EQCMeeting1of1DOC19861219

12/19/1986

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS

DEQ

State of Oregon
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

NOTICE

SPECIAL CONFERENCE CALL MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

December 19, 1986

On Friday, December 19, 1986, at 10:00 am, the Environmental Quality Commission will hold a special conference call meeting to further consider the request for Pollution Control Tax Credit for Ogden-Martin Systems of Marion County. The decision on this matter was postponed from the Commission's December 12, 1986 meeting.

As space permits, the public is invited to listen to the conference call in the fourth floor conference room of the Department of Environmental Quality offices, 811 SW Sixth Avenue, Portland.

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF A SPECIAL MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

December 19, 1986

On Friday, December 19, 1986, a special conference call meeting of the Oregon Environmental Quality Commission was held. Connected by conference call telephone were Commission Chairman James Petersen in Bend, Vice-Chairman Arno Denecke in Salem, Commissioners Mary Bishop and Sonia Buist in Portland, and Commissioner Wallace Brill in Medford. Department Director Fred Hansen was present by phone in Salem and several members of the Department staff and public were present by phone in Portland.

The purpose of this meeting was to continue the discussions from the Commission's December 12, 1986 meeting regarding the Ogden-Martin application for pollution control tax credit.

Director Hansen said that two sets of issues needed to be addressed at this meeting: the Ogden-Martin tax credit question, and a clarification on two items raised during the consideration of the tax credit on December 12. That is, is the facility even eligible for tax credit, and the issue of compliance.

On the eligibility and compliance issues, Director Hansen said the concerns that had been raised about eligibility are issues that are more properly raised before the Legislature, not before the Commission. He said the statute was clear that energy recovery facilities are intended to be eligible for tax credit, not just that portion which are more normally termed pollution control devices, such as the baghouse. Director Hansen said the Department felt this was a very straight forward issue. Chairman Petersen indicated he was comfortable with the issue as outlined by Director Hansen. Commissioner Denecke asked if this was in response to John Charles' (Oregon Environmental Council) argument. Director Hansen replied it was. Chairman Petersen commented that in the Oregon Environmental Council's latest mailing to the Commission they take the position they believe the entire facility is eligible under ORS 468.155. The remainder of the Commission indicated they did not have any problem with the eligibility issue.

Chairman Petersen asked Director Hansen to brief the Commission on the current status of the air, noise and hazardous waste permits for the facility and to comment on where the facility is out of compliance, how the Department anticipates the company achieving compliance. Chairman Petersen said it was his understanding that in order to be eligible for a certificate to begin with the facility must be in compliance. Director Hansen replied that the actual language in the rule is "...will achieve compliance with Department statutes and rules or Commission orders or permit conditions where applicable."

Basically, Director Hansen said, in terms of the water, noise and air issues (except for nitrogen oxide) the facility is in compliance. Relative to nitrogen oxide, preliminary data shows the facility at a level above what is allowed in the permit. The Department is contemplating a change in the permit which would go through the normal public review process. The company expects that either it will meet the modified permit, or if the Department chooses to not modify the permit, the company will meet the existing nitrogen oxide limitation. In regard to the hazardous waste permit, Director Hansen continued, at the present time there are discussions between the Department and the company about the nature of the asn resulting from the burning process. The Department is doing additional testing and establishing protocols for the analyses of the ash. In any event, he said, the analyses is moving forward and whatever the outcome of those analyses are, the company will comply with the applicable rules and regulations. Director Hansen said from the Department's perspective, there was no doubt the facility would achieve compliance.

Commissioner Buist said it seemed to her the matter of compliance was a secondary issue. She asked if tax credits were ever revoked if a facility fails to meet compliance standards. Director Hansen replied the statute did not provide for revocation for reasons of noncompliance. Certificates can only be revoked for fraud or if the facility is removed from use.

Commissioner Bishop asked if the certificate could be conditioned so that if the facility did not come into compliance future tax credits would not be allowed. Chairman Petersen said that statutory authority would be needed for such a condition.

Director Hansen explained that if in the Department's best engineering judgment the facility can achieve compliance, then it meets the test in the regulations. If in the future the facility does not achieve compliance, he continued, there are enforcement tools to be able to address the noncompliance other than the tax credit revocation. Chairman Petersen said that 340-16-035 in the rules says the Commission can revoke the certificate if it is found the holder of the certificate has "failed substantially to operate the facility for the purpose of preventing, controlling or reducing.....pollution, or has failed to operate the facility in compliance with Department or Commission statutes, rules, orders or permit conditions." Michael Huston, Assistant Attorney General, said the rule language almost paralleled statutory language for revocation, so noncompliance would appear to be grounds for revocation. Commissioner Denecke said the Commission could also revoke the operating permits.

Chairman Petersen said he was concerned that the permits might be amended to fit the fact. Director Hansen said there was no question requirements would be complied with. What the Department would be doing is that permit changes would be contemplated depending upon the operation of the facility. The change in the nitrogen oxide permit limit, Director Hansen said, was not a change being contemplated merely to accommodate the company, but will allow standards to be maintained and the plant to be able to operate. The Commission indicated satisfaction with the explanation on the compliance issue.

Introducing the percent allocable to pollution control question, Chairman Petersen said the Commission needs to decide (according to ORS 468.190) the portion of costs allocable to the reduction of solid waste by using the five factors stated in the statute. He said there had been a lot of discussion about whether or not the Commission should consider all the factors. It was Chairman Petersen's opinion that the Legislature gave the Commission a great deal of latitude to use its best judgment in making the decision. He said it was important to consider all the factors, even though the Commission may make a finding that one or more factors are not really applicable to the situation. Chairman Petersen said it was also important to come up with a composite result.

Director Hansen said when the Department looked at the issue of a garbage burner it looked at a series of factors with different computations on what the percent allocable to pollution control result in. One of the issues was the reduction of garbage into ash, which resulted in about an 87% reduction, and therefore one basis of being able to determine what the percent allocable was would be to look at that waste reduction.

Another issue, Director Hansen said, was the facility also generates electricity and the efficiency of that conversion of waste to electricity should also be considered. That computation resulted in 71% allocable to pollution control based on boiler efficiency.

The project does provide a certain level of profit, Director Hansen continued, and the computations that are associated with the return on investment analysis came out to the lower 50% range.

Looking at the above three factors, Director Hansen asked what was the prime purpose of the facility. The Department's answer was that it was waste reduction and concluded that it makes reasonable sense to provide extra weighting to that computation. The other factors of the production of electricity and the return on investment are important factors but are not the primary purpose of the operation of the facility. Therefore, they should be considered, but at some lesser level. The Department's proposal was for the Commission to consider that a double weighting be made to the prime purpose of the facility and the other two significant factors should receive a one weighting. When that averages out it works out to be 75.5% allocable cost to pollution control. Director Hansen said it made best sense in the long-run to be able to consider a variety of factors in a facility such as a garbage burner because the facility had multiple purposes. Director Hansen was proposing this to the Commission as a way to provide for the computation and arrive at a percent allocable number.

Chairman Petersen said that the majority of the tax credit decisions the Commission makes are more straight forward tnan this one and that is why the Commission was struggling with this particular tax credit application as it was the first time it had to deal with this type of facility.

Regarding the weighting of factors to come up with the final percent allocable, Chairman Petersen said the Department was suggesting a weighting of two on the reduction factor, and a weighting of one on the efficiency and return on investment elements. He asked if it was the Department's suggestion that the actual amount of weight be determined by the Commission on a case-by-case basis, or did the Department think it was advisable for

the Commission to adopt the 2-1-1 weighting as a rule. Director Hansen said that issue needed to be looked at more thoroughly before he would say that those were the exact numbers to be applied in each case. He said there was no question that there should be a heavier weight on factors which are the prime purpose and a lesser weight on factors that are significant but not prime, at least in this case. However, he said the Department would like to do more thinking about this method's applicability in other situations where the weighting might be important. Director Hansen said the Department would want to be able to do that through the Commission's rule making process. Chairman Petersen and Commissioner Denecke indicated their agreement with Director Hansen.

The Commission then moved through the five factors in 468.190, making findings as required.

468.190(1)(a) If applicable, the extent to which the facility is used to recover and convert waste products into a salable or usable commodity.

Chairman Petersen said he tended to agree with the applicant that the only use of the facility is to reduce solid waste by a recovery process that produces electricity that is a salable commodity. He said that was obviously a factor the Commission needed to consider and he tended to agree that this factor ought to be given the greatest weight. He said he did not think that the efficiency of the boiler belonged in this particular factor. If the Commission were to consider the boiler efficiency, Chairman Petersen said, it should fall under 468.190(1)(e).

Chairman Petersen said the emphasis in this factor was on the use of the facility which in this case is clearly to reduce solid waste. Commissioner Buist indicated her agreement.

Michael Huston, Assistant Attorney General, commented that it would not make any difference whether the salable or usable commodity question is considered under subsection (a) or (e). Technically, it would not seem to comply with the conversion of subsection (a), but might be better viewed as an other relevant factor under subsection (e).

468.190(1)(b) The estimated annual percent return on investment in the facility.

Chairman Petersen thought that what the Legislature was saying in this subsection was that the state wants to provide an incentive to purchase equipment for facilities that will reduce pollution. But by the same token, if these facilities realize a return on their investment they should not get a windfall at the taxpayers expense. He believed that the Legislature wanted the Commission to take it into consideration. The Commission agreed with Chairman Petersen's analysis.

Chairman Petersen said he was not sure the Commissison's present rules were adequate to cover this subsection. He said he would end up recommending the Department go back to the drawing board on this issue.

Regarding the issue of the sale of the tax credit, Chairman Petersen said the Commission had heard arguments on both sides. In thinking about this, Chairman Petersen, said he really did not believe that the disposition of tax credits ought to be a factor in any way in the calculation. On page 2 of the staff report, he continued, the Department says that if the Commission were to decide that the sale of tax credits should be taken into consideration, "the entire effect of the tax credit sale should be eliminated from the ROI calculations." He asked what the Department meant by that statement and what would be the effect.

Lydia Taylor, Administrator of the Department's Management Services Division, said she meant that in the original application by the company it had included in its calculations a reduction in anticipated revenue due to the pass-through of tax credits to Marion County. It was the Department's feeling that if the pass-through were allowed, the revenue should be included and both sides of that formula should be included. Or, if the Commission determined that the tax credit should not be included at all, it should be eliminated completely so that the tax credit had no impact upon it and the result would be that the revenue would not be counted, nor would the reduction in revenue be counted.

Dick Cantlin, representing Ogden-Martin Systems, Inc., said from their view taking the effect out would fall under subsection (e). What the Company argued was that taking it out still requires the Company to show a deduction for the amount. Ms. Taylor said the Department did not agree. She said the difference was if the $600,000 per year deduction was allowed, but the $6 million in revenue was not allowed it severely skews the return on investment to show that there was a great deal less return on investment by ignoring half of what has occurred in that transaction.

Chairman Petersen asked for a quantification of leaving out both sides of the equation. Ms. Taylor said it would result in a difference in the annual cash flow. She said the annual cash flow that would include the tax credit on both sides would be $12.5 million. The annual average cash flow without it would be $4.3 million. The difference in the return on investment percent allocable would be approximately 3%. The difference being if consideration of the tax credit is deleted entirely, 56.89% is the percent allocable due to return on investment.

Chairman Petersen proposed that both sides of the use of tax credits issue be eliminated from the calculation. Commissioner Denecke clarified that that would change the calculation by $600,000.

Director Hansen said what the Commission had before them was a decision in the whole financial package that contemplated from the very beginning the sale of the tax credit and therefore ought to be considered a part of the deal. In addition, where it become a sale as opposed to being taken by the company, it becomes a commodity and as a result the revenue should be taken into account. Chairman Petersen said he did not think much of Director Hansen's commodity argument. He said he did not think it was a commodity within the meaning of the statute and was still persuaded by the fact that the Schedule 5 was a pre-tax calculation.

Chairman Petersen asked how the Department would view the matter if it knew in advance the applicant was going to use the tax credit. Director Hansen said that under the computation it is a pre-tax calculation and the decrease in taxes is not shown because the expenditure on taxes is not picked up as part of the computation. He said it is picked up only if it is sold.

Chairman Petersen was troubled by the fact that the statute allows the sale of tax credit and there are different results between applicants. Director Hansen said it was a debatable issue.

The Commission indicated agreement with Chairman Petersen on this issue.

Chairman Petersen said the next issue was the conversion from variable interest rate to fixed interest rate. He said there were two issues here, one is the effect on revenue from changing rates. The other is the cost of converting. Chairman Petersen said this issue caused him the most problem. The applicant argues that they could have delayed the decision to convert until after the tax credit was issued and thereby avoid the problem. Chairman Petersen asked if this was true would there have been anything the Commission could have done to revoke or amend the certificate, or could the certificate be conditioned in advance on certain factors and if those factors change could the percent allocable change. Director Hansen replied that a computation made to issue the tax credit before conversion would have included just the interest rate of the low floaters and nothing else. Mr. Huston said the Commission did not have any express authority in the statute to condition a certificate, it would have to be implied, and Mr. Huston did not see the latitude for that.

Commissioner Denecke said it was his reaction that for good financial reasons the County did switch and that was the system of financing the Commission was now faced with. What the County could have done really should not enter in to the Commission's thinking. Commissioner Bishop agreed and said the Commission should just take what is actual cost of financing and include it. In response to Commissioner Denecke, Ms. Taylor said the cost of conversion was $1.2 million, and the alternatives might be (if the Commission determines to include them in the cost of the facility), (1) to amortize those costs, or (2) to include the entire cost. Clarifying, Ms. Taylor said the costs would be amortized over the life of the debt as was done with other bond costs. Director Hansen said it would all be part of the debt financing costs and should be spread evenly across the whole of the debt.

Ms. Taylor said if the cost were amortized, it would add $270,000 to the Department's recommended cost of the facility. If the entire amount were added, she said, $1.2 million would be added to the cost of the facility. The total difference with an amortized costs the Department's recommended cost of the facility is $51,336,505. If the entire cost of conversion were added to the cost of the facility the Department's recommended amount would be $52,335,027.

Chairman Petersen said if the Commission were to include the debt service at the fixed rate rather than the variable rate how would that be offset by the cost of conversion. He asked if it would be more equitable to take the total cost or the amortized cost. Ms. Taylor said there could be a

reasonable argument made for including the full amount. She said it was up to the Commission to determine which is more fair. Director Hansen said a strong argument can be made for the fact that the conversion cost is unique from the across-the-board financing. Chairman Petersen said that from what he understood no one would consider low floaters for the life of the project, and there had to be some anticipation that conversion would be necessary.

Chairman Petersen said he thought the Commission ought to take the actual debt service. He was troubled by the timing question and the only way the Commission could deal with that was by future rule making.

Chairman Petersen proposed that the revenue impact of the debt conversion be considered as well as the cost of the conversion which would be $1.2 million. He said he thought this would be the equitable offset. Commissioner Bishop asked why this would be more equitable than amortizing. Chairman Petersen said he was sure it was a cost which was contemplated in this project. The Commission agreed with Chairman Petersen's proposal.

Ms. Taylor said if the cost of the facility was adjusted to include the total cost of conversion the cost of the facility, according to her calculations, would be $52,335,027. Mr. Cantlin agreed that Ms. Taylor's calculations were correct.

468.190(1)(c) If applicable, the alternative methods, equipment and costs for achieving the same pollution control objective.

Chairman Petersen said the Commission had not heard anything about alternative methods. Director Hansen said that when looking at alternative methods, that subsection (c) applies most appropriately to more traditional forms of pollution control equipment on industrial-type facilities. In this context, only apple and orange type comparisons can be made. It was the Department's conclusion, Director Hansen said, that this factor is not applicable to the computation. Commissioner Denecke commented that the Commission knows the political problems with landfilling, which is the most available alternative, and other alternatives are untried for any volume of garbage.

Chairman Petersen said the Commission had considered subsection (c) and decided it was not relevant.

468.190(1)(d) Any related savings or increase in costs which occur or may occur as a result of the installation of the facility.

Chairman Petersen said he felt this factor was too vague to apply to this situation. Director Hansen said that wherever there might be relevancy the Department would consider that would be picked up in subsection (b) computation.

Commissioner Buist asked if the cost to the customer was relevant. Director Hansen said that it was very difficult to apply that cost to this situation. He said a landfill may or may not be less expensive than the garbage burner. He said the Department did not necessarily think that the savings are either computable or very germane to the analysis. Director

Hansen said the Department just did not see how it would apply.

The Commission agreed subsection (d) did not apply.

> 468.190(1)(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 the recycling or properly disposing of used oil.

Chairman Petersen said the Department had suggested in its proposal that the efficiency of the boiler is another relevant factor. Chairman Petersen said the only other factor he saw was the legislative priority of handling solid waste; considering landfilling as a last resort. He said this facility does comply with the wishes of the legislature to avoid landfilling.

Commissioner Brill commented that in the Medford area landscape gardeners are using the ash from the garbage burners in the area. So the use of the ash, Commissioner Brill said, was worth thinking about.

Chairman Petersen said he was a little troubled about boiler efficiency being considered. Ms. Taylor said when the Department talked about using that particular factor, it considered that the law talks about solid waste facilities which recover a product or create energy. She said the boiler efficiency speaks to the creation of that energy and therefore is an appropriate factor to consider.

In response to concerns expressed by Chairman Petersen, Commissioner Denecke said that in the materials he had received Ogden-Martin stated that its boilers are from 67-71% efficient. Michael Downs, Administrator of the Department's Hazardous and Solid Waste Division, said the calculation on boiler efficiency was specific to this particular facility, however, there would be similar results from other facilities.

Chairman Petersen said he did not feel strongly one way or the other about including the boiler efficiency. He said it did not seem that relevant to him, but he would not object if the rest of the Commission wanted to include it. The Commission agreed.

Chairman Petersen said that now, after finishing discussing each factor, the Commission needed to decide on the Department's proposal to weigh the factors differently. He said the Department proposed a weighting of two in the case of reduction, one in the case boiler efficiency, one in the case of the return on investment.

Commissioner Denecke said he agreed with the weighting proposal. He said he was influenced by the statute specifically saying that the tax credits are to control or reduce solid waste as well as other waste by giving tax credit. Commissioner Denecke said the only purpose of this facility was to reduce solid waste and therefore that factor should be given a double weight.

Commissioner Buist commented that this was a very reasonable proposal, and in the end it was really arbitrary because the guidelines are just that and the Commission has to make its own way through those guidelines.

Chairman Petersen said the only number that needed to be recalculated based on the Commission's decisions so far is the return on investment number. Commissioner Buist said the 87% reduction number was still questionable in her mind. Director Hansen said that was a computation in terms of volume reduction that was provided by the applicant, it was not one that the Department had independently recalculated. Ms. Taylor said she believed the applicant had asked for that number from an independent firm. Mr. Cantlin explained that the 87% was computed by Brown and Caldwell, an independent consulting engineering firm. Mr. Cantlin said the applicant's own internal calculations are higher than 87%, but they are willing to accept the independent engineering report at 87%. Commissioner Buist was satisfied with this explanation.

In response to Chairman Petersen's questions about the actual costs of the facility given the Commission's earlier decisions, Ms. Taylor said the staff had anticipated the alternatives and projected what the percent return on investment would be under different options the Commission might choose. Ms. Taylor said the option chosen by the Commission where the sale of the tax credit is deleted results in a return on investment of 56.897% Working through the weighting calculation, Chairman Petersen said a weighting of two would be given to 87% which is 174.0%; a weighting of one on the 71.000%; a weighting of one on the return on investment of 56.897%; the total is then 301.897% which is divided by four for a final figure of 75.474%. Mr. Cantlin said the computation would need to be rounded to the nearest whole percent which would be 75.5%.

Chairman Petersen asked for a motion to determine that the percent allocable to this facility is 75.5%. Commissioner Denecke so MOVED, Commissioner Buist seconded, and the motion passed unanimously.

Mr. Huston said the statutes require that a written notice and concise statement of findings and reasons for the Commission's decision be issued. and asked for a provision be made for that. He suggested the Department be authorized to develop those findings and reasons consistent with the Commission's deliberations and either circulate among the Commission or have the Chair authorized to sign that notice. The Commission agreed with Mr. Huston's suggestion, and Chairman Petersen with the agreement of the Commission, would review the notice and sign it.

Mr. Cantlin asked when the Certification would take place. Chairman Petersen said it would occur as soon as the Certificate was sent to him, and clearly before the end of the year.

Ms. Taylor said the law states that the percent allocable must be rounded to the nearest whole percent. Chairman Petersen said the staff knows what the Commission's decision is, and has all of the the elements needed to go in to the computation. He said the Commission would defer the final checking of the numbers to the applicant and the Department to make sure that it complies with the statute and the Commission's decision.

Chairman Petersen MOVED to defer any action on agenda item G from the December 12, 1986 EQC meeting dealing with changes to the tax credit rules, and direct the Department to prepare proposed amendments to the tax credit rules which would not only include the previously proposed items in agenda item G, but also additional items the Department believes require clarification for facilities of this type.

Director Hansen recalled for the Commission testimony on this item at the December 12 meeting from Willamette Industries. Ms. Taylor said there were two items that Willamette Industries testified about. One was they concurred that the Department could not retroactively issue a tax credit certificate. The other issue was whether or not the Department could issue a tax credit after 10 years had elapsed after the date of first issuance. Ms. Taylor said the difference of opinion between the Department of Revenue's legal advisor and DEQ's interpretation of the law would indicate that if the rules were left as they now stand the tax credit certificate could be issued to the new owner without regard to the 10 year limitation. Director Hansen said the effect would be that Willamette Industries would go to the Department of Revenue and have a discussion with Revenue on whether or not they had anything left on that tax credit which could be claimed. Director Hansen said that was the most appropriate setting for Willamette Industries to resolve that issue. Chairman Petersen agreed.

Chairman Petersen's motion was seconded by Commissioner Denecke and passed unanimously.

There was some discussion about when to set hearings on the proposed landfill sites during April. Mr. Downs explained that the window the Department had was April 9-21. The Commission deferred this item to its next meeting.

Chairman Petersen thanked the staff and Mr. Cantlin and his group for all the hard work and effort put into this process.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Carol Splettstaszer

Carol Splettstaszer
EQC Assistant

DOY396.3

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

In the Matter of the Certification of Pollution Control Tax Credit for Columbia-Willamette Leasing	)	Findings and Reasons

On December 19, 1986, the Environmental Quality Commission considered the application for tax credits from Columbia-Willamette Leasing for the resource recovery facility in Brooks, Oregon. The Commission makes the following findings:

1. Based on statutes and rules, the entire facility is eligible for pollution control tax credit.

2. The facility will achieve compliance with DEQ statutes, rules and permit conditions.

3. In determining the portion of the costs properly allocable to pollution control, the following factors have been considered:

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

The calculated efficiency of the boiler should be used. Based on staff calculations the figure is 71 percent.

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

(1) The revenue and deductions based on the sale of the tax credit shall be removed from consideration in the return on investment calculation.

(2) Conversion costs shall be included as part of the actual cost of the claimed facility making this figure $52,335,027.

(3) The percentage allocable based on return on investment is 56.897 percent.

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

This factor applies to more traditional types of industrial tax credits and should not be used in this case.

(d) Related savings or increases in costs which occur or may occur as a result of the installation of the facility.

This factor is not computable for this facility and should therefore not be used.

(e) Other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to pollution control.

Based on an independent consultant a waste reduction of 87 percent can be expected.

(4) The Commission finds it appropriate to apply a combination of the factors discussed above in order to determine percent allocable. The percent allocable shall be based on an average of boiler efficiency of 71 percent (factor (a)), return on investment of 56.897 percent (factor (b)), and volume reduction of 87 percent (factor (e)). Factor (e), volume reduction, shall receive a weighting factor of two because it is the major purpose of the facility. Although use of the return on investment factor alone would result in the smallest percent allocable, the Commission finds that use of this factor alone would not adequately reflect other important factors including waste reduction and the conversion of waste products to electricity which need to be considered in determining percent allocable. The use of this combination produces the smallest portions of costs allocable resulting from consideration of relevant factors. The calculation of percentage allocable therefore is as follows:

87.000	x	2	=	174.000
56.897	x	1	=	56.897
71.000	x	1	=	71.000
				301.897
301.897	÷	4	=	75.474

Rounded to nearest percent = 75%

Summation

Based on the findings, the Environmental Quality Commission issues a Pollution Control Facility Certificate for $52,335,027 with 75 percent of actual cost properly allocable to pollution control to Columbia-Willamette Leasing Inc.

_____

James Petersen
Chairman
Environmental Quality Commission

_____

Date

certificate a copy of the notice and election requirements imposed by subsection (5) of this section.]

(5) A person receiving a certificate under this section [*shall make an irrevocable election to take the tax credit relief under ORS 316.097 or 317.072 or the ad valorem tax relief under ORS 307.405 and shall notify the commission, within 60 days after the receipt of such certificate, of his election. This election shall apply to the facility or facilities certified and shall bind all subsequent transferees. Failure to make a timely notification shall make the certificate ineffective for any tax relief under ORS 307.405, 316.097 and 317.072.*] **may take tax relief only under ORS 316.097 or 317.072, 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.**

(6) If the person receiving the certificate is an electing small business corporation as defined in section 1371 of the Internal Revenue Code, [*and if the corporation elects to take tax credit relief, such election shall be on behalf of the corporation's shareholders.*] 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.

(7) If the person receiving the certificate is a partnership, [*and if the partnership elects to take tax credit relief, such election shall be on behalf of the partners.*] **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.**

(8) Certification under this section of a pollution control facility qualifying under ORS 468.165 (1) shall be granted 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 under this section, except that if [*the person elects ad valorem tax relief the provisions of ORS 307.405 shall apply*] **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 for a period of 20 consecutive years from the date of its first certification by the commission.**

[*(9) (a) A facility commenced prior to December 31, 1980, and qualifying under ORS 468.165 (1)(c) shall be certified if it meets such requirements.*]

[*(b) For a facility commenced after December 31, 1980, and prior to December 31, 1983, the commission, in addition to, and not in lieu of, the requirements under ORS 468.165 (1)(c) shall only certify such a if it meets one of the following conditions:*]

[*(A) That the facility is necessary to assist in solving a severe or unusual solid waste, hazardous wastes or used oil problem;*]

[*(B) That the facility will provide a new or different solution to a solid waste, hazardous wastes or used oil problem than has been previously used, or the facility is a significant modification and improvement of similar existing facilities; or*]

[*(C) That the department has recommended the facility as the most efficient or environmentally sound method of solid waste, hazardous wastes or used oil control.*]

[*(c) Except as provided in paragraph (d) of this subsection, such a facility certified after December 31, 1983, shall be certified pursuant to the procedures, costs properly allocable and all other matters as if it were a facility subject to certification under ORS 468.165 (1)(a).*]

[*(d) A facility commenced prior to December 31, 1983, which qualifies under ORS 468.165 (1)(c) and is used for resource recovery as defined in ORS 459.005 shall be subject to the certification requirements of paragraph (b) of this subsection but shall not be subject to paragraph (c) of this subsection regardless of the date such facility is certified.*]

[*(10)*] **(9)** 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 [*(10)*] **(8)** or 317.072 **(8)**, whichever is applicable, shall apply to any sale, exchange or other disposition of a certified portion of a facility.

SECTION 4. ORS 468.190 is amended to read:

468.190. (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 [*468.165 (1)(a) or (b)*] **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 or properly disposing of used oil.**

(2) 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 20 percent.*] **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 reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.

SECTION 5. ORS 307.420 is amended to read:

307.420. Before any exemption from taxation is allowed under ORS 307.405, the person claiming the exemption shall file with the county assessor a written claim for such exemption prepared on a form prescribed by the Department of Revenue and furnished by the assessor, and shall file with the assessor with [*his*] **the** first claim for exemption the certificate issued by the Environmental Quality Commission under ORS 468.170 covering the property for which exemption is sought. The claim shall be filed not later than April 1 in the first year in which the exemption is claimed; except that if the person receives [*his*] a certificate [*either before or*] after April 1 [*and makes his election to receive ad valorem tax relief, as required by ORS 468.170, after April 1 and*] **but** before July 1, [*he*] **the person** may file a claim on or before July 15 of that calendar year. The county clerk shall record the certificate in the county record of deeds, upon presentation by the assessor. Each year thereafter to continue such exemption, the taxpayer must file not later than April 1 a statement with the county assessor, on a form prescribed by the Department of Revenue and furnished by the assessor, stating that the ownership of all property included in the certificate and its use remain unchanged.

SECTION 6. ORS 316.097 is amended to read:

316.097. (1) A credit against taxes imposed by this chapter for a pollution control facility or facilities certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection [*(5)*] **(4)** of this section [*and has not claimed an exemption therefor under ORS 307.405*].

(2)[*(a)*] For a facility [*qualifying*] **certified** under ORS [*468.165 (1)(a) or (b)*] **468.170**, [*and having a useful life of 10 years or longer,*] the maximum credit allowed in any one tax year shall be the lesser of the tax liability of the taxpayer or **one-half of the certified cost of the facility multiplied by the certified percentage allocable to pollution control, divided by the number of years of the facility's useful life. The number of years of the facility's useful life used in this calculation shall be the remaining number of years of useful life at the time the facility is certified but not less than one year or more than 10 years.** [*the following portion of the cost of the facility:*]

[*(A) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is 80 percent or more, five percent of the cost of the facility.*]

[*(B) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is 60 percent or more and less than 80 percent, four percent of the cost of the facility.*]

[*(C) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is 40 percent or more and less than 60 percent, three percent of the cost of the facility.*]

[*(D) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is 20 percent or more and less than 40 percent, two percent of the cost of the facility.*]

[*(E) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is less than 20 percent, one percent of the cost of the facility.*]

[*(b) For a facility qualifying under ORS 468.165 (1)(a) or (b), and having a useful life of less than 10 years, the maximum credit allowed in any one taxable year shall be the lesser of the tax liability of the taxpayer or the following:*]

[*(A) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is 80 percent or more, 50 percent of the cost of the facility, divided by the number of years of useful life of the facility.*]

[*(B) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is 60 percent or more and less than 80 percent, 40 percent of the cost of the facility, divided by the number of years of useful life of the facility.*]

[*(C) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is 40 percent or more and less than 60 percent, 30 percent of the cost of the facility, divided by the number of years of useful life of the facility.*]

[*(D) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is 20 percent or more and less than 40 percent, 20 percent of the cost of the facility, divided by the number of years of useful life of the facility.*]

[*(E) If the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution is less than 20 percent, 10 percent of the cost of the facility, divided by the number of years of useful life of the facility.*]

[*(c) For facilities having a useful life of less than 10 years and for which some portion of the maximum total credit is allowed or allowable in tax years beginning on or after January 1, 1977, such remaining credit shall be prorated over the remaining useful life of the property under administrative rules to be prepared by the department.*]

[*(3)(a) For a facility qualifying under ORS 468.165 (1)(c), and having a useful life of 10 years or longer, the maximum credit allowed in any one tax*