA, State, or local control agency may require the use of a field study or fluid model to verify GEP stack height for the source; or

(3) The height demonstrated by a fluid model or a field study approved by the EPA, State, or local control agency which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(jj) "Nearby" as used in 51.1(ii) is defined for a specific structure or terrain feature and:

(1) for purposes of applying the formulae provided in 51.1(ii)(2) means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile), and

(2) for conducting demonstrations under 51.1(ii)(3) means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (H_t) of the feature, not to exceed 2 miles if such feature achieves a height (H_t) 0.8 km from the stack that is at least 40 percent of the GEP stack height determined by the formulae provided in 51.1(ii)(2) (ii) or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(kk) "Excessive concentration" is defined for the purpose of determining good engineering practice stack height under 51.1(ii)(3) and means:

(1) for sources seeking credit for stack height exceeding that established under 51.1(ii)(2); a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program (40 CFR 51.24 and 52.21), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the authority administering the State implementation plan, an alternative emission rate shall be established in consultation with the source owner or operator;

(2) for sources seeking credit after October 1, 1983, for increases in existing stack heights up to the heights established under 51.1(ii)(2)

either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in (kk)(1) above, except that the emission rate specified by any applicable State implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the authority administering the State implementation plan; and

(3) for sources seeking credit after January 12, 1979 for a stack height determined under 51.1(ii)(2) where the authority administering the State implementation plan requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by the equations in 51.1(ii)(2), a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

40 CFR 51.12(j) The plan must provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in 51.12(k). The plan must provide that before a State submits to

EPA a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by 51.1(ii)(1) or (2), the State must notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it. This Section does not require the plan to restrict, in any manner, the actual stack height of any source.

(k) The provisions of 51.12(j) shall not apply to:

(1) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in 51.18(j)(1)(v)(a), 51.24(b)(2)(i) and 52.21(b)(2)(i), were carried out after December 31, 1970; or

(2) coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

40 CFR 51.18 (1) Such procedures must provide that the degree of emission limitation required of any source for control of any air pollutant must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in 51.12(k). Such procedures must provide that before a State

issues a permit to a source based on a good engineering practice stack height that exceeds the height allowed by 51.1(ii) (1) or (2), the State must notify the public of the availability of the demonstration study and must provide opportunity for public hearing on it. This section does not require such procedures to restrict, in any manner, the actual stack height of any source.

[Taken from 40 CFR 51.1(ff) thru (kk); 51.12(j) & (k); 51.18(1) and the July 8, 1985 federal register, 50 FR 27892-27907.]

AA5018

OREGON ADMINISTRATIVE RULES

[Stack Heights and Dispersion Techniques

Definitions

~~340-20-340~~ (1) "Dispersion Technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by using that portion of a stack which exceeds good engineering practice stack height, varying the rate of emission of a pollutant according to ambient concentrations of that pollutant, or by addition of a fan or a reheater to obtain a less stringent emission limitation. The preceding sentence does not include:

(a) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.

(b) The use of smoke management in agricultural or silvicultural programs;
or

(c) Combining the exhaust gases from several stacks into one stack.

(2) "Excessive Concentrations" for the purpose of determining good engineering practice stack height in a fluid modeling evaluation or field study means a maximum concentration due to downwash, wakes, or eddy effects produced by structures or terrain features which is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(3) "Good Engineering Practice (GEP) Stack Height" means the greater of;

(a) 65 meters;

(b) $H_g = H + 1.5L$, where

H_g = good engineering practice stack height, measured from the ground level elevation at the base of the stack;

H = height of nearby structure or structures measured from ground level elevation at the base of the stack;

L = lesser dimension (height or width) of the nearby structure or structures;

(c) The height demonstrated by a fluid modeling evaluation or a field study which is approved by the Department and ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of downwash, wakes, or eddy effects created by the source itself, nearby structures, or terrain obstacles.

(4) "Nearby Structures" means those structures within a distance of five times the lesser of the height or the width dimension of a structure but not greater than one-half mile. The height of the structure is measured from the ground level elevation at the base of the stack.

Stat. Auth.: ORS Ch. 468

Hist: DEQ 5-1983, f. & ef. 4-18-83

Limitations

340-20-345 (1) The degree of emission limitation required for any source shall not be affected in any manner by so much of the stack height as exceeds good engineering practice (GEP) or by any other dispersion technique. This provision applies to new sources and, modifications of

sources, and to existing sources proposing to increase stack heights.

(2) An emission limitation established pursuant to the proposed construction of a stack under the criteria established in **OAR 340-20-340(3)(c)** shall be subject to notice and opportunity for public comment concerning the fluid modeling evaluation or field study that was used to demonstrate the need for the increased stack height.]

Stat. Auth.: ORS Ch. 468

Hist. DEQ 5-1983, f. & ef. 4-18-83

AA5019

Stack Heights and Dispersion Techniques

340-20-037 Title 40, Code of Federal Regulation, Parts 51.1(ff) thru (kk), 51.12(j) and (k), and 51.18(l), as amended on July 8, 1985 in the Federal Register (50 FR 27892), is by this reference adopted and incorporated herein, concerning stack heights and dispersion techniques.

In general, the rule prohibits the use of excessive stack height and certain dispersion techniques when calculating compliance with ambient air quality standards. The rule does not forbid the construction and actual use of excessively tall stacks, nor use of dispersion techniques; it only forbids their use in calculations as noted above.

The rule has the following general applicability. With respect to the use of excessive stack height, stacks 65 meters high or greater, constructed after December 31, 1970, and major modifications to existing plants after December 31, 1970 with stacks 65 meters high or greater which were constructed before that date, are subject to this rule, with the exception that certain stacks at federally-owned, coal-fired steam electric generating units constructed under a contract awarded before February 8, 1974, are exempt. With respect to the use of dispersion techniques, any technique implemented after December 31, 1970, at any plant is subject to this rule. However, if the plant's total allowable emissions of sulfur dioxide are less than 5,000 tons per year, then certain dispersion

techniques to increase final exhaust gas plume rise are permitted to be used when calculating compliance with ambient air quality standards for sulfur dioxide.

(1) Where found in the federal rule, the term "reviewing agency" means the Department of Environmental Quality (DEQ), Lane Regional Air Pollution Authority (LRAPA), or the U.S. Environmental Protection Agency (EPA), as applicable.

(2) Where found in the federal rule, the term "authority administering the State Implementation Plan" means DEQ, LRAPA, or EPA.

(3) The "procedures" referred to in 40 CFR 51.18(1) are the New Source Review procedures at DEQ (340-20-220 to -276) or at LRAPA (Title 38), and the review procedures for new, or modifications to, minor sources, at DEQ (340-20-020 to -030, -140 to -185) or at LRAPA (Title 34 and rule 38-045).

(4) Where "the State" or "State, or local control agency" is referred to in 40 CFR 51.12(j), it means DEQ or LRAPA.

(5) Where 40 CFR 51.1(kk) refers to the prevention of significant deterioration program and cites 40 CFR 51.24, it means the EPA-approved new source review rules of DEQ or LRAPA (see 40 CFR 52.1987), where they cover prevention of significant deterioration.

(6) Where found in the federal rule, the terms "applicable state implementation plan" and "plan" refer to the programs and rules of DEQ or LRAPA, as approved by EPA, or any EPA-promulgated regulations (see 40 CFR Part 52, Subpart MM).

[Publications incorporated by reference in this rule are available from the office of the Department of Environmental Quality, Air Quality Division, in Portland.]

AA5019.1

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Stack Height & Dispersion Technique Rule Revision
NOTICE OF PUBLIC HEARING

Date Prepared: 01/16/86

Hearing Date: 03/17/86

Comments Due: 03/18/86

**WHO IS
AFFECTED:**

Future builders of high (65 meters or greater) stacks which emit air pollution in Oregon. Existing high stacks in Oregon are not affected.

**WHAT IS
PROPOSED:**

The Department of Environmental Quality is proposing to amend OAR 340-20-340 and 340-20-345. This rule, adopted in 1983, is a copy of federal rules 40 CFR 51.1, 51.12 and 51.18. The federal rule was changed on July 8, 1985, adding considerable detail to the rule. The Department proposes to keep up with the July 8, 1985 change by deleting its present "stack height and dispersion technique" rules, and adopting the federal rule by reference in new OAR 340-20-037.

The stack height rules forbid excessive stack heights from being used during computer modeling when trying to predict exceedences of ambient air standards. Stack height rules do not forbid plants from building and using excessively tall stacks. Stack height rules also do not allow credit for other dispersion techniques.

**HOW TO
COMMENT:**

Copies of the complete proposed rule package may be obtained from the Air Quality Division in Portland (522 S.W. Fifth Avenue) or the regional office nearest you. For further information contact Peter Bosserman at 229-6278.

A public hearing will be held at:

10:00 a.m.
March 17, 1986
Yeon Building, Room 4B
522 S.W. 5th Avenue
Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Air Quality Division, P.O. Box 1760, Portland, OR 97207, but must be received by no later than March 18, 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



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 April 25, 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.

AA5050

RULEMAKING STATEMENTS

for Stack Heights and Dispersion Techniques Rule

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

STATEMENT OF NEED:

Legal Authority

This proposal would amend OAR 340-20-340 and 340-20-345 by deleting them and adding a replacement rule in 340-20-037. It is proposed under authority of ORS 468.295(3).

Need for the Rule

If Oregon does not keep its stack height rule up-to-date with the federal rule, then the Federal EPA would revoke approval of that part of Oregon's State Implementation Plan. Next, EPA would promulgate their new stack height rule in Oregon. This would result in both a federal and state review of new sources with tall stacks because of the differences between the state and the federal rules. This would be a case of undesired dual jurisdiction.

Principal Documents Relied Upon

1. Memorandum June 21, 1985, George Abel of Region X EPA to Oregon Operations Office, transmitted to John Kowalczyk, DEQ, "Implementation of Revised Stack Height Regulations."
2. Federal Register, Vol. 50, pages 27892 to 27907, July 8, 1985 "Stack Height Regulations," and Code of Federal Regulations, 40 CFR 51.
3. Letter July 11, 1985, Thomas Bispham of DEQ to Jim Herlihy of EPA, Oregon Operations Office, re: Stack Height Rules.
4. Letter October 4, 1985, Dennis Norton of PGE to Peter Bosserman of DEQ, compliance of PGE-Boardman with Stack Height Rule.
5. Letter December 24, 1985, DEQ to EPA (Region X) listing every stack in Oregon over 213 feet high and why it is in compliance with the new federal rule.
6. Letter January 7, 1986, EPA to DEQ with comments on proposed stack height rule.

FISCAL AND ECONOMIC IMPACT STATEMENT:

There is no effect on existing high stacks in Oregon, as they are in compliance with the revised federal stack height regulation. If the revised Oregon rule is adopted, new sources with tall stacks will be regulated only by the DEQ and not by the Federal EPA also.

LAND USE CONSISTENCY STATEMENT:

The proposed rule appears to affect land use and appears to be consistent with the Statewide Planning Goals.

With regard to Goal 6 (air, water, and land resources quality) the rules are designed to enhance and preserve air quality in the affected area and are considered consistent with the goal.

Goal 11 (public facilities and services) is deemed unaffected by the rule. The rule does not appear to conflict with other goals.

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201

Phone: 503/222-1963

March 18, 1986

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Department of Environmental Quality
522 SW Fifth
Portland, OR

RE: Comments on Amendments to the SIP Regarding Stack Heights and Dispersion Techniques, Deleting Rules OAR 340-20-340 and 340-20-345, Adding Replacement Rule 340-20-037

The Oregon Environmental Council(OEC) offers the following comments on the above-referenced rule changes:

1. The EQC should adopt by reference Title 40 CFR 51.1(ff) through (kk) (with the exception of section 51.1(hh)(2)(v)) and 51.12(1) and (k), and 51.18(1) as amended on July 8, 1985. We believe these changes will bring Oregon's air quality regulations into compliance with the federal programs and go beyond the federal rules in one instance. The effect of these changes would be to:

- (a) Delete the less stringent OAR 340-20-345 and OAR 340-20-340; and
- (b) Prohibit any exemptions for stacks emitting less than 5000 tons/year of sulfur oxides.

The federal rule allows for such exemptions. OEC believes 5000 tons is a significant amount and Oregon should not allow it.

2. The rule allows excessively tall stacks to be built and used, but forbids their being used to model pollution impacts on ambient air quality. Oregon ought to take the more logical approach and prohibit excessively tall stacks both in modelling and in construction. We believe reliance on excessively tall stacks leads to evasion of sound pollution control in exchange for the use of "dilution of pollution as the solution". This practice should

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
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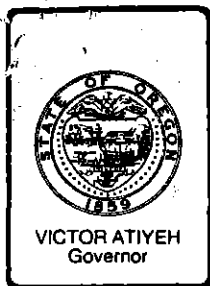
DEQ
Page Two

be discouraged in Oregon.

Thank you for your consideration of these comments.

A handwritten signature in cursive script, appearing to read "John A. Charles".

John A. Charles
222-1963



Department of Environmental Quality

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

December 24, 1985

- E.P.A. Region X
Attn: David Bray, N/S 532
1200 Sixth Avenue
Seattle, WA 98101

Re: Stack Height Rule

Dear Dave:

In response to our State-EPA Agreement, we are enclosing a second draft of our rule-making action concerning Stack Heights for the January 31, 1986 EQC meeting. Please review it. We need your comments, especially on the proposed rule language, by January 10, 1986. We would prefer to present the Environmental Quality Commission with a rule that is EPA approvable, rather than have your comments later, then have to revise the rule again.

To give the status of existing Oregon sources vis-a-vis the July 8, 1985 amendments to the federal stack height rule, see the following table. This table shows all Oregon sources with stack heights over the federal exemption point of 65 meters (213 feet).


Stacks OVER 65 Meters in Oregon

Emission Inventory Number	Company Name, Source, Place	Stack Height, Feet	SO _x Permitted Tons/Yr	Complies With H + 1.5L 1985 Rule?
25-0016	PGE-Boardman Coal-Fired Utility Boiler	656	30,700	Yes, and meets 2.5H rule applicable
03-1840	Ash Grove Cement, Kilns 2 & 3, Lake Oswego	250	Less than 5,000	Built before 1970
05-1849	Boise Cascade, Power Boiler, St. Helens	280	Less than 5,000	Built before 1970
06-0049	Weyerhaeuser, Hogged Fuel Boilers, N. Bend	250	Less than 5,000	Built before 1970
13-0001	Snow Mtn. Pine, Hogged Fuel Boiler, Hines	250	Less than 5,000	Built before 1970
18-0013	Weyerhaeuser, Hogged Fuel Boilers, Klamath Falls	270	Less than 5,000	Built before 1970

Emission Inventory Number	Company Name, Source, Place	Stack Height, Feet	SO _x Permitted Tons/Yr	Complies With H + 1.5L 1985 Rule?
20-8850	Weyerhaeuser, Oil & Hogged Fuel Boilers,	245	Less than 5,000	Built before 1970
	Pulp Mill,	245	Less than 5,000	Built before 1970
	Pulp Mill, Springfield	225	Less than 5,000	Built before 1970
21-0005	Georgia Pacific, Pulp Mill, Toledo	300	Less than 5,000	Built before 1970
22-3501	Pope & Talbot, Pulp Mill, Halsey	300	Less than 5,000	Built before 1970
23-0002	Amalgamated Sugar, Coal Boiler, Nyssa	250	Less than 5,000	Built before 1970

Note that the tallest stack conforms to both the new H+1.5L and the older, applicable 2.5H requirements of the rule and that the other stacks are not affected because they were built too long ago. None of Oregon's tall stack sources use derating to achieve standards. Derating means lower production at the source to lessen air pollution emitted.

Sincerely,



Peter B. Bosserman
Senior Environmental Engineer
Air Quality Division

FBB:a
AA5090

Enclosure: Stack Height Agenda Item for
January 31, 1985 EQC Meeting

bcc: J. Herblich, 000 ETA

(air quality notes)

Source may want to be more
consideration to ground
against downwash &
rather than initial more
expensive hardware they
should have option of using
either less expensive tech

EQC Agenda Item No. J
April 25, 1986
Page 3

7.

The second testimony is Oregon Environmental Council's letter, Attachment 5. OEC does not want either excessively tall stacks or dispersion techniques to be used to evade sound pollution control. OEC's requested rule modifications would make Oregon's stack height rule more restrictive than the federal requirement in two ways. First, OEC recommends prohibiting the use of tall stack heights even though a source has complied with modeling and emission control requirements. Secondly, OEC recommends prohibiting use of dispersion techniques (such as injecting heat into stacks) for smaller sources (less than 5,000 tons per year of SO₂), even though the source has complied with emission control requirements.

The Department disagrees with OEC's recommendations. Sources are subject to sound pollution control requirement including Best Available Control Technology (EPA regulation) and Highest Best Practicable Treatment and Control (state requirement). Despite meeting control requirements, OEC's changes would prohibit sources from using two techniques that would further reduce ground level concentrations of air pollutants. In order to meet OEC requirements and still also meet other air quality restrictions, some sources might need to apply additional control measures or limit their production capability. Since all sources must now meet highest and best practicable treatment, additional control costs (for instance, to reach lowest achievable emission rates) would likely be great, as would the economic impact of production restrictions. Based on studies conducted in the state, there is no identified acid rain problem in Oregon and problems are not likely to occur from stacks that would be affected by the OEC proposal. Thus, it does not seem cost-effective to support OEC's position, which is, in essence, to prohibit use of dispersion techniques which are acceptable in other parts of the country and which can be beneficial to reducing ground level concentrations of air pollutants, to below what is required by ambient air standards and other source control rules.

Evaluation and Alternatives

A first alternative would be to amend the Oregon rule wherever it was less stringent and less detailed than the federal rule. This action would result in a rule unique to Oregon. As this is an infrequently used rule in Oregon and considering that such a rule would not be consistent with the EPA rule, it could be quite confusing for those who will have to eventually interpret these rules.

A second alternative would be no action. In that case, EPA would have to retract delegation of review of new sources where stacks over 65 meters high were involved. This would result in dual jurisdiction, with applicants going through two simultaneous reviews. Applicants would need two construction permits. Oregon has sought to avoid such dual jurisdiction.

A third alternative is to adopt EPA's new rule word-for-word and delete Oregon's existing stack height rule. This alternative naturally would have EPA's approval, would avoid the difficulties and confusion of the first-mentioned alternative, and would avoid the dual review of the second-mentioned alternative. However, it burdens the Oregon Administrative Rules with many inapplicable details which apply only to many plants outside Oregon.

A fourth alternative is to adopt the federal rule by reference, deleting the present Oregon stack height and dispersion technique rule. This is a minimal effort alternative and keeps many inapplicable details out of the Oregon rules.

A fifth alternative would be the OEC proposal, which would be to adopt the new federal rule, but make it more stringent in two places.

The adopt-by-reference alternative is recommended because of the rule's minimal use, the likelihood of EPA revision, and the brevity of this solution.

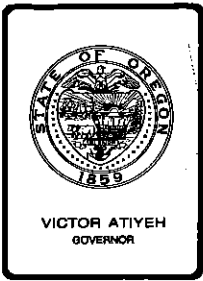
Rule Description

The July 8, 1985 EPA rule and the existing Oregon stack height rules are Attachments 1 and 2. The adopt-by-reference rule is shown in Attachment 3.

The amendments to the stack height rule, made by EPA on July 8, 1985, do not currently affect any existing tall stacks in Oregon. (See the list of Oregon's tallest stacks, Attachment 6.) The amendments generally apply to new stacks, modifications to plants with existing tall stacks, and to one existing plant built after 1970 with a stack greater than 65 meters high. This one existing plant is PGE's Boardman 550 megawatt coal-fired steam-electric plant. Its 656 foot stack complies with the federal rule. These amendments may cause a reduction of about 1,700,000 ton of SO_x per year from power plants and smelters outside of Oregon. Therefore, considerable interest in this rule exists in parts of the United States where most electricity is generated from coal-fired utility boilers, especially in the Ohio Valley. The proposed rule change would cause two needed changes in Oregon's rules and in its State Implementation Plan. First, it would add a needed exemption for episodic restrictions on residential woodburning; and second, it would protect Oregon from excessively tall stack emissions from new plants. The proposed rule change would avert a dual jurisdiction problem caused by Oregon not keeping its own stack height rule up-to-date with EPA's rule.

Summation

1. EPA and DEQ stack height and dispersion technique rules forbid excessive stack heights or dispersion techniques in computing compliance with ambient air standards. Stack height rules do not prevent firms from building and using excessively tall stacks.
2. A recent court suit has caused EPA to revise its stack height and dispersion technique rule and EPA requires revisions to State rules in 1986.
3. The Department, in conjunction with EPA, has determined that Oregon's stack height rule is less stringent than EPA's new rule in some respects.
4. The Department prefers to adopt EPA's amended federal rule by reference into Oregon Administrative Rules, deleting the Oregon's present stack height rule as the most expedient and simplistic approach.



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 K , April 25, 1986, EQC Meeting

Proposed Adoption of the Consolidated and Updated State of Oregon Clean Air Act Implementation Plan, OAR 340-20-047

BACKGROUND

The Clean Air Act of 1970 required states to submit plans to the EPA which provide for "implementation, maintenance, and enforcement" of national ambient air quality standards. In January of 1972 the Environmental Quality Commission adopted the Oregon State Implementation Plan (SIP). Since that time the Department of Environmental Quality has been responsible for developing revisions and additions to the SIP as needed. Numerous revisions have occurred during the past 14 years.

These revisions have led to the development of a number of problems with the SIP. The Department has been aware of these developing problems for several years but has been unable to tend to them due to staff workloads and priorities. The EPA has also noticed some of these problems and has expressed interest in a consolidation of Oregon SIP documents.

The SIP contains statutes, rules, strategies and programs which demonstrate the State's ability to attain and/or maintain compliance with national ambient air quality standards in all areas of the state. Included are control strategies for all areas exceeding standards, plans for visibility impact analysis during New Source Review to protect visibility in Class I areas and plans for prevention of significant deterioration (PSD) of air quality in those areas of the state which are already in compliance with national standards. The SIP is intended to contain only those rules and statutes which are necessary to meet federal requirements. Once approved by EPA the SIP is enforceable as federal law.

Problem Statement

Since its adoption in 1972 the SIP has been amended numerous times in response to: amendments to the Clean Air Act, additions and revisions to EPA regulations, and changes in technology and local conditions. As a result of these revisions a number of problems have developed.

First, the SIP has become fragmented. At present it consists of the original document adopted in 1972, major revisions adopted in 1979, and nonattainment area control strategies, numerous rule revisions, permits and other amendments adopted since 1979. This fragmentation has resulted in a SIP which is cumbersome and difficult to use, both by the agency and by the public. It is difficult to ascertain what portions of Oregon's environmental rules, regulations and programs are included in the EPA approved, federally enforceable Clean Air Act State Implementation Plan (SIP).

Another problem is that some portions of the original 1972 SIP have become obsolete due to changes in Oregon statutes, rules and procedures. In particular, discussions on legal authority, intergovernmental cooperation and public involvement need to be updated.

In addition, some amendments to state regulations which were submitted to EPA as SIP revisions were never acted on by EPA because in their opinion there was inadequate public notice prior to adoption of the amendment. The result of the lack of approval by EPA of these submittals is that the regulations in the SIP are not entirely consistent with those the State is currently enforcing.

Several other rules and statutes need to be removed from the EPA approved SIP. This is due to obsolescence, replacement or irrelevance. Several rules currently included in the SIP are not required for attaining or maintaining national ambient air quality standards and so are not mandatory in the EPA approved SIP. Their removal would give the Department greater flexibility in developing, revising and enforcing Oregon's air quality program by allowing the amending of such rules without EPA approval and oversight.

Finally, some existing State rules need to be submitted for incorporation into the SIP in order to satisfy EPA requirements.

The development of these problems was a gradual process occurring over several years. Each individual problem is relatively minor; however, they add up to a serious need for consolidation and housecleaning of the SIP.

In summary, major revisions to the SIP are needed to consolidate and update the documents. These can be categorized as follows:

1. Deletions and updates of parts of the original 1972 SIP;
2. Deletions and updates of certain SIP amendments made since 1972;
3. Addition of certain existing State rules to the SIP;
4. Addition of certain existing LRAPA rules to the SIP;
5. Readoption of certain State rules as SIP revisions (to satisfy inadequate public notice);
6. Withdrawal of certain State rules submitted as SIP revisions.

Attachment 1 contains a specific list of needed changes in the SIP tabulated in the above categories.

Authority to Act

Oregon Revised Statute 468.305 authorizes the Commission to adopt a plan for the "control or abatement of existing air pollution and for the control or prevention of new air pollution in any area of the state."

ALTERNATIVES AND EVALUATION

The Department is proposing to revise the format and organization of the State Implementation Plan (SIP) by consolidating all SIP documents and regulations along with all State rules, regulations and other documents that relate to Oregon's Air Quality Control Program. All such documents would then be included in one comprehensive set of four volumes. The consolidation of the SIP would be accomplished by repealing the entire "State of Oregon Clean Air Act, Implementation Plan" (OAR 340-20-047) and replacing it with Volumes 2 and 3 of the State of Oregon Air Quality Control Program.

The volumes of the State of Oregon Air Quality Control Program would be: 1. State Implementation Plan Summary (a public information document); 2. The Federal Clean Air Act State Implementation Plan (and other State Rules); 3. State Implementation Plan Appendices (a part of the federally enforceable SIP); 4. State Implementation Plan Reference Material.

Volume 1 would summarize the EPA approved SIP but would not itself be part of the SIP. Volume 2 would constitute the text of the revised OAR 340-20-047, State of Oregon Clean Air Act, Implementation Plan (except for specified State regulations which would not be part of the SIP). Volume 3 would contain the appendices to the SIP. It would include such documents as smoke management plans and legal definitions of nonattainment area boundaries. These documents would have EPA approval and would be part of the federally enforceable SIP but would not be part of the text of OAR 340-20-047. Volume 4 would contain additional reference material which was used in developing the control strategies contained in Volume 2; it would not be part of the EPA approved SIP.

The advantage to such organization is that the public, as well as agency staff, will be able to quickly find, in a single location, all rules, regulations, program descriptions, etc., which relate to air quality control in Oregon. Those state statutes and rules which are not included in the EPA approved SIP will be clearly identified so that individuals can quickly determine which regulations are federally enforceable. Other programs and plans (e.g., smoke management plans) which have received EPA approval and are part of the SIP will also be identified. A second advantage to this organization is that it will have a looseleaf format that will allow for easy and continuous updating so that a current copy can always be available.

It is also proposed that several "housecleaning" functions be performed on the SIP with the same EQC action. All actions which would occur under this proposal were listed in the Request for Authorization to Conduct a Public Hearing which was presented to the Commission at the January 31, 1986 EQC meeting. That list is included here as Attachment 1.

Summary of Public Hearing Testimony

A public hearing was held March 19, 1986 to gather public comment on the proposed consolidation, updating and housekeeping actions on the SIP. The notice of public hearing is included in Attachment 2. The public testimony is summarized in the hearing officer report (Attachment 3).

Six persons submitted oral and/or written testimony on the proposed actions. The testimony focused on two issues: the adequacy of the Conflict of Interest rules being considered for incorporation into the SIP (required by Section 128 of The Clean Air Act), and opposition to the removal from the SIP of rules relating to Indirect Sources. With regard to all other actions proposed testimony was either supportive or neutral. The issues raised in the testimony are evaluated in the following discussions.

Adequacy of Conflict of Interest Rules

Four groups expressed the opinion that the current Conflict of Interest Rules (OAR 340-20-200 through 215) adequately insure that the Environmental Quality Commission represent the public interest. However, they believe that similar rules must be applied to the State Board of Forestry in order to comply with Section 128 of the Clean Air Act (CAA). This section requires that a majority of members of any board or body approving permits or enforcement orders under the CAA represent the public interest. These groups maintain that the Board of Forestry issues prescribed burning permits and therefore should be covered under Section 128. One individual, representing the Department of Forestry, stated that the permitting authority lies with the State Forester and not with the Board of Forestry. Therefore the composition of the board is not relevant to the CAA.

For the purpose of maintaining air quality, smoke from prescribed burning in Oregon is managed through the Smoke Management Plan. This plan is administered by the Department of Forestry which issues prescribed burning permits through the Plan. However, the Plan is developed jointly and co-equally by the Department of Forestry and the Department of Environmental Quality and requires the approval of DEQ. The plan is filed with the Secretary of State and is included in the State Implementation Plan. The DEQ has the responsibility of insuring that the Smoke Management Plan meets the requirements of the Clean Air Act.

In a letter to John A. Charles of the Oregon Environmental Council dated November 20, 1985, George Abel of EPA Region X indicated that the permits issued by the Department of Forestry are not the type of permit envisioned by Section 128 (Attachment 4). The letter further stated that Section 128 does not apply to every board or body which simply carries out provisions of the SIP. Because the Smoke Management Plan is included in the SIP and must be approved by the DEQ and since both the EQC and the DEQ meet the requirements of Section 128, EPA believes, and the Department concurs, that the current Conflict of Interest Rules are adequate and no additional rules are required.

Concerns about Removal of Indirect Source Rules

The League of Women Voters expressed concern that the removal of the indirect source rules would indicate that these rules have a low priority and may be scrapped. They also are concerned that the removal of the rules would put DEQ in a weaker position and possibly jeopardize the City of Portland's parking lid.

The Department has no intention of scrapping the indirect source regulations. They will remain as State rules. Control of specific localized air pollution problems, such as the Portland carbon monoxide problem, are more easily and efficiently addressed through specific control strategies. The

Control Strategy for the Portland-Vancouver Interstate Air Quality Maintenance Area (AQMA) (Oregon Portion) State Implementation Plan for Carbon Monoxide requires management of downtown parking and establishes a maximum inventory of parking spaces (parking lid). In addition, the control strategy contains measures to improve downtown circulation and other measures to enhance the air quality in the downtown area. This control strategy, as well as control strategies for all other nonattainment areas in the State, are required in the SIP and once approved are federally enforceable and cannot be revised without the approval of both the EQC and the EPA. Removal of the indirect source rules does not weaken the Department's position, nor does it jeopardize the City of Portland's parking lid. Including the direct source rules in the SIP, in addition to the control strategies for nonattainment areas, provides no additional control over indirect sources or leverage over local government in those areas.

Section 110 of the Clean Air Act specifically states that indirect source rules are not required in a SIP. They are, however, acceptable if a state wishes to include them. The original 1972 Oregon SIP submittal contained indirect source rules. In 1974 these rules were repealed and replaced on the State level and in 1976 there were additional revisions. These changes were not submitted to EPA for approval. In 1978 further revisions were made and were submitted to EPA but were never acted on by EPA. Subsequent to that time the Governor provided policy direction indicating that State programs should not be unnecessarily tied to federal programs. Consequently, revisions made in 1984 were not submitted to EPA and are not included in the SIP. The current indirect source rules enforced by the State are not consistent with those in the SIP because EPA has acted only on the 1972 submittal and not on subsequent amendments.

Removal of all indirect source rules (OAR 340-20-050 to 135) from the SIP will eliminate confusion over which rules are in the SIP and which are not. This action would also save considerable staff time and paperwork associated with future revisions of these rules. If it ever becomes necessary to use the indirect source rules as a nonattainment area control strategy, the Department could incorporate the current rules into the SIP at that time.

Additional comments concerning this proposal were solicited from EPA, Region X staff. These verbal comments indicated that the current proposed consolidated and updated Oregon State Implementation Plan meets all of the requirements of the Clean Air Act and would therefore be approved by EPA if submitted.

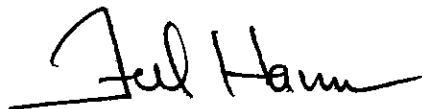
The Commission has three alternatives in this matter. 1) The Commission could approve the consolidated and updated Oregon SIP as proposed. 2) The Commission could choose to take no action or disapprove the proposal. If this alternative is chosen, the Oregon SIP will remain cumbersome, difficult to use and inconsistencies between State and EPA recognized SIP regulations would remain. 3) The Commission could approve the SIP with modifications including reinsertion of Indirect Source Rules and/or removal of Conflict of Interest Rules (delay action on conflict of interest to a later date). Removal of Conflict of Interest Rules would result in submittal to EPA of a SIP which is incomplete.

Summation

1. The State Clean Air Act Implementation Plan (SIP), originally adopted in 1972, has been revised numerous times, resulting in a document which is fragmented, cumbersome, and difficult to use and understand. These problems have developed over a long period of time and have not been dealt with because of lack of staff time and higher priority of other projects.
2. Parts of the SIP have become obsolete and portions are irrelevant to air quality control. There are several inconsistencies between EPA-recognized SIP regulations and regulations the State is currently enforcing. As a result, it has become difficult to determine the exact contents of the Oregon SIP.
3. The Department is proposing to repeal the existing SIP and replace it with an updated State Implementation Plan. In the proposed organization all state regulations and other documents that relate to air quality control in Oregon would be contained in one comprehensive set of volumes. Those regulations and programs which are included in the EPA approved SIP would be identified. No regulations would be created, repealed, or relaxed by this action.
4. A public hearing was authorized by the Commission at the January 31, 1986 EQC meeting. The hearing was held, after appropriate public notice, on March 19, 1986. Written testimony was received from six sources. Testimony was supportive or neutral on all proposed actions except the following. There was concern that: 1) the Conflict of Interest Rules proposed for inclusion in the SIP may not meet the requirements of Section 128 of the Clean Air Act because they do not cover the State Board of Forestry; 2) removal of Indirect Source Rules from the SIP would weaken the ability of the DEQ to maintain the City of Portland parking lid.
5. After considering the public testimony received the Department has made no revisions to the original proposal because:
 - a) The EPA is satisfied that the current Conflict of Interest rules fully meet CAA Section 128 requirements. The Smoke Management Plan, which regulates prescribed burning, is jointly developed by the Department of Forestry and DEQ and requires DEQ approval. The DEQ has ultimate responsibility for insuring that the Smoke Management Plan meets Clean Air Act requirements.
 - b) Indirect source rules are not required in the SIP. In problem areas control over indirect sources is provided in the control strategies for nonattainment areas and these control strategies are included in the SIP. The Portland CO control strategy includes the City of Portland parking lid.
6. The proposed consolidated and updated Oregon State Implementation Plan appears to meet or exceed all of the requirements of the Clean Air Act and is EPA approvable.

Recommendation

Based on the Summation, the Director recommends that the Commission repeal the existing Oregon State Implementation Plan, OAR 340-20-047, and replace it with an updated, consolidated SIP consisting of Volumes 2 and 3 of the State Air Quality Control Program.



Fred Hansen

Attachments:

1. Consolidated SIP Actions
2. Public Notice, Including Rulemaking Statements
3. Hearing Officer's Report
4. EPA Letter of November 20, 1985
5. State of Oregon Clean Air Act Implementation Plan (OAR 340-20-047)

M. Wolgamott:s
229-5713
April 8, 1986

AS2649

CONSOLIDATED SIP ACTIONS

I Oregon State Implementation Plan as Submitted 1/25/72

<u>Item</u>	<u>Proposed Action</u>
(40 CFR 52.1970(b))	
Introduction	Replace with updated section
1. Legal Authority	Replace with updated section
Appendix 1-A Attorney General's Opinion on Legal Authority	Replace with an updated Attorney General's Opinion on Legal Authority
Appendix 1-B Oregon Revised Statutes, Chapter 449 Water and Air Pollution Control	Replace with ORS Chapter 468, Pollution Control
Appendix 1-C Chapters of Oregon Laws 1971 Relating to Air Pollution Control	Replace with ORS Chapter 468, Pollution Control
Appendix 1-D EPA Letter Regarding Legal Authority	Replace with ORS Chapter 468, Pollution Control
Appendix 1-E Oregon Revised Statutes, Chapter 192, Public Information Act	Replace with ORS Chapter 468, Pollution Control
2. Emission Limitations and Other Measures	
Appendix 2-A New Environmental Quality Commission Rules Adopted with the Implementation Plan:	

AIR POLLUTION CONTROL

**DIVISION 20
 GENERAL**

340-20-003	Exceptions (Amendments to)	Retain in SIP
Notice of Construction and Approval of Plans		
340-20-025	Scope (Amendments to)	Retain in SIP
340-20-050	Parking Facilities & Highways to (Amendments to)	Repeal, amended by indirect source regulations which were never incorporated into the SIP
340-20-070		
340-20-032	Compliance Schedules (Addition to)	Retain in SIP

CONSOLIDATED SIP ACTIONS

<u>Item</u>		<u>Proposed Action</u>
DIVISION 21		
340-21-035 to 340-21-045 340-21-030	Particulate Emissions from Process Equipment (Amendment to) Particulate Emission Limitations for Sources Other Than Fuel Burning and Refuse Burning Equipment (Addition to)	Retain in SIP Retain in SIP
340-21-050 to 340-21-060 340-21-065 to 340-21-075	Fugitive Emissions (Addition to) Upset Conditions (Addition to)	Retain in SIP Retain in SIP
DIVISION 22		
340-22-005 to 340-22-025 340-22-050 to 340-22-055	Sulfur Content of Fuels (Addition to) General Emission Standards for Sulfur Dioxide (Addition to)	Retain in SIP Retain in SIP
DIVISION 23		
340-23-005 to 340-23-120	Open Burning (Addition to)	Retain in SIP as revised, see 6/5/84 submittal
DIVISION 25		
340-25-005 to 340-25-025 340-25-315	Construction and Operation of Wigwam Waste Burners (Amendments to) Establishing Emission Standards for Veneer Dryers (Amendments' to)	Retain in SIP Retain in SIP as revised 5/1/73, 2/25/75, 4/11/77, and 4/20/79
340-25-405 to 340-25-430	Laterite Ore Production of Ferronickel (Addition to)	Retain in SIP
DIVISION 27		
340-27-005 to 340-27-030	Air Pollution Emergencies	Retain in SIP as revised, see 10/26/83 submittal
DIVISION 31		
340-31-005 to 340-31-025	Ambient Air Quality Standards (Amendments to)	Retain in SIP

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
340-31-030 Photochemical Oxidants	Retain in SIP as revised, see #50*
340-31-035 Hydrocarbons	Retain in SIP
340-31-040 Nitrogen Dioxide	Retain in SIP
340-31-045 Particle Fallout	Delete from SIP, not required, retain as State Rule
340-31-050 Calcium Oxide (Lime Dust)	Delete from SIP, not required, retain as State Rule

DIVISION 20

340-20-001 Highest and Best Practicable Treatment and Control Required (Addition to)	Retain in SIP
340-20-140 Air Contaminant Discharge Permits to	Retain in SIP as revised, see #51* and #64*
340-20-185	

Appendix 2-B Environmental Quality Commission Rules Existing Prior to Adoption of State Implementation Plan:

DIVISION 12

340-12-005 Civil Penalties Schedule and to	Repeal, rules were replaced in 1974 but never removed from SIP, see #17* and #43*
340-12-025 Air & Water Pollution and Solid Waste Management	

DIVISION 20

340-20-003 Exceptions	Retain in SIP
340-20-005 Registration to	Retain in SIP
340-20-015	
340-20-020 Notice of Construction and to	Retain in SIP
Approval of Plans	
340-20-030	
340-20-035 Sampling, Testing and to	Retain in SIP
Measurement of Air Contaminant Emissions	
340-20-045	

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

<u>Item</u>		<u>Proposed Action</u>
DIVISION 21		
340-21-005 to 340-21-015	General Emission Standards for Particulate Matter	Retain in SIP
340-21-020	Fuel Burning Equipment Limitations	Retain in SIP as revised, see #58*
340-21-025	Refuse Burning Equipment Limitations	Retain in SIP as revised, see #69*
DIVISION 23		
340-23-005 to 340-23-016	Open Burning	Retain in SIP as revised, see 6/5/84 submittal
DIVISION 24		
340-24-005 to 340-24-040	Motor Vehicles Visible Emission	Delete from SIP, not required in SIP, retain as State Rule
DIVISION 25		
340-25-005 to 340-25-025	Construction and Operation of Wigwam Waste Burners	Retain in SIP
340-25-055 to 340-25-080	Reduction of Animal Matter	Delete from SIP, not required in SIP, retain as State Rule
340-25-115	Other Established Air Quality Limitations	Retain in SIP as revised 3/1/73
340-25-105 to 340-25-125	Hot Mix Asphalt Plants	Retain in SIP as revised 3/1/73 and 5/5/83
340-25-150 to 340-25-200	Rules for Kraft Pulp Mills	Retain in SIP as revised 3/1/73 and 6/10/77
340-25-255 to 340-25-290	Primary Aluminum Plants	Retain in SIP as revised, see #57*
340-25-305 to 340-25-325	Board Products Industries	Retain in SIP as revised 8/15/77 and 5/10/79

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

	<u>Item</u>	<u>Proposed Action</u>
340-25-350	Sulfite Pulp Mills	Retain in SIP as revised, see #42*
to		
340-25-390		
340-26-005	Field Burning	Retain in SIP as revised, see #41* and 3/14/84 submittal
to		
340-26-025		
340-20-100	Rules for Indirect Sources (revisions adopted 8/11/76 and 12/4/78)	Withdrawn from submission as SIP revision, not required in SIP, retain as State Rules
to		
340-20-135		
Appendix 2-C	Rules of the Columbia - Willamette Air Pollution Authority	Previously Repealed (see #16)*
Appendix 2-D	Rules of the Mid-Willamette Valley Air Pollution Authority	Previously Repealed (see #56*)
Appendix 2-E	Rules of the Lane Regional Air Pollution Authority	Retain in SIP as revised
Appendix 2-F	Forms Used by DEQ in Review of Plans for New Sources	Repeal, not required in SIP
3.	Adequacy of the Control Strategy	Replaced with Volume 2, Sections 4 and 5, Control Strategies, in New Plan
Appendix 3-A	Estimation of Sulfur Dioxide	Repeal, obsolete
Appendix 3-B	Suspended Particulate Background Values for Oregon Air Quality Control Regions	Repeal, obsolete
Appendix 3-C	Western Oregon Pollution Potential Data	Repeal, obsolete
4.	Air Quality Measurements and Emission Data	Repeal, obsolete
Appendix 4-A through Appendix 4-J		Repeal, obsolete

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
5. Air Quality Surveillance	Replace with Volume 2, Section 6, Ambient Air Quality Monitoring, in New Plan
6. Emergency Action Plan	Replace with updated Emergency Action Plan (Volume 2, Section 7)
Appendix 6-A Emergency Action Plan Regulation	Retain in SIP as revised, see #65*
Appendix 6-B Guidelines for Pre-Planned Strategies - Point Sources	Repeal, not necessary, included in Emergency Action Plan
Appendix 6-C Guidelines for Pre-Planned Strategies - Motor Vehicles and Airports	Repeal, not necessary, included in Emergency Action Plan
Appendix 6-D Technical Procedure: Monitoring Schedules and Declaration Criteria	Repeal, not necessary, included in Emergency Action Plan
7. Resources	Replace with updated version (Volume 2, Section 2.3)
8. Intergovernmental Cooperation	Replace with updated section (Volume 2, Section 2.4)
9. Revisions and Public Participation	Replace with updated section (Volume 2, Section 8 and 9)

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

II Revisions to the Oregon State Implementation Plan Since 1/25/72

<u>Item</u>	<u>Proposed Action</u>
(40 CFR 52.1970(c))	
1. * Amendments to the implementation plan including ORS Chapters 449, 192, and 340 submitted on May 3, 1972, by the Governor	
ORS Chapter 449 , Water and Air Pollution Control	Replaced by ORS Chapter 468, Pollution Control
ORS Chapter 192	Replaced by ORS Chapter 468, Pollution Control
OAR 340-11-005 to 340-11-045 Rules of Practice and Procedure	Delete from SIP, not required in SIP, retain as State Rules
OAR 340-13-005 to 340-13-035 Wilderness, Recreational and Scenic Area Rules	Delete from SIP, not required in SIP, retain as State Rules
OAR 340-24-005 to 340-24-040 Motor Vehicles Visible Emissions	Delete from SIP, not required in SIP, retain as State Rules
OAR 340-25-055 to 340-25-080 Reduction of Animal Matter	Delete from SIP, not required in SIP, retain as State Rules
OAR 340-25-255 to 340-25-290 Primary Aluminum Plants	Retain in SIP as revised, see #57*
OAR 340-25-305 to 340-25-325 Board Products Industries	Retain in SIP as revised
OAR 340-25-350 to 340-25-390 Sulfite Pulp Mills	Retain in SIP as revised, see #42*
2. Transportation control strategy for oxidants and carbon monoxide in the Oregon portion of the Portland Interstate Region submitted on October 26, 1972 by the Governor.	Repeal, replaced by #55*

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
3. Compliance schedules submitted on February 9, 1973, by the Department of Environmental Quality.	Repeal, obsolete
4. Revision to the transportation control plan submitted on April 13, 1973 by the Governor.	Repeal, replaced by #55*
5. Compliance schedules submitted on May 30, 1973, by the Department of Environmental Quality.	Repeal, obsolete
6. Compliance schedules submitted on June 8, 1973, by the Department of Environmental Quality.	Repeal, obsolete
7. Compliance schedules submitted on June 22, 1973, by the Department of Environmental Quality.	Repeal, obsolete
8. Compliance schedules submitted on June 25, 1973, by the Department of Environmental Quality.	Repeal, obsolete
9. Compliance schedules submitted on July 31, 1973, by the Department of Environmental Quality.	Repeal, obsolete
10. Compliance schedules submitted on August 3, 1973, by the Department of Environmental Quality.	Repeal, obsolete
11. Request for an extension to May 31, 1976, of the attainment date for carbon monoxides and photochemical oxidants and miscellaneous additions (Non-regulatory) to the transportation control plan submitted on September 21, 1973 by the Governor.	Repeal, obsolete
12. Miscellaneous additions (Non-regulatory) to the transportation control plan submitted on August 20, 1973, by the Department of Environmental Quality.	Repeal, replaced by #55*

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
13. Plan for maintenance of the national standards submitted on August 27, 1973, by the Department of Environmental Quality.	Retain in SIP
14. Revision to Oregon Administrative Rules (OAR) Chapter 340, sections 25-105 through 25-130, - Hot Mix Asphalt Plants and sections 25-155 through 25-195 Kraft Pulp Mills submitted on February 8, 1973, by the Department of Environmental Quality.	Retain in SIP as revised 6/10/77 and #63*
15. Change to regulations for the Lane Regional Air Pollution Authority submitted on February 13, 1973, by the Department of Environmental Quality.	Retain in SIP as revised
16. Special air pollution control rules for Clackamas, Columbia, Multnomah and Washington Counties and certification of the dissolution of regulations for the Columbia-Willamette Air Pollution Authority submitted on January 17, 1974, by the Department of Environmental Quality.	Delete from SIP, not required in SIP, retain as State Rules, as revised 4/15/75 and 10/20/76
17. Revision to Oregon Administrative Rules (OAR) Chapter 340, sections 12-030 through 12-055 Civil Penalties submitted on February 19, 1975, by the Department of Environmental Quality.	
OAR 340-12-005 to 340-12-025	Delete from SIP, repealed by EQC in 1974
OAR 340-12-030 to 340-12-050	Retain in SIP as revised, see #43*
OAR 340-12-055 Water Pollution Schedule of Civil Penalties	Repeal, not related to air quality
OAR 340-12-040	Retain in SIP as revised 7/5/79

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
18. Oregon Revised Statute 468.095 for public availability of emission data submitted on August 1, 1975 by the Department of Environmental Quality.	Retain in SIP
19. Indirect Source Regulation (OAR, Chapter 340-20-100 through 20-135) submitted on July 24, 1975 by the Department of Environmental Quality.	Delete from SIP, not required in SIP, retain as State Rules as revised 8/11/76 and 12/4/78
20. Indirect Source Regulation (Title 20-Indirect Sources), of the Lane Regional Air Pollution Authority Rules and Regulations, submitted November 18, 1975 by the Department of Environmental Quality.	Delete from SIP, not required in SIP, retain as LRAPA rules
21. Air Contaminant Discharge Permits (Oregon Administrative Rules 340-20-140 through 340-20-185) submitted February 17, 1976.	Retain in SIP as revised, see #51* and #64*
22. Lane Regional Air Pollution Authority Regulation, Title 22-Permits, submitted June 7, 1976.	Replace with new Titles 34 and 38 Submitted 8/5/85
23. Oregon Revised Statutes sections 468.450 through 468.485 submitted on August 1, 1975 by the Department of Environmental Quality.	Retain in SIP
24. Oregon Administrative Rules (OAR) Chapter 340, sections 26-005 through 26-025, submitted on February 17, 1976 by the Department of Environmental Quality.	Retain in SIP as revised, see #26*, #32*, #41*, #68* and #69*
25. Request for an extension to May 31, 1978 of the attainment date for particulate matter national secondary ambient air quality standards in the Eugene/Springfield Air Quality Maintenance Area.	Repeal, obsolete

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
26. Revision to the field burning regulations submitted on June 28, 1979; September 13, 1979; October 10, 1979; and March 11, 1980 by the Department of Environmental Quality.	Retain in SIP as revised, see #32*, #41*, #68* and #69*
27. On June 20 and 29, 1979, the Governor submitted: (i) Carbon monoxide (CO) and ozone (O ₃) attainment plans for the Oregon portion of the Portland-Vancouver AQMA, Salem, and Medford-Ashland AQMA, and (ii) a carbon monoxide (CO) attainment plan for the Eugene-Springfield AQMA.	
Portland CO Plan	Repeal, replaced by #55*
Portland O ₃ Plan	Repeal, replaced by #55*
Salem CO Plan	Retain in SIP
Salem O ₃ Plan	Repeal, replaced by #47*
Medford CO Plan	Repeal, replaced with revision on 10/20/82
Medford O ₃ Plan	Repeal, replaced by O ₃ Maintenance Plan Submitted 2/28/85
Eugene CO Plan	Retain in SIP
28. On June 20, 1979, the Governor requested an extension beyond 1982 for the attainment of carbon monoxide (CO) in Portland, Eugene-Springfield and Medford.	Retain in SIP
29. On June 29, 1979, the Governor requested an extension beyond 1982 for the attainment of ozone (O ₃) in Portland.	Retain in SIP

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
30. On February 14, 1980, the State Department of Environmental Quality submitted its official response to EPA's proposed SIP actions which were published in the Federal Register on January 21, 1980 (45 FR 3929).	Retain in SIP
31. On May 6, 1980, the State Department of Environmental Quality submitted recodified portions of Oregon Revised Statutes (ORS) 449 which authorize Oregon's automobile inspection/maintenance program. This submittal, requested by EPA, included chapters ORS 468.360 through 468.420, 481.190, 481.200, 483.800, 483.820, and 483.825.	Retain in SIP
32. Revisions to the program for controlling the open burning of grass seed fields submitted on April 22, 1980 by the Department of Environmental Quality.	Retain in SIP as revised, see #41*, #68* and #69*
33. Oregon Administrative Rules (OAR) Chapter 340, sections 24-300 through 24-350 for the vehicle inspection and maintenance program, submitted on July 26, 1980 by the Oregon Department of Environmental Quality.	Retain in SIP as revised, see #48*, #59*, #65*, and 5/6/85 submittal
34. On December 27, 1979, the State of Oregon Department of Environmental Quality submitted a plan revision to meet the requirements of Air Quality Monitoring 40 CFR Part 58, Subpart C 52.20.	Repeal (replaced by Air Quality Monitoring Program, Volume 2, Section 6 in New Plan)
35. On December 31, 1980, the State Department of Environmental Quality submitted an Oregon Air Contaminant Discharge Permit No. 36-6041 Addendum No. 1 issued to Spaulding Pulp and Paper Company on December 11, 1980; Oregon Air Contaminant Discharge Permit No. 26-3025, issued to	Retain in SIP

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
Industrial Laundry Dry Cleaners, Inc., in December 1980 and Oregon Environmental Quality Commission Stipulation and Consent Final Order concerning Vanply, Inc., dated December 30, 1980.	
36. On September 8, October 16, December 5, December 19, 1980, May 29, 1981 and September 9, 1981, DEQ submitted revisions to the SIP designed to satisfy the conditions of approval published by EPA on June 24, 1980 (45 FR 42265).	Retain in SIP
37. Specific air pollution control rules for the Medford AQMA (OAR 340-30-005 through 340-30-070) submitted by the Department of Environmental Quality on May 26, 1978 and revisions submitted by the Department of Environmental Quality on February 14, 1980 (OAR 340-30-010 and 340-30-020), October 29, 1980 (OAR 340-30-016, 340-30-035 and 340-30-045), May 22, 1981 (OAR 340-30-010, 340-30-030 and 340-30-045) and September 9, 1981 (OAR 340-30-060).	Retain in SIP
38. Revisions to the Lane Regional Air Pollution Authority rules submitted by the Department of Environmental Quality on March 14, 1977 (Title 22, Sections 010 and 020 and Table A), June 29, 1979 (Title 11, Section 015; Title 12, Sections 005 and 010; Title 13; Title 20, Sections 110, 115, 120, 125, 129 and 130; Title 21, Sections 010 and 030; Title 32, Sections 005 and 010; Title 33, Sections 005, 010, 015 and 065; Title 36; Title 42; Title 43; Title 44; and Title 45), November 6, 1979 (Title 22, Section 020 and Table A), and January 30, 1980 (Title 36).	Repeal Titles 21 and 22 and Title 11-015. Replace with new Titles 34, 38 and 14. Retain other Titles as revised. See #49*. 61*, 62*, and 8/5/83 submittal

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
39. Conditions 5 and 6 of the Air Contaminant Discharge Permit for the Weyerhaeuser Company plant in Bly, Oregon (Permit Number: 18-0037) submitted by the Department of Environmental Quality on March 24, 1981.	Repeal, permit expired, source no longer active
40. Conditions 4, 5, and 6 of the Air Contaminant Discharge Permit for Weyerhaeuser Company plant in North Bend, Oregon (Permit Number: 06-0007) submitted by the Department of Environmental Quality on March 27, 1981.	Previously repealed, see #58*
41. Revisions to the agricultural open field burning rules (OAR 340-26-005 through 340-26-030) submitted by the Department of Environmental Quality on April 23, 1981 and amended "Smoke Management Program Operational Guidelines" submitted by the Department of Environmental Quality on July 8, 1981.	Retain in SIP as revised, see #68 and #69*
42. Revisions to the rules for sulfite pulp mills (OAR 340-25-350 through 340-25-390) submitted by the Department of Environmental Quality on June 2, 1980.	Retain in SI
43. Revisions to the Air Quality Schedule of Civil Penalties (OAR 340-12-050) submitted by the Department of Environmental Quality on February 14, 1980.	Retain in SIP as revised, see #70*
44. Revision to the ambient air quality standard for ozone (OAR 340-31-030) submitted by the Department of Environmental Quality on June 20, 1979.	Retain in SIP as revised, see #50*
45. On March 24, 1981, the State Department of Environmental Quality submitted control strategies for the Portland secondary total suspended particulates nonattainment area.	Retain in SIP

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
46. On March 23, 1981, the State Department of Environmental Quality submitted control strategies for the Eugene-Springfield secondary total suspended particulates nonattainment area.	Retain in SIP
47. On October 16, 1980, the State Department of Environmental Quality submitted revisions to the control strategies for the Salem ozone nonattainment area.	Retain in SIP
48. On August 17, 1981, the State Department of Environmental Quality submitted amendments to the operating rules for the Portland motor vehicle inspection program (OAR 340-24-300 through 350).	Retain in SIP as revised, see #59* and #65*
49. On March 11, 1982, the State of Oregon Department of Environmental Quality submitted three revisions to the Lane Regional Air Pollution Authority rules. They are: (1) Title 11 Definitions (Section 015.013, Air Conveying Systems), (2) Title 22 Permits (Section 020. Fees), (3) Title 32 Emission Standards (Section 800, Air Conveying System).	Retain in SIP as revised, see #61*, #62* and 8/5/85 submittal
50. On March 11, 1982, the State of Oregon Department of Environmental Quality submitted a revision to their State ambient air quality standard for ozone (from 0.08 ppm to 0.12 ppm).	Retain in SIP
51. Amendments to the Air Contaminant Discharge Permit Rules submitted by the State Department of Environmental Quality on February 15, 1977 (OAR 340-20-140 through 185), July 24, 1979 (OAR 340-20-155 Table A, 165, 175 and 180) and May 22, 1981 (OAR 340-20-155 (Table A).	Retain in SIP as revised, see #64*

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
52. Prevention of Significant Deterioration Rules (OAR 340-31-100, 105 subsections (12), (15) and (16), 110, 115, 120 and 130) submitted by the State Department of Environmental Quality on June 20, 1979 and September 9, 1981.	Retain in SIP
53. New Source Review Rules (OAR 340-20-220 to 275, except Section 225 subsections 7 and 11), except to the extent that they apply to marine vessel emissions, submitted by the State Department of Environmental Quality on September 9, 1981 and deletion of Special Permit Requirements for Sources Locating In or Near Nonattainment Areas (OAR 340-20-190 through 195).	Retain in SIP as revised, see #63*
54. Plant Site Emission Limit Rules (OAR 340-20-300 through 320) submitted by the State Department of Environmental Quality on September 9, 1981 and deletion of the Plant Site Emission Limit Rules (OAR 340-20-196 and 197).	Retain in SIP
55. On July 20, 1982, the State of Oregon Department of Environmental Quality submitted: (i) Carbon monoxide (CO) and ozone (O ₃) attainment plans for Portland which build upon those plans submitted in June 1979 and (ii) a request to extend the Portland CO and O ₃ attainment dates to December 31, 1985 and December 31, 1987, respectively.	Retain in SIP
56. On August 9, 1982, the State of Oregon Department of Environmental Quality submitted a revision to remove the Mid-Willamette Valley Air Pollution Authority Regulations from the Oregon State Implementation Plan.	Retain in SIP

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
57. Amendments to the rules for primary aluminum plants submitted by the Oregon State Department of Environmental Quality on February 21, 1974 (OAR 340-25-255 to 290), February 14, 1980 (OAR 340-25-265(4)(b) and 265(5)) and August 9, 1982 (OAR 340-25-255 to 285).	Retain in SIP
58. Amendments to the rules for equipment burning salt laden wood waste from logs stored in salt water (OAR 340-21-020) and removal of Conditions 4, 5, and 6 of the Air Contaminant Discharge Permit for the Weyerhaeuser Company plant in North Bend, Oregon (Permit Number 06-0007) submitted by the Oregon State Department of Environmental Quality on October 18, 1982.	Retain in SIP
59. On August 16, 1982, the State of Oregon Department of Environmental Quality submitted a revision to OAR 340-24-300 to 24-350 (Vehicle Inspection Program Rules).	Retain in SIP as revised, see #65* and 5/6/85 submittal
60. On January 24, 1983, the State of Oregon Department of Environmental Quality submitted a revision to add a lead strategy to the Oregon Implementation Plan and revise the State lead ambient air quality standard to agree with the Federal standard.	Retain in SIP

* This number refers to 40 CFR 52.1970(c)

CONSOLIDATED SIP ACTIONS

- | <u>Item</u> | <u>Proposed Action</u> |
|--|--|
| 61. On December 13, 1982, the State of Oregon Department of Environmental Quality submitted two revisions to the Lane Regional Air Pollution Authority rules. The revisions are:
(1) Title 32, Emission Standards (Section 800, Air Conveying Systems) - revisions to compliance date and (2) Title 33, Prohibited Practices and Control of Special Classes (Section 070, Kraft Pulp Mills) - new rules. | Retain in SIP |
| 62. Title 22 "PERMITS" of the Lane Regional Air Pollution Authority Rules, except to the extent that they apply to marine vessel emissions and except the definitions of "dispersion technique" and "good engineering practice stack height", and Title 32 "EMISSION STANDARDS" Sections 32-100 through 32-104 of the Lane Regional Authority Rules, submitted by the State Department of Environmental Quality on March 2, 1983; clarifying letter dated June 20, 1984. | Repeal Title 22
Replace with Titles 34
and 38. Submitted 8/5/85
Retain title 32 |
| 63. On May 6, 1983, the Oregon Department of Environmental Quality submitted revisions to its rules as follows:

(A) Revisions to the "New Source Review" rule consisting of an amended section OAR 340-20-225, specifically, the deletion of the definitions of "Dispersion Technique" (OAR 340-20-225(7)) and "Good Engineering Practice Stack Height" (OAR 340-20-225(11)), the renumbering of OAR 340-20-225, the revision of the definition of "Non-attainment Area" (OAR 340-20-225(14)), and changes to numerous references to coincide with the new numbering; the deletion of subsection OAR 340-20-240(7) "Growth Increments" and the addition of a new section OAR 340-20-241 "Growth Increments;" and the addition of a new section OAR 340-20-245(2)(c) and OAR 340-20-245(4), and changes to numerous references to coincide with the new numbering of the definitions in OAR 340-20-225; and amendment to subsection OAR 340-20-260(2); a revised reference | Retain in SIP |

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
in OAR 340-20-265(6) to coincide the new numbering of a definition; and the deletion of section OAR 340-20-275 "Stack Heights". (B) the addition of a new "Stack Heights and Dispersion Techniques" rule (OAR 340-20-340 and 345); (C) revisions to the "Portable Hot Mix Asphalt Plants" rule (OAR 340-25-120; and (D) the deletion of OAR 340-22-108 "Applicability of Alternative Control Systems."	
64. Amendments to the fees in the "Air Contaminant Discharge Permit" rule (OAR 340-20-155 Table 1 and OAR 340-20-165) submitted by the Oregon Department of Environmental Quality on June 3, 1983.	Retain in SIP
65. On October 26, 1983 and December 14, 1983, the State of Oregon Department of Environmental Quality submitted four separate revisions to their plan. On October 26, 1983, the State submitted a revised air pollution emergency episode plan (OAR 340-27-005 through 340-27-030, effective October 7, 1983), revisions to gasoline marketing rules for the Medford-Ashland ozone nonattainment area (OAR 340-22-110(1)(a), effective October 7, 1983), and a revised ozone ambient air quality standard for the Lane Regional Air Pollution Authority (Section 31-035 Ozone, effective July 12, 1983). On December 14, 1983, the State submitted revisions to the automobile inspection and maintenance program for Portland (OAR 340-24-306 through 340-24-350, effective November 18, 1983).	Retain in SIP
66. [RESERVED]	
67. On April 25, 1983, the State Department of Environmental Quality submitted Section 4.10, "Medford-Ashland Air Quality Maintenance Area State Implementation Plan for Particulate Matter".	Retain in SIP

CONSOLIDATED SIP ACTIONS

- | <u>Item</u> | <u>Proposed Action</u> |
|--|------------------------|
| <p>68. Amendments to the Refuse Burning Equipment Limitations rules, specifically OAR 340-21-005(1) and (4), OAR 340-21-025(2)(b), and OAR 340-21-027, submitted by the State Department of Environmental Quality on January 16, 1984; amendments to the Open Field Burning rules, specifically, the addition of new sections 340-26-001, 340-26-003, 340-26-031, 340-26-035, 340-26-040, and 340-26-045, revisions to sections 340-26-005, 340-26-013, 340-26-015, 340-26-025, and 340-26-030, the deletion of the existing section 340-26-010 and replacing it with a new section 340-26-010, the deletion of the existing section 340-26-012 and replacing it with a new section 340-26-012, and the deletion of sections 340-26-011 and 340-26-020, submitted by the State Department of Environmental Quality on March 14, 1984; and amendments to the Open Field Burning Rules (OAR 340-23-022 through 115), submitted by the State Department of Environmental Quality on June 5, 1984.</p> | Retain in SIP |
| <p>69. Amendments to the Refuse Burning Equipment Limitations rules, specifically OAR 340-21-005(1) and (4), OAR 340-21-025(2)(b), and OAR 340-21-027, were submitted by the State Department of Environmental Quality on January 16, 1984; and amendments to the Open Field Burning rules, specifically, the addition of new sections 340-26-001, 340-26-003, 340-26-031, 340-26-035, 340-26-040 and 340-26-045, revisions to sections 340-26-005, 340-26-013, 340-26-015, 340-26-010, and replacing it with a new section 340-26-010, the deletion of the existing section 340-26-011 and 340-26-020, were submitted by the State Department of Environmental Quality on March 14, 1984.</p> | Retain in SIP |

CONSOLIDATED SIP ACTIONS

<u>Item</u>	<u>Proposed Action</u>
70. On December 10, 1984, the Oregon Department of Environmental Quality submitted revisions to its Civil Penalty Rules (OAR 340-12) which deleted Sections 005 through 025 and 052 through 068; amended Sections 030, 040 and 050; and added Sections 070 and 075. Sections 035 and 045 were retained.	Retain in SIP
71. Revisions to the Oregon State Implementation Plan were submitted by the Director on July 26, 1984 and August 7, 1984. Revisions are woodstove certification program rules (OAR 340-21-100 to 340-21-190), Oregon Revised Statutes 468.630 to 468.655 and amendment to field burning introduction (OAR 340-26-001) and repeal the field burning rules relating to tax credits (OAR 340-26-030). (i) Incorporation by Reference: (A) Woodstove certification program rules (OAR 340-21-100 to 340-21-190) as published in the Oregon Administrative Rules, November 1984. (B) The Oregon Revised Statutes 468.630 to 468.655 as signed by the Governor on July 5, 1984. (C) Amendment to the field burning rule introduction (OAR 340-60-001) as adopted by the Oregon Environmental Commission on June 29, 1984.	Retain in SIP

III Proposed Additions of Existing State Rules/Statutes to the Oregon State Implementation Plan

- OAR 340-14-005 Procedures for Issuance, Denial, Modification, and
to Revocation of Permits
340-14-050 (adopted 4/15/72)
- OAR 340-20-046 Records; Maintaining and Reporting
 (adopted 9/20/72)
- OAR 340-20-047 Grants Pass Carbon Monoxide Nonattainment Area Designation
 (adopted 11/02/84)
- OAR 340-20-047 Medford Ozone Redesignation and SIP Revisions
 (adopted 01/25/85)
- OAR 340-20-220 Visibility Protection Plan for Class I Areas
to (adopted 09/14/84)
340-20-275
- OAR 340-24-300 Vehicle Inspection Program Rules
to (adopted 04/19/85)
340-24-350
- OAR 340-25-305 Rules for Board Products Industries
to (revisions adopted 3/11/77, 4/11/77, and 3/30/79)
340-25-325
- OAR 340-25-315 Veneer Dryer Rules
 (adopted 7/14/85)

IV Proposed Additions of Existing LRAPA Rules to the Oregon State
Implementation Plan

- 14-001 LRAPA Definitions
(adopted 7/19/85)
- 32-800 LRAPA Rules for Air Conveying Systems
(adopted 04/19/85)
- 34-001 LRAPA Air Contaminant Discharge Permits
to
34-050 (adopted 7/19/85)
- 38-001 LRAPA New Source Review
to
38-045 (adopted 7/19/85)

V Readoption of State Rules and Submittal as State Implementation Plan Revisions (Corrects Inadequate Public Notice on Original Adoption)

OAR 340-25-305 Rules for Board Products Industries
to (revisions adopted 4/11/77 and 3/30/79)
340-25-315

OAR 340-25-150 Rules for Kraft Pulp Mills
to (adopted 6/10/77)
340-25-200

OAR 340-20-200 Rules Relating to Conflict of Interest
to (adopted 9/22/78)
340-20-215

ORS Chapter 468 Pollution Control
(submitted 9/8/75, 2/14/78, and 5/19/78)

VI Withdrawal of State Rules From Submission as State Implementation Plan Revisions - (These Rules Were Never Acted on by EPA and Are Not Now Needed in the SIP)

OAR 340-28-001 Specific Air Pollution Control Rules Clackamas, Columbia,
to Multnomah, and Washington Counties, retain as State rules
340-28-015 (revisions adopted 4/15/75 and 10/20/76)

OAR 340-20-100 Rules for Indirect Sources, retain as State rules
to (revisions adopted 8/11/76 and 12/4/78)
340-20-135

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Consolidation and Updating of the Oregon State
Clean Air Act Implementation Plan
NOTICE OF PUBLIC HEARING

Date Prepared: December 20, 1985
Hearing Date: March 19, 1986
Comments Due: March 20, 1986

**WHO IS
AFFECTED:**

Residents, businesses, industries and government agencies throughout Oregon.

**WHAT IS
PROPOSED:**

The Department of Environmental Quality is proposing to amend OAR 340-20-047, State of Oregon Clean Air Act, Implementation Plan (SIP), by repealing the existing SIP and adopting the proposed consolidated State Implementation Plan which would consist of Volumes 2 and 3 of the State of Oregon Air Quality Control Program. The proposed organization would create a single set of volumes that contain all of Oregon's regulations, strategies, program descriptions and plans that relate to air quality control. Those portions of the consolidated document which are part of the federally enforceable SIP would be clearly identified.

**WHAT ARE THE
HIGHLIGHTS:**

The proposed consolidation and updating would produce a document which would provide both the public and agency staff with quick access to all regulations relevant to air quality and make it easy to determine which of these regulations are included in the SIP.

The following necessary "housecleaning" functions would be accomplished with the same action:

1. Updating or removing obsolete material from the SIP.
2. Removing certain rules, statutes and permits from the EPA approved SIP. These regulations are either irrelevant or are not required in the SIP. Any regulations removed from the SIP would be retained as state or local regulations.
3. Adding to the SIP certain existing state and local regulations which are necessary and already have been adopted but have not been acted on by EPA.



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



4. Re-open public comment on existing state regulations which were not acted on by EPA due to insufficient public notice before adoption. If re-adopted, these rules would become part of the SIP. Included are: OAR 340-25-305 to 315, Rules for Board Products Industries; OAR 340-25-150 to 200, Rules for Kraft Pulp Mills; OAR 340-20-200 to 215, Rules Relating to Conflict of Interest; ORS 468, Pollution Control.

No new regulations are created; no existing state or local regulations are repealed or relaxed; some rules would be removed from the SIP but would be retained as state or local rules. A detailed listing of all actions which would result from this action is available from DEQ Air Quality Division.

**HOW TO
COMMENT:**

Copies of the complete proposed rule package may be obtained from the Air Quality Division in Portland (522 S.W. Fifth Avenue) or the regional office nearest you. For further information contact Mitch Wolgamott at 229-5713.

A public hearing will be held before a hearings officer at:

10:00 a.m.
March 19, 1986
DEQ Conference Room 1400
Yeon Building, 14th Floor
522 SW Fifth Avenue
Portland, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Air Quality Division, P.O. Box 1760, Portland, OR 97207, but must be received by no later than March 20, 1986.

**WHAT IS THE
NEXT STEP:**

After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The adopted rules will be submitted to the U. S. Environmental Protection Agency as part of the State Clean Air Act Implementation Plan. The Commission's deliberation should come in April 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.

RULEMAKING STATEMENTS

for

The Proposed Consolidation and Updating of the Oregon State Clean Air Act Implementation Plan

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

STATEMENT OF NEED:

Legal Authority

This proposal amends OAR 340-20-047. It is proposed under authority of ORS Chapter 468, including Section 305, which authorizes the Commission to adopt a comprehensive plan for control and abatement of pollution statewide.

Need for the Rule

The existing SIP document has become fragmented. Its format is cumbersome to use and difficult to revise. It has become difficult for the layman to determine the exact contents of the SIP. In many cases, the EPA-approved SIP rules and statutes differ from those the state is enforcing. The proposed revised SIP document will incorporate all sections of the SIP into one document consisting of four volumes, which will be easy to use and easy to revise as needed in the future. The exact contents of the SIP, including the rules, would be clarified and updated. No changes to the text or contents of the rules or control strategies are proposed.

Principal Documents Relied Upon

1. The Oregon State Implementation Plan, as adopted by the Environmental Quality Commission in OAR 340-20-047.
2. The Oregon State Implementation Plan, as approved and promulgated by the U.S. Environmental Protection Agency in 40 CFR 52.1970 through 52.1987.
3. The Federal Clean Air Act as Amended, P.L. 95-95.
4. Requirements for Preparation, Adoption and Submittal of Implementation Plans, 40 CFR Part 51.

FISCAL AND ECONOMIC IMPACT STATEMENT:

The proposed consolidation and updating of the SIP would have no significant fiscal impact. Clarifying the exact contents of the SIP would reduce the time and expense required to ascertain the exact contents of the SIP. Removal of unnecessary rules from the SIP would save DEQ administrative costs on future revisions and would benefit industries by clarifying their responsibilities under State and Federal law. Small businesses would not be affected.

LAND USE CONSISTENCY STATEMENT:

The proposed rule appears to affect land use and appears to be consistent with the Statewide Planning Goals.

With regard to Goal 6 (air, water, and land resources quality) the rules are designed to enhance and preserve air quality in the affected area and are considered consistent with the goal.

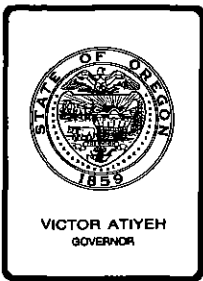
Goal 11 (public facilities and services) is deemed unaffected by the rule. The rule does not appear to conflict with other goals.

Public comment on any land use issue involved is welcome and may be submitted in the same fashions as are indicated for testimony in this notice.

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

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

AS2031.B



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: Mitch Wolgamott, Hearing Officer

SUBJECT: Hearing Officer Report Regarding Proposed Consolidation and Updating of the Oregon State Clean Air Act Implementation Plan

Summary of Procedure

The EQC authorized a public hearing to consider the proposed consolidation and updating of the Oregon State Clean Air Act Implementation Plan (OAR 340-20-047) at its January 31, 1986 meeting. A notice of public hearing was published in the Secretary of State Administrative Rules Bulletin on February 15, 1986. The hearing was also advertised in the February 14, 1986 edition of The Oregonian newspaper. In addition, a copy of the public notice was mailed to over 600 interested persons whose names have been placed on Department mailing lists. The proposed action was distributed for intergovernmental review on February 18, 1986.

The public hearing was held on March 19, 1986 in the DEQ Conference Room in Portland at 10:00 a.m. Approximately ten persons attended the hearing. Four people offered oral testimony, three of these also submitted written testimony. Two additional written comments were received prior to the close of the comment period on March 20, 1986. Copies of the written testimony are attached.

Summary of Testimony

Most of the testimony received concerned the proposed addition to the State Implementation Plan of Rules Relating to Conflict of Interest (OAR 340-20-200 through -215). These rules require that a majority of the Environmental Quality Commission and the DEQ Director represent the public interest and do not receive significant income from regulated sources. No witness objected to this addition. However, four witnesses questioned whether the rules fulfill the requirements of Section 128 of The Clean Air Act. Section 128 requires that any board or body approving permits or enforcement orders under The Clean Air Act must have at least a majority of members who represent the public interest and do not receive significant income from persons subject to permits or enforcement orders.

John A. Charles, Oregon Environmental Council (OEC), testified that the Conflict of Interest Rules are "well-written and we have no suggestions for change." However, OEC believes that because the Board of Forestry, through

the Department of Forestry and the Smoke Management Plan, issues permits for prescribed burning, similar rules governing the Board of Forestry should be included in the SIP. The OEC requests that the Environmental Quality Commission ask the Governor to initiate legislation to amend the statute governing the make-up of the Board of Forestry (ORS 526.010) and request that EPA withhold approval of the Oregon State Implementation Plan until such legislation is in place.

Michael C. Houck, Audubon Society of Portland, testified that the Environmental Quality Commission has excellent conflict of interest provision but that there are "inadequate conflicts of interest safeguards for the Oregon State Board of Forestry". The Audubon Society believes that because the State Department of Forestry, through the Board of Forestry and the Smoke Management Program, has a major impact on air quality, the current conflict of interest rules would have a "problem complying with EPA's conflict of interest provisions".

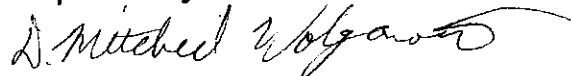
Ann Kloka, Oregon Chapter Sierra Club, testified that because the State Board of Forestry issues permits for prescribed burning under the Oregon Smoke Management Plan, conflict of interest rules must be applied to the Board of Forestry in order to comply with Section 128 of the Clean Air Act. The Sierra Club believes that the current rules, proposed for incorporation into the SIP, are incomplete because they apply only to the EQC and so do not comply with the requirements of Section 128.

Neil T. Skill, Oregon State Forestry Department, testified that the authority to grant prescribed burning permits lies with the State Forester and not with the Board of Forestry. Therefore, the make-up of the Board is not relevant to the Clean Air Act, Section 128 requirements.

Kathy S. Williams, Coastal Coalition for Alternatives to Pesticides (CCAP), submitted written testimony dated March 18, 1986. She expressed the belief that the Oregon SIP does not meet the requirements of Section 128 of the Clean Air Act. She feels that EPA should promulgate regulations to correct the problem.

Jeanne Roy, League of Women Voters of Portland, submitted written comments opposing the removal of the indirect source rules from the State Implementation Plan (SIP). The League expressed concern that removal of these rules from the SIP would indicate "they have been relegated to a low priority and may be scrapped". They also expressed concern that removal of the rules would put DEQ in a weaker position and may result in the elimination of the City of Portland's parking lid.

Respectfully Submitted



D. Mitchell Wolgamott
Hearings Officer

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201

Phone: 503/222-1963

Comments of Oregon Environmental Council
on the Oregon State Implementation Plan
OAR 340-20-047

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EXECUTIVE DIRECTOR

John A. Charles

March 19, 1986

John A. Charles
Executive Director

The Oregon Environmental Council has reviewed the proposed changes to the existing Oregon SIP. By and large they are housekeeping in nature and we offer no comments on them.

However, the SIP is fatally flawed in one significant respect: the conflict-of-interest provisions that are proposed for addition, OAR 340-20-200 to 340-29-215, apply only to the Environmental Quality Commission. These provisions must be applied to the Oregon Board of Forestry in order for the SIP to comply with Section 128 of the Clean Air Act.

Background

Section 128 of the Clean Air Act was added to the Act in the 1977 amendments. That provision, codified at 42 USC 7428, requires that

"any board or body which approves permits or enforcement orders under this Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Act."

OEC Comments on Oregon State SIP
OAR 340-20-047
March 19, 1986
Page two

This section also requires that members of such boards or bodies disclose any potential conflicts of interest.

The EQC adopted OAR 340-20-200 in 1978 to implement Section 128 as it relates to the Commission's activities. For a variety of reasons those regulations were never formally included into the SIP.

OEC believes the rules themselves are well-written and we have no suggestions for change. The problem is that there are no analogous provisions within the SIP for the state Board of Forestry.

Why Section 128 Applies to the Oregon State Board of Forestry

Section 128 applies to all state "boards or bodies" issuing "permits or enforcement orders" pursuant to the federal Act. The Board of Forestry (BOF), through its administrative agency, the Department of Forestry, issues permits annually for the prescribed burning of forest slash. The permits are issued through the Oregon Smoke Management Plan (SMP) which governs the forest smoke management activities in the state of Oregon. The SMP is part of the existing Oregon SIP (see attached letter to Mr. John Kowalczyk of DEQ from Mr. George Abel of EPA). Therefore, the BOF issues permits pursuant to the Clean Air Act and is required to comply with the Section 128 provisions.

Analysis of Board of Forestry Composition in Relation to Section 128 Requirements.

The Board of Forestry consists of nine voting members and three non-voting members (ORS 526.009-010). This statute does not comply

with the conflict-of-interest requirements of Section 128 for several reasons:

1. First, by statute, only one member is appointed to represent the public's interest in forest policy. ORS 526.010(e). Since there are nine voting members on the Board, this is four short of a majority.

Furthermore, there is no statutory guarantee that even this one member will represent the public interest because such key terms as "potential conflict of interest" and "public interest" are not defined either in statute or administrative rule. They are defined in the EQC's own administrative rules, but those rules apply only to the EQC.

Such failure to define terms is in direct violation of EPA guidelines issued in 1978 (see EPA Model letter, attached).

2. Four other members of the Board have specific, obvious conflicts of interest which are not only allowed but are required by statute: "Three voting members shall be chosen from persons actively and principally engaged in an administrative capacity in the production or manufacture of forest products." ORS 526.010(a). And, one voting member "shall be chosen from persons recommended by the Oregon Small Woodland Owners Association." ORS 526.010(d)(B).

3. Finally, EPA guidelines require that decisions made pursuant to the Clean Air Act concerning permits or enforcement orders be made by boards comprised of members who do not even have an appearance of conflict of interest (see attached EPA Model Letter). Three of

OEC Comments on Oregon SIP
OAR 340-20-047
March 19, 1986
Page Four

the remaining members of the Board fail to meet this test, including the Chairman.

Conclusion and Recommendations

The EQC is not the only state board in Oregon regulating air quality. The Board of Forestry, through the Oregon Smoke Management Plan, issues permits and conducts enforcement activities for prescribed slash burning, which is the largest human-caused source of air pollution (total suspended particulates) in the state. Therefore, the SIP must contain provisions applicable to the Board of Forestry that are similiar to OAR 340-20-200 to 340-29-215.

OEC recognizes, however, that in order for the Board of Forestry to comply with Section 128 of the Clean Air Act a change in its authorizing statute would be necessary. Since this is a legislative matter, it is beyond the scope of the EQC's jurisdiction. Therefore OEC requests the following:

1. That the Commission write a letter to the Governor requesting that he introduce legislation, on behalf of the state of Oregon, to amend ORS 526.010 so that it will comply with Section 128 of the Clean Air Act, and that this be done as expeditiously as possible.

2. That the Commission inform EPA of the flaw in the SIP and the EQC action on this matter, and request EPA to withhold final approval of the Oregon SIP until the Section 128 provisions are complied with.

Thank you for your consideration of these comments.



AUDUBON SOCIETY OF PORTLAND

A Branch of National Audubon Society

PHONE 292-6855

5151 NORTHWEST CORNELL ROAD

PORTLAND, OREGON 97210

March 18, 1986

Environmental Quality Commission
D. E. Q.
Yeon Building
522 SW 5th Avenue
Portland, Oregon 97204

Dear Commissioners,

My name is Michael C. Houck. I am here today representing Audubon Society of Portland's conservation committee. We received notification of today's hearing regarding Proposed Consolidation and Updating of the Oregon State Clean Air Act Implementation Plan and wanted to enter our comments into the record.

While we laud the effort to produce an improved document which would be more usable by staff and the public, we want to point out what we believe to be a major inconsistency regarding Section 128 of the Clean Air Act. While the Environmental Quality Commission has excellent provisions that prevent conflicts of interest through OAR 340-20-200, there are totally inadequate conflicts of interest safeguards for the Oregon State Board of Forestry. In fact, ORS 526.010 guarantees potential conflict of interest by board members:

1. Three members must represent the forest products industry.
2. One board member must be chosen on recommendation by AFL-CIO.
3. One board member must be recommended by Small Woodlot Owners Association.
4. One member must be from the Association of Oregon Counties.

The reason we wanted to comment on this issue today is that the language regarding conflicts of interest, Section 128 of the Clean Air Act is very specific and clear. The State Department of Forestry, through the Board of Forestry, has a major impact on air quality through the department's Smoke Management Program. As we read Section 128 and your own conflict of interest (OAR 340-20-200) language, we see a major problem complying with EPA's conflict of interest provisions.

This is an important public policy issue which we feel must be resolved for Oregon to have an acceptable SIP.

Sincerely,

Michael C. Houck



SIERRA CLUB ... Oregon Chapter

Comments of the Oregon Chapter Sierra Club
on the Oregon State Clean Air Act
Implementation Plan

Ann Kloka

March 19, 1986

On behalf of the Oregon Chapter of the Sierra Club, I would like to comment on the adoption of OAR 340-20-200 to 215 (Rules Relating to Conflict of Interest) to the Oregon State Implementation Plan (SIP).

This regulation, as written for adoption, is incomplete and therefore does not fully comply with the requirements of Section 128 of the Clean Air Act. That section states that "any board or body which approves permits or enforcement orders under this Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Act."

Since the rules adopted into the Oregon SIP must strictly adhere to the requirements of the Clean Air Act, any board with enforcement or permitting authority under the State Clean Air Act Implementation Plan must comply with the requirements of Section 128 to protect the public interest.

The problem with OAR 340-20-200 is that it does not go far enough in order to comply with Section 128. It must and does insure that a majority of the members of the Environmental Quality Commission (EQC) represent the public interest. However, it must also include provisions for any other board with permitting or enforcement authority under the Oregon SIP. One

... To explore, enjoy and preserve the nation's forests, waters, wildlife, and wilderness ...

important board that must be included as part of this conflict-of-interest requirement is the Board of Forestry, since it issues permits for prescribed burning (forest slash burning) under the Oregon Smoke Management Plan, which is part of the Oregon SIP. The membership make-up of the Board of Forestry, as directed by ORS 526.009-526.010, does not now comply with Section 128. There are nine voting members on this board, but it is now required to have only one representing the public interest (ORS 526.010e). In order to adhere to Section 128 of the Clean Air Act, this board must have a majority of its voting members representing the public interest.

In conclusion, we feel that OAR 340-20-200 to 215 is adequate for protection of the public interest on the EQC, but that another provision must be added to include the Board of Forestry.

Thank you for giving us this opportunity to comment on the changes proposed to the Oregon SIP.



Coastal Coalition
for Alternatives to Pesticides
P.O. Box 126
Seal Rock, Oregon 97376

March 18, 1986

To Tom Bispham, Air Quality Div., and DEQ Hearing Board:
Re: Proposed Consolidation and Update of Oregon State
Clean Air Act Implementation Plan:

For the record, I would like to comment upon the
above proposal, as I am unable to do it in person at
the public hearing scheduled for March 19, 1986.

The rules proposed by the DEQ at OAR 340-20-200
address only the EQC. However, the State Dept. of Forestry
under authority of the Board of Forestry, issues permits
for slashburning as part of the Oregon State Smoke Manage-
ment Plan, which is part of the SIP.

State Boards which issue permits and enforcement
orders must comply with 42 USC 7428 (§ 128) requirements
of the Clean Air Act. A majority of the State Board of
Forestry members don't represent the public interest,
and therefore the Board doesn't comply with s/s 128.
Therefore the Oregon SIP doesn't contain an adequate
s/s 128, and the EPA should be compelled by 42 USC 7410(c)(1)
to promulgate a section which is satisfactory to substi-
tute for the inadequate one.

Very Sincerely Yours,

Kathy S. Williams
Kathy S. Williams, CCAP

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
AIR QUALITY DIVISION



LEAGUE of WOMEN VOTERS OF PORTLAND

610 DEKUM BUILDING — 519 S.W. THIRD
PORTLAND, OREGON 97204
TELEPHONE: (503) 228-1675

March 20, 1986

DEQ Air Quality Division
P. O. Box 1760
Portland, Oregon 97207

Re: Proposed Consolidation and Update of Clean Air Act Implementation Plan

Dear Sir:

The League of Women Voters of Portland Opposes the proposed removal of the Indirect Source Rules from the State Implementation Plan (SIP).

We are afraid that removing these rules would indicate that they have been relegated to a low priority and may be scrapped. We realize that these rules are not as effective as they could be and need revision. However, this is not justification for removing them from the SIP.

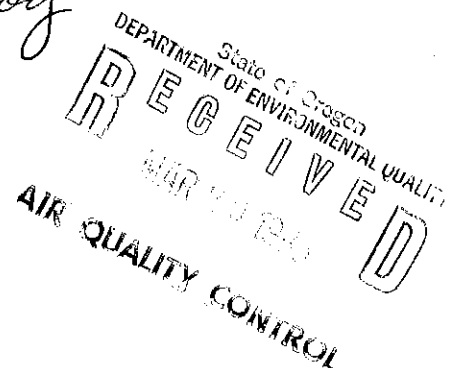
The City of Portland's parking lid, which is the essence of its Parking and Circulation Policy, is vulnerable. One of the reasons opponents of the lid have not succeeded in eliminating it, is that the City knows developers would then have to deal with DEQ under the Indirect Source Rules. If the Indirect Source Rules were not in the SIP the City might think it would have a chance of compromising with the DEQ. The DEQ would be in a weaker position, not having the force of federal law behind it.

We feel that the value of the Indirect Source Rule is worth the extra burden it places on your agency.

Yours truly,

LEAGUE OF WOMEN VOTERS OF PORTLAND

Jeanne Roy
Jeanne Roy



U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION X

1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101



NOV 20 1985

REPLY TO
ATTN OF: M/S 532

John A. Charles
Executive Director
Oregon Environmental Council
2637 S.W. Water Avenue
Portland, OR 97201

Dear Mr. Charles:

Thank you for your November 11, 1985 letter to Mr. David Bray of my staff regarding the Oregon Smoke Management Plan for forest slash burning. We appreciate your concerns about the Smoke Management Plan as it regards to air quality.

First, as you understood, the Oregon Department of Forestry Smoke Management Plan is considered by EPA to be a part of the EPA-approved State Implementation Plan. I have enclosed, for your information, a recent EPA letter to the Oregon DEQ which explains EPA's position on this issue.

In response to the specific questions posed in your letter, EPA does not consider the Oregon Board of Forestry to be a "board" which is subject to the requirements of Section 128 of the Clean Air Act. Section 128 does not apply to every every board or body that simply carries out provisions of a State-adopted control strategy. Many types of bodies are involved in the daily implementation of control measures - municipalities, public and private utilities, public and private transit agencies, etc. However, in all cases, a responsible State or local air pollution agency, subject to the provisions of Section 128, has ultimate responsibility for ensuring that the SIP is adequate for meeting the requirements of the Clean Air Act. Furthermore, permits for prescribed burns, issued by the Oregon Department of Forestry as part of a control strategy for attaining and maintaining ambient air quality standards on a daily basis, are not the type of permits envisioned by Section 128.

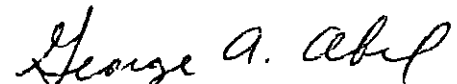
In the case of slash burning in Oregon, our review of the relevant statutes in the EPA-approved SIP indicates that (1) the regulation of slash burning is jointly under the jurisdiction of the Environmental Quality Commission (EQC) and the relevant permit agency (Department of Forestry), and (2) the Smoke Management Plan must be approved by the Department of Environmental Quality before the Department of Forestry may issue burning permits. Since both the EQC and the DEQ meet the requirements of Section 128 of the Act, EPA feels that the public interest is adequately protected with regard to air quality and smoke management.

Since the answer to your first question is "no," the remaining three questions are not applicable.

I hope that this response will aid in resolving your concerns with the Smoke Management Plan and help in the development of an adequate visibility protection plan for Oregon's Class I areas. If you have any questions on our response, please don't hesitate to contact David Bray at (206) 442-4253.

Enclosure

Sincerely,

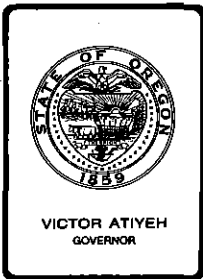

George A. Abel, Chief
Air Programs Branch

cc: J. Kowalczyk, ODEQ

Attachment 5
EQC Agenda Item K
April 25, 1986

"State of Oregon Clean Air Act Implementation Plan"

340-20-047 This implementation plan, consisting of Volume 2 of the State of Oregon Air Quality Control Program [including] contains control strategies, rules and standards prepared by The Department of Environmental Quality and is adopted as the implementation plan of The State of Oregon pursuant to The Federal Clean Air Act as amended.



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 L, April 25, 1986 EQC Meeting

Proposed Adoption of Amendments to Hazardous Waste Management Civil Penalty Schedule, OAR 340-12-068

Background

Since the early 1970's Oregon has recognized the importance of safe hazardous waste management practices to the protection of the state's environment and the public health of its citizens. Previous Oregon Legislative Assemblies have established authorities for and directed the Environmental Quality Commission (EQC) to regulate the generation, transportation (by air and water), storage, treatment and disposal of hazardous wastes. The EQC adopted a comprehensive set of rules, in Division 100-110 of OAR Chapter 340, which specify requirements for hazardous waste handlers. This management program is often referred to as "cradle-to-grave" control because all aspects of waste handling are recognized and regulated as appropriate.

The EQC has also adopted (January 1982), in OAR 340-12-068, minimum civil penalty amounts for hazardous waste management violations. This penalty schedule establishes minimum penalties of \$2,500, \$1,000 or \$100 for specified hazardous waste violations. The maximum penalty which can be assessed for any hazardous waste violation is limited to \$10,000. The largest minimum penalty (of \$2,500) specified in OAR 340-12-068 is for any person who:

- "(a) Establishes, constructs or operates a geographical site in which or upon which hazardous wastes are disposed without first obtaining a license from the Commission.
- (b) Disposes of a hazardous waste at any location other than at a hazardous waste disposal site.
- (c) Fails to immediately collect, remove or treat a hazardous waste or substance as required by ORS 459.685 and OAR Chapter 340 Division 108." (Regarding improper disposal including spills).

The comprehensive hazardous waste management rules adopted by the Commission in April 1984 included many new substantive requirements for hazardous waste handlers, particularly for owners and operators of storage treatment and disposal facilities. Several of these new requirements are considered critically important -- indeed they are cornerstones -- to our management program. They include:

- Groundwater protection measures, including groundwater monitoring, leachate detection and collection, corrective action requirements if contamination occurs, and reporting.
- Establishment of financial assurances to provide for proper closure of hazardous waste management facilities and post-closure care, if required.
- Demonstration of adequate liability coverage for sudden and non-sudden accidental occurrences.

If these provisions are complied with, real environmental protection can be achieved and the possibilities are substantially reduced that today's hazardous waste management activities will result in problems tomorrow or in the future.

When the penalty schedule in OAR 340-12-068 was established in 1982, DEQ's primary concern with hazardous waste was to keep it out of the environment. Accordingly, the schedule set levels of penalties which penalized most heavily those activities for which program violations are believed to lead to the most serious consequences. Today, however, 340-12-068 does not reflect all of the "high-priority" program requirements, since several new provisions, as discussed above, were added in 1984 to the Department's rules.

Analysis of OAR 340-12-068 shows that violations of several high-priority requirements, which are considered to represent a significant potential for harm, have by default the lowest minimum penalty amount of \$100. For example, groundwater protection, closure, post-closure and financial assurance violations would have \$ 100 minimum penalties, since they are captured by default under 340-12-068(3)(b), "..... violates any other condition of a license or written authorization or violates any other rule or statute." Consequently, the Department would be in the awkward position of assessing very low penalties (unless significant aggravating factors are present) for several violations of program requirements with high environmental significance.

Additionally, we have noted two potential conflicts between ORS 466 and existing OAR 340-12-068. First, in ORS 466.880, statutory authority clearly exists to assess a civil penalty "for each day of the violation." However, existing OAR 340-12-068(1),(2) and (3) do not contain similar language. Therefore, 340-12-068 could be interpreted to apply the minimum penalty amounts of \$2,500, \$1,000 and \$100 and the maximum penalty amount of \$10,000 to the violative person. This reading would result in 340-12-068 being more restrictive than its underlying statute. To date an actual conflict has not arisen because the Department has not assessed a civil penalty for hazardous waste violations for a total amount greater than \$10,000 or for more than one day of violation. However, if OAR 340-12-068 is left intact, it is only a matter of time before this conflict is raised for resolution.

Second, ORS 466.100(1) specifies that disposal of a hazardous waste shall occur only at a "licensed" hazardous waste disposal site. However, in existing OAR 340-12-068(1)(b), the minimum penalty established for a person who "disposes of a hazardous waste at any location other than at a hazardous waste disposal site" does not include the term "licensed". Omission of the term "licensed" was apparently an oversight in the initial drafting of OAR 340-12-068 in 1982.

Discussion

On January 31, 1986 the Environmental Quality Commission authorized a public hearing on the proposed rule amendments for March 12, 1986. A notice of the public hearing was published in the Secretary of State's Bulletin of February 15, 1986. Additional notices for the public hearing were mailed out to interested parties in mid-February.

The public hearing on proposed amendment of OAR 340-12-068 was held on March 12. Five issues were raised and are discussed in more depth in the Hearing Officer's report (see Attachment VI). As a result of the public hearing testimony, two changes were made to the proposed rule amendment.

The Department proposes several revisions of OAR 340-12-068 (Attachment III). First, OAR 340-12-068(1) and (2) would be revised to specify that certain groundwater protection, closure, postclosure and financial assurance violations would have a minimum penalty of \$2,500 or \$1,000, depending on the type of facility. Second, 340-12-068(1),(2)and (3) would be revised to clarify that civil penalties may be assessed for each day of the violation. Third, the term "licensed" would be added to 340-12-068(1)(b). The fourth item is to codify certain provisions of Chapter 685, Oregon Laws 1985 (ORS 466.890). Section 2 of Chapter 685 (Attachment IV) establishes a civil penalty schedule for destruction of specified wildlife due to contamination of food or water supply by hazardous waste. This penalty schedule is proposed to be added to 340-12-068 as new Section (4).

As the Department indicated in recent discussions with the Commission pertaining to the hazardous waste enforcement guidelines, DEQ believes that compliance with the closure, post-closure, financial assurance and groundwater protection requirements of our hazardous waste rules is crucial to ensuring that waste management activities do not result in environmental or public health impacts. These high-priority requirements are established to prevent problems from occurring. Noncompliance could result in groundwater contamination or facilities becoming abandoned without adequate funds available to pay for proper closure and post-closure care. Correction of contamination (if feasible) and conduct of facility closure, such as emptying surface impoundments and removal and disposal of contaminated soil, may be extremely costly, time-consuming, and possibly involve expenditure of public funds. For these reasons, DEQ believes violations of these high-priority requirements should be identified specifically, rather than by default, in the minimum penalty rule.

DEQ proposes to add new paragraphs (1)(d) and (2)(h) to OAR 340-12-068 to address violations of these high-priority facility management requirements. The minimum penalty for these violations by a disposal facility would be \$2,500. Similar violations by a storage or treatment facility would have a \$1,000 minimum penalty established. The distinction in minimum penalty amounts between storage or treatment facilities and disposal facilities was made in response to testimony at the hearing. It is consistent with the existing distinction between minimum penalties of 340-12-068(1)(a) for disposal facilities and in 340-12-068(2)(a) for storage or treatment facilities.

The proposed clarification that civil penalties may be assessed for each day of the violation would result in consistency between ORS 466.880 and OAR 340-12-068, thereby avoiding questioning of the Department's ability to assess penalties totalling more than \$10,000 against any person and to assess penalties for more than one day of violation.

The proposed clarification of 340-12-068(1)(b) by addition of the term "licensed" would ensure consistency with ORS 466.100(1).

No objections to these two clarifications were presented at the hearing.

Alternatives and Evaluation

The proposed addition to new Section (4) of OAR 340-12-068 of a civil penalty schedule for wildlife destruction from hazardous waste is a codification of statutory provisions of Chapter 685 Oregon Laws 1985. Although the statutory penalty schedule appears to be self-executing, incorporating it into the Department's rules would appear to be required by ORS 468.130 which in pertinent part specifies:

"(1) The Commission shall adopt by rule a schedule or schedules establishing the amount of civil penalties that may be imposed for a particular violation."

Therefore, not incorporating the statutory penalty schedule into a rule could result in its enforceability being questioned.

Several alternatives to amending 340-12-068(1) and (2) to include additional high priority hazardous waste violations were considered by DEQ. First, the Department could propose no change at all. As a result, for violations which involve the failure to assure: (1) groundwater is protected; (2) adequate closure and post-closure activities will be undertaken; and (3) financial assurance mechanisms are established and maintained, the minimum penalty would be \$100. (The actual penalty could be higher if aggravating circumstances are present). A \$100 minimum penalty likely would not stimulate a violator to expeditiously come into compliance with these important requirements. Consequently, noncompliance could continue, thereby continuing or even exacerbating the risk of groundwater contamination or of facility abandonment. In addition, a \$100 penalty would not deter a violative waste handler from future noncompliance.

Perhaps of even greater significance, other waste handlers would view the assessment of extremely low penalties for these violations as indicative of a low DEQ priority for ensuring compliance with these requirements. This certainly is not the Department's intent, but if this message is conveyed it could result in a higher rate of noncompliance statewide and consequently increased risks of environmental impacts from hazardous waste mismanagement.

Another option was to assign these high priority violations to the \$2,500 category, irrespective of facility type. However, testimony at the hearing raised questions of consistency with DEQ's current distinction in OAR 340-12-068 on minimum penalties based upon the type of management facility. DEQ believes this distinction is appropriate and therefore should be kept for these management facility violations.

The Department's proposal to amend 340-12-068(1) and (2) to specifically include groundwater protection, closure, post-closure and financial assurance violations would result in a civil penalty schedule which more closely reflects today's program priorities. The rule amendment would achieve greater consistency between the minimum amounts of hazardous waste civil penalties and the environmental significance of those violations.

If OAR 340-12-068(1),(2) and (3) are not revised to clarify that penalties may be assessed for each day of the violation, the enforcement authorities granted by ORS 466.880 may become unduly restricted. Consequently, the Director's ability to establish penalty amounts appropriate to the circumstances of the violation and the violator may be impaired. For example, where an owner of a surface impoundment facility continually failed to install groundwater monitoring wells over a long period of time, the Director may be precluded from assessing a penalty for more than one day of violation. We believe the potential disadvantages of the "no action" alternative are significant enough to warrant the proposed rule clarification.

Summary

1. The DEQ presently operates a comprehensive state hazardous waste management program.
2. Violations of certain hazardous waste requirements have high potential environmental significance. These include: (1) Unauthorized disposal of hazardous waste; (2) Establishing or operating a hazardous waste disposal site without first obtaining a license; (3) Failure to immediately collect, remove or treat a hazardous waste or substance; (4) Failure to assure that groundwater is protected; (5) Failure to assure that proper closure and post-closure activities will be undertaken; and (6) Failure to establish and maintain financial assurance mechanisms.

3. Existing OAR 340-12-068 contains a schedule of minimum and maximum civil penalty amounts for hazardous waste violations. The minimum penalty ranges from \$100 to \$2,500.
4. The first three violations listed in paragraph 2 above have a \$2,500 (the highest) minimum penalty according to 340-12-068(1). The remaining listed violations, although of approximately similar significance and program priority, have by default a \$100 minimum penalty amount according to 340-12-068(3)(b). New paragraphs (1)(d) and (2)(h) would establish minimum penalties of \$1,000 for these remaining listed violations by a storage or treatment facility, and \$2,500 if the violations are by a disposal facility.
5. ORS 466.880 authorizes assessment of penalties not to exceed \$10,000 for each day of the violation. However, OAR 340-12-068 does not clearly provide a "per day of violation" basis for penalty assessment. The proposed rule amendment would clarify that penalty assessments may be for each day of the violation.
6. Section (2) of Chapter 685, Oregon Laws 1985 established a schedule of civil penalties for the destruction of wildlife due to contamination of food or water supply from hazardous waste. ORS 468.130 requires the Commission to adopt as rules, civil penalty schedules for particular violations. The proposed rule amendment would incorporate the civil penalty schedule of Chapter 685, Oregon Laws 1985 into a rule.
7. A public hearing on the proposed rule amendments was authorized by the Commission January 31, 1986. Notice of the March 12, 1986 public hearing was published in the Secretary of State's Bulletin on February 15, 1986. Supplemental notices were mailed to interested parties by DEQ in mid-February.
8. The proposed rule amendments reflect two revisions made in response to testimony received.

Director's Recommendation

Based upon the summation, it is recommended that the Commission adopt the amendments to OAR 340-12-068 as proposed in Attachment III.



Fred Hansen

- | | |
|----------------|---|
| Attachments I. | Statement of Need for Rule Amendment |
| II. | Statement of Land Use Consistency |
| III. | Proposed Amendments to OAR 340-12-068 |
| IV. | Chapter 685, Oregon Laws 1985 (Codified in ORS 466.890) |
| V. | Draft Notice of Public Hearing |
| VI. | Hearing Officer's Report |

Alan Goodman:f
229-5254
April 2, 1986
ZF608

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF AMENDING) STATEMENT OF NEED FOR RULE
RULE 340-12-068) AMENDMENT AND FISCAL AND
) ECONOMIC IMPACT

Statutory Authority

ORS 468.130 directs the Environmental Quality Commission to establish schedules of civil penalties.

ORS 466.880 authorizes civil penalties to be assessed against persons who violate hazardous waste management requirements.

Section (2) of Chapter 685, Oregon Laws 1985 (ORS 466.890) establishes a civil penalty schedule for the destruction of wildlife due to contamination of food or water supply from hazardous waste.

Need for the Rule Amendment

The proposed amendment of rule OAR 340-12-068 codifies Section (2) of Chapter 685, Oregon Laws 1985 and establishes a minimum civil penalty amount for specific violations of groundwater protection, closure and post-closure, and financial assurance requirements of the hazardous waste program.

Principal Documents Relied Upon

Chapter 685, Oregon Laws 1985 (ORS 466.890)
ORS 466.880
ORS 468.130

Fiscal and Economic Impact

The proposed rule amendment would only affect persons found to be in violation of certain hazardous waste requirements. An economic impact would occur if and when a penalty is assessed. Since the rule amendment does not affect the substantive or administrative requirements pertaining to hazardous waste handlers, persons complying with these requirements would feel no economic impact.

The small business impact is similar to that noted above.

There is no measurable fiscal impact on the Department.

ZF608.I

Attachment II
Agenda Item L
4/25/86 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF AMENDING) LAND USE CONSISTENCY
RULE 340-12-068)

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.

ZF608.II

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

In the Matter of Amending) Proposed Amendment
OAR 340-12-068))

Hazardous Waste Management Schedule of Civil Penalties

340-12-068 In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to hazardous waste management by service of a written Notice of Assessment of Civil Penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than two thousand five hundred dollars (\$2,500) nor more than ten thousand dollars (\$10,000) for each day of the violation upon any person who:

(a) Establishes, constructs or operates a geographical site in which or upon which hazardous wastes are disposed without first obtaining a license from the Commission.

(b) Disposes of a hazardous waste at any location other than at a licensed hazardous waste disposal site.

(c) Fails to immediately collect, remove or treat a hazardous waste or substance as required by ORS [459.685] 466.205 and OAR Chapter 340 Division 108.

(d) Is an owner or operator of a hazardous waste surface impoundment, landfill, land treatment or waste pile facility and fails to comply with any of the following:

(A) The groundwater monitoring and protection requirements of Subpart F of 40 CFR Part 264 or Part 265;

(B) The closure plan requirements of Subpart G of 40 CFR Part 264 or Part 265;

(C) The post-closure plan requirements of Subpart G of 40 CFR Part 264 or Part 265;

(D) The closure cost estimate requirements of Subpart H of 40 CFR Part 264 or Part 265;

(E) The post-closure cost estimate requirements of Subpart H of 40 CFR Part 264 or Part 265;

(F) The financial assurance for closure requirements of Subpart H of 40 CFR Part 264 or Part 265;

(G) The financial assurance for post-closure care requirements of Subpart H of 40 CFR Part 264 or Part 265; or,

(H) The financial liability requirements of Subpart H of 40 CFR Part 264 or Part 265.

(2) Not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) for each day of the violation upon any person who:

- (a) Establishes, constructs or operates a geographical site or facility upon which, or in which, hazardous wastes are stored or treated without first obtaining a license from the Department.
- (b) Violates a Special Condition or Environmental Monitoring Condition of a hazardous waste management facility license.
- (c) Dilutes a hazardous waste for the purpose of declassifying it.
- (d) Ships hazardous waste with a transporter that is not in compliance with OAR Chapter 860, Division 36 and Division 46 or OAR Chapter 340, Division 103 or to a hazardous waste management facility that is not in compliance with OAR Chapter 340, Divisions 100 thru 106.
- (e) Ships hazardous waste without a manifest.
- (f) Ships hazardous waste without containerizing and marking or labeling such waste in compliance with OAR Chapter 340, Division 102.
- (g) Fails to immediately report to the Oregon Accident Response System (Oregon Emergency Management Division) all accidents or other emergencies which result in the discharge or disposal of hazardous waste.

(h) Is an owner or operator of a hazardous waste storage or treatment facility and fails to comply with any of the following:

(A) The closure plan requirements of Subpart G of 40 CFR Part 264 or Part 265;

(B) The closure cost estimate requirements of Subpart H of 40 CFR Part 264 or Part 265;

(C) The financial assurance for closure requirements of Subpart H of 40 CFR Part 264 or Part 265; or

(D) The financial liability requirements of Subpart H of 40 CFR Part 264 or Part 265.

(3) Not less than one hundred dollars (\$100) nor more than ten thousand dollars (\$10,000) for each day of the violation upon any person who:

- (a) Violates an order of the Commission or Department.
- (b) Violates any other condition of a license or written authorization or violates any other rule or statute.

(4) Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in this section for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in this section that are the property of the state.

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, \$400.

(b) Each mountain sheep or mountain goat, \$3,500.

(c) Each elk, \$750.

(d) Each silver gray squirrel, \$10.

(e) Each game bird other than wild turkey, \$10.

(f) Each wild turkey, \$50.

(g) Each game fish other than salmon or steelhead trout, \$5.

(h) Each salmon or steelhead trout, \$125.

(i) Each fur-bearing mammal other than bobcat or fisher, \$50.

(j) Each bobcat or fisher, \$350.

(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, \$500.

(l) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this section, \$25.

Stat. Auth: ORS Ch. 459

Hist.: DEQ 1-1982. f. & ef. 1-28-82; DEQ 22-1984. f. & ef. 11-8-84

ital investment to which the taxpayer otherwise may be entitled under this chapter for such year.

(7) Upon any sale, exchange, or other disposition of qualifying business, notice thereof shall be given to the Environmental Quality Commission who shall revoke the certification covering the capital investment of such business as of the date of such disposition. The transferee may apply for a new certificate under section 5 of this 1985 Act, but the tax credit available to such transferee shall be limited to the amount of credit not claimed by the transferor. The sale, exchange or other disposition of a partner's interest in a partnership shall not be deemed a sale, exchange or other disposition of a business for purposes of this subsection.

(8) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in that third succeeding tax year and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax year beyond the years specified in section 4 of this 1985 Act.

(9) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section.

Approved by the Governor July 13, 1985
Filed in the office of Secretary of State July 15, 1985

CHAPTER 685

AN ACT

SB 873

Relating to hazardous waste; creating new provisions; and amending ORS 459.685.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this Act is added to and made a part of ORS 459.460 to 459.690.

SECTION 2. (1) Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in subsection (2) of this section for the destruction, due to contamination of food or water supply by such waste or substance, of

any of the wildlife referred to in subsection (2) of this section that are the property of the state.

(2) The penalties referred to in subsection (1) of this section shall be as follows:

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, \$400.

(b) Each mountain sheep or mountain goat, \$3,500.

(c) Each elk, \$750.

(d) Each silver gray squirrel, \$10.

(e) Each game bird other than wild turkey, \$10.

(f) Each wild turkey, \$50.

(g) Each game fish other than salmon or steelhead trout, \$5.

(h) Each salmon or steelhead trout, \$125.

(i) Each fur-bearing mammal other than bobcat or fisher, \$50.

(j) Each bobcat or fisher, \$350.

(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, \$500.

(L) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this subsection, \$25.

(3) The civil penalty imposed under this section shall be in addition to other penalties prescribed by law.

SECTION 3. ORS 459.685 is amended to read:

459.685. (1) Any person having the care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted, who causes or permits any disposal of such waste or substance in violation of law or otherwise than as reasonably intended for normal use or handling of such waste or substance, including but not limited to accidental spills thereof, shall be liable for the damages to person or property, public or private, caused by such disposition.

(2) It shall be the obligation of such person to collect, remove or treat such waste or substance immediately, subject to such direction as the department may give.

(3) If such person fails to collect, remove or treat such waste or substance when under an obligation to do so as provided by subsection (2) of this section, the department is authorized to take such actions as are necessary to collect, remove or treat such waste or substance.

(4) The director shall keep a record of all necessary expenses incurred in carrying out any clean-up projects or activities authorized under subsection (3) of this section, including reasonable charges for services performed and equipment and materials utilized.

(5) Any person who fails to collect, remove or treat such waste or substance immediately, when under an obligation to do so as provided in subsection (2) of this section, shall be responsible for the necessary expenses incurred by the state in carrying out a clean-up project or

activity authorized under subsections (3) and (4) of this section.

(6) If the amount of state-incurred expenses under subsections (3) and (4) of this section are not paid to the department within 15 days after receipt of notice that such expenses are due and owing, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in any court of competent jurisdiction to recover the amount specified in the final order of the director.

(7) The expenditures covered by this section shall constitute a general lien upon the real and personal property of the person under an obligation to collect, remove or treat the hazardous waste or substance described in subsection (1) of this section.

(8) Within seven days after the department begins any clean-up activities under subsections (3) and (4) of this section, the department shall file a notice of potential lien on real property to be charged with a lien under subsection (7) of this section with the recording officer of each county in which the real property is located and shall file a notice of potential lien on personal property to be charged with a lien under subsection (7) of this section with the Secretary of State. The lien shall attach and become enforceable on the day on which the state begins the clean-up projects or activities authorized by subsection (3) of this section if within 120 days after such date, the state files a notice of claim of lien on real property with the recording officer of each county in which the real property charged with the lien is located and files a notice of claim of lien on personal property with the Secretary of State. The notice of lien claim shall contain:

- (a) A true statement of the demand;
- (b) The name of the parties against whom the lien attaches;
- (c) A description of the property charged with the lien sufficient for identification; and
- (d) A statement of the failure of the person to perform the cleanup or disposal as required.

(9) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property.

Approved by the Governor July 13, 1985
 Filed in the office of Secretary of State July 15, 1985

CHAPTER 686

AN ACT

HB 3001

Relating to insurance; creating new provisions; amending ORS 476.270 and 734.575; and appropriating money.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 734.575 is amended to read:

734.575. (1) A member insurer may offset the assessment described in ORS 734.570 (3) first against its [premium or corporate excise tax liabilities to this state an assessment described in ORS 734.570 (3) at the] corporate excise tax imposed under ORS 317.070, its gross premiums tax imposed under ORS 731.816 or both, and second against its fire insurance gross premiums tax imposed under ORS 731.820, in that order. The offset may be taken at a rate of 20 percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. If a member insurer ceases doing business, all uncredited assessments may be credited against its [premium or corporate excise] tax liabilities referred to in this subsection for the year in which it ceases doing business.

(2) Any sums acquired by refund from the association that have previously been written off by contributing insurers and offset against [premium or corporate excise] taxes as provided [in] under subsection (1) of this section, and are not then needed for purposes of ORS 734.510 to 734.710, shall be paid by the association to the commissioner and [by him] deposited with the State Treasurer for credit to the General Fund of this state.

SECTION 2. (1) Not later than the fifth day after the effective date of this Act, the Insurance Commissioner shall notify the State Treasurer of the total amount of assessments that member insurers have offset against their fire insurance gross premium tax under ORS 734.575 (1) for calendar year 1984.

(2) The commissioner shall notify the State Treasurer:

(a) On or before July 1, 1986, of the total amount of assessments that member insurers have offset against their fire insurance gross premium tax under ORS 734.575 (1) for calendar year 1985.

(b) Before July 1, 1987, of the total amount of assessments that member insurers have offset against their fire insurance gross premium tax under ORS 734.575 (1) for calendar year 1986.

(3) After each notification by the commissioner under this section, an amount equal to the amount under subsection (2) of this section reported in the notification or an amount necessary to fund the current legislatively approved budget of the Fire Marshal Division, whichever amount is less, is appropriated and shall be transferred from the General Fund to the State Fire Marshal Fund.

SECTION 3. Section 2 of this Act is repealed on June 30, 1987.

SECTION 4. ORS 476.270 is amended to read:

476.270. (1) If an insurance company has reason to believe that a fire loss to its assured's real or personal

A CHANCE TO COMMENT ON...

Proposed Rule Amendment for Hazardous Waste Penalties

Date Prepared: January 8, 1986
Hearing Date: March 12, 1986
Comments Due: March 12, 1986

**WHO IS
AFFECTED:**

Persons who handle hazardous waste, including generators, air and water transporters, and owners and operators of hazardous waste treatment, storage and disposal facilities.

BACKGROUND:

Chapter 685, Oregon Laws 1985 establishes a schedule of civil penalties against any person having the care, custody or control of a hazardous waste causing the destruction of wildlife due to contamination of food or water supply.

In addition, existing rule OAR 340-12-068 contains a schedule of minimum civil penalties for specified hazardous waste violations, ranging from \$100 to \$2,500, with a maximum of \$10,000. Violations of groundwater protection, closure, post-closure, and financial assurance requirements have a minimum penalty of \$100.

**WHAT IS
PROPOSED:**

Rule OAR 340-12-068 would be amended to:

1. Include the penalty schedule of Chapter 685, Oregon Laws 1985 for destruction of wildlife;
2. Raise the minimum penalty for groundwater protection, closure and post-closure, and financial assurance violations of the hazardous waste program from \$100 to \$2,500; and
3. Clarify that penalties may be assessed for each day of the violation.

A copy of the entire proposed rule amendment is enclosed with this notice.

**WHAT ARE THE
HIGHLIGHTS:**

- o Persons having control of a hazardous waste would be subject to penalties of specified amounts for the destruction of specified wildlife in addition to any other penalty provided by law.
- o Owners and operators of hazardous waste treatment, storage and disposal facilities would be subject to a minimum penalty (if assessed) of \$2,500 for certain violations, including:

(over)



P.O. Box 1760
Portland, OR 97207

8/18/84

ZF616

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.

- Failure to assure groundwater is protected;
- Failure to assure proper closure and post-closure activities will be undertaken; and
- Failure to establish and maintain financial assurance mechanisms.

**HOW TO
COMMENT:**

A public hearing to receive oral comments is scheduled for:

Wednesday, March 12, 1986
10:00 a.m.
DEQ Portland Headquarters
Room 1400
522 S.W. Fifth Avenue

Written comments may be submitted at the public hearing or mailed to DEQ, Hazardous and Solid Waste Division, Attn: Alan Goodman, P.O. Box 1760, Portland, OR 97207, by March 12, 1986.

For more information contact the DEQ Hazardous and Solid Waste Division at (503) 229-5913.

**WHAT IS THE
NEXT STEP:**

After the public hearing, DEQ will evaluate the comments, prepare a response to comments and make a recommendation to the Environmental Quality Commission at its regularly scheduled meeting on April 25, 1986.

ZF616


STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE MEMO

TO: Environmental Quality Commission

DATE: March 31, 1986

FROM: 
Alan Goodman
Hazardous and Solid Waste Division

SUBJECT: Hearing Officer's Report and Responsiveness Summary
Proposed Amendment of Hazardous Waste
Management Civil Penalty Schedule
OAR 340-12-068

On March 12, 1986, at approximately 10:00 a.m. in Room 1400 of the Yeon Building, at 522 SW 5th Ave., Portland, Oregon, a public hearing was held on the proposed amendment of OAR 340-12-068, Hazardous Waste Management Civil Penalty Schedule. Eight persons were in attendance and two persons testified. Written comments from two persons were also received prior to the hearing. Table 1 lists the participants in the hearing.

TABLE 1

<u>Name</u> <u>Representing</u>	<u>Present</u> <u>at Hearing</u>	<u>Testified</u> <u>At Hearing</u>	<u>Submitted</u> <u>Written Comment</u>
1. Llewellyn Mathews Northwest Pulp & Paper Assoc.	X		
2. Myrna Tienken Wescomp	X		
3. Connie Taylor Reidel Environmental Services	X		
4. Richard Saloz State of Oregon Department of General	X		

<u>Name</u> <u>Representing</u>	<u>Present</u> <u>at Hearing</u>	<u>Testified</u> <u>At Hearing</u>	<u>Submitted</u> <u>Written Comment</u>
5. Charles Allen Pacific Power & Light	X		
6. Tom Bushard U.S. Printing Ink	X		
7. Tom Donaca Associated Oregon Industry	X	X	X
8. Jim Brown Tektronix	X	X	
9. George Eliades Society of American Wood Preservers			X
10. Danielle Green Oregon Environmental Council			X

Several issues were raised that are proposed to be dealt with as follows:

Issue 1

Comment:

Proposed new paragraphs (k) and (l) of OAR 340-12-068(1) appear to mandate insurance as the only means of meeting the liability requirements for sudden and non-sudden accidental occurrences. This conflicts with DEQ rules, 40CFR 264.147 and 265.147, which allow a financial test to be used to demonstrate financial assurance for liability.

Department Response:

The commentators believe that use of the term "liability coverage" in proposed 340-12-068(1)(k) and (l) means insurance and excludes the option of a financial test, as allowed in the hazardous waste management rules. It was not the Department's intent to restrict the mechanisms available to facility owners and operators to demonstrate financial assurance for sudden and non-sudden accidents.

The Department has modified paragraphs (k) and (l), (now renumbered as (1)(d)(H) and (2)(h)(D)), to reference rather than restate the financial assurance requirements for facility owners and operators. The proposed rule amendment now reads "Is an owner or operator of a hazardous waste . . . facility and fails to comply with the financial liability requirements of Subpart H of 40 CFR Part 264 or 265."

The Department has made similar revisions to the format of proposed 340-12068 (1) (d) through (y) (now renumbered as (1) (d) (A) through (G) and (2) (h) (A) through (D)). These revisions reference rather than restate the substantive requirements for groundwater monitoring and protection, closure, post-closure and financial assurance. The revisions make the proposed rule amendments more concise.

Issue 2

Comment:

Violations of groundwater monitoring and protection, closure, post-closure, financial assurance and liability requirements are essentially "paperwork" violations and as such do not deserve a \$2,500 minimum penalty. Two commentors recommended a \$100 minimum penalty for these violations. One commentor supported the proposed \$2,500 minimum penalty.

Department Response:

DEQ believes that waste handlers' compliance with these (and other) high-priority requirements offers real and significant environmental and public health protection. Conversely, failure to comply can significantly increase the risk that hazardous waste will enter the environment. Some examples are:

1. Without adequate groundwater monitoring, hazardous waste being placed on the land, such as in landfills, surface impoundments or piles, could seep undetected through soil and contaminate groundwater. This potential even exists if the units are lined, since liners are not completely impermeable to all wastes and have been found to leak.
2. Wastes stored in drums or containers will eventually have to be removed from storage and properly disposed. The waste handling equipment will have to be decontaminated and the waste storage area tested for any residual contamination from leaks, spills, etc. These are closure activities. If a storage facility owner/operator does not develop a cost estimate for closure, then the amount of financial assurance necessary to cover closure costs cannot be determined. Even if a closure cost estimate is developed, unless the waste handler has in place a financial instrument (trust fund, bond, etc.), there is no guarantee that the closure measures will actually be carried out. Closure and financial assurance requirements are intended to preclude the need for government to later assume responsibility and pay for cleanup and disposal of hazardous waste.

(The Commission may recall that the importance of these requirements was an issue raised during discussions of DEQ's Enforcement Guidelines for the Hazardous Waste Program.)

We believe that a related issue is indirectly raised by commentors. The existing minimum civil penalty schedule distinguishes between a storage and treatment facility on the one hand, and a disposal facility on the other.

The minimum penalty for storing or treating a hazardous waste without a permit is \$1,000 while the minimum penalty for disposing of hazardous waste without a permit is \$2,500. The minimum penalty amounts purposely differ because DEQ believes these three types of waste handling activities pose different levels of environmental and public health risks.

The Department believes it is appropriate to maintain this division between types of facilities when establishing minimum penalties for groundwater monitoring, closure, post-closure, financial assurance and liability violations. Therefore, the proposed rule amendments have been modified to set the minimum penalty at \$1,000 if these violations occur by a storage or treatment facility, and at \$2,500 if they occur by a disposal facility.

Issue 3

Comment:

Liability coverage for non-sudden occurrences has become virtually unavailable nationally. Sudden occurrence coverage may not be available in the amounts required. These problems in obtaining insurance are created by Congress and must be resolved there. Given the fact that liability insurance is almost not available, a minimum penalty of \$2,500 for failure to demonstrate liability coverage is unreasonable. The appropriate minimum penalty should remain at \$100.

Department Response:

DEQ recognizes that the (lack of) availability of liability insurance for hazardous waste facility owners and operators is a national problem. When EPA promulgated the liability coverage requirement, comments from the public, Congress, regulated industries, state agencies and insurance companies indicated widespread support and virtually no opposition. However, due to several factors, the liability insurance market today for hazardous waste facilities is almost dried up and what is available is extremely costly.

In response to the situation, in the August 21, 1985 Federal Register (attached) EPA proposed alternative regulatory approaches to addressing the liability coverage problem. These included:

- maintaining the existing requirements
- clarify the required scope of coverage and/or lower the limits
- authorize other financial responsibility mechanisms

- authorize waivers
- suspend or withdraw the liability coverage requirements

It should also be noted that insurance is not the only means to provide financial liability assurance. The existing rules provide a financial test, which is based upon tangible net worth and working capital amounts and ratios.

In recent discussions with EPA, DEQ has learned that EPA will soon publish rule changes in response to its August 21, 1985 request for comments. EPA apparently will retain the financial liability requirement, but make available another mechanism, the corporate guarantee, for meeting it. At this time, we are unable to estimate how much relief will occur from another mechanism being approved for use. However, we believe EPA's retention of liability coverage as a basic requirement for facility owners or operators is important to note.

In response to the depressed state of the insurance market, DEQ has adopted an enforcement approach similar to that of EPA. The Department, in exercising its discretion, will not assess penalties if the facility owner/operator can substantiate good faith efforts at securing insurance. The factors used to evaluate good faith are listed on page 33906 of the August 21, 1985 Federal Register.

Despite comments at the hearing, there is a high rate of compliance with the liability coverage requirements by Oregon's hazardous waste handlers.

The compliance status is summarized in Table 1 below:

Table 1					
Liability Requirement	Number of Facilities Required to Comply	In Compliance	Insurance	Financial Test	
1. Sudden occurrences: \$1 million per occurrence and \$2 million annual aggregate.	14	12	6	6	
2. Non-sudden occurrences: \$3 million per occurrence and \$6 million annual aggregate.	6	4	1	3	

DEQ believes a minimum penalty amount of \$2,500 for failure to demonstrate non-sudden liability coverage is appropriate to the gravity of the violation. However, as indicated above, no enforcement action will be taken for failure to comply, if good faith efforts were made and can be substantiated. Therefore, no change was made to the rules to address this issue.

Issue 4

Comment:

OAR 340-12-068 (1) (c) should be deleted because it is a statutory requirement which is self-executing.

Department Response:

OAR 340-12-068 (1) (c) pertains to cleanup of hazardous waste illegally disposed. The Department did not propose to amend 340-12-068 (1) (c). Repeal of this paragraph without proper prior notice would conflict with Oregon's Administrative Procedures Act. Therefore, no action is proposed to address this issue.

(The Department does propose, however, to change the reference in 340-12-068 (1) (c) from "ORS 459.685" to "ORS 466.205" to conform to the Secretary of State's recent recodification of ORS 459.)

Issue 5

Comment:

Proposed new Section (4) of 340-12-068 is unnecessary because state food and water supplies are adequately protected under current state and federal law. The section would expand the scope of hazardous waste to include things such as process waste which are not legally defined as hazardous waste.

Department Response:

New section (4) is a codification of the hazardous waste-related civil penalty provision of Chapter 685 of Oregon Laws 1985. Section 2 of Chapter 685 (codified as ORS 466.890) established a penalty schedule for destruction of wildlife due to contamination of food or water supply by hazardous waste. The need or desirability for this penalty schedule has been addressed by both the Oregon Legislative Assembly and the Governor and reflected by their approvals. The Department believes it would be inappropriate to not include this penalty schedule in Division 12 of its rules.

The penalty schedule does not expand the definition of hazardous waste, as the commentor has asserted. No changes to the proposed rule are necessary to address this issue.

A. Goodman:y
(503) 229-5254
ZY2541
Attachment
April 9, 1986

FRIDAY

**Wednesday
August 21, 1985**

Part III

**Environmental
Protection Agency**

**40 CFR Parts 264 and 265
Standards Applicable to Owners and
Operators of Hazardous Waste
Treatment, Storage, and Disposal
Facilities: Liability Coverage; Proposed
Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[SWH-FRL 2865-7]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities: Liability Coverage

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency), considering whether to revise the financial responsibility requirements in 40 CFR Sections 264.147 and 265.147, 265.151 (i) and (j), is today requesting comments on the availability of insurance to satisfy the existing liability coverage requirements for owners and operators of hazardous waste facilities and on methods for the Agency to address potential restrictions in the availability of coverage. Owners and operators reportedly have encountered difficulties in obtaining insurance necessary to comply with these requirements.

EPA is considering whether any revisions to 40 CFR Sections 264.147 and 265.147 are necessary in light of the current state of the insurance market. This rule sets forth several regulatory options under consideration by the Agency, and also requests comments on a range of subjects related to the availability of insurance policies that may be used to comply with the liability coverage requirements. [Other alternatives considered by EPA would require new legislation and are not considered in this proposal.]

DATE: Comments must be submitted on or before September 20, 1985.

ADDRESSES: Comments may be mailed to Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments received by EPA may be inspected in Room S-212, U.S. EPA, 401 M Street, SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact Susan Hughes Office of Solid Waste [WH-562], U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202) 382-4761.

SUPPLEMENTARY INFORMATION: The contents of today's rule are listed in the following outline:

I. Background

A. Current Liability Coverage Requirements

B. Liability Insurance for RCRA Facilities

1. Policy Types

- a. CGL Policies
- b. EIL Policies

2. Reasons for Market Conditions

II. Request for Comments

A. Current Market Situation and Reasons for Its Decline

B. What Will Improve the Market

C. "Insurability"

III. Possible Regulatory Approaches to Potential Problems

A. Maintain the Existing Requirements

B. Clarify the Required Scope of Coverage and/or Lower the Limits

C. Authorize Other Financial Responsibility Mechanisms

D. Authorize Waivers

E. Suspend or Withdraw the Liability Coverage Requirements

IV. Executive Order 12291

V. Paperwork Reduction Act

VI. Regulatory Flexibility Act

I. Background

A. Current Liability Coverage Requirements

Section 3004(a)(6) of the Resource Conservation and Recovery Act (RCRA), as amended, requires EPA to establish financial responsibility standards for owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment.

EPA promulgated the financial responsibility standards for both liability coverage and financial assurance for closure and post-closure care on January 12, 1981. On October 1, 1981, EPA deferred the effective date of the regulations governing liability coverage and announced its intent to publish a proposal to eliminate the liability requirements (46 FR 48197). The Agency at that time questioned whether those requirements were necessary or desirable to meet the requirements of RCRA. In response to that announcement EPA received considerable comment from the public, regulated industries, insurance companies, members of Congress, and State agencies. These comments indicated widespread support for a Federal liability coverage requirement

for hazardous waste management facilities; there was virtually no opposition to such a requirement.

On April 16, 1982, EPA promulgated regulations requiring owners and operators to demonstrate liability coverage during the operating life of the facility for bodily injury and property damage to third parties resulting from facility operations (47 FR 16554). Under the liability coverage regulations (40 CFR 264.147 and 265.147), owners and operators of all types of TSDFs are required to demonstrate, on a per firm basis, liability coverage for sudden and accidental occurrences in the amount of \$1 million per occurrence and \$2 million annual aggregate, exclusive of legal defense costs. Owners and operators of surface impoundments, landfills, and land treatment facilities are also required to demonstrate, on a per firm basis, liability coverage for nonsudden accidental occurrences in the amount of \$3 million per occurrence and \$6 million annual aggregate, exclusive of legal defense costs. "First-dollar" coverage is required; the amount of any deductible must be covered by the insurer, with right of reimbursement from the insured. Financial responsibility can be demonstrated through a financial test, liability insurance, or a combination of the two.

The requirements for coverage of sudden accidental occurrences became effective on July 15, 1982. The requirements for nonsudden accidental occurrences were phased in gradually. Firms with annual sales or revenue of \$10 million or more were required to submit evidence of this coverage by January 16, 1983. Firms with annual sales or revenue of \$5 million to \$10 million were required to submit evidence of coverage by January 16, 1984. All other firms were required to demonstrate such coverage by January 16, 1985.

The requirements assure that funds will be available for third parties seeking compensation for bodily injury and property damage arising from facility operations. Furthermore, insurance is a vital part of the Agency's regulatory program for improving environmental management practices of insured parties. It is also less Federally-intrusive than other approaches such as provision of insurance by the Federal Government. In addition, by offsetting a degree of activity-related risk, insurance fosters broad participation in hazardous waste management. The requirements may also instill public confidence in hazardous waste management activities and help to gain public support for the siting of new and improved facilities.

Congress has also expressed its support for financial responsibility requirements. Section 213 of the Hazardous and Solid Waste Amendments of 1984 (RCRA section 3005(e)) provides for the termination of interim status for all land disposal facilities by November 8, 1985, unless: (1) The owner or operator applies for a final determination regarding the issuance of a permit by that date and (2) certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements for liability coverage, closure, and post-closure care.

Failure to comply with the liability requirements can have other significant ramifications. First, § 270.14(b)(17) requires that an owner or operator demonstrate compliance with the RCRA liability requirements in the Part B permit application. The Agency may experience extreme difficulties in issuing RCRA permits without a demonstration of compliance in accordance with the requirements in § 264.147. Second, most authorized States have liability requirements in effect that are equivalent to the existing Federal requirements. Therefore, in the absence of any action by the Agency, owners and operators are still subject to RCRA requirements in authorized States. Consequently, until the States amend their regulations, owners and operators would still be unable to certify compliance with RCRA liability requirements and they will lose interim status. Third, the owner or operator may be subject to citizen suits under RCRA section 7002 or Agency or State enforcement efforts. In addition, publicly-held firms unable to comply might be required to disclose information about their noncompliance on their Securities and Exchange Commission (SEC) 10-K and 10-Q filings. (See 17 CFR Part 229.) If the inability to comply with the RCRA liability coverage requirements might force a firm to close down a facility or plant and that fact is deemed "material" (i.e., important to a reasonable investor in securities issued by that firm), then that fact might need to be disclosed.

Also, if a firm believes that a legal proceeding might be instituted against it because of a failure to comply with the liability coverage requirements, the firm may be required to disclose that fact. Some Agency action may be desirable to forestall serious difficulties arising from a widespread failure to comply with the liability coverage requirements due to a general lack of available insurance coverage. The Agency intends

to promulgate one of the options in this notice by November 8, 1985.

B. Liability Insurance for RCRA Facilities

1. Policy Types

Two basic types of liability coverage are available to cover third party bodily injury and property damage caused by RCRA facility operations: comprehensive general liability (or CGL policies) and environmental impairment liability (or EIL policies). The terms and availability of these two types of policies vary significantly. Both types of insurance are sold to a wide variety of firms in addition to owners and operators of RCRA facilities.

There are two basic distinctions in policy types: claims-made and occurrence based. Under a claims-made insurance policy, coverage is triggered only when claims are made during the policy period. Insurers use the claims-made format to relieve themselves of the burden of claims brought long after the original occurrence and to reduce the difficulty of predicting the number of claims that will be made and the amount of damages that may be awarded. An occurrence based policy covers claims arising from the events that occur during the policy period, regardless of when the claim is filed.

The period of coverage under claims-made policies may be further expanded or restricted by incorporation of "discovery period" or "retroactive period" provisions. The discovery period provision in a claims-made policy provides that an insured, for the payment of an additional premium, may obtain an extension of coverage following expiration of the policy, for losses occurring during the policy period but which are not brought until after the policy's expiration. It is sometimes referred to as an extended reporting period. The retroactive date in a claims-made policy limits coverage to damages caused by occurrences that occurred subsequent to that date.

a. *CGL Policies.* CGL policies have been widely available for decades. They cover all types of third party damages, except those specifically excluded, and therefore cover many types of damages in addition to injuries caused by releases of hazardous wastes. CGL policies are generally issued on an occurrence basis. As a result of this policy feature and of uncertainty about what circumstances in the chain of events leading to third party damages constitute an "occurrence," insurers may be required to defend and/or indemnify parties they insured many years in the past. Most standard CGL policies issued

since the early 1970's have excluded from coverage those damages caused by the release of a pollutant that is not "sudden and accidental." A standard version of the exclusion states that the insurance does not apply "to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental."

Recently, some courts have found pollution exclusion clauses ambiguous and, in accordance with accepted principles of contract law, have interpreted the ambiguity in favor of the insured. *Keene Corp. v. INA*, 667 F. 2d 1034 (D.C. Cir. 1981), cert. denied, 455 U.S. 1007 (1982); *Farm Family Mutual Insurance Co. v. Bagley*, 64 A.D. 2d 1014, 409 N.Y.S. 2d 294 (4th Dept. 1978); *Jackson Township Municipal Utilities Authority v. Hartford Accident and Indemnity Co.*, 186 N.J. Super. 156, 451 A.2d 990 (1982). As a result, insurers claim they are being forced to defend and/or indemnify their insureds for risks they did not knowingly assume when the policies were issued. On the other hand, some courts have interpreted the policies narrowly and accepted the exclusion. *Barnet of Indiana v. Security Insurance Group*, 425 N.E. 2d 201 (Ind. App. 1981); *National Standard Insurance Co. v. Continental Insurance Co.*, CA-3-81-1015-1 (N.D. Tex. October 4, 1983); *Great Lakes Container Corp. v. National Union Fire Insurance Co.*, 727 F. 2d 30 (1st Cir. 1984); and *American States Insurance Co. v. Maryland Casualty Co.*, Civ. No. 82-70353 (E.D. Mich. July 3, 1984).

The insurance industry has responded to these interpretations in several ways. First, standard CGL policy forms are being rewritten to exclude all damages caused by pollution. A new CGL form developed by the Insurance Services Office (ISO) will exclude all pollution liabilities. This form has been filed for approval with many State insurance commissions. "Buy-backs" of coverage for damages caused by sudden and accidental releases are expected to be available under these policies. Buy back is a type of coverage excluded under the basic terms of the policy which can be included for the payment of an additional premium. Second, pending the approval of a revised CGL form, many insurance companies are issuing some CGL policies with a restrictive

endorsement excluding all coverage of damages caused by pollution. Third, the insurance industry has also considered issuing CGL policies on a claims-made basis, rather than an occurrence basis. This change will generally require amending the standard CGL policy forms and approval by State insurance commissions. Fourth, insurers are responding by reducing the availability of coverage. The CGL policies that cover sudden and accidental releases have reportedly been difficult to obtain and costly for firms that manage hazardous wastes or toxic substances.

b. EIL Policies. Environmental impairment liability (EIL) policies are designed specifically to cover third party damages caused by pollution, and therefore are narrower in scope than CGL policies. Virtually all EIL policies are issued on a claims-made basis. EIL policies can be purchased to cover third party damages caused by either nonsudden incidents only or both sudden and nonsudden incidents.

EIL policies are a relatively recent phenomenon. Between the early 1970's and 1981, coverage was generally unavailable for nonsudden releases. Only a few excess and surplus lines insurers offered such coverage. Excess and surplus lines are a designation that a State gives to insurance companies that provide insurance that is not readily available from companies licensed or "admitted" to transact business in that State. Because such companies are not regulated directly, States often control their ability to transact business by regulating brokers and agents. By 1981, a market for nonsudden pollution liability coverage developed because of increasing public awareness of injuries caused by toxic substances and the Agency's proposed RCRA liability coverage requirements.

Many insurance companies entered the initial pollution liability market. The Pollution Liability Insurance Association (PLIA), a reinsurance pool, was established in October 1981 with 37 member companies. The PLIA now has 42 members. At least a dozen other U.S. insurance companies and several London-based insurers also marketed EIL policies.

The market for EIL policies reportedly has changed dramatically in the last year or two. The number of insurers offering coverage has apparently declined significantly. Some of the largest EIL insurers such as Shand, Morahan and Co. Inc., and Stewart Smith Mid-America, Inc. withdrew from the market. Based on anecdotal evidence, the cost of coverage has apparently increased significantly while policy limits have declined. For

example, a company reported to EPA that it recently purchased a policy with limits of \$3 million per occurrence and \$6 million annual aggregate, the minimum acceptable limits for nonsudden accidental occurrences under the RCRA requirements, for \$99,000. A year earlier they purchased a policy with limits of \$20-million per occurrence and \$20 million annual aggregate for about the same price.

2. Reasons for Market Conditions

A wide variety of explanations have been given for the apparent reduced availability and increased cost of EIL coverage for RCRA facilities and other installations. These reasons include: losses due to low premiums and large claims (reducing the availability and increasing the price of reinsurance); difficulty of setting premiums based on risk; judicial interpretation of policies favoring insureds; lack of compliance with liability requirements; and the tragedy in Bhopal, India. Also, some insurers have suggested that another possible factor bearing on the availability of EIL coverage is the apparent lack of demand for such coverage because of the lack of compliance with RCRA liability coverage requirements.

In addition, over the past four years, both the primary insurance and reinsurance industries have incurred large underwriting losses throughout the property and casualty market sector. In 1984, property and casualty insurers suffered a net loss of \$3.55 billion, the first net loss for the insurance industry since 1906, the year of the San Francisco earthquake.

One reason for the insurance industry losses is declining interest rates. When interest rates were high in recent years, the insurance industry was willing to write policies at a "loss" in order to obtain money that could then be invested for a net profit. Consequently, a highly competitive insurance industry often accepted premiums that apparently did not adequately reflect accepted policy risks. However, declining interest rates have reduced investment income and insurers are no longer able to offset policy "losses."

It is important to note that insurance industry profits, like the stock market, are subject to changing economic conditions that are often cyclical. During periods when economic conditions result in large insurance industry losses, the insurance industry may respond by curtailing their riskiest policies. This response is due in part to the insurance industry's need to maintain a sufficient ratio of premiums to reserves. In this

case, RCRA insurance is among the curtailed policies.

Reinsurance is a mechanism which spreads losses and risks by broad participation. Reinsurers provide coverage to insurance companies for excess losses sustained in a certain line or lines of coverage. Reinsurance acts as an incentive for insurance companies to continue writing policies in "tight" markets. Therefore, conditions in the reinsurance marketplace significantly affect the price, amount and type of primary insurance available to potential insureds. The abundance of inexpensive reinsurance in recent years was a major factor fueling competition among primary and excess insurers. Reinsurers have decided to raise rates and restructure major factor fueling competition among primary and excess the risks they will underwrite because the primary insurers have not adequately screened the risks they underwrite. The result of tighter control by reinsurers is a decrease in the availability of policies written by primary insurers in the affected lines of coverage. For example, the Hartford Steam and Boiler Inspection and Insurance Company and Environmental Risk Assessment Service (International) Ltd., a major London-based pool of 15 EIL insurers, stopped writing pollution coverage last year when they could not find reinsurance.

As we understand it, the insurance industry contends that RCRA insurance is a high risk proposition for several reasons. First, there is a lack of actuarial data to establish realistic premiums that adequately reflect risk. Second, there is a lack of acceptable and universally applied risk analysis methods. Third, there is a social perception that hazardous waste has not been and cannot be adequately managed. The insurance industry contends that this perception will ultimately lead to several costly effects: third party claims for virtually all policies that they underwrite; a subsequent duty to defend against these claims; resultant high litigation costs; and policy losses due to court rulings in favor of the insured for coverage that the insurer did not intend to provide.

Litigation costs and court rulings on coverage of hazardous waste related claims, at present, appear to be two factors of great concern to the insurance industry. As noted above, some recent court rulings have narrowly interpreted the standard "pollution exclusion" in the standard CGL form, following the judicial tradition of interpreting ambiguities in insurance contracts against the insurer. In several rulings,

coverage was held to apply to third party off-site bodily injury and property damage claims. The courts have also frequently ruled that the statute of limitations does not begin in a hazardous waste tort case until a victim knew or reasonably should have known of his or her injury. Therefore, where CGL policies allows occurrence made claims, coverage may be provided long after the policy has expired.

While the narrow judicial interpretations of policy *exclusions* for nonsudden pollution do not explain the insurance industry's reluctance to issue nonsudden policies, the industry is concerned that such rulings, in effect, force insurers to assume liability for obligations they allegedly never knowingly agreed, by contract, to assume, and for which they collected no premium. Thus, insurers claim they cannot rely on the terms and conditions of their policy contracts to establish the scope of coverage from which insurers ultimately estimate potential liability risks and establish policy premiums.

The insurance industry places a large portion of the responsibility for insurance industry losses on a legal system that encourages suits against "deep pockets" and Federal and State liability provisions. However, this problem may also be attributed to ambiguous insurance contracts that created high potential exposure to insurers. In fact, when the pollution exclusion was inserted into the CGL policy in the 1970's, some insurers argued that the pollution exclusion language did not clarify coverage, but rather only confused the definition of an occurrence warranting coverage. In addition, hazardous waste management was not a high profile public issue during the early 1970's. Therefore, it is possible that the insurance industry inserted the pollution exclusion clause into the CGL policy aware of its potential ambiguity but unaware of the magnitude of its potential implication.

This explanation finds further corroboration in current insurance industry efforts to eliminate policy ambiguities. More restrictive CGL policies are now being drafted. Pollution coverage for both sudden and nonsudden events will be offered through EIL policies on a claims-made basis. However, it may be some time before the insurance industry has recovered from its current economic condition and is willing to provide sufficient EIL coverage.

Finally, the recent tragedy in Bhopal, India, has further heightened insurers' concerns about the riskiness of toxic substances. Insurers are concerned about being required to pay for cleanup

costs under the strict, joint and several liability standard of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The insurers' concerns regard future liabilities at CERCLA sites for which they had written liability coverage policies when the facilities were managed under RCRA.

Despite the recent publicity about the lack of insurance for owners and operators of hazardous waste management facilities and other firms that handle toxic substances, the Pollution Liability Insurance Association (PLIA) has reported to the Agency a recent increase in its sales of EIL policies. During the first quarter of 1985, PLIA sold more EIL policies and collected more premiums than in the previous year. In addition, American Home/National Union Insurance Companies in the American International Group, and The Travelers Insurance Company are still writing RCRA liability coverage. However, Travelers and PLIA apparently only write coverage for firms which carry other insurance with their company.

II. Request for Comments

This section of the notice requests comments in four areas: (1) The current market for insurance policies that may satisfy RCRA liability coverage obligations and reasons for the present state of the insurance market, particularly with regard to availability and rates; (2) what actions or events might improve the market; (3) what types of firms, facilities, and risks are not insurable; and (4) alternative regulatory approaches that the Agency may adopt in addressing possible problems. In answering the questions that follow, commenters are requested to distinguish, where possible, the different types of insurance policies: CGL policies that cover sudden and accidental releases, EIL coverage for sudden and accidental releases, and EIL coverage for nonsudden and accidental releases. Although the primary focus of the Agency is on coverage for operating RCRA facilities, relevant comments on the insurance market for other types of firms and facilities will also be appreciated.

A. Market Situation

To determine if need exists for modification of federal requirements due to limitations in the availability of third party liability insurance covering the operation of RCRA facilities, the Agency needs a clear and detailed understanding of the current availability of insurance. Among the questions that must be addressed are the following:

What insurance companies are currently offering EIL and/or CGL coverage for RCRA facilities? How many insurance companies that previously offered EIL coverage have withdrawn from the market either completely or selectively? Why did they withdraw? What amounts of coverage (per occurrence and annual aggregate) are available and what amounts are commonly sought for RCRA facilities? Are the current liability limits adequate? How do the amounts of coverage purchased vary by the number of facilities covered, process types, wastes managed, and other factors? Is first-dollar coverage available? Is coverage exclusive of legal defense costs available?

What has been the experience of insurers and insureds under these policies? How many policies have been canceled by the insurer? Why have these policies been canceled? How many claims based on events at RCRA facilities have been paid? What amount has been paid out in these claims? How does this amount compare to the premiums collected? Do the policies and premiums create an effective incentive for facility owners to reduce the risks they present?

How much are the premiums? How have they changed in the last three years? What is the cost for the minimum acceptable amount of first-dollar coverage? What are the costs of higher levels of coverage? What are the most important factors influencing the cost of coverage (e.g., facility age, design, process types, safety record, wastes handled)?

What limitations are there in the availability of reinsurance? What companies offer reinsurance in this line of insurance? Why have the reinsurers withdrawn from the market? Are any captive insurance companies providing coverage for RCRA facilities? A captive insurance company is an insurance company set up by a company or group of companies to insure their own risks, or risks common to the group. Are any efforts underway to establish new captive insurance companies? What limits the establishment of such captives?

What are the major effects of any limitations in the availability of coverage for RCRA facilities? Have any facilities closed solely because of the lack of insurance at an affordable price? How will the availability and cost of insurance influence decisions of owners and operators of interim status facilities about whether to seek Part B permits? Are generators seeking greater liability coverage because of a lack of coverage

by the commercial facilities that handle their wastes?

If sudden accidental occurrence coverage and/or nonsudden accidental occurrence coverage is difficult or excessively expensive to obtain, why? What are the most important causes of the limited availability of coverage? How important are the following factors: lack of demand for coverage; court decisions that broadly interpret policies in favor of the insured; the difficulty of predicting the likelihood of claims, the cost of defense, and the cost of judgments against the insured; the fear of being liable for cleanup costs under CERCLA or other laws; the capacity shortage in the property and casualty insurance market; the lack of reinsurance for environmental risks; and recent concern aroused by the tragedy in Bhopal, India.

B. What Will Improve the Market

The Agency recognizes that it has a limited ability to influence the availability of insurance for RCRA facilities. In this regard, the Agency solicits comments addressing what events or actions will increase the availability of coverage for owners and operators of RCRA facilities. What actions by the Agency, if any, would increase the availability of coverage that would satisfy the intent of the liability coverage requirements? For example, what would be the impact of: increased Agency and State enforcement efforts to ensure compliance with the rules, which might stimulate demand for coverage; and/or clarification by EPA of the term "sudden accidental occurrences," so that it is expressly narrower than the interpretation some courts have applied to that phrase in the CGL pollution exclusion?

C. "Insurability"

One of the purposes of the liability coverage requirements is to encourage owners and operators of RCRA facilities to manage hazardous waste in an environmentally sound manner. Thus, the regulations may be judged successful if poorly designed or improperly managed facilities are forced to close because the risk of accidents they present prevents them from obtaining insurance coverage at an affordable price. However, if low risk facilities that comply with all RCRA statutory and regulatory requirements are unable to obtain insurance coverage at a reasonable price, the liability coverage regulations may merit reconsideration.

To better understand the relationship between risks presented by RCRA

facilities and the availability of insurance, the Agency requests comments on the following issues:

What types of firms and facilities can obtain CGL and EIL coverage? Who cannot obtain coverage at any price? What types of firms, facilities, or risks are reinsurers most hesitant to cover? Does it matter whether a facility has interim status or a permit? On what basis do insurers decide whether a facility or firm will be offered coverage and the cost of coverage? What is a "reasonable" range for premiums? How do these premiums compare to those set for parallel risks (e.g., product liability coverage)? How do these factors differ for different types of policy coverage? What risk assessments are required before a CGL or EIL policy will be issued for a RCRA facility? How does the market distinguish between disposal and nondisposal facilities for sudden and accidental coverage? Does the market distinguish among land treatment facilities, surface impoundments, and landfills for nonsudden coverage? How does the market distinguish among on-site facilities serving only the owner or operator? How does the market distinguish among off-site commercial facilities?

III. Possible Regulatory Approaches to Potential Problems

The Agency believes that requiring insurance or other liability coverage is desirable to protect human health and the environment. However, in light of the present and potential difficulties encountered by some TSDF owners and operators in obtaining insurance coverage, the Agency is considering taking one or a combination of the following five regulatory actions in response to the problem of possible limited insurance availability. These five responses are neither exhaustive nor mutually exclusive, and the Agency is soliciting both comments on these approaches and suggestions for alternative responses. The Agency will find especially useful comments that specify which alternative or combination of alternatives is preferred and why, the predicted benefits and costs of each alternative, and the extent to which each alternative will assist the regulated community in obtaining liability coverage.

A. Maintain the Existing Requirements

If the Agency does not take any action designed to address the problem of possible insurance availability, then the liability requirements contained in 40 CFR 264.147 and 265.147 remain in full effect. Owners and operators of disposal

facilities who are unable to procure insurance or satisfy the financial test, will, under the new amendments, lose interim status.

Of course, not all firms that are unable to procure insurance will fail to meet the RCRA financial responsibility requirements; many firms will instead demonstrate financial responsibility by passing the financial test specified in 40 CFR 264.147 or 265.147. Some owners and operators who are owned by corporations that satisfy the financial test may wish to transfer ownership or operation to the parent corporation. If the parent corporation can pass the financial test for the facility's financial responsibility requirements, the facility would then be in compliance with the liability requirement. (A transfer of ownership or operational control should be accompanied by a revised Part A). However, it is possible that some facilities that follow environmentally sound operating procedures and are, in some sense, "insurable," may nonetheless be unable to retain interim status or obtain a RCRA permit, because the owners and operators can neither pass the financial test nor obtain insurance.

The Agency has adopted a short term enforcement policy in response to the depressed state of the insurance market. The Agency will consider placing an owner or operator on a schedule of compliance to get insurance if: (1) The Agency finds that providing for such a schedule is consistent with the facility's compliance with other RCRA requirements, and (2) the facility can substantiate good faith attempts at securing insurance. Failure to exercise the obligation to obtain insurance or unsubstantiated good faith claims will result in appropriate enforcement actions; compliance orders will be issued and penalties will be assessed when the owner or operator fails to make a good faith effort in accordance with specified criteria.

Several factors are used to define good faith including: submittal of a complete application to insurance companies in a timely fashion, allowing for the insurance companies to process and issue the policy; submittal of an application to "known" suppliers of EIL insurance; submittal of evidence of attempts to acquire insurance with known insurers by documenting the contracts made and the reasons given by the insurance companies for denying or delaying the applications.

This enforcement approach was established as an interim measure, pending a more detailed analysis of the issue. The policy does not apply after

November 8, 1985, and will not (as presently stated) affect the requirement that interim status facilities certify compliance with the financial responsibility requirements as of that date.

B. Clarify the Required Scope of Coverage and/or Lower the Required Levels of Coverage

Limited insurance availability may be caused by the unwillingness of the insurance industry to issue policies with the scope of coverage specified by the regulations. If this is the case, the Agency could address these concerns by clarifying the scope of coverage, and/or revising the regulations to lower the minimum amounts of liability coverage required both per occurrence and on an annual aggregate basis, and/or allow modest deductibles.

The meaning of the terms "sudden and accidental occurrences" and "nonsudden and accidental occurrences" could be specified in a manner that is still conducive to protecting human health and the environment but also clarifies what type of liabilities must be covered. For example, the term "sudden and accidental occurrences" could be defined to be narrower than some recent judicial interpretations of the phrase "sudden and accidental" in CGL policies. However, a clarification of terms by the Agency may not preclude continued judicial interpretation of policy coverage.

The Agency could also address the acceptability of claims-made policies, retroactive dates in claims-made policies, and certain exclusions (e.g., cleanup costs, legal defense costs) in policies used to demonstrate liability coverage. The Insurance Services Office (ISO) announced that it is considering rewriting its new CGL form to include legal defense costs within the policy limits. ISO is considering the change because of concern among both direct insurers and reinsurers over growing defense costs associated with CGL policies. ISO indicated that defense costs often exceed 30% of the cost of a claim paid under a CGL policy. A summary of a study conducted by the Rand Corporation Institute for Civil Justice states that plaintiffs received an average of 37% of the total payout by defendants after deducting plaintiffs' and defendants' litigation expenses.

EPA requires owners or operators to obtain liability coverage exclusive of legal defense costs. This was done because allowing defense costs to be included within the policy limits might defense costs to be included within the policy limits might severely restrict the

amount of insurance coverage available to compensate third parties. Unusually large legal defense costs could result in a significant erosion in the compensation available. This is a special problem for liability suits arising out of the operation of hazardous waste management facilities, as this is an area of expanding liability involving potentially complex issues related to causation and damage. However, insurers could place limits on defense costs as long as the policies specify that the levels of coverage required by EPA are guaranteed before defense costs are absorbed.

In addition, premiums could more accurately reflect potential liability by providing mechanisms for apportioning costs based on risks. For RCRA facilities, the most effective mechanism could involve conducting insured-specific environmental audits based on existing scientific, engineering, and medical data. EPA could facilitate this approach by providing insurers with comprehensive technical data compiled over the past decade. This data may serve as an actuarial basis from which to calculate premiums related to policy coverage. EPA could also provide technical assistance as appropriate.

This approach would provide several benefits. First, the insurance industry could enter the market having determined limits of liability to their satisfaction. Second, a source of defined compensation to pollution victims would be available through the private sector, minimizing Federal intrusion. Third, such insurance would provide an effective market force mechanism to help regulate and reduce the risk of environmental damage by an insured facility or organization by demanding responsible environmental management as a condition and cost of insurance. Improved operations could result from the incentive of lower premiums and insurer oversight. Fourth, this approach would consider environmental risk as a condition of financial responsibility. This consideration should lead, for example, to RCRA permitting of environmentally sound and financially responsible facilities of varying size.

Lowering the minimum level of coverage or narrowing the scope of coverage may lessen the protection of human health and the environment. However, since there are insurance companies currently writing policies below the required limits for RCRA, this option would allow some additional owners and operators to comply with the liability requirements. The Agency solicits comments on the appropriate levels of coverage, how the scope of coverage should be defined, and the

potential effects of these changes, including the effects on the availability of liability coverage.

C. Authorize Other Financial Responsibility Mechanisms

To enable more firms to meet the liability coverage required during a facility's operating life, the Agency could revise 40 CFR 264.147 and 265.147 to authorize, in addition to insurance and financial tests, the use of the corporate guarantee. The EPA regulations requiring financial assurance for closure and post-closure care allow the use of a corporate guarantee by the owner or operator's parent corporation. (See 40 CFR 264.143, 264.145, 265.143, and 265.145.) In addition, the Agency could authorize indemnity contracts as an alternative mechanism.

The corporate guarantee is a promise to answer for the debt or default of another. It is a collateral undertaking and presupposes another contract or transaction, which is identified in the guarantee. There is ordinarily a contract or other agreement between the principal and a third party creating the primary obligation and a contract between the principal and the guarantor creating the guarantee, which supports the primary obligation. If the principal defaults on the primary obligation, then the guarantor is liable to the third party on the obligation created by the guarantee. An indemnity contract is not a collateral undertaking, but rather a two-party agreement that provides that one party, the indemnitor, will reimburse the other party for losses that he may incur because of the occurrence of a specified event.

In the past, the Agency has not approved the use of the corporate guarantee as an alternative mechanism for liability coverage because of concern about the validity and enforceability of the guarantee under State insurance laws. However, if a parent (or unrelated firm) were allowed to provide a subsidiary (or unrelated firm) with a corporate guarantee or an indemnity contract that would assure coverage for third-party damages, a larger number of firms and facilities may be able to comply with the financial responsibility requirements for liability coverage.

In most States, insurance is controlled under State law, with limitations on who may engage in the business of insurance and detailed regulation of business practices. Carrying on the business of insurance without appropriate licenses or certificates of authority can subject companies to fines or other penalties. In addition, corporate guarantees, such as

those for liability coverage could be found void under State laws.

Precisely what constitutes the "business of insurance" varies from State to State. Many States, however, either by statute or common law, exempt from their insurance regulations actions by a firm that might otherwise be covered by the insurance laws, if those actions are incidental to or connected with other business activities of the firm. Thus, a corporate guarantee or indemnity by a corporate parent to its subsidiary that is considered to be incidental to the ownership of the subsidiary by the parent might, in at least some states, be exempt on that basis.

Another question is whether a guarantee provided by one firm to another firm that is not a corporate subsidiary of the guarantor would be considered incidental to the business activities of the guarantor. A single guarantee contract for liability coverage, undertaken exclusively for profit, would probably be subject to most State insurance requirements. If, however, the guarantee was given to ensure that hazardous waste management would continue to be provided to the guarantor, the guarantee might be viewed as incidental to the guarantor's business activities, and thus exempt from some State insurance laws.

The Agency requests comments on the relative merits and disadvantages of allowing either the corporate guarantee or the indemnity contract to be used as a liability coverage mechanism and on their respective likelihood of creating a valid and enforceable obligation under State laws. The Agency will consider amending its regulations to allow use of this mechanism in States where the State Attorney General certifies that the corporate guarantee would be valid and enforceable. In addition, the Agency requests information on the extent to which these alternative mechanisms have been used to demonstrate financial responsibility under other, non RCRA programs.

D. Authorize Waivers.

The Agency could amend its regulations to authorize case-specific waivers of the liability coverage requirements if the owner or operator can demonstrate that it failed to obtain coverage despite a "good faith effort." "Good faith effort" is described in option A. The waiver would be given on a case-by-case basis and would operate for a limited time, to be specified by the Agency (e.g. November 8, 1986). The waiver might be subject to other conditions; for example, a waiver might not be granted to a facility that is owned

or operated by a subsidiary of a corporation that passes the financial test.

This approach would promote environmental protection by maintaining the general liability coverage requirements, allowing the insurance industry additional time to develop needed insurance policies, and allowing regulated facilities that genuinely attempt to comply with the regulations to continue operation. On the other hand, this approach may have the disadvantage of giving firms that obtain a waiver an unfair economic advantage over those that purchase insurance, and of allowing the continued operation of facilities that may be unable to obtain coverage because of the great health and environmental risks they pose. In addition, by decreasing the demand for insurance, widespread use of waivers may actually suppress the development of the needed insurance policies. Finally, the Agency would face a potentially heavy administrative burden of reviewing waiver requests and determining whether a "good faith effort" was made.

One possible way to avoid the problem of allowing uninsured, "high-risk" facilities to continue to operate is to grant waivers only if the owner or operator demonstrates not only a "good faith effort," but also that the facility is "insurable." This approach, however, entails the additional difficulty of determining which facilities are "insurable." An assessment of "insurability" may impose significant administrative burdens on the Agency by requiring it to perform risk analyses on the facilities of each firm that applies for a waiver. The Agency solicits comments on appropriate standards for "good faith effort" and "insurable."

E. Suspend or Withdraw the Liability Coverage Requirements

To the extent that any limited availability of insurance is caused by a temporary depression in the insurance industry, it may be desirable to suspend by regulation the liability coverage requirements for all firms in the regulated community. This approach would avoid the possibility of enforcing requirements which currently may not be attainable. Owners and operators of RCRA facilities would not face potential citizen suits for noncompliance with regulations. Also, a suspension would give the Agency, the regulated community, the insurance industry more time to develop appropriate methods of financial responsibility for liability coverage at RCRA facilities.

However, the approach has several disadvantages. Until the liability

coverage requirements are reactivated, adequate protection may not be provided to human health and the environment. Currently insured firms may terminate their coverage as a result of the suspension. Furthermore, the likelihood that the required environmental insurance would become more available at some point in the future remains unclear. To date, the insurance industry and the regulated community have had several years to develop the required liability insurance. In addition, suspending the requirements for liability coverage would also suspend much of the demand for such insurance, reducing incentives for carriers to provide insurance policies for RCRA facilities. If the insurance market for RCRA facilities is presently depressed, some measure would be needed to determine when the market has recovered sufficiently to reinstate the liability coverage requirements. The Agency requests comments on the present state of the insurance market and on whether insurers will be better able to offer the required liability coverage at some point in the near future.

Finally, the Agency may consider rescinding the liability coverage requirements permanently. The Agency solicits comments on whether human health and the environment would be sufficiently protected in the absence of these requirements.

One obstacle to realizing practical benefits from this approach is that State regulations requiring financial responsibility assurances analogous to the Federal program will remain in effect unless and until a State revises its regulations to parallel EPA's newly amended regulations. Absent some action by EPA, it could be argued that such State regulations would still be regarded as EPA-authorized Subtitle C requirements even though there is no longer a corresponding EPA Subtitle C requirement. Thus, under this theory, facilities in authorized States would obtain no relief from this rulemaking.

EPA's current view is that such a result is inconsistent with the purposes of State authorization under the statute. The general objective of section 3006 is to allow EPA to suspend its implementation of the RCRA program in those States where the State's program (including its substantive standards) satisfies the statutory and regulatory objectives of the RCRA program. Where EPA removes a particular regulatory requirement from the RCRA program, it no longer makes sense for EPA to view the State analog to that requirement as

part of the "RCRA authorized" State program.

Accordingly, if EPA suspends the financial responsibility requirements, EPA would also modify its regulations to indicate that the State's analog to those requirements would no longer be RCRA requirements. It is important to note, however, that the State regulations remain valid requirements enforceable by the State even though they would no longer be Subtitle C requirements. Under section 3009 and 40 CFR 271.1(i) and 271.1(ii), authorized States are allowed to impose more stringent requirements than EPA. Consequently, while EPA would no longer have the authority to enforce the state regulations, the State would remain free to enforce its own law.

Such a modification of the scope of the RCRA State program, would have a direct impact on the responsibilities of owners and operators under section 3005(e)(2)(B) to certify compliance with the "applicable financial responsibility requirements." If State law analogous to the Federal insurance requirements have been removed from the RCRA State

program, then they are no longer the *applicable* requirements for purposes of the certification responsibilities.

IV. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being considered today to the liability requirements are not "major rules". The options under consideration are not likely to result in a significant increase in costs and thus are not a major rule, no Regulatory Impact Analysis has been prepared.

V. Paperwork Reduction Act

There are no information collection requirements associated with this rule.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). The options under

consideration either maintain the existing regulations and thereby impose no additional costs, or relax the existing insurance requirements and thus reduce costs associated with compliance.

List of Subjects

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

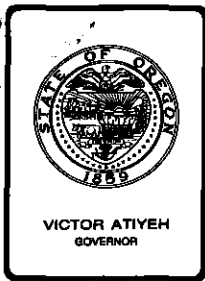
Accordingly, I certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

Dated: August 16, 1985.

Lee M. Thomas,
Administrator.

[FR Doc. 85-20108 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M



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 M, April 25, 1986, EQC Meeting

Informational Report

Development of Landfill Site - Selection Criteria

Background

The purpose of this report is to:

- (1) Inform the Environmental Quality Commission (EQC) of the completion of the Department's program to develop site selection criteria for its Portland metropolitan area landfill siting project, and
- (2) To highlight the Site Evaluation and Final Decision criteria, which will be used to evaluate and rate each of the candidate sites.

The 1985 Legislature, through passage of Senate Bill 662, gave the Department and the Environmental Quality Commission the responsibility and authority to site a solid waste disposal facility to serve the Portland metropolitan area (Senate Bill 662 is published as a note at the end of Oregon Revised Statutes (ORS) 459). The siting of a sanitary landfill is only one part of that legislation which also requires the development and implementation of an aggressive and comprehensive waste reduction program for the Portland region. The timely siting of a landfill is seen as critical since the Portland area's principal existing landfill (St. Johns) is expected to be full by 1989; and the region's designated solid waste authority (Metropolitan Service District) has been unable to site a suitable replacement facility.

In response to Senate Bill 662 the Department has begun a process that will lead to the selection by the Environmental Quality Commission of an environmentally acceptable landfill site by July 1 of 1987. The Department realizes that any site will have some environmental or technical shortcomings, but has designed its site selection process to identify those sites which are most suitable for development as a municipal sanitary landfill. In addition, the Department has included the ability to

prevent or mitigate on-site and off-site impacts from the landfill operation as one of the primary considerations in evaluating potential sites.

To ensure that a suitable site (or sites) is selected the Department has developed a comprehensive set of landfill siting criteria. Three categories of criteria are included. They are the pass-fail criteria, the site evaluation criteria, and the final decision criteria. The pass-fail criteria and a description of the process that was used to develop them were submitted to and reviewed by the Commission at their March 14 meeting. These criteria are now being used by the site selection consultant in the development of a list of potential sites. The site evaluation criteria will be used to evaluate and rank all of the potential sites, and to identify two to four finalist sites. The final decision criteria will be used to evaluate and compare those finalist sites.

Specific information on the site evaluation and final decision criteria and the process used to develop them has been included in this report, so that it can be reviewed by the Commission prior to the application of these criteria in the site selection process. The time frame for the site selection process calls for the development of a comprehensive list of potential sites by May, 1986, the completion and submission to the EQC of a study identifying 12 to 18 preferred and appropriate sites in June, 1986, and the recommendation by the site selection consultant of 2 to 4 finalist sites by October 1, 1986. Each finalist site will receive a detailed feasibility analysis, including a comprehensive geotechnical investigation, preliminary design and site planning, on-and off-site mitigation planning, and cost analysis.

This work will culminate in a DEQ recommendation to the EQC for a specific site (or sites) by May of 1987, and the issuance by the EQC of an order to establish a site or sites by July 1, 1987 as required by Senate Bill 662. In considering the DEQ recommendation and in issuing the siting order the Commission will need to compare the two to four finalist sites using the DEQ site-selection criteria and the site acquisition, construction and operation cost estimates that will be developed as part of the detailed site feasibility studies. In addition, the Commission must find that the site or sites they select meet the minimum site suitability requirements outlined in Section 4 of Senate Bill 662.

Criteria Development

The first major step in the site selection process is the development of site selection criteria. This is an especially critical step since the criteria report will be the guiding document throughout the site selection process. The Department requested proposals from qualified consultants to assist in the development of the criteria. Seven proposals were received and reviewed by Department staff, and the top four candidates were interviewed. Based on information obtained through this process the Department selected the Brown and Caldwell consulting team. The team includes Brown and Caldwell as the primary contractor and their subcontractors Converse Consultants, and H. G. Schlicker and Associates.

The Department has directed Brown and Caldwell to develop criteria that are comprehensive, technically defensible, and that will ensure an impartial, fresh look at all potential landfill sites. The Department has also established a citizens advisory committee (Facility Siting Advisory Committee - FSAC) that will provide advice and direction to Department staff during the criteria development process and throughout the siting project (See Attachment A).

After reviewing numerous other examples of site selection criteria that had been developed and used by communities throughout the Pacific Northwest and other areas of the country the Brown and Caldwell team selected a format that include three major categories and five subcategories of criteria. The three major categories are:

Pass-Fail Criteria. A landfill site or sites must be selected from somewhere within a six-county region (Washington, Multnomah, Columbia, Clackamas, Marion, Yamhill Counties) that includes an area of several thousand square miles. To bring potential sites into focus, certain constraints on where a site can be located must be identified. Obviously incompatible areas must be eliminated-- this is the purpose of the pass-fail criteria. If an area passes an individual pass-fail criterion, it may be suitable for consideration as a landfill. If an area fails the criterion, it is automatically eliminated from further consideration. An example of a pass-fail criterion is the regulatory requirement to keep landfills at least 10,000 feet from airport runways used by turbojet aircraft. All areas within 10,000 feet of these runways will be eliminated from consideration.

Although the principal use of the pass-fail criteria will be in the initial identification of potential sites, the criteria will remain in force as the process continues. Information about sites will surface throughout the site selection process; and if new information indicates the site fails one of these criteria, the site will be eliminated.

Ten pass-fail criteria have been developed for use in the DEQ site selection process. As described earlier, these criteria and the steps that led to their development were reviewed by the Commission at their March 14 meeting.

Site Evaluation Criteria. When the initial process of identifying potential sites is complete there may be more than a hundred sites identified. The initial list of sites must be screened down so that only the most suitable sites are given further consideration. The site evaluation criteria have been developed for this purpose.

These criteria will be used to compare the alternative sites and to identify those that are most suitable. Information used for this process will be obtained from pertinent literature, unpublished reports and file data, aerial photographs, maps, public input, surface reconnaissance and, in the later stages of the process, on-site investigations. Initially the list of potential sites will be reduced to the top 12 to 18 candidates. Limited field investigations will then be conducted on those 12 to 18, and the site evaluation criteria will be reapplied in order to identify the two to four most suitable sites.

Final Decision Criteria. The final 2 to 4 sites will undergo detailed site-specific investigations. These investigations will develop data which will be used in conjunction with the final decision criteria to refine the comparison of the sites, and to select the best site from among the finalists. Forty final decision criteria have been developed. Thirty-eight of these criteria correspond to specific site evaluation criteria. That is, they have the same criterion title and address the same basic issue as their corresponding site evaluation criterion. In most instances, however, the rating categories for the final decision criteria have been expanded and made more detailed. This has been done to reflect the level of detailed site specific information that will be available for each of the finalist sites. A new criterion was developed to address the suitability of each of the finalist sites for the establishment of resource recovery facilities and an informational (no weighting or rating assigned) criterion on site costs was included as a final decision criterion. Several of the final decision criteria directly address the issue of site suitability in relation to the mitigation of potential conflicts with surrounding land uses as identified in Senate Bill 662.

Detailed cost estimates for site acquisition, landfill construction and operation, and impact mitigation will be developed for each of the 2 to 4 final sites. This cost information will, however, be considered separately from the final decision criteria scores when comparing the sites. Considering these factors separately will result in a more straightforward site selection process, and will prevent any real or perceived economic influence on a site's technical and environmental scores.

Each of the three major categories is divided into the same five subcategories: political boundaries, regulatory, environmental, technical, and economic. The purpose of these subcategories is to provide a method to help guide the site selection process. They help direct the project team to evaluate potential sites from all possible perspectives. For some subcategories, there may not be any criteria under a given major category. For example, there are no economic criteria in the pass-fail or Final-Decision categories. The following paragraphs discuss each of the five subcategories:

Political Boundaries. The one political boundary criterion is a pass-fail criterion that limits the area where a site can be located to Multnomah, Washington, Clackamas, Marion, Yamhill, or Columbia Counties.

Regulatory. This category addresses all laws, regulations, or regulatory agency actions which affect landfill site selection. Some of the most significant laws in addition to Senate Bill 662 include the Resource Conservation and Recovery Act (RCRA), Oregon Revised Statutes (ORS) 459, and Oregon Administrative Rules (OAR) 340-61.

Environmental. It is essential that a landfill site be found which has the best natural characteristics for protecting the environment. These natural characteristics back up and support the landfill's built-in environmental protection features.

This sub-category is divided into various environmental elements: surface water, groundwater, natural habitat, land resources, air quality, social and cultural resources, and aesthetics.

Technical. The technical category addresses characteristics of the site which relate more to site design and operation than strictly to protection of the environment. Examples of technical criteria are site capacity and constructability of site soils.

Economic. The cost of the landfill is an important criterion. However, detailed costs of individual sites will not be known until the final stages of site selection. Economic criteria established for earlier stages in the process relate more generally to factors which influence cost, such as distance of the site from the solid waste source. In the evaluation of the final 2 to 4 sites, detailed cost estimates will be developed for each site, but, as was described earlier, they will be considered separately from the criteria rating scores.

The Brown and Caldwell team, which included a number of experts with a broad range of landfill related technical expertise, worked in conjunction with DEQ Staff to develop a list of 12 pass-fail, 38 evaluation, 32 final decision criteria, and a numerical rating system to be used with the evaluation and final decision criteria. The draft criteria and rating system were submitted to the Department in draft form on February 3, 1986. After numerous changes in response to public comments, peer review, and staff review, (see discussion of draft criteria review process below) Brown and Caldwell submitted the final draft of siting criteria on April 4, 1986. A copy of this draft criteria report is attached (Attachment B).

Initial Draft Criteria Review Period - February 3 to February 25

Public Review: The Department employed a number of techniques in order to obtain public comment on the first draft of the criteria report. A complete copy of the report was provided to each member of the FSAC as well as to a core group of technical specialists and involved citizens. An executive summary of the report, along with a public hearing notice and a list of locations where complete copies of the report could be obtained or reviewed, was mailed to over 800 groups and individuals directly or indirectly involved in solid waste related issues. (See Attachment C). In addition, the criteria development processes was discussed and copies of the draft report were circulated at numerous meetings between Department staff and local government officials, recycling and environmental support groups, garbage haulers, and citizen action groups. A notice informing the public of the availability of the draft criteria and outlining the comment schedule was published in The Oregonian on February 13, 1986. A public hearing on the draft criteria was conducted on February 20, and written comments were accepted until February 25th.

Twenty-two individuals or groups provided written comments and eleven individuals presented testimony at the public hearing concerning the draft criteria. The comments varied considerably in their level of detail and the number of criteria that were addressed. Certain general points, however, were made repeatedly. These points were:

- (1) There was general support for the format, methodology, and comprehensive nature of the draft criteria.
- (2) A desire for additional information on the criteria development process and the qualifications of the Brown and Caldwell team.
- (3) The need for clarity and consistency in the technical terms, and definitions used in the report was emphasized.
- (4) More time to adequately review the criteria was requested. Most commenters felt that they had adequate opportunity to review the 12 pass-fail criteria, but not to cover the evaluation and final decision criteria in detail.

Review by Facility Siting Advisory Committee (FSAC): The FSAC reviewed and commented on the criteria development process at their February 12th meeting. The Committee agreed that additional information on the criteria development process and the Brown and Caldwell team qualifications should be added to the report. They also concurred that additional time to review the criteria would be very valuable.

At the February 25th meeting the Committee concentrated on the pass-fail criteria. The Committee discussed several of the pass-fail criteria in detail, and, although no specific objections were raised, the Committee's constructive comments led to the revision of several of the criteria.

The second draft of the criteria report which contained the revised pass-fail criteria, an expanded discussion of the criteria development process, and an appendix describing the qualifications of the Brown and Caldwell team members was submitted to the EQC at their March 14th meeting. In response to the Director's recommendations the Commission limited their review to the pass-fail criteria, and concurred with the Department's proposed course of action for continuing the criteria development process. That course of action included:

- (1) Providing the finalized pass-fail criteria to the site selection consultant, so that they could be used in the site identification process (development of the initial list of potential sites),
- (2) Continued solicitation of public comment on the evaluation and final decision criteria, and
- (3) Submission to and review by the Commission of revised site evaluation and final decision criteria at their April 25 meeting.

Second Draft Criteria Review Period - February 25 - March 31

Public Review: The Department conducted a second mass mailing on March 7 in which notification of an extended comment period and a second public hearing were sent to approximately 700 interested individuals and groups. Copies of the EQC staff report along with the revised pass-fail criteria, and the extension notice were sent to approximately 100 actively involved individuals and groups, including the FSAC and all those individuals who had provided written comments or testimony during the initial review period. Additional meetings were conducted with the Sierra Club and the Tri-County Garbage Haulers Association.

The second public hearing was conducted at the Portland Building on the evening of March 27.

Two additional sets of written comments were received by the Department, and seven individuals provided testimony at the public hearing. The written comments and testimony dealt with several issues addressed by the criteria including surface and groundwater protection, geologic hazards, land use concerns, traffic, potential site end uses, soil suitability, and wildlife protection.

FSAC Involvement: At their March 17 meeting the Facility Siting Advisory Committee discussed several issues that related to specific criteria as well as the manner in which the criteria would be applied and the results presented. At their meeting on April 10, the Committee will discuss the results of the Peer Review Workshop (see following section), and make a recommendation on the Department's proposed site evaluation and final decision criteria. Any recommendations that the Committee makes on the criteria will be forwarded to the Commission at its April 25 meeting.

Peer Review: In addition to soliciting comments from the general public the Department sponsored a draft criteria review workshop on March 20. Several individuals from Oregon and Washington who are experts in the various disciplines addressed in the Department's draft landfill site selection criteria were invited to provide their comments on the site evaluation and final decision criteria. Also invited, as observers, were representatives of county government from Washington, Multnomah and Clackamas County, members of an Ad Hoc environmental and recycling committee that is overseeing the Department's landfill selection process, and members of the Facility Siting Advisory Committee. The workshop was designed to provide an objective peer review of the draft site evaluation and final decision criteria, and was conducted as part of the Department's extensive efforts to involve the public in their landfill site selection process. A summary report on the Peer Review Workshop, that includes a description of the changes made to each of the criterion, is attached (Attachment D).

Response to Comments Received During the Second Review Period

In response to the comments received at the peer review workshop and from the general public and the FSAC, DEQ staff, working with representatives of the consulting firm of Brown and Caldwell, modified all but three of the draft site evaluation and final decision criteria. Many of the modifications were fairly extensive and involved major rewording of the rating descriptions or significant changes in the assigned weighting or rating values. Four new criteria were developed, and two of the draft criteria were dropped.

In addition to their comments on specific criteria, the peer review group and the FSAC had suggestions concerning the site selection process in general. Several of those suggestions were taken into consideration by Department staff in making decisions concerning how the criteria would best be applied and how the site selection results should be presented to the EQC.

In comparing the final 2 - 4 sites, the Department now intends to consider site costs separately from the other criteria ratings. Economic criteria used in the site evaluation stage will therefore be dropped in the final decision stage, and will be considered as part of the preliminary cost estimates for each site.

The Department will present the Environmental Quality Commission with a recommendation based upon the following information for each final site.

- (1) A numerical score which rates the environmental and technical merits of the site, based upon the final decision criteria;
- (2) Preliminary estimates of the cost of site acquisition, landfill construction and operation, and impact mitigation; and
- (3) A finding of whether or not the site meets the minimum requirements specified in Senate Bill 662.

Criteria Definitions

The following pages contain a listing of all of the site evaluation and final decision criteria that includes a one sentence description of the issue addressed by each criterion.

Site Evaluation No.	Final Decision No.	Criterion Title	One Line Description - This criterion will be used to evaluate and rate the:	Criterion Weighting
<u>ENVIRONMENTAL</u>				
<u>Surface Water</u>				
10	110	Floodplains	site location in relation to recognized flood plains.	6
11	111	Site Runoff Sources	type of surface water bodies on the site.	4
12	112	Site Drainage Discharge	size of the surface water body into which the site drains.	4
13	113	Downstream Uses	number of drinking water supplies or developed recreation facilities downstream from the site.	7
<u>Surface Water Subtotal</u>				21
<u>Groundwater</u>				
20	120	Groundwater Recharge/ Discharge Areas	site location in relation to groundwater recharge (upland) and discharge (valley) areas.	8
21	121	Natural Groundwater Protection	thickness and permeability of the earth materials beneath the site.	8

Site Evaluation No.	Final Decision No.	Criterion Title	One Line Description - This criterion will be used to evaluate and rate the:	Criterion Weighting
<u>Groundwater (Continued)</u>				
22	122	Aquifer Characteristics	nature and permeability of the earth materials in the shallowest aquifer beneath the site.	8
23	123	Depth to Groundwater	depth to groundwater beneath the site.	4
24	124	Hydrologic Boundaries	site location in relation to groundwater flow boundaries.	4
25	125	Downgradient Groundwater Users	number of groundwater users (drinking water) located downgradient of the site.	10
26	126	Groundwater Quality	quality of the groundwater beneath the site.	4
27	127	Evidence of Faulting	potential for damage to environmental protection systems (primarily groundwater protection) from movement along active faults.	3
28	128	Downgradient Non-drinking Water Well	number of non-drinking water wells located downgradient of the site.	2
<u>Groundwater Subtotal</u>				51
<u>Natural Habitat</u>				
30	130	Threatened or endangered species	potential for impacts to endangered or threatened species.	8
31	131	Land Habitat	potential for negative impacts to habitat for land-based plants and animals (that are not endangered or threatened).	4

Site Evaluation No.	Final Decision No.	Criterion Title	One Line Description - This criterion will be used to evaluate and rate the:	Criterion Weighting
<u>Natural Habitat</u> (continued)				
32	132	Aquatic Habitat	potential for negative impacts to habitats for aquatic plants and animals (that are not endangered or threatened).	4
33	133	Current Habitat Disturbance	current level of plant and animal habitat disturbance at the site.	4
<u>Natural Habitat Subtotal</u>				20
<u>Land Use</u>				
40	140	Zoning	current land use zone for the site.	3
41	141	Current Site Use	current land use at the site.	7
42	142	Adjacent Land Use	current land use on property adjacent to the site.	8
<u>Land Use Subtotal</u>				18
<u>Air Quality</u>				
50	150	Air Quality	current air quality designation for the site area.	2
<u>Social/Cultural</u>				
60	160	Cultural Resources	nature and importance of cultural, historic, or archaeological resources on the site.	4
<u>Aesthetic</u>				
70	170	Site Visibility	number of existing homes from which the site can be seen.	3
71	171	Scenic Views	potential impact on scenic views.	2

Site Evaluation No.	Final Decision No.	Criterion Title	One Line Description - This criterion will be used to evaluate and rate the:	Criterion Weighting
<u>Aesthetic (continued)</u>				
72	172	Buffer Area	number of homes located near the site.	10
73	173	Access Routes	quality of roads and type and level of development along access routes.	5
<u>Aesthetic Subtotal</u>				<u>20</u>
<u>Environmental Subtotal</u>				<u>136</u>
<u>TECHNICAL</u>				
80	180	Site Life	projected life of the site.	5
81	181	Landfill Gas	potential negative impacts due to landfill gas.	4
82	182	Surface Water Control	site characteristics related to surface water control and diversion.	2
83	183	Groundwater Drainage	groundwater drainage requirements.	2
84	184	Leachate Treatment	availability of leachate treatment facilities.	7
85	185	Working Area Slopes	steepness of the land surface in the active landfill area.	2
86	186	Landslide Potential	potential for landslides or other forms of slope instability.	5
87	187	Site - Soils	suitability of site soils for landfill construction and operation purposes.	4
88	188	Groundwater Monitoring	difficulty of monitoring groundwater beneath and downgradient of the site.	3
89	189	Precipitation	amount of average annual precipitation at or near the	3

Site Evaluation No.	Final Decision No.	Criterion Title	One Line Description - This criterion will be used to evaluate and rate the:	Criterion Weighting
<u>TECHNICAL (Continued)</u>				
90	190	Climatic Extremes	potential for high winds, freezing rain, or ice and snow.	2
91	191	Traffic	level of traffic congestion and accident history on site access roads.	6
*	192	Compatibility with Resource Recovery	suitability of the site for Establishing Resource Recovery Facilities.	3
<u>Technical Subtotal</u>				<u>48</u>
<u>ECONOMIC</u>				
92	**	Waste Transport Distance	distance of the site from the source of solid waste.	5
93	**	Cover Soil Transport Distance	distance of the site from an adequate source of cover material.	3
94	**	Road Construction	amount of road construction required to provide access to the site.	4
<u>Economic Subtotal</u>				<u>12</u>
*	200	Cost	costs for site acquisition, landfill construction and operation, and impact mitigation.	

* No corresponding site evaluation criterion.
 ** No corresponding final decision criterion.

Director's Recommendation:

It is recommended that the Commission review the final Landfill Siting Criteria report (Attachment B) and that it concur in the following course of action to be pursued by the Department:

- (1) The finalized criteria will be provided to the site selection consultant, and will be used in the site identification and evaluation process.
- (2) The Department will return to the Commission at their July 25th meeting to present a list of the top 12 to 18 preferred and appropriate sites, and to discuss the process that led to their selection.
- (3) The Department will return to the Commission at their October 24 meeting to present the top 2 to 4 finalist sites, and to discuss the process that led to their selection. Also, at this meeting, the Department will discuss the detailed procedures which will be followed to further evaluate the 2 to 4 finalist sites.



Fred Hansen

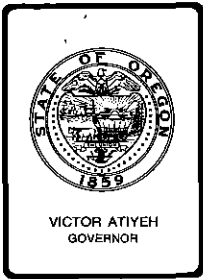
Attachments A - Facility Siting Advisory Committee
Membership Roster

B - "Landfill Siting Criteria" - Third Draft;
Brown and Caldwell, April 1986

C - "A Chance to Comment" Notice for the
Draft Criteria Review Process

D - Summary Report on the Peer Review Workshop

Steve Greenwood;m
SM136
229-5782
April 10, 1986



Department of Environmental Quality

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January 1986

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FY2253

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

LANDFILL SITE SELECTION CRITERIA FOR THE PORTLAND METROPOLITAN AREA

**WHO IS
AFFECTED:**

Residents, property owners, businesses and industry in the Portland Metropolitan Area.

BACKGROUND

By authority of the Oregon Legislature (SB 662), the Environmental Quality Commission has been given until July 1, 1987, to site a new landfill site for the Portland Metropolitan Area.

DEQ's first step in the site selection process is development of siting criteria to identify and evaluate potential landfill sites. Draft Landfill Siting Criteria have been developed and are available for public review and comment.

The Draft Criteria are divided into three categories: the first, Pass/Fail Criteria reflect public comments received in February. The Pass/Fail Criteria will be used to identify all potential landfill sites. The remaining criteria, Site Evaluation Criteria and Final Decision Criteria are the subject of extended public review and will be used to evaluate and limit potential sites to a few final sites.

ISSUES:

What specific criteria should be used to determine if a site is suitable for a landfill? How should criteria be rated in relationship to one another?

**HOW TO
COMMENT:**

PUBLIC HEARING MARCH 27, 1986:

7:00 p.m.
The Portland Building
Auditorium, 2nd Floor
1120 S.W. Fifth, Portland
Portland, OR

IN WRITING BY MARCH 31, 1986:

Dept. of Environmental Quality
Attn: Kent Mathiot, Facility
Siting Coordinator
P.O. Box 1760
Portland, OR 97207

**FOR MORE
INFORMATION:**

To receive a copy of the Draft Site Selection Criteria, call Carol Harris at 229-5759. Copies are also available for review at: DEQ, 522 S.W. Fifth - 6th Floor, Portland; Clackamas County Library, 999 Library Ct., Oregon City; Multnomah County Library, 802 S.W. 10th, Portland; and Beaverton Public Library, 12500 S.W. Allen Blvd., Beaverton.

**WHAT IS THE
NEXT STEP:**

When the comment period has ended, DEQ will incorporate testimony into the final criteria report to be reviewed by the Environmental Quality Commission by April 25, 1986. After this review, DEQ will begin evaluating and rating the potential sites for the Metro Area.

SB5427



P.O. Box 1760
Portland, OR 97207

8/16/84

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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.

A Summary of the March 20, 1986 Peer Group Workshop
for the Review of DEQ's Draft Landfill Site - Selection Criteria

On March 20th, the Department of Environmental Quality sponsored a Draft Criteria review workshop. Several individuals from Oregon and Washington who are experts in the various disciplines addressed in the Department's Draft Landfill Site Selection Criteria were invited to provide their comments on the criteria. Also invited, as observers, were representatives of county government from Washington, Multnomah and Clackamas County, members of the Ad Hoc environmental and recycling committee that is overseeing the Department's landfill selection process, and members of the Facility Siting Advisory Committee. The workshop was designed to provide an objective peer review of the Draft Criteria, and was conducted as part of the Department's extensive efforts to involve the public in their landfill site selection process.

At the workshop, three subgroups were established in order to bring together individuals with similar expertise or interests. The three subgroups were Site Design and Operation, Geology-Hydrogeology, and Natural and Cultural Resources. A list of the participants in each subgroup is shown below:

Geology-Hydrogeology:

Dave Phillips	- Clackamas County, Solid Waste Administrator
Rodger Redfern	- Consulting Environmental Geologist
Marshall Gannet	- Hydrogeologist, Oregon Water Resources Department
Bill Robertson	- Hydrogeologist, Oregon Water Resources Department
Neil Mullane	- Hydrogeologist, DEQ Hazardous Waste
Dennis O'Neil	- Solid Waste staff, Metro
Kent Mathiot	- DEQ 662 Project (Group Discussion Leader)

Site Design and Operation

Bill Webber	- President, Valley Landfills, Inc.
Jim Knudson	- Landfill Specialist, Washington DOE
Norman Wietting	- Landfill Manager, Metro
Tim Spencer	- DEQ, Solid Waste (Group Discussion Leader)

Natural and Cultural Resources

Mike Houck	- Portland Audubon
Sue Yamamoto	- Wildlife Biologist, Oregon Natural Heritage Data Base
Irving Jones	- Oregon Department of Fish and Wildlife
Delyn Kies	- City of Portland
Brian Lightcap	- West Multnomah Soil and Water Conservation District
Maggie Conley	- DEQ, Intergovernmental Coordination
Bob Kulken	- Multnomah County Planning Department
Judy Dehen	- Sierra Club
Elaine Glendening	- Environmental Specialist, DEQ
Ed Mulvihill	- Private Environmental Consultant
Steve Greenwood	- DEQ 662 Project (Group Discussion Leader)

From approximately 9:15 a.m. until Noon, each of the subgroups discussed in detail, those draft criteria that were most directly related to the areas of expertise of the subgroup members. A summary of all of the written comments received by the Department on the Draft Criteria was provided to each subgroup discussion leader and comments pertaining to a particular criterion were read to the sub-group as part of the discussion process for that criterion.

During the lunch break the subgroup discussion leaders presented a brief summary of their subgroup's discussions, findings, etc. to all of the workshop attendees. Following lunch there was a general discussion and question and answer session that lasted until 3:00 p.m.

In response to the comments received at the peer review workshop, DEQ staff, working with representatives of the consulting firm of Brown and Caldwell, modified all but five of the draft site evaluation and final decision criteria. Many of the modifications were fairly extensive and involved major rewording of the rating descriptions or significant changes in the assigned weighting or rating values. Five new criteria were developed, and three of the draft criteria were dropped.

In addition to their comments on specific criteria, the peer review group had suggestions concerning the site selection process in general. Several of those suggestions were taken into consideration by the 662 staff in making major policy decisions concerning how the criteria are to be applied and how the results will be presented to the FSAC and the EQC.

Perhaps the most significant of these decisions has been to deal with the site acquisition, construction, and operational costs separately from the criteria rating process when dealing with the final 2 to 4 sites. The majority of the peer review group felt that detailed site construction and operational costs for each of the finalist sites should be developed as part of the planned site specific feasibility studies, but that the cost estimates should be presented and considered separately from the criteria scores when selecting the most suitable site or sites.

The 662 staff agrees with this proposal, and has therefore not included the three economic Site Evaluation Criteria in the Final Decision Criteria. In addition, the heavily weighted present worth cost criterion (FD 190) has been dropped from the Final Decision Criteria.

It is currently proposed by the 662 staff that the EQC will be presented with three items to use in making their selection of a site or sites. those items will be:

- (1) The criteria scores for each of the finalist sites;
- (2) Detailed estimates of the acquisition, construction, operation and impact mitigation costs for each of the finalist sites, and
- (3) A determination by the Director as to whether or not each of the finalist sites would meet the specific requirements of Senate Bill 662.

The Peer Review Workshop was a very worthwhile and successful effort in that it resulted in the improvement of both the site selection criteria, and the overall site selection process.

A brief statement on the changes made to each of the criterion is listed below:

Criteria Numbers and Titles

Changes Made to Draft Criteria

(SEC = Site Evaluation Criterion.)
(FD = Final Decision Criterion.)

- | | | |
|---|---|--|
| SEC 10/FD 110
Floodplains | - | Riverbank areas that are out of the floodplain, but are subject to erosion from channel migration were added to the description for a 1 rating. |
| SEC 11/FD 111
Site Runoff Sources | - | Technical terms were clarified, and unchanneled surface runoff was given a rating of 6 instead of 1. |
| SEC 12/FD 112
Site Drainage Discharge | - | The flows (cfs) assigned to each rating were changed significantly to be more appropriate to actual study area conditions, and the definition of low-flow was changed so that it will be based on a longer period of record. |
| Groundwater Discharge to Surface Water (Dropped) | - | This criterion was dropped since it was felt that it was too similar to SEC 12/FD 112. |
| SEC 13/FD 113
Downstream Surface Water Uses | - | This is a new criterion that was developed to address Surface water use. |
| SEC 20/FD 120
Groundwater Recharge and Discharge Areas | - | The descriptions for the two lowest ratings were reworded to reflect the concern that regional recharge areas are poor areas for a landfill site. The weighting was increased from a 6 to an 8. |
| SEC 21/FD 121
Natural Groundwater Protection | - | The reference to the depth of the regional water table was removed so that only the thickness and permeability characteristics of the material beneath the site are considered. |

Criteria Numbers and Titles

Changes Made to Draft Criteria

- | | | |
|---|---|--|
| SEC 22/FD 122
Aquifer Characteristics | - | The criterion discussion was expanded and clarified, and the uppermost aquifer was identified as the aquifer to which this criterion would apply. |
| SEC 23/FD 123
Depth to Groundwater | - | All references to natural protection were taken out of the rating descriptions, so that this criterion addresses only depth to groundwater. The criterion discussion was changed to provide a better understanding of the criterion. |
| SEC 24/FD 124
Hydrologic Boundaries | - | This criterion had been a final decision criterion only, but is now included as an SEC. |
| SEC 25/FD 125
Downgradient users | - | The rating descriptions were changed to address the number of homes served by groundwater rather than the number of wells. All references to distance were removed. |
| SEC 26/FD 126
Groundwater Quality | - | The uppermost aquifer was identified as the aquifer of concern. |
| Sole Source Aquifer (Dropped) | - | This criterion was dropped because it was felt that there was no technical or regulatory reason to treat sole source aquifers any differently than all other aquifers. |
| SEC 27/FD 127
Evidence of Faulting | - | This criterion had been a final decision criterion only, but is now included as an SEC. |
| SEC 28/FD 128
Downgradient Non-Drinking
Water Wells | - | This is a new criterion developed to address potential impacts to wells that supply water for industrial, agricultural, or other non-drinking water uses. |
| SEC 30/FD 130
Threatened or Endangered Species | - | This criterion was changed significantly to include species on both state and federal lists and to clarify the rating descriptions and the criterion discussion. |

Criteria Numbers and Titles

Changes Made to Draft Criteria

SEC 31/FD 131
Land Habitat

- The wording in this criterion was changed so that it includes terminology that is better understood by wildlife professionals, and that corresponds to terminology used in county land use plans.

SEC 32/FD 132
Aquatic Habitat

- The language in the rating descriptions and discussion for this criterion was made more descriptive and the stream-flow values assigned to each rating were changed significantly to reflect actual conditions in the project area.

SEC 33/FD 133
Current Habitat Disturbance

- The language in the rating descriptions for this criterion was simplified, wetlands were added to the 1 rating description, and the weighting was changed from 2 to 4.

SEC 40/FD 140
Zoning

- All references to soil and forest classifications were removed from this criterion so that it deals with zoning only. The weighting was lowered from a 7 to a 3.

SEC 41/FD 141
Current Site Use

- The rating descriptions for this criterion were expanded and made more detailed, and the ratings for various land uses were changed to better reflect the expert opinions provided at the workshop and in written comments. The weighting was increased from a 4 to a 7.

SEC 42/FD 142
Adjacent Land Use

- Forest land use was given a rating of 6 rather than 8, and light industrial was lowered from 6 to 4.

SEC 50/FD 150
Air Quality

- The top two rating descriptions were removed since they are not applicable to the study area, and the weighting was lowered from 4 to 2.

Criteria Numbers and Titles

Changes Made to Draft Criteria

- SEC 60/FD 160
Cultural Resources
- SEC 70/FD 170
Site Visibility
- SEC 71/FD 171
Scenic Views
- SEC 72/FD 172
Buffer Area
- SEC 73/FD 173
Access Routes
- SEC 80/FD 180
Site Life
- SEC 81/FD 181*
Landfill Gas
- SEC 82/FD 182*
Surface Water Control
- The entire criterion was rewritten in order to make it more comprehensive and clear, and to address the issue of the potential for impact mitigation.
 - The reference to site visibility from roads was removed from all but the lowest rating description, and the weighting was dropped from 6 to 3.
 - This criterion was completely revised, and the weighting was lowered from 4 to 2.
 - The criterion discussion was expanded to point out that this criterion addresses buffer area as measured from the active landfill area to the nearest residences, and the distance required for a 10 rating was increased from 3,000 ft. to 4,000 ft. Buffer area from a highway was addressed in the description for a 3 rating.
 - The rating descriptions for this criterion were made more comprehensive and clear.
 - The site life figures in the rating descriptions were lowered significantly. A top rating of 10 is now given to a total projected life of 30 rather than 40 years. Information on the amount of disposal area needed (based on cubic yards of garbage per year) is provided in FD 180.
 - The desired setback distance of structures from the landfill site was lowered from 1,500 ft. to 500 ft.
 - The distinction between a minor and major perennial water course was removed, and all sites occupied by a perennial water course were given a rating of 1.

Criteria Numbers and Titles

Changes Made to Draft Criteria

SEC 83/FD 183*
Groundwater Drainage

- Shallow regional water table conditions were added to the lowest rating description so that both perched and permanent groundwater would be addressed.

SEC 84/FD 184*
Leachate Treatment

- The distances to acceptable waste water treatment facilities that were assigned to each rating description were cut in half. A top rating went from access within 10 miles to access within 5 miles.

SEC 85/FD 185
Working Area Slopes

- The rating for slopes of from 0 to 5 percent was lowered from 10 to 7 on the basis that very low slopes could be problematic due to lack of surface water runoff. References to slope stability were taken out of the criterion discussion since that issue is addressed in the landslide potential criterion.

SEC 86/FD 186
Landslide Potential

- The inactive landslide topography rating description was split into two descriptions (large scale and small scale inactive landslide topography) and definitions for large and small scale were provided in FD 186.

SEC 87/FD 187
Site Soils

- No change.

SEC 88/FD 188
Groundwater Monitoring

- No change.

SEC 89/FD 189
Precipitation

- This criterion was reworded so that it deals only with the amount of precipitation at the site.

SEC 90/FD 190
Climatic Extremes

- This is a new criterion developed to address unusual weather conditions.

SEC 91/FD 191
Traffic

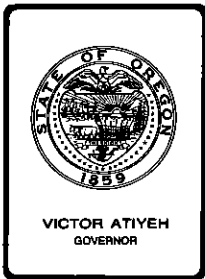
- This is a new criterion that was developed to address traffic safety issues.

Criteria Numbers and Titles

Changes Made to Draft Criteria

- | | | |
|--|---|---|
| SEC 92*
Waste Transport Distance | - | No change.
<u>Note:</u> This criterion (as well as SEC 93 and SEC 94) will not be included as a final decision criterion (see discussion on site costs in text.) |
| SEC 93*
Cover Soil Transport Distance | - | The weighting for this criterion was lowered from 6 to 3. |
| SEC 94*
Road Construction | - | No Change. |
| FD 192
Compatibility with Resource Recovery | - | No Change. |
| Present Worth Cost (Dropped) | - | This criteria was dropped. See discussion on site costs in text. |
| FD 200*
Cost | - | This is a new informational criterion that will be considered separately from the technical and environmental criteria. |

* See discussion in text on site costs.



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, April 25, 1986, EQC Meeting

Informational Report: Yard Debris as a Principal Recyclable Material in the Portland, Washington, Multnomah, Clackamas, and West Linn Wastesheds

Background

On January 31, 1986, the Environmental Quality Commission authorized the Department to hold public hearings on proposed rule changes identifying yard debris as a principal recyclable material in the Portland, Washington, Multnomah, Clackamas and West Linn Wastesheds. In March 1986, the Department held five public hearings on the proposed rule changes. Forty-one people submitted oral and written testimony. Most of the testimony at the hearing was general and in opposition to the proposed rule changes.

The testimony raised concerns about the definition of yard debris, whether yard debris was a principal recyclable material, whether yard debris was a recyclable material, the cost of collection of yard debris, the effective date of the rule amendments, the processing capability of yard debris processors, the markets for yard debris compost product, and the accumulation of unprocessed yard debris.

It remains the Department's opinion that source separated yard debris is a principal recyclable material in all five of the Portland metropolitan area wastesheds. The Department recognizes, however, that collection of yard debris presents unique collection problems. Before returning to the Commission with a proposed rule, the Department wants to meet with local governments and other affected persons to define acceptable alternative methods for providing the opportunity to recycle yard debris and identify those specific locations within each wasteshed where yard debris does not meet the definition of recyclable material. The Department will also do further analysis of area processing capacity and develop market assistance strategies for compost products.

The Department anticipates making a recommendation to the Commission at its July 25, 1986 meeting.

Fred Hansen

Lorie Parker:b
229-5826
April 2, 1986
YB5570

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15316-1

OUR FILE NO.

PLEASE REPLY TO PORTLAND OFFICE

*MEMBER OREGON AND WASHINGTON STATE BARS

April 23, 1986

HAND-DELIVERED

Department of Environmental Quality
Box 1760
Portland, Oregon 97207

ATTN: Sherman O. Olson

Re: Proposed Amendments to On-Site Sewage Disposal
Rules, OAR 340-71-130, OAR 340-71-600(8)

Gentlemen:

On February 21, 1986 Chasm Chemical Company, Inc.
(Chasm) requested an extension of time within which to submit
additional comments on the proposed amendments to OAR
340-71-130(16). The purpose of Chasm's request was to enable
Chasm to examine DEQ's files and respond to the "numerous
complaints" of damage to cesspools and septic tanks from the
addition of chemical treatments that were the supposed
justification for DEQ's amendments. Chasm has completed its
review of DEQ's file and now submits the following additional
comments:

DEPARTMENT OF ENVIRONMENTAL QUALITY
RECORDED
APR 23 1986

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Chasm's position, which is set out in more detail below, is first, that it objects to DEQ's proposed rule, and second, that it supports the proposed rule submitted by Septiclear, Inc. at the February 26, 1986 hearing in Portland.

1. The DEQ file still does not contain any reliable basis to support DEQ's proposed rule. DEQ's "Discussion of Proposed On-Site Sewage Disposal Rule Modifications" states that DEQ has heard "numerous complaints" of damage to on-site systems from the addition of commercial chemicals. The record does not support this allegation. Chasm would certainly have heard of such complaints, if there were any, because Chasm offers a ten-year unconditional guarantee on its treatment process. But Chasm has not heard of any such complaints. Septiclear representatives testified to the same effect. Chasm asked DEQ representatives before the February 26, 1986 hearing in Portland to substantiate the alleged complaints. No such evidence has appeared.

The record does not contain a single written complaint. The only oral evidence of complaints was from a clerical employee of Multnomah County, Michael Jabling, who testified only that he was aware of complaints from others. However, Jabling had no specific information on the substance of the complaints, the identity of the complainants or even

what chemicals were allegedly involved. For all we know, the alleged complaints derive from the use of "explosives" or "organic solvents" which DEQ's proposed rule mentions and which Chasm agrees should be prohibited. The alleged complaints also could have derived from the use of caustic soda or lye, which Chasm also agrees should not be used to clean septic tanks or cesspools.

In support of its use of acids to clear septic tanks and cesspools, Septiclear introduced written endorsements from nine retail sellers of its products, some of whom have sold the products for over 15 years. These endorsements testified to a total absence of any complaints of damage to septic tanks or cesspools. In addition, Septiclear offered to provide a list of over 2,000 satisfied customers, and Chasm offered to produce a similar list for DEQ's inspection. Septiclear also requested that DEQ provide some evidence that systems treated with acids have caused any pollution to groundwater. The record is still devoid of such evidence.

Chasm is thus left wondering what the real basis for DEQ's proposed rule is. Is there is any evidence of groundwater pollution? If so, where is it? Why was it not introduced?

2. DEQ's proposed rule would substantially lessen competition in the sewage treatment industry, and would harm low income consumers. Both Septiclear and Chasm would be legislated out of the on-site sewage treatment business if DEQ's proposed rule is adopted. This would greatly benefit sewage pumpers by eliminating their only competition. But consumers would be harmed because they would have no alternative method of sewage treatment except pumping or complete replacement of their cesspools or septic tanks.

If a septic tank or cesspool becomes clogged, pumping out the sewage does not unclog the system, it merely empties it. The average cost of pumping is approximately \$400. Pumping frequently must be repeated, sometimes every few months. After a few \$400 pumping bills, consumers are frequently advised by septic tank pumpers that the only real long-term solution is to dig up and replace the cesspool or septic tank. The average cost of a new cesspool or new septic tank is approximately \$2,700 to \$3,000. In East Multnomah County, the total economic impact of DEQ's proposed rule would be approximately \$20,000 to \$40,000 per day in unnecessary cesspool and septic tank construction. These costs would be visited primarily on those least able to afford them, the lower income residents of East Multnomah County. The average cost of one treatment by Septiclear or Chasm is approximately \$200-\$250.

One treatment normally solves the problem. Cesspools and septic tanks that were treated by Chasm as long as 18 years ago are still functioning without damage.

Adoption of DEQ's proposed rule would not only hurt consumers, it would also involve the Environmental Quality Commission in the impermissible role of market regulator insofar as the Commission would be eliminating competition in the sewage treatment industry. Neither DEQ nor EQC is authorized by law to undertake market regulation, and both bodies should carefully consider whether that is not the result of DEQ's otherwise well-intended regulation. DEQ's proposed rule would hand the entire sewage treatment market to sewage pumpers on a silver platter. Is that really what DEQ and EQC want to do?

Adoption of DEQ's proposed regulation would create yet another serious problem for Chasm: The proposed regulation would prevent Chasm from honoring its ten-year guarantee to refund the treatment price or to fix the treatment system at no additional charge to the consumer. What is Chasm supposed to do about this?

3. The Septiclear proposal, by contrast, accomplishes everything DEQ's proposed rule seeks, without any negative impact on the industry or the public.

The amendment proposed by Septiclear seeks to regulate not the inflow into sewage treatment systems, but the outflow. It uses the same pH parameters as DEQ's proposed rule, but it states that the acceptable range of four to nine on the pH scale is to be measured "after treatment." This is a sensible way to regulate. DEQ has no real interest in regulating what goes into a sewage treatment system except to the extent that such material may be a source of pollution if it leaves the system undigested by bacteria. In addition, DEQ's attempt to regulate the inflow is not sensible. Under DEQ's proposed rule fresh lemon juice or vinegar, both of which have pH's in the range of 1.0-1.5, and are perfectly safe, could not be deposited in a sewage treatment system. Yet lye and caustic soda, which have a pH of 13, could be used, because they are active ingredients in "cleaning compounds typically found in the home," which is an exception from the prohibition in DEQ's proposed rule.

The only conceivable downside to Septiclear's proposed rule is that, due to the absence of any controlled scientific tests by DEQ, it would be difficult at the present time for DEQ to know which chemicals qualify and which do not. But this is

only a temporary problem. It could be easily solved by having DEQ or an independent testing laboratory conduct tests to determine whether the outflow of systems treated by Chasm and Septiclear are within the pH limits of 4-9.

Surely Chasm, which would be legislated out of business by DEQ's proposed rule, has a right to demand that DEQ conduct the minimum of scientific tests before recommending the complete elimination of acidic treatments.

Conclusion

The bottom line is that DEQ does not know whether acidic system treatment poses any danger of groundwater pollution or not. DEQ has not conducted a single test, and has no real evidence to support its proposed rule. If DEQ wishes to investigate groundwater pollution scientifically, Chasm will cooperate. In the meantime, DEQ's proposed rule should not be adopted. It is clearly overbroad and it is economically unfair to both East County residents and to Chasm (and Septiclear), which would be eliminated from the on-site sewage treatment business.

DEQ's proposed rule has produced one great advantage, however: It has prompted enough awareness of the potential danger to cause Septiclear to draft a more appropriate rule to

Department of Environmental Quality
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Page 8

accomplish the result at which DEQ legitimately aims -- namely, to prevent groundwater pollution -- and it has prompted Chasm to agree to study the outflow of treatment systems under DEQ's supervision.

Very truly yours,

Frank M. Parisi
Attorney for
Chasm Chemical Company

cc: Paul Oldenberg
Richard H. Williams