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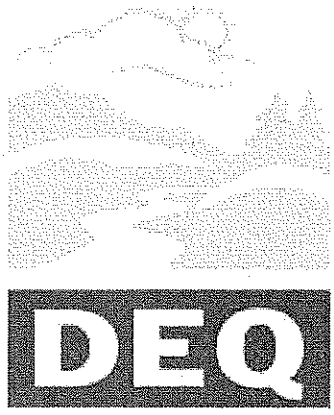
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS



State of Oregon
Department of Environmental Quality

OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

DECEMBER 12, 1986

FOURTH FLOOR CONFERENCE ROOM
EXECUTIVE BUILDING
811 SW SIXTH AVENUE
PORTLAND, OREGON

TENTATIVE AGENDA

9:00 a.m. CONSENT ITEMS

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

A. Minutes of October 24, 1986, EQC meeting.

B. Monthly Activity Report for September and October 1986.

C. Tax Credits.

9:10 a.m. PUBLIC FORUM

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

HEARING AUTHORIZATIONS

D. Request for authorization to conduct a public hearing on proposed amendments to OAR 340, Divisions 60 and 61 to require annual submittal of recycling report, amend list of principal recyclable materials, and change phone number on used oil recycling signs.

ACTION AND INFORMATION ITEMS

Public hearings have previously been conducted on items marked by an asterisk (*). The Commission may, however, wish additional information on these items and accept comments from interested persons or call on interested persons to answer questions. This opportunity shall not replace comments at public hearings. Public testimony will be accepted on all other items.

*E. Proposed adoption of the Slash Burning Smoke Management Plan revisions as an amendment to the State Implementation Plan (OAR 340-20-047).

*F. Proposed adoption of amendments to the Hazardous Waste Permit Fee Schedule, OAR 340-105-110.

*G. Proposed adoption of Pollution Control Tax Credit Rule Amendments, Chapter 340, Division 16.

H. Request for Pollution Control Tax Credit for Ogden-Martin Systems of Marion County.

I. Request for extension of the July 1, 1986 deadline for providing the opportunity to recycle in the Milton-Freewater wasteshed (ORS 459.185(9)).

J. Informational Report: City of Sheridan request for a grant from the Pollution Control Bond Fund.

K. Court of Appeals remand of "Arnold Irrigation District vs. DEQ" for reconsideration.

L. City of Klamath Falls petition for an order waiving the applicability of OAR 340-48-020(2)(i) to the Salt Caves Hydroelectric Project and directing DEQ to deem the City's 401 Certification application complete.

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 Portland Inn, 1414 SW Sixth Avenue. Agenda items may be discussed at breakfast. The Commission will lunch at the DEQ offices, 811 SW Sixth Avenue, Portland.

The next Commission meeting will be January 23, in Portland.

Copies of the staff reports on the agenda items are available by contacting the Director's Office of the Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204, phone 229-5395, or toll-free 1-800-452-4011. Please specify the agenda item letter when requesting.

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ENVIRONMENTAL QUALITY COMMISSION

WORKSHOP

Following their regular meeting on December 12, 1986, the staff of the Department of Environmental Quality will conduct a workshop for the Commission on the landfill siting process.

As space permits, the public is invited to monitor the workshop.

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE ONE HUNDRED SEVENTY-SIXTH MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

December 12, 1986

On Friday, December 12, 1986, the one hundred seventy-sixth meeting of the Oregon Environmental Quality Commission convened in the fourth floor conference room of the Executive Building, 811 SW Sixth 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, 811 SW Sixth Avenue, Portland. Oregon. Written information submitted at this meeting is hereby made a part of this record and is on file at the above address.

BREAKFAST MEETING

Review of 1987 Legislative Concepts

Stan Biles, Assistant to the Director, Director Hansen, and various Division Administrators reviewed for the Commission the status of legislative concepts proposed to be submitted by the Department for the 1987 Legislative Session.

FORMAL MEETING

AGENDA ITEM A: Minutes of the October 24, 1986 EQC Meeting

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

AGENDA ITEM B: Monthly Activity Report for September and October, 1986

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

AGENDA ITEM C: Tax Credit Applications

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

Director's Recommendation

It is recommended that the Commission take the following action:

1. Issue tax credit certificates for pollution control facilities:

Appl. No.	Applicant	Facility
T-1839	Wilbur-Ellis Co., Inc.	Loading Dock Enclosure
T-1842	Portland General Electric	Oil Spill Containment
T-1843	Portland General Electric	Oil Spill Containment
T-1844	Evanite Battery Separator	Groundwater Monitoring Wells
T-1845	Conrad Wood Preserving Co.	Lift Truck to move Hazardous Material
T-1847	Newberg Garbage Service	Recycling Center and Storage

2. Revoke Pollution Control Facility Certificate No. 1123 issued to Reichhold Chemical and reissue the certificate to CPEX Pacific, Inc.

3. Revoke Pollution Control Facility Certificates No. 363, 489 and 494 issued to Boise Cascade, Salem Paper Mill.

4. Revoke Pollution Control Facility Certificates No. 921, 1001, and 1200, issued to Glacier Ranch and reissue to Glacier Ranch, Inc.

PUBLIC FORUM

Bill Johnson, ENUF, Foster, Oregon, appeared regarding alternate uses for straw instead of burning. Mr. Johnson said that in Europe straw pellets are used for fuel or cattle feed. In the United States, he continued, straw pellets cannot be used for cattle feed because of pesticides, but could be used for fuel. He said that this use of straw could stop field burning, but that manufacturers of other sources of fuel would not like to see straw used for fuel. Mr. Johnson said that Oregon should develop an industry based on straw utilization for fuel and asked the Commission to give consideration to alternatives to field burning and to push for development of alternatives.

Chairman Petersen assured Mr. Johnson that the Commission was keenly interested in trying to find a way to eliminate the necessity to burn fields. Chairman Petersen said it occurred to him that with as much money as has been spent on research into field burning alternatives, he was surpised that if there was a demand for straw pellets for fuel, it had not been developed. He said the Commission would support alternatives that make sense economically and requested Mr. Johnson to give any

information he had on the subject to the Department. Mr. Johnson said that half of the money collected from farmers each year in field burning fees goes to Oregon State University for research into alternatives, but so far there have been no results.

Bill Schneider, Vale, appeared regarding the Eagle Picher plant in Malheur County which was built directly in front of his home. Since the plant was built, Mr. Schneider said, they have been plagued with noise and air emission problems for which the plant has been cited on several occasions. Mr. Schneider said the company was flaunting the law, and he was concerned about public health. Originally, he opposed the construction of the plant and the issuance of permits, but upon assurance by DEQ that the public would be protected, and also assurances from Eagle Picher, he withdrew his objections to the plant. Eagle Picher said no part of the plant would be visible from his property, but it is. In addition, he continued, Eagle Picher said its emissions were only steam, but they have an immense particulate problem emitting a hazardous substance as defined by EPA. Mr. Schneider said some emissions can be seen from as far away as three miles from the plant. He showed the Commission pictures of emissions from the plant and said that the plant's own engineers state the emissions contain up to 40% cristobalite. He said the emissions were irritating, and some people were more susceptible than others to the fallout which is mixing with their soil so they will be breathing it for years. Mr. Schneider cited instances where bee colonies had been lost because the particulate is so sharp it killed the bees along with other flying insects needed to pollinate fields.

Mr. Schneider expressed concern that DEQ is bowing to political pressure. He said his questions regarding the makeup of the Vale airshed had not been answered. He said that DEQ could apparently vary the definition of the airshed to suit a Fortune 500 company.

Mr. Schneider said that in 1984 he was assured protection from noise impact. Mr. Schneider said it was the state's responsibility to protect citizens. He said that since the plant has been running, he was only getting two hours of sleep a night. He said doctors had determined there was nothing organically wrong with him, only that he was sensitive to the noise.

Mr. Schneider also expressed concern that almost all of the data for issuing the permits came from the industry, not from an independent analysis by DEQ.

Jack Torrey, Vale, owns 267 acres adjacent to the Eagle Picher plant. He said he signed the petition in favor of the plant on assurances that it would have to comply with standards and regulations, and considering the need for jobs in Malheur County. Mr. Torrey was concerned about the health and welfare of his family. He has a daughter at risk from an inherited form of emphysema. Mr. Torrey said he did not want to see the plant close, but it was the state's responsibility to protect the people of the state. He contended his complaints to the DEQ Noise Section were met with rudeness. Mr. Torrey said they had to keep their windows closed all summer because of the noise from the plant. He too said the plant had ignored their emission limits. Mr. Torrey said the citizens could not wait another six months to a year for the plant to comply.

Mr. Torrey said DEQ had never done independent noise tests on the plant, but that the tests were run by a private firm hired by Eagle Picher. He said an acceptable noise level should have been established before the plant was built. He also questioned how the tests were run as he had information the plant deliberately operated quieter during testing by cutting fans and dropping RPMs.

Mr. Torrey thanked the EQC for their time. He said he has gone without sleep for six months and his lack of sleep was affecting his work day. He complimented the DEQ staff, but asked the EQC for help in moving the process along. He said if they did not receive results, they would be seeing the Commission again.

Commissioner Buist asked what was known about the emissions from the plant. Tom Bispham, Administrator of the Department's Air Quality Division, said that the information on cristobalite comes from Eagle Picher. He said the amount was much lower in the raw material. Commissioner Buist said there needed to be adequate information about emissions and because the current information is inadequate, people are more alarmed than they need to be. Commissioner Buist said that if cristobalite was being formed, then Mr. Schneider had a right to be concerned. She said the hazard needed to be identified, the concentration, and particulate size. She said that for reassurance to the people concerned, generally if you can see the particulate there is less need to be concerned than if it cannot be seen. She said it was the very small particle sizes that cause problems. Commissioner Buist said that one large exposure cannot cause silicosis. She said it would need to be extreme heavy exposures for six to nine months to develop acute silicosis. It was Commissioner Buist's educated guess that the size range of the particles was large and probably not a real health hazard, but very irritating. She requested Director Hansen to get more information about the content of the plant's emissions.

Mr. Bispham said the Department was trying to get more information to pass on to residents in the area. He said there were problems at the plant and the Department was taking enforcement actions. Mr. Bispham said that fugitive emissions were very difficult to quantify, but the Department's Laboratory and Regional Operations Divisions would be doing ambient monitoring to get more information. Commissioner Buist emphasized that the size of the particles was important. She said it was easy to be alarmed, but not enough information was known at this time.

Mr. Torrey expressed concern that Commissioner Buist's educated guess may be wrong and that her information was limited. He said there should have been concern shown about asbestos sooner, also, which was now shown to be such a problem.

Chairman Petersen said he thought Mr. Torrey and Mr. Schneider were saying that the conditions of the permit were being violated, but then asked if they were saying the permit was not strict enough. Mr. Torrey said he could live with the noise standards if the plant was in compliance. However, he had noticed respiratory problems in his cattle which prompted him to check with a veterinarian. He said he could live with a permit that called for 57 tons per year of stack emissions, but fugitive emissions were another matter. He said that the company had been served with a five day notice and that the Department's Eastern Region Office was writing up

six additional violations. But, he continued, the company was not concerned about violations. Mr. Torrey said he understood the fugitive emissions from the finished product were the most dangerous.

Chairman Petersen said the Department needed to be given a chance to respond and suggested this matter be put on the Commission's agenda for its next meeting. He said it was too bad Mr. Torrey and Mr. Schneider had to come to the EQC. Chairman Petersen said Mr. Torrey and Mr. Schneider would be kept informed and the Department would be getting back to them.

Director Hansen said it was important to point out that on both noise and air the Department agrees there is a problem and will continue with enforcement. He said the background testing on noise is parallel to what had been found in other quiet areas of the state and is consistent with those other areas. Director Hansen assured the Commission that at such time the Department determines whether or not the company is in compliance, the Department will do the testing and not rely on the company.

Howard Baker, Sweet Home, appeared concerned about smoke from field burning. He said he had not received answers to questions about what he is breathing in the smoke. Mr. Baker was concerned about the high rate of cancer in the valley. Mr. Baker said that burning under favorable winds meant sending the smoke towards Sweet Home and Lebanon instead of Eugene which is more populated. He thought the law could be changed to give equal treatment to residents of Eugene and Salem.

Chairman Petersen said he was sympathetic to Mr. Baker's concerns, but that the smoke has to go somewhere and the Legislature has made a policy decision to send the smoke to the least populated areas. Chairman Petersen suggested the best place for Mr. Baker to go would be to the Legislature.

Director Hansen assured the Commission the Department does respond to questions. Chairman Petersen told Mr. Baker the Department would tell him everything it knew.

Jack Smith, Northwest Environmental Defense Center, appeared to inform the Commission it was filing suit in Federal District Court against EPA regarding the pollution of the Tualatin River. He said they were moved to legal action after petitioning DEQ and the EQC for eight years requesting water quality standards for nutrients and excessive algae growths.

Jack Churchill, appeared to also express his disappointment with the Commission and the Department for not moving on nutrient standards. Mr. Churchill also expressed concern about the public involvement process as he was not informed about the issuance of new permits for the sewage treatment plants along the Tualatin River, as he had been promised. He asked when the Department was going to take a stand in terms of the sewage treatment problems in the Tualatin Basin. He also said it was time the Commission looked at the administration of the Department.

AGENDA ITEM D: Request for authorization to conduct public hearings on proposed amendments to OAR Chapter 340, Divisions 60 and 61 to require annual submittal of recycling reports, amend the list of principal recyclable material, and change the telephone number on used oil recycling signs

This item requests authorization to conduct a public hearing on a proposed rule amendment to require wastesheds to submit annual recycling reports and persons conducting recycling programs required under the Oregon Recycling Opportunity Act to submit data on the amount of material they recycle and the number of users of on-route collection programs. Also proposed are rule changes to make corrections to the list of principal recyclable materials in certain wastesheds, and amend the oil recycling sign rule in order to eliminate the requirement that a particular DEQ telephone number (now nonfunctional) be listed. Authorization is also requested to conduct an additional public hearing on an earlier proposed rule to add yard debris to the list of principal recyclable material in the Portland metropolitan wastesheds.

Director's Recommendation

Based upon the summations in Sections I, II and III of the staff report, it is recommended that the Commission authorize public hearings to take testimony on proposed amendments: (a) to OAR 340-60-010 and OAR 340-60-045 to require annual submittal of recycling reports and to define "recycling setouts"; (b) to OAR 340-60-030 to amend the list of principal recyclable materials; and (c) to OAR 340-61-062 to change the telephone number required on oil recycling signs.

Commissioner Bishop asked how much burden was the paperwork going to be to haulers. Director Hansen said the Department did not like to add extra paper burdens if it was not necessary. He said the Department has been working closely with an advisory committee which includes haulers and local government representatives, and the committee is satisfied with this proposal. He said the Department believed it was doable and had been accepted by the advisory committee.

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

Commissioner Buist asked where things stood regarding plastics recycling. Director Hansen replied that the Department had a plastics recycling task force evaluating what could be done and the conclusions from that task force are mixed. He said there was no consensus that the process for recycling plastics was very far along or that independent actions of this state would be able to accomplish much. Director Hansen said the Department was trying to find ways to encourage greater markets without which opportunities to recyle plastics are limited.

AGENDA ITEM E: Proposed adoption of the Slash Burning Smoke Management Plan revisions as an amendment to the State Implementation Plan (OAR 340-20-047)

This Plan addresses the concerns expressed by the Commission at its October 24, 1986 meeting. Specifically the "objective" statement in the rule has been revised to include protection of public health and reductions in emissions. The "assumption" section in the Directive has been deleted entirely.

Director's Recommnendation

Based on the summation in the staff report, it is recommended that the Commission adopt the revised Smoke Management Plan and Directive as an amendment to the State Implementation Plan (OAR 340-20-047)

William L. Toffler, M.D., Portland, testified he was a family physician at OSHU and was previously in private practice in Sweet Home which gave him experience with people affected by smoke. He said that the Smoke Management Plan needs specifics and the health impact was beyond question. Dr. Toffler said the question was how much smoke causes the problem, not if there was a health problem at all. He said the difficulty was in quantifying the problem. Dr. Toffler said that often the experts in the field do not have a medical practice to actually see the effects. He has personal knowledge of people who had had to move from the area because of health problems due to smoke. He said there was clear evidence to show there was a particulate health impact at far less a level than was previously thought. During field burning, he said, there are times it is hard to see 100 meters. He said there was not much of a problem in Portland, but in Sweet Home he saw someone every week who was affected by the smoke. Dr. Toffler said there were people everywhere so sending the smoke to less populated areas was not a solution.

Commissioner Buist asked what proportion of the population experiences an adverse health impact from smoke. Dr. Toffler said he did not have an answer, but that it was an excellent question that needed and answer. Commissioner Buist said there was an enormous body of literature relating to the effects of various types of air pollution. In setting public policy, she continued, the problem is deciding where the cut point should be. All air pollution cannot be done away with. She would, however, like to see field burning done away with. In the absence of alternatives, Commissioner Buist said, it has to be determined what to do with the smoke, and to decide what is an acceptable level of adverse health effects. Commissioner Buist said that no doubt there was an economic burden to the affected people which has to be offset by the economic benefit to the burners. Commissioner Buist said that as far as it is known the levels of pollution do not create disease where there was no disease before, but may aggravate disease where it already exists. In order to answer her question to Dr. Toffler, a population based study needed to be done using instruments that are probably not available, Commissioner Buist said.

Dr. Toffler agreed with Commissioner Buist on the economic argument, and agreed that it was not known how many people are affected, and that there is no knowledge of long-term impact. Dr. Toffler believed it was a priority to determine the impact and the problem with existing standards is that answers are not given for Oregon.

Chuck Stringham, Lincoln City physician, expressed concern about the health effects of slash and field burning. He agreed with Dr. Toffler and said there was no question that during the time of slash and field burning there is a marked increase in his patients for respiratory problems. He said this was a short-term and economic affect. Dr. Stringham said he did not have studies for long-term effects, but knows it is a problem for the people affected. He urged investigation of health impact and enforcement of already existing air quality standards. He encouraged the development of forest practices that would decrease pollution. Dr. Stringham thought there were alternatives that could meet the forestry needs and not impact the health of people in the vicinity of the burning. He asked the Commission to address these concerns to assure health is protected.

Kathy Williams, Seal Rock, realized that the Smoke Management Plan is being reviewed as the support document to the visibility State Implementation Plan. She reminded the Commission the basic purpose of the Clean Air Act was to protect public health. Ms. Williams was concerned about the health effects of slash burns and disagreed with the staff report that the smoke was not affecting people. She said with the particulate levels DEQ already has, it could be determined where the particulate standards are being exceeded. Ms. Williams asked why regulations were not applied the same to the forest industry as to other industry. She said the staff report was only the opinion of some DEQ staff and that others on the DEQ staff were not agreeable. She wanted DEQ to return to the Department of Forestry to develop new and more enforceable rules to protect public health.

Director Hansen believed that the issues coming forth at this meeting have been motivated by pesticide and herbicide concerns. He said new information was coming out, but was still preliminary. He said DEQ was very interested in that data, however did not believe it needed to be addressed in the Smoke Management Plan. If the data leads the Department to believe different regulations are required, then the Department would proceed accordingly.

Chairman Petersen asked for comment on the issue raised that there was not adequate data to assess health impact of short duration exposure to smoke. Director Hansen said the federal standard was based on 24 hours. If an exceedance lasts for only one to two hours it must be at such a level that if averaged over 24 nours it would exceed the 24 hour standard. Commissioner Buist said that this was part of the missing information. If there is a one hour exceedance, she continued, as opposed to constant exposure, then there is inadequate data as to the health impact. Chairman Petersen asked what it would take to develop the data. Commissioner Buist said it was more effective to look toward prevention which is the long-term solution, not to pour money into more research. Commissioner Buist said she had tried to think of ways to study the problem and estimated it could not be done for less than several million dollars.

Chairman Petersen asked what was the extent of research into alternatives. Director Hansen replied that in field burning a specific portion of the fees go into research. He said there had been a lot of work in this area, some of it productive such as alternative crops and better ways to burn.

However, no suitable alternatives have been developed. Regarding slash burning, Director Hansen said, there are some forest managers who do not utilize burning or herbicides. He said this was probably tied to utilization of the slash as well as management of the forests.

Neil Skill, Department of Forestry, said research was being done on a number of topics, but so far no economically feasible way had been found to get rid of the slash. Forestry has advocated a number of strategies, he continued, such as different timing and burning under favorable weather conditions, and removing slash for other purposes. However, so far that has not been a workable solution.

Commissioner Buist said that one of the advantages of slash burning is that it is cheap and quick. As long as it is allowed, there is no incentive to develop alternative technology. Mr. Skill said there were two reasons for slash burning, economics as well as removing the fire hazard and for the reforestation effort. He said the practice was to use burning as a tool. Commissioner Buist said it was controversial as to whether burning slash is the best or only way to prepare the forest for reforestation.

Chairman Petersen said that the people complaining were in rural areas where they do not have political clout and feel their complaints are not heard. He was sympathetic to that, but not sure solving their complaints was within the scope of this agenda item. Mr. Skill said the Department of Forestry felt the same way and that is why they have made a substantial effort to control the smoke the best way they can. Chairman Petersen emphasized he was not being critical of the Department of Forestry because they are charged by law to regulate the forests. Therefore, he continued, the Department of Forestry is not in in the position to take the lead in finding more expensive alternative ways to take care of the slash. Mr. Skill said Forestry believes that working for the public interest is their job. Chairman Petersen apologized if his comments were taken otherwise.

Commissioner Denecke complimented Forestry and DEQ for their concerted efforts in this matter.

Director Hansen said he believed the Plan will reduce smoke impacts and within the next eight years the Department is expecting an overall 22% reduction in smoke impacts. Although, he said, that does not satisfy the people who have to face the remaining percent. He said this Plan was an attempt to reduce total emissions.

Commissioner Denecke said he was not unsympathetic to the people who testified, but would support the Plan because of assurances that DEQ and Forestry will continue to make strides in this area. Chairman Petersen agreed.

Commissioner Buist said she would support the Director's Recommendation, but asked how to send a stronger message that the Commission does not think this is an adequate way to solve the problem--that prevention is the answer. She did not think there was any teeth in the Plan to provide an incentive to get to the root of the problem. Director Hansen said there were a number of ways that could be relayed. For field burning more alternative research could be done. For slash burning the most productive area is to have better utilization of the existing slash.

In response to Commissioner Bishop, Director Hansen said the Plan would be reviewed in three years.

Director Hansen said he thought the forest industry was seen as a key aspect of the state's economy and has had a very hard time. It will be difficult, he said, but that does not mean that some additional steps in forestry regarding slash utilization could be taken, which may mean the Legislature authorizing additional money or people to do the job.

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

Commissioner Brill commented that the Plan was a place to start in solving the problem. Commissioner Bishop said she hoped the public knew their comments were very helpful to the Commission and could make a difference in decisions. Chairman Petersen agreed, and thanked the testifiers for their comments.

AGENDA ITEM F: Proposed adoption of amendments to the Hazardous Waste Permit Fee Schedule, OAR 340-105-110

This item requests adoption of proposed amendments to the hazardous waste permit fee schedule. The proposed amendments would increase the annual compliance determination fees for hazardous waste disposal sites and would temporarily rescind the permit application filing and processing fees for hazardous waste storage facilities.

Director's Recommendation

Based upon the summation in the staff report, it is recommended that the Commission adopt the proposed amendments to the hazardous waste permit fee schedule in OAR 340-105-110.

There was no public testimony during the hearing.

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

AGENDA ITEM G: Proposed adoption of Pollution Control Tax Credit Rule amendments, OAR Chapter 340, Division 16

The proposed amendments to OAR Chapter 340, Division 16 are intended to detail legal requirements related to revocation and reissuance of tax credits and to provide further guidance regarding eligible and ineligible facility costs.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission adopt the proposed amendments to the Pollution Control Tax Credit Rule, OAR Chapter 340, Division 16.

Rich Miller, Willamette Industries, was concerned about the rule requiring application within 10 years of facility construction. He was also concerned about retroactively dated certificates. Mr. Miller said an original certificate is good for 10 years from the date of original issuance. He understood the intent of the statute was to give incentive to industry to solve pollution problems. He asked what difference it would make if the transfer is made after 10 years as long as the facility is still used to control pollution. Mr. Miller requested that OAR 340-16-040(2) not be adopted.

Michael Huston, Assistant Attorney General, commented it had been the Attorney General's Office consistent advice to the Department that the statute precludes the retroactive granting of a certificate.

Maggie Conley, the Department's Tax Credit Program Coordinator, felt it was only equitable to give to the transferee the same rights of the original certificate holder which is that the certficate would be valid for 10 years. Otherwise, she continued, the certificate could potentially be extended each time it is transferred. The Department felt such action would be difficult to administer, she said, so proposed the 10 year limit.

Mr. Miller said his clients simply forgot to file in a timely manner for the transfer of a certificate, and were therefore being penalized. Chairman Petersen asked how the statute was being frustrated when a facility was built, was eligible and would have gotten credit had they applied in a timely fashion. Mr. Miller said the intent of the statute was frustrated if application is made after the 10 year period. He said the Department of Revenue only considers credit lost during the intervening years, but the credit can be used after the certificate is transferred.

Commissioner Denecke asked about the Attorney General's advice on this matter. Maggie Conley said that both Elizabeth Stockdale and Arnold Silver from the Attorney General's office worked on developing the proposed rule and agreed it is one way of addressing the problem--not the only way--but an equitable way of dealing with the matter which does not take any rights away from the transferee that were granted to the original certificate holder. Mr. Huston said it was the Attorney General's Office advice that the Commission could go to rulemaking. He said the language calling for 10 consecutive years was in the statute and based on that, as a matter of policy, the Commission could adopt a rule calling for an absolute 10 year limit.

Director Hansen said the original certificate holder has the ability to take credit for a total of 10 years, but can put it off for 3 years and if they do not have any tax liability in that time, they lose the credit. He asked why should a transferee, who may not have had a tax liability, be able to drag that time out. The Department decided, he said, it made best sense to be able to put a 10 year limit on the time by policy choice. Mr. Miller said he did not think there was any intent to drag out the credit.

R. A. Cantlin, representing Ogden-Martin Systems, Inc., did not object to the regulations as written, but strongly objected to the staff interpretation. He said it was important to realize that these regulations are proposed to be interpreted contrary to statutory intent. He thought it was within the Commission's policy making purview to deal with interpretation.

The Commission deferred action on this item.

AGENDA ITEM H: Tax Credit Application, Ogden-Martin of Marion, Inc.

Because of the size and complexity of the Ogden-Martin of Marion, Inc.'s resource recovery tax credit, it has been separated from other tax credits as an agenda item. Staff have analyzed eligible costs and have calculated a percentage allocable based on all available information.

Director's Recommendation

Based on the summation in the review report, it is the Director's recommendation that a Pollution Control Facility Certificate bearing the cost of $51,046,228 with 54% allocable to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1841 after receipt of documentation regarding the sale and amendments to the tax credit rules are filed with the Secretary of State.

Director Hansen explained that this was a very complex financial arrangement. He said that if certain pieces of the financial arrangement were taken out and analyzed against other types of tax credits a different conclusion could be made than the one the Department came to. He urged the Commission to look at the whole of the financial transaction and evaluate it accordingly. Director Hansen also urged the Commission to keep in mind that the decisions on tax credits, although not like the Commission was signing a check, the effect on the drain in the general fund is the same.

Dick Cantlin, Attorney for Ogden-Martin Systems of Marion, Inc., countered that while one could characterize tax credits as a drain on the revenue of the state, that drain was mandated by the Legislature and he did not think that the purpose at this meeting was to determine whether or not the Legislature was correct in the legislation it passed. He said the purpose at this meeting was to make a determination under the legislation as it exists.

Mr. Cantlin referred the Commission to his overview memorandum dated December 12, 1986. This memorandum is made a part of the Commission's record in this matter. Most of the Commission indicated they had just received the memorandum and had not yet had a chance to read it.

Mr. Cantlin said they disagreed with the conclusions reached in the DEQ staff report regarding the amount of allowed credits based on the law as enacted by the Legislature, its application to the facts, what they perceive to be the proper economic and financial treatment of the data

which has been submitted, and generally accepted accounting and financial standards. He believed the staff report seriously understated the proper amount of credit.

Mr. Cantlin said the staff report relied heavily on staff interpretation of regulations some of which have not been adopted, and all of which were proposed long after the facility was financed and constructed. In certain instances, he said, they do not believe the interpretation given by the staff to those regulations is supportable by law. He said those interpretations were not known until the staff report was made public just a week prior to this Commission meeting.

Mr. Cantlin said the Commission's decision in this matter would have a tremendous effect not only on Marion County but also on any other mass burn facilities in the state. He said they felt the Legislature intended to give the Commission the discretion to fit the type of facility into the most appropriate determining factor in the statute.

Randy Franke, Marion County Commissioner, gave the Commission some background history on the waste-to-energy facility. He said that the Marion County facility was being viewed as a model throughout the Country.

Commissioner Franke said that state pollution tax credits were never intended to be revenue to Ogden-Martin. The money was always intended to go to reduce the cost of disposal to the residents of Marion County. He said the total facility was for the sole purpose of reducing pollution caused by garbage. Without the possibility of state pollution tax credits this facility would not have been built, he continued. Likewise, the facility would not have been built without innovative financing. Commissioner Franke said they believed the Commission's decision on this matter was not only important to the residents of Marion County, but also as a policy statement for the rest of the state.

Commissioner Franke commented that the State of Oregon should be doing more to encourage resource recovery throughout the state as opposed to landfilling, where it is financially feasible and appropriate.

Commissioner Franke said he was not criticizing DEQ staff for coming to the Commission with what Marion County felt was an extremely conservative position. He said DEQ staff recommended a 54% allocation. He said the purpose of appearing at this meeting was to provide the Commission with information needed make a higher than a 54% allocation. He asked the Commission to look at all the factors; they felt the staff only looked at two factors.

Commissioner Petersen asked why it was important for the Commission to make a decision at this meeting. Mr. Cantlin responded that a decision on the certification must occur in 1986. The credits will be sold to Columbia-Willamette leasing. The difference in the price which accrues to Marion County between being able to affect the sale in December 1986 or January 1987 would be in the neighborhood of $900,000 to $1.1 million. Commissioner Petersen clarified that the decision literally did not have to be made at this meeting, but did have to be made prior to December 30, 1986.

Commissioner Petersen asked why the County reasonably expected a 90 to 100% credit, but not less than 80%. Commissioner Franke said legislative committee discussions indicated to the County that taking everything into consideration the chances were very good that they would have 90-100%. Granted, he continued, it was not guaranteed.

Commissioner Petersen asked what the County would have done differently if they had known before construction that the percent allocable would be 54%? Commisssioner Franke said when the County was making the decision in late 1981 they were making many comparisons and part of that comparison was the availability of pollution control tax credits, which at that time was 100% for solid waste. Had they known at the time the allocation would be only 54%, the county would have perhaps just gone for more landfilling.

Commissioner Denecke asked if Commissioner Franke recollected anything presented to the legislative committees in the way of exhibits which may be recorded in the legislative history which would put any light on supporting the County's anticipation that a higher percentage would be allocable. Commissioner Franke said he could not recall.

Commissioner Buist said it seemed to her it boiled down to what it costs to dispose of garbage. She asked what it costs at this time for a homeowner in Marion County to dispose of a can of garbage a week, and if the Commission were to recommend the 54%, what would that really do to the cost of garbage disposal? Commissioner Franke said it was approximately $6.25 for one can per week in Marion County right now. Mr. Cantlin said the difference would be about $5.00 per ton. Director Hansen said about 10% of the per ton cost was translated on to the can for residential, and about 50% per ton on to the commercial disposal. Mr. Cantlin said that under the law as written, Commissioner Buist's question was irrelevant. He said the credits are mandated by the Legislature.

Director Hansen said that in the questions on the tax credit, the Department was in no way raising a concern about the burner. He said there had clearly been a committment on behalf of Marion County with which the Department was very pleased.

Mr. Cantlin presented to the Commission the ruling from the Department of Revenue approving this project; a request from Ogden-Martin and a response from Brown and Caldwell. These items are made a part of the Commission's record on this matter.

Mr. Cantlin explained that "low floater" is variable rate municipal debt which can be put to the issuing entity every seven days. This was the first project of its type ever to use low floaters. "Fixed rate debt," Mr. Cantlin explained is like a mortgage, outstanding for a period of years, has set interest rates and stated terms.

Mr. Cantlin said they agreed with staff that the plant is a qualified pollution control facility which meets the test in the law. And as importantly, he continued, it is a single-purpose pollution control facility. ORS 468.190 tells the Commission what they have to do next, he said. This statute says the Commission has to allocate eligible costs and in doing so "the Commission shall consider the following factors." Mr. Cantlin said they read that portion of the statute as "must consider."

ORS 468.190 reads as follows:

Allocation of costs to pollution control.

(1) In establishing the portion of costs properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil for facilities qualifying for certification under ORS 468.170, the commission shall consider the following factors:

(a) If applicable, the extent to which the facility is used to recover and convert waste products into a salable or usable commodity.

(b) The estimated annual percent return on the investment in the facility.

(c) If applicable, the alternative methods, equipment and costs for achieving the same pollution control objective.

(d) Any related savings or increase in costs which occur or may occur as a result of the installation of the facility.

(e) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention,control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling properly disposing of used oil.

(2) The portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent. If zero percent the commission shall issue an order denying certification.

(3) The commission may adopt rules establishing methods to be used to determine the portion of costs properly allocable to the prevention, control or reduciton of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.

Regarding factor (a), Mr. Cantlin said the only use of the facility is to convert municipal waste into electricity, therefore they conclude that the only possible result from applying this factor is that 100% of the cost of the facility qualifies for tax credit. He said the Department maintains that because the boiler is only 71% efficient, only 71% of the cost is properly allocable under this factor. He said they had been trying to understand what boiler efficiency had to do with this test and had been unable to do so. Mr. Cantlin said if the Legislature intended efficiency to be a factor, they would have written the statute that way.

Factor (b), Mr. Cantlin said was not the most appropriate. It must be noted, he continued, they did not include the computation required by this factor in the original application because they do not think factor (b) was relevant and prepared the computation only after DEQ insisted. In response to Chairman Petersen, Mr. Cantlin said they did not think this factor was relevant because the statute tells the Commission to examine the most

relevant criteria and make a determination predicated on its judgment as to the most relevant factor. He said they were not saying the Commission should not consider this factor, just that they do not think it is the most relevant. Mr. Cantlin said they beleived the staff report misapplies the formula to the Marion County facility and thus reaches an incorrect conclusion as to the proper percentage of allocable costs.

In regard to factor (c), Mr. Cantlin said the only alternative to the Marion County mass burn facility is siting a landfill with all the attendant environmental, timing, financial and long-term problems. In their view, he said, that alternative is more costly and would not or could not achieve the same pollution control objective. In applying this factor, Mr. Cantlin said, they felt the qualifying certification had to be 100%.

Regarding factor (e), Mr. Cantlin said they believed this was an important factor. If it is believed as a matter of public policy, he continued, that mass burning of solid waste is environmentally superior to any other practical method presently available (as believed in Marion County), then the Commission should recognize that it must be encouraged. Tax credits are an appropriate and necessary means of that encouragement, therefore the appropriate public policy response because the sole purpose of the facility is the reduction of solid waste by a process that produces energy, is to recognize this factor at 100%, Mr. Cantlin said. A second way of looking at this factor, Mr. Cantlin said, would be to measure the efficiency with which the facility reduces the volume of solid waste. He said the purpose of the letter from Ogden-Martin to Brown and Caldwell and the response was to tell the Commission how that measurement could be done. As Brown and Caldwell states, the volume reduction is 87%. Therefore, the factor for allocating the cost of the tax credit if this criteria is used would be 87%.

Commissioner Brill asked if consideration had been given to the fact that the people in Marion County would benefit more from the tax credit than others in the state. Mr. Cantlin replied that as a matter of legislative policy the Legislature has said that is the way it is going to be. Mr. Cantlin said that in his view that would not be a relevant factor.

David Brown, tax lawyer and Alan Schnider, a national tax partner, outlined for the Commission with the use of charts various ways the tax credit could be calculated.

Bob Cannon, Marion County legal counsel, followed SB 112 through the 1983 legislative session because Marion County had the greatest vested interest. Mr. Cannon said there were two disputes during the Legislative Session. One was to have 100% financing of the certified costs eligible for tax credit as a continuation of the then-existing statute. He said they knew, nowever, that that was not likely to continue. Marion County felt that the legislation that they helped amend correctly and adequately provided that if a pollution control facility was dedicated soley to pollution control it would be 100% eligible. Responding to Commissioner Brill's earlier question, Mr. Cannon said this was a state law which allows for tax credits for all communities in the state, not just Marion County. Mr. Cannon said the county had urged other local governments to look at state pollution tax credits for the means by which they are able to control

some of the pollution that arises out of garbage. He said this is a means of helping local government and residents dispose of a very severe pollution problem.

Chairman Petersen said the one issue the applicant had been driving home was the question of the inconsistent result when applying the sale of the credit and the timing of the decision to change the financing mechanism, and why the Department believes that those should be considered part of the actual costs. Lydia Taylor, Administrator of the Department's Management Services Division, said staff had examined the bulk of the issues brought before the Commission. Because this was complex issue the Department had not dealt with in the past, Ms. Taylor said the Department asked the advice of Jim Joseph of E.F. Hutton to observe whether there were thoughts about the deal that the Department could not observe because it was unfamiliar with this sort of financial arrangement, and to point them out. Also, the Department asked specifically if revenue from the proceeds of selling tax credits should be considered an income item in the return on investment calculation. To which Mr. Joseph responded, yes. Ms. Taylor said Ogden-Martin had a contract with Marion County about the sale of the tax credits and what what they are supposed to do with any benefit derived from the use of the tax credits. When the Department looked at the arrangements and the original proposal on return investment sent by Ogden-Martin, it included the deduction of $600,000 per year reduction in service fee because of the contract with Marion County to pass through use of the tax credits, but they did not report any potential income from sale of the tax credits. It was the Department's feeling that either the tax credit sale deal is part of the entire package, or it is not a part of the entire financial transaction.

Chairman Petersen asked for a response to the inconsistent result argument. Ms. Taylor said there was some flaw in the inconsistent result information provided to the Commission by Ogden-Martin. The flaw is, she said, the contract with Marion County says Ogden-Martin shall pass through to Marion County 9/10ths of any benefit derived from use of the tax credits. If $600,000 a year is taken off the calculation it must be assumed that there is taxable income against which to apply that tax credit. Ms. Taylor said that is not the case. Ogden-Martin has said the reason that tax credits might be sold is because they do not make enough income to write them off. The Department has, Ms. Taylor said, taken the specific written agreements between Ogden-Martin and Marion County and applied them to the return on investment.

Chairman Petersen asked if this was a "tail wagging the dog" problem when those types of impacts were considered and having then that tail wag the dog of making the best financial decisions. Ms. Taylor said she could see the difficulty in any rule that is written that relates to tax laws or to corporate structure. Ms. Taylor said that when someone is in business they use to the best of their ability the laws they have to work with, one of which is the Department of Revenue rules. In this case these are tax laws and applications.

Chairman Petersen asked that when the Marion County Commission was making its decision on this project, was it unreasonable for them to assume that they would get 80-100% tax credit? Ms. Taylor said the tax credit law changed in 1983 and it was her understanding the preliminary decision to

build the plant was made in 1981 when 100% of the facility would have been eligible for tax credit. She said the question was at what point is a decision changed based upon a change in law.

Commissioner Denecke asked Mr. Huston for his observations on the language in the statute which says, "the commission shall consider the following factors." In addition, Commissioner Denecke said the legislation also says "the commission may adopt rules establishing methods to be used to determine the portion of costs..." Subsequent to this legislation, Commissioner Denecke said, the Commission adopted a regulation which requires the Commission to use the factors which result in the smallest portion of costs allocable. Mr. Huston replied that unfortunately this was not an issue he was aware of at the time he reviewed the staff report so he had not had an opportunity to look at this particular issue. Mr. Huston said it seemed to him that the 1983 legislation did two significant things.

One is that it added solid and hazardous waste facilities to an existing statute for allocation of tax credits and determination of costs allocable to pollution control. Secondly, Mr. Huston thought it was rather significant that there was a major new subsection added which delegated to the Commission rulemaking authority for the methods of determining percent allocable. Mr. Huston thought when that was combined with the fact that the preexisting statute also allowed the Commission to determine other relevant factors and apply those, that the total result is a fair amount of legislative discretion delegated to the Commission, particularly for rule adoption. Arguably, Mr. Huston said, for the Commission to adopt a rule under its authority in the statute that precluded consideration of one of the five factors, might well be beyond its authority.

Commissioner Brill asked at what point in time was the Commission delegated to make rules. Mr. Huston said the authority was in the 1983 legislation.

Commissioner Denecke said it would be his reaction, that even without subsection (3) of the statute, given the five factors, the Commission would be required to make rules.

Chairman Petersen said it did not appear to him to be inconsistent to say that if all the factors are considered, they may come up with different numbers. He said they do not necessarily lead to one, inescapable conclusion. Mr. Huston said it would seem to require an inherent balance in the consideration of the factors.

Ms. Taylor said advice from E.F. Hutton indicated the Department should consider not allowing conversion costs under certain circumstances. And, the Commission might consider adopting a rule that says whether or not it will allow conversion costs in a financial transaction. In response to Chairman Petersen, Ms. Taylor said she was speaking about conversion from one type of financing to another. Ms. Taylor said the company had included conversion costs in capitalized costs for the actual cost of the facility. The Department wrote a rule which said costs for long-term debt should be pro rated because the benefit of long-term debt is received over time not just during the period of construction.

Ms. Taylor said Ogden-Martin provided the Department with a breakdown of costs and one of those costs was the cost of converting from floating term to fixed term, (which the company did opt to do) and to pay back in advance some of the debt they had outstanding. Ms. Taylor thought that conversion costs could be looked at many different ways. After reading the consultant's suggestion that conversion costs were not appropriate to charge to a facility unless there was a date specific upon which the conversion would be made, the Department did not include the conversion costs as allocable costs under the actual costs of the facility. Ms. Taylor said the Department tried hard to abide by the written contracts and agreements and did not speculate in trying to apply given revenue dollars and given operating expense dollars to the return on investment formula.

Chairman Petersen asked what the result would be if the cost of conversion was included. Ms. Taylor said if the cost of conversion were included and amortized the result would be 54.023% cost allocable. If the total conversion cost were added to the DEQ original recommended cost of the facility the portion allocable would be 55.46%, she said.

John Charles, Oregon Environmental Council (OEC), said they had been interested in pollution control tax credits for a long time. He had been on the Department's task force to look at the Department's program. Mr. Charles said he had toured the Marion County facility and found it very impressive and thought there was a lot of potential for energy recovery facilities.

Mr. Charles said the company was in error, and the Department was suggesting far too much in tax credit for the facility. First, Mr. Charles said DEQ erroneously concluded that the sole purpose of the facility is pollution control. He said that is not true as the facility is an electric power generating plant that happens to use municipal solid waste as a fuel. In the process, he said, the facility creates new forms of pollution including highly toxic air pollutants, constant noise pollution, and sludge that is considered by DEQ to be hazardous waste (which is now being stored in a Woodburn solid waste facility but is being segregated in the event it has to go to a hazardous waste disposal site). Mr. Charles said the facility was a processor of solid waste and generates a usable product, but is not a pollution control facility.

Secondly, Mr.Charles continued, DEQ has erroneously calculated the allowable percentage of costs. In the terms of pollution control, Mr. Charles said it was arguable which was the better facility--the garbage burner or a landfill. As a general matter, Mr. Charles said other alternatives cannot be written off.

Mr. Charles said it was relevant to look at the control or reduction of air, water or noise pollution. This facility does not reduce air or noise pollution, he said, it creates that pollution where there was none.

Thirdly, Mr. Charles said, the facility does not comply with its DEQ permits and it is unclear whether they will. By statute and rule, the Commission must find that the facility will comply with its permits. Mr. Charles said in reference to the air quality permit, the Company is apparently not even going to try to comply with the nitrogen oxide

standard, but will ask the Department to raise the permit levels to match what they are emitting. Mr. Charles said it would be imprudent for the Commission to determine at this meeting that the facility will comply with the air quality permit.

Mr. Charles suggested the Commission only give credit for expenditures that are solely related to pollution control which are the baghouse, scrubber, etc., cooling tower, acid storage and caustic storage tank, etc.

Mr. Charles also suggested the Commission defer action on this immensely complicated matter and decide what should be done with the violation of the nitrogen oxide standard, and further simply having the company representatives say they are going to comply is not enough.

Mr. Charles requested that even though there is a lot of pressure for the Commission to decide this matter by the end of December, it is the Commission's role to issue the final determination and he would be disappointed if the Commission would somehow feel they had to make the decision by the end of December. Mr. Charles said this was part of the risk of doing business.

Director Hansen explained he thought the Commission's decision options were to take Mr. Charles' recommendation that the facility's sole purpose was not for pollution control, then the cost allocable was 0 except for the items such as air pollution control equipment and so on. If the Commission does not do that, Director Hansen said, then the Commission faces the issue of the result of the lowest formula and if it wants to change that it needs to adopt some sort of an emergency rule. Regarding the issue of the sale of tax credits, it seemed to Director Hansen that if the Commission determines it is a commodity and a salable item, then it should be treated as the Department has.

Chairman Petersen noted the requirement that the facility will achieve compliance. He said there was a revocation provision that if the company did not comply the credit could be revoked. The Director made a specific finding in his recommendation that the facility will comply. Director Hansen said the Department has looked at the facility and determined it will comply as required by statute.

Commissioner Denecke said that was not true on nitrogen oxide. Director Hansen said the Department's determination on nitrogen oxide was that the change in the permit condition would be reasonable and therefore still in compliance. If that change were not made in the permit, the Department would expect the facility to come into compliance on nitrogen oxide.

Chairman Petersen suggested that the issues be laid out by both the Department and the applicant in a memorandum to the Commission, not be more than three pages in length, summarizing the issue and the arguments and the conclusion on each issue, and submit it to the Commission within a week. Chairman Petersen said the Commission needed to make a good faith effort to get this matter resolved prior to the end of the year.

The Commission set 10:00 am on Friday, December 19 to further consider this item by special conference call meeting.

AGENDA ITEM I: Request for extension of the July 1, 1986 deadline for providing the opportunity to recycle in the Milton-Freewater wasteshed (ORS 459.185(9))

The Recycling Opportunity Act, adopted by the 1983 Legislature, requires that the opportunity to recycle be provided to all persons in Oregon by 1986. Milton-Freewater has requested an extension of the deadline to April, 1987 because it will be changing its collection system for solid waste and would like to institute the recycling collection as an integral part of the new solid waste collection system.

Director's Recommendation

Based on the findings in the summation of the staff report, it is recommended that the Commission grant an extension to April 30, 1987 of tne July 1, 1986 deadline for providing the opportunity to recycle, with two conditions, as follows:

1. The recycling depot at the Milton-Freewater disposal site be completed and ready to accept recyclable materials by January 1, 1987.

2. The initial publicity be provided at least four weeks prior to the beginning of the recycling collection service, and notification to residents also precede the initiation of service, to allow people time to start saving their recyclable materials.

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

AGENDA ITEM J: Information Report: City of Sheridan request for grant from Pollution Control Bond Fund

The City of Sheridan has requested that the Department provide them a grant from the Pollution Control Bond Fund in the Amount of $252,000. The grant would be used to pay 30% of the cost of a sewage treatment lagoon to accommodate a new federal minimum/medium security prison in Sheridan.

Director's Recommendation

The Director recommends that the Department introduce a Legislative Emergency Board request on behalf of the City of Sheridan, but that the Department remain neutral as to whether such a grant should be issued.

The request should stipulate that any grant approved be subject to the project qualifying for funding and the facility plan receiving approval from DEQ Water Quality Division.

Bruce Peet, Sheridan City Admininstrator, presented a letter from Sheridan Mayor J.A. "Art" Hebert in support of the proposal. This letter is made a part of the Commission's record on this matter.

Patrick Curran, Sheridan City Engineer, also testified in support of a grant from the Pollution Control Bond Fund for the construction of sewage treatment facilities to serve the federal correctional institution. He said the prison is to be in service by January 1989 and the treatment facility and lagoons are essential to maintain the quality of the South Yamhill river. He said the City intends full compliance with state water quality standards and has instituted a vigorous program to control discharges from the lagoons. Mr. Curran requested the Commission's support for a grant and asked the Commission to direct the staff to advocate on behalf of the City of Sheridan before the Emergency Board.

Director Hansen explained that in order for an item to go before the Emergency Board it must be presented by a state agency. Director Hansen saw the Department as a facilitator to get this matter before the Emergency Board. He recommended a neutral stand as the most appropriate, as normally the Department would recommend against any grants from the Pollution Control Bond Fund.

Commissioner Denecke MOVED the Director' Recommendation be approved, noting he did not think the endorsement of the Commission would mean that much in this matter. The motion was seconded by Commissioner Buist and passed unanimously.

AGENDA ITEM K: Court of Appeals remand of "Arnold Irrigation District v. DEQ" for reconsideration

On April 23, 1986, the Oregon Court of Appeals reversed an EQC order that had affirmed the Department's decision to deny a 401 certification for a hydroelectric project proposed by the Arnold Irrigation District. The project is proposed at Benham Falls on the Deschutes River south of Bend. This item directs the Department to proceed in reconsidering the District's application for a 401 Certificate.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission return the application of Arnold Irrigation District to the Department with instructions to: (1) assist the applicant to secure the necessary additional information, but include the Deschutes County land use review process as a part of the information-gathering effort unless the county fails to make a good faith effort, (2) complete a reevaluation of the application with due regard to the requirement of state and federal law and the opinion of the Court of Appeals, and (3) advise the applicant of the Department's new decision in the matter. It is also recommended that the Commission direct the Department to follow public involvement procedures as outlined in OAR 340-48-020(4). If the applicant notifies the Department within 20 days of notice of a decision that it is dissatisfied with that decision, the contested case hearing before the Commission will be reopened at the earliest possible date.

Chairman Petersen read into the record a letter from Neil R. Bryant, attorney representing Arnold Irrigation District.

Bruce White, Oregon Chapter of the Sierra Club, said that the Northwest Environmental Defense Center had appealed the EQC's decision to the Court of Appeals on the question of the impact on designated uses. NEDC, he said, wanted a clarification as to what the Department's position was in terms of whether there was any role for designated uses after the Arnold decision.

Michael Huston, Assistant Attorney General, commented he did not think the court decision would preclude DEQ from considering beneficial uses. Commissioner Denecke said the question presented to the Commission under the decision now is, should it be returned to the county asking if there is anything in the land use plan and goals that has any connection with water quality. He said it was Mr. Bryant's contention there was nothing that affected water quality. Commissioner Denecke said he was not saying there was not an answer to Mr. White's question, only that the Commission did not have it at this particular time.

Mr. White said NEDC wanted to preserve its options to have this issue addressed by the staff in the next round of the licensing procedure. He noted the denial of November 27, 1974 made by the Director on land use grounds and eight deficiencies in water quality. He also noted that nothing in the contested case proceeding addressed those water quality deficiencies. It appeared to him that those deficiencies were addressed informally and nothing in the record addresses the reasons for the denial. Mr. White asked what constituted the record in this case. Mr. Huston said the Department initially cited eight minor water quality problems to which the applicant replied. It was presented on the record as a satisfactory response. Whether it was ever in the proper written form, Mr. Huston did not know. Mr. White said that an exchange of correspondence in the record is enough to meet requirements.

Mr. White asked what kind of a proceeding comes after denial and what would constitute the record of that proceeding. Mr. Huston said that on the first round the Department denied the application. It was appealed and a contested case hearing was held in which Arnold was the only one who testified. Deschutes County requested intervention and the Commission declined to grant them intervention. It seemed to Mr. Huston there would be a decision by the Department that would be subject to a contested case procedure before the Commission and other interested parties would then have an opportunity to request intervention in that proceeding.

Director Hansen said the Department would make a decision that could be appealed through the contested case process to the Commission.

Chairman Petersen asked about putting a 60 day time limit on the processing. Richard Nichols, Administrator of the Department's Water Quality Division, explained that whether or not that was sufficient time would depend on the time it would take to put together the public notice, publish it and have the notice out for the required 30 days as Director Hansen said the Department's goal was to proceed expeditiously.

Commissioner Denecke MOVED adoption of the Director's Recommendation with a 60 day limit on the process, and if toward the end of the 60 days the Department found it unrealistic to meet the deadline, the Commission should be informed and the time would be extended. The motion was seconded by Commissioner Bishop and passed with Chairman Petersen abstaining.

AGENDA ITEM L: City of Klamath Falls petition rquesting an order waiving OAR 340-48-020(2)(i) and directing DEQ to deem complete the City's 401 certification application

Several months ago, the City of Klamath Falls submitted an application for a 401 certification of its Salt Caves hydroelectric project on the Klamath River. Based upon the Department's rules for 401 certification and the Department's interpretation of the Arnold decision rendered by the Oregon Court of Appeals, the Department has requested submittal of land use information before the application can be considered complete for processing. The City believes the Department's position is inappropriate and has petitioned the Commission to waive the rule requiring land use information.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the petition of the City of Klamath Falls be denied.

George Flitcraft, Mayor of Klamath Falls, testified the City has a sincere desire to limit delays and is concerned that DEQ is mistaken in the way it is handling the 401 certification which creates unnecessary delay. He said they were determined to carry the project through, but it must be on an expeditious basis. He said it was not fair for the project to be held up in DEQ on county land use issues. DEQ's expertise is in water quality he continued. Mayor Flitcraft said that the City filed its application in August and it was now December and DEQ refuses to begin review of the application and has stated that the City must undergo a six month land use process before the Department will consider the application complete.

Mayor Flitcraft proposed that the 401 process proceed concurrently with the land use process and requested that the City's application be accepted and deemed complete.

Peter Glaser, Attorney representing the City of Klamath Falls, testified the dispute was that DEQ will not consider a Section 401 application complete until a land use compatibility statement is submitted from a local governing body. He argued that such action will lead DEQ to deny their application for failure to submit land use information and that the Arnold decision says an application cannot be denied for that reason. He also said the DEQ apparently believes the Commission does not have the authority to waive the regulation and believes that rule making is necessary. The City disagrees. Mr. Glaser argued that the Commission has authority to waive any procedural filing requirement in its rules and cited a U.S. Supreme Court case to support his argument. Mr. Glaser urged the Commission to grant the City's petition, i.e., waive the procedural

filing requirement, declare the City's application complete, and proceed with processing simultaneously with processing of the City's application to the County for land use approval which the City commits to filing soon.

Bob Beach, Klamath Falls businessman, appeared as Chairman and founder of "Save Our Klamath Jobs," an organization with 2,490 members organized to support the Salt Caves project. He testified that the project would mean a great deal to the economy of the City of Klamath Falls. He requested the Commission be sensitive to the reasons behind the project when determining how to schedule consideration of the water quality aspects of the project. He said there was no reason DEQ and the county could not act concurrently in this administrative process. He said the City had bent over backwards to make this a good hydro project and appealed to the Commission to grant the petition.

Bruce White, Sierra Club, testified that the EQC is being urged to act because delay will hurt. What has not been addressed, he said, is why the City has not yet applied to the county for the land use process to start if delay is of such concern. Mr. White said the City has just applied to FERC in the last two weeks and the FERC process takes a very long time. He said it would not be holding up the process if the Commission does not act immediately. He believed the local land use process should be observed and did not believe those programs should be run roughshod over by not giving the county an opportunity to go through its process. He urged the petition be rejected and the land use process proceed.

Commissioner Denecke said it seemed to him no question that the present regulation is contrary to the Court of Appeals decision and would have to be modified. Director Hansen agreed. However, Commissioner Denecke was not sure where to go from there. Chairman Petersen asked exactly what was involved in looking at the plan. Director Hansen said a full analysis of the county land use plan would have to be done to determine what are the water quality provisions of the plan and then determine how to handle it in the 401 Certification process.

Commissioner Denecke asked why it would take six months for the county to review land use issues. Director Hansen referred the Commission to the letter from Klamath County regarding its process (the letter was attached to the Staff report).

Commissioner Buist asked why the county would take 75 days before the first public hearing. Director Hansen said that at the county level an amendment to the land use plan was going to be required and 75 days is a fast track for a change in a land use plan.

Director Hansen said that what is at issue is that there is a process that will have to be gone through. The Department has not said it will deny. He said the county would already be four months into the process if Klamath Falls had filed an application with the county at the same time it filed with DEQ.

Chairman Petersen asked Mr. Huston to comment on the waiver issue and Mr. Glaser's argument that a waiver is appropriate. Mr. Huston stated that state law is less clear than federal law on the authority of an administrative agency to waive procedural requirements. He stated that

it is not legally advisable to waive a rule requirement; the better course of action is to change the rule requirement. He further noted that the state Administrative Procedures Act does not recognize a petition for a waiver as a remedy to a problem—it does recognize a petition for rulemaking. He recommended the Commission pursue rulemaking with appropriate notice if the Commission wished to pursue the merits of the City's proposal.

Chairman Petersen expressed frustration at what he perceived to be a continuing effort to have the Commission and Department expand its authority under the Clean Water Act beyond what it has. He said the Department either grants or denies a certification under the water quality criteria and then if it does grant the certificate it can be conditioned with water quality related issues as decided by Arnold. He thought it would be a mistake to do otherwise.

He indicated he appreciated the Department's effort to give difference to other state laws and interagency agreements, but felt it was a mistake to take other than a narrow view of the authority given the Department under the federal Clean Water Act.

Director Hansen stated that was the crux of this issue--do we comply with land use and other requirements of state law to the maximum extent possible under Arnold, or do we go for the minimum extent possible.

Chairman Petersen indicated his desire to grant some relief as requested by the City, but was unsure of the process to follow to do so. Director Hansen advised that the Commission could act today by adopting a temporary rule, or could authorize the Department to give notice of a hearing, draft rule amendments, and proceed rapidly through a normal rulemaking process. He further indicated the Department would need guidance from the Commission on the extent of amendments desired and the role of land use authorities in order to draft rule amendments.

Commissioner Denecke asked if the Department would visualize seeking input from the County. Director Hansen indicated one option would be to send materials submitted by the applicant to the County, ask for its review and advice, and if no comments are received within 60 days, proceed with processing the application. Chairman Petersen and Commissioner Denecke both felt that such an option made sense in that it defers to the County, but establishes a time limit.

It was MOVED by Commissioner Denecke to deny the petition and direct the Department to issue public notice of proposed rulemaking, draft rule amendments to conform the 401 rules to the Arnold decision, and establish an alternative with a time certain for planning jurisdictions to provide advice to the Department on land use requirements that may be water quality related, and hold the rulemaking hearing before the Commission at its January 23, 1987 meeting. The motion was seconded by Commissioner Buist and passed unanimously.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Carol Splettstaszer
EQC Assistant

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE ONE HUNDRED SEVENTY-FIFTH MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

October 24, 1986

On Friday, October 24, 1986, the one hundred seventy fifth meeting of the Oregon Environmental Quality Commission convened in room 602 of the Multnomah County Courthouse, 1021 SW Fourth 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.

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, 811 S. W. Sixth Avenue, Portland, Oregon. Written information submitted at this meeting is hereby made a part of this record and is on file at the above address.

BREAKFAST MEETING

1. DEQ's 1987-89 Biennium Budget Request and Previous Budgets.

   John Rist of the Department's Budget Office presented the Commission with a summary document indicating the Department's 1987-89 budget request and five previous bienniums of budget information.

2. Discussion of issues relating to adoption of rules to implement 1984 hazardous and solid waste amendments to the Resource Conservation and Recovery Act (RCRA).

   Michael Downs, Administrator of the Department's Hazardous and Solid Waste Division, told the Commission the Department received final authorization for its hazardous waste program from EPA on January 31, 1986. This means EPA found Oregon's programs to be equivalent to the federal program in effect as of July 1, 1985; that it was consistent with the Federal program and other authorized state programs; and that it provided for adequate enforcement. Upon receiving final authorization, the state's program operates in lieu of the federal program in Oregon, i.e., all permitting and compliance activities are delegated to the State with EPA oversight of state actions.

On November 8, 1984, Mr. Downs continued, the President signed into law the Hazardous and Solid Waste Amendments of 1984 (HSWA). This major law profoundly changed the way the Country manages hazardous waste and the Federal-state relationship for authorized state programs. A dual federal-state regulatory system was created in authorized states such as Oregon where the state is responsible for implementing its authorized program, and EPA is responsible for implementing the HSWA requirements and prohibitions until Oregon receives authorization to implement HSWA.

Mr. Downs said this dual regulatory system creates serious concern for industry because of the confusion about effective regulations, conflicting regulations, who is the responsible agency and the differences in approach to compliance between the state and federal government.

An example of the complexity of the situation is in the regulation of small quantity generators of hazardous waste. A small quantity generator is anyone who generates less than 1000 kg (2200 pounds) per month of hazardous waste. Oregon's program contains small quantity generator requirements that were more stringent than EPA requirements in effect on July 1, 1985. HSWA required EPA to promulgate new requirements for small quantity generators by March 1986. These new regulations were promulgated and effective September 22, 1986 and since they were adopted pursuant to HSWA, they are effective immediately in Oregon. However, Oregon's regulations are still on the books and are still effective. New EPA regulations are more stringent and more comprehensive than Oregon's. This is confusing to industry, especially since most of the companies affected are small businesses.

Mr. Downs outlined the following alternative courses of action:

A. Adopt requirements equivalent to EPA's and request authorization to implement.

B. Delete existing state small quantity generator requirements that are more stringent than EPA's.

C. Use enforcement discretion on existing state requirements until the Commission adopts new federal small quantity generator rules.

AGENDA ITEM A: Minutes of the September 12, 1986 EQC Meeting.

It was MOVED by Commissioner Bishop, seconded by Commissioner Brill and passed with Commissioner Buist abstaining that the Minutes of the September 12, 1986 meeting be approved. Commissioner Denecke was not present for the vote.

AGENDA ITEM B: Monthly Activity Report for August 1986.

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist and passed unanimously that the Monthly Activity Report be approved. Commissioner Denecke was not present for the vote.

AGENDA ITEM C: Tax Credit Applications

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

Director's Recommendation

It is recommended that the Commission take the following action:

1. Issue tax credit certifications for pollution control facilities:

Appl. No.	Applicant	Facility
T-1757	Corvallis Kennels	Enclosed Animal Kennel
T-1779	Gamble Farms	Chicken manure storage
T-1791	Tektronix, Inc.	New paint line in Building 16
T-1834	Boise Cascade Corp.	Air cooled heat exchange, oil skimmer and bark removal system
T-1835	Graphic Arts Center, Inc.	Vapor incinerator

2. Revoke certificates issued to Publishers Paper Co. and reissue to Smurfit Newsprint Corporation.

3. Revoke certificates issued to Champion International and reissue to Gold Beach Timber Products.

PUBLIC FORUM

Chairman Petersen read the following letter he had received from Fred Smith in Salem:

> "In 1948 I built a home at 190 37th Avenue, N.E. in Salem. At present the Marion County Assessor has assessed it at, true cash value: Land $14,000 Improvements, $46,830.
>
> In 1969 West Coast Grocery constructed a warehouse on property directly across the street west of my home on a ten acre plot of land, of which six acres is building. This is on 37th avenue, which was at that time zoned R-1. single family residence.
>
> Their operation is 24 hours a day, both by truck and rail. The noise is unbearable, motors raceing (sic), loading bays banging day & night. I am sure they are exceeding the noise limit by many times over.
>
> This letter is being written in the hope that your office can get us some relief from this disturbing noise--anything you can do will be greatly appreciated by my family and the residents of 37th Avenue, N.E. Salem, Oregon.
>
> Thank you,
>
> /s/ Fred W. Smith"

Chairman Petersen expressed concern about continued noise complaints regarding West Coast Grocery. He instructed the Department to look into the situation and report back to him on whether or not noise regulations are being exceeded. Tom Bispham, Administrator of the Department's Air Quality Division, told Chairman Petersen the Department was continuing to work with West Coast Grocery. The Company hired a consultant to work on the problem but did not feel the consultant's recommendations were appropriate. Mr. Bispham said DEQ was still working with the company to incorporate the changes recommended by the consultant. The Department believes there is something that can be done to improve the situation. The Company is in violation, Mr. Bispham continued. Chairman Petersen said he was sympathetic to homeowners who have lived in the area since before the facility was built, and especially if the company was not in compliance.

Bill Puntney, Clayton-Moore Recycling Company, Salem, appeared protesting the approval of the Marion County Wasteshed Report as he had in early 1986. Mr. Puntney said he understood at the time that he would be able to comment on the report when appropriate. He said when he wrote a letter to the Commission it was responded to by a telephone

call from a DEQ staff member. Mr. Puntney said the staff response to his concerns was not adequate. Mr. Puntney still felt the Marion County report was inadequate and asked the Commission to recind its approval of the report until all the facts are found out about the inaccuracies.

As an example of what he felt was inaccurate, Mr. Puntney said the report states that in one particular town in Marion County any commercial hauler can do business and can buy recyclable material. Mr. Puntney said his company had been buying newspaper from a customer in this town and the town stopped this practice by saying only the franchised garbage collector could buy newspaper in their town. The customer then choose to cross the county line to sell its newspaper. Mr. Puntney said he did not feel this was the intent of SB 405, the Opportunity to Recycle Act.

In addition, Mr. Puntney continued, during 1981 hearings on the Marion County mass burning facility, the County testified the plant would not adversely affect his business. Mr. Puntney said he was not being allowed to dump at the burn plant. He said the county was destroying confidential documents at the burn plant in direct competition with his recycling company and in violation of the intent of SB 405 as his company recycles the material after shredding instead of burning. Mr. Puntney said individuals are being allowed to dump at the burn plant, but his company is not. He said the Commission would be considering a tax credit application for this facility and asked that it not be considered until after these issues are resolved.

Chairman Petersen told Mr. Puntney that he sent him a letter saying the Commission had delegated responsibility for approval of wasteshed reports to the Department and would not substitute its judgment for that of the Department. He said the purpose of the wasteshed report is for the Department to determine if the opportunity to recycle was being provided.

Chairman Petersen asked about the matter of the tax credit. Director Hansen said the tax credit will be sold as a security. Ogden Martin, as the builder of the facility, will receive the tax credit. The ability to market tax credits is controlled by the Department of Revenue. Director Hansen said this matter would come to the Commission as a separate item from their regular tax credit applications because of its uniqueness.

Director Hansen said it was the Department's understanding Mr. Puntney would submit his concerns to the Department as a formal hearing was not meant to be scheduled on this report. He said some of Mr. Puntney's issues relate to concerns he has with the county and other municipalities who choose to franchise or not. The only statutory

authority the Department has is to determine that the opportunity to recycle is being provided. Director Hansen said the Department did not have to ability to address some of Mr. Puntney's concerns.

Chairman Petersen said the Department could investigate whether or not the report was truthful. Director Hansen replied it could, but in the specifics Mr. Puntney raised, the Department's concern is whether or not the opportunity to recycle is being provided, not whether or not selling of newspaper can be restricted.

Michael Downs, Administrator of the Department's Hazardous and Solid Waste Division, said staff had discussed Mr. Puntney's concerns with him, but have not found anything that would cause the Department to change its mind. However, Mr. Downs continued, if Mr. Puntney had any new information, the Department would be pleased to address it.

Chairman Petersen indicated the Department had broad discretion in reviewing these reports, and if there was a permit condition being violated the Department would like to hear about it, however the Commission was not going to get involved at this time.

There being no one further who wished to speak, public forum was closed.

AGENDA ITEMS D AND E: Proposed approval of the slash burning smoke management plan revisions as an amendment to the State Implementation Plan (OAR 340-20-047).

Proposed adoption of the State Air Quality Implementation Plan revisions (OAR 340-20-047, Section 5.2) to address visibility protection in Class I areas.

As these two items were interrelated, they were discussed at the same time.

The proposed approval of the Slash Burning Smoke Management Plan revisions (Agenda Item D) as an amendment to the State Implementation Plan recommended changes to the smoke management rule and directives governing forest slash burning. This is the first comprehensive review of the Smoke Management Plan since its adoption in 1972 and is the result of year-long discussions with the Oregon Department of Forestry, federal land management agencies and the forest industry.

The proposed changes have received public comment and would generally update and improve smoke management regulations. Elements necessary for visibility protection in Class I areas have also been incorporated.

The Department is requesting the Commission adopt proposed changes to both the Smoke Management Plan administrative rule and the Directive (or operational guidelines) as amendments to the State Implementation Plan. The Plan and Directives will then be forwarded to the Department of Forestry for approval and promulgation.

Director's Recommendation (Item D)

It is recommended that the Commission adopt the revised Smoke Management Plan and Directive as an amendment to the State Implementation Plan (OAR 340-20-047).

Agenda Item E proposes to amend the State Implementation Plan to incorporate visibility protection for Oregon's wilderness and national park lands as required by the Clean Air Act. Visibility is impaired in these lands about 25% of the summer daylight hours, primarily by smoke from forest prescribed burning and grass field burning. The proposed strategy is expected to reduce the frequency of substantial impairment by 40-50% over the next 15 years. The proposed rule meets the EPA Phase II visibility protection program requirements and must be submitted to EPA prior to December 1986.

The proposed rule has been revised to strengthen summer visibility protection for Eastern and Southern Oregon Class I areas and establishes a schedule for assessment of lands designated under the Oregon Wilderness Bill of 1984. Enforcement provisions of the Oregon Department of Forestry Smoke Management Plan have also been strengthened through inclusion of a permit audit program and a Department of Forestry commitment to seek legislative authority to levy civil penalties.

Director's Recommendation (Item E)

Based on the summation in the staff report, the Director recommends the Commission adopt the revised proposed rules (OAR 340-20-047, Section 5.2), Visibility Protection for Class I areas.

Director Hansen explained the visibility plan is required under the Clean Air Act amendments and a court decision which determined a schedule for adoption of State Implementation Plan (SIP) amendments. The Oregon Class I area rules are required by December 31, 1986. Because the Department does not have total responsibility for the Smoke Management Plan, the ORS requires that the Department Director

and the State Forester sign a Smoke Management Plan. These two agenda items try to bring together those two requirements. The visibility SIP is the overall plan to reduce smoke impacts in Class I areas. The Smoke Management Plan is the authority that implements the strategies that are outlined in the visibility SIP.

John Core of the Department's Air Quality Division, gave the Commission an overview of the work on this project. He said there was a close intertie with the Visibility Protection Plan and the Smoke Management Plan in that the Smoke Management Plan includes the rules and internal guidelines of the Department of Forestry for implementing and enforcing the forestry-related issues. The Department has been working on both plans in cooperation with other agencies over the last two years to develop the recommendations before the Commission. Mr. Core said it had been 12-13 years since the Smoke Management Plan had been originally written and some changes in practices needed to be addressed.

The Smoke Management Plan, Mr. Core continued, does include provisions for visibility protection. The short-term strategy for visibility protection incorporates both field burning and prescribed forestry burning elements and covers the period from July 4 to Labor Day. The field burning and slash burning element addresses control of smoke during that period. The field burning element provides for prohibition of weekend burning and would allow for commitments to long-term solutions to field burning. Mr. Core said the essence of the field burning strategy is in the weekend reduction of burning. He said the prescribed forestry burning elements are what occurs on the coastal areas where burning would be allowed from July 4 to Labor Day only when smoke would not be driven into Class I areas in Oregon or Washington. This element also asks that upper level wind transports over a two day period be considered. In the Western Cascades there would be a general prohibition from July 4 to Labor Day during fair-weather periods with the exception of hardwood conversion burning (prescribed burning for the purpose of eliminating hardwoods so that it can be replanted with fir).

Mr. Core said that an emergency exception for both the spring and fall would allow the Director and State Forester to look at the current status of the burning to determine if there is an undue economic impact. In response to Chairman Petersen, Mr. Core said that the emergency exception requires the consent of both agency heads.

Chairman Petersen asked who would make the decision on the weekend exemption of field burning. Mr. Core said that decision was made by the Department Director following consultation with staff.

Commissioner Brill asked if there was currently a lot of slash burning during the July 4 to Labor Day time period. Mr. Core said that a considerable amount of slash burning occurs on the Coast during that time. In Southern Oregon most of the burning is done in the Spring. Mr. Core said that during the public hearing the issue of year-round protection was raised. Following discussions with EPA, the Department concluded that the proposed plan required reasonable progress toward meeting the goal of no significant impairment. Mr. Core said the enforceability would be through the Smoke Management Plan and the Department has included provisions for auditing progress. Mr. Core said he understood the Department of Forestry would be seeking legislative authority to level civil penalties.

Chairman Petersen commented that the Visibility Protection Plan indicated the Department of Forestry would audit 1% of the units each year with DEQ participation. He asked if there was an intent to limit DEQ's participation, or could DEQ conduct its own audits? Mr. Core replied that the Department of Forestry would have primary responsibility to audit and DEQ would participate as its resources allowed. There was no direct provision for DEQ to audit independent of the Department of Forestry.

Regarding the Directive, Commissioner Bishop asked why there was no assumption that the goal was to improve public health. Mr. Core replied that it has only been recently that the issue of public health impacts have been a concern. He said more information is needed about public health impacts.

Commissioner Bishop asked why assumptions were made at all. She said she knew the forestry industry was trying hard and asked if an assumption regarding public health could be added. Director Hansen said it was important to note the Department had sufficient questions about health effects that it felt substantial additional data needed to be gathered. He said the Department did not feel it had enough information on health effects.

Commissioner Buist commented this Plan was a move in the right direction. She said there was not enough information about health effects and felt the Department was going about the right way of obtaining more data. Commissioner Buist said she felt there was no real reason for alarm--that the risk was likely to be extremely small. She did not consider the health effects issue to be something that should hold up adoption.

Chairman Petersen then excused Commissioner Buist from the rest of the meeting.

Kathy Williams, Seal Rock, testified the Commission should consider new information that had surfaced following the public hearings. She said there were new appendices in the Directive that were not available at the time of the public hearing. Ms. Williams said there was presently a study on herbicides going on and the data was not yet available. Ms. Williams said no herbicides are registered to be burned by EPA, but the Smoke Management Plan encourages the use of herbicides to be sprayed before burning. When herbicides are disposed of in this manner, she continued, it comes it into the regulation of DEQ. Dinitro, which has recently been banned by EPA, Ms. Williams said, was the most common herbicide used around her home two years ago. She said there was lack of information on the safety of these herbicides. New preliminary data on the amount of particulate measured in this summer's slash burns voids the June 1986 DEQ field and slash burning study, Ms. Williams said.

Ms. Williams said that nowhere in the report was there an attempt to determine how far away the slash burns were from the monitor at the Waldport Elementary School. Recent data indicates higher particulate levels in excess of EPA standards. What shows in the report was not worst case, she continued. Ms. Williams thought the data needed to be reevaluated. She thought rural people need the same protection as urban residents. Ms. Williams felt there was a health impact that may not be measurable in the Willamette Valley, but those close to the burning were definitely at risk. She said that although the DEQ was strictly regulating motor vehicle and wood stove emissions, it was too bad it was not willing to stand up to the forestry industry and say that public health was important.

Chairman Petersen asked Ms. Williams if she was aware of any hard data that proves the adverse health impact of the herbicide burning. He said he heard the Department state the same questions as Ms. Williams, but was not aware of any specific studies in place that confirm the extent of the problem. Ms. Williams said she did not know of any hard data. Chairman Petersen said the point was to continue to gather data to find out the extent of the problem with regard to herbicide burning. Ms. Williams asked that data continue to be gathered, but was not sure how ethical it was to allow experimental spraying in the meantime.

Commissioner Denecke asked for the Department response on the more recent findings on particulates. Mr. Core said the current appendices to the Directive were listed in the information that went to public hearing, but that because of the very recent nature of the new appendices, they were not available at the time of the hearing. These new appendices have not been substantially changed except as they relate to estimation of fuel consumption. With respect to the new monitoring data, Mr. Core said he just saw the recent data Ms. Williams referred to a few minutes before. He said these were short-

term samples taken immediately adjacent to the fires. Mr. Core said the Department would normally apply national standards to placement of monitors in populated areas. He said he had not had time to evaluate these preliminary particulate results.

Chairman Petersen asked why rural standards should be different than those applied in urban areas. Mr. Core said the Smoke Management Plan is directed to populated areas of the state and not specifically directed to protecting rural residents. That is why the Department was trying to gather more information on health effects. Director Hansen said a part of the effort in the Smoke Management Plan is to keep smoke out of the designated (populated) areas. By shifting the burning into the wetter times of the year, less particulate will be produced. Mr. Core said that people in charge of the National forests were aware of the concerns of the people living in the areas and make an attempt to limit the impacts.

Ann Wheeler, Oregon Environmental Council and a member of the Department's Advisory Committee, testified that it was not feasible to provide a maximum opportunity to burn and limit smoke impacts. She said the original plan was to move smoke into rural areas. Ms. Wheeler said the Commission had an opportunity to reevaluate that method. She was concerned about the ideal of continuing to provide maximum opportunity to burn with minimum emissions.

Ms. Wheeler recommended the following amendments to the Smoke Management Plan administrative rule:

OAR 629-43-043(3)(c)

> During periods of heavy use, major recreation areas in the state shall be provided the same [consideration] protection as "designated areas."

Ms. Wheeler felt that because the plan was directed towards protecting designated areas, the word should be "protection" and not "consideration."

OAR 629-43-043(4)(b)

> ....Upon termination, any burning already under way will be completed, residual burning will be mopped up as soon as practical, and no additional burning will be attempted until approval has been received from the State Forester.

Ms. Wheeler said that most smoke emissions are in the mopping up period and felt there should be a specific time for mopping up to be completed. She said there was stronger language used in the Directives.

OAR 629-43-043(6)(a)

> ....Burning should be done to best accomplish maximum vent height and to minimize nuisance effect on any segment of the public.

Ms. Wheeler said the Smoke Management Plan should be enforced as a matter of public health and not as a nuisance provision.

OAR 629-43-043(8)

> The Department of Environmental Quality, in cooperation with the State Forester, federal land management agencies, and private forest landowners shall develop maximum annual and daily emission limits in accordance with federal PSD (Prevention of Significant Deterioration) regulations.

Ms. Wheeler said there needed to be a timeline for implementation of the PSD program. Commissioner Bishop asked what a reasonable time would be. Ms. Wheeler replied that that would have to be a determination made by the Department; she did not know what would be involved.

Regarding the assumptions listed on page 3 of the Directive, Ms. Wheeler said that the Oregon Environmental Council had some difficulty with all the assumptions. Regarding the first assumption on the reduction of insect and disease problems, Ms. Wheeler said slash burning was not a method of insect and disease control in the Pacific Northwest, and this assumption needed correction.

The second assumption deals with the reduction of threats from wildfires, Ms. Wheeler said. Statistics reveal that slash burning starts more wildfires more often than any other cause except lightening in some forest areas, she continued.

Ms. Wheeler also had problems with the third assumption regarding protecting populated areas as opposed to protecting everyone in general.

Ms. Wheeler felt the Commission should direct the Department to reevaluate these assumptions. She said the Smoke Management Plan was directed only to Western Oregon burning, and it was time to develop some kind of a Smoke Management Plan for Eastern Oregon too. She said the Department wanted to wait until problems arise instead of addressing the matter now. Ms. Wheeler said it was the Advisory Committee's feeling that the Smoke Management Plan was inadequate without addressing statewide protection and it was important that east

side burning be included. As this was the first update of the Plan in 15 years, it should not take another 15 years for a major revision to protect other areas of the state.

Ms. Wheeler said it was the Oregon Environmental Council's feeling that the Directive was in violation of Oregon statutes by not being rule. She understood that the Department wants to build flexibility but the Directive needs to be rule. The Oregon Environmental Council is curious to know how they will be informed when a Directive is being changed, and wondered what public involvement there would be in the process. Ms. Wheeler's concern stemmed from the Oregon Environmental Council originally being told they could not attend the Smoke Management Task Force meetings, and when they did attend the Department of Forestry told them they could not participate or talk. OEC eventually did participate, but only through their own persistance. Ms. Wheeler said the Department had tried to justify its approach by showing how enforceable the Directive is. However, she said challenge to the Directive would require the public to go to a federal court. She said there should be a state involvement process first and a great deal of the substance of the Smoke Management Plan is in the Directive.

Ms. Wheeler said the Oregon Environmental Council feels the Smoke Management Plan should be premised on public health. The goal of moving the smoke around contradicts the PSD program.

Chairman Petersen asked if it is assumed that there must be some prescribed burning, would it be OEC's intention that an equal amount of smoke ought to go into populated areas? Ms. Wheeler said she could not make that statement. OEC would question the assumption that some slash burning needs to take place. She said the Smoke Management Plan should concentrate on emission reduction. However, she continued, if an equal amount of smoke were to go into populated areas, there would politically be a more rapid move to limit emissions. She indicated that rural residents do not have much political power.

Ms. Wheeler commended the Department for its proposal to do a wilderness review. She said the Federal Act requires reasonable progress, nevertheless also requires short- and long-term components. The long-term component should consider year-round and statewide protection. If there is ever to be statewide protection, Ms. Wheeler said, it should be in the Plan. She said the Act requires protection of all Class I areas.

Ms. Wheeler concluded by saying she hoped the Commission would consider the Oregon Environmental Council's comments and make some policy directions to staff to amend the plans.

Dave Jessup, Oregon Forestry Industries Council (OFIC), testified they were generally satisfied with the Plan. He commended John Core for the way he conducted the public hearings. Mr. Jessup said new wilderness areas are different from the mandatory Class I areas. They are lower in elevation, and historically have different air quality conditions. Mr. Jessup said the recommended evaluation within the next three years boxes the Department into a corner, and suggested that before an evaluation is made all concerned get together some criteria and guidelines. He offered to work to establish guidelines to go by for the 22 new wilderness areas. Mr. Jessup asked the Commission to consider tempering the recommendation based on three suggested stipulations: adequate funding is available to do a credible job of evaluation; the evaluation effort for the next three years be the development of new criteria to fit the characteristics of the 1984 wilderness areas; and that the Department spend more talent and money to deal with the public health issue.

Mr. Jessup said the assumptions made in the Smoke Management Plan relating to prescribed fires are correct. He said burning as a means to reduce insect and disease problems is a method used by the Park Service to maintain the integrity of existing conditions in the national parks. Also, he said, records showed that through time damages resulting from fire have been reduced tremendously. Mr. Jessup said that fires result when slash is not burned in the first place.

Director Hansen said the Smoke Management Plan as required by statute is agreed to by the Department Director and the State Forester. The Directives are items that are under the authority of the Department of Forestry. Director Hansen said he found it important that the Department sees that the Directives and the Smoke Management Plan are carried out appropriately. He said changes in the Smoke Management Plan would involve a public review process and the Department expects that those Directives would result in appropriate implementation. He believed the Department of Forestry was committed to pursuing the Directives. In order to change the Plan, it would need to go back to the Department of Forestry. Director Hansen explained that the Department would have a role in negotiating changes to the Directives, but not the same role as in changing a rule.

Commissioner Bishop still had problems with the assumptions. She asked that if the Commission decided to delete or change the assumptions, would the Plan then go back to the Department of Forestry? Director Hansen said the assumptions are contained in the directives solely by Forestry. The assumptions are included because they expand the Department of Forestry's administrative rule. He explained any changes would have to be negotiated by the Department of Forestry. Director Hansen said the Department did not put a lot of weight in the assumptions. The Department was concerned about

how the program would be administered. The assumptions may or may not affect specific issues and if they do, it is more appropriately raised with the Department of Forestry, he said. Director Hansen said the goal was to see reduction of emissions and lessening of impacts. He said the assumptions do not directly affect that.

Commissioner Bishop said she was worried about the public perception of the Smoke Management Plan directives. She asked why the Commission was being asked to approve them if they had no power to change them. Director Hansen said the role of the Commission in this process was to be able to formally adopt the Visibility Plan as an administrative rule. He said it did not make much sense to have a Visibility Plan without some sense of how it was going to be implemented. He said the Smoke Management Plan was the implementing mechanism. Chairman Petersen clarified that it was a statutory requirement that the Director of the Department approve the Smoke Management Plan and Directives. Director Hansen believed there were certain levels of responsibility for both the Department and the Department of Forestry and the assumptions were just another part of the plan. In response to Chairman Petersen, Director Hansen said he was satisfied with the Smoke Management Plan.

Michael Huston, Assistant Attorney General, said that ORS Chapter 477 creates a joint approval of the Plan with the Department and the Department of Forestry and then in turn preserves responsibility for adoption of the rules implementing that plan to the Department of Forestry.

Chairman Petersen asked of what significance was the Commission's satisfaction with the Plan. Director Hansen said that ultimately if there was a disagreement between the Commission and the Department, the statute was clear that the Director is given the authority to sign the Smoke Management Plan. He said the Department was trying to avoid having one body in disagreement with the direction of the overall smoke management effort.

Director Hansen said the Department brought both agenda items to the Commission, even though the Smoke Management Plan was not the Commission's responsibility to sign. He said if the Commission had significant concerns about the Plan, it was appropriate to direct the Department to reevaluate it. Director Hansen urged the Commission to recognize it was a very difficult two-year negotiation process to develop the Plan and that significant steps have been taken to improve it.

Commissioner Denecke was willing to accept the assumptions, but requested the Department to ask the Department of Forestry to give hard data on wildfires and noted the other two assumptions were more difficult to prove or disprove. Director Hansen said slash burning does result in wildfires, but what was at issue was whether or not the slash that has been successfully burned reduces fire danger. He indicated the Department could get more statistics as Commissioner Denecke requested.

Commissioner Bishop did not understand why health effects were not addressed in the assumptions. She appreciated the time and effort which had gone into the Plan and realized her concern about the assumptions was not substantative, but the assumptions do say what the program is based on. She indicated she would vote for the Visibility Plan but could not vote for the Smoke Management Plan and Directive as proposed. Commissioner Bishop said she would prefer to have the assumptions deleted entirely.

Chairman Petersen indicated it did not make much sense to have problems which affect health and visibility addressed by the Department in such programs such as field burning, wood stoves, the ban on backyard burning and the voluntary program on field burning in the Madras area, while slash burning is administered by the Department of Forestry. As a result of this split of responsibility, it is frustrating for the Commission and the Director. Chairman Petersen said he has been on record before that it does not make any sense to have two agencies working on the same problem. He said he did not mean to imply that the Department of Forestry was not going forward in good faith; they are responsible people. Chairman Petersen expressed concern about the lack of enforceability implied with the Directive. He was also concerned with Ms. Williams point about directing smoke into rural areas which implies that rural citizens are worthy of less protection than urban citizens. He suggested the Department work in the next three years to make it a high priority to direct resources towards reducing the total amount of emissions and hopefully someday eliminate them. Chairman Petersen said this Plan was a big first step. He was convinced the Commission would see continued progress and hoped the situation continued to improve.

It was MOVED by Commissioner Denecke, seconded by Commissioner Bishop and passed unanimously that the Director's Recommendation on Item E, the adoption of the State Air Quality Implementation Plan revisions to address visibility protection in Class I areas be approved.

Chairman Petersen asked if the Commission was required to take action on Item D, the proposed approval of the slash burning smoke management plan revisions? Michael Huston replied that although the statute assigns approval to the Director, the reason the Director brought it before the Commission was that it also needs to be made a part of the

State Implementation Plan which needs to be approved by the Commission. He said that the Commission vote would incorporate a Department-approved document into the Smoke Management Plan.

Commissioner Denecke MOVED approval of Agenda Item D, the Slash Burning Smoke Management Plan revisions as an amendment to the State Implementation Plan, on the basic assumption that it is a good first step and he was satisfied it was a good beginning. Chairman Petersen seconded the motion. Commissioner Bishop agreed it was a good first step, but said she could not vote for the motion. The motion failed with Commissioners Bishop and Brill voting no.

Fred Robinson, Assistant State Forester in charge of forest protection, testified that from the Department of Forestry's perspective, they have a number of internal directives. In their system, a directive is a set of instructions on how to do things. he said that this particular directive has been looked at only by the Department of Forestry for 15 years and was developed for internal instructions. He said the assumptions on the Directive have no bearing on how the Department of Forestry implements the Smoke Management Plan.

Commissioner Bishop said she could not imagine basing a Plan on irrelevant assumptions and had trouble voting to approve something with assumptions she is not sure of. Mr. Jessup indicated these were basic forestry assumptions developed over many years of foresters dealing with resources in the woods. Commissioner Bishop said that because of the Department's need to approve the Plan, she hoped it would include some of the Department's assumptions also, such as protection of public health. Commissioner Bishop indicated she would like to see a more balanced set of assumptions than those contained in the Directives.

Director Hansen clarified that Commissioner Bishop would like either the assumptions in the Directives deleted, or if they remain, there should be some resolution to the reduction of insect and disease problem; that statistics support the assumption that significant reductions in the cost and damages resulting from wildfires are achieved by slash burning; and the last assumption on smoke being managed to minimize air quality on populated areas, adequately addressed air quality, and in addition, that the protection of public health and promotion of emission reductions be addressed in the objectives statement.

Commissioner Bishop asked if the overall goal was to decrease slash burning? Director Hansen replied that that was not in the assumptions, but was an objective of the Smoke Management Plan.

AGENDA ITEM F: Proposed adoption of the Grants Pass Carbon Monoxide Strategy as a revision to the State Implementation Plan (OAR 340-20-047, Section 4.11).

This item proposes to include the Grants Pass Carbon Monoxide Control Strategy in the State Implementation Plan. The control strategy was prepared cooperatively by local and state agencies, with the City of Grants Pass as lead agency.

A major part of the control strategy is construction of a third bridge over the Rogue River. The third bridge is scheduled for construction in the Six-Year highway Improvement Program of the Oregon Department of Transportation.

A public hearing on the Grants Pass control strategy was held in September. The testimony was generally supportive of the proposal.

Director's Recommendation

Based on the summation in the staff report, the Director recommends that the Commission adopt the Grants Pass Carbon Monoxide Control Strategy as a revision to the State Implementation Plan (OAR 340-20-047, Section 4.11).

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

AGENDA ITEM G: Proposed adoption of rules amending National Standards of Performance for New Stationary Sources, OAR 340-25-505 to -710 and amending National Emission Standards and Procedural Requirements for Hazardous Air Contaminants, OAR 340-25-460 to -485.

In the last year, the Environmental Protection Agency has promulgated five more new source performance standards and amended eight others. The Department has committed to bring State rules up to date with EPA rules on a once a year basis. The comments received on the proposed rules support the Department's recommendation not to adopt the rule on rock crushers. The Department also recommends not adopting the change to the length of required opacity observations.

The source classes affected are:

Amended Rules

Asphalt plants
Basic Oxygen Processes at Steel Mills
Kraft Pulp Mills
Metal Furniture Coating
Test Method Changes

New Rules

Secondary Emissions at Steel Mills
Leaks at Natural Gas Plants
SO2 at Natural Gas Plants
Radon from Uranium Mines

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

Steel mills in Portland and McMinnville
Kraft Mills
Natural Gas Plant near Mist

Director's Recommendation

Based upon the summation in the staff report, it is recommended that the Commission adopt the proposed amendments to OAR 340-25-460 to 340-25-710, rules on National Standards of Performance for New Stationary Sources and for Hazardous Air Contaminants, and ask EPA for authority to administer the equivalent Federal Rules in Oregon.

Chairman Petersen asked for the Department to go over the pros and cons of Alternative 3, which reads as follows:

3. The Commission could adopt alternative 2 with the exception of two items: Non-Metallic Mineral Processing Rule, 40 CFR 60, Subpart 000 and amendments to 40 CFR 60.11(b) (published in 50 FR 53108, December 27, 1985). With respect to the Non-Metallic Processing Rule, the Department believes the compliance monitoring and tracking requirements for individual pieces of equipment (crushers, screens, conveyors, etc.) is burdensome, detracts from higher priority work, and results in little environmental improvement. The Department also believes remotely located sources that do not impact people or property should not be subject to these stringent requirements. The amendments to 40 CFR 60.11(b) require extensive opacity reading which the Department also believes requires too much time to be reasonable.

Tom Bispham, Administrator of the Department's Air Quality Division, replied the Department did not believe the two regulations in question were reasonable or would result in any environmental improvement. The Department's intent is to petition through the National air pollution administrators organization to develop a national position that can be taken to EPA. He indicated he had talked to a number of states which have the same concerns as Oregon.

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

AGENDA ITEM H: Public Hearing and proposed adoption of amendments to the State Implementation Plan (OAR 340-20-047) which include Lane Regional Air Pollution Authority modifications to their (1) Total Suspended Particulate Control Strategy for the Eugene-Springfield AQMA, and (2) New Source Review Rules and associated definitions including stack heights.

The Lane Regional Air Pollution Authority (LRAPA) has modified its Eugene-Springfield Air Quality Maintenance Area (AQMA) Total Suspended Particulate (TSP) Control Strategy at the request of the Environmental Protection Agency (EPA) to bring it up to date and has also modified their New Source Review Rule, including the stack height provision. Both changes are acceptable to EPA and are at least as stringent as comparable State rules and plans.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission conduct a public hearing and consider adoption of LRAPA amendments to their Eugene-Springfield AQMA TSP control strategy and New Source Review Rules, including the stack height rule as revisions to the State Implementation Plan, OAR 340-20-047. It is further recommended that the EQC authorize the Director to designate LRAPA to act as hearings officer for the EQC on future LRAPA SIP revisions under the condition that the Department finds the proposed LRAPA rules or plans at least as stringent as comparable State rules and plans.

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

AGENDA ITEM I: Request for authorization to hold public hearings on Oregon's Oil and Hazardous Materials Emergency Response Plan.

The Executive Department's Emergency Management Division (EMD) is charged with the coordination of the State's emergency response programs. EMD has written Oregon's Emergency Operations Plan which describes how the state will function during all emergencies. Annex O to this Plan details the responsibilities and authorities of state agencies during a hazardous materials emergency. It also outlines how the spill response system is supposed to work, although local government was not involved in its preparation. Over the past several years, critiques of several significant spill incidents by the Oregon Accident Response System Council (OARS) have consistently identified problems with the implementation of the existing emergency response system.

To address these concerns, the Department introduced HB 2146 during the 1985 Legislative session. HB 2146 was passed and is now codified as ORS 466.605 to 466.690. Section 466.620 of the statutes specifically requires the Commission to adopt an oil and hazardous material emergency response master plan after consultation with the Interagency Hazardous Communication Council, the Oregon State Police, the Oregon Fire Chiefs' Association, and any other appropriate agency or organization.

Director's Recommendation

Based on the summation in the staff report, the Department requests authorization from the Commission to proceed to public hearing to take testimony on the draft hazardous material response plan.

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

AGENDA ITEM: Proposed modifications to the Bus Noise Inspection Intergovernmental Agreement between the EQC and Tri-Met.

A petition for rulemaking was received on April 16, 1984 from the Livable Streets Coalition, asking that Portland area motor vehicles be inspected for excessive noise as part of the current air emission inspection program. The petition requested that all major motor vehicle categories, including Tri-Met's diesel transit buses, be included in a noise inspection program.

After accepting the petition, the Commission directed the Department to develop, prior to April 1, 1985, an agreement that would ensure that all of Tri-Met's buses are maintained to appropriate noise emission limits. On June 7, 1985, an intergovernmental agreement was approved for testing and certifying of the buses which met the noise standards. The agreement provided for amendments to be made after the first year of testing. The staff report provides a review of the testing process and also provides the Commission the opportunity to consider the proposed modifications of the agreement.

Director's Recommendation

Based on the summation in the staff report, it is recommended that the Commission accept and execute the proposed amendments to the Agreement.

Chairman Petersen noted it was difficult to assess the amendments without the full agreement before him. Nevertheless, he was impressed with Tri-Met's report and pursuaded it should be approved as recommended.

Tom Bispham, Administrator of the Department's Air Quality Division, indicated the reason the full agreement was not attached was it was the Department's intent to just inform the Commission of progress at this meeting, and to bring the agreement to the Commission in December for approval.

Commissioner Denecke asked how changing the inspection schedule cycle from the existing calendar year basis to a fiscal year basis would benefit the program? Ron Householder of the Department's Vehicle Inspection Program, explained that Tri-Met prefers to test their vehicles during the summer. The Department does not feel that this is a significant matter and recommends that the cycle not be changed at this time.

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

RECOGNITION OF GLEN CARTER

At this point in the meeting Chairman Petersen took the opportunity to recognize Glen Carter, an employee in the Department's Water Quality Division, for 30 years of dedicated service to the State Sanitary Authority, the Department of Environmental Quality and the people of Oregon. During this time Mr. Carter has acquired an extraordinary knowledge of the environmental quality and natural resources of the State of Oregon. Mr. Carter has played a key role in gathering of basic data, investigation of problems and complaints, development of standards and water pollution control programs, and evaluation of pollution control efforts. Chairman Petersen said there was no individual in Oregon today more knowledgeable of water quality and past and present sources of pollution than Mr. Carter. He has personally investigated and observed the good, the bad and the ugly. In short, Chairman Petersen continued, Mr. Carter has played a unique and extremely effective role in the protection of Oregon's Water Quality for 30 years.

Chairman Petersen on behalf of the Commission and the Department presented Mr. Carter with a plaque honoring his years of service. Director Hansen presented Mr. Carter with the first length of service award pin ever presented to a Department employee in recognition of his 30 years with the Department.

RECONSIDERATION OF AGENDA ITEM D

Commissioner Denecke announced it had come to his attention that a Commissioner wished to change his vote in this matter.

Commissioner Denecke MOVED that the vote on Agenda Item D be reconsidered. The motion was seconded by Commissioner Brill and passed with Commissioner Bishop voting no.

Commissioner Denecke MOVED that the Director's Recommendation in Item D be approved. The motion was seconded by Chairman Petersen. Commissioner Brill asked if some of the assumptions in the Directives could be eliminated. Chairman Petersen said they could not if the motion passed. The motion failed with Commissioners Bishop and Brill voting no.

Commissioner Brill asked if this matter would come up again. Tom Donaca, Associated Oregon Industries, said he was not sure the report could come back to the Commission without going through the public hearing process again, which he doubted could happen before the Commission's December meeting. Michael Huston, Assistant Attorney General, indicated another public hearing would not necessarily have to be held as the assumptions were addressed at the original public hearing.

Chairman Petersen noted that if a Commissioner has real concerns about an item they ought to be able to state those concerns and have something done about it.

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

LUNCH MEETING

The Commission adjourned to lunch at the Department's new offices at 811 SW Sixth Avenue in Portland. Before lunch the Commission was given a tour of the offices.

During the lunch meeting Janet Gillaspie, Manager of the Department's Northwest Region gave a Regional Manager's report on significant activities in the Region.

The Commission agreed to the following dates for meetings in 1987 (locations to be determined): January 23, March 13, April 17, May 29, July 10, August 21, October 2, November 20.

The Commission also agreed to workshops on the landfill siting process following their December, January and March meetings.

Respectfully submitted,

Carol Splettstaszer

Carol Splettstaszer
EQC Assistant

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. B, December 12, 1986, EQC Meeting

September and October 1986 Program Activity Report

Discussion

Attached are the September and October 1986 Program Activity Reports.

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

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

The purposes of this report are:

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

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

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

Recommendation

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

Fred Hansen

SChew:y
MD26
229-6484
Attachment

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

September and October, 1986

Table of Contents

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

September 1986
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans
	Month	FY	Month	FY	Month	FY	Pending
Air							
Direct Sources	3	15	1	9	0	0	10
Small Gasoline Storage Tanks Vapor Controls	0	0	0	0	0	0	0
Total	3	15	1	9	0	0	10
Water							
Municipal	13	56	29	66	0	0	28
Industrial	19	37	7	31	0	0	13
Total	32	93	36	97	0	0	41
Solid Waste							
Gen. Refuse	2	9	1	2	0	0	20
Demolition	0	0	0	2	0	0	0
Industrial	0	7	1	7	0	0	14
Sludge	0	0	0	0	0	0	1
Total	2	16	2	11	0	0	35
Hazardous Wastes	0	0	0	0	0	0	0
GRAND TOTAL	37	124	39	117	0	0	86

FY3650
MAR.2 (1/83)

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT
DIRECT SOURCES
PLAN ACTIONS COMPLETED

COUNTY	NUMBER	SOURCE	PROCESS DESCRIPTION	DATE OF ACTION	ACTION
COLUMBIA	176	BOISE CASCADE PAPERS	INSTALL GAS INCINERATOR	09/22/86	APPROVED

TOTAL NUMBER QUICK LOOK REPORT LINES 1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — September 1986 (Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received Month	Permit Actions Received FY	Permit Actions Completed Month	Permit Actions Completed FY	Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
Direct Sources							
New	2	7	6	10	10		
Existing	2	9	3	6	13		
Renewals	5	25	8	26	86		
Modifications	3	15	7	18	8		
Total	12	56	24	60	117	1343	1366
Indirect Sources							
New	2	4	1	9	3		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	1	0	1	1		
Total	2	5	1	10	4	259	262
GRAND TOTALS	14	61	25	70	121	1602	1628

Number of Pending Permits	Comments
21	To be reviewed by Northwest Region
23	To be reviewed by Willamette Valley Region
6	To be reviewed by Southwest Region
6	To be reviewed by Central Region
7	To be reviewed by Eastern Region
13	To be reviewed by Program Operations Section
31	Awaiting Public Notice
10	Awaiting end of 30-day Public Notice Period
117	

MAR.5
AA5323

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT
DIRECT SOURCES
PERMITS ISSUED

COUNTY	SOURCE	PERMIT NUMBER	APPL. RECEIVED	STATUS	DATE ACHIEVED	TYPE APPL.	PSEL
CLACKAMAS	SMURFIT NEWSPRINT CORP.	12/28/82	PERMIT ISSUED	09/04/86	RNW		
COOS	WEYERHAEUSER CO	01/07/85	PERMIT ISSUED	09/04/86	RNW		
MALHEUR	ORE-IDA FOODS INC.	03/13/86	PERMIT ISSUED	09/04/86	RNW		
CLACKAMAS	JOE BERNERT TOWING CO INC	06/27/86	PERMIT ISSUED	09/09/86	RNW		
COLUMBIA	TAYLORMADE PRODUCTS, INC.	08/22/86	PERMIT ISSUED	09/09/86	MOD		
DOUGLAS	TRI CITY READY MIX, INC.	07/22/86	PERMIT ISSUED	09/09/86	RNW		
JACKSON	EUGENE BURRILL LUMBER CO	06/18/86	PERMIT ISSUED	09/09/86	MOD		
LINN	LUMBER TECH INC.	04/04/86	PERMIT ISSUED	09/09/86	NEW		
LINN	WILLAMETTE INDUSTRIES	05/28/85	PERMIT ISSUED	09/09/86	RNW		
MULTNOMAH	MULT CO TRANSPORTATION	04/25/86	PERMIT ISSUED	09/09/86	NEW		
TILLAMOOK	COAST HARDWOODS CO	03/14/86	PERMIT ISSUED	09/09/86	RNW		
TILLAMOOK	S-C PAVING COMPANY	08/18/86	PERMIT ISSUED	09/09/86	MOD		
PORT.SOURCE	GRANT I SHARP CO	07/21/86	PERMIT ISSUED	09/09/86	EXT		
WASHINGTON	CARNATION CO. CAN DIV.	09/10/86	PERMIT ISSUED	09/10/86	MOD		
MALHEUR	ONTARIO ASPH. & CONC. INC	03/14/86	PERMIT ISSUED	09/11/86	RNW		
WASCO	NORTHWEST ALUMINUM CO.	09/17/86	PERMIT ISSUED	09/18/86	MOD		
CURRY	SOUTH COAST LUMBER CO	07/21/86	PERMIT ISSUED	09/22/86	MOD		
DOUGLAS	UNISERVICE CORP.	05/22/86	PERMIT ISSUED	09/22/86	NEW		
LINCOLN	NEWPORT READY MIX	06/02/86	PERMIT ISSUED	09/22/86	NEW		
MULTNOMAH	CONTINENTAL BRASS CO.	05/19/86	PERMIT ISSUED	09/22/86	EXT		
YAMHILL	TAYLOR LUMBER CO	08/08/86	PERMIT ISSUED	09/22/86	MOD		
PORT.SOURCE	MUNSEN PAVING&EXCAVATING	06/25/86	PERMIT ISSUED	09/22/86	NEW		
PORT.SOURCE	CASCADE MATERIALS INC.	06/27/86	PERMIT ISSUED	09/22/86	EXT		
PORT.SOURCE	MOCON CORPORATION	07/08/86	PERMIT ISSUED	09/22/86	NEW		

TOTAL NUMBER QUICK LOOK REPORT LINES 24

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — September 1986 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources			
Multnomah	Columbia Commerce Park II, 162 Spaces File No. 26-8610	09/26/86	Final Permit Issued

MAR.6
AA5324

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — September 1986 (Month and Year)

PERMIT ACTIONS PENDING

County	Name of Source/Project /Site and Type of Same	Date of Initial Action	Date of Completed Action	Type of Action and Status
Indirect Sources				
Multnomah	Yellow Freight Terminal 72 Spaces (Modification), File No. 26-8517	08/18/86	09/05/86	Proposed Permit Issued
Multnomah	Gresham Town Fair, 1,394 Spaces, File No. 26-8611	08/27/86	09/16/86	Proposed Permit Issued
Clackamas	SRO-Cinema, 959 Spaces, File No. 03-8612	09/08/86	09/26/86	Proposed Permit Issued
Washington	Murrayhill Marketplace, 720 Spaces, File No. 34-8613	09/15/86	09/30/86	Application Complete

MAR.7
AA5324

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — September 1986 (Month and Year)

PLAN ACTIONS COMPLETED - 36

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES - 29			
Clatsop	The Logger Restaurant (Richard A. Oja) RGF and LP distribution 2,000 gpd	9-15-86	Provisional Approval
Tillamook	Neskowin RV Park Change Order No. 1	9-11-86	Provisional Approval
Clackamas	Big Valley Mobile Home Park RV Addition On-Site system expansion 3200 gpd	9-24-86	Provisional Approval to County
Clackamas	CCCD No. 1 (Hoodland) Mt. Hood Golf Club Terrace and Rhododendron Sewage Systems	9-11-86	Provisional Approval
Lane	Lynnbrook Extensions within Lynnbrook II	9-11-86	Provisional Approval
Lincoln	Toledo New Toledo Middle School Sanitary Sewer	9-10-86	Provisional Approval
Lincoln	Depoe Bay Lane Street Extension	9-10-86	Provisional Approval
Yamhill	Dundee Alder Street Extension	9-29-86	Provisional Approval
Linn	Tangent Sanitary Sewerage Improvements (Schedules S, N & T) .110 MGD/1369 P.E.	9-22-86	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — September 1986 (Month and Year)

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES (cont'd)			
Coos	North Bend Pump station rehabilitation and reliever lines	9-22-86	Provisional Approval
Clackamas	Estacada Phase I wastewater collection system rehabilitation	9-18-86	Provisional Approval
Morrow	Boeing Remote antenna range extension on-site system, 1900 gpd	9-9-86	Comments to region
Clatsop	Astoria Williamsport sewer extension	9-23-86	Provisional Approval
Lane	MWMC/Eugene		
	- C-92 Construction of sludge management facility	9-18-86	Provisional Approval
	- C-91 Construction of force mains	9-18-86	Provisional Approval
	- M-91 Purchase of force main pipe	9-18-86	Provisional Approval
	- E-91A/E-91B Purchase of sludge management equipment	9-18-86	Provisional Approval
Clackamas	Lake Oswego		
	- Oakridge Apts	9-30-86	Provisional Approval
	- South Shore Estates	9-30-86	Provisional Approval
	- Palisades Terrace Dr. William Ling	9-29-86	Provisional Approval
Douglas	RUSA		
	- Garden Terrace Subdiv.	10-3-86	Provisional Approval
	- Sludge Hauling/Land	9-9-86	Approved
Josephine	Harbeck-Fruitdale Service District 2nd Additional to Meadow Glen Subdiv.	9-26-86	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — September 1986 (Month and Year)

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES (cont'd)			
Jackson	BCVSA Vawter/Dark Hollow	9-11-86	Provisional Approval
Wasco	The Dalles East 10th St. (Thompson to Morton)	9-29-86	Provisional Approval
Clackamas	Wilsonville		
	- LID No. 7 (Boberg Rd/ Barber Rd)	9-29-86	Provisional Approval
	- Hoosh-Lin Investment (Phase 1)	9-29-86	Provisional Approval
Marion	Stayton		
	- Third Ave. LID	9-29-86	Provisional Approval
	- Noble Ave. LID	9-29-86	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED - 36

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES 7			
Benton	Evanite Battery Separator Inc., Submicro Division Modification to TCE Sump Collection System & Monitoring Walls at WWTF	09-11-86	Approved
Yamhill	Portland General Electric Oil Spill Containment Fac. Sheridan Substation, Sheridan	09-12-86	Approved
Multnomah	Portland General Electric Oil Spill Containment Fac. Hogan North Substation Gresham	09-12-86	Approved
Jackson	Cascade Wood Products Monitoring Wells	09-22-86	Approved
Clackamas	Portland General Electric Oil Spill Containment Fac. Oswego Substation, Lake Oswego	08-05-86	Approved
Columbia	Portland General Electric Oil Spill Containment Fac. Rainier Substation, Ranier	09-26-86	Approved
Jackson	Diamond-Rogue Mining Tailing Discharge	09-12-86	Approved

SUMMRY-F

Summary of Actions Taken
On Water Permit Applications in SEP 86

8 OCT 86

Source Category &Permit Subtype	Number of Applications Filed						Number of Permits Issued						Applications Pending Permits Issuance (1)			Current Number of Active Permits		
	Month			Fiscal Year			Month			Fiscal Year								
	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen
Domestic																		
NEW		2		1	7			1			1		6	14				
RW	1			1									2	1				
RWO	6	3		21	5		5			7	7		47	21				
MW										1			2					
MWO		1		1	3			1		1	1		5	2				
Total	7	6		24	15		5	2		9	9		62	38		233	167	29
Industrial																		
NEW					3	14			4		1	19	5	9				
RW													1					
RWO	4	4		13	5		5	1		10	3		20	13				
MW													1					
MWO	1			1			1		2	4		2	4	1				
Total	5	4		14	8	14	6	1	6	14	4	21	31	23		173	136	361
Agricultural																		
NEW					1									1				
RW																		
RWO	1			1									1	1				
MW																		
MWO																		
Total	1			1	1								1	2		2	11	57
Grand Total	13	10	0	39	24	14	11	3	6	23	13	21	94	63	0	408	314	447

1) Does not include applications withdrawn by the applicant, applications where it was determined a permit was not needed, and applications where the permit was denied by DEQ.

It does include applications pending from previous months and those filed after 30-SEP-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	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
General: Cooling Water									
IND	100	GEN01	MWO	88772/A	ROCKWOOD & CO. AND ATWOOD, W. R. ,DBA TIMBER PRODUCTS CO.	GRANTS PASS	JOSEPHINE/SWR	17-SEP-86	31-DEC-90
General: Filter Backwash									
IND	200	GEN02	NEW	100171/A	VERNONIA, CITY OF	VERNONIA	COLUMBIA/NWR	12-SEP-86	31-DEC-90
General: Log Ponds									
IND	400	GEN04	MWO	100170/A	GLIDE LUMBER PRODUCTS CO.	GLIDE	DOUGLAS/SWR	12-SEP-86	31-DEC-90
General: Boiler Blowdown									
IND	500	GEN05	NEW	100170/A	GLIDE LUMBER PRODUCTS CO.	GLIDE	DOUGLAS/SWR	12-SEP-86	31-JUL-91
IND	500	GEN05	NEW	88772/A	ROCKWOOD & CO. AND ATWOOD, W. R., DBA TIMBER PRODUCTS CO.	GRANTS PASS	JOSEPHINE/SWR	17-SEP-86	31-JUL-91
General: Suction Dredges									
IND	700	GEN07	NEW	100172/A	OWNBY, LARRY D.		/	09-SEP-86	31-JUL-91

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
NPDES									
IND	100163	NPDES	MWO	53166/A	NORTHWEST ALUMINUM COMPANY	THE DALLES	WASCO/CR	18-SEP-86	31-MAR-91
IND	100226	NPDES	RWO	70613/A	PORT OF PORTLAND , TERMINAL 5	PORTLAND	MULTNOMAH/NWR	22-SEP-86	31-JUL-91
DOM	100227	NPDES	RWO	90770/A	UNIFIED SEWERAGE AGENCY OF WASHINGTON COUNTY	HILLSBORO	WASHINGTON/NWR	22-SEP-86	31-JUL-91
DOM	100229	NPDES	RWO	3924/A	ASTORIA, CITY OF	ASTORIA	CLATSOP/NWR	24-SEP-86	30-JUN-91
DOM	100230	NPDES	RWO	90715/A	UNIFIED SEWERAGE AGENCY OF WASHINGTON COUNTY	BANKS	WASHINGTON/NWR	24-SEP-86	31-MAY-91
DOM	100231	NPDES	RWO	78140/A	SALEM, CITY OF - WILLOW LAKE STP	SALEM	MARION/WVR	24-SEP-86	30-JUN-91
DOM	100232	NPDES	RWO	61419/A	NORTH BEND, CITY OF	NORTH BEND	COOS/SWR	26-SEP-86	31-JAN-90
IND	100233	NPDES	RWO	8477/A	BIOPRODUCTS, INCORPORATED	WARRENTON	CLATSOP/NWR	29-SEP-86	31-JUL-91
IND	100234	NPDES	RWO	21354/A	CROWN ZELLERBACH CORPORATION	PORTLAND	MULTNOMAH/NWR	29-SEP-86	30-SEP-91
IND	100235	NPDES	RWO	96244/A	WEYERHAEUSER COMPANY	SPRINGFIELD	LANE/WVR	29-SEP-86	30-SEP-91
IND	100236	NPDES	RWO	54190/A	MCCORMICK & BAXTER CREOSOTING CO.	PORTLAND	MULTNOMAH/NWR	30-SEP-86	30-JUN-91
WPCF									
IND	100224	WPCF	RWO	10641/A	BRAND-S CORPORATION	CORVALLIS	BENTON/WVR	05-SEP-86	31-JUL-91
DOM	100225	WPCF	NEW	100135/A	CLEVELAND, ED - MIDWAY CARE CENTER	PORTLAND	MULTNOMAH/NWR	19-SEP-86	30-SEP-91
DOM	3597	WPCF	MWO	95600/A	BOHEMIA INC.	EUGENE	LANE/WVR	22-SEP-86	30-NOV-87

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — September 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			
General Refuse							
New	-	2	2	2	-		
Closures	-	-	-	1	3		
Renewals	1	2	3	10	13		
Modifications	-	-	5	6	-		
Total	1	4	10	19	16	182	182
Demolition							
New	-	1	1	2	-		
Closures	-	-	-	-	1		
Renewals	-	-	-	-	-		
Modifications	-	-	1	2	-		
Total	0	1	2	4	1	13	13
Industrial							
New	-	4	3	7	8		
Closures	-	2	-	-	1		
Renewals	2	3	-	2	13		
Modifications	-	-	2	2	-		
Total	2	9	5	11	22	103	103
Sludge Disposal							
New	-	-	1	1	1		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	-		
Modifications	-	-	-	1	-		
Total	0	1	1	2	1	16	16
Total Solid Waste	3	15	18	36	40		
Hazardous Waste							
New							
Authorizations	52	52	52	52	-		
Renewals	-	-	-	-	-		
Modifications	-	-	-	-	-		
Total	52	52	52	52	-	14	19

MAR.5S (11/84) (SB5285.B)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — September 1986 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Coos	Selmar A. Hutchins Trust Oil Reserve New mud disposal site	9/2/86	Letter Authorization issued
Baker	Crisstad Enterprises, Inc. Crisstad Ash Disposal Site New industrial disposal site	9/8/86	Permit issued
Tillamook	Tillamook County Tillamook County Landfill Existing municipal landfill	9/9/86	Permit renewed
Lincoln	Smurfit Newsprint Corp. (previous name Publishers Paper) Toledo Log Yard Landfill New industrial landfill	9/11/86	Permit issued
Umatilla	City of Milton-Freewater Milton-Freewater Landfill Existing municipal landfill	9/11/86	Permit renewed
Baker	Idaho Power Company Oxbow (septage) Disp. Site New septage disposal site	9/16/86	Permit issued
Jackson	Oregon Dept. of Fish & Wildlife Denman Wildlife Area Existing industrial disposal site	9/16/86	*Permit amended
Jackson	KOGAP Manufacturing Co. KOGAP Disposal Site Existing industrial disposal site	9/16/86	*Permit amended
Klamath	Klamath County Dept. of Solid Waste Management Bonanza Transfer Station Existing transfer station	9/16/86	*Permit amended

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Klamath	Klamath County Dept. of Solid Waste Management Ft. Klamath Transfer Station Existing transfer station	9/16/86	*Permit amended
Klamath	Klamath County Dept. of Solid Waste Management Langell Valley Demolition Site Existing demolition landfill	9/16/86	*Permit amended
Klamath	Klamath County Dept. of Solid Waste Management Sprague River Disposal Site Existing municipal landfill	9/16/86	*Permit amended
Marion	Brown's Island, Inc. Gaffin Rd. Transfer Sta. New transfer/recyc. station	9/16/86	Permit issued
Multnomah	East County Recycling Co. East County Recycling Co. New solid waste processsing facility	9/16/86	Permit issued
Multnomah	Sunflower Recycling Sunflower Recycling Existing recycling center	9/16/86	*Permit amended
Marion	Valley Landfills, Inc. MacLeay Transfer Station Existing transfer station	9/16/86	*Permit amended
Marion	Marion County & Brown's Island, Inc. New temporary demolition disposal at closed Brown's Is. Lndfl. (Salem)	9/23/86	Letter authorization issued
Umatilla	Desert Winds, Inc. (dba Sanitary Disp. Lndfl.) Hermiston area Existing municipal sanitary landfill	9/26/86	Permit renewed

*Permit amended by the Department to extend expiration dates. These actions are intended to simplify the renewal process when no significant changes in the permit are required.

MAR.6 (5/79) SB6094.D

DATE	WASTE TYPE	SOURCE	DISPOSE NOW	DISPOSE ANNUALLY
17-SEP-86	MERCURY CONTAMINATED SOLID WASTE	ALKALIES & CHLORINE	0	27 CU YD
	1 Request(s) approved for generators in British Columbia			
12-SEP-86	LAB PACK / POISON B (PESTICIDES)	COLLEGES & UNIVERSITIES	0	5.4 CU YD
12-SEP-86	LAB PACK / POISON B (PESTICIDES)	COLLEGES & UNIVERSITIES	0	2.7 CU YD
12-SEP-86	LAB PACK / ORM-E	COLLEGES & UNIVERSITIES	0	1.35 CU YD
12-SEP-86	LAB PACK / FLAMMABLE LIQUID	COLLEGES & UNIVERSITIES	0	2.7 CU YD
	4 Request(s) approved for generators in Idaho			
08-SEP-86	SOIL CONTAMINATED WITH PESTICIDES	RCRA SPILL CLEANUP	0	1.6 CU YD
	1 Request(s) approved for generators in Montana			
08-SEP-86	COMPACTED DUST CONTAMINATED WITH LEAD	PAINTS	0	1.5 CU YD
08-SEP-86	PCB CONTAMINATED SOLIDS	TRUCKING TERMINAL FACILITIES	0	1.08 CU YD
08-SEP-86	CREOSOTE CONTAMINATED SOIL	WOOD PRESERVING	0	8.1 CU YD
12-SEP-86	WASTE DRY PLATING SLUDGE	PLATING & ANODIZING	0	37 CU YD
12-SEP-86	PENTACHLOROPHENOL CONTAMINATED SOIL	WOOD PRESERVING	0	385 CU YD
12-SEP-86	PCB EQUIPMENT	COLLEGES & UNIVERSITIES	0	1.08 CU YD
12-SEP-86	HEAVY METAL SOLIDS CONTAMINATED WITH CADMIUM	AIRCRAFT PARTS	0	300 CU YD
12-SEP-86	CAUSTIC SOLID	STEEL FOUNDRIES	0	36.49 CU YD
16-SEP-86	METHYLENE CHLORIDE CONTAMINATED SOIL	NON-SUPERFUND SITE CLEANUP	0	200 CU YD

DATE	WASTE TYPE	SOURCE	DISPOSE NOW	DISPOSE ANNUALLY
23-SEP-86	WASTE PAINT AND CONTAMINATED SOIL	NON-SUPERFUND SITE CLEANUP	0	9.07 CU YD
24-SEP-86	SOLIDIFIED DIP TANK SLUDGE CONTAINING PENTACHLOROPHENOL	WOOD PRESERVING	0	27 CU YD

11 Request(s) approved for generators in Oregon

04-SEP-86	WASTE ALKALINE BATTERIES	HW TREAT/STORE/DISPOSE FCLTY	0	13 CU YD
04-SEP-86	WASTE NICKEL-CADMIUM BATTERIES	HW TREAT/STORE/DISPOSE FCLTY	0	13 CU YD
04-SEP-86	ASBESTOS	HW TREAT/STORE/DISPOSE FCLTY	0	5.4 CU YD
04-SEP-86	CHROMATE THERMAL BATTERIES	HW TREAT/STORE/DISPOSE FCLTY	0	7 CU YD
04-SEP-86	MINIATURE LEAD ACID BATTERIES	HW TREAT/STORE/DISPOSE FCLTY	0	13 CU YD
04-SEP-86	MERCURY BATTERIES	HW TREAT/STORE/DISPOSE FCLTY	0	13 CU YD
04-SEP-86	MAGNESIUM BATTERIES	HW TREAT/STORE/DISPOSE FCLTY	0	13 CU YD
08-SEP-86	BROMOCHLOROMETHANE	HW TREAT/STORE/DISPOSE FCLTY	0	19.4 CU YD
08-SEP-86	PESTICIDE CONTAMINATED SOIL	OTHER AGRICULTURAL CHEMICALS	0	100 CU YD
11-SEP-86	PCB	AIRCRAFT	0	50 CU YD
11-SEP-86	CONCRETE AND DIRT DEMOLITION DEBRIS	AIRCRAFT	0	75 CU YD
12-SEP-86	SAND AND GRAVEL FILTER MEDIA CONTAMINATED WITH LEAD	ENV. SERVICES CONTRACTORS	0	4.86 CU YD
12-SEP-86	SILICA INSULATOR	PAPERBOARD MILLS	0	14.88 CU YD
12-SEP-86	OIL CONTAMINATED DIRT AND GRAVEL	TRUCKING TERMINAL FACILITIES	0	10 CU YD

DATE	WASTE TYPE	SOURCE	DISPOSE NOW	DISPOSE ANNUALLY
12-SEP-86	CONCRETE DEMOLITION CONTAMINATED WITH FIBERGLASS RESIN	TRUCKING TERMINAL FACILITIES	0	30 CU YD
12-SEP-86	PESTICIDES CLEAN UP DEBRIS	RCRA SPILL CLEANUP	0	97.02 CU YD
12-SEP-86	LAB PACK / POISON B	ELEMENTARY & SECONDARY SCHOOLS	0	0.27 CU YD
12-SEP-86	LAB PACK	ELEMENTARY & SECONDARY SCHOOLS	0	0.27 CU YD
12-SEP-86	PCB	NON-RCRA SPILL CLEANUP	0	2500 CU YD
12-SEP-86	MERCURY CONTAMINATED HEAT EXCHANGER DEPOSITS	PETROLEUM REFINING (& ASPHALT)	0	0.27 CU YD
17-SEP-86	BROKEN CONCRETE TANKS	AIRCRAFT	0	4 CU YD
17-SEP-86	LAB PACK	ELEMENTARY & SECONDARY SCHOOLS	0	0.27 CU YD
17-SEP-86	LABORATORY WASTE	COOKIES & CRACKERS	0	1.48 CU YD
17-SEP-86	LAB PACK	HW TREAT/STORE/DISPOSE FCLTY	0	0.27 CU YD
17-SEP-86	LAB PACK/ WASTE OXIDIZER	HW TREAT/STORE/DISPOSE FCLTY	0	0.27 CU YD
17-SEP-86	WASTE DDT	HW TREAT/STORE/DISPOSE FCLTY	0	0.8 CU YD
17-SEP-86	WOOD TREATMENT SLUDGE	WOOD PRESERVING	0	135 CU YD
17-SEP-86	LAB PACK	ELEMENTARY & SECONDARY SCHOOLS	0	0.27 CU YD
23-SEP-86	ASBESTOS	ELECTROMETALLURGICAL PRODUCTS	0	0.27 CU YD
23-SEP-86	DRAW TEMP 275 CONSISTING OF SODIUM NITRATE, SODIUM NITRITE, AND POTASSIUM NITRATE	METAL HEAT TREATING	0	19.4 CU YD
23-SEP-86	ROAD STRIPING PAINT MIXED WITH SOIL	RCRA SPILL CLEANUP	0	16 CU YD

31 Request(s) approved for generators in Washington

48 Requests granted - Grand Total

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — September, 1986 (Month and Year)

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated Mo	New Actions Initiated FY	Final Actions Completed Mo	Final Actions Completed FY	Actions Pending Mo	Actions Pending Last Mo
Industrial/ Commercial	5	37	7	27	215	217
Airports			0	2	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — September, 1986 (Month and Year)

FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Clackamas	Portland Road and Driveway, Milwaukie	09/86	No Violation
Multnomah	Alpha Therapeutic Corporation Plasma Center, Portland	09/86	No Violation
Multnomah	Art Glass, Portland	09/86	In Compliance
Multnomah	Corvettes Only, Portland	09/86	In Compliance
Multnomah	Eddie Edgaro Band, Portland	09/86	In Compliance
Multnomah	Owens-Corning Fiberglass Corporation, Trumbull Asphalt Company Division, Portland	09/86	In Compliance
Jackson	Boise Cascade Corporation, Pacific Highway, Medford	07/86	No Violation

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1986

CIVIL PENALTIES ASSESSED DURING MONTH OF SEPTEMBER, 1986:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Sheldon Manufacturing Corporation Cornelius, Oregon	HW-NWR-86-76 Unauthorized disposal of hazardous waste.	9/10/86	$2,500	Paid 9/23/86.
Ready-Mix Sand and Gravel Co., Inc. Milton-Freewater, Oregon	WQ-ER-86-92 Discharged excessively turbid waste water into ground water on 3 days, in violation of water pollution control facilities permit.	9/15/86	$4,000	Given extension until 10/20/86 to file a mitigation request.
Rusty Kastner Coos Bay, Oregon	OS-SWR-86-97 Discharged septic tank effluent to surface of ground.	9/15/86	$150	Default order and judgment issued on 10/15/86.
Ontario Asphalt and Concrete, Inc. Ontario, Oregon	AQ-ER-86-110 Discharged excessive emissions on 2 days from asphaltic concrete paving plant, in violation of air contaminant discharge permit.	9/29/86	$3,000	Paid 10/14/86.

GB6102

September, 1986
DEQ/EQC Contested Case Log

ACTIONS	LAST MONTH	PRESENT
Preliminary Issues	0	1
Discovery	0	0
Settlement Action	4	4
Hearing to be scheduled	0	0
Department reviewing penalty	1	1
Hearing scheduled	1	4
HO's Decision Due	0	0
Briefing	0	0
Inactive	4	4
SUBTOTAL of cases before hearings officer.	10	14
HO's Decision Out/Option for EQC Appeal	0	0
Appealed to EQC	2	2
EQC Appeal Complete/Option for Court Review	0	0
Court Review Option Taken	1	1
Case Closed	5	1
TOTAL Cases	18	18

15-AQ-NWR-86-178	15th Hearing Section case in 1986 involving air quality program violation in Northwest Region; 178th enforcement action in the Department in 1986.
$	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
HW	Hazardous Waste
HSW	Hazardous and Solid Waste Division
Hrng Rfrl	Date when Enforcement Section requests Hearing Section schedule a hearing
Hrngs	Hearings Section
NP	Noise Pollution
NPDES	National Pollutant Discharge Elimination System wastewater discharge permit.
NWR	Northwest Region
OSS	On-Site Sewage Section
P	Litigation over permit or its conditions
Prtys	All parties involved
Rem Order	Remedial Action Order
Resp Code	Source of next expected activity in case
SS	Subsurface Sewage (now OSS)
SW	Solid Waste Division
SWR	Southwest Region
T	Litigation over tax credit matter
Transcr	Transcript being made of case
Underlining	New status or new case since last month's contested case log
WQ	Water Quality Division
WVR	Willamette Valley Region

September 1986

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WAH CHANG	04/78	04/78		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	Current permit in force. Hearing deferred.
WAH CHANG	04/78	04/78		Prtys	03-P-WQ-WVR-78-2012-J NPDES Permit Modification	Current permit in force. Hearing deferred.
HAYWORTH FARMS, INC., and HAYWORTH, John W.	01/14/83	02/28/83	04/04/84	Prtys	50-AQ-FB-82-09 FB Civil Penalty of $1,000	Appealed to Court of Appeals.
McINNIS ENT. ENTERPRISES, LTD., et al.	06/17/83	06/21/83	08/11/86	Prtys	52-SS/SW-NWR-83-47 SS/SW Civil Penalty of $500	Scheduled hearing postponed for settlement.
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.
McINNIS ENTERPRISES, LTD., et al.	10/25/83	10/26/83		Prtys	59-SS-NWR-83-33290P-5 SS license revocation	Hearing deferred.
FUNRUE, Amos	03/15/85	03/19/85	06/20/85	Dept	05-AQ-FB-84-141 Civil Penalty of $500	EQC affirmed $500 penalty June 13, 1986. Department of Justice to draft final order reflecting EQC action.

September 1986

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
DANT & RUSSELL, INC.	05/31/85	05/31/85	03/21/86	Prtys	15-HW-NWR-85-60 Hazardous waste disposal Civil Penalty of $2,500	Settlement action.
~~MERIT OIL & REFINING CO.~~	~~07/24/85~~	~~05/13/86~~		~~Prtys~~	~~20-WQ-NWR-85-61 WQ-Civil-Penalty of $1,200~~	EQC approved penalty reduction to $300. Merit also to connect to sewer. Case closed.
BRAZIER FOREST PRODUCTS	11/22/85	12/12/85	02/10/86	Dept	23-HSW-85 Declaratory Ruling	EQC issued declaratory ruling July 25, 1986. Department of Justice to draft final order reflecting EQC action.
NULF, DOUG	01/10/86	01/13/86	05/05/86	Dept	01-AQFB-85-02 $500 Civil Penalty	Draft decision distributed to DEQ for penalty review on August 1, 1986.
DECKER, MARVIN	06/02/86	06/03/86	09/02/86	Prtys	04-AQOB-NWR-86-54 $3,000 Civil Penalty	Scheduled hearing postponed for settlement action.
VANDERVELDE, ROY	06/06/86	06/10/86	10/15/86	Prtys	05-WQ-WVR-86-39 $5,500 Civil Penalty	Hearing scheduled.
LUTTRELL FARMS, INC.	06/10/86	06/12/86	08/21/86	Prtys	06-AQOB-NWR-86-55 $3,000 Civil Penalty	Scheduled hearing postponed. for settlement action.

September 1986

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
MALLORIE'S DAIRY, INC.	09/08/86	09/08/86	11/24/86	Prtys	07-WQ-WVR-86-91 WPCF Permit violations $2,000 Civil Penalty	Hearing rescheduled.
MALLORIE'S DAIRY, INC.	09/08/86	09/08/86	11/24/86	Prtys	08-AQOB-WVR-86-92 $1,050 Civil Penalty	Hearing rescheduled.
MAGNA CORP. INC.	09/09/86	09/10/86	10/16/86	Prtys	09-AQOB-NWR-86-93	Hearing scheduled.
MONTEZUMA WEST,	10/09/86	10/09/86		Prtys	10-HW-SWR-86-46	Prelim. Issues.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality, Water Quality and Hazardous and Solid Waste Divisions	October 1986
(Reporting Unit)	(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans
	Month	FY	Month	FY	Month	FY	Pending
Air							
Direct Sources	5	20	2	11	0	0	14
Small Gasoline Storage Tanks Vapor Controls	-	-	-	-	-	-	-
Total	5	20	2	11	0	0	14
Water							
Municipal	9	65	3	69	0	0	32
Industrial	7	44	5	36	0	0	15
Total	16	109	8	105	0	0	47
Solid Waste							
Gen. Refuse	0	9	3	6	0	0	17
Demolition	1	1	0	2	0	0	1
Industrial	2	9	1	8	0	0	16
Sludge	0	0	1	1	0	0	0
Total	3	19	5	17	0	0	34
Hazardous Wastes	-	0	-	0	-	-	-
GRAND TOTAL	24	148	15	133	0	0	95

FY3651
MAR.2 (1/83)

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PLAN ACTIONS COMPLETED

Permit Number	County	Plan Action Number	Source Name	Process Description	Date Rcvd	Status Assigned
34 2678 652 02	WASHINGTON	175	TEKTRONIX, INC	INSTALL STEAM HEATED DRYER	10/03/86	APPROVED
34 2740 650 02	WASHINGTON	177	JOHN H. HARLAND COMPANY	CHECK PRINTING FACILITY	10/13/86	APPROVED

TOTAL NUMBER QUICK LOOK REPORT LINES 2

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — October 1986 (Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received Month	Permit Actions Received FY	Permit Actions Completed Month	Permit Actions Completed FY	Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
Direct Sources							
New	0	7	2	12	8		
Existing	5	14	1	7	16		
Renewals	15	40	10	36	90		
Modifications	9	24	9	27	14		
Total	29	85	22	82	128	1365	1389
Indirect Sources							
New	1	5	1	10	3		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	1	1	2	0		
Total	1	6	2	12	3	260	263
GRAND TOTALS	30	91	24	94	131	1625	1652

Number of Pending Permits	Comments
13	To be reviewed by Northwest Region
21	To be reviewed by Willamette Valley Region
7	To be reviewed by Southwest Region
9	To be reviewed by Central Region
6	To be reviewed by Eastern Region
18	To be reviewed by Program Operations Section
45	Awaiting Public Notice
9	Awaiting end of 30-day Public Notice Period
128	

MAR.5
AA5323

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PERMITS ISSUED

Permit Number	County Name	Source Name	Appl. Rcvd.	Status	Date Achvd.	Type Appl.
21 0013 06	LINCOLN	GUY ROBERTS LUMBER CO.	06/11/86	PERMIT ISSUED	10/03/86	RNW
26 2204 24	MULTNOMAH	THE BOEING COMPANY	09/24/86	PERMIT ISSUED	10/03/86	MOD
26 3031 14	MULTNOMAH	PACIFIC FIREPLACE FRN INC	09/24/86	PERMIT ISSUED	10/03/86	MOD
26 3038 17	MULTNOMAH	CASCADE CORPORATION	09/24/86	PERMIT ISSUED	10/03/86	MOD
26 3039 15	MULTNOMAH	WAGNER MINING EQUIP CO	09/24/86	PERMIT ISSUED	10/03/86	MOD
26 3112 13	MULTNOMAH	DURA INDUSTRIES, INC.	09/24/86	PERMIT ISSUED	10/03/86	MOD
34 2666 15	WASHINGTON	PORTLAND CHAIN MFG CO	09/24/86	PERMIT ISSUED	10/03/86	MOD
37 0346 01	PORT.SOURCE	ROGERS ASPHALT PAVING CO	08/29/85	PERMIT ISSUED	10/08/86	NEW
03 1924 05	CLACKAMAS	LAKE-SHORE CONCRETE CO.	08/01/86	PERMIT ISSUED	10/10/86	RNW
04 0046 04	CLATSOP	BAYVIEW TRANSIT MIX, INC.	06/30/86	PERMIT ISSUED	10/10/86	RNW
08 0042 16	CURRY	FREEMAN ROCK ENTERPRISES	07/07/86	PERMIT ISSUED	10/10/86	RNW
13 0015 01	HARNEY	WOODMARK CORP	05/02/86	PERMIT ISSUED	10/10/86	NEW
15 0029 35	JACKSON	3M COMPANY	10/01/86	PERMIT ISSUED	10/10/86	MOD
22 0286 14	LINN	ALBANY TITANIUM INC	05/28/86	PERMIT ISSUED	10/10/86	RNW
22 2523 07	LINN	CEDAR LUMBER INC	07/02/86	PERMIT ISSUED	10/10/86	RNW
24 8053 12	MARION	JERRY COLEMAN METALS	10/01/86	PERMIT ISSUED	10/10/86	MOD
26 2572 16	MULTNOMAH	MYERS CONTAINER CORP	12/06/85	PERMIT ISSUED	10/10/86	RNW
30 0055 09	UMATILLA	SNIPES MOUNTAIN S & G	05/01/86	PERMIT ISSUED	10/10/86	RNW
34 2583 06	WASHINGTON	SOUTHWEST READYMIX CO.	08/15/86	PERMIT ISSUED	10/10/86	RNW
34 2681 06	WASHINGTON	INTEL CORPORATION	02/19/86	PERMIT ISSUED	10/10/86	MOD
37 0361 01	PORT.SOURCE	WDL RENTAL & SALES INC.	07/28/86	PERMIT ISSUED	10/10/86	EXT
06 0099 18	COOS	COOS CNTY SOLID WASTE DPT	02/05/85	PERMIT ISSUED	10/15/86	RNW

TOTAL NUMBER QUICK LOOK REPORT LINES 22

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division (Reporting Unit) — October 1986 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources			
Multnomah	Yellow Freight Terminal, 72 Spaces (Modification) File No. 26-8517	10/01/86	Final Permit Issued
Multnomah	Gresham Town Fair, 1,394 Spaces, File No. 26-8611	10/24/86	Final Permit Issued

MAR.6
AA5324

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit) — October 1986 (Month and Year)

PLAN ACTIONS COMPLETED - 8

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES - 3			
Yamhill	Cove Orchard Change No. 8	10-13-86	Approved
Coos	Lakeside Phase I Sewerage System Improvements	10-21-86	Provisional Approval
Clatsop	Lewis & Clark Square Shopping Center Recirculating Gravel Filter/ drainfields 14,400 gallons per day	10-29-86	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED - 8

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES 5			
Douglas	Richard Montgomery Manure Control Facility	9-17-86	Ineligible for Tax Credit Referred to MSD
Lane	Larry Dresser Manure Control Facility	10-1-86	Approved
Washington	Tektronix Building 40 Remedial Clean-up	10-1-86	Approved
Jackson	Diamond Rogue Mining Tailing Discharge Intermediate Pad	10-31-86	Approved
Umatilla	Smith Frozen Foods New Brine Pond	10-31-86	Approved

Summary of Actions Taken
On Water Permit Applications in OCT 86

Source Category &Permit Subtype	Number of Applications Filed						Number of Permits Issued						Applications Pending Permits Issuance (1)			Current Number 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					7		1	1		1	2		4	13				
RW				1									1	1				
RWO	5	6		25	11		2	3		9	7		49	26				
MW										1			2					
MWO		1		1	4					1	1		5	3				
Total	5	7		27	22		3	4		12	10		61	43		234	167	29
Industrial																		
NEW	1			1	3	14			1		1	21	6	9				
RW													1					
RWO	4			18	5		1	2		11	5		23	11				
MW							1			1			1					
MWO	1		1	2		1				4		2	4	1	1			
Total	6		1	21	8	15	2	2	1	16	6	23	35	21	1	170	133	354
Agricultural																		
NEW					1									1				
RW																		
RWO				1				1			1		1					
MW																		
MWO																		
Total				1	1			1			1		1	1		2	11	56
Grand Total	11	7	1	49	31	15	5	7	1	28	17	23	97	65	1	406	311	439

1) Does not include applications withdrawn by the applicant, applications where it was determined a permit was not needed, and applications where the permit was denied by DEQ.

It does include applications pending from previous months and those filed after 31-OCT-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	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
General: Suction Dredges									
IND	700	GEN07	NEW	100180/A	RHODES, CALVIN E.		MOBILE SRC	07-OCT-86	31-JUL-91
NPDES									
IND	3733	NPDES	MW	88729/A	TILLAMOOK COUNTY CREAMERY ASSOCIATION	TILLAMOOK	TILLAMOOK/NWR	14-OCT-86	31-JUL-88
DOM	100243	NPDES	RWO	87435/A	GREATER ALBANY SCHOOL DISTRICT 8-J	TANGENT	LINN/WVR	15-OCT-86	31-AUG-91
DOM	100244	NPDES	RWO	66100/A	PACIFIC CITY SANITARY DISTRICT	PACIFIC CITY	TILLAMOOK/NWR	15-OCT-86	31-AUG-91
IND	100245	NPDES	RWO	96188/A	WEYERHAEUSER COMPANY	COTTAGE GROVE	LANE/WVR	15-OCT-86	30-SEP-91
DOM	100247	NPDES	NEW	26200/A	ECHO, CITY OF	ECHO	UMATILLA/ER	28-OCT-86	31-OCT-91
WPCF									
DOM	100237	WPCF	RWO	9735/A	BONANZA, TOWN OF	BONANZA	KLAMATH/CR	01-OCT-86	31-JUL-91
DOM	100238	WPCF	RWO	88436/A	THREE D CORPORATION	ASTORIA	CLATSOP/NWR	01-OCT-86	31-JUL-91
DOM	100239	WPCF	NEW	100141/A	WALNUT PARK CO.	PORTLAND	MULTNOMAH/NWR	09-OCT-86	30-JUN-91
AGR	100240	WPCF	RWO	64805/A	OREGON STATE PENITENTIARY	SALEM	MARION/WVR	14-OCT-86	31-AUG-91
IND	100241	WPCF	RWO	14200/A	CARLTON PACKING COMPANY	CARLTON	YAMHILL/WVR	14-OCT-86	30-JUN-91
IND	100242	WPCF	RWO	87150/A	T. P. PACKING CO.	KLAMATH FALLS	KLAMATH/CR	14-OCT-86	31-JUL-91
DOM	100246	WPCF	RWO	59180/A	RAINEY, MICHAEL L.	WHITE CITY	JACKSON/SWR	15-OCT-86	30-SEP-91

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — October 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			
General Refuse							
New	-	2	-	2	-		
Closures	-	-	1	2	2		
Renewals	1	3	1	11	13		
Modifications	-	5	-	6	-		
Total	1	10	2	21	15	182	182
Demolition							
New	-	1	-	2	-		
Closures	-	-	-	-	1		
Renewals	-	-	-	-	-		
Modifications	1	2	1	3	-		
Total	1	3	1	5	1	13	13
Industrial							
New	-	4	1	8	7		
Closures	1	3	-	-	2		
Renewals	1	4	-	2	13		
Modifications	1	3	1	3	-		
Total	3	14	2	13	22	103	103
Sludge Disposal							
New	-	-	-	1	1		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	-		
Modifications	-	1	-	1	-		
Total	0	1	0	2	1	16	16
Total Solid Waste	5	28	5	41	39		

Hazardous Waste

Outputs currently under revision.

MAR.5S (11/84) (SB5285.B)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — October 1986 (Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Union	Grande Ronde Recovery Center, Inc. Fox Hill Landfill (near La Grande) Existing municipal waste landfill.	10/1/86	Permit issued.
Clackamas	Paul Seifert Canby Tree Farm New industrial waste landfill.	10/16/86	Letter authorization expiration date extended.
Marion	Marion County Interim Demolition Disposal Site at Brown's Island Landfill Interim demolition lndfl.	10/28/86	Letter authorization amended.
Baker	Goose Lake Lumber Company Goose Lake Lumber Co. Disposal Site New industrial waste landfill.	10/24/86	Permit issued.
Umatilla	Robert L. & Karen J. Bopp Pilot Rock Landfill Existing municipal waste landfill.	10/31/86	Closure permit issued.

SB6179.D MAR.6 (5/79)

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
27-OCT-86	GREASE OIL PADS & OIL SAND	RAILROADS, LINE-HAUL OPERATING	8 CU YD

1 Request(s) approved for generators in California

01-OCT-86	PARAFORMALDEHYDE AND PHENOL	PLASTICS MATERIALS, SYNTHETICS	2.67 CU YD
01-OCT-86	PAINT CONTAMINATED DIRT	RCRA SPILL CLEANUP	15 CU YD
01-OCT-86	PAINT CONTAMINATED MATERIALS	RCRA SPILL CLEANUP	10.67 CU YD
01-OCT-86	PCB BALLASTS	ELEMENTARY & SECONDARY SCHOOLS	1.33 CU YD
01-OCT-86	TRANSFORMER PARTS CONTAMINATED WITH PCB	ELECTRIC SERVICES	2.67 CU YD
10-OCT-86	CHLORDANE/HEPTAACHLOR IN SOIL & CLAY GRANULES	RCRA SPILL CLEANUP	2.7 CU YD
15-OCT-86	LAB PACK - ORM-A	OTHER GOVERNMENT AGENCY	5.4 CU YD
15-OCT-86	LAB PACK - ORM-E	OTHER GOVERNMENT AGENCY	8.1 CU YD
15-OCT-86	LAB PACK - POISON B	OTHER GOVERNMENT AGENCY	6.75 CU YD
15-OCT-86	LAB PACK - FLAMMABLE	OTHER GOVERNMENT AGENCY	13.5 CU YD
15-OCT-86	LAB PACK - CORROSIVE ACID	OTHER GOVERNMENT AGENCY	13.5 CU YD
17-OCT-86	LAB PACK - COMBUSTIBLE LIQUID	OTHER GOVERNMENT AGENCY	0.27 CU YD
17-OCT-86	LAB PACK - ORM-A	OTHER GOVERNMENT AGENCY	2.16 CU YD
17-OCT-86	LAB PACK - ORM-C	COLLEGES & UNIVERSITIES	1.08 CU YD
17-OCT-86	LAB PACK - CORROSIVE	COLLEGES & UNIVERSITIES	2.16 CU YD
17-OCT-86	LAB PACK - COMBUSTIBLE	COLLEGES & UNIVERSITIES	1.08 CU YD
17-OCT-86	LAB PACK - FLAMMALBLE-CORROSIVE	COLLEGES & UNIVERSITIES	1.08 CU YD
17-OCT-86	CHLORDANE CONTAMINATED DEBRIS	OTHER GOVERNMENT AGENCY	0.27 CU YD
17-OCT-86	LAB PACK - CORROSIVE LIQUID	OTHER GOVERNMENT AGENCY	0.27 CU YD
21-OCT-86	TETRA ETHYL LEAD	GAS STATION	0.27 CU YD
21-OCT-86	LAB PACK - ORM-E WASTES	COLLEGES & UNIVERSITIES	1.08 CU YD

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
21-OCT-86	LAB PACK - WASTE OXIDIZERS	COLLEGES & UNIVERSITIES	1.08 CU YD
21-OCT-86	LAB PACK - ORM-B	COLLEGES & UNIVERSITIES	1.08 CU YD
21-OCT-86	LAB PACK - CORROSIVE	COLLEGES & UNIVERSITIES	1.08 CU YD
21-OCT-86	LAB PACK - ORM-A	COLLEGES & UNIVERSITIES	1.08 DRUMS
21-OCT-86	PCB CAPACITORS	OTHER MEMBERSHIP ORGANIZATIONS	2.7 CU YD
27-OCT-86	WASH WATER	HW TREAT/STORE/DISPOSE FCLTY	50 CU YD
27-OCT-86	LAB PACK - FLAMMABLE	OTHER AGRICULTURAL CHEMICALS	4.05 CU YD
27-OCT-86	MC DERMID METEX NICKEL STRIPPER	OTHER ELECTRONIC COMPONENTS	0.14 CU YD
27-OCT-86	LAB PACKS - ORM-A	OTHER AGRICULTURAL CHEMICALS	1.35 CU YD
27-OCT-86	POLYURETHANE PLASTIC	PLASTICS MATERIALS, SYNTHETICS	24.3 CU YD
27-OCT-86	LAB PACK - POISON B	FEDERAL GOV'T	0.27 CU YD
27-OCT-86	LAB PACK - ORM-A	FEDERAL GOV'T	0.27 CU YD
27-OCT-86	LAB PACK - FLAMMABLE	FEDERAL GOV'T	0.27 CU YD
27-OCT-86	LAB PACK - ORM-E	FEDERAL GOV'T	0.27 CU YD

35 Request(s) approved for generators in Oregon

01-OCT-86	LAB PACK / OXIDIZER	ELEMENTARY & SECONDARY SCHOOLS	0.27 CU YD
01-OCT-86	ION EXCHANGE RESIN	DEPARTMENT OF DEFENSE	8 CU YD
01-OCT-86	HYDRAULIC OIL CONTAMINATED WITH PCB	PRIMARY PRODUCTION OF ALUMINUM	2.7 CU YD
01-OCT-86	BAGHOUSE BAGS CONTAMINATED WITH LEAD	CERAMIC WALL & FLOOR TILE	4 CU YD
01-OCT-86	WASTE ORM-B LAB PACK	MEDICAL & SURGICAL HOSPITALS	0.27 CU YD
01-OCT-86	WASTE CORROSIVE MATERIAL LAB PACK	MEDICAL & SURGICAL HOSPITALS	0.27 CU YD
01-OCT-86	LAB PACK - COMBUSTIBLE LIQUID	MEDICAL & SURGICAL HOSPITALS	0.27 CU YD
01-OCT-86	HEXACHLOROCYCLOPENTDIENE ON ACTIVATED CHARCOAL	RESEARCH & DEVELOPMENT LABS	0.54 CU YD

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
10-OCT-86	SOLIDIFIED SOLVENT SLUDGE	HW TREAT/STORE/DISPOSE FCLTY	25 CU YD
10-OCT-86	UNOBA EP-2 GREASE	PRIMARY PRODUCTION OF ALUMINUM	0.81 CU YD
10-OCT-86	HALOGENATED HYDROCARBON CONTAMINATED SOIL	ENV. SERVICES CONTRACTORS	13.5 CU YD
10-OCT-86	CHEMICALLY STABILIZED HALOGENATED HYDROCARBON CONTAMINATED SOIL	ENV. SERVICES CONTRACTORS	27 CU YD
10-OCT-86	POT LINER	PRIMARY PRODUCTION OF ALUMINUM	26000 CU YD
10-OCT-86	ASBESTOS	MEDICAL & SURGICAL HOSPITALS	1 CU YD
17-OCT-86	HALOGENATED HYDROCARBON CONTAMINATED DEBRIS	HW TREAT/STORE/DISPOSE FCLTY	2.7 CU YD
17-OCT-86	FLOOR SWEEPINGS	OTHER AGRICULTURAL CHEMICALS	2.7 CU YD
21-OCT-86	LAB PACK - ORM-A	HW TREAT/STORE/DISPOSE FCLTY	10.58 CU YD
21-OCT-86	LAB PACK - ORM-C	HW TREAT/STORE/DISPOSE FCLTY	2.16 CU YD
21-OCT-86	GRAPHOIL LITHIUM GREASE	PRIMARY SMELT NONFERROUS METAL	1.08 CU YD
21-OCT-86	LAB PACK - ORM-B	ELEMENTARY & SECONDARY SCHOOLS	0.27 CU YD
21-OCT-86	LAB PACK - CORROSIVE	ELEMENTARY & SECONDARY SCHOOLS	0.27 CU YD
27-OCT-86	LAB PACK - ORM-B	HW TREAT/STORE/DISPOSE FCLTY	4.32 CU YD
27-OCT-86	LAB PACK - ORM-E	HW TREAT/STORE/DISPOSE FCLTY	0.27 CU YD
27-OCT-86	LAB PACK - ORM-A	HW TREAT/STORE/DISPOSE FCLTY	0.27 CU YD
27-OCT-86	LAB PACK - POISON B	HW TREAT/STORE/DISPOSE FCLTY	0.27 CU YD
27-OCT-86	WASTE EMPTY PESTICIDE CONTAINERS	RAILROADS, LINE-HAUL OPERATING	15 CU YD
27-OCT-86	FLAT GLASS MANUFACTURING OFF-SPEC BATCH	FLAT GLASS	450 CU YD

27 Request(s) approved for generators in Washington

63 Requests granted - Grand Total

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — October, 1986 (Month and Year)

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated		Final Actions Completed		Actions Pending	
	Mo	FY	Mo	FY	Mo	Last Mo
Industrial/ Commercial	11	48	4	31	222	215
Airports			1	3	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit) — October, 1986 (Month and Year)

FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Clackamas	Rock Creek Sand & Gravel, Clackamas	10/86	Source Closed
Multnomah	Texaco-Minit Mart, Portland	10/86	In Compliance
Tillamook	Lichner's Chainsaw Sculptures, Garibaldi	10/86	In Compliance
Lincoln	Newport Diesel, South Beach	10/86	In Compliance
Douglas	Rodine Ranch Airport	10/86	Boundary Approved

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1986

CIVIL PENALTIES ASSESSED DURING MONTH OF OCTOBER, 1986:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
The McCloskey Corporation (Oregon) Portland, Oregon	HW/AQ-NWR-86-103 Unauthorized disposal of hazardous waste and emitted odorous air contaminants.	10/8/86	$6,000	Paid 10/28/86.
Hawk Oil Company Medford, Oregon	AQ-SWR-86-105 Failed to use vapor return hose while unloading gasoline truck; failed to display certification sticker.	10/8/86	$125	Paid 10/14/86.
R.W. Hays Co. Medford, Oregon	AQ-SWR-86-87 Failed to use vapor recovery equipment while unloading gasoline truck.	10/9/86	$50	Paid 10/20/86.
R-D Mac, Inc. Island City, Oregon	WQ-ER-86-98 Unauthorized discharge of waste water into the Grande Ronde River.	10/10/86	$3,000	Paid 10/31/86.

GB6170

October, 1986
DEQ/EQC Contested Case Log

ACTIONS	LAST MONTH	PRESENT
Preliminary Issues	1	1
Discovery	0	0
Settlement Action	4	3
Hearing to be scheduled	0	0
Department reviewing penalty	1	1
Hearing scheduled	4	2
HO's Decision Due	0	0
Briefing	0	1
Inactive	4	4
SUBTOTAL of cases before hearings officer.	14	12
HO's Decision Out/Option for EQC Appeal	0	0
Appealed to EQC	2	2
EQC Appeal Complete/Option for Court Review	0	0
Court Review Option Taken	1	1
Case Closed	1	2
TOTAL Cases	18	17

15-AQ-NWR-86-178 — 15th Hearing Section case in 1986 involving air quality program violation in Northwest Region; 178th enforcement action in the Department in 1986.

$	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
HW	Hazardous Waste
HSW	Hazardous and Solid Waste Division
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

October 1986

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WAH CHANG	04/78	04/78		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	Current permit in force. Hearing deferred.
WAH CHANG	04/78	04/78		Prtys	03-P-WQ-WVR-78-2012-J NPDES Permit Modification	Current permit in force. Hearing deferred.
HAYWORTH FARMS, INC., and HAYWORTH, John W.	01/14/83	02/28/83	04/04/84	Prtys	50-AQ-FB-82-09 FB Civil Penalty of $1,000	Appealed to Court of Appeals.
~~McINNIS ENTERPRISES, LTD., et al.~~	~~06/17/83~~	~~06/21/83~~	~~08/11/86~~	~~Prtys~~	~~52-SS/SW-NWR-83-47-SS/SW-Civil Penalty of $500~~	EQC approved penalty reduction to $100. Case closed.
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.
McINNIS ENTERPRISES, LTD., et al.	10/25/83	10/26/83		Prtys	59-SS-NWR-83-33290P-5 SS license revocation	Hearing deferred.
FUNRUE, Amos	03/15/85	03/19/85	06/20/85	Dept	05-AQ-FB-84-141 Civil Penalty of $500	EQC affirmed $500 penalty June 13, 1986. Department of Justice to draft final order reflecting EQC action.

October 1986

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
DANT & RUSSELL, INC.	05/31/85	05/31/85	03/21/86	Prtys	15-HW-NWR-85-60 Hazardous waste disposal Civil Penalty of $2,500	Settlement action.
BRAZIER FOREST PRODUCTS	11/22/85	12/12/85	02/10/86	Dept	23-HSW-85 Declaratory Ruling	EQC issued declaratory ruling July 25, 1986. Department of Justice to draft final order reflecting EQC action.
NULF, DOUG	01/10/86	01/13/86	05/05/86	Dept	01-AQFB-85-02 $500 Civil Penalty	Draft decision distributed to DEQ for penalty review on August 1, 1986.
~~DECKER, MARVIN~~	~~06/02/86~~	~~06/03/86~~	~~09/02/86~~	~~Prtys~~	~~04-AQOB-NWR-86-54 $3,000 Civil Penalty~~	EQC approved penalty reduction to $2,000. Case closed.
VANDERVELDE, ROY	06/06/86	06/10/86	11/06/86	Prtys	05-WQ-WVR-86-39 $5,500 Civil Penalty	Post hearing briefing.
~~LUTTRELL FARMS, INC.~~	~~06/10/86~~	~~06/12/86~~	~~08/21/86~~	~~Prtys~~	~~06-AQOB-NWR-86-55 $3,000 Civil Penalty~~	EQC approved penalty reduction to $2,000. Case Closed.
MALLORIE'S DAIRY, INC.	09/08/86	09/08/86	11/24/86	Prtys	07-WQ-WVR-86-91 WPCF Permit violations $2,000 Civil Penalty	Hearing rescheduled.

October 1986

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
MALLORIE'S DAIRY, INC.	09/08/86	09/08/86	11/24/86	Prtys	08-AQOB-WVR-86-92 $1,050 Civil Penalty	Hearing rescheduled.
MAGNA CORP. INC.	09/09/86	09/10/86	10/16/86	Prtys	09-AQOB-NWR-86-93	Hearing postponed for submission of settlement agreement to EQC.
MONTEZUMA WEST	10/09/86	10/09/86		Prtys	10-HW-SWR-86-46	Settlement action.
In re ROBERT "BUCK" FROMAN, dba BUCK'S STOVE PALACE	11/10/86				Request for Declaratory Ruling ORS 468.635 and OAR 340-21-105.	

-47-

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item C, December 12, 1986, EQC Meeting

TAX CREDIT APPLICATIONS

Director's Recommendations

It is recommended that the Commission take the following action:

1. Issue tax credit certificates for pollution control facilities:

Appl. No.	Applicant	Facility
T-1839	Wilbur-Ellis Co., Inc.	Loading Dock Enclosure
T-1842	Portland General Electric	Oil Spill Containment
T-1843	Portland General Electric	Oil Spill Containment
T-1844	Evanite Battery Separator	Groundwater Monitoring Wells
T-1845	Conrad Wood Preserving Co.	Lift Truck to Move Hazardous Material
T-1847	Newberg Garbage Service	Recycling Center and Storage

2. Revoke Pollution Control Facility Certificate No. 1123 issued to Reichhold Chemical and reissue the certificate to CPEX Pacific, Inc.

3. Revoke Pollution Control Facility Certificates No. 364, 489 and 494 issued to Boise Cascade Salem Paper Mill.

4. Revoke Pollution Control Facility Certificates No. 921, 1001 and 1200 issued to Glacier Ranch and reissue to Glacier Ranch, Inc.

Fred Hansen

M. Conley:b
(503) 229-6408
November 13, 1986
MB6205

Proposed December 12, 1986 Totals:

Air Quality	$ 13,000.00
Water Quality	46,265.64
Hazardous/Solid Waste	90,997.00
Noise	-0-
	$ 150,262.64

1986 Calendar Year Totals for Tax Credits Certified at this time:

Air Quality	$ 3,701,299.01
Water Quality	3,648,467.10
Hazardous/Solid Waste	1,299,842.88
Noise	69,079.00
	$ 8,718,687.99

MB6205

Application No. T-1839

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Wilbur-Ellis Company, Inc.
Portland Feed Division
P.O. Box 8838
Portland, OR 97208

The applicant owns and operates a meat and bone meal manufacturing plant (animal feed) in Portland, Oregon.

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

2. Description of Facility

A metal building addition was added to an existing open loading dock to enclose the loading dock.

Claimed Facility Cost: $13,000
(Cancelled checks were provided).

3. Procedural Requirements

The facility was completed after December 31, 1983, so it is governed by ORS 468.150 through 468.190 in effect on January 1, 1984, and by OAR 340-16-015 (effective July 13, 1984; amended March 21, 1985).

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed December 17, 1985 more than 30 days before construction commenced on February 17, 1986.

b. The request for preliminary certification was approved before application for final certification was made.

c. Construction of the facility was substantially completed on May 23, 1986 and the application for final certification was found to be complete on October 10, 1986 within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution. The requirement is to comply with OAR 340-21-060(1) "Fugitive Emissions".

Meat and bone scraps are received at the plant. These are then ground up and blended with grain to produce meat and bone meal (animal food). Under windy conditions (over 10 miles per hour wind speed) meal was being blown onto the neighbor's properties during loading of meal delivery trucks at an open air loading dock.

The claimed facility encloses the loading dock and prevents wind blown fugitive emissions. The Department inspected the building and believes it will prevent fugitive emissions. No complaints have been received since it was constructed.

b. Analysis of Eligible Costs

One hundred percent of the cost is allocable to pollution control since the enclosure produces no return on investment. The plant operated 30 years without enclosing this loading dock.

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $13,000.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1839.

RAY POTTS:a1
AA5591
(503) 229-5286
October 15, 1986

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Portland General Electric Company
121 S.W. Salmon Street
Portland, OR 97204

The applicant owns and operates an electric utility company with substations throughout Oregon.

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

2. Description of Facility

The facility is an oil spill containment system at the Redland Substation. The facility consists of 644 feet of pressure treated 2 x 14 lumber, 6.5 tons of mason's sand, and 5.24 tons of 3/4 minus crushed rock.

Claimed Facility Cost: $ 16,562.36

3. Procedural Requirements

The facility was completed after December 31, 1983, so it is governed by ORS 468.150 through 468.190 in effect on January 1, 1984, and by OAR 340-16-015 (effective July 13, 1984; amended March 21, 1985).

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed January 28, 1986 less than 30 days before construction commenced on January 30, 1986. The application was reviewed by DEQ staff and the applicant was notified that the application was complete and that construction could commence.

b. The request for preliminary certification was approved before application for final certification was made.

c. Construction of the facility was substantially completed on March 10, 1986 and the application for final certification was found to be complete on September 22, 1986 within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution.

This prevention is accomplished by the containment of industrial waste as defined in ORS 468.700.

In accordance with federal law, electric utility companies must provide oil spill containment facilities at substations where oil filled equipment is utilized.

Three sides of the Redland Substation have been trenched and backfilled with mason's sand. A 2 x 14 pressure treated wood timber has been partially buried in the sand to act as a containment berm. The sand has been covered with crushed rock.

The fourth (untrenched) side of the substation is upgradient and serves as the entryway to the site. Normal storm runoff will flow towards one of the three trenches and pass through the sand under the timber. In the event of an oil spill, the sand would retard the oil to provide time for the cleanup crew to be dispatched to the site. Equipment monitors would warn crews of any failure. The crews would remove the oil and contaminated sand, and reconstruct the facility following site cleanup.

The Redland Substation does not contain any PCB oils. No spills have occurred at this site.

b. Analysis of Eligible Costs

There is no return on investment from this facility. One hundred (100) percent of the cost of the facility is allocated to pollution control.

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by containment of industrial waste as defined in ORS 468.700.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100 %.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $ 16,562.36 with 100 % allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1842.

L.D. Patterson:c
WC1191
(503) 229-5327
10/21/86

Application No. T-1843

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Portland General Electric Company
121 SW Salmon Street
Portland, Oregon 97204

The applicant owns and operates an electric utility company with substations throughout Oregon.

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

2. Description of Facility

The facility is an oil spill containment system at the Mulino Substation consisting of 216 feet of 2 x 12 and 2 x 14 pressure treated lumber, 6.5 tons of mason's sand, and 5.25 tons of 3/4 minus crushed rock.

Claimed Facility Cost: $9,812.69

3. Procedural Requirements

The facility was completed after December 31, 1983, so it is governed by ORS 468.150 through 468.190 in effect on January 1, 1984, and by OAR 340-16-015 (effective July 13, 1984; amended March 21, 1985).

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed January 28, 1986 less than 30 days before construction commenced on January 30, 1986. The application was reviewed by DEQ staff and the applicant was notified that the application was complete and that construction could commence.

b. The request for preliminary certification was approved before application for final certification was made.

c. Construction of the facility was substantially completed on March 10, 1986, and the application for final certification was found to be complete on September 22, 1986 within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution.

This prevention is accomplished by the containment of industrial waste as defined in ORS 468.700.

In accordance with federal law, electric utility companies must provide oil spill containment facilities at substations where oil filled equipment is utilized.

Three sides of the Mulino Substation have been trenched and backfilled with mason's sand. The 2 x 14 and 2 x 12 pressure treated wood timbers have been partially buried in the sand to act as a containment berm. The sand has been covered with crushed rock.

The fourth (untrenched) side of the substation is upgradient of the site. Normal storm runoff will flow towards one of the three trenches and pass through the sand under the timber. In the event of an oil spill, the sand would retard the oil to provide time for the cleanup crew to be dispatched to the site. Equipment monitors would warn crews of any failure. The crews would remove the oil and contaminated sand, and reconstruct the facility following site cleanup.

The Mulino Substation does not contain any PCB oils. No spills have occurred at this site.

b. Analysis of Eligible Costs

There is no return on investment from this facility. One hundred (100) percent of the cost of the facility is allocated to pollution control.

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $9,812.69 with 100 percent allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1843.

L.D. Patterson:h
WH1275
(503) 229-5327
October 22, 1986

Application No. T-1844

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Evanite Battery Separator, Inc.
P. O. Box E
Corvallis, OR 97339

The applicant owns and operates a polyethylene battery separator manufacturing facility in Corvallis, Oregon.

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

2. Description of Facility

The facility consists of the development and installation of seven groundwater monitoring wells, consisting of casings, pumps, and electrical work.

Claimed Facility Cost: $ 19,890.59.
(Accountant's Certification was provided)

3. Procedural Requirements

The facility was completed after December 31, 1983, so it is governed by ORS 468.150 through 468.190 in effect on January 1, 1984, and by OAR 340-16-015 (effective July 13, 1984; amended March 21, 1985).

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed January 15, 1986 more than 30 days before construction commenced on February 17, 1986.

b. The request for preliminary certification was approved before application for final certification was made.

c. Construction of the facility was substantially completed on April 12, 1986 and the application for final certification was found to be complete on October 10, 1986 within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to control water pollution. The requirement is to comply with OAR 340- 41-029.

This control is accomplished by groundwater monitoring which may result in removal or elimination of industrial waste as defined in ORS 468.700.

In August 1985, construction crews on the applicant's property were excavating soils for a storm drainage project. After several of the workers became ill, it was discovered the soils and groundwater in the area were contaminated with trichloroethylene (TCE). The applicant was instructed by the Department to initiate a groundwater monitoring program to determine the quantity of TCE in the soil and groundwater, and the area of contamination. The applicant installed seven monitoring wells on the plant site and has proceeded to characterize the quality of the groundwater in the area. Additional monitoring wells will be installed as needed, and a groundwater collection and cleanup program is being studied. At present, however, the applicant is only applying for tax credit for the original seven groundwater monitoring wells.

b. Analysis of Eligible Costs

There is no return on investment from this facility. One hundred (100) percent of the facility cost is allowable for pollution control.

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control water pollution and accomplishes this purpose by groundwater monitoring which may result in removal or elimination of industrial waste as defined in ORS 468.700.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100 %.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $ 19,890.59 with 100 % allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1844.

L.D. Patterson:c
WC1231
(503) 229-5374
November 17, 1986

Application No. T-1845

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

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

The applicant owns and operates a wood products treatment company at North Bend, Oregon.

Application was made for tax credit for a hazardous waste facility.

2. Description of Facility

The facility consists of addition of a "dedicated" Hyster (lift truck) to be used only in the drip-pad area of the facility.

Claimed Facility Cost: $41,121
(Accountant's Certification was provided).

3. Procedural Requirements

The facility was completed after December 31, 1983, so it is governed by ORS 468.150 through 468.190 in effect on January 1, 1984, and by OAR 340-16-015 (effective July 13, 1984; amended March 21, 1985).

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed February 24, 1986 more than 30 days before installation commenced on August 21, 1986.

b. The request for preliminary certification was approved before application for final certification was made.

c. Installation of the facility was substantially completed on August 21, 1986 and the application for final certification was found to be complete on November 5, 1986 within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to prevent a substantial quantity of hazardous waste from being created.

This prevention is accomplished by the redesign to substantially reduce hazardous waste as defined in ORS 466.005.

b. Analysis of Eligible Costs

The sole purpose of the "dedicated" Hyster lift truck is to prevent contamination of soil adjacent to the containment drip pad. Prior to purchase of the equipment, the one lift truck at the facility transported treated wood from the drip pad to the storage area across soil. Hazardous wastes from the pad were carried by the lift truck to the soil and soil was carried back onto the drip pad creating hazardous waste contaminated soil. Under present operation, with the additional lift truck, one lift truck stays on the containment pad and the other stays in the yard with no tracking of waste onto the soil or soil onto the containment pad. Approximately twelve 55-gallon barrels per year of contaminated soil were transported for disposal at a hazardous waste disposal site before purchase of the equipment.

The only savings from the dedicated lift truck is clean up and disposal costs which are no longer required. The company costs were $300 per barrel for transportation and disposal. They also estimated $75 per barrel clean up costs for a total of $375 per barrel or $4,500 per year. Using $4,500 as average annual cash flow, a 9.14 return on investment factor was obtained. Using Table 1 of OAR 340-16-030 and an expected life of 5 years, a return on investment of zero was obtained. Therefore, the facility is 100% allocable to pollution control.

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of hazardous waste.

This prevention is accomplished by redesign to substantially reduce hazardous waste as defined in ORS 466.005.

c. The facility complies with DEQ statutes and rules.

d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $41,121 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1845.

EA Schmidt:b
SB6171
(503) 229-5157
November 17, 1986

Application No. T-1847

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Newberg Garbage Service
P.O. Box 990
Newberg, OR 97132

The applicant owns and operates a solid waste transfer and recycling center at Newberg, Oregon.

Application was made for tax credit for a solid waste recycling facility.

2. Description of Facility

The facility consists of a recycling center and storage area at the transfer station and drop off centers at four locations in Newberg. The claimed recycling system consists of the following:

Recycling boxes	$29,240
Cardboard bailer	7,000
Cardboard storage building	5,300
Backhoe forks	721
15 - 1 1/2 yard cardboard bins	675
Recycling boxes/news print shed	6,940

Claimed Facility Cost: $ 49,876
(Accountant's Certification was provided).

3. Procedural Requirements

The facility was completed after December 31, 1983, so it is governed by ORS 468.150 through 468.190 in effect on January 1, 1984, and by OAR 340-16-015 (effective July 13, 1984; amended March 21, 1985).

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed March 13, 1984 more than 30 days before installation commenced on August 17, 1984.

b. The request for preliminary certification was approved before application for final certification was made.

c. Installation of the facility was substantially completed on March 1, 1985, and the application for final certification was found to be complete on October 15, 1986 within 2 years of substantial completion of the facility.

4. Evaluation of Application

The sole purpose of the facility is recycling of materials that would otherwise be solid waste. The recycling center and drop off locations are operated in conjunction with an on-route collection of source separated recyclable materials and the service is in compliance with Department Recycling and Solid Waste Rules (OAR 340-60 and 61).

Percent allocable was determined by using OAR 340-16-030. Facility cost divided by average annual cash flow equal 14.44 (return on investment factor). The useful life of the facility was estimated at 10 years. Using Table One of the rule gives a return on investment of zero. Therefore, the facility is 100% eligible.

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines.

b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of solid waste by recycling. This reduction is accomplished by the use of a resource recovery process.

c. The facility complies with DEQ statutes and rules.

d. The sole purpose of the facility is to utilize material that would otherwise be solid waste by mechanical process for their useful chemical or physical properties.

The end product of the utilization, other than a usable source of power, is competitive with an end product produced in another state; and

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

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

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $49,876 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1847.

Ernest A. Schmidt
SF1404
(503) 229-5157
October 16, 1986

State of Oregon
Department of Environmental Quality

REVOCATION AND REISSUANCE OF POLLUTION CONTROL FACILITY CERTIFICATION

1. Certificates issued to:

Reichhold Chemicals, Inc.
Nitrogen Products
P.O. Box 810
St. Helens, OR 97051

The Certificates were issued for air quality pollution control facilities.

2. Summation:

CPEX Pacific purchased the Nitrogen Products Division of Reichhold Chemicals on April 18, 1985. All operations continue as before but require the change of company name on the tax credit certificate.

3. Director's Recommendation:

It is recommended that Certificate Number 1123 be revoked and reissued to CPEX Pacific, the certificate to be valid only for the time remaining from the date of the first issuance.

M. Conley:b
229-6408
November 13, 1986
MB6204

CPEX Pacific, Inc.

Nitrogen Products

63149 COLUMBIA RIVER HIGHWAY
P.O. BOX 810
ST. HELENS, OREGON 97051-0810

Tel: 503-397-2225
TWX: 910-456-7091

October 13, 1986

DEPARTMENT OF ENVIRONMENTAL QUALITY
522 S.W. 5th
Portland, Oregon 97204

ATTN: Ms. M. Conley

RE: Pollution Control Facility
Tax Credit Certificate No. 1123

We request that the subject certificate, originally issued to Reichhold Chemicals, Inc., be transferred to CPEX Pacific, Inc. The tax credit application number is T 1241.

CPEX Pacific, Inc. purchased the Nitrogen Products Business, including the manufacturing facility at St. Helens, from Reichhold Chemicals, Inc. on April 18, 1985. The manufacturing plant includes the urea prill tower pollution abatement system, and it has been in continuous use at the same site since the change of ownership. "Continuous use" means round-the-clock operation whenever the urea plant is on stream, and this usually averages about 330-plus days per year.

Thank you for your assistance.

Very truly yours,

CPEX PACIFIC, INC.

Edward J. Stipkala
Vice President

EJS/lc

Reichhold Chemicals, Inc.
Corporate Headquarters
525 North Broadway
White Plains, New York 10603

REICHHOLD

October 7, 1986

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

Dear Ms. Chew,

This concerns the attached Pollution Control Facility Certificate, No. 1123, issued to Reichhold Chemicals, Inc. on August 15, 1980 pursuant to application No. T-1241.

Please be advised that on April 18, 1985, Reichhold Chemicals sold the facility covered by this certificate to CPEX Pacific, Inc.

Please contact me if you have any questions,

Very truly yours,

Deborah Stone Rech

Deborah Stone Rech
Manager of Federal Taxes

DSR/jn

Attachment

Tel. (914) 682-5700
Telecopier: (914) 682-5800
Telex: 6818190
Cable: Beckacite White Plains

Certificate No. 1123

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Date of Issue 8/15/80

Application No. T-1241

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To:	Location of Pollution Control Facility:
Reichhold Chemicals, Inc. Nitrogen Products Division P. O. Box 810 St. Helens, Oregon 97051	On North Columbia River Highway (U.S. 30) three miles north of St. Helens, Oregon
As: ☐ Lessee ☒ Owner	

Description of Pollution Control Facility:

Scrubber system to control particulate emissions from the urea prilling (drying) tower.

Type of Pollution Control Facility: ☒ Air ☐ Noise ☐ Water ☐ Solid Waste ☐ Hazardous Waste ☐ Used Oil

Date Pollution Control Facility was completed: March 1979 Placed into operation: May 23, 1979

Actual Cost of Pollution Control Facility: $ 857,646.00

Percent of actual cost properly allocable to pollution control: 80% or more

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of ORS 468.175 and subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE — The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

Signed J. B. Richards

Title Joe B. Richards, Chairman

Approved by the Environmental Quality Commission on the 15th day of August, 1980.

State of Oregon
Department of Environmental Quality

REVOCATION OF POLLUTION CONTROL FACILITY CERTIFICATION

1. Certificates issued to:

Boise Cascade
Paper Group
1600 S.W. 4th Avenue
P.O. Box 1414
Portland, OR 97204

The Certificates were issued for water pollution control facilities.

2. Summation:

Boise Cascade closed the Salem mill where these facilities were located. Since that time, the facilities have been demolished or removed from service.

3. Director's Recommendation:

It is recommended that Certificate Numbers 364, 489 and 494 be revoked.

M. Conley:b
229-6408
November 13, 1986
MB6204

Paper Group

1600 S.W. 4th Avenue
P.O. Box 1414
Portland, Oregon 97207
503/224-7250

Boise Cascade

October 30, 1986

Ms. Maggie Conley
Inter Governmental Coordinator
Oregon Department of Environmental
Quality
811 S.W. 6th St.
Portland, OR 97204

Subject: Salem Pollution Control
Facility Certificate Revocation

Dear Ms. Conley:

The following Department of Environmental Quality Pollution Control Facility Certificates were issued to the Boise Cascade Salem Mill.

Certificate Number	Date of Issue	Date of Recording	Application Number
364	3/7/73	3/26/73	T-416
489	6/21/74	6/28/74	T-539
494	6/21/74	6/28/74	T-533

These pollution control facilities located on the Willamette slough have been either dismantled during the demolition project completed in October, 1986 or have been officially classified as closed facilities by the DEQ, (attached June 13, 1986 letter). The dikes of the aerated lagoon secondary treatment system is the only item that is physically intact. All piping and electrical equipment has been dismantled. These lagoons will not be used by Boise Cascade for treating wastes effluent at any time in the future.

BCC requests revocation of the above certificates by the DEQ.

Very truly yours,

Allan Mick
Regional Environmental Engineer-West

AM:sld
Attach.

cc: Dave St. Louis
Pete Meuleveld
Bob Netson
Carol Raymer
Mike Roberts - w/encl.
Doug Townsend
Allen Willis
Jack Borgwardt

feb orig
Salem – water permit

VICTOR ATIYEH
Governor

Department of Environmental Quality

JUN 16 1986

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

JUN 13 1986

Boise Cascade Corporation
P. O. Box 2139
Salem, OR 97308

RECEIVED
JUN 17 1986
ENVIRON. AFFAIRS

Attn: Pete Meuleveld

Re: Waste Disposal Permit
No. 3852; File 9577

Gentlemen:

We have received your request for cancellation of Water Pollution Control Facilities (WPCF) permit No. 3852 issued for the various closure activities at the Salem mill. These closure activities included extensive groundwater monitoring and assessment on Minto Island; closure of the industrial solid waste site; closure of the emergency holding pond; assessment of the waste water stabilization basins; and removal of asbestos, liquid and solid wastes and PCB's remaining in the mill complex.

Our review of the various closure reports, certifications and other materials submitted on the closure activities confirms that Boise Cascade has met the requirements of Schedule C of the WPCF permit. The field inspections with your staff on May 29th provided further confirmation. WPCF permit No. 3852 is hereby cancelled.

Although the permit is no longer necessary, there are remaining concerns that you may wish to address with any prospective purchaser of the Minto Island property:

1. A copy of the Minto Island Geohydrologic Study should be provided to parties having interest. The report contains extensive data on the condition of groundwater beneath the island, the impacts on potential beneficial uses and the expected duration of the black band in the Willamette River.

2. The monitoring wells installed on the island should remain in place if at all possible and be protected from damage or vandalism. Water Resources Department is currently reviewing the well construction details to determine acceptability of well construction and the need for well abandonment.

cm/h 6/16/86
cc J. Williams
J Borgwardt
K Nelson
J. Sherman
S. Donaldson
M. Roberts

3. The industrial solid waste site will require periodic maintenance to preserve closure contours and assure a healthy cover crop.

4. Steps may be required during successive dry summers to assure the water level in the waste water stabilization basins remains sufficiently above the sludge layer to prevent odors.

Overall, we are quite pleased with the extensive efforts Boise Cascade has put forth over the past 3 years to adequately close the mill facilities. Although no specific additional action is contemplated at this time, I must remind you that should future State or federal requirements dictate additional action, Boise Cascade may likely be named as a responsible party regardless of property ownership.

If you have questions, please contact either Dave St. Louis at 378-8240 in Salem, or Larry Patterson at 229-5374 in Portland.

Sincerely,

Fred Hansen
Director

FH:c
WC622
cc: Allan Mick, Boise Cascade Corporation, P. O. Box 1414, Portland 97207
Bill Robertson, Water Resources, 3850 Portland Rd. NE, Salem 97310
Willamette Valley Region, DEQ

State of Oregon
Department of Environmental Quality

REVOCATION AND REISSUANCE OF POLLUTION CONTROL FACILITY CERTIFICATION

1. Certificates issued to:

Glacier Ranch
2400 Odell Highway
Hood River, Oregon

The Certificates were issued for air pollution control facilities.

2. Summation:

The certificates were issued to Glacier Ranch when it was unincorporated. Glacier Ranch was incorporated in 1980. The Department of Revenue informed the owner that in order for the corporation to use the tax credit, the certificate must be reissued to the corporation.

3. Director's Recommendation:

It is recommended that Certificate Numbers 921, 1001 and 1200 be revoked and reissued to Glacier Ranch, Inc., the certificates to be valid only for the time remaining from the date of the first issuance.

M. Conley:b
229-6408
November 13, 1986
MB6204

James M. Frater C.P.A., P.C.
405 13th STREET • HOOD RIVER, OR 97031 • (503) 386-2141

November 6, 1986

Department of Environmental Quality
Maggie Conley
811 S.W. 6th
Portland, OR 97204

RE: Fred Moe, Glacier Ranch
Pollution Control Facility Certificate
T-1004 #921
T-1091 #1001
T-1293 #1200

Dear Maggie:

As per our conversation of 11/05/86, we are hereby requesting a name change for the above certificates.

The certificates were originally issued under Fred Moe, Glacier Ranch. Glacier Ranch was incorporated 02/06/80. Therefore, the certificates need to be changed to Glacier Ranch, Inc.

Thank you again for all your help. We will be pursuing the tax credit issues we discussed through the Oregon Department of Revenue.

Sincerely,

Lori J. Robertson
James M. Frater CPA, PC

LJR/mh

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item D, December 12, 1986, EQC Meeting

Request for Authorization to Conduct Public Hearings on Proposed Amendments to OAR 340-60 and 340-61 to Require Annual Submittal of Recycling Reports, Amend List of Principal Recyclable Materials, and Change Telephone Number on Used Oil Recycling Signs

I. Background and Problem Statement - Submittal of Recycling Reports

The Recycling Opportunity Act (ORS 459.165 to 459.200) required each wasteshed to report to the Department by July 1, 1986 on how the wasteshed will implement the Act. OAR 340-60-045 establishes standards for submittal of the report. The rules do not require reporting beyond July 1, although the Act requires ongoing recycling collection systems and education and promotion programs.

The intent of the Recycling Opportunity Act is to increase the number of people who recycle and the types and amounts of materials recycled. In order to monitor the success of the programs throughout the state, as well as to ensure continued compliance with the requirements of the Act, there needs to be a data collection system so that the Department knows the amount of materials being recycled in the various local programs, the rate of participation by waste generators, any changes made in the collection system, and the education and promotion activities being conducted.

This information is also needed because ORS 459.188 allows the Commission to require mandatory source separation of recyclable materials by waste generators. To do so, the Commission must find, among other things, that the level of participation by generators does not fulfill the state's goal to reduce, reuse, and recycle materials that would otherwise be disposed of as waste. In order to determine whether the Act is being successfully implemented on a voluntary basis or whether mandatory participation should be proposed, there must be regular data collection. The Department is proposing that wastesheds annually report volumes of materials recycled at curbside and at depots, and number of recycling setouts on residential curbside collection routes. Setout data would be required to be collected during the months of January, April, July and October.

These proposed rules were developed with review and advice from the Department's Recycling Subcommittee of the Hazardous and Solid Waste Task Force and from wasteshed representatives. The Recycling Subcommittee includes representatives from garbage industries, recycling industries, local governments, and interested citizens. The proposed rules and draft reporting form reflect a compromise between the Department's need for data to evaluate recycling programs and the collectors' needs to have a simple, non-burdensome system for reporting.

Alternatives and Evaluation

Without adoption of the proposed rules, the Department could not require submittal of information and data from wastesheds about curbside recycling programs and promotion and education efforts. As a solid waste disposal site permit condition, the Department now requires quarterly reporting of amounts of materials recycled at some disposal sites. That information would continue to be received, but it is only a partial indicator of the amount of recycling going on in a community, since it would not include recyclable material from on-route collection and other recycling opportunities. The Department could continue to annually survey end-users of recycled materials about the volumes of materials received. This data, which can be obtained only if the end-user wishes to provide it, would indicate the overall increase or decrease in recycling in the state, but would give no information on the level of success of individual recycling programs.

The Department could also gauge recycling participation by polling a sample of residents served by each collection program. To evaluate all 200+ on-route collection programs in this way would be prohibitively expensive, costing on the order of $100,000 for a minimum sample of 100 residents per program. In addition, polls of this type usually show a bias in that more people report they recycle than really do recycle.

The proposed rule would allow the Department to gather the data necessary to monitor implementation of the Recycling Opportunity Act and to determine the effectiveness of the various recycling programs throughout the state. It would enable the Department to compare approved alternative methods for providing recycling opportunities with the general on-route collection method. It would also generate data which would enable the Department to compare the effectiveness of different on-route collection systems being used throughout the state (e.g. providing recycling containers, weekly vs. monthly collection) and education and promotion activities. This information would be valuable to all recycling service providers.

The Department is aware that the public review process for recycling reports places an administrative burden on the local affected persons. The proposed deletion of requirements for public notice of availability of the report and certification by local governments will mitigate the burden of the reporting requirements on the local affected persons.

Alternatively, if the public review requirement remains in the rules, it would assure that the public and local governments remain involved in reviewing the recycling programs serving the citizens of the wasteshed.

Summation

1. The Department's rules do not require any reporting after July 1, 1986 about the implementation of the opportunity to recycle required by ORS 459.165 et seq.

2. The intent of the Recycling Opportunity Act is to increase the number of people who recycle and the volumes of materials recycled.

3. In order to monitor compliance with ORS 459.165 et seq. and the effectiveness of the recycling programs, it is necessary to receive regular data on volumes of material recycled, generator recycling setout rates, any changes in the collection system, and education and promotion efforts.

II. Background and Problem Statement - Amendments to Lists of Principal Recyclable Materials

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

"Recyclable material" is defined as "any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material". As such, changes in the market price of materials and the cost of collection and disposal will each affect whether a material is recyclable.

Market Price for Recyclable Materials

The market price for most paper products and for glass increased significantly in 1986. The base price for old newsprint is $57.50 per ton - $10 per ton higher than it was a year ago. Cardboard prices are presently high at $80/ton base price, but starting to fall slightly. This is $25 per ton higher than the price a year ago. In mid 1986, Owens Illinois raised the base price of green glass from $30 to $40/ton, matching the price for brown and clear glass.

On the other hand, oil prices have fallen sharply in 1986, and scrap metal prices have also generally declined. Two years ago, oil collectors usually paid service stations about 25 cents per gallon to collect and recycle their oil. When crude oil and fuel oil prices dropped more than 40 cents

per gallon during the past year, the price paid for used oil showed a similar drop. Thus, most service stations now pay 15 cents per gallon to have their oil picked up and recycled.

Although most service stations are now charged to have their oil recycled, virtually all of the recycling programs that collect oil from households under the Oregon Recycling Opportunity Act can have their oil picked up for recycling for free even during the present poor market conditions. This is because the oil collectors and processors believe that oil prices will rise again in the future, and also believe that the recycling programs starting up under the Act are an important potential source of used oil that is presently being thrown away. Thus, by giving the household collection programs a special break now, they will develop a growing supply of used oil that will be valuable when oil prices rise again in the future.

The base price for tin cans paid in Seattle has dropped from $58 to $54/ton in the past year, parallel to the average decline in the price of bundled steel scrap. Certain other metal products have shown a much greater decline. With the closing of the Bergsoe battery-processing plant, car batteries have declined in value to the point where it is now difficult to find a company that will accept them for recycling. Batteries that are recycled are either shipped to Los Angeles or overseas, with the cost of freight being roughly equal to the value of the batteries at their destination.

Steel scrap processors are becoming much more selective about the materials they will purchase for recycling. Some are now refusing items such as oil-coated metal turnings, and are requiring that batteries, catalytic converters, mufflers, and other potentially hazardous materials be removed from scrap before it will be accepted. This will further lower the field price of much steel scrap such as appliances and car bodies.

Cost of Disposal

The cost of disposal of materials as garbage has increased in some of the wastesheds. Coos and Marion Counties have shown the largest increase in tipping fees for wastes. In Coos County, the county raised the tipping fee for compacted waste from $2.00 to $3.60 per cubic yard. In Marion County, the tipping fee for waste is projected to rise from $12/ton to $26/ton effective March 1, 1987, with the tipping fee at transfer stations rising to $40/ton.

Recommended Changes

Because both the disposal costs and the value of most recyclable materials have increased since the original lists of recyclable materials were adopted by rule, the Department recommends that, other than certain technical corrections described below, no material be removed from the list of principal recyclable material for wastesheds. The status of oil as a principal recyclable material has been problematic this year due to both

the present low value of oil fuel and the possibility that used oil would be listed as a hazardous waste, thus increasing the liability associated with handling used oil. The Department, however, recommends that used oil be kept on the lists of principal recyclable materials for the following reasons: (1) Environmental Protection Agency has announced it will not list used oil as a hazardous waste; (2) the recyclers collecting used oil from households under the Recycling Opportunity Act can in turn have that oil picked up for free by commercial used oil collectors; (3) the price of other recyclable materials has increased; and (4) the cost associated with improper disposal of used oil is high.

There are some wastesheds where a material is listed as a principal recyclable material but has not been found to be recyclable in any location in the wasteshed where the opportunity to recycle is required. The Department is recommending that the lists of principal recyclable materials be amended to remove these materials, and in one case to add a material that is considered recyclable but is not presently on the list for that wasteshed. The recommended technical changes are as follows:

Wasteshed	Change
Columbia	Delete hi-grade office paper
Gilliam	Delete newspaper
Malheur	Add aluminum
Milton-Freewater	Delete hi-grade office paper
Morrow	Delete corrugated cardboard
Wallowa	Delete corrugated cardboard
Wheeler	Delete newspaper

Yard Debris

The Department in January received authorization to hold public hearings on its proposal to add yard debris to the list of principal recyclable materials for the Portland metropolitan wasteshed. After public hearings were held in March, the Department decided to delay making a recommendation on the issue while Metro had a market analysis of yard debris prepared by consultants. The study was completed in September, 1986 and found that "the general outlook for compost sales is quite good," and that

> "Interest in the usage of compost (produced from yard debris) is high, and the marketing outlook is positive if two key conditions are met:
>
> (1) An aggressive long-term marketing program is adopted and backed by competitive pricing of yard debris vis-a-vis other competing products.
>
> (2) No major new suppliers of organic compost products enter the Portland metropolitan area or quickly expand production and sales."
>
> (Market Analysis of Portland Metropolitan Area Yard Debris. Northwest Economic Associates, Page 2).

The Department is requesting authorization to hold another hearing in January on its proposal to add yard debris to its list of principal recyclable materials in the Portland metropolitan wastesheds. The Department will then make a recommendation on yard debris to the Commission at its March 13, 1987 meeting.

Alternatives and Evaluation

The recommended changes in the lists of principal recyclable materials will conform the lists with the legal definition of principal recyclable material. Since these changes only involve deleting materials that are not considered recyclable and are not presently being recycled anywhere where the opportunity to recycler is required in a wasteshed, and in one case adding a material that is presently being recycled, the recommended changes will have no effect on existing recycling programs.

Deleting used oil from lists of principal recyclable material would probably result in used oil being dropped from many recycling programs. This would slightly increase the economic viability of some of the recycling programs. It would, however, leave many Oregon residents without any convenient opportunity to recycle used oil, and would probably result in more oil being improperly disposed of. Many service stations have discontinued taking oil from the public due to the fact that they are presently charged to have their oil recycled, so there would be increasingly fewer alternatives for recycling used oil.

Summation

1. The market value of paper products and glass has increased in the past year, and disposal costs have increased or remained constant, reducing the net cost of recycling material as opposed to disposing of material as waste.

2. Minor technical amendments are recommended in the lists of principal recyclable materials for certain wastesheds so that the materials on these lists will conform with the legal definition of principal recyclable material.

3. The Department recommends that used oil be kept as a principal recyclable material in all wastesheds in spite of the present low value of used oil because the increase in value of the other recyclable materials exceeds the increased costs of recycling used oil, and because legal or illegal disposal of used oil would be environmentally costly.

4. A market analysis of yard debris commissioned by Metro indicates that the market outlook for yard debris is positive.

III. Background and Problem Statement - Phone Numbers on Used Oil Recycling Signs

The Used Oil Recycling Act required the Commission to adopt rules to require sellers of more than 500 gallons of used oil annually to post signs informing the public of oil recycling opportunities and the importance of oil recycling. The Commission adopted OAR 340-61-062 to meet this legislative requirement. This rule requires that a presently non-functional phone number that once was the number of the Department's Recycling Switchboard be posted on the used oil recycling signs. The Department now has a different number that the public can call to receive recycling information, and many wastesheds also have local phone numbers where recycling information can be obtained. In addition, the sign requires that the location of one or more recycling depots be listed.

Since this rule was written well before the passage of the Recycling Opportunity Act, it did not consider that on-route recycling collection programs might be operating and be a more convenient recycling opportunity than a depot. The Department proposes to remedy these problems by requiring only that a telephone number where the public can receive more information on oil recycling be posted on the sign, and that the signs be allowed to include recycling opportunities besides depots.

Alternatives

The Department has not identified a reasonable alternative to the suggested rule change.

Summation

The Department recommends that OAR 340-61-062 be amended to allow oil recycling signs to list any telephone number where the public can obtain recycling information, and to allow on-route recycling collection or other recycling opportunities as well as depots to be listed on the sign.

Director's Recommendation

Based upon the Summations in Sections I, II, and III, it is recommended that the Commission authorize public hearings to take testimony on proposed amendments to OAR 340-60-010 and OAR 340-60-045 to require annual submittal of recycling reports and to define "recycling setouts" to OAR 340-60-030 to amend the list of principal recyclable materials, and to OAR 340-61-062 to change the telephone number required on oil recycling signs.

Fred Hansen

Attachments 1. Proposed Revision of OAR 340-60-010 (Definitions); OAR 340-60-030 (Principal Recyclable Material); OAR 340-60-045 (Standards for Recycling Reports), and OAR 34-061-062 (Oil Recycling Signs)
2. Draft Public Notices
3. Rulemaking Statements

Lorie Parker:m
SM387
229-5826
November 28, 1986

OAR 340-60-010 is proposed to be amended as follows:

340-60-010 As used in these rules unless otherwise specified:

(1) "Affected person" means a person or entity involved in the solid waste collection service process including but not limited to a recycling collection service, disposal site permittee or owner, city, county and metropolitan service district. For the purposes of these rules "Affected person" also means a person involved in operation of a place to which persons not residing on or occupying the property may deliver source separated recyclable material.

(2) "Area of the state" means any city or county or combination or portion thereof or other geographical area of the state as may be designated by the Commission.

(3) "Collection franchise" means a franchise, certificate, contract or license issued by a city or county authorizing a person to provide collection service.

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

(5) "Collector" means the person who provides collection service.

(6) "Commission" means the Environmental Quality Commission.

(7) "Department" means the Department of Environmental Quality.

(8) "Depot" means a place for receiving source separated recyclable material.

(9) "Director" means the Director of the Department of Environmental Quality.

(10) "Disposal site" means land and facilities used for the disposal, handling or transfer of or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting

plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468.740; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site licensed pursuant to ORS 481.345.

(11) "Generator" means a person who last uses a material and makes it available for disposal or recycling.

(12) "Land disposal site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond or lagoon.

(13) "Metropolitan service district" means a district organized under ORS Chapter 268 and exercising solid waste authority granted to such district under ORS chapters 268 and 459.

(14) "On-route collection" means pick up of source separated recyclable material from the generator at the place of generation.

(15) "Opportunity to recycle" means those activities described in OAR 340-60-020:

(16) "Permit" means a document issued by the Department, bearing the signature of the Director or the Director's authorized representative which by its conditions may authorize the permittee to construct, install, modify or operate a disposal site in accordance with specified limitations.

(17) "Person" means the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

(18) "Principal recyclable material" means material which is a recyclable material at some place where the opportunity to recycle is required in a wasteshed and is identified by the Commission in OAR 340-60-030.

(19) "Recyclable material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

(20) "Recycling setout" means any amount of source-separated recyclable material set out at or near a residential dwelling for collection by the recycling collection service provider.

[(20)] (21) "Resource recovery" means the process of obtaining useful material or energy resources from solid waste and includes:

(a) "Energy recovery," which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material.

(b) "Material recovery," which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose;

(c) "Recycling," which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(d) "Reuse," which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

[(21)] (22) "Solid waste collection service" or "service" means the collection, transportation or disposal of or resource recovery from solid wastes but does not include that part of a business licensed under ORS 481.345.

[(22)] (23) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, waste paper and cardboard; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid wastes, dead animals and other wastes; but the term does not include:

(a) Hazardous wastes as defined in ORS 459.410

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals.

[(23)] (24) "Solid waste management" means prevention or reduction of solid waste; management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities necessary or convenient to such activities.

[(24)] (25) "Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

[(25)] (26) "Waste" means useless or discarded materials.

[(26)] (27) "Wasteshed" means an area of the state having a common solid waste disposal system or designated by the commission as an appropriate area of the state within which to develop a common recycling program.

OAR 340-60-030 is proposed to be amended as follows:

340-60-030

(1) The following are identified as the principal recyclable materials in the wastesheds as described in Sections (4) through (8):

(a) Newspaper;
(b) Ferrous scrap metal;
(c) Non-ferrous scrap metal;
(d) Used motor oil;
(e) Corrugated cardboard and kraft paper;
(f) [Container glass] aluminum;
(g) [Aluminum] container glass;
(h) Hi-grade office paper
(i) Tin cans

(2) In addition to the principal recyclable materials listed in (1) above, other materials may be recyclable material at specific locations where the opportunity to recycle is required.

(3) The statutory definition of "recyclable material" (ORS 459.005(15)) determines whether a material is a recyclable material at a specific location where the opportunity to recycle is required.

(4) In the following wastesheds, the principal recyclable materials are those listed in Section 1 (a) through (i):

(a) Benton and Linn wasteshed
(b) Clackamas wasteshed
(c) Clatsop wasteshed
[(d) Columbia wasteshed]
[(e)] (d) Hood River wasteshed
[(f)] (e) Lane wasteshed
[(g)] (f) Lincoln wasteshed
[(h)] (g) Marion wasteshed
[(i) Milton-Freewater wasteshed]
[(j)] (h) Multnomah wasteshed

[(k)] (i) Polk wasteshed
[(l)] (j) Portland wasteshed
[(m)] (k) Umatilla wasteshed
[(n)] (l) Union wasteshed
[(o)] (m) Wasco wasteshed
[(p)] (n) Washington wasteshed
[(q)] (o) West Linn wasteshed
[(r)] (p) Yamhill wasteshed

(5) In the following wastesheds, the principal recyclable materials are those listed in Section 1 (a) through (g):
(a) Baker wasteshed
(b) Crook wasteshed
(c) Jefferson wasteshed
(d) Klamath wasteshed
(e) Tillamook wasteshed

(6) In the following wastesheds, the principal recyclable materials are those listed in Section 1 (a) through (h):

(a) Coos wasteshed
(b) Deschutes wasteshed
(c) Douglas wasteshed
(d) Jackson wasteshed
(e) Josephine wasteshed

(7) In the following wasteshed, the principal recyclable materials are those listed in Subsections (1)(a) through (f) of this rule:

(a) Malheur wasteshed

(8) In the following wastesheds, the principal recyclable materials are those listed in Section 1(a) through (g) and (i):

(a) Columbia wasteshed
(b) Milton-Freewater wasteshed

[(7)] (9) In the following wastesheds, the principal recyclable materials are those listed in Section 1 (a) through (e):

(a) Curry wasteshed
(b) Grant wasteshed
(c) Harney wasteshed
(d) Lake wasteshed
[(e) Malheur wasteshed]
[(f) Morrow wasteshed]
[(g) Wallowa wasteshed]

[(8)] (10) In the following wastesheds, the principal recyclable materials are those listed in Section 1 (a) through (d):

(a) [Gilliam wasteshed] Morrow wasteshed
(b) Sherman wasteshed
(c) [Wheeler wasteshed] Wallowa wasteshed

(11) In the following wastesheds, the principal recyclable materials are those listed in Subsections (1)(b) through (d) of this rule:

(a) Gilliam wasteshed
(b) Wheeler wasteshed

[(9)] (12) (a) The opportunity to recycle shall be provided for each of the principal recyclable materials listed in (4) through [(8)] (11) of this rule and for other materials which meet the statutory definition of recyclable material at specific locations where the opportunity to recycle is required.

(b) The opportunity to recycle is not required for any material which a recycling report, approved by the Department, demonstrates does not meet the definition of recyclable material for the specific location where the opportunity to recycle is required.

[(10)] (13) Between the time of the identification of the principal recyclable materials in these rules and the submittal of the recycling reports, the Department will work with affected persons in every wasteshed to assist in identifying materials contained on the principal recyclable material list which do not meet the statutory definition of recyclable material at some locations in the wasteshed where the opportunity to recycle is required.

[(11)] (14) Any affected person may request the Commission modify the list of principal recyclable material identified by the Commission or may request a variance under ORS 459.185.

[(12)] (15) The Department will at least annually review the principal recyclable material lists and will submit any proposed changes to the Commission.

OAR 340-60-045 is proposed to be amended as follows:

Standards for Recycling Reports

340-60-045

(1) The first recycling report shall be submitted to the Department not later than July 1, 1986 on forms supplied by the Department. Subsequent recycling reports shall be submitted to the Department not later than February 15, 1988 and each subsequent year on forms supplied by the Department.

(2) The recycling report shall include the following information:

(a) The materials which are recyclable at each disposal site and within the urban growth boundary of each city of 4,000 or more population or within the urban growth boundary established by a metropolitan service district, if there has been a change from the previous year;

(b) The manner in which recyclable material is [to be] collected or received, if there has been a change from the previous year;

(c) Proposed and approved alternative methods for the opportunity to recycle which are to be used in the wasteshed and justification for the alternative method, if there has been a change from the previous year;

(d) [Proposed Methods for providing the] Public education and promotion [program; and] activities in the preceding calendar year; and

(e) Other information necessary to describe changes from the preceding calendar year in the [proposed] programs for providing the opportunity to recycle.

(f) The number of recycling set-outs collected by each on-route collection program required by OAR 340-60-020 in January, April, July and October of the preceding calendar year.

(g) The amount of materials recycled in the preceding calendar year at each disposal site or more convenient location, by type of material collected.

(h) The amount of materials recycled in the previous calendar year by each on-route collection program required by OAR 340-60-020, or by an approved alternative method, by type of material collected.

(i) If a recycling program required by OAR 340-60-020 collects materials both on-route and at disposal sites or other recycling depots in such a way that it is impractical to separately report the amount of material recycled as required in (2)(g) and (h) above, then the total amount of material recycled and estimates of the amount of material recycled by the on-route collection program and at each disposal site or more convenient location shall be reported.

(3) The recycling report shall include attachments including but not limited to the following materials related to the opportunity to recycle:

(a) Copies of materials that are being used in the wasteshed as part of education and promotion,

(b) A copy of any new city or county collection service franchise, or any new amendment to a franchise, including rates under the franchise, which relates to recycling in areas required by OAR 340-60-020 to provide on-route collection of source separated recyclable materials, and

(c) Other attachments which demonstrate the [proposed] programs for providing the opportunity to recycle.

(4) (a) The cities and counties and other affected persons in each wasteshed should [before July 1, 1985]:

(A) Jointly identify a person as representative for that wasteshed to act as a contact between the affected persons in that wasteshed and the Department in matters relating to the recycling report.

(B) Inform the Department of the choice of a representative.

(b) The cities and counties and other affected persons in a wasteshed shall gather information from the affected persons in the wasteshed and compile that information into the recycling report.

[(5) (a) Prior to submitting the recycling report, it shall be made available to all cities and counties and other affected persons in the wasteshed for review.

(b) The recycling report shall include a certification from each county and city with a population of over 4,000 that it has reviewed the report.

(c) The recycling report shall be made available for public review and comment prior to submittal to the Department. Any public comments shall be submitted to the Department with the report.]

[(6)] (5) The Department shall review the recycling report to determine whether the opportunity to recycle [will be] is being provided to all persons in the wasteshed. The Department shall approve the recycling report if it determines that the report contains all the information required under this rule and the wasteshed [will]:

(a) [Provide] Is providing the opportunity to recycle, as defined in OAR 340-60-020, for:

(A) each material identified on the list of principal recyclable material for the wasteshed, as specified in OAR 340-60-030, or has demonstrated that at a specific location in the wasteshed a material on the list of the principal recyclable material is not a recyclable material for that specific location; and

(B) other materials which are recyclable material at specific locations where the opportunity to recycle is required;

(b) [Have] Has an effective public education and promotion program which meets the requirements of OAR 340-60-040.

OAR 340-61-062 is proposed to be amended as follows:

340-61-062 USED OIL RECYCLING SIGNS.

(1) Retail sellers of more than 500 gallons of lubrication or other oil annually in containers for use off premises shall post and maintain durable and legible signs, of design and content approved by the Department, at the point of sale or display. The sign shall contain information on the importance of proper collection and disposal of used oil, and the name, location and hours of a conveniently located used oil recycling depot.

(2) Signs will be provided upon request by the Department['s Recycling Information Office].

(3) Retail sellers wishing to print their own signs are required to provide the following for their signs:

(a) Oil Recycling logo;

(b) Information on the energy and environmental benefits gained by recycling used motor oil;

(c) [The Recycling Switchboard and the toll-free statewide number 1-800-452-7813;]

A telephone number where people can call to obtain more information on oil recycling depots and other oil recycling opportunities;

(d) Information on how to recycle used oil;

(e) Information on at least one conveniently located used oil recycling depot, or other oil recycling opportunity, i.e., name, location and hours of operation.

(f) Sign size which shall be no smaller than 11 inches in width and 14 inches in height.

(4) Above information is also available from the Department['s Recycling Information Office].

(5) The Department suggests that the following appear on the sign, "Conserve Energy - Recycle Used Motor Oil," in at least inch-high letters.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Rules to Identify Yard Debris as a Principal Recyclable Material in the Portland, Multnomah, Washington, Clackamas and West Linn Wastesheds

Date Prepared: 11/28/86
Hearing Dates: 1/28/87
Comments Due: 1/30/87

WHO IS AFFECTED: Owners and operators of solid waste collection and disposal businesses. Operators of yard maintenance services. Operators of yard debris processing facilities. Local governments. The public who generate yard debris. Individuals involved in the implementation of the Oregon Recycling Opportunity Act (ORS 459.005 to 459.285) within Washington, Clackamas, and Multnomah Counties.

WHAT IS PROPOSED: The Department proposes to amend OAR 340-60-010 and 030 to identify yard debris as a principal recyclable material, initiating a process for the collection of source separated yard debris from generators.

WHAT ARE THE HIGHLIGHTS: If yard debris is identified as a principal recyclable material, then it would have to be given consideration as to whether it meets the definition of "Recyclable Material" at each location where the opportunity to recycle is required. Each disposal site in the affected wastesheds would have to provide a place for collecting source separated yard debris or show that it does not meet the definition of "Recyclable Material" at that location. On-route collection programs for source separated yard debris would have to be developed within the urban growth boundary of Canby and the urban growth boundary set by the Metropolitan Service District unless it can be shown that yard debris does not meet the definition of "Recyclable Material." An alternative method for providing the opportunity to recycle yard debris could be proposed. It would be at the discretion of local governments as to who would provide the collection service and how costs or saving would be allocated.

HOW TO COMMENT: A public hearing will be held before a hearings officer at:

3:00 p.m. and 7:00 p.m.
Wednesday, January 28, 1987
Room C - 2nd Floor
Portland Building
1120 S.W. 5th Street
Portland, Oregon

811 S.W. 6th Avenue
Portland, OR 97204

11/1/86

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.

(over)

Written or oral comments can be presented at the hearing. Written comments can also be sent to Bill Bree, Hazardous and Solid Waste Division, Department of Environmental Quality, 811 S.W. 6th Portland, OR 97204, but must be received no later than 5:00 p.m., Friday, January 30, 1987.

Copies of the complete proposed rule package may be obtained from the DEQ Hazardous and Solid Waste Division in Portland (811 S.W. 6th). For further information contact Bill Bree at 229-6975.

WHAT IS THE NEXT STEP:

The Environmental Quality Commission may adopt rule amendments identical to the ones proposed, adopt modified amendments as a result of testimony received or may decline to amend the rule. The Commission will consider the proposed rule amendments at its meeting on March 13, 1987.

YB5173.P

Agenda Item D
12/12/86 EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROPOSED REVISION OF RULES RELATING TO RECYCLING

NOTICE OF PUBLIC HEARING

Date Prepared: 11/19/86
Hearing Date: January 21, 1987
Comments Due: January 26, 1987

WHO IS AFFECTED: Wasteshed representatives, on-route recycling collectors, disposal site operators, local governments and others involved in implementation of the Recycling Opportunity Act, and stores selling motor oil.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend OAR 340-60 and 340-61 to require annual submittal of recycling reports, amend the list of principal recyclable materials, and change the telephone number to be placed on used oil recycling signs.

WHAT ARE THE HIGHLIGHTS:

1. Requires wastesheds to submit annual recycling reports with updated reports with updated information on:

   - materials which are recyclable and manner in which they are collected or received
   - volumes of materials recycled
   - participation rates for on-route recycling collection programs
   - education and promotion efforts

2. Deletes requirements for public review and local government certification prior to submittal of the report.

3. Deletes material from the list of principal recyclable materials for the following wastesheds:

Columbia	Morrow
Gilliam	Wallowa
Milton-Freewater	Wheeler

   Adds aluminum to the list of principal recyclable materials for the Malheur wasteshed.

4. Modifies the information required on signs posted in retail stores that recycle used oil.

811 S.W. 6th Avenue
Portland, OR 97204

11/1/86

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.

HOW TO COMMENT:

Copies of the complete proposed rule packet may be obtained from the Hazardous and Solid Waste Division in Portland (811 S. W. 6th Avenue) or the regional office nearest you. Call 229-5913 for a packet. For further information contact Peter Spendelow at 229-5253.

A public hearing will be held before a hearings officer at:

(Time) 3:00 p.m. and 7:00 p.m.
(Date) Wednesday, January 21, 1987
(Place) Portland Building, Meeting Room C
1120 S. W. Fifth Avenue, Portland

Oral and written comments will be accepted at the public hearing. Written comments may be sent to Peter Spendelow, DEQ Hazardous and Division, 811 S. W. 6th Avenue, Portland, OR 97204, but must be received by no later than January 26, 1987.

WHAT IS THE NEXT STEP:

After public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The Commission's deliberation should occur on March 13, 1987 as part of the agenda of a regularly scheduled Commission meeting.

RULEMAKING STATEMENTS

for

Proposed Revision of Rules Relating to Recycling

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 340-60-045, (Standards for Recycling Reports), OAR 340-60-010, (Definitions), OAR 340-60-030, (Principal Recyclable Material), and OAR 340-61-062, (Oil Recycling Signs). It is proposed under authority of ORS 459.165 to 459.200 and ORS 468.862.

Need for the Rule

The Department's rules do not require any reporting after July 1, 1986 about implementation of the opportunity to recycle required by the Recycling Opportunity Act. The intent of the Act is to increase the number of people recycling and the volumes of materials recycled. In order to monitor compliance with the Act and effectiveness of the programs,

it is necessary to amend OAR 340-60-045 and OAR 340-60-010 to require regular submittal of data on the materials which are recyclable and the manner in which recyclable material is collected or received, the volumes of materials recycled, the number of setouts by participants in on-route collection programs, and education and promotion efforts.

The rule amending the lists of principal recyclable material (OAR 340-60-030) is necessary so that the materials listed will conform with the definition in OAR 340-60-010 of principal recyclable material. The rule amending the oil recycling sign rule is necessary because a telephone number that is required to be printed on these signs is now not functional.

Principal Documents Relied Upon

1. Recycling Opportunity Act, ORS 459.165 to 459.200.

2. Used Oil Recycling Act, ORS 468.850 to 468.871.

3. Rules for the Implementation of the Recycling Opportunity Act, OAR 340-60-005 to 340-60-085.

4. Oil Recycling Sign Rule, OAR 340-61-062.

FISCAL AND ECONOMIC IMPACT STATEMENT:

The proposed rule requiring annual recycling reports (OAR 340-60-045) would have a moderate fiscal impact on the affected persons in that it contains a new requirement for recordkeeping on volumes of material recycled and recycling setout data, and for submittal of recycling information to the Department on an annual basis. Many of the affected persons are small businesses involved in on-route collection and recycling depot operation. Many of the recycling programs already collect the information required in the proposed rule. The proposed rule would standardize the method of data collection to enable the Department to analyze the effectiveness of the various programs. No fiscal impact is anticipated for the other proposed rule changes.

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 provide for recycling of solid waste in a manner that encourages the reduction, recovery and recycling of material which would otherwise be solid waste, and thereby provide protection for air, water and land resource quality.

With regard to Goal 11 (public facilities and services), the rules provide for solid waste disposal needs by promoting waste reduction at the point of generation through beneficial use and recycling. The rules also intend to assure that current and long-range waste disposal needs will be reduced by the provision of the opportunity to recycle.

The rules do not appear to conflict with other goals.

Public comment on any land use issue involved is welcome and may be submitted in the same 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.

LP:m
SM387.E

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item E, December 12, 1986, EQC Meeting

Proposed Adoption of the Slash Burning Smoke Management Plan Revisions as an Amendment to the State Implementation Plan (OAR 340-20-047)

Background

In November, 1984, the Commission directed staff to meet with the Oregon State Department of Forestry (OSDF) and other agencies to review, update, and improve the Smoke Management Plan (SMP) for prescribed forest land (slash) burning. Such a review was considered timely because the SMP had not been formally reviewed since its adoption in 1972 and parallel efforts were getting underway to develop strategies for protection of visibility in Class I areas.

Oregon law (ORS 477.515) requires that the State Forester and the Department of Environmental Quality (DEQ) approve a plan for managing smoke in areas they designate. The State Forester has promulgated rules to administer the plan (OAR 629-43-043 Smoke Management Plan) with the help of written procedures called a Directive (1-1-3-411 Operational Details for the Oregon Smoke Management Plan).

A task force was appointed to review the SMP, co-chaired by OSDF and DEQ staff and including representatives from the U.S. Forest Service, Bureau of Land Management, Bureau of Indian Affairs, and private forest industry. The task force produced revisions to the SMP rules and a completely revised Directive (1-4-1-601), which were subsequently amended to incorporate provisions specifically related to visibility protection in Class I areas.

The revised SMP and Directive were presented to the Commission (Agenda Item E, June 13, 1986, EQC Meeting) and authorized for public hearings to be held jointly with OSDF in conjunction with hearings on the proposed

Visibility Protection Plan (Agenda Item F, June 13, 1986, EQC Meeting). Attachment 1 summarizes the public testimony received.

A discussion of key testimony and a proposal to adopt the revised SMP and Directive were presented to the Commission (Agenda Item D, October 24, 1986, EQC meeting). Upon consideration, the Commission did not approve adoption, noting the following concerns: 1) The "Objective" statement in the SMP rule should include some reference to public health protection and should contain a provision encouraging reductions in slash burning emissions, and 2) the "Assumptions" listed in the Directive should either be eliminated or revised to substantiate statements referring to the disease and wildfire control benefits of slash burning.

The Commission directed staff to discuss these changes with OSDF and requested that adoption of the revised SMP and Directive be reconsidered at its December 12, 1986 meeting.

Summary of October 24, 1986 Public Comment

Kathy Williams, Coastal Coalition Against Pesticides, stated her concerns about the health effects of prescribed burning smoke, particularly the potential for toxic emissions from herbicide-treated units. She suggested that results from recent air sampling near slash burns showed high particulate loadings and that this new information should be considered by the Commission.

Ann Wheeler-Bartol, Oregon Environmental Council, commented on a number of issues, many of which were presented during the public hearings. Her comments focused on the validity of the SMP Directive assumptions, the need to specify a timeline for development of PSD limits for prescribed forest burning, issues related to the ability of the SMP to protect public health and the need to clarify the role of the public in future revisions to the SMP. She also suggested clarifying language for portions of the SMP Plan.

Dave Jessup of the Oregon Forest Industries Council (OFIC) addressed comments made by the two above speakers and suggested that the Department commit available resources to find ways to reduce emissions from slash burning and resolve the public health effects issue. Mr. Jessup also recommended that the Department carefully assess the resources needed to evaluate the newly defined wilderness areas.

Discussion on Public Comments

In comments to the Commission, Kathy Williams cited recent particulate mass measurements near slash burns as cause for public health concern. Her reference was to the Department's Field and Slash Burning Organic Air Toxics Study in which air samples are being collected within and very near (less than 50 feet) slash burning. In addition, three samples have been taken at distances of 2.5 to 8 miles.

The purpose of this sampling program is to provide source samples suitable for laboratory analysis of toxic air contaminants. These samples are not suitable for comparison to the existing or proposed ambient air quality standards. It should be noted that to establish a violation of the ambient particulate standards requires that the 24-hour level exceed the standard level more then once per year. Measurements taken at distance of 10 to 50 feet from the fires indicate that very high, short-term particulate concentrations do occur. The samples taken at greater distances from the fires revealed significantly lower concentrations. Further data is needed and will become available from studies being conducted in the State of Washington to determine the potential of exceeding Federal and State air quality standards on residential property adjacent to burns.

The preliminary results from the Field and Slash Burning Air Toxics program should not, in the Department's judgment, be interpreted as evidence that smoke from prescribed burning is a threat to public health since the measured high concentrations were in very close proximity to the fires and have not been shown to be representative of pollutant concentrations to which the public is exposed. Further evaluation of these public health issues needs to be based on results from on-going Department and EPA health effects research studies.

SMP Rule Development

In response to comments made by the Oregon Environmental Council and at the direction of the Commission, Department and OSDF staff have met and reached agreement on the SMP objective statement and Directive assumptions. The proposed SMP objective statement has been revised to include protection of public health and reduction of emissions (Attachment 2) as follows:

> "Objective: to prevent smoke resulting from burning on forest lands from being carried to or accumulating in designated areas. (Exhibit 2) or other areas sensitive to smoke and to provide maximum opportunity for essential forest land burning while minimizing emissions; to coordinate with other state smoke management programs; to conform with state and federal air quality and visibility requirements; to protect public health; and to encourage emission reductions".

The Directive assumptions have been deleted entirely (Attachment 3).

The new SMP Directive Appendices (1,2,3 and 4) proposed for adoption have been reviewed with respect to the current Appendices to determine if any significant differences are found between the two documents. With the exception of the fuel consumption procedures and calculations (Directives Appendix 4), no other significant differences were found. Since the method of calculating slash fuel consumption may be argued to affect the stringency of the SMP, the Department proposes to continue to utilize the current methodology while including the new procedure on an experimental basis. Therefore, no public hearings are necessary.

The Department and OSDF will, over the next year, be evaluating the experimental fuel consumption and emission calculation procedures. If significant improvements in the accuracy of the emission estimates will

as expected be realized, the Department will request authorization for public hearings to formally adopt the experimental methods as the standard calculation method of the SMP directive.

Summation

1. At the direction of the Commission, Department staff met with the Oregon State Department of Forestry (OSDF), other land management agencies, and the forest industry to review the rules and guidelines governing slash burning.

2. Proposed revisions to the Smoke Management Plan and Directive, tentatively endorsed by both Departments, were presented to the Commission and authorized for public hearing on June 13, 1986. Joint public hearings with OSDF (in conjunction with hearings on the Visibility Protection Plan) were held in August 1986 at five locations, resulting in testimony from 235 persons.

3. Key testimony was discussed and a proposal to adopt the revised SMP and Directive was presented to the Commission on October 24, 1986. The Commission did not adopt the proposed SMP and Directive due to concerns about the content of the SMP rule "Objective" statement and the "Assumptions" section in the Directive.

4. The Department, after consultation with OSDF, has recommended revision of the SMP "Objective" statement to explicitly include protection of public health and emission reductions, and deletion of the "Assumptions" section of the Directive.

5. The SMP Directive Appendices proposed for adoption have been compared to the Appendices distributed during the public hearing process. No substantiate changes have been found that would effect the stringency of the program. New, experimental methods for calculating fuel consumption and emissions have been incorporated into Appendix 4 to allow the Department and OSDF to evaluate the new methodology.

Director's Recommendations

Based on the above summation, it is recommended that the Commission adopt the revised Smoke Management Plan and Directive as an amendment to the State Implementation Plan (OAR 340-20-047).

Fred Hansen

Attachments:

1. Hearings Officer's Report
2. Proposed Smoke Management Plan Administrative Rule (OAR 629-43-043)
3. Proposed Directive 1-4-1-601 Operational Guidance for the Oregon Smoke Management Program
4. Directive 1-1-3-411 Operational Details for the Oregon Smoke Management Plan

Sean O'Connell:a
AA5758
686-7837
November 24, 1986

Attachment 1
Agenda Item E
December 12,1986
EQC Meeting

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Environmental Quality Commission DATE: September 16, 1986

FROM: John Core, DEQ Hearings Officer
William Hughes, DOF Hearings Officer

SUBJECT: Report for Hearings Held August 5, 7, 11, 13, and 15, 1986

Proposed Revisions to the State Air Quality Implementation Plan (OAR 340-20-047) to Address Visibility Protection in Class I Areas and Proposed Revisions to the State of Oregon Department of Forestry Smoke Management Plan (OAR 629-43-043).

Summary of Procedure

Joint hearings conducted by the Department of Environmental Quality and the Department of Forestry were held to receive public comment on the proposed Visibility Protection and Smoke Management (SMP) plans. Written and oral testimony was received from 235 persons during five public hearing conducted August 5th (Portland), 7th (Springfield),11th (Bend), 13th (Medford) and 15th (Newport). John Core, Senior Environmental Analyst, Air Quality Division, Department of Environmental Quality and William Hughes, Department of Forestry presided at all hearings. A total of 198 persons attended the five hearings.

Summary of Testimony

Comment on the proposed rules can be best organized by summarizing the four positions brought out in the testimony; (1) those in support of the proposed rules, (2) those opposed to the rules as too restrictive to the forest land managers; (3) those opposed because the rules are not sufficiently protective of Class I Area visibility or public health and (4) those that held no specific position on the proposed rules but wished to comment on specific elements of the proposed rules. Forty-nine percent of those commenting on the rules supported adoption as proposed, 32 % opposed adoption and 19 % held no specific position on rule adoption. Of those that oppose adoption, 60 % felt that they would place severe restrictions on the forest land managers ability to burn slash and 40 % opposed the rules feeling that did not offer sufficient visibility and/or public health protection. The position of each of these groups is summarized below. A listing of all persons submitting comment is attached. Copies of the written testimony are on file with the Department of Environmental Quality and the Department of Forestry.

Summary Testimony in Support Of The Proposed Rules

Those in support of rule adoption include the U.S.D.A. Forest Service, the National Park Service, Bureau of Land Management, the Oregon Seed Council, Oregon Forest Industries Council, Lane Regional Air Pollution Control Authority, Union County Seed Growers and numerous other forest product industry groups and public members. Most of those supporting rule adoption did so with reservation, noting serious concerns on the impact of the rules on the ability of forest land managers to burn slash and sustain forest productivity at an acceptable cost. Although the principal agencies affected by these rules (Forest Service, BLM and Oregon Forest Industries) submitted lengthy testimony outlining concerns and changes they would prefer to see in the rules, they support adoption in view of the 3 year limitation on the Visibility Protection Plan and in the belief that the proposed rules represent the best compromise that could be reached following an extended period of study and negotiation.

Summary Testimony In Opposition As Too Restrictive

Those opposed to the proposed rules include numerous forest products industries, small woodland owners and a segment of the public. These groups feel that forest slash burning, as administered under the current Smoke Management Plan, is already too restrictive, too costly to the forest land manager and will result in reduced forest productivity resulting in major losses in forestry jobs. The testimony focuses on the importance of forest prescribed burning to the industry, the lack of alternatives to burning and the cumulative effects of spotted owl protection, limitations on the use of herbicides, protection of riparian zones and smoke management in reducing necessary forestry burning. Concern was expressed that resultant buildup of unburned slash areas could become a hazard for future major wildfires. Many feel that the proposed rules are unnecessary, overly restrictive or unreasonable.

Summary Testimony In Opposition As Insufficiently Restrictive

Those opposing the rules as not providing enough protection of Class I Area visibility and/or public health include the Oregon Environmental Council, the American Lung Association, the Oregon Natural Resource Council, Sierra Club of Oregon, Coastal Citizens Against Pesticides, other environmental groups and a segment of the public. Testimony relative to visibility protection centers on (a) extension of the protection period from the summer months to the entire year, (b) protection of all Oregon wilderness lands under the rule (the 22 new wilderness areas designated in the 1984 Oregon Wilderness Bill are not currently Class I Areas), (c) designation of all Class I Areas as "Smoke Sensitive" in the SMP, (d) deletion of the hardwood conversion exemption and (e) changes in the "emergency clause" to tighten definition of terms. Eighteen of the 29 comments in this group were concerned about health effects caused by prescribed forestry burning and/or health effects caused by the burning of forest residues that had been treated with herbicides. Testimony relative to the Department of

Forestry's SMP noted a lack of enforcement provisions in the SMP rule, need to include the Directives in the rule and extension of the SMP throughout the state.

Summary Of Other Testimony

Numerous comments were received from the forest products and public sectors regarding specific elements of the proposed rules, but did not indicate overall support or opposition. Many of these comments noted the necessity to continue forest prescribed burning and the importance of the forest products industry to Oregon's economy. Others were concerned with nuisance or health effects related to field and prescribed burning smoke.

Summary Of Key Issues

The following summarizes key issues raised in the hearing testimony. Because of the volume of comment received, only the principal issues are summarized here.

1. Cost/Benefit Study

DEQ, during development of the Visibility Protection Plan, commissioned a study of the cost of forest prescribed burning control alternatives and visibility/health benefits likely to result from implementation of the alternatives. Results of the cost/benefit study were a primary focus of comment. Forest land managers felt that the study dramatically underestimated costs to the industry, was significantly flawed in it's estimate of visibility benefits and seriously underestimated costs associated with the carryover of unburned acreage to the next year. Opponents to burning, however, feel that the visibility benefits reported are greatly underestimated since the study did not include benefits from reductions in burning related to wildlife habitat, water quality and forest productivity. Benefits to the public living in urban areas outside of the Willamette Valley were also not included in the analysis.

2. Summer Burning Prohibition

Many forest land managers commented that the objectives of the Visibility Protection Plan would be better served through a program to apply smoke management, rather than prohibit burning, during the July 4-Labor Day period. Citing the prohibition as "unnecessarily restrictive", comment was made that such a prohibition seriously affects scheduling flexibility and increases costs while stopping burning in areas (Mt. Hood to Mt. Jefferson) where smoke can be easily kept out of Class I Areas using smoke management methods.

3. Coastal Burning Smoke Management

Comment from forest land managers note concern that restrictions on coastal burning designed to protect Class I Areas are of questionable value as

these lands are 75 miles away. A better technical demonstration of the contribution of coastal burning smoke to Class I Area visibility needs to be made before additional restrictions are placed on coastal burning. The 2-day upper level wind forecasting requirement is likely not possible with any degree of reliability.

4. Health Effect Caused By Forest Prescribed Burning Smoke.

Serious concern was voiced by 18 persons that prescribed burning smoke, especially smoke that is emitted from slash units that had previously been treated with herbicides, is a major public health problem. Testimony was offered that the burning of herbicide-treated units results in exposure of the public to toxic pollutants, including dioxin and herbicide products of combustion. Several demanded a stop to prescribed forest burning, opposing the proposed rules as not protective of public health. Other technical testimony was received that there was no public health problem and that emissions from herbicide-treated units did not represent a health risk.

5. Scope of the Visibility Protection Plan

Objection was expressed that the proposed protection plan does not include the 22 new wilderness areas created by the 1984 Congress and that there was no DEQ commitment to begin the process to redesignate these land to Class I status-thereby including them under the Visibility Protection Plan. Additionally, not all Oregon Class I lands are set aside as "Smoke Sensitive" areas nor does the Plan protect Class I Areas in eastern Oregon (Eagle Cap and Strawberry Mountain Wilderness Areas). Further, the Plan protects visibility during only the summer months rather than year around. Many felt that the "Emergency Clause" provisions of the Plan are vaguely written and that the exemption for hardwood conversion burning should be deleted.

6. Dept. of Forestry Smoke Management Plan Deficiencies

Considerable testimony was offered that there are no enforcement provisions within the SMP rule (only in the Directives) and that the "heart" of the SMP is found in the Directives which are only advisory in nature. Further, since the Directives can be changed by the State Forester with no public input, the entire SMP (Rule and Directives) should be promulgated as an administrative rule. Because of these factors, many felt that the SMP clearly violates ORS 477.515(3)(b) which requires the State Forester to promulgate SMP rules. Others felt that the objectives of the SMP "to maximize the opportunity for forest land burning" are contradictory and objected to the purpose of the SMP ("simply moving smoke around") rather than making emission reductions.

7. Field Burning Provisions of the Visibility Plan

Although a great deal of support for the Willamette Valley field burning provisions of the Plan was offered by the Oregon Seed Council and the public sector, the Council has requested that an "emergency" clause permitting weekend burning during the July 4-Labor Day period be included in the Plan. Under this clause, burning would be permitted in the event that unusual weather conditions have prohibited accomplishment of a stated number of acres by mid-August, paralleling the slash burning "emergency" clause for forestry burning. Others have commented that the agricultural field burning throughout the state should be covered by the Plan to assure visibility protection in Eastern Oregon Class I Areas.

8. Other Issues

Comment has been received that (a) the visibility monitoring program is inadequate to identify coastal prescribed burning smoke impacts within the Cascade wilderness areas; (b) national historical areas (e.g.,Jacksonville) and National Monuments (e.g. Oregon Caves) must be protected under the proposed rules; (c) all significant actions in which federal agencies participate must be covered by an Environmental Impact Statement as required under the National Environmental Policy Act (NEPA) and (d) the proposed rules are not consistent with Planning Goals 3 (Preservation of Agricultural Lands),4 (Conservation of Forest Lands), 5 (Consistency with County Comprehensive Plans) and 9 (Economy of the State).

Attachment
AS3832

VISIBILITY PROTECTION AND SMOKE MANAGEMENT PLAN HEARINGS SUMMARY

KEY: RULE POSITION: S=SUPPORTS, O=OPPOSED, N=NO POSITION
HEARING: P=PORTLAND, S=SPRINGFIELD, B=BEND, M=MEDFORD, N=NEWPORT
W=WRITTEN

NO.	NAME	AFFILIATION	CITY	HEARING
1	JIM SPACE	U.S.D.A.FOREST SERVICE	PORTLAND	P
2	DAVE NELSON	OREGON SEED COUNCIL	SALEM	P
3	JOE JACOBS	OREGON SEED COUNCIL	SALEM	P
4	AMOS FUNRUE	GRASS SEED FARMER	WILLAMETTE VAL.	P
5	HOWARD HOPKINS	WOODLAND OWNER	MILWAUKIE	P
6	JEAN MEDDAUGH	OR ENVIRON COUNC.	PORTLAND	P
7	JOHN McGHENEY	SIMPSON LUMBER	FOREST GROVE	P
8	ALTON CRONK	CONSULTANT	PORTLAND	P
9	ROBERT RIVERS	BLM	PORTLAND	P
10	ROBERT SMITH	PUBLIC	???	P
11	DAVE JESSUP	OR FOREST IND COUNC	SALEM	P
12	ALAN THAYER	CONSULTANT	VANCOUVER,WN	P
13	LOUIS REINOEHL	PUBLIC	PORTLAND	P
14	JEFF MADISON	CHAMPION INT'L	MAPLETON	S
15	DON FISHER	BOHEMIA LUMBER	EUGENE	S
16	BOB KINTIGH	WOODLAND OWNER	SPRINGFIELD	S
17	DON ARKELL	LANE REGIONAL APA	SPRINGFIELD	S
18	L.M. GIUSTINA	WOODLAND OWNER	EUGENE	S
19	PETER SORENSON	PUBLIC	EUGENE	S
20	BILL JOHNSON	PUBLIC (ENUF)	FOSTER	S
21	ROBERT MAGATHON	E. LANE FOREST PROT.	SPRINGFIELD	S
22	LEONARD GONDEK	ROSEBURG RESOURCES	ROSEBURG	S
23	DWIGHT COON	GRASS SEED GROWER	ALBANY	S
24	NAN COHEN	PUBLIC	EUGENE	S
25	RICHARD GOLD	PUBLIC	EUGENE	S
26	EARL BENEDICT	SKOOKUM REFOREST.	SPRINGFIELD	S
27	STEPHEN CAFFERATA	WEYERHAUSER	SPRINGFIELD	S
28	SUSANNA DEFAZIO	PUBLIC	WALTON	S
29	NORMA GRIER	NCAP	EUGENE	S
30	JUNE ANN LOCKLEAR	AM. LUNG ASSN.	EUGENE	S
31	WILLIAM McLOUGHLIN	BLM-ROSEBURG	ROSEBURG	S
32	D.J. VAN CISE	PUBLIC	BEND	B
33	JIM BLACK	DESCHUTES FARM BUREAU	BEND	B
34	DON TRYON	OR. NATURAL RES. COUN.	BEND	B
35	MARTIN LUGAS	KLAMATH FOREST PROTEC.	KLAMATH FALLS	B
36	RUSS ANDERSON	CHAMPION INT'L	BEND	B
37	OMER FULS	PUBLIC	BEND	B
38	SUE JOERGER	SO. OR TIMBER ASSN	MEDFORD	M
39	RUSS McKINLEY	MEDFORD C OF C	MEDFORD	M
40	DAVID McNABB	OSU COLL. FORESTRY	CORVALLIS	M
41	STEPHEN HOBBS	OSU COLL. FORESTRY	CORVALLIS	M
42	BRUNO MEYER	ROGUE FOREST PROT.ASSN	MEDFORD	M
43	KATHI JOY	ROSEBURG C OF C	ROSEBURG	M
44	RICK SOHN	LONE ROCK TIMBER	ROSEBURG	M
45	MYRA ERWIN	LEAGUE OF WOMEN VOTERS	MEDFORD	M
46	BILL CARLSON	HUSKY INDUSTRIES	WHITE CITY	M
47	TOM ESPINOSN	PUBLIC	MEDFORD	M

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NO.	NAME	AFFILIATION	CITY	HEARING
48	CHRISTOPHER BRATT	HEADWATERS,INC	MEDFORD	M
49	DAVID JONES	BLM-MEDFORD	MEDFORD	M
50	HARDY GLASCOCK	WOODLAND OWNER	CORVALLIS	[illegible]
51	JANE NEWTON	PUBLIC	PHILOMATH	N
52	JOHN ROLLIN	CHAMPION INT'L	MAPLETON	N
53	WILLIAM TRUAX	BOISE CASCADE	MONMOUTH	N
54	JOHN WASHBURN	TIMES MIRROR TIMBER	TILLAMOOK	N
55	LOCHA PITTS	PUBLIC	BANDON	N
56	LINDA STEWARD	TIMES MIRROR TIMBER	TILLAMOOK	N
57	SHANNON WHITE	TIMES MIRROR TIMBER	TOLEDO	N
58	RANDY HEREFORD	STARKER FORESTS	CORVALLIS	N
59	JOHN WALSTAD	OSU DEPT FORESTRY	CORVALLIS	N
60	LOGAN NORRIS	OSU DEPT FORESTRY	CORVALLIS	N
61	RANDY BECKER	PUBLIC	SEAL ROCK	N
62	FRANK DOST	OSU DEPT AG. CHEM.	CORVALLIS	N
63	BOB CRAIN	DOUGLAS CTY LAND DEPT.	ROSEBURG	N
64	DAVE JESSUP	OR.FOREST IND. COUNCIL	SALEM	N
65	ERIC BUNDY	CONSULTANT FORESTER	NEWPORT	N
66	LEE MILLER	MILLER TIMBER SERV.	NEWPORT	N
67	SUSAN SWIFT	PUBLIC	NEWPORT	N
68	PAUL MERRALL	PUBLIC	TIDEWATER	N
69	CAROL VAN STRUM	PUBLIC	TIDEWATER	N
70	MORRIS BERGMAN	WILLAMETTE INDUSTRIES	ALBANY	N
71	JIM DENISON	TIMES MIRROR TIMBER	TOLEDO	N
72	BUSTER KITTEL	PUBLIC	WALDPORT	N
73	KATHY WILLIAMS	PUBLIC (CCAP)	SEAL ROCK	N
74	DAVE PICKERING	PUBLIC (ONCAP)	LINCOLN CITY	N
75	SCOTT ASHCOM	OR. FARM BUREAU FED.	SALEM	N
76	DENNIS CREEL	HAMPTON TREE FARMS	WILLAMINA	N
77	ANN HARDY	PUBLIC	ROSE LODGE	N
78	MARGIE MORRISON	PUBLIC	ROSE LODGE	N
79	DOROTHY PATTERSON	PUBLIC	OTIS	N
80	DEBBIE PICKERING	PUBLIC	OTIS	N
81	RAY AYERS	REX TIMBER CO.	TOLEDO	N
82	STEPHEN TEDROW	PUBLIC	TIDEWATER	N
83	ROBERT RUBIN	PUBLIC	WALDPORT	N
84	DIANE GEORGE	PUBLIC	OREGON CITY	W
85	JACK & JUDY BOLING	PUBLIC	GRANTS PASS	W
86	CANDICE GUTH	PUBLIC	TOLEDO	W
87	ROBERT LOWERY	WILLAMETTE SEED CO.	ALBANY	W
88	DAN YOUNG	OR. REGION. CHERRY COMM	SALEM	W
89	???	KLAMATH CTY WEED CONTROL	KLAMATH FALLS	W
90	GREG LOBERG	NPI AG.SERVICE CORP.	SALEM	W
91	DANIEL GOLTZ	BURRILL LUMBER CO.	MEDFORD	W
92	THOMAS HAY	LONGVIEW FIBRE CO.	LONGVIEW, WN.	W
93	DON CLITHERO	ROSEBURG C OF C	ROSEBURG	W
94	CHARLES CHANDLER	CHANDLER HEREFORDS,INC	BAKER	W

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NO.	NAME	AFFILIATION	CITY	HEARING
95	JIM GEISINGER	WEST.FOREST IND. ASSN.	PORTLAND	W
96	STEVEN AKEHURST	ROSBORO LUMBER	SPRINGFIELD	W
97	MIKE QUIGLEY	PUBLIC	SUNRIVER	W
98	JOHN PERRY	INT'L PAPER CO.	VENETA	W
99	WILLIAM BRIGGLE	NATIONAL PARK SERVICE	SEATTLE,WN	W
100	JOHN HASSINGER	UNION CTY SEED GROWERS	???	W
101	BILL WEATHERFORD	UNION CTY SEED GROWERS	ELGIN	W
102	TONY PUCKETT	UNION CTY SEED GROWERS	???	W
103	MIKE GULGOW	UNION CTY SEED GROWERS	LA GRANDE	W
104	LUTHER SUTTE	UNION CTY SEED GROWERS	COVE	W
105	CRAIG NEOLATO	UNION CTY SEED GROWERS	???	W
106	RANDY GLEN	UNION CTY SEED GROWERS	???	W
107	EDWIN HOOFUAGLER	UNION CTY SEED GROWERS	???	W
108	CARL BERKLEL	UNION CTY SEED GROWERS	???	W
109	SYLVAN RASMUSSEN	UNION CTY SEED GROWERS	???	W
110	RIHEL RASMUSSNEN	UNION CTY SEED GROWERS	???	W
111	JOHN RAUN	UNION CTY SEED GROWERS	???	W
112	GEORGE REYES JR.	UNION CTY SEED GROWERS	???	W
113	GEORGE REYES	UNION CTY SEED GROWERS	???	W
114	DALE EISIMINGER	UNION CTY SEED GROWERS	???	W
115	KATHY BAYLINK	UNION CTY SEED GROWERS	SUMMERVILLE	W
116	WILLIAM HOWELL	UNION CTY SEED GROWERS	???	W
117	L.R. STARR	UNION CTY SEED GROWERS	???	W
118	STEVE MARKER	UNION CTY SEED GROWERS	???	W
119	RON WISTENIKA	UNION CTY SEED GROWERS	???	W
120	NAME ILLEGIBLE	UNION CTY SEED GROWERS	???	W
121	GARY HOBERG	PUBLIC	FLORENCE	W
122	RON GRAY	INTERNATIONAL PAPER	GARDINER	W
123	LIZ VAN LEUWEN	STATE REPRESENTATIVE	SALEM	S
124	HOWARD HOPKINS	LONGVIEW FIBRE CO.	VERNONIA	W
125	KEVIN MCMULLEN	PUBLIC	FLORENCE	W
126	SAMUEL DONOVAN	PUBLIC	???	W
127	SHASTA MCMULLEN	PUBLIC	FLORENCE	W
128	WANDA HOBERG	PUBLIC	FLORENCE	W
129	HOBE JONES	WILBUR-ELLIS CO.	PORTLAND	W
130	CAROL CURRY	PUBLIC	EUGENE	W
131	BRUCE ALBER	WILBUR-ELLIS	PORTLAND	W
132	GENEVIEVE SAGE	AMERICAN LUNG ASSN.	MEDFORD	W
133	MARK SWISHER	ROGUE VALLEY AUDUBON SOC.	TALENT	W
134	LEVERETTE CURTIS	PUBLIC	SPRINGFIELD	W
135	DAN SANDS	VALLEY CHEMICAL CO.	LAGRANDE	W
136	CURT HOWELL	MT. EMILY SEED, INC.	IMBLER	W
137	JAMES BUTLER	STAYTON CANNING CO.	STAYTON	W
138	THOM NELSON	HOOD RIVER GROWERS	ODELL	W
139	BRUNO MEYER	MEDFORD CORP.	MEDFORD	W
140	RONALD YOCKIM	DR JOHNSON LUMBER	RIDDLE	W
141	KURT MULLER	FORESTER	???	W

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NO.	NAME	AFFILIATION	CITY	HEARING
142	RON WEINHOLD	SUPERIOR TIMBER CO.	GLENDALE	W
143	EDWARD WALL	GREGORY FOREST PROD.	GLENDALE	W
144	JOHN&PHYLLIS STEWART	PUBLIC	SALEM	W
145	MR&MRS Wm SPARHIM	PUBLIC	BROWNSVILLE	W
146	LESLIE LEWIS	PUBLIC	???	W
147	ROSE DICKERSON	PUBLIC	SHEDD	W
148	JACK KALENA	FARMER	???	W
149	SAMUEL DONAVAN	PUBLIC	GRANTS PASS	W
150	ELMA JEAN CUTLER	PUBLIC	SWEET HOME	W
151	SHIRLEY DAVIS	PUBLIC	LEBANON	W
152	RICHARD MALPASS	OREGON GOLF COURSE ASSN	VANCOUVER,WN	W
153	DAVID SCHUDEL	HOLIDAY TREE FARM	CORVALLIS	W
154	MICHELLE BOUVIA	PUBLIC	ALBANY	W
155	DON HENDERSON	PUBLIC	DONALD	W
156	C. BALDWIN	PUBLIC	STAYTON	W
157	CAROL HANSEN	LANE CTY. COW BELLES	EUGENE	W
158	NEVEN&LAFONA JENSEN	JENSEN'S POLLED HEREFORDS	EUGENE	W
159	JERRY BOLLEN	WEYERHAUSER	SPRINGFIELD	W
160	VIRGINIA DAGG	LAGRANDE C OF C	LAGRANDE	W
161	JOHN MORTON	SHELL OIL CO.	ATHENA	W
162	LYNNE BURNHARDT	PUBLIC	DEXTER	W
163	STEVE GAPP	WESTERN FARM SERVICES	TANGENT	W
164	TOM THOMPSON	AGRICULTURAL CONSULTANT	PENDLETON	W
165	DAVID KEISER	KOGAP MANUFACTURING	MEDFORD	W
166	J. ALLAN BARKER	PUBLIC	STATE OF VA.	W
167	JAMES HILL JR.	PUBLIC	ARCH CAPE	W
168	DON BURLINGHAM	WOODBURN FERTILIZER	WOODBURN	W
169	CLIFF PARKER	LANDSCAPE SPRAY SERV.	AMITY	W
170	OASMIL HUMPHREY	PUBLIC	AUMSVILLE	W
171	DAVID DIETZ	OREGON.FOR FOOD & SHELTER	SALEM	W
172	ANN KLOKA	SIERRA CLUB	PORTLAND	W
173	DELBERT GLASER	GRASS SEED GROWER	???	W
174	STEVE MASTERS	BLUE MT. SEED,INC.	IMBLER	W
175	STEPHEN CAFFERATA	WEST.LANE FOREST PROT.ASSN	VENETA	W
176	ADELE NEWTON	LEAGUE OF WOMEN VOTERS	SALEM	W
177	RUSSELL McKINLEY	BOISE CASCADE	MEDFORD	W
178	BERT HOCKETT	SWANSON BROS. LUMBER CO.	NOTI	W
179	GENE&ROSEALE CLEMENS	PUBLIC	PORTLAND	W
180	HELEN SCHOTT	PUBLIC	McMINNVILLE	W
181	JAMES AGEE	NATIONAL PARK SERVICE	SEATTLE,WN	W
182	JEANNE&SCOTT FITTERER	PUBLIC	LAGRANDE	W
183	WALT SHEARARD	PUBLIC	REEDSPORT	W
184	JOHN CHARLES	OREGON ENVIRON COUNCIL	PORTLAND	W
185	DARLENE LIND	LIND ENTERPRISES	SHERWOOD	W
186	JODY PUPER	PUBLIC	JUNCTION CITY	W
187	KAY KING	PUBLIC	FLORENCE	W
188	JOHN THOMPSON	PUBLIC	???	W

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NO.	NAME	AFFILIATION	CITY	HEARING
189	GERALD GRUBER	INDUST. FOREST ASSN	EUGENE	W
190	CONNIE YEAKLEY	AMERICAN LUNG ASSN.	COVE	W
191	RICHARD BEEBY	CHAMPION INTERNATIONAL	ROSEBURG	W
192	ANNA BECHTEL	PUBLIC	???	W
193	PRISCILLA COE	PUBLIC	LAGRANDE	W
194	HAL ROSS	ODIN CORP	NEWPORT	W
195	DEAN PIHLSTROM	DEAN PIHLSTROM,INC.	NEWPORT	W
196	WILLIAM POWELL	UPPER-ROGUE INDEPENDENT	EAGLE POINT	W
197	DALE LEDYARD	INTERNATIONAL PAPER	GARDINER	W
198	ROB FRERES	FRERES LUMBER CO.	LYONS	W
199	CLIFFORD LANSDON JR	SUPERIOR LUMBER CO.	GLENDALE	W
200	CHLOE LARVIK	GRANDE RONDE RES. COUNCIL	LAGRANDE	W
201	WILSON BUMP	GRASS SEED GROWER	MONMOUTH	W
202	SANDRA DIEDRICH	COOS-CURRY COG	COOS BAY	W
203	JAMES PIERCE	PUBLIC	EUGENE	W
204	MRS TOM LAFOLLETT	PUBLIC	CANBY	W
205	KAREN VALLAD	OREGON WOMEN FOR TIMBER	SWEET HOME	W
206	CAROL CURRY	PUBLIC	EUGENE	W
207	WANDA HOBERG	PUBLIC	FLORENCE	W
208	JUANITA DAVIS	PUBLIC	CORVALLIS	W
209	ROBERT WATSON	SPAULDING & SONS	GRANTS PASS	W
210	NOLA MILLHOUSER	POLK SOIL & WATER CONSV.	DALLAS	W
211	PAUL RUDD	UNION CTY SEED GROWERS	???	W
212	SHIRLEY DAVIS	PUBLIC	LEBANON	W
213	CINDY PAYNE	PUBLIC	MAPLETON	W
214	ELVAN HUNTINGTON	PUBLIC	MAPLETON	W
215	DAN BORLAND	PUBLIC	VENETA	W
216	DEL PHELPS	PUBLIC	FLORENCE	W
217	ANNA MANISON	PUBLIC	MAPLETON	W
218	DIANE MILLER	PUBLIC	CORVALLIS	W
219	GILBERT WEATHERSPOON	UNION CTY SEED GROWERS	???	W
220	GEORGE ROYER	PUBLIC	IMBLER	W
221	DIANE MILLER	PUBLIC	CORVALLIS	W
222	GRANT&HELEN HENDERSON	UNION CTY SEED GROWERS	???	W
223	DON STARR	UNION CTY SEED GROWERS	???	W
224	RALPH RHODES	SKOOKUM REFORESTATION	SPRINGFILED	W
225	JUDY ROTONDI	PUBLIC	BEND	W
226	NANCY CHASE	PUBLIC	OTIS	W
227	HAROLD CHRISTIANSEN	PUBLIC	OTIS	W
228	HAL ROSS	ODIN CORP.	ELGIN	W
229	BERNARD HUG JR.	FARMER	ELGIN	W
230	H.WAYNE BOLLENBAUGH	PUBLIC	???	W
231	DELBERT&LOUISE COX	PUBLIC	ALBANY	W
232	MARTI KIMLER	PUBLIC	BEND	W
233	ALAN TRACY	SIERRA CLUB	BEND	W
234	TINA McGEARY	LEAGUE WOMEN VOTERS	BEND	W
235	EDWARD STYSKEL	PUBLIC	BEND	W

Attachment 2
Agenda Item E
December 12, 1986

FINAL DRAFT
11/21/86

SMOKE MANAGEMENT PLAN ADMINISTRATIVE RULE

(Including Visibility)

Reader Notes:
Underline-Rule Changes
Double Underline-Changes
Since 10-24-86 EQC Meeting

Smoke Management Plan

629-43-043 (1) Objective: To [keep] prevent smoke resulting from burning on forest lands from being carried to or accumulating in designated areas (exhibit 2) or other areas sensitive to smoke[.], and to provide maximum opportunity for essential forest land burning while minimizing emissions; to coordinate with other state smoke management programs; to conform with state and federal air quality and visibility requirements; to protect public health; and to encourage the reduction of emissions.

(2) Definitions:

(a) "Deep mixed layer" extends from the surface to 1,000 feet or more above the designated area ceiling.

(b) "Smoke drift away" occurs where projected smoke plume will not intersect a designated area boundary downwind from the fire.

(c) "Smoke drift toward" occurs when the projected smoke plume will intersect a designated area boundary downwind from the fire or when wind direction is indeterminate due to wind speed less than 5 mph at smoke vent height.

(d) "Smoke vent height" - level, in the vicinity of the fire, at which the smoke ceases to rise and moves horizontally with the wind at that level.

(e) "Stable layer of air" - a layer of air having a temperature lapse rate of less than dry adiabatic (approximately 5.5°F, per 1,000 feet) thereby retarding [either] upward [or downward] mixing of smoke.

(f) "Tons available fuel" - an estimate of the tons of fuel that will be consumed by fire at the given time and place. [Low volume is less than 75 tons per acre, medium volume 75 to 150 tons per acre, and high volume over 150 tons per acre.]

(g) "Residual smoke" - smoke produced after the initial fire has passed through the fuel.

(h) "Field administrator" - a forest officer or federal land administrator who has the direct responsibility for administering burning permits on a unit of forest land within the boundaries of an official fire district.

(i) "Restricted area" - that area delineated in Exhibit 2 for which permits to burn on forest land are required year round, pursuant to rule 629-43-041.

(j) "Designated area" - those areas delineated in Exhibit 2 as principal population centers.

(k) "Heavy use" - unusual concentrations of people using forest land for recreational purposes during holidays, special events.

(l) "Major recreation area" - areas of the state subjected to concentrations of people for recreational purposes.

(m) "State Forester" means the State Forester or delegated Department of Forestry employe representative.

(n) "Instructions" means the specific burn authorizations and weather discussions issued and disseminated as needed by the State Forester.

(o) "Smoke Management Plan" means the administrative rule approved by the State Forester and the Department of Environmental Quality and administered by the State Forester to control prescribed burning on forest lands.

(p) "Smoke Management Directive 1-4-1-601", as approved by the Department of Environmental Quality, is the Department of Forestry's operational guidance for administration of the Oregon Smoke Management Program.

(q) "Other Areas Sensitive to Smoke" are intended to consider specific recreation areas during periods of heavy use by the public such as coastal beaches on special holidays, federal mandatory Class I areas during peak summer use, special events. All Oregon and Washington Class I areas shall be considered as areas sensitive to smoke during the visibility protection period, defined in the Oregon Visibility Protection Plan, OAR 340-20-047, Sec. 5.2.

(3) Control:

(a) The State Forester is responsible for the coordination and control of the smoke management plan. The plan applies [statewide] to the restricted area set forth in Exhibit 2 with full interagency cooperation with the U.S.D.A., Forest Service, Bureau of Land Management, U. S. Fish and Wildlife Service, Bureau of Indian Affairs, private forest [industry] landowners, and the Department of Environmental Quality. The smoke

management plan, Department of Forestry Directive 1-4-1-601 and the Smoke Management instructions (and authorized variances) issued pursuant to the plan, shall be strictly complied with.

(b) Certain "designated areas" are established in consultation with the Environmental Quality Commission. [The major objective of smoke control efforts will be to keep smoke from forest land burning out of these designated areas.] Exhibit 2 delineates designated areas and specified ceilings.

(c) During periods of heavy use, major recreation areas in the state shall be provided the same consideration as "designated areas". Other areas sensitive to smoke shall be provided the same consideration as designated areas.

(d) The Smoke Management Plan shall be operated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I areas (OAR 340-20-047, Sec. 5.2).

(4) Administration:

(a) The State Forester, in developing instructions, and each field administrator issuing burning permits under this plan [will] shall manage the prescribed burning on forest land in connection with the management of other aspects of the environment in order to maintain a satisfactory atmospheric environment in designated areas (Exhibit 2). Likewise, this effort [may] shall be applied in special situations where local conditions warrant and that are not defined as designated areas but nevertheless are sensitive to smoke. The development of instructions and [A] accomplishment of burning will entail

consideration of air quality conditions and weather forecasts (including burning forecasts and plans of the Department of Environmental Quality and the Washington Department of Natural Resources), acreages involved, amounts of material to be burned, evaluation of potential smoke column vent height, direction and speed of smoke drift, residual smoke, mixing characteristics of the atmosphere, and distance from the designated area of each burning operation. [Designated areas are outlined and vertical extents or ceilings are indicated in Exhibit 2).]

(b) The State Forester and [E] each field administrator [will] shall evaluate downwind conditions prior to implementation of burning plans. When the State Forester or a field administrator determines that visibility in a designated area, or other area sensitive to smoke is already seriously reduced or would likely become so with additional burning, or upon notice from the State Forester through the Protection Division [of Fire Control], or upon notice from the State Forester following consultation with the Department of Environmental Quality that air in the entire state or portion thereof is, or would likely to become adversely affected by smoke, the affected field administrator [will] shall terminate burning. Upon termination, any burning already under way will be completed, residual burning will be mopped up as soon as practical, and no additional burning will be attempted until approval has been received from the State Forester.

(5) Reports: Field administrators [will] shall report daily at such times and in such manner as required by the State

Forester covering their daily burning operations. Any wildfire that has the potential for smoke input into a designated or smoke sensitive area [will] shall be reported immediately to the State Forester's office. The State Forester shall report to the Department of Environmental Quality each day on a timely basis its forecast, planned and accomplished burning, and smoke intrusions.

(6) Key to Smoke Drift Restrictions:

(a) Smoke drift away from designated area: No specific acreage limitation will be placed on prescribed burning when smoke drift is away from designated area. Burning should be done to best accomplish maximum vent height and to minimize nuisance effect on any segment of the public.

(b) Smoke drift toward designated area:

(A) Smoke plume height below designated area ceiling. Includes smoke that for reasons for fire intensity, location, or weather, will remain below the designated area ceiling. Also included are fires that vent into layers of air, regardless of elevation, that provide a downslope trajectory into a designated area:

(i) Upwind distance less than 10 miles outside designated areas. No new prescribed fires will be ignited.

(ii) Upwind distance 10-30 miles outside designated area boundary. Burning limited to 1,500 tons per 150,000 acres on any one day.

(iii) Upwind distances 30-60 miles outside designated area boundary. Burning limited to 3,000 tons per 150,000 acres on any one day.

(iv) Upwind distances more than 60 miles beyond designated area boundary. No acreage restriction unless otherwise advised by the Forester.

(B) Smoke will be mixed through the deep layer at the designated area. This section includes smoke that will be dispersed from the surface through a deep mixed layer when it reaches the designated area boundary:

(i) Upwind distance less than 10 miles from designated area boundary. Burning limited to 3,000 tons per 150,000 acres on any one day.

(ii) Upwind distance 10-30 miles from designated area boundary. Burning limited to 4,500 tons per 150,000 acres on any one day.

(iii) Upwind distances 30-60 miles outside designated area boundary. Burning limited to 9,000 tons per 150,000 acres on any one day.

(iv) Upwind distances more than 60 miles beyond designated area boundary. No acreage restriction unless othewise advised by the Forester.

(C) Smoke above a stable layer over the designated area. Smoke in this group will remain above the designated area, separated from it by a stable layer of air:

(i) Upwind distance less than 10 miles outside designated area. Burning limited to 6,000 tons per 150,000 acres on any one day.

(ii) Upwind distance 10-30 miles outside designated area. Burning limited to 9,000 tons per 150,000 acres on any one day.

(iii) Upwind distances 30-60 miles outside designated area. Burning limited to 18,000 tons per 150,000 acres on any one day.

(iv) Upwind distances more than 60 miles beyond designated area boundary. No acreage restriction unless otherwise advised by the Forester.

(D) Smoke vented into precipitation cloud system. When smoke can be vented to a height above the cloud base from which precipitation is falling, there will be no restrictions to burning[.], unless otherwise advised by the Forester.

(c) Changing conditions: When changing weather conditions, adverse to the Smoke Management objective, occur during burning operations, aggressive mop-up [will] shall be initiated as soon as practical[.] and no additional burning shall be initiated.

(7) Analysis and Evaluation: The State Forester [will] shall be responsible for the annual analysis and evaluation of [state-wide] burning operations under this plan. Copies of the summaries will be provided to all interested parties.

(8) The Department of Environmental Quality, in cooperation with the State Forester, federal land management agencies, and private forest landowners shall develop maximum annual and daily emission limits in accordance with federal PSD (Prevention of Significant Deterioration) regulations.

NOTE THIS EXHIBIT PROPOSED TO BE REPLACED IN ENTIRETY

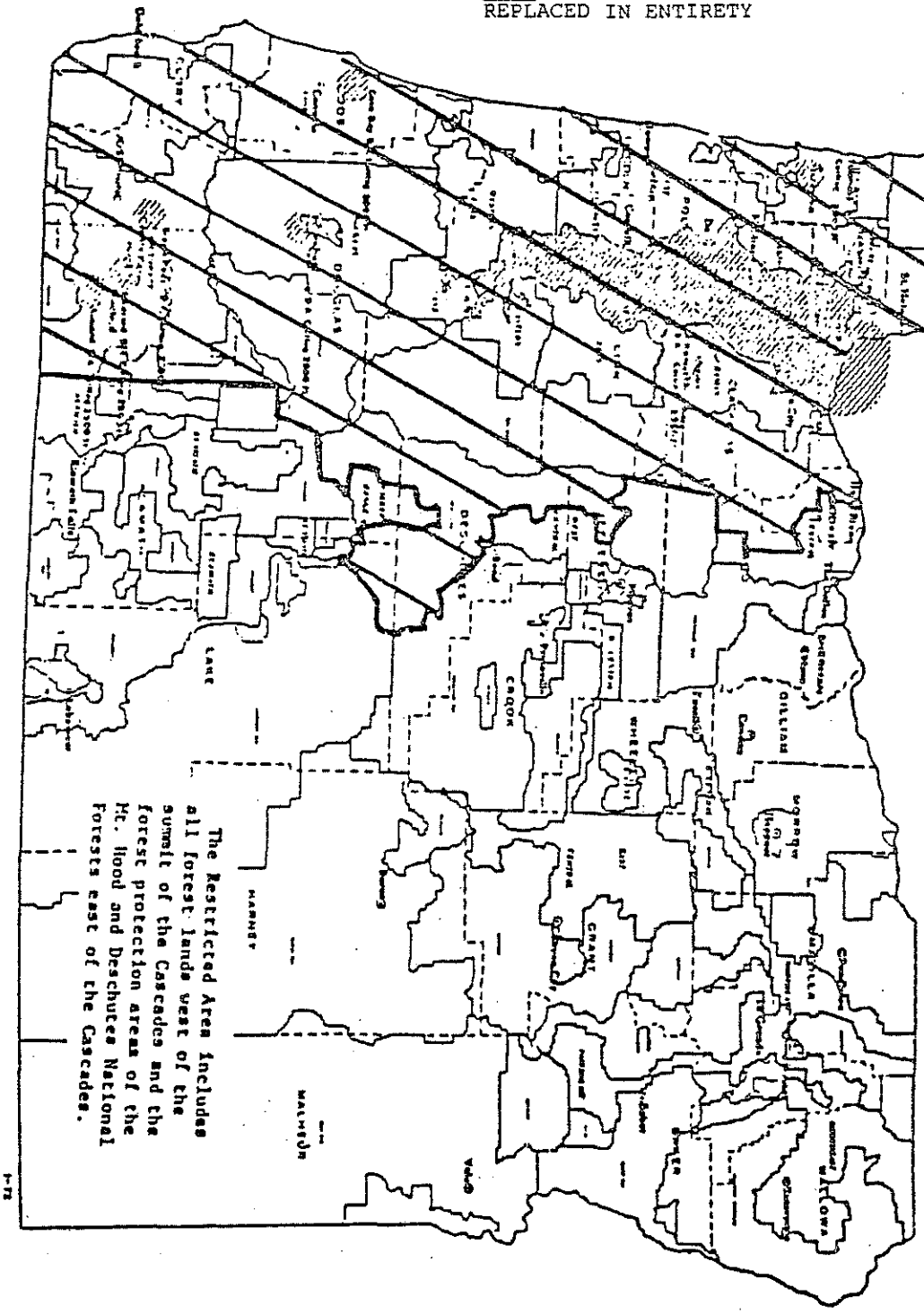
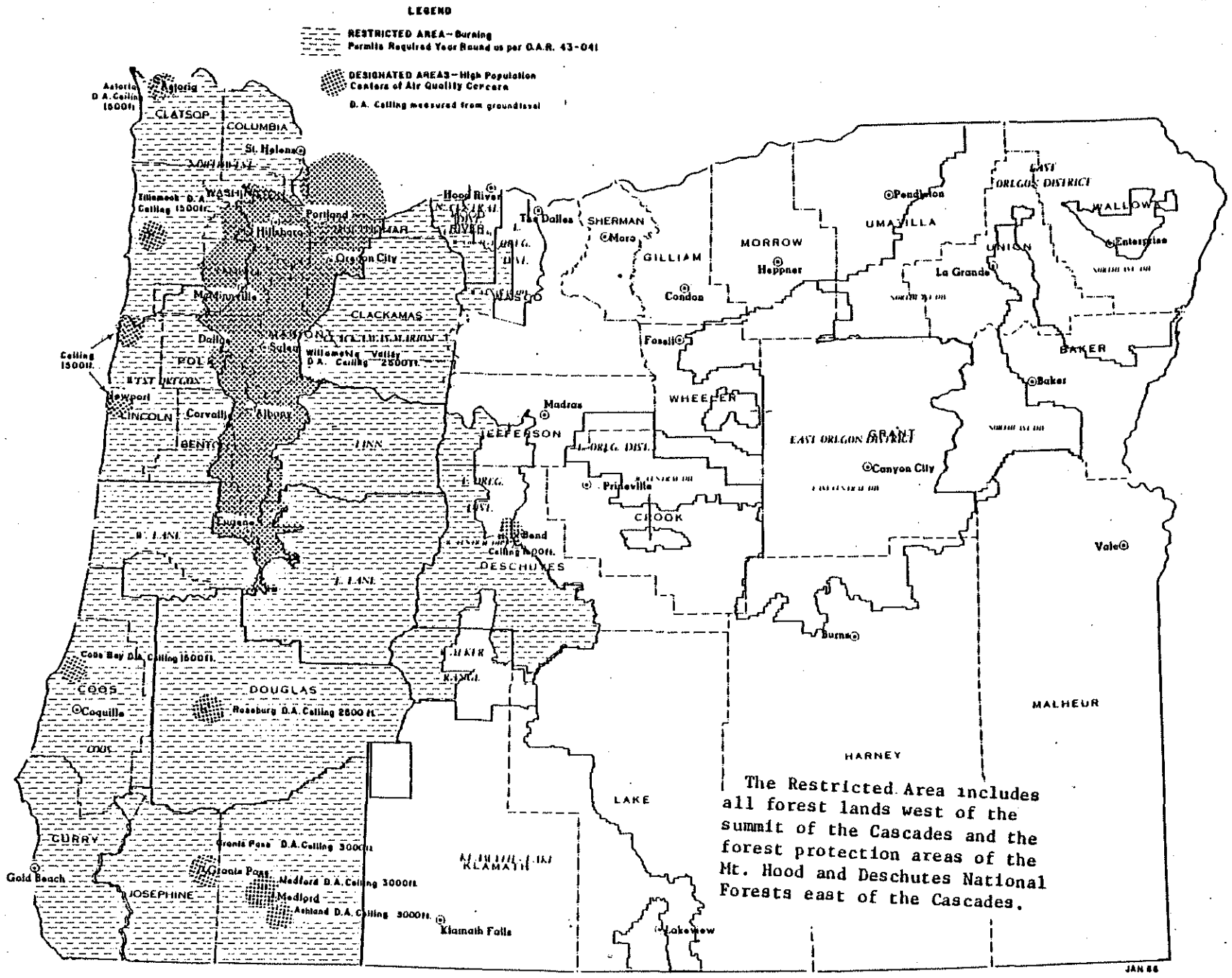


EXHIBIT 2
(629-43-043)


LEGEND
RESTRICTED AREA – Burning Permits Required Year Round as per O.A.R. 43-041
DESIGNATED AREAS – High Population Centers of Air Quality Concern
D. A. Ceiling measured from ground level
Astoria D.A. Ceiling 1500 ft.
CLATSOP
COLUMBIA
St. Helens
Tillamook D.A. Ceiling 1500 ft.
Portland
Hillsboro
Oregon City
Hood River
The Dalles
SHERMAN
Moro
GILLIAM
MORROW
Heppner
Pendleton
UMATILLA
EAST OREGON DISTRICT
WALLOWA
Enterprise
UNION
La Grande
McMinnville
CLACKAMAS
Dallas
Salem
Willamette Valley D.A. Ceiling 2500 ft.
Ceiling 1500 ft.
Newport
LINCOLN
Corvallis
Albany
Condon
Fossil
BAKER
Baker
WHEELER
Madras
JEFFERSON
GRANT
Canyon City
Prineville
CROOK
Eugene
LANE
Bend
Ceiling 10000 ft.
DESCHUTES
Vale
Burns
Coos Bay D.A. Ceiling 1500 ft.
COOS
Coquille
DOUGLAS
Roseburg D.A. Ceiling 2500 ft.
MALHEUR
HARNEY
CURRY
Gold Beach
Grants Pass D.A. Ceiling 3000 ft.
Medford D.A. Ceiling 3000 ft.
Medford
Ashland D.A. Ceiling 3000 ft.
JOSEPHINE
Klamath Falls
LAKE
Lakeview
The Restricted Area includes all forest lands west of the summit of the Cascades and the forest protection areas of the Mt. Hood and Deschutes National Forests east of the Cascades.
JAN 86

OPERATIONAL GUIDANCE FOR THE OREGON SMOKE MANAGEMENT PROGRAM (Including Visibility)

PURPOSE. This directive sets forth the operational guidance for the Oregon Smoke Management Program. Contained herein are the objective, concept of operations, organizational guidance, and instructions for administration of the Oregon Smoke Management program.

SCOPE.

The Smoke Management Directive is:

1. Developed in cooperation with Federal and State agencies, landowners, and organizations which will be affected by the Smoke Management Program.

2. Jointly approved by the State Forester and (the Director of) DEQ.

3. Applicable to all prescribed burning on forests in western Oregon and selected portions of central Oregon as defined on Exhibit 2, OAR 629-43-043, Smoke Management Program.

SITUATION.

1. Authority:

ORS 477.515(3)(a) states:

> "For the purpose of maintaining air quality, the State Forester and the Department of Environmental Quality shall approve a plan for the purpose of managing smoke in areas they shall designate."

ORS 477.515(3)(b) states:

> "The State Forester shall promulgate rules to carry out provisions of the Smoke Management Plan..."

ORS 468.275 through 468.355 provides authority to DEQ to establish air quality standards including emissions standards for the entire state or an area of the state.

ORS 468.450 through 468.495 gives DEQ the authority to regulate field burning.

2. Under this authority:

a. The State Forester:

(1) Coordinates the administration and operation of the plan.

(2) Issues additional restrictions on prescribed burning in situations where the air quality of the entire state or any part thereof is, or would likely become, adversely affected by smoke.

(3) Issues daily burning instructions when needed.

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(4) Annually, analyzes and evaluates state-wide burning operations under the plan and provides copies of the summary to interested parties.

b. The Department of Environmental Quality:

(1) Maintains a real-time air quality monitoring network that is used by OSDF.

(2) Provides information on field burning activity.

(3) Establishes criteria for air pollution emergencies and notifies OSDF of episode stages such as alerts, warnings, and emergencies.

(4) Regulates the emission of air pollutants to ensure compliance with adopted standards, limits, and control strategy plans.

(5) Notifies the Department of Forestry when the air in the entire State or portions thereof is or would likely become adversely affected by smoke.

3. Prescribed Burning in Oregon: An average of 104,000 acres is burned annually in western Oregon on 3,300 units. Tonnage burned has varied between a low of approximately 1.6 million in 1984 and a high of approximately 4.5 million in 1976. Burning activity varies according to seasonal weather and fuel conditions, and reforestation and land management needs.

4. Cooperating Agencies: The policies and resources of many public and private agencies and organizations have substantial influence on the administration of the Smoke Management Program. The entities and their responsibilities are:

a. State Agencies

(1) Department of Environmental Quality: policy, information and resources.

(2) Washington Department of Natural Resources: information.

b. Federal Agencies

(1) USDA, Forest Service: resources.

(2) Bureau of Land Management: resources.

(3) Bureau of Indian Affairs: information.

(4) U. S. National Park Service: information.

(5) U. S. Fish & Wildlife Service: information.

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(6) National Weather Service: information and resources.

c. Other

(1) Regional air pollution authority: information.

(2) Oregon Forest Industries Council: information.

5. Program Resources: The State Forester maintains a staff of four personnel in Salem and a field force of 65 foresters throughout western Oregon and central Oregon who participate in the Smoke Management Program to accomplish the inspection, enforcement, monitoring, and reporting tasks.

In addition, the USDA Forest Service and the BLM maintain field forces of approximately 80 supervisory personnel and professional foresters trained in the techniques of prescribed burning and the elements of the Smoke Management Program.

DEFINITIONS. See OAR 629-43-043 (2a - p).

POLICY.

The policy of the State Forester is to:

1. Regulate prescribed burning operations on forest land recognizing the need to maintain forest productivity and the need to maintain air quality in populated areas and areas sensitive to smoke.

2. Achieve strict compliance with the Smoke Management Plan, Directive and instructions.

3. Encourage cost-effective utilization of forest residues as a means to reduce burning.

OBJECTIVE. To prevent smoke, resulting from burning on forest lands, from being carried to or accumulating in designated areas and other areas sensitive to smoke; to provide maximum opportunity for essential forest land burning while minimizing emissions; to coordinate with other state smoke management programs; to conform with state and federal air quality and visibility requirements; to protect public health; and to encourage the reduction of emissions.

PROGRAM ELEMENTS.

1. The Smoke Management Plan: The Smoke Management Plan (OAR 629-43-043) provides a specific framework for the administration of the Smoke Management Program as administered by the State Forester.

The plan instructs the State Forester and each Field Administrator to maintain a satisfactory atmospheric environment in designated areas and other areas sensitive to smoke consistent with the plan objectives and smoke drift restrictions.

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In administering the Smoke Management Program, the Forester and the Field Administrators are required to continually monitor weather factors and air quality conditions in designated areas and other areas sensitive to smoke.

The plan establishes a set of limitations applicable to specified burning and mixing conditions. These limitations relate to tonnage of fuel per 150,000 acres which, ideally, may be burned under various sets of mixing conditions. Experience has shown that these standards are adequate to protect designated areas only under ideal conditions. Frequently, in order to meet air quality objectives, more specific restrictions must be applied through issuance of Smoke Management instructions by the State Forester.

2. Operator's Written Plan: OAR 629-43-045 requires that prior to prescribed burning, a forest landowner or operator shall, in cooperation with the State Forester, develop a written plan which shall include consideration of "air quality".

3. Smoke Management Forecasts: The Salem and Medford Forestry Fire Weather offices provide smoke management forecasts daily. The forecast is for the following day (the forecast period) with an update as necessary on the morning of the forecast period (Salem only). An extended forecast may be provided depending on the weather influences involved at any given time.

   The forecasts include reference to transport winds and mixing for the restricted area and other areas sensitive to smoke. Burning will be conducted in accordance with the current forecast information, including updated forecasts, when issued.

4. Smoke Management Instructions

   Smoke Management Instructions will be issued only by the Salem Forestry Fire Weather Center and only during periods when weather is favorable for significant amounts of burning (usually late May through October). The instructions provide constraints on burning in areas where the restrictions, set forth in the Smoke Management Plan, may be inadequate to protect designated areas or other areas sensitive to smoke.

   The instructions are based upon an analysis of the atmospheric conditions affecting smoke transport, dispersion, and air quality and visibility conditions in designated areas and other areas sensitive to smoke.

5. Priority Burning System: The Forest Land Burning Priority Rating System was initiated to reduce the amount of forest land burning during the time when the maximum acreage of grass seed fields are being burned in the Willamette Valley. There are approximately 60 days during mid-summer when field burning has been given a high priority for use of the air shed in the valley for smoke dispersal. The Priority Burning System was developed by the Department of Forestry in coordination with the Department of Environmental Quality and with the cooperation of public and private forest land managers.

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The priority burning period is established by the Department of Forestry upon the recommendation of the Department of Environmental Quality. The exact period varies from year to year and may extend for more or less than 60 days.

The Priority Burning System limits forest land burning during the 60-day period to units which must be burned during that time to meet the burning objectives. Only units with a high priority rating will be burned when the Priority Burning System is in effect. The Forester will provide notice to all Field Administrators when the Priority Burning System is initiated and rescinded.

The procedures for rating and prioritizing burn units are included in Appendix 3 of this directive. These procedures will apply to all units which may be burned when priority burning restrictions are in effect.

6. Enforcement: All forest land prescribed burning will be done in accordance with the daily Smoke Management Instructions and this directive:

   a. On private land: Violations of the Smoke Management Plan, Directive or the daily instructions issued by the State Forester are subject to enforcement action by the State Forester:

      (1) Burning without a permit is a violation of ORS 447.515.

      (2) Burning not in compliance with the Smoke Management Plan and Directive is a violation of OAR 629-24-301(7).

   b. On Federal forest land:

      Violations of the Smoke Management Plan Directive or the daily instructions issued by the State Forester are subject to federal enforcement action under Section 118 of the Clean Air Act, as amended in 1977.

      > Section 118 states that "Each...agency...of the Federal Government...engaged in any activity resulting...in the discharge of air pollutants...comply with all Federal, State, interstate, and local requirements,...respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity."

7. Air Stagnation Advisories: Air stagnation advisories are issued by the National Weather Service Forecast Office in Portland when atmospheric conditions are such that the potential exists for air pollutants to accumulate for an extended period. During such times smoke and other pollutant sources within designated areas will create substantial air quality deterioration without the addition of smoke from outside sources. This condition is recognized in the administration of the Smoke Management Plan.

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Smoke Management Instructions issued during an Air Stagnation Advisory will limit forest land burning to units which will not contribute smoke to a designated area covered by an Air Stagnation Advisory or an Air Pollution Alert issued by DEQ. Burning during such periods will be closely controlled.

8. Monitoring: The State Forester will monitor prescribed burning operations periodically by aircraft and other means:

   1. to insure compliance with the Smoke Management Program; and,

   2. to determine the effectiveness of smoke management procedures.

   Real-time air quality monitoring data is available to the State Forester through computer link with DEQ. This information will be used in the preparation and validation of daily Smoke Management Instructions as appropriate.

   To evaluate compliance with the Smoke Management Program, the State Forester shall conduct a review of approximately 1% of the units burned each year. All units to be audited will be randomly selected. Each audit will include a site visit during burning, visual tracking and documentation of long range plume behavior and a determination of compliance with (a) the conditions of the burning permit; (b) the provisions of the Smoke Management Administrative Rules and Directives; and (c) compliance with the Smoke Management Program Instructions. The Department of Environmental Quality may jointly participate in some audits. Following completion of the audits, a written report of all findings shall be prepared. Significant findings shall be included in the Smoke Management Program Annual Report.

9. Reporting and Analysis:

   Information is needed from the Field Administrators to provide for analysis of the program procedures. Reporting will be accomplished in accordance with Appendix 1, Detailed Instructions for the Oregon Smoke Management Reporting System.

10. Annual Report: The State Forester will prepare an annual report of statewide forest land prescribed burning, wildfire and smoke management activities. The report will summarize burning activities of the previous year and intrusion events and make pertinent observations toward improved operational efficiency in the program.

STANDARDS.

1. Quantification of Forest Residues: The consistent estimation of the tons of fuel consumed in each prescribed burn is important to the development and equitable operation of the Smoke Management Program. To determine the fuel consumed by a prescribed burn:

   a. Determine total pre-burn fuel tonnage load.

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b. Calculate woody fuel consumption using 1000-hour timelag fuel moisture and algorithm developed to predict large fuel consumption.

c. Calculate and add duff consumption.

Estimation by Field Administrators of the total pre-burn fuel tonnage will be through the application of the "planer transect method" of inventorying forest residue. The planer transect method may be applied by the actual measurement of fuels, or by use of the publication "Photo Series for Quantifying Forest Residue", or through supplemental photographs developed by following appropriate procedures.

Instructions for the actual measurement of fuels are contained in the "Handbook for Inventorying Downed and Woody Material", U.S.D.A. Forest Service General Technical Report INT-16, 24p, Intermountain Forest and Range Experiment Station, Ogden, Utah.

Instructions for using the "Photo Series" are included in Appendix 4. A publication has been developed for western Oregon and eastern Oregon fuel types.

Instructions for fuels inventory and consumption procedures and utilization of 1000-hour fuels data are contained in Appendix 4.

2. Intrusions Defined: A smoke intrusion occurs when smoke from prescribed burning enters a Designated Area or other smoke sensitive area at ground level. When measurments or observations are available, intrusions are characterized as light, moderate, or heavy based on hourly nephelometer measurements of less than 1.8×10^{-4} B-scat, between 1.8×10^{-4} and 4.9×10^{-4} B-scat, and 5.0×10^{-4} B-scat and greater, respectively, above the clean air background. The clean air background is the average nephelometer reading for the 3 hours prior to the intrusion.

When no nephelometer data are available, the following visibility table will be used when visibility data are available. Standard National Weather Service visibility observation criteria will be used for reporting purposes. (See Appendix 2.)

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INTRUSION CLASSIFICATION BASED ON VISIBILITY
(For instructions on use see Appendix 2)

Background Visibility (Miles)*	INTRUSION INTENSITY**		
	LIGHT	MODERATE	HEAVY
	REDUCED VISIBILITY - RV (MILES)		
>50	RV $\geq$ 11.4	11.4< RV $\geq$ 4.6	RV<4.6
25-50	RV $\geq$ 10.5	10.5< RV $\geq$ 4.4	RV<4.4
20-24	RV $\geq$ 8.1	8.1< RV $\geq$ 4.1	RV<4.1
15-19	RV $\geq$ 7.5	7.5< RV $\geq$ 3.8	RV<3.8
10-14	RV $\geq$ 6.2	6.2< RV $\geq$ 3.5	RV<3.5
5-9	RV $\geq$ 3.7	3.7< RV $\geq$ 2.5	RV<2.5
3-4	RV $\geq$ 2.5	2.5< RV $\geq$ 1.8	RV<1.8
1-2	RV $\geq$ 1	1< RV $\geq$ 0.5	RV<0.5
0	RV $\geq$ -	-	0

* Background based on 3-hour average visibility prior to reduction due to activity smoke. Visibility changes during naturally occurring periods of change, may have to be factored into the classification on a case-by-case basis (i.e., from daylight to dark, during a rain shower, etc.).

** Reduced visibility must be determined to be predominantly from prescribed burning in order to determine intensity class.

Intrusions will be reported to the Smoke Management Program Administrator who will notify DEQ on a timely basis. See Appendix 2, Smoke Intrusion Report Form 1-4-1-301.

3. Daily and Annual Maximum Tonnage: The Department of Environmental Quality, in cooperation with the State Forester, federal land management agencies, and private forest land owners shall develop maximum annual and daily emission limits in accordance with federal PSD (Prevention of Significant Deterioration) regulations.

SPECIAL GUIDANCE.

1. Instructions: Smoke Management Instructions will be issued from Salem at approximately 3:15 PM daily for the entire restricted area. By 7:00 AM each day a message will be placed on an automatic answering phone only if the previous 3:15 PM instructions will be updated. If the 3:15 PM instructions are still valid at 7:00 AM they will remain on the recording. If there is to be an update, burning shall not be initiated in the affected area until updated instructions are issued. Any amended instructions (either written or verbal) that are issued during the working day shall be strictly complied with.

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The instructions shall be considered as directives from the State Forester. The authority for approving prescribed burning is delegated to the District Forester for burning regulated directly by the State Forester (private and BLM forest land), and to the Forest Supervisor for the U.S.D.A., Forest Service, and the Park Superintendent for the National Park Service for burning coordinated with the State Forester. These delegates and their designated field personnel are "Field Administrators". Any planned variances from the daily burning instructions will be discussed with the Smoke Management Duty Forecaster. If the Smoke Management Duty Forecaster and District Forester cannot agree on deviation from the instructions, the Deputy State Forester will discuss the situation and provide final resolution. If the Forest Supervisor or Park Superintendent and the Smoke Management Duty Forecaster cannot agree on deviation from the instructions, the Deputy State Forester will discuss the situation and make final resolution.

Variances or revisions to the instructions shall be recorded by the Protection Division.

2. Requests for Information: The State Forester's Office will provide more specific information to Field Administrators when requested by telephone. The following telephone numbers will be used in regards to the Smoke Management Instructions:

   378-2800: "Automatic Answering Phone" recording with Smoke Management Instructions. Instructions will be recorded by approximately 7:00 AM (as needed) and 3:15 PM.

   378-2153: Smoke Management Duty Forecaster. Call this number for forecasts, instructions, and other daily operations. Do not call between 2:30 PM and 3:15 PM, or prior to 8:30 AM. These times are used to prepare instructions.

   378-2509: Salem Fire Weather Forecast Service. Use this for fire weather needs; not smoke management.

   378-2518: Salem Communications. For assistance in getting unit numbers, planning and resulting units or other daily data needs. Do not use for daily decision-making assistance.

3. Reduction of Emissions: The Department of Forestry will encourage private forest landowners to burn only those units that must be burned to achieve the landowners' objectives. Forest Practices Foresters, through the administration of the Forest Practices Act, will encourage utilization of residue, fuel reduction measures, and alternate treatment practices that are consistent with the purposes of the Forest Practices Act. The Department of Forestry supports efforts to reduce prescribed burning emissions and will strive to achieve emissions reduction goals established within the Oregon Visibility Protection Plan.

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Burning during time periods when 1000-hours and larger fuels (3 inches in diameter or larger fuels) have relatively high fuel moistures, such as during spring, will be promoted where such burning is within the prescription necessary to achieve the objectives of the landowner.

Mass ignition methods will be encouraged to help reduce emissions where such techniques are economical and practical.

To minimize impacts from residual smoke, mop-up will be initiated on all units consistent with atmospheric and wind conditions. Within this context, during periods of observed or forecast low level transport toward the designated areas, mop-up shall begin immediately.

4. Monitoring of smoke behavior will be intensified on marginal days. This will be done by use of lookouts, aerial observation, and on-site observation of smoke behavior.

5. Any wildfire that has the potential for smoke input into a designated area or other area sensitive to smoke will be reported immediately to the State Forester's Fire Operations Section who will advise DEQ on a timely basis.

6. Test Burn Project: In order to determine the feasibility of alternative schedules in burning to minimize smoke impacts while maintaining burning accomplishments, a test project will be established during 1986-88. Special strategies will be employed in burning, and assessment will be made for impacts on air quality and burning accomplishment.

7. Tonnage limits will be reviewed by the DEQ and the Department of Forestry for possible update and revision, as necessary, as uniform fuel loading estimation and consumption procedures are developed and tested.

8. A statewide forest fuels inventory procedure will be developed by the Department of Forestry in cooperation with the Department of Environmental Quality. The new procedure will be implemented in 1987.

RESPONSIBILITIES.

1. State Forester: The State Forester is responsible for the coordination of the Smoke Management Plan and the Operating Details between the National Weather Service, U.S.D.A. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service, forest landowners, Department of Environmental Quality, National Park Service, Bureau of Indian Affairs, Washington State Department of Natural Resources, and regional air quality authorities. In addition, the State Forester, through the Forest Protection Division, has the responsibility to issue additional restrictions on prescribed burning in situations where the air quality of the entire state or any part thereof is, or would likely become, adversely affected by smoke.

2. Forest Protection Division: The Forest Protection Division is directly responsible for:

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a. Providing weather forecasting services for Smoke Managment purposes.

b. Issuing Smoke Management Instructions to Field Administrators.

c. Coordinating with Department of Forestry's Area and District offices, cooperating agencies, and forest land owners in identifying training needs and in developing training programs.

d. Monitoring the Smoke Management Program.

e. Providing on-the-ground assistance to Field Administrators as requested.

f. Maintaining liaison with Field Administrators through the Smoke Management Meteorologist and normal staff/line relationships.

g. Maintaining the Smoke Management Record System.

3. Field Administrators: Oregon Department of Forestry field administrators will administer prescribed burning according to the Smoke Management Plan, Operational Guidance for the Oregon Smoke Management Program (Directive 1-4-1-601), and the daily Smoke Management Instructions.

U.S.D.A., Forest Service (USFS), Bureau of Land Management (BLM), National Park Service (NPS), U. S. Fish and Wildlife Service (USFWS), and the Bureau of Indian Affairs (BIA). Federal land management agencies are required by law to follow the directions of the Forester for the protection of air quality in conducting prescribed burning operations in the restricted area. They will follow the smoke management weather forecasts, smoke management instructions, and priority burning restrictions as provided by the Oregon Smoke Management Plan and the Operational Guidance for the Oregon Smoke Management Program (Directive 1-4-1-601).

o Make daily reports relating to burning operations.

4. Department of Environmental Quality (DEQ): The State Forester and the DEQ are required by ORS 477.515 to approve a plan for the purpose of managing smoke in areas they shall designate. The Oregon Smoke Management Plan is the product of this statutory requirement.

5. Private Forest Landowners: It is the responsibility of private forest landowners under Oregon Forest Laws to do forest land prescribed burning according to the Oregon Smoke Management Plan. They are responsible to burn according to directions from State Forestry Field Administrators and to do mop-up of prescribed burns necessary to maintain air quality and visibility in designated areas and areas sensitive to smoke.

CONTROL.

Review: The Smoke Management Plan and Directive shall be reviewed at least every three years. The review will be conducted jointly by the State Forester and the

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Director of Environmental Quality and will include representatives of affected agencies and parties.

AGREEMENT:

In witness whereof, the parties have agreed to the guidelines set forth in this Directive.

State of Oregon
Department of Forestry

by: _____

Title: _____

Date: _____

State of Oregon
Department of Environmental Quality

by: _____

Title: _____

Date: _____

NS:cb
5243E/0002J

REPORTING SYSTEM
SMOKE MANAGEMENT PLAN

Objective: The Department of Forestry's Fire Operations center operates a computer program to record and process smoke management data. Data is received and transmitted through the State Forestry and U.S. Forest Service communications systems.

The objectives of the reporting system are to provide a current record of:

1. Locations and amounts of planned burning for the current day.

2. Locations and amounts of burning accomplished the previous day.

3. Annual summaries of data for air quality purposes.

Area Included:

Reporting is required throughout the state. The procedure and frequency of reporting needs for different areas of the state are identified below. Data are grouped by Administrative Units, i.e., National Forest, Crater Lake National Park and each State Forest Protection District.

Types of Burning to be Included:

All burning related to forest management activities should be included in the reporting system. Some examples are slash and brush disposal after logging, road building, scarification, or burning of brush fields for reforestation. Other examples which should be included are underburning, or brush field burning for stand improvement or wildlife habitat.

Types of Burning That Should Not be Included:

Burning for debris disposal or burning related to agricultural activities should not be included in the reporting system. Some examples are household or yard maintenance debris such as paper, leaves, lumber, etc., and grass or grain stubble. Small piled slash areas such as for a homesite should not be included if the amount to be burned is less than 5 tons.

While these examples would not be reported in the Smoke Management Plan Data System, any burning subject to permit under ORS 477.515 must conform to the Smoke Management Plan. Also, in some areas "backyard" and stubble burning must be done in compliance with the Department of Environmental Quality (DEQ) rules, rather than the Oregon Smoke Management Plan.

Range improvement burning data in central and eastern Oregon should not be included in the reporting system.

Procedure:

For units outside of the restricted area and right-of-way units, see the "Frequency of Reporting" paragraphs. In the restricted area, three basic steps are involved in the reporting system:

1. A "Unit Description" is submitted to Salem for each "burn unit" as provided on Reporting System Coding Sheet (Part I, Form 1-4-1-501).

REPORTING SYSTEM
SMOKE MANAGEMENT PLAN

This results in a "Unit Number" assigned to the specific burn unit, anywhere from several months or weeks to a day before the burning is to be done. Field offices with access to the OSDF computer network should enter the data directly into the computer.

2. "Unit Numbers" of planned burns in the restricted area are submitted by field offices on the day burning is to be done. This results in "Planned Burns" (Part II of Form 1-4-1-501). Planned burns are posted daily on the communications network for all users and the list is sent to DEQ.

3. An "Accomplishment Report" is submitted by field offices in the restricted area the day after burning, again using "Unit Number" as a reference (See Part III of Form 1-4-1-501). The accomplishment report is posted daily along with planned burns.

Frequency of Reporting:

In the restricted area (see OAR 629-43-043), all planned and accomplished burning should be entered into the computer on a daily basis. The planned burns are entered by 10:15 AM on the morning of the burn; accomplishments are reported by 10:15 AM on the next working day after the unit is burned. Special circumstances due to an office closure or a late planned or accomplished burn should be handled through the Fire Operations Center in Salem. This is not expected to be a routine practice.

Right-of-way burning should be accomplished in accordance with the instructions on Form 1-4-1-502. Basically, right-of-way units should get a unit number as per step 1 in the procedure listed above. Right-of-way units do not have to be planned or accomplished on a daily basis. Accomplishments should be submitted promptly to Salem Fire Operations by the 5th of each month for the prior month's activity.

Outside of the restricted area, unit numbers should be obtained as per step one in the procedure listed above. Otherwise, units do not have to be planned on a daily basis nor does an accomplishment report have to be submitted to Salem on a daily basis. However, Part III (Accomplishment Report) of Form 1-4-1-501 must be completed for every burn with the date of the burn identified for each unit. If a unit is burned on several different dates, there should be a complete entry for each date on which the unit was burned.

The accomplishments should be submitted promptly to Salem Fire Operations by the 5th of each month for the prior month's activity. Right-of-way burning should be submitted as per the procedure identified above for units within the restricted area.

DETAILED INSTRUCTIONS FOR REPORTING SYSTEM CODING SHEET (FORM 1-4-1-501):

Instructions are included as pages 7-11 of Appendix 1.

REPORTING SYSTEM
SMOKE MANAGEMENT PLAN

Part I - Unit Description and Number Assignment (Page 1 of Form 1-4-1-501):

A number needs to be obtained prior to burning a unit. The number will be assigned by the computer after the data is entered into the computer. The raw data is the information needed from a field office to begin a record for a specific area to be burned. The data may be entered on the form and mailed to Salem or entered directly on a CRT that has access to the computer program. Where teletype variety communications exist, data may be transmitted via those devices, separating each field by a comma per the instructions on the coding sheet. Teletype transmitted data will then be entered into the computer by Salem Fire Operations personnel. Forms that are mailed should be addressed to:

Department of Forestry
Attn: Fire Operations Center
2600 State Street
Salem, OR 97310

Number Assignment:

Field offices that enter data directly into the computer via CRT will have the unit number displayed on the CRT after the data has been entered.

Field offices that submit data to Salem for entry into the computer will receive a printout of the data with the assigned unit number.

All offices should review the data as soon as possible. If any errors are found, correct Salem Fire Operations and provide the correct data. Salem personnel will then correct the data.

Part II - Planned Burns (Page 2 of Form 1-4-1-501)

On the day a unit is planned for burning, the information that needs to be reported is the unit number, planned ignition time, acres planned for burning and the tons planned for burning. The acres and tons can be more or less than those numbers entered in Part I; they are to be your best estimate of activity on the unit for the day.

When reporting by teletype, be sure to separate the data fields by a comma. When reporting by CRT, fill in the blanks on the screen. All data should be reported by 10:15 AM.

Do not plan right-of-way burns on a daily basis (See Form 1-4-1-502).

Field offices outside of the restricted area should not plan units on a daily basis. See "Frequency of Reporting" section, above.

When all planned burns have been received, a daily planned summary listing will be generated for distribution to field offices and DEQ.

REPORTING SYSTEM
SMOKE MANAGEMENT PLAN

Part III - Accomplished Burns (Page 2 of Form 1-4-1-501)

On the day after a unit is burned, enter the data shown in Part III of Form 1-4-1-501.

When reporting by teletype, be sure to separate the data fields by a comma. Also, when no burning occurred on a planned unit, only the unit number and two zeroes are required (all separated by commas).

When reporting by CRT, fill in the blanks on the screen. Enter only the unit number and a zero in the tons entry field and a zero in the acres data field.

The accomplished acres and tons may be more or less than the number entered in either Part I or Part II depending upon the fuel and weather conditions on the site. Report the actual tonnage that was estimated to be consumed as well as the actual acreage that was burned. Include data from any slopover when the fire gets out of the unit.

All data shoud be reported by 10:15 AM.

Do not accomplish right-of-way burns on a daily basis using the above procedure (See and use Form 1-4-1-502).

Field offices outside of the restricted area should not result units on a daily basis via teletype or CRT. See "Frequency of Reporting" section, above.

All planned burns must be accomplished the following day or on the next business day if the Fire Operations Center is not operational on a weekend or holiday. The data fields must be completed if there was burning or "zeroed" if there was no burning.

When reporting by teletype, units burned during weekends or holidays when the Fire Operations Center is closed should be reported in groups by the date burning was done on the next workday when the Center is open.

OREGON SMOKE MANAGEMENT REPORTING SYSTEM CODING SHEET
Part I
Unit Verification and Number Assignment - Codes

AGENCY: _____ FOREST OR DISTRICT: _____

NOTE: The X's below indicate the maximum number of digits that can be sent in that group. The group in many cases will be smaller than the maximum field size indicated. When sending the data to Salem for input into the Computer the field size is not important in the free-form input as long as each field is separated by a comma (,). This comma tells the computer operator to start the next field of data. All you have to do as an operator is enter the consecutive order format, separating each field by a comma. When you are entering data directly into the computer, merely fill in the blanks on the CRT screen.

	PART I																
Forest/Dist. Use	UNIT DESCRIPTION REPORT																
Date entered into computer or other information (not for Comp. entry)	Dist. or Forest Ident. XXX,1	County No. 1-36 2 XX,	Twp.Rge.Sec. 3 XXXXXXXXXX,	Elev. 4 XXXX,	Distance from DA to Mile 5 XXX,	Type of Burn 6 X,	Priority of Burn 7 X,	Owner-ship 8 X,	Acres in Unit 9 XXXX,	Total Fuel Load 10 (tns) XXXXX,	Tot. Fuel Load (3") Tns/ac 11 XXXX,	Method Fuel Load 12 X,	Aver. Duff Depth 13 XX,	Predom. Species 14 X,	Min. Diam. 15 X,	Unit No. (Assign. by Computer)

Form 1-4-1-501, Rev. 3/86, all previous editions of this form are obsolete and should be destroyed. (Old form number 1-1-3-400.)

7668E

OREGON SMOKE MANAGEMENT
REPORTING SYSTEM CODING SHEET
Part II & Part III
Planned and Accomplishment Report - Codes

AGENCY: _____ FOREST OR DISTRICT: _____

NOTE: The X's below indicate the maximum number of digits that can be sent in that group. The group in many cases will be smaller than the maximum field size indicated. When sending the data to Salem for input into the computer the field size is not important in the free-form input as long as each field is separated by a comma (,). This comma tells the computer operator to start the next field of data. All you have to do as an operator is enter the consecutive order format, separating each field by a comma. When you are entering data directly into the computer, merely fill in the blanks on the CRT screen.

Forest/	PART II					PART III												
Dist. Use	PLANNED BURNS					ACCOMPLISHMENT REPORT												
Date entered Into Comp. or other information (not for Comp. entry)	Unit No. (Assign. by Comp) 1 XXXX,	Dist. or Forest Ident. 2 XXX,	Est. Ign. Time 3 XXXX,	Acres Planned 4 XXXX,	Tons Planned 5 XXXXX,	Unit No. &/or Date Burned 1 XXXX,	Dist. or Forest Ident. 2 XXX,	Actual Ign. Time 3 XXXX,	Ign. Dura. 4 XXX,	Ign. Meth. 5 X,	Actual Acres Burned 6 XXXX,	Live Fuel 7 X,	Vol. Pile/ Bcst. 8 XXXX,	Actual Tons Burned 9 XXXXX,	Wx Stat. Used 10 XXXXXXXXXX,	1000 hr/ fuel Moist 11 XX,	1000 hr/ fuel Meth. 12 X,	Wx at Ignition 13 XXXXXXXXX,	Mo. Summer Dry 14 X,

Form 1-4-1-501, Rev. 3/86, all previous editions of this form are obsolete and should be destroyed. (Old form number 1-1-3-400.)

7668E

INSTRUCTIONS FOR DATA FORM 1-4-1-501 FOR SMOKE MANAGEMENT GENERAL REQUIREMENTS

PART I: INITIAL ENTRY FOR UNIT VERIFICATION AND NUMBER ASSIGNMENT.

The following information shall be entered into the computer prior to burning to get the necessary unit number for planning and resulting burns.

1. District or Forest Identifier: A three-digit code as shown in the table on page 9.

2. County Number

01	Baker	10	Douglas	19	Lake	28	Sherman
02	Benton	11	Gilliam	20	Lane	29	Tillamook
03	Clackamas	12	Grant	21	Lincoln	30	Umatilla
04	Clatsop	13	Harney	22	Linn	31	Union
05	Columbia	14	Hood River	23	Malheur	32	Wallowa
06	Coos	15	Jackson	24	Marion	33	Wasco
07	Crook	16	Jefferson	25	Morrow	34	Washington
08	Curry	17	Josephine	26	Multnomah	35	Wheeler
09	Deschutes	18	Klamath	27	Polk	36	Yamhill

3. Legal location by township, range and section. Separate each element by a dash. Do not include the letters "T", "R", "S".

   Example: 10S-10W-33 Not T10S-R10W-S33

4. Elevation of Burn: Height of burn above sea level in feet, using average elevation to the nearest 100 feet.

5. Distance from nearest designated area boundary: Rounded to nearest mile. If within DA, use 0. If more then 60 miles, enter "60".

6. Type of Burn: Broadcast - B Piles - P Underburn - U

7. Priority of burn based on rating form:

   High Priority - H Low Priority - L
   Right-of-way - R
   NOTE: High classes are not used on units south of the main stem and North Fork of the Umpqua River. High classes are not used on units on the Diamond Lake and North Umpqua Ranger Districts.

8. Ownership Type:

   USFS - blank Private - P Federal (except USFS) - F
   State, County, Municipal - S

9. Acres in unit: If less than 1, report 1.

DATA FORM FOR SMOKE MANAGEMENT
GENERAL REQUIREMENTS

10. TOTAL fuel loading (tons):

The total fuel loading on the unit should be reported in this entry, not just consumable tons. Units with less than 5 tons should not be entered.

11. Total Loading of 3"+ fuels (Tons/acre)

12. Method for determining fuel loading:

Transect - T PNW Photo Series - S Local Photo Series - L
Other Methods - M
NOTE: Use of "M" requires local documentation and record-keeping of the method used.

13. Average duff depth to the nearest inch.

14. Predominant Species of fuel:

Softwood - S Hardwood - H Brush - B

15. Minimum harvest log diameter:

Harvest Spec.	Entry Code
4 inches by 4 feet	"4"
6 inches by 6 feet	"6"
8 inches by 10 feet	"8"
Other	"9"
Not Applicable	"1"

PART II: PLANNED BURN

The following information shall be entered into the computer on the day that the unit is planned for burning for all districts and forests in the restricted area. Outside of the restricted area, see Part III for reporting requirements.

1. Unit Number: As previously assigned by the computer. Do not plan right-of-way units on a daily basis; see Form 1-4-1-502 for right-of-way procedures.

2. District or forest identifier (as used in Part I).

3. Estimated ignition time: use 24-hour clock and local time.

4. Number of acres that are planned to be burned.

5. Tons that are planned to be burned.

DATA FORM FOR SMOKE MANAGEMENT
GENERAL REQUIREMENTS

PART III: ACCOMPLISHED BURN

The following information shall be entered into the computer on the day after the burning occurred for all districts and forests in the restricted area. Outside of the restricted area, districts and forests should keep daily records of the following information and submit the information to Salem Communications by the fifth of each month for the prior month's activity.

1. Unit number as previously assigned by the computer. Do not result right-of-way units into the computer on a daily basis; see Form 1-4-1-502 for right-of-way procedures.

2. District or Forest identifier (as used in Part I and II).

3. Actual ignition time: use 24-hour clock and local time.

4. Ignition Duration: The total minutes from time ignition first started to the time ignition stopped, including any breaks in firing. Example: if ignition started at 0800; then stopped at 0830; then resumed at 0930 and was completed at 1100, the duration would be 180 minutes.

5. Ignition Method:

   Aerial - A Hand - H Combination of Aerial and Hand - C
   Other Method - M
   NOTE: If one method accounts for 75% or more of the acres ignited, enter that method, not "C".

6. Number of acres actually burned.

   NOTE: This can be more or less than the number planned. Include slop-over acres in the total.

7. Live fuel present (Tons/acre):

Tons/Acre	Entry Code
0 to 1/3	"1"
1/3 to 2	"2"
2	"3"

8. For piles burned simultaneously on broadcast units enter the volume, in cubic yards, of material burned. Enter "0" if there are none.

9. The number of tons actually burned. This can be more or less than the entries made in Part I and II. On broadcast burns, include the piled tonnage if the piles are burned.

DATA FORM FOR SMOKE MANAGEMENT
GENERAL REQUIREMENTS

10. Weather station used for consumption estimates:

RAWS - enter the station name.
Fire Weather Station - enter the station name.
National Weather Service Office - enter NWS office name.
On site - enter the word "unit".

NOTE: If a station name exceeds ten characters, enter only the first ten characters. Delete spaces when entering the name.

11. 1000-hr fuel moisture: Example 32%, enter 32.

12. How was 1000-hr fuel moisture determined:

Method	Entry Code
NFDR-th	"N"
ADJ-th	"A"
Measured:	
Weighed	"W"
Moisture Meter	"M"

13. Unit weather at the time of ignition. Enter temperature (°F), humidity (%), surface wind direction and wind speed (mph). For wind direction, use 8 points of the compass as shown in the table. Separate all entries by a dash.

Wind Direction Table

Code	Direction	Code	Direction
1	NE	5	SW
2	E	6	W
3	SE	7	NW
4	S	8	N

NOTE: "Direction" is the direction from which the wind is coming.

Example entry: Temp - 72, Humidity - 50%, NW wind at 5 mph should be entered as 72-50-7-5.

14. Months of summer drying since harvest:

Months	Entry Code
= 3 months	"3"
3 months	"4"

SMOKE MANAGEMENT DISTRICT ID NUMBERS

521 Astoria
69_ Clackamas-Marion
691 Molalla
692 Santiam
72_ Coos
721 Bridge
722 Coos Bay
723 Gold Beach
090 Crater Lake N.P.
01_ Deschutes NF
011 Bend
012 Crescent
013 Fort Rock
015 Sisters
73_ Douglas
731 North Douglas
732 South Douglas
671 Eastern Lane
53_ Forest Grove
531 Columbia City
532 Forest Grove
02_ Fremont NF
021 Bly
022 Lakeview
023 Paisley
024 Silver Lake
98_ Klamath-Lake
981 Klamath Falls
982 Lakeview
66_ Linn
661 Sweet Home
622 Santiam
04_ Malheur NF
041 Bear Valley
042 Burns
043 Long Creek
044 Prairie City
06_ Mt. Hood NF
061 Barlow
062 Bear Springs
063 Clackamas
064 Columbia Gorge
065 Estacada
066 Hood River
069 Zig Zag
97_ Northeast
971 La Grande
972 Pendleton
973 Wallowa
07_ Ochoco NF
071 Big Summit
072 Paulina
073 Prineville
074 Snow Mountain
10_ Rogue River NF
101 Applegate
102 Ashland
103 Butte Falls
106 Prospect
11_ Siskiyou NF
111 Chetco
112 Galice
113 Gold Beach
114 Illinois Valley
115 Powers
12_ Siuslaw NF
121 Alsea
122 Hebo
123 Mapleton
124 Waldport
71_ Southwest
711 Central Point
712 Grants Pass
511 Tillamook
14_ Umatilla NF
141 Dale
142 Heppner
144 Ukiah
146 Walla Walla
15_ Umpqua NF
151 Cottage Grove
152 Tiller
153 Diamond Lake
156 North Umpqua
991 Walker Range
16_ Wallowa-Whitman NF
161 Baker
162 Wallowa Valley
165 Eagle Cap
166 La Grande
167 Pine
169 Unity
95_ West Central
951 Fossil
952 John Day
953 Monument
954 Prineville
955 Sisters
956 The Dalles
68_ Western Lane
681 Florence
682 Reedsport
65_ West Oregon
651 Philomath
652 Dallas
653 Toledo
18_ Willamette NF
181 Blue River
183 Sweet Home
184 Detroit
185 Rigdon
186 Lowell
187 McKenzie
188 Oakridge
20_ Winema NF
201 Chemult
202 Chiloquin
203 Klamath

OREGON SMOKE MANAGEMENT:
MONTHLY REPORTING SYSTEM CODING SHEET FOR RIGHT-OF-WAY UNITS ONLY

Agency:________________ Month: _________ Forest or District _____________

NOTE: SEE INSTRUCTIONS ON OTHER SIDE

(1) UNIT #	(2) DATE BURNED (Month/Day/Year)	(3) ACTUAL IGNITION TIME (Use 24 hour clock)	(4) ACTUAL TONS BURNED

SMOKE INTRUSION REPORT
Form 1-4-1-301

Definition

A smoke intrusion occurs when any visible or monitored smoke from prescribed forest burning enters a Designated Area or other area sensitive to smoke at ground level.

Backgound

An assessment of burning's impact on air quality is aided by a knowledge of when smoke entered a Designated Area. Smoke intrusions vary greatly in duration, concentration and effect on a Designated Area. Smoke accumlating at the surface and remaining overnight adversely affects air quality more than if smoke drifts through and clears in an hour or two. The State Forester is required by statute and agreement with DEQ to "analyze and evaluate state-wide burning operations under the plan." Such analysis includes intrusion analyses.

Purpose

This intrusion report provides a descriptive record of smoke intrusions as required by administrative rule. Reports are annually summarized in the Smoke Management Annual Report compiled by the Smoke Management Section.

Responsibilities

Field units, i.e., State Districts or National Forests, are responsible for monitoring smoke from burning activity and reporting intrusions to the Smoke Management Coordinator through the use of Form 1-4-1-301.

The Salem Smoke Management Coordinator is responsible for:

1. Combining field reports into one intrusion summary when more than one field unit is involved.

2. Liaison with Department of Environmental Quality to develop descriptive reports of smoke intrusions.

3. Preparing an annual summary of intrusions.

When to report by telephone:

Any intrusion is to be reported by telephone as soon as possible but not later than noon of the next workday after the intrusion. If 7-day operations are not in progress at Salem, then telephone by noon on the first workday after the incident. If the Smoke Management Coordinator is not available, then the duty forecaster for smoke management should be notified.

SMOKE INTRUSION REPORT
Form 1-4-1-301

When to report by mail:

A completed Smoke Intrusion Report Form 1-4-1-301 shall be submitted by the appropriate field office to the Smoke Management Coordinator within two working days of the intrusion. Sections H through L of the form will be completed by the duty forecaster and returned to the field office in two working days.

Field offices observing smoke entering a Designated Area from burn units outside of their administrative area should also submit telephone and written reports as outlined above. In addition, they should notify the field office that has administrative responsibility for the problem unit(s) of the fact that smoke is entering or about to enter a Designated Area.

It is helpful and desirable that field offices report potential intrusions as soon it appears that smoke may enter a Designated Area. This allows the Smoke Management Coordinator or duty forecaster to obtain monitoring data prior to and during the incident. It also facilitates public relations work resulting from an incident.

SMOKE INTRUSION REPORT

Sections A and B must be telephoned to Salem, 378-2153, no later than noon the next workday after the intrusion. Every attempt should be made to notify Salem as soon as it is evident that smoke will impact a designated area. A completed form should be submitted to Salem within two working days of the intrusion.

A. SMOKE ORIGIN:

Unit Number(s)	District/ Forest	Legal Descr.	Owner Class	Elev.	Acres	Tons	Ign Time	Date Burned

B. INTRUSION DESCRIPTION:

1. Designated Area Affected _____.
2. Date _____ Time _____ Smoke entered area. Duration _____ hours.
3. Type: Main Plume _____ Residual Smoke _____ Drift Smoke _____
4. Describe Smoke Behavior (including distances and elevations of base of plumes) _____

C. FORECAST AND INSTRUCTIONS:

1. Forecast transport wind direction and speed at ignition time and for next 12 hours _____
2. Observed transport wind direction and speed at ignition time and for next 12 hours _____
3. Forecast surface wind direction and speed at ignition time and for next 12 hours (24 hours if residual smoke was a factor) _____
4. Observed surface wind direction and speed at ignition time and for next 12 (24) hours _____
5. Were significant changes in transport or surface wind conditions forecast _____ observed _____. Describe any changes that occurred _____.
6. What were general weather conditions during the burn period (include conditions at least 6 hours after ignition stopped). Give sky conditions, type and height of clouds, precipitation etc., be specific.
7. Was Salem consulted about observed weather that was different than forecast? _____
8. What were Smoke Management Instructions? Written and/or verbal _____

D. WHAT WERE THE FUEL MOISTURES AT IGNITION TIME:

1 hour _____ 10 hour _____ 100 hour _____ 1000 hour _____

E. OTHER VISIBILITY RESTRICTING SOURCES PRESENT:

Field Smoke _____ Resident Emssions _____ Ag Smoke _____ Wildfire Smoke (Fire's Name) _____

Dust _____ Other Prescribed Fire Smoke _____ Other (Specify) _____ Unable to identify _____

SMOKE INTRUSION REPORT

F. EXPLAIN SPECIFICALLY THE CAUSE OF THE INTRUSION. Has the cause been the result of previous intrusions?

_____

_____.

G. COMMENTS: _____

_____

SECTION H THROUGH L TO BE COMPLETED BY SALEM FORECASTER:

H. INTRUSION INTENSITY (see directive tables):

1. Average DA prevailing visibility for 3 hours prior to start of intrusion _____ miles.

2. Lowest prevailing visibility during duration of intrusion _____ miles.

3. Average DA nephelometer for 3 hours prior to start of intrusion _____.

4. Highest nephelometer during duration of intrusion _____.

5. Classification based on visibility or nephelometer:

   Light _____ Moderate _____ Heavy _____ Unknown or can't determine _____ No classification (due to other sources) _____

   If moderate or heavy, the number of hours in those categories: Moderate _____ Heavy _____

I. OBSERVED MIXING DEPTH FROM NEAREST RAOB OR UPPER AIR SITE. (Identify any shear layers.) _____

_____.

J. GENERAL SYNOPTIC CONDITIONS, BOTH LARGE AND SMALL SCALE. Be as specific as possible with feature locations. _____

_____

_____

_____

K. WERE FORECASTS AND INSTRUCTION ADEQUATE (Y/N) _____. Why _____

_____

_____

L. COMMENTS. _____

_____

_____

_____

INTRUSION DETERMINATION FROM VISIBILITY OBSERVATIONS

Introduction

When no nephelometer data is available to determine the intensity of an intrusion, visibility data may be used as a substitute when such data is available from a reliable source. The standard observation procedure used by the National Weather Service as outlined in the Federal Meteorological Handbook No. 1 should be the minimum standard accepted as a reliable indicator of visibility. The observation procedure is outlined below and should especially be utilized by field units that have the potential of impacting Designated Areas where no airport data is available. Prevailing visibility is the observation that will be used as a surrogate for nephelometer data. Using the procedure outlined below to determine prevailing visibility and the visibility table in the Smoke Management Directive 1-4-1-601, a determination of intrusion intensities will be made.

Observation Procedure

Determination of Visibility: Using all available visibility markers, determine the greatest distances that can be seen in all directions around the horizon circle. When the visibility is greater than the distance of the farthest markers, estimate the greatest distance you can see in each direction. Base this estimate on the appearance of the visibility markers. If the markers are visible with sharp outlines and little blurring of color, the visibility is much greater than the distance to the markers. If a marker can barely be seen and identified, the visibility is about the same as the distance to that marker.

Determination of Prevailing Visibility: After visibilities have been determined around the entire horizon circle, resolve them into a single value for reporting purposes. To do this, use either the greatest distance that can be seen throughout at least half the horizon circle, or if the visibility is varying rapidly during the time of the observation, use the average of all observed values. Prevailing visibility should be reported in miles.

Determination of Sector Visibility: When the visibility is not uniform in all directions, divide the horizon circle into sectors which have approximately the same visibility. Report the prevailing visibility which can be seen throughout at least half of the horizon circle.

See the next page for examples of the prevailing visibility that should be reported in different scenarios.

INTRUSION DETERMINATION FROM VISIBILITY OBSERVATIONS

Introduction

When no nephelometer data is available to determine the intensity of an intrusion, visibility data may be used as a substitute when such data is available from a reliable source. The standard observation procedure used by the National Weather Service as outlined in the Federal Meteorological Handbook No. 1 should be the minimum standard accepted as a reliable indicator of visibility. The observation procedure is outlined below and should especially be utilized by field units that have the potential of impacting Designated Areas where no airport data is available. Prevailing visibility is the observation that will be used as a surrogate for nephelometer data. Using the procedure outlined below to determine prevailing visibility and the visibility table in the Smoke Management Directive 1-4-1-601, a determination of intrusion intensities will be made.

Observation Procedure

Determination of Visibility: Using all available visibility markers, determine the greatest distances that can be seen in all directions around the horizon circle. When the visibility is greater than the distance of the farthest markers, estimate the greatest distance you can see in each direction. Base this estimate on the appearance of the visibility markers. If the markers are visible with sharp outlines and little blurring of color, the visibility is much greater than the distance to the markers. If a marker can barely be seen and identified, the visibility is about the same as the distance to that marker.

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Determination of Sector Visibility: When the visibility is not uniform in all directions, divide the horizon circle into sectors which have approximately the same visibility. Report the prevailing visibility which can be seen throughout at least half of the horizon circle.

See the next page for examples of the prevailing visibility that should be reported in different scenarios.

FOREST LAND BURNING PRIORITY RATING SYSTEM

The Forest Land Burning Priority Rating System (Priority Burning System) identifies units* which require burning during the summer months to meet silvicultural and reforestation objectives. It provides a means for prioritizing units selected for summer burning into "high" or "low categories.

The objective of the Priority Burning System is to more closely regulate forest land burning during the approximately 60 mid-summer days when field burning is being accomplished in the Willamette Valley. The system insures that only forest units which must be burned during the hotter, drier mid-summer period will be burned while field burning is taking place.

The area covered by the system is that part of western Oregon north of the North Fork and main stem of the Umpqua River, excluding the Diamond Lake and North Umpqua Ranger Districts of the Umpqua National Forest.

Rating forms for the Cascade and Coast Ranges were developed and field tested by two interagency-industry task force groups. The system is designed to identify those units which, because of the nature of the site, fuel and silvicultural requirements, must be burning during the hotter, drier mid-summer period.

The Priority Burning System is closely coordinated with the Department of Environmental Quality. The start and ending of the priority period** will be determined by the Forester with the advice of the DEQ on field burning levels. The priority burning systems will not be in effect when field burning is stopped, or is at very low activity levels. Also, non-priority burning may be allowed in specified areas when the Forester determines that such burning will not impact the Willamette Valley.

Notification of the beginning, ending, and any areas exempt from the Priority Burning System will be included with daily smoke management instructions issued from Salem.

---

* Unit: A term used to describe a contiguous area of forest land with specific boundaries upon which some activity or activities will be conducted.

** Priority Burning Period: It is a period of time when only "high priority" forest land units will be burned. The 60 days is an approximate span of time; the period will generally begin in mid-July when heavy field burning has begun and will end when conditions no longer permit this level of burning in September.

FOREST LAND BURNING PRIORITY RATING SYSTEM

Certain special areas will be classed as high priority without use of the priority rating procedure. Such areas are characterized by special or unique management objectives which make use of a rating system impractical. Such units include:

Vegetation management areas, such as huckleberry fields.
Visual management areas which must be burned under very restrictive prescriptions.
Special watershed areas requiring burning.
Game habitat improvement burning.
Campground development.
Special research projects.
Right-of-way burning which must be done during the summer.
Prescribed under-burning.
*High elevation units.

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* High elevation units in the Cascades which may be burned with no risk of impact on designated areas will be considered high priority under the following circumstances.

a. High elevation units must be at least 1000 feet in elevation above the designated area ceiling (designated area ceiling is 2500 feet). Thus, any unit must be at or near 3500 feet elevation to fall into this category.
b. In no event will any unit burned in this category be less than 1000 feet above a stable layer above the designated area.
c. There must be a sustained westerly air flow in the vicinity of the unit with no probability of a wind shift toward the designated area within 12 hours of ignition time.
d. All units must be at least 40 miles from the designated area.
e. All units must be cleared through the Smoke Management Coordinator prior to ignition.

FOREST LAND BURNING PRIORITY RATING SYSTEM

Instructions For Using Priority Rating Forms for Evaluating Forest Land Burning Units

The Preliminary Priority Burning Chart will be used for all units which are desirable to burn during the summer months. This chart is used to indicate the treatment objective for the site and whether burning is needed. If burning is needed, the season when burning objectives can best be met are identified. If summer burning is required or desirable, the appropriate Coast Range or Cascade Range Prioriting Rating Form is used.

Using the Preliminary Priority Chart Form 1-4-1-503

Listed under "treatment objective" are seven of the most common treatment objectives. More than one treatment objective may be present for any single unit. Additional space is provided for treatment objectives not listed.

When treatment objectives have been identified, the "Burning Required?" column is used to indicate whether or not burning is required to meet the objective.

If the "Burning Required?" column is checked "yes", the "When Can Burning Best Be Accomplished" column is checked as to when burning should be accomplished to meet the treatment objectives. When "Summer" is checked, the Coast or Cascade Range form is to be used to further evaluate the unit.

The "Comments" column is available for any special considerations such as special objectives, pre-treatment efforts required or other factors.

Burning Priority Rating Form for the Cascade Range Form 1-4-1-505

This form is adapted for the westside of the Cascade Range north of the North Fork and mainstream of the Umpqua River.

The "Slope" column is used to evaluate the way the steepness of the terrain will affect fire behavior on the unit. Fire will spread and broadcast much more readily on steep slopes than on gentle slopes or flat ground. Points are assigned for each slope class.

The "Special Considerations" column includes a variety of factors which relate to the need to burn during the summer months or to the risk of down-canyon winds advecting smoke into the designated area.

The "Aspect" column is used to consider is used to consider exposure as it affects drying of fuels and fire behavior. For example, south exposure units receive much more direct sunlight and will be dry enough to burn many more days than north slopes.

The "Silvicultural Consideration" column indicates things such as pre-treatment requirements before burning, availability of essential planting stock or cost and potential for success of alternative treatments.

FOREST LAND BURNING PRIORITY RATING SYSTEM

The "Soil Consideration" relates to soil which may be damaged if too dry, or too moist soils which preclude burning except during mid-summer drought periods. Also included are areas where excessive soil damage will result from mechanical piling activity.

The points are totaled. Any unit scoring 50 points or more is a high priority unit which may be burned during the Priority Burning Period. Units with less than 50 points will not be burned while the priority burning restriction is in effect.

Burning Priority Rating Form For The Coast Range Form 1-4-1-504

The "Plant Community" column relates to the plant community on the site and the difficulty of reforesting the site with desirable species. For example, the Salmonberry-Thimbleberry plant community is extremely difficult to reforest without burning or repeated chemical applications. The most difficult plant community to reforest receives the highest point values.

The "Fuels Overstory" relates to the fuel type that will remain after logging or treatment. Fuel types which will burn readily are rated lower than the Alder-Salmonberry combinations that are difficult to burn under ideal conditions.

The "Location" column relates primarily to marine air influence on drying and the probability of summer fog intrusions. Point values increase as the coastline is approached and in fog influx corridors.

The "Aspect" column uses the same consideration as the Cascade form. North slopes may be burned on much fewer days than south slopes.

The "Fuel Treatment" column relates to the difficulty and effectiveness of alternate treatments and the pre-treatment essential to achieving the burning objectives. Units requiring mass ignition with explosive fuses are given a high point score because it is essential to fire such units at the earliest burn day following installation of the ignition equipment. Such units normally fall into a high category for other reasons also.

As in the Cascades a score of 50 points or more is needed to place a unit in the priority burn category. Units with less than 50 points will not be burned during the Priority Burning Period.

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PRELIMINARY PRIORITY BURNING CHART

629-1-4-1-503

This chart is to be used to indicate the treatment objective and whether or not burning is required to meet that objective. If burning is indicated, the period when that burning can best be accomplished will be indicated. Units which are checked for summer, spring-summer or summer-fall will then be evaluated on the Coast or Cascade Range Slash Burning Priority Status form for assignment of priority.

UNIT: _____

TREATMENT OBJECTIVE	Burning Required?		When can burning best be accomplished?			UNIT _____ COMMENTS
	YES	NO	Spring	Summer	Fall	
1. Reduce duff layer, root mat or prepare seed bed						
2. Reduce or eliminate mechanical barrier to planting or seeding						
3. To control competing vegetation						
4. To eliminate or control shading for seeded or planted stock						
5. To control animal habitat, insect or disease						
6. To reduce overall fuel loading in the area to reduce fire hazard						
7. Reduce fire hazard in high risk areas						
8.						
9.						
10.						

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A SLASH BURNING PRIORITY RATING FORM FOR THE CASCADE RANGE IN WESTERN OREGON

(This form is adapted for the west side of the Cascade Range, north of the North Fork and main stream of the Umpqua River)

UNIT _____

Priority Rating: _____

SLOPE	SPECIAL LOCATION CONSIDERATIONS	ASPECT	SILVICULTURAL CONSIDERATIONS	SOIL CONSIDERATIONS
Less than 15% slope 15	High elevation (short burning season) or critical east wind exposure which cannot be reasonably disposed of at other times. *Hign value at Risk exposure 20	N NE NW Slopes 20	Site preparation by burning is required. Dessicant spray required and can only be burned in this summer period or pretreatment already made, or type of planting stock available is critical. 18	Summer burning required to achieve low intensity burn, or area with high summer soil moisture. Area cannot be mechanically treated. 15
15% to 40% slope 10	Moderate east wind exposure, or Access needs to be put to bed before fall rains. *Medium value at risk exposure 10	E SE Slopes 8	Moderate needs for burning by site preparation - other site preparation measures more expensive; or planting stock availabilities fairly critical 10	Critical soils requiring light burn; Mechanical disturbance must be kept to a minimum 8
More than 40% slope 4	Exposed to down canyon air movement into Designated Area. *Low value at Risk exposure 4	S SW W Slopes 4	 4	Mechanical treatment possible but undesirable for this site. 4

Priority:
- 50+ points — High
- 35-50 points — Moderate
- Less than 35 points — Low

*Value at Risk Exposure defined in "Forest Residues Management Guidelines".

Example: A unit which must be burned on a very specific prescription to protect high values at risk will have to be burned when prescribed conditions occur. This would fall in the High category since the prescribed conditions may occur during the summer burning period.

NOTE: See "high elevation units" on reverse side of this form.

ESTIMATING TONS OF FUEL CONSUMED IN PRESCRIBED BURNS

Quantification of Fuel Loading (and Consumption)

The Photo Series for Quantifying Residue* provides reasonable means for estimating the tons of fuel that may be consumed by a prescribed burn. This publication contains six series of photographs displaying different forest residue loading levels by size class, for areas of like timber types and cutting practice.

Information with each photo includes measured weights, volumes and other residue data, information about the timber stand and harvest and thinning actions and fuel ratings. These photo series provided a fast and easy-to-use means for quantifying existing residues. An evaluation of the portion of each size class of fuel that will remain after burning will provide a reasonable estimate of the fuel which will be consumed by fire when fuel moisture conditions are known. It must be emphasized that this system, while not perfect, will provide reasonable estimates if used consistently. Experience in its use will increase the ease of using it and improve the accuracy of estimates.

Procedures for use of the photo series for estimating fuel tonnage which will be, or has been, consumed by fire follows:

1. Select the loading rank, forest type, forest size class and cutting practice as explained on pages 7 and 8 of the photo series. Selection of the loading rank may best be done by looking at the photo series after selecting the other three characteristics.

   Example: Douglas Fir FDO type, size class 4 (20 inch dbh), clear cut (CC) will identify the series of photos from which individual photos can be selected which are most representative of the slash unit being measured.

2. When the representative photo(s) is(are) selected, the data sheets for that fuel loading can be used to make the fuels estimate.

   Using 7-Df-4-CC (page 22) as an example:

Fuel Size Class	Tons/Acre	Estimated % That Will be Burned
0.25 - 1.0	4.9	100
1.1 - 3.0	11.3	100
3.1 - 9.0	22.0	60
9.1 - 20.0	13.9	20
20.1 +	45.0	10

The following calculations will give you a tonnage estimate (per acre) of: (4.9 x 100%) + (11.3 x 100%) + (22.0 x 60%) + (13.9 x 20%) + (45.0 x 10%) = 36.7 tons per acre. Note that these percentages are subjective. In most cases, the percentages should be determined using the "experimental" procedures detailed on the following pages.

* USDA Forest Service General Technical Report PNW 51, 1976. Photo Series for Quantifying Forest Residues in coastal Douglas-fir - Hemlock type and the coastal Douglas-fir - hardwood type. Also, Technical Report PNW 52, 1976 (same title) for Ponderosa pine types, Ponderosa pine and associated species type and Lodgepole pine type.

Note, for example, that if the observed 1.1 - 3.0 inch loading was better represented by the photo on page 24, then 5.9 tons/acre (see page 25) would be a part of the ensuing tonnage calculations instead of the 11.3 tons/acre listed above.

Examination of units before and after burning will increase the accuracy of estimating the percentage of each fuel type that will be consumed.

The photo series is one way of determining fuel loading. A second method, the basis upon which the photo series was developed, is actual field sampling of proposed units. It is recommended that pre- and post-burn sampling be done to get a feel for consumption estimates under different moisture conditions.

The procedures for inventorying downed woody material are provided in two U. S. Forest Service technical reports published by the Intermountain Forest and Range Experiment Station in Ogden, Utah. The "Handbook for Inventorying Downed Woody Material" by James K. Brown (USDA General Technical Report INT-16, 1974) and the "Graphic Aids for Field Calculation of Dead, Downed Forest Fuels" by Hal E. Anderson (USDA General Technical Report INT-45, August 1978) are the reference documents to be followed when doing a planar intersect sample.

The intent in using the photo series or by performing an actual transect is to provide consistency in the quanitification of fuel loading.

Calculation of Woody Fuel Consumption (Experimental)[1]

The calculation of woody fuel consumption should utilize the graph shown on page 4. The graph was taken from the USFS research report, "Predicting Fuel Consumption by Fire Stages to Reduce Smoke from Slash Fires" by Roger Ottmar.

The graph provides an estimate of the large (3" +) fuel consumption as a function of the 1000-hr fuel moisture. Three alternatives are provided to determine the 1000-hr fuel moisture. The moisture can be measured (either by weighing or moisture meter); the NFDR-th value can be utilized; or the ADJ-th can be used. The method for determining as well as the moisture value and weather station are reported on the coding form and when entering data into the computer.

For fuels smaller than 3", total consumption should be assumed when calculating the total woody fuel consumption.

A second method for calculating woody fuel consumption is by doing a post-burn transect.

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[1] The fuel consumption estimation procedures for woody fuels and duff are intended as an alternative procedure to be used on an experimental basis to test and verify techniques that are described in this directive. Collection and submission of field data needed for the experimental method is required under the Smoke Management Plan.

Calculation of Duff Consumption (Experimental)[1]

In addition to calculating the woody fuel consumption, the duff consumption needs to be calculated. Again, using the 1000-hr fuel moisture, determine the fuel diameter reduction shown on the graph on page 4. Using the fuel diameter reduction, enter the graph on page 5 to determine the duff consumption in inches, interpolating as necessary. Multiply the inches of duff consumption by 18.7 to determine the tons/acre of duff consumed.

The graph on page 5 was also taken from Ottmar's USFS research report that was referenced above.

Total Fuel Consumption (Experimental)[1]

The total fuel consumption is the sum of the woody fuel consumption, both large and small fuel, and the duff consumption. The total, in tons/acre, should be multiplied by the number of acres that are burned (or are expected to be burned) when planning and accomplishing units.

Pile Burning Fuel Consumption

When piles are being burned, estimate the volume of material in the piles and then, using the procedures provided in the reference documents, determine the tons of material in the piles.

For reporting purposes, assume total consumption of the piles when planning and accomplishing units. Even when piles are part of a broadcast burn and total consumption of fuels from the broadcast operation is not expected, total consumption of the piles burned should be reported.

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[1] The fuel consumption estimation procedures for wood fuels and duff are intended as an alternative procedure to be used on an experimental basis to test and verify techniques that are described in this directive. Collection and submission of field data needed for the experimental method is required under the Smoke Management Plan.

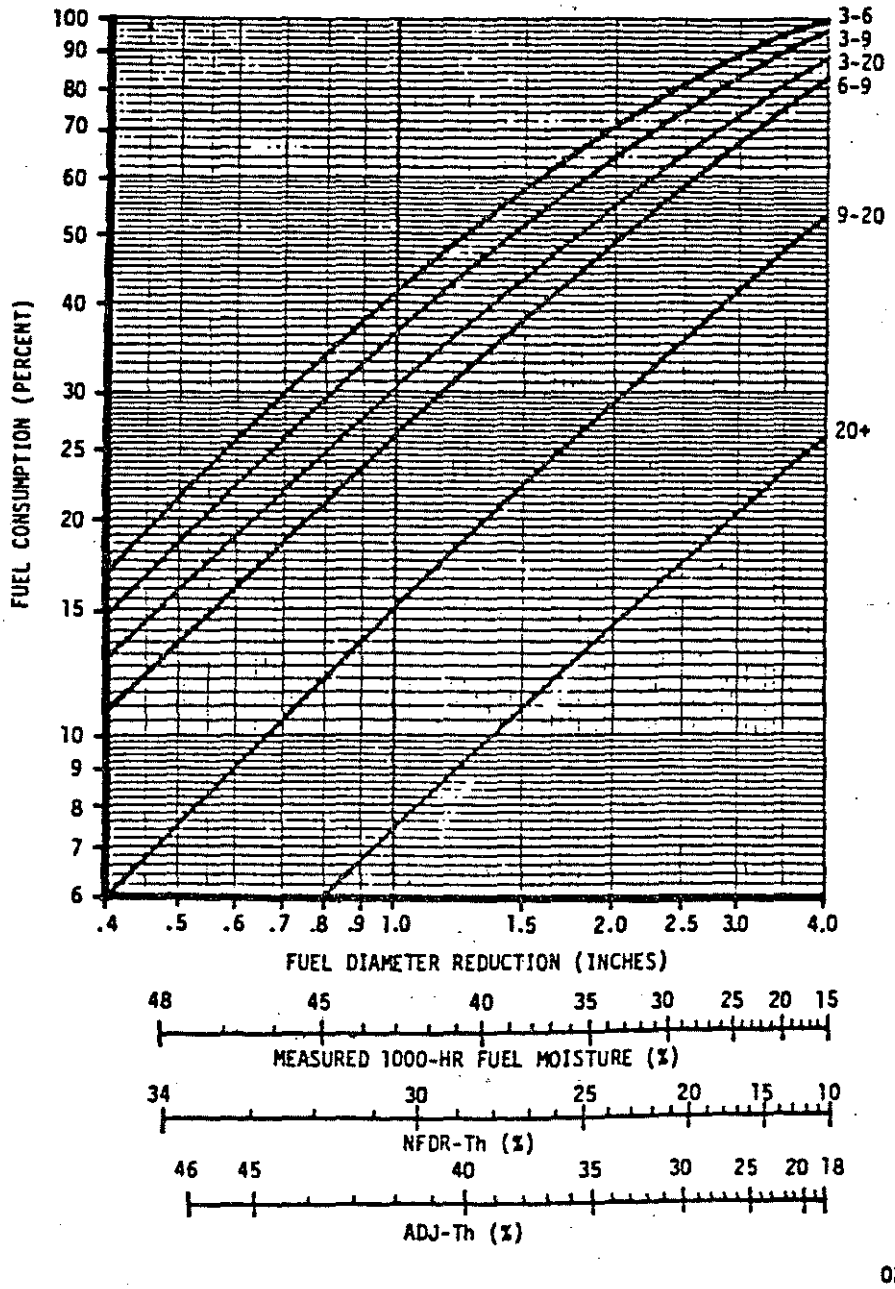

Figure 3.--Consumption of large fuel (greater then 3 inches in diameter) estimated from reduction of fuel diameter, measured 1000-hour fuel moisture, NFDR-Th, or ADJ-Th. Based on results of prescribed fires in Douglas-fir/hemlock clearcut and underburn units. Incomplete consumption of small fuels (caused by high humidity or precipitation, for example) causes less large fuel to be consumed than predicted. sustained wind causes a greater amount of large fuel to be consumed than predicted.

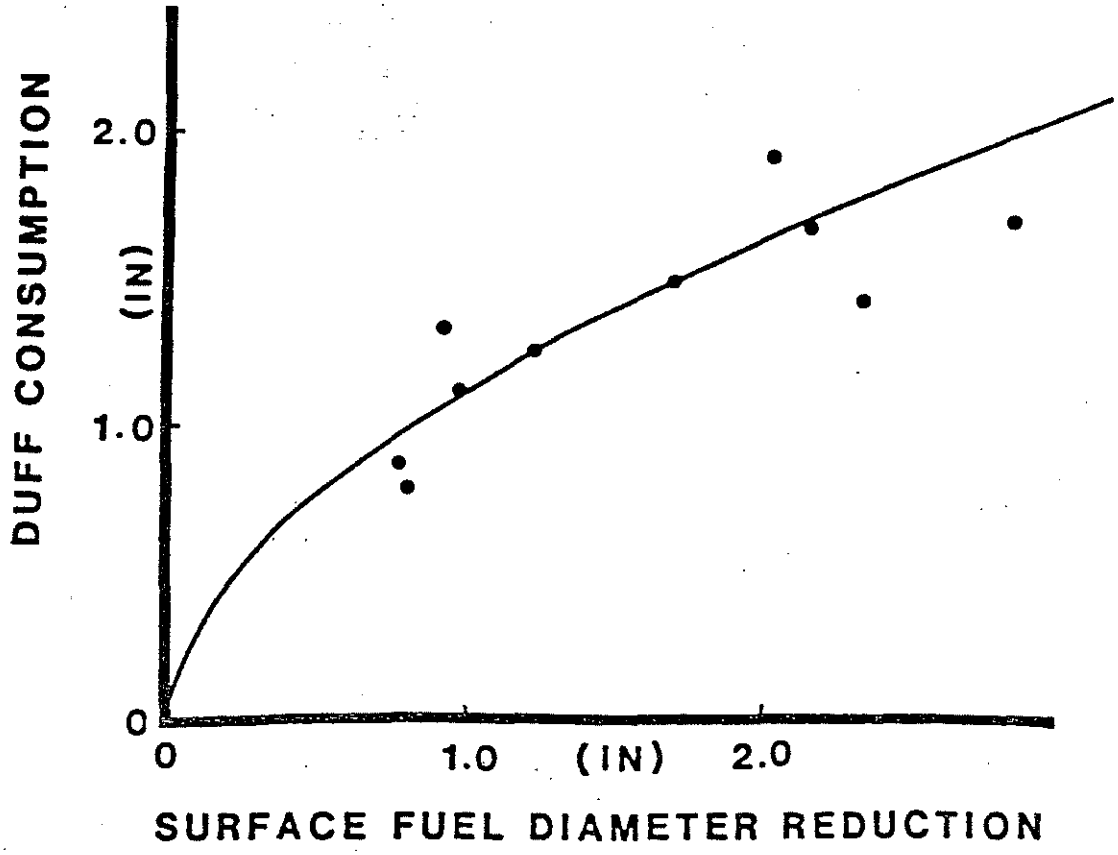

Figure 6.--Duff consumption with regression dependent on surface fuel diameter reduction. Analysis limited to fuel-dependent duff consumption.

ATTACHMENT 4

Protection
6/83 - - P.N. 628

DIRECTIVE
1-1-3-411 p. 1

OPERATIONAL DETAILS FOR THE OREGON SMOKE MANAGEMENT PLAN

PURPOSE. This directive provides guidelines and constraints necessary to the successful accomplishment of forest land management objectives and to the maintenance of a satisfactory atmospheric environment in designated areas.

SITUATION. Prescribed burning to reduce hazardous fuel accumulations and prepare logged or brushy areas for reforestation is applied on an average of 111,000* acres of Oregon's forest land each year. The burning is done on approximately 3,400 separate parcels (units) of forest land.

Some units are burned for hazard reduction only; however, most burning is done to reduce hazard and to improve the chances for successful reforestation of logged sites and brush fields. A reduction in the use of herbicides has increased the importance of fire as a silvicultural tool, particularly in the highly productive forest lands in western Oregon where brush competition can severely reduce the chances for successful reforestation on many sites.

Along with the recognition of the critical role fire has in the successful management of Douglas fir forests has come a critical awareness of the problems smoke from these fires can cause for residents of the state. This awareness has resulted in the development of the Oregon Smoke Management Plan. The original plan for managing smoke from forest lands was first developed by the Department of Forestry in coordination with other forest land management agencies and the forest industry. It was later made into law by the Oregon Legislature.

The Smoke Management Plan consists of the original plan (Directive 1-1-3-410) as defined by Administrative Rule and refinements developed by the Department of Forestry as new knowledge and skills have developed in the science of predicting atmospheric conditions relative to smoke movement.

AUTHORITY. Substantial authority is granted to the Forester by ORS 477.515 to develop a plan for the management of smoke produced by forest land burning. This statute provides that the Department of Forestry and the Department of Environmental Quality shall approve a plan for managing smoke in areas they will designate. The statute also specifies a variety of control measures the Forester may use to administer the plan.

ORS 477.515 also states that the Smoke Management Plan shall be developed by the State Forestry Department in cooperation with federal and state agencies, landowners and organizations that will be affected by the plan. The plan is filed with the Secretary of State and is promulgated as Administrative Rule OAR 629-43-043. The State Forester has administrative authority to develop operating policies, procedures and practices to meet the objectives of the plan.

OBJECTIVE. The objective of the Smoke Management Program is to keep smoke resulting from burning on forest lands from being carried to, or accumulating in designated areas, or accumulating in other areas sensitive to smoke; and to provide maximum opportunity for essential forest land burning consistent with this objective.

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*This is a running average for the five year period ending in 1980.

OPERATIONAL DETAILS FOR THE OREGON SMOKE MANAGEMENT PLAN

POLICY. It is the policy of the Forester to manage prescribed burning on forest land with concern for all aspects of the environment and with particular consideration for the need for continuous forest production on Oregon's forest lands. It is also the policy of the Forester that the Smoke Management Plan, directives and guidelines issued relative to the plan be strictly complied with.

STANDARDS.

The Oregon Smoke Management Plan (Directive 1-1-3-410) provides a specific legal framework for the administration of the forest smoke management program for Oregon.

The State Forester is responsible for the coordination and control of the Oregon Smoke Management System. The plan applies to western Oregon. It is administered with full interagency cooperation with the U.S. Forest Service, Bureau of Land Management, Bureau of Indian Affairs, the Department of Environmental Quality and private forest industry.

The plan instructs each Field Administrator to maintain a satisfactory atmospheric environment in designated areas. The plan requires the Forester and the Field Administrator to continually monitor weather factors, advisories and air quality conditions in designated areas in conducting the burning program.

The plan establishes a set of limitations applicable to specified burning and mixing conditions. These limitations relate to tonnage of fuel per 150,000 acres which, ideally, may be burned under various sets of mixing conditions. Experience has proven these standards are adequate to protect designated areas only under ideal conditions. Frequently, more specific restrictions must be applied to meet air quality objectives.

The various standards used in the administration of the Smoke Management Plan follow:

A. Weather Forecasts

The Salem, Portland and Medford Fire Weather Offices provide twice daily smoke management forecasts. Each forecast provides a general discussion of meteorological conditions that influence air movement and atmospheric mixing conditions which will affect smoke movement and dispersion in the atmosphere.

Specific weather predictions are given for climatic zones within the area. A section of the forecast is devoted to the smoke mixing and dispersion characteristics of the atmosphere within the forecast area. This is determined by the stability of the air mass and the speed and direction of transport winds. Sections of the forecast provide information relative to burning conditions as well as air movement.

An outlook for the day following the forecast period is provided. The period of time covered by the outlook will depend upon the weather influences involved at any given time. Burning will be conducted in accordance with current forecast information.

OPERATIONAL DETAILS FOR THE OREGON SMOKE MANAGEMENT PLAN

B. Smoke Management Advisory

Smoke Management Advisories will be issued by the Salem Smoke Management Section during periods when weather is favorable for significant amounts of burning. The advisories provide constraints on burning in areas where the basic Smoke Management Plan may be inadequate to protect Designated Areas.

The advisories are based upon an analysis of the atmospheric conditions affecting smoke transport and dispersion and of the air quality conditions in designated areas which might be affected by forest land burning.

The advisories will be issued immediately after the Portland, Salem and Medford weather forecasts, usually at 8:30 am and 4:00 pm. The morning advisory will regulate the current day's burning. The afternoon advisory will state the next day's expected constraints, and is primarily to assist field units in planning.

Field units planning early morning ignitions (prior to 8:30 am) should use the prior afternoon's advisory for smoke management considerations. Ignitions planned after 8:30 am should adhere to the current morning's advisory.

Field Administrators are encouraged to discuss plans for early morning or night time ignitions with the Smoke Management Coordinator.

A smoke management "Hot Line" is in operation in the Salem Fire Weather Forecast Office. This line provides recorded weather information to any caller at any time. Recorded weather information is updated as follows:

1. During the period when the Priority Burning System is in effect, the previous day's. 3:00 PM forecast will be updated at 6:30 AM.
2. At 8:00 AM and 3:00 PM the most current forecast will be recorded.

This information can be obtained by calling 378-2800.

C. Priority Burning System (See Appendix 3)

The Forest Land Burning Priority Rating System (Priority Burning System), was initiated to reduce the amount of forest land burning during the time when the maximum acreage of grass seed fields are being burned in the Willamette Valley. There are approximately 60 days during mid-summer when field burning has been given a high priority for use of the air shed in the valley for smoke dispersal. The Priority Burning System was developed by the Department of Forestry in coordination with the Department of Environmental Quality and with the cooperation of public and private forest land managers.

The Priority Burning System limits forest land burning during the 60-day period to units which must be burned during that time to meet the burning objectives. Only units with a high priority rating will be burned when the Priority Burning System is in effect. The Forester will provide notice to all Field Administrators when the Priority Burning System is initiated and rescinded.

OPERATIONAL DETAILS FOR THE OREGON SMOKE MANAGEMENT PLAN

The priority burning period is established by the Department of Forestry upon the recommendation of the Department of Environmental Quality. The exact period varies from year to year and may extend for more or less than 60 days.

The procedures for rating and prioritizing burn unit is included in Appendix 3 of this directive. These procedures will be used on all units which may be burned during the summer months.

D. Air Stagnation Advisories

Air stagnation advisories will be issued by the Weather Service Forecast Office in Portland when atmospheric conditions are such that the potential exists for air pollutants to accumulate in designated areas for an extended period. During such times smoke and other pollutant sources within the designated area will create substantial air quality deterioration without the addition of smoke from outside sources. This condition is recognized in the administration of the Smoke Management Plan.

Smoke management advisories issued during an Air Stagnation Advisory will limit forest land burning to units which will contribute no smoke to a designated area covered by an Air Stagnation Advisory or an Air Pollution Alert. Burning during such periods will be closely controlled.

E. Measurement of Fuel Tonnage

The correct estimation of fuel tons that will be consumed by a burn is very important to the development and improvement of the smoke management program. It is essential that a reasonably accurate estimate of tons of fuel that will be consumed by a fire be reported in the burning plan.

The publication "Photo Series For Quantifying Forest Residues" will be used for making fuel tonnage estimates. Instructions for the use of this publication in estimating tonnage are included in Appendix 4.

A publication has been developed for western Oregon and eastern Oregon forest types.

F. Reporting

Three basic information items are essential to the administration of the burning program. These items are: (1) unit descriptions, (2) planned burns, and (3) accomplished burns. Additional information is needed to provide data for analysis, reporting and evaluation of the program procedures. Reporting will be accomplished in accordance with Appendix 1, Detailed Instructions for the Oregon Smoke Management Reporting System.

RESPONSIBILITY.

A. State Forester. The State Forester is responsible for the coordination of the Smoke Management Plan and the Operating Details between the National Weather Service, United States Forest Service, Bureau of Land Management, Oregon Forest Protection Association, Department of Environmental Quality, and any regional air quality

authorities. In addition, the State Forester, through the Forest Protection Division, has the responsibility to issue additional restrictions on prescribed burning in situations where the air quality of the entire state or any part thereof is, or would likely become, adversely affected by smoke.

B. Forest Protection Division - Fire Operations Section. The Fire Operations Section is directly responsible for providing weather forecasting services for smoke management purposes.

Burning advisories will be issued in concurrence with weather forecasts and in coordination with the Department of Environmental Quality (DEQ) when the priority burning restriction is in effect or during air pollution alerts. Burning advisories will be written in clear and concise terms. The Operations Section will provide more specific information when requested by telephone.

The Operations Section will monitor the burning program currently. Monitoring will be intensified on marginal days and will involve aircraft observation and telephone calls to the districts relative to local conditions.

The Operations Section will work with the areas and districts in identifying training needs and in developing training packages.

Operations Section staff will provide assistance on the ground wherever needed. They will maintain a close liaison with field operations through the Smoke Management Meteorologist and normal staff-line relationships.

The Operations Section will maintain a smoke management records system. They will produce an annual summary of burning and smoke management activities. They will also provide available data to meet the immediate needs of staff and line personnel upon request.

C. Area Directors and District Foresters. Each Field Administrator issuing burning permits under the Smoke Management Plan will manage prescribed burning on forest land with respect to other aspects of the environment in order to maintain a satisfactory atmospheric condition in designated areas. This effort will also be applied to special situations where local conditions warrant in areas not defined as designated areas but which are sensitive to smoke. Accomplishment will involve a consideration of weather forecasts, burning advisories, acreages involved, amounts of material to be burned, evaluation of potential smoke column vent height, direction and speed of smoke drift, residual smoke, mixing characteristics of the atmosphere, and distance from the designated area of each burning operation.

Each Field Administrator will evaluate down-wind conditions prior to implementation of burning plans. Upon notice from the Forest Protection Division that air in the entire state or portion thereof is, or would likely become, adversely affected by smoke, the affected Field Administrator will terminate burning. Upon termination, any burning already under way will be completed; residual burning will be mopped up as soon as practical; and no additional burning will be attempted until approval has been received through the burning advisory.

OPERATIONAL DETAILS FOR THE OREGON SMOKE MANAGEMENT PLAN

Field Administrators will make daily reports covering burning operations. Monitoring of smoke behavior will be intensified on marginal days. This will be done by use of lookouts, aerial observation and on-site observation of smoke behavior.

Any wildfire that has the potential for smoke input into a designated area will be reported immediately to communications in the Fire Operations Section.

D. Department of Environmental Quality (DEQ). The State Forester and the DEQ are required by ORS 477.515 to approve a plan for the purpose of managing smoke in areas they shall designate. The Oregon Smoke Management Plan is the product of this statutory requirement.

The DEQ cooperates with the Department of Forestry in all phases of the administration of the Smoke Management Plan. Particularly important is current and timely information on air pollution levels in designated areas and priority burning periods.

E. United States Forest Service (USFS), Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA). The USFS, BLM and BIA have signed agreements with the Department of Forestry and the DEQ to comply with the Oregon Smoke Management Plan. These agencies have agreed to follow the direction of the Forester in conducting burning operations. They follow the smoke management weather forecasts, smoke management advisories and priority burning restrictions.

National Forests within the state will coordinate currently with the Forester on smoke management and burning plans. The State Director of the Bureau of Land Management has directed BLM field people to comply with the Smoke Management Plan as administered by the State Forester.

F. Private Forestry Operations. It is the responsibilty of private forest operators under Oregon Forest Laws to burn according to the Oregon Smoke Management Plan. They are responsible to burn according to directions from State Forestry field personnel and to do mop-up of the burns necessary to prevent smoke intrusion into designated areas and to prevent fire escape.

Summary:

The State Forester is responsible for the administration of the Smoke Management Plan in Oregon. He does this in coordination with the Department of Environmental Quality and with the cooperation of the public land management agencies.

The Smoke Management Plan places the specific responsibility for making day-to-day decisions upon Field Administrators. The Forest Protection Division is responsible for providing meteorological and technical assistance to Field Administrators and for monitoring the program.

REPORTING SYSTEM
SMOKE MANAGEMENT PLAN

Objective: The Department of Forestry's communications center operates a computer program to record and process smoke management data. Data is received and transmitted through the State Forestry and U.S. Forest Service teletype systems.

The objectives of the reporting system are to provide a record of:

1. Locations and amounts of planned burning for the current day.
2. Locations and amounts of burning accomplished the previous day.
3. Smoke intrusions, including source, area affected, duration, and information relative to the cause of the intrusion.
4. Annual summaries of data.

Area Included:

The reporting system includes all of western Oregon, plus those parts of Hood River and Wasco Counties within the boundary of the Mt. Hood National Forest, and the part of Klamath County within Crater Lake National Park. Data is grouped by Administrative Units, i.e., each National Forest, Crater Lake Park, and each State Forest Protection District.

Types of Burning to be Included:

All burning related to forest management activities should be included in the reporting system. Some examples are slash and brush disposal after logging, road building, scarification, or burning of brush fields for reforestation. Other examples which should be included are underburning, or brush field burning for stand improvement or wildlife habitat.

Types of Burning That Should Not be Included:

Burning for debris disposal or burning related to *agricultural activities should not be included in the reporting system. Some examples are household or yard maintenance debris such as paper, leaves, lumber, etc., and grass or grain stubble. Small piled slash areas such as for a homesite should not be included if the amount to be burned is less than 5 tons.

While these examples would not be reported in the Smoke Management Data System, any western Oregon burning subject to permit under ORS 477.515 must conform to the Smoke Management Plan. Also, in some areas "backyard" and stubble burning must be done in compliance with Department of Environmental Quality rules, rather than the Oregon Smoke Management Plan.

* The range burning on Class III (Grazing) lands, common in Coos and Douglas Districts, should not be included in the Oregon Smoke Management System (OSMS) Data System. This burning should be reported to Salem daily as a separate item following "Accomplishment Report". For each permit exeeding 5 acres, report township, range, section and acreage burned.

REPORTING SYSTEM
SMOKE MANAGEMENT PLAN

Procedure:

Three basic steps are involved in the reporting system:

1. A "Unit Description" is submitted to Salem for each "burn unit"* as provided on Reporting System Coding Sheet (Part I, Form 1-1-3-400). This results in a "Unit Number" assigned to the specific burn unit, usually months or weeks before burning is to be done.

2. "Unit Numbers" of planned burns are submitted by field offices on the day burning is to be done. This results in "Planned Burns" (Part II of Form 1-1-3-400). Planned Burns are listed daily on the teletype network to all users and to DEQ.

3. An "Accomplishment Report" is submitted by field offices the day after burning, again using the "Unit Number" as a reference (Part III of Form 1-1-3-400). The Accomplishment Report is listed daily on the teletype along with Planned Burns.

Detailed instructions for Reporting System Coding Sheet (Form 1-1-3-400)
(Also see instructions on back of form.)

Part I - Unit Description and Number Assignment.

Example entry for Part I, Form 1-1-3-400 (Unit Description).

Raw Data: This is the information needed from a field office to begin a record for a specific area to be burned. The data may be entered on the form and mailed or sent by teletype. Forms mailed should be addressed to:

Department of Forestry
Attn: Communications Section
2600 State Street
Salem, OR 97310

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* Unit—this term is used to describe a contiguous area which will be burned at the same time. This could include a right-of-way containing piled slash if the area is considered one project and will be burned at one time.

REPORTING SYSTEM
SMOKE MANAGEMENT PLAN

Field No.
Data Entry

1	This example is located in: West Oregon District	WO
2	This example is located in: Benton County	2
3	This example is located in: Township 11S, Rng. 7W, Sec. 12	11S-7W-12
4	Average elevation of the Unit is 1,500 feet above sea level	1500
5	Distance from Designated Area, to nearest mile, is 12 miles	12
6	Type of burn will be broadcast	B
7	Acreage in unit to nearest acre is 15	15
8	Estimated tonnage that will be consumed by fire is 150	150
9	Burn is rated high priority. (See Priority Rating System, this directive and instructions, Part I, Field 9, on back of Form 1-1-3-400)	H
10	The unit is privately owned	P

Summarized for teletype transmittal, this data would appear as follows:

WO,2,11S-7W-12,1500,12,B,15,150,H,P

Teletype transmittal of numerous entries allows a tape of field data to be made as the data is received. This tape allows direct data entry into the computer. Therefore, it is critical that each element of data (field 1, 2, 3, etc.) be separated by a comma. Also, the Township, Range and Section must be separated by a hyphen. When the last data entry (field 10) is entered, do not use a comma. Start a new line by using line feed, carriage return. (On USFS teletypes, it is helpful if the "rubout" key is also used after line feed and carriage return.)

If an error is made at any point in a line of data, type three "X's" (XXX). The computer will recognize "XXX" and ignore the data in that line. Use line feed, carriage return, etc., and start the entry again.

Number Assignment

The Salem Communications Clerk enters the unit description into the computer, then sends a "Unit Verification and Number Assignment" on the teletype, to the appropriate field office(s).

The teletype will appear as follows:

SMOKE MANAGEMENT
UNIT VERIFICATION AND NUMBER ASSIGNMENT FOR 02/01/81

	WEST OREGON			BENTON					
*Unit No.	Twp Rge Sec	Elev.	Dist.	**Type	Acres	Tons	***Tons/Ac.	Owner
912	11S-07W-12	1500	12	B-H	15	150	10	P

* Automatically assigned by computer.
** Type and priority are both listed, i.e., B = Broadcast, H = High priority.
*** Automatically calculated by computer.

REPORTING SYSTEM
SMOKE MANAGEMENT PLAN

Field offices should review these as soon as possible. If any errors are found, contact the Communications Clerk to correct the data.

This completes the entry process, Part I of Form 1-1-3-400.

PART II. Planned Burns

Example entry background: The field has decided to burn Unit No. 912 (the number assigned by the computer in Part I above) today, July 20, 1981. Estimated ignition time is noon. The entire unit will be burned.
Data to be sent to Salem by teletype:

Field No.		Data Entry
1	Unit Number 912	912
2	Estimated ignition time	1200
3	Tonnage to be burned	150

The teletype data line will appear as follows:

912,1200,150

If an error is made at any point on a line of data, three X's should be entered, then use line feed and carriage return, and enter the correct data.

Do not plan right-of-way burns. (See Form 1-3-4-420)

When all planned burns have been received from the field, the Communications Clerk enters the data into the computer, which results in a teletype listing as follows:

SMOKE MANAGEMENT

PLANNED BURNS FOR 07/20/81

	WEST OREGON		BENTON				
Unit No.	Twp Rge Sec	Elev.	Dist.	Type	Acres	Tons	**Time
912	11S-07W-12	1500	12	B-H	15	150	1200

** Estimated ignition time. This replaced tons/acre shown on Planned Burns, beginning January 1, 1981.

PART III. Accomplishment Report

Example entry backgound: Unit 912 was ignited as planned in the above example. However, only half the unit burned. Smoke from the burn entered Corvallis.

REPORTING SYSTEM
SMOKE MANAGEMENT PLAN

Data to be sent to Salem by teletype on July 21.

Field No.		Data Entry
1	Unit Number	912
2	Actual Ignition Time	1200
3	Actual tonnage burned	75
		*Yes

The teletype data line will appear as follows:

912,1200,75, Yes (Same instructions as above for errors, etc.)

* Report a smoke intrusion by adding YES at the end of the data field.

When a smoke intrusion occurs, Form 1-1-3-410, Smoke Intrusion Report, also must be completed as soon as practical. Usually, preliminary information can be telephoned. See Appendix 2 Smoke Intrusion Report.

All planned burns must be "accomplished" the following day or on the next business day if the Communications Center is not operational on a weekend or holiday. If no burning was done, the data line would appear as follows:

912,0,0

Units burned during weekends or holidays when the Communications Center is closed should be reported in groups by the date burning was done.

Use Form 1-3-4-420 to report right-of-way burns.

The accomplishment report sent out from Salem Communications Center will appear as follows:

SMOKE MANAGEMENT
RESULTS SUMMARY FOR 7/21/81*

	WEST OREGON			BENTON			
Unit No.	Twp Rge Sec	Elev.	Dist.	Type	Acres	Tons	**Time
912	11S-07W-12	1500	12	B-H	15	75	1200

* Burning actually occurred 7/20
** Actual Ignition Time. This replaced tons/acre beginning January 1, 1981.

REPORTING SYSTEM
SMOKE MANAGEMENT PLAN

Additional Instructions - "Available Tons" and "Tons Burned":

Background:

Tons of fuel burned is a critical element in the data system. It is used to estimate emissions from forest burning. It is important to private, state, and federal land managers, and air quality enforcement agencies. Therefore, the reporting of this information must be as accurate as possible. There is no advantage to be gained by knowingly reporting amounts smaller or larger than actually available or actually burned.

Entering Data:

When entering data in Part I, Field 8, the tons should be the amount expected to be burned under ideal burning conditions, not the total fuel loading. For example, old growth slash may total 150 tons/acre before burning. After burning it is not uncommon to have as much as 100 tons/acre (usually the larger material) remaining. In this case, 50 tons/acre should be the basis for estimating the "available tons". If the unit area was 10 acres, then 10 x 50 = 500 tons - the amount which should be entered in Part I, Field 8, of Form 1-1-3-400.

Planning a Burn:

The data system was modified in 1979 to allow planning all, or part, of a unit on a given day. If only part of a unit will be burned, the tons to be burned that day should be entered. (Part II, Field 3, Form 1-1-3-400.) The computer will list that amount on the "Planned Burn" list for that day.

Resulting a Burn:

Report the tons that actually burned.

Summaries Available:

In addition to the daily planned burns and results listings, several summary printouts are available. At approximately 3-month intervals, the Communications Clerk will send each field administrative unit the following summaries. Also, they may be obtained at any time by calling the Communications Clerk:

REPORTING SYSTEM
SMOKE MANAGEMENT PLAN

1. Available Units. Lists all units that have not been reported as 100% burned. Last item shown is percent of tonnage unburned.

Available Units Format:

SMOKE MANAGEMENT
AVAILABLE UNITS

WEST OREGON

Unit	Twp-Rng-Sec	Elev.	Distance	Type	Acres	Tons	Left
912	11S-07W-12	1500	12	B-U-M	15	75	50%
					15*	75*	-

*Total acres and tons by District.

2. Accomplishment Report. Lists all units that have had any burning done. Tons is the cumulative amount burned prior to the printout date.

Accomplishment Report Format:

SMOKE MANAGEMENT
ACCOMPLISHMENT REPORT

WEST OREGON

Unit	Twp-Rng-Sec	Elev.	Distance	Type	Acres	Tons
912	11S-07W-12	1500	12	B-H-M	15	75
1*					15*	75*

* Total units, acres and tons by District.

3. Problem Summary Report. This lists all burns from which an intrusion was reported. The last item shown is month and day the burn was conducted.

REPORTING SYSTEM
SMOKE MANAGEMENT PLAN

Reporting Schedules

Unit Descriptions

These may be transmitted any time during office hours; however, field offices should avoid periods when the teletype is scheduled for other data such as incoming weather or fire reports. Also, waiting to submit unit descriptions until the day the unit is to be burned places unreasonable demands on the data system. Whenever possible, these should be sent well before the day burning will occur.

Accomplished and Planned Burns

These are to be sent at 9:30 AM. The Salem Communications Clerk will transmit "Smoke Management Accomplished and Planned Please" at approximately 9:30 AM, after which field units should report in the following format: (Also see Reporting System pages 4-5 this Appendix)

District Identifier, Accomplished (yesterday's burning)
Unit No., Actual Ignition Time, Tons Burned, YES (only if intrusion occurred)

(use a new line for each unit number)

Planned (for today)
Unit No., Estimated Ignition Time, Tons Planned,
(use a new line for each unit number)

End - District Identifier

Smoke Management (Daily summaries from Salem)

As soon as Accomplished and Planned reports are processed in Salem, the Communications Clerk will transmit the summaries to field units and Department of Environmental Quality. Contents of these summaries are shown on pages 4 & 5 of this appendix.

SMOKE INTRUSION REPORT FORM 1-1-3-410

Definition

A smoke intrusion occurs when any visible or monitored smoke from prescribed forest burning enters a Designated Area below that Designated Area's ceiling.

Background

Smoke intrusions vary greatly in duration, concentration and effect on a Designated Area. For example, a smoke layer well above the surface would not affect the monitored air quality in a Designated Area, but is still an intrusion under the Oregon Smoke Management Plan. Smoke accumulating at the surface, and remaining overnight adversely affects air quality more than if smoke drifts through, clearing in an hour or two.

Purpose

This report provides a descriptive record of smoke intrusions, supplemental to the "Problem Burns" reported in the Smoke Management Data System. Reports are annually summarized in the "Smoke Management, Annual Report" compiled by the Smoke Management Section.

Responsibilities

Field units, i.e., State Districts or National Forests, are responsible for monitoring smoke from their burns, and reporting intrusions to the Smoke Management Coordinator:

1. On the burning "Accomplishment Report" given daily, and,
2. Through the use of form 1-1-3-410.

The Salem Smoke Management Coordinator is responsible for:

1. Combining field reports into one intrusion summary when more than one field unit is involved.

2. Liaison with Department of Environmental Quality to develop mutually acceptable descriptive reports of smoke intrusions within 3 days of the occurrence.

3. Completion of Form 1-1-3-410A, summary of meteorological information.

4. Preparing an annual summary of intrusions.

Detailed Instructions

When to report:

Any intrusion is to be reported as soon as possible. If 7-day operations are not in progress at Salem, then report on the first workday after the incident.

SMOKE INTRUSION REPORT FORM 1-1-3-410

It is also helpful to report potential intrusions, as soon as it appears that smoke may enter a Designated Area. This allows the Smoke Management Coordinator to obtain monitoring data prior to and during the incident. It also facilitates public relations work resulting from an incident.

Data Entries (See sample form page 4 of this appendix.)

Smoke Origin

1. The unit number(s) of burns contributing to the intrusion.
2. Date ignition occurred.
3. Name of State District, National Forest (or Crater Lake Park).
4. Wind direction and speed at burn site at time of ignition.
5. Time ignition began, use 24 hour clock time.

Intrusion Description

6. Brief description, including name(s) of communities, and extent of area affected. (For example, smoke entered Willamette Valley near Dallas, drifted SE through Monmouth to Albany.) Check yes if smoke entered city of 10,000 including 3-mile radius around city limits.
7. Date intrusion entered Designated Area (This may be later than date of ignition).
8. Time (24 hour clock) smoke entered Designated Area.
9. Number of hours smoke was present in Designated Area.
10. Check proper box. Main plume refers to smoke produced during active or convective phase of burn. Residual smoke is that which is produced after fire dies down to smoldering phase. Drift smoke is that which accumulates in one area, later moving into a Designated Area, or is split off from a main plume.
11. If smoke in Designated Area was at ground level, enter "surface" or "0" for base elevation. If smoke did not reach the ground, enter best estimate of distance between ground and bottom of smoke cloud.

    For depth, enter best estimate of distance from bottom to top of smoke layer.
12. Check box which best describes smoke behavior in the Designated Area. Other descriptive phrases may be substituted if field reporter wishes.
13. Best estimate of visibility in miles in the Designated Area. (Airports are often the best source of information.)

SMOKE INTRUSION REPORT FORM 1-1-3-410

14. Leave blank if no other visibility impairment was present or several may be checked.

15.&16. Self-explanatory.

17. Name of field person reporting the intrusion.

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FORM 1-1-3-410

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1-1-3-411 p. 18
APPENDIX 2 p. 4

SMOKE INTRUSION REPORT

OREGON SMOKE MANAGEMENT PLAN

This information must be telephoned to Salem, 378-2518, no later than the next workday after intrusion.

Smoke Origin: Unit Number(s) 1 Date Burned 2 (Mo. Day Year)

District/Forest 3

Surface Wind Direction & Speed 4 at ignition time 5.

Intrusion Description

Area affected (Portion of DA where smoke was visible or monitored)

6

Did smoke affect populated area? (cities over 10,000 population, plus Lebanon, Tillamook) Yes [] No []

Date 7 Time 8 smoke entered area. Duration 9 hrs.

10 Smoke Type: Main Plume [] Residual [] Drift Smoke []

11 Vertical Characteristics: Base elevation (above terrain) _____ ft.

Depth _____ ft.

12 Behavior: Smoke remained at same level [] Smoke rose []
Smoke subsided [] Smoke layered & maintained identity []
Smoke dispersed, lost identity []

Prevailing Visibility (at time smoke entered area) 13 miles

14 Other visibility restricting sources present (check those which apply)

1. Field Smoke []
2. Wildfire Smoke []
3. Dust []
4. Resident Emmissions []
5. Fog []
6. Other (specify) [] _____
7. Unable to Identify []

Cause (Your explanation of reason smoke intrusion occurred)

15

Comments: (Any additional information which may clarify report)

16

Reported by 17
Name

FOREST LAND BURNING PRIORITY RATING SYSTEM

The Forest Land Burning Priority Rating System (Priority Burning System) identifies units* which require burning during the summer months to meet silvicultural and reforestation objectives. It provides a means for prioritizing units selected for summer burning into "high", "moderate", and "low", categories.

The objective of the Priority Burning System is to more closely regulate forest land burning during the approximately 60 mid-summer days when field burning is being accomplished in the Willamette Valley. The system insures that only forest units which must be burned during the hotter, drier mid-summer period will be burned while field burning is taking place.

The area covered by the system is that part of western Oregon north of the North Fork and main stem of the Umpqua River, excluding the Steamboat and Diamond Lake Districts of the Umpqua National Forest.

Rating forms for the Cascade and Coast Ranges were developed and field tested by two interagency-industry task force groups. The system is designed to identify those units which, because of the nature of the site, fuel and silvicultural requirements, must be burned during the hotter, drier mid-summer period.

The Priority Burning System is closely coordinated with the Department of Environmental Quality. The start and ending of the priority period** will be determined by the Forester with the advice of the DEQ on field burning levels. The priority burning systems will not be in effect when field burning is stopped, or at very low activity levels. Also, non-priority burning may be allowed in specified areas when the Forester determines that such burning will not impact the Willamette Valley.

Notification of the beginning, ending, and any areas exempt from the Priority Burning System will be included with daily smoke management advisories issued from Salem.

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* Unit: A term used to describe a contiguous area of forest land with specific boundaries upon which some activity or activities will be conducted.

** Priority Burning Period: It is a period of time when only "high priority" forest land units will be burned. The 60 days is an approximate span of time; the period will generally begin in mid-July when heavy field burning has begun and will end when conditions no longer permit this level of burning in early September.

FOREST LAND BURNING PRIORITY RATING SYSTEM

Certain special areas will be classed as high priority without use of the priority rating procedure. Such areas are characterized by special or unique management objectives which make use of a rating system impractical. Such units include:

Vegetation management areas, such as huckleberry fields.
Visual management areas which must be burned under very restrictive prescriptions.
Special watershed areas requiring burning.
Game habitat improvement burning.
Campground development.
Special reseach projects.
Right-of-way burning which must be done during the summer.
Prescribed under-burning.
*High elevation units.

---

* High elevation units in the Cascades which may be burned with no risk of impact on the designated area will be considered high priority under the following circumstances:

a. High elevation units must be at least 1000 feet in elevation above the designated area ceiling (designated area ceiling is 2500 feet). Thus, any unit must be at or near 3500 feet elevation to fall into this category.
b. In no event will any unit burned in this category be less than 1000 feet above a stable layer above the designated area.
c. There must be a sustained westerly air flow in the vicinity of the unit with no probability of a wind shift toward the designated area within 12 hours of ignition time.
d. All units must be at least 40 miles from the designated area.
e. All units must be cleared through the Smoke Management Coordinator prior to ignition.

FOREST LAND BURNING PRIORITY RATING SYSTEM

Instructions For Using Priority Rating Forms For Evaluating Forest Land Burning Units

The Preliminary Priority Burning Chart will be used for all units which are desirable to burn during the summer months. This chart is used to indicate the treatment objective for the site and whether burning is needed. If burning is needed, the season when burning objectives can best be met are identified. If summer burning is required or desirable, the appropriate Coast Range or Cascade Range Prioriting Rating Form is used.

Using the Preliminary Priority Burning Chart Form 1-1-3-403

Listed under "treatment objective" are seven of the most common treatment objectives. More than one treatment objective may be present for any single unit. Additional space is provided for treatment objectives not listed.

When treatment objectives have been identifed, the "Burning Required?" column is used to indicate whether or not burning is required to meet the objective.

If the "Burning Required?" column is checked "yes", the "When Can Burning Best Be Accomplished" column is checked as to when burning should be accomplished to meet the treatment objective. Where "Summer" is checked, the Coast or Cascade Range form is to be used to further evaluate the unit.

The "Comments" column is available for any special considerations such as special objectives, pre-treatment efforts required or other factors.

Burning Priority Rating Form for the Cascade Range Form 1-1-3-402

This form is adapted for the westside of the Cascade Range north of the North Fork and mainstream of the Umpqua River.

The "Slope" column is used to evaluate the way the steepness of the terrain will affect fire behavior on the unit. Fire will spread and broadcast much more readily on steep slopes than on gentle slopes or flat ground. Points are assigned for each slope class.

The "Special Considerations" column includes a variety of factors which relate to the need to burn during the summer months or to the risk of down-canyon winds advecting smoke into the designated area.

The "Aspect" column is used to consider exposure as it affects drying of fuels and fire behavior. For example, south exposure units receive much more direct sunlight and will be dry enough to burn many more days than north slopes.

The "Silvicultural Consideration" column include things such as pre-treatment requirements before burning, availability of essential planting stock or cost and potential for success of alternative treatments.

FOREST LAND BURNING PRIORITY RATING SYSTEM

The "Soil Consideration" relates to soil which may be damaged if too dry, or too moist soils which preclude burning except during mid-summer drought periods. Also included are areas where excessive soil damage will result from mechanical piling activity.

The points are totaled. Any unit scoring 50 points or more is a high priority unit which may be burned during the Priority Burning Period. Units with less than 50 points will not be burned while the priority burning restriction is in effect.

Burning Priority Rating Form For the Coast Range Form 1-1-3-401

The "Plant Community" column relates to the plant community on the site and the difficulty of reforesting the site with desirable species. For example, the Salmonberry-Thimbleberry plant community is extremely difficult to reforest without burning or repeated chemical applications. The most difficult plant community to reforest receives the highest point values.

The "Fuels Overstory" relates to the fuel type that will remain after logging or treatment. Fuel types which will burn readily are rated lower than the Alder-Salmonberry combinations that are difficult to burn under ideal conditions.

The "Location" column relates primarily to marine air influence on drying and the probability of summer fog intrusions. Point values increase as the coastline is approached and in fog influx corridors.

The "Aspect" column uses the same consideration as the Cascades form. North slopes may be burned on much fewer days than can south slopes.

The "Fuel Treatment" column relates to the difficulty and effectiveness of alternate treatments and the pre-treatment essential to achieving the burning objectives. Units requiring mass ignition with explosive fuses are given a high point score because it is essential to fire such units at the earliest burn day following installation of the ignition equipment. Such units normally fall into a high category for other reasons also.

As in the Cascades. a score of 50 points or more is needed to place a unit in the priority burn category. Units with less than 50 points will not be burned during the Priority Burning Period.

FORM 1-1-3-411

UNIT_____

Priority Rating_____

A SLASH BURNING PRIORITY RATING FORM FOR THE COASTAL RANGE - WESTERN OREGON

SERAL COMMUNITY (UNDERSTORY)	FUELS (OVERSTORY)	LOCATION	ASPECT (DOMINANT)	FUEL TREATMENT NECESSARY TO ACHIEVE SUCCESSFUL BURNING
Salmonberry, thimbleberry, red huckleberry, sword fern, vine maple 15	Alder with a salmonberry salal undercover or a brush dominant site or predominately hemlock stand 15	Strong marine influence of coastal strip up to 10 miles inland generally and 15 miles in fog influx* corridors or areas west of the coast range where the fog persists late in the day. 15	NORTH NE NW 20	Unit to be treated with dissicant or herbicide or hand slashed to meet vegetation control objective, and/or unit must be burned during dry period to reduce competing vegetation 18
Salal, bracken fern, ocean spray, vine maple 8	Spruce/hemlock or alder with 10-30% fir 12	West of summit of the Coast Range 8	E SE 8	Unit can be mechanically bunched or slashed, or dessicant or herbicide applied to produce burn which will reduce competing vegetation. 12
	Second growth fir and alder. Fir is 30% or more of the stand. 10	East of the summit of the Coast Range 6	SW W 6	Unit has some hand slashing. No dessicant or herbicide used. Sufficient heavy slashing present to carry broadcast fire. 6
Sword fern, Oregon oxalis 4	Second growth or mature fir stand. 50% or more of stand is fir 4	Valley fringe type 4	SOUTH	Burning will meet the vegetation control objective with little or no fuel treatment 4

Point system: 50+ High
35-50 Medium
Under 35 Low

*Fog influx corridors are areas where marine air flows through a drainage into the Valley--included are the Nestucca, Salmon, Siuslaw Yaquina, Alsea, Columbia and Umpqua Rivers.

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A SLASH BURNING PRIORITY RATING FORM FOR THE CASCADE RANGE IN WESTERN OREGON

(This form is adapted for the west side of the Cascade Range, north of the North Fork and main stream of the Umpqua River)

UNIT _____

Priority Rating: _____

SLOPE	SPECIAL LOCATION CONSIDERATIONS	ASPECT	SILVICULTURAL CONSIDERATIONS	SOIL CONSIDERATIONS
Less than 15% slope 15	High elevation (short burning season) or critical east wind exposure which cannot be reasonably disposed of at other times. *High value at Risk exposure 20	N NE NW Slopes 20	Site preparation by burning is required. Dessicant spray required and can only be burned in this summer period or pretreatment already made, or type of planting stock available is critical. 18	Summer burning required to achieve low intensity burn, or area with high summer soil moisture. Area cannot be mechanically treated. 15
15% to 40% slope 10	Moderate east wind exposure, or Access needs to be put to bed before fall rains. *Medium value at risk exposure 10	E SE Slopes 8	Moderate needs for burning by site preparation - other site preparation measures more expensive; or planting stock availabilities fairly critical 10	Critical soils requiring light burn; Mechanical disturbance must be kept to a minimum 8
More than 40% slope 4	Exposed to down canyon air movement into Designated Area. *Low value at Risk exposure 4	S SW W Slopes 4	 4	Mechanical treatment possible but undesirable for this site. 4

Priority:
50+ points High
35-50 points Moderate
Less than 35 points Low

*Value at Risk Exposure defined in "Forest Residues Management Guidelines".

Example: A unit which must be burned on a very specific prescription to protect high values at risk will have to be burned when prescribed conditions occur. This would fall in the High category since the prescribed conditions may occur during the summer burning period.

NOTE: "high elevation units" on reverse side of this

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DIRECTIVE 1-1-3-411 p. 24 APPENDIX 3 p. 6

"High elevation Units" which may be burned with no risk of impact will be considered high priority under the following circumstances:

a. High elevation units must be at least 1000 feet in elevation above the designated area ceiling (designated area ceiling is 2500 feet). Thus, any unit must be at or near 3500 feet elevation to fall into this category.

b. In no event will any unit burned in this category be less than 1000 feet above a stable layer above the designated area.

c. There must be a sustained westerly air flow in the vicinity of the unit with no probability of a wind shift toward the designated area within 12 hours of ignition time.

d. All units must be at least 40 miles from the designated area.

e. All units must be cleared through the Smoke Management Coordinator prior to ignition.

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PRELIMINARY PRIORITY BURNING CHART

FORM: 1-1-3-403

This chart is to be used to indicate the treatment objective and whether or not burning is required to meet that objective. If burning is indicated, the period when that burning can best be accomplished will be indicated. Units which are checked for summer, spring-summer or summer-fall will then be evaluated on the Coast or Cascade Range Slash Burning Priority Status form for assignment of priority.

UNIT: _____

TREATMENT OBJECTIVE	Burning Required?		When can burning best be accomplished?			UNIT _____ COMMENTS
	YES	NO	Spring	Summer	Fall	
1. Reduce duff layer, root mat or prepare seed bed						
2. Reduce or eliminate mechanical barrier to planting or seeding						
3. To control competing vegetation						
4. To eliminate or control shading for seeded or planted stock						
5. To control animal habitat, insect or disease						
6. To reduce overall fuel loading in the area to reduce fire hazard						
7. Reduce fire hazard in high risk areas						
8.						
9.						
10.						

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APPENDIX 3 p. 8

ESTIMATING TONS OF FUEL CONSUMED IN PRESCRIBED BURNS

The Photo Series for Quantifying Residue* provides reasonable means for estimating the tons of fuel per acre that will be consumed by a prescribed burn in residue left after logging. This publication contains 6 series of photographs displaying different forest residue loading levels, by size class, for areas of like timber types and cutting practice.

Information with each photo includes measured weights, volumes and other residue data, information about the timber stand and harvest and thinning actions, and fuel ratings. These photo series provide a fast and easy-to-use means for quantifying existing residues. An evaluation of the portion of each size class of fuel that will remain after burning will provide a reasonable estimate of the fuel which will be consumed by fire. It must be emphasized that this system, while not perfect, will provide reasonable estimates if used consistently. Experience in its use will increase the ease of using it and improve the accuracy of estimates.

Procedures for use of the photo series for estimating fuel tonnage which will be, or has been, consumed by fire follows:

1. Select the loading rank, forest type, forest size class, and cutting practice as explained on page 7 and 8 of the photo series. Selection of the loading rank may best be done by looking at the photo series after selecting the other three characteristics.

   Example: Douglas Fir (FD0 type, size class 4 (20 inch dbh), clear cut (CC) will identify the series of photos from which a photo can be selected which is most representative of the slash unit being measured.

2. When the representation photo is selected the Data sheet for that fuel loading can be used to make the fuels estimate.

   Using 7-Df-4-CC (page 22) as our example and assuming:

Fuel size class	Weight/Acre	% that will be burned
0.25-1.0	4.9	100%
1.1-3.0	11.3	95%
3.1-9.0	22.0	60%
9.0-20.0	13.9	20%
20.1+	45.0	10%

The following calculations will give a tonnage estimate per acre:

(4.9x100%) + (11.3x95%) + (22..0x60%)
\+ (13.9x20%) + (45.0x10%) = Tons per acre
4.9 + 10.7 + 13.2 + 2.8 + 4.5 = 36.1 tons per acre.

Examination of units before and after burning will increase the accuracy of estimating the percentage of each fuel type that will be consumed.

* USDA Forest Service General Technical Report PNW 51, 1976. Photo Series for Quantifying Forest Residues in the coastal Douglas-fir - Hemlock type and the coastal Douglas-fir - hardwood type. Also Technical Report PNW-52, 1976 (same title) for Ponderosa pine types, Ponderosa pine and associated species type and Lodgepole pine type.

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item F, December 12, 1986, EQC Meeting

Proposed Adoption of Amendments to the Hazardous Waste Permit Fee Schedule, OAR 340-105-110.

Background and Problem Statement

ORS 466.165 authorizes the Department to assess fees to generators of hazardous waste and to permittees of hazardous waste collection, treatment or disposal sites. The fees are to be in an amount determined by the Commission to be necessary to carry on the Department's monitoring, inspection and surveillance program for hazardous waste management facilities and for related administrative costs. An increase in the annual compliance determination fees for hazardous waste disposal sites is needed, to provide funding for a new, full-time inspector for the Chem-Security Systems, Inc. disposal site at Arlington, Oregon.

In addition, the State Legislative Counsel Committee has reviewed the current hazardous waste permit fee schedule and has expressed concern about the Department's legal authority to assess permit application filing and processing fees for hazardous waste storage facilities. The committee has recommended that these fees be temporarily deleted from the fee schedule, until statutory authority is clarified.

On October 17, 1986, a public hearing was held in Portland concerning these proposed amendments to the hazardous waste permit fee schedule, OAR 340-105-110. The Department now requests that the Commission adopt these amendments as proposed. A statement of need for rulemaking is attached. The Commission is authorized to adopt such rules by ORS 466.165.

Alternatives and Evaluation

Chem-Security Systems, Inc. (CSSI) currently operates the only authorized hazardous waste disposal site in the state, at Arlington. Proper design and operation of this facility is therefore vital to a successful, comprehensive hazardous waste management program in Oregon. To this end, the Department recently hired a Senior Environmental Engineer to monitor

the Arlington facility full-time. Previously, the site was monitored on a part-time basis by staff who had other program responsibilities as well. Funding for the new position will be provided by the $50,000 increase in the Annual Compliance Determination fees collected from CSSI.

The proposed fee increase has been reviewed and approved by the Department's Hazardous Waste Program Funding Committee. The committee represents affected industries, including CSSI. A list of the committee's membership is attached.

The second item in the Department's proposal is the temporary suspension of permit application fees for hazardous waste storage facilities. The Department agrees with the Legislative Counsel Committee that statutory authority to assess such fees is currently unclear. The Department will seek clarification from the Legislature during the upcoming 1987 session. In the interim, the Department has agreed to not assess these fees. Accordingly, failure to temporarily suspend these fees in the administrative rules is not absolutely necessary. However, formal suspension of the fees would eliminate any possible confusion about the Department's intent to assess these fees.

No one testified at the public hearing, concerning these matters held in Portland on October 17, 1986. Also, no written testimony was received. Hearing notices were mailed to all hazardous waste generators, to owners and operators of all hazardous waste treatment, storage and disposal facilities, and to all persons who have previously requested notice of proposed hazardous waste rule changes. Notice was also published in the Secretary of State's Bulletin.

Prior to the hearing, comments were received from Mr. Richard Zweig, of CSSI, by telephone. Mr. Zweig did not object to the proposed fee increase, but he did object to the Department's publication of a "typical disposal cost" at CSSI's disposal site, in the Statement of Fiscal and Economic Impact. He contended that the published figure was incorrect for many types and amounts of waste.

In response to Mr. Zweig's comments, a statement was prepared to clarify the Department's intent in the use of this figure. This statement was entered into the hearing record by Hearing Officer William Dana of the Department's staff. A copy of the statement is attached, with the Hearing Officer's Report. In addition, the attached Statement of Fiscal and Economic Impact has been revised so as to not include a specific estimated disposal cost figure.

Summation

1. The Department is authorized by ORS 466.165 to assess fees to permittees of hazardous waste management facilities.

2. The Commission is authorized by ORS 466.165 to determine the amount of fee necessary for the Department to conduct a monitoring, inspection and surveillance program.

3. The Department recently hired a full-time inspector for the state's only authorized hazardous waste disposal site, the CSSI facility at Arlington. The Department's Hazardous Waste Program Funding Committee supports a proposed fee increase for the disposal site to fund this position.

4. The Legislative Counsel Committee has recommended that permit application filing and processing fees, for hazardous waste storage facilities, be temporarily suspended, until statutory authority for such fees is clarified.

5. The Department notified interested and affected parties of these proposed amendments and conducted a public hearing. No objections to the proposal were received.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission adopt the proposed amendments to the hazardous waste permit fee schedule, in OAR 340-105-110.

Fred Hansen

Attachments: I. Letter from Legislative Counsel Committee, dated July 22, 1986
II. Funding Committee Membership List
III. Statement of Need for Rulemaking
IV. Statement of Land Use Consistency
V. Hearing Officer's Report
VI. Proposed Amendment of OAR 340-105-110

William H. Dana:f
ZF1294
229-6015
November 12, 1986

THOMAS G. CLIFFORD
LEGISLATIVE COUNSEL

S101 STATE CAPITOL
SALEM, OREGON 97310
AREA CODE 503
378-8148

Attachment I
Agenda Item F
12/12/86 EQC MEETING

STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

July 22, 1986

Fred Hansen, Director
Department of Environmental Quality
522 S. W. Fifth Avenue, Box 1760
Portland, Oregon 97207

Re: ARR 6413 - OAR 340-105-110

Dear Fred:

As you know, at its June 9, 1986, meeting, the Legislative Counsel Committee reviewed an administrative rule of the Environmental Quality Commission (EQC) relating to hazardous waste storage facility fees. After discussing the rule in question, the committee asked me to inform you of their recommendations.

Briefly, to refresh your memory, the rule in question is OAR 340-105-110. In our review, we concluded that there was no fee authorized by statute and therefore, the EQC lacks the statutory authority to charge an application processing fee for storage facilities. In response to our report (ARR 6413), your office indicated that the Department of Environmental Quality (DEQ) is proposing to submit legislation during the 1987 session to clarify the commission's authority to charge this fee. I indicated this to the committee in the course of their discussion of the rule. However, it is the consensus of the committee that in the interim, until such legislation is passed by the 1987 Legislature, the EQC should amend this rule to delete the provision charging an application processing fee for storage facilities.

In addition to recommending that the rule provision in question be deleted until enabling legislation is passed, the committee asked that I recommend that you check the legislative history to determine if there is any clear statement by the legislature that would indicate a legislative intent that the EQC charge such a fee. There was some feeling by the committee that this may in fact provide you with the authority needed to continue the fee; however, a concern was expressed by Senator Walt Brown that even if such a statement were found, unless the statute is ambiguous, the legislative history would not be relevant.

The committee would appreciate a response before their next meeting, which is as yet unscheduled. Please let me know if I can be of any assistance to you in this matter.

Very truly yours,

Jeannette K. Holman
Deputy Legislative Counsel

JKH

Attachment II
Agenda Item F
12/12/86 EQC Meeting

Hazardous Waste Program Funding Committee Membership List

Tom Donaca, Chairperson - Associated Oregon Industries

Jason Boe - Oregon Petroleum Markets Association

Frank Deaver - Tektronix

Loren Fletcher - Tektronix

Bob Gilbert - Crown Zellerbach

Tom McCue - Oregon Steel Mills

John Pittman - Wacker Siltronics

Jerry Schaeffer - Wacker Siltronics

Bill Van Dyke - Chem-Security Systems, Inc.

Richard Zweig - Chem-Security Systems, Inc.

ZF1294.2

Attachment III
Agenda Item F
12/12/86 EQC Meeting

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Amending OAR Chapter 340 Section 105-110	)))	Statement of Need for Rule Amendment and Fiscal and Economic Impact.

1. Statutory Authority

ORS 466.165 provides that fees may be required of hazardous waste generators and of permittees of hazardous waste collection, treatment or disposal sites. The fee shall be in an amount determined by the Commission to be necessary to carry on the Department's monitoring, inspection and surveillance program established under ORS 466.195 and to cover related administrative costs.

2. Statement of Need

A fee increase for hazardous waste disposal sites is needed, to assure continued funding for an existing, full-time inspector for the Chem-Security Systems, Inc. disposal site at Arlington, Oregon. In addition, the current permit application filing and processing fees for hazardous waste storage facilities should be temporarily deleted, until statutory authority for such fees is clarified.

3. Principal Documents Relied Upon

a. Oregon Revised Statutes, Chapter 466
b. Oregon Administrative Rules, Chapter 340, Division 105

4. Fiscal and Economic Impact

There is currently only one hazardous waste disposal site in Oregon: the Chem-Security Systems, Inc. facility at Arlington. Accordingly, the proposed fee increase will only impact that facility and hazardous waste generators who use the site.

The proposed fee increase amounts to about 50 cents per ton of waste received at the site, based on current waste flow. In view of the current disposal rates at the site, the Department believes that the impact of this proposed increase will be insignificant to both large and small businesses.

The proposed temporary deletion of the permit application filing and processing fees for hazardous waste storage facilities will have no economic impact. The Department did not intend to assess these fees, until statutory authority had been clarified. The proposed deletion simply formalizes existing policy.

ZF1294.3

Attachment IV
Agenda Item F
12/12/86 EQC Meeting

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Amending	)	Land Use Consistency
OAR Chapter 340	)	
Section 105-110	)	

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.

ZF1294.4

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

Attachment V
Agenda Item F
12/12/86 EQC Meeting

To: Environmental Quality Commission

From: William H. Dana, Hearing Officer

Subject: Report on Public Hearing Held October 17, 1986, Concerning Proposed Amendments to the Hazardous Waste Permit Fee Schedule, in OAR 340-105-110

Summary of Procedure

Pursuant to public notice, a public hearing was convened at 9:00 a.m., on October 17, 1986 in the Department's office at 522 S.W. Fifth Avenue in Portland. The purpose of the hearing was to receive testimony concerning proposed amendments to the hazardous waste permit fee schedule. Three people attended the hearing, in addition to Department staff. An attendance list is attached.

Summary of Testimony

No public testimony was received at the hearing. Also, no written testimony was received by mail.

Prior to the hearing, comments were received from Mr. Richard Zweig, of Chem-Security Systems, Inc. (CSSI), by telephone. Mr. Zweig did not object to the proposed fee increase, but he did object to the Department's publication of a "typical disposal cost", at CSSI's disposal site, in the Statement of Fiscal and Economic Impact. He contended that the published figure was incorrect for many types and amounts of waste.

In response to Mr. Zweig's comments, a statement was prepared to clarify the Department's intent in the use of this figure. This statement was read into the hearing record by Hearing Officer William Dana. A copy of the statement is attached.

Respectfully submitted,

William H. Dana

William H. Dana
Hearing Officer

WHD:f
ZF1294.5
Attachments: 1. Hearing Attendance List
2. Comments Concerning the Department's Statement of Fiscal and Economic Impact

Bill Dana: Hearing Officer

ATTENDANCE LIST

Date: 10/17/86

Rule Change to Increase Haze Fees

NAME AND ADDRESS	REPRESENTING
Sara Laumann 027 SW Arthur St, Portland	OSPIRG
[illegible] (PASSO)	PASSO
Dale Young (PASSO)	PASSO

MEMORANDUM

To: Environmental Quality Commission Date: October 15, 1986

From: William H. Dana, Hearing Officer

Subject: Comments Concerning the Department's Statement of Fiscal and Economic Impact

The packet of information that the Department distributed, concerning this proposed fee increase, included an analysis of the probable economic impact to hazardous waste generators, as required by state law. It should be emphasized, however, that the disposal cost figure used in the analysis was an approximation only. Actual disposal costs are variable and may be substantially different than the figure the Department published, depending upon the type and amount of waste disposed.

Nevertheless, the Department continues to believe that the analysis was basically correct. The impact of this proposed fee increase, relative to current disposal costs, should be negligible.

The Department regrets any confusion or inconvenience that the publication of this disposal cost figure may have caused.

WHDANA:b
229-6015
October 15, 1986
ZB6114

Attachment VI
Agenda Item F
12/12/86 EQC Meeting

OAR 340-105-110 is proposed to be amended as follows:

340-105-110 (1) . . .

Table 1: Fee Schedule

(1) Filing Fee. A filing fee of $50 shall accompany each application for issuance, renewal or modification of a hazardous waste management facility permit, except storage facility permits. This fee is nonrefundable and is in addition to any application processing fee or annual compliance determination fee which might be imposed.

(2) Application Processing Fee. An application processing fee varying between $25 and $5,000 shall be submitted with each application. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) A new facility (including substantial expansion of an existing facility:

(A)	Storage facility	$ [150] No Fee
(B)	Treatment facility - Recycling	150
(C)	Treatment facility - other than incineration	250
(D)	Treatment facility - incineration	500
(E)	Disposal facility	5,000
(F)	Disposal facility - post closure	2,500

(b) Permit Renewal:

(A)	Storage facility	[50] No Fee
(B)	Treatment facility - recycling	50
(C)	Treatment facility - other than incineration	75
(D)	Treatment facility - incineration	175
(E)	Disposal facility	5,000
(F)	Disposal facility - post closure	800

(c) Permit Modification - Changes to Performance/Technical Standards:

(A)	Storage facility	[50] No Fee
(B)	Treatment facility - recycling	50
(C)	Treatment facility - other than incineration	75
(D)	Treatment facility - incineration	175
(E)	Disposal facility	1,750
(F)	Disposal facility - post closure	800

(d) Permit Modification - All Other Changes not Covered by (2)(c):
All Categories, Except Storage Facilities 25

(e) Permit Modification - Department Initiated..... no fee

(3) Annual Compliance Determination Fee. (In any case where a facility fits into more than one category, the permittee shall pay only the highest fee):

(a)	Storage facility:	
	(A) 5-55 gallon drums or 250 gallons total or 2,000 pounds	250
	(B) 5 to 250 - 55 gallon drums or 250 to 10,000 gallons total or 2,000 to 80,000 pounds	1,000
	(C) >250 - 55 gallon drums or >10,000 gallons total or >80,000 pounds	2,500
(b)	Treatment Facility:	
	(A) <25 gallons/hour or 50,000 gallons/day or 6,000 pounds/day	250
	(B) 25-200 gallons/hour or 50,000 to 500,000 gallons/day or 6,000 to 60,000 pounds/day	1,000
	(C) >200 gallons/hour or >500,000 gallons/day or >60,000 pounds/day	2,500
(c)	Disposal Facility:	
	(A) <750,000 cubic feet/year or <37,500 tons/year	[50,000] <u>100,000</u>
	(B) 750,000 to 2,500,000 cubic feet/year or 37,500 to 125,000 tons/year	[100,000] <u>150,000</u>
	(C) >2,500,000 cubic feet/year or >125,000 tons/year	[150,000] <u>200,000</u>
(d)	Disposal Facility - Post Closure: All categories	5,000

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. G, December 12, 1986, EQC Meeting

Proposed Adoption of Pollution Control Tax Credit Rule Amendments, Chapter 340, Division 16

Background

Questions have been raised recently regarding the significance of portions of the pollution control tax credit statute (ORS 468.150 to .190) and rules (OAR Chapter 340, Division 16). Legal counsel for the Department has recommended adopting rules to address these questions related to the significance of the term "actual cost" and procedures for transfer of tax credit certificates to transferees of pollution control facilities. These issues and proposed rule changes are discussed separately below.

A. Actual Costs.

On March 19, 1986, the Department received a letter from legal counsel for Ogden-Martin, owners of the resource recovery facility in Marion County. In the letter, a request was made for clarification from the Department as to which costs related to the facility are eligible for tax credits.

A request for preliminary certification for tax credit was received from the company on December 8, 1983 and construction began later in December, 1983. Construction of the plant has been completed and the company is now conducting test runs. It is now fully operational and Ogden-Martin has applied for final pollution control tax credit certification. (See Agenda Item H)

ORS 468.170 states that "the action of the Commission shall include certification of the actual cost of the facility and the portion of the actual cost properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil as set forth in ORS 468.190(2)" (emphasis added). The term "actual cost" as used here

is not defined by statute or rule. In attempting to determine the meaning of this term, the Department's legal counsel conducted research into the legislative history of the statute and the legislative and case history of the term "actual cost." The conclusion reached is that the term has no consistent common law significance, no well-understood trade or technical meaning, and no specific meaning defined by the legislature. Legal counsel, therefore, has recommended that the Department undertake rulemaking to define the term actual cost.

The proposed rule amendments (OAR 340-16-026) define "actual costs" to include those costs which should be capitalized in accordance with generally accepted accounting principles. In some cases, the Commission may elect to exclude costs not consistent with the intent of the tax credit statute which have not been specifically included or excluded by the rule. Though all conceivable costs associated with a pollution control facility may not be included on the list, the list provides a good basis for applicants to use in attempting to determine actual costs and allows the Commission to consider eligibility of other costs in the future.

The proposed rule amendment includes an applicability section which makes 340-16-026 applicable on or after December 12, 1986. This is included so that it will apply to the Ogden-Martin pollution control tax credit request being considered at the December 12, 1986 EQC meeting. (See Agenda Item H)

B. Retroactive Transfer of Tax Credits

On May 28, 1986, the Department received a letter from legal counsel for Willamette Industries requesting that a tax credit issued to Bauman Lumber in 1972 be revoked and reissued to Willamette Industries retroactive to April, 1974 when Willamette Industries purchased Bauman Lumber Company. (See Attachment VI) This raised the question of whether a reissued certificate becomes effective at thedate of reissuance or at the date of transfer of the facility.

ORS 317.072(10) requires that notice be given to the Environmental Quality Commission upon any sale, exchange or other disposition of a certified facility. The Environmental Quality Commission is directed to revoke the certificate as of the date of disposition, and the transferee is permitted to apply for a new certificate to claim the remaining tax credit that was not claimed by the transferor. ORS 468.170(8) provides that the period in which a certificate is valid for tax credit purposes is 10 consecutive years from the year of certification. It is clear from the provisions of ORS 468.155 to 468.190 and ORS 317.072 that the tax credit is available only to the holder of a certificate for a pollution control facility. The certificates are issued in the name of the person who constructed or acquired the pollution control facility. Therefore, a transferee of a pollution control facility would not be able to claim the credit until the transferee obtains a new certificate in his or her name.

The Attorney General's office has told the Department that rule adoption would be the best way to clarify these issues. It is, therefore, recommended that the rule be amended to specifically state that reissued certificates are only valid from the date of reissuance and that tax credits can not be issued retroactively by the Commission (see OAR 340-16-040(3)).

C. Deadline for requesting transfer of tax credit certificate.

A question has been raised as to when an applicant must apply for revocation and reissuance of a tax credit certificate. While the statute does not state when notice of disposition is to be given to the EQC, nor when application for a new certificate claiming unused tax credit must be made, the Department interprets the statute to mean that it is prior to the date of expiration of the certificate issued to the original owner. ORS 316.097 (8) states that "upon any sale, exchange, or other disposition of a facility, notice thereof shall be given to the EQC who shall revoke the certification covering the facility as of the date of such disposition" and may reissue a tax credit to the transferee. It may be presumed that there must be a valid, unexpired certification in existence before the EQC can revoke and reissue it. Pursuant to ORS 468.170 (8), the original holder of the tax credit certificate is granted the tax credit "for a period of 10 consecutive years which 10-year period shall begin with the tax year of the person in which the facility is certified." (Emphasis added) Since the certificate is only valid to the original holder of the tax credit certificate for 10 consecutive years from the date of issuance and since the transferee is treated in the same manner as the original owner, it follows that the transferee must apply for revocation and reissuance of the certificate within 10 years of the date when the certificate was originally issued.

It is, therefore, recommended that the rule amendment be made to clarify this question. The amendment would require a tax credit to be reissued within 10 years of issuance of the original certificate (see OAR 340-16-040(2)).

Rule Development Process

Upon receiving hearing authorization, the Department mailed the proposed rule to a mailing list including associated Oregon Industries, Oregon Environmental Council, Willamette Industries, Ogden-Martin and others. The hearing notice was also mailed to the standard list of Oregon cities, counties and citizens who desire to be kept informed of DEQ rulemaking activities. Three of the parties requested and were mailed copies of the proposed rules. The hearing was held in Portland on October 16, 1986. The Hearings Officer's Report is Attachment IV.

Testimony was received on the following issues:

1. Testimony from Odgen Corporation supported the proposed definition of "actual costs."

2. Testimony from Willamette Industries recommended allowing retroactive issuance of certificates if it is established that the conditions of the original permit have been met during the period that the certificate has not been enforced due to the transfer.

   The Department does not agree with this recommendation. Based upon the interpretation of the statute by legal counsel, tax credit certificates cannot be issued retroactively under any circumstances.

   Additional comments were also received regarding retroactive reissuance of tax credit by the EQC in 1975. This retroactive reissuance was subsequently disallowed by the Department of Revenue. This rule amendment will make the Department of Environmental Quality and Department of Revenue actions consistent in the future.

Alternatives and Evaluation

1. The Department could continue operating without amending the rules by interpreting the tax credit statutes on a case-by-case basis. By adopting rules, however, the public is put on notice as to what is required and the Department and Commission have better guidance as to how to address similar situations in the future.

2. "Actual Costs" could be defined to include more or fewer eligible costs than recommended in the proposed rule. However, since no specific definition of the term is provided by the Legislature or the courts, use of the generally accepted definition of capitalized costs as used by accountants is preferable.

3. The transferee of a tax credit could be allowed to apply for reissuance of the certificate more than 10 years after the original date of issuance of the certificate so long as the facility is in use. This interpretation of the statute would, however, be giving rights to the transferee which the original recipient of the tax credit certificate did not have. Since this right is not available to the original recipient of the tax credit, and since the transferee is otherwise treated the same as the original holder of the tax credit certificate, it seems inconsistent with the intent of the statute to allow tax credits to be transferred more than 10 years after the original certificate was issued.

Summation

1. Problems related to interpretation of the term "actual costs" and to procedures relating to reissuance of tax credits have been identified.

2. The Attorney General's office has recommended that rules be adopted to clarify statutory intent and interpretation. Adoption of rules will ensure that the public is given adequate notice of the statute's meaning and provide guidance for future actions by the Commission.

Director's Recommendation

Based on the summation, it is recommended that the Commission adopt the proposed amendments to the Pollution Control Tax Credit Rule, Chapter 340, Division 16.

Mike Downs for
Fred Hansen

Attachments
I Statement of Need for Rules
II Statement of Land Use Consistency
III Public Notice of Rule Adoption
IV Proposed Amendments to Chapter 340, Division 16
V Hearings Officer's Report
VI Letter regarding Retroactive Issuance of Tax Credit to Willamette Industries
VII Attorney General's Opinion

M. Conley:y
MY3610
229-6408
December 5, 1986

Attachment 1
December 12, 1986
EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF AMENDING OAR CHAPTER 340, DIVISION 16	)))	STATEMENT OF NEED FOR RULES

Statutory Authority:

Amendment of the Pollution Control Tax Credit Rules is consistent with enabling legislation, ORS 468.150 to 468.190.

Need for Rule Amendments:

Through application of the statute and current rules, it has been determined that certain provisions of the statutes and rules need clarification. Specifically, clarification is needed as to which costs related to pollution control facilities are eligible for tax credit certification. Clarification is also needed regarding procedures for transfer of tax credits.

Principal Documents Relied Upon:

Existing statute, ORS 468.150 to 468.190 and existing state rules OAR Chapter 340-16-010 to 340-16-050.

Fiscal and Economic Impact:

Amending the rules to specifically define which costs are eligible for pollution control tax credits will probably have a minimal fiscal and economic impact. The rule identifies eligible and ineligible costs based on generally accepted accounting principles and current interpretation by the Department of the term "actual cost." Applicants are not currently required to identify the components which comprise the total eligible cost of the facility. However, since costs such as construction period interest are generally accepted by accountants as costs which should be capitalized, they may currently be included as part of the actual cost of the facility.

Amending the rules to specifically state that the Environmental Quality Commission cannot reissue tax credits retroactively to transferees of facilities should have no fiscal or economic impact. This is the practice currently followed by the Department, based on statutory interpretation.

Amending the rules to require transferees of pollution control facilities to apply for reissuance of tax credit certificates within 10 years of issuance of the original certificate should have a minimal fiscal and economic impact. Most applicants apply for reissuance of the tax credit certificate immediately after transfer of the facility.

The overall impact of the rule would not be significant or adverse to small business.

MC:y
MD146.A

Attachment II
December 12, 1986
EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF AMENDING	)	
OAR CHAPTER 340,	)	LAND USE CONSISTENCY
DIVISION 16	)	

The proposal described appears to be consistent with all statewide planning goals. Specifically, the rule amendments comply with Goal 6 because they would provide tax credits for pollution control facilities, thereby contributing to the protection of air, water and land resource quality.

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

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

After public hearing, the Commission may adopt permanent rules identical to the proposal, adopt modified rules on the same subject matter, or decline to act. The Commission's deliberation should come on December 12, 1986 as part of the agenda of a regularly scheduled Commission meeting.

MC:y
MD146.B

Attachment III
December 12, 1986
EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Pollution Control Tax Credit Rule Amendments Public Hearing

Date Prepared: August 15, 1986
Hearing Date: October 16, 1986
Comments Due: October 16, 1986

WHO IS AFFECTED: Amendment of the rules will affect people applying for pollution control tax credits.

WHAT IS PROPOSED: The DEQ proposes to adopt amendments to OAR Chapter 340, Division 16 to improve the Pollution Control Tax Credit Rules (OAR 340-16-010 through 340-16-050) to define the term "actual costs" of a pollution control facility eligible for tax credit and to establish procedures for reissuance of tax credit certificates to transferees of pollution control facilities.

WHAT ARE THE HIGHLIGHTS: Amendment of the rules would define the term "actual cost" of a pollution control facility to identify which costs are "eligible" and "ineligible."

Amendment of the rules would prohibit the Environmental Quality Commission from retroactively reissuing a tax credit certificate to a transferee of the pollution control facility.

Amendment of the rules would require a transferee of a facility to apply for reissuance of the tax credit within 10 years of issuance of the original tax credit certificate.

HOW TO COMMENT: Copies of the proposed rule amendments can be obtained from:

Sherry Chew
Management Services Division
P.O. Box 1760
Portland, OR 97207
Telephone: 229-6484
toll-free 1-800-452-4011

P.O. Box 1760
Portland, OR 97207

8/16/84

FOR FURTHER INFORMATION:

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

Written comments should be sent to the same address by October 16, 1986. Verbal comments may be given during the public hearing scheduled as follows:

3:00 p.m.
October 16, 1986
Room 1400
522 SW Fifth Avenue
Portland, Oregon

WHAT IS THE NEXT STEP: After the public hearing, the Environmental Quality Commission may adopt rules identical to those proposed, modify the rules or decline to act. The Commission's deliberations should come on December 12, 1986 as part of the agenda of a regularly scheduled Commission meeting.

ATTACHMENTS: Statement of Need for Rules (including Fiscal Impact)
Statement of Land Use Consistency

MY3194

Attachment IV
December 12, 1986
EQC Meeting

OREGON ADMINISTRATIVE RULES

FOR POLLUTION CONTROL TAX CREDITS

CHAPTER 340, DIVISION 16

340-16-015 PURPOSE

The purpose of these rules is to prescribe procedures and criteria to be used by the Department and Commission for issuance of tax credits for pollution control facilities. These rules are to be used in connection with ORS 468.150 to 468.190 and apply only to facilities on which construction has been completed after December 31, 1983, except where otherwise noted herein.

340-16-010 DEFINITIONS

(1) "Circumstances beyond the control of the applicant" means facts, conditions and circumstances which applicant's due care and diligence would not have avoided.

(2) "Commencement of erection, construction or installation" means the beginning of a continuous program of on-site construction, erection or modification of a facility which is completed within a reasonable time, and shall not include site clearing, grading, dredging, landfilling or similar physical change made in preparation for the facility.

(3) "Commission" means Environmental Quality Commission.

(4) "Department" means Department of Environmental Quality.

(5) "Facility" means a pollution control facility.

(6) "Like-for-like replacement cost" means the current price of providing a new facility of the same type, size and construction materials as the original facility.

(7) "Principal purpose" means the most important or primary purpose. Each facility may have only one principal purpose.

(8) "Reconstruction or replacement" means the provision of a new facility with qualities and pollution control characteristics equivalent to the original facility. This does not include repairs or work done to maintain the facility in good working order.

(9) "Sole purpose" means the exclusive purpose.

(10) "Special circumstances" means emergencies which call for immediate erection, construction or installation of a facility, cases where applicant has relied on incorrect information provided by Department personnel as demonstrated by letters, records of conversations or other written evidence, or similar adequately documented circumstances which directly resulted in applicant's failure to file a timely application for preliminary certification. Special circumstances shall not include cases where applicant was unaware of tax credit certification requirements or applied for preliminary certification in a manner other than that prescribed in 340-16-015(1).

(11) "Substantial completion" means the completion of erection, installation, modification, or construction of all elements of the facility which are essential to perform its purpose.

(12) "Useful life" means the number of years the claimed facility is capable of operating before replacement or disposal.

340-16-015 PROCEDURES FOR RECEIVING PRELIMINARY TAX CREDIT CERTIFICATION

(1) Filing of Application

(a) Any person proposing to apply for certification of a pollution control facility pursuant to ORS 468.165, shall file an application for preliminary certification with the Department of Environmental Quality 30 days before the commencement of erection, construction or installation of the facility. The application shall be made on a form provided by the Department. The preliminary certificate need not be issued prior to construction for compliance with this requirement.

(b) If the application is filed less than 30 days before commencement of construction, the application will be rejected as incomplete due to failure to comply with ORS 465.175(1) and OAR 340-16-015(a). However, if the Department reviews the application within 30 days of filing, and finds it complete, the Department shall notify the applicant in writing that the application is complete and ready for processing, and that the applicant may proceed with construction without waiting 30 days and without being rejected as incomplete.

(c) The Commission may waive the filing of the application if it finds the filing inappropriate because special circumstances render the filing unreasonable and if it finds such facility would otherwise qualify for tax credit certification pursuant to ORS 468.150 to 468.190.

(d) Within 30 days of the filing of an application the Department shall request any additional information that applicant needs to submit in order for the application to be considered complete. After examination thereof, the Department may request corrections and revisions to the plans and specifications. The Department may, also, require any other information necessary to determine whether the

proposed construction is in accordance with Department statutes, rules and standards.

(e) The application shall not be considered complete until the Department receives the information requested and notifies the applicant in writing that the application is complete and ready for processing. However, if the Department does not make a timely request pursuant to subsection (d) above, the application shall be deemed complete 30 days after filing.

(f) Notice of the Department's recommended action to deny an application shall be mailed at least seven days before the Commission meeting where the application will be considered unless the applicant waives the notice requirement in writing.

(2) Approval of Preliminary Certification

(a) If the Department determines that the proposed facility is eligible it shall issue a preliminary certificate approving the erection, construction or installation within 60 days of receipt of a completed application. It is not necessary for this certificate to include a determination of the full extent a facility is eligible for tax credit.

(b) If within 60 days of the receipt of a completed application, the Department fails to issue a preliminary certificate of approval and the Commission fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued. The construction must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted.

(c) Issuance of a preliminary tax credit certification does not guarantee final tax credit certification.

(3) Denial of Preliminary Certification

If the Department determines that the erection, construction or installation does not comply with the Department statutes, rules and standards, the Commission shall issue an order denying certification within 60 days of receipt of a completed application.

(4) Appeal

Within 20 days from the date of mailing of the order the applicant may demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the Director of the Department. The hearing shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550.

340-16-020 PROCEDURES FOR RECEIVING FINAL TAX CREDIT CERTIFICATION

(1) Filing of Application

(a) A written application for final tax credit certification shall be made to the Department on a form provided by the Department.

(b) Within 30 days of receipt of an application, the Department shall request any additional information that applicant needs to submit in order for the application to be considered complete. The Department may also require any other information necessary to determine whether the construction is in accordance with Department statutes, rules and standards.

(c) An application shall not be considered filed until all requested information is furnished by the applicant, and the Department notifies the applicant in writing that the application is complete and ready for processing.

(d) The application shall be filed within two years of substantial completion of construction of the facility. Failure to file a timely application shall make the facility ineligible for tax credit certification.

(e) The Commission may grant an extension of time to file an application if circumstances beyond the control of the applicant would make a timely filing unreasonable.

(f) An extension shall only be considered if applied for within two years of substantial completion of construction of the facility. An extension may be granted for no more than one year. Only one extension may be granted.

(g) An application may be withdrawn and resubmitted by applicant at any time within two years of substantial completion of construction of the facility without paying an additional processing fee, unless the cost of the facility has increased. An additional processing fee shall be calculated by subtracting the cost of the facility on the original application from the cost of the facility on the resubmitted application and multiplying the remainder by one-half of one percent.

(h) If the Department determines the application is incomplete for processing and applicant fails to submit requested information within 180 days of the date when the Department requested the information, the application will be rejected, unless applicant requests in writing additional time to submit requested information.

(2) Commission Action

(a) Notice of the Department's recommended action on the application shall be mailed at least seven days before the Commission meeting where the application will be considered unless the applicant waives the notice requirement in writing. The Commission shall act on an application

for certification before the 120th day after the filing of a complete application. The Commission may consider and act upon an application at any of its regular or special meetings. The matter shall be conducted as an informal public informational hearing, not a contested case hearing, unless ordered otherwise by the Commission.

(b) Certification

(A) If the Commission determines that the facility is eligible, it shall certify the actual cost of the facility and the portion of the actual cost properly allocable to pollution control, resource recovery or recycling as set forth in ORS 468.190. Each certificate shall bear a separate serial number for each such facility.

(B) No determination of the proportion of the actual cost of the facility to be certified shall be made until receipt of the application.

(C) If two or more facilities constitute an operational unit, the commission may certify such facilities under one certificate.

(D) A certificate is effective for purposes of tax relief in accordance with ORS 307.405, 316.097 and 317.116 if erection, construction or installation of the facility was begun before December 31, 1988.

(E) Certification of a pollution control facility qualifying under ORS 468.165(1) shall be granted for a period of 10 consecutive years. The 10-year period shall begin with the tax year of the person in which the facility is certified under this section. However, if ad valorem tax relief is utilized by a corporation organized under ORS Chapter 61 or 62 the facility shall be exempt from ad valorem taxation, to the extent of the portion allocable, for a period of 20 consecutive years from the date of its first certification by the Commission.

(F) Portions of a facility qualifying under ORS 468.165(1)(c) may be certified separately under this section if ownership of the portions is in more than one person. Certification of such portions of a facility shall include certification of the actual cost of the portion of the facility to the person receiving the certification. The actual cost certified for all portions of a facility separately certified under this subsection shall not exceed the total cost of the facility that would have been certified under one certificate. The provisions of ORS 316.097(8) or 317.116 whichever is applicable, shall apply to any sale, exchange or other disposition of a certified portion to a facility.

(c) Rejection

If the Commission rejects an application for certification, or certifies a lesser actual cost of the facility or a lesser portion of the actual cost properly allocable to pollution control, resource recovery or recycling than was claimed in the application for certification, the Commission shall cause written notice of its action, and a concise statement of the findings and reasons therefore, to be sent by registered or certified mail to the applicant within

120 days after the filing of the application. Failure of the Commission to act constitutes rejection of the application.

(3) Appeal

If the application is rejected for any reason, or if the applicant

is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to pollution control, resource recovery or recycling, the applicant may appeal from the rejection as provided in ORS 468.110. The rejection of the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the Commission.

340-16-025 QUALIFICATION OF FACILITY FOR TAX CREDITS

(1) "Pollution control facility" or "facility" shall include any land, structure, building, installation, excavation, machinery, equipment or device, or alternative methods for field sanitation and straw utilization and disposal as approved by the Field Burning Advisory Committee and the Department, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person, which will achieve compliance with Department statutes and rules or Commission orders or permit conditions, where applicable, if:

(a) The principal purpose of the facility is to comply with a requirement imposed by the Department, the Federal Environmental Protection Agency or 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

(b) The sole purpose of the facility is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.

(2) Such prevention, control or reduction required by this subsection shall be accomplished by:

(a) The disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468.700;

(b) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468.275;

(c) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the commission;

(d) The use of a resource recovery process which obtains useful material or energy resources from material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 459.410, or used oil as defined in ORS 468.850;

(e) Subsequent additions to a solid waste facility, made either to an already certified facility or to an operation which would have qualified as a facility but for the fact that it was erected, constructed or installed before January 1, 1973, which will increase the production or recovery of useful materials or energy over the amount being produced or recovered by the original facility whether or not the materials or energy produced or recovered are similar to those of the original facility.

(f) The treatment, substantial reduction or elimination of or redesign to treat, substantially reduce or eliminate hazardous waste as defined in ORS 459.410; or

(g) Approved alternative field burning methods and facilities which shall be limited to:

(A) Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning;

(B) Propane flamers or mobile field sanitizers which are alternatives to open field burning and reduce air quality impacts; and

(C) Drainage tile installations which will result in a reduction of grass seed acreage under production.

(3) "Pollution control facility" or "facility" does not include:

(a) Air conditioners;

(b) Septic tanks or other facilities for human waste;

(c) Property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system;

(d) Any distinct portion of a solid waste, hazardous waste or used oil facility that makes an insignificant contribution to the purpose of utilization of solid waste, hazardous waste or used oil including the following specific items:

(A) Office buildings and furnishings;

(B) Parking lots and road improvements;

(C) Landscaping;

(D) External lighting;

(E) Company signs;

(F) Artwork; and

(G) Automobiles.

(e) Facilities not directly related to the operation of the industry or enterprise seeking the tax credit;

(f) Replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued under ORS 468.170, except:

(A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the department, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility; or

(B) If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

(4) Any person may apply to the commission for certification under ORS 468.170 of a pollution control facility or portion thereof erected, constructed or installed by the person in Oregon if:

(a) The air or water pollution control facility was erected, constructed or installed on or after January 1, 1967.

(b) The noise pollution control facility was erected, constructed or installed on or after January 1, 1977.

(c) The solid waste facility was under construction on or after January 1, 1973, or the hazardous waste, used oil, resource recovery, or recycling facility was under construction on or after October 3, 1979, and if:

(A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155(1);

(B) The facility will utilize material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 459.410 or used oil as defined in ORS 468.850:

(i) By burning, mechanical processing or chemical processing; or

(ii) Through the production, processing, presegregation, or use of:

(I) Materials for their heat content or other forms of energy of or from the material; or

(II) Materials which have useful chemical or physical properties and which may be used for the same or other purposes; or

(III) Materials which may be used in the same kind of application as its prior use without change in identity;

(C) The end product of the utilization is a usable source of power or other item of real economic value;

(D) The end product of the utilization, other than a usable source of power, is competitive with an end product produced in another state; and

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

(d) The hazardous waste control facility was erected, constructed or installed on or after January 1, 1984 and if:

(A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155(1) and

(B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as defined in ORS 459.410.

(5) The Commission shall certify a pollution control, solid waste, hazardous waste or used oil facility or portion thereof, for which an application has been made under ORS 468.165, if the Commission finds that the facility:

(A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165(1) and 468.175;

(B) Is designed for, and is being operated or will operate in accordance with the requirements of ORS 468.155; and

(C) Is necessary to satisfy the intents and purposes of and is in accordance with the applicable Department statutes, rules and standards.

340-16-026 ACTUAL COSTS OF POLLUTION CONTROL FACILITIES ELIGIBLE FOR CERTIFICATION

(1) In determining eligible and ineligible costs, the Commission will consider whether costs are treated as expenses of the current period or capitalized as part of the facility cost in the company records. Items which are not capitalized by the company but which are included as part of the facility cost eligible for certification must be identified and explained by the applicant. The Commission may request additional verification of these records as necessary.

(2) Applicability - This rule section shall apply to all pollution tax control credits certified on or after December 12, 1986.

(3) Eligible costs.

(a) To the extent that costs are necessarily incurred in the acquisition, erection, construction and installation of a pollution control facility, as defined in OAR 340-16-025, the following expenses are eligible for certification by the Commission as part of the cost of the facility:

(A) Land acquisition costs, including amounts paid for:

(i) Purchase price;

(ii) Costs of closing the transaction and perfecting title, such as commissions, legal fees, title investigation, and title insurance;

(iii) Costs of preparing the land to make it suitable for desired use, such as surveying, clearing, grading, draining, and filling.

(B) Facility acquisition, erection, construction, and installation costs, including amounts paid for:

(i) Purchase price of facility and/or necessary components;

(ii) Construction labor, materials, supplies, and related overhead;

(iii) Facility design and engineering consultant fees;

(iv) Patent searches;

(v) State, federal and local permit fees;

(vi) Construction period interest and taxes;

(vii) Insurance premiums for coverage during construction period;

(viii) Financial consultant fees, legal fees, and other construction related financial costs.

(ix) Costs such as but not limited to underwriter's discount and bond insurance, which are incurred for debt which extends beyond the construction period must be prorated. Only the proportionate share of costs related to the construction period are eligible.

(x) Testing of facility prior to it being placed in operation for its intended use.

(xi) Other costs as determined by the Commission.

(4) Ineligible costs.

(a) The following costs are not eligible for certification as costs of the facility:

(b) Items identified in 340-16-025(3);

(c) Insurance costs paid after the completion date of the facility;

(d) Maintenance, operation and repair costs;

(e) Amounts set aside for a contingent liability;

(f) Tax credit processing and application fees;

(g) Other costs as determined by the Commission.

340-16-030 DETERMINATION OF PERCENTAGE OF CERTIFIED FACILITY COST ALLOCABLE TO POLLUTION CONTROL

(1) Definitions

(a) "Annual operating expenses" means the estimated costs of operating the claimed facility including labor, utilities, property taxes, insurance, and other cash expenses, less any savings in expenses attributable to installation of the claimed facility. Depreciation, interest expenses, and state and federal taxes are not included.

(b) "Average annual cash flow" means the estimated average annual cash flow from the claimed facility for the first five full years of operation calculated as follows:

(A) Calculate the annual cash flow for each of the first five full years of operation by subtracting the annual operating expenses from the gross annual income for each year and

(B) Sum the five annual cash flows and divide the total by five. Where the useful life of the claimed facility is less than five years, sum the annual cash flows for the useful life of the facility and divide by the useful life.

(c) "Claimed facility cost" means the actual cost of the claimed facility minus the salvage value of any facilities removed from service.

(d) "Gross annual income" means the estimated total annual income from the claimed facility derived from sale or reuse of recovered materials or energy or any other means.

(e) "Salvage value" means the value of a facility at the end of its useful life minus what it costs to remove it from service. Salvage value can never be less than zero.

(2) In establishing the portion of costs properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil for facilities qualifying for certification under ORS 468.170, the Commission shall consider the following factors, if applicable:

(a) The extent to which the facility is used to recover and convert waste products into a salable or usable commodity;

(b) The estimated annual percent return on the investment in the facility;

(c) The alternative methods, equipment and costs for achieving the same pollution control objective;

(d) Related savings or increase in costs which occur or may occur as a result of the installation of the facility; or

(e) Other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.

(3) For facilities that have received preliminary certification and on which construction has been completed before January 1, 1984, the portion of actual costs properly allocable shall be:

(a) Eighty percent or more.

(b) Sixty percent or more but less than 80 percent.

(c) Forty percent or more but less than 60 percent.

(d) Twenty percent or more but less than 40 percent.

(e) Less than twenty percent.

(4) For facilities on which construction has been completed after December 31, 1983, the portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent. If zero percent, the Commission shall issue an order denying certification.

(5) In considering the factors listed in 340-16-030 to establish the portion of costs allocable to pollution control, the Commission will use the factor, or combination of factors, that results in the smallest portion of costs allocable.

(6) When the estimated annual percent return on investment in the facility, 340-16-030(2)(b), is used to establish the portion of costs allocable to pollution control, the following steps will be used:

(a) Determine the claimed facility cost, average annual cash flow and useful life of the claimed facility.

(b) Determine the return on investment factor by dividing the claimed facility cost by the average annual cash flow.

(c) Determine the annual percent return on investment by using Table 1. At the top of Table 1, find the number equal to the useful life of the claimed facility. In the column under this useful life number, find the number closest to the return on investment factor. Follow this row to the left until reaching the first column. The number in the first column is the annual percent return on investment for the claimed facility. For a useful life greater than 30 years, or percent return on investment greater than 25 percent, Table 1 can be extended by utilizing the following equation:

$$I_R = \frac{1-(1+i)^{-n}}{i}$$

Where: I_R is the return on investment factor.
i is the annual percent return on investment.
n is the useful life of the claimed facility.

(d) Determine the reference annual percent return on investment from Table 2. Select the reference percent return from Table 2 that corresponds with the year construction was completed on the claimed facility. For each future calendar year not shown in Table 2, the reference percent return shall be the five-year average of the rate of return before taxes on stockholders' equity for all United States manufacturing corporations for the five years prior to the calendar year of interest.

(e) Determine the portion of actual costs properly allocable to pollution control from the following equation:

$$P_A = \frac{RROI - ROI}{RROI} \times 100\%$$

Where: P_A is the portion of actual costs properly allocable to pollution control in percent, rounded off to the nearest whole number.
ROI is the annual percent return on investment from Table 1.
RROI is the reference annual percent return on investment from Table 2.

If ROI is greater than or equal to RROI, then the portion of actual costs properly allocable to pollution control shall be zero percent.

Table 2

Reference Annual Percent Return on Investment

Year Construction Completed	Reference Percent Return
1975	19.1
1976	19.8
1977	21.0
1978	21.9
1979	22.5
1980	23.0
1981	23.6
1982	23.4
1983	21.5
1984	19.9

Calculation of the reference percent return was made by averaging the average annual percent return before taxes on stockholders' equity for all manufacturing corporations as found in the Quarterly Financial Report for Manufacturing, Mining and Trade Corporations, published by the U.S. Department of Commerce, Bureau of the Census, for the five years prior to the year shown.

340-16-035 PROCEDURE TO REVOKE CERTIFICATION

(1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the Commission may order the revocation of the final tax credit certification if it finds that:

(a) The certification was obtained by fraud or misrepresentation or

(b) The holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary for, preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or recycling or disposing of used oil as specified in such certificate, or has failed to operate the facility in compliance with Department or Commission statutes, rules, orders or permit conditions where applicable.

(2) As soon as the order of revocation under this section has become final, the Commission shall notify the Department of Revenue and the county assessor of the county in which the facility is located of such order.

(3) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307.405, 316.097 and 317.116.

(4) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further relief provided under ORS 307.405, 316.097 or 317.116 in connection with such facility, as the case may be, from and after the date that the order of revocation becomes final.

(5) The Department may withhold revocation of a certificate when operation of a facility ceases if the certificate holder indicates in writing that the facility will be returned to operation within five years time. In the event that the facility is not returned to operation as indicated, the Department shall revoke the certificate.

340-16-040 PROCEDURES FOR TRANSFER OF A TAX CREDIT CERTIFICATE

(1) To transfer a tax credit certificate from one (holder) to another, the Commission shall revoke the certificate and (reissue) a new one to the new holder for the balance of the available tax credit following the procedure set forth in ORS 307.405, 316.097, and 317.116.

(2) A request for transfer of a tax credit must be made before the original certificate has expired. The tax credit certificate is considered valid for a period of ten consecutive years beginning with the tax year of the person in which the facility is originally certified.

(3) Reissued tax credit certificates are only valid from the date of reissuance by the Commission. Certificates may not be reissued retroactively.

340-16-045 FEES FOR FINAL TAX CREDIT CERTIFICATION

(1) An application processing fee of one-half of one percent of the cost claimed in the application of the pollution control facility to a maximum of $5,000 shall be paid with each application. However, if the application processing fee is less than $50, no application processing fee shall be charged. A non-refundable filing fee of $50 shall be paid with each application. No application is complete until the filing fee and processing fee are submitted. An amount equal to the filing fee and processing fee shall be submitted as a required part of any application for a pollution control facility tax credit.

(2) Upon the Department's receipt of an application, the filing fee becomes non-refundable.

(3) The application processing fee shall be refunded in whole if the application is rejected.

(4) The fees shall not be considered by the Environmental Quality Commission as part of the cost of the facility to be certified.

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

340-16-050 TAXPAYERS RECEIVING TAX CREDIT

(1) A person receiving a certificate under this section may take tax relief only under ORS 316.097 or 317.116, depending upon the tax status of the person's trade or business except if the taxpayer is a corporation organized under ORS Chapter 61 or 62, or any predecessor to ORS Chapter 62 relating to incorporation of cooperative associations, or is a subsequent transferee of such a corporation, the tax relief may be taken only under ORS 307.405.

(2) If the person receiving the certificate is an electing small business corporation as defined in section 1361 of the Internal Revenue Code, each shareholder shall be entitled to take tax credit relief as provided in ORS 316.097, based on that shareholder's pro rata share of the certified cost of the facility.

(3) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 316.097, based on that partner's pro rata share of the certified cost of the facility.

(4) Upon any sale, exchange or other disposition of a facility written notice must be provided to the Department of Environmental Quality by the company, corporation or individual for whom the tax credit certificate has been issued. Upon request, the taxpayer shall provide a copy of the contract or other evidence of disposition of the property to the Department of Environmental Quality.

(5) The company, corporation or individual claiming the tax credit for a leased facility must provide a copy of a written agreement between the lessor and lessee designating the party to receive the tax credit and a copy of the complete and current lease agreement for the facility.

(6) The taxpayer claiming the tax credit for a facility with more than one owner shall provide a copy of a written agreement between the owners designating the party or parties to receive the tax credit certificate.

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
01/06/84

% R.O.I.	EXPECTED USEFUL LIFE IN YEARS									
	1	2	3	4	5	6	7	8	9	10
0.00	1.000	2.000	3.000	4.000	5.000	6.000	7.000	8.000	9.000	10.000
0.25	0.998	1.993	2.985	3.975	4.963	5.948	6.931	7.911	8.889	9.864
0.50	0.995	1.985	2.970	3.950	4.926	5.896	6.862	7.823	8.779	9.730
0.75	0.993	1.978	2.956	3.926	4.889	5.846	6.795	7.737	8.672	9.600
1.00	0.990	1.970	2.941	3.902	4.853	5.795	6.728	7.652	8.566	9.471
1.25	0.988	1.963	2.927	3.878	4.818	5.746	6.663	7.568	8.462	9.346
1.50	0.985	1.956	2.912	3.854	4.783	5.697	6.598	7.486	8.361	9.222
1.75	0.983	1.949	2.898	3.831	4.748	5.649	6.535	7.405	8.260	9.101
2.00	0.980	1.942	2.884	3.808	4.713	5.601	6.472	7.325	8.162	8.983
2.25	0.978	1.934	2.870	3.785	4.679	5.554	6.410	7.247	8.066	8.866
2.50	0.976	1.927	2.856	3.762	4.646	5.508	6.349	7.170	7.971	8.752
2.75	0.973	1.920	2.842	3.739	4.613	5.462	6.289	7.094	7.878	8.640
3.00	0.971	1.913	2.829	3.717	4.580	5.417	6.230	7.020	7.786	8.530
3.25	0.969	1.907	2.815	3.695	4.547	5.373	6.172	6.946	7.696	8.422
3.50	0.966	1.900	2.802	3.673	4.515	5.329	6.115	6.874	7.608	8.317
3.75	0.964	1.893	2.788	3.651	4.483	5.285	6.058	6.803	7.521	8.213
4.00	0.962	1.886	2.775	3.630	4.452	5.242	6.002	6.733	7.435	8.111
4.25	0.959	1.879	2.762	3.609	4.421	5.200	5.947	6.664	7.351	8.011
4.50	0.957	1.873	2.749	3.588	4.390	5.158	5.893	6.596	7.269	7.913
4.75	0.955	1.866	2.736	3.567	4.360	5.117	5.839	6.529	7.188	7.816
5.00	0.952	1.859	2.723	3.546	4.329	5.076	5.786	6.463	7.108	7.722
5.25	0.950	1.853	2.711	3.525	4.300	5.035	5.734	6.398	7.029	7.629
5.50	0.948	1.846	2.698	3.505	4.270	4.996	5.683	6.335	6.952	7.538
5.75	0.946	1.840	2.685	3.485	4.241	4.956	5.632	6.272	6.876	7.448

% R.O.I.	EXPECTED USEFUL LIFE IN YEARS									
	11	12	13	14	15	16	17	18	19	20
0.00	11.000	12.000	13.000	14.000	15.000	16.000	17.000	18.000	19.000	20.000
0.25	10.837	11.807	12.775	13.741	14.704	15.665	16.623	17.580	18.533	19.484
0.50	10.677	11.619	12.556	13.489	14.417	15.340	16.259	17.173	18.082	18.987
0.75	10.521	11.435	12.342	13.243	14.137	15.024	15.905	16.779	17.647	18.508
1.00	10.368	11.255	12.134	13.004	13.865	14.718	15.562	16.398	17.228	18.040
1.25	10.218	11.079	11.930	12.771	13.601	14.420	15.230	16.030	16.819	17.599
1.50	10.071	10.908	11.732	12.543	13.343	14.131	14.908	15.673	16.426	17.169
1.75	9.927	10.740	11.538	12.322	13.093	13.850	14.595	15.327	16.046	16.753
2.00	9.787	10.575	11.348	12.106	12.849	13.578	14.292	14.992	15.679	16.351
2.25	9.649	10.415	11.164	11.896	12.612	13.313	13.998	14.668	15.323	15.964
2.50	9.514	10.258	10.983	11.691	12.381	13.055	13.712	14.353	14.979	15.589
2.75	9.382	10.104	10.807	11.491	12.157	12.805	13.435	14.049	14.646	15.227
3.00	9.253	9.954	10.635	11.296	11.938	12.561	13.186	13.754	14.324	14.877
3.25	9.126	9.807	10.467	11.106	11.725	12.324	12.905	13.467	14.012	14.539
3.50	9.002	9.663	10.303	10.921	11.517	12.094	12.651	13.190	13.710	14.212
3.75	8.880	9.523	10.142	10.740	11.315	11.870	12.405	12.920	13.417	13.896
4.00	8.760	9.385	9.986	10.563	11.118	11.652	12.166	12.659	13.134	13.590
4.25	8.644	9.250	9.833	10.391	10.927	11.440	11.933	12.406	12.859	13.294
4.50	8.529	9.119	9.683	10.223	10.740	11.234	11.707	12.160	12.593	13.006
4.75	8.417	8.990	9.537	10.059	10.557	11.033	11.488	11.921	12.335	12.731
5.00	8.306	8.863	9.394	9.899	10.380	10.838	11.274	11.690	12.085	12.462
5.25	8.198	8.740	9.254	9.742	10.206	10.647	11.066	11.465	11.843	12.202
5.50	8.093	8.619	9.117	9.590	10.038	10.462	10.865	11.246	11.608	11.950
5.75	7.989	8.500	8.983	9.441	9.873	10.282	10.668	11.034	11.379	11.706

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
01/06/84

% R.O.I.	EXPECTED USEFUL LIFE IN YEARS 21	22	23	24	25	26	27	28	29	30
0.00	21.000	22.000	23.000	24.000	25.000	26.000	27.000	28.000	29.000	30.000
0.25	20.433	21.380	22.324	23.266	24.205	25.143	26.077	27.010	27.940	28.868
0.50	19.989	20.784	21.676	22.563	23.446	24.324	25.199	26.063	26.933	27.794
0.75	19.363	20.211	21.053	21.889	22.719	23.542	24.359	25.171	25.976	26.775
1.00	18.857	19.660	20.456	21.243	22.023	22.795	23.560	24.316	25.066	25.806
1.25	18.370	19.131	19.882	20.624	21.357	22.081	22.796	23.503	24.200	24.889
1.50	17.900	18.621	19.331	20.030	20.720	21.399	22.068	22.727	23.376	24.016
1.75	17.448	18.130	18.801	19.461	20.109	20.746	21.372	21.987	22.592	23.186
2.00	17.011	17.658	18.292	18.914	19.523	20.121	20.707	21.281	21.844	22.396
2.25	16.590	17.203	17.803	18.389	18.962	19.523	20.072	20.608	21.132	21.645
2.50	16.185	16.765	17.332	17.885	18.424	18.951	19.464	19.965	20.454	20.930
2.75	15.793	16.343	16.879	17.401	17.908	18.402	18.863	19.351	19.806	20.249
3.00	15.415	15.937	16.444	16.936	17.413	17.877	18.327	18.764	19.188	19.600
3.25	15.050	15.545	16.024	16.488	16.938	17.373	17.795	18.203	18.599	18.982
3.50	14.698	15.167	15.620	16.058	16.482	16.893	17.285	17.667	18.036	18.392
3.75	14.358	14.803	15.232	15.645	16.043	16.427	16.797	17.154	17.498	17.829
4.00	14.029	14.451	14.857	15.247	15.622	15.983	16.330	16.663	16.984	17.292
4.25	13.712	14.112	14.496	14.864	15.217	15.556	15.881	16.193	16.492	16.779
4.50	13.405	13.784	14.148	14.495	14.828	15.147	15.451	15.743	16.022	16.289
4.75	13.108	13.468	13.812	14.141	14.454	14.753	15.039	15.312	15.572	15.820
5.00	12.821	13.163	13.489	13.799	14.094	14.375	14.643	14.898	15.141	15.372
5.25	12.544	12.868	13.176	13.469	13.747	14.012	14.263	14.502	14.728	14.944
5.50	12.275	12.583	12.875	13.152	13.414	13.662	13.898	14.121	14.333	14.534
5.75	12.015	12.308	12.584	12.846	13.093	13.326	13.547	13.756	13.954	14.141

% R.O.I.	EXPECTED USEFUL LIFE IN YEARS 1	2	3	4	5	6	7	8	9	10
6.00	0.943	1.833	2.673	3.465	4.212	4.917	5.582	6.210	6.802	7.360
6.25	0.941	1.827	2.661	3.445	4.184	4.879	5.533	6.149	6.728	7.274
6.50	0.939	1.821	2.648	3.426	4.156	4.841	5.485	6.089	6.656	7.189
6.75	0.937	1.814	2.636	3.406	4.128	4.804	5.437	6.030	6.585	7.105
7.00	0.935	1.808	2.624	3.387	4.100	4.767	5.389	5.971	6.515	7.024
7.25	0.932	1.802	2.612	3.368	4.073	4.730	5.343	5.914	6.447	6.943
7.50	0.930	1.796	2.601	3.349	4.046	4.694	5.297	5.857	6.379	6.864
7.75	0.928	1.789	2.589	3.331	4.019	4.658	5.251	5.802	6.312	6.786
8.00	0.926	1.783	2.577	3.312	3.993	4.623	5.206	5.747	6.247	6.710
8.25	0.924	1.777	2.566	3.294	3.967	4.588	5.162	5.693	6.182	6.635
8.50	0.922	1.771	2.554	3.276	3.941	4.554	5.119	5.639	6.119	6.561
8.75	0.920	1.765	2.543	3.258	3.915	4.520	5.075	5.587	6.057	6.489
9.00	0.917	1.759	2.531	3.240	3.890	4.486	5.033	5.535	5.995	6.418
9.25	0.915	1.753	2.520	3.222	3.865	4.453	4.991	5.484	5.935	6.348
9.50	0.913	1.747	2.509	3.204	3.840	4.420	4.950	5.433	5.875	6.279
9.75	0.911	1.741	2.498	3.187	3.815	4.387	4.909	5.384	5.817	6.211
10.00	0.909	1.736	2.487	3.170	3.791	4.355	4.868	5.335	5.759	6.145
10.25	0.907	1.730	2.476	3.153	3.767	4.324	4.829	5.287	5.702	6.079
10.50	0.905	1.724	2.465	3.136	3.743	4.292	4.789	5.239	5.646	6.015
10.75	0.903	1.718	2.454	3.119	3.719	4.261	4.751	5.192	5.591	5.951
11.00	0.901	1.713	2.444	3.102	3.696	4.231	4.712	5.146	5.537	5.889
11.25	0.899	1.707	2.433	3.086	3.673	4.200	4.674	5.101	5.484	5.829
11.50	0.897	1.701	2.423	3.070	3.650	4.170	4.637	5.056	5.431	5.769
11.75	0.895	1.696	2.412	3.053	3.627	4.141	4.600	5.011	5.379	5.709

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
01/06/84

% R.O.I.	EXPECTED USEFUL LIFE IN YEARS 11	12	13	14	15	16	17	18	19	20
6.00	7.887	8.384	8.853	9.295	9.712	10.106	10.477	10.828	11.158	11.470
6.25	7.787	8.270	8.725	9.153	9.556	9.935	10.291	10.627	10.943	11.241
6.50	7.689	8.159	8.600	9.014	9.403	9.768	10.111	10.432	10.735	11.019
6.75	7.593	8.050	8.477	8.878	9.253	9.605	9.935	10.243	10.532	10.803
7.00	7.499	7.943	8.358	8.745	9.108	9.447	9.763	10.059	10.336	10.594
7.25	7.406	7.838	8.240	8.616	8.966	9.292	9.595	9.880	10.145	10.391
7.50	7.315	7.735	8.126	8.489	8.827	9.142	9.434	9.706	9.959	10.194
7.75	7.226	7.635	8.014	8.365	8.692	8.995	9.276	9.537	9.779	10.004
8.00	7.139	7.536	7.904	8.244	8.559	8.851	9.122	9.372	9.604	9.818
8.25	7.053	7.439	7.796	8.126	8.430	8.712	8.971	9.212	9.433	9.638
8.50	6.969	7.345	7.691	8.010	8.304	8.575	8.825	9.055	9.268	9.463
8.75	6.886	7.252	7.588	7.897	8.181	8.442	8.683	8.904	9.107	9.294
9.00	6.805	7.161	7.487	7.786	8.061	8.313	8.544	8.756	8.950	9.129
9.25	6.726	7.071	7.388	7.678	7.943	8.186	8.408	8.612	8.798	8.968
9.50	6.647	6.984	7.291	7.572	7.828	8.062	8.276	8.471	8.650	8.812
9.75	6.570	6.898	7.196	7.468	7.716	7.942	8.147	8.335	8.505	8.661
10.00	6.495	6.814	7.103	7.367	7.606	7.824	8.022	8.201	8.365	8.514
10.25	6.421	6.731	7.012	7.267	7.499	7.709	7.899	8.072	8.228	8.370
10.50	6.348	6.650	6.923	7.170	7.394	7.596	7.779	7.945	8.095	8.231
10.75	6.277	6.570	6.836	7.075	7.291	7.486	7.663	7.822	7.966	8.095
11.00	6.207	6.492	6.750	6.982	7.191	7.379	7.549	7.702	7.839	7.963
11.25	6.138	6.416	6.666	6.891	7.093	7.274	7.438	7.584	7.716	7.835
11.50	6.070	6.341	6.583	6.801	6.997	7.172	7.329	7.470	7.596	7.710
11.75	6.003	6.267	6.503	6.714	6.903	7.072	7.223	7.358	7.480	7.588

% R.O.I.	EXPECTED USEFUL LIFE IN YEARS 21	22	23	24	25	26	27	28	29	30
6.00	11.764	12.042	12.303	12.550	12.783	13.003	13.211	13.406	13.591	13.765
6.25	11.521	11.784	12.032	12.266	12.485	12.692	12.887	13.070	13.242	13.404
6.50	11.285	11.535	11.770	11.991	12.198	12.392	12.575	12.746	12.907	13.059
6.75	11.057	11.294	11.517	11.725	11.921	12.104	12.275	12.436	12.586	12.727
7.00	10.836	11.061	11.272	11.469	11.654	11.826	11.987	12.137	12.278	12.409
7.25	10.621	10.836	11.036	11.222	11.396	11.558	11.709	11.850	11.981	12.104
7.50	10.413	10.617	10.807	10.983	11.147	11.299	11.441	11.573	11.696	11.810
7.75	10.212	10.406	10.585	10.752	10.907	11.050	11.184	11.307	11.422	11.529
8.00	10.017	10.201	10.371	10.529	10.675	10.810	10.935	11.051	11.158	11.258
8.25	9.827	10.002	10.164	10.313	10.451	10.578	10.696	10.804	10.905	10.997
8.50	9.644	9.810	9.963	10.104	10.234	10.354	10.465	10.566	10.660	10.747
8.75	9.465	9.623	9.769	9.902	10.025	10.138	10.242	10.337	10.425	10.506
9.00	9.292	9.442	9.580	9.707	9.823	9.929	10.027	10.116	10.198	10.274
9.25	9.124	9.267	9.398	9.517	9.627	9.727	9.819	9.903	9.980	10.050
9.50	8.961	9.097	9.221	9.334	9.438	9.532	9.618	9.697	9.769	9.835
9.75	8.803	8.932	9.049	9.157	9.254	9.343	9.425	9.498	9.566	9.627
10.00	8.649	8.772	8.883	8.985	9.077	9.161	9.237	9.307	9.370	9.427
10.25	8.499	8.616	8.722	8.818	8.905	8.984	9.056	9.121	9.180	9.234
10.50	8.354	8.465	8.566	8.657	8.739	8.814	8.881	8.942	8.997	9.047
10.75	8.212	8.318	8.414	8.500	8.579	8.648	8.712	8.769	8.821	8.868
11.00	8.075	8.176	8.266	8.348	8.422	8.488	8.548	8.602	8.650	8.694
11.25	7.941	8.037	8.123	8.201	8.270	8.333	8.389	8.440	8.485	8.525
11.50	7.811	7.903	7.984	8.058	8.124	8.183	8.236	8.283	8.326	8.364
11.75	7.685	7.772	7.850	7.919	7.981	8.037	8.087	8.131	8.171	8.207

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
01/06/84

% R.O.I.	EXPECTED USEFUL LIFE IN YEARS 1	2	3	4	5	6	7	8	9	10
12.00	0.893	1.690	2.402	3.037	3.605	4.111	4.564	4.968	5.328	5.650
12.25	0.891	1.685	2.392	3.021	3.583	4.082	4.528	4.925	5.278	5.593
12.50	0.889	1.679	2.381	3.006	3.561	4.054	4.492	4.882	5.228	5.536
12.75	0.887	1.674	2.371	2.990	3.539	4.026	4.457	4.840	5.180	5.481
13.00	0.885	1.668	2.361	2.974	3.517	3.998	4.423	4.799	5.132	5.426
13.25	0.883	1.663	2.351	2.959	3.496	3.970	4.388	4.758	5.084	5.372
13.50	0.881	1.657	2.341	2.944	3.475	3.943	4.355	4.718	5.038	5.320
13.75	0.879	1.652	2.331	2.929	3.454	3.915	4.321	4.678	4.992	5.267
14.00	0.877	1.647	2.322	2.914	3.433	3.889	4.288	4.639	4.946	5.216
14.25	0.875	1.641	2.312	2.899	3.413	3.862	4.256	4.600	4.902	5.166
14.50	0.873	1.636	2.302	2.884	3.392	3.836	4.224	4.562	4.858	5.116
14.75	0.871	1.631	2.293	2.869	3.372	3.810	4.192	4.524	4.814	5.067
15.00	0.870	1.626	2.283	2.855	3.352	3.784	4.160	4.487	4.772	5.019
15.25	0.868	1.621	2.274	2.841	3.332	3.759	4.129	4.451	4.729	4.971
15.50	0.866	1.615	2.264	2.826	3.313	3.734	4.099	4.415	4.688	4.925
15.75	0.864	1.610	2.255	2.812	3.293	3.709	4.068	4.379	4.647	4.879
16.00	0.862	1.605	2.246	2.798	3.274	3.685	4.039	4.344	4.607	4.833
16.25	0.860	1.600	2.237	2.784	3.255	3.660	4.009	4.309	4.567	4.789
16.50	0.858	1.595	2.228	2.770	3.236	3.636	3.980	4.274	4.527	4.745
16.75	0.857	1.590	2.219	2.757	3.218	3.613	3.951	4.241	4.489	4.701
17.00	0.855	1.585	2.210	2.743	3.199	3.589	3.922	4.207	4.451	4.659
17.25	0.853	1.580	2.201	2.730	3.181	3.566	3.894	4.174	4.413	4.617
17.50	0.851	1.575	2.192	2.716	3.163	3.543	3.866	4.142	4.376	4.575
17.75	0.849	1.570	2.183	2.703	3.145	3.520	3.839	4.109	4.339	4.534

% R.O.I.	EXPECTED USEFUL LIFE IN YEARS 11	12	13	14	15	16	17	18	19	20
12.00	5.939	6.194	6.424	6.628	6.811	6.974	7.120	7.250	7.366	7.469
12.25	5.873	6.123	6.346	6.544	6.721	6.878	7.019	7.143	7.255	7.354
12.50	5.810	6.053	6.270	6.462	6.633	6.785	6.920	7.040	7.147	7.241
12.75	5.748	5.985	6.195	6.381	6.547	6.693	6.823	6.939	7.041	7.132
13.00	5.687	5.918	6.122	6.302	6.462	6.604	6.729	6.840	6.938	7.025
13.25	5.627	5.852	6.050	6.225	6.380	6.516	6.637	6.743	6.837	6.921
13.50	5.568	5.787	5.979	6.149	6.299	6.431	6.547	6.649	6.739	6.819
13.75	5.510	5.723	5.910	6.075	6.220	6.347	6.459	6.557	6.644	6.720
14.00	5.453	5.660	5.842	6.002	6.142	6.265	6.373	6.467	6.550	6.623
14.25	5.397	5.599	5.776	5.931	6.066	6.185	6.289	6.380	6.459	6.529
14.50	5.341	5.538	5.710	5.861	5.992	6.106	6.206	6.294	6.370	6.437
14.75	5.287	5.479	5.646	5.792	5.919	6.029	6.126	6.210	6.283	6.347
15.00	5.234	5.421	5.583	5.724	5.847	5.954	6.047	6.128	6.198	6.259
15.25	5.181	5.363	5.521	5.658	5.777	5.881	5.970	6.048	6.115	6.174
15.50	5.130	5.307	5.461	5.594	5.709	5.803	5.895	5.969	6.034	6.090
15.75	5.079	5.252	5.401	5.530	5.641	5.738	5.821	5.893	5.955	6.009
16.00	5.029	5.197	5.342	5.466	5.575	5.668	5.749	5.818	5.877	5.929
16.25	4.979	5.144	5.285	5.406	5.511	5.601	5.678	5.745	5.802	5.851
16.50	4.931	5.091	5.228	5.346	5.447	5.534	5.609	5.673	5.728	5.775
16.75	4.883	5.039	5.173	5.287	5.385	5.469	5.541	5.603	5.655	5.700
17.00	4.836	4.988	5.119	5.229	5.324	5.405	5.475	5.534	5.584	5.628
17.25	4.790	4.938	5.065	5.172	5.264	5.343	5.410	5.467	5.515	5.557
17.50	4.745	4.889	5.012	5.117	5.206	5.281	5.346	5.401	5.447	5.487
17.75	4.700	4.841	4.960	5.062	5.148	5.221	5.283	5.336	5.381	5.419

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
01/06/84

	EXPECTED USEFUL LIFE IN YEARS									
% R.O.I.	21	22	23	24	25	26	27	28	29	30
12.00	7.562	7.645	7.718	7.784	7.843	7.896	7.943	7.984	8.022	8.055
12.25	7.442	7.521	7.591	7.653	7.709	7.759	7.803	7.842	7.877	7.908
12.50	7.326	7.401	7.467	7.526	7.579	7.626	7.667	7.704	7.737	7.766
12.75	7.212	7.283	7.347	7.403	7.453	7.497	7.536	7.571	7.602	7.629
13.00	7.102	7.170	7.230	7.283	7.330	7.372	7.409	7.441	7.470	7.496
13.25	6.994	7.059	7.116	7.166	7.211	7.250	7.285	7.316	7.343	7.367
13.50	6.889	6.951	7.005	7.053	7.095	7.132	7.165	7.194	7.219	7.242
13.75	6.787	6.845	6.897	6.942	6.982	7.017	7.048	7.075	7.099	7.120
14.00	6.687	6.743	6.792	6.835	6.873	6.906	6.935	6.961	6.983	7.003
14.25	6.590	6.643	6.690	6.731	6.766	6.798	6.825	6.849	6.870	6.889
14.50	6.495	6.546	6.590	6.629	6.663	6.693	6.718	6.741	6.761	6.778
14.75	6.403	6.451	6.493	6.530	6.562	6.590	6.615	6.636	6.654	6.670
15.00	6.312	6.359	6.399	6.434	6.464	6.491	6.514	6.534	6.551	6.566
15.25	6.225	6.269	6.307	6.340	6.369	6.394	6.415	6.434	6.450	6.465
15.50	6.139	6.181	6.217	6.249	6.276	6.299	6.320	6.337	6.353	6.366
15.75	6.055	6.095	6.130	6.159	6.185	6.208	6.227	6.243	6.258	6.270
16.00	5.973	6.011	6.044	6.073	6.097	6.118	6.136	6.152	6.166	6.177
16.25	5.893	5.930	5.961	5.988	6.011	6.031	6.048	6.063	6.076	6.087
16.50	5.815	5.850	5.880	5.905	5.927	5.946	5.962	5.976	5.988	5.999
16.75	5.739	5.772	5.801	5.825	5.846	5.864	5.879	5.892	5.903	5.913
17.00	5.665	5.696	5.723	5.746	5.766	5.783	5.798	5.810	5.820	5.829
17.25	5.592	5.622	5.648	5.670	5.689	5.705	5.718	5.730	5.740	5.748
17.50	5.521	5.550	5.574	5.595	5.613	5.628	5.641	5.652	5.661	5.669
17.75	5.452	5.479	5.502	5.522	5.539	5.553	5.565	5.576	5.584	5.592

	EXPECTED USEFUL LIFE IN YEARS									
% R.O.I.	1	2	3	4	5	6	7	8	9	10
18.00	0.847	1.566	2.174	2.690	3.127	3.498	3.812	4.078	4.303	4.494
18.25	0.846	1.561	2.166	2.677	3.110	3.475	3.785	4.046	4.267	4.454
18.50	0.844	1.556	2.157	2.664	3.092	3.453	3.758	4.015	4.232	4.415
18.75	0.842	1.551	2.148	2.651	3.075	3.431	3.732	3.985	4.198	4.377
19.00	0.840	1.547	2.140	2.639	3.058	3.410	3.706	3.954	4.163	4.339
19.25	0.839	1.542	2.131	2.626	3.041	3.388	3.680	3.925	4.130	4.302
19.50	0.837	1.537	2.123	2.613	3.024	3.367	3.655	3.895	4.096	4.265
19.75	0.835	1.532	2.115	2.601	3.007	3.346	3.629	3.866	4.063	4.228
20.00	0.833	1.528	2.106	2.589	2.991	3.326	3.605	3.837	4.031	4.192
20.25	0.832	1.523	2.098	2.577	2.974	3.305	3.580	3.809	3.999	4.157
20.50	0.830	1.519	2.090	2.564	2.958	3.285	3.556	3.781	3.967	4.122
20.75	0.828	1.514	2.082	2.552	2.942	3.265	3.532	3.753	3.936	4.088
21.00	0.826	1.509	2.074	2.540	2.926	3.245	3.508	3.726	3.905	4.054
21.25	0.825	1.505	2.066	2.529	2.910	3.225	3.484	3.699	3.875	4.021
21.50	0.823	1.500	2.058	2.517	2.895	3.205	3.461	3.672	3.845	3.988
21.75	0.821	1.496	2.050	2.505	2.879	3.186	3.438	3.645	3.815	3.955
22.00	0.820	1.492	2.042	2.494	2.864	3.167	3.416	3.619	3.786	3.923
22.25	0.818	1.487	2.034	2.482	2.848	3.148	3.393	3.593	3.757	3.892
22.50	0.816	1.483	2.027	2.471	2.833	3.129	3.371	3.568	3.729	3.860
22.75	0.815	1.478	2.019	2.459	2.818	3.111	3.349	3.543	3.701	3.830
23.00	0.813	1.474	2.011	2.448	2.803	3.092	3.327	3.518	3.673	3.799
23.25	0.811	1.470	2.004	2.437	2.789	3.074	3.306	3.493	3.646	3.769
23.50	0.810	1.465	1.996	2.426	2.774	3.056	3.284	3.469	3.619	3.740
23.75	0.808	1.461	1.989	2.415	2.760	3.038	3.263	3.445	3.592	3.711

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
01/06/84

% R.O.I.	EXPECTED USEFUL LIFE IN YEARS									
	11	12	13	14	15	16	17	18	19	20
18.00	4.656	4.793	4.910	5.008	5.092	5.162	5.222	5.273	5.316	5.353
18.25	4.613	4.746	4.860	4.955	5.036	5.105	5.162	5.211	5.253	5.288
18.50	4.570	4.700	4.810	4.903	4.982	5.048	5.104	5.151	5.191	5.224
18.75	4.528	4.655	4.762	4.852	4.928	4.992	5.046	5.091	5.130	5.162
19.00	4.486	4.611	4.715	4.802	4.876	4.938	4.990	5.033	5.070	5.101
19.25	4.446	4.567	4.668	4.753	4.824	4.884	4.934	4.976	5.012	5.041
19.50	4.406	4.523	4.622	4.705	4.774	4.832	4.880	4.921	4.954	4.983
19.75	4.366	4.481	4.577	4.657	4.724	4.780	4.827	4.866	4.898	4.926
20.00	4.327	4.439	4.533	4.611	4.675	4.730	4.775	4.812	4.843	4.870
20.25	4.289	4.398	4.489	4.565	4.628	4.680	4.723	4.760	4.790	4.815
20.50	4.251	4.358	4.446	4.520	4.581	4.631	4.673	4.708	4.737	4.761
20.75	4.214	4.318	4.404	4.475	4.534	4.583	4.624	4.657	4.685	4.708
21.00	4.177	4.278	4.362	4.432	4.489	4.536	4.576	4.608	4.635	4.657
21.25	4.141	4.240	4.321	4.389	4.444	4.490	4.528	4.559	4.585	4.606
21.50	4.105	4.202	4.281	4.347	4.401	4.445	4.481	4.511	4.536	4.557
21.75	4.070	4.164	4.242	4.305	4.358	4.400	4.436	4.465	4.488	4.508
22.00	4.035	4.127	4.203	4.265	4.315	4.357	4.391	4.419	4.442	4.460
22.25	4.001	4.091	4.164	4.224	4.274	4.314	4.347	4.374	4.396	4.414
22.50	3.968	4.055	4.127	4.185	4.233	4.272	4.303	4.329	4.350	4.368
22.75	3.935	4.020	4.090	4.146	4.193	4.230	4.261	4.286	4.306	4.323
23.00	3.902	3.985	4.053	4.108	4.153	4.189	4.219	4.243	4.263	4.279
23.25	3.870	3.951	4.017	4.071	4.114	4.149	4.178	4.201	4.220	4.235
23.50	3.838	3.917	3.982	4.034	4.076	4.110	4.138	4.160	4.178	4.193
23.75	3.807	3.884	3.947	3.997	4.038	4.071	4.098	4.120	4.137	4.151

% R.O.I.	EXPECTED USEFUL LIFE IN YEARS									
	21	22	23	24	25	26	27	28	29	30
18.00	5.384	5.410	5.432	5.451	5.467	5.480	5.492	5.502	5.510	5.517
18.25	5.317	5.342	5.363	5.381	5.397	5.409	5.420	5.429	5.437	5.444
18.50	5.252	5.276	5.296	5.313	5.328	5.340	5.350	5.359	5.366	5.372
18.75	5.189	5.212	5.231	5.247	5.261	5.272	5.282	5.290	5.297	5.303
19.00	5.127	5.149	5.167	5.182	5.195	5.206	5.215	5.223	5.229	5.235
19.25	5.066	5.087	5.104	5.119	5.131	5.141	5.150	5.157	5.163	5.168
19.50	5.007	5.026	5.043	5.057	5.069	5.079	5.088	5.093	5.099	5.104
19.75	4.948	4.967	4.983	4.996	5.007	5.017	5.024	5.031	5.036	5.041
20.00	4.891	4.909	4.925	4.937	4.948	4.956	4.964	4.970	4.975	4.979
20.25	4.836	4.853	4.867	4.879	4.889	4.897	4.904	4.910	4.915	4.919
20.50	4.781	4.797	4.811	4.823	4.832	4.840	4.846	4.852	4.856	4.860
20.75	4.727	4.743	4.756	4.767	4.776	4.783	4.790	4.795	4.799	4.802
21.00	4.675	4.690	4.703	4.713	4.721	4.728	4.734	4.739	4.743	4.746
21.25	4.624	4.638	4.650	4.660	4.668	4.674	4.680	4.685	4.688	4.691
21.50	4.573	4.587	4.598	4.608	4.615	4.622	4.627	4.631	4.635	4.638
21.75	4.524	4.537	4.548	4.557	4.564	4.570	4.575	4.579	4.582	4.585
22.00	4.476	4.488	4.499	4.507	4.514	4.520	4.524	4.528	4.531	4.534
22.25	4.428	4.440	4.450	4.458	4.465	4.470	4.475	4.478	4.481	4.484
22.50	4.382	4.393	4.403	4.410	4.417	4.422	4.426	4.429	4.432	4.434
22.75	4.336	4.347	4.356	4.364	4.369	4.374	4.378	4.381	4.384	4.386
23.00	4.292	4.302	4.311	4.318	4.323	4.328	4.332	4.335	4.337	4.339
23.25	4.248	4.258	4.266	4.273	4.278	4.282	4.286	4.289	4.291	4.293
23.50	4.205	4.214	4.222	4.228	4.234	4.238	4.241	4.244	4.246	4.248
23.75	4.163	4.172	4.179	4.185	4.190	4.194	4.197	4.200	4.202	4.203

TABLE 1

RETURN ON INVESTMENT PERCENTAGE
BASED ON R.O.I. FACTOR (FACILITY COST/AVRG. ANNUAL CASH FLOW)
AND THE EXPECTED USEFUL LIFE OF THE NEW FACILITY
01/06/84

	EXPECTED USEFUL LIFE IN YEARS									
% R.O.I.	1	2	3	4	5	6	7	8	9	10
24.00	0.806	1.457	1.981	2.404	2.745	3.020	3.242	3.421	3.566	3.682
24.25	0.805	1.453	1.974	2.393	2.731	3.003	3.222	3.398	3.539	3.653
24.50	0.803	1.448	1.967	2.383	2.717	2.986	3.201	3.375	3.514	3.625
24.75	0.802	1.444	1.959	2.372	2.703	2.968	3.181	3.352	3.488	3.598
25.00	0.800	1.440	1.952	2.362	2.689	2.951	3.161	3.329	3.463	3.571

	EXPECTED USEFUL LIFE IN YEARS									
% R.O.I.	11	12	13	14	15	16	17	18	19	20
24.00	3.776	3.851	3.912	3.962	4.001	4.033	4.059	4.080	4.097	4.110
24.25	3.745	3.819	3.879	3.926	3.965	3.996	4.021	4.041	4.057	4.070
24.50	3.715	3.787	3.845	3.892	3.929	3.959	3.983	4.003	4.018	4.031
24.75	3.686	3.756	3.812	3.858	3.894	3.923	3.946	3.965	3.980	3.992
25.00	3.656	3.725	3.780	3.824	3.859	3.887	3.910	3.928	3.942	3.954

	EXPECTED USEFUL LIFE IN YEARS									
% R.O.I.	21	22	23	24	25	26	27	28	29	30
24.00	4.121	4.130	4.137	4.143	4.147	4.151	4.154	4.157	4.159	4.160
24.25	4.081	4.089	4.096	4.101	4.106	4.109	4.112	4.114	4.116	4.118
24.50	4.041	4.049	4.055	4.060	4.065	4.068	4.071	4.073	4.075	4.076
24.75	4.002	4.009	4.015	4.020	4.024	4.028	4.030	4.032	4.034	4.035
25.00	3.963	3.970	3.976	3.981	3.985	3.988	3.990	3.992	3.994	3.995

Table 2

Reference Annual Percent Return on Investment

Year Construction Completed	Reference Percent Return
1975	19.1
1976	19.8
1977	21.0
1978	21.9
1979	22.5
1980	23.0
1981	23.6
1982	23.4
1983	21.5
1984	19.9
1985	18.5
1986	17.4

Calculation of the reference percent return was made by averaging the average annual percent return before taxes on stockholders' equity for all manufacturing corporations as found in the Quarterly Financial Report for Manufacturing, Mining and Trade Corporations, published by the U.S. Department of Commerce, Bureau of the Census, for the five years prior to the year shown.

Attachment V
December 12, 1986
EQC Meeting

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

TO: Environmental Quality Commission DATE: November 13, 1986

FROM: Maggie Conley, Hearing Officer

SUBJECT: Report from Hearing held October 16, 1986

Proposed Pollution Control Tax Credit Rules

Summary of Procedure

Two people attended the hearing, which was held at 3:00 p.m. in Portland, 522 SW Fifth, in the EPA conference room. Maggie Conley, Intergovernmental Coordinator for DEQ, presided. Also, attending from DEQ was Judy Hatton from the Management Services Division.

Two people provided oral testimony at the hearing. No written comments were received.

Summary of Testimony

Maurice Georges, representing Ogden Corporation, supported the rule amendments related to the definition of the term "Actual Cost" (OAR 340-16-026).

Rich Miller, representing Willamette Industries, presented testimony disagreeing with the proposed rule Section 340-16-040 which relates to revocation and reissuance of tax credit certificates. He supported amending the proposed rule to allow the EQC to be ble to issue certificates retroactively if it is established to the satisfaction of the Commission that all conditions requisite to the issuance of the original certificate have been met during the period that the certificate has not been enforced due to the transfer.

MC:y
MY3611

Attachment VI
December 12, 1986
EQC Meeting

LAW OFFICES OF
DUFFY, KEKEL, JENSEN, JONES & MILLER
1404 STANDARD PLAZA
PORTLAND, OREGON 97204
TELEPHONE (503) 226-1371

CHARLES P. DUFFY
DAVID A. KEKEL, P.C.
PATRICK H. JENSEN, P.C.
PHILIP N. JONES
RICHARD W. MILLER
CAROLYN E. WILSON
STEVEN A. NICHOLES

WALDEN STOUT
OF COUNSEL

May 28, 1986

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

Re: Willamette Industries, Inc.

Dear Sherry:

We represent Willamette Industries, Inc., an Oregon corporation. On March 24, 1972, Bauman Lumber Company, an Oregon corporation, was issued a pollution control facility certificate by the Environmental Quality Commission, covering a gas/oil-fired package boiler located at the company's plant in Lebanon. A copy of the certificate is enclosed for your reference.

Effective April 1, 1974, Willamette Industries purchased substantially all of the assets of Bauman Lumber Company, including the boiler described on the enclosed certificate. At that time, Willamette failed to apply for a new pollution control certificate covering the same boiler.

It is respectfully requested that the Environmental Quality Commission, at the next meeting that it is able to do so (which we understand is July 25) issue a certificate identical in all material respects to the one that is enclosed except that it be issued in the name of Willamette Industries, Inc., as of April 1, 1974. With respect to the conditions set forth on the enclosed certificate, we can advise you that, since the boiler was acquired by Willamette Industries, it has been operated continuously at maximum efficiency for the designed purpose of preventing, controlling and reducing air pollution.

When we have obtained a retroactively-dated certificate from the Commission in the past, the reissued certificate has contained the following language:

> "Note: This is a reissued certificate valid only for the time remaining from the date of first issuance."

We would appreciate a similar notation on the reissued certificate requested.

If you need any additional information, please call.

Thank you for your consideration.

Very truly yours,

Richard W. Miller

RWM:las
Encl.

cc: Mr. Don McNeill

AYER

William F. Gary
DEPUTY ATTORNEY GENERAL

ATTACHMENT VII
December 12, 1986
EQC Meeting

DEPARTMENT OF JUSTICE

TAX DIVISION
100 State Office Building
Salem, Oregon 97310
Telephone: (503) 378-4494

January 31, 1984

Mr. Leonard Hamilton
Corporation Audit Unit
Department of Revenue
452 Revenue Building
Salem, Oregon

Re: Pollution Control Facility Tax Credit
(150-102-5-06373; 83-43)

Dear Leonard:

You have asked several questions concerning the operation of the pollution control facility tax credit statutes, ORS 316.097, 317.072, and related statutes codified in ORS ch 468. Specifically you have asked the following questions:

FIRST QUESTION PRESENTED

How is the pollution control facility tax credit affected if the useful life of a pollution control facility is less than 10 years and (a) the remaining useful life is shortened because the facility becomes obsolete and is abandoned or replaced; (b) the remaining useful life is shortened due to technological or economic change; (c) the remaining useful life is extended by renovation or repair?

ANSWER GIVEN

Two methods of treating the remaining pollution control facility tax credit are available. Rulemaking by the Department of Revenue is recommended. See discussion.

SECOND QUESTION PRESENTED

The Environmental Quality Commission currently issues a revised certificate when it is determined that the costs of construction certified in an original certificate are in error. In some cases, the revised certificate is issued in a different tax year than the original certificate. In which tax year may a taxpayer begin claiming a credit based upon a revised certificate

reflecting an increased cost? Does it make a difference if the additional costs were incurred before or after the original certificate was issued?

ANSWER GIVEN

More than one method of handling the effect of additional certified cost is available to the Department of Revenue. It is recommended that the Department of Revenue adopt rules in this area. See discussion.

THIRD QUESTION PRESENTED

If a certified pollution control facility is transferred in one tax year and a new certificate is not issued to the new owner until a subsequent tax year, in which tax year may the acquiring corporation begin claiming the remaining pollution control credit? If the acquiring corporation cannot begin claiming pollution control credits until a new certificate is issued, are any credits lost for the intervening years?

ANSWER GIVEN

A new owner of a pollution control facility may not claim tax credits until a certificate is issued in the name of the new owner. Generally, no credits will be lost if the transferee delays application for a new certificate. See discussion.

FOURTH QUESTION PRESENTED

If a certified pollution control facility is transferred to another corporation in a tax-free merger, is the surviving corporation required to apply for a new certificate in order to claim the remaining pollution control credits? Is the answer different if the facility is transferred in a consolidation (two corporations consolidate and form a third corporation)?

ANSWER GIVEN

The surviving corporation is not required to obtain a new certificate in order to claim remaining pollution control facility tax credits for a facility transferred through a merger or consolidation. See discussion.

FIFTH QUESTION PRESENTED

If a partnership obtains a pollution control facility certificate and the partnership is subsequently incorporated, must the

new corporation obtain a new certificate for the remainder of the tax credit available? If the new corporation fails to obtain a pollution control facility certificate for several years, does the corporation lose the right to claim any pollution control facility tax credits?

ANSWER GIVEN

A corporation that succeeds a partnership must obtain a new certificate before the corporation may claim tax credits for a pollution control facility. Generally, no credit will be lost if the corporation fails to obtain a new certificate immediately. See discussion for question 3.

DISCUSSION

Oregon has provided a tax credit for pollution control facilities since 1967. Oregon Laws 1967, ch 592. The statutes governing the allowance of pollution control facility tax credits have been amended substantially over the years, up to and including major changes which will become operative January 1, 1984. Oregon Laws 1983, ch 637. Generally, the pollution control facility tax credit is available to corporations for facilities certified by the Environmental Quality Commission. In order to qualify for a tax credit, the taxpayer must be the owner or lessee of an Oregon trade or business that is utilizing the pollution control facility or be the owner, lessee or beneficial interest holder in a resource recovery pollution control facility. The pollution control facility must be owned or leased by the taxpayer during the tax year for which the credit is claimed. The pollution control facility must be in use during the tax year for which the credit is claimed. The facility must be certified at the time the tax credit is claimed. The Environmental Quality Commission certifies the allowable amount of costs that are eligible for the tax credit. ORS 316.097, 317.072, 468.170. The following discussion will refer only to the corporation excise tax credit statute, ORS 317.072. Parallel provisions are contained in the personal income tax credit statute, ORS 316.097. The responses to questions 1-3 apply to both individual and corporate taxpayers.

Question 1.

(a) Prior to 1977 the pollution control facility tax credit statute, ORS 317.072, did not provide a method for allocating the credit for a facility having a useful life of less than 10 years. (ORS 317.072, as amended by ch 637, Oregon Laws 1983, has been renumbered as ORS 317.116. References in this opinion will continue to be in terms of ORS 317.072.) In 1977, the statute was amended to provide for proration of the certified cost of a facility over

its useful life if the facility had a useful life of less than 10 years. Oregon Laws 1977, ch 795, § 12. ORS 317.072(2)(c) provides a transition for facilities having a useful life of less than 10 years, allowing proration of any remaining credit over the remaining useful life of the facility under rules to be adopted by the Department of Revenue. (I note that no rules were so adopted.) The response to this question and other questions presented will address, where appropriate, treatment of the credit under the statutory provisions existing between 1977 and 1983 and those which become operative for facilities certified on or after January 1, 1984.

ORS 317.072(2)(b) provides that the maximum credit allowable in any one tax year is the maximum total credit divided by the number of years of useful life of the facility. If a pollution control facility becomes obsolete and is abandoned before the end of its expected useful life, no credit may be claimed for tax years after which the facility has been abandoned because the facility will not meet the requirement that it be in use during tax years for which a credit is claimed. See ORS 317.072(5)(b). As stated above, the tax credit statute requires the total allowable credit to be claimed over the "useful life" of the pollution control facility. The statute does not specify at what time the useful life of the facility is to be determined for purposes of calculating the maximum annual credit. One reasonable construction of this language is that the useful life is to be determined at the time the facility is certified. No statutory requirement is imposed upon the Environmental Quality Commission to certify a useful life in addition to the cost of the facility. However, the Environmental Quality Commission does require an applicant for certification to estimate the useful life of the facility.

Two alternative methods of handling this situation appear to be reasonable under the statute. The Department could allow the taxpayer to reamortize the certified cost over the actual useful life of the facility (as determined by the fact of abandonment), and amend returns for those years that are still open. This would allow the taxpayer to recover a portion of the credit amount attributed to years beyond the actual useful life. In the alternative, the Department could determine that the "useful life" must be determined only as of the date of certification of the facility, and any credit remaining unused when the plant is abandoned or lost.

The Department of Revenue should engage in rulemaking to determine which of these procedures will be applied.

For pollution control facilities certified after January 1, 1984, the 1983 amendments specify that the useful life of a facility

is to be determined at the time of certification. Chapter 637, Oregon Laws 1983, § 7. It appears that the only reasonable construction of the statute as amended, is that no credit is allowable for remaining years of estimated useful life if a plant has been abandoned.

(b) If a facility is replaced by a more efficient facility, the availability of tax credits may be determined by the treatment of the facility by the Environmental Quality Commission. The Department of Justice has previously advised the Department of Environmental Quality that reconstruction or replacement of a pollution control facility is eligible in part for additional tax credits. That opinion also advised the Environmental Quality Commission to revoke the original certificate given to the replaced facility so that no duplicate tax credits would be claimed.

Under the 1983 amendments, the statute specifically provides that if a facility is replaced before the end of its useful life the taxpayer may carry over any unused credit to the new facility. In addition, only those costs in excess of the functional replacement cost of the replaced facility are eligible for the tax credit. ORS 468.115(2)(e). The Department of Environmental Quality is currently preparing proposed administrative rules in this area. We recommend that the Department of Revenue participate in that process and consider rules of its own.

(c) If the useful life of a facility is extended due to extensive repairs or renovation, the tax treatment may be influenced by the fact that the Environmental Quality Commission may issue a revised or additional certificate of costs. If the life of a pollution control facility is extended by repair, which is not eligible for additional tax credit, the taxpayer should continue to claim the original credit over the original useful life. If a revised or additional certificate is issued due to substantial expense of renovation, the Department may permit the newly certified cost to be claimed over the number of years remaining in the original useful life of the facility or over the new remaining useful life to the extent that the total life of the facility over which credits are claimed does not exceed 10 years. The treatment of this situation will not change under the 1983 amendments. Once again, rulemaking is recommended.

Question 2.

Although no specific authority is present in the statutes permitting correction of an error in the certified cost of a pollution control facility, it must be inferred that this is permissible because the legislature clearly intended the credit to be allowed on the basis of actual cost incurred. If an error in

the actual amount spent prior to certification by the Environmental Quality Commission is later discovered and the EQC issues a revised certificate, the Department may permit the taxpayer to amortize the correct certified cost over the original useful life, and amend returns for those years for which credits have been claimed that are still open. Any cost incurred and certified after the original certification may be amortized over the useful life of the pollution control facility, and additional credit may be claimed beginning in the year in which certification for the additional cost was obtained. The Department of Environmental Quality should be urged to propose rules establishing standards for the circumstances under which amended or revised certificates will be issued.

Question 3.

ORS 317.072(10) requires that notice be given to the Environmental Quality Commission upon any sale, exchange or other disposition of a certified facility. The Environmental Quality Commission is directed to revoke the certificate as of the date of disposition, and the transferee is permitted to apply for a new certificate to claim the remaining tax credit that was not claimed by the transferor. ORS 468.170(8) provides that the period in which a certificate is valid for tax credit purposes is 10 years from the year of certification. It is clear from the provisions of ORS 468.155 to 468.190 and ORS 317.072 that the tax credit is available only to the holder of a certificate for a pollution control facility. The certificates are issued in the name of the person who constructed or acquired the pollution control facility. Therefore a transferee of a pollution control facility would not be able to claim the credit until the transferee obtains a new certificate.

Once a transferee of a facility has obtained a new certificate, the transferee is limited to the amount of credit that was not claimed by the transferor of the facility. The original person receiving the certificate for a pollution control facility is required by ORS 468.170(5) to make an irrevocable election to take either income tax or property tax relief. This election binds all subsequent transferees. For facilities certified after January 1, 1984, no election is required and the nature of the tax relief available is specified by the statutes. Income tax credit relief under ORS 316.097 or 317.072 is determined in part by the useful life of the facility. Generally, the total amount of the available credit is amortized over the life of the facility up to a maximum of 10 years. This corresponds to the 10 year period for which the certificate is valid under ORS 468.170(8).

It is our opinion that the transferee obtains a new certificate which is valid for 10 years from its issue date. The only limitations on the transferee's tax credit eligibility that are imposed by statute are, first that the transferee must take the same form of tax relief as the transferor (ORS 468.170(5)), and second that the maximum total credit available to the transferee is limited to the transferor's unclaimed credit. Otherwise the transferee is treated in the same manner as the original owner. The transferee must amortize the available credit over the shorter of the remaining useful life of the facility, as of the date of the new certificate, or 10 years.

Generally, a transferee's failure to obtain a new certificate immediately will not result in lost credit. However, if the transferee does not accurately determine the remaining useful life, abandonment or replacement of the facility might result is loss of credits. See discussion under question 1. If it is considered necessary that a transfer be immediately reported, the Department of Revenue and the Environmental Quality Commission should consider rules making this requirement clear.

Question 4.

Under Oregon's corporation law when two or more domestic corporations merge or consolidate, or when one or more domestic corporations and one or more foreign corporations merge or are consolidated, the successor corporation is entitled to all the rights, privileges and interests belonging to the corporations that were merged or consolidated. See ORS 57.480 and 57.485. Therefore, in these circumstances, a new pollution control facility tax credit certificate need not be obtained by the surviving corporation in order to continue to claim remaining pollution control credits. If a foreign corporation authorized to transact business in Oregon is merged or consolidated into another foreign corporation, the laws of the state in which the successor corporation is incorporated will govern the rights of the successor corporation and determine the transferability of the certificate. The Environmental Quality Commission has been advised previously to note on the original certificate the fact that there has been a merger and the names of the corporations involved. Although no rules are required to deal with this question, if the Department of Revenue wishes to give notice of the consequences of such mergers or consolidations, and require notice from the parties to the Department, administrative rules may be in order.

Question 5.

In 1981, the legislature amended ORS 317.072 to provide that the sale, exchange or other disposition of a partner's interest

in a partnership is not to be deemed a sale, exchange or other disposition of a pollution control facility for the purposes of the requirement that the Environmental Quality Commission revoke the original certificate and issue a new certificate to a transferee of a facility. ORS 317.072(10) It is our opinion that this provision permits an individual partner to dispose of his or her interest in an existing partnership and the new partner will be eligible to claim tax credit relief without the issuance of a new certificate by the Environmental Quality Commission. However, we do not believe this provision would operate to avoid the requirement that a new certificate be obtained when a partnership is dissolved and the former partners create a new corporation to which they transfer the property formerly owned by the partnership. Under these circumstances, a "sale, exchange or other disposition" of a facility has occurred and notice must be given to the Environmental Quality Commission and a new certificate must be issued before the corporation may claim the tax credits for the pollution control facility previously owned and operated by the partnership.

We recommend an administrative rule be drafted to address this question. If the new corporation delays in obtaining a new certificate, the same principles apply as if the corporation were a transferee. See discussion in question 3.

This letter is written at the request of the Department of Revenue for the purpose of assisting the Department of Revenue in the interpretation and application of the tax laws. It is not a formal or official opinion of the Attorney General.

Sincerely,

Elizabeth S. Stockdale

Elizabeth S. Stockdale
Assistant Attorney General

bem

cc: George Weber
Tom Everall
Carol Splettstaszer, DEQ
Rob Haskins, Portland Office
Department of Justice

Agenda Item H
12/12/86 EQC Meeting

Application No. T-1841

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Columbia-Willamette Leasing, Inc.
101 S.W. Main Street, Suite 850
Portland, OR 97204

The applicant has a beneficial interest in a solid waste energy facility at Brooks, Oregon, which is owned by Ogden-Martin of Marion, Inc.

Application was made for tax credit for a solid waste resource recovery facility.

2. Description of Facility

The facility consists of a plant to receive, store and burn solid waste with the energy converted to electricity.

Claimed Facility Cost: $54,940,879.00
(Accountant's Certification was provided).

3. Procedural Requirements

The facility was completed after December 31, 1983, so it is governed by ORS 468.150 through 468.190 in effect on January 1, 1984, and by OAR 340-16-015 (effective July 13, 1984; amended March 21, 1985).

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed December 3, 1983 more than 30 days before construction commenced on July 1, 1984.

b. The request for preliminary certification was approved before application for final certification was made.

c. Construction of the facility was substantially completed on September 30, 1986 and the application for final certification was found to be complete on October 30, 1986 within 2 years of substantial completion of the facility.

d. The sole purpose of the facility is to reduce a substantial quantity of solid waste by a resource recovery process that produces energy.

4. Evaluation of Application

A. Background

Trans-Energy of Oregon (TEO) was the original developer of the resource recovery facility in Marion County. TEO prepared feasibility reports, developed preliminary design work and contracted with Portland General Electric for the sale of electricity produced by the facility.

In 1984 Ogden-Martin Systems of Marion, Inc. purchased Trans-Energy of Oregon. In the same year, Marion County issued bonds for the development of the resource recovery facility valued at $57,000,000 with proceeds going to Ogden-Martin of Marion, Inc.

As part of the bond sale agreement, Ogden-Martin of Marion County, Inc. must share the pollution control tax credit proceeds with Marion County with 90% of the proceeds going to Marion County and 10% to Ogden-Martin. Marion County has asked for payment of the tax credit proceeds to be made by Ogden-Martin of Marion, Inc. in one payment, rather than annually. In order to do this, the tax credit must be sold since normally recipients of tax credit certificates can only use 1/10 of the amount of tax credits for which they are eligible each year for ten years. Under Revenue Department statutes an owner, lessee or beneficial interest holder in a resource recovery facility may assign or sell the tax credit to another beneficial interest holder. It is estimated that they will sell the tax credit for 40-60% less than the value or approximately $6 million. This discount reflects the reduced value at today's prices of tax credits which otherwise could not all be claimed for 10 years. It appears that the sale will be made to Columbia-Willamette Leasing, Inc., Portland, Oregon, and the Company has asked that the certificate be issued to them.

B. Alternatives

There are three important factors which may influence the amount of the tax credit to the company (and the payment to Marion County). They are the total costs of the facility eligible for tax credit, the percentage allocable to pollution control and the compliance status of the facility.

1. Costs Eligible for Pollution Control Tax Credit

A detailed list of costs has been provided by Ogden-Martin of Marion (hereafter referred to as "the Company") indicating costs incurred during construction of the facility (Attachement I). Most costs submitted by the Company are eligible for tax credit. The Department has identified several costs which it believes are not eligible under the pollution control tax credit rules. These costs fall into three main categories.

The first category includes costs not associated with pollution control. OAR 340-16-025(3) states that a "pollution control facility does not include . . . any distinct portion of a solid

waste, hazardous waste or used oil facility that makes an insignificant contribution to the purpose of utilization of solid waste . . . including . . . office buildings and furnishings". It also excludes "facilities not directly related to the operation of the industry or enterprise seeking the tax credit".

The second category of ineligible costs includes costs related to maintenance and repair. It has been a long-standing Department policy that maintenance and repair costs are ineligible, and if the Commission adopts OAR 340-16-026(4)(d) on 12/12/86 they will be ineligible by rule (Agenda Item G).

The third category of ineligible costs includes portions of claimed costs which were not prorated. It is the Department's opinion that costs incurred for debt which extends beyond the construction period must be prorated and only the proportionate share of costs related to the construction period are eligible. If the Commission adopts OAR 340-16-026(3)(a)(B)(ix) on 12/12/86 this will be by rule (Agenda Item G). An independent consultant hired by the Department also recommended that conversion costs of the bonds be excluded (copy attached Attachment II).

These three categories are set forth as follows:

I.	Costs Not Associated with Pollution Control:		
	A.	Office expenses	$ 95,534
	B.	Other - public relations	82,598
	C.	Plant outfitting - office equipment .	67,860
	D.	Buildings - roofing and siding for the administration area	40,000
		Group I - Subtotal:	$285,992
II.	Costs Related to Maintenance and Repair:		
	A.	Maintenance and service	$ 77,599
	B.	Spare parts	186,853
	C.	Plant outfitting	
		1. Maintenance shop machinery and tools	28,341
		2. Instrument testing and repair devices	2,728
		3. Hand tools for maintenance . . .	15,410
		Group II - Subtotal:	$310,931
III.	Costs Which Must be Prorated:		
	A.	Bond related costs (amount excluded after prorating and conversion) .	$3,297,728
		Total Groups I, II, III	$3,894,651

After subtraction of the ineligible costs from the $54,940,879 claimed in the application, the amount of $51,046,228 remains eligible.

2. Alternative Methods of Determining Percent Allocable

OAR 340-16-030(2) lists the following methods of determining percentage allocable:

"(a) The extent to which the facility is used to recover and convert waste products into a salable or usable commodity;
(b) The estimated annual percent return on investment in the facility;
(c) The alternative methods, equipment and costs for achieving the same pollution control objective;
(d) Related savings or increase in costs which occur or may occur as a result of the installation of the facility; or
(e) Other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil."

Based on the rule, Department staff have determined two methods of determining percent allocable. They are:

(a) Extent to which the facility is used to recover waste products.

Under OAR 340-16-030(2)(a), in determining the portion of costs allocable to pollution control, the Commission shall consider the extent to which the facility is used to recover and convert waste products into a salable or usable commodity.

The applicant maintains that the entire facility is a pollution control device that converts solid waste to a usable source of energy, in this case electricity and thus is 100% allocable. It is the Department's position that even though the sole purpose of the facility is pollution control, it is still subject to percent allocable under the present statutes.

The Department determined the percent allocable based on efficiency of conversion of waste to steam. This has been estimated by staff to be 71% (memo attached - Attachment III).

(b) Percent allocable based on return on investment -

Under OAR 340-16-030(2)(b), in determining the costs allocable to pollution control, the Commission shall consider the estimated annual percent return on the investment in the facility. In order to determine return on investment, several factors are considered including gross annual income, annual operating expenses, and useful life of facility. In this case, the method of determining gross annual income is discussed in depth since there are several possible ways of treating claimed income in the return on investment calculation.

A. Gross Annual Income

(1) Operation and Maintenance Fee - The service agreement between Marion County and the Company provides for the County to pay a fee for disposal of acceptable waste at the facility. This fee is a monthly amount, specified at $270,830, adjusted annually by an inflation factor.

(2) Debt Service - This component represents the annual principal and interest payments on the Series 1984 Bonds, which amount is paid directly to a trustee by the County.

(3) Electricity Sales - This amount represents the Company's share (10%) of the projected revenue to be generated from the sale of electricity.

(4) Special Credit - This amount represents that portion of the net proceeds derived from the sale of Oregon tax credits to be credited to the County. The Service Agreement contemplates the amount to be a reduction in the Service Fee which would have the effect of reducing or eliminating the Operations and Maintenance Fee and a portion of the Debt Service (which the Company would then have to pay directly). The County has asked for the right instead to use the proceeds as it sees fit to reduce tipping fees.

Because the sale of the tax credits is being negotiated currently, the selling price, related transaction costs and ultimate amount to be paid to the County cannot be determined more precisely. The Company gives $6 million as a conservative estimate; the total could be much greater or smaller. The $6 million estimate is based on the information included in the Official Statement for the sale of the Series 1984 Bonds, dated September 20, 1984 and DEQ assumes the County's share is paid during the first year of commercial operation of the Facility.

The gross annual income identified by the Company does not include the income from the sale of tax credits which the Company would receive. If the full amount of tax credit requested by the Company is certified, this could amount to between $4 and $5.5 million, depending on the amount received from the sale of the tax credits. For the purposes of determining percent allocable, it will be assumed that the Company will receive $600,000 based on the $6 million figure.

B. Method of Evaluation

The method focuses on the income received by the Company from the proposed sale of the tax credits, which will in turn be used to reduce the service fee paid by the County to the Company. As discussed above, the total amount is estimated by the Company to be $6 million. The Department included the revenue as income in the first year. Ninety percent (90%) of this figure has been figured as credit against revenue ($5,400,000) in the first year. Using these figures, the Department calculated a percent allocable of 54%.

Attached are completed schedules showing allocation of costs and Company/DEQ methods of calculating percentage allocable (Attachment IV).

The three calculations of percentage allocable yield the following:

Company request	100%
Conversion of solid waste to steam	71%
Department calculation of return on investment	54%

OAR 340-16-030(5) states "In considering the factors listed in 340-16-030 to establish the portion of costs allocable to pollution control, the Commission will use the factor, or combination of factors, that results in the smallest portion of costs allocable."

Therefore, based on the Department's rule, the recommendation is that a percentage allocable of 54% be established.

Attorneys for the company have requested that the certificate not be issued until documentation of the transaction between Ogden-Martin of Marion, Inc. and Columbia-Willamette Leasing, Inc. is provided to the Department on December 15, 1986. In addition, the Department of Justice has recommended that the certificate not be signed until the amendments to the tax credit rules (Agenda Item G) are filed with the Secretary of State.

3. Compliance Status

OAR 340-64-025(1) defines a pollution control facility as a facility "which will achieve compliance with Department statutes and rules or Commission orders or permit conditions." The following section includes a discussion of the compliance status of the facility:

Air Quality:

The facility is in compliance or on schedule to achieve compliance with the Air Contaminant Discharge Permit requirements. In compliance with the permit time limit, the Company submitted on November 11, 1986, the results of the required source testing. The Air Quality Division review of the test results is now beginning but cannot be completed until supplementary information is provided. The Company has agreed to submit this information on or around December 1, 1986. However, a preliminary review indicates that nitrogen oxide emissions exceed the permit requirements. The Company has informally requested a permit modification to the actual emission rate. For all other pollutants, reported emissions are in compliance with permit requirements and, in some notable cases, many times lower than permit limits. Consequently, the Department would give favorable consideration to a request to modify the permit to reflect actual emissions capabilities, if the source test results are determined to be accurate.

Noise:

On July 1, 1986, the Director issued a Notice of Violation (WVR-NP-86-95) to Ogden-Martin Systems of Marion, Inc. for violation of the Department's octave band noise standards. Subject notice requested the submission of a proposed compliance plan with schedule prior to September 2, 1986. This deadline was subsequently deferred sixty (60) days, establishing a revised deadline of November 1, 1986. A written progress report was received October 16, 1986 informing the Department the induced draft fans' rotational speeds were reduced, resulting in a 4 decibel reduction from previously measured noise levels. This most recent set of data suggests progress in reducing excessive noise emissions, but did not substantiate compliance with all applicable standards. Based on the margin of violation originally documented, 12 decibels at 125 Hertz, present noise emissions are probably still exceeding permissible levels. The Company submitted a compliance plan to the Department on December 1, 1986.

Solid and Hazardous Waste:

The initial ash sample test results submitted by Ogden-Martin to the Department indicated it exceeded the permissible hazardous waste limits for lead and cadmium. The Company has met with the Department and discussed the sampling procedure. They believe the samples taken were not representative of the ash residue. Additional samples have been taken and results will be available at the Commission meeting. In any case, the Company has committed both verbally and in writing to comply with all applicable state and federal hazardous and solid waste requirements. At this point it is not a question of whether the facility can comply, but what the appropriate requirements are and the cost of complying.

Water Quality:

Ogden-Martin Systems holds an NPDES permit for the discharge of cooling water and boiler blowdown water to the Willamette River. The permit contains limits for flow, temperature, pH, and residual chlorine. Since the facility became operational in late May, it has occasionally exceeded the daily maximum permit limitations for flow, pH, and chlorine. These violations occurred in June, July, August and September.

A recent letter from Ogden-Martin indicated the violations were directly related to startup of the facility. Rerouting of plumbing which was installed incorrectly, adjusting the automatic cooling water blowdown system, and replacement of defective chlorine injection equipment have steadily resulted in improved compliance. During October and November, there have not been any permit violations.

NPDES monitoring is currently being conducted at the plant site. The outfall line extends approximately six miles to the Willamette River. Due to the small volume of the discharge and mixing that would occur within the outfall line, it is not likely the discharges have any measurable impact on the quality of the river.

Based on the efforts of the Company to comply with all Department standards, the Department finds that the facility is eligible for tax credit since it has demonstrated that it will comply with standards.

Summation

1. Three methods have been identified to determine percentage allocable with percent allocable ranging from 54% to 100% depending on which method is used.

2. OAR 340-16-030(5) requires the Commission to use the factors which result in the smallest portion of costs allocable.

3. The Department finds that the facility will comply with DEQ standards and permit requirements.

4. The facility was constructed in accordance with all regulatory deadlines.

5. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of solid waste by the use of a resource recovery process.

6. The sole purpose of the facility is to utilize material that would otherwise be solid waste by burning the material for its heat content.

   The end product of the utilization is a usable source of power.

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

7. The portion of the facility cost that is properly allocable to pollution control is 54%.

8. The certificate should not be issued to Columbia-Willamette Leasing, Inc. until documentation is provided regarding the purchase and the amendments to the tax credit rules (Agenda Item G) are filed with the Secretary of State.

Director's Recommendation

Based on the summation, it is the Director's recommendation that a Pollution Control Facility Certificate bearing the cost of $51,046,228 with 54% allocable to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1841 after receipt of documentation regarding the sale and amendments to the tax credit rules (Agenda Item G) are filed with the Secretary of State.

Fred Hansen

Attachments:
I. Facility Costs
II. Consultant's Report
III. Calculations of Boiler Efficiency
IV. Allocation of Costs - Company and DEQ Percent Allocable Calculations

R. Brown:b
229-6237
November 25, 1986
SB6252

Explanation of Items Listed on Schedule of Costs

*	Boiler -		$ 9,200,441
*	Stoker -		1,299,569
*	Turbine Generator -		1,770,033
*	Air Pollution Control - includes the costs of scrubbers, baghouses, flue gas ductwork and instrumentation for process control as follows:		
	Baghouse/Scrubber	$3,231,787	
	Ductwork	161,575	
	Ductwork Installation	107,743 (1)	
	Spare Parts (Baghouse equipment and bags)	16,000 (2)	
	Total		3,517,105
*	Ash Handling -		605,732
*	Stack -		525,091
*	Pressure Vessel -		23,126
*	Exchangers -		429,244
*	Pumps -		166,714
*	Compressors -		57,523
*	Cooling Tower -		188,495
*	Storage Tanks - consists of the following:		68,936

** Raw Water Tank - holds all process water for the facility which is drawn as needed.

** Diesel Fuel Tank - fuel storage for front end loader.

** Firewater Tank - holds water to be used to extinguish fires.

** Domestic Water Tank - to provide potable water.

** Acid Storage Tank; Caustic Storage Tank; Demineralized Water Tank; Neutralization Tank - all used for treatment of process water.

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(1) Included in "Equipment Installation" on the Schedule of Costs.
(2) Included in "Spare Parts" on the Schedule of Costs.

*	Maintenance/Service - includes the turbine generator maintenance crane and the service/freight elevator.	77,599
*	Refuse Crane -	504,928
*	Package System - consists of a deaerator for the treatment of process water and the truck scale and related computer system to process weighing data.	64,031
*	Water Treating -	147,906
*	Site Work - consists of the preparation of the site including demolition of structures and removal of debris, excavation and grading and construction of the drainage pond. The costs of paving and roads are excluded from the calculation of the percent of cost of the claimed facility properly allocable to pollution control (see Section V(4)).	2,076,463
*	Concrete -	2,212,510
*	Structural Steel -	1,420,713
*	Buildings - includes the following:	1,518,930
	** Scalehouse ** Roofing and siding for the Refuse Pit, Tipping Building, Boilerhouse, Turbine Hall and Switchgear Building ** Residue Building ** Roofing and siding for the administration area which includes a portion of the office building exterior, but excludes the supervisor's office in the calculation of the percent of cost of the claimed facility properly allocable to pollution control (see Section V(4)).	
*	Piping -	2,968,949
*	Electrical -	2,714,459
*	Instrumentation -	715,908
*	Insulation -	227,979
*	Painting -	210,470

*	Equipment Installation -	827,182 (3)
*	Construction Management - includes mobilization and demobilization of the general contractor and subcontractors as well as facilities for temporary offices and tool sheds. Also includes the cost of providing security for the site.	350,000
*	Spare Parts - This item represents critical replacement parts for major components of the facility which are not normally available from general sources. Without a readily available replacement, the breakdown of one of these critical parts would cause a shutdown of the facility. Because of the quantity of items involved (200-300 items), the list of these parts with their respective quantities has not been compiled as of this time.	186,853 (4)
*	Plant Outfitting - consists of the following:	365,887
**	Front end loader and sweeper - to move ash and refuse	
**	Forklift and lifting equipment - to move chemical drums	
**	Maintenance shop machinery and tools	
**	Instrument testing and repair devices	
**	Safety equipment and protective gear	
**	Hand tools for maintenance	
**	Office Equipment - This item, amounting to $67,860, is required to enable plant personnel to perform their assigned duties.	
*	Legal Fees - consists of fees paid to counsel for the company as follows:	

Schnader, Harrison, Segal & Lewis	$ 73,777
Miller, Nash, Wiener, Hager & Carlsen	205,372
Sullivan & Cromwell	5,123
Rhotem, Brand & Lien	8,099
Cravath, Swaine & Moore	16,841
McCarter & English	360
Total	309,572

** Legal fees for tax credit related work are not included.

*	Architectural Engineering -	2,501,201

(3) Net of $107,743 included in "Air Pollution Control." See Item (1) on page 1.

(4) Net of $16,000 included in "Air Pollution Control." See Item (2) on page 1.

*	Overhead - This item represents the general, administrative and operating costs of the Company's parent which are allocated to the facility based on the ratio of direct labor hours incurred by personnel in the design and construction of the facility over total direct labor hours incurred by all company employees multiplied by the total overhead to be allocated. This method is used consistently among all facilities.		1,837,806
*	Capitalized Interest - see attached schedule		2,711,931
*	Developmental Costs - The amounts paid to or on behalf of Trans-Energy Oregon, Inc. ("TEO"), include those costs incurred by TEO in developing the project including preparation of feasibility reports, preliminary design work, testing and permitting, and related matters as follows:		
	** Direct Costs - outside engineering and other consultants, legal counsel, etc.	$ 506,905	
	** Internal Direct Engineering Costs	385,630	
	** Engineering Overhead - based on internal direct engineering costs	425,380	
	** Allocated General and Administrative Costs	449,320	
	** Acquisition of TEO and Rights to the Project	550,000	
	** Costs of Marion County for development and siting of the facility paid by the Company	400,000	
	Total		2,717,235
*	Land -		637,049
*	Construction Insurance -		520,527
*	Bond Related Costs - Bond Insurance Premium - Payment of the principal and interest on the bonds at their stated maturity or sinking fund installment payment dates is insured by a municipal bond insurance policy issued by AMBAC Indemnity Corporation. Such a policy results in the bonds being rated AAA by Standard & Poor's, the highest rating available, thereby decreasing the amount of interest to be paid on the bonds. The bond related costs are as follows:		

**	Bond insurance premium	$1,447,501	
**	Underwriters' discount	776,754	
**	Costs of issuance and conversion of bonds	2,376,047	
	Total		4,600,302

* Start-up Costs are as follows:

Engineering and administrative support	$ 114,267	
Repairs and maintenance	86,111	
Leased equipment	24,410	
Utilities	237,422	
Outside engineering and other services	414,579	
Trade labor	386,382	
Oil flush	17,616	
Plant wages	811,368	
Chemicals, fuel, etc.	57,392	
Other (items under $10,000)	33,179	
Total		2,182,726

* Other Costs Directly Attributable to Facility are as follows:

**	Wages and Employee Travel - includes the direct cost of employees engaged in the design and construction of the facility and their related out-of-pocket expenses incurred in traveling to and from the facility.	652,862
**	License and Permit Fees - represents the fees paid to Martin GmbH under the Cooperation Agreement between the company and Martin GmbH and fees paid for required permits.	1,180,971
**	Financial Advisory Services - represents the fees paid to Shearson Lehman Brothers, Inc., for advice rendered to the company with respect to financial consequences of constructing and operating the facility including preparation of economic analyses and the plan of financing.	215,000
**	Consultants' Fees - represents principally the cost of independent engineers and other consultants engaged by the company to assist in the development of the project and design of the facility.	84,319

**	Interest on Retainage - represents interest to the general contractor on amounts withheld from each monthly progress payment made by the company to the general contractor. Interest is paid concurrently with the release of the retainage upon satisfactory completion of each stage of construction.		98,263
**	Office Expenses - consists of the costs of office supplies, postage, telephone, telecopier and similar items incurred prior to the operation of the facility.		95,534
**	Other - consists of the following:		
	* Items which generally can be categorized as contributions and public relations	$ 82,598	
	* Items which represent outside engineering, consulting and miscellaneous construction expenses not yet classified to appropriate category	70,207	
			152,805
TOTAL FACILITY COST			$54,940,879

OGDEN MARTIN SYSTEMS OF MARION, INC.
(MARION COUNTY SOLID WASTE-TO-ENERGY FACILITY)
ATTACHMENT TO APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 ET. SEQ.

SCHEDULE OF CAPITALIZED INTEREST CALCULATION

MONTH/ YEAR	CUMULATIVE MONTHLY CONSTRUCTION COST	EFFECTIVE INTEREST RATE(MONTHLY)	AMOUNT
9/84	$ 2,748,197	0.575%	$ 15,802
10/84	2,822,896	0.561%	15,849
11/84	4,171,597	0.514%	21,423
12/84	4,919,878	0.543%	26,731
1/85	6,550,409	0.523%	34,253
2/85	7,439,919	0.424%	31,542
3/85	8,729,003	0.420%	36,662
4/85	9,854,807	0.435%	42,909
5/85	11,096,930	0.446%	49,474
6/85	13,059,320	0.418%	54,550
7/85	15,879,549	0.362%	57,431
8/85	18,176,726	0.432%	78,463
9/85	19,905,964	0.444%	88,333
10/85	21,890,717	0.416%	91,029
11/85	25,296,336	0.518%	131,161
12/85	27,509,150	0.628%	172,817
1/86	28,963,231	0.617%	178,570
2/86	31,149,779	0.549%	170,904
3/86	33,373,034	0.506%	168,810
4/86	35,306,457	0.515%	181,702
5/86	36,572,142	0.482%	176,230
6/86	36,988,102	0.472%	174,669
7/86	38,306,775	0.484%	185,380
8/86	39,394,469	0.662%	260,953
9/86	40,199,173	0.662%	266,284
		Total	$2,711,931

MARION COUNTY SOLID WASTE-TO-ENERGY FACILITY

SCHEDULE OF COSTS FROM INCEPTION TO SEPTEMBER 30, 1986

Boiler	$ 9,200,441
Stoker	1,299,569
Turbine generator	1,770,033
Air pollution control	3,393,362
Ash handling	605,732
Stack	525,091
Pressure vessel	23,126
Exchangers	429,244
Pumps	166,714
Compressors	57,523
Cooling tower	188,495
Storage tanks	68,936
Maintenance/service	77,599
Refuse crane	504,928
Package system	64,031
Water treating	147,906
Site work	2,076,463
Concrete	2,212,510
Structural steel	1,420,713
Building	1,518,930
Piping	2,968,949
Electrical	2,714,459
Instrumentation	715,908
Insulation	227,979
Painting	210,470
Equipment installation	934,925
Construction management	350,000
Spare parts	202,853
Plant outfitting	365,887
Legal	309,572
Architectural engineering	2,501,201
Overhead	1,837,806
Capitalized interest	2,711,931
Developmental costs	2,717,235
Land	637,049
Construction insurance	520,527
Bond related cost	4,600,302
Start-up costs	2,182,726
Other costs directly attributable to the facility	2,479,754
TOTAL FACILITY COST	$54,940,879

Attachment II
Agenda Item H
December 12, 1986
EQC Meeting

EF Hutton & Company Inc.
Member New York Stock Exchange

December 2, 1986

EF Hutton

580 California Street
Suite 2200
San Francisco, CA 94104
Telephone: (415) 954-9200

Ms. Maggie Conley
Intergovernmental Coordinator
Oregon Department of
Environmental Quality
Executive Building
811 S.W. Sixth Avenue
Portland, OR 97204

Dear Ms. Conley:

Enclosed are the results of E.F. Hutton's review of the issues outlined in your request. We recognize that the certification of tax credits for pollution control projects is essentially a public policy determination and, with respect to many issues, these judgements must be made without any specific statutory guidance.

We hope that the enclosed materials adequately address the issues you have identified. The opinions expressed do not necessarily reflect those of E.F. Hutton as a firm, but do incorporate the best thoughts and judgements of individuals within the firm who are familiar with resource recovery financings.

I would be happy to respond to any questions about the enclosed materials or any related items at the EQC meeting on December 12, 1986. Please feel free to call if you need to reach me before that date.

I look forward to seeing you on the 12th.

Sincerely,

James C. Joseph
Vice President

Enclosure

EF Hutton

REVIEW OF TAX CREDIT EVALUATION

BEING PERFORMED BY THE OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

Background

E.F. Hutton & Company Incorporated was retained by the Oregon Department of Environmental Quality (the "Department") under the terms of a personal services contract (signed November 21, 1986) to undertake a review of certain elements of a tax credit transaction involving Ogden-Martin Systems of Marion, Inc. ("Ogden Marion") and Marion County (the "County"). A list of the printed material provided to facilitate this review is attached as Appendix I. In addition, information relevant to this review was derived from telephone conversations with representatives of the Department and Ogden Marion.

Specifically, the contract requested that E.F. Hutton review and comment on the following:

(1) items the Department should take into account in determining the amount of facility cost allowable;

(2) whether or not dollar amounts being received from the sale of tax credits be included as revenue in the Department's return on investment calculation;

(3) the impact a reduction in tipping fees (due to receipt of tax credit money) should have on projected revenues for purposes of determining return on investment.

The review we have undertaken attempts to fairly identify the public policy implications of these issues while, at the same time, recognizes the financial interests of the private parties involved in the transaction. It is our hope that the brief review we have provided will assist the Department in the adoption of permanent administrative rules that give clear guidance to future participants in the process.

- - - - -

(1) **"Review tax credit transaction in general to identify any items the Department should take into account in determining the amount of facility cost allowable."**

The tax credit process currently in place requires submission of an "Application for Final Certification of a Pollution Control Facility for Tax Relief Purposes Pursuant to ORS 468.155 Et. Seq." This application includes a formula calculation that determines the "Portion of actual costs properly allocable to pollution control."

An agreement on the definition of the term "actual costs" will give us some guidance in determining the dollar amounts that should be included in the above-referenced formula. Ogden Marion's attorney (Miller, Nash, Wiener, Hager & Carlsen) has examined legislative history and concluded that the word "cost" was used in an income tax context. According to their counsel, therefore, the cost of the project is that "reflected on the books, records, and income tax returns of Ogden Marion."

The Department's legal counsel examined this issue and concluded that the term "actual cost" has "no consistent common law significance, no well-understood trade or technical meaning, and no specific meaning defined by the legislature." As a result, counsel has suggested that the Department define its understanding of the term's definition through the rule-making process.

Given that there is room for differing interpretations of the term "actual cost", we agree that additional clarification is called for. Provision of a standard meaning through the administrative rules process will give applicants consistent guidance in the formulation of their requests. The approach that has been taken to provide this consistency is the development of proposed rules that rely on generally accepted accounting principles. However, as the current example demonstrates, it is important that the Department retain a degree of discretionary judgement in the final determination of eligible costs.

The Ogden Marion request raises the question of whether or not there should be special consideration for facilities designed, built and operated primarily to dispose of waste. Resource recovery facilities are a good example of projects that not only address a significant pollution control problem (i.e. disposal of solid waste), they provide the additional advantages of generating electrical energy and result in the recovery of small amounts of useful material.

From this point of view, an applicant may argue that all costs associated with the construction of a resource recovery facility should be considered eligible when the Department calculates the "Return on Investment Factor". However, ORS 468.155 specifically excludes certain items from eligible costs. The distinction appears to be between facilities and equipment used in the pollution control process and those items that may be categorized as "support" (administrative facilities, landscaping, parking, etc.).

While this is a reasonable approach, it is important that the Department retain sufficient flexibility to cover unique situations as they arise. For example, with a resource recovery facility, the road(s) constructed to permit efficient delivery of solid waste to the truck scale and receiving area are an integral part of the recovery process. As such, we believe that this is an expense that should be included in the facility cost in determining the return on investment factor.

As noted above, however, ORS 468.155 specifically excludes parking lots and road improvements from the costs that may be counted as a part of the pollution control facility. If the Department accepts that the delivery of solid waste to the resource recovery facility is an integral part of the pollution control process, it may wish to secure greater discretion in this area through revision of the applicable statute.

The method used to finance the Ogden Marion facility raises other issues relating to how these costs will be treated. The Ogden Marion facility was originally financed using variable-rate debt ("lower floaters"). Prior to completion of the facility, the following transactions took place: (1) October, 1985, $19,435,000 principal amount of bonds were converted from floating to fixed interest rates; (2) July, 1986, $31,690,000 principal amount of bonds were converted from floating to fixed interest rates; and (3) July, 1986, $6,200,000 principal amount of bonds were redeemed.

In its proposed administrative rules, the Department has indicated that amounts paid for "financial consulting fees, legal fees, and other construction period financial costs" are eligible for certification by the Environmental Quality Commission (the "Commission") as part of the cost of the facility. Refinancing or conversion costs are not specifically referenced.

Should the Department accept costs of converting variable-rate debt to fixed interest rates if that conversion occurs during the construction period? What if the conversion takes place after the construction period, but before the owner-operator applies for the tax credit review? Will the Department accept the costs associated with advance refunding fixed-rate debt as project costs if the transaction occurs prior to the project completion date? What if the advance refunding occurs prior to the tax credit review?

The proposed administrative rules state that eligible costs include "Financial consultant fees, legal fees, and other construction period financial costs." It would provide some clarification to future applicants if this proposed rule (OAR 340-016-026) would indicated whether this refers specifically to costs related to the initial financial of the facility or <u>any</u> financing costs incurred during the construction period.

The same proposed rule goes on to indicate that, "Such costs which are incurred for debt which extends beyond the construction period must be prorated." Again, it would assist future applicants to specify whether or not this refers to refinancing costs.

We would recommend that the Department exclude the costs associated with refinancing the original debt from the determination of "actual costs of pollution control facilities eligible for certification". We feel that it is not the Department's role to evaluate decisions

involving the method of financing the pollution control facility. Initial funding decisions made by the municipality and the owner-operator are be based on the economic viability of the project at the time the debt is issued - without the expectation that refinancing costs will be included as eligible project costs. Any savings or more favorable terms that result from the conversion or refinancing of the initial debt will affect the tax credit evaluation only to the extent that they affect the annual cash-flow calculations that are a part of the application.

[NOTE: An exception might be made in cases where the initial borrowing was clearly structured as an interim financing with permanent debt to be arranged upon completion of the facility.]

In summary, we support the efforts of the Department to adopt administrative rules that give applicants clear, consistent guidance in the preparation of their tax credit applications. In addition to providing specific direction on those items which are common to all applicants, we encourage the Department to retain sufficient flexibility and discretion to deal with those projects which may encompass unique characteristics.

- - - - -

(2) **"Should the Department consider whether dollar amounts being received from the sale of tax credits be included as revenue in DEQ's return on investment calculation?"**

Our review of this question is necessarily related to consideration of the complexities associated with the financing of a resource recovery facility. Unlike most municipal enterprises, these projects are frequently privately-owned and operated, with tax-exempt financing provided by a municipal entity.

As a result, the determination of economic viability is dependent upon a detailed assessment of the obligations each party to the transaction is willing to assume. For example, the "service fee" is the amount the municipal participant is obligated to pay to the plant operator for accepting a specified quantity of refuse. The "tipping fee" is the per ton cost of the service fee. It provides an index to gauge the actual cost of using the plant. Tipping fee is also a generic term applied to a per ton disposal charge (e.g., a private hauler would be charged a tipping fee to use the facility).

Additionally, the owner-operator will typcially enter into a power purchase agreement with an electric utility which provides for the sale of power generated by the resource recovery facility.

Our purpose in commenting on the complexity of resource recovery financings is to demonstrate the number and variety of factors that must be taken into consideration by a private firm as it evaluates the economic viability of a facility. The potential for tax credit proceeds is another variable that must be considered. As a part of the bond sale agreement in the current example, Odgen Marion entered into an agreement with the County to share any tax credits utilized or syndicated by the company (with two-thirds of the proceeds going to the County and one-third to Ogden Marion).

If the Department reaches the conclusion that Ogden Marion anticipated the revenues to be derived from the sale of tax credits in its assessment of project viability, then it would be appropriate to include these dollar amounts in its calculation of return on investment. We feel that such revenues were a part of the company's initial evaluation of project viability for the following reasons: (1) similar tax credit transactions have been employed in the past; (2) Oregon statutes specifically permit such tax credits; and (3) Ogden Marion and the County entered into an agreement anticipating the disposition of tax credit proceeds.

- - - - -

(3) **"If Marion County reduces its tipping fee because of tax credit money, thus reducing revenue into the Odgen Martin facility, what impact should this have on projected revenue for purposes of determining return on investment?"**

This question is closely associated to the appropriate treatment of the tax credit revenues. We feel that the central consideration should be whether or not the company anticipated the reduction of tipping fee revenue as a result of the tax credit transaction.

In a memorandum describing the plan of financing the facility, Ogden Martin provides the following description of the "Service Fee Rebate":

> "As more fully described on page A-23 of the Official Statement for sale of the bonds dated September 20, 1984 (copy attached), our agreement with Marion County requires Ogden Martin Systems of Marion, Inc., to share any tax credits utilized or syndicated by the Company in the form of a reduction of the County's Service Fee (the "Special Credit"). Marion County has asked for its payment (or "rebate") to be made as a lump sum rather than an annual service fee reduction. The money is still to be used to reduce Marion County's Service Fee expense and therefore the tipping fee, but a single payment allows Marion County greater flexibility and the opportunity to earn

interest. The Service Fee income shown on the Schedule is the gross amount before reduction for the rebate to Marion County."

If the Department chooses to include tax credit revenue in its assessment of project cash-flow, it should also recognize that the sharing of this same revenue with the County will result in a reduction of the service fee. Both the potential for receipt of tax credit revenues and the impact this sale would have on service fees were known when the current transaction was structured and, presumably, both items were factored into the assessment of the project's cost-effectiveness.

Appendix I

Resource Material

1) Letter from Martin N. Hausman (Ogden Marion) to Ms. Maggie Conley (DEQ) dated November 24, 1986 re: Ogden Martin Systems of Marion, Inc., Tax Credit T-1841.

2) Letter from Martin N. Hausman (Ogden Marion) to Ms. Maggie Conley (DEQ) dated November 20, 1986 re: Ogden Marion's obligation to pay certain bond issuance costs. Included as attachments were copies of the Loan Agreement between Marion County, Oregon and Ogden Martin Systems of Marion, Inc. and the Indenture of Trust.

3) Letter from Martin N. Hausman (Ogden Marion) to Ms. Maggie Conley (DEQ) dated November 19, 1986 re: Tax Credit T-1841 (Schedule of Costs).

4) Letter from Martin N. Hausman (Ogden Marion) to Ms. Maggie Conley (DEQ) dated November 5, 1986 re: Tax Credit T-1841 with attached memorandum describing the plan of financing the facility, the treatment of the tax credit payment and the chart of participants.

5) Letter from Martin N. Hausman (Ogden Marion) to Ms. Maggie Conley (DEQ) dated November 3, 1986 re: Tax Credit T-1841 (supplemental information).

6) Interoffice Memorandum from Maggie Conley re: Marion County Resource Recovery Project (background).

7) Letter from Martin N. Hausman (Ogden Marion) to Ms. Maggie Conley (DEQ) dated October 30, 1986 re: Tax Credit T-1841 (Schedule of Costs).

8) Letter from Ms. Maggie Conley (DEQ) to Mr. David Wu (Miller, Nash, et. al.) dated October 6, 1986 re: Tax Credit T-1841 (request for additional information).

9) Memorandum from Fred Hansen (DEQ) to Environmental Quality Commission re: Request for Authorization to Conduct a Public Hearing on Pollution Control Tax Credit Rule Amendments, Chapter 340, Division 16.

10) Letter from Maurice O. Georges (Miller, Nash, et. al.) to Mrs. Elizabeth Stockdale and Mr. Arnold Silver (Oregon Attorney General's Office) re: treatment of project costs (with attachment from Deloitte Haskins & Sells).

11) Copy of Oregon Revised Statutes 314.250-314.255.

12) Copy of Oregon Revised Statutes 468.150, 468.155, 468.160, 468.165, 468.170, 468.175, 468.180, 468.185, 468.187, 468.190, 307.390, 307.395, 307.405, 307.420, 307.430, 314.250, 316.097, 316.142, and 317.072.

Attachment III
Agenda Item H
December 12, 1986
EQC Meeting

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Hazardous and Solid Waste Division Files

DATE: November 20, 1986

FROM: Tim Davison
Solid Waste Section

SUBJECT: Ogden Martin Systems of Marion, Inc.

As part of the review of the application by the corporation for certification for final tax credits, the overall efficiency of the boiler was calculated, using the following equation:

$$\text{Overall boiler efficiency} = \frac{W_{bo}\,(h_2 - h_i)}{W_f\, q_h}$$

Where: W_{bo} = pounds of steam delivered by the boiler per hour (lb/hr)

h_2 = enthalpy of the steam delivered by the boiler (BTU/lb)

h_1 = enthalpy of the water as it reaches the boiler (BTU/lb)

w_f = pounds of fuel (refuse) fired per hour (lb/hr)

q_h = higher heating value of the fuel (BTU/lb)

For the design conditions of this boiler, the values are:

W_{bo} = 67,000 lb/hr of steam (per furnace)

h_2 = 1,347 BTU/lb (based upon a pressure of 650 psig and a temperature of 700°F leaving the boiler)

h_1 = 208 BTU/lb (based upon the deaerator operating pressure of 10 psig for water entering the boiler)

W_f = 275 tons of refuse per day (per boiler unit)

= 22,916 lb/hr.

Q_h = 4,300 BTU/lb to 5,000 BTU/lb

Assuming a higher heating value of 4,700 BTU/lb., the overall boiler efficiency is:

$$\text{Efficiency} = \frac{67{,}000 \text{ lb. steam/hr. X } (1{,}347 - 208) \text{ BTU/lb.}}{22{,}916 \text{ lb. refuse/hr. X } 4700 \text{ BTU/lb}} = .7085$$

The overall boiler efficiency is 70.85%, not including the energy used to drive certain boiler auxiliaries (such as forced-draft and induced-draft fans, grate motors, etc.). This overall boiler efficiency should not be considered to be the actual efficiency of the entire facility, as it does not consider losses in steam transmission lines, the steam turbine, the electrical generator or other system components.

In a telephone discussion with Ken Spianche (Technical Operations Department of Ogden Martin Corp.) on November 19th, he told me that other Ogden Martin facilities had overall boiler efficiencies ranging from 67% to 71%. He also told me that the corporation is currently using the data from the facility performance tests conducted last week to develop the actual efficiencies, using the American Society of Mechanical Engineer's procedure (which is the recognized procedure).

SF1491

OGD-MART
05-Dec-86

DEPARTMENT OF ENVIRONMENTAL QUALITY ANALYSIS
OGDEN MARTIN SYSTEMS OF MARION, INC.
(Marion County Solid Waste-To-Energy Facility)
Attachment to Application for Final Certification of a Pollution Control Facility for Tax Relief Purposes Pursuant to ORS 468.155 ET. SEQ.
Section V, Allocation of Costs

	YEAR 1	2	3	4	5	TOTAL
GROSS ANNUAL INCOME						
Operations and Maintenance Fee	3,250,000	3,347,500	3,447,925	3,551,363	3,657,904	17,254,692
Debt Service	3,634,519	3,634,519	3,634,519	4,997,164	4,981,674	20,882,395
Electricity Sales	371,844	379,281	386,866	394,604	402,496	1,935,091
Special Credit	(5,400,000)					(5,400,000)
Revenue from Sale of Tax Credit	6,000,000					6,000,000
Gross Annual Income	7,856,363	7,361,300	7,469,310	8,943,131	9,042,074	40,672,178
ANNUAL OPERATING EXPENSES						
Plant Operations (Salaries, Benefits, etc.)	1,160,000	1,194,800	1,230,644	1,267,563	1,305,590	6,158,597
Utilities (excluding pass-through costs)	23,000	23,690	24,401	25,133	25,887	122,111
Chemicals, Water Treatment and services	267,000	275,010	283,260	291,758	300,511	1,417,539
Routine upkeep and supplies	155,000	159,650	164,440	169,373	174,454	822,917
Services, Rentals, Testing and Residue hauling	350,000	360,500	371,315	382,454	393,928	1,858,197
Major repairs	260,000	267,800	275,834	284,109	292,632	1,380,375
Plant overhead expenses	60,000	61,800	63,654	65,564	67,531	318,549
Insurance (excluding pass-through costs)	100,000	103,000	106,090	109,273	112,551	530,914
Ogden Martin systems operations and technology support	875,000	901,250	928,288	956,136	984,820	4,645,494
Consulting Fees	100,000	103,000	106,090	109,273	112,551	530,914
Annual Operating Expenses	3,350,000	3,450,500	3,554,016	3,660,636	3,770,455	17,785,607
ANNUAL CASH FLOW	4,506,363	3,910,800	3,915,294	5,282,495	5,271,619	22,886,571
				FIVE YEAR AVERAGE		4,577,314

Attachment IV
Agenda Item H
December 12, 1986
EQC Meeting

DEPARTMENT OF ENVIRONMENTAL QUALITY

APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 ET. SEQ.

(Continued)

SECTION IV SIGNIFICANT DATES AND INFORMATION

(12) Has claimed facility previously been certified by DEQ for tax credit, or is tax credit application currently pending on claimed facility or any portion of it? Yes _____, please explain. No _____

(13) Has claimed facility, or any portion of it, previously been certified as an Energy Conservation Facility by the State Department of Energy, or is such an application pending? Yes _____, please explain. No _____

SECTION V ALLOCATION OF COSTS

(1) Provide the following information regarding costs associated with the claimed facility. Fill out tables as designated.

a. Actual cost of the claimed facility $ 54,940,879

b. Salvage value of any facility removed from service $ _____

c. Calculation of annual cash flows:

YEAR	GROSS ANNUAL INCOME*	ANNUAL OPERATING EXPENSES*	ANNUAL CASH FLOW
1-	6,656,363	3,350,000	3,306,363
2-	6,761,300	3,450,500	3,310,800
3-	6,869,310	3,550,015	3,315,295
4-	8,343,131	3,660,635	4,682,495
5-	8,442,074	3,770,455	4,671,619
TOTALS	37,072,178	17,785,605	19,286,573

d. Average annual cash flow $ 3, 857,315

Calculate by using the following formula:

$$\frac{\text{Total of Annual Cash Flows}}{5} = \text{Average Annual Cash Flow}$$

e. Useful life of claimed facility 30 years

f. Return on investment factor $ 14.24

Calculate by using the following formula:

$$\frac{\text{Cost of Facility}}{\text{Average Annual Cash Flow}} = \text{Return on Investment Factor}$$

g. Annual percent return on investment (ROI) (Use Table 1, OAR 340-16-030) 5.75 %

h. Reference annual percent return on investment (RROI) (Use Table 2, OAR 340-16-030) 17.4 %

i. Portion of actual costs properly allocable to pollution control 67 %

Calculate by using the following formula:

$$\frac{\text{RROI} - \text{ROI}}{\text{RROI}} \times 100\% = \text{Percent allocable}$$

*Attach calculations for each of the first five years.

DEPARTMENT OF ENVIRONMENTAL QUALITY

APPLICATION FOR FINAL CERTIFICATION OF A POLLUTION CONTROL FACILITY FOR TAX RELIEF PURPOSES PURSUANT TO ORS 468.155 ET. SEQ.

(Continued)

SECTION IV SIGNIFICANT DATES AND INFORMATION

(12) Has claimed facility previously been certified by DEQ for tax credit, or is tax credit application currently pending on claimed facility or any portion of it? Yes _____, please explain. No _____

(13) Has claimed facility, or any portion of it, previously been certified as an Energy Conservation Facility by the State Department of Energy, or is such an application pending? Yes _____, please explain. No _____

SECTION V ALLOCATION OF COSTS

(1) Provide the following information regarding costs associated with the claimed facility. Fill out tables as designated.

a. Actual cost of the claimed facility $ 51,046,228

b. Salvage value of any facility removed from service $ _____

c. Calculation of annual cash flows:

YEAR	GROSS ANNUAL INCOME*	ANNUAL OPERATING EXPENSES*	ANNUAL CASH FLOW
1-	7,856,363	3,350,000	4,506,363
2-	7,361,300	3,450,500	3,910,800
3-	7,469,310	3,554,016	3,915,294
4-	8,943,131	3,660,636	5,282,495
5-	9,042,074	3,770,455	5,271,619
TOTALS	40,672,178	17,785,607	22,886,571

d. Average annual cash flow $ 4,577,314

Calculate by using the following formula:

$$\frac{\text{Total of Annual Cash Flows}}{5} = \text{Average Annual Cash Flow}$$

e. Useful life of claimed facility 30 years

f. Return on investment factor $ 11.15

Calculate by using the following formula:

$$\frac{\text{Cost of Facility}}{\text{Average Annual Cash Flow}} = \text{Return on Investment Factor}$$

g. Annual percent return on investment (ROI) (Use Table 1, OAR 340-16-030) 8.0 %

h. Reference annual percent return on investment (RROI) (Use Table 2, OAR 340-16-030) 17.4 %

i. Portion of actual costs properly allocable to pollution control 54 %

Calculate by using the following formula:

$$\frac{\text{RROI} - \text{ROI}}{\text{RROI}} \times 100\% = \text{Percent allocable}$$

*Attach calculations for each of the first five years.

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item I, December 12, 1986, EQC Meeting

Request for Extension of the July 1, 1986 Deadline for Providing the Opportunity to Recycle in the Milton-Freewater Wasteshed. (ORS 459.185(9))

Background and Problem Statement

The Recycling Opportunity Act, adopted by the 1983 Legislature, requires that the opportunity to recycle be provided to all persons in Oregon by 1986.

The opportunity to recycle includes:

(a) A place for receiving source separated recyclable materials, located either at the disposal site or at another location more convenient to the population being served;

(b) If a city has 4,000 or more people, on-route collection at least once a month of source-separated recyclable materials from collection service customers within the City's urban growth boundary; and

(c) A public education and promotion program that gives notice to each person of the opportunity to recycle and encourages source separation of recyclable material.

ORS 459.185(9) allows any affected person to apply to the Commission to extend the time permitted for providing all or part of the opportunity to recycle and submitting a recycling report to the Department. The Commission may: (a) grant an extension upon a showing of good cause; (b) impose any necessary conditions on the extension; or (c) deny the application in whole or in part.

The Milton-Freewater wasteshed consists of all the area within the urban growth boundary of the City of Milton-Freewater. The City directly provides municipal garbage service within the city limits. Presently, the only opportunity to recycle in the Milton-Freewater wasteshed consists of two newspaper dropoffs operated by a local scout troop, and some promotion conducted by the scouts.

The Department has received a request from the City for an extension to April, 1987 of the deadline for providing the opportunity to recycle. The City has asked for an extension for providing the on-route portion of the opportunity to recycled because it will be changing its collection system for solid waste, and would like to institute the recycling collection as an integral part of the new solid waste collection system (see Attachment I). The new collection system will be a semi-automated or automated collection system, and will require the purchase of two garbage trucks. The City would also like to delay the notification and promotion portion of the opportunity to recycle until closer to the time when the recycling collection will begin. The request also was for an extension for providing the opportunity to recycle at the Milton-Freewater disposal site. Now, however, the city plans to have the recycling depot at the disposal site completed by December, 1986.

Evaluation and Alternatives

In order to grant a request for a time extension, the applicants must show good cause for needing the extension. Milton-Freewater originally made arrangements for a recycler from nearby Walla Walla, Washington to provide the on-route collection of recyclable materials for a trial period of time. The Walla Walla recycler offered to provide this recycling service for free during the trial period, but later decided that this would not be economically viable for him. It would be possible for the City to use their garbage collection staff to collect recyclable materials once a month, but since the city is already regularly having to pay overtime to their garbage collection staff, and since the city intends to institute major modifications in their garbage collection service this coming spring, the city has decided that it would prefer to develop its recycling program at the same time as and in conjunction with the changes in garbage service.

The Commission may either approve an extension, deny an extension, or approve an extension with conditions. If the Commission approves the extension, the city will develop, implement, and promote its new on-route recycling program in conjunction with the change in the garbage collection program. If the Commission denies the extension, the City will have to begin providing recycling collection service immediately or the Department will determine that portions of the opportunity to recycle are not

being provided and report that finding to the Commission. The Commission must then hold a public hearing in the affected area of the wasteshed and determine whether the opportunity to recycle is being provided. If it is not, the Commission can by order determine how the opportunity to recycle will be provided, including a timetable for implementation. Any person who violates an order of the Commission would be subject to civil penalties.

The Department believes that since the City of Milton-Freewater will soon make major changes to its system of solid waste collection, and did make initial arrangements to provide the opportunity to recycle that later fell through, an extension to April, 1987 is warranted to allow the recycling program to be developed in conjunction with the new solid waste collection program. The Department does not believe that an extension is warranted for providing the opportunity to recycle at the Milton-Freewater disposal site. The City of Milton-Freewater has concurred, and is just completing a new recycling depot at the disposal site.

Summation

1. The opportunity to recycle must be provided to all persons in Oregon as of July 1, 1986. The Commission may grant an extension of that deadline upon a showing of good cause, impose any necessary conditions on that deadline extension, or deny the application in whole or in part.

2. The City of Milton-Freewater has requested an extension until April, 1987 for providing the opportunity to recycle. The City believes that this extension is necessary because the original arrangements fell through for providing the on-route collection portion of the opportunity to recycle, and because the City will soon be making major changes in its garbage system and would like to develop the recycling program as an integral part of the new system.

3. The Department considers the above considerations to be good cause to grant an extension for providing on-route collection and the education, promotion, and notification portion of the Opportunity to Recycle until April 30, 1987. No extension is justified or will be necessary for providing a recycling depot at the Milton-Freewater disposal site.

Director's Recommendation

Based on the findings in the Summation, it is recommended that the Commission grant an extension to April 30, 1987 of the July 1, 1986 deadline for providing the opportunity to recycle, with two

conditions, as follows:

1. The recycling depot at the Milton-Freewater disposal site be completed and ready to accept recyclable materials by January 1, 1987.

2. The initial publicity be provided at least four weeks prior to the beginning of the recycling collection service, and notification to residents also precede the initiation of service, to allow people time to start saving their recyclable materials.

Fred Hansen

Attachments: I. Letter from the City of Milton-Freewater to DEQ dated September 15, 1986.

Peter H. Spendelow
229-5253
November 28, 1986

Attachment 1
Agenda Item I
12/12/86 EQC Meeting

CITY OF

MILTON-FREEWATER

P.O. Box 6, Milton-Freewater, Ore. 97862 · Phone 503-938-5531

September 15, 1986

Mr. Peter Spendelow
Department of Environment Quality
Solid Waste Division
P. O. Box 1760
Portland, OR 97207

SUBJECT: Solid Waste Recycling

Dear Mr. Spendelow:

The City of Milton-Freewater respectively requests a time extension until April 1987 to begin on route recycling within our independent waste shed.

The plan of contracting on route collection by a contractor in Walla Walla, Washington did not materialize.

A City Council top goal for the 1986-1987 year calls for an evaluation of our current solid waste collection. Our current operation consists of two men/one truck that covers the entire City weekly. This crew is overloaded now resulting in almost daily overtime. For this reason, we are not in a position to add the additional burden of picking up recyclables on route by the regular crew. To start a program at this time would require a separate person and vehicle to follow the regular truck on recycle day. The costs to operate an inefficient system like that would probably be at least four fold than that of revenues generated.

The Council directed evaluation has just begun with completion anticipated early next spring. The end result will most likely be a two truck automated or semi-automated system whereas recycling could be built into it. Then a potential break even program could be established.

The City owned disposal site is proposed to be partially delayed also. We are now recycling aluminum, ferrous and nonferrous metals, white goods, while newspaper is being collected at two depots in town by the Boy Scouts. The glass, cardboard, and tin cans as well as promotiohn is proposed to be delayed until April 1987.

In conclusion, the City is agreeable to actively promote a recycle program provided the revenue/cost ratio is nearly equal. A poorly planned program would certainly not be cost effective and prove "not recyclable" in a short period of time.

Thank you for your consideration in this matter.

Sincerely,

Howard Moss
Public Works Dept.

HM/dsk

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item J, December 12, 1986, EQC Meeting

Information Report: City of Sheridan Request for Grant from Pollution Control Bond Fund

Background

In November of 1985, the City of Sheridan and the Oregon Economic Development Department met with DEQ staff and staff from other state agencies to attempt to locate money to assist Sheridan in providing land and road, sewer and water improvements so that they could entice the Federal Bureau of Prisons to build a minimum/medium security complex in Sheridan. The Economic Development Department proposed that Sheridan receive a grant from the Bond Fund to help pay for the sewer costs since their financial situation would make repayment of a loan impossible.

The Department told Sheridan City officials and the Economic Development Department that requests to receive grants from the Pollution Control Bond Fund have to go before the Legislative Emergency Board.

The City of Sheridan has subsequently been notified by the Federal Bureau of Prisons that the Bureau intends to build the facility in Sheridan. Sheridan prepared an engineering feasibility study. The City applied for and received $50,000 from the Legislature towards purchase of the land. The sewerage facility plan which requires DEQ approval will be submitted in May 1987.

The total cost to Sheridan for the required road, sewer and water improvements will be $2.2 million, of which sewage treatment facility costs will be $841,000. Sheridan is requesting a $252,000 grant from the bond fund to pay for 30% of the sewage treatment lagoon.

Issues

Grants from the Pollution Control Bond Fund must be repaid by either a repayment from the general fund to the sinking fund as part of the Agency Budget Process, or through excess interest earnings on money deposited in the sinking fund.

The Legislature has in the past approved grants from the Bond Fund. Although they provided a repayment schedule, when interest earnings have been high, the Legislature has delayed paying according to schedule, thus, subsequent Legislatures are presented with the due bill on grants made in the past. It has been the Department's position that it is more prudent for the Legislature to make direct grants than to incur a debt to the Bond Fund.

Under the new federal tax law, interest earnings on the sinking fund balance which consist of repayments to DEQ from bonds issued December 31, 1986 forward cannot be retained at the state level, but must be paid to the federal treasury.

Therefore, this is an issue for the Legislature to decide if it wants to commit itself to guarantee payment to the Bond Sinking fund of a $252,000 grant to Sheridan.

Director's Recommendation:

The Director recommends that the Department introduce a Legislative Emergency Board request on behalf of the City of Sheridan, but that the Department remain neutral as to whether such a grant should be issued.

The request should stipulate that any grant approved be subject to the project qualifying for funding and the facility plan receiving approval from DEQ Water Quality Division.

Mike Downs
for
Fred Hansen

Attachments: James Petersen Letter
City of Sheridan Letter
Summary of Proposed Prison Complex
Sheridan City Map
Photo of Type of Prison

Lydia Taylor:y
MY3641
229-6485
December 2, 1986

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

November 13, 1986

Mr. J. A. "Art" Hebert, Mayor
City of Sheridan
139 N.W. Yamhill Street
Sheridan, OR 97378

Dear Mayor Hebert:

I have asked the Department to schedule an informational report to the Environmental Quality Commission on your request for a grant from the Pollution Control Board Fund of $252,000 at our meeting on December 12th, in Portland.

Requests for grants from the Fund require approval from the Oregon Legislature. The Department will notify the Executive Department that the City of Sheridan wishes to propose the grant be approved at the January 8th Legislative Emergency Board meeting. Lydia Taylor of our staff will be in contact with Bruce Peet, City Administrator, to discuss the details.

Sincerely,

James Petersen, Chairman
Environmental Quality Commission

JP:y
MY3618

City of SHERIDAN

'Tis A Privilege To Live In The Phil Sheridan Country

139 N.W. Yamhill Street
SHERIDAN, OREGON 97378

October 24, 1986

Mr. James Petersen, Chairman
Environmental Quality Commission
811 S.W. Sixth Avenue
Portland, Oregon 97204

Dear Mr. Petersen:

The City of Sheridan wishes to convey its intention to seek assistance from the Oregon Pollution Control Bond Fund in order to construct and deliver municipal sewage treatment and disposal facilities serving a 750-bed minimum/medium security federal prison being built in Sheridan.

On August 14, 1986, following completion of the environmental impact assessment process governed by the National Environmental Protection Act, Mr. Norman Carlson, Director of the Federal Bureau of Prisons, announced a decision to proceed with construction of the prison on a site in Sheridan. Conveyence of the property to the federal government was completed on October 24, 1986. The Portland architectural firm of Zimmer, Gunsul and Frasca has been retained by the Bureau, and is presently engaged in preliminary site design and development.

The Bureau's project schedule calls for construction to begin in August, 1987, and prison operations to commence in December, 1988. It is imperative that city sewer infrastructure be constructed and placed on line within this time frame.

The City commissioned an Engineering Feasibility Study in early 1986, which described the size and scope of sewer facilities needed to serve the prison's capacity requirements at an extimated cost of $841,000. Estimated costs of expanding the municipal water system to serve the prison are an additional $1.4 million, bringing total municipal financing needs to $2.2 million.

In November, 1985, representatives of the City met with state officials to assess potential sources of financing to meet total infrastructure needs for this project. The Oregon Pollution Control Bond Fund was identified as a possible source at that time. Subsequently, the City has filed water and sewer

funding applications with Farmers Home Administration, the Oregon Economic Development Department and the Intergovernmental Relations Division, totalling $1.46 million in funding requests.

The need for additional assistance from the Pollution Control Bond Fund is based on factors related to the specifics of this project, summarized as follows:

-- The need for a federal facility of this type in the Pacific Northwest is well established. With selection of the Sheridan location, no other Northwest site is being considered. At a total construction cost of $53 million, the project brings a substantial investment to Oregon. With passage of the omnibus funding bill in early October, Congress has appropriated $38 million for the first year of construction of the facility.

-- Existing sewerage facilities are inadequate to accomodate the impact of the prison's capacity demand. The City has enacted special policies to protect and enhance existing sewerage capacity to meet project community demand into the future. For the prison, however, separate facilities must be built in order to restrict and control discharges to the South Yamhill River within the City's present NPDES permit conditions.

-- The proposed sewer expansion described in the City's Feasibility Study represents the minimum adequate level of required capacity, and is the most cost-effective project alternative. Provision of sewage facilities is a necessity, but available resources of the city and other accessible public funding programs leave a financing shortfall.

It is the City's understanding that, subject to required qualifications and approvals, the maximum, allowable project financing obtainable from the Bond Fund is 30% of eligible expenses. The City requests EQC's consideration of the maximum, or $252,000, of the total estimated sewerage cost of $841,000. In addition, the City requests the recommendation by EQC that Pollution Control Bond Fund authority be converted to a grant, in order that local and other project financing may be maximized in meeting total infrastructure costs.

In presenting this request, City staff have been directed to cooperate and assist officials of DEQ by providing all information needed to identify and describe the proposed project to your satisfaction. Please do not hesitate to contact City Administrator Bruce Peet, at 843-2347, or City Engineer Patrick Curran, 684-3478, in this regard. The City welcomes your inquiries or questions.

Thank you for your consideration.

Very truly yours,

J.A. "Art" Hebert
MAYOR

cc: City Administrator
City Engineer
City Attorney

PROPOSED SHERIDAN FEDERAL PRISON COMPLEX

FACILITY: Minimum/medium security complex.

NUMBER OF INMATES: Minimum security 250, medium security 500.

SITE SIZE: 200 acres.

WORK FORCE: 350 employees for both facilities.

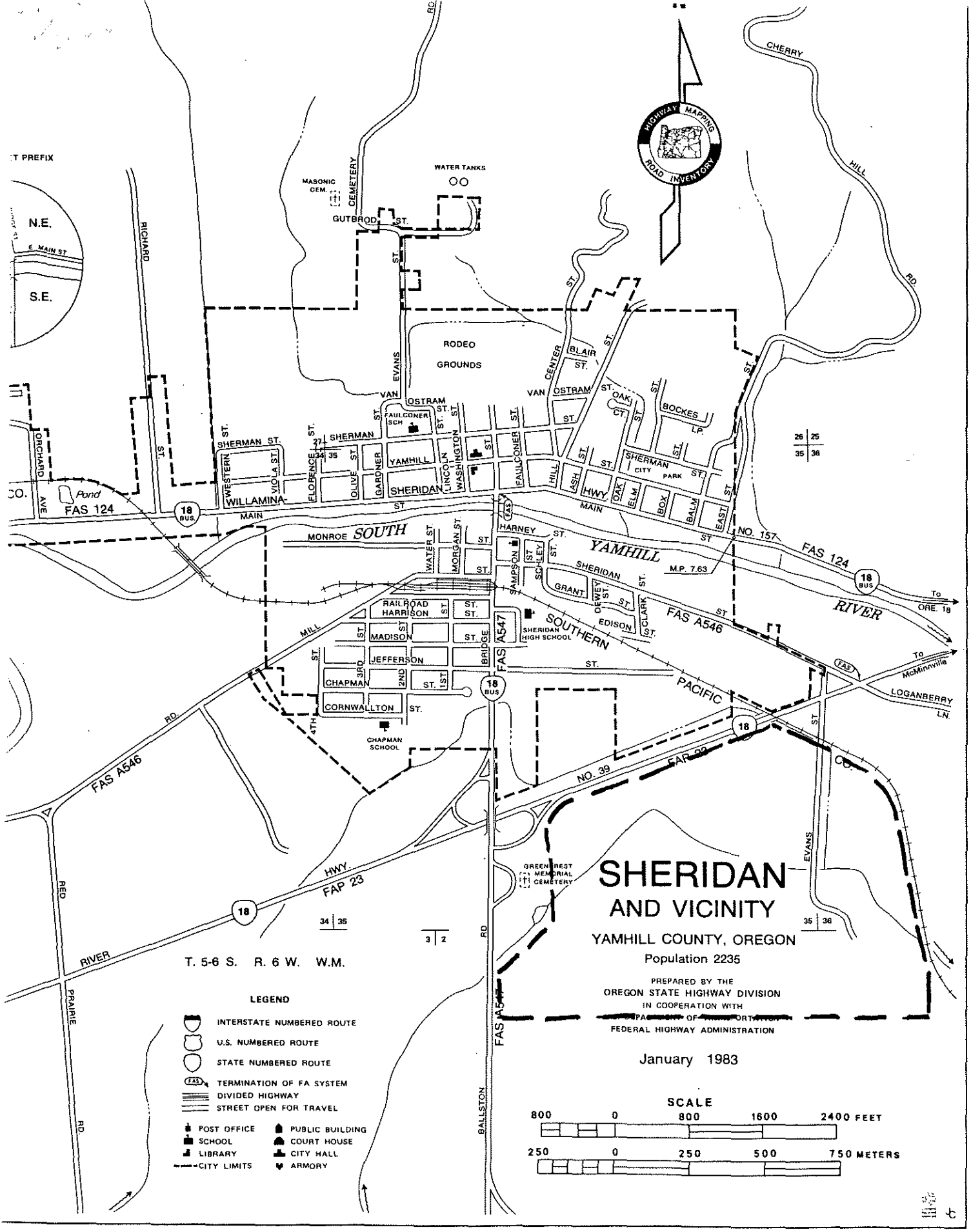
ANNUAL OPERATION BUDGET: $8-$12 million including $5 million payroll.

SALARIES OF EMPLOYEES: Federal prison employees are paid starting salary of $18,000 per year at entry level positions and earn up to $28,000 at these positions. More skilled jobs pay more. Average annual salary of 350 employee workforce is $25,000. Employees must be under 35 years old when hired and MUST retire at age 55.

CONSTRUCTION: The facilities would be built on about 120 acres of the 200-acre complex at a cost estimated to be between $40 million to $50 million. Local contractors would be used in the construction. The facilities are designed to look like a college campus, not an old-style federal prison seen in the movies. There are no guard towers planned.

TIME TABLE: Preliminary site development to begin about June 1986. Ground breaking early 1987 with facility operational by December 1988.

11/19/85


HIGHWAY MAPPING
ROAD INVENTORY
SHERIDAN
AND VICINITY
YAMHILL COUNTY, OREGON
Population 2235
PREPARED BY THE
OREGON STATE HIGHWAY DIVISION
IN COOPERATION WITH
FEDERAL HIGHWAY ADMINISTRATION
January 1983
T. 5-6 S. R. 6 W. W.M.
LEGEND
INTERSTATE NUMBERED ROUTE
U.S. NUMBERED ROUTE
STATE NUMBERED ROUTE
TERMINATION OF FA SYSTEM
DIVIDED HIGHWAY
STREET OPEN FOR TRAVEL
POST OFFICE
SCHOOL
LIBRARY
CITY LIMITS
PUBLIC BUILDING
COURT HOUSE
CITY HALL
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SCALE
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SHERIDAN
YAMHILL
MAIN ST
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SOUTH
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RIVER
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FAS 124
FAS A546
FAS A547
NO. 157
NO. 39
FAP 23
HWY
M.P. 7.63
WILLAMINA
MONROE
RAILROAD
HARRISON
MADISON
JEFFERSON
CHAPMAN
CORNWALLTON
CHAPMAN SCHOOL
SHERIDAN HIGH SCHOOL
FAULCONER SCH
GREENCREST MEMORIAL CEMETERY
MASONIC CEM.
CEMETERY
WATER TANKS
RODEO GROUNDS
CITY PARK
Pond
To ORE. 18
To McMinnville
LOGANBERRY LN.
CHERRY HILL RD.
RICHARD
EVANS
BALLSTON
RED
PRAIRIE
ORCHARD AVE
GUTBROD ST
VAN OSTRAM ST
BLAIR ST
OAK CT
BOCKES LP
HARNEY ST
GRANT ST
DEWEY ST
EDISON ST
CLARK ST
SCHLEY ST
SAMPSON ST
WATER ST
MORGAN ST
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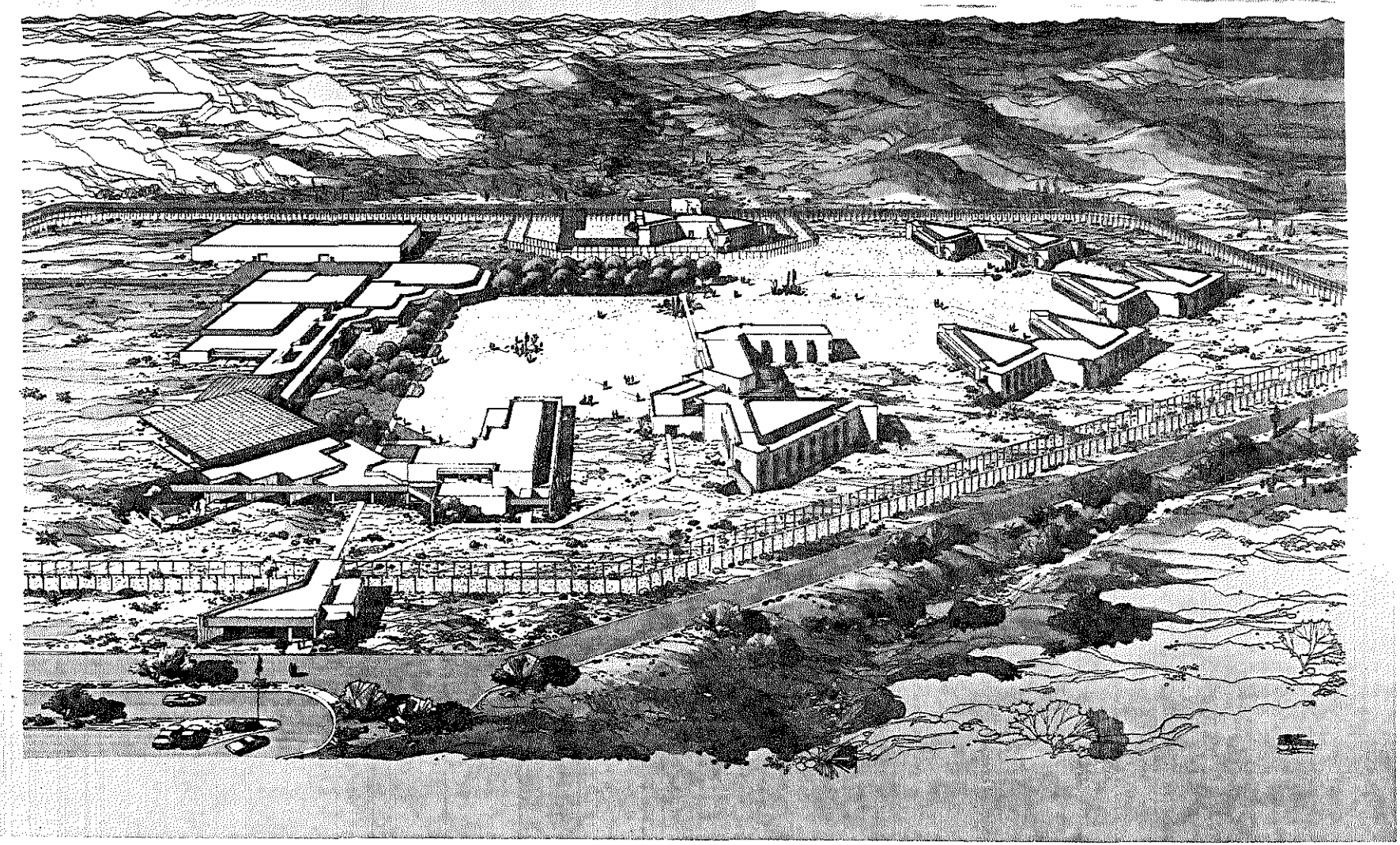

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

TO: Environmental Quality Commission

FROM: Director

SUBJECT: Agenda Item K, December 12, 1986 EQC Meeting

Court of Appeals Remand of "ARNOLD IRRIGATION DISTRICT vs. DEQ" for Reconsideration

BACKGROUND

On April 23, 1986, the Court of Appeals ruled on Arnold Irrigation District's petition for review of the final order of the Environmental Quality Commission (EQC). The EQC order had affirmed the DEQ decision denying Arnold a certificate of compliance for a hydroelectric project on the Deschutes River. The Court of Appeals reversed the EQC and remanded the matter for reconsideration. The court also ruled on a cross petition by the Northwest Environmental Defense Center (NEDC). The court affirmed the agency view that the Clean Water Act (CWA) provision does not restrict hydroelectric generation or any other water use unless the use degrades quality below established criteria.

NEDC petitioned the Supreme Court to review the Court of Appeals Decision on May 29, 1986. The Supreme Court denied the petition on September 16, 1986. The Court of Appeals decision became effective on October 24, 1986.

The EQC must now establish the process for reconsideration in light of the court decision. This entails gathering information and making the determinations which will establish the agency's position.

EVALUATION AND ALTERNATIVES

The Court Decision

The Court of Appeals decision addressed the criteria which DEQ could use in determining whether to issue a Certificate of Compliance with the federal Clean Water Act and what conditions it could place on the certification.

DEQ had denied the certificate because Arnold had not provided a statement from Deschutes County that the project was compatible with the county's comprehensive plan and land use ordinances. The Court of Appeals held that DEQ could not deny certification on that basis. However, the court said that in issuing certificates, DEQ must consider land use goals and acknowledged comprehensive plans and include limitations reflecting them to the extent they relate to water quality. DEQ was also advised to consider the effects of the recently adopted criteria for certification, ORS 468.732, OAR 340-48-025(2)(f)(C), and DEQ's modified procedure for determining compliance with land use plans, OAR 340-48-020(2)(i), (6)(d).

Action Required of DEQ

In order to carry out the reconsideration mandate, additional information must be obtained for the record sufficient to make the following determinations:

(1) Determine whether any new information would cause the Department to modify its previous findings regarding compliance with the requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act.

(2) Determine the specific water quality related requirements of state law which are appropriate to include as conditions of a granted certificate pursuant to Section 401(d) of the Clean Water Act. This includes the water quality related provisions of the Deschutes County land use plan and implementing regulations as well as other appropriate water quality related requirements of state law.

(3) Determine effects of ORS 468.732 and ORS 197.180(1) and, to the extent permitted by federal law as interpreted in the Arnold decision, develop findings as required by ORS 468.732 and ORS 197.180(1).

The Department must go as far as possible to comply with both state and federal law. Only if compliance with both is impossible will the federal requirements take precedence.

New Information is Needed

DEQ needs the following additional information to reevaluate the certification eligibility and develop certification conditions:

a. Identification of the provisions of the Deschutes County Land Use Plan which apply to the proposed hydroelectric project; and analysis of whether or not the proposed project complies with such provisions and if not, why not.

b. Analysis of how the proposed hydroelectric project complies with the standards of Sections 3 and 5 of Chapter 569, Oregon Laws 1985, and rules adopted by the Water Resources Commission and Energy Facility Siting Council to implement those standards.

The Department believes this information should be part of the application. In the case of item a. above, Deschutes County is the best source of the information. DEQ has traditionally relied on the applicant obtaining local review of land use issues. The Department's land use coordination agreement, approved by LCDC, incorporates this process. Although DEQ does not intend to relinquish its authority or obligation for decision-making relative to land use issues and the water quality relationships of land use requirements, it is appropriate and desirable to recognize the county's expertise and greater familiarity with its own plan. We believe the county should have the opportunity to identify the applicable plan provisions, determine the degree of compliance with those plan provisions, and offer their opinion as to the plan provisions they believe to be water quality related. Only if the county refuses to act, burdens the applicant with unreasonable demands, or extends its process over an unreasonably long period of time would the Department wish to circumvent the county and attempt to develop the necessary information on its own.

Procedures

The Commission has several alternatives for procedures to follow to accomplish the reconsideration of the Arnold Irrigation District Application for certification. These are as follows:

A. Remand the matter back to the Department to secure the necessary additional information, re-evaluate the matter, and enter a new decision on the application and notify the applicant of the decision. If the applicant is dissatisfied with the decision, the matter would automatically be returned to the EQC for review. The additional information, Department's evaluation, and decision would be entered into the record. Arguments could then proceed, followed by a decision and order of the Commission.

B. The process could proceed as in Alternative A above except that the Department would complete its analysis and make a recommendation to the Commission. The information, analysis, and recommendation would be entered into the case record. Arguments could then proceed, followed by a decision and order of the Commission.

C. The Commission could re-open the contested case hearing and receive additional information and analysis through direct testimony. Arguments could then proceed, followed by a decision and order of the Commission.

The Department believes the most expeditious process for completing the re-evalation would be alternative A. The Department would assist the Applicant in securing the additional information needed to complete the re-evaluation. The Department believes that Deschutes County and its land use review process should be utilized as part of the information-gathering effort. Only if the county fails to make a good faith effort should it be circumvented.

Because new information must be obtained and the certification decision be reconsidered, the Department believes public involvement should be allowed. Such involvement is required by OAR 340-48-020(4) which outlines the procedures for considering 401 certification. Consequently, if the Commission chooses either options A or B, the Department would propose to follow the public involvement process as outlined in OAR 340-48-020(4).

SUMMATION

1. The Court of appeals has remanded the 401 certification decision on the Arnold Irrigation District Application for reconsideration.

2. Additional information must be secured and re-evaluation must be completed before a new decision can be made on the 401 certification.

3. Alternative procedures for reconsideration range from returning the matter to the Department for a new decision to reconvening the contested case hearing to receive new information through direct testimony.

DIRECTOR'S RECOMMENDATION

Based on the summation, it is recommended that the Commission return the application of Arnold Irrigation District to the Department with instructions to: (1) assist the applicant to secure the necessary additional information, but include the Deschutes County land use review process as a part of the information-gathering effort unless the county fails to make a good faith effort, (2) complete a re-evaluation of the application with due regard to the requirement of state and federal law and the opinion of the Court of Appeals, and (3) advise the applicant of the Department's new decision in the matter. It is also recommended that the Commission direct the Department to follow public involvement procedures as outlined in OAR 340-48-020(4). If the applicant notifies the Department within 20 days of notice of a decision that it is dissatisfied with that decision, the contested case hearing before the Commission will be re-opened at the earliest possible date.

Mike Downs for
Fred Hansen

Richard J. Nichols/Harold Sawyer
MY3512
229-5324/229-5776
December 2, 1986
Attachments: A. Arnold Decision
B. OAR 340-48

ATTACHMENT A

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In Re

LAVA DIVERSION PROJECT
FERC No. 5205
Deschutes County, Oregon.

ARNOLD IRRIGATION DISTRICT and GENERAL ENERGY DEVELOPMENT, INC., an Oregon corporation,

Petitioners - Cross-respondents,

v.

DEPARTMENT OF ENVIRONMENTAL QUALITY,

Respondent - Cross-respondent,

NORTHWEST ENVIRONMENTAL DEFENSE CENTER, an Oregon nonprofit corporation,

Respondent - Cross-petitioner.

(25-WQ-CR-FERC-P5205; CA A35731)

Judicial Review from Environmental Quality Commission.

Argued and submitted March 10, 1986.

Neil R. Bryant, Bend, argued the cause for petitioners - cross-respondents. With him on the brief were Benjamin Lombard, Jr., and Gray, Fancher, Holmes & Hurley, Bend.

Michael Huston, Assistant Attorney General, Portland, argued the cause for respondent - cross-respondent. With him on the brief were Dave Frohnmayer, Attorney General, James E. Mountain, Jr., Solicitor General, and Michael D. Reynolds and Mary J. Deits, Assistant Attorneys General, Salem.

Steven R. Schell, Portland, argued the cause for respondent - cross-petitioner. With him on the brief was Rappleyea, Beck, Helterline, Spencer & Roskie, Portland.

Before Warden, Presiding Judge, and Van Hoomissen and Young, Judges.

YOUNG, J.

Reversed and remanded for reconsideration on petition; affirmed on cross-petition.

1466N FILED: April 23, 1986.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Case Name: Arnold Irrig. Dist. v. DEQ

Appellate case number: A35731

Trial Court or agency case number: 25-WQ-CR-FERC-P5205

Prevailing party or parties: Petitioners on petition; cross-respondents on cross-petition.

[ ] No costs awarded

[xx] Costs awarded to the prevailing party or parties, payable by: Respondents on petition; cross-petitioner on cross-petition.

* * * * * * * * * * * * * *

FINAL ORDER*

IT IS ORDERED that on appeal or judicial review the prevailing party or parties recover from

costs and disbursements taxed at $_____, and attorney fees in the amount of $_____. (ORAP 11.03, 11.05, and 11.10.)

IS FURTHER ORDERED that judgment be entered in favor of the Judicial Department and against

in the amount of $_____ for filing fees not waived and unpaid at the time of entry of the final written disposition of this case. ORS 21.605.

Date Supreme Court denied review:

DATED: COURT OF APPEALS
(seal)

*This section will be completed when the appellate judgment is prepared. The Records Division of the Office of the State Court Administrator will prepare the appellate judgment, enter it in the appellate register, and mail copies to the parties within the time and in the manner specified in ORAP 11.03(3). See also ORS 19.190(1).

YOUNG, J.

This case concerns the criteria which the Department of Environmental Quality (DEQ) may use in determining whether to issue a certificate of compliance with the Federal Water Pollution Control Act (also known as the Clean Water Act (CWA))[1] and what conditions it may place on the certificate. Petitioners seek review of a final order of the Environmental Quality Commission (EQC) affirming a DEQ decision denying them a certificate of compliance for a hydroelectric project on the Deschutes River. DEQ denied the certificate, because petitioners did not provide a statement from Deschutes County that the project was compatibile with the county's comprehensive plan and land use ordinances. Petitioners assert that federal law limits DEQ's consideration to water quality concerns and that the land use provisions are not related to water quality. Respondent Northwest Environmental Defense Center cross-petitions and seeks to require DEQ to deny the certificate on the additional ground that, under DEQ's regulations, hydroelectric power is not a beneficial use on the affected portion of the river. We reverse and remand for further proceedings on the petition and affirm on the cross-petition.

Petitioners are jointly involved in a proposal to divert water from the Deschutes River south of Bend for

hydroelectric generation. The project will return the water to the river some distance downstream after using the natural fall of the river to produce power. Petitioner General Electric Development, Inc., holds a planning and design permit from the Federal Energy Regulatory Commission (FERC) for the project, and petitioners have applied to FERC for a license to build and operate it. Because the project involves a discharge into navigable waters, section 401 of the CWA, 33 USC § 1341,[2] requires petitioners to provide a certificate that the project complies with the act before FERC may issue the license. Under CWA, the certifying body is usually not a federal agency; rather, it is usually a state agency responsible for administering the act. The compliance certified is not with standards which the federal government has established but with standards adopted by the state and only approved by the federal Environmental Protection Agency (EPA).[3] This hybrid arrangement, with state agencies acting under federal law, is the source of much of the confusion in this case.

Congress' purpose in adopting the CWA was "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a), 33 USC § 1251(a). It did not, however, seek to achieve its purpose by exercising federal control and administration over those waters. Rather, "[i]t is the policy of the Congress to recognize, preserve, and

protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator [of the EPA] in the exercise of his authority under this [Act]." 33 USC § 1251(b).

In accordance with the emphasis on state responsibility and administration, the CWA places primary responsibility for the development of water quality standards on the states, subject to EPA approval. See, e.g., CWA § 303(a), 33 USC § 1313(a). Only if the state fails to act, or if its standards are less strict than those the act requires, will the federal government intervene directly. See, e.g., 33 USC § 1313(b); Mississippi Comm. on Natural Resources v. Costle, 625 F2d 1269 (5th Cir 1980). Federal requirements for the content of the regulations are only minimums; state standards may be stricter. CWA § 510, 33 USC § 1370; 40 CFR § 131.4; Homestake Min. Co. v. U.S. Environ. Protect., 477 F Supp 1279, 1283 (D SD 1979).

States establish standards under 33 USC § 1313 by first designating the uses of the waters which they wish to assure; they then adopt water quality standards which will allow the designated uses to be actual uses. "Such standards shall be such as to protect the public health or welfare,

enhance the quality of water and serve the purposes of this [Act]. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation." 33 USC § 1313(c)(2). The state standards applicable to the "Deschutes Basin" are found in OAR 340-41-562 through OAR 340-41-580; EPA has approved them. Hydroelectric generation is not one of the designated uses which those standards are designed to foster on the stretch of the river in question. OAR 340-41-562, table 9.

The certificate which petitioners have to have from the state before they can proceed with the project is that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306 and 307 of CWA, 33 USC §§ 1311, 1312, 1313, 1316 and 1317. 33 USC § 1341(a)(1). Neither DEQ nor EQC found that the proposal violated any of those sections or any of the regulations adopted by the state under CWA authority. Violation of one of those sections or regulations is the only basis on which the state has authority under the CWA to deny the certificate. The power to issue the certificate is solely a creature of federal law; the state agencies are controlled by that law in their decisions on applications. They may not consider other factors than

compliance with the provisions listed in 33 USC § 1341(a)(1) and with the state regulations in deciding whether to issue a certificate. EQC therefore erred when it affirmed DEQ's denial on the basis of a failure to show compliance with state and county land use requirements. We must, therefore, remand the case for reconsideration under the correct legal standard. ORS 183.482(8)(a)(B).[4]

That EQC erred in affirming the denial of the certificate does not resolve this case. Although the state could not deny the certificate on the grounds stated, 33 USC § 1341(d) does allow it to place limitations on the certificate if the limitations are

> "necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with <u>any other appropriate requirement of State law</u> set forth in such certification * * *." (Emphasis supplied.)

Any limitation that the state imposes becomes a condition on any federal license or permit issued pursuant to the certification.

Although the emphasized language does not allow DEQ to consider land use and other issues outside the CWA in deciding whether to approve certification applications, it may be able to consider those factors in deciding what limitations to place

on the certificate. Because the question of the relevance of land use regulations to limitations on a certificate is certain to arise on remand, we discuss it here.[5]

The legislative history of the phrase in question is minimal. The conference committee which developed the final version of the bill added it; there was nothing precisely comparable previously. The committee's report says only that under this provision "a State may attach to any Federally issued license or permit such conditions as may be necessary to assure compliance with water quality standards in that State." That statement gives little additional hint of Congress' intent. We believe, however, that there are sufficient indications of what kinds of other state requirements Congress considered "appropriate" for DEQ and EQC to use.

We look first at the purpose of the act and at what Congress could have said but did not. The purpose of CWA is "to restore and maintain the * * * integrity of the Nation's waters." 33 USC § 1251(a). Under the act, primary responsibility for determining what constitutes the integrity of the nation's waters and what is necessary to restore and maintain that integrity is with the states. The act requires the states to exercise their responsibility by adopting water quality standards under 33 USC § 1313 and to base those standards on the uses which the states wish to encourage. The

specific effluent limitations and performance standards provided in other sections of the act are designed to achieve the quality standards of section 1313. Certainly, section 1313 water quality standards are appropriate limitations in determining what limits to place on a certificate.

The section 1313 standards are not, however, the only water quality standards which states may enforce; the states have inherent authority, independently of the CWA, to protect and plan the use of their waters. Congress did not make the section 1313 standards the exclusive water quality criteria which the states may use in placing limitations on section 1341 certificates. If Congress had intended to do so, it could have specifically mentioned those standards in section 1341(d), but it did not. Rather, it allowed the states to enforce <u>all</u> water quality-related statutes and rules through the state's authority to place limitations on section 1341 certificates. Congress thereby required federal licensing authorities to respect all state water quality laws in licensing projects involving discharges to navigable streams. "[A]ny other appropriate requirement of State law" is thus a Congressional recognition of all state action related to water quality and Congressional authorization to the states to consider those actions in imposing limitations on CWA certificates. It does not, however, allow limitations which are not related to water

quality.

Although it functions as a federal agent in issuing certificates of compliance, DEQ is a state agency and must comply with state law to the extent that federal law does not supersede it. That law requires DEQ to act, with respect to programs affecting land use, in compliance with the statewide land use goals and in a manner compatible with acknowledged comprehensive plans. ORS 197.180(1). DEQ therefore must include limitations reflecting the goals and plans in section 1341 certificates to the maximum extent that the CWA allows--that is, to the extent that they have any relationship to water quality. Only if a goal or plan provision has absolutely no relationship to water quality would it not be an "other appropriate requirement of State law." In that case, and only in that case, would the CWA override DEQ's obligations under ORS 197.180(1).

We cannot say at this point what land use provisions would relate to water quality. Many uses of land may affect water quality, even if they do not immediately result in direct discharges to the state's waters. Part of the goals and plans clearly relate to water quality--Goal 6 most obviously--but others may also have a significant, if indirect, impact. Limitations on development or on other uses of land near waters may fit into the category. The precise determination is for

DEQ in the first instance. Because DEQ required a certificate of full compliance with the Deschutes County land use provisions, it did not consider the extent to which they may have related to water quality. On remand, it must examine their relationship to water quality. If it grants petitioners' request for a certificate, it must require, as a condition of that certificate, that petitioners comply with the water-related portions of the Deschutes County land use regulations. ORS 197.180(1). It must also consider the effects of the recently adopted criteria for certification, ORS 468.732, OAR 340-48-025(2)(f)(C), and of DEQ's modified procedure for determining compliance with land use plans. OAR 340-48-020(2)(i), (6)(d).[6]

In its cross-petition, Northwest Environmental Defense Center asserts that DEQ may not grant a certificate on any condition, because hydroelectric generation is not a designated use for the particular portion of the Deschutes River. Cross-petitioner misunderstands the role that the designated uses play in CWA's framework. 33 USC § 1313(c)(2) provides that a "water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses." The purpose of designating uses is to determine what the water quality criteria are intended to do. The purpose of those criteria is

to make the water adequate for the designated uses. They do not require that the uses of the water be limited to the ones designated. Nothing in the provision places any limitations on the use actually made of the waters, so long as the quality of the waters does not fall below that provided in the criteria. DEQ determines what uses to protect; it does not determine that other uses are forbidden. If a hydroelectric project does not degrade the water below the quality which the criteria require, and if no other water quality-related law prohibits such a project, it is irrelevant to certification under the CWA whether hydroelectric generation is a designated use. DEQ did not err in this respect.

Reversed and remanded for reconsideration on petition; affirmed on cross-petition.

FOOTNOTES

1

The Water Pollution and Control Act was originally adopted in 1948. Pub. L. 80-845, 62 Stat 1155. It was extensively amended in 1972. Pub. L. 92-500, 86 Stat 816. References in this opinion to the Clean Water Act are to the act after the 1972 amendments.

2

For ease of reference, our first citations to a CWA section include both the section number of the act and the United States Code section where it is compiled. Thereafter, we generally cite only to the code.

3

EQC is the Oregon agency with ultimate authority for adopting the standards and issuing the certificates. ORS 468.730. However, it functions primarily as an appellate body, and DEQ does most of the actual work and promulgates the standards.

4

Despite the parties' extensive arguments, this case

does not involve federal preemption of state regulation. The CWA is a federal act in which Congress has provided for significant state involvement. 33 USC § 1341 gives the states a veto over federal actions. What criteria the states may consider in exercising that veto is a matter of federal, not state, law. The states, in passing on applications for certificates, act in part as agents of the federal government, and they may act only where Congress has permitted. This case is therefore unlike First Iowa Hydro-Elec. Coop v. Federal Power Com'n, 328 US 152, 66 S Ct 906, 90 L Ed 1143 (1946), in which the Supreme Court held that the Federal Power Act preempted all inconsistent state regulation and that section 9(b) of that act, 16 USC § 802(b), did not preserve an independent state role in determining the requirements for a hydroelectric project. In the CWA, Congress has created an independent state role in all federal actions involving discharges into navigable waters; the question is not Congressional preemption but what criteria Congress intended the states to consider in deciding whether to issue certificates of compliance with the act.

5

DEQ and EQC relied on the emphasized language in denying the certificate, and the parties discuss its meaning

and background in their briefs. Although DEQ is incorrect in treating this provision as allowing it to deny the certificate for failure to comply with requirements outside the CWA, the language is important in determining what conditions it may place on a certificate on remand.

6

Of course, whether the state can enforce non-water quality-related land use requirements against a federal licensee is beyond the scope of this case.

DIVISION 48

CERTIFICATION OF COMPLIANCE WITH WATER QUALITY REQUIREMENTS AND STANDARDS

Purpose

340-48-005 The purpose of these rules is to describe the procedures to be used by the Department of Environmental Quality for receiving and processing applications for certification of compliance with water quality requirements and standards for projects which are subject to federal agency permits or licenses and which may result in any discharge into navigable waters or impact water quality.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Definitions

340-48-010 As used in these rules unless otherwise required by context:

(1) "Certification" means a written declaration by the Department of Environmental Quality, signed by the Director, that a project or activity subject to federal permit or license requirements will not violate applicable water quality requirements or standards.

(2) "Clean Water Act" means the Federal Water Pollution Control Act of 1972, Public Law 92-500, as amended.

(3) "Coast Guard" means U.S. Coast Guard.

(4) "Commission" means Oregon Environmental Quality Commission.

(5) "Corps" means U.S. Army Corps of Engineers.

(6) "Department" or "DEQ" means Oregon Department of Environmental Quality.

(7) "Director" means Director of the Department of Environmental Quality or the Director's authorized representative.

(8) "Local Government" means county and city government.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Certification Required

340-48-015 Any applicant for a federal license or permit to conduct any activity, including but not limited to the construction or operation of facilities which may result in any discharge to waters of the state, must provide the licensing or permitting agency a certification from the Department that any such activity will comply with Sections 301, 302, 303, 306, and 307 of the Clean Water Act which generally prescribe effluent limitations, water quality related effluent limitations, water quality standards and implementation plans, national standards of performance for new sources, and toxic and pretreatment effluent standards.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Application for Certification

340-48-020 (1) Except as provided in section (6) below, completed applications for project certification shall be filed directly with the DEQ.

(2) A completed application filed with DEQ shall contain, at a minimum, the following information:

(a) Legal name and address of the project owner.

(b) Legal name and address of owner's designated official representative, if any.

(c) Legal description of the project location.

(d) Names and addresses of immediately adjacent property owners.

(e) A complete description of the project proposal, using written discussion, maps, diagrams, and other necessary materials.

(f) Name of involved waterway, lake, or other water body.

(g) Copies of the environmental background information required by the federal permitting or licensing agency or such other environmental background information as may be necessary to demonstrate that the proposed project or activity will comply with water quality requirements.

(h) Copy of any public notice and supporting information, issued by the federal permitting or licensing agency for the project.

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

(j) Specific detailed documentation of compliance with the hydroelectric project standards established in Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules adopted by the Water Resources Commission and Energy Facility Siting Council implementing such standards.

(3) The DEQ reserves the right to request any additional information necessary to complete an application or to assist the DEQ to adequately evaluate the project impacts on water quality. Failure to complete an application or provide any requested additional information within the time specified in the request shall be grounds for denial of certification.

(4) In order to inform potentially interested persons of the application, a public notice announcement shall be prepared and circulated in a manner approved by the Director. Notice will be mailed to adjacent property owners as cited in the application. The notice shall tell of public participation opportunities, shall encourage comments by interested individuals or agencies, and shall tell of any related documents available for public inspection and copying. The Director shall specifically solicit comments from affected state agencies. The Director shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit written views and comments. All comments received during the 30-day period shall be considered in formulating the Department's position. The Director shall add the name of any person or group upon request to a mailing list to receive copies of public notice.

(5) The Director shall provide an opportunity for the applicant, any affected state, or any interested agency, person, or group of persons to request or petition for a public hearing with respect to certification applications. If the Director determines that new information may be produced thereby, a public hearing will be held prior to the Director's final determination. Instances of doubt shall be resolved in favor of holding the hearing. There shall be public notice of such a hearing.

(6) For projects or activities where the Division of State Lands is responsible for compiling a coordinated state response (normally applications requiring permits from the Corps or Coast Guard), the following procedure for application and certification shall apply:

(a) Application to the federal agency for a permit constitutes application for certification.

(b) Applications are forwarded by the federal agency to the Division of State Lands for distribution to affected agencies.

(c) Notice is given by the federal agency and Division of State Lands through their procedures. Notice of request for DEQ certification is circulated with the federal agency notice.

(d) All comments including DEQ Water Quality Certification are forwarded to the Division of State Lands for evaluation and coordination of response. The Division of State Lands is responsible for assuring compatibility with the local comprehensive plan or compliance with statewide planning goals.

(7) In order to make findings required by OAR 340-48-025(2), the Department's evaluation of an application for project certification may include but need not be limited to the following:

(a) Existing and potential beneficial uses of surface or groundwater which could be affected by the proposed facility.

(b) Potential impact from the generation and disposal of waste chemicals or sludges at a proposed facility.

(c) Potential modification of surface water quality or quantity.

(d) Potential modification of groundwater quality.

(e) Potential impacts from the construction of intake or outfall structures.

(f) Potential impacts from waste water discharges.

(g) Potential impacts from construction activities.

(h) The project's compliance with plans applicable to Section 208 of the Federal Clean Water Act.

(i) The project's compliance with standards established in Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules adopted by the Water Resources Commission and the Energy Facility Siting Council implementing such standards.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Issuance of a Certificate

340-48-025 (1) Within thirty (30) days from the time the Department determines an application is complete, it shall so notify the applicant by certified mail. Within ninety (90) days of receving a complete application for project certification, the DEQ shall serve written notice upon the applicant that the certification is granted or denied or that a further specified time period is required to process the application. Written notice shall be served in accordance with the provisions of OAR 340-11-097 except that granting of certification may be by regular mail. Any extension of time shall not exceed one year from the date of filing a completed application.

(2) DEQ's certification for a project shall contain the following information:

(a) Name of applicant;

(b) Project's name and federal identification number (if any);

(c) Type of project activity;

(d) Name of water body;

(e) General location;

(f) Findings that the proposed project is consistent with:

(A) Rules adopted by the EQC on Water Quality;

(B) Provisions of Sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, Public Law 92-500, as amended;

(C) For hydroelectric projects, standards established in Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules adopted by the Water Resources Commission and Energy Facility Siting Council implementing such standards;

(D) Standards of other state and local agencies that the Director determines are other appropriate requirements of state law according to Section 401 of the Federal Water Pollution Control Act, Public Law 92-500, as amended.

(g) For projects requiring a site certificate from the Energy Facility Siting Council or a water appropriation permit from the Water Resources Commission, DEQ shall include a condition requiring such certificate or permit to be obtained prior to initiating the activity for which 401 certification is granted.

(3) If the applicant is dissatisfied with the conditions of any granted certification, the applicant may request a hearing before the Commission. Such requests for a hearing shall be made in writing to the Director within 20 days of the date of mailing of the certification. Any hearing shall be conducted pursuant to the rules of the Commission for contested cases.

(4) Certifications granted pursuant to these rules are valid for the applicant only and are not transferable.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Certification Delivery

340-48-030 For projects where application for certification is filed directly with DEQ by the applicant, the DEQ certification will be returned directly to the applicant. For those applications that are coordinated by the Division of State Lands, DEQ certification will be delivered to the Division of State Lands for distribution to the applicant and the federal permitting agencies as part of the Oregon coordinated response.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Denial of Certification

340-48-035 If the Department proposes to deny certification for a project, a written notice setting forth the reasons for denial shall be served upon the applicant following procedures in OAR 340-11-097. The written notice shall advise the applicant of appeal rights and procedures. A copy shall also be provided to the federal permitting agency. The

denial shall become effective 20 days from the date of mailing such notice unless within that time the applicant requests a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the rules of the Commission for contested cases.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Revocation or Suspension of Certification

340-48-040 (1) Certification granted pursuant to these rules may be suspended or revoked if the Director determines that:

(a) The federal permit or license for the project is revoked.

(b) The federal permit or license allows modification of the project in a manner inconsistent with the certification.

(c) The application contained false information or otherwise misrepresented the project.

(d) Conditions regarding the project are or have changed since the application was filed.

(e) Special conditions or limitations of the certification are being violated.

(2) Written notice of intent to suspend or revoke shall be served upon the applicant following procedures in OAR 340-11-097. The suspension or revocation shall become effective 20 days from the date of mailing such notice unless within that time the applicant requests a hearing before the Commission or its authorized representative. Such a request for hearing shall be filed with the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the rules of the Commission for contested cases.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

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

TO: Environmental Quality Commission

FROM: Director

SUBJECT: Agenda Item L, December 12, 1986, EQC Meeting

City of Klamath Falls Petition Requesting an Order Waiving OAR 340-48-020(2)(i) and Directing DEQ to Deem Complete the City's 401 Certification Application

By letter to the Director dated November 15, 1986, received in the Department of Environmental Quality offices on November 17, 1986, the City of Klamath Falls (City) has filed a petition dated November 17, 1986. In this petition, the City requests the Environmental Quality Commission to issue an order which:

(a) Waives the requirements of OAR 340-48-020(2)(i) -- a rule which requires an applicant for 401 certification to provide in the application, a statement from the county regarding the status of land use compatibility for the proposed project; and

(b) Directs the Department to deem the City's 401 certification application to be complete and commence processing of the application.

BACKGROUND

By letter dated August 25, 1986, William G. Miller, Project Director, Resource Management International Inc. (RMI) transmitted to the Department the application of the City of Klamath Falls for certification of a proposed hydroelectric project on the Klamath River in Oregon pursuant to Section 401 of the Federal Clean Water Act.

By letter dated September 25, 1986, the Department acknowledged receipt of documents, advised the applicant of deficiencies and additional documents and information that would be required before the application could be considered complete for processing, requested additional information to facilitate review of the application, and advised of the procedures the Department expected to follow in processing the application, once complete.

On October 14, 1986, the Department met with the applicants at their request. Some information requested in the September 25, 1986 letter from the Department was delivered at this meeting. All requested information was briefly discussed and substantial time was spent discussing requested information relative to land use.

By letter dated October 17, 1986, RMI transmitted additional information and documents in response to the September 25, 1986 letter from the Department.

By letter dated November 3, 1986, the Department acknowledged documents received in response to the September 25, 1986 letter, summarized the Department's understanding of the position of the City with regard to requested land use information, reiterated and clarified the Department's position with regard to the land use information needed to complete an application for 401 certification pursuant to Commission rules, and advised the applicant of the issues that remained to be resolved before the Department could consider the City of Klamath Falls application to be complete for processing.

The City has responded with the petition that is now before the Commission.

DISCUSSION OF ISSUES RAISED IN THE PETITION

Essentially the Department believes the Commission has two decisions to consider with this petition:

1. Is the Department inappropriately applying the requirements of OAR 340-48-020(2)(i) in light of the recent Court of Appeals decision in Arnold Irrigation District vs. the Department, 79 OR. App. 136, 717 p. 2d 1274 (1986)? (This case will hereafter be referred to as Arnold.)

2. If the Environmental Quality Commission believes the rule is being applied inappropriately, what is the best means to provide relief to the petitioner?

The first question will be considered first. OAR 340-48 states, in part, as follows:

> 340-48-020(2) A completed application filed with DEQ shall contain, at a minimum, the following information:
>
> (i) A statement from the appropriate local government whether the project is compatible with the acknowledged local comprehensive plan and land use regulations or that the project complies with statewide planning goals if the local plan is not acknowledged. If the the project is not compatible or in compliance, the statement shall include reasons why it is not. If a local government is the applicant for a project for which it has also made the land use compatibility determination, the State Land Conservation and Development Department may be asked by the DEQ to review and comment on the local government's compatibility determination.

Arnold states that the Department can only issue or deny a 401 certificate based upon water quality standards established pursuant to the Federal Clean Water Act ammendments of 1972. In addition, however,"it must require, as a condition of that certificate, that petitioners comply with the water-related portions of the Deschutes County land use regulations. ORS 197.180(1). It must also consider the effects of the recently adopted criteria for certification, ORS 468.732, OAR 340-48-025(2)(f)(C), and of DEQ's modified procedure for determining compliance with land use plans. OAR 340-48-020(2)(i), (6)(d)."

The petitioner argues, based upon the Arnold decision, that the Department cannot deny a 401 certificate on a basis other than water quality standards. Further, while land use requirements can be used to condition a 401 certificate, the petitioner cannot be required to obtain land use review by Klamath County in order to provide the necessary information for those conditions. Consequently, the petitioner believes it is the Department's responsibility to obtain the information and the applicant should not be required to go through the county to get it. The applicant is willing to submit its project to Klamath County for review. However, the applicant believes the land-use review should be concurrent with the Department's review of the completed 401 certification application, not sequential.

The Department, on the other hand, believes the county is the best and most appropriate entity through which to obtain the necessary information for the Department to determine what components of the county land use plan apply to the project and, of those components, which are water quality related. The Department also believes it is appropriate to expect the applicant to obtain the necessary information through the county's land use review process. This is particularly so, in this case, where, as we understand the issues, the applicant must obtain a comprehensive land use plan amendment and, perhaps, a conditional use approval in order to comply with the land use laws. It is difficult for the Department to know or predict what water quality related requirements might be imposed upon the project until the local land use review process is complete. If the Department were to attempt to review the 401 application before or concurrently with Klamath County's land use review, it would do so with incomplete information. Consequently, the Department believes its review is better accomplished after the county's review. Only if the local land use entity (in this case, Klamath County) did not make a good faith effort to complete the land use process would the Department be willing to circumvent the county and attempt to develop the necessary information on its own. Klamath County has indicated that it will expidite the review process and could complete the process in five to six months once an application is received.

If the Commission determines that OAR 340-48-020(2)(i) is inappropriate and that the Department erred in its application of the rule to this project, then the second question must be answered: What is the best means to provide relief to the petitioner?

Commission rules provide for petitions for declaratory ruling, petitions for rulemaking, and appeals of final decisions of the Director on an application. No other form of petition is contemplated in the rules.

Specifically, Commission rules do not provide a process for waiving a rule. It could be argued that the petition submitted by Klamath Falls is not appropriate in its current form. No final action has been taken on their application that would constitute an appealable action. The petitioner has not asked for a declaratory ruling, nor have they asked the Commission to enact a rule.

The Commission could, however, consider the petition to be either a petition for a declaratory ruling, or a petition for rulemaking. Although the procedures for rulemaking and declaratory rulings differ, in both cases, the Commission must decide within 30 days after filing whether or not to consider the petition. In general, the Commission may refuse to consider the petition -- in which case an order denying the petition would be entered. If the Commission elects to consider the petition, however, notice must be given, copies must be provided to interested parties, and the specified process for declaratory ruling or rulemaking followed.

As an additional alternative, the Commission could amend or suspend the rule in question without prior notice or hearing pursuant to ORS 183.335(5). This statute allows the Commission to adopt a temporary rule if it provides the following items:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need; and

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection.

The rule would only be effective for 180 days unless it is adopted within that time under the Commission's rulemaking process. The Department does not believe the petitioners have demonstrated that the Commission's "failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned."

The options available to the Commission at the December 12, 1986 meeting appear to be:

-- Give the City of Klamath Falls the opportunity to present their petition.

-- If the Commission decides to refuse consideration, enter an order accordingly.

-- If the Commission decides to further consider the petition, It should decide whether rulemaking or a declaratory ruling process would be appropriate, designate a hearings officer, schedule a hearing, give public notice and distribute the petition, and proceed to final action on the petition. If the Commission further believes that serious prejudice will result to the petitioner or public interest if prompt action is not taken, it can adopt a temporary rule pursuant to ORS 103.335(5).

Finally, as a related issue, the City of Klamath falls believes that its project is exempt from the requirements of ORS 468.732. ORS 468.732 contains requirements brought about by HB2990 which was adopted by the 1985 legislature and is intended to assure protection of fish and other natural resource values. The Department has requested an opinion from the State Attorney General as to whether the revised Salt Caves project is exempt. In the event the Attorney General rules that ORS 468.732 does apply to the project, then additional information will be necessary. The Department believes that the Arnold decision allows for the Department to consider the effects and to condition a 401 certification based on water quality slated requirements of this statute. Depending on how the Commission rules on this agenda item, the Commission should not preclude the Department from requesting information of the applicant concerning ORS 463.732 and that the application should not be considered complete until the necessary information is provided. This information is outlined in OAR 340-48-020(2)(j).

SUMMATION

1. On November 17, 1986, the City of Klamath Falls filed a petition with the Commission requesting issuance of an order which waives the requirements of OAR 340-48-020(2)(i) and directs the Department to deem the City's 401 Certification application to be complete. The City argues that the Court of Appeals decision in Arnold Irrigation District vs. the Department precludes the Department from requiring compliance with the rule. The City believes the Department should conduct its review of the 401 certification application concurrently with the County's land use review.

2. The Department argues that the current rule of the Commission requiring submittal of information on land use as part of an application for 401 certification continues to be appropriate and is, in fact, reinforced by the Court of Appeals decision in Arnold. To review the 401 application concurrently with the County's land use review would require the Department's review to be based on incomplete information.

3. Commission rules generally provide for petitions for declaratory ruling, rulemaking, and appeal of the final action taken by the Director on an application. The City of Klamath Falls petition does not clearly fall into any of these categories and therefore may not be appropriate in its current form. However, the petition could be considered either as a petition for declaratory ruling or a petition for rulemaking.

4. Waiver of a rule does not appear to be an option since no process for such a waiver is provided. The Commission can suspend the rule pursuant to ORS 183.335(5) which allows the Commission to grant a temporary rule with no notice or hearing.

5. The options available to the Commission at the December 12, 1986 meeting appear to be:

   -- Give the City of Klamath Falls the opportunity to present their petition.

   -- If the Commission decides to refuse consideration, enter an order accordingly.

   -- If the Commission decides to further consider the petition, decide whether rulemaking or a declaratory ruling process would be appropriate, designate a hearings officer, schedule a hearing, give public notice and distribute the petition, and proceed to final action on the petition.

   -- The Commission can adopt a temporary rule pursuant to ORS 183.335(5) if it finds that its failure to promptly act will seriously prejudice the public interest or the petitioner.

DIRECTOR'S RECOMMENDATION

Based on the summation, it is recommended that the petition of the City of Klamath Falls be denied.

Mike Downs
for
Fred Hansen

Harold Sawyer/Richard J. Nichols:c
WC1326
229-5776/229-5324
December 2, 1986
Attachment

A. Cover letter, petition and attachments from the City of Klamath Falls.

   1) Cover letter, page A-1
   2) Petition, page A-3
   3) Arnold Decision, page A-15
   4) Transmittal letter and 401 application narrative, page A-31
   5) Letter DEQ to RMI, Inc. September 25, 1986, page A-39
   6) Letter RMI to DEQ, October 17, 1986, page A-43
   7) Letter DEQ to RMI, November 3, 1986, page A-47
   8) Letter Klamath Conty Planning Dept. to DEQ, October 29, 1986, page A-50

B. OAR 340-48

ATTACHMENT A

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November 15, 1986

Fred Hansen
Director, Department of
Environmental Quality
522 S.W. Fifth Avenue
Box 1760
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State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV 17 1986
OFFICE OF THE DIRECTOR

Dear Mr. Hansen:

Enclosed is an original and extra copy of a petition by the City of Klamath Falls to the Environmental Quality Commission requesting an order waiving O.A.R. 340-48-020(2)(i) and directing DEQ to initiate substantive review of the City's Section 401 application. The City takes this action reluctantly but in the belief that the City's Section 401 application must move forward.

We request that this matter be placed on the agenda for the Commission's December 12, 1986 meeting. The essence of our petition is that action should be initiated on our application before the expiration of the six months set forth in your November 3, 1986 letter. Obviously, the ability of the Commission to grant us relief is diminished if we cannot be heard until the January 23 meeting. Our petition is relatively brief, and the Commission is familiar with the issues raised. We feel, therefore, that our petition would not unduly burden the December 12 agenda, and we would greatly appreciate if we could be heard on that date.

There are several points in your November 3, 1986 letter that are not addressed in the enclosed petition and which we wish to comment on. You state that the City said at our meeting on October 14, 1986 that the City expects the land use application process to take more than one year to complete. I think what was said was that we did not know how long the County would take to complete its procees, but it would not surprise us if it took up to a year or more. We are glad to learn that the County believes that the process can be completed in five to six

months, and we will cooperate to the utmost in attaining that goal.

The second and third indented paragraphs on page 2 of your letter correctly characterize one compromise proposal made by the City. The City's legal position, which it does not waive, is that DEQ should examine the County plan, and based on that examination, determine that there are no water quality aspects of the plan that would form the basis for any appropriate conditions in an issued Section 401 certificate.

Your letter goes on to state that "[t]he County also stated that it would consider it to be inappropriate for DEQ to process the City's application and receive public comment on land use issues (a necessary part of the DEQ public notice and input process) when the local process including public hearings has not been completed." We do not see that comment in the October 29, 1986 letter from the Klamath County Planning Department attached to your November 3, 1986 letter.

Fred, as stated in our petition, with the County indicating that the land use process can be completed within five to six months, there appears to be no reason why compromise positions of both DEQ and the City cannot be accommodated without having to burden EQC. DEQ can obtain the information that would be generated by the land use process before the certificate is issued, while at the same time DEQ can proceed to determine whether the project complies with the EPA-approved water quality criteria.

Please let us know what you think and whether this matter can be placed on the December 12 Commission agenda.

Sincerely,

Peter S. Glaser

Enclosure

cc: Hon. George Flitcraft
James Keller
William Miller
Kurt Burkholder

BEFORE THE OREGON
ENVIRONMENTAL QUALITY COMMISSION

In the Matter of the Application by the City of Klamath Falls for Certification of Compliance with Water Quality Requirements and Standards for the Salt Caves Hydroelectric Project	)))))	Petition by the City of Klamath Falls for Waiver of O.A.R. 340-48-020(2)(i) and for Order Directing DEQ to Deem Application Complete

The City of Klamath Falls respectfully petitions this Commission for an order waiving the requirements of O.A.R. 340-48-020(2)(i) and directing the Department of Environmental Quality to deem complete the City's application for certification of compliance with water quality requirements and standards under Section 401 of the Federal Water Pollution Control Act for the Salt Caves Hydroelectric Project.

Relying on O.A.R. 340-48-020(2)(i), DEQ has informed the City that it will not deem complete and begin substantive processing of the City's Section 401 application until the City initiates and comletes a land use approval process with Klamath County. DEQ has further informed the City that if such process is not completed within six months, the City's Section 401 application will be rejected.

DEQ's action is wrong as a matter of law and as a matter of policy. As a matter of law, DEQ's action conflicts with the recent case of Arnold Irrigation District v. Department of Environmental Quality, 79 Or. App. 136, 717 P. 2d 1274 (1986) (Attachment 1 hereto), which was decided after this Commission adopted the regulation in question.

As a matter of policy, the City has offered DEQ a reasonable compromise that addresses DEQ's desire to receive land use information from the County and at the same time addresses the City's concern that the application be processed expeditiously. This compromise should be adopted.

These points are addressed in more detail below.

I

BACKGROUND

The City applied to DEQ for Section 401 certification for the Salt Caves Project on August 25, 1986. Attachment 2 hereto. The City's proposed project was a modification of an earlier project proposal for which the City had filed, and had then withdrawn, a prior application for Section 401 certification. The City's reasons for modifying the earlier project were, in large part, to address water quality concerns raised by DEQ staff. The City now believes that the modified project, as set forth in the current Section 401 application, does not present any water quality concerns. During the process of drafting its application to the Federal Energy Regulatory Commission (FERC) for a license for the modified project, and before the City filed its Section 401 application, the City met with DEQ staff on two occasions and spoke on several others in order to familiarize staff with the new proposal and to identify and eliminate any possible water quality concerns.

By letter dated September 25, 1986, DEQ notified the City that the Section 401 application was deficient in four respects and that the staff desired that the City provide three

other items as additional information. Attachment 3 hereto. Significantly, none of the deficiencies identified by DEQ pertained to any failure by the City to supply technical information required to analyze compliance with DEQ's EPA-approved water quality standards. The "deficiency" items DEQ requested were: a complete copy of the City's draft environmental report included in the FERC application (which report had been previously supplied to DEQ as a part of the FERC application process); an explanation of why the City believes it is exempt from Sections 3 and 5 of Chapter 569, Oregon Laws 1985 (H.B. 2990); a discussion of whether the City's project proposal was now final; and the land use information required by O.A.R. 340-48-020(2)(i).

On October 14, 1986, the City met with DEQ to discuss DEQ's September 25, 1986 letter. By letter dated October 17, 1986, the City supplied some of the information requested by DEQ. Attachment 4 hereto. In a further meeting on October 21, 1986, the City supplied additional information.

The only information requested by DEQ which the City did not supply was the information DEQ believes is required by O.A.R. 340-48-020(2)(i). That section provides as follows:

> (2) A completed application filed with DEQ shall contain, at a minimum, the following information:
>
> * * *
>
> (i) A statement from the appropriate local government whether the project is compatible with the acknowledged local

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

In its Section 401 application, in response to this regulation, the City had provided two letters from Klamath County stating that the County could not supply the O.A.R. 340-48-020(2)(i) statement until the City filed an application with the County for various land use approvals and until the County completed the public process required for action on such approvals. DEQ's September 25, 1986 letter, however, stated that this response did not satisfy O.A.R. 340-48-020(2)(i).

At the October 14, 1986 meeting, DEQ and the City discussed what information DEQ could require under O.A.R. 340-48-020(2)(i). The City explained that under Arnold it could not be required to initiate and complete the County's land use approval process as a pre-condition to filing its Section 401 application. The City explained that O.A.R. 340-48-020(2)(i) had been adopted before Arnold and that such regulation, as DEQ was interpreting it, could no longer be enforced after that decision.

However, as a compromise, but without waiving the City's legal position, the City informed DEQ that the City was prepared to initiate the proper County land use process as soon as possible and that the City had intended to do so even before receiving DEQ's September 25, 1986 letter. The City proposed that it would initiate the land use process and that in the meantime DEQ would deem complete the City's Section 401 application and begin substantive processing of it.

DEQ took the matter under advisement, and by letter dated November 3, 1986, informed the City that two items remained to be "submitted or resolved" before the City's application could be considered complete. Attachment 5 hereto. One was that DEQ had to receive an opinion from the Attorney General on the issue of the project's exemption under Chapter 569, Oregon Laws 1985 (H.B. 2990).* The second was that the City would be required to initiate and complete the County land use process and that it would have six months to do so.

As discussed below, DEQ's refusal to begin processing the Section 401 application until the County land use process is complete is wrong as a matter of law and policy.

II

DEQ'S POSITION IS WRONG
AS A MATTER OF LAW

The Arnold decision made two specific rulings that are applicable to this case.

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* The Attorney General's opinion is expected to be issued by the time this Commission meets to consider this petition.

First, the Court held that DEQ cannot deny a Section 401 application for reasons other than failure to comply with DEQ's EPA-approved water quality standards. The court stated that:

> The certificate which petitioners have to have from the state before they can proceed with the project is that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306 and 307 of CWA, 33 USC §§ 1311, 1312, 1313, 1316 and 1317. 33 USC § 1341(a)(1). Neither DEQ nor EQC found that the proposal violated any of those sections or any of the regulations adopted by the state under CWA authority. Violation of one of those sections or regulations is the only basis on which the state has authority under the CWA to deny the certificate. The power to issue the certificate is solely a creature of federal law; the state agencies are controlled by that law in their decisions on applications. They may not consider other factors than compliance with the provisions listed in 33 USC § 1341(a)(1) and with the state regulations in deciding whether to issue a certificate.

Attachment 1 hereto at pp. 4-5.

The Court's holding could not be more clear. Yet despite that holding, DEQ has told the City that it will dismiss the City's application unless it undertakes a land use process. DEQ's November 3, 1986 letter states that "DEQ is not attempting to deny 401 certification," but if the City refuses to comply with DEQ's directive in its letter, that is exactly what DEQ will do. As stated in DEQ's September 25, 1986 letter (p. 3):

> Failure to complete the application and provide the requested information within this time frame or within such other time as we may agree upon will be grounds for denial of certification.

The reason for such denial will be the City's failure to comply with a requirement other than DEQ's EPA-approved water quality standards. The Arnold decision simply does not allow DEQ to deny a Section 401 application for that reason.

The second holding of Arnold that is relevant here is that DEQ is authorized to provide as a condition to an issued Section 401 certificate that the developer must comply with such other requirements of state law as are related to water quality. In other words, if the Klamath County land use plan has requirements that are related to water quality, DEQ could provide in an issued Section 401 certificate that the City must comply with those requirements.*

DEQ's actions are at odds with this holding. They are a classic case of putting the cart before the horse. As noted, Arnold states that requirements of state law other than DEQ's EPA approved water quality standards are matters for a developer to meet after his water quality certificate is issued. DEQ would have the City apply for and complete the County land use process before the water quality certificate is issued. DEQ's position cannot be harmonized with Arnold.

DEQ's November 3, 1986 letter (p. 2) states that the City must initiate and complete the County land use process so that information can be developed to allow DEQ "to determine which provision of the local comprehensive plan may be water

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* It is the City's position that there is nothing in the County plan upon which a water quality condition in a Section 401 certificate can be based.

quality-related and thus appropriate conditions of a granted certificate."

This reasoning is misplaced. Even assuming for the sake of argument that the results of a land use process would be helpful to DEQ in fashioning appropriate conditions, DEQ is simply not permitted under Arnold to require that the City undertake the land use process in advance of issuing the certificate. Such requirement places DEQ in the position of having to deny the City's Section 401 application if the City were to refuse. As noted, such denial, which would not be based on DEQ's EPA-approved water quality standards, would not be allowed under Arnold.

Moreover, it is not really necessary, as DEQ states, for the City to complete the land use process in order for DEQ to attach appropriate conditions. DEQ is free to explore the land use plan with County officials in order to further understand the details of such plan, and DEQ's November 3, 1986 letter states that DEQ has already done so. This process would allow DEQ to make a judgment as to whether any requirements of the plan are related to water quality and are appropriate conditions for the granted water quality certificate without running afoul of Arnold.

In addition, the land use process will probably not even be helpful to DEQ in determining appropriate conditions for the issued certificate. The essence of determining such conditions is making the judgment as to whether any parts of the County plan are related to water quality. Since DEQ is the body

with the authority to issue water quality certificates, that is a judgment for DEQ, not the County, to make. Moreover, the County land use process has no provision in it for determining what requirements are or are not related to water quality. The County process provides that the County will determine whether an applicant meets various parts of the plan. Other than that certain parts of the plan specifically refer to "water quality" matters, there is nothing in the County process pursuant to which the County would say that any specific requirement does or does not relate to water quality.

In sum, the City believes that DEQ is misapplying the Arnold decision. DEQ simply cannot require that the City initiate and complete the County land use process as a condition to acting on the City's Section 401 application.

III

DEQ'S ACTIONS ARE WRONG
AS A MATTER OF POLICY

Putting aside the legal arguments, DEQ should begin processing the City's Section 401 application now as a matter of policy. As noted above, although the City believes that it would be legally justified in refusing to initiate the County process before issuance of the City's water quality certificate, the City has informed DEQ that it will file for the appropriate County approvals as soon as possible. At its November 17, 1986 council meeting, the City expects to authorize the filing of the appropriate application, and as the City has informed DEQ, that application should be filed around January 1, 1987.*

With the City's commitment to file that application and to diligently pursue the County land use approvals, there should be no reason that DEQ should need to hold up substantive processing of the Section 401 application. As indicated in DEQ's November 3, 1986 letter (p. 3), DEQ has evidently received assurances from Klamath County that the land use process can be completed in five to six months, or by May 1987, assuming a January 1987 filing. If DEQ were to begin substantive processing of the Section 401 application in December 1986, DEQ would have ample time to receive and analyze the results of the land use process within the one year in which DEQ must act on the Section 401 application.

In short, there is no reason why DEQ should have to delay substantive processing of the Section 401 application for six months. DEQ's concern with respect to having the results of the land use process before issuance of the certificate can be met without that delay.

It should be administrative policy to expedite administrative action and to prevent delays where possible. The present situation with the City's Section 401 application presents the Commission with the opportunity to conform to this policy without interfering with the staff's need to carefully consider the application. By the time the Commission considers this petition, the City's application will have been on file for

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* The City is taking these actions without waiving its legal position that it cannot be required to initiate and complete the County land use process prior to DEQ action on a Section 401 certificate.

four months. During that time no technical defects in the application have been identified, yet the City has been unable to convince DEQ to undertake substantive review. The City only wishes to have DEQ proceed with the exercise of DEQ's own expertise and function in this area, that is, administration of DEQ's EPA-approved water quality criteria. The City hopes and respectfully requests that this Commission will order DEQ to exercise this function forthwith.

For the foregoing reasons, the City requests that this Commission enter an order waiving O.A.R. 340-48-020(2)(i) and directing DEQ to immediately begin substantive processing of the City's Section 401 application.

Dated: November 17, 1986

Respectfully submitted,

Peter Glaser
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(202) 467-6370

Attorneys for the City of
Klamath Falls, Oregon

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In Re

LAVA DIVERSION PROJECT
FERC No. 5205
Deschutes County, Oregon.

ARNOLD IRRIGATION DISTRICT and GENERAL ENERGY DEVELOPMENT, INC., an Oregon corporation,

Petitioners - Cross-respondents,

v.

DEPARTMENT OF ENVIRONMENTAL QUALITY,

Respondent - Cross-respondent,

NORTHWEST ENVIRONMENTAL DEFENSE CENTER, an Oregon nonprofit corporation,

Respondent - Cross-petitioner.

(25-WQ-CR-FERC-P5205; CA A35731)

Judicial Review from Environmental Quality Commission.

Argued and submitted March 10, 1986.

Neil R. Bryant, Bend, argued the cause for petitioners - cross-respondents. With him on the brief were Benjamin Lombard, Jr., and Gray, Fancher, Holmes & Hurley, Bend.

Michael Huston, Assistant Attorney General, Portland, argued the cause for respondent - cross-respondent. With him on the brief were Dave Frohnmayer, Attorney General, James E. Mountain, Jr., Solicitor General, and Michael D. Reynolds and Mary J. Deits, Assistant Attorneys General, Salem.

Steven R. Schell, Portland, argued the cause for respondent - cross-petitioner. With him on the brief was Rappleyea, Beck, Helterline, Spencer & Roskie, Portland.

Before Warden, Presiding Judge, and Van Hoomissen and Young, Judges.

YOUNG, J.

Reversed and remanded for reconsideration on petition; affirmed on cross-petition.

1466N FILED: April 23, 1986.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Case Name: Arnold Irrig. Dist. v. DEQ

Appellate case number: A35731

Trial Court or agency case number: 25-WQ-CR-FERC-P5205

Prevailing party or parties: Petitioners on petition; cross-respondents on cross-petition.

[ ] No costs awarded

[xx] Costs awarded to the prevailing party or parties, payable by: Respondents on petition; cross-petitioner on cross-petition.

* * * * * * * * * * * * * *

FINAL ORDER*

IT IS ORDERED that on appeal or judicial review the prevailing party or parties recover from

costs and disbursements taxed at $_____, and attorney fees in the amount of $_____. (ORAP 11.03, 11.05, and 11.10.)

IS FURTHER ORDERED that judgment be entered in favor of the Judicial Department and against

in the amount of $_____ for filing fees not waived and unpaid at the time of entry of the final written disposition of this case. ORS 21.605.

Date Supreme Court denied review:

DATED: COURT OF APPEALS
(seal)

*This section will be completed when the appellate judgment is prepared. The Records Division of the Office of the State Court Administrator will prepare the appellate judgment, enter it in the appellate register, and mail copies to the parties within the time and in the manner specified in ORAP 11.03(3). See also ORS 19.190(1).

YOUNG, J.

This case concerns the criteria which the Department of Environmental Quality (DEQ) may use in determining whether to issue a certificate of compliance with the Federal Water Pollution Control Act (also known as the Clean Water Act (CWA))[1] and what conditions it may place on the certificate. Petitioners seek review of a final order of the Environmental Quality Commission (EQC) affirming a DEQ decision denying them a certificate of compliance for a hydroelectric project on the Deschutes River. DEQ denied the certificate, because petitioners did not provide a statement from Deschutes County that the project was compatibile with the county's comprehensive plan and land use ordinances. Petitioners assert that federal law limits DEQ's consideration to water quality concerns and that the land use provisions are not related to water quality. Respondent Northwest Environmental Defense Center cross-petitions and seeks to require DEQ to deny the certificate on the additional ground that, under DEQ's regulations, hydroelectric power is not a beneficial use on the affected portion of the river. We reverse and remand for further proceedings on the petition and affirm on the cross-petition.

Petitioners are jointly involved in a proposal to divert water from the Deschutes River south of Bend for

hydroelectric generation. The project will return the water to the river some distance downstream after using the natural fall of the river to produce power. Petitioner General Electric Development, Inc., holds a planning and design permit from the Federal Energy Regulatory Commission (FERC) for the project, and petitioners have applied to FERC for a license to build and operate it. Because the project involves a discharge into navigable waters, section 401 of the CWA, 33 USC § 1341,[2] requires petitioners to provide a certificate that the project complies with the act before FERC may issue the license. Under CWA, the certifying body is usually not a federal agency; rather, it is usually a state agency responsible for administering the act. The compliance certified is not with standards which the federal government has established but with standards adopted by the state and only approved by the federal Environmental Protection Agency (EPA).[3] This hybrid arrangement, with state agencies acting under federal law, is the source of much of the confusion in this case.

Congress' purpose in adopting the CWA was "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a), 33 USC § 1251(a). It did not, however, seek to achieve its purpose by exercising federal control and administration over those waters. Rather, "[i]t is the policy of the Congress to recognize, preserve, and

protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator [of the EPA] in the exercise of his authority under this [Act]." 33 USC § 1251(b).

In accordance with the emphasis on state responsibility and administration, the CWA places primary responsibility for the development of water quality standards on the states, subject to EPA approval. See, e.g., CWA § 303(a), 33 USC § 1313(a). Only if the state fails to act, or if its standards are less strict than those the act requires, will the federal government intervene directly. See, e.g., 33 USC § 1313(b); Mississippi Comm. on Natural Resources v. Costle, 625 F2d 1269 (5th Cir 1980). Federal requirements for the content of the regulations are only minimums; state standards may be stricter. CWA § 510, 33 USC § 1370; 40 CFR § 131.4; Homestake Min. Co. v. U.S. Environ. Protect., 477 F Supp 1279, 1283 (D SD 1979).

States establish standards under 33 USC § 1313 by first designating the uses of the waters which they wish to assure; they then adopt water quality standards which will allow the designated uses to be actual uses. "Such standards shall be such as to protect the public health or welfare,

enhance the quality of water and serve the purposes of this [Act]. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation." 33 USC § 1313(c)(2). The state standards applicable to the "Deschutes Basin" are found in OAR 340-41-562 through OAR 340-41-580; EPA has approved them. Hydroelectric generation is not one of the designated uses which those standards are designed to foster on the stretch of the river in question. OAR 340-41-562, table 9.

The certificate which petitioners have to have from the state before they can proceed with the project is that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306 and 307 of CWA, 33 USC §§ 1311, 1312, 1313, 1316 and 1317. 33 USC § 1341(a)(1). Neither DEQ nor EQC found that the proposal violated any of those sections or any of the regulations adopted by the state under CWA authority. Violation of one of those sections or regulations is the only basis on which the state has authority under the CWA to deny the certificate. The power to issue the certificate is solely a creature of federal law; the state agencies are controlled by that law in their decisions on applications. They may not consider other factors than

compliance with the provisions listed in 33 USC § 1341(a)(1) and with the state regulations in deciding whether to issue a certificate. EQC therefore erred when it affirmed DEQ's denial on the basis of a failure to show compliance with state and county land use requirements. We must, therefore, remand the case for reconsideration under the correct legal standard. ORS 183.482(8)(a)(B).[4]

That EQC erred in affirming the denial of the certificate does not resolve this case. Although the state could not deny the certificate on the grounds stated, 33 USC § 1341(d) does allow it to place limitations on the certificate if the limitations are

> "necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with <u>any other appropriate requirement of State law</u> set forth in such certification * * *." (Emphasis supplied.)

Any limitation that the state imposes becomes a condition on any federal license or permit issued pursuant to the certification.

Although the emphasized language does not allow DEQ to consider land use and other issues outside the CWA in deciding whether to approve certification applications, it may be able to consider those factors in deciding what limitations to place

on the certificate. Because the question of the relevance of land use regulations to limitations on a certificate is certain to arise on remand, we discuss it here.[5]

The legislative history of the phrase in question is minimal. The conference committee which developed the final version of the bill added it; there was nothing precisely comparable previously. The committee's report says only that under this provision "a State may attach to any Federally issued license or permit such conditions as may be necessary to assure compliance with water quality standards in that State." That statement gives little additional hint of Congress' intent. We believe, however, that there are sufficient indications of what kinds of other state requirements Congress considered "appropriate" for DEQ and EQC to use.

We look first at the purpose of the act and at what Congress could have said but did not. The purpose of CWA is "to restore and maintain the * * * integrity of the Nation's waters." 33 USC § 1251(a). Under the act, primary responsibility for determining what constitutes the integrity of the nation's waters and what is necessary to restore and maintain that integrity is with the states. The act requires the states to exercise their responsibility by adopting water quality standards under 33 USC § 1313 and to base those standards on the uses which the states wish to encourage. The

specific effluent limitations and performance standards provided in other sections of the act are designed to achieve the quality standards of section 1313. Certainly, section 1313 water quality standards are appropriate limitations in determining what limits to place on a certificate.

The section 1313 standards are not, however, the only water quality standards which states may enforce; the states have inherent authority, independently of the CWA, to protect and plan the use of their waters. Congress did not make the section 1313 standards the exclusive water quality criteria which the states may use in placing limitations on section 1341 certificates. If Congress had intended to do so, it could have specifically mentioned those standards in section 1341(d), but it did not. Rather, it allowed the states to enforce <u>all</u> water quality-related statutes and rules through the state's authority to place limitations on section 1341 certificates. Congress thereby required federal licensing authorities to respect all state water quality laws in licensing projects involving discharges to navigable streams. "[A]ny other appropriate requirement of State law" is thus a Congressional recognition of all state action related to water quality and Congressional authorization to the states to consider those actions in imposing limitations on CWA certificates. It does not, however, allow limitations which are not related to water

quality.

Although it functions as a federal agent in issuing certificates of compliance, DEQ is a state agency and must comply with state law to the extent that federal law does not supersede it. That law requires DEQ to act, with respect to programs affecting land use, in compliance with the statewide land use goals and in a manner compatible with acknowledged comprehensive plans. ORS 197.180(1). DEQ therefore must include limitations reflecting the goals and plans in section 1341 certificates to the maximum extent that the CWA allows--that is, to the extent that they have any relationship to water quality. Only if a goal or plan provision has absolutely no relationship to water quality would it not be an "other appropriate requirement of State law." In that case, and only in that case, would the CWA override DEQ's obligations under ORS 197.180(1).

We cannot say at this point what land use provisions would relate to water quality. Many uses of land may affect water quality, even if they do not immediately result in direct discharges to the state's waters. Part of the goals and plans clearly relate to water quality--Goal 6 most obviously--but others may also have a significant, if indirect, impact. Limitations on development or on other uses of land near waters may fit into the category. The precise determination is for

DEQ in the first instance. Because DEQ required a certificate of full compliance with the Deschutes County land use provisions, it did not consider the extent to which they may have related to water quality. On remand, it must examine their relationship to water quality. If it grants petitioners' request for a certificate, it must require, as a condition of that certificate, that petitioners comply with the water-related portions of the Deschutes County land use regulations. ORS 197.180(1). It must also consider the effects of the recently adopted criteria for certification, ORS 468.732, OAR 340-48-025(2)(f)(C), and of DEQ's modified procedure for determining compliance with land use plans. OAR 340-48-020(2)(i), (6)(d).[6]

In its cross-petition, Northwest Environmental Defense Center asserts that DEQ may not grant a certificate on any condition, because hydroelectric generation is not a designated use for the particular portion of the Deschutes River. Cross-petitioner misunderstands the role that the designated uses play in CWA's framework. 33 USC § 1313(c)(2) provides that a "water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses." The purpose of designating uses is to determine what the water quality criteria are intended to do. The purpose of those criteria is

to make the water adequate for the designated uses. They do not require that the uses of the water be limited to the ones designated. Nothing in the provision places any limitations on the use actually made of the waters, so long as the quality of the waters does not fall below that provided in the criteria. DEQ determines what uses to protect; it does not determine that other uses are forbidden. If a hydroelectric project does not degrade the water below the quality which the criteria require, and if no other water quality-related law prohibits such a project, it is irrelevant to certification under the CWA whether hydroelectric generation is a designated use. DEQ did not err in this respect.

Reversed and remanded for reconsideration on petition; affirmed on cross-petition.

FOOTNOTES

1

The Water Pollution and Control Act was originally adopted in 1948. Pub. L. 80-845, 62 Stat 1155. It was extensively amended in 1972. Pub. L. 92-500, 86 Stat 816. References in this opinion to the Clean Water Act are to the act after the 1972 amendments.

2

For ease of reference, our first citations to a CWA section include both the section number of the act and the United States Code section where it is compiled. Thereafter, we generally cite only to the code.

3

EQC is the Oregon agency with ultimate authority for adopting the standards and issuing the certificates. ORS 468.730. However, it functions primarily as an appellate body, and DEQ does most of the actual work and promulgates the standards.

4

Despite the parties' extensive arguments, this case

does not involve federal preemption of state regulation. The CWA is a federal act in which Congress has provided for significant state involvement. 33 USC § 1341 gives the states a veto over federal actions. What criteria the states may consider in exercising that veto is a matter of federal, not state, law. The states, in passing on applications for certificates, act in part as agents of the federal government, and they may act only where Congress has permitted. This case is therefore unlike First Iowa Hydro-Elec. Coop v. Federal Power Com'n, 328 US 152, 66 S Ct 906, 90 L Ed 1143 (1946), in which the Supreme Court held that the Federal Power Act preempted all inconsistent state regulation and that section 9(b) of that act, 16 USC § 802(b), did not preserve an independent state role in determining the requirements for a hydroelectric project. In the CWA, Congress has created an independent state role in all federal actions involving discharges into navigable waters; the question is not Congressional preemption but what criteria Congress intended the states to consider in deciding whether to issue certificates of compliance with the act.

5

DEQ and EQC relied on the emphasized language in denying the certificate, and the parties discuss its meaning

and background in their briefs. Although DEQ is incorrect in treating this provision as allowing it to deny the certificate for failure to comply with requirements outside the CWA, the language is important in determining what conditions it may place on a certificate on remand.

6

Of course, whether the state can enforce non-water quality-related land use requirements against a federal licensee is beyond the scope of this case.

1400-031 Ltr
F.1

DUNCAN, WEINBERG & MILLER, P.C.

OCT 03 1986

RESOURCE MANAGEMENT INTERNATIONAL INC.

SALT CAVES HYDROELECTRIC PROJECT

P.O. BOX 237 • (500 KLAMATH AVENUE) • KLAMATH FALLS, OREGON 97601 • PHONE (503) 883-5320

August 25, 1986

Mr. Fred Hansen
Director
Department of Environmental Quality
522 S.W. Fifth Avenue
P. O. Box 1760
Portland, Oregon 97207

Subject: Salt Caves Hydroelectric Project Application for Certification of Compliance with Water Quality Requirements and Standards

Dear Mr. Hansen:

Transmitted herewith is the City of Klamath Falls' Application for Certification of Compliance for its proposed Salt Caves Hydroelectric Project.

Should you or your staff have any questions pertaining to the enclosed, or should you wish additional information, please contact me at:

Resource Management International, Inc.
1010 Hurley Way
Suite 500
Sacramento, CA 95825
(916) 924-1534

Sincerely,

William G. Miller
Project Director

Enclosure

SALT CAVES HYDROELECTRIC PROJECT

APPLICATION FOR CERTIFICATION OF COMPLIANCE WITH WATER QUALITY REQUIREMENTS AND STANDARDS

The City of Klamath Falls ("City") submits this application for certification of compliance of its proposed Salt Caves Hydroelectric Project ("Project") with the water quality requirements and standards of the Department of Environmental Quality ("DEQ") and the Environmental Quality Commission ("EQC"). This application is submitted pursuant to section 401 of the Federal Water Pollution Control Act, 33 U.S.C. § 1341, and DEQ's regulations adopted pursuant to that Act, O.A.R. 340-48-005 et seq. and 350-41-962 et seq.

O.A.R. 340-48-020(2)(a)-(j) specifies the information that must be included in an application for project certification. This information is contained in the attached material. This material includes the following sections of the City's draft license application for the Federal Energy Regulatory Commission ("FERC"): Volume I: Initial Statement, Exhibit A (Project Description), Exhibit B (Project Operation and Resource Utilization), Exhibit C (Construction Schedule), Exhibit D (Project Costs and Financing), Exhibit F (Preliminary Design Drawings) and Exhibit G (Project Maps); Volume II: Exhibit E, Section 1 (General Description of the Locale), Section 2 (Report on Water Use and Water Quality) and Section 3 (Report on Fish, Wildlife and Botanical Resources); and Volumes VI and VII: Preliminary Supporting Design Report and Appendices. Separate tables of contents are included in each of these exhibits or sections. Also included in the attached material are two letters relevant to O.A.R. 340-48-020(2)(i). An index is set forth below showing where the information required in O.A.R. 340-48-020 (2)(a)-(j) may be found in the attached materials.

A complete copy of the City's draft license application was provided to DEQ under cover of letter dated August 1, 1986 for review and comment in connection with the preparation of a final license application for FERC. The City would be willing to provide additional complete copies as part of its application for project certification should DEQ so desire.

The following indexes the attached material with the filing requirements of O.A.R. 340-48-020(2)(a)-(j) and provides additional information responsive to those requirements.

(a) Refer to Volume I, Initial Statement, Item 3 of draft license application.

(b) Refer to Volume I, Initial Statement, Item 3 of draft license application.

(c) Refer to Volume I, Exhibit G of draft license application.

(d) United States Department of the Interior, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon, 97504. Pacific Power & Light Company, 920 S.W. Sixth Avenue, Portland, Oregon, 97204.

(e) Refer to the following portions of the draft license application:

- Volume I, Initial Statement
- Volume I, Exhibits A, B, C, D, F, and G
- Volume VI, Preliminary Supporting Design Report and Appendices A and B
- Volume VII, Preliminary Supporting Design Report Appendices C-H

(f) Klamath River

(g) The environmental background information required by the federal licensing agency (FERC) is contained in Exhibit E of the City's draft license application. Because of the volume of this material and because some of this material is not relevant, the City attaches only sections 1-3 of Exhibit E. As noted above, the City will provide additional copies of its full draft license application if DEQ so desires.

(h) No public notices or supporting information has been issued by FERC for the Project.

(i) Attached are two letters. The first is dated June 26, 1985 from Klamath County to DEQ in connection with the City's previous proposal for water quality certification. The County indicated in this letter that it is unable to determine consistency with land use requirements because the City has not yet filed an appropriate application. The City, as of the date of the instant filing, has not filed such application. The second letter is dated May 5, 1986 from the Klamath County Planning Department explaining that the County's land use critique of the Project will take place when the City files its application with the County.

(j) Under section 27 of Chapter 569, Oregon Laws 1985, the City has an exemption to the standards of that Chapter and, therefore, to the rules adopted by the Water Resources Commission ("WRC") and Energy Facility Siting Council ("EFSC") implementing such standards. The City's proposed project is a hydroelectric project in excess of 25 megawatts for which funding has been approved by the governing body of the City before May 15, 1985 within the meaning of section 27.

O.A.R. 340-48-025(2)(f) provides that in order for DEQ to issue project certification, DEQ must make the four findings set forth therein. The City believes that the attached materials provide a more than adequate basis for DEQ to make the necessary findings. Should DEQ believe that more information is necessary, the City would be happy to provide it.

The City believes that two of the required findings merit further comment.

First, O.A.R. 340-48-025(2)(f)(A) requires that DEQ find that the Project meets the applicable rules adopted by the EQC on water quality, which rules are set forth in O.A.R. 340-41-965 et seq. The City is concerned that one of these rules, O.A.R. 340-41-965(2)(b)(A), respecting water temperature, cannot literally be applied to diversion hydroelectric projects such as that proposed by the City. Such projects have no identifiable "mixing zones" or "control points." It would appear that such temperature standard was intended to be applied to thermal discharges, not to diversion hydroelectric projects.

Given the impossibility of applying the temperature standard literally to the Project, the City would suggest that DEQ apply the standard in light of its purpose, that is, to protect the salmonid population in the affected portion of the Klamath River. Applying the standard in this fashion, DEQ would examine whether the Project would cause temperature increases hazardous to the salmonid population. The City believes that the attached material in section 3.1 of the draft license application, particularly on pages 3.1-82 through 3.1-110 and 3.1-112 through 3.1-118, demonstrates that the Project will not cause negative temperature-related effects to the salmonid population and that the Project, in fact, will be beneficial to such population.

Second, O.A.R. 340-48-025(2)(f)(C) requires that DEQ find that the Project is consistent with "standards established in sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules adopted by the Water Resources Commission and Energy Facility Siting Council implementing such standards." As noted above, the

Project is exempted from sections 3 and 5 of Chapter 569, Oregon Laws 1985 and, therefore, from administrative rules implementing such sections. This standard, therefore, should not be applied to the Project.

The City also believes that it is necessary to comment on O.A.R. 340-48-025(2)(g), which provides that for "projects requiring a site certificate from the Energy Facility Siting Council or a water appropriation permit from the Water Resources Commission, DEQ shall include a condition requiring such certificate or permit to be obtained prior to initiating the activity for which 401 certification is granted." The City believes that this regulation is no longer valid under Arnold Irrigation District v. Department of Environmental Quality, 79 Or. App. 136, 717 P.2d 1274 (1986), rev. denied, ___ P.2d ___ (Or. 1986), in which the Court of Appeals held that DEQ's standards implementing section 401 must be related to water quality. Virtually none of the requirements that an applicant must meet to obtain a site certificate from EFSC or a water appropriation permit from WRC are related to water quality. Under Arnold Irrigation District, it is apparent that the City cannot be required to meet these EFSC and WRC requirements in order to obtain project certification from DEQ.

The only EFSC and WRC standards that relate to water quality simply adopt DEQ's standards. See O.A.R. 690-74-045(9) and O.A.R. 345-78-040(1). It would obviously be unfair to condition project certification on the City obtaining positive findings from EFSC and WRC with respect to those standards. The effect of such a condition would be to require the City to obtain a finding from three agencies that the Project meets the same water quality standards. Of the three agencies, only DEQ has water quality expertise, and only DEQ should apply its water quality regulations.

In sum, the City believes that O.A.R. 340-48-025(2)(G) should not be applied to the Project.

As noted above, the City is ready to provide any additional information that is necessary and to work with DEQ in addressing any of its concerns.

Respectfully submitted,

William G. Miller
Project Director
Salt Caves Hydroelectric Project

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

September 25, 1986

Resource Management International, Inc.
Attn: William G. Miller, Project Director
1010 Hurley Way
Suite 500
Sacramento, CA 95825

Dear Mr. Miller:

The following documents were received in this office on August 26, 1986:

1. Transmittal letter to DEQ from William G. Miller, RMI Inc., dated August 25, 1986.

2. Application for Certification of Compliance with Water Quality Requirements and Standards, Salt Caves Hydroelectric Project — consisting of 6 pages plus copies of a June 26, 1985 letter from the Klamath County Board of Commissioners and letters dated June 26, 1985 and May 5, 1986 from the Klamath County Director of Planning.

3. Volumes I, II, VI, and VII of the Draft Application to the Federal Energy Regulatory Commission (FERC) for License, Salt Caves Hydroelectric Project.

We have reviewed the submitted material under OAR 340-48-020(2) for completeness as an application for Certification of Compliance with Water Quality Requirements and Standards (401 Certification) and note the following deficiencies:

1. OAR 340-48-020(2)(g) requires copies of the environmental background information required by the federal permitting or licensing agency or such other environmental background information as may be necessary to demonstrate that the proposed project or activity will comply with water quality requirements. Volume II of the Draft Application to FERC for License for the Salt Caves Hydroelectric Project was submitted to satisfy this requirement. We note that Volume II is but 1 of 4 volumes that make up "Exhibit E - Environmental Report" to the Draft FERC Application. In order to comply with the rule and supply the "environmental background information required by the federal permitting or licensing agency", Volumes III, IV, and V must be submitted.

2. OAR 340-48-020(2)(i) requires "a statement from the appropriate local government whether the project is

compatible with the acknowledged local comprehensive land use plan and land-use regulations... If the project is not compatible or in compliance, the statement shall include reasons why it is or is not." The application states that Klamath County (County) is unable to determine consistency because the City of Klamath Falls (City) has not yet filed an appropriate application. The application further states that the City, as of the date of filing the 401 certification application, has not filed an application with the County. No indication is given as to when such an application might be filed with the County.

The decision in Arnold Irrigation District v. DEQ, 79 Or. App 136 (1986), requires DEQ to examine the relationship of local land use provisions and your proposal to water quality. See also, ORS 197.180(1). If any of those provisions are water quality-related, DEQ must require compliance with those land use provisions as a condition of Sec. 401 certification; 79 Or. App at 143; see also, 33 USC Sec. 1341(d). The only means by which DEQ can determine whether such conditions are necessary is by the City providing the information required under OAR 340-48-020(2)(i). That information must be obtained from Klamath County.

The information provided is incomplete and does not respond to the requirement of OAR 340-48-020(2)(i).

3. OAR 340-48-020(2)(j) requires specific documentation of compliance with the hydroelectric project standards established in Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules adopted by the Water Resources Commission and the Energy Facility Siting Council implementing such standards. The application claims the project is exempt from such standards pursuant to Section 27 of the same Act. No specific documentation is presented to support such a claim of exemption. However, we are informed that your counsel has provided documentation to the Oregon Attorney General's Office. Also, please provide DEQ with a copy of documentation you believe supports this claim of exemption. Also, please be advised that we have asked the Attorney General for an opinion on this matter.

4. The documents submitted as attachments to your application are "DRAFT" documents that are part of the second stage consultation process pursuant to FERC licensing rules. The potential is that these documents may be revised in the near future in response to comments received during this second stage consultation process. It is our expectation that the documents filed as part of the 401 certification application

are not "draft" and therefore can be relied upon. Unless we are advised otherwise, we will assume that the documents filed as part of the 401 certification application are final and not subject to change after we determine your application to be complete for processing.

Pursuant to OAR 340-48-020(3), we request that you provide the above requested information to complete your application within 60 days. Failure to complete the application and provide the requested information within this time frame or within such other time as we may agree upon will be grounds for denial of certification.

In order to facilitate our prompt processing of your application once it is determined to be complete, we request the following:

1. Two additional copies of the complete application.

2. We note that on pages 37 and 38 of Exhibit A Project Description, mention is made of a potable water treatment system and a sewage treatment module which will provide tertiary treatment and discharge treated waste into the tailrace. We find no other information in the documents on the projected quantity and quality of wastes generated, the specific treatment processes proposed, or the quantity and quality of effluent projected to be discharged to the Klamath River via the proposed tailrace. We also note that no mention is made in the initial statement of the need to obtain an NPDES permit from DEQ pursuant to ORS 468.740 and Section 402 of the Federal Clean Water Act for such discharge. Please provide us with detailed documentation of your proposal for sewage disposal.

3. A copy of detailed documentation for the water quality simulation models, together with work papers, input data, and computer printouts for the simulations which form the basis for conclusions regarding water quality impacts of the project. This information will greatly facilitate our ability to review your application.

We request that this second set of information be submitted with the information request above. Please understand that, if and when, we determine your application to be complete, we may request additional information as needed to judge possible water quality impacts.

Finally, To assist you in your planning, we would anticipate the following procedure for processing your application:

a. Once we determine your application to be complete, we will notify you of the date of such completion in writing as provided by OAR 340-48-025(1).

b. OAR 340-48-020(4) provides for public notice of a completed application and opportunity for comment. OAR 340-48-020(5) provides for opportunity for a public informational hearing upon request. We expect significant interest in your application and therefore plan to proceed directly to public notice of a hearing on your application, once it is determined to be complete. We would expect to give at least 30 days notice of such a hearing and allow about 10 days after the hearing for final submission of any written comments for the record. Such a hearing will be a public information hearing only, not a contested case proceeding, and will be held for the sole purpose of receiving input from the public regarding your completed application.

c. Once the public hearing record is closed, DEQ will review the application and the information received in the public input process and will complete its determination on the application. Due to the complexity of the application, we would expect to need at least 90 days to complete such an analysis.

d. If certification is granted and the applicant is dissatisfied with any conditions of certification, or if certification is denied, the applicant will have opportunity to request a contested case hearing before the EQC or its authorized representative.

Based on this process, we would expect it to take us longer than 90 days from the date of receiving a complete application to complete processing of your application. We would therefore expect to advise you, upon completion of your application, of our need for a longer time for processing pursuant to OAR 340-48-025(1).

Sincerely,

Fred Hansen
Director

FH:h
WH1178 (HLS/GDC)

RESOURCE MANAGEMENT INTERNATIONAL INC.

1010 HURLEY WAY • SUITE 500
SACRAMENTO, CALIFORNIA 95825
(916) 924-1534

October 17, 1986

Fred Hansen, Director
Department of Environmental Quality
522 S.W. Fifth Avenue
Box 1760
Portland, Oregon 97207

Subject: City of Klamath Falls, Salt Caves Hydroelectric Project

Dear Mr. Hansen:

Your letter of September 25, 1986, requested certain information with respect to the City of Klamath Falls' request for certification of the Salt Caves Hydroelectric Project under Section 401 of the Federal Water Pollution Control Act. Our response is as follows:

1. With respect to your first deficiency request on page 1 of your letter, the City provided you with three copies of the Draft License Application on October 14, 1986.

2. With respect to your second deficiency request on pages 1 and 2 of your letter, the DEQ's land use requirement was the subject of much discussion at the City's meeting with DEQ on October 14, 1986. As we understand the outcome of that meeting, the City and DEQ will be speaking again shortly about the land use requirement. Pending those discussions, the City will hold off submitting any further information on this issue.

3. With respect to your third deficiency request on page 2 of your letter, we are enclosing the information that we provided to the Attorney General's office supporting the City's qualification for an exemption under H.B. 2990. As shown in that information, funding for the Salt Caves Hydroelectric Project was approved by the governing body of the City by Ordinance No. 6488, dated March 18, 1985, and Resolution No. 3040, dated May 1,

1985. Since this approval was made prior to May 15, 1985, the City qualifies for an exemption under the terms of Section 27 of H.B. 2990 and under DEQ's regulations implementing H.B. 2990. As also shown in the attached information, the City did not lose its exemption from H.B. 2990 by modifying the design of the project.

4. With respect to your fourth deficiency request on pages 2 and 3 of your letter, as we explained at the October 14, 1986 meeting, the City's FERC License Application is, in fact, at this time a draft. We expect to have a final application by, or shortly after, the end of this month.

As you are aware, it is not unusual for Section 401 applications for hydroelectric projects to be filed by prospective license applicants when their license applications are still in draft. Many prospective license applicants even file Section 401 applications at the preliminary permit stage, prior to preparation of their draft license applications. Indeed, FERC's regulations require that a Section 401 application be filed prior to filing of a final FERC license application

We do not anticipate that the City's Final FERC License Application will differ significantly from the Draft License Application provided to you, particularly on water quality issues. However, since we have not yet received all agency comments on the draft, obviously no guarantees can be made. As noted, we will have the Final License Application available shortly, and will promptly supply it to DEQ. This should obviate any problems.

5. With respect to your first additional information request on page 3 of your letter, as noted, three copies of the license application were proved to you on October 14, 1986.

6. With respect to your second additional information request on page 3 of your letter, enclosed is detailed documentation of our proposal for sewage disposal.

7. With respect to your third additional information request on page 3 of your letter, detailed documentation for the water quality simulation models will be provided to Bruce Cleland of your office on October 21, 1986.

We hope this adequately addresses your letter. If you should require further information, please do not hesitate to contact Ken Carlson of Beak Consultants, Inc. or Joe Field of Stone & Webster Engineering Corporation, on technical issues; Peter Glaser of Duncan, Weinberg & Miller, P.C. on legal issues; or myself.

Thank you.

Sincerely,

William G. Miller
Project Director

Enclosures

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

November 3, 1986

Mr. William G. Miller, Project Director
Resources Management International, Inc.
1010 Hurley Way, Suite 500
Sacramento, CA 95825

Re: City of Klamath Falls, Proposed
Salt Caves Hydroelectric Project

Dear Mr. Miller:

The Department of Environmental Quality (DEQ) has received the following documents submitted in response to our letter to you dated September 25, 1986:

A. Three complete copies of the City of Klamath Falls' (City) draft FERC License Application delivered to our offices on October 14, 1986.

B. Your letter dated October 17, 1986, received in DEQ offices on October 20, 1986, together with attachments regarding (1) project authorization and funding by the City of Klamath Falls, and (2) sewage disposal.

C. Information regarding water quality simulation modeling delivered to DEQ offices on October 21, 1986.

Items remaining to be submitted or resolved before DEQ may consider the City's application to be complete are:

1. "A statement from the appropriate local government whether the project is compatible with the acknowledged local comprehensive land use plan and land use regulations .... If the project is not compatible or in compliance, the statement shall include the reasons why it is or is not." (OAR 340-48-020(2)(i))

   At our meeting on October 14, 1986, this item was discussed at length. We understand the City's position as presented at the meeting to be as follows:

   -- The City intends to file an application for land use approval with Klamath County in January 1987, and expects the review and approval process to take more than one (1) year to complete;

-- The City questions the need to supply the information required by the EQC rule because it interprets the Court of Appeals decision in Arnold Irrigation District v. DEQ to provide that DEQ cannot use land use information in determining whether or not to grant certification;

-- The City believes DEQ should waive the current Environmental Quality Commission (EQC) rule and proceed with processing the City's 401 certification application without the City having obtained from Klamath County information on the applicable land use provisions, the degree of compliance with such provisions, and identification of potential water quality relationships of such provisions;

-- The City believes that DEQ should condition a granted certificate to require the City to comply with any land use provisions that are subsequently determined upon completion of the County's process to be water quality-related.

DEQ, in turn, maintained that it has not been provided any evidence that compliance with the rule (OAR 340-48-020(2)(i)) is unreasonable or impossible. DEQ further advised the City that the information requested under the rule is necessary for DEQ to determine which provisions of the local comprehensive plan may be water quality-related and thus appropriate conditions of a granted certificate.

Since our meeting on October 14, 1986, department staff have met with the Klamath County Planning Department staff to better understand the local process. The County has advised DEQ that it could complete its review and decision process within 5 to 6 months after an application is filed. (See attached letter) The County also stated that it would consider it to be inappropriate for DEQ to process the City's application and receive public comment on land use issues (a necessary part of the DEQ public notice and public input process) when the local process including public hearings has not been completed.

The County Planning Department's position is consistent with DEQ's obligation under state law to act compatibly with local land use requirements, as well as with the requirements under OAR 340-48-020 that the County be the initial forum for land use determinations. We are not inclined to waive this rule when the City has not taken steps to initiate, let alone complete, the local land use process. Nor do we think that Arnold Irrigation District proscribes application of OAR 340-48-020(2)(i) in this instance. DEQ is not attempting to deny 401 certification under this rule, but only to gather the information necessary to make findings whether conditions are necessitated by water quality-related provisions of the County's land use requirements.

In summary, we are not prepared to waive or postpone the requirement that a statement from the County regarding land use compatibility be submitted before the City's application may be considered complete.

2. As previously noted, we have requested an opinion from the Attorney General regarding your claim for exemption from the requirements of Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules promulgated pursuant thereto by the Water Resources Commission and the Energy Facility Siting Council. We have not received that opinion as of this date.

We hope the City will provide the needed information to complete the City's application at the earliest practicable date. In light of the information provided by Klamath County, we request that the information needed to complete the application be submitted within 6 months, rather than the 60 days noted in our previous letter.

Sincerely,

Fred Hansen
Director

FH:r
DOR171.6
cc Klamath County
Planning Department
FERC
Peter Glaser

Klamath County ~ Planning Department

VETERANS MEMORIAL BUILDING — 503-882-2501 — KLAMATH FALLS, OREGON 97601
COURTHOUSE

October 29, 1986

Mr. Glen Carter
Water Quality Division
Department of Environmental Quality
811 SW 6th Street
Portland, OR 97204

Dear Mr. ~~Carter~~ Glen:

To begin with, I would like to thank both you and Harold Sawyer for traveling down to Klamath to visit with us last week. I'm sure that because of the complexity of this issue, we will probably have to meet again. I suppose it will be my turn to travel north, but that will be okay.

My staff and I sat down today to outline the exact process that will need to be followed at the County level when the City of Klamath Falls applies for the Salt Caves Dam approvals and permit.

As we discussed, there will be State LCDC Goal issues, local Comprehensive Plan Policy issues, and Land Development Code requirements that will need to be addressed by the applicant.

I would anticipate that after a complete application is submitted to this Department, I will be able to schedule the first public hearing within 75 days. As complex as this may seem, the Klamath County Planning Commission, sitting in a joint hearing with the Board of County Commissioners, should be able to take all relevant testimony, wrestle with the issues, and arrive at a decision within a six-month time frame.

So, if I receive a complete application on January 1, 1987, I would optimistically expect hearings to begin in mid-March and conclude by the end of May, 1987.

I will stay in touch with you on this matter, as I hope you will with me. Give me a call anytime.

Sincerely,

Roy R. Huberd
Director of Planning

kb
c: Chairman of the Board of County Commissioners
Bob Boivin, County Legal Counsel
Bill Miller
Mel Lucas

DIVISION 48

CERTIFICATION OF COMPLIANCE WITH WATER QUALITY REQUIREMENTS AND STANDARDS

Purpose

340-48-005 The purpose of these rules is to describe the procedures to be used by the Department of Environmental Quality for receiving and processing applications for certification of compliance with water quality requirements and standards for projects which are subject to federal agency permits or licenses and which may result in any discharge into navigable waters or impact water quality.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Definitions

340-48-010 As used in these rules unless otherwise required by context:

(1) "Certification" means a written declaration by the Department of Environmental Quality, signed by the Director, that a project or activity subject to federal permit or license requirements will not violate applicable water quality requirements or standards.

(2) "Clean Water Act" means the Federal Water Pollution Control Act of 1972, Public Law 92-500, as amended.

(3) "Coast Guard" means U.S. Coast Guard.

(4) "Commission" means Oregon Environmental Quality Commission.

(5) "Corps" means U.S. Army Corps of Engineers.

(6) "Department" or "DEQ" means Oregon Department of Environmental Quality.

(7) "Director" means Director of the Department of Environmental Quality or the Director's authorized representative.

(8) "Local Government" means county and city government.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Certification Required

340-48-015 Any applicant for a federal license or permit to conduct any activity, including but not limited to the construction or operation of facilities which may result in any discharge to waters of the state, must provide the licensing or permitting agency a certification from the Department that any such activity will comply with Sections 301, 302, 303, 306, and 307 of the Clean Water Act which generally prescribe effluent limitations, water quality related effluent limitations, water quality standards and implementation plans, national standards of performance for new sources, and toxic and pretreatment effluent standards.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Application for Certification

340-48-020 (1) Except as provided in section (6) belo completed applications for project certification shall be filed directly with the DEQ.

(2) A completed application filed with DEQ shall contain, at a minimum, the following information:

(a) Legal name and address of the project owner.

(b) Legal name and address of owner's designated official representative, if any.

(c) Legal description of the project location.

(d) Names and addresses of immediately adjacent property owners.

(e) A complete description of the project proposal, using written discussion, maps, diagrams, and other necessary materials.

(f) Name of involved waterway, lake, or other water body.

(g) Copies of the environmental background information required by the federal permitting or licensing agency or such other environmental background information as may be necessary to demonstrate that the proposed project or activity will comply with water quality requirements.

(h) Copy of any public notice and supporting information, issued by the federal permitting or licensing agency for the project.

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

(j) Specific detailed documentation of compliance with the hydroelectric project standards established in Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules adopted by the Water Resources Commission and Energy Facility Siting Council implementing such standards.

(3) The DEQ reserves the right to request any additional information necessary to complete an application or to assist the DEQ to adequately evaluate the project impacts on water quality. Failure to complete an application or provide any requested additional information within the time specified in the request shall be grounds for denial of certification.

(4) In order to inform potentially interested persons of the application, a public notice announcement shall be prepared and circulated in a manner approved by the Director. Notice will be mailed to adjacent property owners as cited in the application. The notice shall tell of public participation opportunities, shall encourage comments by interested individuals or agencies, and shall tell of any related documents available for public inspection and copying. The Director shall specifically solicit comments from affected state agencies. The Director shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit written views and comments. All comments received during the 30-day period shall be considered in formulating the Department's position. The Director shall add the name of any person or group upon request to a mailing list to receive copies of public notice.

(5) The Director shall provide an opportunity for the applicant, any affected state, or any interested agency, person, or group of persons to request or petition for a public hearing with respect to certification applications. If the Director determines that new information may be produced thereby, a public hearing will be held prior to the Director's final determination. Instances of doubt shall be resolved in favor of holding the hearing. There shall be public notice of such a hearing.

(6) For projects or activities where the Division of State Lands is responsible for compiling a coordinated state response (normally applications requiring permits from the Corps or Coast Guard), the following procedure for application and certification shall apply:

(a) Application to the federal agency for a permit constitutes application for certification.

(b) Applications are forwarded by the federal agency to the Division of State Lands for distribution to affected agencies.

(c) Notice is given by the federal agency and Division of State Lands through their procedures. Notice of request for DEQ certification is circulated with the federal agency notice.

(d) All comments including DEQ Water Quality Certification are forwarded to the Division of State Lands for evaluation and coordination of response. The Division of State Lands is responsible for assuring compatibility with the local comprehensive plan or compliance with statewide planning goals.

(7) In order to make findings required by OAR 340-48-025(2), the Department's evaluation of an application for project certification may include but need not be limited to the following:

(a) Existing and potential beneficial uses of surface or groundwater which could be affected by the proposed facility.

(b) Potential impact from the generation and disposal of waste chemicals or sludges at a proposed facility.

(c) Potential modification of surface water quality or quantity.

(d) Potential modification of groundwater quality.

(e) Potential impacts from the construction of intake or outfall structures.

(f) Potential impacts from waste water discharges.

(g) Potential impacts from construction activities.

(h) The project's compliance with plans applicable to Section 208 of the Federal Clean Water Act.

(i) The project's compliance with standards established in Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules adopted by the Water Resources Commission and the Energy Facility Siting Council implementing such standards.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Issuance of a Certificate

340-48-025 (1) Within thirty (30) days from the time the Department determines an application is complete, it shall so notify the applicant by certified mail. Within ninety (90) days of receving a complete application for project certification, the DEQ shall serve written notice upon the applicant that the certification is granted or denied or that a further specified time period is required to process the application. Written notice shall be served in accordance with the provisions of OAR 340-11-097 except that granting of certification may be by regular mail. Any extension of time shall not exceed one year from the date of filing a completed application.

(2) DEQ's certification for a project shall contain the following information:

(a) Name of applicant;

(b) Project's name and federal identification number (if any);

(c) Type of project activity;

(d) Name of water body;

(e) General location;

(f) Findings that the proposed project is consistent with:

(A) Rules adopted by the EQC on Water Quality;

(B) Provisions of Sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, Public Law 92-500, as amended;

(C) For hydroelectric projects, standards established in Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules adopted by the Water Resources Commission and Energy Facility Siting Council implementing such standards;

(D) Standards of other state and local agencies that the Director determines are other appropriate requirements of state law according to Section 401 of the Federal Water Pollution Control Act, Public Law 92-500, as amended.

(g) For projects requiring a site certificate from the Energy Facility Siting Council or a water appropriation permit from the Water Resources Commission, DEQ shall include a condition requiring such certificate or permit to be obtained prior to initiating the activity for which 401 certification is granted.

(3) If the applicant is dissatisfied with the conditions of any granted certification, the applicant may request a hearing before the Commission. Such requests for a hearing shall be made in writing to the Director within 20 days of the date of mailing of the certification. Any hearing shall be conducted pursuant to the rules of the Commission for contested cases.

(4) Certifications granted pursuant to these rules are valid for the applicant only and are not transferable.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Certification Delivery

340-48-030 For projects where application for certification is filed directly with DEQ by the applicant, the DEQ certification will be returned directly to the applicant. For those applications that are coordinated by the Division of State Lands, DEQ certification will be delivered to the Division of State Lands for distribution to the applicant and the federal permitting agencies as part of the Oregon coordinated response.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Denial of Certification

340-48-035 If the Department proposes to deny certification for a project, a written notice setting forth the reasons for denial shall be served upon the applicant following procedures in OAR 340-11-097. The written notice shall advise the applicant of appeal rights and procedures. A copy shall also be provided to the federal permitting agency. The

denial shall become effective 20 days from the date of mailing such notice unless within that time the applicant requests a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the rules of the Commission for contested cases.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

Revocation or Suspension of Certification

340-48-040 (1) Certification granted pursuant to these rules may be suspended or revoked if the Director determines that:

(a) The federal permit or license for the project is revoked.

(b) The federal permit or license allows modification of the project in a manner inconsistent with the certification.

(c) The application contained false information or otherwise misrepresented the project.

(d) Conditions regarding the project are or have changed since the application was filed.

(e) Special conditions or limitations of the certification are being violated.

(2) Written notice of intent to suspend or revoke shall be served upon the applicant following procedures in OAR 340-11-097. The suspension or revocation shall become effective 20 days from the date of mailing such notice unless within that time the applicant requests a hearing before the Commission or its authorized representative. Such a request for hearing shall be filed with the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the rules of the Commission for contested cases.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1985, f. & ef. 12-3-85

To The Oregon Department of Environmental Quality:

December 8, 1986

We as citizens of Malheur County, Oregon wish to petition the Oregon Department of Environmental Quality to enforce the laws of our state and either force The Eagle-Picher owned plant located west of Vale, Oregon to comply with those laws immediately or cease operations until the company can meet OAR 340-35-035.

We understand that your department did allow Eagle-Picher to make base-line noise level tests and to make noise level tests which were to represent the noise level of the plant in full operation. Since these tests were conducted by a consulting firm hired by Eagle-Picher, we feel that there is too much room for the test results to be biased in favor of the company. We therefore request that The State Of Oregon run these tests and that the citizens of this county be notified of the date, time, and sites of the tests prior to their being made.

A letter dated January 23, 1984 was sent to Leslie Hopper, Director of The Malheur County Planning Department and Eagle-Picher by Mr. Terry Obteshka, Noise Specialist of your state agency clearly defining that Eagle-Picher could not produce more than ten (10) decibels of noise over the existing ambient levels which were normal for this site during the twenty (20) years immediately preceding commencement of construction by Eagle-Picher. We believe that by callously ignoring our laws, Eagle-Picher did forfeit all rights to the grace period that your department has extended to this company. We find the noise produced by Eagle-Picher highly objectionable and injurious to Malheur County citizens.

Signature	Address	Distance To Plant
Jack Torrey	Rt. 1 Box 1737 Vale, Or.	1/2 mile
Dan Tolman	RT #1 Box 1740 VALE	APROX 1/2 MILE
Donna J. Tolman	Rt 1 Box 1740 Vale.	Aprox 1/2 Mile
Richard LaPlant	Rt 1 Box 1720 Vale Or	1/2 mile
Richard LaPlant	Rt Box 1720 Vale	1/2 mile
Francis Tolman	Rt 1 Box 1810	Vale 1/2 mile
Marlene	Rt 1 Box 1810	Vale 1/2 mile
Michael Gooch	Rt 1 Box 1722	Vale OR 1/2 Mile
Larry Clark	RT. 1 Box 1722	Vale 1/2 mile
Alice M. Taylor	Rt 1 Box 1738	Vale 1/2 mile

To The Oregon Department Of Environmental Quality

December 8, 1986

We as citizens of Malheur County, Oregon wish to inform your department that we have observed dense emissions of dust from the Eagle-Picher plant west of Vale. These emissions come both from the stacks and from other areas around the plant. We are aware that this dust is emitted in the form of raw diatomaceous earth and as the finished product. We are also aware that there are threshold limitations for both forms of this material because it can cause silicosos and it is irritating to the respiratory tract.

Since Eagle-Picher did publicly announce that their only emission was steam, and they are emitting dust, we are very concerned about the safety of this product which is polluting our air.

Jack Torrey Rt 1 Box 1737 Vale, Oregon 97918
Signature Address

Dan Tolman Rt #1 Box 1740 VALE, OR. 97918
Signature Address

Donna F Tolman Rt 1 1740 Vale Ore 97918
Signature Address

Mildred LaPlant Rt 1 Box 1720 Vale Or 97918
Signature Address

Richard LaPlant Rt 1 Box 1720 Vale
Signature Address

Francis Tolman Rt. 1 Box 1810 Vale Or 97918
Signature Address

Marlene Tolman Rt Box 1810 Vale Or 97918
Signature Address

Michael E Couch Rt 1 Box 1722 Vale Or 97918
Signature Address

Jenny Couch Rt Box 1722 Vale Or 97918
Signature Address

Alice M Taylor Rt 1 Box 1738 Vale, Or 97918
Signature Address

John C Taylor Rt 1 Bx 1738 Vale Or 97918
Signature Address

Ian L Dyoo Rt 1 Box 1809 Vale ORe 97918
Signature Address

[illegible] Rt 1 Box 1809 Vale Or 97918
Signature Address

[illegible] Rt Box 1325 Vale or 97918
Signature Address

L.J. Rindlisbach Rt # 1 Box 1325 Vale Or 97918
Signature Address

Brian Rindlisbach

L.J. Rindlisbach Rt 1 box 1325 Vale OR 97918
Signature Address

Ronald J. Pressley Rt. 1 Box 1846 Vale, Ore 97918
Signature Address

To The Oregon Department Of Environmental Quality

December 8, 1986

We as citizens of Malheur County, Oregon wish to inform your department that we have observed dense emissions of dust from the Eagle-Picher plant west of Vale. These emissions come both from the stacks and from other areas around the plant. We are aware that this dust is emitted in the form of raw diatomaceous earth and as the finished product. We are also aware that there are threshold limitations for both forms of this material because it can cause silicosos and it is irritating to the respiratory tract.

Since Eagle-Picher did publicly announce that their only emission was steam, and they are emitting dust, we are very concerned about the safety of this product which is polluting our air.

Signature	Address
Kris Pressley	RT 1 Box 1446 Vale Ore.
M. Thomas Hesse	RT 1 Box 1604 Vale OR
Dennis A Hatton	RT 1 Box 1605 Vale Ore
Susan Torrey	Rt. 1 B1737 Vale Oregon
William R. Musgrove	1102 D St. Vale, Oregon
Denise Musgrove	1102 D Street West Vale, Oregon
Gene Messinger	Rt 1, Box 1472 Vale, Or
Joann E Schneider	Rt 1 Box 1750 Vale Oreg
Wm. E. Schneider	Rt 1 Box 1750 Vale, Oreg.

What All That Noise Pollution Is Doing to Our Lives

More than a nuisance, the blare of modern life can damage hearing and reduce learning ability.

The banging, screeching, crashing and pounding in the nation's workplaces are being muffled today—but complaints about noise pollution in residential communities are growing louder.

"Fifty percent of the U.S. population is exposed every day to noise that interferes with speech or sleep," reports Rutgers University's Noise Technical Assistance Center.

Jill Lipoti, chief of the center, contends that "noise affects more people than any other pollutant."

There is mounting evidence that nerve-jarring sounds—from such things as aircraft, faulty mufflers, vacuum cleaners and suitcase-size portable radios—trigger what experts term "fight or flight" reactions.

In Collinston, La., a 74-year-old man, tired of the roar from low-flying crop-dusters, is facing charges of shooting and wounding a pilot who was spraying fields near his home two years ago.

In Miami, Fla., a 61-year-old man was sentenced to life in prison for the 1982 shooting death of his 27-year-old neighbor after a long dispute over the high volume of a stereo and the rumble of a motorcycle.

Examples of the disruptive effects are cited by citizens across the country.

In Aurora, Colo., the pealing of church bells was blamed for disturbing patients in a hospital across the street.

On Long Island, N.Y., the roar of jets taking off and landing at John F. Kennedy Airport interrupts classes at Hempstead schools so frequently that students lose a total of 1 hour of learning time each day.

Reagan, too. Even President Reagan has been troubled by airplane noise. In April, the President apologized to Dominican Republic President Salvador Jorge Blanco when jetliners from nearby National Airport drowned out the visiting leader's remarks during a welcoming ceremony on the White House lawn.

Although noise is usually considered a mere nuisance, medical researchers find that prolonged exposure may cause health and learning disorders.

California Department of Health Services investigators determined last year that students in Los Angeles schools located alongside freeways scored well below their social and economic counterparts in quieter neighborhoods on standardized reading and math tests.

After 20 years of study, David Lipscomb of the University of Tennessee concluded that today's 19-year-olds, especially those who grew up with loud music from earphone-equipped portable stereos, don't hear as well as youths of that age did two decades ago.

Rutgers's Lipoti reports: "Constant noise is linked to high blood pressure, heart disease and ulcers. Exposure 24 hours a day to even the normal noises of everyday life can increase blood pressure up to 40 percent. And it doesn't return to normal until long after you leave the noise."

Such findings are emerging two years after the Environmental Protection Agency's 14-million-dollar program to curb noise pollution was swept away by budget cuts. In place of federal grants to aid local noise-control efforts, EPA now only offers advice over the telephone.

With improved shielding and baffles for heavy machinery, and earplugs and other personal hearing-protection devices, the industrial-noise problem is far better controlled. Money is the reason, health experts say. "Industrial noise is being addressed because hearing loss is compensable," says California noise-control coordinator Jerome Lukas.

New trouble areas. Complaints about intrusive noises are rising in once placid regions where the quiet is broken by new industries and the din of snowmobiles, off-road motorcycles and other recreational vehicles.

Asked to list their top concerns in a recent poll, Oregon residents put noise pollution fourth after crime, property taxes and quality of education. Says Oregon noise-control director John Hector: "We get more complaints about noise than any other form of pollution."

Some local governments are fighting back with strict antinoise ordinances.

Since 1975, Colorado Springs' noise-control unit has had police powers to enforce rules limiting street sounds that are audible indoors to 55 decibels between 7 a.m. and 7 p.m. and 50 decibels after 7 p.m.

In April alone, Colorado Springs issued 542 tickets, carrying fines ranging from $25 to $125, for loud parties, unmuffled car exhausts, barking dogs and other violations.

In New York City, people who insist on playing oversized radios—called "boom boxes"—on the streets risk confiscation of the equipment by city police and a $25 fine. Similar get-tough laws are being enforced in San Diego and Salt Lake City.

Federal aides are taking steps to reduce airplane noise. By January 1, all planes using U.S. airports must meet strict standards designed to cut jet-exhaust volume—measured at 2 miles away from runways—by half. Then, officials say, the intensity of jet roar won't exceed that of a loud motorcycle.

Still, noise-control experts worry that they are fighting a losing battle. Says Edward DiPolvere of the National Association of Noise Control Officials: "Noise is the only pollutant that some people actually want. Truckdrivers want the meanest-sounding rig. A company tried to sell a quiet vacuum cleaner years ago, but few wanted them. They would never sell because they were too quiet." □

By RONALD A. TAYLOR

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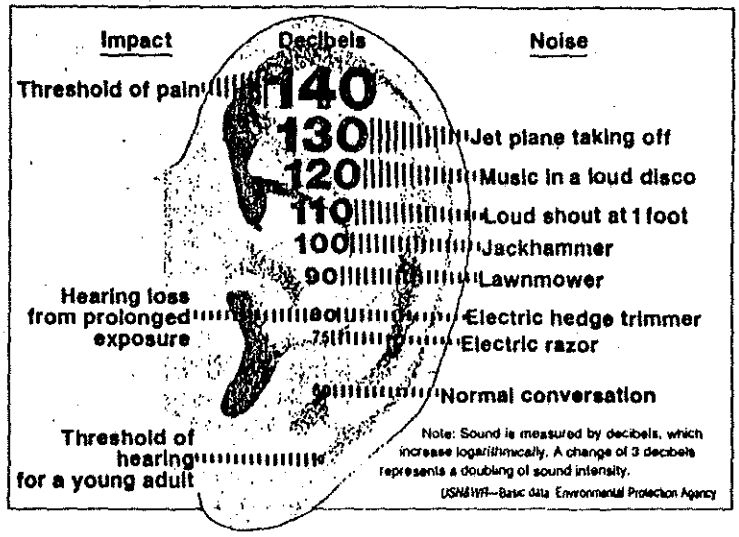


January 23, 1984

Leslie Hopper, Director
Malheur County Planning Department
P. O. Box 277
Vale, OR 97918

Dear Ms. Hopper:

Enclosed please find a copy of Oregon's Noise Control Regulations. On pages 13 - 16 and pages 33 - 34, you will find DEQ's standards for new industrial and commercial operations.

In reference to our telephone conversation on January 19, 1984, the proposed diatomaceous earth processing plant locating in Malheur County is obligated to meet OAR 340-35-035. If this facility is sited on property which has not been used by any industrial or commercial noise source during the twenty (20) years immediately preceding commencement of its construction, all operations associated with the plant are required to comply with OAR 340-35-035(1)(b)(B) onppage 13 of the enclosed regulations. This section regulates all noise originating from any commercial or industrial enterprise, including idling vehicles and attached auxiliary equipment, use of jake brakes, and traffic noise generated by motor vehicles ingressing and egressing the extraction and processing sites. Under this regulation, the proposed plant and all attendant activities are prohibited from exceeding the existing ambient sound levels by more than ten (10) decibels, A-weighted, or the standards in Table 8 on page 33, whichever provides the greater margin of protection to existing noise sensitive properties (e.g. residential properties).

Usually, it is more cost effective to design a new facility to meet State noise standards than to employ a retrofitting program to achieve compliance after start-up. Malheur County may wish to require the submissions of an acoustical analysis report prepared by a professional acoustical engineer demonstrating compliance with State noise regulations. Our staff would conduct a technical review of any information provided on the behalf of Malheur County. I have taken the liberty to enclose a list of firms providing this service for your information.

DEQ is very pleased to hear that Eagle-Picher Industries, Inc. has selected Malheur County to site its new processing.plant. We share your excitement over the creation of new jobs for your citizens and the future financial benefits which will be realized by the local economy. We are equally concerned that the livability that Oregonians enjoy is not compromised or lost.

If I can be of further assistance, please feel free to contact me, toll free, at 1-800-452-4011.

Sincerely,

Terry L. Obteshka
Local Noise Specialist
Noise Control Program

TLO:ahe
Enclosures

Eagle-Picher Industries, Inc.

James A. Ralston, *Vice President & General Counsel*

August 8, 1986

Mr. Terry L. Obteshka
Department of Environmental Quality
522 S.W. Fifth Avenue
Box 1760
Portland, Oregon 97207

Dear Mr. Obteshka:

I am enclosing with this letter a copy of an ambient noise survey taken at Eagle-Picher's diatomaceous earth plant near Vale, Oregon. As you can see, this study was prepared by Jim Buntin, Eagle-Picher's acoustical consultant from Brown-Buntin Associates. As we are mindful of our obligations with respect to Oregon's noise standards, we have been studying the situation at the plant and intend to be in full compliance with the law when the plant is in production. At that time we will be able to determine if we are generating noise in excess of the statutory allowance and if so, what will be necessary to come into compliance with the statutes.

Your July 29, 1986 letter states your intent to work with Eagle-Picher to solve any problems that may exist at the plant. We too intend to cooperate with the Department of Environmental Quality. Eagle-Picher has made an enourmous investment in this plant and in the economy of the Vale area and we intend to be a part of that community for a long time. We currently operate a plant in Nevada that has been

in existence since the mid-1940's and which we plan to continue to operate for many more years into the future. Finally, our company traces its history back to the mid-1800's so I think we have a record of longevity and commitment that we can be proud of. On the other hand, we are aware that a few nearby residents have complained about the noise from the plant and I did want to point out that we do not believe that these complaints are based on the noise level, but are based on other factors. We have heard that some people in the area with real estate adjacent to our plant site would like to sell unneeded property of theirs to us. We have also heard stories of people who may be unhappy because they applied for jobs at the plant and have been turned down because they do not meet our qualifications. I think it would be a shame to allow these extrinsic matters to impede the development of this plant if these really are the basis for the complaints.

If you have any additional questions, please don't hesitate to call. I am sending this letter in Marc Greenberg's absence from the office on vacation. He will return on August 20th and if you have any specific questions it may be better to delay them until then since Marc is more familiar with this file than I am. Thank you for your cooperation.

Sincerely,

James A Ralston

James A. Ralston

JAR:d/jw
Enclosure
cc: w/encl. Mr. Roger E. Malone
w/o encl. Mr. Marc L. Greenberg
w/o encl. Mr. Kent Blevins

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

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

October 3, 1986

Mr. Robert W. Piekarz, P.E.
Vice President, Engineering
Eagle Picher Industries, Inc.
P.O. Box 12130
Reno, NV 89510

RE: Eagle-Picher Industries, Inc.
NP - Vale, Malheur County

Dear Mr. Piekarz:

This letter is being written to confirm the results of the meeting on September 22, 1986 with your noise consultant, Jim Buntin, Terry Obteshka of DEQ, you and me.

From our discussions, we understand your plant now has all equipment in operation and is nearing full capacity. It will achieve full capacity and efficiency as your personnel gain training and familiarity with the operation.

Your plant is running three shifts with the furnace and kiln operating constantly 24 hours a day. We understand that presently there are 8 to 12 truck deliveries daily with potential for more, and 2 to 3 railcar deliveries are made per week.

During the meeting, you said that sound level measurements of Eagle- Picher's full plant operations including the above mentioned operations would be conducted shortly. These measurements are planned at several of the surrounding residential properties. We understand that this data should be collected, tabulated and submitted by October 15, 1986, as previously agreed. Further, you agreed to submit a compliance program and schedule of implementation within sixty (60) days of submission of the noise data.

Noise control staff have further analyzed the ambient noise data submitted by Mr. Buntin and forwarded to us by Mr. James Ralston in his August 8, 1986 letter. This analysis considered nighttime ambient noise levels between the hours of 1:00 a.m. and 5:00 a.m. These hours have a very low amount of human, animal and meteorological noise contributions but are sensitive because of sleep disturbance potential. The data during these hours showed mean ambient noise levels of L_{50} - 28 dBA and L_{10} - 34 dBA. Under the applicable standard, OAR 340-35-035(1)(b)(B), the Department has determined that the nighttime allowable statistical noise limits are as follows:

Nighttime Sound Pressure Limits at Nearby Residential Property

L_1 - 60 dBA
L_{10} - 44 dBA
L_{50} - 38 dBA

If you have any questions about this decision please feel free to contact me.

Finally, we understand that you and your consultants are already considering a range of engineering and administrative controls for fans, conveyance systems, mobile equipment and other sources. I hope the information supplied in this letter will assist you in that effort. If I may be of further assistance, please contact me at the Noise Control office at (503)229-5365.

Sincerely,

Gerald T. Wilson
Environmental Noise Specialist
Noise Pollution Control

GW:dj

cc: James A. Ralston
Vice President & General Counsel
Eagle Picher Industries, Inc.
Jim Buntin, Brown-Buntin Associates
Kent Blevins, Malheur County Environmental
Health Department
Tom Bispham, Air Quality Division, DEQ
S.F. Gardels, Eastern Region, DEQ

Northwest Environmental Defense Center
10015 S.W. Terwilliger Blvd., Portland, Oregon 97219
(503) 244-1181 ext.707

August 16, 1986

Lee Thomas
Administrator,
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Robi Russell
Administrator, Region X
Environmental Protection Agency
1200 6th Ave.
Seattle, WA 98101

Edwin Meese, III
U.S. Attorney General
Room 5111, Main Justice Bldg.
10th & Constitution Avenues, N.W.
Washington, D.C. 20530

Fred Hanson
Director, Oregon Department of Environmental Quality
522 SW 5th Ave.
Portland, OR 97207

Dear People:

This letter is to give you notice as required by 33 U.S.C. § 1365(b)(2) (Clean Water Act § 505(b)(2)), that the Northwest Environmental Defense Center (NEDC) intends to file suit under § 1365(a)(2), after expiration of sixty days against the Environmental Protection Agency, for a failure to perform nondiscretionary duties under the Clean Water Act.

Specifically:

Oregon's Actions are Contrary to the Purposes and Requirements of the Clean Water Act

Among other things:

1) Each state was required to identify those waters where effluent limits are not stringent enough to implement any water quality standard. 33 U.S.C. § 1313(d)(1)(A); 40 C.F.R. § 130.7(b)(1). These waters are called water quality limited segments. 40 C.F.R. § 130.2(i).

Water Quality Standards (WQS's) consist of the designated uses of the waters and the water quality criteria based on those uses. 33 U.S.C. § 1313(c)(2); 40 C.F.R. § 130.2(c).

The state of Oregon, through its Department of Environmental Quality (DEQ) has repeatedly identified the middle and lower Tualatin River and Lake Oswego as being bodies of water where designated uses are not being fully supported. See, Oregon 1984 Water Quality Program Assessment and Program Plan for Fiscal Year 1985 ("1984 305(b) Report"), Section 6, Table 2 and Section 7, Table 4; and Oregon 1986 Water Quality Program Assessment and Program Plan for Fiscal Year 1987 ("1986 305(b) Report"), at 158 (This report is required by section 305(b) of the Clean Water Act. 33 U.S.C. § 1315(b)).

DEQ has identified river miles 0-9 of the Tualatin as being degraded during the ten years from 1972 to 1982. 1984 305(b) Report at Table 2. In 1984 DEQ listed the uses not fully supported for the Tualatin River as being swimming, Id. at Table 2, and for Lake Oswego as being aesthetics. Id. at Table 4. In 1986 DEQ added aquatic life to swimming (now called "contact recreation") as a use not fully supported for the Tualatin River, and changed the use not fully supported for Lake Oswego from aesthetics to contact recreation. 1986 305(b) Report at 158.

DEQ has identified the pollutants causing problems in the Tualatin as dissolved oxygen, fecal coliform bacteria, and nutrients. 1984 305(b) Report at Table 2, and 1986 305(b) Report at 158. DEQ has identified the pollutants causing problems in Lake Oswego as nutrients. 1984 305(b) Report at Section 7, Table 4, and 1986 305(b) Report at 158. DEQ has identified the sources of the pollution for the lower Tualatin (river miles 0-9), as being municipal wastes (33 1/3%), urban runoff (33 1/3%), and natural (33 1/3%). DEQ identified the sources of the pollution for the middle Tualatin (river miles 9-39),as being municipal waste (40%), agriculture and other nonpoint sources (20%), urban runoff (20%), and natural (20%). 1984 305(b) Report at Table 3. DEQ has identified the source of pollutants in Lake Oswego as municipal waste (50%) and urban runoff (50%) from the Tualatin River. Id. at Table 4.

The information contained in Oregon's 305(b) report shows that the Tualatin River and Lake Oswego are "waters ... for which the effluent limitations ... are not stringent enough to implement any water quality standard applicable to such waters" within the meaning of section 1313(d), and that the pollution is getting worse.

Oregon has failed to Identify the Tualatin River and Lake Oswego, or any other body of water, as waters where effluent limitations are not stringent enough to prevent violation of applicable water quality standards contrary to the purposes and requirements of the Clean Water Act as required by 33 U.S.C. § 1313(d)(1)(A); 40 C.F.R. § 130.7(b)(1).

2) Each state was required to establish Total Maximum Daily Loads (TMDL's) for those pollutants identified by the EPA under section 1314(a)(2)(D), for those water quality limited segments identified by the state under section 1313(d)(1)(A). 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.7(c).

Oregon has failed to establish TMDL's for the Tualatin River and Lake Oswego, or any other body of water in violation of a water quality standards as required by section 1313(d)(1)(A).

3) Each state was required to submit this list of waters identified as being water quality limited segments, and TMDL's established for those waters no later than 180 days after the date of publication by the EPA of pollutants identified as being suitable for determination of TMDL's under section 1314(a)(2)(D). 33 U.S.C. § 1313(d)(2); 40 C.F.R. § 130.7(d).

EPA made the necessary identifications on December 28, 1978 by publication in the Federal Register. 43 Fed. Reg. 60662-66 (Dec. 28, 1978). The EPA identified all pollutants as being suitable for the calculations of TMDL's. 43 Fed. Reg. at 60665. Therefore states were required to submit TMDL's by June 26, 1979 for all pollutants for those waters identified as not meeting Water Quality Standards.

"If a state fails over a long period of time to submit proposed TMDL's, this prolonged failure may amount to the 'constructive submission' by that state of no TMDL's." Scott v. City of Hammond, Ind., 741 F.2d 992, 996 (7th Cir. 1984).

Oregon has failed over a long period of time to submit proposed TMDL's and to identify water quality limited segments. This failure is a constructive submission of no TMDL's and a constructive submission of no identifications. Oregon's failure to identify these waters as required by section 1313(d)(1)(A) and to establish TMDL's for these waters as required by section 1313(d)(1)(C), within 180 days of Dec. 28, 1978, is contrary to the purposes and requirements of the Clean Water Act. 33 U.S.C. § 1313(d)(1)(A), (C).

EPA's Failures Under the Clean Water Act

Among other things:

1) EPA is under a nondiscretionary duty to review reports submitted by the states under the Clean Water Act. 40 C.F.R. § 130.8. EPA is aware, or because the information is contained in Oregon's 305(b) report, should be aware, that the Tualatin River and Lake Oswego do not fully support the designated uses.

Water Quality Standards include designated uses. EPA is aware, or should be aware, that Oregon has not identified to the EPA the Tualatin River and Lake Oswego as waters not meeting applicable water quality standards, that Oregon is required to do so, and that Oregon's failure to do so is contrary to the purposes and requirements of the Clean Water Act.

EPA is aware, or should be aware, that Oregon has not submitted to the EPA, TMDL's for the Tualatin River and Lake Oswego, that Oregon is required to do so, and that Oregon's failure to do so is contrary to the purposes and requirements of the Clean Water Act.

2) EPA is under a nondiscretionary duty to review the identifications and TMDL's submitted by the states to determine whether they are adequate under the act. EPA is under a nondiscretionary duty to approve or disapprove submissions by a state of its identification of waters not meeting WQS's and the state's establishment of TMDL's, under section 1313(d) within 30 days of the date of submission. 33 U.S.C. § 1313(d)(2). If the failure by the state is a constructive submission of no identifications and no TMDL's, "then the EPA is under a duty to

either approve or disapprove the 'submission.'" Scott v. City of Hammond, at 997.

EPA has failed to perform nondiscretionary duties (1) to review the constructive submissions by Oregon of no identifications and no TMDL's; and (2) to approve or disapprove the constructive submissions.

3) EPA is under a duty to disapprove any submission of either an identification of waters not meeting WQS's, or of TMDL's, if the EPA finds that such identification of waters not meeting WQS's or of submissions of TMDL's is contrary to the purposes and requirements of the Clean Water Act. 33 U.S.C. § 1313(d)(2). Because effluent limitations for the Tualatin River and Lake Oswego are not stringent enough to prevent violation of Water Quality Standards or even to prevent degradation of the water quality, any approval by the EPA of Oregon's constructive submission of no identifications of waters not meeting WQS's or of no TMDL's is an arbitrary and capricious decision not supported by the evidence in the record in violation of the Administrative Procedures Act.

4) If the identifications or loads are disapproved, then EPA is under a nondiscretionary duty to, within 30 days of the disapproval, make the identifications and establish such loads as determined necessary to implement the applicable water quality standards. 33 U.S.C. § 1313(d)(2). EPA has failed to perform a nondiscretionary duty to make the identifications and establish the TMDL's, if the state's submissions are not approved.

5) EPA is under a nondiscretionary duty when it disapproves of a state's submission of identifications and TMDL's, to identify such waters in the state and to establish such loads as he determines necessary to implement the Water Quality Standards. 33 U.S.C. § 1313(d)(2). EPA has failed to perform this nondiscretionary duty to identify and to establish loads.

Sincerely,

Karen Stolzberg
President,
Northwest Environmental Defense Center

cc: Governor Victor Atiyeh
254 State Capitol
Salem, OR 97310

OCT 23 1986

October 22, 1986

Mr. Fred Hansen,
Director Environmental Quality

Dear Sir:

In 1848 I built a home at 190 37th Avenue, N. E. in Salem. At present the Marion County Assessor has assessed it at, true cash value: Land $14,000 Improvements, $ 46, 830.

In 1969 West Coast Grocery constructed a warehouse on property directly across the street west of my home on a ten acre plot of land, of which six acres is building. This is on 37th avenue, which was at that time zoned R-1. single family residence.

Their operation is 24 hours a day, both by truck and rail. The noise is unbearable, motors racing, loading bays banging day & night. I am sure they are exceeding the noise limit by many times over.

This letter is being written in the hope that your office can get us some relief from this disturbing noise--anything you can do will be greatly appreciated by my family and the residents of 37th Avenue N. E. Salem, Oregon.

Thank you.

Fred W Smith

cc/ James E. Peterson

10/23/86
GEL

Preliminary Data

Date	Unit	PM-10 µg/m³	Sample Wt, g	Sample Time	Dist. from burn
9/4/86	Wright Creek	179	.0381	~3 hr	~3 mi
		9320	2.8786	~4 hr	~20 ft
		998	.257	~5 hr	~20 ft
		1244	.0423	~2½ hr	~40 ft
9/11/86	Freeman #2	376	.0980	~4 hr	~50 ft
		56	.0126	~3 hr	~2½ mi
9/15/86	Sunnyridge	397	.1025	~3 hr	inside
		636	.0737	~2 hr	inside
		379	.0970	~4 hr	~50 ft
10/5/86	Buttermilk	5379	.9771	~2 hr	inside
		1974	.6171	~4 hr	inside
10/10/86	Plugged Pipe	15548	4.1912	~4 hr	~10 ft
		8438	1.9283	~3½ hr	~10 ft
		188	.0455	~4 hr	~8 mi
10/12/86	Good Split	12838	3.1500	~4 hr	~20 ft
		4225	1.3526	~4 hr	~20 ft

Significant comments which may be necessary to interpret this data are not yet available.

STATE OF OREGON
Environmental Quality
Laboratories & Applied Research

INTEROFFICE MEMO

TO: Tom Bispham

DATE: October 29, 1986

FROM: Dennis G. Duncan

SUBJECT: Observations Related to Smoke Management - F/S Toxics Study

In the process of making field measurements of slash burning impacts, I have made some general observations which relate to the current efforts to manage slash smoke impacts. Some of these, I think are not generally well understood even by those intimately involved with the practice.

1. Primary Plume:

Scale of impact: Smoke levels measured in the breathing zone (by light scattering) in the nearest proximity to the fire areas is >>100β. Particularly as the plume loses bouyancy following the initial and most energetic burning. However, as you move away from the fire, the smoke levels generally drop within a short distance, (a few hundred yards) to less than 100β, often to less than 40β. Generally within a few miles, the breathing zone impacts drop to less than 10β. When the plume impacts the breathing zone more than 10 miles from the fire, scattering levels, are in the range of 4-8β. It is difficult to generalize because conditions vary and unusual impacts, no doubt, do occur. The worst observations I have recorded were in the range of 20-40β approximately 3 miles down-wind of a fire.

Duration of Impact by Primary Plume:

In my efforts to collect samples of down-wind impacts by the primary plume, I have always attempted to get access to the plume nearest the source where it impacts the breathing zone in its most concentrated condition. It has been extremely difficult to find a plume which is sufficiently well-behaved to maintain or sustain significant impacts at the site for longer than 5 hours. It would seem that the mechanisms of transport which brought it, take it on, or change direction and take it away from the sampling locations. If you move further down-wind you may get more sustained impact but at lower concentration levels.

Visual Observations of Smoke Impacts:

Visual effects of smoke are deceiving to the observer. Smoke generated in Slash burning is often stratified, puffy, and unevenly mixed. As one moves through the diluted down-wind plume at the nearer down-wind breathing zone impacts one finds spiky, erratic and noisey measurement of light scattering to be typical, ranging from 5-20β with each puff and current of wind.

ual observations are affected by the visual angle, sun angle, visual range, and the variability of the smoke. Seldom do the raw observations, often dominated by the scattering and shadow effect of the plume or streams of smoke above you, reflect the actual ground level smoke concentrations, except in a very casual way. The eerie, ruddy glow of scattered sunlight and sudden increase/decrease of visual range in a canyon has a powerful effect as your observation of smoke. The measurements I have made by nephelometry tell me that smoke observation tends to be relative both by smell and sight. Smoke can be observed and smelled at 1-2 β and the inclusion of moisture or fog with the smoke tends to make the appearance more obvious, because the smell and visual impact is stronger. I have difficulty telling, by observation, the differences between smoke at 2 β and smoke at 8 β except as known from the nephelometer indications.

As the smoke moves down-wind from the fire, it spreads both horizontally and vertically, both of these actions dilute the plume particulate concentrations, but the vertical dispersion does not reduce the visual effect as does the horizonta The effect of this anisotropic observation function is to further reduce the accuracy of visual observations.

Plume Buoyancy

Even the limited observation made this summer and fall show some apparent relationships exist between breathing zone impacts and plume energy/buoyancy. The worst fires, from the ground level impacts aspect, we observed, were handlit. One, at mid-summer, because of concern about fire danger from low fuel moisture and dry burning conditions. I, in my naivete, would have thought this would be a nearly text book clean burn. Not so, the slow lighting directed by the dry conditions resulted in getting inadequate heat generation over the many hours of lighting to lift the plume very high into the air, consequently it was on the ground in the breathing zone within a short distance (approximately 3 miles). The second worst involved slow lighting because of fire danger caused by high winds. In both cases, the effect was similar although the high winds helped to move the smoke, it was not maintaining high altitude and relatively quickly dropped into the breathing zone in approximately 5 miles, although in more diluted form. The best burns we observed, were lit quickly with use of helicopters. Plumes were more energetic. Fires seemingly more intense and burning for short periods. Ground level impacts were distant and more dilute, or the plume was actually off shore before they reached the breathing zone in any substantial way.

Multiple Plumes, Plume Spacing

When many fires are set in a single day or even afternoon, they tend to follow the same transport as they spread. At ground level, it can be difficult to distinguis the particular plume one is trying to trace, unless you have the opportunity to observe them by aircraft or from high point of ground. When the plumes are not far apart (less than 5 miles), they spread into each other and within 20-30 miles may be indistinguishable from the ground. On the preferred NE wind flows for coastal burning, the plumes tend to follow an often common path following the winds south and west until over the coastal shelf they bend around the south.

The afternoon sea breeze then carries them back ashore and on to the south and east. Smoke generated in the study area is seemingly most likely to intercept the breathing zone south of Newport in the ridges and trenches north of Waldport. If there is high ground down-wind, that area is likely to be impacted, by the descending plume, first.

2. Secondary Smoke

After the primary plume collapses as the burn loses energy, the remaining burning results in gound level impacts in erratic and unpredictable patterns, within a mile or so of the burn. This smoke does not, in my observations, behave in a very organized way; sometimes sinking to the lower terrain, sometimes following light surface winds up slope - or down, smoke levels tend to be in the 10-100β range. Like sitting around an unruly camp fire with smoke wafting around as if by will. This smoke impact continues for many hours. Having spent many hours trying to characterize this phase of burning, I believe that frequent, erratic and irritating impact is characteristic. Nearly all, if indeed not all, burn plans make some reference to complete, total, or 100% mop-up following burning as being required, or desired. If this is done, it most certainly is not completed on the day that burning is done. Particulate measurements indicate this smoke has several hundred to a couple of thousand ug/m^3 particulate and nephelometer readings show that smoke levels may continue erratically, but seemingly without much reduction for many hours. With the exception of a very poorly lit or poorly buoyant primary plume which might not effectively get "off the ground", I would consider this secondary smoke the most serious breathing zone impact in the nearby area (within 1 mile).

Possible Consideration for Smoke Management

1. The primary plume contains, in all likelihood, thousands to tens of thousands of ug/m^3 fine particulate aerosol and obvious noxious gases. Our measurements (made in the breathing zone) indicate that these impacts may be extreme for anyone living adjacent to and particularly upslope and down-wind of a slash burn. Particular consideration should be given to anyone living within near proximity to such a burn. I would recommend that:
   1) primary first order priority be given to wind strength and direction in consideration of the impacts of nearby residents, whatever their population density;
   2) second priority should be given to people living within 1 mile potentially subject to impact from the primary plume and the secondary smoke;
   3) third priority should be given to protecting population centers within 10 miles, where lesser, but still obnoxious, impacts may occur.

   Subsequent priority should be given to protecting more distant populations from the lesser breathing zone and visual impacts from such burning. Aesthetic protection at distance can probably best be provided by consideration of numbers of fires. Transport distances, directions, and ventilation (this broader area impact can most likely be treated successfully by the use of dispersion models).

It is of course obvious that these general observations are the result of a limited number of measurements. We do now have at our disposal equipment and techniques to define and refine the knowledge we have about health and visual impacts from slash and field smoke.

It is disappointing that the weather was so uncooperative (abnormal?) this summer, as we had an opportunity to test only one actual springtime burn (untreated). It would be desirable to test burns under springtime and summertime weather and chemical treatment conditions, as well as the fall burns we primarily tested. The profile of chemical treatments and interval from treatment to burn was limited. We definitely need to know more about what chemicals and chemical practices are used typically and what are "worst case" treatment/burns intervals. It has been rewarding to see how well the equipment and techniques developed for this study have worked in the field. One of the obvious benefits from this work has been the development of tools which can be usefully further employed to characterize these difficult and erratic sources of air pollutants. The transient nature of emissions is in a more sensible way partially matched by the mobility of the measurement and sampling equipment using these techniques.

Particulate Measurements

Particualte measurements, made in conjunction with these smoke level observations show some interesting preliminary results. Mass levels of particulates show that primary plumes may contain several thousand ug/m^3 of fine aerosol loading for several hours. Measurements made inside and on the edge of slash unit boundaries, show that there is little respect shown for property lines. The highest measure of aerosol loading was from air in the breathing zone at the edge of the burn. That fire, as others, shows that enormous aerosol impacts may occur off-site from slash burns. How or whether, these measurements relate to particular standards, are to short term episode standards, is certainly not clear.

To illustrate: from our worst test we measured approximately 5 hours of fine (10μ aerosol of 15,900 ug/m^3 and 5 hours secondary fine aerosol of 8,400 ug/m^3).

Assumption: If the impact from the remaining 14 hours of the day was zero (it certainly was much higher) the average aerosol loading would have been:

$$\frac{(15{,}500 \times 5) + 8{,}400 \times 5}{24 \text{ hrs.}} = 4{,}980 \text{ ug/m}^3$$

Since slash is burned to property lines and in near proximity to rural residences, it is probable that impacts of this magnitude do occur. It would be ridiculous to assume that we have in six test sets likely seen worst cases impact potential. Considering the likely character of such aerosol; high organic content and small size, concern expressed by coastal residents about near encounters with slash smoke does not seem unreasonable.

he's referring to the so-called source samples [illegible]

E.N.U.F.
P.O. Box 258
Foster, OR 97345

11 December 1986

An open letter to members of the Environmental Quality Commission:

There is a grave and growing concern with what appears to be a cavalier attitude by the Department of Forestry and the Department of Environmental Quality regarding the effects that field and slash burning smoke have on the population.

At the very least, the smoke from these sources are an intolerable nuisance. The costs in medical attention to some hundreds of thousands of Oregonians is almost totally ignored. Merchants complain bitterly of lost revenues. Tourism needs to be encouraged - but what rational person will return to Oregon, or recommend the state to others - if smoke continually ruins a vacation?

For the multi-millions of dollars extracted from farmers over the years, and handed to OSU for research into alternative uses of straw, for example, almost nothing of value has come of this.

* Yet: we know there are viable alternatives that are ignored - even belittled. There is a growing suspicion as to why this is so. DEQ admits that, while burning was a few acres less, in the grass fields this year, the complaints were markedly more numerous; and many more than usual from rural areas.

What we need is: adequate and thorough efforts to curtail field and slash burning. In doing so, we can relieve the physical and financial burdens for hundreds of thousands. The farmers suffer too, for it is their money that is used to prolong this misery. We can then encourage tourism with a clear conscience and create thousands of badly needed jobs.

For the folks who say:
enuf is ENUF

Bill Johnson
Pres., ENUF

* It has been estimated that Oregon produces enough agri-waste and wood-waste yearly that, if pelletized for fuel, could heat every home in the six western states. B.J.

Key Policy Issues Still in Need of EQC Direction in Smoke Management Plan(with brief OEC response)

* Statewide vs. westside only.
  - Eastern Oregonians deserve equal protection
  - DEQ wants to wait for "significant problems" to arise; the state should take a preventive approach before problems arise
  - The visibility SIP is legally inadequate without such protection
  - DEQ should take necessary measures to control eastside range and field burning

* Rules vs. Directives.
  - Directives are a prima facie violation of ORS 477.515(3)(b)
  - All DEQ programs are implemented by administrative rule; why should slash burning be an exception?
  - How will the public know when Directives are to be changed and how will the public participate in that process? DEQ has never been specific on that issue.
  - DEQ places too much emphasis on the "citizen suit" enforcement provisions of the Clean Air Act to remedy the flaws of Directives. Citizen suits are expensive and done only as a last resort.

* Is SMP premised on nuisance control or public health protection?
  - The SMP should be premised on public health protection. It is not.
  - The goal of merely moving smoke around to keep it out of populated areas is unacceptable, and also completely contradicts the purpose of the PSD program.

Key Policy Issues Still in Need of EQC Direction in Visibility SIP

* Year-round vs. summer-only protection.
  - The federal Act requires year-round protection.
  - OEC concedes that summer-only protection in the short-term plan probably meets the "reasonable progress" test. But can the EQC honestly state that failure to include year-round protection even in the long-term plan still constitutes "reasonable progress"? We believe not.

* Statewide vs. Central Cascades only.
  - The Act requires protection for all Class I airsheds that existed in 1977. DEQ's plan illegally exempts wilderness areas in eastern Oregon and southwest Oregon.
  - The Act requires states to "prevent" visibility impairment. How can Oregon meet that requirement if the program deals only with known "hot spots". If DEQ waits till problems arise before acting, they have violated the prevention mandate of the Act

OEC
10/23/86

OREGON NORTHERN COALITION FOR ALTERNATIVES TO PESTICIDES

P.O. BOX 909, LINCOLN CITY, OR 97367 (503) 996-4321

James Petersen
835 NW Bond
Bend,OR 97701

Nov.20, 1986

Dear James,

When the EQC meets December 12th to review the Smoke Management Plan for inclusion in Oregon's SIP, I encourage you to give careful consideration to the impact of tha plan on the health and welfare of Oregonians. My concerns include the facts that:

- Slash burning represents routine violations of PSD standards;
- Exposure to air pollution at sites adjacent to slash burns can exceed Emergency Action Levels;
- If each point source cannot be monitored in the case of slashburns, then the EQC ought to adopt some methodology capable of protecting the health of rural and eastern Oregonians who have a right to equal protection under the law.

If you should chose to approve the Plan for inclusion in this SIP, I urge you to require that either the Board of Forestry or DEQ research these issues of significant concern regarding the health of rural Oregonians exposed to slashburn smoke and report in three years.

In your concern over the Assumptions (p.3, Draft Directives), I caution you not to lose sight of these other, equally valid, areas of concern:

1) That the objective (page 1 of the Rule) is contradictory, ie, to provide maximum opportunity for burning while minimizing emissions;
2) That immediate mop up should be required, not mop up "as soon as practical" as the Draft Rule states on page 5; and
3) That #8 (page 8, Draft Rule) needs to set a specific deadline for development of emission limits.

Thanking you for your attention to my concern, I remain,

Sincerely yours,

Jean C. Meddaugh
ONCAP Board Member

VICTOR ATIYEH
GOVERNOR

Oregon Department of Revenue

REVENUE BUILDING
955 CENTER STREET, N.E.
SALEM, OREGON 97310

December 11, 1986

Ogden Martin Systems of Marion, Inc.
Attention: Martin N. Hausman, Sr. Vice-President &
Chief Financial Officer
140 East Ridgewood Avenue
Paramus, NJ 07652

Maurice O. Georges and David W. Brown
Miller, Nash, Wiener, Hager & Carlsen
111 S.W. Fifth Avenue
Portland, OR 97204-3699

Pollution Control Facility Tax Credit for Ogden Martin Facility in Marion County

Gentlemen:

By letter dated December 2, 1986, you requested a ruling from the Oregon Department of Revenue on the tax incidents of allowing pollution control facility tax credits to be claimed by a shareholder of a corporation which has purchased the land (the "SITE") under a mass burn, solid waste disposal, electric power generating, resource recovery facility (the "FACILITY") recently constructed in Marion County, Oregon (the "COUNTY"). The SITE and the FACILITY are collectively referred to as the "PROJECT." The PROJECT is presently owned by Ogden Martin Systems OF Marion, Inc. ("OGDEN MARION"), a subsidiary of Ogden Martin Systems, Inc. ("MARTIN"), and an indirect subsidiary of Ogden Corporation ("OGDEN").

Summary of Transactions

1. Sale and leaseback.

   Ogden Marion Land Corp. ("LAND"), a subsidiary of Martin, was organized to purchase the SITE from OGDEN MARION and lease the SITE back to OGDEN MARION for a 50-year term pursuant to a ground lease.

2. Issuance of preferred stock.

   LAND will thereupon issue 300 shares of $1,000 par value preferred stock for $300,000 to Columbia Willamette Leasing, Inc. ("PURCHASER"). The preferred stock gives PURCHASER the right to receive dividends equal to one-half the rentals received for the SITE under the ground lease. Ground lease rent (and therefore the amount of dividends) is based upon tons of acceptable waste processed at the FACILITY.

3. Payment for the SITE.

The purchase price of the preferred stock is equal to the appraised fair market value of the SITE, and all proceeds from issuing the preferred stock will be used to pay the purchase price of the SITE.

4. EQC certificate.

The Oregon Environmental Quality Commission ("EQC") will certify the actual cost of the PROJECT, certify the portion of the actual cost properly allocable to the prevention, control or reduction of solid waste, and fix the dollar amount of the pollution control tax credits (the "CREDITS") at its hearing in Portland, Oregon, on December 12, 1986. OGDEN MARION, LAND, and PURCHASER will designate, by signed written agreement, PURCHASER as the person entitled to 100 percent of the "certified cost" of the PROJECT (and therefore all of the CREDITS).

If OGDEN MARION believes that the amount of CREDITS certified by the EQC is substantially less than the amount which it properly earned for the PROJECT, PURCHASER's preferred stock holdings may be proportionately reduced immediately after the EQC hearing to reflect the additional amount of CREDITS OGDEN MARION will seek to have certified by judicial review of the EQC action. In any event, the preferred stock investment by the PURCHASER would not be expected to be less than $150,000. The balance of the preferred stock would be held by LAND to be issued upon resolution of the dispute regarding the amount of the CREDITS.

5. Payment for CREDITS.

PURCHASER will pay OGDEN MARION for the allocation of certified costs and PURCHASER will pay all expenses of transferring the CREDITS. No portion of the costs of transferring the CREDITS will be certified by the EQC as pollution control expenses. OGDEN MARION in turn will pay a majority percentage of what it receives for the CREDITS to the COUNTY. The precise amount and percentage to paid to the COUNTY depends on the total amount of net proceeds realized from the sale of the CREDITS.

I. Parties and Background Facts

1.01. OGDEN MARION. OGDEN MARION, an Oregon corporation, TIN 91-1246805, was organized November 5, 1982. OGDEN MARION will own the PROJECT (except for the SITE) and will operate the PROJECT. OGDEN MARION's former name was Trans Energy-Oregon, Inc. ("TEO").

1.02. OGDEN. OGDEN, a Delaware corporation, TIN 13-5549268, was organized August 4, 1939. On September 20, 1984, acting through an

intermediate subsidiary, OGDEN acquired and now owns all the issued and outstanding stock of OGDEN MARION. MARTIN owns all of the common stock of LAND. OGDEN's stock is listed and traded on the New York Stock Exchange.

1.03. LAND. LAND, an Oregon corporation, TIN 13-3369730, was incorporated September 16, 1986, and will be organized prior to its purchase of the SITE. Its only planned activity is the ownership and lease of the SITE.

1.04. PURCHASER. PURCHASER, an Oregon corporation, TIN 93-0851591, was incorporated February 1, 1984. It will own all of the preferred stock of LAND (and almost all of LAND's initial equity), and claim the CREDITS. Under circumstances described in Summary paragraph 4 above, a portion of the preferred stock may be held by LAND and issued at a later date if OGDEN MARION disputes the decision of the EQC regarding the amount of the CREDITS.

1.05. Service Agreement and bonds. OGDEN MARION is obligated under a "Service Agreement" with the COUNTY to (i) acquire, construct, install and equip the FACILITY and the SITE; (ii) operate and maintain the PROJECT for a period of at least 17.5 years; (iii) dispose of at least 145,000 tons per year of acceptable waste which is to be delivered to the PROJECT for disposal; and (iv) charge and collect a fee for such disposal from the COUNTY. In order to finance the PROJECT, the COUNTY, in 1984, issued $57,325,000 floating/fixed rate solid waste and electric revenue bonds. The COUNTY loaned the $57,325,000 to OGDEN MARION which, together with approximately $12,600,000 of equity capital contributed by OGDEN MARION, is being used to pay for the PROJECT. During the last year the interest rates for the bonds have been fixed and $6,200,000 of bond principal has been retired because the PROJECT cost less than was anticipated. OGDEN MARION makes monthly payments to a trustee for the bondholders for the account of the COUNTY to repay the COUNTY's loan to OGDEN MARION and in turn to pay principal and interest on the bonds. Pursuant to appropriate documents, the PROJECT stands as security for payment to the COUNTY and the bondholders. The bonds have varying maturity dates, the latest being October 1, 2009.

1.06. DEQ application. On September 11 and October 30, 1986, OGDEN MARION submitted an application for certification of pollution control costs for the PROJECT to the Department of Environmental Quality (DEQ) of approximately $55 million. OGDEN MARION's cost of the SITE was included in the PROJECT costs to be certified by the EQC.

II. Proposed Transactions

2.01. Sale and leaseback of the SITE. Before EQC action on December 12, 1986, OGDEN MARION will sell the SITE to LAND for its appraised fair market sales value. LAND will issue a promissory note as payment. LAND will in turn lease the SITE to OGDEN MARION for a 50-year term at its appraised fair market rental value. A lease term of 50 years is greater than the expected useful life of the improvements being constructed. The ground rental will be 18.62 cents per ton of acceptable waste for up to 160,000 tons per year, and 4 cents per ton for tons in excess of 160,000. Minimum rental of $27,000 is based upon the COUNTY's guaranteed minimum waste delivered to the PROJECT of 145,000 tons. The COUNTY and the trustee for the bondholders will authorize sale of the SITE and payment of the rentals, so that OGDEN MARION and LAND can conclude the sale and leaseback. The SITE will be subject to a lien in favor of the bond trustee as well as the COUNTY's rights under the Service Agreement, which includes a fair market value purchase option for the entire PROJECT under certain circumstances. OGDEN MARION will agree to hold LAND harmless from the lien of the bond trustee and to permit LAND to receive the full purchase price of the SITE (exclusive of improvements) in the event the COUNTY exercises its purchase option.

2.02. Other terms of the sale and leaseback will be:

(a) The ground lease will be triple net, obligating OGDEN MARION to pay all taxes, insurance and other costs. The termination options for OGDEN MARION and LAND will be very limited. The COUNTY and the bond trustee will have the right to cure any lessee defaults. The lease will permit OGDEN MARION to remove the improvements at any time and to restore the SITE to a bare and graded condition. If OGDEN MARION does not remove and restore prior to termination of the lease, then at LAND's request OGDEN MARION will remove the improvements and restore the SITE to a bare and graded condition upon termination of the lease.

(b) OGDEN MARION will have the option to purchase the SITE for its then appraised fair market value after December 31, 1999, through the end of the term of the lease. LAND may sell the SITE at any time after December 31, 1999, subject to the lease, OGDEN MARION's purchase option, and COUNTY's rights under the Service Agreement. The SITE may not be sold to a competitor of OGDEN.

(c) An appraisal in support of the sales price and rental value was obtained. The appraisal states:

(i) The proposed sales price of $300,000 falls within the range of fair market value and reflects a price which

could realistically be realized in an arm's length sale.

(ii) The proposed annual rental based on volume of garbage processed would yield a minimum return of 9 percent, and an expected return of 10 percent (and a potentially higher return), and is consistent with a rental which could be realized based on a market, arm's length negotiation.

(iii) It is expected that the fair market value of the SITE at the end of the lease term (determined without including any increase or decrease for inflation or deflation) will be at least 20 percent of the 1986 purchase price.

(iv) It is expected a profit will be earned by the PURCHASER on the purchase and leaseback of the SITE.

OGDEN MARION and LAND also believe the terms of the sale and leaseback are fair to both parties. Rent will be payable based on the amount of acceptable waste processed at the SITE. Minimum rental of $27,000 produces a minimum yield (before income taxes) of 9 percent per annum.

(d) Rent will increase every five years based upon the consumer price index. The formula for adjustment is one-half the increase in the consumer price index over the five-year period to a maximum of 12.5 percent.

(e) Neither OGDEN MARION nor any affiliate will lend money to LAND or guarantee any indebtedness of LAND in connection with the purchase of the SITE, except that payment for the SITE will come from the proceeds of issuance of the preferred stock. OGDEN will guarantee to PURCHASER any debts or obligations of LAND owed to PURCHASER or to OGDEN MARION.

2.03. Organization and capitalization of LAND.

(a) The preferred stock is expected to be transferable only as a single block subject to (i) any applicable securities regulations, and (ii) obtaining the reasonable consent of OGDEN MARION and LAND. In the event there are two preferred stockholders of LAND as a result of the circumstances described in Summary paragraph 4, these limitations on transferability would apply separately to each preferred stockholder.

(b) LAND will redeem the preferred stock issued to PURCHASER for its original issue price plus accrued and unpaid dividends after January 1, 1997. There are no agreements to redeem or retire any portion of

the preferred stock before that time.

(c) The preferred stock participates in pollution control by reason of its dividend based upon ground rent which is based upon tons of acceptable waste delivered to the FACILITY. The aggregate dividend for the 300 shares of preferred stock equals one-half the total ground rent.

(d) The preferred stock is nonvoting, does not participate in management of LAND, and has a dividend which is cumulative if not paid. For as long as any preferred stock is issued and outstanding, LAND has agreed to limit its activities to ownership of the SITE, without incurring additional material debt or obligations. Furthermore, as long as any preferred stock is owned by PURCHASER, OGDEN or its subsidiaries will continue to own all of the common stock of LAND and without PURCHASER's consent, will not amend its Articles or Bylaws, change its business, issue additional stock, amend the Ground Lease, liquidate or dissolve, or do certain other things.

2.04. EQC certification. PURCHASER, and perhaps OGDEN MARION and LAND (and no other person or entity) will receive a certificate from the EQC of the actual cost of the PROJECT and the portion of the actual cost properly allocable to the prevention, control or reduction of solid waste as provided in ORS 468.170(1).

2.05. Allocation of costs. OGDEN MARION, LAND, and PURCHASER will allocate all the certified costs (and thereby the CREDITS) to the PURCHASER, its successors and assigns. The allocation will be made by a written agreement signed by OGDEN MARION, LAND, and PURCHASER. The agreement will be attached to the Oregon income (or excise) tax returns of each of the parties for their taxable year which includes such allocation. In consideration of the allocation of certified costs to it, PURCHASER will pay OGDEN MARION for the CREDITS, and will pay all expenses of obtaining and transferring the CREDITS pursuant to a "Purchase Agreement," the form of which is attached as Exhibit A. Pursuant to the Service Agreement, OGDEN MARION has agreed with the COUNTY, that the majority of the benefit attributable to OGDEN MARION's sale of the CREDITS will be paid to the COUNTY, based upon the total net proceeds received from PURCHASER. OGDEN MARION has agreed to provide PURCHASER with a broad income tax indemnity assuring PURCHASER of the right to claim the CREDITS without loss or recapture over the next 10 years. OGDEN has provided PURCHASER with a guaranty of the obligations of OGDEN MARION and LAND described herein.

2.06. Interest of PURCHASER. PURCHASER has the following interests: (i) a capital interest in LAND by reason of purchasing $300,000 of capital

stock and holding it for the entire ten year period of the CREDITS; (ii) an interest in the PROJECT because the purchase price of the preferred stock was used to purchase the SITE from OGDEN MARION; (iii) an interest in the PROJECT because dividends on the preferred stock are tied to waste processed at the FACILITY; (iv) an interest in the PROJECT by being a substantial shareholder in LAND, the owner, and lessor of the SITE; and (v) an interest in the PROJECT by reason of the payment for the CREDITS.

III. Rulings

3.01. Based upon the representations and statements of fact in your December 2, 1986, letter, and as restated herein, the following rulings are given:

(1) The proposed transactions between OGDEN MARION and LAND will result in LAND purchasing the SITE and leasing it to OGDEN MARION under a true lease for Oregon tax purposes.

(2) (a) PURCHASER and LAND will each be treated as having a "beneficial interest" in the PROJECT within the meaning of ORS 316.097(4)(a)(C) and ORS 317.116(4)(a)(C). In the event PURCHASER is left with less than all of the authorized preferred stock of LAND (but has at least $150,000) because OGDEN MARION has decided to challenge the action of the EQC, PURCHASER will nonetheless have such beneficial interest.

(b) Pursuant to the written agreement, all the certified costs of the PROJECT within the meaning of ORS 316.097(4)(a)(C) and ORS 317.116(4)(a)(C) as certified by the EQC will be properly allocable to PURCHASER.

(c) Under ORS 316.097(2) and ORS 317.116(2), the CREDIT claimed by PURCHASER will be limited to the lesser of (i) the amount of PURCHASER's Oregon income or excise tax liability for each year beginning in the year of EQC certification or (ii) one-tenth of the CREDIT, with allowance for carry forwards as provided in ORS 316.097(9) and ORS 317.116(9).

(3) (a) Respecting carry forward of CREDITS, the CREDITS shall be claimed in the order of the year in which they accrue. In other words, the earliest carry forwards shall be used prior to later carry forwards or CREDITS for the then current tax year which may otherwise be available.

(b) Any carry forward may be added to the one-tenth of the total CREDITS allowable in each year, so that in carry forward years, more

than one-tenth of the total CREDITS may be used if PURCHASER's tax liability is otherwise sufficiently large.

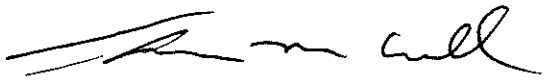
(4) (a) If any of PURCHASER's preferred stock in LAND is transferred, the CREDIT for the then current year may be allocated between PURCHASER and its transferee in proportion to the number of days in the year before and after the transfer.

(b) Any unused CREDIT of PURCHASER being carried forward may continue to be used by PURCHASER (subject to the limitation of ORS 316.097(9) and ORS 317.116(9)) even if PURCHASER no longer has a beneficial interest in the PROJECT or even if the EQC certificate has been revoked, except as otherwise provided under the recapture rules in ORS Chapter 468.

(5) There is no provision for recapture of properly claimed CREDITS except as provided under ORS 468.185(3), and the collection procedures specified by ORS 314.255.

(6) If the EQC certificate is issued in 1986, CREDITS for 1986 (one-tenth of the total CREDIT) may be claimed entirely by PURCHASER. No portion of the CREDIT for 1986 would be allocable to OGDEN MARION or LAND if the agreement for allocation of the costs is filed with the Oregon Department of Revenue on or before December 31, 1986.

(7) These rulings will be binding on the Oregon Department of Revenue and may be relied upon by OGDEN MARION, LAND, and PURCHASER and their successors or assigns to the same extent as though it were separately addressed to them, provided that the facts and circumstances are not different from those set forth in your December 2, 1986, letter, and as restated herein, and upon which the rulings were issued.



Thomas M. Everall, Supervisor
Corporation Section, Audit Division

Telephone: (503) 378-3745

Enclosure

cc: Elizabeth Stockdale
Donald H. McNeal
Leonard M. Hamilton

STATEMENT AND AGREEMENT OF ALLOCATED COSTS

WHEREAS, THE UNDERSIGNED, Ogden Martin Systems of Marion, Inc. ("Ogden Marion"), Ogden Marion Land Corp. ("Ogden Land"), and Columbia Willamette Leasing, Inc. ("CWL"), each have "beneficial interest" within the meaning of ORS 317.116(4)(a)(c) in a mass burn solid waste disposal, electric power generating, resource recovery facility in Marion County, Oregon (the "Project"); and

WHEREAS, construction of the Project qualifies for Oregon pollution control facility income and corporate excise tax credits which have been applied for pursuant to an application dated September 11, 1986, filed with the Oregon Department of Environmental Quality, as supplemented and amended (such credits as certified by the Oregon Environmental Quality Commission ("EQC") at its hearing on December 12, 1986, pursuant to such application hereinafter the "Credits") as provided in ORS 468.155 to 468.190; and

WHEREAS, the amount of Credits has been (or will be) certified by the EQC in the name or names of Ogden Marion, Ogden Land, and CWL and no other person or entity (unless and until such time as the Credits or interests therein are transferred); and

WHEREAS, Ogden Marion, Ogden Land, and CWL wish to allocate among themselves the amount of the certified cost of the Project as determined by the EQC ("Certified Cost") (and thereby the amount of Credits claimed by each);

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. One hundred percent of the Certified Cost shall be allocated to CWL, its successors and assigns, zero percent shall be allocated to Ogden Marion, and zero percent shall be allocated to Ogden Land.

2. This statement shall be attached to the Oregon Corporate Excise (or Income) Tax Returns of Ogden Marion, Ogden Land, and CWL for the taxable year of each which includes the date of certification by the EQC.

EXHIBIT A

IN WITNESS WHEREOF, the undersigned have executed this Statement and Agreement of Allocated Costs effective this _____ day of December, 1986.

OGDEN MARTIN SYSTEM OF MARION, INC.

By _____
(title)

OGDEN MARION LAND CORP.

By _____
(title)

COLUMBIA WILLAMETTE LEASING, INC.

By _____
(title)

Ogden Corporation, a Delaware corporation and the indirect parent corporation of Ogden Martin Systems of Marion, Inc., and Ogden Marion Land Corp. hereby consents to and acknowledges the action taken in this Statement and Agreement of Allocated Costs.

OGDEN CORPORATION

By _____
(title)

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*ADMITTED IN OREGON AND WASHINGTON
**ADMITTED IN WASHINGTON ONLY
***ADMITTED IN IDAHO ONLY

MEMORANDUM

To: Members of the Environmental Quality Commission

Subject: Ogden Martin Systems of Marion, Inc., Pollution Control Tax Credits

Date: December 12, 1986

I. What is the facility?

Ogden Martin Systems of Marion, Inc., has built a state of the art mass-burn solid waste-to-energy facility in Marion County. The staff report, at page 1, correctly explains (a) that the facility is a plant which receives, stores and burns solid waste with the energy converted to electricity, and (b) that the sole purpose of the facility is to reduce a substantial quantity of solid waste by a resource recovery process that produces energy.

II. What is the standard to be applied by the Commission?

By statute:

"In establishing the portion of costs properly allocable to the prevention, control or reduction of * * * solid * * * waste * * * the commission shall consider the following factors:

"(a) If applicable, the extent to which the facility is used to recover and convert waste products into a salable or usable commodity.

"(b) The estimated annual percent return on the investment in the facility.

"(c) If applicable, the alternative methods, equipment and costs for achieving the same pollution control objective.

"(d) Any related savings or increase in costs which occur or may occur as a result of the installation of the facility.

"(e) Any other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of * * * solid * * * waste." (ORS 468.195, emphasis added)

III. Applying this standard, what percentage should be certified?

1. With respect to factor (a): the entire facility is used for the sole purpose of converting waste products into a salable commodity. One hundred percent. This factor is the most applicable to a solid waste facility.

2. With respect to factor (b), Return on Investment:

(a) General principles.

(i) This factor is relevant to other applicants, such as those with mixed manufacturing and pollution control objectives.

(ii) By regulation, the income or cash flow percentage of credits is to be calculated independent of the method or methods of financing. Consider the example of two identical plants with identical benefits to the operator, one financed with fixed rate bonds and one financed with floating rate bonds: the tax credits should be the same. Or consider the example of two identical plants financed with identical floating rate bonds, only one plant fixes the interest rate on the bonds before EQC action and one plant fixes the interest rate on the bonds after EQC action: the tax credits should be the same.

(iii) The formula yielding the percentage of credits is calculated independent of whether or not the tax credits are used or sold. Consider the example of two identical plants, one built by a taxpayer who can use the credits and one built by a taxpayer who cannot and therefore sells the credits

in the fashion approved by statute and the Oregon Department of Revenue: the tax credits should be the same.

(b) Specific problems with the staff report:

(i) The fact that Marion County, acting on the best advice of its financial advisors, elected to convert the bonds from a floating to a fixed rate, a decision which had no financial impact on Ogden, was used by the staff to reduce the qualifying percentage and therefore reduce the tax credits by more than $4 million.

The EQC should instead follow a policy which is absolutely neutral toward financing decisions made after initial financing of the facility.

(ii) Whether Ogden uses the credits or whether the credits are transferred to another taxpayer is irrelevant. The EQC should follow a policy which is absolutely neutral toward whether the tax credits are used or transferred. Instead, the staff used the projected sale to reduce the qualifying percentage and therefore the tax credits.

By express intent, your regulation requires income taxes to be completely ignored in Schedule V. Therefore, a sale of a future tax benefit should have no impact on calculation of the credits. A sale of the tax credits pursuant to an express statute and approval of the Oregon Department of Revenue should not decrease the total tax credits certified.

(iii) Deloitte, Haskins & Sells certified $54,940,879 as the total capitalized costs of the project. The staff report allowed only 92.9 percent of the total capital costs as pollution control costs, yet the report then claimed 100 percent of the cash flow as pollution control income for Schedule V computation purposes. The cash flow must be prorated equitably over all capital expenditures for the facility.

(iv) If the capitalized repair and maintenance items are excluded from qualifying costs, the income and expense statement must be adjusted to reflect the actual cash expenditures for those items, all of which are expected to be used up in the first five years of operation.

(v) Assuming (but not agreeing) that some portion of the bond costs (which have all been paid by Ogden) are not eligible as certified costs, your new regulation on prorating such actual, cash expenditures must mean that the costs are prorated over the life of the bonds and must therefore include the five year period of the income statement.

(vi) A cogent argument advanced by your financial consultant is that debt service paid by Marion County should be excluded from the Ogden Marion cash flow statement. First, the money is paid by the County directly to the bond trustee and never comes to Ogden Marion. Second, the interest component of the debt service is not net income for either financial or tax purposes because there is an equal, offsetting deduction. Third, the interest rate and schedule of principal payments are financing decisions which should not affect the amount of the tax credits.

3. The third factor, the alternative methods, equipment and costs for achieving the same pollution control objective, should result in a 100 percent certification. The high range of 100 percent is based on the fact that the costs of the alternative of siting and using a landfill can be almost infinite. You are well aware of the environmental problems and inordinate difficulty in siting landfills.

4. The fourth factor, related savings, does not easily apply to a mass-burn solid waste facility. The electric revenues are included in the return on investment computation.

5. The fifth factor, "other" was amended by the legislature in 1983 to be expressly applicable to solid waste. A much better and more relevant test for efficiency is the degree to which the facility reduces the volume of solid waste which must ultimately be landfilled. The 87 percent reduction in the total volume of solid waste reflects the amount of material no longer required to be placed in the landfill.

IV. What about the "lowest factor" regulation?

The regulation which says you must choose the factor which yields the lowest percentage is void as an impermissable alteration or amendment of the statute it purports to interpret. The statute requires that all factors shall be considered. Factor (e) is expressly applicable to solid waste facilities. In testimony before the 1983 legislature, the DEQ indicated the use of several factors and agreed that for this

very facility, various factors would be considered. No mention was made of arbitrarily selecting the factor which would yield the lowest percentage.

Richard A. Cantlin
David W. Brown

OGDEN MARTIN SYSTEMS, INC.
140 EAST RIDGEWOOD AVENUE
PARAMUS, N. J. 07652

bcc: M. Hausman

RICHARD W. SEELINGER
EXECUTIVE VICE PRESIDENT
(201) 599-2400

December 10, 1986

Mr. Ervin E. Nesheim
Brown and Caldwell
Consulting Engineers
1501 North Broadway
Walnut Creek, CA 94596

Subject: Resource Recovery Facility
Marion County, Oregon

Dear Mr. Nesheim:

Confirming our phone conversation of December 9, 1986, we are attaching herewith calculations which we believe represent savings in landfill requirements when refuse is incinerated in a Resource Recovery Facility such as that now in operation in Marion County, Oregon.

As discussed with you, we are proposing to the State of Oregon that this volume reduction could be a means to determine the extent of pollution control tax credits for the facility.

In our calculations we have used a compacted density of 1250 pounds per cubic yard for landfilled refuse and 2000 pounds per cubic yard for the landfilled ash. We have also assumed the ash to be 20.5 per cent of the original refuse. The basis of the refuse compacted density was information we had access to for the City of New York.

We would appreciate your review of these calculations and providing us with a letter as an independent engineer that the calculations are representative of the reduced landfill requirements. We are not requesting you concur in the tax credit approach.

As this is a matter of some urgency, we trust your letter can be provided accordingly. Please call us should you have any questions.

Very truly yours,

Richard W. Seelinger

Richard W. Seelinger
Executive Vice President

RWS:jc
Attachment

MARION COUNTY, OREGON
VOLUME REDUCTION OF LANDFILLED WASTE DUE INCINERATION

Facility Size = 550 TPD = 45,833 lb/hour

Assume raw waste to landfill with no incineration:

Daily volume refuse compacted in landfill =

$$45{,}833 \frac{\text{lb}}{\text{hr}} \times 24 \text{ hr} \times \frac{1 \text{ cu.yard}}{1250 \text{ lb.}} = 880 \text{ cu. yard}$$

Assume Waste is incinerated and ash goes to landfill:

Daily volume ash compacted in landfill =

$$45{,}833 \frac{\text{lb}}{\text{hr}} \times 24 \text{ hr} \times .205 \frac{\text{lb ash}}{\text{lb refuse}} \times \frac{1 \text{ cu. yard}}{2000 \text{ lb}} = 113 \text{ cu. yard}$$

Reduced volume to landfill due incineration = 767 cu. yard

Volume reduction to landfill = $\frac{767}{880}$ = 87 per cent

BROWN AND CALDWELL
CONSULTING ENGINEERS

December 11, 1986

Mr. Richard W. Seelinger
Executive Vice President
Ogden Martin Systems, Inc.
140 East Ridgewood Avenue
Parmus, New York 07652

11-19-2328-01/1
Telecopied to
(503) 224-0155

Subject: Marion County, Oregon, Waste-to-Energy Project

Dear Mr. Seelinger:

Your December 10, 1986, letter requests that we review your calculations regarding reduction of landfill volume requirements resulting from incinerating solid waste. You calculated an 87-percent reduction. Your assumptions and our evaluation follow:

1. Landfilled solid waste bulk density = 1,250 lb/cu yd. The range of landfill bulk density is 600 to 1,200 lb/cu yd. Typical values are 750 and 1,000 lb/cu yd for normally compact and well compacted, respectively.

2. Ash quantity = .205 lb/lb solid waste. This represents the dry ash from burning the reference waste. The wet weight of ash residue produced from burning 188 tons of solid waste during the 8-hour energy efficiency test was 54.6 tons, or .290 lb/lb solid waste (wet weight).

3. Landfilled ash residue bulk density = 2,000 lb/cu yd. Wet, compacted mixture of bottom ash and high lime dosed fly ash.

Our calculated range of landfill volume reduction using typical compaction bulk densities, actual wet ash residue quantities, and 2,000 lb/cu yd ash landfill volume is 85 to 89 percent. Since the

amount of cover volume is also significantly reduced, the actual reduction should be more than calculated. We believe the 87-percent reduction stated in your letter is reasonable.

Very truly yours,

BROWN AND CALDWELL

Ervin E. Nesheim, P.E.
Project Manager

EEN:dll
Enclosure

cc: Mr. Robert Hansen, Marion County Department of Public Works, Salem, Oregon

NOV 21 1986

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Jim Petersen DATE: November 19, 1986

FROM: Fred Hansen

SUBJECT: Attached Petition from the City of Klamath Falls dated November 17, 1986, transmitted by letter dated November 15, 1986.

In the attached petition, the City of Klamath Falls requests the EQC to issue an order which:

(a) waives the requirements of OAR 340-48-020(2)(i) -- a rule which requires an applicant for 401 certification to provide in the application, a statement from the county regarding the status of land use compatibility for the proposed project; and

(b) directs the Department to deem the City of Klamath Falls' 401 certification application to be complete and commence processing of the application.

The Department letter to William G. Miller, Project Director dated November 3, 1986 (attachment 5 of petition) explained the department's interpretation and position regarding the applicant's responsibility to provide land use information as part of a complete application for 401 certification.

We obviously do not agree with Peter Glaser's interpretation of the Arnold Irrigation District decision. We believe the decision, in it's total content, requires DEQ to go as far as it can to comply with both state law and federal law as it receives, reviews, and acts on a 401 certification application. Only if state law would direct an outcome contrary to federal law would the federal law supersede state law. Arnold on page 8, lines 2 through 16 specifically requires DEQ to act, with respect to programs affecting land use, in compliance with the statewide land use goals and in a manner compatible with acknowledged comprehensive plans and to include limitations reflecting goals and plans in section 401 certificates to the maximum extent that the Clean Water Act allows--that is, to the extent that they have any relationship to water quality.

We believe it is quite reasonable to require the applicant to provide the basic information necessary to support the decisions DEQ must make in acting on their application. This is what the present rule requires. Arnold did not invalidate the rule. In fact, it directs DEQ on remand to consider the effect of this rule (OAR 340-48-020(2)(i)) on the Arnold Irrigation District project (see Arnold page 9, lines 9 through 13).

The rule requires the applicant to obtain land use information from the appropriate local planning agency -- in this case, Klamath County. They are the ones best able to determine what provisions of their plan apply to the project, and the extent to which the project complies with those provisions. Although DEQ must ultimately determine what provisions have some relationship to water quality, we believe it appropriate for the county to identify the provisions they believe to be water quality related.

We believe we should respect the county's expertise and process for evaluating land use consistency. Only if the local planning agency refuses to act on an applicant's request or unnecessarily delays the evaluation process, would it be appropriate for DEQ to fall back to some alternative process for developing the needed land use information. The 5-6 months the county estimates it will take to evaluate the project, hold the hearings and make the local determinations is a reasonable estimate and in our opinion constitutes a good faith effort to expedite processing of an application, once received.

Klamath Falls has had knowledge of EQC Rules since they were adopted in November 1985. They have elected to not request the information from the County in time to file it with their application. We do not believe there is justification for any alternative procedure to that specified in the present EQC rules.

We therefore will recommend that the petition of Klamath Falls be denied.

Procedural Options

The EQC has procedural rules for handling petitions for rulemaking and declaratory rulings (OAR 340-11-047) and 11-062). Although the procedures for rulemaking and declaratory rulings differ, in both cases, the EQC must decide within 30 days after filing whether or not to consider the petition. In general, the EQC may refuse to consider the petition -- in which case an order denying the petition would be entered. If the Commission elects to consider the petition however, notice must be given, copies must be provided to interested parties, and the specified processes for hearings or rulemaking followed.

This petition does not clearly fall into either category. However, if the EQC were inclined to go along with the city's request, we believe it will be necessary to initiate rulemaking and amend the present rule. (Please recall that no variance authority exists in the water quality statutes, therefore a waiver is not possible.) The notice requirements for rulemaking cannot be accomplished by the December 12 meeting date. In addition, our rules for acting on a petition for rulemaking do not contemplate a temporary rule. Therefore, action on December 12 to adopt a rule modification seems to be precluded.

The most likely options for Commission action seem to us to be:

- Give Klamath Falls the opportunity to present their petition at the December 12, 1986 meeting.

- If the EQC decides to refuse consideration, enter an order accordingly.

- If the EQC decides to further consider the petition, decide whether rulemaking or a declaratory ruling process would be appropriate, designate a hearings officer, schedule a hearing, give public notice, and proceed.

Your further comments will be appreciated.

HS:y
DOY365.7

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November 15, 1986

Fred Hansen
Director, Department of
Environmental Quality
522 S.W. Fifth Avenue
Box 1760
Portland, Oregon 97207

Dear Mr. Hansen:

Enclosed is an original and extra copy of a petition by the City of Klamath Falls to the Environmental Quality Commission requesting an order waiving O.A.R. 340-48-020(2)(i) and directing DEQ to initiate substantive review of the City's Section 401 application. The City takes this action reluctantly but in the belief that the City's Section 401 application must move forward.

We request that this matter be placed on the agenda for the Commission's December 12, 1986 meeting. The essence of our petition is that action should be initiated on our application before the expiration of the six months set forth in your November 3, 1986 letter. Obviously, the ability of the Commission to grant us relief is diminished if we cannot be heard until the January 23 meeting. Our petition is relatively brief, and the Commission is familiar with the issues raised. We feel, therefore, that our petition would not unduly burden the December 12 agenda, and we would greatly appreciate if we could be heard on that date.

There are several points in your November 3, 1986 letter that are not addressed in the enclosed petition and which we wish to comment on. You state that the City said at our meeting on October 14, 1986 that the City expects the land use application process to take more than one year to complete. I think what was said was that we did not know how long the County would take to complete its procees, but it would not surprise us if it took up to a year or more. We are glad to learn that the County believes that the process can be completed in five to six

months, and we will cooperate to the utmost in attaining that goal.

The second and third indented paragraphs on page 2 of your letter correctly characterize one compromise proposal made by the City. The City's legal position, which it does not waive, is that DEQ should examine the County plan, and based on that examination, determine that there are no water quality aspects of the plan that would form the basis for any appropriate conditions in an issued Section 401 certificate.

Your letter goes on to state that "[t]he County also stated that it would consider it to be inappropriate for DEQ to process the City's application and receive public comment on land use issues (a necessary part of the DEQ public notice and input process) when the local process including public hearings has not been completed." We do not see that comment in the October 29, 1986 letter from the Klamath County Planning Department attached to your November 3, 1986 letter.

Fred, as stated in our petition, with the County indicating that the land use process can be completed within five to six months, there appears to be no reason why compromise positions of both DEQ and the City cannot be accommodated without having to burden EQC. DEQ can obtain the information that would be generated by the land use process before the certificate is issued, while at the same time DEQ can proceed to determine whether the project complies with the EPA-approved water quality criteria.

Please let us know what you think and whether this matter can be placed on the December 12 Commission agenda.

Sincerely,

Peter S. Glaser

Enclosure

cc: Hon. George Flitcraft
James Keller
William Miller
Kurt Burkholder

BEFORE THE OREGON
ENVIRONMENTAL QUALITY COMMISSION

In the Matter of the Application by the City of Klamath Falls for Certification of Compliance with Water Quality Requirements and Standards for the Salt Caves Hydroelectric Project	)))))	Petition by the City of Klamath Falls for Waiver of O.A.R. 340-48-020(2)(i) and for Order Directing DEQ to Deem Application Complete

The City of Klamath Falls respectfully petitions this Commission for an order waiving the requirements of O.A.R. 340-48-020(2)(i) and directing the Department of Environmental Quality to deem complete the City's application for certification of compliance with water quality requirements and standards under Section 401 of the Federal Water Pollution Control Act for the Salt Caves Hydroelectric Project.

Relying on O.A.R. 340-48-020(2)(i), DEQ has informed the City that it will not deem complete and begin substantive processing of the City's Section 401 application until the City initiates and comletes a land use approval process with Klamath County. DEQ has further informed the City that if such process is not completed within six months, the City's Section 401 application will be rejected.

DEQ's action is wrong as a matter of law and as a matter of policy. As a matter of law, DEQ's action conflicts with the recent case of Arnold Irrigation District v. Department of Environmental Quality, 79 Or. App. 136, 717 P. 2d 1274 (1986) (Attachment 1 hereto), which was decided after this Commission adopted the regulation in question.

As a matter of policy, the City has offered DEQ a reasonable compromise that addresses DEQ's desire to receive land use information from the County and at the same time addresses the City's concern that the application be processed expeditiously. This compromise should be adopted.

These points are addressed in more detail below.

I

BACKGROUND

The City applied to DEQ for Section 401 certification for the Salt Caves Project on August 25, 1986. Attachment 2 hereto. The City's proposed project was a modification of an earlier project proposal for which the City had filed, and had then withdrawn, a prior application for Section 401 certification. The City's reasons for modifying the earlier project were, in large part, to address water quality concerns raised by DEQ staff. The City now believes that the modified project, as set forth in the current Section 401 application, does not present any water quality concerns. During the process of drafting its application to the Federal Energy Regulatory Commission (FERC) for a license for the modified project, and before the City filed its Section 401 application, the City met with DEQ staff on two occasions and spoke on several others in order to familiarize staff with the new proposal and to identify and eliminate any possible water quality concerns.

By letter dated September 25, 1986, DEQ notified the City that the Section 401 application was deficient in four respects and that the staff desired that the City provide three

other items as additional information. Attachment 3 hereto. Significantly, none of the deficiencies identified by DEQ pertained to any failure by the City to supply technical information required to analyze compliance with DEQ's EPA-approved water quality standards. The "deficiency" items DEQ requested were: a complete copy of the City's draft environmental report included in the FERC application (which report had been previously supplied to DEQ as a part of the FERC application process); an explanation of why the City believes it is exempt from Sections 3 and 5 of Chapter 569, Oregon Laws 1985 (H.B. 2990); a discussion of whether the City's project proposal was now final; and the land use information required by O.A.R. 340-48-020(2)(i).

On October 14, 1986, the City met with DEQ to discuss DEQ's September 25, 1986 letter. By letter dated October 17, 1986, the City supplied some of the information requested by DEQ. Attachment 4 hereto. In a further meeting on October 21, 1986, the City supplied additional information.

The only information requested by DEQ which the City did not supply was the information DEQ believes is required by O.A.R. 340-48-020(2)(i). That section provides as follows:

> (2) A completed application filed with DEQ shall contain, at a minimum, the following information:
>
> * * *
>
> (i) A statement from the appropriate local government whether the project is compatible with the acknowledged local

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

In its Section 401 application, in response to this regulation, the City had provided two letters from Klamath County stating that the County could not supply the O.A.R. 340-48-020(2)(i) statement until the City filed an application with the County for various land use approvals and until the County completed the public process required for action on such approvals. DEQ's September 25, 1986 letter, however, stated that this response did not satisfy O.A.R. 340-48-020(2)(i).

At the October 14, 1986 meeting, DEQ and the City discussed what information DEQ could require under O.A.R. 340-48-020(2)(i). The City explained that under Arnold it could not be required to initiate and complete the County's land use approval process as a pre-condition to filing its Section 401 application. The City explained that O.A.R. 340-48-020(2)(i) had been adopted before Arnold and that such regulation, as DEQ was interpreting it, could no longer be enforced after that decision.

However, as a compromise, but without waiving the City's legal position, the City informed DEQ that the City was prepared to initiate the proper County land use process as soon as possible and that the City had intended to do so even before receiving DEQ's September 25, 1986 letter. The City proposed that it would initiate the land use process and that in the meantime DEQ would deem complete the City's Section 401 application and begin substantive processing of it.

DEQ took the matter under advisement, and by letter dated November 3, 1986, informed the City that two items remained to be "submitted or resolved" before the City's application could be considered complete. Attachment 5 hereto. One was that DEQ had to receive an opinion from the Attorney General on the issue of the project's exemption under Chapter 569, Oregon Laws 1985 (H.B. 2990).* The second was that the City would be required to initiate and complete the County land use process and that it would have six months to do so.

As discussed below, DEQ's refusal to begin processing the Section 401 application until the County land use process is complete is wrong as a matter of law and policy.

II

DEQ'S POSITION IS WRONG
AS A MATTER OF LAW

The Arnold decision made two specific rulings that are applicable to this case.

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* The Attorney General's opinion is expected to be issued by the time this Commission meets to consider this petition.

First, the Court held that DEQ cannot deny a Section 401 application for reasons other than failure to comply with DEQ's EPA-approved water quality standards. The court stated that:

> The certificate which petitioners have to have from the state before they can proceed with the project is that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306 and 307 of CWA, 33 USC §§ 1311, 1312, 1313, 1316 and 1317. 33 USC § 1341(a)(1). Neither DEQ nor EQC found that the proposal violated any of those sections or any of the regulations adopted by the state under CWA authority. Violation of one of those sections or regulations is the only basis on which the state has authority under the CWA to deny the certificate. The power to issue the certificate is solely a creature of federal law; the state agencies are controlled by that law in their decisions on applications. They may not consider other factors than compliance with the provisions listed in 33 USC § 1341(a)(1) and with the state regulations in deciding whether to issue a certificate.

Attachment 1 hereto at pp. 4-5.

The Court's holding could not be more clear. Yet despite that holding, DEQ has told the City that it will dismiss the City's application unless it undertakes a land use process. DEQ's November 3, 1986 letter states that "DEQ is not attempting to deny 401 certification," but if the City refuses to comply with DEQ's directive in its letter, that is exactly what DEQ will do. As stated in DEQ's September 25, 1986 letter (p. 3):

> Failure to complete the application and provide the requested information within this time frame or within such other time as we may agree upon will be grounds for denial of certification.

The reason for such denial will be the City's failure [illegible] with a requirement other than DEQ's EPA-approved water [illegible] standards. The Arnold decision simply does not allow [illegible] a Section 401 application for that reason.

The second holding of Arnold that is relevant [illegible] that DEQ is authorized to provide as a condition to an issued Section 401 certificate that the developer must comply with such other requirements of state law as are related to water quality. In other words, if the Klamath County land use plan has requirements that are related to water quality, DEQ could provide in an issued Section 401 certificate that the City must comply with those requirements.*

DEQ's actions are at odds with this holding. This is a classic case of putting the cart before the horse. As noted, Arnold states that requirements of state law other than DEQ's EPA approved water quality standards are matters for a developer to meet after his water quality certificate is issued. DEQ would have the City apply for and complete the County land use process before the water quality certificate is issued. DEQ's position cannot be harmonized with Arnold.

DEQ's November 2, 1995 letter (p. 2) states that the City must initiate and complete the County land use process so that information can be developed to allow DEQ "to determine which provision of the local comprehensive plan may be water

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* It is the City's position that there is nothing in the County plan upon which a water quality condition in a Section 401 certificate can be based.

quality-related and thus appropriate conditions of a granted certificate."

This reasoning is misplaced. Even assuming for the sake of argument that the results of a land use process would be helpful to DEQ in fashioning appropriate conditions, DEQ is simply not permitted under Arnold to require that the City undertake the land use process in advance of issuing the certificate. Such requirement places DEQ in the position of having to deny the City's Section 401 application if the City were to refuse. As noted, such denial, which would not be based on DEQ's EPA-approved water quality standards, would not be allowed under Arnold.

Moreover, it is not really necessary, as DEQ states, for the City to complete the land use process in order for DEQ to attach appropriate conditions. DEQ is free to explore the land use plan with County officials in order to further understand the details of such plan, and DEQ's November 3, 1986 letter states that DEQ has already done so. This process would allow DEQ to make a judgment as to whether any requirements of the plan are related to water quality and are appropriate conditions for the granted water quality certificate without running afoul of Arnold.

In addition, the land use process will probably not even be helpful to DEQ in determining appropriate conditions for the issued certificate. The essence of determining such conditions is making the judgment as to whether any parts of the County plan are related to water quality. Since DEQ is the body

with the authority to issue water quality certificates, that is a judgment for DEQ, not the County, to make. Moreover, the County land use process has no provision in it for determining what requirements are or are not related to water quality. The County process provides that the County will determine whether an applicant meets various parts of the plan. Other than that certain parts of the plan specifically refer to "water quality" matters, there is nothing in the County process pursuant to which the County would say that any specific requirement does or does not relate to water quality.

In sum, the City believes that DEQ is misapplying the Arnold decision. DEQ simply cannot require that the City initiate and complete the County land use process as a condition to acting on the City's Section 401 application.

III

DEQ'S ACTIONS ARE WRONG
AS A MATTER OF POLICY

Putting aside the legal arguments, DEQ should begin processing the City's Section 401 application now as a matter of policy. As noted above, although the City believes that it would be legally justified in refusing to initiate the County process before issuance of the City's water quality certificate, the City has informed DEQ that it will file for the appropriate County approvals as soon as possible. At its November 17, 1986 council meeting, the City expects to authorize the filing of the appropriate application, and as the City has informed DEQ, that application should be filed around January 1, 1987.*

With the City's commitment to file that application and to diligently pursue the County land use approvals, there should be no reason that DEQ should need to hold up substantive processing of the Section 401 application. As indicated in DEQ's November 3, 1986 letter (p. 3), DEQ has evidently received assurances from Klamath County that the land use process can be completed in five to six months, or by May 1987, assuming a January 1987 filing. If DEQ were to begin substantive processing of the Section 401 application in December 1986, DEQ would have ample time to receive and analyze the results of the land use process within the one year in which DEQ must act on the Section 401 application.

In short, there is no reason why DEQ should have to delay substantive processing of the Section 401 application for six months. DEQ's concern with respect to having the results of the land use process before issuance of the certificate can be met without that delay.

It should be administrative policy to expedite administrative action and to prevent delays where possible. The present situation with the City's Section 401 application presents the Commission with the opportunity to conform to this policy without interfering with the staff's need to carefully consider the application. By the time the Commission considers this petition, the City's application will have been on file for

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* The City is taking these actions without waiving its legal position that it cannot be required to initiate and complete the County land use process prior to DEQ action on a Section 401 certificate.

four months. During that time no technical defects in the application have been identified, yet the City has been unable to convince DEQ to undertake substantive review. The City only wishes to have DEQ proceed with the exercise of DEQ's own expertise and function in this area, that is, administration of DEQ's EPA-approved water quality criteria. The City hopes and respectfully requests that this Commission will order DEQ to exercise this function forthwith.

For the foregoing reasons, the City requests that this Commission enter an order waiving O.A.R. 340-48-020(2)(i) and directing DEQ to immediately begin substantive processing of the City's Section 401 application.

Dated: November 17, 1986

Respectfully submitted,

Peter Glaser
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1615 M Street, N. W.
Suite 800
Washington, D. C. 20036
(202) 467-6370

Attorneys for the City of
Klamath Falls, Oregon

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In Re

LAVA DIVERSION PROJECT
FERC No. 5205
Deschutes County, Oregon.

ARNOLD IRRIGATION DISTRICT and GENERAL ENERGY DEVELOPMENT, INC., an Oregon corporation,

Petitioners - Cross-respondents,

v.

DEPARTMENT OF ENVIRONMENTAL QUALITY,

Respondent - Cross-respondent,

NORTHWEST ENVIRONMENTAL DEFENSE CENTER, an Oregon nonprofit corporation,

Respondent - Cross-petitioner.

(25-WQ-CR-FERC-P5205; CA A35731)

Judicial Review from Environmental Quality Commission.

Argued and submitted March 10, 1986.

Neil R. Bryant, Bend, argued the cause for petitioners - cross-respondents. With him on the brief were Benjamin Lombard, Jr., and Gray, Fancher, Holmes & Hurley, Bend.

Michael Huston, Assistant Attorney General, Portland, argued the cause for respondent - cross-respondent. With him on the brief were Dave Frohnmayer, Attorney General, James E. Mountain, Jr., Solicitor General, and Michael D. Reynolds and Mary J. Deits, Assistant Attorneys General, Salem.

Steven R. Schell, Portland, argued the cause for respondent - cross-petitioner. With him on the brief was Rappleyea, Beck, Helterline, Spencer & Roskie, Portland.

Before Warden, Presiding Judge, and Van Hoomissen and Young, Judges.

YOUNG, J.

Reversed and remanded for reconsideration on petition; affirmed on cross-petition.

1466N FILED: April 23, 1986.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Case Name: Arnold Irrig. Dist. v. DEQ

Appellate case number: A35731

Trial Court or agency case number: 25-WQ-CR-FERC-P5205

Prevailing party or parties: Petitioners on petition; cross-respondents on cross-petition.

[ ] No costs awarded

[xx] Costs awarded to the prevailing party or parties, payable by: Respondents on petition; cross-petitioner on cross-petition.

* * * * * * * * * * * * * *

FINAL ORDER*

IT IS ORDERED that on appeal or judicial review the prevailing party or parties recover from

costs and disbursements taxed at $_____, and attorney fees in the amount of $_____. (ORAP 11.03, 11.05, and 11.10.)

IS FURTHER ORDERED that judgment be entered in favor of the Judicial Department and against

in the amount of $_____ for filing fees not waived and unpaid at the time of entry of the final written disposition of this case. ORS 21.605.

Date Supreme Court denied review:

DATED: COURT OF APPEALS
(seal)

*This section will be completed when the appellate judgment is prepared. The Records Division of the Office of the State Court Administrator will prepare the appellate judgment, enter it in the appellate register, and mail copies to the parties within the time and in the manner specified in ORAP 11.03(3). See also ORS 19.190(1).

YOUNG, J.

This case concerns the criteria which the Department of Environmental Quality (DEQ) may use in determining whether to issue a certificate of compliance with the Federal Water Pollution Control Act (also known as the Clean Water Act (CWA))[1] and what conditions it may place on the certificate. Petitioners seek review of a final order of the Environmental Quality Commission (EQC) affirming a DEQ decision denying them a certificate of compliance for a hydroelectric project on the Deschutes River. DEQ denied the certificate, because petitioners did not provide a statement from Deschutes County that the project was compatibile with the county's comprehensive plan and land use ordinances. Petitioners assert that federal law limits DEQ's consideration to water quality concerns and that the land use provisions are not related to water quality. Respondent Northwest Environmental Defense Center cross-petitions and seeks to require DEQ to deny the certificate on the additional ground that, under DEQ's regulations, hydroelectric power is not a beneficial use on the affected portion of the river. We reverse and remand for further proceedings on the petition and affirm on the cross-petition.

Petitioners are jointly involved in a proposal to divert water from the Deschutes River south of Bend for

hydroelectric generation. The project will return the water to the river some distance downstream after using the natural fall of the river to produce power. Petitioner General Electric Development, Inc., holds a planning and design permit from the Federal Energy Regulatory Commission (FERC) for the project, and petitioners have applied to FERC for a license to build and operate it. Because the project involves a discharge into navigable waters, section 401 of the CWA, 33 USC § 1341,[2] requires petitioners to provide a certificate that the project complies with the act before FERC may issue the license. Under CWA, the certifying body is usually not a federal agency; rather, it is usually a state agency responsible for administering the act. The compliance certified is not with standards which the federal government has established but with standards adopted by the state and only approved by the federal Environmental Protection Agency (EPA).[3] This hybrid arrangement, with state agencies acting under federal law, is the source of much of the confusion in this case.

Congress' purpose in adopting the CWA was "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a), 33 USC § 1251(a). It did not, however, seek to achieve its purpose by exercising federal control and administration over those waters. Rather, "[i]t is the policy of the Congress to recognize, preserve, and

protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator [of the EPA] in the exercise of his authority under this [Act]." 33 USC § 1251(b).

In accordance with the emphasis on state responsibility and administration, the CWA places primary responsibility for the development of water quality standards on the states, subject to EPA approval. See, e.g., CWA § 303(a), 33 USC § 1313(a). Only if the state fails to act, or if its standards are less strict than those the act requires, will the federal government intervene directly. See, e.g., 33 USC § 1313(b); Mississippi Comm. on Natural Resources v. Costle, 625 F2d 1269 (5th Cir 1980). Federal requirements for the content of the regulations are only minimums; state standards may be stricter. CWA § 510, 33 USC § 1370; 40 CFR § 131.4; Homestake Min. Co. v. U.S. Environ. Protect., 477 F Supp 1279, 1283 (D SD 1979).

States establish standards under 33 USC § 1313 by first designating the uses of the waters which they wish to assure; they then adopt water quality standards which will allow the designated uses to be actual uses. "Such standards shall be such as to protect the public health or welfare,

enhance the quality of water and serve the purposes of this [Act]. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation." 33 USC § 1313(c)(2). The state standards applicable to the "Deschutes Basin" are found in OAR 340-41-562 through OAR 340-41-580; EPA has approved them. Hydroelectric generation is not one of the designated uses which those standards are designed to foster on the stretch of the river in question. OAR 340-41-562, table 9.

The certificate which petitioners have to have from the state before they can proceed with the project is that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306 and 307 of CWA, 33 USC §§ 1311, 1312, 1313, 1316 and 1317. 33 USC § 1341(a)(1). Neither DEQ nor EQC found that the proposal violated any of those sections or any of the regulations adopted by the state under CWA authority. Violation of one of those sections or regulations is the only basis on which the state has authority under the CWA to deny the certificate. The power to issue the certificate is solely a creature of federal law; the state agencies are controlled by that law in their decisions on applications. They may not consider other factors than

compliance with the provisions listed in 33 USC § 1341(a)(1) and with the state regulations in deciding whether to issue a certificate. EQC therefore erred when it affirmed DEQ's denial on the basis of a failure to show compliance with state and county land use requirements. We must, therefore, remand the case for reconsideration under the correct legal standard. ORS 183.482(8)(a)(B).[4]

That EQC erred in affirming the denial of the certificate does not resolve this case. Although the state could not deny the certificate on the grounds stated, 33 USC § 1341(d) does allow it to place limitations on the certificate if the limitations are

> "necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification * * *." (Emphasis supplied.)

Any limitation that the state imposes becomes a condition on any federal license or permit issued pursuant to the certification.

Although the emphasized language does not allow DEQ to consider land use and other issues outside the CWA in deciding whether to approve certification applications, it may be able to consider those factors in deciding what limitations to place

on the certificate. Because the question of the relevance of land use regulations to limitations on a certificate is certain to arise on remand, we discuss it here.[5]

The legislative history of the phrase in question is minimal. The conference committee which developed the final version of the bill added it; there was nothing precisely comparable previously. The committee's report says only that under this provision "a State may attach to any Federally issued license or permit such conditions as may be necessary to assure compliance with water quality standards in that State." That statement gives little additional hint of Congress' intent. We believe, however, that there are sufficient indications of what kinds of other state requirements Congress considered "appropriate" for DEQ and EQC to use.

We look first at the purpose of the act and at what Congress could have said but did not. The purpose of CWA is "to restore and maintain the * * * integrity of the Nation's waters." 33 USC § 1251(a). Under the act, primary responsibility for determining what constitutes the integrity of the nation's waters and what is necessary to restore and maintain that integrity is with the states. The act requires the states to exercise their responsibility by adopting water quality standards under 33 USC § 1313 and to base those standards on the uses which the states wish to encourage. The

specific effluent limitations and performance standards provided in other sections of the act are designed to achieve the quality standards of section 1313. Certainly, section 1313 water quality standards are appropriate limitations in determining what limits to place on a certificate.

The section 1313 standards are not, however, the only water quality standards which states may enforce; the states have inherent authority, independently of the CWA, to protect and plan the use of their waters. Congress did not make the section 1313 standards the exclusive water quality criteria which the states may use in placing limitations on section 1341 certificates. If Congress had intended to do so, it could have specifically mentioned those standards in section 1341(d), but it did not. Rather, it allowed the states to enforce <u>all</u> water quality-related statutes and rules through the state's authority to place limitations on section 1341 certificates. Congress thereby required federal licensing authorities to respect all state water quality laws in licensing projects involving discharges to navigable streams. "[A]ny other appropriate requirement of State law" is thus a Congressional recognition of all state action related to water quality and Congressional authorization to the states to consider those actions in imposing limitations on CWA certificates. It does not, however, allow limitations which are not related to water

quality.

Although it functions as a federal agent in issuing certificates of compliance, DEQ is a state agency and must comply with state law to the extent that federal law does not supersede it. That law requires DEQ to act, with respect to programs affecting land use, in compliance with the statewide land use goals and in a manner compatible with acknowledged comprehensive plans. ORS 197.180(1). DEQ therefore must include limitations reflecting the goals and plans in section 1341 certificates to the maximum extent that the CWA allows--that is, to the extent that they have any relationship to water quality. Only if a goal or plan provision has absolutely no relationship to water quality would it not be an "other appropriate requirement of State law." In that case, and only in that case, would the CWA override DEQ's obligations under ORS 197.180(1).

We cannot say at this point what land use provisions would relate to water quality. Many uses of land may affect water quality, even if they do not immediately result in direct discharges to the state's waters. Part of the goals and plans clearly relate to water quality--Goal 6 most obviously--but others may also have a significant, if indirect, impact. Limitations on development or on other uses of land near waters may fit into the category. The precise determination is for

DEQ in the first instance. Because DEQ required a certificate of full compliance with the Deschutes County land use provisions, it did not consider the extent to which they may have related to water quality. On remand, it must examine their relationship to water quality. If it grants petitioners' request for a certificate, it must require, as a condition of that certificate, that petitioners comply with the water-related portions of the Deschutes County land use regulations. ORS 197.180(1). It must also consider the effects of the recently adopted criteria for certification, ORS 468.732, OAR 340-48-025(2)(f)(C), and of DEQ's modified procedure for determining compliance with land use plans. OAR 340-48-020(2)(i), (6)(d).[6]

In its cross-petition, Northwest Environmental Defense Center asserts that DEQ may not grant a certificate on any condition, because hydroelectric generation is not a designated use for the particular portion of the Deschutes River. Cross-petitioner misunderstands the role that the designated uses play in CWA's framework. 33 USC § 1313(c)(2) provides that a "water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses." The purpose of designating uses is to determine what the water quality criteria are intended to do. The purpose of those criteria is

to make the water adequate for the designated uses. They do not require that the uses of the water be limited to the ones designated. Nothing in the provision places any limitations on the use actually made of the waters, so long as the quality of the waters does not fall below that provided in the criteria. DEQ determines what uses to protect; it does not determine that other uses are forbidden. If a hydroelectric project does not degrade the water below the quality which the criteria require, and if no other water quality-related law prohibits such a project, it is irrelevant to certification under the CWA whether hydroelectric generation is a designated use. DEQ did not err in this respect.

Reversed and remanded for reconsideration on petition; affirmed on cross-petition.

FOOTNOTES

1

The Water Pollution and Control Act was originally adopted in 1948. Pub. L. 80-845, 62 Stat 1155. It was extensively amended in 1972. Pub. L. 92-500, 86 Stat 816. References in this opinion to the Clean Water Act are to the act after the 1972 amendments.

2

For ease of reference, our first citations to a CWA section include both the section number of the act and the United States Code section where it is compiled. Thereafter, we generally cite only to the code.

3

EQC is the Oregon agency with ultimate authority for adopting the standards and issuing the certificates. ORS 468.730. However, it functions primarily as an appellate body, and DEQ does most of the actual work and promulgates the standards.

4

Despite the parties' extensive arguments, this case

does not involve federal preemption of state regulation. The CWA is a federal act in which Congress has provided for significant state involvement. 33 USC § 1341 gives the states a veto over federal actions. What criteria the states may consider in exercising that veto is a matter of federal, not state, law. The states, in passing on applications for certificates, act in part as agents of the federal government, and they may act only where Congress has permitted. This case is therefore unlike First Iowa Hydro-Elec. Coop v. Federal Power Com'n, 328 US 152, 66 S Ct 906, 90 L Ed 1143 (1946), in which the Supreme Court held that the Federal Power Act preempted all inconsistent state regulation and that section 9(b) of that act, 16 USC § 802(b), did not preserve an independent state role in determining the requirements for a hydroelectric project. In the CWA, Congress has created an independent state role in all federal actions involving discharges into navigable waters; the question is not Congressional preemption but what criteria Congress intended the states to consider in deciding whether to issue certificates of compliance with the act.

5

DEQ and EQC relied on the emphasized language in denying the certificate, and the parties discuss its meaning

and background in their briefs. Although DEQ is incorrect in treating this provision as allowing it to deny the certificate for failure to comply with requirements outside the CWA, the language is important in determining what conditions it may place on a certificate on remand.

6

Of course, whether the state can enforce non-water quality-related land use requirements against a federal licensee is beyond the scope of this case.

1400-031 Yelo
F1

DUNCAN, WEINBERG & MILLER, P.C.

OCT 03 1986

RESOURCE MANAGEMENT INTERNATIONAL INC.

SALT CAVES HYDROELECTRIC PROJECT

P.O. BOX 237 • (500 KLAMATH AVENUE) • KLAMATH FALLS, OREGON 97601 • PHONE (503) 883-5320

August 25, 1986

Mr. Fred Hansen
Director
Department of Environmental Quality
522 S.W. Fifth Avenue
P. O. Box 1760
Portland, Oregon 97207

Subject: Salt Caves Hydroelectric Project Application for Certification of Compliance with Water Quality Requirements and Standards

Dear Mr. Hansen:

Transmitted herewith is the City of Klamath Falls' Application for Certification of Compliance for its proposed Salt Caves Hydroelectric Project.

Should you or your staff have any questions pertaining to the enclosed, or should you wish additional information, please contact me at:

Resource Management International, Inc.
1010 Hurley Way
Suite 500
Sacramento, CA 95825
(916) 924-1534

Sincerely,

William G. Miller
Project Director

Enclosure

SALT CAVES HYDROELECTRIC PROJECT

APPLICATION FOR CERTIFICATION OF COMPLIANCE WITH WATER QUALITY REQUIREMENTS AND STANDARDS

The City of Klamath Falls ("City") submits this application for certification of compliance of its proposed Salt Caves Hydroelectric Project ("Project") with the water quality requirements and standards of the Department of Environmental Quality ("DEQ") and the Environmental Quality Commission ("EQC"). This application is submitted pursuant to section 401 of the Federal Water Pollution Control Act, 33 U.S.C. § 1341, and DEQ's regulations adopted pursuant to that Act, O.A.R. 340-48-005 et seq. and 350-41-962 et seq.

O.A.R. 340-48-020(2)(a)-(j) specifies the information that must be included in an application for project certification. This information is contained in the attached material. This material includes the following sections of the City's draft license application for the Federal Energy Regulatory Commission ("FERC"): Volume I: Initial Statement, Exhibit A (Project Description), Exhibit B (Project Operation and Resource Utilization), Exhibit C (Construction Schedule), Exhibit D (Project Costs and Financing), Exhibit F (Preliminary Design Drawings) and Exhibit G (Project Maps); Volume II: Exhibit E, Section 1 (General Description of the Locale), Section 2 (Report on Water Use and Water Quality) and Section 3 (Report on Fish, Wildlife and Botanical Resources); and Volumes VI and VII: Preliminary Supporting Design Report and Appendices. Separate tables of contents are included in each of these exhibits or sections. Also included in the attached material are two letters relevant to O.A.R. 340-48-020(2)(i). An index is set forth below showing where the information required in O.A.R. 340-48-020 (2)(a)-(j) may be found in the attached materials.

A complete copy of the City's draft license application was provided to DEQ under cover of letter dated August 1, 1986 for review and comment in connection with the preparation of a final license application for FERC. The City would be willing to provide additional complete copies as part of its application for project certification should DEQ so desire.

The following indexes the attached material with the filing requirements of O.A.R. 340-48-020(2)(a)-(j) and provides additional information responsive to those requirements.

(a) Refer to Volume I, Initial Statement, Item 3 of draft license application.

(b) Refer to Volume I, Initial Statement, Item 3 of draft license application.

(c) Refer to Volume I, Exhibit G of draft license application.

(d) United States Department of the Interior, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon, 97504. Pacific Power & Light Company, 920 S.W. Sixth Avenue, Portland, Oregon, 97204.

(e) Refer to the following portions of the draft license application:

- Volume I, Initial Statement
- Volume I, Exhibits A, B, C, D, F, and G
- Volume VI, Preliminary Supporting Design Report and Appendices A and B
- Volume VII, Preliminary Supporting Design Report Appendices C-H

(f) Klamath River

(g) The environmental background information required by the federal licensing agency (FERC) is contained in Exhibit E of the City's draft license application. Because of the volume of this material and because some of this material is not relevant, the City attaches only sections 1-3 of Exhibit E. As noted above, the City will provide additional copies of its full draft license application if DEQ so desires.

(h) No public notices or supporting information has been issued by FERC for the Project.

(i) Attached are two letters. The first is dated June 26, 1985 from Klamath County to DEQ in connection with the City's previous proposal for water quality certification. The County indicated in this letter that it is unable to determine consistency with land use requirements because the City has not yet filed an appropriate application. The City, as of the date of the instant filing, has not filed such application. The second letter is dated May 5, 1986 from the Klamath County Planning Department explaining that the County's land use critique of the Project will take place when the City files its application with the County.

(j) Under section 27 of Chapter 569, Oregon Laws 1985, the City has an exemption to the standards of that Chapter and, therefore, to the rules adopted by the Water Resources Commission ("WRC") and Energy Facility Siting Council ("EFSC") implementing such standards. The City's proposed project is a hydroelectric project in excess of 25 megawatts for which funding has been approved by the governing body of the City before May 15, 1985 within the meaning of section 27.

O.A.R. 340-48-025(2)(f) provides that in order for DEQ to issue project certification, DEQ must make the four findings set forth therein. The City believes that the attached materials provide a more than adequate basis for DEQ to make the necessary findings. Should DEQ believe that more information is necessary, the City would be happy to provide it.

The City believes that two of the required findings merit further comment.

First, O.A.R. 340-48-025(2)(f)(A) requires that DEQ find that the Project meets the applicable rules adopted by the EQC on water quality, which rules are set forth in O.A.R. 340-41-965 et seq. The City is concerned that one of these rules, O.A.R. 340-41-965(2)(b)(A), respecting water temperature, cannot literally be applied to diversion hydroelectric projects such as that proposed by the City. Such projects have no identifiable "mixing zones" or "control points." It would appear that such temperature standard was intended to be applied to thermal discharges, not to diversion hydroelectric projects.

Given the impossibility of applying the temperature standard literally to the Project, the City would suggest that DEQ apply the standard in light of its purpose, that is, to protect the salmonid population in the affected portion of the Klamath River. Applying the standard in this fashion, DEQ would examine whether the Project would cause temperature increases hazardous to the salmonid population. The City believes that the attached material in section 3.1 of the draft license application, particularly on pages 3.1-82 through 3.1-110 and 3.1-112 through 3.1-118, demonstrates that the Project will not cause negative temperature-related effects to the salmonid population and that the Project, in fact, will be beneficial to such population.

Second, O.A.R. 340-48-025(2)(f)(C) requires that DEQ find that the Project is consistent with "standards established in sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules adopted by the Water Resources Commission and Energy Facility Siting Council implementing such standards." As noted above, the

Project is exempted from sections 3 and 5 of Chapter 569, Oregon Laws 1985 and, therefore, from administrative rules implementing such sections. This standard, therefore, should not be applied to the Project.

The City also believes that it is necessary to comment on O.A.R. 340-48-025(2)(g), which provides that for "projects requiring a site certificate from the Energy Facility Siting Council or a water appropriation permit from the Water Resources Commission, DEQ shall include a condition requiring such certificate or permit to be obtained prior to initiating the activity for which 401 certification is granted." The City believes that this regulation is no longer valid under Arnold Irrigation District v. Department of Environmental Quality, 79 Or. App. 136, 717 P.2d 1274 (1986), rev. denied, ___ P.2d ___ (Or. 1986), in which the Court of Appeals held that DEQ's standards implementing section 401 must be related to water quality. Virtually none of the requirements that an applicant must meet to obtain a site certificate from EFSC or a water appropriation permit from WRC are related to water quality. Under Arnold Irrigation District, it is apparent that the City cannot be required to meet these EFSC and WRC requirements in order to obtain project certification from DEQ.

The only EFSC and WRC standards that relate to water quality simply adopt DEQ's standards. See O.A.R. 690-74-045(9) and O.A.R. 345-78-040(1). It would obviously be unfair to condition project certification on the City obtaining positive findings from EFSC and WRC with respect to those standards. The effect of such a condition would be to require the City to obtain a finding from three agencies that the Project meets the same water quality standards. Of the three agencies, only DEQ has water quality expertise, and only DEQ should apply its water quality regulations.

In sum, the City believes that O.A.R. 340-48-025(2)(G) should not be applied to the Project.

As noted above, the City is ready to provide any additional information that is necessary and to work with DEQ in addressing any of its concerns.

Respectfully submitted,

William G. Miller
Project Director
Salt Caves Hydroelectric Project

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

September 25, 1986

Resource Management International, Inc.
Attn: William G. Miller, Project Director
1010 Hurley Way
Suite 500
Sacramento, CA 95825

Dear Mr. Miller:

The following documents were received in this office on August 26, 1986:

1. Transmittal letter to DEQ from William G. Miller, RMI Inc., dated August 25, 1986.

2. Application for Certification of Compliance with Water Quality Requirements and Standards, Salt Caves Hydroelectric Project — consisting of 6 pages plus copies of a June 26, 1985 letter from the Klamath County Board of Commissioners and letters dated June 26, 1985 and May 5, 1986 from the Klamath County Director of Planning.

3. Volumes I, II, VI, and VII of the Draft Application to the Federal Energy Regulatory Commission (FERC) for License, Salt Caves Hydroelectric Project.

We have reviewed the submitted material under OAR 340-48-020(2) for completeness as an application for Certification of Compliance with Water Quality Requirements and Standards (401 Certification) and note the following deficiencies:

1. OAR 340-48-020(2)(g) requires copies of the environmental background information required by the federal permitting or licensing agency or such other environmental background information as may be necessary to demonstrate that the proposed project or activity will comply with water quality requirements. Volume II of the Draft Application to FERC for License for the Salt Caves Hydroelectric Project was submitted to satisfy this requirement. We note that Volume II is but 1 of 4 volumes that make up "Exhibit E - Environmental Report" to the Draft FERC Application. In order to comply with the rule and supply the "environmental background information required by the federal permitting or licensing agency", Volumes III, IV, and V must be submitted.

2. OAR 340-48-020(2)(i) requires "a statement from the appropriate local government whether the project is

compatible with the acknowledged local comprehensive land use plan and land-use regulations... If the project is not compatible or in compliance, the statement shall include reasons why it is or is not." The application states that Klamath County (County) is unable to determine consistency because the City of Klamath Falls (City) has not yet filed an appropriate application. The application further states that the City, as of the date of filing the 401 certification application, has not filed an application with the County. No indication is given as to when such an application might be filed with the County.

The decision in Arnold Irrigation District v. DEQ, 79 Or. App 136 (1986), requires DEQ to examine the relationship of local land use provisions and your proposal to water quality. See also, ORS 197.180(1). If any of those provisions are water quality-related, DEQ must require compliance with those land use provisions as a condition of Sec. 401 certification; 79 Or. App at 143; see also, 33 USC Sec. 1341(d). The only means by which DEQ can determine whether such conditions are necessary is by the City providing the information required under OAR 340-48-020(2)(i). That information must be obtained from Klamath County.

The information provided is incomplete and does not respond to the requirement of OAR 340-48-020(2)(i).

3. OAR 340-48-020(2)(j) requires specific documentation of compliance with the hydroelectric project standards established in Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules adopted by the Water Resources Commission and the Energy Facility Siting Council implementing such standards. The application claims the project is exempt from such standards pursuant to Section 27 of the same Act. No specific documentation is presented to support such a claim of exemption. However, we are informed that your counsel has provided documentation to the Oregon Attorney General's Office. Also, please provide DEQ with a copy of documentation you believe supports this claim of exemption. Also, please be advised that we have asked the Attorney General for an opinion on this matter.

4. The documents submitted as attachments to your application are "DRAFT" documents that are part of the second stage consultation process pursuant to FERC licensing rules. The potential is that these documents may be revised in the near future in response to comments received during this second stage consultation process. It is our expectation that the documents filed as part of the 401 certification application

are not "draft" and therefore can be relied upon. Unless we are advised otherwise, we will assume that the documents filed as part of the 401 certification application are final and not subject to change after we determine your application to be complete for processing.

Pursuant to OAR 340-48-020(3), we request that you provide the above requested information to complete your application within 60 days. Failure to complete the application and provide the requested information within this time frame or within such other time as we may agree upon will be grounds for denial of certification.

In order to facilitate our prompt processing of your application once it is determined to be complete, we request the following:

1. Two additional copies of the complete application.

2. We note that on pages 37 and 38 of Exhibit A Project Description, mention is made of a potable water treatment system and a sewage treatment module which will provide tertiary treatment and discharge treated waste into the tailrace. We find no other information in the documents on the projected quantity and quality of wastes generated, the specific treatment processes proposed, or the quantity and quality of effluent projected to be discharged to the Klamath River via the proposed tailrace. We also note that no mention is made in the initial statement of the need to obtain an NPDES permit from DEQ pursuant to ORS 468.740 and Section 402 of the Federal Clean Water Act for such discharge. Please provide us with detailed documentation of your proposal for sewage disposal.

3. A copy of detailed documentation for the water quality simulation models, together with work papers, input data, and computer printouts for the simulations which form the basis for conclusions regarding water quality impacts of the project. This information will greatly facilitate our ability to review your application.

We request that this second set of information be submitted with the information request above. Please understand that, if and when, we determine your application to be complete, we may request additional information as needed to judge possible water quality impacts.

Finally, To assist you in your planning, we would anticipate the following procedure for processing your application:

a. Once we determine your application to be complete, we will notify you of the date of such completion in writing as provided by OAR 340-48-025(1).

b. OAR 340-48-020(4) provides for public notice of a completed application and opportunity for comment. OAR 340-48-020(5) provides for opportunity for a public informational hearing upon request. We expect significant interest in your application and therefore plan to proceed directly to public notice of a hearing on your application, once it is determined to be complete. We would expect to give at least 30 days notice of such a hearing and allow about 10 days after the hearing for final submission of any written comments for the record. Such a hearing will be a public information hearing only, not a contested case proceeding, and will be held for the sole purpose of receiving input from the public regarding your completed application.

c. Once the public hearing record is closed, DEQ will review the application and the information received in the public input process and will complete its determination on the application. Due to the complexity of the application, we would expect to need at least 90 days to complete such an analysis.

d. If certification is granted and the applicant is dissatisfied with any conditions of certification, or if certification is denied, the applicant will have opportunity to request a contested case hearing before the EQC or its authorized representative.

Based on this process, we would expect it to take us longer than 90 days from the date of receiving a complete application to complete processing of your application. We would therefore expect to advise you, upon completion of your application, of our need for a longer time for processing pursuant to OAR 340-48-025(1).

Sincerely,

Fred Hansen
Director

FH:h
WH1178 (HLS/GDC)

RESOURCE MANAGEMENT INTERNATIONAL INC.

1010 HURLEY WAY • SUITE 500
SACRAMENTO, CALIFORNIA 95825
(916) 924-1534

401 Plead

DUNCAN, WEINBERG & MILLER, P.C.

OCT 20 1986

October 17, 1986

Fred Hansen, Director
Department of Environmental Quality
522 S.W. Fifth Avenue
Box 1760
Portland, Oregon 97207

Subject: City of Klamath Falls, Salt Caves Hydroelectric Project

Dear Mr. Hansen:

Your letter of September 25, 1986, requested certain information with respect to the City of Klamath Falls' request for certification of the Salt Caves Hydroelectric Project under Section 401 of the Federal Water Pollution Control Act. Our response is as follows:

1. With respect to your first deficiency request on page 1 of your letter, the City provided you with three copies of the Draft License Application on October 14, 1986.

2. With respect to your second deficiency request on pages 1 and 2 of your letter, the DEQ's land use requirement was the subject of much discussion at the City's meeting with DEQ on October 14, 1986. As we understand the outcome of that meeting, the City and DEQ will be speaking again shortly about the land use requirement. Pending those discussions, the City will hold off submitting any further information on this issue.

3. With respect to your third deficiency request on page 2 of your letter, we are enclosing the information that we provided to the Attorney General's office supporting the City's qualification for an exemption under H.B. 2990. As shown in that information, funding for the Salt Caves Hydroelectric Project was approved by the governing body of the City by Ordinance No. 6488, dated March 18, 1985, and Resolution No. 3040, dated May 1,

1985. Since this approval was made prior to May 15, 1985, the City qualifies for an exemption under the terms of Section 27 of H.B. 2990 and under DEQ's regulations implementing H.B. 2990. As also shown in the attached information, the City did not lose its exemption from H.B. 2990 by modifying the design of the project.

4. With respect to your fourth deficiency request on pages 2 and 3 of your letter, as we explained at the October 14, 1986 meeting, the City's FERC License Application is, in fact, at this time a draft. We expect to have a final application by, or shortly after, the end of this month.

As you are aware, it is not unusual for Section 401 applications for hydroelectric projects to be filed by prospective license applicants when their license applications are still in draft. Many prospective license applicants even file Section 401 applications at the preliminary permit stage, prior to preparation of their draft license applications. Indeed, FERC's regulations require that a Section 401 application be filed prior to filing of a final FERC license application

We do not anticipate that the City's Final FERC License Application will differ significantly from the Draft License Application provided to you, particularly on water quality issues. However, since we have not yet received all agency comments on the draft, obviously no guarantees can be made. As noted, we will have the Final License Application available shortly, and will promptly supply it to DEQ. This should obviate any problems.

5. With respect to your first additional information request on page 3 of your letter, as noted, three copies of the license application were proved to you on October 14, 1986.

6. With respect to your second additional information request on page 3 of your letter, enclosed is detailed documentation of our proposal for sewage disposal.

7. With respect to your third additional information request on page 3 of your letter, detailed documentation for the water quality simulation models will be provided to Bruce Cleland of your office on October 21, 1986.

We hope this adequately addresses your letter. If you should require further information, please do not hesitate to contact Ken Carlson of Beak Consultants, Inc. or Joe Field of Stone & Webster Engineering Corporation, on technical issues; Peter Glaser of Duncan, Weinberg & Miller, P.C. on legal issues; or myself.

Thank you.

Sincerely,

William G. Miller
Project Director

Enclosures

VICTOR ATIYEH
Governor

Department of Environmental Quality

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

November 3, 1986

Mr. William G. Miller, Project Director
Resources Management International, Inc.
1010 Hurley Way, Suite 500
Sacramento, CA 95825

Re: City of Klamath Falls, Proposed
Salt Caves Hydroelectric Project

Dear Mr. Miller:

The Department of Environmental Quality (DEQ) has received the following documents submitted in response to our letter to you dated September 25, 1986:

A. Three complete copies of the City of Klamath Falls' (City) draft FERC License Application delivered to our offices on October 14, 1986.

B. Your letter dated October 17, 1986, received in DEQ offices on October 20, 1986, together with attachments regarding (1) project authorization and funding by the City of Klamath Falls, and (2) sewage disposal.

C. Information regarding water quality simulation modeling delivered to DEQ offices on October 21, 1986.

Items remaining to be submitted or resolved before DEQ may consider the City's application to be complete are:

1. "A statement from the appropriate local government whether the project is compatible with the acknowledged local comprehensive land use plan and land use regulations .... If the project is not compatible or in compliance, the statement shall include the reasons why it is or is not." (OAR 340-48-020(2)(i))

   At our meeting on October 14, 1986, this item was discussed at length. We understand the City's position as presented at the meeting to be as follows:

   -- The City intends to file an application for land use approval with Klamath County in January 1987, and expects the review and approval process to take more than one (1) year to complete;

-- The City questions the need to supply the information required by the EQC rule because it interprets the Court of Appeals decision in Arnold Irrigation District v. DEQ to provide that DEQ cannot use land use information in determining whether or not to grant certification;

-- The City believes DEQ should waive the current Environmental Quality Commission (EQC) rule and proceed with processing the City's 401 certification application without the City having obtained from Klamath County information on the applicable land use provisions, the degree of compliance with such provisions, and identification of potential water quality relationships of such provisions;

-- The City believes that DEQ should condition a granted certificate to require the City to comply with any land use provisions that are subsequently determined upon completion of the County's process to be water quality-related.

DEQ, in turn, maintained that it has not been provided any evidence that compliance with the rule (OAR 340-48-020(2)(i)) is unreasonable or impossible. DEQ further advised the City that the information requested under the rule is necessary for DEQ to determine which provisions of the local comprehensive plan may be water quality-related and thus appropriate conditions of a granted certificate..

Since our meeting on October 14, 1986, department staff have met with the Klamath County Planning Department staff to better understand the local process. The County has advised DEQ that it could complete its review and decision process within 5 to 6 months after an application is filed. (See attached letter) The County also stated that it would consider it to be inappropriate for DEQ to process the City's application and receive public comment on land use issues (a necessary part of the DEQ public notice and public input process) when the local process including public hearings has not been completed.

The County Planning Department's position is consistent with DEQ's obligation under state law to act compatibly with local land use requirements, as well as with the requirements under OAR 340-48-020 that the County be the initial forum for land use determinations. We are not inclined to waive this rule when the City has not taken steps to initiate, let alone complete, the local land use process. Nor do we think that Arnold Irrigation District proscribes application of OAR 340-48-020(2)(i) in this instance. DEQ is not attempting to deny 401 certification under this rule, but only to gather the information necessary to make findings whether conditions are necessitated by water quality-related provisions of the County's land use requirements.

In summary, we are not prepared to waive or postpone the requirement that a statement from the County regarding land use compatibility be submitted before the City's application may be considered complete.

2. As previously noted, we have requested an opinion from the Attorney General regarding your claim for exemption from the requirements of Sections 3 and 5 of Chapter 569, Oregon Laws 1985 and rules promulgated pursuant thereto by the Water Resources Commission and the Energy Facility Siting Council. We have not received that opinion as of this date.

We hope the City will provide the needed information to complete the City's application at the earliest practicable date. In light of the information provided by Klamath County, we request that the information needed to complete the application be submitted within 6 months, rather than the 60 days noted in our previous letter.

Sincerely,

Fred Hansen
Director

FH:r
DOR171.6
cc Klamath County
Planning Department
FERC
Peter Glaser

Klamath County ~ Planning Department

[redacted] — 503-882-2501 — KLAMATH FALLS, OREGON 97601
COURTHOUSE

October 29, 1986

Mr. Glen Carter
Water Quality Division
Department of Environmental Quality
811 SW 6th Street
Portland, OR 97204

Dear Mr. ~~Carter~~ Glen:

To begin with, I would like to thank both you and Harold Sawyer for traveling down to Klamath to visit with us last week. I'm sure that because of the complexity of this issue, we will probably have to meet again. I suppose it will be my turn to travel north, but that will be okay.

My staff and I sat down today to outline the exact process that will need to be followed at the County level when the City of Klamath Falls applies for the Salt Caves Dam approvals and permit.

As we discussed, there will be State LCDC Goal issues, local Comprehensive Plan Policy issues, and Land Development Code requirements that will need to be addressed by the applicant.

I would anticipate that after a complete application is submitted to this Department, I will be able to schedule the first public hearing within 75 days. As complex as this may seem, the Klamath County Planning Commission, sitting in a joint hearing with the Board of County Commissioners, should be able to take all relevant testimony, wrestle with the issues, and arrive at a decision within a six-month time frame.

So, if I receive a complete application on January 1, 1987, I would optimistically expect hearings to begin in mid-March and conclude by the end of May, 1987.

I will stay in touch with you on this matter, as I hope you will with me. Give me a call anytime.

Sincerely,

Roy R Huberd

Roy R. Huberd
Director of Planning

kb
c: Chairman of the Board of County Commissioners
Bob Boivin, County Legal Counsel
Bill Miller
Mel Lucas

Law Offices

Duncan, Weinberg & Miller, P.C.

SUITE 800

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December 11, 1986

Kurt Burkholder
State Department of Justice
500 Pacific Building
520 S.W. Yamhill Street
Portland, Oregon 97204

VIA TELECOPY

Dear Kurt:

I am enclosing a brief legal memorandum which addresses the contention of DEQ that it does not have the power to waive O.A.R. 340-48-020(2)(i). We would appreciate if you could make this memorandum available to the Director and the Commissioners as soon as possible. I have tried reaching you by telephone and will do so again.

Sincerely,

Peter Glaser/EJB

Peter Glaser

PG:dm

The question has been raised whether the Department of Environmental Quality ("DEQ") has the authority to waive the requirements of O.A.R. 340-48-020(2)(i) if necessary to comply with Arnold Irrigation District v. Department of Environmental Quality, 79 Or. App. 136, 717 P.2d 1274 (1986), in connection with the City of Klamath Falls' application for certification under Section 401 of the Clean Water Act. The answer is that DEQ unquestionably does have the authority to grant a waiver, and that DEQ does not have to undertake a formal rulemaking to revoke such regulation.

It is important to recognize at the outset that the DEQ regulation at issue here is a procedural, not substantive, rule. Three factors illustrate the rule's procedural nature. First, DEQ itself characterizes the regulation as procedural: "The purpose of these rules is to describe the procedures to be used by the [DEQ] for receiving and processing applications for certification of compliance with water qualify requirements and standards. . . ." O.A.R. 340-48-005 (emphasis added). Second, the regulation is procedural in that it dictates what information DEQ is to receive in the application for certification. See O.A.R. 340-48-020(2)("A completed application filed with DEQ shall contain, at a minimum, the following information:"). Clearly, the rule does not directly affect substantive rights because it does not control what factors DEQ considers or the weight given to each piece of information; rather, O.A.R. 340-48-020(2) constitutes a filing requirement that merely describes the DEQ's process for receiving information, nothing more. Third, that this rule is procedural is evident based upon the nature of the underlying dispute between DEQ and the undersigned petitioner. As DEQ Director Hansen described the controversy in his December 2, 1986, letter to the Environmental Quality Commission, petitioner has requested that DEQ conduct its review of the Section 401 certification application concurrently with Klamath County's land use review, while DEQ has argued that processing of the application should not commence until after the County has completed that land use review. Thus, the dispute here centers on one issue only: timing of DEQ's processing of the application, a purely procedural matter.

It simply could not be clearer that DEQ has the power to waive its own procedural rules, especially under the facts surrounding petitioner's application. It is black letter law that an agency possesses broad discretion in administering its own procedures. In a case strikingly similar to the present situation, the United States Supreme Court endorsed such agency discretion. American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 90 S.Ct. 1288, 25 L.Ed.2d 547 (1970).

At issue in American Farm Lines was the adequacy of the applicant's compliance with regulations promulgated by the Interstate Commerce Commission ("ICC"). The Interstate Commerce Act authorized the ICC to grant motor carriers temporary

operating authority "without hearing or other proceedings" when the authority relates to a "service for which there is an immediate and urgent need." 397 U.S. at 533, 25 L.Ed.2d at 550. The ICC regulations implementing that provision of the Act required that applications for temporary operating authority "must contain at least" eleven items of information. Id. There was no dispute that the applicant had failed to submit two of the eleven required items. 397 U.S. at 537, 25 L.Ed.2d at 552. The ICC, however, granted the application, finding "adequate" compliance with its regulations. 397 U.S. at 538, 25 L.Ed.2d at 553. The United States District Court for the Western District of Washington set aside the ICC's order. 397 U.S. at 536, 25 L.Ed.2d at 551.

In reversing the District Court and reinstating the agency's order, the Supreme Court held that the ICC acted lawfully when it accepted the technically defective application: "The [ICC] is entitled to a measure of discretion in administering its own procedural rules in such a manner as it deems necessary to resolve quickly and correctly urgent transportation problems." 397 U.S. at 538, 25 L.Ed.2d at 552. Rejecting the argument that deviation from the rules should be invalidated because they were adopted to confer important procedural benefits upon individuals, the Court stated: "We agree with the [ICC] that the rules were promulgated for the purpose of providing the 'necessary information' for the [ICC] 'to reach an informed and equitable decision' on temporary authority applications." 397 U.S. at 538, 25 L.Ed.2d at 552-53. As the Court held, because the applicant's failure to strictly comply with the ICC's regulation did not prejudice other carriers in making precise and informed objections to the application, the ICC was entirely justified in accepting the application:

> Thus, there is no reason to exempt this case from the general principle that "[i]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice requires it. The action of either in such a case is not reviewable except upon a showing of substantial prejudice to the complaining party."

397 U.S. at 539, 25 L.Ed.2d at 553 (quoting NLRB v. Monsanto Chemical Co., 205 F.2d 763, 764 (8th Cir. 1953)).

In similar fashion, the Ninth Circuit recently upheld the Federal Energy Regulatory Commission's ("FERC") acceptance of an admittedly defective application. The Steamboaters v. FERC, 759 F.2d 1382 (9th Cir. 1985). In Steamboaters, a company sought to construct a new concrete powerhouse and intake structure at an existing dam located on the North Umpqua River about five miles

north of Roseburg, Oregon. Because the hydropower project was to be located at an existing dam, and because the proposed installed capacity of the project was to be less than five megawatts, the company filed an application with FERC for an exemption from federal licensing procedures under Section 408 of the Energy Security Act of 1980. 759 F.2d at 1385. FERC granted the exemption. Id. at 1386.

One issue in Steamboaters, particularly relevant to our purposes here, involved alleged deficiencies in the exemption application. Several intervenors had argued that the application was deficient because it failed to describe adequately dam modifications the applicant planned to undertake, and therefore, FERC and other agencies were unable to properly perform their review and consultation functions. Id. at 1390. FERC rejected this argument, noting first that the application technically complied with FERC regulations, and second that, although the company should have amended its application, its failure to do so was not prejudicial because the interested parties had sufficient notice and information regarding the planned modifications before a final exemption order was issued. Id.

On review, the court noted that although FERC regulations do not require amendments to applications, the company should have amended its application by providing a detailed description of the dam modifications. Id. Nevertheless, the court held that the applicant's failure to provide a detailed description should not bar FERC's grant of an exemption. Id. Declaring that FERC has the discretion to waive or relax filing requirements, the court stated "[w]e will not review the exercise of such discretion 'except upon a showing of substantial prejudice to the complaining party.'" 759 F.2d at 1390-91 (quoting American Farm Lines, 397 U.S. at 539, 25 L.Ed.2d at 553).

Numerous other courts have followed this axiom of administrative law. See, e.g., Neighborhood TV Co., Inc. v. FCC, 742 F.2d 629, 636 (D.C. Cir. 1984)("where, as here, the rule governs information that the agency requires before it will consider a filing by one it regulates, courts have been especially apt to allow agencies much leeway in granting waivers to their own rules."); Dana Corp. v. ICC, 703 F.2d 1297, 1300 (D.C. Cir. 1983)(holding that American Farm Lines rule applies to provisions designed not primarily to safeguard private rights, but rather to facilitate the agency's orderly transaction of its business); Sun Oil Co. v. FPC, 256 F.2d 233, 239 (5th Cir. 1958) (an administrative agency is not a slave of its rules, and in the absence of a showing of injury or substantial prejudice may relax or modify its procedural rules), cert. denied, 358 U.S. 872, 79 S.Ct. 111, 3 L.Ed.2d 103 (1958); NLRB v. Grace Co., 184 F.2d 126, 129 (8th Cir. 1950)(agency in its discretion may apply or waive procedural rule as the facts of a given case may demand in the interest of stability and fairness); Mentor v. Kitsap County, 22

Wash. App. 285, 288, 588 P.2d 1226, 1229 (1978)(although application did not meet the agency's formal requirements, the agency properly accepted the application because of a lack of substantial prejudice to complaining party). See also Port of Jacksonville Maritime Ad Hoc Committee, Inc. v. United States Coast Guard, 788 F.2d 705, 708 (11th Cir. 1986)("As a general rule of administrative law 'agencies are not required, at the risk of invalidation of their action, to follow all of their rules, even those properly classified as "internal."'")(quoting United States v. Caceres, 440 U.S. 741, 754 n. 18, 99 S.Ct. 1465, 1472 n. 18, 59 L.Ed.2d 733 (1979)); Taylor v. Maryland School for the Blind, 409 F.Supp. 148, 154 (D.Md. 1976), aff'd 542 F.2d 1169 (4th Cir. 1976)(although an agency must follow its own regulations, at times courts permit agencies to make ad hoc exceptions to a regulation).

In conclusion, although DEQ's regulations do not explicitly provide for waivers, the present situation falls squarely within the well-established rule that agencies may relax or modify their procedural rules in the absence of a showing of substantial prejudice. The case law makes it abundantly clear that DEQ is entitled to broad discretion in administering procedural regulations concerning filing requirements.

Just as was the regulation in question in American Farm Lines, O.A.R. 340-48-020(2)(i) is a procedural rule which DEQ promulgated for the purpose of providing the necessary information for the agency to reach an informed and equitable decision on section 401 certification applications. Just as the applicant did in American Farm Lines, the petitioner herein has adequately and substantially complied with the submission of information required by the agency rule. More importantly, just as was the result in American Farm Lines, the agency's acceptance of the technically deficient application will not prejudice any party, in that petitioner does not propose to withhold the required information; instead, petitioner simply requests that DEQ initiate the certification process without awaiting Klamath County's findings. As in Steamboaters, any interested party will have sufficient notice and information before the Section 401 certificate is issued.

The need for DEQ to exercise its discretion to modify application of O.A.R. 340-48-020(2)(i) is even more compelling in light of the Court of Appeals decision in Arnold Irrigation District. For DEQ to require literal compliance with the rule in question would violate that court's holding that land use requirements can be used to condition a Section 401 certificate, but cannot form the basis for DEQ's denial of such certificate. By putting the certification process on hold until Klamath County submits its findings would impermissibly empower the County to delay indefinitely the processing of the Section 401 certification application, thereby conferring de facto veto power to the County in clear violation of Arnold Irrigation District. The

inevitable remand from the court to DEQ sharply emphasizes the waste of judicial and administrative time and resources likely to follow from DEQ's refusal to relax its procedural rules.

December 3, 1986

Fred Hansen
Director
Department of Environmental Quality
522 S.W. Fifth Avenue, Box 1769
Portland, Oregon 97207

RE: New Salt Caves Project 401 Proceedings

Dear Mr. Hansen:

The undersigned parties are writing to comment on the City of Klamath Falls' petition for a waiver of OAR 340-48-020(2)(i). We understand that the EQC will be considering the petition at its December 12, 1986 meeting.

First of all, Arnold Irrigation did not invalidate OAR 340-48-020(2)(i). The issue in Arnold Irrigation was whether land use criteria could be considered in the denial of a 401 certificate. The decision by the Court of Appeals leaves the door open for DEQ to consider land use criteria in the conditioning of 401 certificates, provided that such conditions are water-quality related. In light of this fact, it is not inappropriate to require a 401 applicant to provide proof of compliance with land use regulations that are water-quality related. Thus OAR 340-48-020(2)(i) is not facially invalid under Arnold.

It is clear that the effect of granting the City's petition would be to either amend DEQ's 401 rules or to declare that OAR 340-48-020(2)(i) does not apply to the City's 401 application. This places the City's petition in the category of either a Petition To Amend a Rule or a Petition For A Declaratory Ruling. In either case, the Department or the EQC may not consider the merits of such a petition without first announcing its intent to act upon the petition and then providing for notice and comment of interested parties. See OAR 340-11-047(3) and OAR 340-11-062(5).

The only exception to the above characterization is if the City's petition were to be considered a petition for a temporary rule under OAR 340-11-052. The prejudice requisite to the adoption of a temporary rule plainly does not exist in this case. The City appears to allege prejudice from the fact that compliance with local land use proceedings might delay consideration of its 401 application. However, the City for reasons known only to itself has delayed filing with Klamath County for land use permits. If any prejudice to the City exists, it is of the City's own making, and thus cannot serve as the basis for a temporary rule. Furthermore, a decision to usurp the imput to be gained from the local land use process without allowing opportunity for notice and comment would prejudice the public interest. Consideration of a temporary rule in this case would, therefore, be totally inappropriate.

Given that the City's petition should be considered to be either a Petition To Amend a Rule or a Petition For A Declaratory Ruling, the petition is deficient under DEQ's rules. The petition fails to identify interested parties as required by OAR 340-11-047(1)(e) and OAR 340-11-062(2)(g) respectively. We urge DEQ and/or the EQC to reject the City's petition for failure to conform to the agency's rules.

If the EQC does decide to treat the petition as a valid petition for a declaratory ruling, then we move that the Model Attorney General Rules of Procedure be applied with respect to the timeframe within which the Department must act. OAR 340-11-062(13) states that where a conflict exists between OAR 340-11-062 and the Model Rules the latter shall control upon motion by an outside party. Here, a conflict does exist, since OAR 340-11-062(5) requires the EQC or the Department to act within 30 days, whereas Model Rule 137-02-020(2) allows the agency 60 days within which to make its decision.

Thank you for your consideration of these comments. We would appreciate it if you could relay our concerns to the EQC.

Sincerely,

Terence L. Thatcher
Oregon Wildlife Federation

Bruce W. White
The Sierra Club

Karl G. Anuta
Northwest Evironmental
Defense Center

Andy Kerr
Oregon Natural Resources
Council

cc: Commission Members
Richard Glick
Peter Glaser
Michael Huston
Salt Caves Parties

December 5, 1986

Fred Hansen
Director
Department of Environmental Quality
522 S.W. Fifth Avenue, Box 1769
Portland, Oregon 97207

RE: New Salt Caves Project 401 Proceedings

Dear Mr. Hansen:

The undersigned parties are writing to comment on the City of Klamath Falls' petition for a waiver of OAR 340-48-020(2)(i). We understand that the EQC will be considering the petition at its December 12, 1986 meeting.

First of all, Arnold Irrigation did not invalidate OAR 340-48-020(2)(i). The issue in Arnold Irrigation was whether land use criteria could be considered in the denial of a 401 certificate. The decision by the Court of Appeals leaves the door open for DEQ to consider land use criteria in the conditioning of 401 certificates, provided that such conditions are water-quality related. In light of this fact, it is not inappropriate to require a 401 applicant to provide proof of compliance with land use regulations that are water-quality related. Thus OAR 340-48-020(2)(i) is not facially invalid under Arnold.

It is clear that the effect of granting the City's petition would be to either amend DEQ's 401 rules or to declare that OAR 340-48-020(2)(i) does not apply to the City's 401 application. This places the City's petition in the category of either a Petition To Amend a Rule or a Petition For A Declaratory Ruling. In either case, the Department or the EQC may not consider the merits of such a petition without first announcing its intent to act upon the petition and then providing for notice and comment of interested parties. See OAR 340-11-047(3) and OAR 340-11-062(5).

The only exception to the above characterization is if the City's petition were to be considered a petition for a temporary rule under OAR 340-11-052. The prejudice requisite to the adoption of a temporary rule plainly does not exist in this case. The City appears to allege prejudice from the fact that compliance with local land use proceedings might delay consideration of its 401 application. However, the City for reasons known only to itself has delayed filing with Klamath County for land use permits. If any prejudice to the City exists, it is of the City's own making, and thus cannot serve as the basis for a temporary rule. Furthermore, a decision to usurp the imput to be gained from the local land use process without allowing opportunity for notice and comment would prejudice the public interest. Consideration of a temporary rule in this case would, therefore, be totally inappropriate.

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If the EQC does decide to treat the petition as a valid petition for a declaratory ruling, then we move that the Model Attorney General Rules of Procedure be applied with respect to the timeframe within which the Department must act. OAR 340-11-062(13) states that where a conflict exists between OAR 340-11-062 and the Model Rules the latter shall control upon motion by an outside party. Here, a conflict does exist, since OAR 340-11-062(5) requires the EQC or the Department to act within 30 days, whereas Model Rule 137-02-020(2) allows the agency 60 days within which to make its decision.

Thank you for your consideration of these comments. We would appreciate it if you could relay our concerns to the EQC.

Sincerely,

Terence L. Thatcher
Oregon Wildlife Federation

Bruce W. White
The Sierra Club

Karl G. Anuta
Northwest Evironmental
Defense Center

Andy Kerr
Oregon Natural Resources
Council

cc: Commission Members
Richard Glick
Peter Glaser
Michael Huston
Salt Caves Parties

City of SHERIDAN
'Tis A Privilege To Live In The Phil Sheridan Country

139 N.W. Yamhill Street
SHERIDAN, OREGON 97378

December 12, 1986

Environmental Quality Commission
811 SW Sixth Avenue
Portland, Oregon 97204

RE: Federal Prison in Sheridan, Oregon

Dear Mr. Chairman and Members of the Commission:

In conjunction with Agenda Item J of the December 12th meeting of the Commission, the City of Sheridan submits the following comments regarding our application for grant assistance through the Pollution Control Bond Fund.

Sheridan needs to deliver water and sewer capacities adequate to serve the federal prison to be built in our City. The costs of sewerage construction represent $841,000 of the $2.2 million total infrastructure package required by this new development.

Success in this venture will bring 300 new, permanent federal jobs, and induced employment of another 150 jobs in the private sector. Project construction will generate employment for an additional 487 Oregon workers in the next 24 months. The long term economic benefits to our rural area and the State of Oregon as a whole are dramatic, and entirely consistent with Oregon's statewide objectives for economic development. Equally important, this is a one-time development opportunity for Oregon.

However, the project is a major undertaking for our small community. We have worked closely with the Bureau of Prisons and agencies of state government to effectively plan and deliver the resources needed. The Staff Report you received is one product of this collaboration. Another is the communication of state commitment to this project by Governor Atiyeh, in his letter to Mr. Norman Carlson, Director of FBOP, in March of last year.

Our presence at your meeting today is a direct consequence of those commitments, and the planning considerations on which they are based.

The City's request to you is for approval of a grant from the Pollution Control Bond Fund for the full amount allowed under ORS 468.220. The form of the request is the result of three factors:

First, unlike private economic developments, the Bureau of Prisons, as a federal agency, is immune from the taxing powers of cities. The option to secure funding derived from taxes on the value of property development is foreclosed to us.

Second, prior to the arrival of this project, the City has made existing, present and future commitments to pollution control priorities. These local commitments represent a sizeable financial obligation by the community over the next several years.

Third, the proposed sewage facilities are sized to meet only the capacity requirements of the prison itself. Hence there is no direct community benefit of additional sewage treatment capacity.

In assessing these facts, we conclude that it is both impractical and unwise to apply our limited borrowing capacity to facilities of secondary benefit to our citizens, and thereby further encumber our ability to meet primary pollution control obligations which the existing community has acknowledged and accepted.

We further believe that Bond Fund legislation is permissive to our request, is applicable to the pollution control issues we face, and finally, is cost-effective in meeting Oregon's pollution control objectives. Oregon has a unique opportunity in this project. The federal decision to select a site in Sheridan represents a $53 million investment in Oregon, to the exclusion of all other locations west of Denver, Colorado and San Francisco, California.

Sheridan and Oregon both need this project, and we need your help to accomplish it.

Thank you for the opportunity to share our comments with you.

Respectfully,

J. A. "Art" Hebert
MAYOR

Attachments: Letter from Governor Atiyeh
State Agency/Community Task Force Report
FBOP Technical Assessment Study

ATTACHMENT 2

Ian

VICTOR ATIYEH
GOVERNOR

EXHIBIT D

OFFICE OF THE GOVERNOR
STATE CAPITOL
SALEM, OREGON 97310

March 6, 1986

RECEIVED
MAR 11 1986

Norman A. Carlson, Director
Federal Bureau of Prisons
320 First Street, N.W.
Washington, D.C. 20534

I understand that the Bureau's plans for a minimum/medium security facility in Sheridan are progressing as evidenced by the recent publication of a draft Environmental Impact Statement.

As I did in person several weeks ago, I would like to reaffirm my support for the facility in Sheridan. The state is prepared to take every necessary step to secure funding for sewer and water services to the property. There are several sources of funds for this, including programs operated by the Oregon Economic Development Department, Executive Department Intergovernmental Relations Division, the Department of Environmental Quality, Federal Funds administered by the State of Oregon and Other Funds available to Oregon state and local government.

Some of these funds are competitive in nature, so it is not possible now to guarantee allocations. You have my assurance that we will work to gain the funds through the appropriate mechanisms. I have assigned the Economic Development Department as the lead agency in this effort. Your staff should work with Department staff at every point along the way as this process develops.

As an evidence of the state's interest in this plan, let me call attention to two other developments:

- First, the Intergovernmental Relations Division of the Executive Department recently approved a $10,000 technical assistance grant to the City of Sheridan to assist in preparing detailed engineering plans for the extension of public services to the site.

- Second, the Legislative Emergency Board recently approved a reservation of $50,000 to assist in the purchase of land for the minimum/medium facility.

In summary, we stand ready to assist you, the local community group, and the local governments, in any way possible to complete arrangements for this facility.

Sincerely,

Victor Atiyeh
Governor

VA:pl

STATE OF OREGON

INTEROFFICE MEMO

TO: Thomas F. Kennedy, Director

DATE: November 27, 1985

FROM Rich Carson RC
Clarence Parker CP

SUBJECT: Federal Bureau of Prisons Project

At the request of Gerry Thompson, a state agency/community task force met on Wednesday, November 20, to review alternatives for financing land and infrastructure for the proposed federal prison project in Yamhill County. The group also reviewed and commented on a draft cost benefit analysis prepared by the Economic Development Department.

Financing of the project is composed of two elements. The first is the acquisition of 208 acres of land. The City of Sheridan will contribute 20 acres, with 188 acres remaining to be purchased. The estimated cost for the 188 acre portion is $400,000. The second element is water and sewer services. The project will require a 24-acre sewer stabilization pond at a cost of $900,000. A 9,000 foot water line will be constructed at a cost of $1,400,000. Total cost of water and sewer is $2,300,000, of which the City of Sheridan will contribute $500,000.

Financing of Land Purchase:

1. The task force could not identify a state or federal program that provides for purchase of land. Federal programs reviewed do not allow for grants which provide land to another federal agency. State agency programs discussed were operated by these agencies: DEQ, DOE, EDD, and IRD. Federal programs reviewed were operated by: Economic Development Administration (EDA) and Housing and Urban Development (HUD), administered by IRD.

2. According to Bruce Peet, City Administrator of Sheridan, the City is unable to finance the purchase of the land. Since the City must service any debt incurred from pledged sources, it is virtually impossible to free up City funds for the purchase of land.

3. According to County Commissioner Don Porter, Yamhill County is unable to finance the purchase of the land. The County recently experienced a tax base measure defeat and as a result was forced to lay off 20 employes.

4. EDD staff is currently attempting to determine if PGE may be able to assist in the land purchase. The prison site is in the PGE service area.

Financing of Infrastructure:

1. For the reason outlined in item #1 above, the task force found that no federal programs are available for financing infrastructure.

2. According to County Commissioner Don Porter, Yamhill County is unable to assist in financing infrastrucutre.

3. The City Administrator of Sheridan indicated the City is able to participate up to a maximum of $500,000. The City would provide funding through a revenue bond which would not require voter approval.

4. DEQ may be able to participate, through a grant of $270,000 or 30% of the $900,000 sewer portion of the project. The source is the Pollution Control Bond Fund. While the fund is primarily for loans, it is possible to grant funds if: (1) the facility qualifies; (2) the Environmental Quality Commission approves and (3) the Legislative Emergency Board approves. Additionally, if sufficient funds are not available at the time of application, DEQ would be required to float a bond issue which could be in late 1986 or early 1987. Such an application would require an analysis of the Fund debt service to determine if a grant is feasible. Six (6) months advanced notice to DEQ is necessary.

5. The IRD Infrastructure Fund is a potential source. Applications are accepted in December 1985 and in June 1986. Funds are expected to be available in February 1986 and August 1986. This competitive program provides for maximum of a $1 million grant.

6. The EDD "Site Specific" Infrastructure Fund is a potential source of financing. It is non-competitive, has a rapid turn around time, and can provide up to 85% project costs.

7. The Department of Energy has a grant and a loan program to provide financing for infrastructure projects that save energy. According to the Department, the program fund on discrete elements of a project.

The City of Sheridan is focusing on grant programs because it is unable to service debt in excess of $500,000. Water and sewer monthly service charges from the project would be pledged to retire debt.

The City will apply for a $10,000 technical assistance grant to IRD in December to prepare a preliminary engineering feasibility study. The City will contribute an additional $10,000 to complete the study. The results of the report will form the basis for a possible lottery fund request to IRD in June 1986.

The City understands that all land use issues, including annexation of property, must be resolved prior to applying to an agency for grant funds.

The Federal Bureau of Prisons apparently hopes that both land and infrastructure will be provided with other than Bureau funds. The Bureau will be seeking an appropriation from Congress next year to fund the $48 million project. Any costs incurred for the purchase of land and infrastructure reduces the scope of the project and may have the effect of reducing the number of jobs. Contribution of funds by the Bureau could well be a topic of discussion when representatives meet with the Governor on December 17.

Cost Benefit Analysis:

The Department has prepared a cost benefit analysis of the project (copy attached). The analysis reveals that substantial benefits will accrue to the state and local area in both construction and long term operations.

Timing of Project:

The Congressional budgeting process is an extremely important element in the timing of the project. Subcommittee hearings could begin in March 1986. Discussions with Kevin Smith of Representative AuCoin's office and Bureau officials indicate that state and/or local acquisition of land and provision of infrastructure needs will definitely help their cause in seeking congressional approval of funding. The major hurdle for the subcommittee, according to Kevin Smith, is the land question. Apparently the chairman of the subcommittee does not favor expenditure of federal dollars for land acquisition.

The following is a tentative schedule for project development:

November 14, 1985	EIS scoping meeting - Willimina
December 13, 1985	City of Sheridan applies for technical assistance grant
December 17, 1985	Bureau meeting with Governor and Action Council
December 1985-March 1986	City land use/annexation issues resolved
March 1986	Congressional sub-committee begins hearings
April 1986	EIS process completed
June-August 1986	Preliminary site development begins
June 1987	Construction of infrastructure underway
January 1987	Ground breaking for facility construction
March 1988	Infrastructure completed
December 1988	Facility construction complete

RC:rfh
6235F
cc: State Agency/Community Task Force
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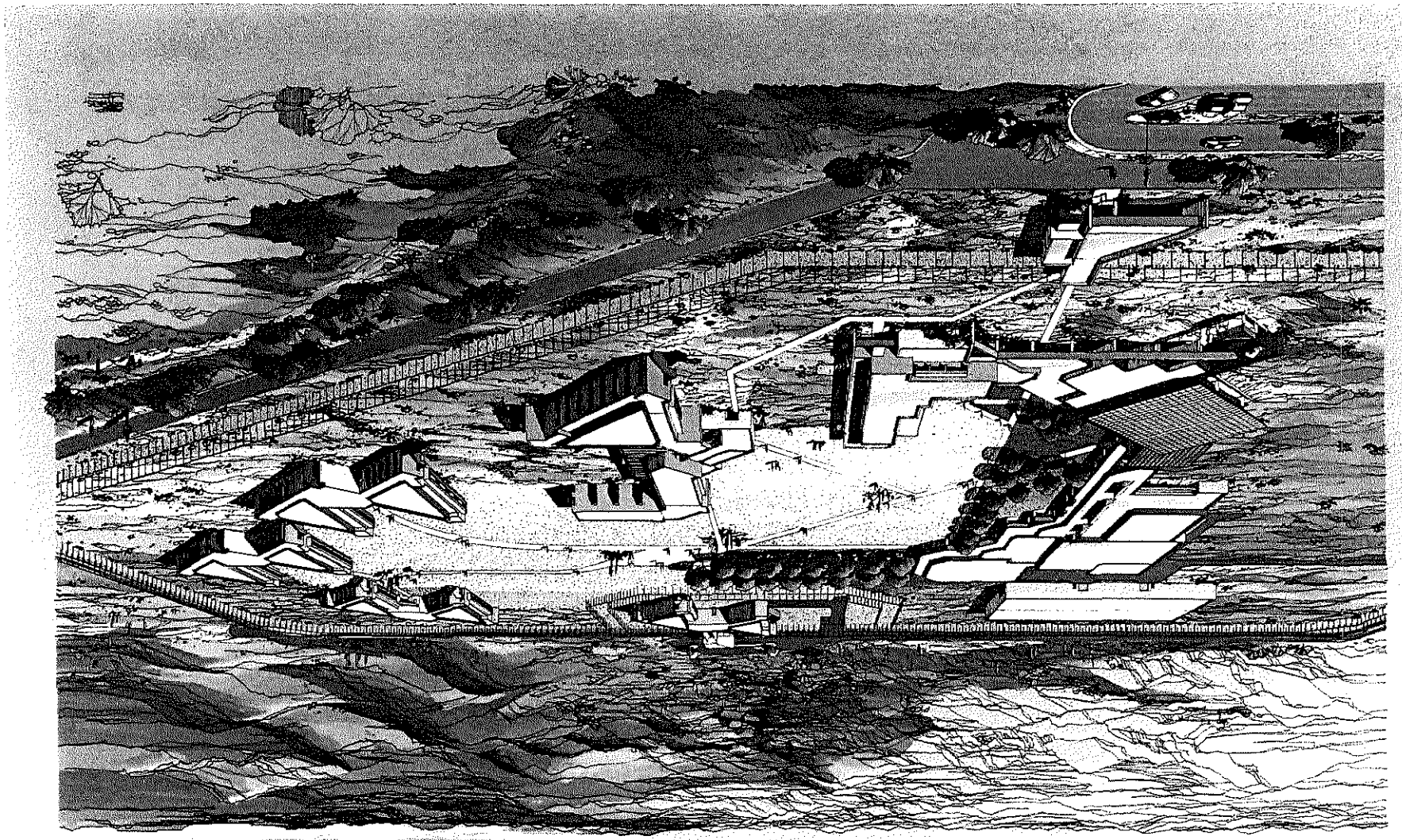
Rich Carson, EDD
Doug Crook, EDD
Pat Curran, City of Sheridan Engineer
Clarence Parker, EDD
Bruce Peet, City of Sheridan Administrator
Don Porter, Yamhill County Commissioner
Gary Ross, EDD
Lynn Steiger, Yamhill County Planner
Lydia Taylor, DEQ
Dave White, DOE



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BY APPOINTMENT ONLY

December 9, 1986

JAMES E PETERSEN, CHAIRMAN
ENVIRONMENTAL QUALITY COMMISSION
835 NW BOND STREET
BEND OR 97701

Re: Arnold Irrigation District

As you know, I represent Arnold Irrigation District. At the suggestion of Michael Huston, I am sending this letter directly to the Commissioners. I received Director Hansen's memorandum on December 5, 1986 and wanted to make sure each Commissioner had Arnold's response in hand at the December 12, 1986 meeting.

The issues involving Arnold at the December 12, 1986 meeting are more procedural than substantive. Consequently, the District would like to save attorney's fees and have me respond in writing to the memorandum. I will not personally appear.

First, Arnold has no information that would suggest that the Department needs to review its previous findings regarding compliance with the requirements of the Clean Water Act. Previously, the Department has found that the project meets all of the requirements of the Clean Water Act.

Second, last summer Deschutes County passed an ordinance which places a moratorium on this particular project. Consequently, the Deschutes County water quality provisions are not relevant as far as the County is concerned. The County's position is that you cannot build a small hydro project on this section of the Deschutes. It is similar to the position taken by ORS 543.165 (HB 2237). These legislative actions choose to ignore the United States Supreme Court as cited in my Appellant's brief:

> "To require the Petitioner to secure the actual grant to it of a state permit . . . as a condition precedent to securing a federal license for the same project under the Federal Power Act would invest in the Executive Counsel of Iowa a veto power over the federal project. Such a veto power easily could destroy the effectiveness of the federal act. It would subordinate to the control of the state the comprehensive planning which act provides shall depend upon the judgment of the Federal Power

> Commission or other representative of the federal government." First Iowa Coop v. EPC, 328 US 152 (1945), at page 164. (Emphasis added)

Congress has given the states limited authority concerning hydroelectric licensing. In this particular instance, that authority is through Section 401(d) of the Clean Water Act. Arnold knows of no specific qualifications relating to water quality that have been imposed by Deschutes County that have not already been answered through the DEQ process. In the past, Deschutes County, as other counties, have relied upon the DEQ to make water quality decisions.

This process has gone on too long already. Arnold and GED began this project in 1981. If the Commission sends this matter back to the Department, Arnold would request that strict time lines be established: The DEQ have 60 days within which to secure additional information, re-evaluate the matter, enter a new decision on the application and notify the applicant. This should give Deschutes County ample time in which to identify the applicable provisions and for the DEQ to determine the degree of compliance required. Deschutes County should not be surprised in that they have had the Court of Appeals' decision for several months.

If you have any questions, I would be happy to respond.

Neil R. Bryant

da

cc: Arnold Denecke
Dr. Sonia Buist
Wallace Brill
Mary Bishop
Arnold Irrigation District
Donald P. McCurdy
Department of Environmental Quality

VICTOR ATIYEH
GOVERNOR

Environmental Quality Commission

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

12/12/86

"BOTTLE BILL" POLICY STATEMENT

Whereas, improper disposal of municipal waste threatens public health, safety, welfare and the general environment, and

Whereas, existing state statutes encourage waste minimization through recycling, and

Whereas, the "bottle bill" deposit and return system is an outstanding minicipal waste management tool by effectively and inexpensively returning a portion of the waste stream for recycling, and

Whereas, amendments to the "bottle bill" are expected to be introduced to the 1987 Oregon State Legislature, and

Whereas, members of the Oregon State Environmental Quality Commission and staff of the Oregon State Department of Environmental Quality may be asked to testify on these amendments,

Therefore, be it resolved that the Oregon State Environmental Quality Commission formally endorses the existing program commonly referred to as the "Oregon Bottle Bill" and goes on record opposing any revisions to the program that would result in a reduction of volume of returned beverage containers or public participation levels. Furthermore, the Environmental Quality Commission directs the Department staff to work with interested parties to seek improvements in the program that

would: (1) increase the volume of materials returned, and (2) increase public participation levels in an efficient, equitable, and reasonably priced manner.

Approved this date: December 12, 1986

James Petersen, Chairman

Arno H. Denecke, Vice Chairman

Mary V. Bishop

Wallace B. Brill

A. Sonia Buist, M.D.

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

Memorandum

To: Environmental Quality Commission Date: 12/4/86

From: Stan Biles SB

Subject: Legislative Concepts

Attached are the most recent copies of our 1987 legislative proposals. You will recall that the Commission previously discussed the concepts last spring. Since that time Department staff have worked with impacted interest groups, the Governor's Office, and most recently the Governor-elect's transition team representatives, to further develop the concepts. This effort is ongoing. As a result, these drafts appear in various stages of completion. Some have been officially drafted by Legislative Counsel. Others have been drafted by staff but are pretty much completed. Lastly, a few are still being refined with the help of various advisory committees. We hope to pre-session file our proposals on December 15. We submit the most recent drafts at this time for your review, comment, and revision where necessary.

We plan to discuss these concepts with you at your breakfast meeting on December 12. Appropriate staff will be available at that time to explain the concepts and respond to questions.

/cs

cc: Fred Hansen
Fred Bolton
Tom Bispham
Mike Downs
Al Hose
Dick Nichols
Lydia Taylor

Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE: (503) 229-~~5136~~ 5445

TO: Remedial Action Advisory Committee Members

FROM: Al Goodman

SUBJECT: Next Meeting: Wednesday, November 12, 9:00 a.m.
811 SW 6th; Room 400
Portland

Attached is a revised draft of our proposed legislation. At Wednesday's meeting, I would like to briefly summarize it, section by section, highlighting changes from the first draft. Then, the committee can work through the bill, hopefully reaching general consensus on each section's direction. Our time frame is tight so please try to review this draft and note your questions and comments before Wednesday's meeting.

Also, I have good news to report. Department Director Fred Hansen has selected Dan Cooper, a Portland attorney, to chair the committee. Dan is anxious to begin his work as chair, and to act as a facilitator for the committee as it develops state remedial action policy.

I hope to see you at Wednesday's meeting.

ZF1457

Stan Biles

Remedial Action Advisory Committee

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11/5/86
SM556

NOVEMBER 6, 1986

SECOND DRAFT

PROPOSED

REMEDIAL ACTION LEGISLATIVE CONCEPT

A BILL FOR AN ACT

Relating to environment; creating new provisions; amending ORS and repealing ORS

Be It Enacted by the People of the State of Oregon:

Section 1. Sections 2 through 19 of this Act are made a part of ORS Chapter 466.

SECTION 2. As used in Sections 2 through 19 of this act:

(a) "Commission" means the Environmental Quality Commission.

(b) "Department" means the Department of Environmental Quality.

(c) "Director" means the Director of the Department of Environmental Quality.

(d) "Dispose" or "disposal" means any abandoning, spilling, leaking, pumping, pouring, emptying, injecting, escaping, leaching, dumping or placing of a substance into or on any lands or waters of the state, as defined in ORS 468.700, so that such substance may enter the environment, be emitted into the air or discharged into any waters, except as authorized by and in compliance with a permit issued under ORS Chapter 454, 459, 468, or 469, ORS 466.005 to 466.385, or federal law.

(e) "Hazardous substance" means:

(A) Hazardous waste as defined in ORS 466.005.

(B) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended.

(C) Oil as defined in section 2 of this act.

(D) Any substance designated by the commission under section 7 of this Act or under ORS 466.630.

(f) "Hazardous substance disposal site" means any site in or upon which any disposal of any hazardous substance has occurred or threatens to occur.

(g) "Natural Resources" means land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by or otherwise controlled by the state of Oregon, and any political subdivision thereof.

(h) "Oils" or "oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product or fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(i) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, corporation, commission, political subdivision of the state, interstate body, and the federal government including any agency thereof.

(j) "Regulated substance" means:

(a) Any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended (but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101).

(b) Oil as defined in section 2 of this Act.

(c) A substance designated by the commission under section 7 of this Act or under ORS 466.630.

(k) "Remedy" or "remedial action", means actions taken to prevent, eliminate, remove, abate, control, minimize, investigate, assess, evaluate

or monitor public health, welfare, safety and environmental hazards or potential hazards in connection with hazardous substance disposal sites, or to transport, store, treat or dispose of substances and contaminated materials from such sites.

(1) "Underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.

( ) "Site" means:

(A) Any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle or rolling stock; or

(B) Any area or land.

SECTION 3. Purpose and Policy

(1) The Legislative Assembly recognizes that it has a fundamental obligation to protect public health, welfare and safety and to preserve the most elemental supports of life. Those supports include surface water, groundwater, land and air. Oregon's natural resources are delicately balanced and establish the basis for the state's obligations.

(2) The Legislative Assembly find that:

(a) The disposal or threatened disposal of hazardous substances into the environment presents a real and substantial threat to the public health, welfare and safety, and the state's environment; and

(b) The dangers posed by the disposal of hazardous substances can be minimized only by prompt identification and corrective action.

(3) The Legislative Assembly concludes that it is in the interest of the health, welfare and safety of Oregon's citizen's and of the quality of Oregon's environment to provide a mechanism to remedy the damages from improper disposal of hazardous substances into Oregon's environment.

(4) Therefore, the Legislative Assembly declares that it is the purpose of this Act to:

(a) Protect the public health, welfare, safety and the environment of Oregon;

(b) Establish an inventory of hazardous substance disposal sites in potential need of remedy; and

(c) Create a mechanism to remedy hazardous substance disposal sites.

SECTION 4, In addition to any other authorities granted by law, the department may:

(1) Undertake independently, in cooperation with others or by contract, investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction, operation, maintenance and any other activity necessary to conduct remedial action at hazardous substance disposal sites and to carry out the provisions of this Act; and

(2) Recover the state's remedial action costs, including the legal costs thereof associated with a hazardous substance disposal site.

SECTION 5 (1) The commission and the department may participate in and carry out all provisions of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended; and of Subtitle I of the federal Solid Waste Disposal Act, P.L. 96-482, as amended, and as it relates to remedial (corrective) action.

(2) The department shall have authority to enter into cooperative agreements with the Environmental Protection Agency to carry out the provisions of this Act.

SECTION 6 (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the commission may adopt rules to carry out the provisions of this Act.

SECTION 7 By rule, the commission may designate as a hazardous substance any element, compound, mixture, solution or substance which it finds may present a substantial danger or hazard to the public health, safety, welfare or the environment when disposed of.

Section 8 (1) The department shall develop and maintain an inventory of all hazardous substance disposal sites known to the department. The inventory shall include specific information on the public health, welfare, safety and environmental hazards at each site, the status of any remedial action occuring at each site and other information that the department deems appropriate.

(2) The department shall, on or before January 1, 1989, and annually thereafter, submit the inventory of subsection (1) to the governor and legislature.

Section 9 (1)(a) Whenever any hazardous substance is disposed of or there is a substantial threat of disposal into the environment, the director is authorized to undertake remedial actions relating to such hazardous substances which the director determines necessary to protect the public health, welfare, safety and the environment.

(b) When the director determines that such remedial action will be commenced promptly, conducted properly and completely by the owner or

operator of a hazardous substance disposal site, the director may allow such person to carry out the action in accordance with requirements of or directions from the director.

(2) Whenever the director finds that an inactive hazardous substance disposal site may present an imminent and substantial endangerment or threat thereof to the public health, welfare, safety or to the environment, the director may:

(a) Request the attorney General to institute actions or proceedings for legal or equitable remedies as may be necessary to abate such danger or threat; and

(b) Take other action under this section, including but not limited to the issuance of orders, as may be necessary to protect public health, welfare, safety and the environment.

(3) Before adoption of a plan for remedial action to be undertaken by the department under subsection (1) of this section, notice of such proposed plan and an opportunity for public comment shall be provided to the public.

Section 10 (1) Remedial actions carried out under this Act shall achieve a degree of cleanup of hazardous substances and control of further disposal which assures protection of public health, welfare, safety and of the environment.

(2) A permit may be issued but shall not be required under ORS 466.005 to 466.385 for the on-site portion of any remedial action conducted by the department pursuant to this Act. However, any on-site treatment, storage or disposal of hazardous substances shall comply with the requirements of subsection (1) of this section.

Section 11 (1) Notwithstanding any other provision of law, and subject only to

the defenses set forth in subsections (2) and (3) of this section, the following persons shall be strictly liable for the disposal of hazardous substances and for all remedial action costs incurred by the state government or any person, and for damages for injury to or destruction of any natural resources:

(a) The owner or operator of a hazardous substance disposal site.

(b) Any person who owned or operated a site at the time of disposal of any hazardous substance on that site.

(c) Any person who arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned by any person, at any site owned or operated by another party or entity and containing such hazardous substances.

(d) Any person who accepts or accepted any hazardous substances for transport to disposal, treatment, or other sites selected by such person, at which hazardous substance disposal occurred and which caused remedial action costs to be incurred.

(2) There shall be no liability under this Act for a person otherwise liable who can establish by a preponderance of the evidence that the disposal of a hazardous substance at a site and damages resulting therefrom were caused solely by:

(a) An act of God;

(b) An act of war; or

(c) An act or omission of a third party other than an employee or agent or any person with a contractual relationship with the person asserting this defense to liability, if:

(A) All due care was exercised with respect to the hazardous substance concerned, considering the characteristics of such hazardous substance, in

light of all relevant facts and circumstances; and

(B) Precautions were taken by the person asserting this defense against the foreseeable acts or omissions of a third party and the circumstances that could foreseeably result from such acts or omissions.

(3) Any person who is liable for a hazardous substance disposal site and fails without sufficient cause to properly conduct remedial action upon the department's issuance of an order under section 9 of this Act shall be liable to the department for punitive damages in an amount not to exceed three times the amount of all remedial action costs incurred by the state as a result of failure to take proper remedial action as required by an order.

(4) The commission shall make a finding and enter an order against the person described in subsection (3) of this section for the remedial action costs incurred by the department and for the amount of damages. The order may be appealed in the manner provided for appeal of a contested case order under ORS 183.310 to 183.550.

(5) If the amount of remedial action costs incurred by the department and damages under this section are not paid by the responsible person to the department within 15 days after receipt of notice that such expenses are due and owing, or, if an appeal is filed within 15 days after the court renders its decision if the decision affirms the order, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount specified in the notice of the director.

All moneys received by the department pursuant to this section shall be deposited in a fund established in section's 15 or 16 of this Act.

Section 12 (1) Any person who has or may have information, knowledge or

records relevant to:

(a) The identification, nature, and volume of hazardous substances generated, treated, stored, transported to or disposed of at a site and the dates thereof; or

(b) The identity of potentially liable persons;

Shall upon request of any officer, employee or representative designated by the department, furnish such knowledge, documents or records relating to such matters and allow the department's representative at all reasonable times to have access to, inspect and copy information relating to such matters.

(2) To carry out this Act, any employee, officer, or authorized agent, consultant or contractor of the department may enter upon any real property, place or establishment, public or private, at all reasonable times to:

(a) Conduct sampling, inspection, examination or investigation; and

(b) Effectuate remedial actions authorized by this Act.

(3) If consent is not granted regarding a request for information made under subsection (1) of this section, or for entry under subsection (2) of this section, the Attorney General, at the request of the director, may request a court of competent jurisdiction to issue an order to such person directing compliance with the provisions of this section.

Section 13 (1) All remedial action costs and damages for which a person is liable to the state under this Act shall constitute a lien in favor of the state upon all real and personal property belonging to such persons that are subject to or affected by a remedial action.

(2) The lien imposed by this section shall arise at the time remedial action costs are first incurred by the state.

(3) Within seven days after the department first incurs remedial action costs at a hazardous substance disposal site, the department may file a notice of potential lien on real property to be charged with a lien under 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 this section with the Secretary of State. The lien shall attach and become enforceable on the day on which the state first incurs response costs at an inactive site, 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 claims 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 conduct remedial actions as required.

(4) 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 liens on real or personal property.

(5) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which such person is liable under section 11 of this Act.

Section 14 ORS 466.685 is amended to read:

466.685 Monthly fee; [suspension of fees; notice of suspension or resumption of fees.] [(1) Except as provided by subsection (2) of this section,] beginning on the effective date of this act [January 1, 1986,] every person who operates a facility for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a license issued under ORS 466.005 to 466.385 and 466.890 shall pay a monthly hazardous waste management fee by the 45th day after the last day of each month in the amount of $[1] 2 0 per [dry-weight] ton of hazardous waste or PCB brought into the facility for treatment by incinerator or for disposal by landfill at the facility. Fees under this section shall be calculated in the same manner as provided in section 231 of the federal Comprehensive Environmental Response Compensation and Liability Act, P.L 96-510, as amended.

[(2) When the balance in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund established in ORS 466.690 reaches $500,000 minus any moneys approved for obligation under ORs 466.690 (3), payment of fees under subsection (1) of this section shall be suspended. Payment of fees shall resume upon approval of funds by the Legislative Assembly or the Emergency Board to the department sufficient to decrease the balance in the fund to $150,000 or lower.]

[(3) If payment of fees is to be suspended or resumed under subsection (2) of this section, the department shall give reasonable notice of the suspension or resumption to every person obligated to pay a fee under subsection (1) of this section.]

Section 15 ORS 466.690 is amended to read:

466.690 [Comprehensive Environmental Response, Compensation and

Liability Act Matching] Hazardous Substance Remedial Fund. (1) The [Comprehensive Environmental Response, Compensation and Liability Act Matching] Hazardous Substance Remedial Fund is established separate and distinct from the General Fund in the State Treasury to be used solely for the purposes of this act. All fees received by the Department of Environmental Quality under ORS 466.685 shall be paid into the State Treasury and credited to the fund.

(2) In addition to the fees established by ORS 466.685, the following amounts shall be deposited into the State Treasury and credited to the Hazardous Materials Remedial Fund, as they pertain to hazardous substance disposal sites other than underground storage tanks:

(a) Moneys recovered or otherwise received from responsible parties for remedial action and other damages; and

(b) Any penalties, fines or damages recovered under this Act.

[2] (3) The State Treasurer may invest and reinvest moneys in the [Comprehensive Environmental Response, Compensation and Liability Act Matching] Hazardous Substance Remedial Fund in the manner provided by law.

[3] (4) The moneys in the [Comprehensive Environmental Response, Compensation and Liability Act Matching] Hazardous Substance Remedial Fund are appropriated continuously to the department to be used as provided in subsection [4] (5) of this section [and for providing the required state match for planned remedial actions financed by the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, subject to site by site approval by the Legislative Assembly or the Emergency Board.]

(5) Moneys in the Hazardous Substance Remedial Fund may be used by the Department of Environmental Quality for the following purposes, as they pertain to hazardous substance disposal sites other than underground storage tanks:

(a) Payment of remedial action costs incurred by the department;

(b) Funding all actions and activities authorized by sections 4 and 9 of this Act; and

(c) Providing the state cost share for a remedial action, as required by Section 104(c)(3) of P.L. 96-510.

[(4) Up to 15 percent of the moneys appropriated under subsection (3) of this section may be used for investigating and monitoring potential and existing sites which are or could be subject to remedial action under the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended.]

Section 16 (1) The Leaking Underground Storage Tank Fund is established separate and distinct from the General Fund in the State Treasury to be used soley for the purposes of this Act as it pertains to underground storage tanks.

(2) The following amounts, as they pertain to underground storage tanks, shall be deposited into the State Treasury and credited to the Leaking Underground Storage Tank Fund;

(a) Fees received by the department under section 17 of this act;

(b) Moneys recovered or otherwise received from responsible parties for remedial action and other damages.

(c) Any penalties, fines or damages recovered under this act.

(3) The State Treasurer may invest and reinvest moneys in the Leaking

Underground Storage Tank Fund in the manner provided by law.

(4) The moneys in the Leaking Underground Storage Tank Fund are appropriate continuously to the department to be used as provided for in subsection (5) of this section.

(5) Moneys in the Leaking Underground Storage Tank Fund may be used by the department for the following purposes, as they pertain to underground storage tanks:

(a) Payment of remedial action costs incurred by the department;

(b) Funding all actions and activities authorized by sections (4) and (9) of this act; and

(c) Providing the state cost share for a remedial action, as required by Section 9003(h) (7)(B) of the federal Solid Waste Disposal Act (P.L. 96-482).

Section 17. (1) An annual fee may be required of every owner or operator of an underground storage tank. The fee shall be in an amount determined by the Commission to be adequate, less any federal funds, to carry out the remedial action program for underground storage tanks established under this act, including administrative costs.

(2) The fees collected under this section are continuously appropriated to the department.

(3) If the fee established in this section is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, then the Commission shall adopt an annual fee schedule based on the gross operating revenues of the underground storage tank owner's or operators business.

Section 18 ORS 466.365 is amended to read:

466.365 Commission authority to establish sites for which notice is required; rulemaking; report to Legislative Assembly.

(1) The Commission may establish by rule adopted under ORs 183,310 to 183.550:

(a) A list of sites for which environmental hazard notices must be given and use restrictions must be imposed. The list shall be consistent with the policy set forth in ORS 466.360 and may include any of the following sites that contain potential hazards to the health, safety and welfare of Oregon's citizens:

(A) A land disposal site as defined by ORS 459.005;

(B) A hazardous [waste] substance disposal site as defined by ORS 466.005; and

(C) A disposal site containing radioactive waste as defined by ORS 469.300 (17).

(b) The form and content of use restrictions to be imposed on the sites, which shall require at least that post-closure use of the site not disturb the integrity of the final cover, liners or any other components of any containment system or the function of the facility's monitoring systems, unless the department finds that the disturbance:

(A) Will not increase the potential hazard to human health or the environment; or

(B) Is necessary to reduce a threat to human health or the environment.

(c) The form and content of the environmental hazard notices to be filed with cities and counties.

(d) The circumstances allowing and procedures for removal or amendment

of environmental hazard notices and use restrictions provided by the department.

(e) Any other provisions the commission considers necessary for the department to accomplish the purpose of ORS 466.360 to 466.385.

(2) Spills and releases cleaned up pursuant to ORS 466.205 and 468.795 shall not be listed as sites to be regulated under subsection (1) of this section.

(3) Before hearings on and adoption of rules under subsection (1) of this section, the department shall notify each person who owns a disposal site of the rulemaking proceedings.

Section 19 (1) ORS 466.880 is amended to read:

466.880 Civil penalties. (1) In addition to any other penalty provided by law, any person who violates ORS 466.005 to 466.385 and 466.890, a license condition or any commission rule or order pertaining to the generation, treatment, storage, disposal or transportation by air or water of hazardous waste, as defined by ORS 466.005, shall incur a civil penalty not to exceed $10,000 for each day of the violation.

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed and collected under ORS 448,305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS Chapter 468.

(3) In addition to any other penalty provided by law, any person who violates a provision of ORS 466.605 to 466.690, may incur a civil penalty not to exceed $10,000. Each day of violation shall be considered a separate offense.

(4) The civil penalty authorized by subsection (3) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.125, except that a penalty collected under this section shall be deposited to the fund established in ORS 466.670.

(5) In addition to any other penalty provided by law, any person who violates a provision of this Act, or any rule or order entered or adopted under this Act shall incur a civil penalty not to exceed $10,000 for each day in which such violation occurs or such failure to comply continues.

(6) The civil penalty authorized by subsection (5) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.125, except that a penalty collected under this section shall be deposited to the fund established in section (15) of this Act.

Section 20 (1) Any person who knowingly or willfully violates any provision of this Act or any rule or order adopted or entered under this Act shall, upon conviction, be subject to a criminal penalty not to exceed $10,000 or imprisonment for not more than one year, or both.

(2) Each day of violation shall be deemed a separate offense.

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

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

DRAFT

To: See Distribution List Attached Date: November [illegible], 1986

From: Richard Reiter, Manager
Hazardous Material Section

Subject: SR 1.20
Spill Response Legislation

Attached for your review and critical comment is the first draft of Spill Response Legislation. The main thrust (Sections 2, 3 and 4) is to create authority to assess fees to support the program over time. Sections 5 and 6 amend existing law to insure fees are deposited to Fund and expand use of fund. Sections 7 and 8 provide authority for Fire Districts to become part of regional response program (Cities and Counties already have adequate authority).

Your comments in the following areas would be particularly appreciated:

1. Appropriateness of proposed fees.

2. Additional provisions not covered but needed.

3. Unnecessary provisions.

4. Clarity.

Also attached for your benefit are two examples of the revenue that could be raised by proposed fees. The goal is to raise biennial budget needs and create a reserve balance for unanticipated, catastrophic incidents. The reserve balance could be accumulated over several bienniums to keep the fees lower or during the first biennium after which the fees could be significantly reduced.

I would appreciate your comments by November 19, 1986 if possible.

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Fred Miller, Director, ODOT
Lyn Hardy, Admin., Emergency Management Division
Virginia Honeywell, Admin., State Fire Marshall
Bob Robison, Department of Energy
Kristine Gebbie, Admin., Health Division

In addition, this information was discussed with the Department's HB2146 Policy Advisory committee on November 3, 1986 (see attached membership list).

\D SUTHERLAND/Policy Advis Mail List 10:07 86/02/20 86/11/04
\P 9 9 55
\V 6
\H 12
\M 1 40

Policy Advis Committee Label List
ZB5422.L1 15 Names

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86/11/04 10:07 10:12

A BILL FOR AN ACT

Relating to environment; creating new provisions; amending ORS 466.670 and ORS 466.675.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 1 thru 4 of this Act are made a part of ORS 466.605 to 466.690.

SECTION 2. (1) By rule and after hearing, the Environmental Quality Commission may establish a schedule of fees payable by the following persons:

(a) Owners or operators of underground storage tanks regulated by ORS 468.901 to ORS 468.917.

(b) Persons required to submit a Hazardous Substances Survey pursuant to HB 2255 (Oregon Laws 1985).

(c) Transporters registered with the Public Utility Commissioner.

(2) Until the balance in the Oil and Hazardous Materials Emergency Response and Remedial Action Fund is $3 million ~~or more~~, the fees authorized by subsection one of this section may be up to $200 per year.

(3) For the fiscal year immediately following the year in which the final balance in the fund equals or exceeds an unobligated balance of $3 million, the Commission shall proportionately reduce the fees to maintain a fund balance of at least $1.5 million but not more than $3 million.

(4) For the fiscal year immediately following a year in which the final balance in the fund is less than or equal to an unobligated balance of $1.5 million, the Commission shall proportionately increase the fees authorized by subsection one of this section to maintain a

fund balance of at least $1.5 million but not more than $3 million, except that the fees shall not exceed $200 per year.

SECTION 3. In establishing the schedule of fees authorized by section two of this Act, the Commission shall attempt to assign costs in proportion to the risks created by the three groups of fee payers. In assigning costs, the Commission may consider, but is not limited to, the following factors:

(a) Number of spills or releases,

(b) Average size of spill or release,

(c) Toxicity OR ENVIRONMENTAL SIGNIFICANCE of materials spilled or released,

(d) Department costs to oversee, direct or contract for cleanups.

SECTION 4. By interagency agreement or contract, ~~the Department may have~~ the State Fire Marshal may collect the Hazardous Substance Survey fee and the Public Utility Commissioner may collect the transporter fee. The Department may use a portion of the fees collected to reimburse the State Fire Marshal and Public Utility Commissioner for actual costs of administering fee program.

SECTION 5. ORS 466.670 is amended to read:

466.670 Oil and Hazardous Material Emergency Response and Remedial Action Fund. (1) The Oil and Hazardous Materials and Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury. As permitted by Federal court decisions, federal statutory requirements and administrative decisions, after payment of associated legal expenses, moneys not to exceed $2.5 million received by the State of Oregon from the Petroleum Violation Escrow Fund of the United States Department of Energy that is not obligated by federal

requirements to existing energy programs shall be paid into the State treasury and credited to the fund.

(2) The State treasurer shall invest and reinvest moneys in the Oil and Hazardous Material Emergency Response and remedial Action Fund in the manner provided by law.

(3) The moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund are appropriated continuously to the Department of Environmental Quality to be used in the manner described in ORS 466.675.

(4) All fees authorized by section two of this Act shall be paid into the State Treasury and credited to the fund.

SECTION 6. ORS 466.675 is amended to read:

466.675 Use of moneys in Oil and Hazardous Material Emergency Response and Remedial Action Fund. Moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund may be used by the Department of Environmental Quality for the following purposes:

(1) Training local government employees involved in response to spills or releases of oil and hazardous material.

(2) Training of state agency employes involved in response to spills or releases of oil and hazardous material.

(3) Funding action and activities authorized by ORS 466.645, 466.205, 468.800 and 468.805.

(4) Providing for the general administration of ORS 466.605 to 466.690, 466.880 (3) and (4), 466.995(3) including the purchase of equipment and payment of personnel costs of the department or any other state agency related to the enforcement of ORS 401.025, 466.605 to 466.690, 466.880 (3) and (4), 466.995(3) and 468.070.

(5) Providing grants to fire departments, fire districts or counties for up to 90 percent of the actual costs to purchase equipment and supplies for regional emergency response teams established to respond to oil and hazardous material spills or releases.

(6) To reimburse regional emergency response teams actual costs incurred on a response to an oil or hazardous material incident outside the boundaries of the jurisdiction in which regional emergency response team is based.

SECTION 7. Section 8 of this Act is added to and made a part of ORS 478.210 to 478.310.

SECTION 8. (1) Any district may contract with other rural fire protection districts, cities or counties to establish, operate and maintain a regional oil and hazardous material emergency response team and may, in cooperation with the other contracting party or parties, provide for a joint board of control composed of representatives of the contracting parties, to control the operation of the regional emergency response team.

(2) A rural fire protection district may receive a grant pursuant to subsection (5) of section 6 of this Act.

(3) Any district ~~any~~ WITH A portion of whose boundary coincides with the boundary of this state may contract with any public agency of, or person in, an adjoining state for the purpose of responding to spills or releases of oil and hazardous material.

(4) Oil and hazardous material shall have the meaning established in ORS 466.605.

NOTE: Matter underlined in an amended section is new.

DRAFT

HB2146 PAC Committee
11-3-86

Potential Revenue:

1. UST Owners & Operators
   8500 x $200/yr x 2yrs = $3,400,000

2. HB2255 employers
   10,000 x $200/yr x 2yrs = $4,000,000

3. Transporters
   (a) All Carriers ?? ← Does this include transporters of wheat potatoes, etc. ??
   21,000 x $25/yr x 2yrs = $1,050,000

   (b) Haz Mat Carriers *
   1800 x $175/yr x 2yrs = $630,000

   TOTAL $9,080,000

Estimated Expenditures:

87-89 Biennium Budget Request $3,105,913

Proposed Fund Balance $3,000,000

TOTAL $6,105,813

* Haz Mat Carriers 1800 x $200/yr x 2yrs = $720,000

HB 2146 PAC Committee
11-3-86

Potential Revenue:

1. UST Owners & Operators

   8500 x $100/yr x 2 yrs = $1,700,000

2. HB 2255 employers

   10,000 x $100/yr x 2 yrs = $2,000,000

3. Haz Mat Carriers

   1800 x $100/yr x 2 yrs = $360,000

   TOTAL $4,060,000

Estimated Expenditures:

87-89	Biennium Budget Request	$3,105,813
Proposed	Fund Balance	$3,000,000
	TOTAL	$6,105,913

Prepared by: Richard Reiter
11-3-86

MEASURE SUMMARY

Amends hazardous waste management statutes to clarify existing authorities and to enable Oregon to apply for and receive authorization for the 1984 amendments to the federal Resource Conservation and Recovery Act (RCRA). Prohibits the disposal of non-hazardous liquid wastes in hazardous waste landfills. Regulates persons who produce, market, distribute, transport or burn fuel containing or derived from hazardous wastes. Allows direct legal action against guarantors of financial liability for hazardous waste management facilities. Requires corrective action for past releases of hazardous wastes or constituents of hazardous waste. Requires waste minimization efforts to be undertaken by hazardous waste generators. Clarifies existing authorities to require permit processing and related fees for hazardous waste storage facilities, to establish technical standards for hazardous waste generators, and to place any conditions necessary to protect human health and the environment in hazardous waste facility permits. Extends the RCRA authorization umbrella provision in ORS 466.085.

A BILL FOR AN ACT

Relating to hazardous waste; amending ORS 466.015, 466.020, 466.075, 466.090, 466.105, 466.150, 466.160, 466.180, 466.205 and Section 4, Chapter 735, Oregon Laws 1985.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 466.015 is amended to read:

466.015. (1) Provide for the administration, enforcement and implementation of ORS 466.005 to 466.385 and 466.890 and may perform all functions necessary:

(a) To insure the proper management of hazardous waste by generators;

(b) For the regulation of the operation and construction of hazardous waste treatment, collection and disposal sites; and

(c) For the licensing of hazardous waste treatment, collection and disposal sites in consultation with the appropriate county governing body

or city council.

(d) For the regulation of persons who produce, market, distribute, transport or burn fuels containing or derived from hazardous wastes.

Section 2. ORS 466.020 is amended to read:

466.020. In accordance with applicable provisions of ORS 183.310 to 183.550, the commission shall:

(1) Adopt rules and issue orders thereon, including but not limited to establishing minimum requirements for the treatment, storage and disposal of hazardous wastes, minimum requirements for operation, maintenance, monitoring, reporting and supervision of treatment, collection or disposal sites, and requirements and procedures for selection of such sites.

(2) Adopt rules and issue orders thereon 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 466.005 to 466.385 and 466.890.

(3) Adopt rules and issue orders thereon to classify as hazardous wastes those residues defined in ORS 466.005(6)(b).

(4) Adopt rules and issue orders thereon relating to reporting by generators of hazardous wastes concerning type, amount and disposition of such hazardous waste and waste minimization activities. Rules may be adopted exempting certain classes of generators from such requirements.

(5) Adopt rules and issue orders relating to the transportation of hazardous waste by air or water.

(6) Adopt rules and issue orders thereon relating to the production, marketing, distribution, transportation and burning of fuels containing or

derived from hazardous wastes.

(7) Adopt rules and issue orders thereon relating to corrective action, including corrective action beyond the facility boundary where necessary to protect public health or the environment, for all releases of hazardous wastes or constituents of hazardous wastes from any hazardous waste treatment, storage or disposal facility, regardless of the time at which waste was placed in such facility.

(8) Adopt rules and issue orders thereon relating to the restriction and/or prohibition of non-hazardous liquid wastes in hazardous waste disposal sites, licensed pursuant to ORS 466.110 to 466.170. [Formerly 459.440]

Section 3. ORS 466.075 is amended to read:

466.075. (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, and waste minimization activities;

(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 is destined for treatment, storage or disposal is 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, and waste minimization activities.

(f) Comply with specific waste management standards.

(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. [Formerly 459.445]

Section 4. ORS 466.090 is amended to read:

466.090. (1) Except as provided in subsection (2) of this section, any information filed or submitted pursuant to ORS 466.005 to 466.385 and 466.890 shall be made available for public inspection and copying during regular office hours of the department at the expense of any person requesting copies.

(2) Unless classified by the director as confidential, any records, reports or information obtained under ORS 466.005 to 466.385 and 466.890 shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the director shall classify as confidential such record, report or information, or particular part thereof. However, such record, report or information may be disclosed to other officers, employes or authorized representatives of the state concerned with carrying out ORS 466.005 to 466.385 and 466.890 or when relevant in any proceeding under ORS 466.005 to 466.385 and 466.890.

(3) Records, reports and information obtained or used by the department or the commission in administering the state hazardous waste program under ORS 466.005 to 466.385 and 466.890 shall be available to the United States Environmental Protection Agency and the federal Agency for Toxic Substances and Disease Registry, upon request. If the records, reports or information has been submitted to the state under a claim of confidentiality to the Environmental Protection Agency and the Agency for

Toxic Substances and Disease Registry for requested records, reports or information. The federal [agency] agencies shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law. [Formerly 459.460]

Section 5. Amend ORS 466.105 to read:

466.105. Each hazardous waste collection or treatment site licensee shall be required to do the following as a condition to holding the license:

(1) Maintain records of any hazardous waste identified pursuant to provisions of ORS 466.005 to 466.385, 466.880(1) and (2), 466.890 and 466.995(1) and (2) which is stored or treated at the site and the manner in which such waste was stored or treated, transported and disposed of.

(2) Report periodically to the department on types and volumes of wastes received and their manner of disposition and waste minimization activities for any hazardous wastes generated on the premises.

(3) Participate in the manifest system designed by the department.

(4) Maintain current contingency plans to minimize damage from spillage, leakage, explosion, fire or other accidental or intentional event.

(5) Maintain sufficient liability insurance or equivalent financial assurance in such amounts as determined by the department to be reasonably necessary for corrective actions and to protect the environment and the health, safety and welfare of the people of this state.

(6) Assure that all personnel who are employed by the licensee are trained in proper procedures for handling transfer, transport, treatment and storage of hazardous waste including, but not limited to

familiarization with all contingency plans.

(7) Maintain other plans and exhibits and take other actions 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.

(8) Restore, to the extent reasonably practicable, the site to its original condition when use of the area is terminated.

(9) Maintain a cash bond or other equivalent financial assurance in the name of the state in an amount estimated by the department to be sufficient to cover any costs of closing the site, including corrective actions and monitoring it or providing for its security after closure and to secure performance of all license requirements. The financial assurance shall remain available for the duration of the license and until the site is closed, except to the extent it is released or modified by the department.

(10) Provide corrective action, including correction action beyond the facility boundary where determined by the Department to be reasonably necessary to protect public health, welfare or safety or the environment, for all releases of hazardous wastes or constituents of hazardous wastes, regardless of the time at which wastes were placed at the facility.

(11) In any case where the licensee is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any State court or any Federal Court cannot be obtained over a licensee likely to be solvent at the time of judgment, any claim arising from conduct (or which evidence of financial responsibility must be provided under subsections (5) and (9) of this

section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to involve, all rights and defenses which would have been available to the licensee if any action had been brought against the licensee by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the licensee.

(12) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the licensee under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, constructual or common law liability of a guarantor to a licensee including, but not limited to, this liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

(13) For the purposes of this subsection, the term 'guarantor' means any person other than the licensee, who provides evidence of financial responsibility for a licensee under this section. [Formerly 459.517]

Section 6. ORS 466.150 is amended to read:

466.150. (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 466.005 to 466.385 and 466.890 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 466.005 to 466.385 and 466.890 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 therefore and waste minimization activities for any hazardous wastes generated on the premises.

(h) Maintain other plans and exhibits and take other actions 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 (1) 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. [Formerly 459.590]

Section 7. ORS 466.160 is amended to read:

466.160. (1) The hazardous waste [collection,) treatment, storage or disposal site license shall require a fee based either on the volume of material accepted at the site or a percentage of the fee collected, or both. The fees shall be calculated in amounts estimated to produce over the site use period a sum sufficient to:

(a) Secure performance of license requirements;

(b) Close the site;

(c) Provide for any monitoring or security of the site after closure; and

(d) Provide for any remedial action by the state necessary after closure to protect the public health, welfare 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 ORS 466.150(2)(f), the licensee shall be allowed to withdraw the financial assurance.

(3) If the site 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. [Formerly 459.600]

Section 8. ORS 466.180 is amended to read:

466.180. (1) The department may limit, prohibit or otherwise restrict the treatment or disposal of certain hazardous waste at a hazardous waste treatment or disposal site if 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.

(3) The department may restrict and/or prohibit the disposal of non-hazardous liquid wastes in hazardous waste disposal sites. [Formerly 459.640]

Section 9. ORS 466.205 is amended to read:

466.205. (1) Any person owning a facility which generates, treats, stores or disposes of and 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 is 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 cleanup 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 cleanup 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 cleanup 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 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. [Formerly 459.685]

Section 10. Section 4, Chapter 735, Oregon Laws 1985, is amended to read:

Sec. 4. (1) ORS 459.455 [renumbered 466.085] is repealed.

(2) the repeal of ORS 459.455 by this section does not become operative until [July 1, 1987] December 31, 1990.

Rough Draft
LC 535
11/21/86 (jkh/dp)

MEASURE SUMMARY

Allows Department of Environmental Quality to consider broader range of factors in imposing civil penalty.

A BILL FOR AN ACT

Relating to environment; amending ORS 468.130.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 468.130 is amended to read:

468.130. (1) The commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed $500 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider at least the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to water or air pollution or air contamination or solid waste disposal.

(c) The economic and financial conditions of the person incurring a penalty.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or

regional authority considers proper and consistent with the public health and safety.

(4) The commission may by rule delegate to the department, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties.

LC 534
11/25/86 (1b)

MEASURE SUMMARY

Establishes Water Pollution Control Revolving Fund. Directs Department of Environmental Quality to administer program to grant loans to public agencies to assist in construction of treatment works. Appropriates money.

A BILL FOR AN ACT

Relating to water pollution; and appropriating money.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 9 of this Act:

(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 or the director's designee.

(4) "Fund" means the Water Pollution Control Revolving Fund established under section 3 of this Act.

(5) "Public agency" means any state agency, incorporated city, county, sanitary authority, county service district, sanitary district, metropolitan service district or other special district authorized or required to construct water pollution control facilities.

(6) "Treatment works" means:

(a) The devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, necessary to recycle or reuse water at the most economical cost over the estimated life of the works. "Treatment works" includes:

(A) Intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and any appurtenance,

extension, improvement, remodeling, addition or alteration to the equipment;

(B) Elements essential to provide a reliable recycled water supply including standby treatment units and clear well facilities; and

(C) Any other acquisitions, that will be an integral part of the treatment process or used for ultimate disposal of residues resulting from such treatment including, but not limited to, land used to store treated wastewater in land treatment systems prior to land application.

(b) Any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, storm water runoff, industrial waste or waste in combined storm water and sanitary sewer systems.

(c) Any other facility that the commission determines a public agency must construct or replace in order to abate or prevent surface or ground water pollution.

SECTION 2. It is declared to be the policy of this state:

(1) To aid and encourage public agencies required to provide treatment works for the control of water pollution in the transition from reliance on federal grants to local self sufficiency by the use of fees paid by users of the treatment works;

(2) To accept and use any federal grant funds available to capitalize a perpetual revolving loan fund; and

(3) To assist public agencies in meeting treatment works construction obligations in order to prevent or eliminate pollution of surface and ground water by making loans from a revolving loan

fund at interest rates that are less than or equal to market interest rates.

SECTION 3. (1) The Water Pollution Control Revolving Fund is established separate and distinct from the General Fund in the State Treasury. The moneys in the Water Pollution Control Revolving Fund are appropriated continuously to the department to be used for the purposes described in section 4 of this Act.

(2) The Water Pollution Control Revolving Fund shall consist of:

(a) All capitalization grants provided by the Federal Government under the Clean Water Act;

(b) All state matching funds appropriated or authorized by the legislature;

(c) Any other revenues derived from gifts, grants or bequests pledged to the state for the purpose of providing financial assistance for water pollution control projects;

(d) All repayments of moneys borrowed from the fund;

(e) All interest payments made by borrowers from the fund; and

(f) Any other fee or charge levied in conjunction with administration of the fund.

(3) The State Treasurer may invest and reinvest moneys in the Water Pollution Control Revolving Fund in the manner provided by law. All earnings from such investment and reinvestment shall inure to the Water Pollution Control Revolving Fund.

(4) At the direction of the department, the State Treasurer shall establish separate accounts within the fund, transfer funds between such separate accounts and provide separate accounting for the separate accounts. Separate accounts shall be used only if necessary to comply with federal limits on the use of the federal

capitalization grant funds and to carry out the purposes of this Act.

SECTION 4. (1) The Department of Environmental Quality shall use the moneys in the Water Pollution Control Revolving Fund to make loans to public agencies for the construction or replacement of treatment works.

(2) The department may also use the moneys in the Water Pollution Control Revolving Fund for the following purposes:

(a) To buy or refinance the treatment works debt obligations of public agencies.

(b) To guarantee, or purchase insurance for, public agency obligations for treatment works construction or replacement if the guarantee or purchase would improve credit market access or reduce interest rates.

(c) To pay the expenses of the department in administering the Water Pollution Control Revolving Fund. Such expenditures shall not exceed the total of interest earnings, interest payments on loans, fees levied and four percent of the federal grants provided for capitalization of the fund.

SECTION 5. (1) The department may apply for federal grants for the purpose of capitalizing the Water Pollution Control Revolving Fund.

(2) The department may accept gifts, grants or bequests from the Federal Government or from any other source to capitalize the Water Pollution Control Revolving Fund. The commission may convert any property received as part of a gift, grant or bequest into money through the sale of the property and shall credit the money to the fund.

SECTION 6. In administering the Water Pollution Control Revolving Fund, the department shall:

(1) Provide a form to any public agency applying for moneys from the fund.

(2) Allocate funds for loans in accordance with a priority list adopted by rule by the commission.

(3) Enter into a contract with the public agency receiving a loan setting forth the terms and conditions of the loan.

(4) Use accounting, audit and fiscal procedures that conform to generally accepted government accounting standards.

(5) Prepare any reports required by the Federal Government as a condition to awarding federal capitalization grants.

(6) Adopt by rule any procedures or standards necessary to carry out the provisions of this Act.

SECTION 7. (1) Any public agency desiring a loan from the Water Pollution Control Revolving Fund shall submit an application to the department on the form provided by the department. Each applicant shall demonstrate to the satisfaction of the department and to bond council for the State of Oregon that the applicant has the legal authority to incur the debt. To the extent that a public agency relies on the authority granted by law or charter to issue revenue bonds pursuant to the Uniform Revenue Bonding Act, the department may waive the requirements for the findings required for a private negotiated sale and for the preliminary official statement.

(2) Any public agency receiving a loan from the Water Pollution Control Revolving Fund shall establish and pledge a dedicated source of revenue for the repayment of the loan. The public agency shall maintain debt service reserves as required by the department.

(3) If a public agency defaults on payments due to the Water Pollution Control Revolving Fund, the state may withhold any amounts otherwise due to the public agency and direct that such funds be applied to the indebtedness and deposited into the fund.

SECTION 8. Any loan made to a public agency by the department from the Water Pollution Control Rovolving Fund shall:

(1) Not exceed 10 years unless the commission determines that:

(a) A longer term is necessary to make effective use of the money; and

(b) Public agencies desiring loans for a term of 10 years or less for qualifying treatment works are not available.

(2) Include a provision that:

(a) The rate of interest to be charged on funds loaned shall be the rate established by the commission;

(b) The interest rate may vary from zero to the market rate at the time a loan is made, consistent with the intent and purpose of this Act; and

(c) Upon concurrence of the loan recipient and the department, the interest rate may be adjusted during the term of the loan.

SECTION 9. Before awarding the first loan from the Water Pollution Control Revolving Fund, the Department of Environmental Quality shall submit an informational report to the Joint Committee on Ways and Means or, if during the interim between sessions of the Legislative Assembly, to the Emergency Board. The report shall describe the Water Pollution Control Revolving Fund program and set forth in detail the operating procedures of the program.

SECTION 10. In addition to and not in lieu of any other appropriation, there is appropriated to the Water Pollution Control Revolving Fund, out of the General Fund, the sum of $_____, to be

used by the Department of Environmental Quality for the purposes established under section 5 of this Act.

Rough Draft
LC 640
10/27/86 (jkh/lb)

MEASURE SUMMARY

Deletes requirement that licensee of hazardous waste disposal site or PCB disposal site deed to state real property in or upon which hazardous waste or PCB is disposed. Eliminates requirement that state be given first right of refusal if site is offered for sale.

A BILL FOR AN ACT

Relating to environment; amending ORS 466.150, 466.160, 466.320 and 466.345.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 466.150 is amended to read:

466.150. [(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 466.005 to 466.385 and 466.890 shall be required to do the following as a condition to holding the license:

[(a)] (1) Proceed expeditiously with and complete the project in accordance with the plans and specifications approved therefor pursuant to ORS 466.005 to 466.385 and 466.890 and the rules adopted thereunder.

[(b)] (2) 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)] (3) 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)] (4) Establish emergency procedures and safeguards necessary to prevent accidents and reasonably foreseeable risks.

[(e)] (5) Restore, to the extent reasonably practicable, the site to its original condition when use of the area is terminated as a site.

[(f)] (6) 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)] (7) Report periodically on the volume of material received at the site and the fees collected therefor.

[(h)] (8) 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 (1) 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 2. ORS 466.320 is amended to read:

466.320. [(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 ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 shall be required to do the following as a condition to holding the license:

[(a)] (1) Proceed expeditiously with and complete the project in accordance with the plans and specifications approved and the rules adopted under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350.

[(b)] (2) 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)] (3) 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)] (4) Establish emergency procedures and safeguards necessary to prevent accidents and reasonably foreseeable risks.

[(e)] (5) 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)] (6) 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)] (7) 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)] (8) 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)] (9) Maintain records of any PCB identified under provisions of ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 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)] (10) 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)] (11) If disposal is by incineration, the facility must also incinerate a reasonable ratio of hazardous waste.

SECTION 3. ORS 466.160 is amended to read:

466.160. (1) The hazardous waste collection, treatment or disposal site license shall require a fee based either on the volume of material accepted at the site or a percentage of the fee collected, or both. The fees shall be calculated in amounts estimated to produce over the site use period a sum sufficient to:

(a) Secure performance of license requirements;

(b) Close the site;

(c) Provide for any monitoring or security of the site after closure; and

(d) Provide for any remedial action by the state necessary after closure to protect the public health, welfare 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 ORS 466.150 [(2)(f)] (6), the licensee shall be allowed to withdraw the financial assurance.

(3) If the site 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 4. ORS 466.345 is amended to read:

466.345. (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 ORS 466.320 [(2)], 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.

DRAFT #4
11/14/86

MEASURE SUMMARY

Requires contractors that work with asbestos to be licensed to conduct such projects. Requires workers that come into contact with asbestos to be trained in the hazards and safety aspects of working with asbestos. Establishes requirements for asbestos abatement projects. Requires training providers to be accredited. Allows fees to be assessed to cover the administrative costs of the program. Establishes penalties for violations. Authorizes the Environemental Quality Commission to adopt rules to administer and enforce this Act in consultation with the Workers' Compensation Department, Accident Prevention Division.

A BILL FOR AN ACT

Relating to the regulation of persons engaging in asbestos removal, repair, maintenance, encapsulation, enclosure, handling and disposal; adding new Sections to ORS 468._____.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 10 of this Act are added to and made a part of ORS 468._____ to 468._____.

SECTION 2 As used in sections 2 to 10 of this Act:

(1) "Accredited" means a provider of a training course holds a valid certificate issued by the Department approving and authorizing the holder

to offer training courses as a means of satisfying specific Department licensing and worker training requirements.

(2) "Agent" means any individual performing work on an asbestos abatement project for a contractor that is not an employee of the contractor.

(3) "Asbestos" means actinolite, amosite, anthophyllite, crysotile, crocidolite, or tremolite.

(4) "Asbestos Abatement Project" means any demolition, renovation, repair, construction, or maintenance of any public or private facility involving the repair, maintenance, enclosure, encapsulation, removal, salvage, handling, and/or disposal of any material with the potential of releasing asbestos fibers into the air. Vehicle brake maintainence is exempt from this definition.

(5) "Asbestos Containing Material" means any material containing more than one percent asbestos by weight.

(6) "Commission" means the Environmental Quality Commission.

(7) "Contractor" means any person or legal entity, however organized, that engages in asbestos abatement projects for other parties.

(8) "Department" means the Department of Environmental Quality.

(9) "Director" means the Director of the Department.

(10) "Facility" means any public or private building, structure, installation, equipment, vehicle, vessel including but not limited to ships, or any portion thereof. Private owner-occupied residences are exempt from this definition only when the owner-occupant of the residence is performaing the asbestos abatement work on or in the residence.

new re: homeowner issue

(11) "Facility Owner" means any person that owns a facility.

(12 "Friable Asbestos Material" means any asbestos containing material that hand pressure can crumble, pulverize or reduce to powder when dry.

(13) "License" means an authorization issued by the Department permitting a contractor to engage in asbestos abatement projects.

(14) "Person" means one or more individuals, legal representatives (whether or not organized for profit) corporations, associations, firms, partnerships, joint ventures, business trusts, any organized groups of persons, public and municipal corporations, political sub-divisions, the State and agencies thereof.

new combines API & DEQ "per" definitions

(15) "Trained Worker" means a worker holds a certificate issued by the Department, or an authorized representative of the Department, indicating that the worker has successfully completed specific training relating to, and can demonstrate knowledge of the health and safety aspects of working with asbestos.

new

APD suggestion

(16) "Worker"means as employee or agent of a contractor or facility owner.

SECTION 3 The Legislative Assembly finds and declares that:

(1) Asbestos containing materials in a friable condition, or when physically or chemically altered, can release asbestos fibers into the air. Asbestos fibers are respiratory hazards that are proven to cause lung cancer, mesothelioma, and asbestosis; and as such, are a danger to the public health.

(2) There is no known minimal level of exposure to asbestos fibers which will guarantee the full protection of the public health.

(3) Asbestos containing materials in buildings, facilities, installations, vehicles, vessels, or in other uses within the state are a potential health hazard.

(4) The increasing number of asbestos abatement projects has increased the exposure of abatement contractors and workers, and the public to this hazard.

(5) Improperly performed asbestos abatement projects create unnecessary health and safety hazards which are detrimental to the interest of citizens and the state in terms of health and family life, preservation of human resources, wage loss, insurance, medical expenses, and disability compensation payments.

(6) It is in the public interest to reduce exposure to asbestos caused by improperly performed asbestos abatement projects by upgrading contractor and worker knowledge, skill and competence through training.

SECTION 4 (1) Sections 1 to 10 of this Act are enacted to authorize the Environmental Quality Commission to adopt and provide for the administration and enforcement of a statewide program to govern the proper and safe abatement of asbestos hazards through a contractor licensing and worker training program.

(2) The program shall include, but not be limited to, uniform licensing and training criteria, standardized training courses and requirements, and auditing of abatement job performance.

(3) ~~The Department~~ EQC shall consult with the Workers Compensation Department, Accident Prevention Division concerning rule development and program implementation to assure that all rules adopted pursuant to this Act shall be compatible and consistent with all federal and state statutes and regulations governing asbestos abatement.

new APD suggestion

SECTION 5 (1) Owners of facilities containing asbestos are responsible for the safe abatement of asbestos hazards in their facilities, and may hire only licensed contractors to perform the abatement, except as provided in Subsection (2) below.

(2) A facility owner, or authorized representative, which employs its own workers for the purpose of maintaining, repairing, renovating, or demolishing its own facilities shall allow employees to work on asbestos abatement projects only in accordance wiht the training requirements specified under Section 6 of this Act.

rewritten & cleaned up

(3) No contractor shall work on an asbestos abatement project unless the contractor holds a license for that purpose issued by the Department.

(4) To qualify for a license, a contractor shall:

(a) Ensure that each employee or agent of the contractor who will be working on or is directly responsible for an asbestos abatement project is trained to work on asbestos abatement projects, pursuant to Section 6 of this Act.

new dropped: " who will come into contact with an asbestos hazard"

(b) Successfully complete a basic training course approved by the Department.

(c) Sign a statement acknowledging that the contractor has read and understands the applicable federal and state regulations governing asbestos abatement and certifies to comply with the regulations.

(5) Applications for licenses and renewals shall be submitted according to the procedures established by the EQC.

(6) Licensed contractors shall be responsible for the safe and proper handling and delivery of asbestos containing waste material to a landfill authorized by the Department.

(7) The Department may suspend or revoke a license if the licensee:

(a) Fraudulently or deceptively obtains or attempts to obtain a license.

(b) Fails at anytime to meet the qualifications for a license or to comply with rules adopted by the Commission.

(c) Fails to meet any applicable federal or state standard relating to asbestos abatement projects.

(d) Employs or permits an untrained worker to work on an asbestos project. see 4a)

(e) Employs or permits a worker who fails to comply with the applicable federal and state regulations relating to asbestos abatement projects. NEW APD suggestion

SECTION 6 (1) An individual worker is not eligible to work on an asbestos abatement project unless the worker holds a current certificate issued by the Department, or authorized representative, for that purpose.

(2) To qualify for a certificate, a worker must successfully complete a basic training course approved by the Department.

(3) To qualify for renewal of the certificate, the worker must have successfully completed a review course approved by the Department.

(4) Applications for certificates and renewals shall be submitted according to the procedures established by the EQC.

(5) The Department may suspend or revoke a certificate for failure of the worker to comply with applicable health and safety standards and regulations.

SECTION 7 The Commission may authorize the Director to:
(1) Approve, on a case-by-case basis, an alternative to a specific worker and public health protection requirement for an asbestos abatement project if the contractor or facility owner submits a written description of the alternative procedure and demonstrates to the Director's satisfaction that the proposed alternative procedure provides equivalent worker and public health protection; and

(2) Waive the requirements for a license if the contractor or facility owner is not primarily engaged in the abatement of asbestos, and if worker and public health protection requirements are met or an alternative procedure is approved purusant to subsection (1) above.

SECTION 8 (1) The Department shall provide, or approve and accredit, the training courses contractors are required to successfully complete to qualify for a license, and the training courses workers are required to successfully complete to qualify to work on asbestos abatement projects.

(2) Training courses, at a minimum, must include course material relating to: the characteristics and uses of asbestos and the associated health hazards; federal, state, and local standards relating to asbestos abatement work practices; methods of personal and public health protection from asbestos hazards; air monitoring; safe and proper abatement techniques; and asbestos waste disposal.

(3) Providers of training courses seeking accreditation from the Department shall demonstrate to the Department's satisfaction the ability and proficiency to conduct training.

(4) Applications for accreditation and renewals shall be submitted according to the procedures established by the Commission.

(5) The Department may suspend or revoke training course accreditation for failure of the provider to meet and maintain the standards set by the Commission.

SECTION 9 The Commission shall have the responsibility of providing for the administration and enforcment of this Act and shall have the authority to:

(1) Develop, adopt, promulgate, modify, repeal and enforce rules necessary to implement this Act; and provide exemptions and variances to the rules for reasonable cause. new

(2) Establish and prescribe requirements for contractors applying for a license to conduct asbestos abatement projects.

(3) Establish and prescribe training requirements for workers applying for a certificate to work on asbestos abatement projects.

(4) Establish standards and procedures for the delivery of training to contractors and workers wishing to become licensed and trained to work on asbestos abatement projects.

(5) Establish standards and procedures for the licensing of contractors, training of workers, and the accrediting of training courses and providers.

(6) Issue, renew, suspend, and revoke licenses, certificates, and accreditations.

(7) Establish standards and procedures requiring persons undertaking asbestos abatement projects to provide notice to the Department before commencing the project.

(8) Establish performance standards for the abatement of asbestos hazards, and the handling and disposal of waste materials containing asbestos.

(9) Establish fees to cover costs of administering this Act.

(10) Establish enforcement standards and penalties for violations of this Act and rules adopted to administer this Act.

(11) Direct the Department to refer violations of the Oregon Safe Employment Act (ORS 654.001 to 654.991) and rules adopted pursuant to the Act, to the Workers' Compensation Department, Accident Prevention Division.

new
APD suggestion

Move To Statement of Purpose.

SECTION 10. (1) Violation of any provision of this statute or of any rule adopted pursuant to this statute is a Class A Misdemeanor, and a person convicted thereof shall be punishable by a fine of not more than $25,000 or ~~by imprisonment in the county jail for not more than one year, or both~~; in additon such a person shall be subject to a civil penalty pursuant to ORS 468.140.

(2) In addition to the penalties prescribed by Subsection (1) of this Section, the Department and the Workers' Compensation Department may suspend or revoke the license or certification of any person who violates the conditions of this Act or rules adopted pursuant to this Act.

new
APD suggestion

How often has it been used?
How many in last 5 years?

STATE OF OREGON

MEMO

DATE: November 7, 1986

TO: UST Advisory Committee Members

FROM: Kathi Futornick

RE: Meeting Agenda for November 13, 1986

Enclosed are the meeting agendas for each of the subcommittees, and the full committee. Please review the sections in the draft legislation (enclosed) specified in the meeting agenda for your subcommittee prior to the November 13th meeting.

The Governor's office has recently informed the Department that all proposed legislation must be prefiled by DECEMBER 1st. Therefore, it is important to arrive at a consensus on the concepts proposed in the draft legislation during the November 13th meeting.

If committee members cannot arrive at a consensus on specific concepts on November 13th, amendments can be submitted during the legislative session.

If you cannot attend the November 13th meeting, please phone me at 229-5828 or mail your comments and concerns to me at our new address:

Oregon DEQ
UST Program
The Executive Building
811 S.W. Sixth Avenue
Portland, Oregon 97204

UST.IP(30)

Larry Patterson
DEQ - Water Quality Div.

MEETING AGENDA

UNDERGROUND STORAGE TANK ADVISORY COMMITTEE

THURSDAY, NOVEMBER 13, 1986

LOCATION:
Imperial Hotel
400 S.W. Broadway
Portland, Oregon

Operating Standards Subcommittee:

8:00 A.M. to 8:30 A.M.	Review revised workplan
8:30 A.M. to 10:00 A.M.	Review draft legislation Definitions Permittee Responsibilities Inspection Authority Exemptions Rulemaking

New Construction Standards Subcommittee:

10:00 A.M. to 10:30 A.M.	Review revised workplan
10:30 A.M. to 12:00 P.M.	Review draft legislation Definitions New tank standards Inspection Authority Permittee Responsibilities
12:00 P.M. to 1:00 P.M.	Lunch

Local and State Implementation Subcommittee:

1:00 P.M. to 1:30 P.M.	Review revised workplan
1:30 P.M. to 3:00 P.M.	Review draft legislation Enforcement Emergency Procedures Variances Revocation of Permits State Fund Certification Trade Secret Protection

Underground Storage Tank Advisory Committee:

3:00 P.M. to 5:00 P.M.	Review draft legislation Arrive at consensus

UST DRAFT LEGISLATION

OPTIONS DRAFT/NOVEMBER 13, 1986

DRAFT LEGISLATION

LEAKING UNDERGROUND STORAGE TANKS
(Options Draft/ November 13, 1986)
A BILL FOR AN ACT

Relating to environment; creating new provisions; amending ORS 468.901, 468.904, 468.905, 468.907, 468.908, 468.911, and repealing 468.916, and 468.917.

Be It Enacted by the People of the State of Oregon

SECTION 1. ORS 468.901 is amended to read:

As used in sections 1 through XX of this act:

( ) "Commission" means the Environmental Quality Commission;

( ) "Cleanup" means the containment, collection, removal, treatment or disposal of regulated substance, and site restoration;

( ) "Closure" means the removal from operation of an underground tank including placement of a tank in a "temporarily out of service" condition; abandonment in place, or removal from the ground;

( ) "Department" means the Department of Environmental Quality;

( ) "Director" means the Director of the Department of Environmental Quality;

( ) "Investigation" means monitoring, surveys, testing and other information gathering required or conducted by the department;

( ) "Facility" means one or more underground storage

tanks, including underground associated pipes, lines, fixtures and other equipment used for the storage of regulated substances at a single location or site;

( ) "Guarantor" means any person other than the permittee who provides evidence of financial responsibility for the underground storage tank;

( ) "Oils" or "oil" means gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product or fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute);

( ) "Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank;

( ) "Owner" or "Permittee" means the owner of an underground storage tank;

( )"Person" means an individual, trust, firm, joint stock company, corporation, partnership, joint venture, consortium, association, state, municipality, commission, political subdivision of a state, or any interstate body, any commercial entity, and the United States government or any agency thereof;

( ) "Regulated substance" means:

(a) Any substance defined in 40 CFR Table 302.4 of the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510 and P.L. 98-80) in effect on the effective date of this act (but not including any substance regulated as a hazardous waste under 40 CFR Part 261 and OAR 340 Division 101);

(b) Oil as defined in section 1 of this act.

(c) A substance designated by the Commission under ORS 466.630;

( ) "Release" means the unauthorized discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of regulated substances from an underground storage tank into the air or into or on any land or waters of the state as defined in ORS 468.700, except as authorized by a permit issued under state or federal law;

( )"Remedial action" or "Corrective Action" means an action taken to prevent or minimize the released regulated substance from migrating and causing substantial danger to present or future public health, safety, welfare or the environment. "Remedial action" includes but is not limited to actions taken at the location of a release such as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released regulated substance, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavation, repair or replacement of leaking

underground storage tanks, collection of leachate and runoff, onsite treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure protection of the public health, safety, welfare and the environment;

( )"Underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground.

PURPOSE

SECTION 2.

ORS 468.902 is amended to read:

(1) The Legislative Assembly finds that:

(a) Regulated substances hazardous to the public health, safety, and welfare, and the environment, are stored in underground tanks in the state, and

(b) Underground tanks used for the storage of regulated substances are potential sources of contamination of the air, land, and waters of the state, and may pose dangers to the health, safety, and welfare, of the residents of this state, and the environment.

(2) It is hereby declared to be the public policy of this state to protect the health, safety and welfare of Oregon citizens, and the environment from the potential harmful effects of underground tanks used to store regulated substances.

(3) Therefore, the Legislative Assembly declares that it is the purpose of sections 1 through XX of this act to enable the Environmental Quality Commission to adopt a state-wide program to govern the prevention, reporting, and cleanup of releases from underground storage tanks. The statewide program shall establish uniform procedures and standards to protect the public health, safety, and welfare, of the residents of this state, and the environment in the prevention and reporting of releases from underground storage tanks.

APPLICABILITY OF PROGRAM

SECTION 3. ORS 468.904 is amended to read:

The state-wide underground storage tank program shall be applicable and uniform throughout the state and in all cities, counties, municipalities, and political subdivisions of the state.

(1) Except as provided in Section 17 of this act, no city, county, municipality, or political subdivision shall enact or enforce any ordinance, rule or regulation relating to the same matters encompassed by the state program.

(2) Nine months following the adoption of a state-wide underground storage tank program, existing ordinances, rules or regulations enacted by a city, county, municipality, and political subdivision of the state, and encompassing the same matters as the state program shall be preempted.

INTERAGENCY COOPERATION

SECTION 4. Nothing in this act is intended to interfere with, limit or abridge the authorities of the Department of Commerce, Building Codes Division and Office of the State Fire Marshal or any other state agency. The complimentary relationship between the protection of the public safety from combustion and explosion hazards, and the public health and environment from releases of regulated substances regarding underground storage tanks is hereby recognized. Therefore the department shall work cooperatively with the Department of Commerce in the department's development of procedures and rules to carry out the intent of this act.

NEW TANK STANDARDS

SECTION 5.

(1) The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards.

(2) Following adoption of the standards promulgated under this section, no person shall install an underground storage tank for the purpose of storing regulated substances unless such tank or tanks are in compliance with the rules promulgated under this section.

OPTION (In addition to above)

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(3) Until the adoption of the standards promulgated under this section, no person shall install an underground storage tank for the purpose of storing regulated substances unless such tank:

(a) Will prevent releases due to corrosion or structural failure for the operational life of the tank,

(b) Is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance, and

(c) The material used in the construction or lining of the tank is compatible with the substance stored.

RESPONSIBILITIES OF PERMITTEES

SECTION 6. ORS 468.905 is amended to read:

In addition to any other duty imposed by law, it shall be the responsibility of the owner (prior to issuance of a permit) or the permittee of an underground storage tank to take the following actions as they pertain to an underground storage tank owned by such person:

(1) Prevent releases;

(2) Install and operate tank systems, maintain facilities and records;

(3) Furnish information to the department relating to such tanks, including tank equipment and regulated substances;

(4) Report to the department any releases as soon as they are detected;

OPTION

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(4) Report to the department and to local agencies any any releases as soon as they are detected.

---

(5) Conduct monitoring and testing as required by the department for the purposes of enforcing the provisions of this act;

(6) Permit the department employee or its duly authorized representative at all reasonable times to have access to, and

to copy all records relating to such tanks;

(7) Pay all costs of investigating, testing, preventing, reporting, and stopping releases;

(8) Close tanks in accordance with department rules, including temporary and permanent abandonment, abandonment in place and removal of tanks and disposal of tanks to prevent future releases of regulated substances into the environment.

REMEDIAL ACTION

SECTION 7:

(1) It shall be the responsibility of any owner (prior to the issuance of a permit) or the permittee of an underground storage tank to undertake the following actions pursuant to rules promulgated pursuant to ORS XXX(1987 remedial action legislation):

(a) Report to the department and promptly undertake remedial action with respect to releases from underground storage tanks, and

(b) Pay all department costs of undertaking remedial actions with respect to releases.

(2) The Commission may establish by rule:

(a) Reporting requirements for remedial action taken in response to a release from an underground storage tank;

(b) Requirements for taking remedial action taken in response to a release from an underground storage tank.

(c) A schedule of fees;

(3) Monies reimbursed to the department for remedial actions shall be deposited into the Remedial Action Fund and used for the purposes authorized for the fund.

INSPECTION AUTHORITY

SECTION 8. ORS 468.907 is amended to read:

(1) For the purposes of enforcing the provisions of this act, the department or its duly authorized representative may:

(a) Enter at reasonable times any establishment or facility where an underground storage tank is located;

(b) Inspect and obtain samples of any regulated substances contained in such tank, and

(c) Require or conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, and waters of the state.

(2) Notwithstanding the requirements for permittees, the department may directly or by contract, undertake the closure of an underground storage tank.

(3) Upon refusal of entry, inspection ,sampling or copying records, the department or its duly authorized representative may apply for and obtain a warrant or subpoena to allow such entry, inspection, sampling or copying.

ENFORCEMENT: FINDINGS AND ORDERS

SECTION 9:

(1) Whenever the department believes the operation of any underground storage tank used to store regulated substances is in violation of this act or not in compliance with rules or orders issued pursuant to this act, the department may, upon its own motion, investigate the operation of the site.

(2) The department may, after it has made an investigation under subsection (1) of this section, without notice and hearing, make such findings and orders as it considers necessary from the results of its investigation.

(3) The findings and orders made by the department under subsection (2) of this section may:

(a) Require changes in operations conducted, practices utilized and operating procedures found to be in violation of this act and or the rules adopted thereunder.

(b) Require compliance with the provisions of the permit.

(4) The department shall deliver a certified copy of all orders issued by it under subsection (2) of this section to the respondent or the respondent's duly authorized representative at the address furnished to the department in the permit application. The order shall take effect 20 days after the date of its issuance, unless the

respondent requests a hearing on the order before the Commission before the 20-day period has expired. The request for a hearing shall be submitted in writing and shall include the original order.

(5) All hearings before the Commission shall be in compliance with applicable provisions of ORS 183.310 to 183.550 for judicial review of contested cases.

(6) Whenever it appears to the department that any person is engaged or about to engage in any acts or practices which constitute a violation of this act or the rules and orders adopted thereunder or of the terms of the permit, without prior administrative hearing, the department may institute actions or proceedings for legal or equitable remedies to enforce compliance therewith or to restrain further violations thereof.

EXEMPTIONS

SECTION 10. ORS 468.911 is amended to read:

(1) Sections 1 through XX shall not apply to a:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tank used for storing heating oil for consumptive use on the premises where stored if such tanks are located at:

(A) a residence, or

(B) An industrial or commercial site and such tank is 10,000 gallons or less capacity;

(c) Septic tank.

(d) Pipeline facility including gathering lines regulated under:

(A) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671) ; or

(B) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq); or

(C) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of law referred to in subsections (dA) and (dB) of this section.

(e) Surface impoundment, pit, pond, or lagoon

(f) Storm water or waste water collection system.

(g) Flow-through process tank.

(h) Liquid trap or associated gathering lines directly

related to oil or gas production and gathering operations.

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

(2) Except as required by Section 6 subsection (3) of this act, industrial or commercial tanks of 10,000 gallons or more capacity used for storing heating oil for consumptive use on the premises where stored, are exempt from the provisions of this act.

RULEMAKING

SECTION 11. ORS 468.908 is amended to read:

(1) The Commission may establish by rule:

(a) Performance standards for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of public health, safety and welfare of the residents of this state, and the environment.

(b) Requirements for maintaining records of leak detection monitoring, which includes inventory control or tank testing system or comparable system;

(c) Performance standards for underground storage tanks which shall include but not be limited to, design, construction, installation, release detection, and compatibility standards;

(d) Requirements for the closure of tanks including temporarily out of service tanks, abandonment in place, and removal;

(e) Reporting requirements for releases;

(f) Requirements for permits issued pursuant to this act;

(g) A schedule of permit and licensing fees issued pursuant to this act;

(h) A schedule of fees in an amount adequate to carry out the contracting services rendered pursuant to section

17 of this act.

(i) Procedures for distributors of regulated substances and sellers of underground storage tanks;

(j) Requirements for establishing financial responsibility;

(k) Requirements and procedures for licenses issued pursuant to this act;

(l) Requirements for a state fund including a schedule of fees and disbursement;

(m) Rules and procedures for carrying out any other responsibility imposed by this act.

(2) Requirements prescribed pursuant to subsections 1(a), 1(c), and 1(d) of this section may vary in different areas or regions of the state upon a finding by the Commission that:

(a) Such rules are needed to protect the public health, safety, and welfare of the residents of this state;

(b) Such rules are needed to assure protection of the waters of this state, or

(c) EPA designates a sole source aquifer pursuant to the Federal Safe Drinking Water Act.

PROCEDURES FOR EMERGENCIES

SECTION 12. (1) Whenever, in the judgement of the department from the results of monitoring or observation of an identified release, there is reasonable cause to believe that a clear and immediate danger to the public health, welfare 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 an order on the owner or operator of the facility.

(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, safety and welfare of the residents of this state, or the environment.

VARIANCES

SECTION 13. (1) The Commission may grant variances from the particular requirements of any rule or standard promulgated under this act, if it can be demonstrated to the Commission that the alternate design, practice, or method of storage or remedial action provides environmental protection equal to or greater than the requirements of the department and remains at least as stringent as the federal requirements.The Commission may grant such specific variance only if it finds that strict compliance with the rule or standard is inappropriate because:

(a) Conditions exist that are beyond the control of the persons granted such variance; or

(b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions;

(2) The Commission may delegate the power to grant variances to the department.

(3) A copy of each variance granted, renewed, or extended by the department shall be filed with the Commission within 15 days after it is granted. The Commission shall review the variance and the reasons therefor within 120 days of receipt of the copy and may approve, deny or modify the variance terms. Failure of the Commission to act on the variance within the 120 day period shall be considered a

determination that the variance denied by the department is denied by the Commission.

PERMIT REQUIREMENTS

SECTION 14. (1) Within 90 days after the Commission adopts rules pursuant to this section,

(a) owners of existing underground storage tanks in operation,

(b) owners of existing underground storage tanks taken out of operation between January 1, 1974 and the effective date of the rules promulgated pursuant to this section,

(c) owners of existing underground storage tanks taken out of operation prior to January 1, 1974 containing regulated substances, must submit a complete permit application to the department.

(2) Within one year after the Commission adopts rules pursuant to this section, no person shall install, bring into operation, or close such a facility without first obtaining a permit from the department.

(3) Any person who is to assume ownership of a facility from a previous permittee must complete and return to the department a permit application prior to the operation of the facility under the new ownership.

(4) Any person who deposits regulated substances into underground storage tanks or sells underground storage tanks shall reasonably notify the owner or operator of such tank of the permit requirements pursuant to this section.

(5) Beginning 90 days after the effective date of the

rules regarding permitting requirements, no person shall deposit regulated substances into an underground storage tank unless a permit for such tank has been issued by the department.

REVOCATION OF PERMITS

SECTION 15.

(1) At any time, the department may refuse to issue, modify, suspend revoke or refuse to renew any permit issued pursuant to this section if it finds:

(a) A material misrepresentation or false statement in the application for the permit;

(b) Failure to comply with the conditions of the permit, and

(c) Violation of any applicable provision of this act or any applicable rule, standard or order issued pursuant to this act.

(2) The department may modify any permit issued pursuant to this act if it finds that modification is necessary for the proper administration or enforcement of the provisions of this act.

(3) The procedure for modification, suspension, revocation or refusal to issue or renew shall be the procedure for a contested case as provided in ORS 183.310 to 183.550.

PROTECTION OF TRADE SECRETS

SECTION 16. ORS 468.910 reads:

(1) Except as provided in subsection (2) of this section any records, reports, or information obtained from any persons within this act shall be made available for public inspection and copying during the regular office hours of the department at the expense of any person requesting copies.

(2) Unless classified by the director as confidential, any records, reports or information obtained under this act shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports, or information, or particular parts thereof, if made public, would divulge methods, processes or information entitled to protection as trade secrets under ORS 192.500, the director shall classify as confidential such record, report, or information or particular thereof. However, such record, report or information may be disclosed to any other officer, medical or public safety employe or authorized representative of the state concerned with carrying out sections 1 through XX of this act or when relevant in any proceeding under this act.

(3) Records, reports, and information obtained or used by the department or the Commission in administering the state-wide underground storage tanks program under this act be available to the United States Environmental

Protection Agency upon request. If the records, reports or information has been submitted to the state under a claim of confidentiality, the state shall make that claim of confidentiality to the Environmental Protection Agency for the requested records, reports or information. The federal agency shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law.

CONTRACT AND AGREEMENTS

SECTION 17.

(1) The department is authorized to enter into contracts and agreements with, any authorized departments or agencies of this state or any local unit of government to administer the underground storage tank program.

(2) In the performance of services required by any contract or agreement authorized by subsection (1) of this section, the agency or local unit of government that has entered into a contract or agreement pursuant to this section shall have the authority of the department.

(3) If a fee is collected by any agency or local unit of government performing duties under subsection (1) of this section, the department may disburse all or part thereof to the local unit of government.

(4) Notwithstanding any other provisions of this section, no contract or agreement provided under this section shall be entered into or continued when the total amount of fees collected by the agency or local unit of government exceeds the total cost of the program for providing the services rendered.

FEES

Section 18.

(1) An annual fee may be required of every permittee of an underground storage tank used to store regulated substances under sections 1 through XX of this act. The fee shall be in an amount determined by the Commission to be adequate to carry on the compliance, investigation, and inspection activities under this act, and present and future remedial action provisions pursuant to ORS XXX.

(2) Except as provided in ORS XXX, fees collected under this section shall be deposited in the State Treasury to the credit of an account of the department. All fees paid to the department shall be continuously appropriated to the department, and be expended by the department to carry out the provisions of this act.

REIMBURSEMENTS

SECTION 19. ORS 468.914 is amended to read:

(1) The owner of an underground storage tank which is found to be the source of a release shall reimburse the department for all costs incurred by the department in the investigation of the identifiable release from the underground storage tank, and any costs associated with the investigation.

(2) Payment of costs to the department under subsections (1) and (2) of this section must be made to the department within 15 days after the end of the appeal period or, if an appeal is filed, within 15 days after the court or the Commission renders its decision, if the decision affirms the order.

(3) If the amount of state-incurred expenses under subsections (1) and (2) of this section is not paid by the owner of the underground storage tank to the department within the time provided in subsection (3) of this section, the Attorney General, upon the request of the director, shall bring action in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of any other county in which the release may have taken place to recover the amount specified in the order of the department.

(4) In addition to any other penalty provided by law, if any person is found in violation of any provision of this

act, the Commission or the court may award double the sum of money sufficient to compensate for the costs of investigating the release.

(5) Monies reimbursed shall be deposited to the State Treasury and continuously appropriated by the department for the purposes of administering this act.

FINANCIAL RESPONSIBILITY

SECTION 20.

(1) The Commission may adopt requirements for maintaining evidence of financial responsibility for:

(a) Taking remedial action, and

(b) Compensating third parties for bodily injury and property damage caused by the sudden and nonsudden releases arising from the operation of an underground storage facility.

(2) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Department by any one, or any combination of the following: insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer. In promulgating requirements under this subsection, the department is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this act.

(3) If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgement, any claim arising from conduct for which evidence of financial responsibility must

be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this subsection, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(4) The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual or common law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or other applicable law.

(5) Corrective action and compensation programs financed by fees on tank owners and operators and administered by the Department may be submitted as evidence of financial responsibility under this section.

(6) The permittee of an underground storage tank found

to be the source of a release shall be liable to owners of other underground storage tanks in the vicinity for all costs reasonably incurred by such other underground storage tank owners in determining which tank was the source of the release.

STATE FUND

SECTION 21.

CONCEPT:

Additional fees may be established by the Commission and deposited in a state insurance fund for UST to be used for the purpose of providing financial responsibility under this act. Disbursements from this fund will provide compensation for taking remedial actions and compensating third parties.

Some initial thoughts are:

(1) Require $100,000 liability insurance of all tank owners. If claims are made over this amount the insurance will pay for the first $100,000, and the state insurance fund pay the amounts above $100,000 up to $1,000,000. Any amount above $1,000,000 will come from the state superfund program.

(2) Tom Donaca, Neil Baker and Kathi Futornick are researching other possibilities for future discussions.

LICENSING

SECTION 22. (1) In order to safeguard the public health, safety and welfare, to protect the state's natural and biological systems, and to protect the public from unlawful underground tank installations and retrofit procedures, and to assure the highest degree of leak prevention from underground storage tank facilities, the Commission may regulate persons offering and providing underground storage tank installation, retrofit, testing and inspection services. Under such regulations, the Commission may license persons who demonstrate to the satisfaction of the department that they possess the ability to perform tank services pursuant to subsection (1) of this section. This demonstration of ability may consist of written and field examinations and may establish different types of licenses for different types of demonstrations, including but not limited to installation and retrofit, and inspection of underground facilities, tank integrity testing, and installation of leak detection systems. No person shall be required to obtain a license in order to carry out the duties as a department employe.

(2) After offering opportunity for public hearing before a hearings officer, the department may revoke the license of any person offering underground tank services, including inspection who has committed fraud or deceit in obtaining licensure or submitting an application or who has

demonstrated gross negligence or incompetence in performing underground tank services and inspection.

PENALTIES

SECTION 23.

(1) Any person who knowingly or intentionally violates any provision of this act or the rules promulgated herein shall be subject to a criminal penalty not to exceed $10,000 or imprisonment for not more than one year or both.

(2) Any person who violates any provision of this act, the rules promulgated herein or the terms or conditions of any order or permit issued by the department shall be subject to a civil penalty not to exceed $10,000 per violation per day of violation.

(3) Each violation may be a separate and distinct offense and in the case of a continuing violation, each day's continuance thereof may be deemed a separate and distinct offense.

(4) The department may levy civil penalties up to $500 dollars for each day fees due and owing under this act are unpaid. Penalties collected under this subsection shall be placed in the State Treasury to the credit of an account of the department. Such penalties are continuously appropriated to meet the administrative expenses of the program.

(5) Penalties will be administered pursuant to ORS 468.125

AUTHORIZATION:

SECTION 24. ORS 468.913 reads:

The commission and the department are authorized to gain interim and final authorization of a state program for the regulation of underground storage tanks under the provisions of Section 9004 of the Federal Resource Conservation and Recovery Act (P.L. 94-580 as amended and P.L. 98-616),and federal regulations and interpretive and guidance documents issued pursuant to P.L. 94-580 as amended and P.L. 98-616. The commission may adopt, amend, or repeal any rule necessary to implement this act.

SECTION 25. Repeal of ORS 468.916

SECTION 26. Repeal of ORS 468.917

Rough Draft
LC 990
11/21/86 (jkh/se)

MEASURE SUMMARY

Creates Department of Environmental Quality Equipment Reserve Account. Appropriates money.

A BILL FOR AN ACT

Relating to the Department of Environmental Quality Department; and appropriating money.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) There is created in the General Fund of the State Treasury a Department of Environmental Quality Equipment Reserve Account. All moneys credited to the account are appropriated continuously to the department to pay the expenses in replacing major pieces of equipment used in the operations of the department.

(2) The Department of Environmental Quality on behalf of the State of Oregon may accept gifts, grants and donations from public and private sources for the purpose set forth in subsection (1) of this section. Such gifts, grants and donations shall be deposited by the department in the Department of Environmental Quality Equipment Reserve Account until such time as required to purchase equipment to be used by the department in its operations.
