

4/17/1987

OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS



State of Oregon
Department of
Environmental
Quality

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OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

April 17, 1987

Fourth Floor Conference Room
Executive Building
811 S.W. Sixth Avenue
Portland, Oregon

A G E N D A

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 March 10, 1987, special conference call meeting and March 13, 1987, regular EQC meeting.
- B. Monthly Activity Report for March 1987.
- C. Tax Credits.

9:05 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 the Hazardous Waste Fee Schedules, OAR 340-102-065 and 340-105-113.

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 Amendments to the State Implementation Plan (OAR 340-20-47) Consisting of Changes by Lane Regional Air Pollution Authority to their Permit Fees.
- F. Consideration of Petition for Adoption of Rules regarding Selection of a Solid Waste Disposal Facility under Senate Bill (SB) 662.
- G. Informational Report: Review of FY 88 State/EPA Agreement and Opportunity for Public Comment.

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

The next Commission meeting will be May 29, 1987, 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 S.W. Sixth Avenue, Portland, Oregon 97204, phone 229-5395, or toll-free 1-800-452-4011. Please specify the agenda item letter when requesting.

DOP439
EQC.AG (12/86)

These minutes are not final until approved by the EQC

MINUTES OF THE ONE HUNDRED SEVENTY-NINTH MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

April 17, 1987

On Friday, April 17, 1987, the one hundred seventy-ninth meeting of the Oregon Environmental Quality Commission convened in the fourth floor conference room of the Executive Building, 811 S. W. Sixth Avenue, in Portland, Oregon. Present were Commission Chairman James Petersen, Vice-Chairman Arno Denecke, and Commission members Mary Bishop, Wally 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

In addition to members of the Commission, legal counsel and Department staff, the breakfast meeting was attended by Edward Sullivan, attorney with Mitchell, Lang and Smith.

Three issues were briefly discussed at the breakfast meeting: TMDLs, Multnomah County sewers and pending legislation.

1. TMDLs: Dick Nichols, Manager, Water Quality Division, provided the Commission with an update of the Northwest Environmental Defense Center lawsuit against EPA. A settlement had been negotiated but was not yet reduced to writing. The settlement was based on TMDLs being established for the Tualatin consistent with the EQC approved schedule. TMDLs will be initiated on 10 other streams within a year and Waste Load Allocations will be completed within 5 years.
2. Mid-Multnomah County Sewers: Michael Huston advised the Commission on the current status of 3 pending suits regarding the EQC order to install sewers in Mid-Multnomah County. The Attorney General's office will be filing motions to dismiss the cases before the Land Use Board of Appeals (LUBA) and the Court of Appeals. The case filed in Marion County Circuit Court is considered to be the appropriate one for reaching the merits of the challenge to the order.

3. Legislation: Fred Hansen, Director, gave the Commission a brief overview of pending legislation, noting that most DEQ bills have cleared the first committee and are either before the Ways and Means Committee or are before the other house. Specific note was made of the following bills:

- Hazardous and Solid Waste Act (HSWA) -- Passed Senate, in House
- State Superfund (liability issue) -- in Ways and Means
- Spill response (dollar issue) -- in Ways and Means
- Asbestos (received modifications; however, all industry groups are now in agreement)
- Civil penalties -- Passed Senate, in House Energy and Environment Committee
- State Revolving Loan Fund -- in Ways and Means

Other bills discussed were as follows:

- o Disposal of tires; this bill proposes incentives for shredding and properly handling used tires
- o Backyard Burning (no hearings are scheduled)
- o Mid-Multnomah County -- a number of bills deal with two basic issues:
 1. Altering the process to require all 4 criteria to be met before a threat to drinking water can be found to exist.
 2. Provide for financial relief to citizens by distributing costs to people outside the affected area and providing state financial assistance.
- o Medford Inspection and Maintenance (introduced to allow a repair cap)
- o Tax Credits -- The current program sunsets in 1988. Industry is pushing to extend the program. The proposal being discussed includes elimination of certification of garbage burners and spill cleanup pending sunset in 1988. After 1988, the program would scale back even further. A revolving loan fund or similar concept would be created to provide assistance after phase out of the tax credits.

FORMAL MEETING

AGENDA ITEM A: Minutes of the March 10, 1987, Special Conference Call and the March 13, 1987, Regular EQC Meeting

Commissioner Denecke indicated the minutes of the March 13 regular EQC meeting on page 11 did not accurately reflect a discussion between him and the Director regarding designation of yard debris as a recyclable material and proposed legislation to reinstate backyard burning.

The minutes on page 11 should read:

Commissioner Denecke asked about John Charles' (Oregon Environmental Council) letter to Fred Hansen suggesting that yard debris be added to

the list of recyclable materials to head off the bill in the legislature to reinstate backyard burning. He asked if this topic should be discussed at this meeting.

Lorie Parker of the Hazardous and Solid Waste Division said that at this time a report was being prepared on yard debris; however, the Department would like another month to make a final recommendation. Director Hansen indicated that although it is difficult to predict the actions of the legislature, he did not think it likely that bill would pass.

It was MOVED by Commissioner Buist and seconded by Commissioner Bishop and passed unanimously that the minutes of the March 10 special conference call be approved and the minutes of the March 13 meeting be approved as amended.

AGENDA ITEM B: Monthly Activity Report for March 1987.

Commissioner Brill asked about page 13 of the activity report: the potential for recovery of copper from transformers rather than throwing them away. Director Hansen replied that recycling those materials is a choice of the generator and depends upon the cost involved and the levels of contamination. The process of recovering copper involves PCBs which are tightly regulated. Director Hansen said it is often cheaper and less liability occurs when transformers are disposed and not recovered.

Commissioner Bishop asked about McInnis Enterprises. Michael Huston, Assistant Attorney General, told the Commission that it was the Department's position the case should go forward.

Linda Zucker, Hearings Officer, gave some background on the nature of the issue which she felt extended beyond the administrative review process. Ms. Zucker said the real issue is whether it is appropriate to hear the case before the criminal proceedings are resolved.

Commissioner Denecke said the District Attorney's office is backlogged with assaults and violent crimes and may view this as a low priority. Director Hansen indicated it is not a matter of low priority but rather a problem resulting from a change of personnel in the District Attorney's office.

Mr. Huston said the Department will check again with the District Attorney on the status of the criminal case and will return to the hearings officer with a request to schedule the hearing. If the Department is dissatisfied with the hearings officer's decision, it will return to the Commission. Linda Zucker requested the opportunity to brief the Commission on the issue if it comes to the Commission on a motion of the Department.

Director Hansen indicated the Department would like to obtain closure on this case.

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

AGENDA ITEM C: Tax Credit Applications.

Chairman Petersen noted that Tax Credit Application No. T-1840 had been withdrawn from consideration at this meeting.

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

Director's Recommendation:

It is recommended the Commission take the following action:

1. Issue Tax credit certificates for pollution control facilities:

<u>APPL</u>	<u>APPLICANT</u>	<u>FACILITY</u>
T-1860	PP&L Dairy Substation	Oil spill containment system
T-1862	PP&L Eastside Substation	Oil spill containment system
T-1865	PP&L Henley Substation	Oil spill containment system
T-1866	PP&L Henry Street Substation	Oil spill containment system
T-1867	PP&L Lincoln Substation	Oil spill containment system
T-1871	PP&L Power Operations Headquarters	Oil spill containment system
T-1872	Carl Fenk	Manure control system

2. Revoke Pollution Control Facility Certificate No. 1123 issued to CPEX Pacific, Inc. and reissue the same certificate to Chevron Chemical Company. The company was purchased by Chevron in December 1986.
3. Revoke Pollution Control Facility Certificates 1031 and 1359, issued to Smurfit Newsprint Corporation and reissue the same certificates to Willamina Lumber Company. Smurfit sold four of their lumber manufacturing divisions on December 31, 1986.

PUBLIC FORUM:

Mr. B.C. Canoles, Canoles Concrete Products, submitted a brochure on Jet Aeration sewage treatment plants, which is made a part of the record of this meeting. Mr. Canoles asked the Commission to consider changing the subsurface rules to reduce the size of the required drainfield by 50% and eliminate the requirement for a drainfield replacement area when aerobic treatment plants are used to replace a septic tank. Chairman Petersen asked Dick Nichols, Manager, Water Quality Division, to review the

materials and prepare a report for the Commission in response to Mr. Canoles' request.

Commissioner Buist asked about the life expectancy of the system and the system's motor. Mr. Canoles responded that life expectancy was about 17 years for the system and from 2 to 17 years for the motor. He said it depends on owner's maintenance of the system; however, Canoles Concrete Products provides a service contract for repair of the system.

AGENDA ITEM D: Request for Authorization to Conduct a Public Hearing on Proposed Amendments to the Hazardous Waste Fee Schedules, OAR 340-102-065 and 340-105-113.

This item requested authorization to conduct a public hearing on proposed amendments to rules concerning hazardous waste management fees. The Department is proposing fee increases and amendments to other fee-related rules.

The proposed fee increases are necessary to offset a current revenue shortfall in the hazardous waste program and to maintain the program at the level required for authorization by the U.S. Environmental Protection Agency (EPA). The other proposed amendments were for the purposes of clarification.

Director's Recommendation:

Based upon the Summation in the report, it is recommended the Commission authorize a public hearing to take testimony on the proposed amendments to rules concerning hazardous waste management fees, OAR 340-102-065 and 340-105-113.

Director Hansen told the Commission that the Hazardous Waste Program's Fee Committee had reviewed the program and current fees and had supported the increase because the current base program is underfunded. He noted there would be no fees if the Federal government operated the hazardous waste program in Oregon. Thus, the desire of industry to have the state operate the program and pay fees to help fund that effort is a fairly large commitment. Chairman Petersen said he felt it was important that industry be involved in the process and have the opportunity to express their concerns.

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

AGENDA ITEM E: Proposed Adoption of Amendments to the State Implementation Plan (OAR 340-20-047) Consisting of Changes by Lane Regional Air Pollution Authority to their Permit Fees.

Historically the fee schedule adopted by Lane Regional Air Pollution Authority (LRAPA) for air contaminant discharge permits in Lane County had been identical to the schedule of fees adopted by the Environmental Quality Commission for the rest of the state. However, in March 1986, the EQC

adopted a rule change allowing regional authorities to set fees different from DEQ fees. In December 1986, the IRAPA Board of Directors adopted amendments to their permit fee schedule, which resulted in an overall 17.5 percent increase in fees.

This proposed EQC action incorporates the new IRAPA fee schedule for Lane County into the Clean Air Act Implementation Plan (SIP). The fee schedule contained in the SIP would be kept consistent with the schedule actually in effect in Lane County.

Director's Recommendation:

Based on the report summation, it is recommended the Commission adopt the revised IRAPA permit fee rules as an amendment to the State Implementation Plan.

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

AGENDA ITEM F: Consideration of Petition for Adoption of Rules Regarding Selection of a Solid Waste Disposal Facility Under Senate Bill (SB) 662.

Director Hansen advised the Commission they had received a petition for adoption of rules regarding the selection of a solid waste disposal facility under SB 662. This petition and the proposed rules attached to the petition had been reviewed by the Department and the Attorney General's office. The Attorney General's office prepared a memorandum outlining their position on the petition for adoption of rules as well as a draft order denying that petition if that was the Commission's decision.

Director Hansen indicated that Michael Huston, Assistant Attorney General, would represent the Department in this matter.

Chairman Petersen noted that Mr. Ed Sullivan of Mitchell, Lang, and Smith was present to represent the petitioners.

Michael Huston summarized the material before the Commission regarding this agenda item. He identified two petitions: one was for rulemaking, the other was a request to take deposition. Dave Ellis, Assistant Attorney General, prepared a legal memorandum in response to the petition for rulemaking. Also before the Commission was a draft order to deny the petition for rulemaking. Additional written arguments from Mr. Sullivan were also provided.

Mr. Huston advised the Commission of their options. The Commission has a great deal of discretion in acting on a petition for rulemaking; subject to time limitations contained in statutes and Commission rules, however. He said options available include: granting the petition and initiating the rulemaking process; denying the petition through an order; and postponing action and requesting additional information. Since a 30-day requirement exists for Commission action, the Commission must either act by April 25 or obtain agreement from Mr. Sullivan to allow additional time.

Commissioner Denecke identified a potential conflict of interest by stating he had worked with Mr. Sullivan and had appeared for him in a motion in Circuit Court in Marion County at no charge.

Mr. Edward Sullivan, attorney representing the Helvetia Mountaineering Preservation Coalition, summarized his petition. He asked the Commission to adopt rules which establish standards for a decision and conduct the landfill siting hearings as a contested case. He expressed the view that the Commission has the authority to consider sites outside the Portland Metropolitan area, and that the Commission may select a site that is not on the list of preferred sites.

Mr. Sullivan asked the Commission to look at section 4 of the act. He said there was an obligation to go through rule making if a "delegative" term exists. He felt the April 1986 draft of site ranking criteria was approved by the Commission. However, Mr. Sullivan said, the set of criteria had been changed and the changes had not been approved by the EQC. Neither the criteria nor the changes had been adopted by rule. Detailed hearings were held, but not contested case hearings.

Mr. Sullivan concluded by saying the Commission was required to adopt rules to govern the site selection process. He further noted that these proceedings are involved with peoples rights and obligations and are in the character of a contested case; therefore, a contested case hearing is required. Mr. Sullivan indicated the petition for depositions would be disposed of if the petition for rulemaking and contested case hearing were denied.

Commissioner Buist asked the definition of a contested case. Mr. Sullivan replied this involved formal proceedings where people are under oath and cross examined. A contested case is more in the character of a trial, and a particular conclusion is reached.

Chairman Petersen asked Steve Greenwood, Manager, Facility Siting Section, about the change of criteria. Steve Greenwood said the criteria had not been changed. The criteria adopted in April had been used throughout the process. The criteria state that interpolation between ratings is appropriate in applying the criteria. The Department prepared criteria rating guidelines to guide interpolation between ratings contained in the criteria. He said opponents have implied the scores have been changed, but most scores have decreased rather than increased as a result of using better information to apply the criteria and interpolate between criteria ratings where appropriate.

Mr. Sullivan noted that the public had no opportunity to contest the criteria. Mr. Greenwood advised that the criteria were reviewed by the Commission after numerous meetings with government, communities and environmental groups.

Mr. Huston reviewed the basis for the Commission's decision. He noted that section 4 of SB 662 can be taken literally. These are the only legally binding standards the Commission must take into account in its decision. He advised that the Department is required by section 3 to conduct a study and submit recommendations to the Commission. The Commission is not bound

to take the Department's advice; however, there is great legal risk if a site is selected that is not considered in the Department's study. The Commission's decision is reviewable by the Supreme Court. It requires elaborate findings supported by substantial evidence in the record. If the Commission picked a site not studied, it is questionable whether the necessary evidence and information would be available to make the required findings to address standards set forth in section 4. In addition, Mr. Huston said, the Court could decide that the EQC must follow the study called for in section 3. He also noted that if a site is outside the 3 county area, approval of the county where the site is located is required. This county approval introduces land use issues into the process.

Mr. Huston concluded that the statute distinguishes between the responsibilities of the Department in section 3 and the Commission in section 4. Section 3 charges the Department with conducting a study. The Department does not have rulemaking authority. Therefore, the legislature did not intend that the Department study be conducted through rulemaking. He said Mr. Sullivan's response was to come to Commission to ask that rule making be performed. Mr. Huston indicated that Mr. Sullivan had also filed a lawsuit in State Supreme Court with the same argument.

Mr. Sullivan summarized by saying that rule making can be obligated or discretionary. He felt it is obligated for the rights of individuals and property. He further said that the April 1986 criteria are rules by default and that interpolation between the criteria is rulemaking.

Chairman Petersen said he was impressed with the thoroughness, fairness and consistency of the process. He said the study produced not perfect results or criteria but generated the fairest possible result. He felt the adoption of rules was not required and would not aid in any way. He said that he did not agree that interpolation between the criteria is a change in criteria.

It was MOVED by Commissioner Buist, seconded by Commissioner Brill and passed unanimously that the petition for adoption of rules be denied.

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist and passed unanimously that the landfill siting process not be considered as a contested case.

Mr. Huston suggested that the draft order denying the petition be amended to include an additional reason the Commission thought it was inappropriate to hold a contested case hearing; specifically that a contested case hearing was not required.

It was MOVED by Commissioner Denecke, seconded by Commissioner Buist and passed unanimously that the draft order as amended by Mr. Huston's suggestion be adopted.

AGENDA ITEM G: Informational Report: Review of FY 88 State/EPA Agreement and Opportunity for Public Comment

Each year the Department and the EPA negotiate an agreement whereby the EPA provides basic grant support to the Department's various environmental programs. This is done in exchange for commitments from the Department to work on planned environmental priorities of the state and federal government.

Director's Recommendation:

It was recommended the Commission:

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

Commissioner Bishop asked about the many Number 1 priorities. Lydia Taylor, Administrator, Management Services Division, said priorities are negotiated with EPA. Most listed items are program maintenance issues and are high priorities that must be provided on a continuous basis. Commissioner Denecke asked about the hazardous and solid waste section of the report. He indicated solid waste was not listed in the section. Ms. Taylor said the Department does not receive federal dollars for solid waste.

Commissioner Bishop asked about maintaining the Portland ozone standard and working with the State of Washington. Tom Bispham, Administrator, Regional Operations, said the Department is coordinating with Washington to meet ozone standards. He said there are two areas both states are interested in: (1) the impacts from slash burning (hydrocarbons reacting in the Portland Metropolitan airshed); and (2) fuel volatility (evaporative losses) and the number of refineries in Washington. Mr. Bispham said the Department will be working with the State of Washington and EPA, Region X, to develop fuel volatility standards. Correcting ozone and volatility problems will give the Portland Metropolitan airshed a greater growth margin. Mr. Bispham indicated Washington had been cooperative. He hopes they will give stronger attention to their slash burning program, and the Department has received a commitment from EPA, Region X, that this will occur.

No public comment was received on this item.

By consensus, the Commission accepted the Director's recommendation.

ADDITIONAL ITEM: USA Rock Creek Waste Treatment Plant Permit Modification:

Director Hansen provided the Commission with a memorandum about an issue which has arisen with respect to modification of the Rock Creek waste discharge permit. The proposed modified permit contains a "reopener clause" which will allow the Department to reopen the permit and insert

appropriate effluent limits and compliance schedules. Representatives of the Northwest Environmental Defense Center are concerned that OAR 340-41-120(3)(c) would hinder the Department's ability to impose timely compliance schedules. This rule provides for deferral of implementation of requirements which are more stringent than federal requirements until facilities are expanded or modified.

The Department interprets the adoption of TMDL's to be to meet federal standards. Therefore, since the TMDL would not be more stringent than federal requirements, the deferral option in subparagraph (c) of the rule would not apply. The Department requested that the Commission concur with the Department's interpretation.

By consensus, the Commission concurred with the Department interpretation that "applicable federal standards" as referred to in OAR 340-41-120(3)(c) would include waste load allocations developed as part of the Department's process to develop total maximum daily loads.

OTHER ITEMS:

Dick Nichols, Administrator, Water Quality Division, introduced Susanne Moeller to the Commission. Susanne is from Denmark, and her husband is in graduate school at Oregon State University. She will be assisting Water Quality for about two or three months.

The Commission established the following dates and tentative locations for future meetings:

May 29 - Portland

June 12 - Portland - Special Meeting (deliberating landfill site)

July 17 - Portland

August 28 - Portland

October 9 - Bend

December 4 - Portland

There was no further business, and the meeting was adjourned.

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC.

MINUTES OF THE ONE HUNDRED SEVENTY-EIGHTH MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

March 13, 1987

On Friday, March 13, 1987, the one hundred seventy-eighth meeting of the Oregon Environmental Quality Commission convened in the fourth floor conference room of the Executive Building, 811 S. W. Sixth Avenue, in Portland, Oregon. Present were Commission Chairman James Petersen, Vice-Chairman Arno Denecke, and Commission members Mary Bishop, Wally 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

In addition to members of the Commission, legal counsel, and department staff, the breakfast meeting was attended by John Lang, David Gooley and Bob Reick of the City of Portland Bureau of Environmental Services.

1. Field Burning Update

Sean O'Connell, Manager of the Field Burning Program, presented an overview of the field burning program. Sean discussed the goal of the research and development program: to develop reasonable and economically feasible alternatives to the annual practice of open field burning. Sean reviewed the research program including straw utilization for energy (bale burner) and animal feed (nutrient enhancement), alternative crops, green house research on alternative sanitation methods and health effects. He also reviewed the general factors which are considered in burning decisions. Burning techniques were also reviewed. He noted that tax credits are becoming more important as alternatives to open field burning are pursued. Sean identified stack burning and propane flaming as two issues where additional rules may be appropriate. He also indicated that it may be appropriate in the future to extend the Eugene area performance standard to other areas in the valley or to adjust acreage limits.

2. City of Portland's Plan for a Safety Net

John Lang introduced David Gooley and Bob Reick from his staff. Mr. Gooley reviewed the costs for a typical 70 by 100 foot lot as follows:

Assessment for public sewers	\$3,150
Connection charge	1,000
Private plumbing costs	1,500
Total costs	\$5,650

Mr. Gooley reviewed the deferral options available or planned. In financial hardship cases, the City plans to use the option of allowing the homeowner not to hook up to the sewer until the property sells, the system fails, or the year 2005, whichever occurs first. This will allow the private plumbing costs and connection charge to be deferred.

The city must recover funds to pay for the public sewer in the street when construction occurs; therefore, the safety net focuses on a mechanism to cover the assessment cost until the property is sold. The city hired a consultant to evaluate other financial assistance programs and propose eligibility criteria. The proposed criteria focus on:

1. Income: use two times the federal poverty level.
2. Assets: exclude the home, furnishings, car and \$20,000 from the calculation of available assets.
3. Household costs: a hardship would exist if household costs exceed 30 percent of the income.

The percent of the assessment that can be deferred will vary based on how combinations of the three criteria are applied. Application of the criteria would be to homeowners only. Others could appeal for consideration for hardship assistance on a case-by-case basis.

The city is proposing the state fund the safety net since: (1) an existing program already exists at the state level for senior citizens; (2) there are needs also in other areas like River Road/Santa Clara; and (3) the state has the money.

The city estimates \$900,000 would be needed for the 1987-1989 biennium based on the need to assist about 3,000 properties. They want to be ready to provide assistance to homeowners by July 1, 1987. No decisions have been made about interest rates on the loan paying the property owners' assessment (the deferral). Legislation has been drafted and introduced that will create the state funded safety net program. Mr. Lang again stressed that an appeal process would be available to those outside the eligibility criteria.

The Commission thanked Mr. Lang for the update.

FORMAL MEETING

AGENDA ITEM A: Minutes of the January 23, 1987, EQC Meeting

It was MOVED by Commissioner Bishop and seconded by Commissioner Denecke to approve the minutes. The motion passed with Commissioner Brill abstaining since he did not attend the January 23 meeting.

AGENDA ITEM B: Monthly Activity Report for December 1986 and January 1987.

Commissioner Denecke asked about the status of the McInnis litigation. Linda Zucker, Hearings Officer for the Department of Environmental Quality, responded that an agreement had initially been reached between the Department and McInnis to postpone the contested case until the conclusion of court proceedings. She indicated the Court of Appeals had ruled on procedural issues and returned the matter to the Circuit Court for further proceedings. The Circuit Court proceeding has not yet been tried. Ms. Zucker further indicated that although the Department had requested that the contested cases be set for hearing, she had decided to continue the delay until the cases could be fully defended. She was concerned that until the court cases were resolved, privileges against self-incrimination would deter a full presentation of the defenses.

Michael Huston, Assistant Attorney General, noted that the Court of Appeals decision on the criminal part of the Circuit Court decision excludes rather significant evidence from the proceeding. The District Attorney must now decide the advisability of proceeding with the case in Circuit Court.

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

AGENDA ITEM C: Tax Credit Applications

Commissioner Bishop asked about what happened to the tax credits for storage sheds when there was no longer a market for straw and straw is no longer stored. Director Hansen said tax credits were approved for the purpose stated on the application and continue in effect unless revoked for fraud or other reasons. Sean O'Connell, Manager, Field Burning Program, stated certificates can be revoked or delayed if the facility is not used for the certified pollution control purpose.

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 certificates for pollution control facilities:

Appl. No.	Applicant	Facility
T-1838	Yaquina Sanitary, Inc.	Full-line recycling center
TC-2072	Hockett Farms, Inc.	Propane flamer
TC-2103	Golden Valley Farms	Storage shed in Salem TC-2192
	Far West Fibers, Inc.	Cardboard compactor TC-2233
	Golden Valley Farms	Storage shed in Brooks

2. Revoke Pollution Control Facility Certificate No. 219 issued to Bauman Lumber Company and reissue to Willamette Industries.

PUBLIC FORUM:

Jean Meddaugh, Oregon Environmental Council, submitted written testimony which is made a part of the record of this meeting. She stated the Oregon Environmental Council is opposed to the Department of Environmental Quality's approval of an Air Contaminant Discharge Permit for Entek in Lebanon. Ms. Meddaugh feels the citizens of Lebanon are concerned about the cancer exposure caused by TCE and in what they perceive as the Department's refusal to consider those concerns as part of the decision-making process.

Commissioner Buist asked what kind of cancer TCE causes or increases the risk for. Ms. Meddaugh said TCE is known to cause liver tumors. Commissioner Buist indicated the NIOSH standard cited in Oregon Environmental Council's written testimony does not relate only to healthy young males but rather is for a working population. She suggested the figure cited on page two of the testimony be micrograms not milligrams.

Steve South, Economic Development Director, City of Lebanon, on behalf of Mayor Ron Passmore, said issues about Entek are centered around hearings, health and environment. However, he felt letters from citizens of Lebanon were equally divided into three categories: opposed to the plant, in favor of the plant or wanted more information. Mr. South said he believed the Director acted appropriately in issuing Entek's Air Contaminant Discharge Permit. A copy of a petition generated by the community, not at the request of Entek or encouragement by the city, demonstrating Entek is welcome was shown to the Commission. He felt the concerns expressed about the plant represent the minority, and the environment is adequately protected by the Department and the process. Mr. South said Entek has a high level of concern for the environment and will install state-of-the-art equipment.

Bob Howard, Entek, said he was proud to be part of the Lebanon community. He said TCE is not a waste product they want to get rid of from the manufacturing facility. TCE is a vital ingredient used over again and is not casually emitted into the atmosphere. TCE is very volatile like gasoline. Mr. Howard said their system for controlling air emissions is the best available technology. He further noted that 25 percent of the cost of the plant is for pollution control facilities. He said the equipment will use three activated carbon beds to capture vapors, and the building will be under negative pressure. Mr. Howard felt the Department held the public information meeting after the permit was granted to allow citizens to express additional concerns; however, nothing new was brought up during the 30-day public comment period or hearing. Mr. Howard submitted a fact sheet on Entek.

Commissioner Buist asked if TCE would be emitted in pulses. Mr. Howard responded the TCE would be released in a uniform flow. Commissioner Buist asked what would be the distribution of TCE, (since TCE is volatile). Mr. Howard replied the stack will be 65 feet in height, and the emissions

will be discharged high into the atmosphere, rapidly dispersing away from the stack.

Commissioner Buist asked Director Hansen and Lloyd Kostow of the Air Quality Division, about monitoring TCE emissions. Director Hansen replied that two different emissions, stack and fugitive, would be monitored. He said the fugitive emissions were of greater concern. Mr. Kostow said the Department requires that fugitive emissions be quantified. He said Entek will be required to estimate those losses, which is difficult for a new plant. Mr. Kostow said the Department used loss factors from a similar plant in Corvallis to determine the estimate.

Commissioner Buist asked Mr. Kostow if there were plans for monitoring emissions. He indicated that stack monitoring and material balance calculation would be used to determine the losses. Mr. Kostow was asked if the Department had an estimate of the population at risk from TCE emissions. He said the Department used modeling techniques to predict impacts at the company's property line and in the community. Emissions were found to be low at the property line and decreased rapidly from that point. Mr. Kostow was asked about the size gradient of the emissions. He responded the highest impact occurred at the property line, and modeling would not predict a zero gradient; however, the gradient did decrease rapidly from the property line.

Commissioner Buist asked if the company in Corvallis had TCE fugitives or stack emissions. Mr. Kostow replied the material produced at the Corvallis plant is similar. The plant uses TCE but the process equipment at the Corvallis site is older and configured differently. Commissioner Buist asked Mr. Howard if Entek was a national company and had experience with plants in other areas. Mr. Howard replied that Entek is an Oregon company.

Commissioner Denecke asked about interior plant safety. Mr. Howard responded that fugitive emissions will escape within the plant, and TCE emissions would be greater inside the plant. He said the company developed a good sealing system to prevent material from evaporating. Mr. Howard said only one building will be involved with TCE emissions, and the recovery equipment used should restrict vapor exposure to the workers. OSHA will be examining the plant and notifying the Department if they have any questions.

Chairman Petersen asked about the 300 factor cited in the staff report. Mr. Kostow explained this was a guideline from the State of New York used for toxic air pollutant analysis. Director Hansen indicated this factor is used by states who do have resources to conduct independent research.

Commissioner Buist felt it would be worthwhile for the Department to monitor and track stack emissions. She said it would be a good opportunity to study the health effects.

Commissioner Brill asked what happens to the saturated charcoal filters. Mr. Howard replied that steam is used to remove the TCE, the steam is condensed and then the water is sent through a distillation process. He said the water is recycled and the TCE is used again.

Chairman Petersen said he felt there were two issues: health and holding a public hearing. He said many people in the Lebanon area felt a hearing should have been held. Chairman Petersen indicated that when in doubt, the Department should hold a hearing.

AGENDA ITEM D: Request for authorization to Conduct a Public Hearing on Proposed Open Field Burning Rules, OAR 340-26-001 Through 340-26-055, as a Revision to the Oregon State Implementation Plan.

This items requests authorization to conduct a public hearing on proposed amendments to the open burning field burning rules.

The proposed rule amendments would tighten restrictions on propane flaming. These restrictions are necessary due to the increased smoke problems that occur from propane flaming. Regulations on the burning of straw stacks are proposed in addition to other minor changes. Rule amendments will be submitted to the U. S. Environmental Protection Agency (EPA) as a State Implementation Plan (SIP) revision. The Department has met with the grass seed growers and believes most areas of controversy have been resolved.

Director's Recommendation:

Based on the Summation, the Director recommends the EQC authorize a hearing to consider public testimony on the proposed field burning rule changes and as a revision to the State Implementation Plan (SIP).

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

Chairman Petersen indicated this would be Sean O'Connell's last EQC meeting before leaving for California. Chairman Petersen said Sean, as Manager of the entire field burning program, has been responsible for the regulatory control of field burning as well as research and development. He continued that the statute Sean had been working under involved considerable pressures from all sides. Chairman Petersen said Sean's assignment was difficult; however, Sean had been successful because he was able to coordinate diverse interest groups involved in field burning. Those groups included the growers, Seed Council, public, fire departments, Air Quality Division, advisory committees and forestry. He said that Sean had made a valuable contribution to the Commission through his work on the smoke management plan and the visibility SIP. Chairman Petersen and all the Commissioners wished Sean good luck.

Chairman Petersen noted that Agenda Item E on the printed agenda had been deleted.

AGENDA ITEM F: Request for Authorization to Conduct a Public Hearing to Amend National Standards of Performance for New Stationary Sources of Air Pollution OAR 340-25-505 to 553.

Oregon updates its rules concerning federal air emission standards each year in agreement with the U. S. Environmental Protection Agency (EPA). In the last year, EPA has promulgated four new emission standards and amended four others. Four of these standards were recommended for hearing authorization. Four Hazardous Air Pollutant Standards were not recommended for hearing authorization since they are sources presently not located in Oregon. Additionally, there is no likelihood of those sources locating here in the future.

The four sources not recommended were:

1. Vinyl chloride plants
2. Arsenic used on glass plants
3. Arsenic from copper smelters
4. Arsenic production plants

The New Source Performance Standards recommended for hearing authorization are:

1. Relaxed NOx standard for large utility boilers
2. Standards for industrial/commercial/institutional large boilers
3. Changes to test methods for coil coaters
4. Revised test methods (five)

There are about 20 large boilers in the state that could be affected by these rules if a boiler is modified. There are no coil coaters in the state at this time.

Director's Recommendation:

Based upon the Summation, it is recommended the Commission authorize a public hearing to take testimony on the proposed amendments to OAR 340-25-505 to 34-025-553, rules on National Standards of Performance for New Stationary Sources.

Chairman Petersen asked if the Department should add the standards into the rules even when there are no sources in those categories at present. Director Hansen replied that federal standards apply even if they had not been adopted by state government. The Department has preferred to keep the rules shorter and omit categories where no sources are anticipated.

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

AGENDA ITEM G: Request for Authorization to Conduct a Public Hearing on Proposed Changes in Air Contaminant Discharge Permit Fees and Other Requirements and to Amend the State Implementation Plan.

This is a request to propose changes to the Air Quality permit program by exempting from the Air Quality permit program nine industrial source classes having little impact on air quality and by adding two other source classes to the permit program. Also, this request proposes to

increase application processing fees and compliance determination fees for all boiler classifications currently requiring a permit. The fee increase is needed to bring boiler fees more in line with Department costs associated with this source class. ORS 468.065(2) indicates fees shall be set to recover the cost of application investigation, issuance or denial of permits and compliance assurance. Fees have not been increased for four years. The proposal represents a 13.8 percent increase, that is well in line with the rate of inflation during that period of time.

Director's Recommendation:

Based upon the summation, it is recommended that the Commission authorize a public hearing to obtain testimony on proposed changes to Air Contaminant Discharge Permit Fees, OAR 340-20-155, Table 1, OAR 340-20-165 and the State Implementation Plan. Director Hansen noted that industrial organizations were aware of the proposed increases.

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

AGENDA ITEM H: Request for Authorization to Hold a Public Hearing on the Construction Grants Management System and Priority List for FY 88.

This is a request to hold a hearing on the proposed priority list for funding sewerage projects with federal construction grant funds and rule modifications.

Annually, the Commission must adopt a priority list for funding sewerage projects with federal construction grant funds. The Department is now preparing the priority list for FY88. The draft list will be available after April 10, 1987. Additionally, this request proposes rule modifications to OAR 340-53-025 pertaining to reserve accounts for a state revolving fund and for nonpoint source planning, and to OAR 340-53-027 to broaden eligibility for major sewer replacement or rehabilitation and for combined sewer overflows.

Director's Recommendation:

Based on the Summation, the Director recommends the Commission authorize a public hearing to solicit public comment on the FY 88 priority list, a proposed rule amendment about the establishment of a reserve to aid in capitalizing a state revolving fund, a rule addition to allow the establishment of a nonpoint source management planning reserve and a proposed rule amendment to broaden eligibility for major sewer replacement or rehabilitation and for combined sewer overflows. The hearing will be held May 13, 1987. All testimony entered into the record by 5:00 p.m. on May 15, 1987, will be considered by the Commission.

Commissioner Denecke asked if it was probable the state would receive \$34 million for FY 87. Director Hansen replied the actual appropriations for FY 87 is expected to be \$2.4 billion. Congress has already appropriated half that amount and committed to appropriate the balance upon reauthorization of the Clean Water Act. He said Congress has reauthorized the Act but has not yet appropriated additional dollars.

Such appropriation is expected to occur within the next several months. When that does occur, the State share for FY 87 will be \$27.4 million. This, combined with the carry over funds, will total \$34 million. Commissioner Denecke asked if 50 percent of the \$34 million dollars would have to be set aside for a state revolving fund. Director Hansen responded that for FY 87 and FY 88 the set aside is discretionary and can be used for grants. He said after that time, for FY 89 and 90, a portion of the fund must be set aside and used in the state revolving fund, or the fund will revert to the federal government for allocation to other states with revolving funds. In the years FY 91 through FY 94, all funds coming from the federal government must be added to the state revolving fund.

Commissioner Denecke asked if any funds were set aside in FY 86. Director Hansen replied that FY 87 was the first year for setting aside funds. Commissioner Denecke asked about the timing of the decision as to how much to set aside from FY 87. Director Hansen said the issue is being debated now in Senate Bill (SB) 117 (the enabling legislation for the state revolving fund). He said a 20 percent match is required at the state level. The timing of the set asides and the provision of state match must be coordinated. Oregon will not lose any federal funds if match funds are delayed until next biennium.

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

AGENDA ITEM I: Request for Authorization to Hold a Public Hearing on Proposed Amendments to the Water Quality Program Permit Fee Schedule (OAR 340-45-070).

This is a request to hold a hearing on a proposal to increase permit fees and is similar to the request about air program fees considered in Agenda Item G. Fees have not been increased for four years. Statutes direct the Department to recover a portion of its operating budget from fees, and this proposal meets that requirement.

This fees increase (as well as the air program fee increase) are reflected in the Department's budget request and has been approved by the Governor.

Director's Recommendation:

Based upon the summation, the Director recommends the Commission authorize the Department to hold a public hearing on the proposed amendment of the Water Quality Permit Fee Schedule and Rules.

Commissioner Denecke asked about the difference between the filing and application fees. Kent Ashbaker of the Water Quality Division, stated the air and water discharge permits are similar and are made up of three

parts: (1) a non-refundable filing fee of \$50 for water quality; (2) an application processing fee that varies depending on the type and complexity of the application and can be refunded if the application is withdrawn; and (3) an annual compliance determination fee (inspection fee). Commissioner Denecke asked what is obtained with the filing fee. Mr. Ashbaker replied the filing fee covers the paper work--receiving and logging the application and issuing the public notice. He said all the fees are paid at once. The filing fee is not refundable but portions of the application fee may be refunded.

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

AGENDA ITEM J: Request for Authorization to Conduct a Public Hearing on Proposed Amendments to the Hazardous Waste Management Rules, OAR Chapter 340, Divisions 100-102.

This agenda item requested authorization for the Department to conduct a public hearing concerning proposed amendments to the hazardous waste management rules. The proposed amendments would incorporate by reference new federal hazardous waste regulations, delete the state's existing small quantity hazardous waste generator rules and add some new state rules concerning the public availability of information about hazardous waste management facilities. Adoption of these amendments is required if the state is to maintain final authorization to operate a hazardous waste management program.

Director's Recommendation:

Based upon the summation, it is recommended the Commission authorize a public hearing to take testimony on the proposed amendments to the hazardous waste management rules, OAR Chapter 340, Divisions 100-102.

Director Hansen noted these rules reflect the commitment to have state and federal rules identical in all cases where the state and federal approach to regulating a hazardous waste is close to avoid confusion.

Commissioner Buist noted the agenda item was well written and that Bill Dana of the Hazardous and Solid Waste Division should be commended.

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

AGENDA ITEM K: Proposed Adoption of 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.

This agenda item proposed to adopt amendments to the recycling rules. These amendments would require operators of wastesheds submit annual recycling reports and persons conducting recycling programs, required under the Oregon Recycling Opportunity Act, submit data on the amount of material they recycle and the number of users of on-route collection programs.

The proposed rule amendments also make technical corrections to the list of principal recyclable materials in certain wastesheds and amends the oil recycling sign rule in order to eliminate the requirement that a particular telephone number (now non-functional) be listed.

Director's Recommendation:

Based upon the evaluations and summations in Sections I, II and III, it is recommended the Commission adopt the proposed amendments to OAR 340-60-101 and OAR 340-60-45 to require annual submittal of recycling reports and to define recycling set outs 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.

Estle Harlan, Oregon Sanitary Service Institute, presented written testimony supporting approval of the amendment. This written testimony is made part of the record of this meeting.

Chairman Petersen asked if the Department would be receiving all the information that is needed. Director Hansen responded the Department compromised and concluded needed information would be received. Commissioner Bishop asked about the time schedule for reporting recyclables.

Peter Spendelow of the Hazardous and Solid Waste Division, said reporting would be accomplished in two parts: (1) the annual report due February 15, 1988, and each February 15 thereafter for the prior calendar year; and (2) the report to be submitted one month per quarter indicating the number of recycling setouts. The collectors will report on a quarterly basis so the information does not become backlogged.

Commissioner Buist asked about the definition of a set out. Mr. Spendelow responded a set out is any amount of recyclable materials set out at the curb to be collected for recycling. Commissioner Buist asked how the set outs will be counted by drivers. Mr. Spendelow said collectors will use clickers to gather the data.

Commissioner Denecke asked about John Charles' (Oregon Environmental Council) letter to the Commission about yard debris as a recyclable material and how this would affect backyard burning. He asked if this topic should be discussed at this meeting.

Lorie Parker of the Hazardous and Solid Waste Division said that at this time a report was being prepared; however, the Department would like another month to make a final recommendation. Director Hansen indicated the legislature could affect the outcome of this report.

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

AGENDA ITEM I: Proposed Adoption of Order Requiring the City of Portland to Provide the Opportunity to Recycle.

The City of Portland received an extension to January 31, 1987, for providing recycling collection service, promotion and education. The City did not comply with the conditions of the extension and still has not provided a recycling program to all of its citizens. The Department has disapproved the Portland Wasteshed Recycling Report and upon the Commission's direction has held a hearing to allow public comment on the Department's disapproval.

The Department recommends the Commission find that the opportunity to recycle is not being provided within the City of Portland and the area within its urban services boundary, and that the City of Portland be ordered to provide the program. The Department also recommends an order be prepared to require Metro to provide a financial incentive for recycling within the Portland wasteshed.

Director's Recommendation:

It is recommended the Commission find, based upon the facts and findings in the Department's Disapproval of the Portland Wasteshed Recycling Report and upon the record of the hearing held February 17, 1987, that:

1. The opportunity to recycle is being provided in Maywood Park and at the disposal sites within the Portland wasteshed.
2. The opportunity to recycle is not being provided within the City of Portland and the area within its urban services boundary.

It is further recommended the Commission require the opportunity to recycle to be provided by adopting a proposed order (Attachment III of the staff report), and directing the Department to work with Metro in the preparation of an order requiring Metro to provide financial incentives for recycling within the Portland wasteshed. Such an order should be considered by the Commission at its next meeting.

Judy Dehen, Sierra Club, said her testimony was not related to recycling but provided information in an indirect way about mass garbage incinerators. She provided the Commission with information on the hazards of garbage incinerators. She said the Columbia River Sierra Club would like to support the City of Portland's contract plan for recycling which was the original plan as stated in the report. She indicated the garbage haulers do have a problem if the first option is chosen. She said because of the free enterprise system, the haulers compete with each other and with waste management. The third alternative, Ms. Dehen said, which is recommended by the Department, has some problems since there is no incentive or positive enforcement for haulers if left to the City of Portland. She said if Portland does not come up with something that will work, the opportunity to recycle program will be back at its beginning.

Commissioner Denecke asked if any incentive from Metro was included in the order. Director Hansen said the recommendation would be to direct the Department to work with Metro to develop a financial incentive program. He said the Department is preparing the order to accomplish the incentive program and it would be presented at the next meeting. Ms. Dehen

expressed concern that Metro's answer was to push quickly to solve the recycling problem by installing mass solid waste incinerators, and that they were not interested in recycling.

Jean Meddaugh, Oregon Environmental Council, presented written testimony stating the Oregon Environmental Council (OEC) encouraged the Commission not to sign the order prepared by the Department as a third alternative but to order the City of Portland to implement the contract plan recommended and developed last June. This written testimony is made a part of the record of this meeting.

Estele Harlan, Oregon Sanitary Service Institute, presented written testimony supporting the proposed order. This written testimony is made part of the record of this meeting.

Jeanne Roy, League of Women Voters of Portland, presented written testimony asking the Commission order the City of Portland to approve the contract plan. This written testimony is made a part of the record of this meeting.

Michela McMahon, Cloudburst Recycling, said Cloudburst started recycling twelve years ago with the stated purpose of a city-wide recycling program. She said they thought if they demonstrated a program that worked well, the City of Portland would think recycling was a good idea. She worked on the technical advisory committee and the committee developed a good recycling program. Ms. McMahon said the committee watched the program fall apart and saw a permit system the advisory committee had not considered viable being voted on by the City Council. She said they were disappointed they had not heard recycling talked about as the best way to reduce waste. Instead, all that is talked about is the haulers' problems. She felt the contract system was the best plan and should be moved forward.

David McMahon, Cloudburst Recycling, said he is a member of the Portland Area Sanitary Service Operators but the board and most of the members disagree with his position on recycling. He believes different collectors offering different collection systems and quality of service would be a difficult system for the city to promote. He said we need to go beyond the dedicated recycler and obtain substantially greater participation rates. The permit system, he said, will result in some recycling but with no comparison to determine if it is successful. Mr. McMahon indicated the City will have difficulty monitoring the different types of operation, schedules, collections and subcontracting. He said it would be difficult for the City to enforce violations of service providers by relying only on random inspections for compliance. It is less costly if haulers pick up recyclables on a garbage truck and are able to manage the volume of setouts. However, he said, there are severe limits as to how much can be picked up on a truck. Separate truck collection is more costly to operate. Mr. McMahon said the City refuses to regulate solid waste in Portland and the hauling industry cannot respond to an integrated recycling program without regulation. He said the Commission must decide whether a second-rate system is enough.

Commissioner Buist asked if separate trucks were needed for recycling and garbage and if the 100 percent participation involved only the recyclers.

Mr. McMahon said 95 percent of his garbage customers recycle. He said they attracted people interested in recycling and he has always emphasized recycling to his customers. He talks to the customers who call the office and those on his routes, and he gives out environmental information to his customers.

Commissioner Buist asked Mr. McMahon about Mrs. Roy's statement that if haulers just put racks on their trucks, recycling will not work. Mr. McMahon agreed with Mrs. Roy's statement. He said many trucks do not have room for racks and puts a limit on how much a truck can pick up.

Chairman Petersen said Ms. McMahon felt there was not really a free enterprise system in the city and asked Mr. McMahon if he agreed. Mr. McMahon responded that if you compete for residential customers, you are ostracized--the system "respects traditional routes." Chairman Petersen said on one hand you hear the system in place is good but you also hear a great concern about competition and losing customers. He said he had trouble reconciling the approaches and this information verified some of his thoughts.

Commissioner Brill asked in what manner customers were acquired. Mr. McMahon replied usually routes are purchased from others. Commissioner Brill asked if any segregation of customer routes occurred. Mr. McMahon said in a 10 square block near Lloyd Center he counted 15 companies operating.

Marguerite Truttman, Alpine Disposal and Recycling, responded to comments made by Jeanne Roy and David McMahon. She said they are taking recyclables on their truck. They do pick up recyclables and they have a customer participation rate of 50 percent. She said Alpine takes recyclables weekly and that it is a manageable schedule. However, she said, are there times when they have to make a special trip to unload recyclables. They try to make it a point to condense their route and to have a processing (storage) site near to their customer route. When this is done, recycling is not an economic hardship. She said some haulers only pick up recyclables once a month and then they cannot take all of it on the truck. Some haulers will contract picking up recyclables and it will be possible to do this weekly.

Ms. Truttman said she did not buy their route from a family member. Alpine made it a point to buy a condensed route. Ms. Truttman said the reason haulers do not get along with recyclers is that they buy a route to have the right to pick up customers. She realized competitors were free to solicit an account.

Commissioner Buist said it appeared Alpine was a responsible hauler and asked why Alpine started recycling. Ms. Truttman replied they started recycling in 1983. She said her husband was a garbage hauler. They knew the Department, City and Metro had been urging a recycling project. She said Alpine spent money on equipment and offered recycling from the very beginning of their operation.

Commissioner Buist asked if Alpine broke even on recyclables. Ms. Truttman replied they do not; they operate at a loss. They offer the lowest prices in the City and hope eventually to break even. She said

recycling has been an advantage for them. Commissioner Buist asked what they would do if 80 to 90 percent of their customers recycled. Ms. Truttman said if that becomes the case, Alpine would buy a drop box or have another container available within the route to unload more frequently recyclables from the collection trucks.

Commissioner Bishop asked about Alpine's fee incentive program. Ms. Truttman said perhaps more should be charged for the second garbage can rather than less as is the current practice.

Chairman Petersen asked about reducing the tipping fee. Ms. Truttman said the City mentioned that Metro would pay haulers \$3 for each ton of recyclables generated. She liked that approach better than a penalty imposed for haulers with too much waste.

Director Hansen said the Department had outlined a concept that Metro would pay for the tonnage of recycled materials delivered. Under this concept, less would be put into the landfill so the tipping fee paid would be reduced. The haulers would be paid for the amounts recycled.

Commissioner Buist asked if enough incentives were there to bring people not as responsible as Alpine into line. Mr. Truttman said she thought there was. The City could take away a haulers garbage permit and the haulers cannot afford to lose the permit. She also noted haulers are waiting for the program to be established; they do not want to spend money on equipment if the City is going to have a contractor do the recycling.

Commissioner Denecke asked Lorie Parker to comment on Mr. McMahon's statement that he doubted the Department could determine at the end of the year if the program was working. Lorie Parker of the Hazardous and Solid Waste Division, said she and the City were concerned about how difficult it will be to enforce this program. At last count, there were 131 haulers in Portland. Ten to 20 haulers attend the meetings and they hear from the responsible haulers. She said it was the other haulers they are concerned about.

Commissioner Denecke asked if the Department would have enough information at the end of one year to make a report about compliance. Ms. Parker said the City would be asking for monthly set out rates, as well as sales receipts for verification of quantity of recyclables collected. She said the data will only be as good as the information given them, however.

Commissioner Bishop asked where the haulers were going to store the recyclables before being sold. Ms. Parker said storage may be a problem and zoning violations are a possibility. Many haulers may be forced to market their materials daily; however, not as much revenue is generated as when recyclables are stored and sold in larger volumes. Ms. Truttman said Alpine purchased a 30-yard drop box to store newspapers. She thought other haulers may combine resources to do something like this. Commissioner Bishop asked Ms. Truttman where Alpine keeps their drop box. Ms. Truttman replied they keep the drop box at the same location they park their trucks. Ms. Truttman said that PROS, comprised of 36 haulers, contracted with a company to pick up recyclables once a month, reducing the potential need for storage sites.

John Lang, Environmental Services, City of Portland, said the Environmental Services Bureau had an opportunity to read the Department's staff report and recommendations. He said they believe it is reasonable and the order should be adopted. In February 1987, the Council passed an ordinance giving the opportunity to recycle to all customers. He continued the City had met with the haulers to further develop rules and regulations to provide recycling opportunities. He said a summary of the rules and regulations had been circulated to the haulers. The summary included all the recommendations before the Commission in the proposed the order and others as well. Mr. Lang said the City was making a sincere effort to develop a good recycling program. Mr. Lang went over the following points about the City's recycling plan in addition to the proposed order:

Service:

In addition to requiring, at least, monthly collection of recyclables, newspapers will be collected at the garbage can weekly. Also, customers can give materials to haulers, individuals, charitable groups or recycling companies who must be permitted by the City and report on materials collected.

Commissioner Denecke asked Mr. Lang if only the recycling companies must be permitted by the City. Mr. Lang replied that anyone picking up recyclables must have a permit and report the amount of collected recyclables. The permits are expected to be issued at no charge.

Mr. Lang continued with the recycling plan:

Funding:

The fee mechanism the City will implement to recover city costs for promotion and administration will include some structure of cost for tonnage of waste taken to the landfill by the haulers. This is intended to be an incentive to the haulers to reduce waste going to the landfill by recycling. The City also supports the idea of working with Metro an incentive program.

Enforcement:

The City will assess fines and revoke permits of those haulers who are not in compliance. Some haulers will have difficulty with recycling, at least, in the beginning. The City will work with Metro so that those haulers with revoked permits are barred from entering the landfills.

The City plans to perform random service checks and customer surveys to verify compliance and to determine the amount of recyclables.

The City wants to form a recycling review committee of haulers and customers to advise the City on promotion and education and program improvement.

Administration:

The City intends to provide haulers with reports on how well they are doing compared to other haulers.

Mr. Lang summarized the City's recycling plan by saying it is important to recognize the City has made a decision to accomplish recycling in a particular way. The City and haulers should be allowed to demonstrate their ability to provide a good recycling program. City staff and haulers are committed to their plan and feel it is a good plan, although it will take longer and be more expensive.

Chairman Petersen asked how many haulers the City had been talking to. Mr. Lang replied his staff had spoken with the (perhaps 50 or 60) haulers at the meetings. In addition, the City has sent correspondence to all the haulers. Chairman Petersen responded that earlier the Commission had heard testimony that only 10 to 20 haulers had attended the meetings. Chairman Petersen asked how many resources would be involved in the random service checks. Mr. Lang said the City has a full-time staff person to administer and to work on the recycling program. This person will be assisted by another staff member who will be responsible for promotional and educational activities. A third person will be administering the solid waste and recycling programs. The required budget will be about \$200,000 per year. The City has not attempted to estimate the cost of enforcement (hearings officer) and procedural activities but will be spending in excess of \$50,000 a year on promotion as well as the staff time.

Tor Lyshang, Solid Waste Director, Metro, presented written testimony for Rena Cusma, Executive Officer for Metro, supporting financial incentives and other plans to reduce and divert waste from landfills, and Metro is willing to cooperate with both the City and the Department to develop methods of making curbside recycling an effective program in Portland. Ms. Cusma's written testimony is made part of the record of this meeting.

Chairman Petersen said the Commission considered and approved Metro's waste reduction plan, and the certification portion of the program was now on the back burner. He asked if the certification program was going to be part of the Metro recycling plan. Mr. Lyshang said Metro will deal with the certification issue in the program. When they know what will be needed to divert waste away from the St. John's Landfill, Metro will deal with it. The certification program is not Metro's highest priority. Mr. Lyshang said the highest priority was to divert no less than 200,000 tons per year away from the St. John's Landfill for the next two or three years in order to buy time until they determine if a landfill site can be located in this area.

Director Hansen asked if Metro would support a landfill only if the site was east of the mountains. Mr. Lyshang said no, and that Metro will look at all the opportunities to deal with the waste and garbage situation. Chairman Petersen indicated he was disappointed with Metro. He said the City, Commission and Metro had been talking about the recycling plan for some time; Metro is still studying the problem and cannot offer specifics about incentives. Chairman Petersen found it difficult to understand that

Metro would feel it is premature to talk about incentives. Commissioner Bishop agreed.

Commissioner Buist asked Director Hansen to review the options. Director Hansen said the staff report discussed three principal alternatives. The Department recommended supporting the commitment by the City of Portland to work with the existing permitted haulers and to require a recycling program within that authority. The Department believes there are some weaknesses in the plans originally proposed, and provisions are included in the draft order to correct them. Specifically, within one year, the information about participation should come back so the Commission will be able to revise the order if necessary to correct problems. Director Hansen noted the authority of the Commission under Senate Bill 405 is very broad. The Commission could order franchising of recycling services. The Department does not recommend that but the Commission's authority is extensive.

Commissioner Bishop stated she had real reservations and had hoped the contracting plan would be approved. She felt the programs had worked very hard and had gotten nowhere. She said she was concerned with incentives, storage, tipping fees, evaluations and Metro. Commissioner Bishop expressed the need to get this plan going.

Director Hansen said that if all haulers operated like Alpine, the permit system could work very well. Chairman Petersen said the key issue is how far does the Commission want to extend its authority. He said he was reluctant to impose the Commission's will when the City voted for the permit system. Senate Bill 405, he said, is called the opportunity to recycle act. While the Commission can mandate a program, it will not work without a commitment of the people. He said people must want to recycle. Chairman Petersen said education was the most important element of insuring recycling. He said he was willing to defer to the City's judgement and give them the opportunity to put together a first-rate recycling program. He felt that when the program had been in place for a year, it could be reviewed and determined if some other course of action is needed.

Commissioner Denecke said he hoped Ms. Parker could report to the Commission periodically how the program was developing. Director Hansen replied that Condition No. 9 of the proposed order stipulates the City must provide monthly reports. Chairman Petersen asked if the haulers would deliver promotional materials to customers or was the City required to mail information. Mr. Lang replied the plans would be to use both methods: mail directly to customers and have haulers leave information at the garbage cans.

Chairman Petersen suggested the wording of the second paragraph of the Section be changed to read: "... The City shall mail promotional materials to each garbage service customer within the Portland urban services boundary and require each permittee to deliver the promotional materials to his or her customers."

Ms. Parker suggested the wording on page 3 of the order, paragraph 1, be changed to read: "... By May 13, 1987, the City shall mail an announcement of the beginning of the City's recycling program and cause the contractor (s) or permittees ..."

The Commission had no objection to these proposed amendments to the order. Director Hansen clarified the Department would be back at the next Commission meeting with an additional order relative to Metro and incentives.

Ms. Roy noted the plan requires that recycling be offered to all garbage customers; however, she thought the law required that recycling be offered to all persons. Ms. Parker said the plan provides all garbage service customers with the opportunity to recycle. People hauling their own waste have the opportunity to recycle at the landfill or transfer station.

It was MOVED by Commissioner Bishop, seconded by Commissioner Denecke and passed unanimously that the Director's recommendation be approved with the amendments as noted in the discussion.

AGENDA ITEM M: Appeal of Air Contaminant Discharge Permit by Husky Industries (Royal Oak Enterprises, Inc.)

The Department issued an Air Contaminant Permit to Husky Industries for their charcoal production plant in White City on November 21, 1986. Husky has appealed the allowable annual particulate limits contained in the permit.

The Department feels the emission limits were established in accordance with the Commission's rules. These rules are stringent in the Medford-Ashland Air Quality Maintenance Area (AQMA) requiring emission increases be offset such that no net increase in emissions will occur.

The Commission must decide whether to maintain the present rules or to revise the rules to allow for emissions growth in that area.

Director's Recommendation:

Based on the summation, it is recommended that Husky's appeal be denied and that Husky be required to operate within their existing allowable emissions or go through New Source Review to obtain an emission increase.

Michael Huston, Assistant Attorney General, outlined the legal setting for consideration of the company's request. Mr. Huston indicated that Husky was appealing its permit. Permit appeals are normally processed through the contested case process before a hearings officer. At the company's request and because they needed to make a business decision, Husky and the Department agreed to a more informal approach before the Commission. Husky waived the normal contested case procedure but did reserved the right to appeal the decision of the Commission.

Bill Carlson, Royal Oak Enterprises, told the Commission he would refer to Royal Oak as Husky or Husky Industries because that was what the company was called at the time of the permit. He said Husky brought the case to the Commission because for almost 3-1/2 years Husky has been trying to work out an acceptable solution with the Department for a permit. The solution had always seemed straight forward to Husky but it was not until he saw the Department's response to the request for appeal that he realized

the Department did not understand their operating process and improvements.

Mr. Carlson used a diagram to explain the company's operation. He said the charcoal furnace, the heart of the operation, was constructed as a wood waste disposal device in 1969 by Olson Lumber Company. At that same time, they also installed a hog fuel boiler adjacent to the furnace. A scrubber was added to the hog fuel boiler in 1975 to meet Department regulations for hog fuel boilers. In 1976, a hog fuel dryer was added to the charcoal furnace to increase disposal capability and to minimize air emissions. Husky purchased this facility from Georgia-Pacific in December 1978 which was the last month of the two baseline years the Department refers to in their regulations.

The transfer of ownership also happened to coincide with the new 1978 regulations for the Medford-Ashland air quality maintenance area which established a particulate limit of 10 pounds of particulate for each ton of charcoal produced. The existing air contaminant discharge permit which allowed 175 tons of annual particulate emissions from the furnace and 38 tons of particulate emissions from the hog fuel boiler was transferred to Husky with the property. To meet new permit limits, Husky began to design and construct pollution control equipment for the furnace. That equipment was constructed in 1979 and 1980 consisted of the equipment shown in Area 2 of the diagram. The effect of that construction was to move the emission point from the two charcoal furnace stacks to the after combustion stack. In 1982, Husky designed and built a waste heat recovery unit (boiler) to capture the heat created from the stack and to generate steam (area 3). Now, most of the emissions come from the waste heat boiler stack rather than the charcoal furnace stacks.

Husky wanted to install a turbine generator to use the remainder of the steam that could be generated from the waste heat recovery unit. In addition, they could then sell low pressure steam to other industries in exchange for hog fuel-- the raw material for making charcoal. This is proposed to be constructed in 1987 and 1988. He specifically noted that installation of the turbine will create no new emissions. The furnace and hog fuel boiler, the only emission sources, have not been altered either in capacity or operating schedule since constructed in 1969. The permit issued in November jeopardizes the entire operation.

Mr. Carlson then responded to the Department's specific comments to the appeal. He noted the Department refers in several places of the report to Husky asking for an increase in their annual particulate tonnage. He said what was really in dispute was not an increase but the degree of reduction Husky can take from the 175 tons previously permitted for the furnace. Husky agreed 145 tons would allow an economically, viable operation but the Department wants to reduce that amount to 107. The reduction to 145 tons that Husky can agree to does not represent the emissions associated with continually running the furnace at full capacity. Instead, 145 tons represents a compromise; emissions equivalent to 29,000 tons per year of charcoal produced now compared to the previously permitted level of 35,000 tons of charcoal per year.

Another point of disagreement Mr. Carlson discussed is the Department's interpretation the construction of the turbine triggers a New Source Review for the facility. He stressed the only source of emissions is the charcoal furnace which is not being modified. The waste heat recovery unit and turbine generator make use of the hot exhaust gases made available from the pollution control equipment; they are not sources of air pollution and no hog fuel is consumed because of their existence. He continued that it would not have been necessary to notify the Department about the installation of the generator except that it happened to coincide with the final issuance of the new permit.

Mr. Carlson said a third major area of disagreement was the strict interpretation of the baseline year criteria to determine new annual tons emitted. In the two baseline years of 1977 and 1978, Husky did not own the plant. However, Husky did realize they bought a furnace with a history of mechanical problems and high-percentage of forced downtime. He called attention to the preface of the Commission's baseline year rule which indicates intent not to limit the use of existing unused production capacity. He interpreted the Department's proposal to prohibit Husky from using existing installed production capacity contrary to the expressed intent of the rule.

Mr. Carlson also disagreed with the Department's position that emissions from the furnace are proportionate with output. He said if the local Medford DEQ officials were here today they could confirm that this is not true from their hundreds of visual observations made over the years. He said the furnace emits the most particulates during start up and shut down and during long sustained periods of low load operation.

In concluding, Mr. Carlson said the Department's testimony describes the air quality in the Medford airshed, and states that approval of Husky's position by the Environmental Quality Commission will exacerbate the existing situation and lead to a revision of the State Implementation Plan. He said the January 1986 version of the State Implementation Plan includes Husky's furnace operation at 175 tons for the charcoal furnace and 38 tons for the hog fuel boiler, exactly the same limits as in the expired permit. Approval of the 145 and 38 ton figures previously agreed to with local officials actually represents the reasonable further progress sought by the Department.

Mr. Carlson again referred to the Commission Policy Statement in OAR 340-20-300 which he quoted as follows: "The Commission recognizes the need to establish a more definitive method for regulating increases and decreases in air emissions of air quality permit holders as contained in OAR 340-23-301 through 320. However, by adoption of the rules, the Commission does not intend to limit the use of existing production capacity of any air quality permittee; cause any undue hardship or expense to any permittee due to the utilization of existing unused productive capacity; or create inequity within any class of permittees subject to specific industrial standards which are based on emissions related to production."

Summarizing, Mr. Carlson said Husky has a charcoal furnace that has not been modified since 1969 except to add pollution control and energy conservation equipment. He asked the Commission to interpret the policy statement as it is written and to set the annual furnace tonnage of 145

tons and the hog fuel boiler tonnage at 38 tons, levels below the previous permitted tonnage and the tonnage in the State Implementation Plan.

Commissioner Brill asked Lloyd Kostow of the Air Quality Division if he felt the turbine generator would increase the amount of pollution emitted. Mr. Kostow replied yes, that it would increase the emissions because of the fact they will be operating more hours to produce steam to operate the turbine generator. Commissioner Brill asked if the Department was interpreting the turbine generator to be a new installation that would contribute to pollution. Mr. Kostow said the new installation would allow the plant to do something they were not able to do before--increase production and produce electricity as a new product and thereby increase emissions.

Commissioner Brill handed out a copy of a newspaper editorial. He said he realized the Medford area has a real pollution problem and the airshed is saturated. However, Commissioner Brill said, industry has been singled out enough over the past 15 or 20 years. He said industries are easy to go after because they are bigger and there are fewer of them. However, woodstoves are the biggest component of the pollution in the area. He said he felt the Commission should take a good look at this appeal because industry has done a good job.

Commissioner Denecke asked if because of the installation of the turbine generator that either or both the hog fuel boiler and the charcoal furnace were going to have to operate a longer period. Mr. Kostow said yes. He added the Department approved the installation of the pollution control facilities. He said construction was approved with the understanding there would be no net increase in emissions from the facility. Mr. Kostow said the key issue is the baseline and the Commission's rules require the baseline be the actual emissions during the baseline period of the SIP which is 1977 through 1978. He said the Department went back to the baseline and looked at the reductions required by the new rules and examined the requests for increases in emissions that may be approved. Because it is a very tight situation in Medford area, there is no growth margin. Mr. Kostow said the plan to install a turbine generator would increase the production through the entire facility and thereby increase emissions.

Mr. Carlson disagreed with Mr. Kostow's statement. He said the pollution control equipment and waste heat boiler are not sources of pollution and cannot create additional pollution.

Commissioner Denecke said he understood Mr. Kostow to say that because Husky was adding a turbine generator, the emissions of charcoal furnace and hog fuel boiler would increase. Mr. Carlson replied the emissions are all determined by the operation of the charcoal furnace. He said that adding turbine generators on the end of the furnace, if the steam were there, would not change the amount of the emissions. He explained it is whether or not the furnace has been modified that determines if the facility is a new source. Husky did not modify the furnace, the equipment or the operating schedule.

Commissioner Denecke asked Mr. Carlson if Husky would be operating the charcoal furnace or boiler any more now with the turbine generator than before. Mr. Carlson responded by saying their normal operating schedule would not change. Commissioner Denecke asked Mr. Carlson if additional material would be put into either furnace or the boiler. Mr. Carlson said no. The productive capacity of the furnace has not been altered by any of projects or the generator.

Commissioner Buist said in order for the Commission to understand this appeal, the Commission should see a copy of Mr. Carlson's testimony since it was different than the letter submitted. She said based on the testimony heard at the meeting, she did not think the Department responded adequately to all the points raised by Mr Carlson's presentation. Commissioner Buist asked Mr. Carlson if they could discuss the appeal at the next Commission meeting. Mr. Carlson replied the permit had actually expired on November 1, 1983. He said when Husky applied for the permit, they thought it was a routine renewal. However, now they are up against a time crunch. Their power contract requires the generator to be on line by January 1, 1989. However, since the project would take about two years to for construction, the company is at a crucial decision point.

Commissioner Buist restated she felt the department did not adequately answer the points brought up by Mr. Carlson and said she was not clear now where the conflict was. She preferred to have the Department read Mr. Carlson's testimony and prepare a detailed response before the Commission made a decision.

Chairman Petersen said one of the technical arguments being dealt with was the Department's characterization of the facility as a new source. He added that causes some rules to come into effect when a new source is created or an old source has been modified. This creates a necessity for a baseline calculation. Chairman Petersen said the point Mr. Carlson tries to make is that the facility has not changed--it's the same source of pollution. Mr. Kostow, on the other hand, said the facility is a new source.

Mr. Kostow read the definition of a modification from the New Source Review Rule as follows: "any physical change or change in operation of a source that would result in a net significant emission rate increase." Mr. Kostow said the Department and EPA's interpretation would be that the installation of a steam turbine is a physical change in the facility and that emissions would be increased by virtue of the fact they are increasing their production. Mr. Kostow added the way to avoid a physical change being considered a major modification would be to insure there was no net increase in emissions. He further explained that if the company had an internal offset with no net increase, the new construction would not fall under the New Source Review Rule and that is one option available to Husky. This would enable Husky the ability to operate their boiler in conjunction with their charcoal plant under a bubble. He said the Department has allowed a bubble, which is available under the rules, and this insures the company would not have a net increase of emissions.

Chairman Petersen asked Mr. Carlson to respond to Mr. Kostow's statements. Mr. Carlson said the definition Mr. Kostow cited was the same one they have always used. He said their proposal was an obvious

physical change but there is no emission rate increase as a result of these projects. Mr. Carlson said Husky has not altered the source of pollution which is the furnace nor have they altered the operating schedule, thus no more emissions are coming from the furnace or boiler than have come out before. Mr. Kostow disagreed with Mr. Carlson.

Mr. Kostow went on to describe the concept of baseline and the definition of major modification. He said the calculations of net emission increases must take into account all accumulated increases and decreases in actual emissions occurring at the source since January 1, 1978. This ties the company to the 1978 baseline. It is an EPA requirement that Husky use actual emissions during the baseline year when calculating increases and decreases.

Commissioner Denecke asked Mr. Kostow if he agreed with Mr. Carlson's position that the furnace and boiler will not run at any longer periods and no additional material would go into them and emissions will not increase. Mr. Kostow stated the Department contends that more material will be going through, resulting in increased emissions. In short, Husky will operate more hours and at higher rates than they were in the baseline years.

Chairman Petersen asked if Husky would be getting more toward the capacity of the original equipment. Mr. Kostow replied yes. Chairman Petersen noted that would appear consistent with the policy statement cited by Mr. Carlson, and he asked Mr. Kostow to comment on that part of the regulations. Mr. Kostow explained that when the Environmental Quality Commission adopted the New Source Review Rules in 1981, the Commission struggled with the problem of whether to start with actual emissions or with plant capacity. He said he thought the Commission was satisfied at the time to use actual emissions, based partly on an argument that 1978 was a good year economically and most industries were running near capacity. This decision to use actual emissions is tied into the requirements imposed upon the state by the Clean Air act which requires that actual emissions are used to base the State Implementation Plan upon. Chairman Petersen then asked why the policy statement was adopted. Mr. Kostow said the Commission added the policy statement at the request of industry because they were concerned about the capacity question. He continued that the wording was added indicating that you could go up to plant capacity if airshed capacity is available. The Department does have the ability to grant increases (above baseline) if airshed capacity is available; however, the Medford area is the worst possible situation and there is no airshed capacity.

Chairman Petersen asked Mr. Kostow if it was the Department's position that air quality standards would be violated at the 145 tons for the furnace as opposed to 107 tons. Mr. Kostow replied it was the Department's view that any increase in emissions would contribute to the exceedance problem. There is no growth margin for particulates in Medford. Mr. Carlson responded the furnace is exactly the same furnace that has been in operation since 1969 and apparently because Georgia-Pacific did not have a good year in 1978. The permit is written to say the furnace cannot be operated at a reasonable capacity that would be economically viable.

Commissioner Buist MOVED that the Commission accept Husky's appeal against the Department's recommendation. Commissioner Brill seconded the motion. The motion passed with Commissioner Denecke voting no.

Chairman Petersen asked Mr. Huston if there were any technicalities the Commission needed to consider about the motion. Mr. Huston said the Department took a calculated risk in bringing the case informally to the Commission, realizing it would be procedurally obscure and may not frame the issues as well. He suggested the Department be given an opportunity to assess the ramifications and if necessary formulate an order for adoption at the next Commission meeting or by a conference call.

AGENDA ITEM N: Informational Report: Status of Ogden Martin Systems of Marion, Inc. Energy Recovery Facility.

This agenda item is an update on the status of the Ogden Martin Systems of Marion energy recovery facility at Brooks. The report is being presented in response to the Commission's request at the January 23 meeting.

Discussion of hazardous and solid waste aspects focuses on the facility's operational status and the ongoing program for classifying the combustion residues.

Air quality topics include the 1986 emissions testing results, Ogden Martin's request for Air Contaminant Discharge modifications and the Environmental Protection Agency's (EPA) test program at the facility. Finally, the status of the noise abatement program is discussed.

Director's Recommendation:

The Department intends to continue action to resolve the status of the combustion residues from the burner. Public comment on the proposed modifications to the Air Contaminant Discharge Permit will be solicited and reviewed prior to final action on the request for modification.

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

AGENDA ITEM O: Informational Report: Proposed Approach for Establishing Total Daily Loads as a Management Tool on Water Quality Limited Segments.

This agenda item reviews the Department's Water Quality Management Program from 1972 to the present. In 1972, the Federal Clean Water Act specified certain requirements for water quality planning and management activities. Among the requirements is one requiring total maximum daily loads (TMDLs) be established for identified water quality limited stream segments. Water quality limited segments are those waters where minimum treatment controls for point sources are not stringent enough to meet the established water quality standards.

In December 1986, the Northwest Environmental Defense Center (NEDC) filed a suit in Federal District Court against the Environmental Protection Agency (EPA) to ensure that TMDLs are established and implemented for waters in Oregon identified as being water quality limited. Subsequently, NEDC filed a Notice of Intent to sue, naming 27 other water bodies requiring TMDLs be established.

The Department has proposed a process and schedule for addressing the issue of establishing TMDLs for identified water quality limited stream segments. To start the process, the Department intends to place the Tualatin TMDLs on a 30-day notice for public review and comment.

Director's Recommendation:

It is recommended the Commission:

1. Approve the process identified by the Department for establishing TMDLs including the proposed schedule for completing Phase I for those stream segments listed in Attachment F, Table F-2.
2. Concur with the Department's intent to place the Tualatin TMDLs on 30-day notice for public review and comment, thus initiating the entire TMDL/WLA process for the Tualatin River.

Director Hansen told the Commission the agenda item was not an action item other than in terms of concurrence. He said a recent court case in Illinois ruled this is a non-discretionary function of EPA. Previous lawsuits on the same issue had been dismissed. Commissioner Denecke asked Director Hansen if funds would be diverted from other water quality programs to establish the TMDLs. Director Hansen replied yes and that establishing TMDLs would be an intensive effort.

Commissioner Buist asked how long this process would take. Director Hansen said that was part of the concern. The Department has established as fast a process as possible with resources diverted to it with from commitments. Given other program requirements and commitments, he said he does not feel the process can be quickened. Director Hansen said the need to be able to involve the sources that will be affected on each stream reach is not easily done.

Commissioner Buist asked how long it would take to go through four phases. Dick Nichols of the Water Quality Division said the schedule for the Tualatin Basin shows the project ending February or March 1988. He said this involved proposing the TMDLs, sending out a 30-day public notice, receiving comments and finalizing the proposed TMDLs that would be looked at by the advisory committee. He said felt the Department could accomplish this schedule. The Tualatin River Study, which is proceeding concurrently with the TMDL development, was an outgrowth of the algae standard adopted over a year ago.

Dr. Thomas Habecker presented written testimony urging the Commission to act promptly to set water loading standards for all waters. This written testimony is made a part of the record of this meeting.

Eugene Appel, City of Portland, Bureau of Environmental Services, said the Bureau concurs with the Department's informational report. He said the Bureau is concerned with the classification of streams. All bodies of water have been previously labeled as water quality limited. He said the Department needs to reevaluate the data and reclassify streams as effluent limiting where appropriate. He further supported public participation in the process of establishing TMDLs.

Mr. Nichols noted that all waters of the State were initially classified as water quality limiting. He said this was a good decision because lower effluent numbers were achieved than if streams had been classified effluent limiting. The result is better water quality today, a higher degree of treatment of most sources and lower quantities of effluent being discharged. Director Hansen added that if one had classified streams as effluent limiting, less construction grant money would have been available for sewage treatment plant improvements.

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

AGENDA ITEM P: Issue Paper: Determination of Percent Allocable for Pollution Control Tax Credits.

The Commission elected to defer consideration of this item with the intent to discuss it informally in the van on the way to the landfill sites.

Jean Meddaugh, Oregon Environmental Council, offered comments for John Charles. She reminded the Commission to weigh negative values. In the case of the garbage burner, the Commission should weigh the results of generating energy and reducing solid waste but against the air pollution or hazardous wastes generated as byproducts.

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

MINUTES OF THE CONFERENCE CALL

OF THE

ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON

March 10, 1987

9:00 a.m.

This special meeting of the Environmental Quality Commission (EQC) was called by Fred Hansen, Director of the Department of Environmental Quality (DEQ) to discuss with the EQC the results of the draft feasibility study reports for the Bacona Road, Wildwood and Ramsey Lake potential landfill sites, prepared by CH2M Hill. All EQC commissioners were present by the telephone conference call. Fred Hansen; Steve Greenwood, Facility Siting Project Manager; Ann Werner, Community Involvement Coordinator; and David Ellis, Assistant Attorney General were also present.

Chairman Petersen of the EQC called the meeting to order.

Mr. Hansen explained that the draft feasibility study reports for the three potential metropolitan-area landfill sites had been completed by CH2M Hill and were, as of March 10, 1987, available for review by the EQC and the public. Mr. Hansen explained that the results of the consultant's technical review of the Wildwood site had led to the conclusion that the site was technically infeasible for the construction of a sanitary landfill. Mr. Hansen explained this conclusion was based upon detailed investigation, including soil-borings from depths of 150 feet to over 370 feet. A massive landslide failure zone was identified in three of the deep borings. Measures were examined for stabilizing the deep slide discovered on the site but it was concluded that under each of the alternatives analyzed, the estimated factor of safety for construction of a landfill at this site was not acceptable. Mr. Hansen explained that because of this conclusion, no neighborhood protection plan had been prepared by the consultants for this site since they were unwilling to design a landfill for a site without the appropriate margin of safety.

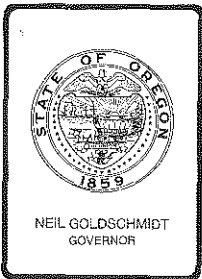
Mr. Hansen then asked if the Commission would prefer him to continue with discussion of the reports for the other two sites before returning to discussion of the implications of the findings for the Wildwood site, or whether the EQC would prefer to resolve the Wildwood problem first. Chairman Petersen indicated the Wildwood situation should be dealt with first. Mr. Hansen explained to the Commission they need not take any action concerning the Wildwood site because they had never taken any formal action concerning any of the sites at an earlier date. Rather, the EQC had only been informed by DEQ of the three sites which DEQ had selected for further feasibility analysis. Chairman Petersen decided, however, the public deserved a formal statement from the Commission as to whether or not it would continue to consider Wildwood as a potential landfill site. Chairman Petersen moved the EQC not consider Wildwood as a potential landfill site. The motion was seconded. Chairman Petersen asked all those

opposed to indicate by voting no. There were no negative votes and Chairman Petersen announced the motion was carried unanimously to not consider Wildwood as a potential landfill site.

Mr. Hansen went on to explain that, with respect to the other two sites, Bacona Road and Ramsey Lake, construction of a sanitary landfill on either of these sites was technically feasible. Mr. Hansen noted there were pluses and minuses attendant with each site. He went on to inform the Commission about two factors distinguishing the two remaining sites from one another. First, preliminary cost comparison between development of the Ramsey Lake site and the Bacona Road site disclosed that the Ramsey Lake site would cost somewhere in the magnitude of \$10 per ton of solid waste disposed at the site more than disposal at the Bacona Road site. Second, Mr. Hansen explained that current estimates showed the Bacona Road site could accept about four times as much waste as could the Ramsey Lake site.

Commissioner Bishop asked Mr. Hansen what all of this meant to the lawsuits filed by West Hills and Island Neighbors, Inc. Mr. Hansen asked David Ellis, Assistant Attorney General, to respond to that question. Mr. Ellis said he assumed the suits filed by West Hills and Island Neighbors would be dismissed by the various courts, and he would continue to press to have the courts dismiss the cases filed by the Port of Portland. As an alternative to dismissal, Mr. Ellis informed the Commission that he would urge the Port to stipulate to a stay of any further judicial proceedings until such time as the EQC issued its order selecting a site.

Chairman Petersen adjourned the meeting, there being no further business to conduct.



Environmental Quality Commission

811 SW SIXTH AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item No. B, April 17, 1987, EQC Meeting
February 1987 Program Activity Report

Discussion

Attached is the February, 1987 Program Activity Report.

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

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

The purposes of this report are:

1. To provide information to the Commission regarding the status of reported activities and an historical record of project plan and permit actions;
2. To obtain confirming approval from the Commission on actions taken by the Department relative to air contaminant source plans and specifications; and
3. To provide logs of civil penalties assessed and status of DEQ/EQC contested cases.

Recommendation

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

Fred Hansen

SChew:y
MD26
229-6484
Attachment

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

February, 1987

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

February 1987
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans Pending
	<u>Month</u>	<u>FY</u>	<u>Month</u>	<u>FY</u>	<u>Month</u>	<u>FY</u>	
<u>Air</u>							
Direct Sources	3	45	2	26	0	0	20
Small Gasoline Storage Tanks Vapor Controls	-	-	-	-	-	-	-
Total	3	45	2	26	0	0	20
<u>Water</u>							
Municipal	6	88	12	108	0	0	22
Industrial	7	66	5	64	0	0	9
Total	13	154	17	172	0	0	31
<u>Solid Waste</u>							
Gen. Refuse	-	15	-	10	-	-	19
Demolition	-	2	-	2	-	-	2
Industrial	-	10	1	14	-	-	11
Sludge	-	1	0	1	-	-	1
Total	0	28	1	27	0	0	33
<u>Hazardous Wastes</u>	-	0	-	0	-	-	-
<u>GRAND TOTAL</u>	16	227	20	251	0	0	84

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
22 0547	LINN	199	TELEDYNE WAH CHANG	INSTALL AIR SEPARATOR	02/04/87	APPROVED
05 1849	COLUMBIA	201	BOISE CASCADE PAPERS	REPLACEMENT BOILER	02/04/87	APPROVED
TOTAL NUMBER QUICK LOOK REPORT LINES				2		

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

February 1987
(Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
	Month	FY	Month	FY			
<u>Direct Sources</u>							
New	2	16	1	16	12		
Existing	4	23	1	13	22		
Renewals	5	79	22	91	68		
Modifications	<u>1</u>	<u>35</u>	<u>3</u>	<u>42</u>	<u>12</u>		
Total	12	153	27	162	114	1375	1407
<u>Indirect Sources</u>							
New	3	12	2	15	5		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	<u>0</u>	<u>1</u>	<u>0</u>	<u>2</u>	<u>0</u>		
Total	<u>3</u>	<u>13</u>	<u>2</u>	<u>17</u>	<u>5</u>	<u>265</u>	<u>270</u>
<u>GRAND TOTALS</u>	15	166	29	179	119	1640	1677

Number of
Pending Permits

Comments

11	To be reviewed by Northwest Region
13	To be reviewed by Willamette Valley Region
0	To be reviewed by Southwest Region
10	To be reviewed by Central Region
2	To be reviewed by Eastern Region
16	To be reviewed by Program Operations Section
44	Awaiting Public Notice
<u>18</u>	Awaiting end of 30-day Public Notice Period
114	

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PERMITS ISSUED

County Name	Source Name	Permit Number	Appl. Rcvd.	Status	Date Achvd.	Type Appl.
BENTON	LEADING PLYWOOD	02	2479	03/17/86	PERMIT ISSUED	01/29/87 RNW Y
CLACKAMAS	DAMMASCH STATE HOSPITAL	03	2593	11/25/86	PERMIT ISSUED	01/29/87 RNW N
COLUMBIA	OWENS-CORNING FIBERGLAS	05	2085	12/03/84	PERMIT ISSUED	01/29/87 RNW Y
CURRY	TIDEWATER CONTRACTORS INC	08	0044	11/14/86	PERMIT ISSUED	01/29/87 RNW Y
DOUGLAS	COMPANION ANIMAL CLINIC	10	0134	11/04/86	PERMIT ISSUED	01/29/87 NEW N
JACKSON	BOISE CASCADE CORP	15	0020	04/25/86	PERMIT ISSUED	01/29/87 RNW Y
LAKE	GOOSE LAKE LUMBER CO.	19	0019	02/07/86	PERMIT ISSUED	01/29/87 RNW Y
LINCOLN	ROAD & DRIVEWAY CO	21	0001	11/28/86	PERMIT ISSUED	01/29/87 MOD Y
LINN	WILLAMETTE INDUSTRIES	22	2509	11/14/86	PERMIT ISSUED	01/29/87 RNW N
LINN	WILLAMETTE INDUSTRIES	22	5193	03/14/86	PERMIT ISSUED	01/29/87 RNW Y
LINN	CLEAR LUMBER CO	22	7022	11/06/86	PERMIT ISSUED	01/29/87 RNW N
MALHEUR	HOLY ROSARY HOSPITAL	23	0020	09/16/86	PERMIT ISSUED	01/29/87 RNW N
WALLOWA	ROGGE LUMBER, INC.	32	0011	06/09/86	PERMIT ISSUED	01/29/87 RNW N
WASHINGTON	SUNSET HIGH SCHOOL	34	2569	10/21/86	PERMIT ISSUED	01/29/87 RNW N
WASHINGTON	MERCER INDUSTRIES, INC.	34	2695	10/20/86	PERMIT ISSUED	01/29/87 EXT Y
BENTON	PHILOMATH SHAKE CO	02	7076	10/02/86	PERMIT ISSUED	02/23/87 RNW N
COLUMBIA	MULTNOMAH PLYWOOD CORP	05	2076	03/06/86	PERMIT ISSUED	02/23/87 RNW
DOUGLAS	ROSEBURG FOREST PRODUCTS	10	0083	11/02/84	PERMIT ISSUED	02/23/87 MOD Y
JACKSON	SPECIAL PRODUCTS OF OREG.	15	0098	11/03/86	PERMIT ISSUED	02/23/87 RNW N
JOSEPHINE	GRANTS PASS MOULDING CO.	17	0008	05/16/86	PERMIT ISSUED	02/23/87 RNW
MARION	HARDWOOD COMPONENTS, INC.	24	2307	12/01/86	PERMIT ISSUED	02/23/87 RNW N
MARION	JERRY COLEMAN METALS	24	8053	11/24/86	PERMIT ISSUED	02/23/87 MOD Y
MULTNOMAH	CROWN ZELLERBACH PKG DIV	26	2777	11/06/86	PERMIT ISSUED	02/23/87 RNW Y
MULTNOMAH	CARNATION COMPANY	26	2782	10/31/86	PERMIT ISSUED	02/23/87 RNW N
MULTNOMAH	NORTHWEST MARINE IRN WRKS	26	3101	08/09/83	PERMIT ISSUED	02/23/87 Y
WASHINGTON	THOMAS JUNIOR HIGH SCHOOL	34	2573	11/25/86	PERMIT ISSUED	02/23/87 RNW N
WASHINGTON	TEKTRONIX, INC	34	2678	11/28/86	PERMIT ISSUED	02/23/87 RNW N

TOTAL NUMBER QUICK LOOK REPORT LINES

27

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

February 1987
(Month and Year)

PERMIT ACTIONS COMPLETED

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

Indirect Sources

Washington	Hall Boulevard Commercial Site, 789 Spaces, File No. 34-8616	02/27/87	Final Permit Issued
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Washington	The Lakes 495 Spaces, File No. 34-8617	02/20/87	Final Permit Issued
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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit)	February 1987 (Month and Year)
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PLAN ACTIONS COMPLETED - 17

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

MUNICIPAL WASTE SOURCES - 12

Tillamook	Netarts-Oceanside S.D. Harold Holmes Property	2-27-87	Provisional Approval
Douglas	Green Sanitary District Industrial Electric Bldg.	3-5-87	Provisional Approval
Coos	Bandon Face Rock Court	2-10-87	Provisional Approval
Curry	Brookings South Beach Improvement	3-6-87	Provisional Approval
Coos	Charleston Sanitary Dist. Phase II Sewer Project	3-6-87	Provisional Approval
Marion	Jefferson Outfall Relocation	2-11-87	Provisional Approval
Marion	Mt. Angel STP Improvements	2-10-87	Provisional Approval
Clackamas	Tri-City Svc District Gladstone Westside Sewer Separation	3-9-87	Comments to County
Clackamas	Tri-City Svc District Oregon City Separation Phase 1A	3-9-87	Provisional Approval
Clackamas	Tri-City Service District Oregon City Sewer Separation Phase 1B	3-9-87	Provisional Approval
Clackamas	Tri-City Service District Oregon City Separation Phase II	3-9-87	Provisional Approval
Clackamas	Tri-City Svc District Oregon City Separation, Phase III	3-9-87	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

February 1987
(Month and Year)

PLAN ACTIONS COMPLETED - 17

* County	* Name of Source/Project * /Site and Type of Same	* Date of * Action	* Action	*
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INDUSTRIAL WASTE SOURCES - 5

Lane	Forrest Paint Company Groundwater Monitoring Wells	2-2-87	Approved	
Benton	Hewlett-Packard Co. Spill Containment Facilities	2-26-87	Approved	
Benton	Hewlett-Packard Co. Secondary Containment Pipe & Chemical Resistant Coating	2-26-87	Approved	
Clackamas	Consolidated Metco, Inc. Metal Pretreatment	2-3-87	Approved	
Umatilla	Readymix Sand & Gravel Modification of Wastewater Treatment Facility	2-24-87	Approved	

Summary of Actions Taken
On Water Permit Applications in FEB 87

9 MAR 87

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				1	9			1		1	8		5	10				
RW				1									1	1				
RWO	2	4		40	28		1			22	14		50	36				
MW										1			2					
MWO	2	2		5	7					1	5		8	3				
Total	4	6		47	44		1	1		25	27		66	50		230	173	29
Industrial																		
NEW		2	3	4	10	22			2	2	3	26	7	12	6			
RW	1			1			1			1			1					
RWO	2	2		27	12		3	1		19	10		20	11				
MW										1								
MWO			1	5	1	4	1		1	10		4	3	2	3			
Total	3	4	4	37	23	26	5	1	3	33	13	30	31	25	9	165	131	350
Agricultural																		
NEW					1									1				
RW																		
RWO				1	1					1	1			1				
MW																		
MWO																		
Total				1	2					1	1			2		2	11	56
Grand Total	7	10	4	85	69	26	6	2	3	59	41	30	97	77	9	397	315	435

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

It does include applications pending from previous months and those filed after 28-FEB-87.

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	SUB-TYPE	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
<u>General: Cooling Water</u>								
IND	100	GEN01 MWO	32665/B	MENASHA CEDAR CORPORATION	COOS BAY	COOS/SWR	27-FEB-87	31-DEC-90
<u>General: Oily Stormwater Runoff</u>								
IND	1300	GEN13 NEW	65589/A	OWENS-CORNING FIBERGLAS CORPORATION	PORTLAND	MULTNOMAH/NWR	12-FEB-87	31-JUL-88
IND	1300	GEN13 NEW	83550/A	SPECIAL ASPHALT PRODUCTS, INC.	PORTLAND	CLACKAMAS/NWR	24-FEB-87	31-JUL-88
<u>NPDES</u>								
IND	3862	NPDES MWO	70596/A	PORT OF PORTLAND	PORTLAND	MULTNOMAH/NWR	06-FEB-87	31-JUL-89
DOM	100284	NPDES RWO	90480/A	RAINBOW ROCK SERVICE ASSOCIATION, INC.	BROOKINGS	CURRY/SWR	18-FEB-87	31-DEC-91
IND	100285	NPDES RWO	9341/A	BOHEMIA INC	VAUGHN	LANE/WVR	18-FEB-87	31-JAN-92
IND	100286	NPDES RW	93450/A	WACKER SILTRONIC CORPORATION	PORTLAND	MULTNOMAH/NWR	18-FEB-87	31-JAN-92
IND	100287	NPDES RWO	9294/A	BOHEMIA INC	DRAIN	DOUGLAS/SWR	26-FEB-87	31-JAN-92
IND	100288	NPDES RWO	32854/A	GEORGIA-PACIFIC CORPORATION	COQUILLE	COOS/SWR	26-FEB-87	31-JAN-92
<u>WPCF</u>								
DOM	100281	WPCF NEW	100153/A	REDMOND SCHOOL DISTRICT	TUMALO	DESCHUTES/CR	06-FEB-87	30-SEP-91
IND	100283	WPCF RWO	90861/A	UNION PACIFIC RAILROAD COMPANY	HERMISTON	UMATILLA/ER	06-FEB-87	30-NOV-91

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

February 1987
(Month and Year)

SUMMARY OF SOLID AND HAZARDOUS WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	FY	Month	FY			
<u>General Refuse</u>							
New	-	2	-	3	-		
Closures	-	1	-	2	3		
Renewals	1	11	1	13	18		
Modifications	-	10	-	11	-		
Total	1	24	1	29	21	182	182
<u>Demolition</u>							
New	-	1	-	2	-		
Closures	-	-	-	-	-		
Renewals	-	1	-	-	2		
Modifications	-	2	-	3	-		
Total	-	4	0	5	2	13	13
<u>Industrial</u>							
New	-	4	-	8	6		
Closures	-	3	-	-	2		
Renewals	-	5	2	8	9		
Modifications	-	7	-	7	-		
Total	-	19	2	23	17	103	103
<u>Sludge Disposal</u>							
New	1	2	1	3	1		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	-		
Modifications	-	1	-	1	-		
Total	1	3	1	4	1	16	16
Total Solid Waste	2	50	4	61	41		

Hazardous Waste

Outputs currently under revision.

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

February 1987
(Month and Year)

PERMIT ACTIONS COMPLETED

#	County	#	Name of Source/Project /Site and Type of Same	#	Date of Action	#	Action	#
	Coos		Oregon Coast Sanitation, Inc. Beaver Hill Lagoon New septage lagoon		2/10/87		Letter authorization issued (for use of primary septage lagoon only).	
	Douglas		Sun Studs, Inc. Sun Studs Landfill Existing industrial waste landfill.		2/10/87		Permit renewed.	
	Lane		Georgia-Pacific Corp. Irving Road Existing industrial waste landfill.		2/19/87		Permit renewed.	
	Grant		Prairie City City of Prairie City Lndfl. Existing municipal waste landfill.		2/25/87		Permit renewed.	

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
06-FEB-87	PCB CONTAMINATED SOLIDS	PRIMARY SMELT NONFERROUS METAL	2.43 CU YD
06-FEB-87	ACTIVATED CARBON	OTHER AGRICULTURAL CHEMICALS	1.08 CU YD
18-FEB-87	PESTICIDE CONTAMINATED SOIL	RCRA SPILL CLEANUP	14 CU YD

3 Request(s) approved for generators in Idaho

03-FEB-87	CHROMIUM-HEX	NON-SUPERFUND SITE CLEANUP	0.41 CU YD
03-FEB-87	TRI-SODIUM PHOSPHATE	NON-SUPERFUND SITE CLEANUP	0.41 CU YD
03-FEB-87	EBONAL - SODIUM HYDROXIDE, SODIUM NITRATE, SODIUM NITRITE	NON-SUPERFUND SITE CLEANUP	2 CU YD
03-FEB-87	EBONAL - SODIUM HYDROXIDE, SODIUM NITRATE, SODIUM NITRITE	NON-SUPERFUND SITE CLEANUP	0.81 CU YD
03-FEB-87	CADMIUM CONTAMINATED SOLIDIFIED SLUDGE	NON-SUPERFUND SITE CLEANUP	8.37 CU YD
03-FEB-87	LEAD, IRON, CHROMIUM OXIDE, CHROME	NON-SUPERFUND SITE CLEANUP	0.81 CU YD
03-FEB-87	SODIUM HYDROXIDE	BUILDING PAPER & BOARD MILLS	1.35 CU YD
04-FEB-87	PCB CONTAMINATED CRUSHED DRUMS	MOTORS AND GENERATORS	1073 CU YD
04-FEB-87	PCB CONTAMINATED TRANSFORMERS	FEDERAL GOV'T	40 CU YD
06-FEB-87	PCB	ELECTRIC SERVICES	720 CU YD
06-FEB-87	PCB TRANSFORMERS	ELECTRIC SERVICES	1.08 CU YD
18-FEB-87	DEMOLITION DEBRIS	NON-SUPERFUND SITE CLEANUP	20 CU YD
18-FEB-87	LAB PACK - POISON B	ELEMENTARY & SECONDARY SCHOOLS	0.27 CU YD
18-FEB-87	LAB PACK - ORM-A	ELEMENTARY & SECONDARY SCHOOLS	0.27 CU YD
18-FEB-87	LAB PACK - ORM-E	ELEMENTARY & SECONDARY SCHOOLS	0.27 CU YD
18-FEB-87	LAB PACK - CORROSIVE	ELEMENTARY & SECONDARY SCHOOLS	0.27 CU YD

16 Request(s) approved for generators in Oregon

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
06-FEB-87	WASTE GRAPHITE	AIRCRAFT	500 CU YD
06-FEB-87	WASTE GRAPHITE SCRAPS	AIRCRAFT	500 CU YD
06-FEB-87	DEWATERED LIME SLUDGE	HW TREAT/STORE/DISPOSE FCLTY	1600 CU YD
06-FEB-87	PAINT, STAIN, VARNISH, ETC	HW TREAT/STORE/DISPOSE FCLTY	152 CU YD
06-FEB-87	LAB TESTING WASTE WATER	OTHER INDUS. ORGANIC CHEMICALS	0.54 CU YD
18-FEB-87	PCB	COLLEGES & UNIVERSITIES	2.7 CU YD
26-FEB-87	CONTAMINATED PLATING LINE TANK	PLATING & ANODIZING	120 CU YD

7 Request(s) approved for generators in Washington

26 Requests granted - Grand Total

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program
(Reporting Unit)

February, 1987
(Month and Year)

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated		Final Actions Completed		Actions Pending	
	<u>Mo</u>	<u>FY</u>	<u>Mo</u>	<u>FY</u>	<u>Mo</u>	<u>Last Mo</u>
Industrial/ Commercial	5	74	10	59	220	225
Airports			0	6	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit)	February, 1987 (Month and Year)
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FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Clackamas	Coo Sand Corporation, Clackamas	02/87	In Compliance
Clackamas	Diprofio Metal Fabrication Company, Milwaukie	02/87	In Compliance
Clackamas	Precision Castparts Corporation, Clackamas Plant	02/87	In Compliance
Clackamas	Stanley Hydraulic Tools, Milwaukie	02/87	In Compliance
Multnomah	Finkle Office Building/Tigard Electric, Portland	02/87	In Compliance
Multnomah	Hillside Body Shop Portland	02/87	In Compliance
Multnomah	Macken & Son Automotive, Inc. Portland	02/87	In Compliance
Multnomah	G. Rose Body Shop Portland	02/87	In Compliance
Multnomah	Ron Tonkin Chevrolet Portland	02/87	In Compliance
Washington	Morgan Staley, Sherwood	02/87	In Compliance

CIVIL PENALTY ASSESSMENTS
DEPARTMENT OF ENVIRONMENTAL QUALITY
1987

CIVIL PENALTIES ASSESSED DURING MONTH OF FEBRUARY, 1987:

<u>Name and Location of Violation</u>	<u>Case No. & Type of Violation</u>	<u>Date Issued</u>	<u>Amount</u>	<u>Status</u>
Genex Transportation Medford, Oregon	AQ-SWR-87-06 Failed to use vapor recovery equipment when unloading a gasoline truck.	2/10/87	\$150	Paid 2/19/87.

GB6517

February, 1987
DEQ/EQC Contested Case Log

<u>ACTIONS</u>	<u>LAST MONTH</u>	<u>PRESENT</u>
Preliminary Issues	0	0
Discovery	0	0
Settlement Action	4	2
Hearing to be scheduled	0	2
Department reviewing penalty	0	0
Hearing scheduled	2	0
HO's Decision Due	1	2
Briefing	0	0
Inactive	<u>4</u>	<u>4</u>
SUBTOTAL of cases before hearings officer.	11	10
HO's Decision Out/Option for EQC Appeal	0	1
Appealed to EQC	3	3
EQC Appeal Complete/Option for Court Review	0	0
Court Review Option Taken	0	0
Case Closed	<u>3</u>	<u>0</u>
TOTAL Cases	17	14

15-AQ-NWR-87-178 15th Hearing Section case in 1987 involving Air Quality Division violation in Northwest Region jurisdiction in 1987; 178th enforcement action in the Department in 1987.

\$ Civil Penalty Amount
 ACDP Air Contaminant Discharge Permit
 AGI Attorney General l
 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

CONTES.B

February 1987

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WAH CHANG	04/78	04/78		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	Current permit in force. Hearing deferred.
WAH CHANG	04/78	04/78		Prtys	03-P-WQ-WVR-78-2012-J NPDES Permit Modification	Current permit in force. Hearing deferred.
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.
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	Nulf appealed decision imposing \$300 civil penalty.

CONTES.T

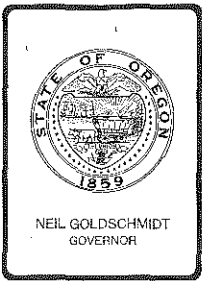
March 10, 1987

February 1987

DEQ/EQC Contested Case Log

<u>Pet/Resp Name</u>	<u>Hrng Rqst</u>	<u>Hrng Rfrl</u>	<u>Hrng Date</u>	<u>Resp Code</u>	<u>Case Type & No.</u>	<u>Case Status</u>
VANDERVELDE, ROY	06/06/86	06/10/86	11/06/86	<u>Resp.</u>	05-WQ-WVR-86-39 \$5,500 Civil Penalty	<u>Decision affirming penalty issued 2/19/87.</u>
MALLORIE'S DAIRY, INC.	09/08/86	09/08/86	11/24/86	<u>Prtys</u>	07-WQ-WVR-86-91 WPCF Permit violations \$2,000 Civil Penalty	<u>Settlement effort unsuccessful. Hearing to be continued.</u>
MALLORIE'S DAIRY, INC.	09/08/86	09/08/86	11/24/86	<u>Prtys</u>	08-AQOB-WVR-86-92 \$1,050 Civil Penalty	<u>Hearing to be continued.</u>
MONTEZUMA WEST	10/09/86	10/09/86		<u>Prtys</u>	10-HW-SWR-86-46	Settlement action.
M & W FARMS, INC.		12/28/86	02/20/87	<u>Hrgs</u>	12-AQ-FB-86-11 \$300 civil penalty	<u>Decision due.</u>
RICHARD KIRKHAM dba, WINDY OAKS RANCH		01/07/87	03/04/87	<u>Hrgs</u>	1-AQ-FB-86-08 \$680 civil penalty	<u>Decision due.</u>

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Environmental Quality Commission

811 SW SIXTH AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission
From: Director
Subject: Agenda Item C, April 17, 1987, 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:

<u>Appl.</u> <u>No.</u>	<u>Applicant</u>	<u>Facility</u>
T-1840	Portland General Electric	Replacement of PCB-filled capacitors
T-1860	PP&L Dairy Substation	Oil spill containment system
T-1862	PP&L Eastside Substation	Oil spill containment system
T-1865	PP&L Henley Substation	Oil spill containment system
T-1866	PP&L Henry St. Substation	Oil spill containment system
T-1867	PP&L Lincoln Substation	Oil spill containment system
T-1871	PP&L Power Operations Headquarters	Oil spill containment system
T-1872	Carl Fenk	Manure control system

2. Revoke Pollution Control Facility Certificate No. 1123 issued to CPEX Pacific, Inc. and reissue the same certificate to Chevron Chemical Company. The company was purchased by Chevron in December of 1986. (Letters attached).
3. Revoke Pollution Control Facility Certificates 1031 and 1359, issued to Smurfit Newsprint Corporation and reissue the same certificates to Willamina Lumber Company. Smurfit sold four of their lumber manufacturing divisions on December 31, 1986. (Letters attached).

Fred Hansen

EQC Agenda Item C
April 17, 1987
Page 2

Proposed April 17, 1987 Totals:

Air Quality	\$ -0-
Water Quality	510,314.76
Hazardous/Solid Waste	-0-
Noise	-0-
	<u>510,314.76</u>

1987 Calendar Year totals not including Tax Credits certified at this EQC meeting.

Air Quality	\$ 131,118.63
Water Quality	288,570.69
Hazardous/Solid Waste	61,564.00
Noise	-0-
	<u>481,253.32</u>

S. Chew:p
(503) 229-6484
March 25, 1987
MP461

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 distribution lines throughout Oregon.

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

2. Description of Facility

The project consists of the replacement and disposal of PCB filled pole mounted capacitors. Each unit was replaced with a capacitor filled with non-PCB insulating oil.

Claimed Facility Cost: \$ 447,284.97
(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 July 23, 1985 less than 30 days before installation commenced on July 29, 1985. The application was reviewed by DEQ staff and the applicant was notified that the application was complete and that installation could commence.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Installation of the facility was substantially completed on December 12, 1985 and the application for final certification was found to be complete on January 30, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. Although this project may ultimately reduce PGE's liability for spill cleanup, 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 equipment replacement to eliminate the potential of PCB releases to the environment.

In accordance with federal law the use of PCB capacitors outside restricted-access electrical substations is prohibited after October 1, 1988. The applicant has replaced approximately 206 pole mounted capacitors with non-PCB units at various locations in Clackamas, Columbia, Marion, Multnomah, Polk, Washington and Yamhill Counties. The PCB units were removed and, as required by federal regulations, sent to an EPA approved incinerator in Arkansas for final destruction.

- b. Analysis of Eligible Costs

ORS 340-16-030(2) lists five factors which must be considered in establishing the percent of the pollution control facility cost allocable to pollution control.

Factor (a), the extent to which the facility is used to recover and convert waste products into a salable or usable commodity is not applicable here since there is no waste conversion.

Factor (b), the estimated annual percent return on investment in the facility, would result in 100 percent allocable, if used, since there is no return on investment. Because these capacitors are like for like replacement, there is no benefit to PGE's overall return on investment other than the early equipment replacement. In this case the use of other factors would be more applicable since they accurately reflect the gain to PGE from installation of the new capacitors.

Factor (c), alternative methods, equipment and costs for achieving the same pollution control objective, is not applicable since no alternatives to replacement of the capacitors have been identified.

Factor (d), related savings or increase in costs which occur or may occur as a result of the installation of the facility is the most appropriate factor to use in this case.

Factor (e), other factors which are relevant in establishing the portion of the facility cost properly allocable to pollution control, is not applicable since there are no other factors.

PGE does realize some savings from the project. Since the useful life of capacitors is about 27 years and the average age of the replaced capacitors was 16 years the applicant benefitted by obtaining new electrical distribution equipment.

The costs associated with this project are for labor, overhead, equipment and PCB treatment. The Department viewed the costs for PCB treatment as fully allocable for pollution control, but prorated the labor, overhead, and equipment costs based on the average years of remaining life (11 years). The portion of the facility cost that is allocable for pollution control is calculated as follows:

PCB incineration	\$ 33,924.60
Labor (11/27 x 31,178.13)	12,689.50
Overhead (11/27 x 170,830.85)	69,528.16
Includes construction supervision, engineering, accounting	
Equipment (11/27 x 211,351.39)	<u>86,020.02</u>
	202,162.28

$$\$202,162.28 / \$447,284.97 = 0.451 \text{ or } 45\%$$

In accordance with OAR 340-16-030(4), the portion of costs properly allocable for pollution control must be in increments of one percent.

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 equipment replacement or redesign to eliminate the potential for toxic releases to the environment.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 45%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$447,284.97 with 45% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1840.

MC:p
MP488
March 31, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates an electrical substation (Dairy Substation) in Klamath Falls, Oregon.

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

2. Description of Facility

The facility described in this application is an oil spill containment system consisting of an oil/water separator with an oil stop valve, and a concrete slab with 6 inch high perimeter curbs.

Claimed Facility Cost: \$10,335.10

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 September 13, 1985 less than 30 days before construction commenced on September 19, 1985. 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 September 27, 1985 and the application for final certification was found to be complete on December 4, 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 control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

The Dairy Substation is located adjacent to an irrigation ditch in Klamath Falls. Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with requirements of the federal government, the applicant installed oil spill containment facilities around the transformers. A concrete slab with a 6 inch curb was poured around the perimeter of the existing transformer foundations to direct any oil leakage through a new oil/water separation sump. With this system in place, all drainage from the transformer area is controlled prior to entering the irrigation ditch.

b. Analysis of Eligible Costs

There is no return on investment from this facility. One hundred percent (100%) of the facility cost is 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 principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution and accomplishes this purpose by containing 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 \$10,335.10 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1860.

L.D. Patterson:c
WC1714
(503) 229-5374
March 13, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates an electrical substation (Eastside Substation) in Klamath Falls, Oregon.

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

2. Description of Facility

The facility described in this application is an oil spill containment system consisting of an oil/water separator with an oil stop valve, and a concrete slab with 6 inch high perimeter curbs.

Claimed Facility Cost: \$9,222.89

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 September 13, 1985 less than 30 days before construction commenced on September 16, 1985. 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 September 20, 1985 and the application for final certification was found to be complete on December 4, 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 control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

The Eastside Substation is located adjacent to the Link River in Klamath Falls. Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with requirements of the federal government, the applicant installed oil spill containment facilities around the transformers. A concrete slab with a 6 inch curb was poured around the perimeter of the existing transformer foundations to direct any oil leakage through a new oil/water separation sump. With this system in place, all drainage from the transformer area is controlled prior to entering the Link River.

b. Analysis of Eligible Costs

There is no return on investment from this facility. One hundred percent (100%) of the facility cost is 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 principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution and accomplishes this purpose by containing 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 \$9,222.89 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1862.

L.D. Patterson:c
WC1715
(503) 229-5374
March 13, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates an electrical substation (Henley Substation) in Klamath Falls, Oregon.

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

2. Description of Facility

The facility described in this application is an oil spill containment system consisting of an oil/water separator with an oil stop valve, and a concrete slab with 6 inch high perimeter curbs.

Claimed Facility Cost: \$12,106.85

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 June 11, 1984, more than 30 days before construction commenced on November 24, 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 December 14, 1984 and the application for final certification was found to be complete on December 4, 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 control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

The Henley Substation is located adjacent to an irrigation ditch in Klamath Falls. Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with requirements of the federal government, the applicant installed oil spill containment facilities around the transformers. A concrete slab with a 6 inch curb was poured around the perimeter of the existing transformer foundations to direct any oil leakage through a new oil/water separation sump. With this system in place, all drainage from the transformer area is controlled prior to entering the irrigation ditch.

b. Analysis of Eligible Costs

There is no return on investment from this facility. One hundred percent (100%) of the facility cost is 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 principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution and accomplishes this purpose by containing 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 \$12,106.85 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1865.

L.D. Patterson:c
WC1716
(503) 229-5374
March 13, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates an electrical substation (Henry Steet Substation) in Coquille, Oregon.

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

2. Description of Facility

The facility described in this application is an oil spill containment system consisting of an oil/water separator with an oil stop valve, and a concrete slab with 6 inch high perimeter curbs.

Claimed Facility Cost: \$12,146.15

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 May 22, 1984, more than 30 days before construction commenced on November 25, 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 December 7, 1984 and the application for final certification was found to be complete on December 4, 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 control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

The Henry Street Substation is located adjacent to a city storm drain in Coquille. Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with requirements of the federal government, the applicant installed oil spill containment facilities around the transformers. A concrete slab with a 6 inch curb was poured around the perimeter of the existing transformer foundations to direct any oil leakage through a new oil/water separation sump. With this system in place, all drainage from the transformer area is controlled prior to entering the storm ditch.

b. Analysis of Eligible Costs

There is no return on investment from this facility. One hundred percent (100%) of the facility cost is 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 principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution and accomplishes this purpose by containing 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 \$12,146.15 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1866.

L.D. Patterson:c
WC1717
(503) 229-5374
March 13, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates an electrical substation (Lincoln Substation) in Portland, Oregon.

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

2. Description of Facility

The facility described in this application is an oil spill containment system consisting of an oil/water separator with an oil stop valve, and site grading and excavation.

Claimed Facility Cost: \$4,991.21

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 August 16, 1984 more than 30 days before construction commenced on November 24 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 December 7, 1984 and the application for final certification was found to be complete on December 4, 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 control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

The Lincoln Substation is located adjacent to a city storm drain in Portland. Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with requirements of the federal government, the applicant installed oil spill containment facilities. The site was graded to direct plant site runoff towards existing substation storm drains. An oil/water separation sump was installed in the existing storm sewer at the edge of the property site. With this system in place, all drainage from the transformer area is controlled prior to entering the City of Portland's storm sewer.

b. Analysis of Eligible Costs

There is no return on investment from this facility. One hundred percent (100%) of the facility cost is 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 principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution and accomplishes this purpose by containing 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 \$4,991.21 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1867.

L.D. Patterson:c
WC1718
(503) 229-5374
March 13, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates an electrical equipment storage yard (Power Operations Headquarters) in Albany, Oregon.

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

2. Description of Facility

The facility described in this application is an oil spill containment system consisting of two oil/water separators with oil stop valves, and paving.

Claimed Facility Cost: \$5,441.59

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 October 19, 1984 more than 30 days before construction commenced on April 5, 1985.
- 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 25, 1985 and the application for final certification was found to be complete on December 4, 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 control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

The Power Operations Headquarters is located adjacent to a city storm drain in Albany. Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with requirements of the federal government, the applicant installed oil spill containment facilities. The electrical equipment storage yard was paved and sloped towards two newly installed oil/water separation sumps. With this system in place, all drainage from the yard area is controlled prior to entering the City of Albany storm sewer. The paving also prevents groundwater and soil contamination.

b. Analysis of Eligible Costs

There is no return on investment from this facility. One hundred percent (100%) of the facility cost is 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 principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution and accomplishes this purpose by containing 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 \$5,441.59 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1871.

L.D. Patterson:c
WC1719
(503) 229-5374
March 13, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Carl Fenk
11420 Chance Road
Tillamook, OR 97141

The applicant owns and operates a dairy farm in Tillamook, Oregon.

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

2. Description of Facility

The facility is a manure control system consisting of a 20' diameter x 7.5' high liquid storage tank.

Claimed Facility Cost: \$8,786.00
(Accountant's Certification was provided).

The Accountant certified a facility cost of \$8,786.00. The U.S. Department of Agriculture Stabilization and Conservation Service reimbursed the applicant \$3,986.00. This amount will be subtracted by the applicant from the amount of tax credit for which he is eligible when he files his State Income Tax form.

3. 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 June 4, 1984 more than 30 days before construction commenced on September 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 November 11, 1986 and the application for final certification was found to be complete on January 23, 1987 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 control a substantial quantity of water pollution.

This control is accomplished by elimination of industrial waste as defined in ORS 468.700. Industrial waste includes liquid and solid substances which may cause pollution of the waters of the state.

The applicant has conducted a phased program for the control of manure wastes at the dairy. Prior to installation of control facilities manure was spread on land throughout the year, which frequently resulted in these materials entering Tillamook Bay via local ditches. In 1984, two covered dry storage areas were constructed to reduce the need for winter application of these wastes on land. The new liquid manure tank was installed to collect and hold a small volume of liquid seepage from the dry storage facilities. This has eliminated seepage losses of manure wastes, and has allowed manure application to land during the drier summer months.

This application only pertains to the new liquid manure storage tank. A Pollution Control Facility Certificate has already been issued for the dry storage facilities. The small volume of liquids collected annually and spread on land provides no return on investment. It should be understood that manure was spread on land prior to installation of the control facilities. The timing of the land application can now be controlled to minimize contamination of storm runoff. The sole purpose of this facility is to control wastes from the farm operation to reduce the contamination of the Tillamook Bay Drainage Basin.

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

b. Analysis of Eligible Costs

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

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 control a substantial quantity of water pollution and accomplishes this purpose by the 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 \$8,786.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1872.

L.D. Patterson:c
WC1720
(503) 229-5374
March 13, 1987

State of Oregon
Department of Environmental Quality

REISSUANCE OF POLLUTION CONTROL FACILITY CERTIFICATION

1. Certificates issued to:

CPEX, Inc.
63149 Columbia River Highway
P.O. Box 810
St. Helens, OR 97051-0810

The Certificate was issued for an air pollution control facility.

2. Summation:

In 1980, the EQC issued a Pollution Control Facility Certificate to Reichhold Chemicals. On December 12, 1986, the certificate was reissued to CPEX, Inc. Since that time, CPEX Pacific sold its Nitrogen Products Business, including the manufacturing facility in St. Helens, to Chevron Chemical Company (December 29, 1986). The Department has been notified by letter of the transaction and Chevron has requested that Tax Credit Certificate No. 1123 be reissued under the Chevron name.

3. Director's Recommendation:

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

S. Chew:p
229-6484
March 25, 1987
MP461.A



Chevron Chemical Company

63149 Columbia River Hwy., St. Helens, Oregon

Mail Address: P.O. Box 810, St. Helens, OR 97051

Fertilizer Division

397.2225

February 9, 1987

POLLUTION CONTROL FACILITY
TAX CREDIT CERTIFICATE NO. 1123

DEPARTMENT OF ENVIRONMENTAL QUALITY

ATTN: Ms. Sherry Chew

522 S.W. 5th

Portland, OR 97204

We request that the subject Certificate issued to CPEX Pacific, Inc., be transferred to Chevron Chemical Company. The tax credit application number is T 1241.

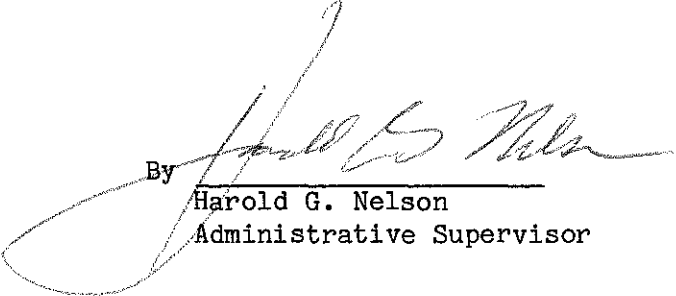
Chevron Chemical Company purchased the Nitrogen Products Business, including the manufacturing facility at St. Helens, from CPEX Pacific, Inc. on December 29, 1986. The manufacturing plant includes the urea prill tower pollution abatement system, and it has been in continuous use at the same site since 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,

K. E. Eimer
Plant Manager

By


Harold G. Nelson
Administrative Supervisor

HGN:lc

cc: L. A. Harrison



P.O. BOX 800
AMARILLO, TEXAS 79105
TELEPHONE (806) 371-8800

Ms. Sherry Chew
State of Oregon
Department of Environmental Quality
522 S.W. 5th Avenue
Box 1760
Portland, OR 97207

Management Services Div.
Dept. of Environmental Quality

RECEIVED
FEB 23 1987

February 9, 1987

Dear Ms. Chew,

This concerns the attached Pollution Control Facility Certificate #1123 issued to CPEX Pacific, Inc. on December 12, 1986 pursuant to application #T-1241. Please be advised that on December 29, 1987, CPEX Pacific, Inc. sold the facility covered by this certificate to Chevron Chemical Company.

Very truly yours,
CEPEX, INC.

A handwritten signature in cursive script that reads 'A. Burt Davis'.

A. Burt Davis
Senior Vice President

cc: Harold Nelson

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Cert. No. 1123
 Date First Issued August 15, 1980
 Date Reissued December 12, 1986
 Appl. No. 1-1241

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: CPEX Pacific, Inc. 63149 Columbia River Highway PO Box 810 St. Helens, OR 97051-0810	Location of Pollution Control Facility: On North Columbia River Highway (U.S. 30) three miles north of St. Helens, Oregon
As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner	
Description of Pollution Control Facility: Scrubber system to control particulate emissions from the urea piling (drying) tower.	
Type of Pollution Control Facility: <input checked="" type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil	
Date Pollution Control Facility was completed: <u>March 1979</u> Placed into operation: <u>May 23, 1979</u>	
Actual Cost of Pollution Control Facility: \$ <u>857,646.00</u>	
Percent of actual cost properly allocable to pollution control: <p style="text-align: center;">80 percent or more</p>	

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.

NOTE: THIS IS A REISSUED CERTIFICATE VALID ONLY FOR THE TIME REMAINING FROM THE DATE OF FIRST ISSUANCE.

Signed James E. Petersen
 Title James E. Petersen, Chairman

Approved by the Environmental Quality Commission on
 the 12th day of December, 19 86

State of Oregon
Department of Environmental Quality

REISSUANCE OF POLLUTION CONTROL FACILITY CERTIFICATION

1. Certificates issued to:

Smurfit Newsprint Corp.
4000 Kruse Way Place
Lake Oswego, OR 97034

The Certificates were issued for solid waste and water pollution control facilities.

2. Summation:

In 1979 and 1981 the EQC issued pollution control facility certificates 1031 and 1359 to Publishers Paper Company.

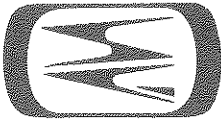
In 1986, the facilities were purchased and the certificates were reissued to Smurfit Newsprint Corp.

Willamina Lumber Company (an affiliate of Hampton Industries) then purchased two of Smurfit's lumber manufacturing facilities in December of 1986. They have requested that the tax credit associated with the acquisition be reissued under their name.

3. Director's Recommendation:

It is recommended that Certificate Numbers 1031 and 1359 be revoked and reissued to Willamina Lumber Co., the certificate to be valid only for the time remaining from the date of the first issuance.

S. Chew:p
229-6484
March 25, 1987
MP461.B



SMURFIT NEWSPRINT CORPORATION

427 MAIN STREET, OREGON CITY, OR 97045 503/650-4211

February 3, 1987

Ms. Sherry Chew
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

Dear Ms. Chew:

Smurfit Newsprint Corporation sold four lumber manufacturing divisions to two different buyers on December 31, 1986. After tax year 1986, Smurfit will not claim the pollution control tax credits associated with these mills.

The companies which purchased the mills presumably will request reassignment of the credits to their names. The Tillamook and Toledo divisions were purchased by Hampton Industries, Inc., and the Clackamas and Molalla divisions were purchased by RSG Forest Products.

Tax credit certification information for the four mills is given below. Certificate No. 861* (Tillamook scrubber) will expire after the 1986 tax year, so a transfer is unnecessary.

<u>Division</u>	<u>Facility</u>	<u>Certif. No./Date</u>	<u>Certified Cost</u>
*Tillamook	Wet Scrubber for Hog Fuel Boiler	861/12-16-77	\$133,682
Tillamook	Turbine Generator	1031/12-14-79	\$1,988,718
Toledo	Dip Tank	1359/12-4-81	\$68,711
Clackamas	Dip Tank	1883/1-31-86	\$50,220
Molalla	Dip Tank	1772/12-14-84	\$87,272

Please call if you have questions.

Respectfully submitted,

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

RAS:kr

cc: Hampton Industries, Inc.
RSG Forest Products
J. Lamb
F. Ostlund
F. Viteznik

WILLAMINA LUMBER COMPANY

Phone 297-7691

Oregon Area Code 503

Telex 36-0355

9400 S. W. BARNES RD. • PORTLAND, OR. 97225

400 SUNSET BUSINESS PARK

March 24, 1987

Ms. Sherry Chew
Department of Environmental Quality
811 S.W. 6th Avenue
Portland, OR 97204

Dear Ms. Chew:

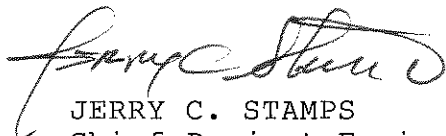
Willamina Lumber Company recently purchased the Smurfit Newsprint operations in Toledo and Tillamook, Oregon. I would like to request reassignment of the tax credits as follows:

<u>Division</u>	<u>Facility</u>	<u>Cert. No./Date</u>	<u>Certified Cost</u>
Tillamook	Turbine - Generator	1031/12-14-79	\$1,988,718
Toledo	Dip Tank	1359/12-14-81	\$68,711

Please call me if you have any questions.

Sincerely,

WILLAMINA LUMBER COMPANY



JERRY C. STAMPS
Chief Project Engineer

JCS:vls

Management Services Div.
Dept. of Environmental Quality

RECEIVED
MAR 25 1987



A HAMPTON AFFILIATE

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Cert. No. 1031
Date First Issued 12/14/79
Date Reissued 10/24/86
Appl. No. T-1112

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Smurfit Newsprint Corporation 4000 Kruse Way Place Lake Oswego, OR 97034	Location of Pollution Control Facility: 3111 Third Street Tillamook, Oregon
As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner	
Description of Pollution Control Facility: Electrical generating facility, including a turbine generator, cooling tower, boiler modifications and related equipment and modifications.	
Type of Pollution Control Facility: <input type="checkbox"/> Air <input type="checkbox"/> Noise <input type="checkbox"/> Water <input checked="" type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil	
Date Pollution Control Facility was completed: December 21, 1978 Placed into operation: December 21, 1978	
Actual Cost of Pollution Control Facility: \$1,988,718.00	
Percent of actual cost properly allocable to pollution control: One hundred percent	

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.

NOTE: THIS IS A REISSUED CERTIFICATE VALID ONLY FOR THE TIME REMAINING FROM THE DATE OF FIRST ISSUANCE.

Signed James E. Petersen
 Title James E. Petersen, Chairman

Approved by the Environmental Quality Commission on
 the 24th day of October 1986.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Cert. No. 1359
Date First Issued 12/4/81
Date Reissued 10/24/86
Appl. No. T-1461

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: Smurfit Newsprint Corporation 4000 Kruse Way Place Lake Oswego, OR 97034	Location of Pollution Control Facility: Toledo, Oregon
As: <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Owner	
Description of Pollution Control Facility: The facility is a pentachlorophenate solution dip tank and control system with a slop tank, a sloped concrete slab, and a metal roof.	
Type of Pollution Control Facility: <input type="checkbox"/> Air <input type="checkbox"/> Noise <input checked="" type="checkbox"/> Water <input type="checkbox"/> Solid Waste <input type="checkbox"/> Hazardous Waste <input type="checkbox"/> Used Oil	
Date Pollution Control Facility was completed: October 1981 Placed into operation: October 1981	
Actual Cost of Pollution Control Facility: \$ 68,711.00	
Percent of actual cost properly allocable to pollution control: 30 percent 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.

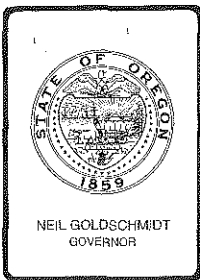
NOTE: THIS IS A REISSUED CERTIFICATE VALID ONLY FOR THE TIME REMAINING FROM THE DATE OF FIRST ISSUANCE.

Signed James E. Petersen

Title James E. Petersen, Chairman

Approved by the Environmental Quality Commission on

the 24th day of October, 1986.



Environmental Quality Commission

811 SW SIXTH AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item D, April 17, 1987, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Amendments to Rules Concerning Hazardous Waste Management Fees, OAR 340-102-065, and 340-105-113.

Background

During the Department's current budget period, fiscal years 1985-87, the Department's hazardous waste program suffered a revenue shortfall of approximately \$550,000. The Department took immediate steps to temporarily fix the problem. However, it was clear that other measures would be necessary to provide a long-term solution.

An Advisory Committee made up of representatives from the regulated industries in Oregon was appointed to review the overall hazardous waste program and recommend an approach for long-term funding of the program, including solutions for addressing the 1985-87 revenue shortfall. The advisory committee looked at the required activities and effort necessary to maintain an authorized state program and also evaluated other aspects of a good hazardous waste program for Oregon. The committee found that the current Department program was understaffed and underfunded to adequately cover the demands of the program. The committee agreed that in addition to a strong regulatory program, it was important to provide education and technical assistance on hazardous waste management to the public and the regulated community. The committee looked at funding options for a comprehensive program and recommended a more balanced funding approach. They agreed that there should be increases in the fees paid by generators of hazardous waste and by facilities that treat, store or dispose of hazardous waste. They also felt that an increase in state general funds was warranted. Historically, the program has received almost no general fund support and has primarily been funded by federal grant money and industry paid fees. The committee recommended an increase in general fund support for the program. These recommendations are included in the Department's proposed budget for fiscal years 1988 and 1989 and in the attached proposed amendments to the existing fee schedules in OAR 340102-065 and 340-105-113.

Another issue concerning hazardous waste fees is the current inconsistency between the fees listed in Divisions 105 and 120 of the Department's rules. The permit application processing fees described in OAR 340-105-113 have been superseded by the more recent fees in OAR 340-120-030, which were adopted pursuant to ORS 466.045 (Senate Bill 138, 1985 Legislature). To maintain consistency and to avoid confusion, OAR 340-105-113 needs to be updated to include the fees in Division 120.

In addition to these needs, the Department wishes to take this opportunity to change the units of measure by which hazardous waste generator fees are calculated, to be consistent with the units used in other sections of the hazardous waste rules. These changes do not affect the overall ratio of waste volume to the amount of fee. The Department also wants to clarify the manner in which hazardous waste generation rates are determined for purposes of calculating fees.

The Department requests authorization to conduct a public hearing on these proposed amendments. The Commission is authorized to adopt hazardous waste management rules by ORS 466.020 and to adopt hazardous waste fees by ORS 466.165 and 466.215.

Discussion

The proposed rule amendments are intended to address three basic issues: increasing compliance determination fees to relieve a revenue shortfall, clarifying the rules concerning hazardous waste permit application fees, to insure proper implementation of Senate Bill 138 as passed by the 1985 Legislature, and clarifying the rules concerning waste volume calculations for assessing fees for hazardous waste generators. These issues are discussed separately below.

A. Compliance Determination Fee Increase:

The Department's hazardous waste program is very costly to administer: it covers a broad range of activities and the rules are very detailed and complex. Also, as a result of amendments to the federal program in November 1984, EPA has been developing and adopting new regulations at a rapid rate. Concurrent with this expansion, federal funding of state programs has been decreasing. A change in EPA's allocation formula and passage of the Gramm-Rudman Bill by Congress resulted in a reduction in federal funds during fiscal years 1985-87. This reduction in funds is expected to continue, based on discussions with EPA.

Another important factor which contributed to the shortfall was that the Department had underestimated the magnitude of the federal requirements for program authorization. In 1985, an audit of the Department's program, by EPA, was very critical, particularly in the areas of compliance, enforcement and permit issuance. Based on the Department's own evaluation and the comments in the EPA audit, a decision was made to try to overcome their deficiencies by temporarily shifting funds and expending more effort in the areas identified by EPA. Failure to make these immediate program changes and associated increased spending could have resulted in the state being denied final authorization to manage the federal hazardous waste program.

Last year's shortfall was overcome by a permanent transfer of two staff positions and their associated funding from the Solid Waste Program to the Hazardous Waste Program. Also, additional dollars were made available by holding vacant positions in hazardous waste and

other programs, and transferring these funds to the critical areas in the hazardous waste program. These actions handicapped the Department in several program areas, but were deemed necessary to obtain final authorization. However, this was only a temporary solution. The Department must find a permanent funding source to replace the decreased federal funds and must continue this increased level of performance required by EPA for program authorization. It was to this end that the above referenced advisory committee comprised of industry representatives was appointed. A copy of the committee's membership list is attached.

The committee evaluated the Department's program and determined that the budget should not be balanced by reducing program spending. In fact, the committee recommended that the program be expanded in the areas of compliance assurance and technical assistance. The committee also recommended that the Department seek additional state General Funds and that fees be increased as the Department is now proposing.

The committee's proposal includes splitting the existing compliance determination fees for generators and management facilities into base and graduated components. The fixed base fee reflects the basic oversight cost to the Department of any hazardous waste handling activity, irrespective of the amount of waste generated or managed. The graduated component reflects the added costs of overseeing larger, more complex operations. These fees increase with the amount of waste generated or managed.

In summary, the proposed amendments would:

1. Establish a new, fixed, base component of the annual compliance determination fees for generators and for hazardous waste treatment, storage and disposal facilities. The fee would be \$100 annually for generators \$500 annually for treatment and storage facilities, and \$1,000 annually for disposal facilities (See note below).
2. Establish new, base and graduated annual compliance determination fees for hazardous waste treatment, storage and disposal facilities undergoing closure.
3. Increase the existing graduated component of the compliance determination fees for hazardous waste treatment and storage facilities by 25 to 40 percent, depending upon the size of the facility (See note below).
4. Increase the graduated component of the annual compliance determination fees for hazardous waste generators by 22 to 100 percent, depending upon the amount of waste generated. Generators of no more than 2,200 lbs. of waste per year would continue to be exempt from such fees.

Note: The Commission adopted fee increases for hazardous waste disposal sites, in December 1986, which incorporated the committee's recommendations. Today's proposed action displays the fees for disposal sites in a new format, but does not impose any further increases in fees.

B. Correction of Permit Processing Fee Inconsistencies:

In 1985, the Legislature passed Senate Bill 138, concerning siting and permitting requirements for hazardous waste and PCB treatment and disposal facilities. The portion of that bill concerning permit application processing fees for new and existing facilities has been codified as ORS 466.045.

On April 25, 1986, the Commission incorporated the requirements of SB 138 into Division 120 of the Department's rules. Rule 340-120-030 incorporates the fee requirements of ORS 466.045. These fees and the manner in which they are assessed are substantially different than the existing permit application processing fees in OAR 340-105-113. The Department did not propose to amend OAR 340-105-113 when Division 120 was adopted. Because other fee related rule changes were under consideration at that time, a decision was made to postpone the amendment of rule 340-105-113, until a complete fee amendment package could be proposed. Today's action fulfills that intent.

The current differences between rules 340-105-113 and 340-120-030 can be summarized as follows:

1. New Facilities:

Rule 340-105-113 provides for fixed fees, ranging from \$150 to \$5,000, depending upon the type of facility.

Rule 340-120-030 provides for variable fees. A fee of \$70,000 must initially be paid for any new facility, regardless of type. However, the Department must refund to the applicant any portion of the fee that is not expended in the Department's review and processing of the application.

2. Existing Facilities:

Rule 340-105-113 provides for fixed fees, ranging from \$50 to \$5,000, depending upon the type of facility.

Rule 340-120-030 provides for graduated fees, which are assessed in the same manner as for new facilities (see above). However, for existing facilities, the initial fee is \$50,000.

In implementing these new requirements, the Department will be required to closely monitor expenditures associated with particular permit applications. Any unspent monies will be refunded. However, it is the Department's belief that

expenditures will substantially exceed the amount of the proposed fees, in most cases and that refunds will be uncommon.

The fees in OAR 340-105-113 are superseded by those in OAR 340-120-030. The fees in OAR 340-120-030 are taken directly from the statute and clearly reflect the intent of the 1985 Legislature. For this reason, and to avoid confusion, the Department proposes to revise the fee schedule in OAR 340-105-113 as follows:

1. The fixed permit application processing fees in OAR 340-105-113 are proposed to be deleted and replaced with the variable fees described in OAR 340-120-030, including the initial fees of \$70,000 for new facility permits and \$50,000 for existing facility permits. Note: In cases where an applicant can demonstrate financial need, the Department intends to allow the payment of this fee in installments, over a reasonable period of time.
2. The fixed, non-refundable application filing fee of \$50 in OAR 340-105-113 is proposed to be retained, to offset the Department's clerical costs in receiving the application. These costs are incurred even if an application is withdrawn before detailed staff review and processing has begun. Such fees are assessed in each of the Department's other permit programs as well.
3. The listing of various types of facilities in OAR 340-105-113 is proposed to be simplified. However, the Department proposes to retain separate listings for treatment, storage and disposal facilities and for disposal sites undergoing closure, to be consistent with current hazardous waste permitting rules.

The Commission will note that there are currently no fees associated with permit issuance for hazardous waste storage facilities. On December 12, 1986, the Commission temporarily deleted those fees on the recommendation of the state's Legislative Counsel Committee. This committee had determined that statutory authority for such fees was unclear. At the Department's request, Senate Bill 116 has been introduced in the 1987 Legislature. Among other things, it would amend ORS 466.045 to confirm this authority. If Senate Bill 116 is passed into law, the Department intends to return to the Commission and restore the permit application fees for hazardous waste storage facilities.

Senate Bill 138, and therefore Division 120 of the Department's rules, do not address post-closure permits for disposal sites. Accordingly, the Department is not proposing to amend the manner in which post-closure permit processing fees are assessed. The amount of the fees for such permits is proposed to be increased to the level required for other permits, but the provision for refunding unspent monies is not proposed. The

effort and expertise required to process post-closure permits is expected to be the same as that required to process operating permits.

C. Clarification of Hazardous Waste Generation Rates for Determining Fees

The current schedule of fees for hazardous waste generators, in OAR 340-102-065, lists the fees in terms of the volume of waste generated (i.e., cubic feet per year). However, other requirements are based upon the weight of the waste generated.

Under the new federal rules, generators of less than 220 lbs. per month of hazardous waste are essentially exempt from regulation. Also, generators of between 220 and 2,200 lbs. of waste per month are subject to requirements and fees that are different than those for generators of more than 2,200 lbs. per month.

To be consistent, the Department proposes to change the units of measurement for generator fees from cubic feet per year to pounds per year. These changes do not affect the overall ratio of the amount of waste generated to the amount of fee. In addition, to avoid possible confusion in the regulated community about which wastes should and should not be counted when determining generation rates, the Department proposes to add new sections to OAR 340-102-065, which specifically identify the types of waste to be counted or not counted.

Summation

1. The Department's hazardous waste program is currently suffering a revenue shortfall of approximately \$550,000 for the biennium. An advisory committee on program funding has recommended an approach for overall funding of the program. Included in their recommendations were fee increases to offset this shortfall. The recommended increase for hazardous waste disposal sites was adopted by the Commission in December 1986.
2. With the passage of Senate Bill 138 by the 1985 Legislature, the permit application processing fees in Divisions 105 of the Department's hazardous waste management rules have been superseded. The fees in Division 120 prevail and those in Division 105 should be amended accordingly.
3. There is currently inconsistency in the rules concerning the units of measure upon which fees and other requirements are determined. Also, the Department believes a better explanation is needed regarding how waste generation rates are calculated.
4. The Department has drafted amendments to rules concerning hazardous waste management fees, OAR 340-102-065 and 340-105-113, to address these concerns. Authorization to conduct a public hearing on these proposals is requested.
5. The Commission is authorized to adopt hazardous waste management rules by ORS 466.020 and to adopt hazardous waste fees by ORS 466.165 and 466.215.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission authorize a public hearing, to take testimony on the proposed amendments to rules concerning hazardous waste management fees, OAR 340-102-065 and 340-105-113.



Fred Hansen

- Attachments I. Funding Task Force Membership List
- II. Statement of Need for Rulemaking
- III. Statement of Land Use Consistency
- IV. Draft Hearing Notice
- V. Draft Rules, OAR 340-102-065 and 340-105-113

Bill Dana
ZF1821
229-6015
March 19, 1987

Attachment I
Agenda Item
4/17/87 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.

ZF1821.1

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Amending) Statement of Need for Rule
OAR 340-102-065, 340-105-110) Amendment and Fiscal and
and OAR 340-105-113) Economic Impact.

1. Statutory Authority

ORS 466.165 provides that fees may be required of hazardous waste generators and of owners and operators of hazardous waste treatment, storage 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.

ORS 466.045 sets limits on permit application processing fees for new and existing hazardous waste treatment and disposal sites and establishes the manner in which such fees are to be assessed.

ORS 466.020 requires the Commission to adopt rules pertaining to generators of hazardous waste and to facilities for the treatment, storage and disposal of hazardous waste (TSD facilities). ORS 466.215 provides that the Commission may by rule establish a post-closure permit application fee.

2. Statement of Need

Fee increases are needed to offset a current biennial revenue shortfall of approximately \$550,000 in the Department's hazardous waste program. The shortfall is the result of cuts in federal funding and federal program requirements which have resulted in increased spending. The proposed fee increases have been recommended by an advisory committee comprised of industry representatives.

The other amendments that are proposed are for purposes of clarification.

3. Principal Documents Relied Upon

- a. Oregon Revised Statutes, Chapter 466
- b. Oregon Administrative Rules, Chapter 340, Divisions 105 and 120.

4. Fiscal and Economic Impact

The proposal would amend the existing annual compliance determination fees for generators of hazardous waste and for owners and operators of hazardous waste TSD facilities. Currently, the fees for generators vary from zero to \$5,000 annually, depending upon the volume of waste

Attachment II
Agenda Item
4/17/87 EQC Meeting

generated. The fees for TSD facilities range from \$250 to 200,000 annually depending upon the size and type of facility. Under the proposed new rules, the fees would have both a fixed and a graduated component.

The proposed fixed, base fees would be \$100 annually for generators \$500 annually for treatment and storage facilities and \$1,000 annually for disposal facilities, including facilities undergoing closure.

The proposed graduated fees would range from zero to \$6,250 annually for generators and from \$350 to \$199,000 annually for TSD facilities.

The recommended fee increases for hazardous waste disposal sites, except for facilities undergoing closure, were adopted by the Environmental Quality Commission on December 12, 1986. No further fee increases are proposed at this time.

Application processing fees for disposal site post-closure permits are proposed to be increased from \$2,500 to \$70,000 for new permits and from \$800 to \$50,000 for permit reissuance. These are the amounts authorized by the Legislature for the issuance and reissuance of other types of hazardous waste facility permits.

The other proposed rule changes are for clarification only and will have no economic impact.

ZF1821.2

Attachment III
Agenda Item
4/17/87 EQC Meeting

Before the Environmental Quality Commission
of the State of Oregon

In the Matter of Amending) Land Use Consistency
OAR 340-102-065, and)
340-105-113)

The proposed rule amendments do not affect land use as defined in the Department's coordination program approved by the Land Conservation and Development Commission.

ZF1821.3

A CHANCE TO COMMENT ON...

Proposed Amendments to the Hazardous Waste Fee Rules
OAR 340-102-065 and 340-105-113

Date Prepared: Mar 20, 1987
Hearing Date: May 19, 1987
Comments Due: May 19, 1987

**WHO IS
AFFECTED:**

Persons who manage hazardous waste, including generators, and owners and operators of hazardous waste treatment, storage and disposal facilities (TSD facilities).

**WHAT IS
PROPOSED:**

The Department of Environmental Quality (DEQ) proposes to amend rules concerning hazardous waste fees, OAR 340-102-065 and 340-105-113. The amendments are necessary to offset a current biennial revenue shortfall of \$550,000 and to clarify certain fee related issues.

**WHAT ARE THE
HIGHLIGHTS:**

- o Establishes a new, fixed component to the annual compliance determination fees for generators of hazardous waste and for TSD facilities.
- o Increases the existing graduated component of the annual compliance determination fees for hazardous waste generators by 22 to 100 percent, depending upon the amount amount of waste generated. Generators of no more than 2,200 lbs. of waste per year would continue to be exempt from this fee.
- o Increases the existing graduated component of the annual compliance determination fee for hazardous waste treatment and storage facilities by 25 to 40 percent, depending upon the size of the facility.
- o Establishes new annual compliance determination fees for hazardous waste TSD facilities undergoing closure.
- o Clarifies discrepancies between the existing rules pertaining to permit application processing fees in OAR 340-105-113 and those in OAR 340-120-030 and increases the application processing fees for disposal into post-closure permits.
- o Changes the units of measure used to calculate hazardous waste generator fees from cubic feet per year to pounds per year.



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

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.

- o Clarifies the manner in which waste generation rates are determined for purposes of calculating fees.

**HOW TO
COMMENT:**

A Public Hearing is schedule for:

9:00 a.m.
Tuesday, May 19, 1987
DEQ's Portland Office
811 S.W. Sixth Avenue
4th Floor Conference Room

Written comments should be submitted at the public hearing or sent to DEQ, Hazardous and Solid Waste Division, Attn: Bill Dana, 811 S.W. 6th, Portland, Oregon 97204, by May 19, 1987.

**WHAT IS THE
NEXT STEP:**

After the public hearing, DEQ will evaluate the comments, prepare a response to comments and make a recommendation to the Environmental Quality Commission in July 1987. The Commission may adopt the amendments as proposed, adopt modified amendments as a result of the testimony received or decline to adopt any amendments.

For more information, or to receive a copy of the proposed rule amendments, call Bill Dana at (503) 229-6015 or toll-free at 1-800-452-4011 in the State of Oregon.

ZF1821.4

1. Rule 340-102-065 is proposed to be amended as follows:

340-102-065 (1) Beginning July 1, 1984, each person generating hazardous waste shall be subject to an annual fee based on the [volume] weight of hazardous waste generated during the previous calendar year. The fee period shall be the state's fiscal year (July 1 through June 30) and shall be paid annually by July 1[, except that for fiscal year 1985 the fee shall be paid by January 1, 1985].

(2) For the purpose of determining appropriate fees, each hazardous waste generator shall be assigned to a category in Table 1 of this Division based upon the amount of hazardous waste generated in the calendar year identified in section (1) of this rule except as otherwise provided in section (5) of this rule.

Table 1

Hazardous Waste Generation Rate [(cu.ft./year)]	(lbs./year)	Base Fee	Graduated Fee	Total Fee [(dollars)]
[< ± 35]	<2,200	\$100	No Fee	[No Fee] \$100
[35-99]	2,201 - 6,200	100	200	\$100 ... 300
[100-499]	6,201 - 31,100	100	450	[350].... 550
[500-999]	31,101 - 62,300	100	775	[625].... 875
[1,000-4,999]	62,301 - 312,000	100	1,875	[1500].... 975
[5,000-9,999]	312,001 - 624,000	100	4,375	[350]... 4,475
[>10,000]	>624,000	100	6,250	[5000].. 6,350

(3) For the purpose of determining appropriate fees, hazardous waste [that is used, reused, recycled or reclaimed] shall be included in the quantity determinations required by section (1) of this rule as follows:

(a) Except as provided in subsection (b) of this section, all quantities of "listed" and "characteristic" hazardous waste shall be counted that are:

- (A) Accumulated on-site for any period of time prior to subsequent management;
- (B) Packaged and transported off-site;
- (C) Placed directly in a regulated on-site treatment or disposal unit; or
- (D) Generated as still bottoms or sludges and removed from product storage tanks.

(b) Hazardous wastes shall not be counted that are:

- (A) Specifically excluded from regulation under 40 CFR 261.4 or 261.6;
- (B) Continuously reclaimed on-site without storage prior to reclamation. (Note: Any residues resulting from the reclamation process, as well as spent filter materials, are to be counted);
- (C) Managed in an elementary neutralization unit, a totally enclosed treatment unit, or a wastewater treatment unit;

(D) Discharged directly to a publicly-owned wastewater treatment works, without first being stored or accumulated (Note: Any such discharge must be in compliance with applicable federal, state and local water quality regulations); or

(E) Already counted once during the calendar month, prior to being recycled.

(4) In order to determine annual hazardous waste generation rates, the Department [intends to] may use generator quarterly reports required by rule 340-102-041; treatment, storage and disposal reports required by rule 340-104-075; [and] information derived from manifests required by 40 CFR 262.20, and any other relevant information. [For wastes reported in the units of measure other than [cubic feet] pounds, the Department will use the following conversion factors: [1.0 cubic feet = 7.48 gallons = 62.4 pounds = 0.03 tons (English) = 0.14 drums (55 gallon).] 1.0 pound = 0.016 cubic feet = 0.12 gallons = 0.0005 tons (English) = 0.0022 drums (55 gallon).

(5) Owners and operators of hazardous waste treatment, storage and disposal facilities shall not be subject to the fees required by section (1) of this rule for any wastes generated as a result of storing, treating or disposing of wastes upon which an annual hazardous waste generation fee has already been paid. Any other wastes generated by owners and operators of treatment, storage and disposal facilities are subject to the fees required by section (1) of this rule.

(6) All fees shall be made payable to the Department of Environmental Quality.

2. Rule 340-105-113 is proposed to be amended as follows:

340-105-113 (1) Filing Fee. A filing fee of \$50 shall accompany each application for issuance, [renewal] reissuance 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 or Authorization to Proceed request, if such a request is required under OAR 340-120-005. For all applications except those for disposal site post-closure permits, any portion of the application processing fee for a treatment and disposal facility which exceeds the Department's expenses in reviewing and processing the application shall be refunded to the applicant. 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)] permit:
- (A) Storage facility \$ No Fee
 - (B) Treatment facility [- Recycling]. [150] 70,000
 - [(C) Treatment facility - other than incineration 250
 - (D) Treatment facility - incineration 500]

- (C) [(E)] Disposal facility [5,000] 70,000
- (F) Disposal facility - post closure [2,500] 70,000

(b) Permit [Renewal] Reissuance:

- (A) Storage facility No Fee
- (B) Treatment facility [- recycling]. [50] 50,000
- [(C) Treatment facility - other than
incineration 75
- (D) Treatment facility - incineration 175]
- (C) [(E)] Disposal facility [5,000] 50,000
- (D) [(F)] Disposal facility - post closure [800] 50,000

(c) Permit Modification - [Changes to Performance/Technical Standards] major:

- (A) Storage facility No Fee
- (B) Treatment facility [- recycling]. 50
- [(C) Treatment facility - other than
incineration 75
- (D) Treatment facility - incineration 175]
- (C) [(E)] Disposal facility 1,750
- (D) [(F)] Disposal facility - post closure 800

(d) Permit Modification - [All Other Changes not Covered by (2)(c)] Minor:

All Categories, except storage facilities25

[(e) Permit Modifications - Department Initiated . . . No Fee]

(3) Annual Compliance Determination Fee. Except as provided in rule 340-105-110(5), [(in any case where a facility fits into more than one category, the permittee shall pay only the highest fee[])] as follows:

	<u>Base Fee</u>	<u>Graduated Fee</u>	<u>Total Fee</u>
(a) Storage facility:			
(A) 5-55 gallon drums or 250 gallons total or 2,000 pounds	<u>\$500</u>	<u>\$350</u>	[250] <u>850</u>
(B) 5 to 250 - 55 gallon drums or 250 to 10,000 gallons total or 2,000 to 80,000 pounds	<u>500</u>	<u>1,250</u>	[1,000] <u>1,750</u>
(C) >250 - 55 gallon drums or >10,000 gallons total or >80,000 pounds	<u>500</u>	<u>3,000</u>	[2,500] <u>3,500</u>
<u>D) Closure</u>	<u>500</u>	<u>1,000</u>	<u>1,500</u>
(b) Treatment Facility:			
(A) <25 gallons/hour or 50,000 gallon/day or 6,000 pounds/day	<u>500</u>	<u>350</u>	[250] <u>850</u>
(B) 25-200 gallons/hour or 50,000 to 500,000 gallons/day or 6,000 to 60,000 pounds/day	<u>500</u>	<u>1,250</u>	[1,000] <u>1,750</u>
(C) >200 gallons/hour or >500,000 gallons/day or >60,000 pounds/day . . .	<u>500</u>	<u>3,000</u>	[2,500] <u>3,500</u>

Attachment V
 Agenda Item
 4/17/87 EQC Meeting

	<u>(D) Closure</u>	<u>500</u>	<u>3,000</u>	<u>3,500</u>	
(c)	Disposal Facility:				
	(A) <750,000 cubic feet/year or <37,500 tons/year	<u>1,000</u>	<u>99,000</u>	100,000	
	(B) 750,000 to 2,500,000 cubic feet/year or 37,500 to 125,000 tons/year . . .	<u>1,000</u>	<u>149,000</u>	150,000	
	(C) >2,500,000 cubic feet/year or >125,000 tons/year	<u>1,000</u>	<u>199,000</u>	200,000	
	<u>(D) Closure</u>	<u>1,000</u>	<u>5,000</u>	<u>6,000</u>	
(d)	Disposal Facility - Post Closure:				
	All categories	<u>1,000</u>	<u>5,000</u>	[5,000]	<u>6,000</u>



Environmental Quality Commission

811 SW SIXTH AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item E, April 17, 1987, EQC Meeting

Proposed Adoption Of Amendments To The State Implementation Plan (OAR 340-20-047) Consisting Of Changes By Lane Regional Air Pollution Authority To Their Permit Fees.

Background

In March of 1986, the Commission authorized the Lane Regional Air Pollution Authority (LRAPA) to set permit fees different than the state's (DEQ) fees. This action was taken to allow LRAPA to recover a larger percentage of the actual costs of administering their permit program as a means of dealing with the uncertainty of funding from local governments.

LRAPA has recently raised their permit fees by an average of 17.5%. The new fee schedule will collect about \$53,000 per year; the old fee schedule collected about \$45,500 per year, compared to the \$68,000 per year cost of the permit program. The new LRAPA fees are nearly the same as the proposed new DEQ air permit fees (see Agenda Item G, March 13, 1987, EQC Meeting). The greatest differences are where LRAPA will charge \$350 more than DEQ for an Application Processing fee for a rendering plant and \$435 more for an Annual Compliance Determination fee for a pulp mill. LRAPA has some slight differences in fees compared to DEQ because of slightly different priorities and emphasis in compliance assurance work, and higher level of service to local industries.

Problem

LRAPA's permit program is a necessary part of the State Implementation Plan (SIP). Because LRAPA's permit fee schedule is part of LRAPA's permit program rule, it also became part of the SIP. Since LRAPA has changed their permit fee schedule, it is desirable to incorporate the new permit fee schedule into the SIP to maintain consistency of SIP rules and LRAPA rules.

Authority for the Commission to act is detailed in a Rulemaking Statement, Attachment (1).

Alternatives and Evaluation

NO ACTION The Commission could take no action. EPA would probably not be concerned with the inconsistency of LRAPA's new permit fees and LRAPA's old permit fees contained in the SIP. Since LRAPA has the authority to set fees different than the equivalent DEQ fees, and since they have already changed their rules, they would continue to administer these new fees if the Commission does not incorporate the new fees into the SIP.

ADOPT LRAPA RULES AS PART OF THE SIP The Commission could adopt the revised LRAPA rule, Attachment 2, into the SIP. Then the new fees will become recognized by both the state and federal agencies and the SIP will be consistent with the LRAPA rules.

Rulemaking Process

At its October 24, 1986 meeting, the Commission authorized the Director to designate LRAPA to act as hearings officer for the Commission on future LRAPA SIP revisions.

In a November 12, 1986 letter, the Department authorized the LRAPA Board of Directors to be a hearings officer for the revised permit fee rule. The Department had previously reviewed the revised permit fee rules and found them reasonable.

The notice of public hearing for this rule was advertised in three Lane County newspapers more than 30 days before the hearings.

On November 16, 1986, the LRAPA Board of Directors held the necessary hearing. The testimony and the staff response to that testimony is shown in the Hearing Report, (Attachment 3). The rule was adopted by LRAPA and forwarded to the Commission, recommending that the Commission adopt the rule into the SIP.

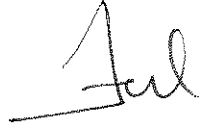
Summation

1. The Commission has authorized LRAPA to set permit fees different than the State DEQ fees.
2. LRAPA has changed their permit rule increasing fees an average of 17.5%. These changes make LRAPA permit fees only very slightly different than proposed new DEQ permit fees.
3. After being authorized to act as the Commission's hearings officer for LRAPA amendments to the SIP, the LRAPA Board of Directors held a legal hearing on December 16, 1986, took testimony, then adopted their revised permit fees.

4. LRAPA has requested that the Commission adopt the LRAPA Permit Fee rule as an amendment to the SIP.

Director's Recommendation

Based on the Summation, it is recommended that the Commission adopt the revised LRAPA permit fee rules as an amendment to the State Implementation Plan.



Fred Hansen

- Attachments
1. Rulemaking Statements
 2. LRAPA Rule: Title 34 Fee Schedule
 3. Hearings Report on Fee Schedule

P. B. Bosserman:d
AA6017
229-6278
April 2, 1987

RULEMAKING STATEMENTS

for

Lane Regional Air Pollution Authority Rules Related
to Air Contaminant Discharge Permits

Pursuant to ORS 183.335, these statements provide information on the intended action to amend a rule.

STATEMENT OF NEED:

Legal Authority

This proposal amends OAR 340-20-047. It is proposed under authority of ORS 468.305, 468.020, 468.065, 468.535 and 468.565.

Need for the Rule

The permit fee table needs to be adjusted for two reasons. First, the current table contains some inequities among source categories which will be eliminated in the new table, distributing the cost of the program more accurately according to staff time required for each category. Second, the LRAPA Board of Directors desires to increase the cost-recovery for LRAPA's permit activities as a means to help stabilize funding for the agency.

Principal Documents Relied Upon

LRAPA Title 34, "Permits".

FISCAL AND ECONOMIC IMPACT STATEMENT:

Most holders of Air Contaminant Discharge Permits in Lane County would pay higher fees. The overall increase is 17.5 percent, and the amount of increase per source category depends upon whether the category was increased or decreased in the first part of the process.

LAND USE CONSISTENCY STATEMENT:

The proposed rule appears not to affect land use and appears to be consistent with the Statewide Planning Goals.

With regard to Goal 6 (air, water, and land resources quality) the rules are designed to enhance and preserve air quality in the affected area and are considered consistent with the goal.

The proposed rules maintain local control over development and land use as described in applicable land use plans in Lane County.

Goal 11 (public facilities and services) is deemed unaffected by the rule. The rule does not appear to conflict with other goals.

Public comment on any land use issue involved is welcome and may be submitted in the same fashions as are indicated for testimony in this notice.

It is requested that local, state, and federal agencies review the proposed action and comment on possible conflicts with their programs affecting land use and with Statewide Planning Goals within their expertise and jurisdiction.

The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflict brought to our attention by local, state, or federal authorities.

AA5699

LANE REGIONAL AIR POLLUTION AUTHORITY

TITLE 34

Air Contaminant Discharge Permits

Section 34-001 General Policy and Discussion

In order to restore and maintain Lane County air quality in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the County, it is the policy of the Lane Regional Air Pollution Authority to require a permit to discharge air contaminants from certain sources. As a result, no person shall construct, install, establish, modify, enlarge, develop, or operate an air contaminant source listed in Section 34-025 (Table A), without first obtaining a permit from the Authority to discharge air contaminants. In addition, for those sources not listed in Section 34-025 (Table A) which have emissions of air contaminants, the Director may require registration with the Authority.

Section 34-005 Definitions

All relevant definitions for this title can be found with the general definitions listed in Title 14.

Section 34-010 General Procedures for Obtaining Permits

1. Any person intending to construct, install, or establish a new source, renew an expired permit, modify an existing source with substantial changes to the process or emission control equipment, or increase the emissions of air contaminants beyond allowable rates established by regulation or permit shall submit a completed application on forms provided by the Authority and containing the following information:
 - A. Name, address, and nature of business;
 - B. A description of the production processes and a related flow chart;
 - C. A plot plan showing location of all air contaminant sources, all discharge points, and the surrounding residential and commercial property;
 - D. Type and quantity of fuels used;
 - E. Amount, nature, and duration of all emissions of air contaminants;
 - F. Estimated efficiency of air pollution control equipment;
 - G. Other pertinent information required by the Authority.
2. Within fifteen (15) days after receiving the permit application, the Authority will review the application to determine the adequacy of the information submitted:

- A. If the Authority determines that additional information is needed, it will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within ninety (90) days of the request.
 - B. If, in the opinion of the Director, additional measures are necessary to gather facts regarding the application, the Director will notify the applicant of his intent to institute said measures and the timetable and procedures to be followed. The application will not be considered complete for processing until the necessary additional fact-finding measures are completed.
 - C. When the information in the application is deemed adequate, the applicant will be notified that the application is complete for processing.
 - D. If, upon review of an application, the Authority determines that a permit is not required, the Authority shall notify the applicant in writing of this determination. Such notification shall constitute final action by the Authority on the application.
 - E. Following determination that it is complete for processing, each application will be reviewed on its own merits, in accordance with the provisions of all applicable statutes, rules and regulations of the State of Oregon and the Lane Regional Air Pollution Authority.
3. In the event the Authority is unable to complete action on an application within forty-five (45) days after notification that the application is complete for processing, the applicant shall be deemed to have received a temporary or conditional permit. Caution should be exercised by the applicant under a temporary or conditional permit since it will expire upon final action by the Authority to grant or deny the original application, and since such temporary or conditional permit does not authorize any construction, activity, operation, or discharge which will violate any of the laws, rules, or regulations of the State of Oregon or the Lane Regional Air Pollution Authority.
 4. If the Authority proposes to issue a permit, proposed provisions prepared by the Authority will be forwarded to the applicant for comment. The Authority shall issue public notice of its intent to issue an air contaminant discharge permit. The public notice shall allow thirty (30) days for written comment from the applicant, the public, and interested local, state, and federal agencies prior to issuance of the permit.
 5. After thirty (30) days have elapsed since the date of mailing of the proposed provisions and the issuance of public notice, the Authority may take final action on the application for a permit. The Authority may adopt or modify the proposed provisions or recommend denial of a permit. In taking such action, the Authority shall consider the comments received regarding the proposed provisions and any other information obtained which may be pertinent to the application being considered.
 6. The Authority shall promptly notify the applicant in writing of the final action taken on his application. If the conditions of the permit issued are different from the proposed provisions forwarded to the applicant for review, the notification shall include the reasons for the changes made. A copy of the permit issued shall be attached to the notification.

7. If the applicant is dissatisfied with the conditions or limitations of any permit issued by the Authority, he may request a hearing before the Board of Directors or its authorized representative. Such a request for hearing shall be made in writing to the Director within twenty (20) days of the date of mailing of the notification of issuance of the permit. Any hearing held shall be conducted pursuant to the rules of the Authority.
8. If the Authority proposes to deny issuance of a permit, it shall notify the applicant by registered or certified mail of the intent to deny and the reasons for denial. The denial shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the applicant requests a hearing. Such a request for a hearing shall be made in writing and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the Rules of the Authority.
9. Permits issued by the Authority will specify those activities, operations, emissions and discharges which are permitted, as well as requirements, limitations and conditions which must be met.
10. No permit will be issued to an air contaminant source which is not in compliance with applicable rules, unless a compliance schedule is made a condition of the permit.
11. Each permit proposed to be issued or revised by the Authority shall be submitted to the Department of Environmental Quality at least thirty (30) days prior to the proposed issuance date.
12. A copy of each permit issued, modified, or revoked by the Authority pursuant to this section shall be promptly submitted to the Department.
13. A flow chart which summarizes the general procedures for air contaminant discharge permit issuance is contained in Figure 1 of this title.
14. The Authority may waive the procedures prescribed in these rules and issue special permits of duration not to exceed sixty (60) days from the date of issuance for unexpected or emergency activities, operations, emissions or discharges. Said permits shall be properly conditioned to insure adequate protection of property and preservation of public health, welfare and resources, and shall include provisions for compliance with applicable emissions standards of the Authority. Application for such permits shall be in writing and may be in the form of a letter which fully describes the emergency and the proposed activities, operations, emissions or discharges, as described in Section 34-010-1.
15. The Authority may institute modification of a permit due to changing conditions or standards, receipt of additional information, or other reason, by notifying the permittee by registered or certified mail of its intention to modify the permit. Such notification shall include the proposed modification and the reasons for modification. The modifications shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the permittee requests a hearing. Such a request for hearing shall be made in writing, and the hearing shall be conducted pursuant to the rules of the Authority. A copy of the modified permit shall be forwarded to the permittee as soon as the modification becomes effective. The existing permit shall remain in effect until the modified permit is issued.

34-015 Special Permit Categories

1. Minimal Source Permits

- A. The Lane Regional Air Pollution Authority may designate any source as a "minimal source" based upon the following criteria:
 - (1) Quantity and quality of emissions;
 - (2) Type of operation;
 - (3) Compliance with Authority regulations;
 - (4) Minimal impact on the air quality of the surrounding region.
- B. If a source is designated as a minimal source, the compliance determination fee, provided by Section 34-025, will be collected in conjunction with plant site compliance inspections which will occur every five (5) years.

2. Multiple Source Permits

- A. When a single site includes more than one air contaminant source, a single permit may be issued including all sources located at the site. Such applications shall separately identify by subsection each air contaminant source.
- B. When an individual air contaminant source, which is included in a multiple-source permit, is subject to permit modification, revocation, suspension, or denial, such action by the Authority shall only affect that individual source without thereby affecting any other source subject to that permit.

3. Letter Permits

- A. Any source listed in Section 34-025 with no, or insignificant, air contaminant discharges may apply to the Authority for a letter permit.
- B. The determination of applicability of this letter permit shall be made solely by the Authority.
- C. If issued a letter permit, the application processing fee and/or annual compliance determination fee, provided by Section 34-025 may be waived by the Authority.

34-020 Permit Duration

- 1. The duration of permits may vary, but shall not exceed ten (10) years. The expiration date will be recorded on each permit issued.
- 2. Air Contaminant Discharge Permits issued by the Authority shall be automatically terminated:
 - A. Within sixty (60) days after sale or exchange of the activity or facility which requires a permit;

- B. Upon change in the nature of activities, operations, emissions or discharges from those of record in the last application;
 - C. Upon issuance of a new, renewal or modified permit for the same operation; or
 - D. Upon written request of the permittee.
3. In the event that it becomes necessary to suspend or terminate a permit due to non-compliance with the terms of the permit, unapproved changes in operation, false information submitted in the application, or any other cause, the Authority shall notify the permittee by registered or certified mail of its intent to suspend or revoke the permit. Such notification shall include the reasons for the suspension or revocation. The suspension or revocation shall become effective twenty (20) days from the date of mailing of such notice unless, within that time, the permittee requests a hearing. Such a request for hearing shall be made in writing and shall state the grounds for the request.
 4. If the Authority finds that there is a serious danger to the public health or safety or that irreparable damage to a resource will occur, it may suspend or terminate a permit, effective immediately. Notice of such suspension or termination must state the reasons for action and advise the permittee that he may request a hearing. Such a request for hearing shall be made in writing within ninety (90) days of the date of suspension and shall state the grounds for the request.
 5. Any hearing requested under this Section shall be conducted pursuant to the Rules of the Authority.

Section 34-025 Fees

1. All persons applying for a permit shall at the time of application pay the following fees:
 - A. A filing fee of \$75;
 - B. An application processing fee; and
 - C. An annual compliance determination fee.

The compliance determination fee may be waived when applying for an existing permit modification. The application processing fee may be waived on permit renewals. Both of these fees may be waived when applying for letter permits.
2. The fee schedule contained in the listing of air contaminant sources in this section shall be applied to determine the permit fees on a standard industrial classification (SIC) basis.
3. Applications for multiple-source permits received pursuant to Section 34-015 shall be subject to a single \$75 filing fee. The application processing fee and annual compliance determination fee for multiple-source permits shall be equal to the total amounts required by the individual source involved, as listed in this section.

4. Modifications of existing, unexpired permits which are instituted by the Authority due to changing conditions or standards, receipt of additional information, or any other reason pursuant to applicable statutes, and which do not require refiling or review of an application or plans and specifications shall not require submission of the filing fee or the application processing fee.
5. The annual compliance determination fee shall be paid at least thirty (30) days prior to the start of each subsequent permit year. Failure to remit the annual compliance determination fee on time shall be considered grounds for not issuing a permit or for terminating an existing permit.
6. If a permit is issued for a period of less than one year, the applicable annual compliance determination fee shall be equal to the full annual fee. If a permit is issued for a period greater than twelve (12) months, the applicable annual compliance determination fee shall be prorated by multiplying the annual compliance fee by the number of months covered by the permit and dividing by twelve (12).
7. If a temporary or conditional permit is issued in accordance with adopted procedures, fees submitted with the application shall be applied to the regular permit when it is granted or denied.
8. All fees shall be made payable to the Authority.
9. Table A in this Section lists all air contaminant sources required to have a permit and the associated fee schedule.

Section 34-030 Source Emission Tests

1. Upon request of the Director, the person responsible for a suspected source of air contaminants shall make or have made a source test and shall submit a written report to the Director which describes the nature and quantity of air contaminants emitted, the specific operating conditions when the test was made, and other pertinent data which the Director may require. The source shall be evaluated at maximum operating capacities.
2. All sampling and testing shall be conducted in accordance with the methods approved by the Authority.
3. The Director may conduct tests of emissions of air contaminants from any source, and may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature and quantity of air contaminants which are emitted as a result of operation of the source. Upon request, the Director shall supply a copy of the test results to the person responsible for the source of air contaminant emissions.

Section 34-035 Upset Conditions

1. Emissions exceeding any of the limits established in these rules may not be deemed to be in violation of these rules, if they were caused as a direct result of upset conditions in or breakdown of any operating equipment which was unavoidable and which was not caused or contributed to through careless or unsafe operation, or as a direct result of the shutdown of such equipment for scheduled maintenance, if the requirements of this section are met.

2. If the Director determines that the excessive emissions are harmful to the public health or welfare, they will be deemed to be in violation of these rules.
3. Each such occurrence shall be reported to the Director as soon as reasonably possible but at least within four (4) hours of the occurrence of the breakdown or upset condition.
4. The person responsible for the source of excessive emissions shall, with all practicable speed, initiate and complete appropriate actions to correct the conditions causing the excessive emissions. Upon request of the Director, that person shall submit a full written report to the Director of the occurrence, the known causes, and the actions taken to mitigate the emissions and meet the requirements of this section.
5. No later than forty-eight (48) hours after the start of an upset condition or breakdown, the person responsible for the source of excessive emissions shall discontinue operation of the equipment or facility causing the excess emissions. The Director may, for demonstrated good cause which includes but is not limited to equipment availability, difficulty of repairs, and nature and quantity of emissions, authorize an extension of operation beyond the 48-hour period.
6. For scheduled maintenance which will produce excessive emissions, a report shall be submitted at least twenty-four (24) hours prior to shutdown and contain the following information:
 - A. Identification of the specific facilities to be taken out of service;
 - B. Statement of the nature and quantity of emissions of air contaminants likely to occur during the shutdown period;
 - C. Identification of the measures that will be taken to minimize the length of the shutdown period and minimize air contaminant emissions. If mitigating measures are impractical, reasons acceptable to the Director must be given.
7. Scheduled maintenance which will produce excessive emissions is subject to subsection 2 of this section and shall occur, to the extent practicable, during periods of good atmospheric ventilation.

Section 34-040 Records

The Director may from time to time require owners or operators of air contaminant emission sources to maintain records of, and periodically report to the Authority, information on the nature and quantity of emissions and other such information deemed by the Director to be necessary to determine whether or not such sources are in compliance with the rules of the Authority.

Section 34-045 Registration

For those air contaminant sources not listed in Table A of Section 34-025, the Director may require registration by the owner or operator of the source on forms provided by the Authority.

Section 34-050 Compliance Schedules for Existing Sources Affected by New Rules

1. No existing source of air contaminant emissions will be allowed to operate out of compliance with the provisions of new rules unless the owner or operator of that source first obtains a Board-approved compliance schedule which lists the steps being taken to achieve compliance and the final date when compliance will be achieved. Approval of a reasonable time to achieve compliance shall be at the discretion of the Board.
2. The owner or operator of any existing air contaminant source found by the Director to be in non-compliance with the provisions of new rules shall submit to the Board for approval a proposed schedule of compliance to meet those provisions. This schedule shall be in accordance with time tables contained in the new rules or in accordance with an administrative order by the Director. This schedule shall contain, as necessary, reasonable time milestones for engineering, procurement, fabrication, equipment installation and process refinement. This request shall also contain documentation of the need for the time extension to achieve compliance and the justification for each of the milestones indicated in the schedule.
3. Within one hundred and twenty (120) days of the submittal date of the request, the Board shall act to either approve or disapprove the request. A schedule for compliance becomes effective upon the date of the written order of the Board.
4. Compliance schedules of longer than eighteen (18) months' duration shall contain requirements for periodic reporting of progress toward compliance.
5. An owner or operator of an air contaminant source operating in non-compliance with these rules but under an approved compliance schedule, who fails to meet that schedule or make reasonable progress toward completion of that schedule, may be subject to enforcement procedures in accordance with these rules.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
1. Seed cleaning located in special control areas, commercial operations only (not elsewhere classified)	0723	120	225
2. Smoke houses with 5 or more employees	2013	120	160
3. Flour and other grain mill products in special control areas			
a) 10,000 or more tons per year	2041	380	440
b) Less than 10,000 tons per year	2041	300	190
4. Cereal preparations in special control areas	2043	380	315
5. Blended and prepared flour in special control areas			
a) 10,000 or more tons per year	2045	380	315
b) Less than 10,000 tons per year	2045	300	160
6. Prepared feeds for animals and fowl in special control areas			
a) 10,000 or more tons per year	2048	380	440
b) Less than 10,000 tons per year	2048	100	140
7. Beet sugar manufacturing	2063	500	2,185

Notes: 1. A filing fee of \$75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
8. Rendering plant			
a) 10,000 or more tons per year	2077	610	750
b) Less than 10,000 tons per year	2077	550	595
9. Coffee Roasting	2095	240	290
10. Sawmill and/or planing mill			
a) 25,000 or more board feet per shift	2421	150	280
b) Less than 25,000 board feet per shift	2421	100	210
11. Hardwood mills	2426	100	280
12. Shake and shingle mills	2429	100	105
13. Mill work with 10 employees or more	2431	140	280
14. Plywood manufacturing			
a) Greater than 25,000 square feet per hour (3/8" basis)	2435 & 2436	580	700
b) Less than 25,000 square feet per hour (3/8" basis)	2435 & 2436	450	525

- Notes:
1. A filing fee of \$75 is required for all sources.
 2. Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
15. Veneer manufacturing only (not elsewhere classified)	2435 & 2436	100	280
16. Wood preserving	2491	190	345
17. Particleboard manufacturing	2492	660	945
18. Hardboard manufacturing	2499	740	860
19. Battery seperator manufacturing	2499	120	635
20. Furniture and fixture manufacturing			
a) 100 or more employees	2511	180	345
b) 10 or more employees but less than 100 employees	2511	150	290
21. Pulp mills, paper mills, and paperboard mills	2611, 2621 & 2631	1,410	3,670
22. Building paper and building board mills	2661	240	290
23. Alkalies and chlorine manufacturing	2812	410	760

Notes: 1. A filing fee of \$75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
24. Calcium carbide manufacturing	2819	440	760
25. Nitric acid manufacturing	2819	290	380
26. Ammonia manufacturing	2819	290	440
27. Industrial inorganic and organic chemicals manufacturing (not elsewhere classified)	2819	370	525
28. Synthetic resin manufacturing	2819	280	415
29. Charcoal manufacturing	2861	550	1,220
30. Herbicide manufacturing	2879	730	3,800
31. Petroleum refining	2911	1,460	3,800
32. Asphalt production by distillation	2951	300	570
33. Asphalt blowing plants	2951	290	440

Notes: 1. A filing fee of \$75 is required for all sources.

2. Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
34. Asphalt concrete paving plants			
a) Stationary	2951	290	345
b) Portable	2951	290	440
35. Asphalt felts and coating	2952	300	665
36. Blending, compounding, or refining of lubricating oils and greases	2992	260	410
37. Glass container manufacturing	3221	290	540
38. Cement manufacturing	3251	940	2,785
39. Redimix concrete	3273	100	140
40. Lime manufacturing	3274	440	290
41. Gypsum products	3275	230	315
42. Rock crusher			
a) Stationary	3295	260	345
b) Portable	3295	260	415

Notes: 1. A filing fee of \$75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
43. Steel works, rolling and finishing mills, electrometallurgical products	3312 & 3313	740	760
44. Incinerators			
a) 1,000 pounds per hour and greater capacity		440	290
b) 40 pounds per hour to 1,000 pounds per hour capacity		120	175
45. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries (not elsewhere classified)	3321 & 3322 & 3324 &		
a) 3,500 or more tons per year production	3325	740	665
b) Less than 3,500 tons per year production	3325	180	345
46. Primary aluminum production	3334	1,460	3,800
47. Primary smelting of zirconium or hafnium	3339	7,310	3,800
48. Primary smelting or refining of ferrous and nonferrous metals (not elsewhere classified)			
a) 2,000 or more tons per year production	3339	790	1,780
b) Less than 2,000 tons per year production	3339	150	635

- Notes: 1. A filing fee of \$75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
49. Secondary smelting and refining of nonferrous metals	3341	350	440
50. Nonferrous metal foundries	3361 & 3362	100	175
51. Electroplating, polishing, and anodizing with 5 or more employees	3471	150	290
52. Galvanizing and pipe coating--exclude all other activities	3479	100	175
53. Battery manufacturing	3691	180	380
54. Grain elevators--intermediate storage only, located in special control areas			
a) 20,000 or more tons per year	4221	270	600
b) Less than 20,000 tons per year	4221	150	290
55. Electric power generation			
a) Wood or coal fired--greater than 25 MW	4911	5,900	3,850
b) Wood or coal fired--less than 25 MW	4911	3,540	1,900
c) Oil fired	4911	530	915

Notes: 1. A filing fee of \$75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
56. Gas production and/or manufacturing	4925	560	440
57. Grain elevators--terminal elevators primarily engaged in buying and/or marketing grain in special control areas			
a) 20,000 or more tons per year	5153	740	760
b) Less than 20,000 tons per year	5153	210	290
58. Fuel burning equipment within the boundaries of Eugene-Springfield Air Quality Maintenance Area			
a) Residual or distillate oil fired-- 250 million or more btu per hour (heat input)	4961	240	290
b) Residual or distillate oil fired--5 or more but less than 250 million btu per hour (heat input)	4961	200	210
c) Residual oil fired, less than 5 million btu per hour (heat input)	4961	100	105
59. Fuel burning equipment within the boundaries of Eugene-Springfield Air Quality Maintenance Area			
a) Wood or coal fired--35 million or more btu per hour (heat input)	4961	280	345
b) Wood or coal fired--less than 35 million btu per hour (heat input)	4961	100	245

- Notes:
1. A filing fee of \$75 is required for all sources.
 2. Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
60. Fuel burning equipment outside the boundaries of Eugene-Springfield Air Quality Maintenance Area a) All wood, coal, and oil fired--greater than 30 X 10 ⁶ btu per hour (heat input)	4961	290	315
61. New sources not listed herein which would emit 10 or more tons per year of any air contaminants, including but not limited to; particulates, SO _x , NO _x , or hydrocarbons, if the source were to operate uncontrolled. a) High cost b) Medium cost c) Low cost		2,360 410 210	2,350 410 210
62. New sources not listed herein which would emit significant malodorous emissions as determined by Authority review of sources which are known to produce similar air contaminant emissions. a) High cost b) Medium cost c) Low cost		2,360 410 180	2,350 410 175

Notes: 1. A filing fee of \$75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
63. Existing sources not listed herein for which an air quality problem is identified by the Authority.			
a) High cost		2,360	2,350
b) Medium cost		400	400
c) Low cost		180	175
64. Bulk gasoline plants	5100	100	190
65. Bulk gasoline terminals	5171	1,180	635
66. Liquid storage tanks--39,000 gallons or more capacity (not elsewhere classified)	4200	100/tank	175/tank
67. Can coating	3411	1,770	1,140
68. Paper coating	2641 & 3861	590	380
69. Coating flat wood	2400	590	380

- Notes:
1. A filing fee of \$75 is required for all sources.
 2. Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60, in addition to fees for any other applicable category.

TABLE A

AIR CONTAMINANT SOURCES AND ASSOCIATED FEE SCHEDULE

Air Contaminant Source	Standard Industrial Classification Number	Application Processing Fee	Annual Compliance Determination Fee
70. Surface coating manufacturing			
a) Greater than 1 ton but less than 20 tons VOC per year	2500 & 3300	100	105
b) Greater than 20 tons but less than 100 tons VOC per year	2500 & 3300	120	255
c) Greater than 100 tons VOC per year	2500 & 3300	590	505
71. Flexographic or rotogravure printing over 60 tons VOC per year per plant	2751 & 1754	120	255
72. New sources of VOC not listed herein which have the capacity or are allowed to emit 10 or more tons per year VOC			
a) High cost		2,360	2,350
b) Medium cost		410	410
c) Low cost		180	175

Notes: 1. A filing fee of \$75 is required for all sources.
2. Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60, in addition to fees for any other applicable category.

LANE REGIONAL

AIR POLLUTION AUTHORITY



Attachment 3

(503) 726-2514
225 North 5th, Suite 501, Springfield, OR 97477

Donald R. Arkell, Director

TO: Environmental Quality Commission

FROM: Donald R. Arkell, LRAPA Director, Hearings Officer

SUBJECT: Report on Public Hearing Held December 16, 1986, Concerning Proposed Revision of Fee Schedule for Air Contaminant Discharge Permits, Title 34, Table A, LRAPA Rules and Regulations

Summary of Procedure

Pursuant to public notice, a public hearing was convened at 12:15 p.m. on December 16, 1986 in the Springfield City Council Chamber at 225 North 5th, Springfield. The purpose of the hearing was to receive testimony concerning proposed amendments to Table A of Title 34 of the LRAPA Rules and Regulations, which affects the fee schedules for Air Contaminant Discharge Permits. This hearing was held concurrently before the Board of Directors of the Lane Regional Air Pollution Authority and the Oregon Environmental Quality Commission in order to comply with ORS 468.020 and 468.535(2) pertaining to adoption of rules. Five people attended the hearing in addition to LRAPA board, staff and Advisory Committee representative. An attendance list is included in the minutes of the December 16 meeting of the LRAPA Board of Directors.

Summary of Testimony

Randall Hledik of Wildish Sand & Gravel testified in opposition to the proposed amendments, stating that local permit fees that were higher than the state charges may cause a reevaluation of the relative value of the local agency. Prior to the hearing, Mr. Hledik submitted a letter expressing the same opposition.

Staff's response to Mr. Hledik's letter and testimony was that there was a higher level of service to local industries, that the LRAPA Board of Directors had determined that a higher percentage of cost recovery for LRAPA's permit program was justified and necessary; that extensive consultation with local industry representatives had occurred, and that most of them recognized the need LRAPA had for more stable funding.

Hearings Officer's Report
Title 34, Table A
December 16, 1986
2

Action of LRAPA Board of Directors

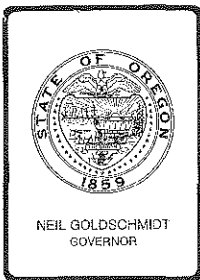
Based on the proposal, staff reports and statement of need, and having considered the testimony presented at the hearing and other comments, the LRAPA board, by a unanimous vote of those present, adopted the amendments as proposed, and directed that the rules be forwarded to the commission for adoption as a revision to the Oregon State Implementation Plan.

Respectfully submitted,



Donald R. Arkell
Hearings Officer

DRA/MJD



Environmental Quality Commission

811 SW SIXTH AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission
From: Director
Subject: Agenda Item F, April 17, 1987, EQC Meeting

Consideration of Petition for Adoption of Rules Regarding Selection of a Solid Waste Disposal Facility Under SB 662

Background

On March 26, 1987, a petition was received requesting that the Commission adopt rules, under OAR 340-11-047, to guide its selection of a solid waste disposal site pursuant to SB 662.

The petition, which is attached, was submitted by Edward J. Sullivan, Attorney representing the Helvetia Mountaintale Preservation Coalition - a group formed in opposition to consideration of the Bacona Road landfill site.

Under OAR 340-11-047, "The Commission shall, within thirty (30) days after the date of submission of the properly drafted petition, either deny the petition or initiate rulemaking proceedings in accordance with applicable procedures for commission rulemaking."

Pursuant to the same administrative rule, the petitioner shall be given 15 days in which to submit written views for consideration. Mr. Sullivan has been notified of this opportunity. Due to the timing of the petition filing, written views must be received no later than April 16 -one day prior to the scheduled EQC consideration of this matter.

Discussion

At the April 17 meeting the Commission will have three options for processing this petition:

- 1) Initiation of rulemaking proceedings in accord with ORS 183.335 and OAR 340-11-010 (the EQC also would have the option of adopting emergency rules effective immediately);
- 2) Denying the petition by adopting an order detailing reasons for denial; or
- 3) Postponement of action of the request until no later than April 25, 1987.

Throughout the facility siting process it has been the advice of legal counsel that adoption of rules regarding criteria and procedures used by the EQC and the Department in this matter is not necessary.

While a detailed response should await the receipt of any additional written views that may be provided by the petitioner within the allotted 15-day period, there appear to be several general arguments to support denial of this rulemaking request. First, the language and standards in the Senate Bill, which the petitioner requests be more clearly defined, are such that they can legally be applied to the specific facts within the context of the EQC order without prior rulemaking. Additionally, due to the timing of the petition and the date of EQC consideration of the matter, a decision to adopt rules would put the Commission in the position of passing rules that could apply to the public hearing on Bacona Road, but not to the public hearing held on the Ramsey Lake site (held April 16). Finally, the rules proposed by the petitioner would also have the practical effect of completely eliminating the Bacona Road site from further consideration.

Before staff can respond in detail to the petition request and prepare a draft order for the Commission to consider it will be necessary to review any written views submitted by the petitioner. Given the 15 day comment period provided the petitioner, staff response to this request may have to be given orally and in writing to the Commission at its meeting on April 17. If petitioner submits comments earlier, we will offer our written comments at the earliest time possible.



Fred Hansen

Attachment A - Petition to Adopt Rules

Steve Greenwood:m
SM930
229-5782
April 6, 1987

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION OF
THE STATE OF OREGON

IN THE MATTER OF THE)
ADOPTION OF RULES FOR)
THE SELECTION OF A)
SOLID WASTE DISPOSAL) PETITION TO ADOPT RULES
SITE FOR MULTNOMAH,)
WASHINGTON, AND)
CLACKAMAS COUNTIES)
PURSUANT TO CH. 679,)
OREGON LAWS, 1985.)

This is a Petition for the adoption of administrative rules by this Commission, or its delegate, under ORS 183.390 and OAR 137-01-070.

1. Petitioners are the Helvetia Mountaineering Preservation Coalition, an Oregon nonprofit corporation in good standing, and Greg Brown, Linda Peters, and Gary LaHaie, all represented by Edward J. Sullivan, Suite 2000, One Main Place, 101 SW Main, Portland, Oregon 97204.

2. Individual Petitioners and their neighbors have pooled their funds and efforts to have Petitioner HMPC represent them in these and other proceedings under Ch. 679, Or. Laws, 1985, hereinafter referred to as "the Act." Individual Petitioners reside and own property in the vicinity of Site W-29 (the Bacona Road site), which is one of the two sites actively being considered by the Department of Environmental Quality (hereinafter "DEQ") and the Environmental Quality Commission (hereinafter "EQC") as the site, or one of the sites, proposed under the Act for a solid waste disposal site. Such Petitioners are therefore affected by the consequent noise,

1 dust, traffic, glare of lights, insects and rodents, odor,
2 water contamination, vandalism, fire danger, reduction of
3 property values, and other adverse consequences of such
4 designation.

5 3. Section 4 (1) of the Act sets out the conditions under
6 which the Commission may locate a solid waste disposal site.
7 Section 2 (2) of the Act require the Department and the
8 Commission to give "due consideration" to certain factors in
9 the location and establishment of a solid waste disposal site.
10 Section 5 (7) of the Act requires the Department to identify
11 and, to the extent practicable, mitigate or require the
12 operator of such a site to mitigate, such conflicts. Section 6
13 (2) of the Act requires the Supreme Court to review the
14 decision of the Commission on petition of an adversely affected
15 or aggrieved person on the grounds of constitutionality and
16 lack of substantial evidence.

17 4. Petitioners are preparing for hearings before the
18 Commission under the Act. In order to prepare for such
19 hearings, Petitioners must understand the meaning of the terms
20 set forth in section 4 (1) of the Act to explain the inexact or
21 delegative terms contained therein. Petitioners must also know
22 from the Commission the rules of procedure for such a
23 proceeding.¹ The Department and Commission have now received a
24

25 ¹. Under a similar series of statutes, the Commission
26 would be required to adopt procedural rules for the conduct of
its hearings under ORS 459.051.


1 great deal of data and policy advice from their own staff and
2 consultants and are in a position to set forth standards which
3 the participants to such proceedings may address in the
4 hearings to be held in late April, 1985. The Commission has
5 the authority to adopt temporary rules under ORS 183.335 (5)
6 and (6) and the authority to delegate its rulemaking power to
7 the Director or other person under ORS 183.325. Such
8 rulemaking proceedings would allow interested members of the
9 public to present their views as to the interpretation of
10 Section 4 (1) of the Act and to be able to focus their
11 presentations to the Commission. Such proceedings would also
12 allow the Commission itself to provide the necessary rationale
13 to explain its order. More importantly, such proceedings would
14 allow the Supreme Court to carry out its responsibilities to
15 review Commission orders and Department findings under Section
16 6 (1) of the Act. Such proceedings would also permit
17 Petitioners and others to understand the documents relied upon
18 by the Commission in adoption of its policy and permit
19 discussion and review of the same by the Legislative Counsel
20 Committee. Providing for rulemaking at this point may also
21 have the effect of preventing further litigation. However,
22 such action need not delay proceedings under the Act, in that
23 judicial review of rules under ORS 183.400 is precluded under
24 section 6 (1) of the Act and the Department and Commission may
25 decline a request for a declaratory ruling under ORS 183.410.

26 5. The text of the proposed rules is set forth in Exhibit

1 "A," attached hereto and by this reference made a part hereof.
2 Petitioners do not necessarily endorse all the criteria for the
3 study of potential solid waste disposal sites set forth in
4 Exhibit "1" to the proposed rules, and will propose adjustment
5 of the same at the comment period. Petitioners find it
6 necessary, however, to provide some criteria for the Commission
7 to consider.

8 Respectfully submitted,

9 MITCHELL, LANG & SMITH

10 
11 _____
12 Edward J. Sullivan

1 PROPOSED OAR 340, DIVISION 64

2 OAR 340-64-005 Definitions. The following definitions shall
3 apply to this Division:

4 (1) "The Act" means Ch. 679, Or. Laws, 1985.

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

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

9 (4) "Disposal site" has the meaning set forth in ORS
10 459.015 (8).

11 OAR 340-64-010 Purpose. The purpose of this Division 64 is to
12 set forth administrative rules to implement Ch. 679, Or. Laws,
13 1985.

14 OAR 340-64-015 Criteria for Department Study. In undertaking
15 the study required by section 3 of the Act, the Department
16 shall use the criteria set forth in Portland Metropolitan Area
17 Landfill Siting Criteria, prepared for the Department by Brown
18 and Caldwell (April, 1986).

19 OAR 340-64-020 Other Relevant Criteria for the Department's
20 Study and Site Selection. The Department and Commission shall
21 also consider and apply the following criteria:

22 (1) No site shall be selected if the siting thereof
23 violates the state-wide planning goals, OAR 660-15-000 to 660-
24 15-010. Such goals shall be deemed directly applicable to
25 siting, in that the Commission has not amended its coordination
26 program with the Land Conservation and Development Commission

1 under ORS 197.180 since the passage of the Act.

2 (2) No site shall be selected if solid waste disposal
3 activity requires a permit from the Division of State Lands and
4 the Corps of Engineers until such permit has been obtained.

5 (3) No site shall be selected which has the potential for
6 violating the water quality laws of this state or the federal
7 Clean Water Act of 1977 unless the Department and Commission
8 certify that no such violations can occur.

9 (4) No site shall be selected if it be located within 15
10 miles of an operating astronomical observatory or such
11 observatory has received development approval from the relevant
12 local government.

13 OAR 340-64-025 Department Site Recommendations to Commission;
14 Commission Review.

15 (1) The Department shall review the recommendations made
16 to the Commission under section 3 of the Act against the
17 criteria set forth in OAR 340-64-015 and 340-64-020 and shall
18 make further recommendations to the Commission no later than
19 May 1, 1987 as to conformity of all sites considered by the
20 Department under sections 2 and 3 of the act.

21 (2) In making the further recommendations to the
22 Commission under subsection (1) of this section, the Department
23 shall not be bound by its previous recommendations.

24 (3) In undertaking further proceedings to locate a solid
25 waste disposal site under section 4 of the act, the Commission
26 shall not be bound by the recommendations of the Department.

1 OAR 340-64-030 Specificity of Criteria under Section 4 of the
2 Act. The Commission shall utilize the following criteria as a
3 refinement of those criteria set forth in section 4 of the act:

4 (1) The "applicable state statutes, rules of the
5 commission and federal regulations" include:

- 6 a. ORS 105.105.
- 7 b. ORS Ch. 281.
- 8 c. ORS 197.005-197.430.
- 9 d. ORS Ch. 459.
- 10 e. ORS Ch. 477.
- 11 f. ORS Ch. 527.
- 12 g. ORS. Ch. 541.
- 13 h. OAR Ch. 141, Div. 85.
- 14 i. OAR Ch. 340, Divs. 14, 35, and 61.
- 15 j. OAR Ch. 629, Divs. 24, 42, and 43.
- 16 k. OAR Ch. 660.
- 17 l. The Solid Waste Disposal Act (Public Law 94-580)
18 as amended by the Resource Conservation and
19 Recovery Act of 1976 (Public Law 91-217).
- 20 m. The Federal Uniform Relocation Assistance and
21 Real Property Acquisition Act of 1970 (Public Law
22 91- 646).
- 23 n. The Clean Water Act of 1977, Section 404 (Public
24 Law 97-8 and 97-117).
- 25 o. The National Environmental Policy Act of 1969
26 (Public Law 91-190).

1 p. 40 C.F.R. 257 and 1500.

2 (2) The adverse effects described in section 4 (1) (b) of
3 the act include effects on uses permitted on adjacent or nearby
4 lands under applicable comprehensive plans and zoning or other
5 development regulations and particularly include the following:

6 a. Violation of noise standards of the Commission
7 under ORS Ch. 467 and OAR Ch. 340, Div. 35 and
8 standards enacted by the appropriate unit of
9 local government.

10 b. Traffic which exceeds the design capacity of the
11 road or which exceeds level of service "C."

12 c. Filling of the waters of the state in violation
13 of ORS 541.645.

14 d. The propagation of public health vectors, as that
15 term is defined in ORS 452.010 (5).

16 e. Violation of OAR 340, Divs. 28, 31, 41, 44 to 52,
17 53, 60 to 63 and 100 to 110.

18 f. Violation of OAR 333, Divs. 16, and 100 to 111.

19 (3) Pursuant to section 4 (1) (c) of the act, the
20 following terms are defined:

21 a. "Significantly contribute" means degrading the
22 level of service by one or more levels (e.g. from
23 "B" to "A") at any intersection within 5 miles of
24 the candidate site, or increasing the number of
25 conflicting traffic movements by more than 25%,
26 or increasing the volume, in passenger car

1 equivalents, of any leg of the intersection more
2 than 20%, explicitly considering heavily-laden
3 trucks and their effect on overall capacity and
4 the gap acceptance characteristics of such
5 trucks.

6 b. "Dangerous intersection" means an intersection
7 which a professional highway or traffic engineer
8 would find hazardous, considering traffic volumes
9 and movements, geometric configuration, sight
10 distance, grade, and other physical and
11 behavioral characteristics. Past accident
12 experience shall be a relevant but not a
13 dispositive of dangerousness.

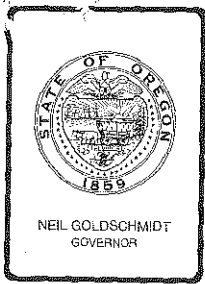
14 c. "Congestion" means more traffic at an
15 intersection than is desirable, i.e. Level of
16 Service "D," "E," or "F." Intersection
17 congestion shall be evaluated for the
18 intersection as a whole and for each individual
19 leg of such intersection.

20 (4) Pursuant to section 4 (1) (d) of the act, "facilities"
21 has the meaning of "public facilities" in statewide planning
22 goal 11. "Can be available or planned" means that the local
23 government comprehensive plan has provided for such facilities
24 and that such facilities do not violate statewide planning
25 goals 2, 11, and 14.

26 (5) Pursuant to section 4 (1) (e) of the act, "to the

1 extent practical" means to the extent physically possible.
2 OAR 340-64-035 Procedures for Commission Hearings. The
3 Commission shall conduct its proceedings for the location and
4 establishment of a solid waste disposal site under ORS 183.413
5 to 183.470 and the provisions of OAR 137, Division 3.

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Environmental Quality Commission

811 SW SIXTH AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

TO: Environmental Quality Commission

FROM: Director

SUBJECT: Agenda Item No. G, April 17, 1987, EQC Meeting

Informational Report: Review of FY 88 State/EPA Agreement and Opportunity for Public Comment

Background

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

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

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

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

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

EQC Agenda Item No. G
April 17, 1987
Page 2

Director's Recommendations

It is recommended that the Commission:

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



Fred Hansen

Attachment: State/EPA Agreement Executive Summary

Sherry Chew
MY2542
229-6484
March 25, 1987

STATE/EPA AGREEMENT
STATE FISCAL YEAR 1988
JULY 1, 1987 TO JUNE 30, 1988

DRAFT

BETWEEN

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

EXECUTIVE DOCUMENT

OREGON STATE/EPA AGREEMENT

FY 1988

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FY 1988
STATE/EPA AGREEMENT

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

AND

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

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

Air Quality
Water Quality

Hazardous Waste Control and
Disposal

The agreement, known as the Oregon State/EPA Agreement (SEA), describes priorities, tasks, and resources which comprise the cooperative federal and state environmental management program in Oregon during fiscal year 1988. This agreement includes required work plans and is the application for consolidated EPA program grants to Oregon under provisions of the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, and Safe Drinking Water Act (for underground injection control).

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

- Section I - An Executive Document including this agreement -- to provide the public and agency program managers with the formal agreement, a clear overview of environmental issues, program priorities, and major tasks for the fiscal year.
- Section II - A Program Document -- to provide detailed workplans to be carried out by each program during the fiscal year. This document also contains the FY 88 consolidated grant application.

This agreement covers the period of time from July 1, 1987 through June 30, 1988. The two agencies hereby agree to cooperatively work towards achieving environmental results and comply with the provisions set forth herein.

FOR THE STATE OF OREGON:

Frederic J. Hansen, Director Date
Department of Environmental Quality

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Robie G. Russell, Regional Administrator Date
Environmental Protection Agency, Region 10

INTRODUCTION

The Oregon State/EPA Agreement (SEA) describes environmental program commitments, priority problems, and solutions which the State of Oregon (represented by the Department of Environmental Quality) and the U.S. Environmental Protection Agency, Region 10, have agreed to work on during Fiscal Year 1988 (July 1, 1987, to June 30, 1988). The programs include:

Air Quality
Water Quality

Hazardous Waste Control
and Disposal

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

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

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

This Executive Document is intended to facilitate use of the SEA by state and federal program managers and by the public. The Oregon SEA priorities which follow this introduction, set forth Oregon's environmental goals and priorities for FY 88. Following the priorities are short FY 88 program strategies for air, water, and hazardous waste. Each strategy profiles existing environmental conditions and summarizes FY 88 tasks and expected outcomes. The Executive Document closes with a budget summary table showing both state and federal resources.

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

Public Participation. All Oregonians are affected by and, therefore, interested in environmental programs described in the FY 88 State/EPA Agreement. A public participation plan was prepared and conducted to encourage public input to this SEA. The plan and a detailed Public Responsiveness Summary is included as an appendix to the Program Document (Section II).

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

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

The parties to this agreement acknowledge that improved coordination of state programs with each EPA program results in major benefits for both agencies, and that conflicts or unanticipated requirements may undermine the plans and purposes of this agreement. Program contact between respective agency staffs will continue on a frequent and voluntary basis. The exchange of operating information among respective program staffs in air, water, and waste management will be encouraged to ensure that problems which might occur can be readily resolved.

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

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

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

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

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

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

To improve oversight and grant management, EPA developed in coordination with the states a policy on oversight and performance-based grants which includes procedures and mechanisms for conducting effective oversight of state programs in Region 10. Existing oversight and grant management procedures are conducted in accordance with the new policy.

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

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

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

FY 1988
OREGON STATE/EPA AGREEMENT
PRIORITIES

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

The first step in the process is tentative identification by EPA and DEQ of the major priorities to be addressed in the SEA and in the coming year. This initial document provides guidance for development of the full FY 88 SEA, and may be revised as a result of public review and staff refinement.

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

MAINTENANCE OF ONGOING PROGRAMS

Much of the environmental effort by DEQ and EPA is directed to operation of the ongoing activities of the air, water, and hazardous waste programs, e.g., regulation development, permits issuance, source inspection, monitoring, etc. While these activities are not specifically discussed in this policy direction document, they do constitute a significant portion of both agencies' priority work. The full FY 1988 SEA, which will be available in draft form for public review and comment in March and April 1987, will include detailed discussions of outputs and commitments for these ongoing programs.

As a focus for the ongoing programs, the priorities listed below are tentatively agreed to be of special importance during FY 1988.

ENFORCEMENT/COMPLIANCE ASSURANCE

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

EPA recognizes that DEQ has prime responsibility to assure compliance in federally delegated program areas and is, therefore, committed to provide technical assistance and back-up enforcement as appropriate. DEQ acknowledges the need for EPA to be kept advised of detailed compliance status within the programs and to be regularly informed by DEQ of state progress to resolve priority violations. The relative roles and responsibilities of each agency are outlined in specific program-by-program compliance assurance agreements. The agreements for the air, water, and hazardous waste programs are in place and will be updated annually to reflect the most recent policy on state/federal enforcement responsibilities. Both agencies agree to modify, as needed, and finalize the compliance assurance agreements by July 1 of each year, and to implement the agreements in a firm, fair, and even-handed way.

Specifically, DEQ and EPA agree to hold quarterly enforcement meetings for the air, water, and hazardous waste programs. Further, DEQ agrees to meet all inspection commitments set forth in the compliance assurance agreements and in the annual work programs. DEQ and EPA agree to work cooperatively to ensure timely and appropriate enforcement action, as defined in the compliance assurance agreements.

AIR QUALITY

PM10 SIP Development - Promulgation of the new federal PM₁₀ standard will create new non-attainment areas in Oregon, necessitate further controls in existing TSP non-attainment areas, especially Medford, and require strategy development and attainment of compliance within a few years.

- Control strategies will be developed according to EPA schedule requirements contained in regulations when the standard is adopted.
- Special emphasis will be given to develop effective woodstove curtailment programs as this strategy will be the most heavily relied upon strategy in most NAA's, especially Medford.

Asbestos - A skeleton program has been developed to work with demolition contractors and provide public information.

- A full program will be developed in FY 88 including mandatory contractor certification/worker training program if authorized by the legislature.

Slash/Field Burning - Class I area visibility protection strategies have been developed which rely on effective control of slash/field burning.

Substantial concern has been raised by public and health officials about adverse impacts from smoke intrusions in lightly populated areas.

- DEQ will work closely with the forestry and grass seed industries to insure complete and effective implementation of the visibility strategy elements.
- Studies of health impacts from smoke intrusions will continue with completion of the pesticide/herbicide combustion project and the development of further proposals for evaluating the effect of the toxic products of combustion (to be considered as a multi-state special project).

Implementation of an Air Toxics Program - Identification and prioritization of air toxic problems will be completed in FY 87 and procedures developed to assess risks of air toxics drafted.

- Implementation of DEQ's Air Toxics Program in FY 88 will include application of risk assessments to appropriate air toxic sources and development of appropriate control strategies.

Portland Ozone - Portland has been projected to attain compliance with the ozone standard by 1987. Recent excursions above the standard have raised concerns about the adequacy of the control strategy.

- DEQ will work with the Washington Department of Ecology to determine whether transport of Washington VOC from slash burning is contributing to Portland ozone.
- DEQ will work with EPA on a 1987 summer ozone monitoring study and on efforts to enhance effectiveness of the ozone strategy.

WATER QUALITY

State Revolving Fund Loan Program - Federal legislation for phasing out the construction grant program and replacing it with a revolving loan fund was enacted in February 1987.

- Proposed state enabling legislation has been submitted to the Oregon State Legislature.
- Proposed rules for establishing the fund and for implementing the loan program will be submitted to the EQC by winter 1987/1988.
- A public advisory committee will be established to review program development.
- The state/EPA delegation agreement will be revised to allow loan program implementation.

Construction Grants - Delegation - DEQ will continue to assume delegation of the federal construction grant program during FY 88.

- Secure Oregon State Legislature budget approval.
- Secure balance of delegable functions - primarily construction-related activities.
- Implement through functional subagreement for specified activities.

NPDES Permits - DEQ will meet reissuance targets for major and minor permits.

- Include biomonitoring (acute and chronic) requirement and toxics monitoring in permits, where appropriate.

National Municipal Policy - The Federal statutory deadline for POTW's to comply with the secondary treatment requirements is July 1, 1988. Several municipal treatment plants do not consistently achieve secondary treatment. The DEQ will continue to provide technical assistance and track compliance schedules as necessary to assure compliance with the National Municipal Policy.

Pretreatment Program Implementation - Twenty-one Oregon POTW's have developed and have approved pretreatment programs. Several other communities experience problems with industrial waste discharges into their sewerage systems.

- DEQ will work closely with POTW's to insure effective implementation of its pretreatment programs or require development of programs, as necessary, to prevent pass through of toxics, treatment plant upsets and interference, and sludge contamination from industrial waste discharges.
- Pretreatment audits will be conducted.
- Bioassays of municipal effluent will be conducted.
- Toxicity requirements will be incorporated into permits, as necessary.
- Assistance will be provided to POTW's in developing local limits.

Non-Point Source - Update a comprehensive program to cover major components of nonpoint activities and controls including (contingent on federal funding and approval by legislature):

- Form a citizen advisory committee to review DEQ's present program and suggest a "generic" process to use in the review.
- Enhance interagency cooperation.
- Conduct monitoring to assess problems and effectiveness of corrective efforts.
- Complaint investigation.
- Initiate special projects to resolve issues or problems in implementing NPS control programs.
- Apply for federal grant funds to prepare assessment reports and management programs pursuant to Section 319 of the Water Quality Act of 1987.

Critical River Basins - Several rivers and streams violate water quality standards, even after the application of conventional waste treatment controls to point sources. These areas are also in basins where rapid population and economic growth have occurred and are expected to continue. Treatment and control strategies need to be reviewed in these critical river basins. Water quality management plans will then be updated so that water quality standards can be achieved. This work will focus on the following streams and others that are identified in any settlement of the NEDC lawsuit:

- Tualatin River
- South Umpqua River
- Bear Creek
- Yamhill and South Yamhill Rivers

Clean Lakes Projects - If federal Phase II Lake Restoration funds are available and legislatively approved, DEQ will prepare grant requests for target lakes with the following conditions:

- Lakes that received Phase I funding and are eligible and in need of Phase II funds to implement restoration measures identified in Phase I.
- Lakes with established baseline water quality information equivalent to Phase I diagnostic and feasibility study demonstrating problems and in need of implementation of restoration measures.

The DEQ will continue to administer Devils Lake and Sturgeon Lake projects and work closely with local communities to track and evaluate progress.

Wellhead Protection Program - During FY 88 program development work will begin on a major new groundwater protection program: the wellhead protection program. The program was included in the 1986 reauthorization of the safe drinking water act. This work will proceed pending program application approval.

Aquifer Assessment and Management Project - This project, pending legislative approval, provides for comprehensive groundwater studies in three aquifers and the development and implementation of an aquifer protection and restoration plan in the Treasure Valley area (Ontario). It also includes a survey of public water supply wells for toxics.

Supplemental 106 Groundwater Quality Program Development - Continuation of program development activities. Emphasis during FY 88 will be to develop a state groundwater quality protection strategy. The strategy will establish a comprehensive framework into which various agency activities will be coordinated to provide effective groundwater protection. Also included in this program is the coordination and improvement of DEQ groundwater quality protection activities. This work is dependent upon FY 87 and FY 88 supplemental 106 GW grant approvals.

State Sludge Management Program - Inadequate management of sewage sludges was identified as a problem many years ago. Since that time, DEQ has expended considerable resources developing and implementing a sludge management program in Oregon. The state has adopted administrative rules and established guidelines on sludge utilization which require the development and implementation of sludge/septage management plans and routine analysis of sludge properties and characteristics. Sites proposed for sludge utilization are also evaluated. DEQ will continue to maintain a strong oversight role in evaluating sludge handling operations, reviewing management plans, and assuring adequate plan implementation.

HAZARDOUS WASTE

RCRA - DEQ will develop program capabilities and seek authorization for HSWA amendments.

- 1987 legislative proposals to seek necessary statutory authority and budget appropriation for resources to carry out the HSWA responsibilities.

- Emphasis on small quantity generator program.
- Emphasis on waste minimization and waste reduction program.
- Rule development and HSWA authorization application preparation.
- Increased enforcement capability.
- EPA to provide intensive support up to and beyond authorization emphasis on 1988 permit deadline, training and assistance, and building state capability.
- Closures. Where hazardous waste releases may cause or have caused groundwater contamination, closures will be a priority. EPA will continue to provide regulatory and technical support to address hazardous waste groundwater problems.
- Off-site discharge of hazardous waste to publicly-owned treatment works (POTWs). As off-site hazardous waste treatment options become less viable, industries will arrange to discharge more waste to POTWs. DEQ-EPA need to direct more attention to industrial pretreatment activities to prevent potential problems at POTWs.
- Land ban. Banning of hazardous waste from landfilling places great strain on overall waste management systems (generator to TSD). Little suitable alternative capability exists. Handlers will turn to on-site treatment including burning for energy recovery. Major EPA-DEQ effort should be directed toward development of policy and regulatory options for the regulated community. Long-term, DEQ supports four-state effort to address this problem.

Spill Response-Title III: Emergency Planning - Oversee work of local planning districts who have been appointed to write local hazardous material emergency response plans. Coordinate planning efforts with state fire marshal's program to implement Title III Community Right-To-Know requirements.

Underground Storage Tanks (UST)* - Major program efforts will be to adopt state administrative rules, implement fees to financially support program, seek authorization of state program establishing a permitting program, and begin early compliance checks of existing system in critical resource areas. Major impact expected on DEQ budget and on large and small businesses.

Cleanup of NPL Sites

- Completion of the design and construction phases for the United Chrome Products site.
- Completion of the remedial investigations and feasibility phases at the Gould and the Martin-Marietta sites.
- Initiation and substantial progress towards completion of the remedial investigation and feasibility study for the Teledyne Wah Chang site.
- Initiation and completion of the remedial investigation and feasibility study for the Allied Plating site (assuming site is listed on NPL).

Enhanced State Participation in Federal Superfund Program

- Cooperative agreements for management assistance on NPL sites, preliminary assessments, site inspection, etc.
- State lead at some NPL sites.
- State participation in other activities to be identified by EPA regulations on state involvement.

Strengthen DEQ Remedial Capability*

- Legislative authority for state remedial action program and adequate funding.
- Budget approval for 87-89 biennium.
- Staff recruitment and training, including IPA.
- DEQ lab capability.
- DEQ ability to contract.

Establish UST Remedial Action Program

- Cooperative agreements for spending federal UST Trust Fund on tank cleanups.
- Funding and staffing for state UST cleanup fund.*

*It should be noted that, to implement several of these priorities and the work outlined, the DEQ will need additional legislative authority and approval of proposed budget items currently being considered by the legislature.

AIR

Program Goals:

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

Profile:

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

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

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

When EPA promulgates new standards for particulate matter, nonattainment areas will be redesignated as appropriate. It is anticipated that the particulate matter nonattainment areas will become Medford/White City, Klamath Falls, Grants Pass, and Eugene/Springfield. Additional areas may be identified later.

Air quality in nonattainment areas has a potentially adverse effect on public health and welfare. Therefore, planning and implementing air quality control strategies are being given top priority in these areas. Significant emission sources are shown in Figure #2.

Recent studies have shown that air pollution caused by industrial sources has been substantially reduced, particularly in Oregon's major urban areas. Oregon industries have invested heavily in pollution control equipment. However, these benefits could be lost unless (1) new sources are controlled with the best available technology, and (2) monitoring, surveillance, and enforcement activities are maintained at a high level.

Conversion to residential wood heating has been identified as one of the important sources of air pollution in Oregon's urban areas. Wood fires are a source of particulates, carbon monoxide, and some toxic organic pollutants. Other areawide sources, such as road dust and vehicular emissions, are also prominent.

Nonattainment areas will soon be meeting federal air quality standards. Managing growth until and after standards have been met, will require continued implementation of new, cost-effective management tools such as emission offset and banking programs, parking and circulation plans, and processes for airshed allocation.

Field burning effects in the Eugene/Springfield area are being minimized by implementation of continued improvements to the smoke management plan. Field burning and slash burning remain significant sources of air pollution in Oregon. Better efforts are needed here to (1) identify actual air quality impact, (2) improve smoke management practices, and (3) develop control techniques such as increased productive use of forest slash in lieu of burning. Field burning and slash burning contribute to visibility impairment of scenic areas in Oregon and strategies have been developed to reduce their impact.

Strategy:

During FY 88 DEQ will continue to implement control strategies for all nonattainment areas. Additional monitoring and assessment will be done for the Portland ozone nonattainment area. Monitoring and development of control strategies for new particulate standards will proceed.

DEQ will continue to implement its New Source Review Rule, including detailed growth management (offset and banking) provisions. DEQ will also have full responsibility for operating the Prevention of Significant Deterioration (PSD) Major New Source Review Program, and for NSPS and NESHAPS pertinent to Oregon. DEQ will develop and implement a formal program for better assessing and controlling toxic and hazardous emissions.

Compliance assurance activities for volatile organics and particulate sources will continue. Air monitoring and quality assurance procedures will fully meet EPA requirements for SLAMS and NAMS air monitoring sites. Air source compliance and enforcement activities will be carried out under current rules including the current air contaminant discharge permit program. The compliance assurance agreement with EPA will be reviewed and revised as is appropriate.

DEQ will expand the current asbestos program. The major problem identified in the program is that many contractors are not properly reporting to DEQ or following other DEQ rules. A new position will be used to identify nonreporters and ensure rules implementation. DEQ will also pursue through the legislature a mandatory certification program for asbestos contractors, combined with a self funding worker training program to ensure the technical competency of asbestos workers.

Vehicle Inspection/Maintenance (I/M) including anti-tampering inspections will continue for the Portland Metropolitan Service District area. An I/M program with anti-tampering inspections, begun in Medford in January 1986, will continue.

DEQ will continue implementation of a wood stove control program as authorized by the 1983 Legislature.

Air program priorities are summarized on the following tables.

FY 88 PRIORITIES
Air Program

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Attainment of EPA's new ambient standards for particulate matter.	Develop new control strategies that will ensure attainment of the EPA standards.	Oregon will comply with EPA's new standards within three years of EPA approval of control plan.	Statewide
1	Implementation of the asbestos standards.	Ensure that asbestos contractors follow required procedures for reporting and removing asbestos. Pursue implementation of a contractor certification program in Oregon.	Exposure to asbestos will be minimized.	Statewide
1	Management of field/slash burning programs.	Ensure implementation of rules designed to protect visibility in Class I areas. Continue studies of the impacts of pesticide/herbicide combustion products.	Visibility in Class I areas will be protected. Health impacts of slash/field burning will be reduced.	Statewide

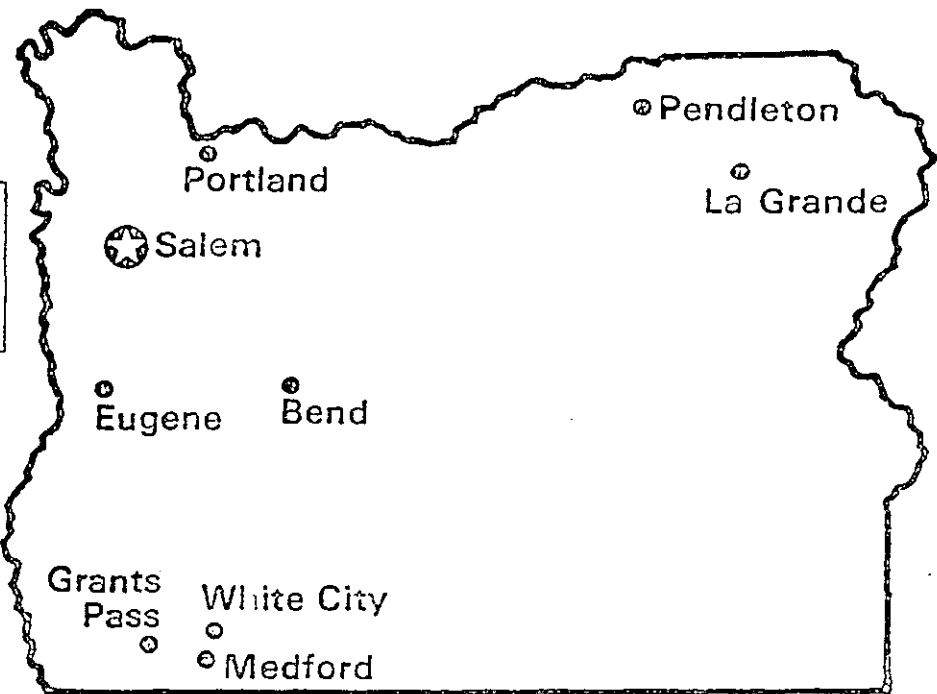
<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Expected Outcome</u>	<u>Geographic Focus</u>
1	Implementation of an air toxics program.	Develop a multi-year air toxics program. Develop guidelines for regulating air toxics control strategies.	Exposure to toxic air pollutants will be reduced.	Statewide
1	Attainment of the ozone standards in Portland.	Determine effects of the transport of VOC from Washington on ozone levels. Conduct additional ozone monitoring during summer. Implement existing ozone reduction strategies.	The Portland/Vancouver area will comply with the ambient air standards for ozone by the end of 1987.	Portland
1	Continuation of a compliance assurance program for stationary sources.	Inspect stationary sources of air pollution and ensure that they comply with regulations. Bring enforcement actions against stationary sources when needed. Evaluate the test procedures of sources that monitor their own emissions and ensure that the monitoring data are reliable and accurate. Implement the EPA/DEQ Compliance Assurance Agreement.	Stationary sources will comply with emission control regulations.	Statewide

Figure 1
**Oregon Cities Exceeding
 Air Quality Standards
 In 1986**

Legend

TSP	Total Suspended Particulates
CO	Carbon Monoxide
O ₃	Ozone

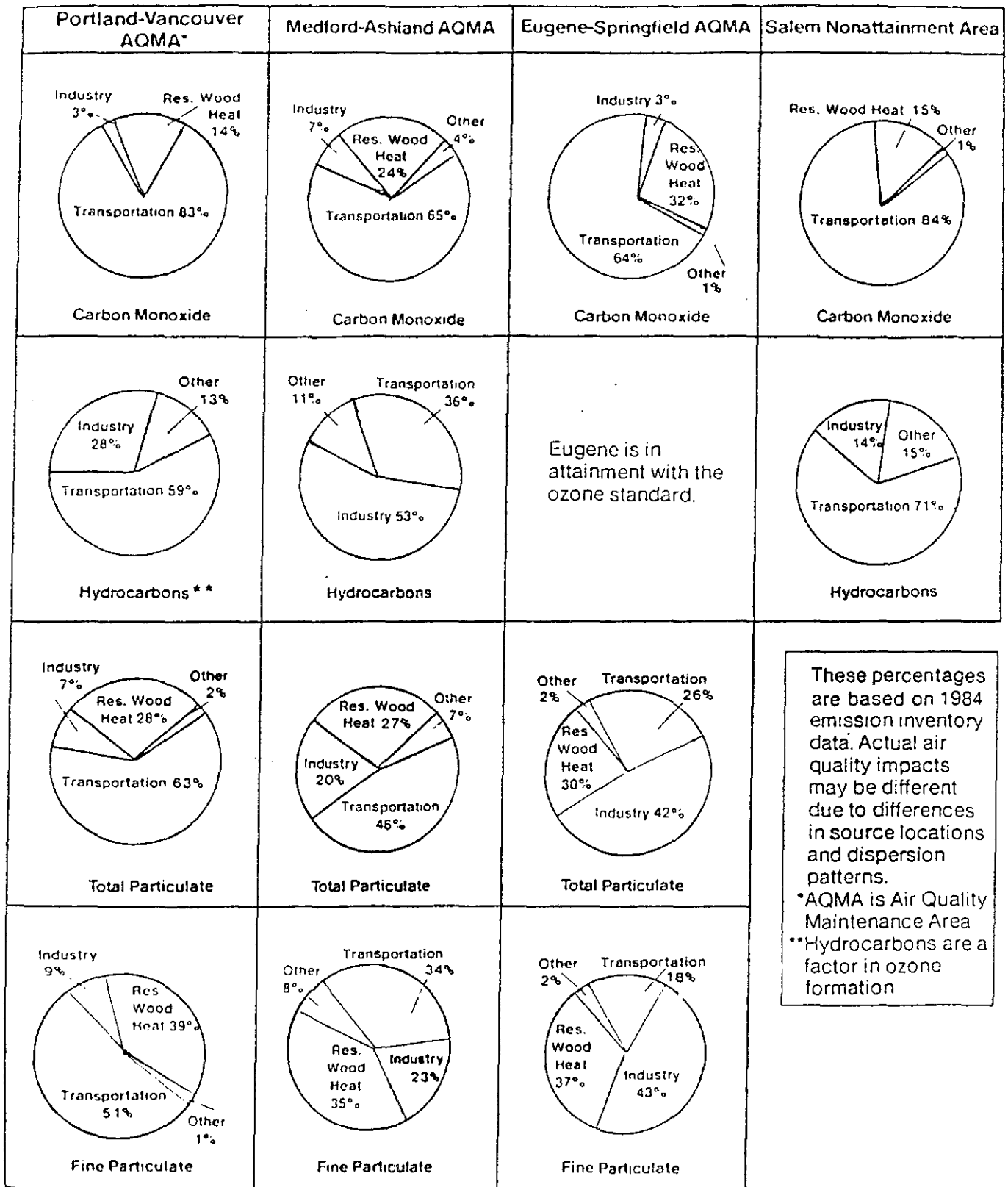
City	TSP	CO	O ₃
Bend	1	.	.
Eugene	4	0	0
Grants Pass	0	2	.
LaGrande	7	.	.
Medford	5	9	0
Pendleton	8	.	.
Portland	1*	1	3
Salem	0	0	0
White City	1	.	.



Number of Days Exceeding Standards (Primary or Secondary) For the Pollutant Indicated

* One Site with 22 exceedances is not reported due to nearby road construction impacts.

Figure 2
Sources of Emissions in Nonattainment Areas



WATER QUALITY PROGRAM

Program Goals:

- Protect recognized beneficial uses of water through attainment and maintenance of Water Quality Standards.
- Develop programs to protect groundwater.
- Reduce bacterial contamination in 1) shellfish producing estuaries; and 2) freshwaters where the body contact recreation is not fully supported.
- Improve knowledge and control of toxics.
- Work with other state agencies to develop process for balancing the state's water resources, considering quantity and quality.

Background:

During the past 25 years, Oregon experienced rapid population growth. Future growth may be lower than that experienced previously but growth is expected to continue. This means more wastes will be generated which will require adequate treatment and disposal in order to maintain and protect surface and groundwater quality. Just maintaining current conditions will require a substantial investment by the public and development of innovative waste management and treatment methods.

Efforts will continue to be directed to correction of localized water pollution problems and nuisance conditions, replacement, and rehabilitation of aging pollution control facilities, and proper operation and maintenance of facilities to assure that effluent limits are met on a continuing basis.

Profile of Water Quality:

Surface Water Quality

Overall, Oregon's water quality is quite good. Of 90,000 stream miles, nearly 27,715 miles have been catalogued. Designated uses are supported in 82 percent, partially supported in 16 percent, and not supported in 2 percent of the streams assessed. (See Table 1.) Of nearly 200,000 acres of lakes assessed, designated uses are supported in 59 percent, partially supported in 39 percent, and not supported in 2 percent. In the majority of shellfish-producing estuaries, water quality only partially supports the use. The primary pollutant preventing full support of uses in surface waters is fecal coliform bacteria and low flow. In Oregon, bacterial contamination results from different source types including: 1) nonpoint sources -- land runoff from failing on-site septic tanks and drainfield systems, inadequately managed animal waste disposal operations, and cattle grazing areas; 2) point sources -- bypasses and discharges of inadequately treated sewage from municipal sewerage systems; and 3) natural sources.

Groundwater Quality

Shallow, unconfined aquifers supply the bulk of groundwater to over 800,000 Oregonians who rely on groundwater for drinking water. Therefore, it is not surprising that many existing urban centers and new developments are located above these aquifers. In several areas of the state, groundwater pollution has been documented. Elevated nitrate-nitrogen concentrations and bacterial contamination have been two primary indicators of wastes seeping underground. Recently, however, data has been collected which suggests the need to investigate toxic chemical and hydrocarbon contamination in groundwater.

Strategy:

In FY 88, DEQ will continue to operate its historic program of preventing the creation of new water quality problems. To accomplish this, DEQ will continue to carefully regulate existing and new sources of water and waste generating activities. Efforts to assure the protection of beneficial uses will be furthered by the reduction of bacterial contamination through controls of both point and nonpoint sources of fecal coliform. In the groundwater program, the DEQ will implement the newly developed comprehensive groundwater protection strategy. Though emphasis will continue in the impact pesticides have on groundwater, additional emphasis will be on new groundwater protection provisions of the 1986 Safe Drinking Water Act, including the Wellhead Protection Program and Sole Source Aquifer Demonstration Grant Program. Efforts will continue to monitor identified groundwater pollution areas and to sewer those areas where groundwater pollution has been identified. The DEQ will direct activities toward toxics pollution by evaluating data collected in toxics screening surveys, oversee pretreatment of municipal wastes, and define areas where technical assistance is needed. DEQ completed the initial phase of delegation of the construction grants program covering pre-Step 3 activities. In FY 88, the DEQ will assume full delegation of all Step 3 activities of the construction grants program.

TABLE 1
ASSESSMENT OF
USE SUPPORT FOR RIVERS AND STREAMS

1986
Use Support Assessment
(miles)

Stream Name	Miles Catalogued	Uses Supported	Uses Partially Supported	Uses Not Supported	Unknown
North Coast Basin/L. Columbia	1129	569	84		476
Mid Coast Basin	878	643	45		190
South Coast Basin	1381	656	165		560
Umpqua Basin	2007	1060	83		864
Rogue Basin	2232	1233	54	27	918
Willamette Basin	4057	1975	319	33	1730
Sandy Basin	387	131			256
Hood Basin	402	52			350
Deschutes Basin	2574	868	181		1525
Grande Ronde Basin	1835	746	58		1031
Umatilla Basin	1140	135	57		948
Walla Walla Basin	475				
Klamath Basin	1183	249	32	70	833
Owyhee Basin	481	108		18	355
Malheur Lake Basin	1918	185	11		1722
Goose and Summer Lake	951				
Malheur River Basin	1595	210		110	1275
John Day Basin	2288	521	688	2	1077
Powder River Basin	802	324	158		320
STATEWIDE TOTAL	27,715	9,665	1,935	260	
		82%	16%	2%	

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OREGON FY 88 PRIORITIES

Water Quality Management

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Output</u>	<u>Geographic Focus</u>
1	Identify stream segments for further efforts.	Evaluate priority water quality limited segments identified in the status assessment process to reassess present water quality management strategies.	Assure cost-effective control strategies to achieve acceptable water quality.	Statewide
1	Implement Clean Lakes feasibility studies.	Implement restoration measures.	Achieve water quality in lake projects.	Devils Lake & Sturgeon Lake
1	Complete a statewide nonpoint source assessment.	Update the 1978 NPS assessment.	NPS assessment.	Statewide
1	Complete a review of the NPS management programs.	Review the NPS management framework.	NPS management program.	Statewide

OREGON FY 88 PRIORITIES

Construction Grants

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Output</u>	<u>Geographic Focus</u>
1	Achieve delegation of construction grants program.	Provide program framework to facilitate delegation to state	Transfer program to state according to schedule.	Statewide
1	Continue effective EPA/State/Corps partnership in management of the construction grants program. Initiate appropriate phase-out of Corps in construction grants program in FY 88.	<p>a. Cooperatively negotiate and implement respective roles in achieving commitments in Office of Water Accountability System.</p> <p>b. Manage projects to meet obligation schedules; outlay projections; provide priority list data for and make use of Grants Information Control System; and manage projects to achieve timely completion, project closeout, and audit.</p>	<p>Efficient program management to achieve expected commitment.</p> <p>Specific project completion schedules met.</p>	Statewide
1	Assure that grant funds are allocated to projects that provide significant water quality or public health benefits pursuant to applicable laws and appropriate regulations.	<p>a. Continue to fund projects which provide significant benefit to water quality and public health.</p> <p>b. Manage priority list to fund highest ranked projects and assure timely use of all funds.</p> <p>c. EPA, with input from DEQ, will identify potential EIS candidate projects and initiate appropriate actions to assure that NEPA processes (FONSI's and EIS's) are completed in a timely way so as not to delay projects.</p>	<p>Most significant water quality and public health problems are solved.</p> <p>Efficient use of funds. Maximize waste treatment and water quality improvement with available funds.</p> <p>Projects will be environmentally sound and not delayed.</p>	Statewide

OREGON FY 88 PRIORITIES

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Output</u>	<u>Geographic Focus</u>
1	Implement special state revolving fund authorized by the 1986 Clean Water Act.	Begin implementing special state revolving fund.	Efficient program development of special state revolving funds.	Statewide
1	Assure that facility plans are completed in a timely way, and address requirements necessary to qualify for Step 3 or Step 4 funding.	a. Assure that facility plans for projects which are scheduled for funding in the next 3 years are appropriately completed and meet applicable requirements for design and/or construction funding.	Selected alternative is fundable and implementable.	Statewide
2		b. Assure that new facility plans which are developed without Step 1/2 funding (planning/design) will evaluate appropriate options including innovative and alternative technologies and will meet all requirements for Step 3 or Step 4 funding.	Projects are not denied for reason of failure to plan or design properly.	Statewide
1	Develop and implement a sludge management program in Oregon.	Maintain strong oversight role in evaluating sludge handling operations, reviewing management plans, and assuring adequate plan implementation.	Adequate management of sewage sludge.	Statewide

OREGON FY 88 PRIORITIES

Water Monitoring/Quality Assurance

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Output</u>	<u>Geographic Focus</u>
1	Gather ambient water quality data to identify quality of Oregon's public waters; assure that data is of known and appropriate quality.	Maintain minimal ambient monitoring network to provide accurate, representative data on the most significant streams (including 13 BWP stations), estuaries, lakes, and groundwater.	Data to track basic quality and trends on significant water studies; support planning decisions.	Statewide
1	Ensure all state monitoring and measurement activities comply with QA requirements consistent with 40 CFR 30.	Develop and implement QA plans for all data generation activities.	All data generation activities comply with EPA QA requirements.	Statewide
1	Assess potential toxics problems.	Expand baseline information by collecting samples for metals and organics at several key locations.	Identification of toxic problem areas if any. Provide basis for saying toxic pollutants are or are not a problem in Oregon waters.	Statewide
1	Assess water quality status and identify current water quality needs by analyzing, interpreting, displaying, and reporting data gathered from the monitoring network.	Develop, operate, and maintain a user oriented ADP based data system.	More effective use of data with less manpower required.	Statewide
1	As identified in the 1986 305(b) Report, Tualatin River, South Umpqua River, Bear Creek, and Yamhill River have water quality problems.	Complete selective, intensive water monitoring in Tualatin River to help provide basis for evaluating problems and developing protection plans.	Final report completed by 6/30/88 (as shown in preliminary draft workplan dated April 23, 1986).	Tualatin River
		Initiate monitoring in South Umpqua River, Bear Creek, and Yamhill for evaluating and developing protection plans and others identified in settlement of the NEDC lawsuit.	Assure control strategies to achieve water quality.	Statewide
1	Update comprehensive program for nonpoint activities and controls.	Conduct monitoring to assess problems and effectiveness of corrective efforts.	Resolve issues or problems in implementing nonpoint source control program.	Statewide

OREGON FY 88 PRIORITIES

NPDES Permits/Compliance

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Output</u>	<u>Geographic Focus</u>
1	National priority is placed on improvement of compliance levels of POTWs including those constructed using federal grant funds provided under PL 92-500.	<p>Continue existing state inspection and compliance assurance program for POTWs, including:</p> <p>a. Provide technical assistance including site visits to identify and correct problems.</p> <p>b. O&M inspection of at least 1/3 of all POTWs (triennial coverage).</p> <p>c. Take appropriate enforcement action to resolve cases of sustained non-compliance.</p>	Reduce effluent violations by identifying and resolving O&M problems before they result in effluent violations.	Statewide
		Implement cooperative compliance data tracking system (PCS) for all POTWs.	Capability to determine level of effluent compliance and identify problem POTWs.	Statewide
1	Expired NPDES permits need to be reissued.	Reissue major/minor permits for all POTW and industrial facilities.	All major/minor permits reissued as they expire and 1/2 of backlogged minor permits reissued.	Statewide
1	Maintain permit compliance	Fully carry out the DEQ/EPA Compliance Assurance Agreement.	Acceptable levels of compliance are maintained.	Statewide

OREGON FY 88 PRIORITIES

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Output</u>	<u>Geographic Focus</u>
2	Implement program to assure pretreatment of certain industrial discharges to municipal sewerage systems.	DEQ will continue to assist cities to implement pretreatment programs which satisfy state and federal requirements. Pretreatment audits will be conducted. If communities which have not implemented a pretreatment program experience compliance problems because of industrial discharges to their systems or accept industrial discharges which require pretreatment programs, DEQ will place those communities on compliance schedules to develop and implement an approved pretreatment program or take enforcement action as appropriate.	Individual city pretreatment programs are implemented as approved by DEQ.	Statewide

OREGON FY 88 PRIORITIES

Groundwater/Underground Injection Control Program

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Output</u>	<u>Geographic Focus</u>
1	Continue to implement groundwater protection activities including Underground Injection Control Program.	Implement comprehensive groundwater protection strategy.	Groundwater protected from pollution.	Statewide
1	Initiate major new groundwater protection programs included in 1986 Safe Drinking Water Act.	<ol style="list-style-type: none"> 1. Develop wellhead protection program and Sole Source Aquifer Demonstration Grant Program. 2. Conduct comprehensive groundwater studies in three aquifers. 3. Develop and implement aquifer protection and restoration plan. 	Groundwater protected from pollution.	Statewide Three aquifers in Oregon Treasure Valley (Ontario)

HAZARDOUS WASTE

Program Goal:

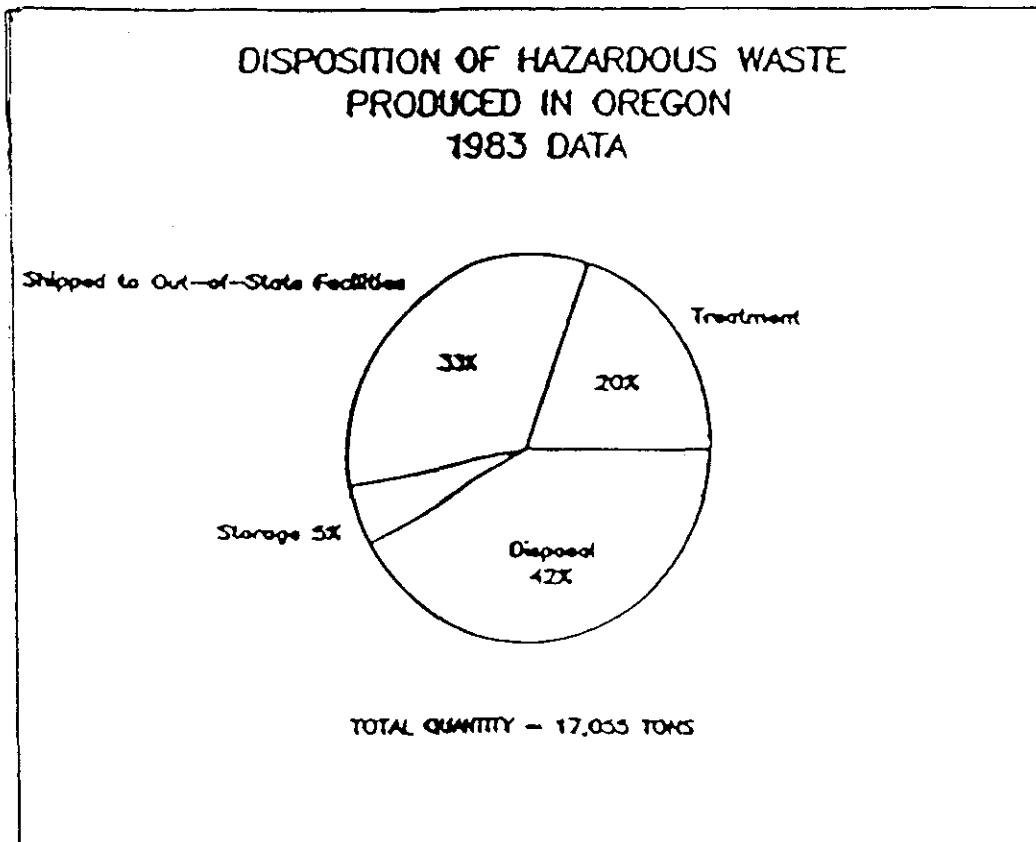
Ensure the safe management of hazardous wastes to protect the environment of Oregon and the public health of its citizens.

Profile:

Hazardous wastes, as defined by the Environmental Quality Commission, are produced by a variety of industrial and commercial operations. Approximately 200 facilities in Oregon generated hazardous wastes in 1983.

The disposition of hazardous wastes generated in Oregon is illustrated in Figure 3 below.

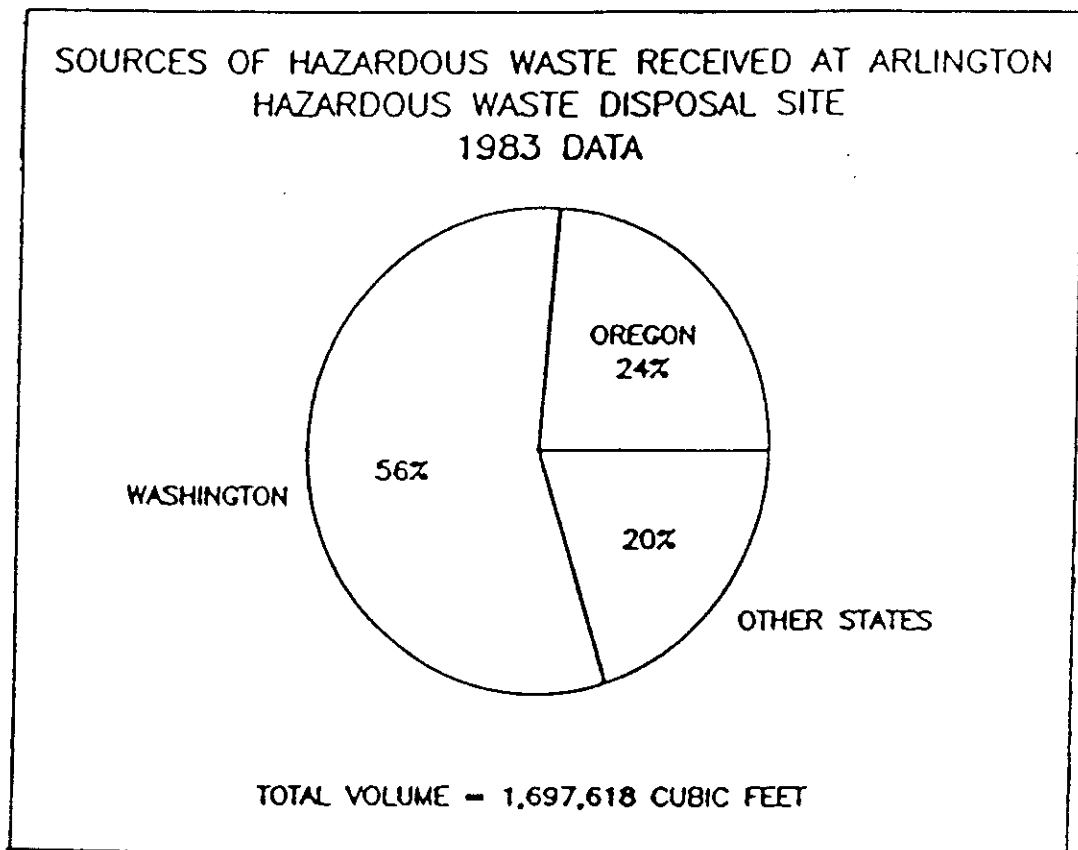
Figure 3



(NOTE: this page to be revised to update data)

A state-licensed hazardous waste disposal site is located in Arlington and operated by a private licensee. This site provides the state with a basic tool to implement its comprehensive hazardous waste regulatory program. The Arlington site receives wastes from sources outside of Oregon as well as from Oregon companies, as shown in Figure 4.

Figure 4



Since 1971, the Oregon Legislature has improved and expanded the Department of Environmental Quality's authority and regulatory tools for hazardous waste management. Today, a comprehensive regulatory framework exists and provides "cradle-to-grave" control over hazardous wastes.

Under the Resource Conservation and Recovery Act of 1976 (RCRA), state hazardous waste programs may be approved by the federal government to operate in lieu of the federal program. Oregon was granted Final Authorization for the base hazardous waste program on January 31, 1986. DEQ intends to develop program capabilities and seek authorization for Hazardous and Solid Waste Act (HSWA) Amendments of 1984.

Strategy:

The Department of Environmental Quality, through the issuance of permits and conduct of an extensive compliance inspection, monitoring and enforcement program, will continue to implement the state program in FY 88. Under Final Authorization, the state program will operate in lieu of the base federal program for those requirements promulgated prior to the Hazardous and Solid Waste Act Amendments of 1984. Assuming the state receives the necessary statutory authority through the 1987 state legislature, DEQ will develop implementing rules and prepare application for HSWA authorization.

A major effort on the part of the EPA and DEQ in FY 88 will be directed towards hazardous waste management system alternatives to land disposal. The HSWA amendments included a schedule for phasing out the land disposal of untreated hazardous wastes. Currently, there are few options available for hazardous waste handlers because suitable alternative capacity is very limited. The development of policy and regulatory options will be a high priority for EPA and all the states in Region 10 in FY 88.

SUPERFUND

The State of Oregon is in the process of developing program capability to fully participate in the federal Superfund program and strengthen the state's remedial action program. The state is seeking legislative authority and adequate funding for a remedial action program to address the need for clean-up at non-NPL sites in Oregon. This will include staff recruitment and training, lab support, and new rulemaking. Increased participation in the Federal Superfund program will occur through cooperative agreements for management assistance on NPL sites, and a cooperative agreement for the state to carry out preliminary assessments and, eventually, site investigations for sites listed on the CERCLA Inventory.

Priority activities at the Oregon NPL sites will include completion of the design and construction phases at United Chrome Products, completion of the remedial investigations and feasibility studies at Gould Battery and Martin-Marietta, and development of the remedial investigation and feasibility study for the Teledyne Wah Chang site. Assuming the Allied Plating site is listed on the NPL, there will be a need for development of a scope of work and initiation of the remedial investigation and feasibility study.

OREGON FY 88 PRIORITIES

Hazardous Waste (RCRA Subtitle C)

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Outcome</u>	<u>Geographic Focus</u>
1	Permits incorporating minimum standards will be issued to hazardous waste management facilities, with emphasis on land disposal and environmentally significant facilities. Permits for land disposal facilities must be issued by November 1988.	DEQ will issue permits under authorized program or DEQ & EPA will issue joint permits.	In addition to compliance with administrative rules, facilities will be given site-specific standards with which to ensure environmentally safe operation.	Statewide
1	Assurance of proper hazardous waste management practices.	<p>(a) Compliance inspections of and enforcement actions at HW generators, transporters and TSD facilities will be carried out under authorized state programs.</p> <p>(b) Priority will be given to ensure TSD facilities are in compliance with groundwater monitoring, financial assurance, insurance and closure/post-closure requirements.</p> <p>(c) Assure compliance with manifest requirements by all inspected facilities.</p> <p>(d) State will identify "non-notifiers" and assure such facilities are managed under state HW program.</p>	Compliance with standards will be carried out and assure that facilities out of compliance will be brought into compliance.	Statewide

OREGON FY 88 PRIORITIES

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Outcome</u>	<u>Geographic Focus</u>
1	Document implementation of final authorized program.	DEQ will provide reports and information necessary for EPA to fulfill its oversight responsibilities.	EPA will be assured state program meets minimum objectives.	Statewide
1	Seek state authorization for Hazardous and Solid Waste Act Amendments of 1984.	Develop rules and HSWA authorization application.	State receives authorization to carry out HSWA amendment provisions.	Statewide
1	Emergency spills require prompt, effective response to prevent environmental impact and ensure cleanup.	Respond to all significant hazardous substance or waste spills.	Reduce impact on environment and ensure prompt resolution, give notification to EPA.	Statewide
1	State program to minimize hazards associated with leaking underground storage tanks and authority to require clean-up by responsible parties or through UST Trust Fund.	Adopt state rules, implement fees to support program, develop compliance strategy. Establish cooperative agreement for use of UST Trust Fund to respond to releases from underground tanks.	State underground storage tank program	Statewide
2	Public must be aware and supportive of state hazardous waste management activities.	DEQ will ensure that public participation in program is carried out.	Public understanding and support, leading to state program which receives Final Authorization, will be ensured.	Statewide
2	Ensure that all state monitoring and measurement activities meet Region 10 Quality Assurance Plan requirements.	Develop and secure laboratory capability including quality assurance to implement RCRA.	Monitoring and measurement activities that satisfy Region 10 quality assurance requirements.	Statewide

OREGON FY 88 PRIORITIES

Superfund

<u>Priority</u>	<u>Problem or Purpose</u>	<u>Task</u>	<u>Outcome</u>	<u>Geographic Focus</u>
1	Increased Superfund activity in Oregon.	EPA and DEQ will fund IPA to be designated state Superfund contact. DEQ will continue to work towards developing full capability to operate a state Superfund program.	State contact with lead responsibility for program coordination in Oregon. Increased State capability in the Superfund program.	Statewide Statewide
1	Remedial action at Oregon sites listed on the National Priority List.	Complete design and initiate construction at United Chrome. Complete RI/FS at Gould & Martin-Marietta. Initiate RI/FS at Teledyne Wah Chang.	Initiate remedial measures to protect public health and the environment at specific sites.	NPL sites
1	Assurance of funding and coordination in use of Superfund money for remedial actions.	(a) Implement cooperative agreement for state management assistance (NPL sites) and preliminary assessments (b) Cooperative agreement will detail specific tasks, time-tables, dollar amounts and working arrangements between EPA and DEQ on a site specific basis.	State provides management assistance at federal lead NPL sites. Preliminary assessments completed for sites identified in cooperative agreement.	Statewide
1	Build state remedial action program capability.	Secure adequate funding, authority, staff, laboratory and contract capability.	State program to conduct investigations, require clean-up by responsible parties, and take remedial action at uncontrolled hazardous waste sites.	Statewide

FY 88

SUMMARY OF PROGRAM RESOURCES

(July 1, 1987 - June 30, 1988)

<u>PROGRAM</u>	<u>RESOURCES</u>			
	Federal Grant Funds Requested	Non-Federal	Total	Staff-Years
○ Air Quality Program	\$1,679,835 (1,629,115)	\$2,129,114 (2,079,620)	\$3,808,949 (3,708,735)	65.0 (65.0)
○ Water Quality Program				
Section 106	\$ 933,436 (766,604)	\$1,529,447 (1,529,447)	\$2,462,883 (2,296,051)	48.5 (48.5)
Section 106 (GW)	\$ 105,400 (93,585)	-0- -0-	\$ 105,400 (93,585)	1.0 (1.0)
Underground Injection Control (SDWA)	\$ 99,000 (95,450)	\$ 33,000 (38,841)	\$ 132,000 (134,291)	3.0 (3.0)
Water Quality Planning (Section 205(j))	\$ 274,200 (276,360)	-0- -0-	\$ 274,200 (276,360)	6.0 (6.0)
Section 1428 (Wellhead Protection)	\$ 104,761 -0-	10,476 -0-	115,237 -0-	(1.0) -0-
○ Hazardous Waste Program (RCRA)	\$ 625,000 (525,000)	\$ 175,000 (175,000)	\$ 800,000 (700,000)	14.8 (13.8)
FY 88 Totals	\$3,821,632* (3,386,114)	\$3,877,037 (3,822,908)	\$7,698,669 (7,209,022)	139.3 (137.3)

Note: The Construction Grants funds listed below will be applied for under separate grant rather than as part of the Consolidated Grant.

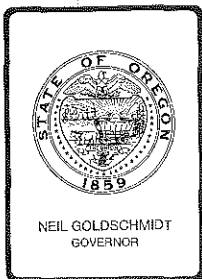
Construction Grants (Section 205(g))	\$1,096,000 (622,960)	-0- -0-	\$1,096,000 (622,960)	11.0 (8.0)
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(FY 87 figures are in parentheses.)

The amounts shown in the left-hand column above are federal funds requested by DEQ to fully fund the related FY 88 (July 1, 1987, to June 30, 1988) workplan commitments presented in the Program Document (Section II). The requested federal amounts are consistent with available EPA guidance. Final FY 88 federal grant resources are not yet available. Once a budget is adopted and Congress appropriates funds, grant amounts and, as necessary, program commitments will be reviewed and adjusted accordingly.

*Gramm-Rudman Reductions and other Congressional actions could considerably reduce this figure.

BR741



Environmental Quality Commission

811 SW SIXTH AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5696

MEMORANDUM

TO: Environmental Quality Commission DATE: April 16, 1987

FROM: Fred Hansen *Fred Hansen*

SUBJECT: USA Rock Creek WTP Permit Modification

At the request of the Unified Sewerage Agency of Washington County, the Department is modifying the NPDES permit for the agency's Rock Creek Advanced Waste Treatment Plant near Hillsboro, Oregon. As the Commission knows, the Department is also currently proceeding to develop Total Maximum Daily Loads (TMDLs), Waste Load Allocations (WLAs) and Load Allocations (LAs) for the Tualatin River Basin. When adopted, the TMDLs and WLAs will apply to the Rock Creek plant.

The Department has included a "reopener clause" in the proposed permit modification that will allow the Department to reopen the permit and insert appropriate effluent limits and compliance schedules. The effluent limits and compliance schedules would be consistent with the adopted TMDLs and WLAs and corresponding implementation strategy. The proposed wording of the "reopener clause" is as follows:

"Within 90 days after the Total Maximum Daily Loads (TMDLs) and Waste Load Allocations (WLAs) have been adopted by the Environmental Quality Commission and approved by the Environmental Protection Agency, the Department shall modify this permit. The modifications shall include appropriate new limits for complying with the established TMDL/WLA strategy. Should limits other than those specified in this permit be required, the new limits and compliance schedules for achieving those limits, consistent with the implementation strategy adopted concurrently with the TMDL/WLAs, shall be incorporated into this permit."

Representatives of the Northwest Environmental Defense Center are concerned that Oregon Administrative Rule (OAR) 340-41-120(3)(c) would hinder the Department's ability to impose timely compliance schedules. OAR 340-41-120(3)(c) states:

"(c)Wherever minimum design criteria for waste treatment and control facilities set forth in this plan are more stringent than applicable federal standards and treatment levels currently being provided, upgrading to the more stringent requirements will be deferred until it is necessary to expand or otherwise modify or replace the existing treatment facilities. Such deferral will be acknowledged in the permit for the source."

Department staff and legal counsel would interpret subparagraph (c) such that "applicable federal standards" would include waste load allocations established as part of the TMDL process. Based upon this interpretation, subparagraph (c) would not apply to the Rock Creek permit or similar situation.

In order to resolve this difference of opinion without resorting to a petition for declaratory ruling, the Department has offered to bring the matter before the Commission at the April 17, 1987 meeting. We admit that your action in this matter would not be equivalent to that obtained pursuant to a declaratory ruling. However, we are trying to expedite the issue because the Department would like to issue the permit modification around May 1, 1987, in order to assure that the current construction season is not missed.

The Director recommends that you concur with the Department's interpretation that "applicable federal standards," as referred to in Oregon Administrative Rule 340-41-120(3)(c), would include waste load allocations developed as part of the Department's process to develop total maximum daily loads.

WC1886



DEPARTMENT OF JUSTICE

GENERAL COUNSEL DIVISION
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4620

April 2, 1987

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
APR 03 1987
OFFICE OF THE DIRECTOR

MEMORANDUM

TO: Environmental Quality Commission

FROM: David G. Ellis, Assistant Attorney General
Natural Resources Section, General Counsel Division

SUBJECT: Department of Environmental Quality v. McInnis Enterprises, Ltd.
Case Nos. 56-WQ-NWR-83-79 and 59-FF-NWR-83-33290P-5

Status Report
DOJ File No. 340-310-G0004-84

The Environmental Quality Commission (commission) has requested a status report concerning the above-referenced cases.

At present, there are two pending cases against McInnis Enterprises. First, a \$10,000 civil penalty for the alleged illegal dumping of septic tank pumpings into a storm drain which emptied into the Columbia slough; this incident also involves criminal charges. Second, the Department of Environmental Quality (DEQ) is proceeding to revoke Mr. McInnis' license to perform sewage disposal services, based in part on past violations and, in part, on the two cases now pending.

On June 26, 1986, the hearings officer ordered that the consolidated hearing for the slough dumping and license revocation proceedings be delayed for an indefinite period of time. The hearings officer's decision was based on assertions of Mr. McInnis' constitutional right to not incriminate himself in the criminal proceeding by testifying or calling witnesses in the administrative proceeding.

Environmental Quality Commission
April 2, 1987
Page Two

On July 3, 1986, DEQ requested the hearings officer to reconsider her position. However, the hearings officer in balancing a potential delay in the DEQ enforcement proceedings with potential infringement of the defendant's alleged constitutional privileges ruled to delay of the DEQ proceedings.

Since June of 1986, the Court of Appeals has rendered decisions unfavorable to the state on two evidentiary matters appealed in the criminal proceeding against Mr. McInnis. Nevertheless, the assistant district attorney assigned to the case has expressed his intent to proceed with prosecution of Mr. McInnis. It should be noted that a new assistant district attorney has taken over handling the criminal prosecution and is not entirely familiar with the facts in the case at this time. I have been requesting information from the assistant district attorney since the beginning of March, but his trial schedule has prevented his detailed review of the file so as to respond to my questions. The criminal proceedings are not set for trial at this time.

I have recently corresponded with the hearings officer and informed her that it is my intent to get these cases set for hearing before the end of June 1987. I will be contacting the assistant district attorney and urging a prompt disposition of this case. If the district attorney decides not to proceed, we will request setting the administrative proceedings as soon as possible. If the district attorney still intends to prosecute, we will attempt to find some way to proceed administratively without further delay. DEQ respects, but does not entirely agree, with the legal reasons upon which the hearings officer has delayed hearing these cases. DEQ may bring the hearings officer's decision before the commission if further delays are experienced. The commission may also, on its own motion, review the hearings officer's decision.

DGE:tlal21/mcinnis2.1/.2
cc: Jess Glaeser, Attorney at Law
Linda K. Zucker, DEQ
Fred Hansen, DEQ
Michael Huston, AIC



DEPARTMENT OF JUSTICE

GENERAL COUNSEL DIVISION

Justice Building

Salem, Oregon 97310

Telephone: (503) 378-4620

April 15, 1987

MEMORANDUM

TO: Environmental Quality Commission

FROM: David G. Ellis, Assistant Attorney General
Natural Resources Section, General Counsel Division

SUBJECT: Petition to Adopt Rules filed by Ed Sullivan on behalf
of the Helvetia Mountaindale Preservation Coalition
DOJ File No. 340-410-P0010-85

Background and Procedures

You have before you a petition to adopt rules filed by Ed Sullivan, on behalf of his clients, the Helvetia Mountaindale Preservation Coalition, an Oregon nonprofit corporation with at least one primary purpose -- to oppose the establishment of a landfill site at the Bacona Road site. Petitions to adopt rules may be filed by any interested person under provisions of the Oregon Administrative Procedures Act. ORS 183.390. By statute, the commission must, within 30 days after the date of the submission of a petition, either initiate rulemaking proceedings or deny the petition in writing. The commission's own rules further require that if the commission determines to deny the petition, the commission must issue an order setting forth its reasons for such denial in detail. OAR 340-11-047(4).

The purpose of this memo is to summarize and respond to the petition, particularly with respect to the legal arguments made by Mr. Sullivan. We regret that this memo had to be provided to the commission so close to its meeting. However, by rule, Mr. Sullivan had until this date to submit additional written comment. It now appears that no additional comment will be submitted.

Analysis of the Proposed Rules

Many of the proposed rules appear to be designed to frustrate the selection process in general and to prevent selection of the Bacona Road site in particular. For instance, proposed rule 340-64-020(4) would prohibit establishment of any disposal site within 15 miles of an operating or approved astronomical observatory. This would have the effect of immediately eliminating Bacona Road from consideration by the commission. Proposed rule OAR 340-64-025 would have the department reevaluate its recommendations of preferred locations and make further recommendations to the commission and would expressly relieve the commission from being bound by the recommendations of the department. Proposed OAR 340-64-020(2) would require issuance of any necessary Division of State Lands or Corps of Engineers permits prior to selection of a site. The process to obtain such permits cannot be completed before the July 1, 1987 deadline for the Environmental Quality Commission (EQC) selection of a site. Because preliminary studies indicate such permits will be required for either of the two sites under consideration, this rule would eliminate both from consideration.

Finally, proposed rule OAR 340-64-030 would adopt definitions for what Mr. Sullivan has labeled "inexact or delegative terms" contained in section 4 of SB 662. To the extent legislative terms are in fact "delegative," under principles announced in Oregon case law, a state agency ordinarily must give meaning to such terms through rulemaking before they are applied to factual situations. "Inexact" terms, on the other hand, may be given meaning by an agency in the context of application of the terms to a given set of facts. If the meaning of a term is plain on its face, no detailed explanation of its application is required of the agency. However, when inexact terms require interpretation, the agency's interpretation and rationalization of that term should properly become a part of the reasoning of the order. Springfield Education Association v. School District, 290 Or 217, 227, 621 P2d 547 (1980).

Examples of "delegative" terms are "good cause, fair, undue, unreasonable, public convenience and necessity." Examples of "inexact" terms are "unemployment, employe or immorality."

The terms Mr. Sullivan would have the commission define by rulemaking are found in section 4(1) of SB 662 and are "applicable state statutes," "sufficiently large to allow buffering," "significantly contribute to dangerous

intersections," "facilities necessary to serve the disposal site," and "designed and operated to the extent practicable." It is our conclusion that these terms are inexact and, therefore, may be given meaning by the agency in the context of its order to the Department of Environmental Quality (DEQ) to establish a disposal site.

If the definitions proposed by Mr. Sullivan were adopted, the commission would be giving rigid meanings to terms without the benefit of public and agency comment. Much of DEQ's efforts in developing its Neighborhood Protection Plans have been aimed at confronting the conditions in section 4(1) of SB 6762 and designing solutions to impacts recognized by the legislature in adopting these conditions. Rigid definitions, adopted without the benefit of that work, may frustrate the entire process.

Finally, Mr. Sullivan proposes that the commission conduct its public hearings on the two sites under consideration as "contested cases" under ORS 183.413-183.470. We do not believe that the selection of a landfill site under the SB 662 process falls within the class of agency actions which must be conducted by contested case. Moreover, because of the extremely short amount of time given under SB 662 to conduct the type of detailed technical feasibility analysis undertaken by DEQ, there will not be time between conclusion of that analysis and July 1, 1987 to conduct the sort of trial-like hearings Mr. Sullivan requests.

Summary and Conclusions

In short, we do not believe that rulemaking is required under the controlling laws. If the proposed rules were adopted in their current form, they would appear to preclude selection of either of the final sites. Contested case procedures are neither required by controlling law, nor possible in the time remaining for commission action.

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 In the matter of Petition to)
4 Adopt Rules filed by Edward) ORDER DENYING PETITION
5 Sullivan on March 25, 1987.)

6 A. INTRODUCTION

7 1. Petitioner has requested this commission to adopt
8 certain rules concerning the selection of a disposal site by the
9 commission pursuant to 1985 Oregon Laws, chapter 679 (the Act).

10 2. Oregon Administrative Rule (OAR) 340-11-047 requires
11 the commission to take action on a petition to promulgate rules
12 within thirty (30) days after submission of a property drafted
13 petition.

14 3. The Department of Environmental Quality (DEQ) mailed
15 the notice and copies of the petition to all parties identified
16 by petitioner as required by OAR 340-11-047.

17 B. FINDINGS, REASONS, CONCLUSIONS

18 The commission has considered the matter and determined to
19 deny the petition for the following reasons:

20 1. Many of the proposed rules are designed to eliminate
21 the site known as the Bacona Road site from the commission's
22 consideration under the Act.

23 2. Other proposed rules would require DEQ to unnecessarily
24 reconsider the sites previously recommended by DEQ.

25 3. Other proposed rules would rigidly define terms and
26 phrases from the Act so as to preclude commission consideration

26 //

1 of comment by the public and DEQ concerning these terms and
2 phrases.

3 C. ORDER

4 IT IS HEREBY ORDERED that the Petition of Edward J. Sullivan
5 to Adopt Rules concerning the location of a disposal site under
6 1985 Oregon Laws, chapter 679, be denied.

7 DATED this ____ day of _____, 1987.

8 ON BEHALF OF THE ENVIRONMENTAL
9 QUALITY COMMISSION:

10 _____
11 Fred Hansen, Director
12 Department of Environmental Quality
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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

OFFICE OF THE DIRECTOR

IN THE MATTER OF THE SELECTION)
OF A METROPOLITAN SOLID WASTE) PARTICIPANTS' FIRST
DISPOSAL SITE PURSUANT TO) PETITION FOR DEPOSITIONS
CHAPTER 679, OREGON LAWS 1985)

Comes now participants, Helvetia Mountaineering Preservation Coalition, and individuals Greg Brown, Gary LaHaie and Linda Peters and move the Commission or its authorized representative for an order allowing the taking of the depositions of the following individuals pursuant to ORS 183.425 and 183.440 and, as applicable, OAR 340-11-116:

Steve Greenwood and Kent Mathiot, employees of the Department of Environmental Quality.

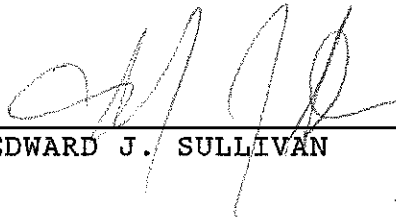
These employees participated in the preparation of the Draft Reports on the Ramsay Lake and Bacon Road sites. Participants wish to question these individuals about matters contained in the reports to understand the evidence to be used at the hearings on April 21, 1987, to seek clarification of matters in those reports and to find the factual basis for assertions contained therein. These individuals are the staff persons principally in charge of the siting of a solid waste disposal facility under Ch. 679, Or. Laws 1985, have coordinated the work of other DEQ staff and consultants and would have the greatest knowledge of the facts in this case. Because Sec. 6(2) of Ch. 679, Or. Laws 1985 limits review to constitutionality or substantial evidence, because the evidence sought is relevant to the proceedings before the Commission in

1 this matter, and because there is but one order to be appealed
2 which includes the survey undertaken by the DEQ (under the
3 direction of these two staff members) which can deal with the
4 evidence brought to EQC by DEQ and its consultants, the
5 evidence sought is relevant to this matter. Participants would
6 limit the scope of the testimony and other evidence to those
7 issues arising under Ch. 679, Or. Laws 1985.

8 Participants request that the depositions of Messrs.
9 Greenwood and Mathiot, and a subpoena duces tecum in the form
10 set forth as Exhibit "A" for all materials relied upon by them
11 in the preparation of the aforementioned reports relating to
12 the Bacona Road and Ramsay Lake sites, be authorized by order
13 of the Commission or its delegate, for examination before an
14 official court reporter of the firm of Sowers, Johnson, Kirk,
15 Bricker & Co., 900 SW Fifth Avenue, Suite C-50, Portland,
16 Oregon 97204.

17 Respectfully submitted,

18 MITCHELL, LANG & SMITH

19 
20 _____
21 EDWARD J. SULLIVAN

1 EXHIBIT "A"

2 For the purposes of this request the term "document" shall
3 include, but not be limited to, invoices, cancelled checks,
4 check stubs, bank statements, accounts, bank books, passbooks,
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forms of advertising, paper, and written, printed, typed or
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15 The documents at issue are:

16 REQUEST NO. 1:

17 All documents relating in any way to the consideration and
18 selection of the Department of Environmental Quality of the
19 sites under section 3 of Ch. 679, Or. Laws 1985, and the
Environmental Quality Commission of the sites considered under
sections 4 and 5 of that article.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF THE SELECTION)
OF A METROPOLITAN SOLID WASTE) CIVIL SUBPOENA
DISPOSAL SITE PURSUANT TO) DUCES TECUM
CHAPTER 679, OREGON LAWS 1985)

TO: KENT MATHIOT, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204

You hereby are required to appear in the office of the Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204, in the city of Portland, Oregon, on the 28th day of April, 1987, at 9:00 o'clock a.m., to testify as a witness in the above entitled cause on behalf of the following named parties: Participants Helvetia Mountaindale Preservation Coalition and individuals Greg Brown, Gary LaHaie and Linda Peters, and to remain until the testimony is closed unless you are sooner discharged. At the end of each day's attendance you may demand of said parties or their attorney the payment of legal witness fees for the next following day and if not then paid, you are not obligated to remain longer in attendance.

You are commanded to bring with you *see Exhibit "A".

Issued By:

Dated: _____

=====
I hereby certify that the foregoing is a complete and exact copy of the original subpoena in the above-entitled cause as the same appears in my hands for service.

IF AN OFFICER, STATE TITLE

=====
Witness fee . . . \$5.00 STATE OF OREGON, County of _____ ss:
Mileage 0.00 I hereby certify that I served the within
subpoena on the _____ day of _____,
19____, on the
Total \$5.00 within named _____
by delivering to him/her at the same time the
fees and mileage (see opposite) to which he/she
is entitled for travel to and from the place
designated in said subpoena and one day's
attendance; that I am a competent person over
the age of 18 years.

Edward J. Sullivan
MITCHELL, LANG & SMITH
101 SW Main, Suite 2000
Portland, OR 97204
(503) 221-1011
Attorney for Participants Helvetia
Mountaindale Preservation Coalition,
Greg Brown, Gary LaHaie and Linda Peters

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10 expenses incurred, telephone bills or printouts, memoranda,
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12 pleadings, claims, affidavits, written or oral testimony,
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14 reports, compilation reports, audit reports, tax returns or
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17 All documents relating in any way to the consideration and
18 selection of the Department of Environmental Quality of the
19 sites under section 3 of Ch. 679, Or. Laws 1985, and the
Environmental Quality Commission of the sites considered under
sections 4 and 5 of that article.

RECEIVED

APR 15 1987

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

OFFICE OF THE DIRECTOR

1
2 IN THE MATTER OF THE SELECTION)
3 OF A METROPOLITAN SOLID WASTE) PARTICIPANTS' FIRST
4 DISPOSAL SITE PURSUANT TO) PETITION FOR DEPOSITIONS
CHAPTER 679, OREGON LAWS 1985)

5 Comes now participants, Helvetia Mountaindale Preservation
6 Coalition, and individuals Greg Brown, Gary LaHaie and Linda
7 Peters and move the Commission or its authorized representative
8 for an order allowing the taking of the depositions of the
9 following individuals pursuant to ORS 183.425 and 183.440 and,
10 as applicable, OAR 340-11-116:

11 Steve Greenwood and Kent Mathiot, employees of
12 the Department of Environmental Quality.

13 These employees participated in the preparation of the
14 Draft Reports on the Ramsay Lake and Bacona Road sites.
15 Participants wish to question these individuals about matters
16 contained in the reports to understand the evidence to be used
17 at the hearings on April 21, 1987, to seek clarification of
18 matters in those reports and to find the factual basis for
19 assertions contained therein. These individuals are the staff
20 persons principally in charge of the siting of a solid waste
21 disposal facility under Ch. 679, Or. Laws 1985, have
22 coordinated the work of other DEQ staff and consultants and
23 would have the greatest knowledge of the facts in this case.
24 Because Sec. 6(2) of Ch. 679, Or. Laws 1985 limits review to
25 constitutionality or substantial evidence, because the evidence
26 sought is relevant to the proceedings before the Commission in

1 this matter, and because there is but one order to be appealed
2 which includes the survey undertaken by the DEQ (under the
3 direction of these two staff members) which can deal with the
4 evidence brought to EQC by DEQ and its consultants, the
5 evidence sought is relevant to this matter. Participants would
6 limit the scope of the testimony and other evidence to those
7 issues arising under Ch. 679, Or. Laws 1985.

8 Participants request that the depositions of Messrs.
9 Greenwood and Mathiot, and a subpoena duces tecum in the form
10 set forth as Exhibit "A" for all materials relied upon by them
11 in the preparation of the aforementioned reports relating to
12 the Bacona Road and Ramsay Lake sites, be authorized by order
13 of the Commission or its delegate, for examination before an
14 official court reporter of the firm of Sowers, Johnson, Kirk,
15 Bricker & Co., 900 SW Fifth Avenue, Suite C-50, Portland,
16 Oregon 97204.

17 Respectfully submitted,

18 MITCHELL, LANG & SMITH

19
20 
21 _____
22 EDWARD J. SULLIVAN
23
24
25
26

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

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OF A METROPOLITAN SOLID WASTE) CIVIL SUBPOENA
DISPOSAL SITE PURSUANT TO) DUCES TECUM
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TO: STEVE GREENWOOD, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204

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You are commanded to bring with you *see Exhibit "A".

Issued By:

Dated: _____

=====
I hereby certify that the foregoing is a complete and exact copy of the original subpoena in the above-entitled cause as the same appears in my hands for service.

IF AN OFFICER, STATE TITLE

=====
Witness fee . . . \$5.00 STATE OF OREGON, County of _____ ss:
Mileage 0.00 I hereby certify that I served the within
subpoena on the _____ day of _____,
19____, on the
Total \$5.00 within named _____
by delivering to him/her at the same time the
fees and mileage (see opposite) to which he/she
is entitled for travel to and from the place
designated in said subpoena and one day's
attendance; that I am a competent person over
the age of 18 years.

Edward J. Sullivan
MITCHELL, LANG & SMITH
101 SW Main, Suite 2000
Portland, OR 97204
(503) 221-1011
Attorney for Participants Helvetia
Mountaindale Preservation Coalition,
Greg Brown, Gary LaHaie and Linda Peters

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20 Environmental Quality Commission of the sites considered under
21 sections 4 and 5 of that article.
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State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE DIRECTOR
APR 16 1987

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION OF
THE STATE OF OREGON

IN THE MATTER OF THE)
ADOPTION OF RULES FOR)
THE SELECTION OF A)
SOLID WASTE DISPOSAL) WRITTEN VIEWS SUBMITTED BY THE
SITE FOR MULTNOMAH,) PETITIONERS UNDER OAR 340-11-047
WASHINGTON, AND) AND REQUEST FOR ORAL PRESENTATION
CLACKAMAS COUNTIES)
PURSUANT TO CH. 679,)
OREGON LAWS, 1985.)

The Petitioners for Rulemaking in this matter have requested that the Commission adopt rules setting forth standards for the selection of a solid waste disposal site for the Portland Metropolitan Area and providing that the matter be conducted as a contested case proceeding. Petitioners have been requested to submit their views in accordance with OAR 340--11--047 (3) (b) and do so by this memorandum, in addition to their letter to Mr. Hanson dated April 2, 1987. In addition, Petitioners request that the Commission hear Petitioners orally, as provided by OAR 340-11-047 (c).¹

I. Requirement of Rulemaking in the Instant Proceedings--

¹. Petitioners secured, on April 15, 1987, a copy of a memorandum to the Commission from the Director, dated for the Commission meeting of April 17, 1987 and relating to their Petition. This memorandum contains erroneous information and was not sent to Petitioners or their Counsel. The failure to disclose this information, along with the failure to notify Petitioners of Commission meetings considering the metropolitan solid waste disposal site proceedings (particularly, the dropping of the Wildwood site) notwithstanding a timely written request for such notice, and the continuing difficulties experienced by Petitioners in securing public records, all create a lack of trust on the part of Petitioners and their members in the integrity of the siting process.

1 I. Requirement of Rulemaking in the Instant Proceedings--

2 Petitioners have filed with the Oregon Supreme Court a
3 Petition for Alternative Writ of Mandamus, a Memorandum of Law,
4 an Abstract of Record, and an Alternative Writ of Mandamus.
5 These documents are attached as Exhibit "A" to this
6 Memorandum.² One of the issues in the Mandamus proceedings is
7 that of rulemaking. In addition to the matters contained in
8 the Petition for Rulemaking, the Commission is invited to
9 review pp. 6-9 of Relators' Memorandum of Law on Petition for
10 Mandamus (Ex. "A" pp. 16 to 18) and Section 2 (d), Ch. 679, Or.
11 Laws, 1985 which establishes legislative intent that the
12 Department and Commission give "due consideration" to, inter
13 alia:

14 "Any other factors the commission or department considers
15 (sic) relevant."

16 Petitioners have requested that the Commission adopt
17 criteria for the siting of the metropolitan solid waste
18 facility. Specifically, they have suggested the original set
19 of criteria informally adopted by the Commission and
20 administered by the Department. However, in adopting rules,
21 the Commission is free to adopt, within the bounds of ORS

22 ². Grant or denial of the Petition is discretionary with the
23 Supreme Court and the Commission should not understand a denial
24 of Petitioner's Petition for Alternative Writ to be an
25 affirmation of its present course of action. Petitioners suggest
26 the Commission join in the Petition and resolve this issue now,
rather than leave these proceedings open to challenge and,
Petitioners believe, the necessity of having to make a new
record, with the attendant expense and effort which accompanies
that effort.

1 183.400 (4), any set of rules for the siting of such a facility
2 it wishes. The point is that there should be some set of
3 baseline criteria to which we all might look as the
4 determinants of the siting decision. The present system finds
5 the Department, and the Attorney General, asserting that the
6 siting criteria are not binding and can be changed (under the
7 euphemism of "refinement").

8 The Director, in his memorandum of April 17th to the
9 Commission, suggests three reasons why the Commission should
10 not consider rulemaking. We shall respond to each reason in
11 turn.

12 First, the Director states that the language of Ch. 679,
13 Or. Laws 1985 "are such that they can legally be applied to the
14 specific facts within the context of the EQC order without
15 prior rulemaking." There are four responses to this position:

16 1. Given the open-ended delegation to the Department and
17 Commission to consider whatever factors they consider relevant
18 under section 2 (2) (d) of Ch. 679, there are delegative terms
19 which require rulemaking.

20 2. Once criteria are established, even without formal
21 rulemaking, they cannot be changed without rulemaking.

22 3. Even if no rulemaking were required, the integrity of
23 the process and public confidence therein should militate in
24 favor of establishing standards and criteria as a matter of
25 fairness.

26 4. The Commission cannot make policy except by rule or in

1 an order in a contested case. ORS 183.355 (5). If the
2 Commission does not conduct these proceedings as an order in a
3 contested case and does not make rules, it cannot discharge its
4 functions.

5 Secondly, the Director contends that the timing of the
6 Petition is such that the rules would be applicable to the
7 Bacona Road site, but not to Ramsey Lake. If so, this is not
8 Petitioners' doing--we did not set up these proceedings and it
9 is certainly possible for the Commission to act before the
10 Ramsey Lake hearing or to continue that hearing until after
11 rules were adopted. And if the requirement for rulemaking and
12 contested case procedures exists, it exists regardless of the
13 time frame in which the Commission and Department finds
14 itself.³

15 Lastly, the Director contends the effect of the rules
16 would be to eliminate the Bacona Road site from consideration
17 in these proceedings. Petitioners have contended that Bacona
18 Road should not have been considered in the first place and
19 should be eliminated. Further and more importantly, the
20 Commission need not adopt the rules suggested by Petitioners,
21 so long as they fulfill their obligation to make rules and
22

23 ³. It isn't as if Petitioners raised this matter at the end
24 of March. Petitioners contended that both rulemaking and
25 contested case procedures were applicable to this matter as early
26 as last summer and continually made these points before the
Facility Siting Advisory Committee. That Committee was assured
that the Commission did not have to adopt rules or follow
contested case procedures in these proceedings.

1 follow contested case procedures.

2 II. The Substantive Rules Proposed--

3 As indicated above, the rules proposed by Petitioners need
4 not be adopted as submitted. The Commission or its delegate
5 has the authority to adopt any valid set of rules it desires.
6 The point is that it must adopt some valid rules. In addition
7 to Petitioners' original submission and its supplementary
8 letter to Mr. Hansen of April 2, 1987 regarding the substance
9 of the rules applicable to the siting process, Petitioners
10 suggest that ORS 468.710 to 468.720, relating to water
11 pollution, 15 U.S.C. sections 1261-1276, relating to hazardous
12 substances, as well as the Federal Solid Waste Disposal Act, 42
13 U.S.C. 6901-6987, and the rules, regulations and executive
14 orders under this legislation be made part of the criteria for
15 approval of a site. Further consideration should also be given
16 to applicable statutes and regulations requiring the adoption
17 of Total Maximum Daily Loads (TMDLs) in the Tualatin River
18 under federal water pollution legislation and regulations, ORS
19 Ch. 451, and Washington County Ordinance 58.

20 III. The Requirements of a Contested Case Hearing--

21 Petitioners refer the Commission to pp. 10-13 of its
22 Relators' Memorandum of Law on Petition for Mandamus, (Ex. "A,"
23 pp. 20 to 23 and also note that this may be a situation which
24 requires a joint hearing on all sites before the Commission.
25 See Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1948). The
26 substance of those procedural rules could be along the lines of

Page 5 WRITTEN VIEWS BY PETITIONERS FOR RULEMAKING

1 those used by the Commission in other contested case
2 proceedings, or those contained in the Attorney General's Model
3 Rules, or any other rules which would meet the requirements of
4 the Oregon Administrative Procedures Act.

5 CONCLUSION

6 Petitioners request the Commission to adopt the rules
7 suggested or any form of rules which would be valid under the
8 Administrative Procedures Act, and to conduct proceedings under
9 Ch. 679, Or. Laws, 1985 as a contested case matter.

10 Respectfully submitted,
11 MITCHELL, LANG & SMITH

12 
13 Edward J. Sullivan, of
14 Attorneys for Petitioners
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1 IN THE SUPREME COURT OF THE STATE OF OREGON

2 STATE EX REL HELVETIA/MOUNTAIN-)
3 DALE PRESERVATION COALITION, INC.,)
4 a nonprofit Oregon Corporation;)
5 GARY LEHAIE; LINDA PETERS; and)
6 GREG BROWN,)

7 Plaintiff-Relators,)

8 v.)

9 OREGON ENVIRONMENTAL QUALITY)
10 COMMISSION, an Oregon state)
11 agency; and OREGON DEPARTMENT)
12 OF ENVIRONMENTAL QUALITY, an)
13 Oregon state agency,)

14 Defendants.)

SC _____

PETITION FOR ALTERNATIVE
WRIT OF MANDAMUS

15 Relators allege:

16 I.

17 INTRODUCTION

18 This is a proceeding to compel the Defendants Oregon Envi-
19 ronmental Quality Commission (EQC) and Department of Environ-
20 mental Quality (DEQ) to conform their actions to the requirements
21 of the Oregon Administrative Procedures Act, state land use goals
22 insofar as applicable, and the agencies' own rules in selecting a
23 site for the proposed Portland Metro area landfill. Specifical-
24 ly, Relators ask the court to compel Defendants to conform their
25 actions to existing siting rules unless and until said rules are
26 amended through formal rulemaking. The rules in question are
 detailed site evaluation and selection standards and criteria
 governing selection of sites for the proposed Portland Metropoli-

1 tan Area Landfill under 1985 Or Laws ch 679 (The Landfill Siting
2 Act).¹

3 II.

4 Relators also ask the Court to compel Defendants to conduct
5 a contested case hearing or hearings under said standards and
6 criteria before making their final site selection. Relators have
7 demanded compliance as requested herein but Defendants have thus
8 far failed or refused to comply.

9 III.

10 INTERESTS OF RELATORS

11 Relator Helvetia/Mountaindale Preservation Coalition, Inc.,
12 is an Oregon non-profit corporation in good standing formed to
13 protect and preserve the Helvetia/Mountaindale area of Washington
14 County from the adverse impacts of construction and operation of
15 a Portland Area Metropolitan Landfill at the Bacona Road site or
16 elsewhere in the Helvetia/Mountaindale area. Selection of the
17 Bacona Road site would frustrate the purpose of the corporation
18 and threatens the quality of life, property values, surface and
19 groundwater quality, air quality, and peace and tranquillity of
20 the area and its residents, including the membership of plaintiff
21 corporation. Individual relators are members of said corpora-
22 tion. Relators Gary LeHaie and Linda Peters, husband and wife,
23 and Ms. Peters' eight-year-old daughter Sarah, own and live on a
24 10-acre tract four miles southeast and downgradient of the
25 proposed Bacona Road site. Location of the landfill at Bacona

26 ¹ Copy of statute attached to supporting memorandum.

1 Road threatens their peace and tranquility, the value of their
2 property and the safety and quality of their air and groundwater.
3 Relator Greg Brown and his four-year-old son Timothy own and live
4 on a 30-acre tract three miles southeast and downgradient of the
5 Bacona Road site. They have timberland, run livestock, and use a
6 spring on their property. They would suffer the same kinds of
7 adverse impacts as the other individual plaintiffs.

8 IV.

9 Relators Brown, Peters, and LeHaie have participated orally
10 or in writing in site selection proceedings and hearings con-
11 ducted by Defendants, and are aggrieved because their contentions
12 have not been adopted. Relators have an interest in the substan-
13 tive and procedural protections afforded by the subject rules,
14 the Oregon State Administrative Procedures Act, the state's land
15 use goals, and all other applicable health, safety, and environ-
16 mental protection statutes and regulations.

17 V.

18 All plaintiffs have been and continue to be prejudiced by
19 the failure of the DEQ and EQC to follow their rules, apply
20 applicable standards, conduct contested case hearings, and follow
21 statutory rulemaking procedures because the Defendants' failure
22 to apply EQC's rules has substantially elevated the comparative
23 ranking of the Bacona Road site relative to other potential
24 sites.

25 VI.

26 ALTERNATIVE REMEDIES

1 Relators have no plain, speedy, or adequate remedy at law
2 because the Landfill Siting Act: (1) precludes normal judicial
3 review of agency action relating to the establishment or siting
4 of a landfill under the Act; (2) confines jurisdiction for
5 judicial review to the Oregon Supreme Court: and (3) precludes
6 judicial review by the Oregon Supreme Court for substantive and
7 procedural errors other than lack of substantial evidence and
8 unconstitutionality.

9 VII.

10 Relators have not filed a petition for mandamus or other
11 relief in a circuit court because the evident intent of the
12 legislature in adopting the Landfill Siting Act was to simplify
13 and accelerate the siting process through concentrating judicial
14 oversight in the Oregon Supreme Court. Plaintiffs reserve the
15 right to file a precautionary petition with a circuit court at
16 any time.

17 VIII.

18 RULEMAKING

19 On or about April 25, 1986, the EQC adopted siting stan-
20 dards, criteria, and procedures in the form of a document
21 entitled "Third Draft--The Portland Metropolitan Area Landfill
22 Siting Criteria, April, 1986." The purpose of the report was

23 "* * * to describe the system that will be used to
24 identify potential landfill sites, to evaluate and
25 compare those sites; and, ultimately, to select the
26 final site or sites. The system is based on the use of
landfill siting criteria that define the important
considerations in selecting a site. The system also
includes a numerical scoring method that will be used
to compare potential sites relative to the criteria.

1 The principal objective of the site selection process
2 described in this report are [sic] to weight all
3 important regulatory, political, environmental,
4 technical, and economic concerns; to allow an objec-
5 tive, fair, and comprehensive look at the entire study
6 area; and to provide a fresh approach to the site
7 selection process." April Report, p. 2.

8 The siting criteria are organized into three major categories, to
9 be used sequentially in the site selection process. These
10 categories are:

- 11 "1. Pass/fail criteria, which will be used to eliminate
12 from further consideration all of the sites exhibiting
13 constraints that would prevent development as a
14 landfill.
- 15 "2. Site evaluation criteria, which will be used to
16 evaluate the suitability of the remaining sites for
17 landfill use.
- 18 "3. Final decision criteria, which will be used to compare
19 the final two to four sites and select the best site
20 from the final alternatives." Report, page 4.

21 The scoring system is weighted as follows:

22 "The scoring system uses two separate numerical
23 indicators for each criterion: a site characteristic
24 rating and a criterion rating. The site characteristic
25 rating is used to numerically compare alternative sites
26 in relation to a single criterion. The criterion
weight is used to compare the importance of a given
criterion in relation to other criteria. Sites with
good features and important criteria will be given
higher scores than sites with poor features for
landfill development or criteria of less importance.
This numerical scoring system will be used for the site
evaluation and final decision criteria only. With the
pass/fail criteria, sites are not scored, but are
designated acceptable or not acceptable for further
evaluation." Report, page 8.

IX.

27 The above standards, criteria and procedures are "rules"
28 within the meaning of the Oregon Administrative Procedures Act.
29 They are agency directives, standards, regulations, and state-

1 ments of general applicability that implement, interpret, and
2 prescribe law or policy and describe the procedure and practice
3 requirements of the agencies.

4 X.

5 Defendants did not follow formal rulemaking procedures,
6 submit the above-described proposed rules to legislative counsel,
7 prepare a statement of need, or file the rules with the secretary
8 of state as required by their own rules and the Administrative
9 Procedures Act.

10 XI.

11 Subsequent to the adoption of said rules, Defendants used
12 the pass/fail criteria, the 41 site evaluation criteria and the
13 weighted scoring system to select 19 "preferred and appropriate
14 sites" from a list of 142 "potential sites." Before proceeding
15 to the next stage, Defendants amended the 41 site evaluation
16 criteria. The amendments were made without formal rulemaking or
17 hearings of any kind. Using the amended criteria, Defendants re-
18 evaluated the 19 "preferred and appropriate sites," and narrowed
19 the list to the top-scoring three finalists: Wildwood, Bacona
20 Road, and Ramsey Lake.

21 Evaluation of the sites under the amended criteria added
22 approximately 96 points to the Bacona Road score, increasing it
23 from approximately 962 to 1058, raising Bacona Road from no
24 higher than fifth place to second place, qualifying it for the
25 final selection process. By contrast, the changes deleted 240
26 points from the score for the Ramsey Lake site, reducing its

1 score from approximately 1340 to approximately 1100, narrowing
2 the difference between the scores for the two sites from over 350
3 points to less than 50 points. The approximate changes for the
4 top six sites are summarized as follows:

5 Site M-5 (Ramsey Lake) 1340 to 1100

6 Site W-29 (Bacona Road) 962 to 1058

7 Site M-2 (Wildwood) 971 to 1017

8 Site C-4 988 to 984

9 Site W-20 979 to 976

10 Site C-30 907 to 973

11 **XII.**

12 **LAND USE GOALS**

13 The rules do not require Defendants to comply with ap-
14 plicable mandatory statewide land use goals, Defendants' cer-
15 tified land use coordination agreement, or the State Agency
16 Coordination statute and rule, ORS 197.185 and OAR 660-30-000ff.
17 The pass/fail criteria include a "Regulatory" standard (P/F 2,
18 Report page 14) and a "Land Use" standard (P/F 7, report page
19 19). However, neither these nor any other standards, including
20 the final site selection standards, require full compliance with
21 statewide land use goals (OAR 660-15-000(1)-(14) or make an
22 exception to the goals or compliance with the goals a pass/fail
23 criterion.

24 **XIII.**

25 Relators have demanded that the Defendants apply the
26 original criteria and have filed a petition for rulemaking

1 requesting formal adoption of the original criteria, but the
2 Defendants have thus far failed or refused to comply.

3 VII.

4 CONTESTED CASE

5 Relators have protected interests in the quasi-judicial
6 application of the applicable standards and criteria to the
7 subject sites, to a decision after a hearing on the record by an
8 impartial tribunal, in development of a record and findings
9 showing compliance with applicable standards based upon substan-
10 tial evidence, and in the opportunity to know and meet the
11 applicable standards through examination and cross-examination of
12 witnesses under oath. They are entitled to and have demanded
13 contested case hearings but Defendants have thus far failed or
14 refused to grant the same.

15 * * * *

16 WHEREFORE, Relators petition the Court to issue its writ
17 direct to Defendants and commanding them as follows:

- 18 1. Immediately after receiving the writ to
- 19 a: Adopt site evaluation and selection criteria and
 - 20 procedures by formal rulemaking.
 - 21 b: Rank all sites according to the original, un-
 - 22 modified criteria until such time as said rules
 - 23 are modified through formal rulemaking.
 - 24 c: Exclude all sites which do not fully comply with
 - 25 state land use goals or other mandatory state,
 - 26 federal, and local standards;

d. Conduct a contested case hearing or hearings to determine whether the Department staff has correctly applied the criteria to the potential, preferred, and finalist sites.

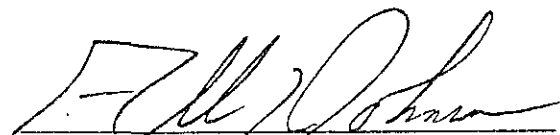
e. Pay relators their reasonable costs, expenses, and attorney fees incurred herein.

or, in the alternative,

2. To appear before this Court or a judge hereof, at a specified time and place within the period allowed by the rules of this Court, to show cause, why they have not done as commanded; and further

3. To return the writ then and there, with their certificates annexed, showing that they have performed the acts sought or showing the cause of their omission to do so.

DATED this 14th day of April, 1987.

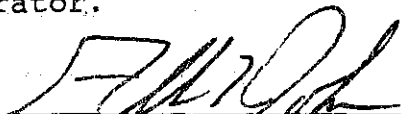


Allen L. Johnson OSB 73153
JOHNSON & KLOOS, ATTORNEYS
Suite 203, 767 Willamette
Eugene, OR 97401
(503) 687-1004

Of Attorneys for Relators

CERTIFICATE OF FILING

I certify that on April 15, 1987, I filed the original and eight copies of the foregoing PETITION FOR ALTERNATIVE WRIT OF MANDAMUS, the original and eight copies of the foregoing ABSTRACT OF RECORD, and the original and two copies of the ALTERNATIVE WRIT OF MANDAMUS with the State Court Administrator, Supreme Court Building, Salem, Oregon 97310, by personally delivering same to the office of the administrator.


Allen L. Johnson
of Attorneys for Petitioners

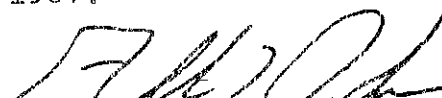
CERTIFICATE OF SERVICE

I hereby certify that on April 15, 1987, I caused two certified true copies of the foregoing PETITION FOR ALTERNATIVE WRIT OF MANDAMUS, ABSTRACT OF RECORD, and ALTERNATIVE WRIT OF MANDAMUS to be served on the following persons by depositing the same in a sealed envelope, first class mail, certified, return receipt requested, postage prepaid, addressed as set forth below, at the U.S. Post Office in Eugene, Oregon:

David B. Frohnmayer
Attorney General
Virginia L. Linder
Solicitor General
100 Justice Building
Salem, OR 97310

Env. Quality Commission
Dept. of Env. Quality
Fred Hansen, Director
522 S.W. Fifth Ave.
P.O. Box 1760
Portland, OR 97233

DATED this 15th day of April, 1987.


Allen L. Johnson
Of Attorneys for Petitioners

Page

1 IN THE SUPREME COURT OF THE STATE OF OREGON

2 STATE EX REL HELVETIA/MOUNTAIN-)
3 DALE PRESERVATION COALITION, INC.,)
4 a nonprofit Oregon Corporation;)
5 GARY LEHAIE; LINDA PETERS; and)
6 GREG BROWN,)

SC _____

7 Plaintiff-Relators,)

RELATORS')
MEMORANDUM OF LAW)

8 v.)

ON PETITION FOR)
MANDAMUS)

9 OREGON ENVIRONMENTAL QUALITY)
10 COMMISSION, an Oregon state)
11 agency; and OREGON DEPARTMENT)
12 OF ENVIRONMENTAL QUALITY, an)
13 Oregon state agency,)

14 Defendants.)

15 A. INTRODUCTION

16 This case is singularly appropriate for the exercise of the
17 Court's original jurisdiction in mandamus. It concerns a new,
18 streamlined siting statute designed to meet a pressing regional
19 need in as short a time as possible. The statute presents novel
20 and important issues and has not previously been interpreted.
21 The statute expressly attempts to concentrate judicial supervis-
22 ion in this court.

23 The petition alleges failure to perform nondiscretionary
24 duties. It meets the special loss test because retrospective
25 review of agency failure to perform those duties is largely
26 precluded by statute.

 Interlocutory judicial intervention will assist the agencies
 in meeting their deadlines and may save the entire siting statute
 from invalidation. Without the judicial oversight afforded by

mandamus, the legislature's delegation of authority under the
1 subject statute is unaccompanied by meaningful, enforceable
2 standards and safeguards.

3 The EQC is directed by Section 5(1) of the Metro Area
4 Regional Landfill Siting Act¹ to select a site by July 1, 1987.
5 The agencies are going to miss that deadline if they don't make
6 the mid-course corrections requested in the petition. This court
7 can carry out the legislature's intent by using its constitution-
8 al authority² to give the agencies some light to steer by.

9 In short, the writ should issue to protect Relators' rights,
10 to preserve the separation of powers, and to save the subject
11 statute from invalidation.

12 **B. ISSUES MAY NOT BE RAISED ON APPEAL OR IN ANOTHER FORUM**

13 Relators are seeking enforcement of the agencies' statutory
14 obligations to (1) use formal rulemaking to adopt rules; to (2)
15 abide by the de facto rules currently in force, to (3) conduct
16 contested case proceedings as required by law; and (4) to apply
17 statewide land use goals as required by law. The agency is not
18 complying with these statutory requirements. Compliance can be

19
20 ¹ 1985 Senate Bill 662, adopted as 1985 Or Laws ch 779,
appended uncodified ORS 459.005-459.285. Copy attached.

21 ² Or Const art VII (Amended), § 2 provides:

22 " * * * [T]he Supreme Court may, in its own discretion,
23 take original jurisdiction in mandamus, quo warranto
and habeas corpus proceedings."

24 See Henkel v. Bradshaw, 257 Or 55, 475 P2d 75 (1970) (Inter-
25 locutory review by mandamus has provided traditional exception to
rule against review of interlocutory orders.)

enforced only through these proceedings because the legislature
1 has precluded retrospective judicial review for agency noncom-
2 pliance with statutes and administrative rules.

3 The 1985 Oregon legislature created a "super-siting" statute
4 to achieve rapid resolution of a long-standing controversy over
5 the location of a regional landfill for the Portland Metropolitan
6 Area. The Metro Area Landfill Siting Act (the Act)³ is one of a
7 new breed of laws designed to deal with the growing problem of
8 siting large, "locally unwanted land uses," or "LULUs."⁴

9 In order to simplify and speed the process of review, the
10 Act confines judicial review to this court and limits the scope

11
12
13 4 "The United States faces a large, distinct, and rapidly
14 growing class of development projects. They may be regionally or
15 nationally needed or wanted, but are considered objectionable by
16 many people who live near them. Examples of such pariah land
17 uses include highways, hazardous waste facilities, power plants,
airports, prisons, garbage disposal sites, low-income housing,
and strip mines. The projects create political tension, for as a
society we want them, but as individuals--and often as
communities--we do not want them close to us. They are locally
unwanted land uses or LULUs.

18 "* * *[T]he LULU has become the central, shared, sometimes
19 hidden subject of a great deal of city planning, law, economics,
20 political science, as well as of practical politics, government
21 and corporate administration. Big new kinds of LULU's loom, such
22 as nuclear waste disposal sites, innovative high-tech factories,
23 the MX missile system, and the many additional telecommunications
24 towers necessitated by the AT&T breakup. LULU's strain a sense
25 of fairness, since they gravitate to disadvantaged areas: the
poor, minority, sparsely populated, or politically
underrepresented localities that cannot fight them off and become
worse places to live after they arrive. LULUs expose clear
deficiencies in the nation's present devices for planning and
regulating them." Popper, LULUs: Environmental Impact and Public
Response, 27 Environment No. 2 (March 1985), reprinted in Gailey,
1986 Zoning and Planning Law Handbook 203-219 (1986).

of that review to substantial evidence and unconstitutionality.

1 Section 6 provides:

2 " (1) Notwithstanding ORS 183.400, 183.482,
3 183.485 and 197.825, exclusive jurisdiction for review
4 of any decision made by the Environmental Quality
5 Commission under this 1985 Act relating to the
6 establishment or siting of a disposal site, any order
7 to the Department of Environmental Quality to establish
8 or complete such a site or any findings made by the
9 department under section 5 of this 1985 Act is
10 conferred upon the Supreme Court.

11 " (2) * * * * review under this section shall be
12 confined to the record; and the court shall not
13 substitute its judgment for that of the commission as
14 to any issue of fact or agency discretion. Upon
15 review, the Supreme Court may affirm, reverse or remand
16 the order of the commission if the court finds that the
17 order is not supported by substantial evidence in the
18 record or is unconstitutional. Proceedings for review
19 under this section shall be given priority over all
20 other matters before the Supreme Court."

21 Normally, this Court will not grant a petition for mandamus
22 where the issues in question can be raised upon appeal. State ex
23 rel LeVasseur v. Merton, 297 Or 577, 580, 686 P2d 366 (1984).
24 However, "an exception to this rule exists where the court below
25 may lack jurisdiction or may be an improper venue for trial."
26 Id., citing State ex rel Automotive Emporium v. Murchison, 289 Or
265, 269 n.5, 611 P2d 1169 (1980).

Without enforcement through normal avenues of judicial
review, the loss of the substantive and procedural protections of
the APA, the goals, and the applicable standards and criteria is
an irretrievable, "special loss" warranting the extraordinary
remedy of mandamus. See cases cited in Murchison at 289 Or 269 n.
5, and associated text.

C. ISSUES ARE NOVEL AND IMPORTANT

1 In State ex rel Sajo v. Paulus, 297 Or 646, 648, 688 P2d 367
2 (1984), this court allowed the alternative writ "because of the
3 importance and the novelty of the statutory and constitutional
4 issues raised by the petition," even though alternative
5 mechanisms of judicial supervision were available.

6 The Landfill Siting Statute is before the courts for the
7 first time with this petition. The issues presented are novel:
8 they include (1) the extent to which the legislature can preclude
9 judicial enforcement of Oregon law; (2) the constitutionality of
10 a delegation under standards and safeguards compliance with which
11 is unreviewable; (3) the availability of mandamus as a measure to
12 provide the judicial oversight necessary to uphold such a
13 delegation; (4) whether an agency can adopt de facto rules
14 without either formal rulemaking or conducting a contested case;
15 and (5) whether an agency must conduct a contested case at some
16 stage in a proceeding to select a landfill under a super-siting
17 statute such as the Landfill Siting Act.

18 D. SUPREME COURT SHOULD BE SOLE JUDICIAL FORUM

19 The legislature has clearly expressed its intent to avoid
20 the confusion and delays that accompany the diffusion of
21 appellate supervision among appellate agencies, circuit courts,
22 and appellate courts. A circuit court may have jurisdiction to
23 compel agency action under ORS 183.490, and petitioners will
24 probably file a precautionary petition for mandamus there--
25 almost certainly if this petition is denied. However, such a
26

1 procedure will frustrate the evident intent of the legislature to
2 identify a single, central, and authoritative court to deal with
3 all issues arising under the Landfill Siting Act.

4 Relators have limited resources. They cannot afford the
5 luxury of the delay game. They, as much as Defendants, seek
6 early and definitive answers to their questions.

7 Mandamus is the proper remedy when an appeal fails to
8 provide an adequate and speedy determination. Nielson v. Bryson,
9 257 Or 179, 477 P2d 714 (1970) (Denecke, J. concurring).

10 Similarly, Supreme Court mandamus is the proper remedy when
11 circuit court mandamus fails to provide a speedy and adequate
12 determination. The legislature has implicitly made that finding
13 here.

14 E. JUDICIAL OVERSIGHT IS NECESSARY TO SUSTAIN DELEGATION

15 Meaningful safeguards must accompany the delegation of power
16 to an to make and apply standards on such major environmental,
17 economic, and social issues as a regional landfill. One of the
18 most important of those safeguards is judicial oversight
19 sufficient to assure that the agency acts within the scope of its
20 delegated legislative and adjudicatory authority. See Knight v.
21 Dept. of Revenue, 293 Or 267, 272, 649 P2d 1343 (1982) Without
22 such a safeguard, there is no assurance that the legislative
23 power remains vested in the legislature or that the judicial
24 power remains vested in the courts.⁵ This court's discretionary

25 ⁵ Or Const art III, § 1, Separation of Powers, provides:

26 "The powers of the Government shall be divided into

1 mandamus jurisdiction is an important backup safeguard which, if
2 properly exercised, can save a super-siting statute such as the
3 Landfill Siting Act.

4 As this court has said:

5 " * * * [T]he important consideration is not
6 whether the statute delegating the power expresses
7 standards, but whether the procedure established for
8 the exercise of the power furnishes adequate safeguards
9 to those who are affected by the administrative
10 action."

11 Warren v. Marion County, 222 Or 307, 314, 353 P2d 257 (1960).

12 The attorney general has summarized the Warren analysis as
13 follows:

14 "Thus the court's adequate safeguards approach in
15 Warren is in reality a combination approach which looks
16 at the law to determine (1) whether the law contains
17 standards to guide administrative action, (2) the
18 character of the administrative action the statute
19 authorizes and (3) the procedural safeguards expressed

20 three separate [sic] departments, the Legislative, the
21 Executive, including the administrative, and the
22 Judicial, and no person charged with official duties
23 under one of these departments, shall exercise any of
24 the functions of another, except as in this
25 Constitution expressly provided."

26 Or Const art IV, § 1, provides:

"The legislative power of the state, except for the
initiative and referendum powers reserved to the
people, is vested in a Legislative Assembly, consisting
of a Senate and a House of Representatives."

Or Const art VII, § 1 (Amended) provides:

"The judicial power of the state shall be vested in one
supreme court and in such other courts as may from time
to time be created by law."

1 in the law to protect those who are affected by the
2 administrative action."⁶

3 This court has long followed the practice of construing statutes
4 to avoid constitutional infirmities. The same policy favors
5 construing the Landfill Siting Act to permit the court's exercise
6 of its constitutional mandamus jurisdiction. See Livesley v.
7 Krebs Hop Company, 57 Or 352, 357, 97 P 718, 107 P 460, 112 P 1
8 (1910) (Supreme Court has inherent power to issue orders to aid
9 or protect its appellate jurisdiction); and Sadler v. Oregon
10 State Bar, 275 Or 279, 292, 550 P2d 1218 (1976) (Legislature
11 cannot 'unreasonably abridge or destroy' the court's 'inherent
12 judicial functions.') This are constitutional issues which can,
13 but need not arise on post-decision judicial review under the
14 Siting Act if the agencies have complied with the requested writ.

15 E. ORIGINAL SITING CRITERIA ARE DE FACTO RULES

16 Defendants are bound by the original siting standards unless
17 and until they amend or repeal them in accordance with APA
18 rulemaking procedures. The Act itself requires the commission to
19 find that "the disposal site will comply with * * * rules of the
20 commission * * *." 1985 Or Laws ch 779, Sec. 4(1)(a).⁷

21 Under the Oregon APA, a rule is defined as

22 "* * *any agency directive, standard, regulation or
23 statement of general applicability that implements,
24 interprets or prescribes law or policy, or describes
25 the procedure or practice requirements of any agency.

26 ⁶ Constitutionality of delegation to LCDC, 38 Op AG 1130
(1977).

⁷ The Act also makes the commission's failure to make such a
finding unreviewable.

1 The term includes the amendment or repeal of a prior
rule * * *." ORS 183.310(8)

2 The standards, criteria, and site selection procedures
3 adopted and applied by Defendants under the Act are clearly "de
4 facto" rules under this definition, however informally they were
5 adopted. See Burke v. Children's Services Division, 288 Or 533,
6 537, 607 P2d 141 (1980).

7 This Court also said in Burke that

8 "An agency's failure to employ proper procedures when
9 adopting a rule does not eliminate the need to employ
proper procedures when repealing it." 288 Or 537
[Emphasis deleted]

10 Accordingly, Defendants are bound to apply the original set
11 of standards and criteria until such time as they amend or repeal
12 them through formal rulemaking. A de facto rule, however
13 adopted, "remains an effective statement of existing practice or
14 policy, binding on the agency, until repealed according to
15 procedures required by the Administrative Procedures Act." 288 Or
16 537.

17 **F. DEFENDANTS ARE BOUND TO COMPLY FULLY WITH STATEWIDE GOALS**

18 The Landfill Siting Act overrides local land use regulations
19 in certain situations and allows location of the site on land
20 which protected by the agricultural and forest lands goals,
21 subject to certain conditions. 1985 Or Laws ch. 679, § 4(1) and §
22 10; and ORS 215.213(1)(i). Otherwise, it requires complete
23 compliance with the goals. 1985 Or Laws ch. 679 §§ 2(a), 5(3) and
24 5(4). Nevertheless, Defendants have not treated goal compliance
25 as a pass-fail criterion.

1 **G. THE AGENCIES MUST CONDUCT A CONTESTED CASE HEARING OR**
2 **HEARINGS**

3 The Landfill Siting Act provides for selection of a single
4 site based upon pre-established statutory and administrative
5 standards. These standards are largely designed to protect
6 persons such as relators, who live, work, or own property near
7 the proposed site and will be exposed to its external impacts.
8 Under Section 4(1) of the Act, for example, the Commission must
9 find that the following conditions, among others, exist:

10 * * * *

11 "(b) The size of the disposal site is sufficiently large to
12 allow buffering for mitigation of any adverse effects
13 by natural or artificial barriers;

14 "(c) Projected traffic will not significantly contribute to
15 dangerous intersections or traffic congestion * * * *

16 * * * *

17 "(e) The proposed disposal site is designed and operated to
18 the extent practicable so as to mitigate conflicts with
19 surrounding uses * * * *.

20 These general requirements are implemented by the far more
21 precise three levels of site evaluation and selection criteria
22 adopted by the Commission in April, 1986. See Third Draft,
23 Portland Metropolitan Area Landfill Siting Criteria, April, 1986.
24 For example, the pass/fail criteria exclude sites within
25 floodways (P/F 4), sites which are critical habitat for listed
26 threatened or endangered species (P/F 6), and sites which are
"over the trace of an active geologic fault." (P/F 5). The Site
Evaluation Criteria are also highly specific. For example,
Criteria Category 41, Land Use, assigns a rating of two to prime

1 commercial forest land and a rating of five to forest lands
2 commercially managed with a cubic foot site class of five or six.
3 (Report, page 44). Final Decision Criterion Six assigns a score
4 of five to access roads with a level of service of "D" and a
5 score of 10 to access roads with a level of service of "C" or
6 better and no identified accident problem. (Report p. 106).
7 These are clear, precise, and manifestly adjudicatory standards.

8 The Act does not exclude the agencies from compliance with
9 the Administrative Procedures Act. It only excludes judicial
10 review under the review provisions of the APA. 1985 Or Laws ch.
11 679, § 6(1). It limits the scope of review, but does confine
12 review to the record and permit review for substantial evidence.
13 1985 Or Laws ch. 679, § 6(2). It also requires findings,
14 although it does not permit reversal or remand for lack of those
15 safeguards. The combination of a site-specific subject matter,
16 pre-defined specific standards and criteria protecting a specific
17 class of affected persons, the need for adjudicative
18 determinations of fact under those standards, a requirement of
19 findings, decision on the record, and review for substantial
20 evidence are all characteristics of a contested case. The
21 Commission has scheduled hearings on the two finalist sites for
22 April 16 and 21 of 1987. These hearings must, by law, have the
23 above characteristics. The orders setting those hearings are
24 therefore orders providing for "hearings substantially of the
25 character required by ORS 183.415, 183.425, 183.450, 183.460 and
26

183.470." Under ORS 183.310((2)(a)(D), such a hearing is a
1 "contested case."

2 The combination of these substantive and procedural
3 protections gives Relators "individual legal rights * * * or
4 privileges" which are "required by statute or Constitution to be
5 determined only after an agency hearing" at which Relators "are
6 entitled to be heard." Relators have protected property and
7 liberty interests in the protections of these standards and
8 procedures. Under the Due Process Clause of the Fourteenth
9 Amendment to the United States Constitution⁸, these interests
10 cannot be rendered illusory by inadequate state procedures. Logan
11 v. Zimmerman Brush Co., 455 U.S. 422, 429, 430, 102 S. Ct. 1148,
12 1154 (1982) (finding property interest in state benefit program
13 requiring meaningful procedures); Cleveland Board of Education v.
14 Loudermill, 105 S Ct 1487, 1492 (1985) (rejecting "bitter-with-
15 the-sweet" doctrine); Parks v. Watson, 716 F2d 646 (9th Cir
16 1983) (finding protected property interest in Oregon subdivision
17 vacation standards).

18 In short, there must at least be an adjudicatory hearing at
19 which Relators are entitled to appear and be heard. Londoner
20 v. City & County of Denver, 210 US 373, 28 S Ct 708, 52 L Ed 1103
21 (1908) (specific assessment decisions are quasi-judicial, with Due
22 Process right to hearing).

23
24
25 ⁸ " * * * [N]or shall any state deprive any person of life,
26 liberty, or property, without due process of law; * * * "

1 In Oregon, the same conclusion follows from Article I, § 20
of the Oregon Constitution, which provides that

2 "No law shall be passed granting to any citizen or
3 class of citizens privileges, or immunities, which,
4 upon the same terms, shall not equally belong to all
citizens."

5 Article I, § 20 is concerned with preventing favoritism and
6 inconsistent administration of the laws. See Megdal v. Board of
7 Dental Examiners, 288 Or 293, 302-03 n. 10, 605 P2d 273 (1980);
8 State v. Clark, 291 Or 231, 236, 630 P2d 810, cert den 454 US
9 1084 (1981); and State v. Freeland, 295 Or 367, 667 P2d 509
10 (1983).

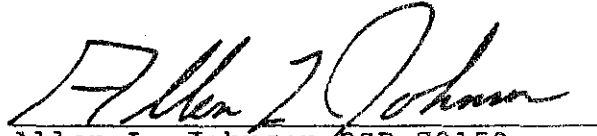
11 Relators have alleged that Defendants have arbitrarily
12 favored the Ramsey Lake site with improper changes in the
13 relative scoring of the two sites. Ramsey Lake is opposed by the
14 powerful Portland Port Authority, and many other sites are
15 opposed by interests far more numerous and powerful than Relators
16 and other residents of the Helvetia/Mountaindale area of rural
17 Washington County. Relators are entitled to the protections of
18 a contested case hearing to assure that the standards are
19 properly interpreted and applied to the facts.

20 Finally, although Relators do not concede that it may be
21 done here, it is worth pointing out that a contested case is the
22 only way other than formal rulemaking that a state agency may
23 announce a rule. See 183.355(5); Marbet v. Portland Gen. Elect.,
24 277 Or 47, 459-461, 561 P2d 154 (1977). Until now, well into the
25 siting process, Defendants have done neither.

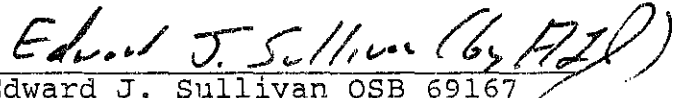
H. CONCLUSION

1 The court can best carry out the intent of the legislature
2 and assure a speedy, constitutional, and lawful completion of the
3 Portland Metro Area landfill siting process by exercising its
4 authority to correct the course of the responsible agencies
5 midstream. Otherwise, they are going to come into port on July
6 1, 1987, with nothing in the hold but garbage.

7 Respectfully submitted this 14th day of April, 1987.

8
9 

10 Allen L. Johnson OSB 73153
11 JOHNSON & KLOOS
12 Old Smeede Hotel
13 Suite 203, 767 Willamette
14 Eugene, OR 97401
15 503-687-1004

16 

17 Edward J. Sullivan OSB 69167
18 MITCHELL, LANG & SMITH
19 2000 One Main Place
20 101 S.W. Main Street
21 Portland, OR 97204
22 503-221-1011

the office of director of a district and fill a vacancy in that office after the effective date of this Act as if this Act had not been enacted. However, on July 1, 1987, the tenure of office of any director appointed by the governing body of a city or county shall cease.

SECTION 7. ORS 267.230 is amended to read:

267.230. (1) **Except as provided in subsection (2) of this section, a transit system operated by a district, including the rates and charges made by a district and the equipment operated by a district, shall not be subject to state laws or ordinances of any political subdivision regulating public utilities or railroads, including those laws administered by the Public Utility Commissioner of Oregon, except for the provisions of ORS chapter 763.**

(2) **ORS chapter 763 applies to the transit system operated by a district except for control and regulation of any crossing at which the light rail transit vehicles of a district's transit system cross a highway at separated grades or any grade crossing at which the light rail transit vehicles operate within and parallel to the right of way of a highway and where all conflicting vehicle movements are controlled by standard highway traffic devices. However, upon written request from the district and the public authority with jurisdiction over the highway at such a grade crossing, the Public Utility Commissioner shall adjudicate any dispute that arises between the district and the public authority with regard to the grade crossing.**

Approved by the Governor July 13, 1985
 Filed in the office of Secretary of State July 15, 1985

CHAPTER 679

AN ACT SB 662

Relating to solid waste disposal; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 9 of this Act are added to and made a part of ORS 459.005 to 459.285.

SECTION 2. (1) The Legislative Assembly finds that the siting and establishment of a disposal site for the disposal of solid waste within or for Clackamas, Multnomah and Washington Counties is necessary to protect the health, safety and welfare of the residents of those counties.

(2) It is the intent of the Legislative Assembly that the Environmental Quality Commission and Department of Environmental Quality, in locating and establishing a disposal site within Clackamas, Multnomah and Washington Counties give due consideration to:

(a) Except as provided in subsections (3) and (4) of section 5 of this 1985 Act, the state-wide planning goals adopted under ORS 197.005 to 197.430 and the acknowledged comprehensive plans and land use regulations of affected counties.

(b) Information received during consultation with local governments.

(c) Information received from public comment and hearings.

(d) Any other factors the commission or department considers relevant.

SECTION 3. (1) The Department of Environmental Quality shall conduct a study, including a survey of possible and appropriate sites, to determine the preferred and appropriate disposal sites for disposal of solid waste within or for Clackamas, Multnomah and Washington Counties.

(2) The study required under this section shall be completed not later than July 1, 1986. Upon completion of the study, the department shall recommend to the commission preferred locations for disposal sites within or for Clackamas, Multnomah and Washington Counties. The department may recommend a location for a disposal site that is outside those three counties, but only if the city or county that has jurisdiction over the site approves the site and the method of solid waste disposal recommended for the site. The recommendation of preferred locations for disposal sites under this subsection shall be made not later than January 1, 1987.

SECTION 4. (1) Subject to subsections (3) and (4) of section 5 of this 1985 Act, the Environmental Quality Commission may locate and order the establishment of a disposal site under this 1985 Act in any area, including an area of forest land designated for protection under the state-wide planning goals, in which the commission finds that the following conditions exist:

(a) The disposal site will comply with applicable state statutes, rules of the commission and applicable federal regulations;

(b) The size of the disposal site is sufficiently large to allow buffering for mitigation of any adverse effects by natural or artificial barriers;

(c) Projected traffic will not significantly contribute to dangerous intersections or traffic congestion, considering road design capacities, existing and projected traffic counts, speed limits and number of turning points;

(d) Facilities necessary to serve the disposal site can be available or planned for the area; and

(e) The proposed disposal site is designed and operated to the extent practicable so as to mitigate conflicts with surrounding uses. Such conflicts with surrounding uses may include, but are not limited to:

(A) Visual appearance, including lighting and surrounding property.

(B) Site screening.

- (C) Odors.
- (D) Safety and security risks.
- (E) Noise levels.
- (F) Dust and other air pollution.
- (G) Bird and vector problems.
- (H) Damage to fish and wildlife habitats.

(2) When appropriate, the conditions listed in this section may be satisfied by a written agreement between the Department of Environmental Quality and the appropriate government agency under which the agency agrees to provide facilities as necessary to prevent impermissible conflict with surrounding uses. If such an agreement is relied on to satisfy any approval criteria, a condition shall be imposed to guarantee the performance of the actions specified.

SECTION 5. (1) The commission, not later than July 1, 1987, shall issue an order directing the Department of Environmental Quality to establish a disposal site under this 1985 Act within Clackamas, Multnomah or Washington County or, subject to subsection (2) of section 3 of this 1985 Act, within another county.

(2) In selecting a disposal site under this section, the commission shall review the study conducted under section 3 of this 1985 Act and the locations for disposal sites recommended by the department under section 3 of this 1985 Act.

(3)(a) When findings are issued by the department under subsection (4) of this section, the commission in selecting a disposal site under this 1985 Act must comply with the state-wide planning goals adopted under ORS 197.005 to 197.430 and with the acknowledged comprehensive plan and land use regulations of the local government unit with jurisdiction over the area in which the disposal site is located.

(b) However, when findings are not issued under subsection (4) of this section, the standards established by section 4 of this 1985 Act take precedence over provisions in the comprehensive plan or land use regulations of the affected local government unit, and the commission may select a disposal site in accordance with those standards instead of, and without regard to, any provisions for locating and establishing disposal sites that are contained in the comprehensive plan or land use regulations of the affected local government unit. Any provision in a comprehensive plan or land use regulation that prevents the location and establishment of a disposal site that can be located and established under the standards set forth in section 4 of this 1985 Act shall not apply to the selection of a disposal site under this 1985 Act.

(4) The department, not later than July 1, 1986, may determine whether the acknowledged comprehensive plans and land use regulations of the counties in which possible disposal sites being considered by the department are situated contain standards for determining the location of land disposal sites that are identical to or consistent with the standards specified in section 4 of this

1985 Act. If the standards contained in the comprehensive plan and land use regulations of a county are identical to or consistent with the standards specified in section 4 of this 1985 Act, the department may issue written findings to that effect and shall submit the findings to the commission.

(5) When selecting a disposal site under this 1985 Act, the commission may attach limitations or conditions to the development, operation or maintenance of the disposal site, including but not limited to, setbacks, screening and landscaping, off-street parking and loading, access, performance bonds, noise or illumination controls, structure height and location limits, construction standards and periods of operation.

(6) If the Environmental Quality Commission directs the Department of Environmental Quality to establish or complete the establishment of a disposal site under this section, the department shall establish the site subject only to the approval of the commission. Notwithstanding any other provision of this 1985 Act or any city, county or other local government charter or ordinance to the contrary, the Department of Environmental Quality may establish a disposal site under this section without obtaining any license, permit, franchise or other form of approval from a local government unit.

(7) The department shall identify conflicts with surrounding uses for any disposal site established under this 1985 Act and, to the extent practicable, shall mitigate or require the operator of the site to mitigate those conflicts.

SECTION 6. (1) Notwithstanding ORS 183.400, 183.482, 183.484 and 197.825, exclusive jurisdiction for review of any decision made by the Environmental Quality Commission under this 1985 Act relating to the establishment or siting of a disposal site, any order to the Department of Environmental Quality to establish or complete such a site or any findings made by the department under section 5 of this 1985 Act is conferred upon the Supreme Court.

(2) Proceedings for review shall be instituted when any person adversely affected or aggrieved by the order of the commission files a petition with the Supreme Court. The petition shall be filed within 30 days following the date on which the order upon which the petition is based is served. The petition shall state the nature of the order or decision the petitioner desires reviewed and shall, by supporting affidavit, state the facts showing how the petitioner is adversely affected or aggrieved. Copies of the petition shall be served by registered or certified mail upon the commission. Within 30 days after service of the petition, the commission shall transmit to the Supreme Court the original or a certified copy of the entire record of the proceeding under review. Review under this section shall be confined to the record, and the court shall not substitute its judgment for that of the commission as to any issue of fact or agency discretion. Upon review, the Supreme Court may affirm, reverse or remand the order of

the commission if the court finds that the order is not supported by substantial evidence in the record or is unconstitutional. Proceedings for review under this section shall be given priority over all other matters before the Supreme Court.

(3) Notwithstanding ORS 197.850, jurisdiction for judicial review of a final order of the Land Use Board of Appeals issued in any proceeding arising under this 1985 Act is conferred upon the Supreme Court. The procedure for judicial review of a final order under this subsection shall be as provided in subsection (2) of this section.

SECTION 7. (1) Subject to policy direction by the commission in carrying out sections 3 and 5 of this 1985 Act, the department may:

(a) By mutual agreement, return all or part of the responsibility for development of the site to a local government unit, or contract with a local government unit to establish the site.

(b) To the extent necessary, acquire by purchase, gift, grant or exercise of the power of eminent domain, real and personal property or any interest therein, including the property of public corporations or local government.

(c) Lease and dispose of real or personal property.

(d) At reasonable times and after reasonable notice, enter upon land to perform necessary surveys or tests.

(e) Acquire, modify, expand or build landfill or resource recovery site facilities.

(f) Subject to any limitations in ORS 468.195 to 468.260, use money from the Pollution Control Fund created in ORS 468.215 for the purposes of carrying out section 5 of this 1985 Act.

(g) Enter into contracts or other agreements with any local government unit or private person for the purposes stated in ORS 459.065 (1).

(h) Accept gifts, donations or contributions from any source to carry out the provisions of sections 3 and 5 of this 1985 Act.

(i) Establish a system of fees or user charges to reimburse the department for costs incurred under this 1985 Act and to allow repayment of moneys borrowed from the Pollution Control Fund.

(2) The metropolitan service district shall have the responsibility for the operation of the disposal sites established under this 1985 Act.

SECTION 8. (1) The metropolitan service district organized under ORS chapter 268 shall prepare a solid waste reduction program. Such program shall provide for:

(a) A commitment by the district to substantially reduce the volume of solid waste that would otherwise be disposed of in land disposal sites through techniques including, but not limited to, rate structures, source reduction, recycling, reuse and resource recovery;

(b) A timetable for implementing each portion of the solid waste reduction program;

(c) Energy efficient, cost-effective approaches for solid waste reduction that are legally, technically and

economically feasible and that carry out the public policy described in ORS 459.015 (2); and

(d) Procedures commensurate with the type and volume of solid waste generated within the district.

(2) Not later than January 1, 1986, the metropolitan service district shall submit its solid waste reduction program to the Environmental Quality Commission for review and approval. The commission shall approve the program if the commission finds that:

(a) The proposed program presents effective and appropriate methods for reducing dependence on land disposal sites for disposal of solid wastes;

(b) The proposed program will substantially reduce the amount of solid waste that must be disposed of in land disposal sites;

(c) At least a part of the proposed program can be implemented immediately; and

(d) The proposed program is legally, technically and economically feasible under current conditions.

(3) After review of the solid waste reduction program, if the commission does not approve the program as submitted, the commission shall allow the metropolitan service district not more than 90 days in which to modify the program to meet the commission's objections.

(4) Notwithstanding ORS 268.310 (2) and 268.317, if the commission does not approve the solid waste reduction program submitted by the metropolitan service district after any period allowed for modification under subsection (3) of this section, all the duties, functions and powers of the metropolitan service district relating to solid waste disposal are imposed upon, transferred to and vested in the Department of Environmental Quality and no part of such duties, functions and powers shall remain in the metropolitan service district. The transfer of duties, functions and powers to the department under this section shall take effect on July 1, 1986. Notwithstanding such transfer of duties, functions and powers, the lawfully adopted ordinances and other rules of the district in effect on July 1, 1986, shall continue in effect until lawfully superseded or repealed by rules of the commission.

(5) If the solid waste reduction program is approved by the commission, a copy of the program shall be submitted to the Sixty-fourth Legislative Assembly not later than February 1, 1987.

SECTION 9. (1) The metropolitan service district shall apportion an amount of the service or user charges collected for solid waste disposal at each general purpose landfill within or for the district and dedicate and use the moneys obtained for rehabilitation and enhancement of the area in and around the landfill from which the fees have been collected. That portion of the service and user charges set aside by the district for the purposes of this subsection shall be 50 cents for each ton of solid waste.

(2) The metropolitan service district, commencing on the effective date of this 1985 Act, shall apportion an amount of the service or user charges collected for solid

waste disposal and shall transfer the moneys obtained to the Department of Environmental Quality. That portion of the service and user charges set aside by the district for the purposes of this subsection shall be \$1 for each ton of solid waste. Moneys transferred to the department under this section shall be paid into the Land Disposal Mitigation Account in the General Fund of the State Treasury, which is hereby established. All moneys in the account are continuously appropriated to the department and shall be used for carrying out the department's functions and duties under this 1985 Act. The department shall keep a record of all moneys deposited in the account. The record shall indicate by cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged. Apportionment of moneys under this subsection shall cease when the department is reimbursed for all costs incurred by it under this 1985 Act.

(3) The metropolitan service district shall adjust the amount of the service and user charges collected by the district for solid waste disposal to reflect the loss of those duties and functions relating to solid waste disposal that are transferred to the commission and department under this 1985 Act. Moneys no longer necessary for such duties and functions shall be expended to implement the solid waste reduction program submitted under section 8 of this 1985 Act. The metropolitan service district shall submit a statement of proposed adjustments and changes in expenditures under this subsection to the department for review.

SECTION 10. ORS 459.049 does not apply to a disposal site established under this Act other than for the purposes of ORS 215.213 (1)(i).

SECTION 11. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.

Approved by the Governor July 13, 1985
 Filed in the office of Secretary of State July 15, 1985

CHAPTER 680

AN ACT SB 791

Relating to sewage treatment works; amending ORS 454.340.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 454.340 is amended to read:
 454.340. (1) *[Except as provided in this section,]* All seepage charges levied and collected by the governing body *[shall be dedicated and pledged to the payment of the principal of and interest due on general obligation bonds or on revenue bonds issued pursuant to ORS 454.285 for the construction of treatment works or to*

provide capital funds for the construction of treatment works] shall be used for the construction of treatment works.

(2) Systems development charges for the installation or replacement of cesspools or septic tanks shall not be imposed by a municipality in any area in which seepage charges are imposed and collected under ORS 454.317 to 454.350. If an owner of real property against which seepage charges are imposed has already paid a systems development charge for the installation or replacement of cesspools or septic tanks for that real property, the owner shall be allowed a credit against the seepage charge otherwise payable in an amount equal to the systems development charge.

(3) When a user fee for the use of treatment works is imposed upon real property, all seepage charges levied against that real property shall cease.

(4) The governing body shall, by ordinance, *[may allocate not less than 25 percent]* allocate all of the seepage charges collected under ORS 454.317 to 454.350 for the purpose of allowing owners of real properties against which the seepage charges are imposed a credit against the future connection charges or systems development charges otherwise due when those real properties are connected to treatment works.

(5) If the municipality levying the seepage charges is not the municipality imposing the connection charges or systems development charges imposed at the time of connection to the treatment works, then the municipality levying the seepage charges shall transfer those seepage charges it has collected to the municipality imposing the connection charges or systems development charges imposed at the time of connection to the treatment works.

Approved by the Governor July 13, 1985
 Filed in the office of Secretary of State July 15, 1985

CHAPTER 681

AN ACT SB 795

Relating to noise emissions; amending ORS 467.120.
Be It Enacted by the People of the State of Oregon:

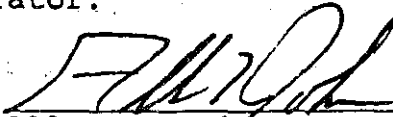
SECTION 1. ORS 467.120 is amended to read:
 467.120. (1) **Except as provided in subsection (3) of this section,** agricultural operations and forestry operations are exempt from the provisions of this chapter.

(2) As used in this section:

(a) "Agricultural operations" means the current employment of land and buildings on a farm for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying

CERTIFICATE OF FILING

I certify that on April 15, 1987, I filed the original and eight copies of the foregoing PETITION FOR ALTERNATIVE WRIT OF MANDAMUS, the original and eight copies of the foregoing ABSTRACT OF RECORD, and the original and two copies of the ALTERNATIVE WRIT OF MANDAMUS with the State Court Administrator, Supreme Court Building, Salem, Oregon 97310, by personally delivering same to the office of the administrator.


Allen L. Johnson
of Attorneys for Petitioners

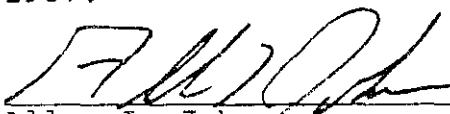
CERTIFICATE OF SERVICE

I hereby certify that on April 15, 1987, I caused two certified true copies of the foregoing PETITION FOR ALTERNATIVE WRIT OF MANDAMUS, ABSTRACT OF RECORD, and ALTERNATIVE WRIT OF MANDAMUS to be served on the following persons by depositing the same in a sealed envelope, first class mail, certified, return receipt requested, postage prepaid, addressed as set forth below, at the U.S. Post Office in Eugene, Oregon:

David B. Frohnmayer
Attorney General
Virginia L. Linder
Solicitor General
100 Justice Building
Salem, OR 97310

Env. Quality Commission
Dept. of Env. Quality
Fred Hansen, Director
522 S.W. Fifth Ave.
P.O. Box 1760
Portland, OR 97233

DATED this 15th day of April, 1987.


Allen L. Johnson
Of Attorneys for Petitioners

1 selection. Also, at this meeting, the Department will
2 discuss the detailed procedures which will be followed
3 to further evaluate the 2 to 4 finalist sites." EQC
4 Minutes for April 25, 1986, meeting.

5 On June 27, 1986, the Department of Environmental Quality
6 presented a status report to the commission and reported on the
7 "methodology and procedures used to develop the initial list of
8 242 potential sites and to reduce that number to 19 candidate
9 sites." At that meeting,

10 "Commissioner Brill asked if the Department
11 anticipated any problems with the Land Conservation and
12 Development Commission. Mr. Greenwood said the
13 Department has incorporated the land use goals into the
14 citing [sic] criteria. Michael Huston, Assistant
15 Attorney General, did not think that LCDC would get
16 involved as Senate Bill 662 provides for an override of
17 the land use process." EQC Minutes, June 27, 1986,
18 meeting.

19 Following June 27, 1986, the Department and/or the EQC
20 developed "Criteria Rating Guidelines" modifying many of the
21 evaluation criteria and also developed amended "Final Decision
22 Criteria." They also reevaluated the 19 "preferred and ap-
23 propriate" sites and, based on that evaluation, reduced the list
24 to three, Wildwood, Bacona Road, and Ramsey Lake, and authorized
25 consultant CH2M Hill to conduct feasibility studies on the three
26 sites. March 10, 1987, EQC minutes.

On March 10, 1987, the commission conducted a special
meeting to discuss the results of the draft feasibility study
reports, and adopted a

RESOLUTION that "the EQC not consider Wildwood as a
potential landfill site."

On February 12 and 24, Edward J. Sullivan, attorney for

Relators, demanded contested case hearings.

1 On March 11, 1987, David G. Ellis, Assistant Attorney
2 General, on behalf of the Defendants, replied by letter to Mr.
3 Sullivan that:

4 " * * * [T]he commission will not treat this as a
5 contested case hearing. Rather, the foollowing
6 procedure and time lines will be followed by EQC.

7 "First, the draft reports concerning each of the
8 three sites will be available to the public on March
9 10, 1987. Then, EQC will conduct separate public
10 meetings to receive oral and written comments from the
11 public for each of the sites under consideration. The
12 meeting for the Bacona Road site is set for April 21,
13 1987. Written comments will be accepted by the EQC
14 upto and including April 24, 1987."

15 "It is anticipated that the final report will be
16 prepared and ready for public review no later than May
17 22, 1987. Interested persons will then have until June
18 12, 1987, to file additional comments or objections
19 with EQC. EQC will meet on DJune 19, 1987, to make its
20 site selection."

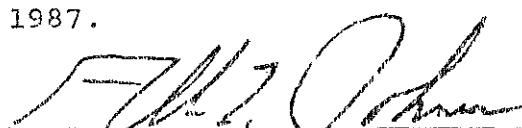
21 On or about March 24, 1987, Relators filed with Defendants a
22 PETITION TO ADOPT RULES
23 under ORS 183.390 and OAR 137-01-070, attaching proposed rules
24 providing, inter alia, that

25 "No site shall be selected if the siting thereof
26 violates the state-wide planning goals * * *."

and

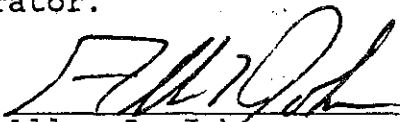
27 "In undertaking the study required by section 3 of
28 the Act, the Department shall use the criteria set
29 forth in Exhibit "1)[the April, 1986, Landfill Siting
30 Criteria] attached hereto and by this reference made a
31 part hereof."

DATED this 24th day of April, 1987.


Allen L. Johnson, OSB 73153

CERTIFICATE OF FILING

I certify that on April 15, 1987, I filed the original and eight copies of the foregoing PETITION FOR ALTERNATIVE WRIT OF MANDAMUS, the original and eight copies of the foregoing ABSTRACT OF RECORD, and the original and two copies of the ALTERNATIVE WRIT OF MANDAMUS with the State Court Administrator, Supreme Court Building, Salem, Oregon 97310, by personally delivering same to the office of the administrator.


Allen L. Johnson
of Attorneys for Petitioners


CERTIFICATE OF SERVICE

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David B. Frohnmayer
Attorney General
Virginia L. Linder
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100 Justice Building
Salem, OR 97310

Env. Quality Commission
Dept. of Env. Quality
Fred Hansen, Director
522 S.W. Fifth Ave.
P.O. Box 1760
Portland, OR 97233

DATED this 15th day of April, 1987.


Allen L. Johnson
Of Attorneys for Petitioners

1 IN THE SUPREME COURT OF THE STATE OF OREGON

2 STATE EX REL HELVETIA/MOUNTAIN-)
3 DALE PRESERVATION COALITION, INC.,)
4 a nonprofit Oregon Corporation;)
5 GARY LEHAIE; LINDA PETERS; and)
6 GREG BROWN,)

7 Plaintiff-Relators,)

8 v.)

9 OREGON ENVIRONMENTAL QUALITY)
10 COMMISSION, an Oregon state)
11 agency; and OREGON DEPARTMENT)
12 OF ENVIRONMENTAL QUALITY, an)
13 Oregon state agency,)

14 Defendants.)

SC _____

ALTERNATIVE
WRIT OF MANDAMUS

15 TO: Oregon Department of Environmental Quality

16 Oregon Environmental Quality Commission:

17 From the petition of the State of Oregon, on the relation of
18 Helvetia/Mountaindale Preservation Coalition, Inc., Gary LeHaie,
19 Linda Peters, and Greg Brown, the following facts appear:

20 I.

21 INTRODUCTION

22 This is a proceeding to compel the Defendants Oregon Envi-
23 ronmental Quality Commission (EQC) and Department of Environ-
24 mental Quality (DEQ) to conform their actions to the requirements
25 of the Oregon Administrative Procedures Act, state land use goals
26 insofar as applicable, and the agencies' own rules in selecting a
site for the proposed Portland Metro area landfill. Specifical-
ly, Relators ask the court to compel Defendants to conform their

1 actions to existing siting rules unless and until said rules are
2 amended through formal rulemaking. The rules in question are
3 detailed site evaluation and selection standards and criteria
4 governing selection of sites for the proposed Portland Metropoli-
5 tan Area Landfill under 1985 Or Laws ch 679 (The Landfill Siting
6 Act).¹

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II.

Relators also ask the Court to compel Defendants to conduct a contested case hearing or hearings under said standards and criteria before making their final site selection. Relators have demanded compliance as requested herein but Defendants have thus far failed or refused to comply.

III.

INTERESTS OF RELATORS

Relator Helvetia/Mountaindale Preservation Coalition, Inc., is an Oregon non-profit corporation in good standing formed to protect and preserve the Helvetia/Mountaindale area of Washington County from the adverse impacts of construction and operation of a Portland Area Metropolitan Landfill at the Bacon Road site or elsewhere in the Helvetia/Mountaindale area. Selection of the Bacon Road site would frustrate the purpose of the corporation and threatens the quality of life, property values, surface and groundwater quality, air quality, and peace and tranquillity of the area and its residents, including the membership of plaintiff corporation. Individual relators are members of said corpora-

¹ Copy of statute attached to supporting memorandum.

1 tion. Relators Gary LeHaie and Linda Peters, husband and wife,
2 and Ms. Peters' eight-year-old daughter Sarah, own and live on a
3 10-acre tract four miles southeast and downgradient of the
4 proposed Bacona Road site. Location of the landfill at Bacona
5 Road threatens their peace and tranquility, the value of their
6 property and the safety and quality of their air and groundwater.
7 Relator Greg Brown and his four-year-old son Timothy own and live
8 on a 30-acre tract three miles southeast and downgradient of the
9 Bacona Road site. They have timberland, run livestock, and use a
10 spring on their property. They would suffer the same kinds of
11 adverse impacts as the other individual plaintiffs.

12 IV.

13 Relators Brown, Peters, and LeHaie have participated orally
14 or in writing in site selection proceedings and hearings con-
15 ducted by Defendants, and are aggrieved because their contentions
16 have not been adopted. Relators have an interest in the substan-
17 tive and procedural protections afforded by the subject rules,
18 the Oregon State Administrative Procedures Act, the state's land
19 use goals, and all other applicable health, safety, and environ-
20 mental protection statutes and regulations.

21 V.

22 All plaintiffs have been and continue to be prejudiced by
23 the failure of the DEQ and EQC to follow their rules, apply
24 applicable standards, conduct contested case hearings, and follow
25 statutory rulemaking procedures because the Defendants' failure
26 to apply EQC's rules has substantially elevated the comparative

1 ranking of the Bacona Road site relative to other potential
2 sites.

3 VI.

4 ALTERNATIVE REMEDIES

5 Relators have no plain, speedy, or adequate remedy at law
6 because the Landfill Siting Act: (1) precludes normal judicial
7 review of agency action relating to the establishment or siting
8 of a landfill under the Act; (2) confines jurisdiction for
9 judicial review to the Oregon Supreme Court; and (3) precludes
10 judicial review by the Oregon Supreme Court for substantive and
11 procedural errors other than lack of substantial evidence and
12 unconstitutionality.

13 VII.

14 Relators have not filed a petition for mandamus or other
15 relief in a circuit court because the evident intent of the
16 legislature in adopting the Landfill Siting Act was to simplify
17 and accelerate the siting process through concentrating judicial
18 oversight in the Oregon Supreme Court. Plaintiffs reserve the
19 right to file a precautionary petition with a circuit court at
20 any time.

21 VIII.

22 RULEMAKING

23 On or about April 25, 1986, the EQC adopted siting stan-
24 dards, criteria, and procedures in the form of a document
25 entitled "Third Draft--The Portland Metropolitan Area Landfill
26 Siting Criteria, April, 1986." The purpose of the report was

1 "* * * to describe the system that will be used to
2 identify potential landfill sites, to evaluate and
3 compare those sites; and, ultimately, to select the
4 final site or sites. The system is based on the use of
5 landfill siting criteria that define the important
6 considerations in selecting a site. The system also
7 includes a numerical scoring method that will be used
8 to compare potential sites relative to the criteria.
9 The principal objective of the site selection process
10 described in this report are [sic] to weight all
11 important regulatory, political, environmental,
12 technical, and economic concerns; to allow an objec-
13 tive, fair, and comprehensive look at the entire study
14 area; and to provide a fresh approach to the site
15 selection process." April Report, p. 2.

16 The siting criteria are organized into three major categories, to
17 be used sequentially in the site selection process. These
18 categories are:

- 19 "1. Pass/fail criteria, which will be used to eliminate
20 from further consideration all of the sites exhibiting
21 constraints that would prevent development as a
22 landfill.
- 23 "2. Site evaluation criteria, which will be used to
24 evaluate the suitability of the remaining sites for
25 landfill use.
- 26 "3. Final decision criteria, which will be used to compare
27 the final two to four sites and select the best site
28 from the final alternatives." Report, page 4.

29 The scoring system is weighted as follows:

30 "The scoring system uses two separate numerical
31 indicators for each criterion: a site characteristic
32 rating and a criterion rating. The site characteristic
33 rating is used to numerically compare alternative sites
34 in relation to a single criterion. The criterion
35 weight is used to compare the importance of a given
36 criterion in relation to other criteria. Sites with
37 good features and important criteria will be given
38 higher scores than sites with poor features for
39 landfill development or criteria of less importance.
40 This numerical scoring system will be used for the site
41 evaluation and final decision criteria only. With the
42 pass/fail criteria, sites are not scored, but are
43 designated acceptable or not acceptable for further
44 evaluation." Report, page 8.

IX.

1
2 The above standards, criteria and procedures are "rules"
3 within the meaning of the Oregon Administrative Procedures Act.
4 They are agency directives, standards, regulations, and state-
5 ments of general applicability that implement, interpret, and
6 prescribe law or policy and describe the procedure and practice
7 requirements of the agencies.

X.

8
9 Defendants did not follow formal rulemaking procedures,
10 submit the above-described proposed rules to legislative counsel,
11 prepare a statement of need, or file the rules with the secretary
12 of state as required by their own rules and the Administrative
13 Procedures Act.

XI.

14
15 Subsequent to the adoption of said rules, Defendants used
16 the pass/fail criteria, the 41 site evaluation criteria and the
17 weighted scoring system to select 19 "preferred and appropriate
18 sites" from a list of 142 "potential sites." Before proceeding
19 to the next stage, Defendants amended the 41 site evaluation
20 criteria. The amendments were made without formal rulemaking or
21 hearings of any kind. Using the amended criteria, Defendants re-
22 evaluated the 19 "preferred and appropriate sites," and narrowed
23 the list to the top-scoring three finalists: Wildwood, Bacona
24 Road, and Ramsey Lake.

25 Evaluation of the sites under the amended criteria added
26 approximately 96 points to the Bacona Road score, increasing it

1 from approximately 962 to 1058, raising Bacona Road from no
2 higher than fifth place to second place, qualifying it for the
3 final selection process. By contrast, the changes deleted 240
4 points from the score for the Ramsey Lake site, reducing its
5 score from approximately 1340 to approximately 1100, narrowing
6 the difference between the scores for the two sites from over 350
7 points to less than 50 points. The approximate changes for the
8 top six sites are summarized as follows:

8	Site M-5 (Ramsey Lake)	1340 to 1100
9	Site W-29 (Bacona Road)	962 to 1058
10	Site M-2 (Wildwood)	971 to 1017
11	Site C-4	988 to 984
12	Site W-20	979 to 976
13	Site C-30	907 to 973

14 XII.

15 LAND USE GOALS

16 The rules do not require Defendants to comply with ap-
17 plicable mandatory statewide land use goals, Defendants' cer-
18 tified land use coordination agreement, or the State Agency
19 Coordination statute and rule, ORS 197.185 and OAR 660-30-000ff.
20 The pass/fail criteria include a "Regulatory" standard (P/F 2,
21 Report page 14) and a "Land Use" standard (P/F 7, report page
22 19). However, neither these nor any other standards, including
23 the final site selection standards, require full compliance with
24 statewide land use goals (OAR 660-15-000(1)-(14) or make an
25
26

1 exception to the goals or compliance with the goals a pass/fail
2 criterion.

3 **XIII.**

4 Relators have demanded that the Defendants apply the
5 original criteria and have filed a petition for rulemaking
6 requesting formal adoption of the original criteria, but the
7 Defendants have thus far failed or refused to comply.

8 **VII.**

9 **CONTESTED CASE**

10 Relators have protected interests in the quasi-judicial
11 application of the applicable standards and criteria to the
12 subject sites, to a decision after a hearing on the record by an
13 impartial tribunal, in development of a record and findings
14 showing compliance with applicable standards based upon substan-
15 tial evidence, and in the opportunity to know and meet the
16 applicable standards through examination and cross-examination of
17 witnesses under oath. They are entitled to and have demanded
18 contested case hearings but Defendants have thus far failed or
19 refused to grant the same.

20 * * * *

21 WHEREFORE, you are commanded as follows:

- 22 1. Immediately after receiving the writ to
23 a: Adopt site evaluation and selection criteria and
24 procedures by formal rulemaking.
25 b: Rank all sites according to the original, un-
26 modified criteria described herein until such time

as said rules are modified through formal rulemaking.

c: Exclude all sites which do not fully comply with state land use goals or other mandatory state, federal, and local standards;

d: Conduct a contested case hearing or hearings to determine whether the Department staff has correctly applied the criteria to the potential, preferred, and finalist sites.

e. Pay relators their reasonable costs, expenses, and attorney fees incurred herein.

or, in the alternative,


2. To file a certificate of compliance or show cause by answer or motion to dismiss as provided by ORAP 3.10 and ORS 34.170 no later than _____, 1987.

DATED this ____ day of _____, 1987.

William R. Linden
State Court Administrator

CERTIFICATE OF FILING

I certify that on April 15, 1987, I filed the original and eight copies of the foregoing PETITION FOR ALTERNATIVE WRIT OF MANDAMUS, the original and eight copies of the foregoing ABSTRACT OF RECORD, and the original and two copies of the ALTERNATIVE WRIT OF MANDAMUS with the State Court Administrator, Supreme Court Building, Salem, Oregon 97310, by personally delivering same to the office of the administrator.


Allen L. Johnson
of Attorneys for Petitioners

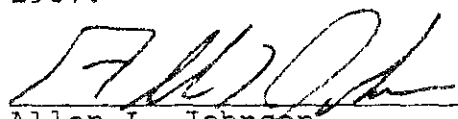
CERTIFICATE OF SERVICE

I hereby certify that on April 15, 1987, I caused two certified true copies of the foregoing PETITION FOR ALTERNATIVE WRIT OF MANDAMUS, ABSTRACT OF RECORD, and ALTERNATIVE WRIT OF MANDAMUS to be served on the following persons by depositing the same in a sealed envelope, first class mail, certified, return receipt requested, postage prepaid, addressed as set forth below, at the U.S. Post Office in Eugene, Oregon:

David B. Frohnmayer
Attorney General
Virginia L. Linder
Solicitor General
100 Justice Building
Salem, OR 97310


Env. Quality Commission
Dept. of Env. Quality
Fred Hansen, Director
522 S.W. Fifth Ave.
P.O. Box 1760
Portland, OR 97233

DATED this 15th day of April, 1987.


Allen L. Johnson
Of Attorneys for Petitioners

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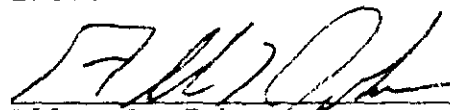
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Fred Hansen, Director
522 S.W. Fifth Ave.
P.O. Box 1760
Portland, OR 97233

DATED this 15th day of April, 1987.


Allen L. Johnson
Of Attorneys for Petitioners

BOX 5060
KETCHIKAN, AK 99901
907-247-8507

CANOLES CONCRETE PRODUCTS

B. C. Canoles

ULTRAVIOLET DISINFECTANT UNITS
LICENSED JET AERATION • DISTRIBUTOR
JET AERATION SEWAGE TREATMENT PLANTS
HOME PLUS COMMERCIAL
1,500 TO 50,000 GAL.

P.O. BOX 10
NEHALEM, OR 97131
503-368-6535

March 26, 1987.

Environmental Quality Commission
811 S.W. 6th
Portland, Oregon 97204

Dear Sir:

I would like to respectfully request to appear before the Environmental Quality Commission on April 17, 1987. This is in regard to tests that have been conducted over the past year and a half on Jet aeration home sewage treatment plant.

Also enclosed are numerous newspaper articles regarding failure of septic tanks and the contamination of the drinking water in the aquafire.

Please advise as soon as possible of the appropriate time for this meeting. Please send your response to:

Mr. B. C. Canoles
Box 5060
Ketchikan, Alaska 99901
(907) 247-8507

Thank you very much for your time and consideration in this matter.

Sincerely,

B. C. Canoles
B.C. Canoles

BCC:lje

RECEIVED
DEPARTMENT OF ENVIRONMENTAL QUALITY
MARCH 27 1987

OFFICE OF THE DIRECTOR

LABORATORY TESTS FOR NORTH COAST CONCRETE PRODUCTS
 DUVALL JET PLANT - McDONALD ROAD

DATE:	D.O. (SM219F)	P.H.	S.S. (SM224C)	BOD (SM408B)	FECAL (SM408B)
4-9-87					
Aerated Influent	9.2	7.2	112	87	—
1st Tank Effluent	—	—	—	—	—
Effluent	10.6	6.9	6	12	159

DATE:					
Aerated Influent					
1st Tank Effluent					
Effluent					

DATE:					
Aerated Influent					
1st Tank Effluent					
Effluent					

DATE:					
Aerated Influent					
1st Tank Effluent					
Effluent					

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1,500 TO 50,000 GAL.

P.O. BOX 10
NEHALEM, OR 97131
503-368-6535

March 26, 1987

Environmental Quality Commission
811 S.W. 6th
Portland, Oregon 97204

Gentlemen:

The enclosed items are a very few examples of the problems caused by the installation of septic tanks for the past many years.

Sincerely,

B.C. Canoles

BCC:lje

EDITORIALS

The Seattle Times

AN INDEPENDENT NEWSPAPER

Founded August 10, 1896

Alden J. Blethen, 1896-1915 C. B. Blethen, 1915-1941
Elmer E. Todd, 1942-1949 W. K. Blethen, 1949-1967

John A. Blethen, Chairman of the Board
W. J. Pennington, President and Publisher

James B. King, Editor and Vice President

Herb F. Robinson,
Editorial Page Editor

Michael R. Fancher,
Managing Editor

OREGON AS MEXICO?

Liquid trouble in H₂Oregon

OREGON, although south of the border, isn't usually considered a Third World country. Visitors don't normally worry about getting *turista* or other waterborne diseases. Most people don't take PeptoBismol to Portland.

And Oregon's former governor, the late Tom McCall, *didn't* say: "Come visit us again and again . . . But for heaven's sake, don't drink the water."

However, it turns out that Oregon has three times the national average of disease linked to dirty drinking water. Many Oregonians are unnecessarily exposed to hepatitis and giardiasis, which cause nausea and severe diarrhea.

Oregon? That cleaner-than-clean, pristiner-than-pristine mecca for eco-freaks? Oregon? Where there's a down-vested environmentalist behind every tree? Oregon? The state that has prided itself on making the Willamette River swimmable again?

We wouldn't believe it, either — if it hadn't come from the director of the Environmental Protection Agency's Portland office himself:

"There is nobody responsible for drinking-water safety in Oregon," said Michael F. Gearheard. "There are a lot of these small, dilapidated or failing water systems in Oregon. If you think of it sort of as a reservoir of lousy little systems, and that some numbers of them will develop problems over time, you'll get a resulting flow of serious problems."

Oregon is one of only three states — along with Indiana and Wyoming — that continue to reject \$400,000 a year in federal funds to take primary responsibility for policing drinking water. As a result, responsibility is divided and enforcement inadequate.

One way or another, Oregon had better clean up its act. Otherwise, the state known as Ecotopia may be dubbed Ickotopia. They'll change its nickname from the Beaver State to the Heaver State. It won't be the Ducks, but the Ucks.

The only state with more waterborne-disease outbreaks per capita, EPA reported, is Colorado. Colorado? We can hardly believe it: Colorado Rocky Mountain Hi(ccou)gh?

25¢
48 pages

The Seattle Times

MONDAY
March 9, 1987

WASHINGTON'S LARGEST NEWSPAPER ■ COPYRIGHT © 1987, SEATTLE TIMES COMPANY

Raw sewage oozing to beaches, back yards

by David Schaefer
Times staff reporter

Raw sewage falls into open ravines at the feet of Seattle's hills. It oozes into a creek that winds up at Alki beach in West Seattle. And it lands on the beach off Magnolia from homes along Perkins Lane.

In a city with a rapidly expanding skyscraper district, a world-class art collection and scientists on the cutting edge of medical and aerospace technol-

ogy, plumbing is still a problem.

Over the next few years, Metro will spend \$1,000 for each man, woman and child in King County to expand its sewage system. But spending \$1.4 billion to install secondary-sewage treatment, a federal requirement, won't solve this problem.

In some parts of Seattle, and in perhaps as many as 1,000 homes in the county, there's no sewage treatment at all. Failed septic systems are allowing untreated sewage to show up in back yards, basements and beaches.

This year, the city of Seattle will spend \$5 million to try to clean up these plumbing problems caused by old, broken septic tanks. But in some areas of the city — along the bluffs in West Seattle, above Seward Park and Shilshole Bay and in Rainier Valley, for instance — health officials still don't know which homes are hooked up to sewers and which are not. And city officials say they expect to spend another \$5 million a year through the end of the decade to find and solve all the problems.

Next year, Seattle residents will start paying about 27 cents more a month per household to pay the city's bill.

"It is real hard to get to some of these areas," said Janet Anderberg of the Seattle-King County Health Department. If they were easy to reach, Anderberg said, homes in the areas would have been hooked up to the city sewer lines long ago.

For the first time, the Health Department is requiring that these houses be connected to the municipal sewer sys-

tem, and the cost can reach \$80,000 to \$100,000 per home, though the expense will in most cases not be borne by the homeowner.

Mike and Maggie Farkas have lived in their modest bungalow along Alki Avenue Southwest for 25 years. Although their home is on the sewer line, there's no line serving the expensive view homes on the bluff 100 yards above them along Califor-

Please see **SEWAGE** on A 6

Disease is a danger

SEWAGE

continued from Page 1

nia Lane Southwest.

For a quarter-century, they have been staring up at a large concrete box suspended from a bank behind their house. The box is a septic tank, which serves two homes on California Lane. There isn't room in the yards for the tank, so it's been wired to the hill overlooking Alki for 50 years.

The Farkases say they're sure the septic tank will come tumbling down on them one day. In the meantime, water and effluent steadily trickle down the bank behind their home.

"Yesterday, it smelled terrible," Mrs. Farkas said.

Anderberg assured the couple the tank would be removed this summer. She said that though the Alki-area septic tank is perhaps the most dramatic illustration of Seattle's sewage problems, it's hardly unique.

The Health and Engineering departments have found 14 areas around the city where homes are all on septic tanks. Each area has at least one and as many as 40 homes. And Anderberg, the only employee who actually goes out looking for the problems, finds new ones all the time.

"The danger is the spread of disease, like hepatitis or typhoid," she said.

Broken septic tanks are difficult to repair because most city lots don't have enough room to install a new, clean drain field for the septic system, Anderberg said.

The city's new program requiring homes to become attached to sewer lines is called "sewer outreach." In one case, near Magnolia's Perkins Lane, renters were evicted from a home because of a broken septic system.

Usually, the tonic is not that strong. In most cases, homeowners in this program are paying \$2,000 to \$5,000 to hook up, and the city pays the rest. City policies require homeowners to bear the cost of hooking up if they live within 200 feet of a sewer line. The city is required to pay the cost of getting the line to within 200 feet of the home.

And that's the expensive part. Most of the unsewered areas are on banks, dead-ends and other difficult-to-reach areas.

Phil Harrison, who heads the outreach project for the Engineering Department, said the city isn't cracking down on homeowners if there's no immediate problem.

"If it is an area where the septic tank is working fine, then there's no reason to go in and spend money," Harrison said.

When repairs are ordered, some can be done for \$2,000 to \$3,000 from the homeowner and \$10,000 to \$30,000 from the city. But in particularly difficult sites, and in areas such as Perkins Lane, where the sewage has to be pumped uphill to reach sewer lines, the costs can reach \$5,000 for a homeowner and \$100,000 for the city.

Harrison said the changes are ordered only when the Health Department requires them, or when a house is sold. For those who meet federal low-income standards, the city makes low-interest loans available and will allow them 10 years to pay off.

Chuck Kleeberg, head of environmental health for the city and county, concedes that Seattle has a problem. But, said Kleeberg, "We are doing something about it."

He said other areas of King County have hundreds and perhaps 1,000 homes with sewer problems.

He cited Vashon Island as an example.

There, 300 homes have failing septic systems and are dumping raw sewage on the beaches, but there's little the Health Department can do about it. The county's environmental plan says that no municipal sewer system will be built on the island because islanders fear that up-to-date services will spur growth in the now-rural area.

Although there's no immediate health risk, Kleeberg said: "I wouldn't eat the clams off the beach."

Cancer Lifeline
447-4542

Bad Crater Lake water wins woman \$19,000 in court

SALEM, Ore. (AP)—The Oregon Court of Appeals on Monday awarded \$19,000 in damages to a woman who became ill after drinking contaminated water at the lodge at Crater Lake National Park in 1975.

The decision has broad implications because 75 other suits are pending against the lodge and its former manager, Ralph Peyton.

The court said Peyton was guilty of "wanton misconduct" because he tried to prevent park visitors from learning of the outbreak of illnesses at the lodge.

The popular southern Oregon tourist attraction was temporarily closed in the summer of 1975 after drinking water was found to have been contaminated with sewage.

More than 500 people reported illnesses and as many as 1,500 people could have been affected, according to court records.

The appeals court ruling involves Janice Joachim of McMinnville, who was awarded \$4,000 in general damages and \$15,000 in punitive damages by a Multnomah County Circuit Court jury.

Peyton argued that punitive damages should not have been awarded because those damages are limited to instances of fraud or intentional acts.

The appeals court said Peyton told employees to remove newspapers with articles about illnesses from the lodge and tore down signs warning that water was not fit to drink.

BC

Step by step Oregon will soon have to face up to the fact that storing human excrement in "septic" tanks is a serious mistake.

Peto

P.8 Journal of Commerce, Seattle
1 Sept '82

Crater Lake Lodge lawsuit settled

PORTLAND (UPI) — The federal government has agreed to settle out of court a \$90,000 suit filed by the former operator of Crater Lake Lodge.

The recently settle case was connected with contaminated water in Crater Lake National Park in the summer of 1975. Many visitors reported they had become ill after drinking water at the lodge.

The suit filed by Ralph Peyton, manager and principal owner of Crater Lake Lodge Inc., and Stonewall Insurance claimed the plaintiffs paid \$81,989 in judgments and \$35,525 in lawyers' fees and costs in connection with the illnesses.

The cases of 76 plaintiffs have been concluded while two additional cases were under arbitration.

Authorities traced the illnesses to sewage that contaminated the lodge's water supply.

If septic tanks are so great how come the above.

Salem/Northwest

Small water districts face financial

By Mary Parkinson
Of the Statesman-Journal

The cost of complying with new federal standards for safe drinking water could be a financial hardship to some small communities in Oregon, a state Health Division official said Tuesday.

Jim Boydston, manager of the division's drinking water systems program, said recent amendments to the federal Safe Drinking Water Act could force some of the state's cities and water districts to build costly filtration plants if the quality of their water doesn't meet criteria that are being developed.

The amendments were passed by Congress and signed by President Reagan this year.

State officials are in Washington, D.C. today for an Environmental Protection Agency workshop to establish criteria that water systems must meet to comply with the new laws.

Mid-Willamette Valley communities systems identified as potentially needing water filtration plants include Brownsville, Lyons and Mehama in Linn County; Detroit and Idanha in Marion County; Monmouth and Falls City, in Polk County; Alesa in Benton County; and the Beverly Beach Water District and Kernville-Gleneden Beach-Lincoln Beach Water District in Lincoln County.

They are communities that rely on surface sources — rivers and

streams — for their drinking water. Salem uses a surface source for water, the North Santiam River, but it already has a slow sand filter water filtration system, Boydston said.

He said the problem with water from surface sources is the amount of turbidity it can contain.

Turbidity is the stuff that makes water look muddy. It can be silt from water that's near a logging operation, or dirt from soil erosion, he said.

Turbidity itself doesn't make water dangerous to drink, Boydston said. What it does, however, is interfere with the chlorine added as a disinfectant to water to kill bacteria.

Some communities already are

gearing up to the reality of building water filtration plants.

In Lincoln County, Hal Haight said that officials already are planning for a filtration system for the Kernville-Gleneden Beach-Lincoln Beach Water District even though existing facilities meet current standards.

He said that depending on the type of system, the capital investment cost could be between \$1 million and \$2 million. The district is equipped to serve about 2,000 homes and apartment units.

In Brownsville, LeRoy Massey said that while he doesn't know what type of plant the city will settle on or how much it will cost, it is planning to build one.

"It's a good practice to have one, for Brownsville and for other small cities," Massey said. He is a field foreman for the city.

Detroit's Elizabeth Black said her city is aware of the approaching necessity for a filtration plant. "We're in discussions with Marion County and the Oregon Association of Water Utilities on what our needs will be," Black, who is the city recorder, said.

Just how much a plant could cost and how the city will pay for it remain to be seen, Black said. "Figures have been tossed around, but we don't know right now.

Boydston said that while the federal law authorizes some money for technical assistance to communities, a separate appropriations bill must

be passed if it to help build now federal scarce," he said.

Oregon is on the list of filtration plants to build one, the \$150 million water for the served by the

Boydston Portland might filtration plant cause it has shed in the which water riods in the

"Most small have this," he

Portland Oregon 9-9-86
Sewage, well conditions raise concern

CORVALLIS (AP) — More than half of the 61 septic systems along a 19-block stretch of Philomath Boulevard in Benton County are failing, and 94 percent of the water well systems in the area are unsatisfactory, according to a county health department study.

The area of concern lies within overlapping jurisdictions of the county, Corvallis and Philomath.

Nearly a fourth of the water systems are contaminated with sewage, the study said. More than a fifth of the area's residents or business owners have their drinking

water trucked in or use bottled water.

Raw or inadequately treated sewage was frequently seen flowing onto the ground, into roadside ditches and across well-used bike paths, the study said. In some cases, sewage was being piped directly into ditches.

"There are serious conditions, which present a reasonably clear possibility that the public generally is being exposed to hazardous conditions," said the report, written by county sanitarians Robert Poole and Richard Swenson.

Their findings were reviewed by

the state Health Division and the state Department of Environmental Quality, and their "uniform consensus" was that water and sewer service needs to be extended into the area, the report said.

"There were several surprises," Swenson said of the field survey that was done last May. "We didn't think there would have been this many (septic) failures, because of the area's (low population) density and the fairly large lots. Also, we thought that more of the septic systems could have been repaired on site and made satisfactory than there can be."

Instead, of the 61 septic systems studied on Philomath Boulevard between 53rd and 72nd streets, 34 were either marginal or failing, and only nine of those could be repaired to meet state and county health regulations. Repair costs were estimated at between \$5,400 and \$7,400 per system.

Of 50 drinking water systems studied, 23 were located within 100 feet of sewage sources, 11 showed sewage contamination and 19 had mineral problems severe enough to make the water unusable for residents.

Jan 30th 1987 Ketchikan Daily News

AIDS epidemic predicted

H&HS chief foresees plague that will dwarf earlier disasters

WASHINGTON (AP) - A worldwide AIDS epidemic will become so serious it will dwarf such earlier medical disasters as the Black Plague, smallpox and typhoid, the nation's health chief said Thursday.

"You haven't heard or read anything yet," Health and Human Services Secretary Otis R. Bowen told a National Press Club audience.

"If we can't make progress, we face the dreadful prospect of a worldwide death toll in the tens of

millions a decade from now," he said.

Listing other diseases that have killed millions of people over the years, Bowen said AIDS "will make these other ones pale by comparison."

He said he is confident a vaccine will be found, but is equally sure it will not be in time to head off an epidemic of a scope that most people have not yet grasped.

Noting that there is no known cure, Bowen said 50 million to 100 million people worldwide could have the AIDS virus in the next two decades and that at least 270,000 actual cases are expected in the United States alone in five years - with more than 10 percent of the new cases by then being among heterosexuals.

Between 1 million and 1.5 million Americans are now believed to be carrying the virus that makes them susceptible to developing the disease.

"No one really knows how many, since AIDS is spread by people free of symptoms and we don't yet have a comprehensive national program to provide blood tests that identify AIDS carriers," said Bowen.

He observed that researchers do not know the incubation period but have established that "a carrier can spread it to others and not know it for 10 years or so."

"So remember when a person has sex, they're not just having it with that partner, they're having it with everybody that partner had it with for the past 10 years," said Bowen.

Public education

Educating the public about how to keep from getting AIDS remains the most potent weapon against its spread said Bowen, acknowledging that the effort has "provoked its share of controversy."

"The situation is not unlike the dilemma we once faced in this country over how to educate young people about syphilis," he said. "We overcame that dilemma with common sense and I think we can overcome this one, too."

Bowen said he believes letting local school boards decide how to deal with the issue in their schools "is both right and reasonable."

"My own sense of things is that the public may be far more receptive to reliable education about AIDS than many suppose," he said.

AIDS, or acquired immune deficiency syndrome, is an affliction in which the body's immune system becomes unable to resist disease. The syndrome is believed to be

Groundwater at risk

WASHINGTON (AP) - A conservation forum said Thursday that the nation's underground water supply is at risk, and called on the federal government and states to do something about it.

The forum, composed of governors, business people, and conservationists, called for "an aggressive national policy" to protect the subterranean supply, which yields half the nation's drinking water.

"It's going to be too late in some areas if we don't act ... and act very, very soon," said New Jersey Gov. Thomas Kean, a member of the National Groundwater Policy Forum.

The panel, introducing final results of a two-year study, said state law, many cases, is sufficient.

But, while huge underground lakes

ignore state borders, laws differ among the states, said William Reilly, president of the Conservation Foundation.

The problem is compounded by lack of a comprehensive national policy, he said.

To foster a coordinated solution, the panel suggested a 10-point plan for state governments. The strategy calls for mapping and monitoring of aquifers, as underground waterways are called.

The forum also suggested strengthened enforcement of anti-pollution laws, and restrictions on how sensitive land above the aquifers is used.

The federal government would supply money and technical assistance.

Groundwater, seen as the largest potential source of potable water on earth, is threatened by garbage dumps, leaking storage tanks and even home septic systems, the forum said.

Cancer, heart disease and a range of other maladies have been linked to polluted drinking water.

Kean appealed to Congress to strengthen water quality laws. He called on President Reagan to support the effort, and to sign the \$18 billion Clean Water Act now on his desk despite a vow to veto it.

Senate Minority Leader Bob Dole of Kansas quoted Reagan Thursday as saying "right up front" that he

Extent of septic tank problems not identified

Story on Page One also

By ED MOSEY
of The Oregonian staff

The Oregon Department of Environmental Quality does not know the magnitude of the septic tank problems caused by improper approval procedures in Tillamook County, but the word "major" appears repeatedly in its report.

William Young, director of the DEQ, said the agency can "only guess" about the number of properties on which improper or illegal site suitability approvals were issued.

Of approximately 1,000 site evaluations recommending issuance of permits in the past five years, about half involve properties which now have subsurface sewage disposal systems in-

stalled, he said.

The approval process has three stages. First, a site suitability report is issued. If the site is found adequate under state standards, the county issues a construction permit. Finally, the county sanitarian must inspect the work and issue a certificate of satisfaction and completion.

The state Environmental Quality Commission on Friday revoked all positive site suitability reports issued and on record with the county during the last five years. Every one — and at this time, no one knows exactly how many — must be re-evaluated.

If construction permits for sewage systems were issued, they will be honored until the permit expires, the EQC said. They are valid for one year from

the date of issuance.

If systems have already been installed, they may be used, and permits remain valid, the EQC decided.

"They are in the same situation as the many permits that were issued — literally thousands of them — and carried into construction before standards were established in 1974," Young said. "We will deal with them the same way we do with all existing systems, and that is as problems arise."

The exception to this policy, however, arises in cases in which construction permits or certificates of completion were issued "without lawful authority."

The meaning of this phrase in the rules adopted Friday is that some permits may have been falsified, DEQ offi-

cials said.

When falsification of documents can be proven, the department will revoke permits and re-evaluate the sites.

The DEQ faces a big task, both in identifying properties and their owners.

State officials say records were not filed properly. Locating owners may also be difficult in cases of undeveloped lots which may have been subdivided. Records of the sanitation department will have to be checked against deeds.

In some cases, Tillamook County chief sanitarian Doug Marshall said, sales of properties may have taken place without recording of contract with the county.

DEQ will notify owners by mail if site suitability evaluations are invalid, the staff said.

Septic tank permits voided in Tillamook

By ED MOSEY
of The Oregonian staff

A state Department of Environmental Quality audit of septic tank permit procedures in Tillamook County has turned up "probably massive program irregularities" and apparent falsification of permit documents over the past six years.

The Environmental Quality Commission, acting on the audit report at its meeting Friday, voided all favorable septic tank site evaluations issued by the county between Jan. 1, 1974, and Dec. 31, 1979.

It also revoked all construction permits and certificates of satisfactory completion that had been issued unlawfully or on the basis of false information.

The commission authorized the DEQ to assist the county in re-evaluating all subsurface sewage system reports and permits. The state staff estimated that the cost of the work to the state alone would be \$100,000, not including potential court costs in the event of lawsuits.

The DEQ also predicted that the fiscal impact on Tillamook County and owners of property affected by the wrongfully issued permits and reports would be "varied and major."

The state staff said as many as 1,000 favorable evaluations of septic tank sites were issued in the five year period, and as many as 20 percent of them might not meet state standards. In most cases where systems have already been installed, land owners may continue to use the systems unless serious pollution problems arise, the EQC decided.

Ronald Somers, a commission member, said the economic consequences to owners of property with inadequate permits would be "shocking." He recommended that the DEQ forward its information to Tillamook County District Attorney Robert Wasson for possible investigation by a grand jury.

"There has been a gross disregard of state rules, and a substantial number of people have been affected," he declared.

He said state rules had been "clearly violated" during the administration of the county's former chief sanitarian, James Seabrandt, who retired recently.

Contacted by telephone at his home, Seabrandt said, "I am retired now, and I have nothing to do with it. I have nothing to say. . . . That will be said later by my attorney."

Tillamook County entered into a

contract with the state in December 1973 to evaluate lots and to approve subsurface sewage system permits only if the sites could meet the rules of the DEQ. The agency began auditing permits in 1978 and became aware at that time of possible "irregularities" in Tillamook County, according to Bill Young, DEQ director.

Subsequent audits in July and August 1979 led state investigators to the conclusion that violations of state standards for issuance of permits were widespread in the county.

T. Jack Osborne, supervisor of the DEQ's subsurface disposal section, said investigators chose 100 sites at random from county records and visited them during a four-day period. More than 70 of them did not meet state standards for conventional septic tanks, and in 35 cases no alternative methods of sewage disposal would be adequate, he said.

"Considering the fact that we are looking at a small sampling and that there are a number of cases with no solution available, then consider the six-year period, and we have a major problem," he said.

Osborne said Tillamook County's problems were not characteristic of the permit programs throughout the state. The other programs are carried out well by county employees, he said.

Doug Marshall, the new chief sanitarian for Tillamook County, said he "walked into this situation 'cold turkey'" on March 1, when he was appointed. He said he had appeared at the Environmental Quality Commission meeting at the request of the county commissioners and that they had requested that the state notify property owners of the need to re-evaluate their properties.

The commission agreed to have the state staff handle notification and site evaluations. The DEQ also will try to find alternative disposal systems in cases where septic tanks already are installed in violation of state standards.

The staff presented to the commission examples of unimproved lots where soil and water-table requirements would not justify favorable site reports or permits, yet positive reports and permits had been issued.

Some of the sites are near beaches or Tillamook Bay, and sewage probably is flowing into the water table or onto the beach, the staff said.

Additional details on Page B8.

State seeks strategy to stop deterioration of groundwater

Page A-1

er than a sewer system. Department of Social and Services and the county department cited regulating only one house per situation.

g the ensuing battle, the suggested researching ev- that was known about dewater in the area.

digging up scattered, ry data going back to, the agencies found "a quality of the ground- d deteriorated over two decades, says Sandison.

s enough of a hint to the agencies to test about throughout the 150- le drainage basin that uch of south Tacoma, Spanaway, Parkland, son, Lakewood and Uni- ce.

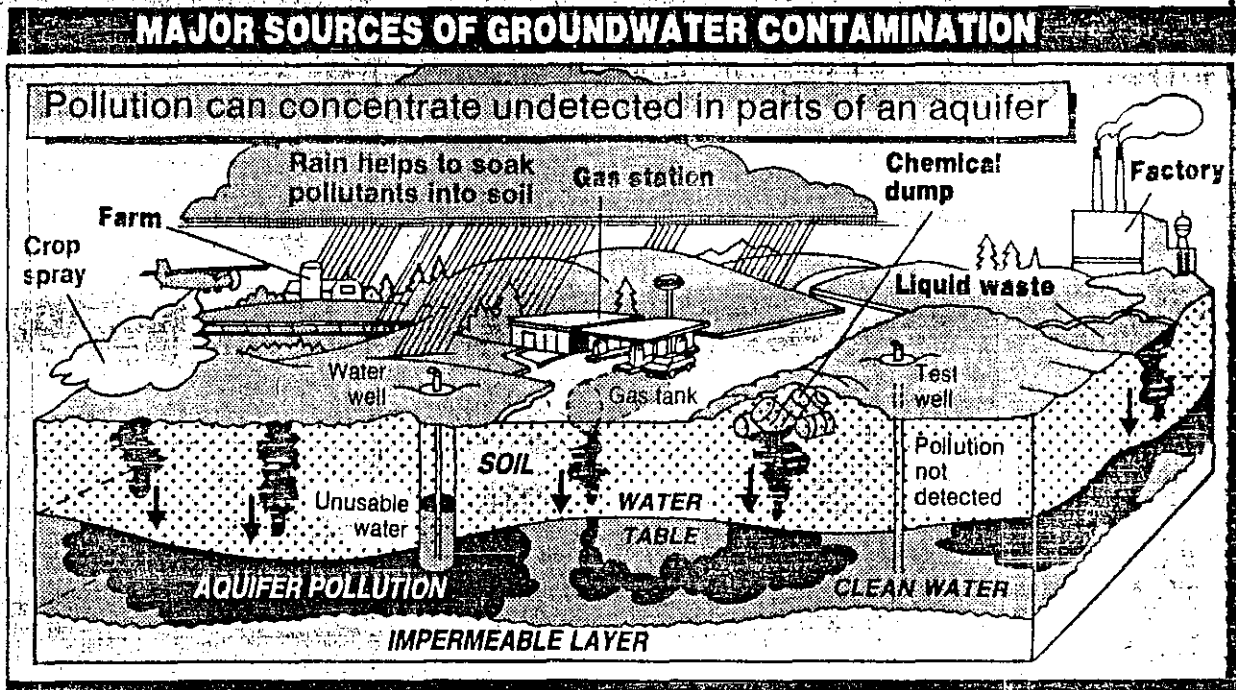
than 167,000 people get some of their drinking m groundwater in the wn as the Clover-Cham- k Basin, according to

Chemicals found

asin contains four differ- aquifers — water-satur- s or pockets — that are ith porous sandy, gravi- al that's easily perme- nwater. "So whatever nts you carry with the r move into the ground- s Sandison.

ests' of the 150 wells t the basin in 1981 two Ponders Corner utaining dry-cleaning So it was mere accident 600 or so households these wells learned that ing water was contami- chemicals that had ropriately disposed of into d by Plaza Cleaners of sight on the other freeway, say Sandison Pews, groundwater pro- ger for the state De- of Social and Health

ews and Sandison also ence that groundwater t the Clover-Chambers was deteriorating. lowed elevated levels of trates and chlorides, all



SOURCE: NEWSWEEK INC.

P-I GRAPHIC

leak or spill or are sprayed into the air can sink into the ground when it rains. Gasoline stations store gas in underground tanks, many of which are several decades old and are leaking. Septic tanks fail. Air pollutants fall to the ground.

The Clover-Chambers Creek Basin has experienced just about all of these problems — and several instances of drinking water contamination as a result.

The series of unwelcome discoveries over the past five years has led Pierce County to propose a 14-point protection program, many aspects of which may be adopted by the state as part of its statewide strategy.

Another big problem both in Pierce County and statewide, says Tony Barrett, water quality planner for the Ecology Department, is a measure usually taken for environmental reasons. Communities and industries everywhere have drilled holes in the ground for the purpose of receiving and disposing of stormwater.

Though these disposal wells may help handle stormwater when it rains, they also simply inject the stormwater — which usually has picked up contaminants — into the ground.

of the groundwater, says Barrett.

Asked what routine practice is most potentially threatening to groundwater, Pews cites the "persistent pesticides."

"We have evidence at this point that a lot of pesticides that are being used are not breaking down, but are leaching onto the ground sources of drinking water."

Pesticides are among the 60,000 man-made organic compounds that have been introduced into American life in fertilizers, plastics, cleaning fluids, polyester fabrics and synthetic fuels. Health authorities are now gearing up to find out if drinking water is contaminated with some of these.

In 1984, Pews directed a survey of drinking water wells near Western Washington raspberry and strawberry fields, whose soils have typically been injected with ethylene dibromide (EDB). The survey turned up 27 wells with pesticide pollution above recommended levels.

Pews expects the state to have standards and monitoring requirements for eight of the commonly used organics within a year. That will be followed by a list of 27 more organics to come under regulation.

enough to draw any conclusions — in which mice are exposed to a chemical can cost \$300,000, says Pews. Just analyzing a single water sample for organics can cost \$1,000, says Barrett.

As for solutions, Pews, Barrett and Sandison mention:

- Widespread study of the state's groundwater and geology in order to identify where the sensitive aquifers are and to assess the quality of groundwater.

- A study of pesticide application practices.

- A ban on landfills and hazardous waste operations in areas with vulnerable aquifers.

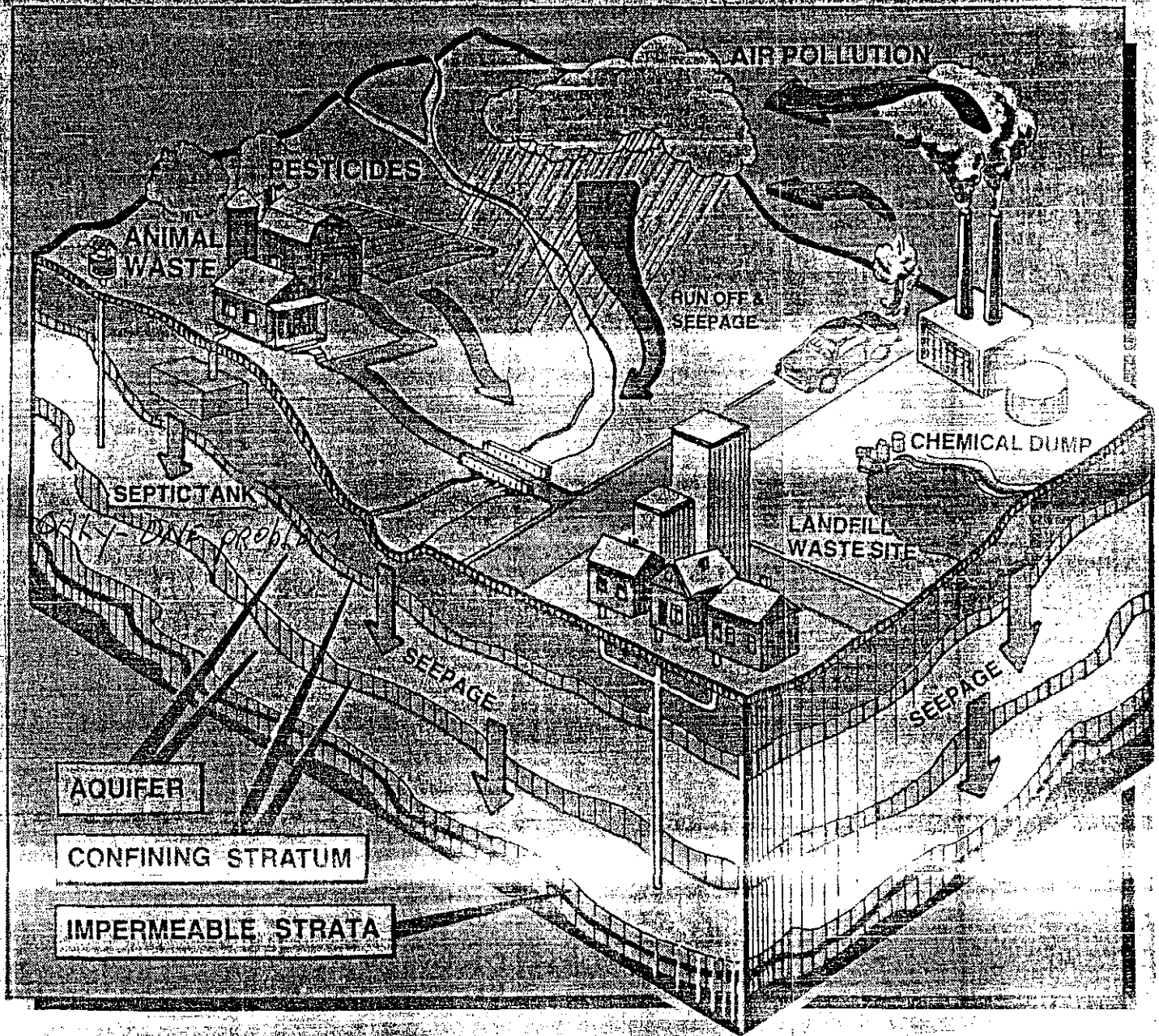
- Stricter regulation of septic systems, by limiting their density and by banning them in areas where industries use hazardous chemicals.

- Stricter requirements for underground tanks, requiring perhaps double-liners and monitoring systems.

- Stricter regulation of well-drilling, which can pollute groundwater.

- Improvements to stormwater disposal wells, such as grass

Risk over troubled water



Clifford Vancura/Journal-American

The complex cycle that gives us our groundwater leaves plenty of chances for it to be contaminated.

Complaints fuel concern over groundwater quality

By Tim Talevich
Journal-American Staff Writer

Residents living off the Issaquah-Fall City Road in the hills just east of Issaquah have scores of startling stories about problems springing up with the water from their wells.

Many complain of rusty, colored water staining their bathtubs and corroding their pipes. Others won't drink the water because it stinks like rotten eggs. Most have seen the supply of whatever water they do get drop off drastically in the past five years.

"You can hardly get it to your nose, much less drink it," Sam Kyle says of the water at his rental house on Black Nugget Road. "You can drink it, but it stinks like rotten eggs."

idents, says his water formerly gushed out at 10 gallons per minute. It now trickles out at three, but he's at a loss to explain why.

"I don't have any idea," Rutledge says. "I just don't know."

He hasn't been alone in his confusion. Until recently, state, county and city governments in Washington were in the same darkness when it came to managing groundwater problems like those plaguing the Grand Ridge area. It was clearly a case of what's out of sight was out of mind.

Not any more. The issue of managing and protecting groundwater as a natural resource is becoming one of the hottest environmental issues of the decade. State and county governments, water districts and the Puget Sound Council of Govern-

measures to protect it.

Groundwater is water that slowly flows in underground streams and rivers. Its supply comes from water from wetlands, lakes, rivers and rainfall that seep through soft or permeable soils to non-porous materials, such as bedrock. The water flows along the hard surfaces in pools, or aquifers. Groundwater comes to the surface through wells tapped into aquifers or through springs.

More than half of Washington's 4.2 million residents rely on groundwater for their drinking water. It provides the East Side with much of its drinking water—all of Issaquah's supply comes from four wells dipping into aquifers under the city, and half of Redmond's, that serving customers east of the Sammamish River is from wells. In rural areas, such as Union

are excellent but they may require more careful surface preparation the oil-based paints," says Bailey. For stains, Bailey says, "Most of are now based on oils. It's a solvent. Stains would give you the maximum penetration. On very soft woods as a smooth cedar, I would recommend a penetrating stain.

The basic difference between stain (the pigment) to the volatile material (solvent or penetrator). The solvent evaporates and disappears but while it's there it thins the material so it will penetrate.

Stains vary. It's really hard to say at what point you no longer have a stain and now have a paint. It's a gray area. You take a regular house paint and thin it back and say you've got a stain — no, haven't. It's not that simple. It's a question of proportion of all the materials, just the thinner."

Bailey says stains are categorized into transparent, semi-transparent and solid-staining stains. "In a transparent or semi-transparent stain the pigment level is so low that they don't completely cover the ground. The solid-covering stain is going toward a paint."

Bailey says that because transparent or semi-transparent stains leave less pigment on the surface of the wood, they give you less protection from the fading caused by ultra-violet radiation from the sun. But, he says, most of the stains come in brown or earth-tone colors "because they contain iron oxides and iron oxide does give you a minimum of ultraviolet protection for a long time."

But, says Bailey, "Many times all that's necessary is to just restrain the weathering of your house twice as often as the exterior of the house."

On the interior, says Bailey, oil-based stains wear longer, are less subject to peeling and marring, and are easier to clean, but nevertheless Bailey says it's hard to pass up the convenience of latex. Latex dries quickly, uses water for cleanup, doesn't have noxious fumes. Most people, he says, prefer to use latex and simply repaint more often.

Roofs

When you're looking for missing shingles, or brittle and cracking shingles, or if your shingles are curling that's an indication the roof is getting old in years. Or it could be a sign of moisture underneath trying to get out. So, says Hastings, "I would check for signs of 'beads' that have fallen off the roof." Beads are what give composition shingles their coloration. "They will come off if a fact will gather in the gutters and in some cases they fill up the gutters. And there's a lot of black felt exposed, depending on the degree, that can be an indication of the need for new roofing." Check carefully in the attic for any sign of leakage. If there's a shake roof, check the nail points to see if they've pulled out or if they have a bead of water

Chimneys Or Brickwork

The main concern is the mortar between the bricks: the joints. "Take a key," says Don Ware, "and scrape the joint. Now if you can scrape that mortar out of the joint easily, then the mortar joint's gone.

The quality of mortar in masonry work varies tremendously. Ware and Maurry say that in older houses, the mortar had too much lime in it and will tend to disintegrate.

But Beckman disagrees. "It depends on the mason. I had the experience of inspecting three buildings in different parts of town on the same day. All of them had been built in 1926. All of them had about the same exposure to the weather. One of them was in absolutely excellent condition. Another was slightly soft but was still serviceable. And the other was gone — it was just sand. The only way it can be explained is the amount of lime the mason put in."

Often, says Ware, "By the time these homeowners discover they have a problem, the top six or seven courses (of a chimney) have to be taken off and relaid. The mortar is so far gone, the bricks are just sitting there."

Ware says tuckpointers go in with a special saw and cut the mortar out to a depth of 3/4 or one inch and then insert new mortar into the joint. When they put the new mortar in, says Ware, they typically make the mortar flush with the brick face at the bottom of the joint and recess it at the top of the joint. That way, when the rain hits it, it "licks the water out." Finally, they clean the brick surface and spray it with a "breathable" waterproof coat.

Cost of a tuckpointing job? Ware says it can vary between \$2 and \$5 a square foot of brick. It depends on the amount and difficulty of work to be done and ease of access, among other things. "The toughest chimney in the world to fix is on a tile roof with about a 6/12 pitch with the chimney right in the middle of the roof," says Ware.

Drainage And Foundations

Check around the base or in the crawl space of your home to make sure there is no wood-soil contact. Wood surfaces should be at least six inches from soil. Hastings warns against building up garden beds which are next to the house with wood chips. It's an open invitation to termites and rot.

Check for moisture under or around the house and eliminate the source of the moisture. If your surface drainage is good and you still have moisture, Beckman points out that your problem could very well be improper subsurface drainage. Cover the ground in your crawl space — even if it's dry — with a vapor barrier (thin sheet of plastic or vinyl).

Associates Ltd., an environmental consulting firm in Sequim, says there are a number of things wrong with the perc test, the main one being that the results are so variable. Using the same test on the same soil, he says, the results can vary 1000 percent.

Hallowin says his company has no vested interest in debunking the perc test: "We could make more money if we did perc tests. I could go out and put on a show for people."

However Anthony Roth, also of Nautilus, says that the complex soil evaluation advocated by his company can only be done adequately by trained soil scientists, such as the one employed by his company, and not by the average septic system installer who does not have that training. "They don't have the skills to match the systems to the soils," Roth says. Nor Roth says do county sanitation officers understand soils well enough to pass judgment on testing and design of systems.

Gary Plews of the state Department of Social and Health Services agrees the perc test is too variable. In one recent study, he says, 20 people conducted perc tests on the same site. The amount of time required for the water to percolate through the soil varied from six to 248 minutes per inch. Yet the soil on the site was basically the same Plews says.

A committee is now evaluating state rules for on-site sewer systems, and Plews said it will probably make the perc test only an optional state requirement by August, possibly dropping the test altogether.

Instead, Plews said, the state will use a method that requires a more detailed analysis of the soil.

The system can be reduced to a test, Plews says, in which soil textures are analyzed by putting them through various sized screens. Plews says the methods he advocates shouldn't cost property buyers much more than those now used. While a higher degree of technical expertise is required, there is less physical labor involved. A backhoe is usually used to dig the perc test hole, while the hole for the new tests can be dug by hand, he says. Plews says county health officers are now being trained in soils and in most cases know enough to evaluate tests and designs.

Before 1970 perc tests were often used exclusively to determine whether a site would support a septic system with "misleading" results, Plews says. Systems installed using the perc test exclusively appear to have a failure rate higher than those who use other methods, Plews says.

Though state officials believe the perc test is nearly useless, it is still used in King, Snohomish, Kitsap, Island and Skagit counties.

"It's one of the useful tools in determining how well soils absorb water," says Bill Liening who has been in the King County sewage program for 29 years. He says it's often necessary to run water through the soil to get "some indication of its absorptive quality."

Liening says the state is allowing some practices the county "threw out years ago," that the county has always been ahead of the state in testing methods, and that it isn't going to affect the county's practices "if the state wants to do away with their regulations entirely."

Some of the people who design or install septic systems agree that the perc test is variable, but continue to believe it is useful; others continue to regard it as the main way to evaluate a site.

There are places where it's worthless," says Charles Best, a licensed installer for five years. In other locations it provides helpful information, he says, and he still uses it along with a practiced eye in reading soil signs.

Brighton Joule, another system designer in the North Bend area, agrees that the test is highly variable. "That's why we did six holes, do six tests and take the average."

Carl Cangie, a licensed soils engineer who also believes the perc test is variable but useful, says people who are "squawking" are usually ones who don't like the outcome of a particular test.

But Gene Johnson, an installer from Island County, says he regards the perc test as his main tool in evaluating a site.

The test is a trustworthy indicator, he says, "if it's done correctly and you take the lay of the land."

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March 26, 1987

Environmental Quality Commission
811 S.W. 6th
Portland, Oregon 97204

ATTENTION: DIRECTOR'S OFFICE

Dear Sir:

The enclosed tests for the plant enclosed in this report were installed under the most difficult conditions imaginable. During the tests we did some experimenting using ozone treatment, which slightly disrupted the normal testing process.

Sincerely,


B.C. Canoles

BCC:lje

A STUDY OF SEWAGE TREATMENT USING AERATION METHODOLOGY
AS A BASIS, AND IN COMBINATION WITH ULTRAVIOLET,
OZONE, AND CHLORINE TREATMENT ON A SITE LOCATED IN
A TIDAL FLOOD PLAIN.

By B.C. Canoles and Richard Duvall

Funded by Canoles Concrete Products of Oregon
and R. Duvall of North Coast Concrete Products

April 21, 1986

We wish to acknowledge our wholehearted support and endorsement of the Jet Inc. Wastewater Treatment Plant.

Until the installation of the Jet Inc. Plant, we were faced with an intolerable situation, such as standing wastewater in the yard and offensive odors.

Our home is located on a 50 X 100 ft. lot adjacent to the Nehalem River. This area is in tidewater and subject to winter flooding and extreme high tides. The property was purchased as a vacation home in 1968 and used as such until 1979 when it became a permanent residence. The home was equipped with a 1000 gallon septic tank and drain field.

Several months after full time occupancy, seepage and odors began to appear. In January 1980 the septic tank was pumped. However, we soon learned that this was not the problem and our troubles were far from over.

The Tillamook County Sanitarian and a local contractor felt the best approach was to install a Doseing System.

In late summer of 1981, after removing a hedge, several trees, numerous bushes and plants the doseing system was installed. In less than a year this system began to fail. An attempt to ration and schedule water use was tried with little effect. Again we sought the aid of the County Sanitarian and the Department of Enviromental Quality. After soil tests and etc., it was suggested we dig a new drain field and incorporate an over and under device. When one system fills the effluents would drain to the other. Once more we were ankle deep in grey water and attempting every water saving technic possible.

We learned that Canoles Concrete of Oregon and North Coast Concrete Products were seeking a test site for the Jet Inc. Wastewater Treatment Plant that was located in a flood plain. We certainly qualified and were prepared to try anything that would grant relief from a sewage saturated yard and the fowl odors.

The Jet System was installed according to specifications with the exception of the effluents draining into the holding tank from the Doseing system and pumped to a rock drain pit. The Effluents appear clear and odorless.

The Jet Inc. System has been in operation for over a year and we have experienced no problems and have thankfully enjoyed a trouble free yard.

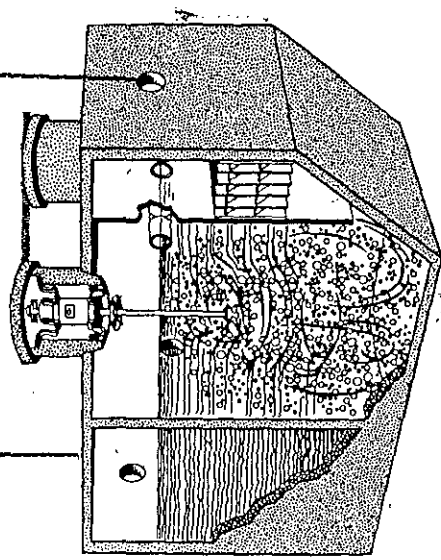
We were at wits end with the situation and frankly do not know what course could have been taken if it were not for the installation of the Jet System. Therefore we offer sincere praise and our highest recommendation for the Jet Inc. Wastewater Treatment Plant.

Yours truly,

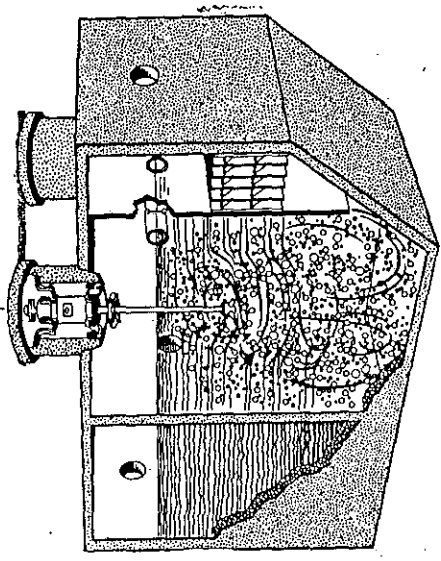


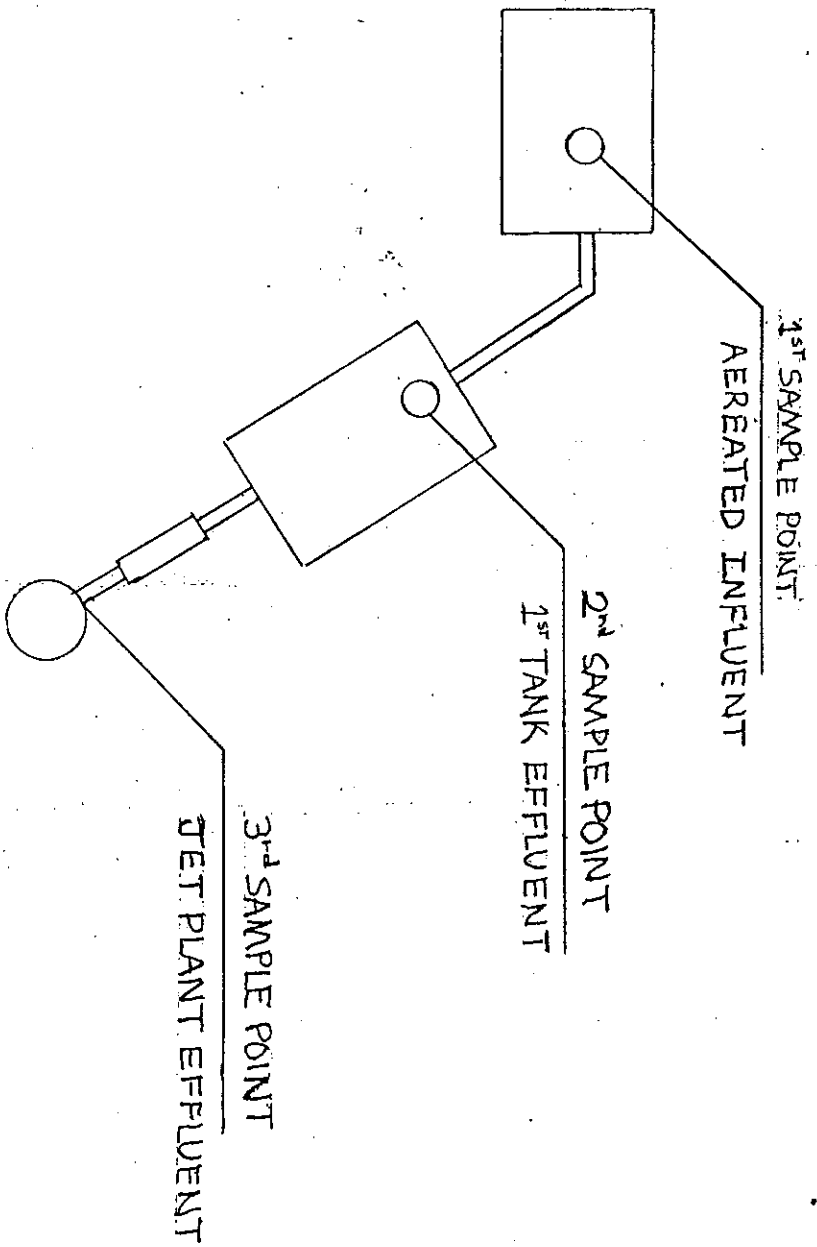
Norma F. Cameron
Don H. Cameron
16375 McDonald Rd.
Nehalem, Or. 97131

1ST PLANT EFFLUENT
2ND PLANT EFFLUENT



AERATED INFILTRANT





A STUDY OF SEWAGE TREATMENT USING AERATION METHODOLOGY
AS A BASIS AND IN COMBINATION WITH ULTRAVIOLET, OZONE,
AND CHLORINE TREATMENT ON A SITE LOCATED IN A
TIDAL FLOOD PLAIN

THE SITE

The site was a residential lot located adjacent to the Nehalem River on the Oregon Coast. The lot is about two miles from the juncture of the river with the Pacific Ocean, and is considered within the flood plain. The lot lies below the river flood level when high tides and heavy rainfall occurs. The lot is subject to flooding. The site contained a house using septic tank sewage disposal dispersed through a standard state specified first and second drain fields. Both drain fields were completely sewage saturated. The entire area had gone septic. The soil was sandy silt. Sewage odors were constantly present.

The purpose of this group of experiments was to see if an aeration treatment plant (JET) in combination with other technologies could provide an acceptable environmental effluent under the most difficult and probably worst case situations.

MATERIALS AND METHODS

The aeration plant(s) chosen to serve as the nucleus for this trial was the 1200 gallon, three compartment standard JET aeration sewage plant. See Appendix A. In this situation it was decided due to the lack of area to devote to the sand filter drain fields, that two plants would be run in tandem to try and achieve environmentally acceptable effluents. Because of the high ground water table, the drain fields were considered of no value. The water level was influenced by the tide levels and installation of the reinforced concrete tanks require that they be buried at low tide. Otherwise, they would float in the excavation and the walls of the excavation would fall into hole. See Appendix B for site and plant system layout.

Each plant contained an aeration motor to pull air for oxidation into the sewage compartments. In experiment #1, at the termination of the second plant was located an ultraviolet disinfecting device composed of a teflon tube through which the effluent from plant 2 passes. The teflon tube is surrounded by four General Electric germicidal lamps #G25T8. Each lamp is rated at 25 watts at 110-120 volts. The lamps produce short wave length ultraviolet light of 253.7 nanometers wave length. It is lethal to bacteria, protozoa, viruses, molds, yeasts, fungi, nematode eggs, and algae. The device is housed in an aluminum casing, which in turn was enclosed in a plywood box.

In experiment #2 the aeration motor was removed from plant #2 and it was replaced by an ozone generator called Photozone. The ultraviolet device was not used during this stage.

In experiment #3 the ozone generator was removed and the aeration motor was reinstalled in plant #2. A chlorinator device replaced the ultraviolet device to provide germicidal action.

Experiment #1 April 3 - May 30, 1985

Laboratory Test Results - conducted by Donald H. Irvin - Wastewater Operator III - Nehalem, Oregon.

DISCUSSION

Refer to table #1 and to site drawing Appendix B. In this experiment, aerated influent was sampled from the center cell of plant #1. Before ultra-violet samples were taken from cell 3 of plant #2 and after ultra-violet samples were removed from the dosing well. In reviewing the data, one would conclude that while the results hoped for were not quite achieved, the final effluents were far superior to the septic tank arrangement. At this point, additional septic organic matter was not being added to the previously saturated soil. By the end of experiment #1 timeframe, the sewage odors were no longer evident.

It is interesting to note that ultra-violet treatment of the effluent reduced the biological oxygen demand (BOD) to 24-52% of effluent's pre-ultra-violet BOD values. Perhaps oxygen dependent microbes were destroyed thus lowering the BOD values. The suspended solids were also reduced after ultra-violet treatment in the range of 50-76%. Reasons why are unknown to the author, however, again, one might make some speculations. Perhaps the natural electropotential of suspended particles was changed by ultra-violet radiation similar to that of a magnetic field. Or perhaps the ultra-violet device did indeed produce a magnetic field. Another theory might be the elimination of motile microbes by the germicidal effects of ultra-violet radiation would precipitate the microbes and nullify the effects of their agitating, motions upon inert and non-motile particles.

The ultra-violet was effective in its germicidal action on fecal coliforms. It should be considered as an ideal germicidal treatment of effluents clear enough to pass the light waves generated by proper ultra-violet devices. Effluents produced by the type of aeration plants in this experiment meets this standard and are quite adaptable to ultra-violet treatment. This is in contrast to septic tank effluents which can run 400 ppm and is too opaque to pass the rays. Ultra-violet treatment has the distinct advantage of not adding a chemical load to the environment. The disadvantage of UV treatment was quite apparent in this experiment. The device requires electricity and due to the housing not being totally watertight, it shorted out and terminated experiment #1. Due to testing and inspection, covers were not sealed water tight as would be required on a standard installation.

Several additional observations might be made about experiment #1. The ground was quite septic at the time of installation and the plants were not watertight. Thus, contaminated ground

water could flow back into the plants' several apertures. This would affect the performance. Perhaps installation with the plants not completely buried and protruding 18 inches above ground would solve ground water contamination of the units. There are numerous like plants in Alaska installed in a like fashion. Some plants are on the coastal beaches and are totally above ground. This would also keep an ultra-violet device free from moisture. Also, in most other sites, the water table would not be as high as in this case. One last comment concerning testing results, it is disappointing to have missing data from areas of the experiment. It would have been valuable to have the BOD values on 5-8-85 in light of a suspended solids of 6 mg/l. Also, one finds the last test results of 5-30-85 as being unrealistic. One would suspect that the suspended solids data as being reversed.

Experiment 2 June 20 - July 12, 1985

DISCUSSION

The use of the ozone generator (Photozone) and experiment #2 was short lived. The unit replaced the aeration motor in plant 2. The generator produced ozone which was delivered to the bottom of the center cell of plant 2 by means of a porous plastic tubing. The ozone would bubble up through the solution which had passed through the aeration process in plant 1. This experiment probably did not get an adequate time allotment and a fair trial. Although BOD and suspended solids (SS) values were not too far above the target of 10 ppm, the dissolved oxygen (DO) dropped to very low values indicating a septic environment. The fecal coliforms seemed to be favored in experiment 2. The 6-27-85 test had colonies too numerous to count after photozone. There was no ultra-violet or chlorination devices on the effluent outfall. The Photozone unit also had the disadvantage of being a very expensive (\$2,000) addition to this project. Had better results been obtained, this phase would have been extended out of professional curiosity.

Experiment 3 September 12, 1985 - February 27, 1986

DISCUSSION

This experiment was the best of the three for achieving the goals of 10 ppm for BOD and SS. Referring to the graph on experiment #3, one can see how often the red line depicting 10 ppm is encountered by the 2nd plant effluent's BOD and SS curves. In comparing experiment 1 with experiment 2, one would wonder why they are not more similar. The major difference was the use of chlorine or ultra-violet to kill residual fecal coliforms. Perhaps in experiment 3 the system was in place for a longer period before the exercise began. This would encourage growth of more beneficial microbes for sewage processing. Another factor mentioned briefly before was that at the earlier date of experiment 1, the soil was more contaminated. Seepage of ground water into the plants, especially plant 2, cell 3 would affect results. By the time experiment 3 was ready, most of the ground contamination had leached away.

SUMMARY

It is possible for areas of high water tables and poor soil perk and/or small lots to have environmentally acceptable on-site sewage treatment and disposal. It does require more rigorous processing than one could expect from a septic tank installation. The above site is an excellent example. The owner of the house had no other solution. The soil could not take any more sewage, additional amounts were passed on to adjacent areas of drainage, and the air smelled of failure. Today the owner is happy with his system. There are many other like situations along the Oregon Coast.

If such methodology becomes common place, it would behoove officials in responsible positions to insist on adequate monitoring of all installations. The supply of parts must be locally available for the expected life of the unit. The supplier of the plant shall be responsible for providing operation training to the owner. The supplier of the plant shall provide the owner with an operation and maintenance (O & M) manual for the specific plant installed. The owner shall remove excess solids from the plant at least once per year, or more frequently if recommended by the O & M manual.

Inspection Requirements. Each aerobic sewage treatment facility installed under this rule shall be inspected by the Agent at least once per year (see OAR 340-71-260(4)(a)).



NORTH TILLAMOOK COUNTY SANITARY AUTHORITY

P.O. BOX 219

NEHALEM, OREGON 97131

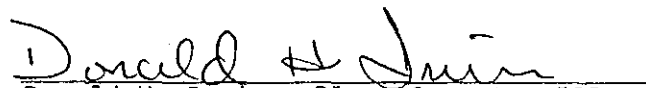
PHONE 368-5125

DUVALL JET PLANT
McDonald Road, Nehalem, OR 97131

EXPLANATION OF TESTING PROBLEMS WITH JET PLANT

- May 8, 1985 BOD⁵ test did not come out due to incubator failure. Incubator could not maintain proper temperature of 20°C over a 5 day period.
- May 8, 1985 The reason for the high Suspended Solids in the effluent was due to introducing a flow through the system to pickup grab samples, this stirred up the lighter solids in the effluent sample.
- August 1st,
9th and
21, 1985 No BOD⁵ and fecal tests on effluent were performed on these dates due to very high CL² residual (over 5.0 + Res.) There were also many broken off CL² particles, from the CL² system tables, in the effluent sample.
- Sept. 4, 1985 No BOD⁵ or fecal test were performed due to a high CL² residual. (over 5.0 + Res.)
- Feb. 19, 1986 High suspended solids due to introducing a flow through the system to pickup grab samples. This induced flow caused the lighter solids (Pin Flock) to become suspended in the effluent sample.

NOTE: In the years (13 to be exact) I have worked in wastewater treatment, I have seen many systems come and go. In the results of the tests performed I have personally gained some confidence in the jet plant. I also believe that this system will work if run and maintained properly. Due to its low maintenance, almost any household with proper care could run this plant.


Donald H. Irvin - Plant Operator III

	FECAL COLIFORMS PER/100ML	BIOLOGICAL OXYGEN DEMAND MG/L	SUSPEND SOLIDS MG/L	DISSOLVED OXYGEN MG/L
3-11-85				
AERATED INFLUENT	856	45	20	7.5
BEFORE UV	2,200	55	16	0.4
AFTER UV	176	42	33	0.5
3-12-85				
AERATED INFLUENT	NO DATA	NO DATA	22	6.8
BEFORE UV	NO DATA	NO DATA	21	1.3
AFTER UV	NO DATA	NO DATA	27	0.6
3-20-85				
AERATED INFLUENT	2,880	106	15	7.1
BEFORE UV	1,800	91	16	3.7
AFTER UV	50	45	13	8.2

These points not charted due to incomplete data.

TABLE 1 EXPERIMENT 1

TESTING WAS CONDUCTED BY DONALD H. IRVIN - WASTEWATER OPERATOR 3

	FECAL COLIFORMS PER/100ML	BIOLOGICAL OXYGEN DEMAND MG/L	SUSPEND SOLIDS MG/L	DISSOLVED OXYGEN MG/L
4-3-85				
AERATED				
INFLUENT	TNTC	88	30	6
BEFORE UV	TNTC	69	18	3.5
AFTER UV	1	27	13	9.5
4-10-85				
AERATED				
INFLUENT	TNTC	62	23	5.7
BEFORE UV	18,000	55	17	3.5
AFTER UV	35	29	13	9.2
4-17-85				
AERATED				
INFLUENT	NO RESULTS	92	42	5
BEFORE UV	NO RESULTS	76	31	1.7
AFTER UV	NO RESULTS	29	20	8.2
4-24-85				
AERATED				
INFLUENT	1,800	93	37	7.8
BEFORE UV	248	40	20	2.5
AFTER UV	20	16	17	9.1
5-1-85				
AERATED				
INFLUENT	1,440	57	26	NO DATA
BEFORE UV	840	41	21	NO DATA
AFTER UV	1	10	15	NO DATA
5-8-85				
AERATED				
INFLUENT	TNTC	NO DATA	19	NO DATA
BEFORE UV	44	NO DATA	12	NO DATA
AFTER UV	14	NO DATA	6	NO DATA
5-30-85				
AERATED				
INFLUENT	TNTC	54	14	NO DATA
BEFORE UV	504	19	15	NO DATA
AFTER UV	1	17	30	NO DATA

TABLE 2 EXPERIMENT 2

TESTING WAS CONDUCTED BY DONALD H. IRVIN - WASTEWATER OPERATOR 3

	FECAL COLIFORMS PER/100ML	BIOLOGICAL OXYGEN DEMAND MG/L	SUSPEND SOLIDS MG/L	DISSOLVED OXYGEN MG/L
5-20-85				
AERATED				
INFLUENT	TNTC	81	13	7.3
BEFORE PROTOZONE	492	58	6	8.2
AFTER PROTOZONE	186	17	5	5
5-27-85				
AERATED				
INFLUENT	TNTC	127	28	5.8
BEFORE PROTOZONE	NO DATA	NO DATA	NO DATA	NO DATA
AFTER UV	TNTC	20	13	3.5
7-12-85				
AERATED				
INFLUENT	NO DATA	34	31	4.6
BEFORE PROTOZONE	NO DATA	21	25	6.2
AFTER UV	3	8	11	5

	FECAL COLIFORMS PER/100ML	BIOLOGICAL OXYGEN DEMAND MG/L	SUSPEND SOLIDS MG/L	DISSOLVED OXYGEN MG/L
8-2-85				
AERATED				
INFLUENT	NO DATA	NO DATA	35	5.6
EFFLUENT	<1	NO DATA	15	8.6
8-9-85				
AERATED				
INFLUENT	NO DATA	NO DATA	37	6.6
EFFLUENT	10	NO DATA	4	9.0
8-15-85				
AERATED				
INFLUENT	NO DATA	67	10	7.0
EFFLUENT	<1	2	2	7.5
8-21-85				
AERATED				
INFLUENT	NO DATA	NO DATA	17	7.0
EFFLUENT	NO DATA	NO DATA	14	13.2

These points not charted due to incomplete data.

TABLE 3 EXPERIMENT 3

TESTING WAS CONDUCTED BY DONALD H. IRVIN - WASTEWATER OPERATOR 3

	FECAL COLIFORMS PER/100ML	BIOLOGICAL OXYGEN DEMAND MG/L	SUSPEND SOLIDS MG/L	DISSOLVED OXYGEN MG/L
9-12-85 AERATED INFLUENT OF FIRST PLANT	----	44	15	6.8
EFFLUENT 2ND PLANT	<1	12	3	8.4
9-19-85 AERATED INFLUENT OF FIRST PLANT	----	89	23	6.3
EFFLUENT 2ND PLANT	85	13	4	7.8
10-17-85 AERATED INFLUENT EFFLUENT 1ST PLANT	----	67	76	6
EFFLUENT 2ND PLANT	103	10	6	7.4
10-24-85 AERATED INFLUENT EFFLUENT 1ST PLANT	----	107	56	4.8
EFFLUENT 2ND PLANT	4	12	4	9
11-1-85 AERATED INFLUENT EFFLUENT 1ST PLANT	----	111	82	6.5
EFFLUENT 2ND PLANT	125	12	3	8.1
11-14-85 AERATED INFLUENT EFFLUENT 1ST PLANT	----	111	103	7.1
EFFLUENT 2ND PLANT	<1	8	6	9.6

TESTING WAS CONDUCTED BY DONALD H. IRVIN - WASTEWATER OPERATOR 3

	FECAL COLIFORMS PER/100ML	BIOLOGICAL OXYGEN DEMAND MG/L	SUSPEND SOLIDS MG/L	DISSOLVED OXYGEN MG/L
11-28-85 AERATED INFLUENT	----	133	104	7.4
EFFLUENT 1ST PLANT	----	-----	98	4.5
EFFLUENT 2ND PLANT	<1	17	6	9.2
12-4-85 AERATED INFLUENT	----	109	144	5.5
EFFLUENT 1ST PLANT	----	100	82	5.3
EFFLUENT 2ND PLANT	<1	11	11	9.7
12-12-85 AERATED INFLUENT	----	74	114	8.4
EFFLUENT 1ST PLANT	----	-----	96	7.4
EFFLUENT 2ND PLANT	<1	9	13	10.6
12-19-85 AERATED INFLUENT	----	95	83	7.1
EFFLUENT 1ST PLANT	----	79	44	6.7
EFFLUENT 2ND PLANT	NO TEST	12	7	10.2
1-9-86 AERATED INFLUENT	----	88	71	6.9
EFFLUENT 1ST PLANT	----	64	42	5.3
EFFLUENT 2ND PLANT	67	13	13	10.2
1-16-86 AERATED INFLUENT	----	84	108	6.6
EFFLUENT 1ST PLANT	----	101	36	5.4
EFFLUENT 2ND PLANT	69	10	9	9.3

TESTING WAS CONDUCTED BY DONALD H. IRVIN - WASTEWATER OPERATOR 3

	FECAL COLIFORMS PER/100ML	BIOLOGICAL OXYGEN DEMAND MG/L	SUSPEND SOLIDS MG/L	DISSOLVED OXYGEN MG/L
1-23-86				
AERATED INFLUENT	----	120	75	7
EFFLUENT				
1ST PLANT EFFLUENT	----	106	46	6.4
2ND PLANT	65	12	21	9.2

REMAINING PORTION OF EXPERIMENT IS NOT CHLORINATED

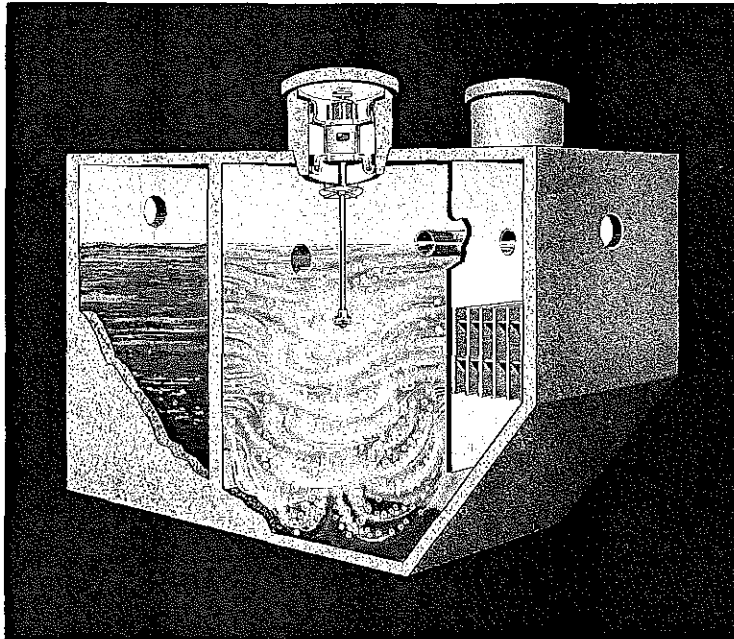
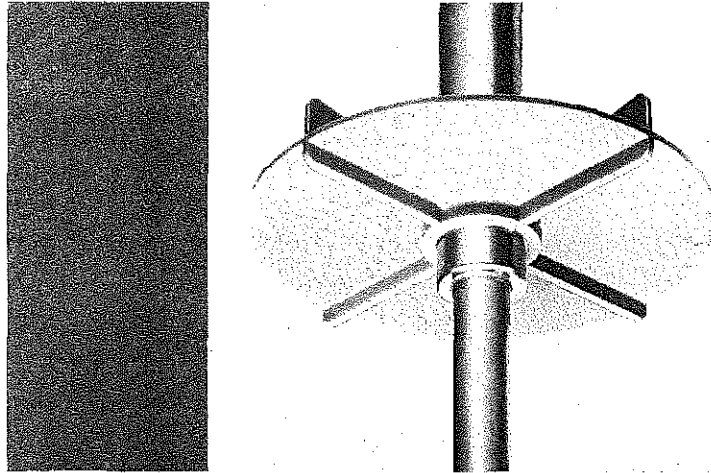
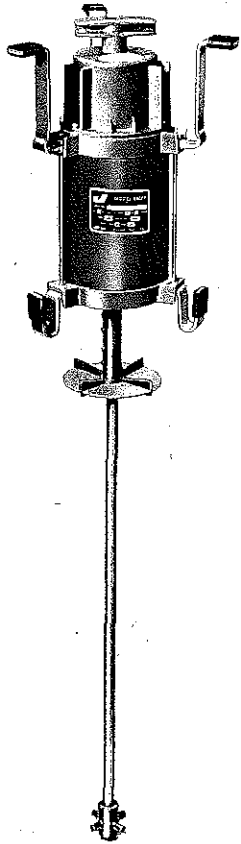
2-13-86				
AERATED INFLUENT	----	129	107	7.4
EFFLUENT				
1ST PLANT EFFLUENT	----	----	----	----
2ND PLANT	99	5	9	10.5

RESIDENT FLUSHED BACTERICIDAL SOLUTION INTO SYSTEM

2-19-86				
AERATED INFLUENT	----	157	101	5.6
EFFLUENT				
1ST PLANT EFFLUENT	----	71	47	4.3
2ND PLANT	TNTC	20	27	9.6
2-27-86				
AERATED INFLUENT	----	81	52	8.1
EFFLUENT				
1ST PLANT EFFLUENT	----	54	43	6.7
2ND PLANT	223	14	8	9.8

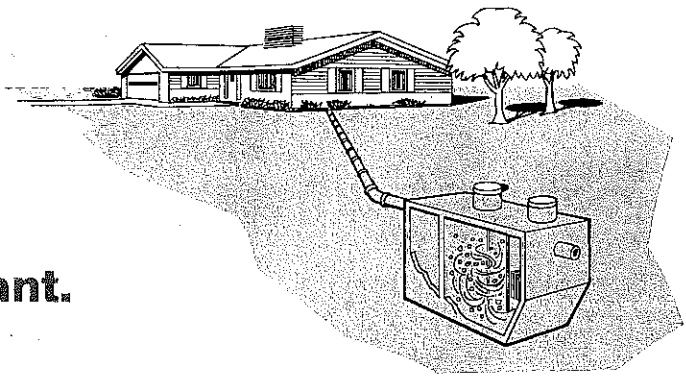


Individual Home Wastewater Treatment Plant



- Reduces normal household wastewater to clear odorless liquid in just 24 hours.
- Same process used by central treatment plants.
- Recommended by health officials across country.
- 30-month limited warranty, 20-year exchange program.
- Backed by local licensed factory-trained JET distributor.
- Product of the pioneer and leading company in field.
- NSF Seal of Acceptance.

Control pollution End septic tank odors Raise health standards ...with a JET Plant.



WHAT IS A JET PLANT?

The JET pollution control plant for individual homes is a giant step into a clean new world — out of the old-fashioned world of the septic tank.

The JET plant is designed to serve homes beyond city sewers . . . anywhere. In just 24 hours it reduces all household wastewater to a clear odorless liquid.

Developed as a replacement for the inefficient septic tank, the JET treatment

plant uses the same treatment process most used by large central treatment plants. Jet simply adapts the process to a small compact underground installation sized to serve a single home.

Local health departments often insist on home aeration plants instead of septic tanks, especially where the water table is high or the soil has poor percolation.

The JET plant is self-contained, automatic, odorless. Designed for modern living, it easily handles wastewater from multiple-bath homes with all modern appliances—automatic laundries, dishwashers, garbage grinders. And yet it is a practical plant. It does not cost a fortune to buy, operate, or maintain. Most important, it requires little maintenance.

HOW DOES IT WORK?

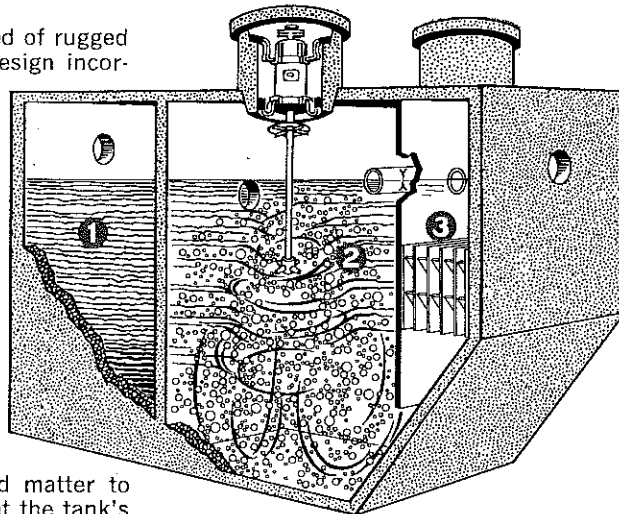
The treatment process — called extended aeration — is a speeded-up version of what happens in nature when a river tumbles through rapids and over waterfalls, purifying itself by capturing oxygen. The JET plant brings oxygen to the wastewater by injecting streams of

air into its underground treatment tank and bubbling this air through the wastewater. The air is injected by an electrically operated JET aerator. A control panel conveniently installed in the home's basement or garage automatically regulates operation of the aerator, which runs only part of the day.

The clear liquid discharged by a JET plant is odorless and colorless. According to some scientific opinion, the high dissolved oxygen content in an aeration plant's oxygen-laden effluent actually contributes to the betterment of nearby streams, helping support aquatic life.*

A Central Treatment Plant In Miniature.

The JET plant is constructed of rugged permanent concrete. Its design incorporates three separate compartments, each performing a specific function in the total purification process.



① The Primary Treatment compartment receives the household wastewater and holds it long enough to allow solid matter to settle to the sludge layer at the tank's bottom. Organic solids are here broken down physically and bio-chemically by anaerobic bacteria — those bacteria that live and work without oxygen. Grit and other untreatable materials are settled out and held back. The partially broken down, finely divided material that is passed on to the aeration compartment is much easier to treat than raw sewage. This, of course, is the reason for Jet's primary compartment. It's one of the steps that makes it possible for JET plants to reduce incoming wastewater to a clear effluent normally within the short period of 24 hours.

② In the Aeration chamber the finely divided, pre-treated material from the primary compartment is mixed with activated sludge and aerated. The JET aerator injects large quantities of fresh air into this compartment to provide oxygen for the aerobic digestion process, and mixes the compartment's entire contents.

The aerator is mounted in a concrete housing that rises to ground level to give it access to fresh outside air. By injecting air into the liquid, the aerator

breaks up the air into tiny bubbles so more air comes in contact with the liquid, thus hastening the aerobic digestion process. Aerobic bacteria, which are bacteria that live and work in the presence of oxygen, then use the oxygen in solution to completely break down the wastewater and convert it to odorless liquids and gases.

The aeration compartment has a 50% greater capacity than is required in the National Academy of Sciences National Research Council Criteria. This extra capacity gives a JET plant a safety factor to handle shock loads from weekend guests, multiple baths, automatic laundries, and dishwashers.

③ The final phase of the operation takes place in the Settling/Clarifying compartment. In this compartment a tube settler eliminates currents and encourages the settling of any remaining settleable material which is returned, via the tank's sloping end wall, to the aeration compartment for further treatment. A non-mechanical surface skimmer, operated by hydraulics, skims floating material from the surface of the settling compartment and returns it to the aeration compartment. The remaining odorless, clarified liquid flows into the final discharge line through the baffled outlet.

*"Evolution of the Suburban STP," Stanley E. Kappe, Sanitary Engineer, from Water and Sewage Works, Reference Number, 1963.

A JET Plant will benefit you & your environment.

■ **NO ODORS.** The most noticeable benefit of the JET AERATION plant is that it eliminates the embarrassing, offensive wastewater odors that are a problem with septic tanks.

■ **OUTSTANDING TEST RESULTS.** During a comprehensive 7-month testing program conducted by an internationally recognized foundation, the JET plant produced an effluent with a median 5-day BOD concentration of only 19 ppm and suspended solids concentration of 25 ppm — average reductions of 89% and 87%.

■ **ENVIRONMENTAL PROTECTION.** The highly treated effluent discharged from a JET plant is normally colorless and odorless, and meets standards of larger plants. This is natural, since Jet's watertight, self-contained plant treats wastewater in the same manner as a central treatment plant. Where clay soil, rock, shale, or high water tables exist, many homes simply cannot be built without JET plants. Gross pollution of ditches and streams is eliminated by Jet and, of course, this protection extends to ground water supplies . . . especially important to homeowners with water wells on their properties.

■ **EFFLUENT DISPOSAL SIMPLIFIED.** Effluent disposal in any area is controlled by the health authorities. Many authorities have found the highly treated Jet effluent eliminates the need for leaching fields or subsurface filters. Most health officials in areas where subsurface disposal is required have found Jet's effluent extends the life of the fields or filters. In a great many areas, Jet's aerated effluent is discharged directly to a storm sewer, flowing stream, or any well-defined line of drainage.

■ **LARGE CAPACITY.** Total net holding capacity in a JET plant's three-compartmented tank is 1200 gallons. Primary Treatment compartment holds

475 gallons; Aeration compartment 600 gallons; Settling/Clarifying compartment 125 gallons.

■ **HANDLES ALL MODERN APPLIANCES.** Automatic laundries, dishwashers, and garbage grinders present no problems to a JET plant because of its sophisticated treatment process and its large capacity. Septic tanks cannot offer this benefit.

■ **AUTOMATIC OPERATION.** A control panel automatically cycles the JET aerator's operation for proper treatment. The homeowner does not concern himself with operation.

■ **BACKED BY A LOCAL JET DISTRIBUTOR.** The local factory-trained JET distributor, who installs the plant, is always available if service is ever needed. His name and phone number are clearly displayed on a nameplate attached to the control panel.

■ **NO OWNER MAINTENANCE.** Absolutely no periodic maintenance is required by the homeowner. Other than perhaps pressing a re-set button on the control panel in the event of an electrical overload, there is nothing for the owner to do. If ever needed, service will be taken care of by the local factory-trained JET distributor.

■ **FREQUENT TANK PUMPING ELIMINATED.** In most cases a JET plant can go five times as long as a septic tank — or longer — before it needs pumping. The JET plant's primary chamber is designed to pre-treat organic material and pass it on for final treatment, not hold it back as septic tanks are supposed to do.

■ **ONLY A SMALL SPACE REQUIRED.** Because of Jet's highly treated effluent (final liquid discharge), most health authorities either greatly reduce the requirements for subsurface filters and leaching devices (commonly used with septic tanks) or elim-

inate the requirement for these altogether. Naturally, this results in a great savings to the home buyer, in both original cost and maintenance.

■ **ECONOMICAL TO INSTALL.** Installation cost for a modern JET AERATION plant usually is no more than for the old-fashioned septic tank. In many instances it is even less.

■ **LOW OPERATING COST.** The JET aerator's fractional horsepower motor is automatically cycled to run only part of each day. A JET plant normally costs the homeowner less to operate than his refrigerator, TV, or most other major home appliances.

■ **OPTIONAL WARNING BUZZER.** The plant's control panel may be equipped with an optional warning buzzer which sounds if there is an electrical overload in the system.

■ **OPTIONAL CHLORINATION AVAILABLE.** Where local health regulations require it, a simple effective chlorinator can be easily added to the plant. Non-mechanical, the JET chlorinator works by gravity flow, uses easy-to-handle disinfectant tablets, requires little attention other than restocking with tablets about twice a year.

■ **OPTIONAL TERTIARY TREATMENT FILTER.** Practical tertiary treatment can be provided, where required, by the optional JET upflow filter. The filter is housed in a separate concrete tank through which the plant effluent flows. The effluent receives further biological treatment from bacterial growth on the filter medium. In independent tests, the JET filter produced effluent averages of 11 ppm BOD and 10 ppm SS — reductions of more than 94% and 96% respectively! If chlorination is also desired, a JET chlorinator can be installed within the filter.

JET Obsoletes the Septic Tank.

Operating Characteristics		JET PLANT	Septic Tank
Odor		no odor	smells bad
Pumping		usually 3-5 years	usually 6-24 months
Garbage grinder		fine	causes problems
Automatic dishwasher		fine	not recommended
Automatic laundry		fine	not recommended
Multiple baths		fine	causes problems
Effluent Quality		JET PLANT	Septic Tank
Biological Oxygen Demand (should be low)		usually 10-40 ppm	usually 200-430 ppm
Dissolved Oxygen (should be high)		usually 4-6 ppm	always 0 ppm
Suspended Solids (should be low)		usually 9-60 ppm	usually 180-380 ppm
Coliform Count (should be low)		usually under 50,000/100ml; with JET chlorination, 0-100/100ml	usually over 400,000/100ml

Note: The above figures for a Jet plant are averages of typical single-family installations using garbage grinders and automatic washers.

The Aerators with the Lowest Repair Rate in the Industry!

JET'S UNIQUE DESIGN, QUALITY CONSTRUCTION ASSURE MANY LONG YEARS OF LIFE AND TROUBLE-FREE SERVICE.

The JET aerator mixes and oxygenates the liquid in the plant's aeration compartment.

Fresh outside air is drawn into the unit by the action of aspirator tubes on the shaft turning in the water. As they rotate they leave a cavity or pocket in the water into which the air is drawn. This

air travels down through the aerator, into the hollow shaft, and out the aspirator tubes. The air bubbles are then reduced in size by the shearing action of the rapidly turning aspirator tubes.

These tiny bubbles are dispersed radially. The rapid rotation of the aspirator induces circulation and mixing through-

out the aeration compartment. As air is injected into the fluid, turbulence is increased, and the entire contents of the compartment are drawn into circulation, broken down, and aerated. Because the air bubbles are small and uniformly dispersed, the JET aerator's oxygen transfer efficiency is exceptionally high.

Two Aerator Models...Floodproof & Standard.

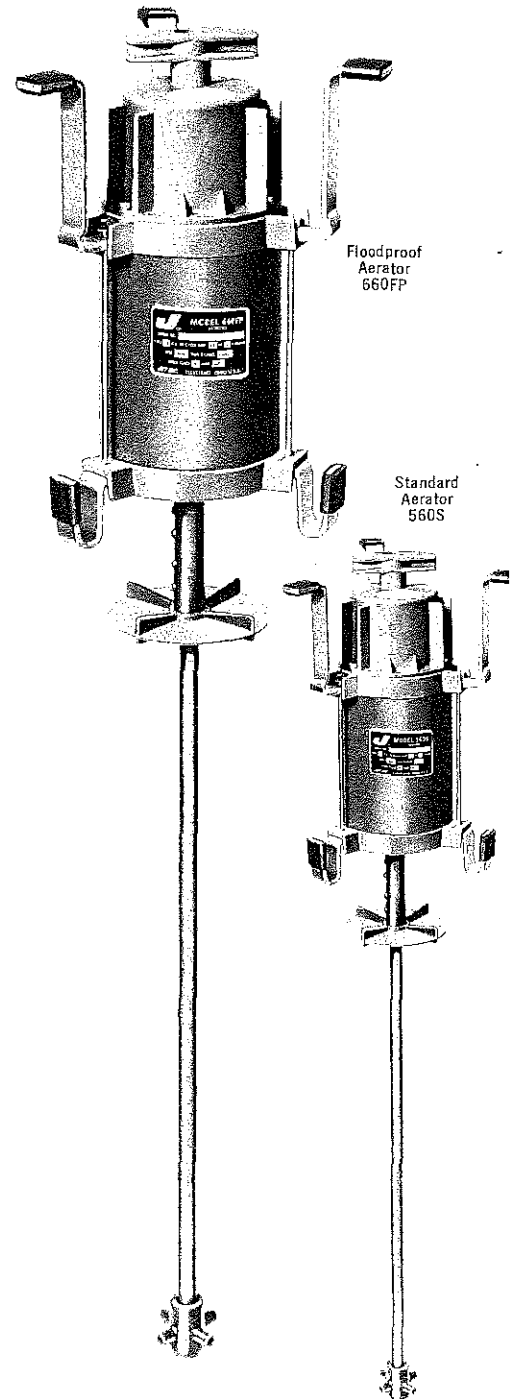
Top-of-the-line Floodproof model:

Running seals protect this waterproof unit from any damage by water backing up in tank from flash floods or temporary storm sewer overloads. Eight years of careful research, design, testing, and field experience went into Jet's develop-

ment of the Floodproof aerator. The field-proven Floodproof model is a major step forward in home aeration plants and the most versatile home aerator available.

Both models have all these quality features:

- **Careful engineering and construction.** Everyone at Jet is proud of turning out the finest product in the field. This company pride results in top quality work . . . consistently superior aerator engineering and construction.
- **Corrosion-proof or protected materials.** Stainless steel or special plastics are used on all submerged parts. Parts above water line are either of similar corrosion-proof materials or are protected by heavy plating or baked enamel finishes.
- **Corrosion-proof foam restrictor.** Protects unit from the foam created by mixing and aeration. It throws foam to tank sides and breaks it up, protecting the aerator.
- **Ball-bearing construction.** Bearings are extra large for longer life, pre-lubricated and permanently sealed for life of the unit . . . no greasing or oiling ever needed.
- **Totally enclosed motor.** Especially designed and produced for Jet by one of America's largest motor manufacturers.
- **Low power requirements.** The fractional horsepower motor is automatically cycled at the factory to run only part of each day. When cycled "on" it normally uses less electricity than most other major household appliances.
- **"U.L. Listed" cable.** Furnished for each installation by JET distributor.
- **Close-tolerance coupling.** Automatically centers shaft to assure smooth even running characteristics and long life.
- **Strict production tolerances.** Aspirator shaft and coupling are produced to tolerances within 3/10,000".
- **Complete testing.** Every JET aerator is thoroughly tested before it leaves the factory. All critical parts such as coupling, shaft, bearing bores, and journals are inspected before assembly. Every assembled unit is run under actual operating conditions before shipping.
- **Completely versatile operation.** Although the control panel is pre-set at factory to cycle the unit for best results under normal conditions, the setting can be changed by the distributor to compensate for unusual situations. If conditions demand it, the JET aerator is so sturdy that it can even be run continuously without decreasing its long life.
- **Quiet operation.** All rotating parts are precision-balanced. This, together with the close tolerances that are held, result in an aerator that is practically noiseless and vibration-free.
- **No adjustment by homeowner.** No periodic adjustment or lubrication by the homeowner is required.
- **Positive air injection.** There's no clogging when the unit is cycled off or power interrupted.
- **JET circuit breaker.** Opens the electrical circuit in the event of an overload, protecting the aerator from damage.
- **Lowest repair rate in industry.** Even the finest mechanical equipment will some day require repair, but two decades of experience have shown the frequency of repair for JET aerators is the lowest in the industry. When these infrequent repairs are needed, the local JET distributor is there to handle them promptly and professionally.



Field-Proven, Accepted.

The carefully engineered JET plant with its advanced treatment process has been providing dependable wastewater treatment for individual homes since 1955, when Jet pioneered the home plant field. The plant has been field-proven in tens of thousands of installations across the U.S. and in foreign countries, and has won enthusiastic approval from health officials, builders, and homeowners.

JET plants meet or exceed all criteria

for evaluating and testing household aerobic wastewater treatment systems as recommended in the National Academy of Sciences—National Research Council Report 586. This report gives the results of a study made for the U.S. Public Health Service. The purpose of this study was to develop criteria for evaluating and testing individual household aerobic wastewater treatment systems.

The plant underwent a 7-month test by

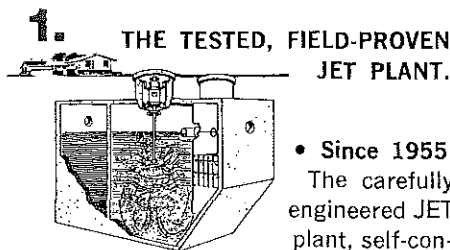


the National Sanitation Foundation and received the NSF Seal of Acceptance.

The Veterans' Administration has declared the JET home plant acceptable for its insured home loans. In addition, JET plants have been sold to the U.S. Army Corps of Engineers, U.S. Navy, U.S. Post Office, and many other state and federal agencies where top quality specifications are strictly adhered to.

Health Authorities Want Complete Dependability.

Health authorities want complete dependability in a home aeration plant and Jet supplies it! Lots of home aeration plants can look good on the drawing board and in the laboratory, but health authorities need to know that the plant and the plant backup are completely dependable in the field — year in, year out. Jet's history, product record and policies have convinced health officials that Jet is a plant they can really depend on.



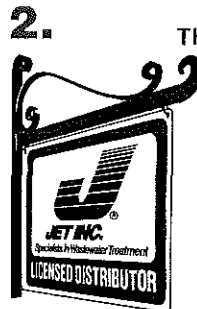
1. THE TESTED, FIELD-PROVEN JET PLANT.

• **Since 1955.** The carefully engineered JET plant, self-contained and compact, has been providing homeowners with dependable wastewater treatment since 1955 — a statement no other home plant manufacturer can make.

• **Consistent, High Quality Effluent.** Tests and field experience have proven that JET plants produce a high quality effluent under a broad range of loadings and temperatures.

• **Comprehensive Owner's Manual.** Even though plant operation is automatic and the homeowner is required to do nothing about plant maintenance, he is given an informative owner's manual so he will understand the workings of his plant, be aware of its guarantees and warranties, and know the importance, to himself and the community, of keeping his plant in top condition.

• **Product of Established Company, Pioneer and Leader in Field.** Because of its proven quality and dependability more health authorities and consumers choose a JET plant each year than all other makes combined.



2. THE LOCAL LICENSED FACTORY-TRAINED JET DISTRIBUTOR.

He sells, installs, stands behind, and services the JET plant.

• **Reliable Source.** JET plants are sold only through licensed distributors — established, carefully selected local businessmen who meet the high standards of workmanship and service set by Jet Inc. These businessmen have an interest, investment, and reputation in the community. They stand behind their JET plants.

• **Factory-Trained Servicemen.** Local servicemen receive in-the-field training by Jet's factory engineers. In addition, Jet holds a Factory Training Seminar at its Cleveland, O., factory several times each year. Attendance at one or more seminars is required of distributors.

• **Businesslike Backup.** The Jet distributor keeps careful records of installations, inspections, and service. He maintains a stock of parts for maintenance and emergency repairs. He provides prompt service whenever needed.

3. JET'S STRONG OWNER PROTECTION PROGRAM.



Backing by the No. 1 company in the industry.

• **Exclusive 30-Month Limited Warranty.** The JET aerator carries a limited warranty against defective materials and workmanship, under normal service, for 30 months from date of original installation. It will be repaired at the factory with no charge for labor or materials during this period.

• **Twenty-Year Exchange.** Sets a ceiling on aerator replacement cost for 17½ more years after the initial warranty expires. Any aerator up to 20 years of age, regardless of condition, may be exchanged for a newly warranted replacement aerator. The price for this exchange is pro-rated against the unit's length of service at a cost the homeowner can afford.

• **Free Two-Year Inspection Policy.** For the first two years of the 30-month warranty period, the Jet distributor regularly inspects the new plant without charge. No charge is made for labor or service if required during this time.

• **Continued Inspection Policy.** After the initial free two-year inspection policy, the homeowner can take out an annual inspection policy with the distributor for a nominal charge if he wishes.

4. TO SUM UP, OVER 25 YEARS OF EXPERIENCE HAS SHOWN THAT A SOLID HOME WASTEWATER TREATMENT PLANT BACKED UP BY A CONCERNED LOCAL DISTRIBUTOR CAN PROVIDE AN EFFECTIVE, DEPENDABLE WASTEWATER TREATMENT FOR THE COMMUNITY.

Questions to ask before choosing a Home Aeration Plant.

Question	JET PLANT	OTHER PLANT
Is plant backed by a national company?	Yes. Jet sells its plants throughout the U.S. and in foreign countries.	?
How does company rank in home wastewater treatment plant field sales?	No. 1.	?
Has company had sufficient field experience with its plant?	Yes — the JET plant is field-proven in tens of thousands of installations since 1955.	?
Is the company reputable?	Yes. Jet was established in 1955, pioneered development of home wastewater treatment plant, is a strong company, well-regarded by health officials, distributors, customers.	?
Has plant been tested by National Sanitation Foundation?	Yes. JET plants carry NSF Seal of Acceptance No. 8092.	?
Does plant have simple reliable design?	Yes.	?
Is plant sold and serviced by a dependable local businessman?	Yes. And local JET distributors are licensed, factory-trained, always available.	?
Is plant reasonably priced?	Yes — about the same or less than a septic tank system, depending on area.	?
Is plant economical to operate?	Yes.	?
Must owner perform plant maintenance?	No.	?
Does mechanical unit have long, low-maintenance life?	Yes. JET aerators have by far the lowest maintenance and repair rate of any plant on market.	?
Does company stand behind its product?	Yes. Jet is the only company to give an exclusive 30-month limited warranty and 20-year exchange program.	?
Is the company financially sound enough to stand behind its warranty?	Yes. Check our Dun & Bradstreet rating — we're proud of it.	?



The Company Behind The Products.

From its founding in 1955, Jet has developed steadily at a high annual growth rate. The company is solidly established as a leader in the pollution control field.

Forward-looking as well as fast-growing, Jet adds new patents and products each year, broadening its lines as its research points the way with new devel-

opments. Jet has the longest successful experience of any company in the home plant field.

Other JET Products

JET-CHLOR TABLET DISINFECTANT SYSTEMS ... a complete tablet chlorination system.

BIO JET 7 ... a natural organic solution specifically to correct problems and increase efficiency of septic tanks and wastewater treatment systems.

JET-TEX ... a synthetic filter fabric to prevent leach bed and filter clogging.

JET PRESSURE DOSING ... insures equal distribution throughout septic tank disposal field, dramatically extends disposal field life and eliminates high repair and replacement costs.

JET COMMERCIAL PLANT ... extended aeration plants, available in a full range of sizes for treatment up to 100,000 gallons of wastewater per day.

AIR SEAL DIFFUSERS ... the only non-clogging, no-maintenance diffuser available today!

Also Available From JET

Lift Stations, Liquid Level Alarms, Controllers and other wastewater treatment products.

YOUR LOCAL JET DISTRIBUTOR IS ...

