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OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS

State of Oregon
Department of Environmental Quality

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OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

March 13, 1987

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

AGENDA

9:00 a.m. CONSENT ITEMS

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

A. Minutes of January 23, 1987 EQC meeting.

B. Monthly Activity Report for January 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 Open Field Burning Rules, OAR 340-26-001 through 340-26-055 as a Revision to the State Implementation Plan.

~~E. Request for Authorization to Conduct a Public Hearing to Amend Oregon's Rule Regarding Air Emissions from Upsets, OAR 340-21-065 through 340-21-075 as a Revision to the State Implementation Plan.~~

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 through 340-25-553.

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.

H. Request for Authorization to Hold a Public Hearing on the Construction Grants Management System and Priority List for FY88.

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

J. Request for Authorization to Conduct a Public Hearing on Proposed Amendments to the Hazardous Waste Management Rules, OAR 340-100-105.

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.

* 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.

L. Proposed Adoption of Order Requiring the City of Portland to Provide the Opportunity to Recycle.

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

N. Informational Report: Status of Ogden-Martin Systems of Marion, Inc. Resource Recovery Facility.

O. Informational Report: Proposed Approach for Establishing Total Maximum Daily Loads (TMDLs) as a Management Tool on Water Quality Limited Segments of stream stretches.

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

After the meeting is adjourned, the Commission members will tour the proposed landfill sites.

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 April 17, 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.

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THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY

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 L: 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 if 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 Lawyer 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 addition 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 pérmit 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 lawsuites 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 ONE HUNDRED SEVENTY-SEVENTH MEETING

OF THE

OREGON ENVIRONMENTAL QUALITY COMMISSION

January 23, 1987

On Friday, January 23, 1987, the one hundred seventy-seventh meeting of the Oregon Environmental Quality Commission convened in the fourth floor conference room of the Executive Building, 811 SW Sixth Avenue, in Portland, Oregon. Present were Commission Chairman James Petersen, Vice-Chairman Arno Denecke, and Commission members Mary Bishop and Sonia Buist. Present on behalf of the Department were its Director, Fred Hansen, and several members of the Department staff.

The staff reports presented at this meeting, which contain the Director's recommendations mentioned in these minutes, are on file in the Office of the Director of the Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon. Written information submitted at this meeting is hereby made a part of this record and is on file at the above address.

BREAKFAST MEETING

In addition to members of the Commission, legal counsel, and department staff, the breakfast meeting was attended by City of Portland Commissioner Bob Koch and his aid Dave White, and John Lang and Delyn Kies of the City of Portland Bureau of Environmental Services.

Review of 1987-89 Proposed Budget

John Rist, Budget Manager, Director Hansen, and various Division Administrators reviewed for the Commission the status of the Department's proposed budget for the 1987-89 biennium which has been submitted to the 1987 legislature.

Lydia Taylor advised the Commission that the Legislative Emergency Board had taken action on the request of the City of Sheridan for a grant from the Pollution Control Bond Fund. The Emergency Board awarded the grant from the general fund rather than from the bond fund.

In response to a question from Chairman Petersen, John Lang assured the Commission that anyone in Mid-Multnomah County having financial difficulty meeting sewer costs would be considered for eligibility under the safety net proposal being developed by the City. Commissioner Koch assured the Commission that the City of Portland would not let folks slip through the cracks.

Director Hansen advised the Commission that NEDC had filed suit against EPA in an effort to require EPA to carry out its non-discretionary duty to establish total maximum daily loads for the Tualatin River in Oregon.

At that point, Chairman Petersen declared the Commission to be in Executive Session to discuss matters of potential litigation.

FORMAL MEETING

Chairman Petersen called the meeting to order and advised everyone that the order of items as presented in the agenda would not be followed.

AGENDA ITEM A: Minutes of the December 12, 1986 Regular EQC Meeting and the December 19, 1986 Special Conference Call Meeting.

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

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

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

Commissioner Denecke asked why Brazier Forest Products was taking so long to wrap up.

Michael Huston, Assistant Attorney General, responded that at Brazier Forest Products' request, the Department is in continuing settlement discussions with respect to that site, and has not yet issued the Commission's final order in that case.

AGENDA ITEM C: Tax Credit Applications.

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

Director's Recommendation

It is recommended that the Commission take the following action:

1. Issue tax credit certificates for pollution control facilities:

Appl. No.	Applicant	Facility
T-1846	PGE Abernethy Substation	Oil spill containment system
T-1848	PGE Faraday Substation	Oil spill containment system
T-1849	PGE Sullivan Substation	Oil spill containment system
T-1850	PGE Grand Ronde Substation	Oil spill containment system
T-1851	PGE Station E Substation	Oil spill containment system
T-1852	PGE Round Butte Switchyard	Oil spill containment system
T-1853	PGE Canemah Substation	Oil spill containment system
T-1854	PGE North Plains Substation	Oil spill containment system
T-1855	PGE Estacada Substation	Oil spill containment system
T-1856	PGE Boones Ferry Substation	Oil spill containment system
TC2055	Precision Castparts	Cartridge type dust collector
TC2058	Precision Castparts	Bag filter dust collection

PUBLIC FORUM

No one wished to appear or testify during the public forum.

AGENDA ITEM M: Request for extension of the July 1, 1986 Deadline for Providing the Opportunity to Recycle in the Portland Wasteshed (ORS 459.185(9)).

The Environmental Quality Commission had previously granted to the City of Portland an extension to January 31, 1987 for their efforts in implementing Senate Bill 405, the opportunity to recycle. With a change of the Commissioner in charge of the Bureau responsible for that area of City government, there has been a request from the City of Portland to be able to have a further extension to allow for the adoption and development of a good recycling program. The Department is disappointed that recycling has not taken place in the largest of the urban areas within Oregon, certainly the area closest to recycling markets, and yet recognizes the complexity of the problem within Portland and believes that, at this stage, an extension is appropriate.

Director's Recommendation

Based upon the findings in the Summation, it is recommended that the Commission grant the City of Portland an extension of the July 1, 1986 deadline for providing the opportunity to recycle in the Portland Wasteshed with the following conditions:

1. The City Council must make a decision by the first week in April on a method for providing recycling service and promotion and education.

2. The chosen program must be at least as effective in increasing participation in recycling and volumes recycled as the program adopted by the City Council in July 1986.

3. Once chosen, the program must be implemented as quickly as possible. Within two weeks from the date the City Council decides upon the method for providing recycling, a schedule for implementation activities must be submitted to DEQ for approval.

4. If the chosen program is not operational by July 1, 1987, the City must establish an interim recycling program by July 1 which will offer at least monthly recycling service to each Portland household.

Commissioner Buist asked why the January 31 extension should be given until April. Director Hansen explained that the Department did not want to grant an extension of more than 30 days from the January 31st date to develop a new alternative; however, given the different options that could be chosen, a certain amount of time would also be needed to get consensus before it could be formally adopted by the City Council. For that reason, the Department decided to add another 30 days onto the extension to build that consensus.

Commissioner Bob Koch, City of Portland, testified that the City of Portland considers the proposed time line the culmination of efforts over several years to make the City stand out and shine. The request is to allow the City Council to work out an equitable, solid solution that would give the council the greatest potential for the future of a recycling effort and to deal with more recyclable type materials and issues. The Council wants to have a foundation for the community that can quickly adapt to changing concerns, not merely a recycling program.

John Lang, City of Portland, testified that the City is requesting an extension of time for two reasons: 1) The City Council has two new members of which Commissioner Koch is one. Commissioner Koch has been assigned the responsibility for environmental services and recycling, and he and the other new member need time to have input into the program; and, 2) When the program was taken back to the City Council in October, there were a number of objections by various parties. The Council feels that it is important to have a program that has uniform support with all those who will be participating and, thereby, have a stronger program. The extension would give the Council enough time to continue to work on and, if necessary, modify the proposals. The city was therefore requesting an extension until April 1, 1987, for a Council decision, and July, 1987 for implementation.

Chairman Petersen asked Mr. Lang why the transition from one Commissioner to another creates a delay when his department has been working on this issue all along. Mr. Lang responded that all decisions made by the City Council are placed on the agenda by the individual Commissioners who have charge of those particular agenda items. This item will not go back to the Council until it is forwarded by Commissioner Koch and, since it is such a controversial issue, Commissioner Koch is not ready to put it back on the agenda within a week or two of taking responsibility for it.

Chairman Petersen asked if there are some elements of the solid waste program in the City of Portland that make it different from other cities in Oregon and, if so, could Mr. Lang or Commissioner Koch explain.

Commissioner Koch said there most assuredly are. Smaller communities can move quicker than large communities due to diversity of interests. Portland has a complex system of solid waste. There are over 100 collectors that comprise the oldest small business group in the City. But a sense of momentum and time has been created through the efforts of the Environmental Quality Commission, the mandate from the State, concerned environmentalists and business interests, the small industry garbage haulers' interests, and the consumer interests. All interests are now all coming together so that we can resolve this issue in an equitable way. Hopefully, everyone is now ready to sit down with each other and support one solid solution to the problem.

Commissioner Bishop stated that the Commission already gave two extensions, thinking that the foundation would be built; but it wasn't. She asked what an additional two months would do.

Commissioner Koch stated that this is the first time a City Commissioner has come and made commitments to the Commission personally. He expressed strong conviction to a solid recycling plan for the City.

Commissioner Buist asked Director Hansen what the process was if the Commission were to deny the request for extension. Director Hansen responded that the statute provides that the Commission will hold a hearing to determine whether or not the opportunity to recycle is being provided. If not, enforcement action could include civil penalties. Another option is an Order whereby the Commission could say what was expected to happen, give timetables and, presumably, non-compliance with that Order would subject the municipality to civil penalties as provided in the statute.

Commissioner Buist asked whether by denying the request the Commission would be making a strong statement--that it was fed up with perceived foot-dragging. Director Hansen stated that it is certainly an option; however, the Department believes that there is more to be gained by a cooperative effort as long as the specific criteria are stated that the Department thinks is critical. They are the conditions that are outlined in the staff report: 1) A decision is made by the City Council by April; 2) If implementation is not feasible by July 1st, an interim measure must go into effect that will meet the minimum requirements of the law. Those are the more positive ways to achieve recycling to the Portland residents.

Commissioner Koch stated that the Department's staff will be a part of the process so that the Department will know literally from day to day what the status is. Also, he is going to sit down with the editorial boards of all the media in the City and bring them up to speed on what has been happening and keep them abreast day by day also. It will be a total community effort; everyone will be informed, and no one will be kept in the dark.

Commissioner Bishop asked Director Hansen about Condition #2 of the recommendation. How is the Department going to determine that the chosen program is at least as effective as the one adopted. Director Hansen stated that the analysis that had been provided to the City Council during their previous deliberations was done by John Lang's staff--the Environmental Services Bureau. They estimated that the preferred option (the contract option) would, in fact, have a participation level of at least 20%. That is the figure the Department is utilizing as the baseline for determining Condition #2. The Department would then expect that both the Environmental Services Bureau as well as the Department would be estimating whether any other option chosen was as effective.

Chairman Petersen stated that he had received a letter from State Senator Bill Bradbury, Chair of the Senate Committee on Agricultural and Natural Resources. He read the letter which requested that the Commission deny the City of Portland's request because the Commission would be sending a message to the rest of the state if it granted the state's largest wasteshed another extension. Chairman Petersen then asked Commissioner Koch how he would answer Senator Bradbury's letter. Commissioner Koch said he was not sure what the message would be. Although the City of Portland does have a lot of resources, it also has a large set of issues and problems inherent in this issue.

Mr. Lang stated that there is a need to evaluate how soon the program would be available if an extension is not granted. The intent of asking for an extension is not to delay action, but to take action and get the program operational as soon as possible. If they don't get an extension, it

appears to him that it may take even longer to get the already adopted program implemented.

Commissioner Denecke asked if the big problem is because waste haulers are not franchised for certain areas as they are in other localities. Mr. Lang responded that the waste haulers are not organized so they are all providing collection service within specific areas. That was a major concern in the City's designing a recycling system. They did not want one hauler providing service to one house (both garbage and recycling) one day and another hauler collecting and providing service to another house on another day. They wanted to create a system in which there could be community and neighborhood consistency in the collection of recyclables. That was the main reason they made the specific proposal to the City Council. The objection to that proposal was that the haulers would not be participating completely in the recycling collection. They are in such a competitive mode with such small profits that, not being involved 100% in the recycling, would further erode profit margins, and several would go out of business. That is the core of the issue that is now before the City Council.

Commissioner Bishop asked what they were going to come up with and recommend to the City Council in the next two months that would be any different than what was previously recommended. Mr. Lang stated there are three basic options: 1) contracting, 2) the existing collection system, and 3) franchising. He feels they need the time to go back and see if there is a better chance for consensus on one of those basic options.

Commissioner Bishop then asked if Mr. Lang thought they would come up with a different conclusion in two months than they did previously. Commissioner Koch stated that it is a political issue and it is time to bring everyone together politically, otherwise it will further divide the community.

Jeanne Roy, League of Women Voters representative on the Portland Recycling Advisory Committee, testified that, as a member of the Recycling Advisory Committee, they worked for ten months exploring the different options and came up with a compromise plan. The plan that the City Council adopted was not the plan that any of the interest groups advocated, but there was agreement that the approved plan was workable. It was a compromise because it gave the City control over the recycling system and yet gave the garbage haulers the ability to collect the newspapers which is the largest money-making part of the system. Her recollection is this plan was not actively opposed at the City Council meeting.

Commissioner Denecke asked if Ms. Roy had a copy of "Report Recommendations On Options To Provide Recycling Collection Service", a publication put out by Commissioner Bogle's office. He asked if the compromise was any of the five options given in the report. Ms. Roy stated that the compromise plan is the dual contract option; Option B.

Ms. Roy went on to request that the Commission deny the extension because the intent of the law was to save landfill space and, even though there are landfill problems in other parts of the state, the biggest problem is here because this is where we have the most waste and where the landfill

is filling up. The other law requiring Metro to have a waste reduction plan might not have been needed had Portland been able to solve its landfill problem before this time. Second, the City of Portland has struggled with this issue of establishing a recycling program for over ten years, and this is the first time that Council has approved a program. She personally does not believe that any other plan will get approved by the City Council. Third, they don't believe the reasons the City is asking for postponement are justified. One of the reasons this has not been accomplished before is because none of the Commissioners or the Mayor have been willing to take on the leadership to really get this program through. That is still not good justification for requesting more time. Also, the shuffling of the Bureaus is not justification for requesting more time because the City Council did approve the program and it is only the implementation that has to take place now. Fourth, although there is value in working with the City, as in the Director's recommendation, instead of trying to push the City, she doesn't feel it will work. She perceives the City Council will not be able to approve a different plan within two months which would mean that the Department would have to start its process for enforcement anyway. The reason why she feels this way is because the residential garbage haulers in Portland want franchising to protect their businesses. If they get franchising, the commercial haulers will also want franchising to protect their businesses so the residential haulers wouldn't take that over; however, there are strong commercial establishments in the City who foresee their commercial garbage rates rising if there is franchising. There is significant opposition to any plan that will be presented.

Chairman Petersen stated that the Commission has a letter signed by all the Commissioners including the Mayor that says the City Council must make a decision by the first week in April on a method for providing recycling service and promoting education. He then asked Ms. Roy if she was saying that they don't mean what they said in the letter or that they will be incapable of making a decision.

Ms. Roy stated that she believes they will be incapable of making a decision. If they do make a decision, it could be the same one they have now which would mean it would just be delayed a couple months. On the other hand, they could come up with another plan, i.e., approve franchising system; however, if they approve that she has been told it would take another year to implement the plan, and then they would have to have an interim plan according to the conditions. As she understands it, all they would have to do would be to require all haulers to pick up recyclables which would be somewhat better than what residents have now, but not significantly. She can see another year and a half going by without any significant change in the recycling program. A better scenario would be for the Commission to deny the request for extension and, hopefully, the City will just implement the plan they have already approved; if not, the Commission could order the City to implement its approved plan. It could be a two-year trial plan which would allow Commissioner Koch to go ahead and work with interested parties, as he has proposed, and come up with a better plan if that's possible. The City would still have an interim plan that would have a significant impact on what is going to the landfill.

Chairman Petersen stated that one of the awkward things about this process is the fact that one of the options the Commission has is the imposition of civil penalties, and he was wondering if Ms. Roy had thought through the ramifications of the Commission, or the Department, ordering civil penalties against a municipality like the City of Portland. Ms. Roy stated she doesn't see it going that far; she thinks the City will respond to an Order from the Environmental Quality Commission. Chairman Petersen asked if she thinks they will respond quicker than the proposal in the letter signed by all five Commissioners. Ms. Roy said she does, and she might be wrong, but her experience in working with the City is that what is required is strong leadership to push through a plan that will have opposition.

John Charles, Oregon Environmental Council (OEC), expressed the desire to establish a link between two Statutory programs; one is Senate Bill 662 (SB 662), and the other is Senate Bill 405 (SB 405). A number of environmental groups have gotten together for the last year and worked with Steve Greenwood, Facility Siting Manager, Hazardous and Solid Waste Division, and staff to provide some support from the environmental community for the process. Whenever there is a landfill siting process, opposition springs up and there is never anyone to stand up from outside the agency to say the process does have integrity and, while some may disagree with the outcome, it needs to go forward. They have done that. The process is going forward in a statutorily sound way. He doesn't see how he could continue to counsel people that the process is sound if an extension is granted. The staff has implemented SB 662 very aggressively and forwardly and it has to do the same thing with SB 405.

Mr. Charles continued by stating he believed the City has participated in some bad faith negotiation. The Commission gave the City an extension and they have not held up their end of the bargain. The other possible bad faith negotiations will be between the Department and the citizens it is dealing with trying to site landfills, and telling them it is making aggressive efforts on waste reduction. He doesn't think the Department is. In reading the letter from the City and the staff report, both are talking about statutory requirement for good cause--but what is good cause. They are saying two things: A) some people did not like the original program and, B) we have a new Commissioner. Those are lame excuses. Some people are not going to like the program no matter what you do. The new Commissioner was the story six months ago when it was Commissioner Bogle who was new and three months from now they can shift the Bureau to Commissioner Blumenauer and say he's new. They can play that game for two to three more years. As far as good cause, that is a pretty broad phrase and almost anything can qualify as good cause. But in the context of this process, the fact that some people don't like the plan or there is a new Commissioner again does not constitute good cause. The delay is already causing harm. Parkrose Recycling Center shut down in August because SB 405 was coming on-line. Six months have gone by, and those hundreds of people who dropped stuff off once a month like clockwork don't have those options now. The recycling center is not there and who knows if those people are still recycling. That indicates that there is actually harm being caused by Portland's foot-dragging. One final comment is that for people to say that the enforcement part is counterproductive is the same thing as saying that the statute is unenforceable. The statute lays out a process. You have to find good

cause. That's what the statute calls for. If it turns out it is counterproductive, then you go back to the 1989 Legislature and tell them that the enforcement procedure is not as good as they would like. But trying to guess now whether that's going to be the case is to admit that the program is unenforceable. There should be a discussion about what is good cause, and if there isn't good cause then the Commission should deny the request and get on with the program.

Chairman Petersen asked if Mr. Charles would agree to an extension if the City complies with the conditions of the extension because enforcement proceedings would not achieve an operational recycling program any more rapidly. Mr. Charles stated he does not agree because it is only speculation and, if the Commission determines there is not good cause and the City is out of compliance, he thinks they will move back towards the original plan they had in June knowing that is the quickest way to get on with the program and will then do it faster than if they have two more months for discussion.

Commissioner Petersen asked why they would go back to the original plan when the Department has already said that is not a good plan. Mr. Charles clarified that he meant the contracting plan. He would go back to the plan that had been determined would be acceptable if he were told he did not have any more time. Chairman Petersen asked if the OEC thinks residential franchising of the garbage collection in Portland would be a step forward environmentally. Mr. Charles indicated that his discussions with City staff indicated that it would take another 18 months to get it underway, which is unacceptable to him. The contracting option seems to be the option that can get moving the fastest and simplest. Franchising is the most lengthy way to do it.

Estle Harlan, Oregon Solid Waste Industry (OSSI) Consultant testified she was speaking on behalf of the six Solid Waste Associations in the Portland Region: Clackamas County Refuse Disposal Association, Multnomah County Refuse Disposal Association, Oregon Sanitary Service Institute, Portland Association of Sanitary Service Operators, Teamsters Local 281, and the Washington County Refuse Disposal Association. The Tri-County Council would support an extension to the City of Portland to develop and implement a curbside recycling program. This issue is critical to the solid waste industry and the City needs to have the additional time they have requested in order to assure implementation of an appropriate system. Most members of the Tri-County Council are in franchised areas and they have adopted recycling programs in those areas approved by the Department of Environmental Quality long ago. However, all of the associations in the Tri-County Council also have members in the City of Portland and, because of the lack of regulation over the solid waste industry in the City, it is much more difficult to arrive at a decision unless the City adopts a franchise system for the regulation of all solid waste management including recycling. The problems are inherent when trying to regulate just the recycling portion of the system. Ms. Harlan disagreed with testimony that indicated that recycling is not happening in Portland right now. She indicated the solid waste industry has been providing recycling for a good many years; they're committed to recycling. Some of the highest volumes in the state are coming out of the City of Portland in an already unregulated situation. She recognized that to meet the technicalities of SB 405 there does need to be a systemmatic program and indicated the

Tri-County Council would work with Commissioner Koch to meet his commitment, but the solid waste industry is not foot-dragging. They are recycling.

Judy Dehen, Sierra Club, testified that she has not been as active in the recycling issues as in the other issues involving solid waste. She worked on SB 662 and she was also involved in the landfill siting issue. The Columbia Group of the Sierra Club sided with the Wildwood neighbors against having it placed in their neighborhood. Wildwood neighbors have spent $100,000 of their own money to fight the landfill and, no matter who gets the landfill, it is going to be a personal tragedy in their lives. It will cause a great deal of stress. If Metro decides to go ahead with some kind of alternative technology, wherever they site that it will also cause a great deal of stress. Everyone should pitch in so that these people do not feel that their land, property values and their lives have been disrupted for nothing.

Leanne MacColl, President, Portland League of Women Voters and a member of the Facility Siting Advisory Committee, testified that she agrees with everything Jeanne Roy said, but she is here to testify for the League of Women Voters and as a disappointed, cynical citizen. The subject has been studied to death. There have been consultants, citizen advisory committees involving all interested groups. It is pie in the sky when we talk about getting consensus amongst all the groups--that will never happen. There is no way all these groups will be satisfied. The plan that the City now has--contracting-- certainly does not satisfy everyone, but it seems to be the best plan now. We know that garbage disposal is going to cost more no matter what method we use to deal with it. Recycling appears to be one very important way to keep these costs down. Furthermore, the public needs to be educated by every means possible that these costs will be escalating and the responsibility to educate the public is in the Bill. Lastly, as a member of the DEQ Facility Siting Advisory Committee, she feels rather hypocritical to have the committee go out telling citizens to really pitch in there and recycle and help solve this problem when right here in our own City we do not even have a plan yet.

Jere Grimm, testifying as an individual, read a brief statement urging the Commission deny the requested 90-day delay. Her family has been source separating and recycling 80% of household wastes for about 12 years. They do this out of concern and love for the earth which we all share and must care for. The State of Oregon has taken the lead in environmental matters for the past 15 years. It is shocking and humiliating that the largest City in this state will be the fourth from last in line to implement the 1983 Opportunity to Recycle Act passed by the State Legislature. The deadline for compliance was delayed once and the program was to be in place last July. There is an acceptable solution which was passed by the City Council and remains only to be put in place. Further delay now only opens the door to reworking the entire matter and even further delays--a flagrant waste of more than a year of staff time. In the name of efficiency and the careful use of our tax dollars, she urged the Commission to deny this delay and direct the City Council to implement the program immediately.

Estella Johnson, League of Women Voters, testified that what concerns her is that this is constantly being delayed. If something is going to get done, we have to get started. Even though it is not perfect the first

time, it can be worked on as we go along. Portland has an obligation since it is the biggest City in the State to set a precedent or standard of what we want Oregon to be and what we want Portland to be. If there is a law, either enforce it or get rid of it. It seems to her the City is constantly evading this and she thinks we can get started at it even though everything isn't ready. The City should start right now. It should not be delayed anymore.

Mike Houck, Audubon Society of Portland, testified that the Audubon Society does not normally get involved in recycling issues per se. Their primary focus is wildlife habitat oriented. He participated in the on-going landfill site selection process by visiting all the preliminary sites and writing up a report for purposes of distribution to the DEQ and the neighborhood groups who were interested in the process. He has personally taken innumerable phone calls at home from concerned citizens, not to mention all the calls and letters that have come in at the Audubon Society. He has participated in DEQ's peer review process and has been very supportive of the process. It is his opinion that the City has developed a compromise program. He was prepared to support that program before the City Council last month, but the hearing was cancelled. He is very sympathetic to Commissioner Koch's reasons for requesting an extension, but he came prepared to urge denial of that extension. It is his opinion that the crux of the issue is Condition #2 in the staff report: "the chosen program must be at least as effective in increasing participation", etc. His concern is an extension would result in an erosion or further compromise of that plan. He heard Commissioner Koch state that his aim is in the interest of building consensus and we can't argue against that as an objective. He would not oppose an extension if that was truly the objective and not merely an opportunity for haulers to gut the program. He is concerned that is what might happen. He feels the Commission's decision is basically a toss up; however, he urges denial of the extension primarily on the basis that it seems to him if the City is forced to go forth with the program that currently exists there will be plenty of opportunity for consensus building and for fine tuning that program.

Jeremy Sarant, Board of Portland Recycling and a member of Portland's Technical Advisory Committee, testified they met for over a year discussing this and hearing from all interested parties. There was significant participation on that Committee from garbage haulers, recyclers and governmental agencies. There are inherent conflicts in this question and that is where the state law comes from. He urged denial of the request for extension. The contract plan which the Technical Advisory Committee came up with and proposed, the City staff also proposed, and the Council approved, does not exclude any party from participation in recycling. The Commission heard today from the Tri-County Haulers that some garbage haulers have been recycling for a long time. That's absolutely true, and there is no reason under the plan the City approved why they cannot continue to participate as a contracted group. They can either join together in groups or proceed individually and bid for one of the several contracts proposed. He agrees with Mike Houck that the only reason for delay would be to reduce or cut back on the potential in the proposed plan. He appreciates Commissioner Koch's working hard to get up to snuff on the issue and, having done that, he does not see what is to be gained by spending any more time. Commissioner Koch has scheduled

meetings and they are underway now. There is no reason why they cannot come up with a plan in two or three weeks. And there is no reason why that plan can't be implemented in two or three months, the amount of time it physically takes to get contracts out and bid on. Finally, he would hope that the Commission would, at least tentatively, set enforcement procedures in motion so that if the request is denied, the hearing would be underway; if the extension is granted it is with the provison that the hearing be scheduled for April 2nd (if the extension is until April 1st).

Commissioner Denecke asked Director Hansen if the last suggestion was a feasible one. Director Hansen stated that is exactly what the recommendation would be. If that milestone were not met, the Commission would authorize the Department to proceed.

David McMahon, Cloudburst Recycling and a member of the Portland Area Sanitary Service Operators, testified that his company has been providing recycling in the Portland area for 12 years and he has been an active participant in all the political processes surrounding solid waste and particularly, recycling. Portland has exhaustively studied the alternative approaches over the past 18 months, and the only barrier was the opposition by some members of the local hauling community. In his view the only justification for granting more time as a courtesy to Commissioner Koch would be to consider franchising. If the EQC decides to grant the extension it would save the City a lot of pain by being explicit as to what alternatives it considers acceptable. First, it should require an ordinance from the City which would automatically implement its adopted plan unless they can adopt an equally effective approach by the given date, April 1st. It should be noted that unless the City enacts an emergency ordinance, any ordinance that they adopt will require a second reading 30 days after the first reading. If the City adopted an ordinance by next month then the second reading would be able to be made by April 1st unless they supplanted it with what they and the Commission consider to be a better program. Second, it should make clear that no variant of the so-called permit approach would be acceptable and should be removed from consideration as not meeting the requirements. It would also be helpful to be even more specific than just matching the expected participation rate of the adopted plan. More specific items should be mentioned such as to minimize the cost of providing service, which is certainly in line with the intent of SB 405 in making recycling collection more cost-effective than collection and disposal; another item is simplicity of design allowing the program to be effectively monitored for reportings purposes, easily promoted, enforced and modified by the City as time goes along. That simplicity is an important part of the success of any program. Another item would be a selection process that gets good operators who are accountable directly to the City to provide the service, and whose continued performance in that capacity is based on performance in the recycling program rather than a blend of various responsibilities.

Sandra Gee, private citizen, testified that she has been recycling for at least 15 years and comes from a community, Davis, California, that was the first community in the country to have a model program in recycling. It was very successfully implemented. It was, and still is, required of citizens. They provide curbside recycling at a very low cost to the City and it has been done very smoothly and has helped the City economically. She feels very disappointed in Portland because it does not take more

leadership. It is the biggest city in the state and there are 65 other communities in the state that have curbside recycling already implemented. She feels that recycling should not be delayed any further and that the Department of Environmental Quality, by its name, has as its responsibility to take the leadership in protecting environmental quality not only locally but globally. Recycling helps preserve resources for the entire globe which is a major concern today. The purpose of this Commission is to provide knowledge and leadership to the citizens. Sometimes it is necessary to force something that is for the public good. Delaying this will use more resources and more quickly fill our landfills and, in the long run, cost us more. She would hate to see Portland heading toward the experience of New Jersey. It has filled 100 landfills and has ten remaining that are about to be closed and their dumping costs have gone from $9 to $96. She believes the Commission should take the leadership and deny this extension and let the curbside recycling program proceed as quickly as possible.

Betty McArdle, private citizen, testified she has been a recycler for at least 20 years. She saves everything in her garage and then hauls it up to Lake Oswego High School. Not everyone in the City of Portland is going to go to that trouble, so it is up to the City to make it convenient for them. The program that was proposed some months ago would make it convenient for citizens to recycle. Her hauler does not pick up recyclables. Therefore, her neighborhood is not a recycling neighborhood. She would like to see that changed. She is a native of Portland and very proud of this City but, at this moment, she is not proud that the City cannot seem to get on-line with the recycling program. It is the law and she doubts that the City of Portland would give her extensions on following the laws of the City. It is time that the City is compelled to follow the law. The plan that was introduced some months ago is a workable plan. It may not be perfect, but it is workable, and she thinks once it is put into place and has been used for a time then the fine tuning that is needed can be worked on. It is difficult to figure out what the problems are going to be until the plan has actually been in use for a while. She urges denial of the extension.

Commissioner Bishop asked if Lorie Parker, Waste Reduction Manager, Hazardous and Solid Waste Division, thinks it is possible that in two months a new plan can be developed. Lorie responded that the issue has been debated in-house at various levels. She is not sure that anything is going to come of the extension. On the other hand, she is not sure that it won't; and the Department decided to try one more time in the cooperative mode especially because the enforcement process is not a rapid one. It would be difficult, and if we can get it through this way, it would certainly be easier and better for everybody.

Commissioner Buist asked why the consensus building and mediation process will come to a grinding halt if the Commission denies the request. It seems to her that it will go on, and yet the Commission is being presented with this as an either/or. If the Commission denies the request, all this great togetherness is going to stop. Surely that is not true. Lorie responded that if the Commission denies the request and goes into the enforcement mode, they could design the Order to look like the conditions that are in the Director's Recommendation which would allow that to continue. Or, they could decide and agree with some of the people

testifying that the option originally chosen by the City is the one they should implement and order them to do that, and not give them the option of redebating and, perhaps, coming up with a different option. It would be up to the Commission as to how much they want to allow the City to continue to debate the issue.

Chairman Petersen stated that they could not make the Order today because there has to be a hearing that gives the public the chance of telling the Commission whether or not the opportunity to recycle is being provided.

Commissioner Buist responded that she was in favor of going in that direction because it seems to her that the message that the Commission is handing down is very, very important. The perception of how the Commission is viewing this issue is very important to the whole of Oregon. If the Commission approves another two months because of all of those things, then she thinks they are saying that someone else can come along and they will agree to their foot-dragging. She is not convinced that a two-month extension will make all that much difference. She is also not convinced that denying the request will prolong the process--it might--but she is willing to take that chance because the message, to her, is extraordinarily important.

Director Hansen responded to Commissioner Buist's question also. He stated there are two significant things that are different this time. First, a very strong commitment by the Commissioner in charge that says "we're going to bring forward a recycling program." Commissioner Bogle who, although he was interested, did not have that same level of commitment to say "we're going to produce an end result". Secondly, the contract option, which was really what was before the City of Portland before, and is being debated now. The Department has stayed out of what the exact mechanism is for garbage collection within the City of Portland. But, clearly, franchising is the option that is being discussed. It is the option that is going to come forward as a possible way of bringing forth an opportunity to recycle program. As we look at the franchise option in terms of recycling, leaving aside what that means for garbage collection, we think that there is going to be at least as good a recycling plan and, quite possibly, a better recycling plan because of a better program that can be implemented through franchising. Therefore, we recommend giving them two months. You do not gain much, at least in terms of the speed of being able to get a new program in place, and you have some potential of being able to get a better program in the long-run. There is more here today than just the fact that last July 1st you were being presented with the first extension request and they needed a little more time. There are significant differences and that is what led the Department to the conclusion that we recommended to the Commission.

Commissioner Buist responded, one of the concerns is that over the next two months the garbage haulers would have the opportunity to gut the program. Director Hansen responded that in provision #2 of the conditions of the extension, it must be at least as effective. If the program produced is not at least as effective as the contract option, then that provision comes in, and the Department would recommend the Commission authorize the Department, immediately upon the formal adoption of a less effective program, to hold a hearing to determine whether or not the opportunity to recycle was being provided. So that issue gets addressed

by the fact that the condition is in the recommendation.

Commissioner Denecke responded to Lorie that he was influenced by the staff report recommending the extension because enforcement would not achieve an operational recycling program any more rapidly than the extension. What concerns him the most is that come April 1st and nothing has happened, is there something that can be done so that they cannot come back to the Commission with the same statements and request. Lorie responded that if the Commission does grant the extension that they also grant the Department the authority to set a hearing for immediately after that April 1st deadline. If the decision is not made, or they make a decision that the Department determines is not going to provide a program at least as effective as the contract program, the Department would immediately move into that hearings process, because, just advertising for the hearing etc. takes time and spreads out the process. Two months would still be lost, but the Department would ask for that instruction even if the Commission does adopt the extension so that more time is not lost than is necessary going into the enforcement mode.

Commissioner Bishop requested clarification of the difference between franchising and contracting. Director Hansen responded that, basically the contract proposal divided the City into six areas that would then be bid as contracts. Those contract holders would then provide the opportunity to recycle, but only recycling. Under a franchise system, individual haulers are "franchised" to provide exclusive service in a specific area. The franchise would require them to provide both garbage collection and recycling service. If franchising were chosen, it could take 12 to 18 months to implement, therefore, an interim program would be required after July 1, 1987.

Commissioner Petersen stated that the staff report does not say anything about the elements of that interim program in terms of its effectiveness. Lorie Parker responded that we would expect, if it were to be several months to get the final program on-line, the City would be on extension until the end of that time. The Department would not acknowledge that the interim program was complying with the law, because most likely they would use the permit system. The permit system would require all the haulers to provide recycling service. The haulers might contract with each other. The Department does not acknowledge that such a program would be effective enough to meet the requirements of the law. It will be very hard to promote, it will not get nearly as good participation, and the City's own studies show that the participation rates under that kind of program would not be good. It will also be very expensive. We would have something of a program but not a very good program for the time that they were working on the franchising option.

Commissioner Bishop stated that she was in favor of building consensus, but could not vote for the extension now because she could not see that there is anything to be gained.

Commissioner Buist stated that one of the arguments she was persuaded by was the idea of going with the existing plan, which very responsible people have worked on for a long time, and seeing if it works. She cannot imagine that any plan, however wonderful it looks on paper, is not going to need fine tuning. She thought that getting the show on the road,

getting the plan going, seeing how it works and then having some mid-course correction is a very reasonable way to go. It is hard for her to imagine that in two months the existing plan is suddenly going to be transformed by something much, much better.

Chairman Petersen asked how long the contracts would be in effect if the contract approach was chosen. Lorie Parker responded they originally proposed five years and then decided on three. The reduced contract length would allow problems to be fixed without waiting so long to be able to fix it. Secondly, originally they had required a fairly extensive record of recycling before anyone could bid. They cut that down also to allow every hauler in the City to have the opportunity to bid on the contract or they could group together and bid on the contract.

Commissioner Petersen asked whether there would be great dislocation to contractors if a franchise collection system were selected and contracts were abandoned after three years. Lorie Parker responded that it is a possibility and one that she knows has been discussed. In the meantime, the concern that haulers really have is that the whole solid waste system should be franchised and that could be approached separately and put together at some later point in time.

Commissioner Petersen asked Lorie what the negatives would be to that approach. Lorie responded there would probably be few. There might be some problems with the amortization of equipment in the short period.

Director Hansen stated that they should be aware that the contract is one that the City originally authorized and then basically backed away from. All City council members have signed a letter saying that Commissioner Koch is responsible for bringing forward a new idea, and they are going to resolve it. Secondly, the contract option costs money. The whole concept behind SB 405 is that when you pick up garbage you also pick up separated recyclable goods. If, however, someone is picking up recyclable goods alone, it clearly is one that has to be paid for. The City of Portland provided for that by having a fee on holders of garbage permits to be able to pay for that contract. So, in the long-run, they are really talking about having a major restructuring of how garbage service is being provided and the best way to fit recycling in with garbage service. The contract option was one which nobody really got very excited about at first, but it became the only way to provide that service. The franchise option has some up-side potential to be able to get better recycling. What the Department is holding after in Condition #2 of the recommendation, however, is a program being no less effective than the contract option.

Commissioner Buist asked if the franchise option is not going to take much longer to develop a super plan. Director Hansen agreed and went on to say what we're asking for in Condition #4 is that an interim program must be in place on July 1. The effectiveness of that is something that has got to be balanced out.

Commissioner Bishop stated, she thinks that if the Commission denies the request for extension, and the City goes ahead with the program, they will have three years to work on the franchise program. Director Hansen stated that the Commission does not have the choice of deciding whether to adopt

a contract. It is the City Council's decision. Commissioner Bishop agreed.

Lorie Parker stated that if enforcement proceedings are initiated, the Commission may have the ability to tell the City exactly what to adopt. They can say "adopt option B and go into contracts and here is what the contracts should look like". The Commission has the ability, under the law, to structure it as much or as little as they want in their directions to the City Council.

Chairman Petersen stated that he, for one, would take that action only as a last resort. He does not believe the Commission should be imposing those kinds of requirements on any local jurisdiction except when they have totally failed to act. He thinks that the solution to Portland's solid waste and recycling problem is best found by the City of Portland and not by the Commission. Also, if there is an extension, the Commission must make some findings for just cause. In his opinion, change in Bureaus and the change in administration does not constitute just cause. If they were to find that, it would come back to haunt them. He is afraid that every municipality in the state would come back and say "wait a minute, Commissioner Smith just died and Commissioner Jones is now involved and he is going to have to study this for another six months". While he is very sympathetic with Commissioner Koch's personal position, he does not think the fact that they have shifted Bureaus is legal just cause. However, there is a significant difference between the way the City of Portland collects its solid waste and the way other communities do, not only because of the size of the community but also because there are over 120 people involved in the process and it is not a franchise process. He feels that would be just cause should the Commission decide to give the extension, because he does believe that they are dealing with a significantly different situation than they are with the City of Bend or any other place. Commissioner Buist stated she could not agree more.

Commissioner Denecke stated that he was going to vote for the extension because, as the staff report said, denying the extension would not speed up recycling, and also because now they have representation by the Mayor and four City Councilpersons that they are all going to expedite this program. He would vote for that on the condition that they start putting the steps in motion now so that come April 1st, if the City is no further along than they are now, the Department can immediately step in.

It was MOVED by Commissioner Denecke to approve the request. There was no second.

It was MOVED by Commissioner Buist, seconded by Commissioner Bishop and passed three to one that the request be denied. Commissioner Denecke voted no.

Chairman Petersen indicated that, for housekeeping purposes, the Commission needed to authorize a hearing on whether the opportunity to recycle is being provided in the Portland wasteshed. Director Hansen indicated that if the Commission would direct the Department to hold a hearing as quickly as it can, the Department will work out the Secretary of State's timing for publication of notice and so on. Chairman Petersen asked if part of that motion would be that the Department would act as Hearings Officer on

the Commission's behalf. Director Hansen stated that all it would be is a hearing to determine if the opportunity to recycle is being provided--not what the alternatives or preferred options are for the Commission. Chairman Petersen agreed.

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist and passed unanimously that the Department should hold a hearing as soon as possible to determine whether or not the opportunity to recycle is being provided in the Portland wasteshed.

AGENDA ITEM D: Proposed Adoption of Oregon's Oil and Hazardous Materials Emergency Response Plan.

At the 1985 Legislative session, the Department introduced HB 2146 which was passed and codified into ORS 466.605 to 466.690. Section 466.620 of the statutes specifically requires the Environmental Quality Commission to adopt an Oil and Hazardous Material Emergency Response Master Plan after consultation with the Interagency Hazard Communication Council, The Oregon State Police, the Oregon Fire Chiefs Association and any other appropriate agency or organization.

Attachment IV is the completed plan. It contains an overview of Oregon's Emergency Preparedness Program, a narrative summary of the Emergency Response System, and a detailed description of the roles and responsibilities of state, local and federal agencies, industry and volunteer organizations. It was completed with the help of three technical advisory committees composed of technical experts and emergency responders from all levels of government and private industry including the Oregon State Police and the Oregon Fire Chiefs Association.

The plan has been reviewed by the Interagency Hazard Communication Council, the three technical committees and the DEQ's HB 2146 Policy Advisory Committee. More than 1,100 copies of the draft were mailed out for public review and comment. Written comments and oral testimony were also solicited through a series of public hearings. Where appropriate, changes have been made in the plan to reflect the concerns expressed during the hearings and review period.

The final plan represents the system as it now exists. It has the concurrence of all interested parties.

Director's Recommendation

Based on the summation in the staff report, the Department requests the Commission to adopt the Oil and Hazardous Material Emergency Response Plan as it is presented in Attachment IV.

There was no public testimony.

It was MOVED by Commissioner Denecke, seconded by Commissioner Buist and passed unanimously that the Oil and Hazardous Material Emergency Response Plan be adopted.

AGENDA ITEM E: Informational Report: Oregon's Recycling Opportunity Act: Report on Implementation to the 1987 Oregon Legislative Assembly

This agenda item contains a report to the Legislature regarding compliance with and implementation of the Recycling Opportunity Act. The Act requires that the Commission review the Department's report and submit a report on compliance with and implementation of the Act to the 1987 Oregon Legislative Assembly.

Director's Recommendation

It is recommended that the Commission review the attached report on compliance with and implementation of the Recycling Opportunity Act and submit the report to the 1987 Oregon Legislative Assembly.

Chairman Petersen asked whether the report ought to be updated to reflect the action taken today. Lorie Parker, Waste Reduction Manager, Hazardous and Solid Waste Division, responded that the Department would like to update the discussion regarding the City of Portland, and they have counted again and there are now 104 cities in the state providing recycling programs.

Commissioner Denecke asked if Milton-Freewater, Pendleton, La Grande and Hermiston are still not recycling. Lorie responded that they are not and today's action helped because Pendleton told them that they were not too worried at the moment. Maybe now they will get worried.

It was MOVED by Commissioner Denecke, seconded by Commissioner Bishop and passed unanimously that the report, as updated, be presented to the 1987 Legislature.

AGENDA ITEM F: Informational Report: The Status of Implementation of the Metro Waste Reduction Program

As requested by the Commission at the time it approved Metro's Waste Reduction Program, Metro has submitted a report on its implementation efforts over the past six months. For the most part, Metro has accomplished the tasks scheduled for those months. They have, however, not adopted the local government certification program with rate incentives to encourage compliance as outlined in the Waste Reduction Program. Nor has Metro carried out its Technical Assistance program to local governments.

Director's Recommendation

It is recommended that the Commission direct the Department to submit to the 1987 Legislative Assembly Metro's Waste Reduction Program Status Report and this Informational Report along with the approved Metro Waste Reduction Program and the June 27, 1986 DEQ staff report.

Chairman Petersen stated there are complex problems in this whole business of siting a landfill. Collecting the garbage amd recycling is a part of that process. Alternative technology is also part of that process. He

has participated in a lot of discussions with people who are really concerned by its operating in a piece-meal fashion. Part of that is because SB 662 really dealt with just one phase of the whole problem. That is, just the siting of the landfill. It really got the Commission involved just in that particular issue. Chairman Petersen is frustrated by the fact that this is being segmented. He knows that there is nothing we can do about that now unless there is legislation being considered or proposed to draw all that together. He was very uplifted about John Charles' and Mr. Houck's comments about how they perceived the siting process to date and how they are pleased and have told their constituents that it seems to be progressing in a reasonable way and a way that complies with the statute. That made him feel better. Is it all going to happen?

Lorie Parker responded that initially we did not have a split system because DEQ had to approve the waste reduction plan. The Department had control of all the recycling plans and the alternative technology and all the planning effort. After the July 1 approvals, the Department had no monitoring authority or enforcement authority over that whole segment of the solid waste management in the region. That was discussed during interim committees. The Legislature acknowledged that they had forgotten to give us any continuing authority. She is not aware of a bill that does address that. A lot of things are happening at Metro; they have a new Executive Director and we really don't know yet where she is going. She has appointed a blue ribbon task force to relook at everything. Metro may or may not like the waste reduction plan that was adopted, and we do not know yet what Metro is going to do.

Chairman Petersen stated that Representative Burton has introduced a bill, or is thinking about introducing a bill, that would delay the siting process. Lorie Parker responded that was true. Director Hansen said there has been nothing printed yet. He has been told that it will extend the deadline until December 31, or somewhere in that range, and, conceptually, the Commission would be barred from being able to choose a site until Metro had concluded its negotiations and awarded a contract for alternative technology.

Commissioner Denecke stated he thinks it is vitally important that the Commission go down to the garbage burner and talk to them about that and also he would hope that at the next meeting they could get the latest report on the emission test on the Marion County Garbage Burner and the garbage hauling rates in Marion County because it is becoming apparent that this is becoming a hot issue certainly in the metropolitan area.

Chairman Petersen also stated that they had talked about going to a state-of-the-art landfill and they would talk for two hours this afternoon at a work session on landfills.

It was MOVED by Commissioner Bishop, seconded by Commissioner Buist and passed unanimously that the report be presented to the 1987 Legislature.

AGENDA ITEM G: Proposed Adoption of Temporary Rule that would Revise "Definitions" OAR 340-108-002(9)(b); "Subdivision B: Reportable Quantities" OAR 340-108-010(1)(d) and (2) and Repeal OAR 340 - Division 108 Appendix I

At the Commission's September 12, 1986 meeting in Bend, revised reportable quantity rules were adopted as part of major revisions to spill and release rules in general. The revisions were prompted by the passage of HB 2146 (now ORS 466.605 to 466.690).

Particular concern by industry was expressed relative to those substances reportable at 19 pounds under the federal program (i.e. PCB and Chlorine) but one pound at the state level.

Although the Commission adopted the staff recommendation, it requested a report back within 90 days on the impact of the lower reportable quantity (RQ) levels. This report is in response to that request. Although the Commission you asked for a status report, we believe the data showed more significant action was warranted. The evaluation suggests that only a limited number of spills occurred in quantities between the state and federal number and would be reportable anyway.

As a result of this analysis, we concluded that use of the federal RQ values is protective of public health and environment. We are proposing a temporary rule to adopt the federal RQ values. If you agree with that recommendation, we need to amend the Director's Recommendation to also include hearing authorization for permanent repeal. Temporary rules are effective for only 180 days until permanent action is taken.

Director's Recommendation

Based on the staff report, it is recommended that the Commission adopt proposed revisions to "Definitions" OAR 340-108-002(9)(b); "Subdivision B: Reportable Quantities" OAr 340-108-010(1)(d) and (2) and repeal in its entirety Appendix I of OAR 340 - Division 108.

Chairman Petersen asked if we are basically going back to the Federal reportable quantity rules. Director Hansen responded that was true. In general they were at various levels at the Federal level, we took them down by an order of magnitude except for those of one pound. The data just does not demonstrate that will accomplish the goal we wanted which was to be able to find out what spills were happening and make sure they were cleaned up properly. This does not change cleanup standards whatsoever. Cleanup was always to be performed appropriately no matter what the level was. This was merely the notification to the Department.

It was MOVED by Commissioner Buist, seconded by Commissioner Bishop and passed unanimously that the Director's recommendation be approved as a temporary rule and that a hearing be authorized for the adoption of permanent rules.

AGENDA ITEM H: Informational Report: Eagle-Picher Minerals, Inc.

This agenda item is an informational report concerning the compliance status of Eagle-Picher Minerals, Inc. This report was requested by the Commission at the December 12, 1986 EQC meeting following the public forum section at which Mr. William Schneider and Mr. Jack Torrey expressed strong concerns about air and noise pollution from the facility.

Following the EQC meeting, Department staff met with the Company to discuss identified problems and established necessary compliance schedules. This report summarizes those discussions and the actions to be taken. Fred Bolton visited the facility this week.

Director's Recommendation

The Department intends to continue to require Eagle-Picher to comply with both Air Quality and Noise standards. Further enforcement action will be initiated if necessary to ensure that compliance is achieved. It is recommended that the Commission concur in this course of action.

Commissioner Buist asked if Fred Bolton's visit was announced ahead of time to the company. Director Hansen stated that it was not coordinated with the company. It was less for the purpose of doing the testing and compliance schedule and more to see what was actually happening at the facility at that time.

Commissioner Buist asked Fred Bolton to tell the Commission about the visit. Fred Bolton, Administrator, Regional Operations Division, responded that he went out with Dave Nichol, of the Eastern Region staff, and Terry Obteshka, of the Noise Section. They met with the local citizens--both Mr. Schneider and Jack Torrey. They observed the plant's operation and also did some noise testing in and around the plant. They walked through the facility to see what the company had done from an air pollution control standpoint. They were either completed or on schedule to be completed by February 15th.

Commissioner Buist asked if it was dusty the day they were there. Mr. Bolton responded it was not. It was very cold--below 10°F; the company had implemented a lot of cleanup programs they had committed to after Department staff met with the company. It was cold but the plant was very clean compared to what it was during previous inspections both by field staff and headquarters staff. Commissioner Buist asked if the residents said the same thing--that it was definitely cleaned up. Mr. Bolton responded that they have not visited the plant directly, but they still observe the noise problems.

Commissioner Buist asked if noise has remained a problem but dust has decreased. Mr. Bolton stated that from what the company has implemented, he would have to say they are not having the same emissions as they had before.

Chairman Petersen asked how far the plant was away from Steve Gardels' office in Pendleton, and wondered if there was anyone who would be able to check and visit it periodically. Mr. Bolton responded that the County Courthouse is seven miles away in Vale. Their Sanitarian has observed things in and about the plant. He does not work for DEQ but our Pendleton office is 180 miles, or a four hour drive, from the plant.

Roger E. Malone, President Eagle-Picher Minerals, Inc., testified that Eagle-Picher Minerals, Inc. is a wholly owned subsidiary of Eagle-Picher Industries whose home offices are in Cincinnati, Ohio, and Eagle-Picher Minerals is located in Reno, Nevada. He had with him Paul Harper, Director of Environmental Affairs and Safety, and also Robert Piekarz,

Eagle-Picher's Vice-President of Engineering and Environmental Affairs. It was Bob Piekarz' group who built the facility in Vale, Oregon. The company was its own contractor on the plant. This plant is located about 7-1/2 miles west of Vale, Oregon, just off of Route 20. They chose a 300-acre site for this operation in order to make it as acceptable in the community as possible. They placed it outside of town a good distance. It was sited there for the purposes of being able to obtain natural gas, and to have a railroad available. The railroad that runs by the site is a branch line that goes to Burns. They put the plant there for the ability to be able to get contractual services that are necessary, to have facilities--the interstate highway runs near there--for the transportation of their products to the market areas. He pointed out that in Nevada, they have three units the size of this one on 20 acres. Also, on that site, they have agreed to, and are keeping, a 500 foot minimum buffer area dedicated to agricultural purposes to mitigate environmental concern.

Mr. Malone described the uses of diatomaceous earth. Syrup is filtered through diatomaceous earth. Diatomaceous earth is also used as the caking agent for fertilizer to keep it free flowing in the bags and for the farmer to apply, or for his fungicide, herbicide, and as a carrier for the toxicants for all these items. Apple juice is filtered through diatomaceous earth. It is used to filter and clean up polluted water. It is capable of filtering out the giardia cyst--the beaver fever cyst. It is heavily used in refining of oil, gasoline, lubricants and one thing and another like that. Many communities filter their water supply through diatomaceous earth. That is becoming more and more popular as time goes on.

Eagle-Picher started in 1843 and the company is 144 years old. You don't get to be 144 years old by flaunting the laws and not addressing environmental issues. The company has been in the diatomaceous earth business in Nevada for 42 years. We have been quite an advantage to the communities that we serve and we continue to be interested in doing that. Our plant in Vale is the cleanest and the quietest diatomaceous earth plant in the world. Not just in the country, but it is the cleanest and quietest plant in the world. This is because we promised it would be. We have been directed to have a plant that operates at 38 decibles. This is for a plant of approximately 2200 horsepower. We have taken that commitment; we have not asked, and are not asking for, a variance on that. We intend to do it; it is a challenge and we will accomplish it. We have had our difficulties. When we went into the enterprise in Oregon, we agreed to hire local people with the exception of three or four that we moved up there. The people we moved here are the people who were to teach and instruct the remaining 37 or so people in the methods of processing diatomaceous earth, keeping the place clean, and in handling things like upset conditions which can be expected. We went into production in August and we have been fighting fires trying to get this thing on an operating basis. We have done a remarkable job of doing that. We now feel that we have total control over it. We will keep our commitment toward being the cleanest and most dust-free operation, for a diatomaceous earth processing plant, in the world and we will be in compliance. There was a 13 to 13-1/2% unemployment rate in Vale when our plant went in. We brought 40 jobs there--they are going to be there forever. We also, because of our operation there, were able to bring natural gas to the

community of Vale which actually gives them further opportunity for economic development. Gas is quite necessary as it was for us because we are a heavy energy consumer. So there will probably be more jobs because they are upgrading/updating themselves. We also, through our financing, are bringing $675,000 to the community. It was a UDAG grant and, under the terms of the grant, the Federal government granted a portion of the overall project which was $13,000,000. We will pay $25,000 to the City in lieu of taxes which is beyond their tax base so that they can make civic improvements with it. The main reason we wanted to be here today is because there has been a great deal of misinformation, half-truths, and accusations passed around. We will address, to the best of our ability, all of your questions.

Paul Harper, Corporate Director of Environmental Affairs and Safety, Eagle-Picher, testified that they have a very strong commitment at all levels at Eagle-Picher to environmental compliance with all the laws and regulations that are on the books. They take any kind of Notice of Violation very, very seriously and move promptly to correct it. Within days after they received the first notice of violation from Mr. Bolton, they requested a meeting to discuss it and go over some action items they had identified and were implementing. They feel they have made tremendous progress in starting up the new plant and addressing some of the problem areas. They started up a new plant the first part of August with new people and they had to train those people and find out what was wrong with the new plant. The plant was the state-of-art design and, like a lot of things, what looks good on paper is not necessarily what happens in the real world. Until they started it up, they really did not know how well some of their designs would work. By and large they were very pleased with their designs. They found some problems and have addressed those promptly. As soon as they found out they had a noise problem they began working with the DEQ to address it. As little as two months after the plant started up they were doing studies to find out what pieces of equipment were causing the noise problems and started to look on solutions. The end result was the report which outlines a plan for implementing several noise reduction measures beyond what they have already implemented. Currently, they are still trying to lower noise without any of these additional modifications, just by experimenting with their fan speeds by trying to lower them. When they started up the plant they had to run the fans at high speed to assure that the material kept moving. Now that they have the plant under more control, they are lowering those fan speeds and trying to lower them as much as possible. They will still install all the extra equipment in addition to these efforts. They are trying to make the plant as quiet as possible.

With the dust problems, again, they have had difficulties early on. The new flame detection system, which was not available when the plant was designed or even started, was installed in early December. They were not even aware of that until November and they have not had a single kiln flush since that new detector was installed. They have identified other problem areas with the help of the Department and addressed those as quickly as possible to find an engineering solution to the problems and design a piece of equipment that would take care of them. In lieu of that they have also added a cleanup man to the staff, whose sole responsibility is to take care of any minor spills, leaks or piles of dust on the ground. That is

his full-time job. They think they have made a lot of progress in those areas.

Commissioner Buist asked Mr. Harper whether there was any monitoring data which would give information about levels and size range of particles. Mr. Harper responded that the company has done quite a bit of work on identifying the nature of its emissions in terms of fugitive dust and the particle size distribution. They have looked at the particle size distribution of the raw product and the finished product. He thinks it is notable that more of the emissions of fugitive dust from the plant come from the raw material end of the plant--not from the finished end of the plant. The finished end of the plant is almost entirely controlled and enclosed. There is no conveyor system--it is all moved by an enclosed air handling system. The particle size of the final product averages 44 microns in diameter. The percentage of the material less than 6 microns is about 7% of the particles.

Commissioner Buist asked if 7% was by number or by volume. Mr. Harper responded that was by weight. Also, of the raw material going in, only 1/2% by volume of that material is less than 44 microns. The raw product, as received, is extremely bulky. They have to grind it to get it down to a size that they can handle in their kilns and convert into the finished product.

Commissioner Buist asked what proportion of the finished product is cristobalite or tridymite. Mr. Harper responded that it varies--there is no tridymite in the finished product whatsoever. Anywhere from 30% to 50% of the finished product is cristobalite.

Commissioner Buist asked if they have a regular monitoring program in their Nevada plant or here in the Vale plant. Mr. Harper responded that they have a regular monitoring plan in the plant established, as required by Mine Safety and Health Administration (MSHA) and Occupational Safety and Health Administration (OSHA), for monitoring people in the workplace. They use personal monitors for eight-hour sampling periods while they are in the plant. Every single one of these people, with one exception, has tested at 70% or below of the threshold limit value (TLV) for the substance. The one individual that was above that, tested at 1.1 for cristobalite. The MSHA traditionally accepts up to 1.3% TLV as in compliance because of the inaccuracies in the method.

Commissioner Buist asked if they have a regular health surveillance program for employees. Mr. Harper responded that they do. Mr. Malone responded that they have pre-employment physical exams for chest x-ray and no pulmonary function on the initial test. They do that in follow-up programs for the people on a three-year basis for new employees until five or six years, then every year after that. The purpose of that is to look for any lung changes.

Commissioner Buist asked if they have had any disability claims in the Nevada plant specifically related to lung or hearing problems. Mr. Malone responded no to hearing problems. They have operated for 45 years at their plant at Clark Station and, during that period of time, there have been four individuals who have developed some lung problems. At the Lovelock operation, which is the one similar to the one at Vale, they have operated

for about 27 years, and have no positively identified people with lung problems.

Commissioner Buist asked about the four with lung claims--what claims were they. Mr. Malone responded that they were pneumoconiosis claims and he should point out that all these people were employed for 20-25 years and this was before there was a DEQ, a MSHA, and there were no real controls that were known. Now that these agencies exist, only another 25 years will tell exactly where they are, but they are not, to the best of their knowledge, creating problems at this pint. Their medical consultant told him a while back that he has never heard of neighborhood pneumoconiosis in his experience. He worked for National Institute of Occupational Safety and Health (NIOSH) many years ago and really wrote the regulations for a number of these things that OSHA and MSHA enforce today. He is a medical doctor, Dr. Clark Cooper out of Berkeley, California, and he mentioned the other day that there is probably as much chance of one of the neighbors of the Vale operation contracting any sort of lung problems from the effluent from their plant as there would be if one of the neighbors was a smoker and left his window open.

Commissioner Buist responded that she would not agree with that analogy at all. Mr. Malone agreed that that was an overstatement. Commissioner Buist agreed that there are no reported cases of neighborhood pneumoconiosis and that a person has to have a heavy and consistent dose. Within the present regulations, she thinks that by the time you get out into the neighborhood you are talking about a dilution factor which is so enormous that the concern of the danger is probably miniscule. Mr. Malone responded that is their understanding, too. In an enclosed environment where you can build a concentration and you breathe it every day, five days a week, eight hours a day, for a lifetime there can be a problem. But once you put the material into the open atmosphere, it is awfully hard to build a concentration. Matter of fact, they try not to have any small rooms within the factory where there is a collection of dust.

Jean Meddaugh, Oregon Environmental Council, testified that she had been in conversation with Mr. Torrey and Mr. Schneider on this problem. She questions the performance of the Department of Environmental Quality in this case. Although DEQ did cite Eagle-Picher for air quality violations on September 10th, one cannot help but wonder why the citizens living adjacent to this area were subjected to air pollution for three months before DEQ even issued a citation. What is more, she might reasonably question whether such a citation would have even been issued if Mr. Schneider, Mr. Torrey and their neighbors had not been complaining. She must also question why DEQ waited another two months and 11 days before threatening to assess fines for non-compliance with air quality standards, and then still another month before meeting with Eagle-Picher to outline a compliance plan. The sum total of all the so-called activity is that Eagle-Picher has been allowed to violate Oregon's air quality standards for over six months, with no more serious penalty than receipt of a citation and the threat to assess fines. Likewise the complaints of these same citizens caused DEQ to request noise level sampling data that has shown the Eagle-Picher plant in violation of standards for new noise sources on previously unused sites. Again the process of requesting data, reviewing data, plus requesting and reviewing a compliance plan has, and

will continue to, drag on with the result that the citizens living adjacent to the plant will have been subjected to noise levels four times greater than conditions existing at the time they made their homes there, and they will have been forced to live with these conditions for ten months. Such conditions have resulted in severe stress and related medical expenses for these people.

She continued that the Oregon Environmental Council finds that this record is shameful, and would like to remind DEQ that their mandate from the citizens of this state is to protect the quality of the environment, and to do so aggressively and effectively. This does not include working hand in glove with polluters to ease them into compliance to the neglect of the health of the citizens. In the interest of protecting environmental quality at this point, OEC urges the Commission to take the following steps: DEQ should establish their own ambient particulate sampling program on, and adjacent to, the Eagle-Picher site with specific monitoring for crystal and silica content and for the level of exposure to neighbors, not just workers. Monitoring should also take place to ascertain whether stack emissions are settling on property on adjacent bluffs at greater concentrations than at locations at lower levels. Adversarial situations, such as this, breed distrust between the polluter and the affected public. It would be more appropriate for sampling data to be generated by consultants hired by DEQ and not the polluter. Such a policy could be established by rule. And the polluter could still be held liable for all costs incurred. Although DEQ met with Eagle-Picher before construction, and advised them of the state's noise standards, and offered to review their construction plans, there are no regulations requiring a company to submit plans for review for noise standards before construction. By either statutory or rulemaking authority as the Commission determines appropriate, the noise pollution control regulatory framework ought to include provisions for requiring permits for all new noise sources or modifications to existing sources as defined in OAR 340-35-035(1)(b). Assuming aggressive compliance monitoring on the part of DEQ, the permitting process would have been more effective in protecting these citizens and could have also prevented the costly retrofitting now necessary at the facility.

Commissioner Denecke asked Ms. Meddaugh what her information was as to whether the company meets the air quality standards. Ms. Meddaugh responded that, as she has heard the report so far, they are to be in final compliance by February 15th. The staff reports that were submitted indicated various start-up dates. She has heard June, July and now August from the plant managers. So she was basing her six month projection on the fact that Mr. Kostow advised her that he thought compliance was complete as of this date. So, from June to January was a generous six months.

Chairman Petersen asked about the compliance issue in terms of the remote location of the plant. We cannot ask Steve Gardels or his people to drive over there every other day to look at it. He is very pleased that Mr. Malone and his people came and he is impressed by the efforts that they have taken and believes them to be good corporate citizens. He was also sympathetic with the comment that was made that Mr. Torrey and Mr. Schneider had to come over here and pound on the table a little bit to get some action on this. Chairman Petersen asked if there was anything

the Department can do that makes sense or that it has the resources to do to monitor both the noise and the air. Director Hansen responded that there may be two issues in terms of the resources available. We could split that between the Air Program and the Noise Program, because those programs have historically been funded at substantially different levels by the Legislature, and each one of our efforts to expand the Noise Program has met with no success. In fact, we find ourselves at risk in that program each Legislative session because of its total general funds support. What does need to be kept in mind is the action that was taken on the Notice of Violation and then the Notice of Intent to Assess Civil Penalty were actions taken prior to the Commission meeting. The Department was in its normal enforcement mode trying to bring the source into compliance. Clearly, when talking about an area that is that difficult to get to with a limited Noise staff, we do not do as good a job as we would like to be able to do, nor as quick. It does not lessen the goal of complete compliance but it always happens when you have limited resources and have substantially greater demand on those resources than everything you'd like to accomplish.

Chairman Petersen asked when this permit comes up for renewal. Lloyd Kostow, Manager, Program Operations, Air Quality Division, responded it is a five-year permit but expires three years from now. Chairman Petersen then asked if the staff is content that the permit conditions are appropriate for the site or would Mr. Kostow expect that, on renewal, there would be material changes in permit conditions based on new information, etc. Mr. Kostow responded that the Department is satisfied with the standards that are in the permit, additional monitoring requirements could be imposed on the company through the permit.

Mr. Malone then stated that the company has sampled the soils in the area around the perimeter of the plant and, whereby diatomaceous earth in its natural state does not contain any crystobilite, they have found soils within the area of the perimeter of their property that have up to 13% quartz and in a very silty manner. So these people, in fact, have built their homes on more hazardous areas than what the company is putting into the air. He is also quite sure there is also diatomaceous earth shale on their properties. They have also found the presence of quartz in the soil at several locations around the perimeter of their facility.

Director Hansen also responded to the permit renewal question by stating that the Department always, in all its permits, reserves the right to reopen any permit for cause. So it does not necessarily have to wait until that renewal time, if the Commission chooses.

Chairman Petersen responded that he thinks, at this point in time, he would like to see the process played out. He has seen a very strong effort on behalf of the Department and the company to be in compliance, he has certainly heard the President of the company's commitment. Not talking about asking for variances, he says "we will comply", "we're going to do whatever it takes to comply". He would personally like to see that happen before we talk about opening the permit process and amending it or whatever. He would also really encourage their continued efforts along those lines and he would probably not be very sympathetic to any kind of variance request. It was his understanding that part of the ground rules that the neighbors brought into it was that the company was going to come

into the community, the Department was going to set up the noise and air permit levels and they were going to meet them, and that is what we expect you to do.

Jack Torrey, resident adjacent to the Eagle-Picher plant, testified that a couple of comments were made by the Eagle-Picher officials which were in error. The majority of the pollution that has come from that plant is from the finished product not the raw product. The majority of the complaints that they have filed and that Mr. Nichol has seen is from the finished product not from the raw ore as it comes into the plant. Steve Gardels, Manager, Eastern Regional Office, then stated it was from the finished product. Also, Mr. Torrey wanted to get on the record that the first week of October, or thereabouts, sixteen property owners met with Mr. Piekarz, Mr. Strobel and Mr. Malone and they assured us at that time that if they could not meet the 38 decibles they would not request a variance-- they would shut the plant down. Mr. Torrey also stated he had at least 60 more signatures on a petition if that would carry any more weight. He presented the Commission with approximately 30-35 last time and he has made another 60 contacts. Director Hansen stated that we would be happy to have them. Mr. Torrey went on to say that last Sunday morning he went out at approximately 8:30, he got on a 105 horsepower John Deere tractor with a load of hay and a front-end loader. He drove up to a gate approximately 35 feet away, parked the tractor and walked 35 feet away from the tractor and opened a gate. The reason he stayed so far back from the gate was because there is a little incline to the gate and he did not want it sliding into it. He opened that gate and, when he was 35 feet away from that 105 horsepower tractor running 25% throttle, he could not even hear it. He could not hear that tractor over the roar of the plant. Thirty-eight decibles is not offensive when talking; however, when you are trying to go to sleep, it is a different story. We are getting readings still up in the 50's. He does appreciate the effort put forth by DEQ. They came down this last week. They visited and talked with them. From the idea that the DEQ, statewide, has somewhat of an image problem, this should have been done a long time ago. Having DEQ come down gives us a little hope. Always before its correspondence and that is it. Mr. Obteshka also came down and took some readings. Another thing that happened, and we have repeatedly said it over and over to Eagle-Picher and their consultant, Jim Button, out of California, is that when we were standing out in our back yard and they are setting up the monitoring equipment, that plant went down and then they took a reading of 44. He knows for a fact that the reading was less than when DEQ's staff arrived. His own trained ear tells him at least 3 or 4 decibles less at the time of the reading than it was when they arrived. So even though they took a reading of 43 or 44 decibles at that time, prior to that we were at least at 48. He would urge the Commission to authorize DEQ to set an ambient noise level and not go by Mr. Button's criteria. Even Mr. Bolton said it really is quiet in my yard. Other than the plant there is nothing up there. It is really quiet. He does not think the officials had any idea how quiet it is out there. You just cannot imagine it. You just cannot imagine without that plant running and we have adequate time-- they have been on a ten and four day schedule. They work ten; they are down four. That is the time the DEQ should be there and monitor that for an ambient noise level. Because now he does not think an ambient level of 28 decibles is allowable. I will bet you an ambient noise level is more like 22

to 24, if that high. We have based our whole judgment on their figures and data.

First, we had no crystobilite, then we are up to 40%, now possibly it is as high as 50%. Let us get rid of the question marks, let us use your data, not theirs. And it does not matter how many trips you make over here, it is just frustrating to think that we had to come and bang on the table. I have pointed out neighbors to Mr. Bolton as I have stood on top of my hill above that plant. Neighbors whose jobs were threatened if they have anything to do with the DEQ or file any complaints. Their jobs have been threatened to be terminated. I know that is a legal matter. I am telling you, people are scared. People are also concerned. And if it takes additional trips that is fine. In the future, the means should be there that any industrial expansion or industrial location of a plant like this should be required to have a permit and be in compliance before that plant ever starts. Mr. Button, the noise consultant out of California, said that if Eagle-Picher was in California they would have never been allowed to start the plant. He said all these problems can be corrected on the blueprints. That is what we need to do, and if there is any way that Mr. Schneider or myself can appear to give an example that we need additional funding for the Noise Division of the DEQ, then so be it. They need more personnel and more equipment, and his only suggestion as far as monitoring is that machinery should be made available to the County Sanitarian in Malheur County, eight miles away at the Courthouse, and he should be allowed to monitor both air and noise. We need someone there. These need to be monitored and these standards need to be set for each season. The difference of the birds and all the farming activities going on in the summer time are a lot different than in the winter. That sound carries so far. Thirty-eight is too loud for the winter time. We need to go back and look at all these permits. We need to be able to monitor continually.

Bill Schneider, Resident of Vale, Oregon, testified that he would not be here today if Eagle-Picher practiced the good neighbor policy they said they were going to practice. Mr. Malone said that there were some doubtful complaints about Eagle-Picher. The exhibits will show why he is very wrong. In the first place he stated that there is an indigenous quartz and some chert on the natural property in the area. This was not considered when their permit for 57 tons was granted. Therefore, that should be considered right now. Reduce their permit from 57 tons based on the natural materials in the soil. They did not comply--they did not even try to comply--until they were forced to do so. Mr. Schneider talked to their Plant Manager and all he said was they were in compliance. He informed the Plant Manager that they were not. After several calls and weeks of getting one, two, three hours of sleep a night, we were exhausted, and sometimes we stutter because we are just plain exhausted. He is tired of listening to the Eagle-Picher promotion. They would not be here if Eagle-Picher had a good neighbor policy. Exhibit #1 is a copy of a page of Eagle-Picher's application in which they state very, very clearly, "No portion of that plant can be viewed from the property to the North". That is the Schneider property. Take a look at the pictures. There is a good example of Mr. Malone's credibility. Can there be any question about his credibility.

Next is a copy of a sketch that they put in their application, which shows our home on top of the bench and their plant 20 feet below our line of vision. You have a photo showing their plant is 20 feet or so in our line of vision, not 20 feet below. These people are not amateurs, they are experts. I do not know how an engineer like Mr. Piekarz could make a 50% error in an 80-foot structure. That just does not make any sense at all. Now as far as their good neighbor policy and how they have responded to neighbor's complaints, after he talked to Mr. Stroebel quite a few times he said he did not want to get into a litigation situation". Mr. Stroebel said, "if you talk litigation, talk to our attorney". He then called Mark Greenberg, in Cincinatti, their attorney. As a result of that call, you have a copy of a letter that Mr. Ralston, their General Counsel and Vice-President, sent to the DEQ stating that "we do not believe that those neighbors are complaining about the noise--they are people who did not get jobs. They put in applications and they were not qualified to work for Eagle-Picher". You have that letter--that is evidence of their credibility. Mr. Schneider indicated he is a pharmacist. He would not work for their $5 an hour in that atmosphere. He told Commissioner Buist, he really appreciates her trying to belay their fears, but he thinks she will see why they are concerned about this plant. When they were inspected and the inspector made a news release and said that there was dust in the air, Mr. Stroebel said there is no dust in the air. He made a copy of labels of an insecticide called "Gotcha". Notice the active ingredient, one active ingredient, 85% silicone dioxide from diatomaceous earth. That item is registered under the Environmental Protection Act as a hazardous substance. It states right on those containers, and even Eagle-Picher's product must be labeled, that there are precautions about it. How hazardous is it? Is it not dangerous until it is a certain size? We know that with those large particles there are small particles. We know that the larger particles fall out closer to the plant than do the smaller particles. Small particles will drift a long ways. They are not a hazard. Then why is it we are seeing dust clouds from the plant, from their stack and from fugitive emissions that you can see as far as five miles. You can go five miles away and see those dust clouds go by you. A neighbor could not get Mr. Nichol on the phone the other day so he talked to Mr. Obteshka and said that he saw a dust cloud as much as 10-15 miles away. Incidentally, on that inspection the other day, Eagle-Picher was in violation. Mr. Obteska took the reading at our property at some 47 decibles. They are allowed 38. Their baseline data from which they were to be allowed ten decibles above baseline is 28 decibles. He talked to Mr. Obteshka about how unhappy they are with that 28 decible baseline that has been established. Mr. Obteshka said that is very comparable to other areas similar to this. But it is not that noisy up there. We do not have instruments--they cost thousands of dollars to get an instrument that will record the sound down that far. Those tests were taken on a gravel road. When vehicles went by, that meter would shoot up to close to 90 decibles. It was put beside an irrigation canal where the frogs were doing their courtship thing and doing all their noise. Have you ever been around a swamp or an irrigation canal with thousands of frogs? Those instruments were put there. Our house is 3,500 feet way from that, but we have a field out here that is less than one-half that distance. That is my place of employment too. But the law specifically states that my residence is not there. It is at my house and the test must be made within 25 feet of the affected residence. Why then were those tests not made up on our hill where we do not have frogs and we do not

have traffic going by. Why were they made on a public road beside an irrigation canal. They did not take those tests as the manual prescribes. Therefore, I am saying the 28 decibles must have been pretty high above what it actually is.

Mr. Schneider showed a portion of a video tape he has made over several months. Commissioner Petersen asked if the pictures were taken after the compliance measures had been taken. Mr. Schneider stated that he is still seeing emissions similar to that at night, but not quite as bad. Most of the exhibits were taken before the compliance measures. We have seen as much as 50 emissions in a day when they were doing something down there, and this would happen maybe once an hour. That is 24 times a day and sometimes it is twice an hour.

Chairman Petersen asked if there was anything the Commission would like to add to his earlier comments in terms of direction of the Department, or whatever. He thinks it is important for people to understand that the enforcement of the rules in this state is the Department's responsibility, not the Commission's. The Commission makes the rules and sets the policy and the Department enforces them. He is sure the Department has listened to all their comments and is very keenly aware of the problems that have been, and may still exist out there. We are not going to get involved as a Commission other than to obviously tell the Department to do the job that they already know they are supposed to be doing. The only question he had was whether the Department has the resources. He hoped the Department has the inclination to do the kind of monitoring that is necessary to make sure the permit is enforced. That is really all we can do. We issue permits and we have to make sure that the permittee complies with the permit. In terms of whether the permit ought to be modified, that is something that the Department is going to have to take direction on.

Mr. Schneider gave a brief summary of several points. A full study of emissions should be made by an unbiased agent. They know that one time when the stack was monitored the emissions coming out were very, very low compared to what is coming out now. There needs to be an accurate description of the parameters of the airshed. He started in 1984 asking for a description of the airshed and it was not until after the neighbors had agreed to remove their objections to Eagle-Picher siting there that Ms. Gillaspie did make a new release that it was the Vale airshed. Then, later, she said that no, she only meant the bluff above the plant. So there needs to be a very definite description. This is only the first plant of three that are proposed in that area according to Eagle-Picher's application. There needs to be an accurate projection of effects of additional units built in this airshed. Is this an adequate industrial site for these other units. We have helter-skelter development. By Eagle-Picher coming into our community, we now have three industrial sites. The mine site, a storage site and the plant site. The goals of LCDC was to keep down the number of industrial sites--get them to plan ahead of time. Then we were promised some monitoring equipment for the County Sanitarian, who acts as the environmental officer without any enforcement powers. He can merely take complaints, review them himself and make reports. We have asked for some equipment because many times the DEQ will be over there and things will be great. And then we need credible insurance that we will not find somewhere down the line that this is not

going to show up as an asbestos thing. We have an entirely different geographical relationship than any of their other plants.

They had a form letter printed up and they sent it to their neighbors and there seems to be something wrong with that because it was all written by Eagle-Picher. The letters said "we are neighbors of Eagle-Picher. We live 3/4 miles Northwest or Northeast of the Eagle-Picher plant. I have lived here blank number of years", and there is a place for them to sign. If you look at their application, you will see that the same location on the map has five different names under it.

AGENDA ITEM L: Public Hearing and Proposed Adoption of Modifications to Section 401 Certification Rules, OAR Chapter 340, Division 48

As directed by the Commission at their regular meeting December 12, 1986, the rules which establish the procedures for processing an application for 401 certification have been reviewed and a proposed modification drafted. A public hearing, before the Commission, on the draft rule modifications is scheduled at this time.

> Director's Recommendation: It is recommended that the Commission receive public testimony regarding the proposed rule amendments contained in Attachment A. It is further recommended that the Commission evaluate the testimony received, and adopt the rule amendments with such further changes as may be appropriate in response to testimony.

John Charles, Oregon Environmental Council, testified that overall he supports the rules. He has just one area that concerns him. The land use compatibility issue. He really does not see any independent review required by DEQ of compatibility with local plan review. If no comments are submitted by local governments, or no comments are forthcoming in this public process, he sees it lingering out there and he is not sure what the Department would intend. He did come across an obscure agreement adopted earlier between DEQ and LCDC. It is a formal agreement for coordination and they do have a Section 5 where it says that the Department may petition LCDC for a compatibility determination and statement where a city or county negative compatibility determination statement, or no statement at all, has been issued on a proposal needed to meet DEQ requirements. Or, if a proposal appears to have major impact requiring a state determination of compatibility in addition to the local statement. If the Department did not get this information forthcoming in this public process, it could presumably work out an agreement with LCDC to provide that review.

Chairman Peterson asked Mr. Charles if he was talking about land use issues other than water quality related. Mr. Charles responded water quality related only. Director Hansen stated that we do not state exactly what happens if a local government does not make any comments. What the Department does do, and the Arnold decision makes it clear, is make that final determination. We are asking that the local government assist in that. But we do not imply, and cannot under Arnold, that whatever a local government says we go along with. Arnold makes it clear that the

Department must make that determination with or without comments from local governments. That is a determination that must be made by the Department on water quality related issues.

Chairman Petersen stated that a concern he had was on pages A3 and A4 of the proposed rules where we talk about a requirement that the applicant identify specific provisions of the appropriate land use plan and implementing regulations that are applicable to the proposed project. Then for hydroelectric project exhibits, the applicant is to identify the applicable provisions of 469 and 543 and other portions of 2990, implementing rules adopted by the Energy Facility Siting Council (EFSC) and Water Resources and, finally, on the next page an exhibit which identifies and describes any other requirements to state law applicable to the proposed project. What if the applicant either inadvertently or intentionally omits an applicable provision of the plan or the statute. It seems to him that the Department is delegating that responsibility. That is not a responsibility that he thinks the Department can delegate. Director Hansen stated that this is what the applicant must produce for the Department, and those documents then serve as the information on the basis that we can then make our findings. This does not substitute for the determinations that the Department must make, but, rather, provides that base of information on which we can make our final judgment. What is really the case is that it is the applicant who makes the best case for why their project complies with the various provisions of law. We then evaluate that and make a determination whether we agree with their determination or not.

Commissioner Denecke asked Mr. Charles if his suggestion is to have something in the rule that says "regardless of what is in the application, and regardless of the information that DEQ does or does not get from the county, the Department ought to make an independent examination to see that the application meets the requirements of whatever land use requirements there are relating to water quality". Mr. Charles responded that was correct. He wants it in. Chairman Petersen agreed also.

Director Hansen stated that it was our intention to do that. Michael Huston stated that on page A6 of the rule they parroted the statutory language that says, "any appropriate requirements of state law". They have never spoken specifically to an obligation to determine independently the water quality related land use requirements. That is why it is not clear. Legally, (g) picks it up and allows that option. If the Commission wants it expressed clearer we can do so. At the bottom of page A6, paragraph (g)(B) it should say "including land use requirements". Chairman Petersen stated he did not think that was necessary. Commissioner Denecke asked if (g), as it now stands, was enough to take care of Chairman Petersen's concern. Everyone was satisfied.

<u>Bruce White,</u> Oregon Chapter of the Sierra Club, testified that he thought the staff did a pretty good job in a difficult area drafting this rule. The Sierra Club does support the concept of input from the local land use planning bodies into the 401 process. It is appropriate, but also probably necessary, under the requirements of HB 2990 which requires the agencies to participate in all state, local and federal proceedings regarding hydropower. They think this is a minimum of what the DEQ has to do to satisfy that policy. This is a difficult area. It is one that we may

have to work problems out as we go along. Although all their concerns have not been met, this is an appropriate first step to at least get some input from the local land use agencies into this process. He addressed some of the City of Klamath Falls' comments. Their first argument seems to be that you cannot require input from the local land use agencies as a prerequisite to determining whether they have a complete application on file because failure to have a complete application on file can lead to permit denial under one of the sections of the regulations. This is really a procedural denial rather than a substantive denial and all agencies have the authority to determine what their procedures will be. The Department has given a 60-day period for comment by the local land use agency before the application can be deemed complete. They are saying that such a denial would not be a water quality related denial in Arnold Irrigation Districts' case. The Commission has the power and authority to set its procedural rules. The Federal Energy Regulatory Commission (FERC) can deny an application for lack of information. It has nothing to do with whether the project is adapted to the Comprehensive development of the waterway. It just does not believe there is enough information in the application to adequately evaluate it. The City has never challenged the fact that FERC can decide that the application is deficient and require further information. So that argument of the City's that you cannot require them to come up with that kind of information because it can lead to a denial on non-water quality grounds is specious. We are really talking about a rejection of an application and a denial on substantive matters. You might want to clarify section 340-48-020(3). It might be better to say "for rejection of the certificate".

Another one of their arguments is that the 60-day waiting period is wrong as a matter of law and policy. Their statement is, "if you cannot deny on water quality grounds then you cannot refuse to process on non-water quality grounds". There again the Commission has the authority to establish its rules and its procedures, and you cannot allow the applicant to come in and tell you how to set your rules and procedures. They then go on to say that there is no good reason for the 60-day delay. We would prefer to have them go through the local land use process first, but we are willing to try this compromise. This is the first of these projects that has come through. Let us give it a try. He does not see what the hurt is going to be with a 60-day delay in a project of this size.

Their application currently is not complete in FERC because FERC has not told them yet that it is complete. They are going through the process of evaluation and it is his understanding, from talking with a gentleman at FERC, there is going to be a deficiency letter sent out at the end of this month in which the applicant is going to have to address certain deficiencies in its application. So it cannot be said that DEQ is slowing the FERC process down.

Commissioner Denecke asked if Mr. White had seen a copy of Mr. Anuta's letter. Mr. White responded that he had seen it. Commissioner Denecke then stated that Mr. Anuta suggested the phrase "or quantity" should not be deleted on page A5 and he wondered if Mr. White had any comments on that. Mr. White responded that he supports that comment and was disappointed that the Department wants to delete it. He was not sure why the Department wants to delete it because there are instances in which water quantity and water quality go together. Where you have certain

pollutant loadings in a stream, obviously there may be a greater concentration if the flow in the stream is going to be reduced. So it seems to him perfectly right, and does not violate Arnold Irrigation, for the Department, in appropriate circumstances, to consider the effect on water quantity as well as water quality. He would not support seeing that deleted. Director Hansen stated that the Department's view is that Arnold makes it very clear that we must look at water quality related provisions. Quantity that adversely affects quality is certainly something we are going to be looking at and are going to be taking into account. We believe that we pick that up under all the other provisions. But the issue of straight quantity if it is not water quality related is an area outside of the Arnold decision.

Chairman Petersen asked about the wording, "or quantity as it may relate to water quality". Director Hansen responded that is fine. But the issue is in order to make findings required, we must make findings against the quantity issue. There is a potential for litigation. That is the reason it becomes significant in that section. Chairman Petersen asked Commissioner Denecke if he wanted that language added to that section and Commissioner Denecke responded that he did.

Mr. White had one last comment: One of the reasons and benefits of trying to get the land use input up front is to have it for the public on request or when the public is notified that it can comment in the future. If you do not put it up front, then it goes out on public notice without having really been a part of the record. He really thinks it is important that we gather as much together up front as possible. That way, the public has a meaningful chance to comment on the entire project.

Mayor George Flitcraft, City of Klamath Falls, testified that he is here on behalf of the City's wish to construct the Salt Caves hydroelectric project on the Klamath River. The City has filed an application with the Department of Environmental Quality for certification of the project under Section 401 of the Clean Water Act. The City's primary concern with 401 rules, at this point, is delay. The City filed its 401 application last August and the Department has not yet deemed the application complete or begun to give it substantive consideration. This five-month delay has not occurred because of any failure by the City to supply technical information pertaining to DEQ's water quality criteria. All such information has been provided. The delay has occurred because of differences between the City and the Department over the Department's procedural Section 401 rules and whether those rules comply with the Arnold Irrigation District's case. They are happy to report that they believe the Department's proposals satisfy certain of the City's major concerns. In particular they endorse most of the proposed changes in OAR 340-48-020(2). These changes pertain to the role land use, HB 2990 and other state water quality requirements will play in DEQ's filing requirements. Their counsel will file recommendations with the Commission for certain further changes in these filing requirements so that the City's concerns are fully met.

Where we disagree with the Department is on the proposed new OAR 349-48-020(4). This proposed regulation states that the Department will delay deeming a Section 401 application complete for up to 60 days in order to allow local government bodies to make findings as to whether

or not the proposed project complies with the local land use plan. If the local body does not supply the findings within 60 days, it can nevertheless submit such findings or any comments it wishes to make to DEQ anytime during the Section 401 process. Frankly, while we understand the Department's purpose for proposing this regulation, the 60-day delay provision does not make sense to us. As noted, the proposed regulation states that a local government can submit its findings on land use at any time during the Section 401 process. Why then is it necessary to build in a 60-day delay to allow for local government comments before that process even begins. The Department has a reasonable time, up to one year, to act on a Section 401 application. Surely local governments can be expected to have their comments to DEQ within a reasonable period up to a year. There is simply no reason why the Section 401 process cannot get started for 60 days to allow for local government comment. If the 60-day delay regulation is adopted, it could be upwards of seven months from the time the City initially filed the Section 401 application before DEQ begins to give substantive consideration to that application. Mayor Flitcraft urged the Commission to let us get started with the Section 401 process on the City's application. We request that you do not adopt OAR 340-48-020(4) and direct the staff to begin considering our application.

Bob Beech, Chairman of Save Our Klamath Jobs, testified that Save Our Klamath Jobs is an organization of 4,000 residents of the Klamath Falls community. Our purpose is to support economic development in the Klamath Basin. Currently the Basin is in an economically depressed state. Unemployment is up, economic activity is down. We desperately need something to turn our economy around. We believe the Salt Caves project can be the vehicle for economic development in the Klamath Basin, and, indeed, for all of Southern Oregon. As a major construction project, it will provide many needed jobs. More importantly, revenues from power sales will fund Operation Bootstrap, a program that will provide seed capital for new job producing industry in the basin. Operation Bootstrap has the potential to create industrial livable wage jobs for decades to come. Please note the livable wage jobs, not the $3.50, $4.50 and $5 jobs. But it is not possible to have Operation Bootstrap without the revenues which the Salt Caves project would generate. We understand that the Commission's job is not economic development; it is environmental quality. And we are here today because we want the Department of Environmental Quality to exercise its environmental quality function. We believe we have a project that will not only stimulate the local economy but will do so in an environmentally sound manner. The position of the City before the Department has always been one of let's proceed with the process of judging the project for its impact on environmental quality, specifically, water quality. So far we have not been totally successful in our position. It has been five months since the City filed its application, and the process has not yet begun. Now they are happy to say the Department's new proposed regulations do eliminate a number of delaying factors that we have been concerned about. We do have one last concern, however, that relates to the issue of the 60-day delay that the Mayor spoke about. We just see anymore delay as totally unnecessary. If Klamath County wishes to comment on our water quality application, by all means they should have the opportunity to do so. But we see no reason why the City's application should be held up for another two months in order to let the County comment. There would be plenty of time for the

County to provide its input without delaying our application. Mr. Chairman and Commissioners please let us get to the main event. Let us begin the process of judging this application according to your rules. No more delay, please.

Richard Glick, City of Klamath Falls, testified that the primary concern the City had with the former DEQ rules was the inserting into the basic application requirement the notion of land use compatibility and substantive compliance with HB 2990. It flys in the face of the Arnold Irrigation District case which has held that you cannot deny a 401 certificate based on matters other than water quality related concerns. You may condition the ultimate certificate on other appropriate state requirements that, in fact, are water quality related, but you cannot deny and, therefore, you cannot in the course of the application stall a project or dismiss an application because of failure to receive the local sign off. We think the staff has come a very long way toward addressing that concern and they are to be commended for the effort they have made. We think there are a few areas in which they have not quite gone the whole distance. We would like to point those out to you, and suggest some modification to them.

We would strongly endorse the proposed deletion of OAR 340-48-020(2)(i) and (2)(j) which the staff has done. We think that is correct and consistent with Arnold. One issue that we would like to raise as a technical amendment would be where the application now must include an identification of the applicable provisions of the local land use plan. Our concern is if that information is not provided to the Department's satisfaction, it could lead to dismissal of the application and, since you are dismissing the application on something that you are not entitled to judge the 401 certificate on, it seems inappropriate to run that risk in that manner. Mr. White tried to draw a distinction between procedural and substantive denial of an application. This is merely a procedural element of the rules. In our view, dismissal is dismissal and it really does not matter what the reason is. The very exercise that the Department has gone through is to address this issue of what does constitute a complete application after the Arnold Irrigation District case.

Commissioner Denecke asked if on page A3 he was referring to (A), (B), and (C). Mr. Glick responded yes. Commissioner Denecke stated he understood in the proposed rule that they were only specifically talking about provision of the local land use plan which affected the quality of water. Mr. Glick responded yes. Commissioner Denecke stated that he could not understand how Mr. Glick could term that irrelevant when it is part of the local land use plan that affects the quality of water. Mr. Glick stated that if the rules say that in the application we fail to include information relating to land use generally, and to HB 2990 and to other state laws, then we run the risk of having the application dismissed.

Commissioner Denecke stated that his point was that he did not think it requires that. It only requires siting and land use that have application to water quality. Mr. Glick stated that there was also (j) on the same page which talks about the implementing rules in reference to HB 2990. Commissioner Denecke stated again that it has (C) relating to water quality. Mr. Glick stated that was true and he thinks what they are doing is responding with an overabundance of caution to make sure they are not

in the same position they were before. Somehow, the application process itself, just the submittal of the application, should not be turned into a vehicle for dismissing the application if it is not deemed to meet those other requirements. They want to keep it focused on the substantive aspects. Commissioner Denecke said if it would be of assistance to them he would give them some legislative history to help them. But he believes those rules only apply to land use provisions and rules of the Energy Facility Siting Council Water Resources Commission which are only directly related to water quality. Mr. Glick stated they would take some comfort in that statement if that is, in fact, what the Commission's intent is in adopting that kind of rule. Commissioner Denecke stated that in a United States Supreme Court decision, one of the justices said in a footnote, "if legislative history is not clear return to the words of the statute", Mr. Glick stated they are just gun shy. They want to make sure that all the i's are dotted and t's are crossed. That is the reason we make that statement. We think the Commission certainly has the right under Arnold to examine local land use requirements and HB 2990 requirements to the extent they are water quality related. As the basis of a condition to impose upon the issued certificate, not as a basis for denial or granting of the permit.

Chairman Petersen asked why not. If they are water quality related why can't the application be denied. Mr. Glick responded that because the way that 401 of the Clean Water Act is set up, it says what you must review for the granting and denial issue is whether certain portions of the Clean Water Act are complied. That is the water quality standards, the technical standards, EPA approved standards that you are implementing. It also says, though, that on the issued certificate the imposed conditions may be derived from appropriate state requirements. Chairman Petersen stated that he understood that. But he asked how you develop information necessary to a determination under Sections 303, 305, 307, etc., unless the material is brought forward. Those sections are the only ones on which an application denial can be based. Mr. Glick responded that those are technical standards, numerical standards on various parameters of water quality, and the applicant clearly has the burden to satisfy the Department that we can meet those standards that are there. When you start to run afoul of that is when you start inquiring into general land use requirements even if they have a water quality element. They are not plugged into the effluent standards that the Agency has adopted and that EPA has approved. That is the only focus that the Department is permitted to look at in the issuance and denial phase.

Chairman Petersen said what we are talking about is providing information to the Department in connection with the application that would identify some of these factors. In this section that you are addressing, we are not talking about our attention to the granting or denial of the certificate. Mr. Glick stated that what they would submit to the Commission is the question as to whether or not an application is complete. The question of whether the Agency can, in fact, take some action upon the application. We think that the matters involving land use and the matters involving HB 2990, even to the extent they are water quality related, are not relevant to the issue of whether you may issue or deny the certificate. They can be relevant, according to the Court of Appeals, at tne time you decide you want to impose conditions. We want you to move the process along, accept the application, start reviewing

and in the course of your review you certainly have every right to look at whatever factors you think are appropriate including the local land use and HB 2990 requirements that are water quality related. It is a question of what you need to have in the application just to get the process moving and the clock running. The upshot of our argument today on that issue is that we think you can meet the needs that you are setting forth, and also stay clearly within the Arnold Irrigation District's parameters by phrasing the rule in non-mandatory language. The applicants are requested to provide this information. Mr. Hansen was saying earlier that it will be in the applicant's best interest to make the best case it can in front of the Agency and by putting this in and giving the applicants notice that these are the things you will be looking in for formulating conditions. We think that your result will be the same without running this issue of whether it goes to the granting or denial of the permit itself.

The major issue we would like to address today is one that Mayor Flitcraft and Mr. Beech touched upon and that is the 60-day delay that is written into the rules for the local land use participation. We feel, as a matter of policy, it is not necessary. They can come into the process at any time. They certainly can be given notice at the outset and there is no reason why everything should stand on hold while we are waiting for this to play out. As a matter of law, if Arnold says that we cannot deny a 401 certificate based on the lack of the land use compliance statement, then surely there should not be any reason for slowing down the process for the same impermissible reason. Mr. White addressed that issue. He said there is no harm to anybody if there is another 60-day delay. That is very easy for Mr. White to say but, for applicants who are trying to move through this very difficult and laborious process, 60 days is a long time and it hurts. In the case of the City of Klamath Falls this application has been pending for five months. It will be seven months before it is reviewed. It is too much, it is not fair, it is not right. It is also not necessary and we would urge you to delete the 60-day waiting period.

Commissioner Denecke asked what would trigger the County's sending in their belief as to what land use laws affect the water quality. Mr. Glick responded that there is no reason why the County cannot be given notice on the filing of the application, and invited to participate. If they do not want to participate within 60 days or 90 days, or whatever, that is up to them. All you really want to do is give them the opportunity. There is no reason why they cannot be given the opportunity at the outset. Again, what we would like to have happen is to have the process move as swiftly as it can and we urge, on page 8 of our submittal, a minor modification to OAR 340-48-025(1). We would ask that the Department make a determination of the completion of the application and, instead of waiting the 30 days, notify the applicant immediately upon determining that the application is complete. If the Commission feels it absolutely must have this 60-day window which local land use considerations must be taken up at the outset, we would at least recommend that, in the instance when the local land use body does not intend to get back to you within 60 days, they can tell you that and we can get on with the show. We propose language, again on page 8, that suggests that where the local land use jurisdiction is telling you that they will not get the information to you within 60 days then you can move forward. We would think that would

be fair, at a minimum, for you to adopt; but our primary position is still that the 60 days is not needed. We also have a technical argument to make with regard to the proposed 340-48-020(8) that deals with the findings that the Commission will be making particularly with regard to the HB 2990 requirements. We are, of course, operating under the assumption that the City is exempt from the HB 2990 requirements. But independent of that question, what we would like to make clear is, in reviewing those HB 2990 requirements again, the context in which you do that is for the imposition of conditions upon the issued certificate. Not on whether you issue or deny the certificate. In trying to drive that issue home we would just make a small technical amendment at the bottom of page 9 so that the language in 340-48-020(8) would say, "in order to make findings or establish conditions as appropriate". Then it goes on from there. We are just trying to make sure that is understood.

We want to go on record as strongly endorsing the proposed deletion of OAR 340-48-020(2)(g). That is the one that requires the applicant to acquire a site certificate from the Energy Facility Siting Council and a water appropriation permit from the Water Resources Commission. That is clearly outside of water quality considerations, as described to us, and the Arnold Irrigation District case, and we think the staff is right in taking that from your rules. With that we would ask that you would adopt the rules as they are written and as amended as we suggest.

Commissioner Denecke said he was looking again at page A4. He reads into it that the City or any applicant can go to the local planning jurisdiction before they file application so that there is not necessarily going to be a 60-day delay. It is really only a political consideration. The local planning jurisdiction should furnish this before the application is even filed. Mr. Glick stated the language he was concerned about is about mid-way down in that paragraph where it says, "the application shall not be deemed complete until the local planning jurisdiction provides comments to the Department, or 60 days have elapsed, whichever occurs first". It is common in state regulatory processes for local governments and county land use jurisdictions not to be timely in their filing. It would be best if all the agreements were worked out in advance. We always try to do that but sometimes it is not possible. Sometimes the County has other items on its agenda that it considers more important. We do not think that should be a reason for holding up the Commission's review of the application.

Commissioner Denecke asked the Department if, assuming we kept the 60 days, it sees anything objectionable to adopting the suggestion that the period would be cut off if the local planning commission sent in a letter saying they do not have any objections. Director Hansen responded that the Department thinks that is covered in (4) page A4. What we indicate is that the application shall not be deemed complete until the local planning jurisdiction provides comments to the Department, or 60 days have elapsed. If the local planning department provides the comment that says "no comment," it meets that condition and we proceed. Mr. Glick stated they did not read the language that way and if that is the staff's intent his view is that it would be clearer just to state expressly that is the way it would work. We read the word comment in there. We interpreted that to mean substantive comment. It would just make us more comfortable if it was spelled out that is in fact what we are trying to do.

LCDC delivered a letter that Director Hansen passed out to the Commission. He does not believe it substantively deals with any of the issues they are talking about amending. Their comments generally are addressing future issues and items which the Department feels are already addressed.

Chairman Petersen said that it points out to them that the nature of the problems, the reason they are struggling so hard with the rules, and the reason for the Arnold decision is that we've got federal policy on the one hand, as ennunciated in the Clean Water Act and the Federal Power Act, and we have state policy on the other hand as ennunciated by the Legislature from HB 2990 and other related statutes. They do not mesh. We are caught in the middle because we are a state agency and we are bound to not only follow state law but also bound by an interagency agreement with other state agencies that we will coordinate efforts and relate ourselves to their laws and they will relate to our laws. It really is a philosophical question as to whether you make policy and say the federal law preempts the state in all instances--the federal law fills the whole void--and all we have to do is look at that law and apply very strictly the law under the Clean Water Act, or look at it the other way and say the void is filled by the state law. The only reason you have to pull back around the edges of the state law is if you bump head on with the federal law. His feeling is that, as a state agency, we are really bound by the state laws and we pull back only where we bump head on with the federal law. Arnold had ennunciated it pretty clearly to him where that is. So he prefers to go as far as we can to enforce the state statutes without being in violation of the federal law. Our prior rules went too far. These proposed rules are very adequate to recognize the outer boundaries of state law. With the one exception of the water quantity thing which he is happy to expand on as we have discussed. If he were looking at it from the federal perspective, he would have to agree with the City of Klamath Falls. But he does not report to the federal government. He is part of the state government and that is not the way he looks at it.

He does not believe that these proposed rules are going to detrimentally affect the project. The delay is frustrating and he appreciates that. We are part of the State of Oregon and the Legislature has clearly ennunciated a policy with regard to these projects. He thinks that these proposed rules fit that policy and still comply with the decision of the Court of Appeals.

Commissioner Denecke asked Michael Huston to look at page A3. In (i)(C) and (j)(C) they both say (B). Shouldn't they both say (A)? Michael Huston respnded "yes". Harold Sawyer said the intent was to narrow the scope of what has to be commented on in the water quality related piece. The intent was (B) in both (i)(C) and (j)(C).

Director Hansen corrected an error in (4). The word "circulation" should be "jurisdiction". And, in paragraph (A) what was intended was that the applicant would go through and identify all aspects in the land use plan related to the project. Then (B) and (C) would narrow it to those water quality related provisions.

Commissioner Denecke stated that it seems to him all we need are provisions relating to water quality and he thinks it would be a little bit of a

burden to ask for more than that. Chairman Petersen responded that, to him (A) allows him to come closer to complying with existing state statutes. As long as we do not either condition, deny or grant on other than water quality effects, we are in compliance. Director Hansen responded that, from a staff standpoint, it makes life substantially easier. Because they go through the land use plan and say these are the issues that relate to that project and these are the water quality related issues. It does not say "describe". It says "identify and cite". We are not talking about reams of information on each of those. What it allows the Department to do is to be able to make sure whether or not we agree those are land use related or a water quality related provisions.

Commissioner Denecke asked what would the Department's reaction be if, inadvertently, the applicant under (A) left out a provision of land use law that was applicable. Do you think that would be grounds for dismissal? Director Hansen responded in technical terms yes it would potentially be grounds for dismissal. But that is a way the the Department has never worked and will not work. We clearly then communicate to the applicant whether it is a document on an area that is clearly water quality related. We do not deny and then say you can resubmit an application. We try to work to be able to make that application complete.

Richard Nichols, Water Quality Division Administrator, asked the Commission what the wording was on the quantity issue on page A5. Chairman Petersen said to word it to say "or water quantity as it affects water quality".

It was MOVED by Commissioner Denecke, seconded by Commissioner Buist and passed unanimously that the rules, as amended and with the typo correction be approved.

Chairman Petersen stated to Mr. White that Mr. Anuta wrote a letter and raised the question again, which has already been determined by the Commission, about who has the right to appeal. We have already addressed that issue and you can refer to our minutes of that discussion, we do not believe that is appropriate and, therefore, we are not going to reconsider that or change our mind on that earlier decision. Mr. Huston can also provide additional information.

An unidentified citizen stated that it looks like the Commission has used the City of Klamath Falls as a guinea pig to clean up our regulations to comply with the law and they are the ones that are suffering the delay. Chairman Petersen stated that he does not share that same perception but he certainly has the right to hold it. He thinks that the Commission is plowing a whole bunch of new ground, specifically in Klamath Falls' particular application.

AGENDA ITEM I: Informational Report on the Vehicle Inspection Program, 1985-1986

This agenda item is an informational report on the Vehicle Inspection Program. This report summarizes the past two years of operation. It is the sixth in a series of biennial informational reports. The original report was presented to the Commission in January, 1977.

Among the highlights are:

1. During these past two years, over 850,000 emission tests were conducted and over 550,000 Certificates of Compliance were issued.

2. The Rogue Valley was incorporated into the Oregon I/M Program as required by ORS 468.397. During 1986, in just one year of operation, over 60,000 emission tests were conducted at the Rogue Valley Station in Medford.

3. Significant reductions in vehicle emissions continue to be accrued. These restrictions help Oregon's efforts to maintain a healthy environment.

4. The program is still projecting compliance with ambient CO and ozone for both the Portland and Rogue Valley areas.

Director's Recommendation

It is recommended that the Commission accept this informational report.

Commissioner Buist stated that she found the report to be very interesting and informative and she appreciates all the work that went into putting it together. Chairman Petersen stated that they also appreciate the professionalism with which this program has been carried out and, in particular, the transition to the Medford program is a real success story for the Department, and this Commission appreciates that very much.

AGENDA ITEM K: Request For An Exception to OAR 340-41-026(2) (An EQC Policy Requiring Growth and Development Be Accommodated Within Existing Permitted Loads) By Wacker Siltronic Corporation.

Wacker Siltronic Corporation has requested an increase in loading limitations of their NPDES permit. Such request will require the Commission to consider an exception to OAR 340-41-026(2) which requires that growth and development be accommodated within existing permitted waste dischrage loads. Such request for exception is scheduled before the Commission at this time.

Director's Recommendation

Based upon the Alternatives and Evaluation, the Director recommends that the Commission adopt the staff report as its findings, allow an exception to the existing policy, and grant the requested permitted load increase based on a flow of 0.80 MGD.

Chairman Petersen stated that the only question he had was the permit renewal for the City of Newport where local citizens were very concerned that there was no hearing. The rule is that if the Department determines the permit renewal will be of significant interest to the community the Department schedules a hearing. He wondered whether this is that kind

of a situation. Director Hansen responded that was Georgia-Pacific outfall at Toledo, and this is a different issue.

It was MOVED by Commissioner Denecke, seconded by Commissioner Buist and passed unanimously that the exception to OAR 340-41-026(2) be granted.

Chairman Petersen stated that Murray Tilson, Environmental Manager for Wacker Siltronic had signed up to testify but since the Commission had already taken the action, he declined.

AGENDA ITEM J: Determination of Percent Allocable for Pollution Control Tax Credits

This issue paper attempts to outline the issues related to the determination of percent allocable raised during the review of the Ogden-Martin resource recovery facility tax credit at the last EQC meeting. It is hoped the Commission discussion of these issues will provide the Department with policy direction and direct the Department to draft rules where appropriate.

Director's Recommendation

The Department requests that the Commission discuss the conceptual framework it wishes to have the Department use in drafting rules on issues covered in this paper.

It was decided to defer Agenda Item J until the next Commission meeting because Chairman Petersen would like to discuss this item in more detail. Director Hansen stated that the tax credit program sunsets in July, and so it will be a hotly debated issue in this legislative session. It would be helpful to have the policy direction the Commission is going to give the Department to use in the legislative debate and, therefore, there may have to be a conference call to discuss the tax credit policy and Ogden-Martin specifically.

There being no further business, the meeting was adjourned.

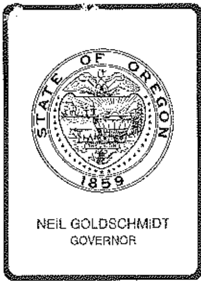
A work session to review landfills and their design and construction was conducted after the formal meeting.

Respectfully submitted,

Terri Sylvester

Terri Sylvester
Adminisrative Assistant
Regional Operations Division

TS:y



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, March 13, 1987, EQC Meeting

December 1986 and January 1987 Program Activity Report

Discussion

Attached are the December 1986 and January 1987 Program Activity Reports.

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

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

The purposes of this report are:

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

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

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

Recommendation

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

Fred Hansen

SChew:p
MD26
229-6484
Attachment

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

December 1986 and January 1987

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MD26.A

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

December 1986
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans
	Month	FY	Month	FY	Month	FY	Pending
Air							
Direct Sources	10	34	9	23	0	0	16
Small Gasoline Storage Tanks Vapor Controls	-	-	-	-	-	-	-
Total	10	34	9	23	0	0	16
Water							
Municipal	7	77	20	93	0	0	23
Industrial	7	57	5	55	0	0	9
Total	14	134	25	148	0	0	32
Solid Waste							
Gen. Refuse	2	12	1	9	-	-	17
Demolition	-	1	-	2	-	-	1
Industrial	-	9	1	10	-	-	14
Sludge	-	1	-	1	-	-	1
Total	2	23	2	22	0	0	33
Hazardous Wastes	-	0	-	0	-	-	-
GRAND TOTAL	26	191	36	271	0	0	48

MAR.2 (1/83)

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PLAN ACTIONS COMPLETED

Permit Number		County	Plan Action Number	Source Name	Process Description	Date Rcvd	Status Assigned
10	0018	DOUGLAS	171	D R JOHNSON LUMBER CO.	INSTALL BOILER	12/15/86	APPROVED
34	2738	WASHINGTON	173	HARDWOOD INDUSTRIES INC.	INSTALL BAGHOUSE	09/08/86	APPROVED
32	0012	WALLOWA	178	SEQUOIA FOREST INDUSTRIES	INSTALL MULTICLONE	12/02/86	APPROVED
22	1037	LINN	181	OREGON STRAND BOARD CO	INSTALLATION OF VENEER DRYER	11/18/86	APPROVED
18	0013	KLAMATH	186	WEYERHAEUSER COMPANY	INSTALL CYCLONE	12/15/86	APPROVED
05	2581	COLUMBIA	187	OREGON NATURAL GAS CORP.	FACILITY MODIFICATION	12/03/86	APPROVED
21	0001	LINCOLN	188	ROAD & DRIVEWAY CO	NEW PAVING PLANT EQUIPMENT	12/24/86	APPROVED
31	0013	UNION	191	HOFF-RONDE VALLEY LUMBER	INSTALL WET SCRUBBER	12/18/86	APPROVED
15	0004	JACKSON	194	BOISE CASCADE CORP	REPAIRS TO CYCLONES 5 & 6	12/29/86	APPROVED

TOTAL NUMBER QUICK LOOK REPORT LINES 9

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division	December 1986
(Reporting Unit)	(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			
Direct Sources							
New	3	12	0	14	10		
Existing	2	18	0	8	20		
Renewals	16	70	3	54	94		
Modifications	10	34	2	34	19		
Total	31	134	5	110	143	1368	1398
Indirect Sources							
New	3	8	1	13	3		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	1	0	2	0		
Total	3	9	1	15	3	263	266
GRAND TOTALS	34	143	6	125	146	1631	1665

Number of Pending Permits	Comments
16	To be reviewed by Northwest Region
23	To be reviewed by Willamette Valley Region
2	To be reviewed by Southwest Region
10	To be reviewed by Central Region
3	To be reviewed by Eastern Region
18	To be reviewed by Program Operations Section
61	Awaiting Public Notice
10	Awaiting end of 30-day Public Notice Period
143	

MAR.5
AA5323

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PERMITS ISSUED

Permit Number		County Name	Source Name	Appl. Rcvd.	Status	Date Achvd.	Type Appl.
37	0149	PORT.SOURCE	PENDLETON READY-MIX CO.	10/28/86	PERMIT ISSUED	11/28/86	RNW
10	0083	DOUGLAS	ROSEBURG FOREST PRODUCTS	10/07/86	PERMIT ISSUED	12/03/86	MOD
10	0018	DOUGLAS	D R JOHNSON LUMBER CO.	08/14/86	PERMIT ISSUED	12/15/86	MOD
05	2520	COLUMBIA	PORTLAND GENERAL ELECTRIC	11/27/85	PERMIT ISSUED	12/18/86	RNW
15	0046	JACKSON	BOISE CASCADE CORP	05/08/86	PERMIT ISSUED	12/23/86	RNW

TOTAL NUMBER QUICK LOOK REPORT LINES 5

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

December 1986
(Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Indirect Sources			
Washington	Koll Center-Woodside, 2,339 Spaces, File No. 34-8614	12/15/86	Final Permit Issued

MAR.6
AA5324

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality (Reporting Unit)

December 1986 (Month and Year)

PLAN ACTIONS COMPLETED - 25

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES - 20			
Clatsop	Gearhart Deli/Store On-Site Repair Revision Request	12-26-86	Comments to Engineer
Douglas	Drain Wastewater Treatment Plant Improvement Project	12-30-86	Provisional Approval
Lane	MWMC Contract C-92, revised Lagoon Liner Specification	12-2-86	Provisional Approval
Clatsop	Windward Condominiums On-Site Repair	12-18-86	Provisional Approval
Coos	Maxine Reed Hauser Trailer Village RGF/Onsite Disposal	12-18-86	Provisional Approval
Douglas	Canyonville School Access Road	12-16-86	Provisional Approval
Jackson	BCVSA Agate Street Extension from Peach Street to Happy Valley Drive	12-29-86	Provisional Approval
Jackson	BCVSA Crater Lake Hwy Project No. 84-8	12-29-86	Provisional Approval
Jackson	Shady Cove Lowery Property and Martinson Property	12-29-86	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED - 25

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES (cont'd)			
Columbia	St. Helens McCormick Park, Phase III	12-30-86	Provisional Approval
Clatsop	Arch Cape Service District Hemlock Street (Lateral E.1)	12-31-86	Provisional Approval
Douglas	Glide-Idleyld David Kennaday Extension	12-31-86	Provisional Approval
Jackson	Jacksonville 440/460 W. California Street	1-5-87	Provisional Approval
Clackamas	Lake Oswego Robinson Sewer Relocation	1-5-87	Provisional Approval
Clackamas	Lake Oswego Lee Street Improvement	1-6-87	Provisional Approval
Malheur	Vale "A" St. Sewerline Replacement	1-6-87	Provisional Approval
Jackson	Medford Rogue Valley Manor Village Phase 3	1-7-87	Provisional Approval
Wallowa	Enterprise Outfall Replacement Clarifier to Station 39+90	1-5-87	Provisional Approval
Jackson	Ashland Tolman Creek Meadows	1-7-87	Provisional Approval
Coos	Sunset Bay State Park Shore Acres State Park Connection (Pump station and force main)	1-2-87	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

PLAN ACTIONS COMPLETED - 25

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES - 5			
Multnomah	Hogan South	09-09-86	Approved
Washington	Tektronix Analytical and sampling equipment	10-7-86	Approved
Washington	Tektronix, Inc. Vacuum Pump for Alkali Line at Building 40	12-23-86	Approved
Benton	Evanite Battery Additional Off-site Monitoring Wells	12-17-86	Approved
Tillamook	Hathaway Farms Manure Control Facility	12-23-86	Approved

SUMMRY-F

Summary of Actions Taken
On Water Permit Applications in DEC 86

7 JAN 87

Source Category & Permit Subtype	Number of Applications Filed – Month			Number of Applications Filed – Fiscal Year			Number of Permits Issued – Month			Number of Permits Issued – Fiscal Year			Applications Pending Permits Issuance (1)			Current Number of Active Permits		
	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen
Domestic																		
NEW	1	1		1	9			2		1	6		6	11				
RW				1									1	1				
RWO	8	8		37	24		6	1		18	10		51	36				
MW										1			2					
MWO	1			2	4			1		1	3		5	1				
Total	10	9		41	37		6	4		21	19		65	49		233	171	29
Industrial																		
NEW	2	3	1	4	7	16		1	1	2	3	24	7	11	1			
RW													1					
RWO	3	1		24	9		1	1		14	7		26	13				
MW										1			1					
MWO				2	1	1	2		1	6		3	2	2				
Total	5	4	1	30	17	17	3	2	2	23	10	27	37	26	1	173	134	356
Agricultural																		
NEW					1									1				
RW																		
RWO		1		1	1						1		1	1				
MW																		
MWO																		
Total		1		1	2						1		1	2		2	11	56
Grand Total	15	14	1	72	56	17	9	6	2	44	30	27	103	77	1	408	316	441

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

It does include applications pending from previous months and those filed after 31-DEC-86.

NEW - New application
RW - Renewal with effluent limit changes
RWO - Renewal without effluent limit changes
MW - Modification with increase in effluent limits
MWO - Modification without increase in effluent limits

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
General: Cooling Water									
IND	100	GEN01	MWO	76018/B	AMERICAN FINE FOODS, INC.	MILTON-FREEWTR	UMATILLA/ER	10-DEC-86	31-DEC-90
General: Oily Stormwater Runoff									
IND	1300	GEN13	NEW	100707/A	HARBOR OIL, INC.	PORTLAND	MULTNOMAH/NWR	02-DEC-86	31-JUL-88
NPDES									
IND	100109	NPDES	MWO	9444/A	BOISE CASCADE CORPORATION	ELGIN	UNION/ER	08-DEC-86	31-AUG-90
DOM	100213	NPDES	RWO	19802/A	COOS BAY, CITY OF	COOS BAY	COOS/SWR	08-DEC-86	31-JAN-90
DOM	100263	NPDES	RWO	60420/A	NETARTS-OCEANSIDE SANITARY DISTRICT	OCEANSIDE	TILLAMOOK/NWR	12-DEC-86	30-SEP-91
DOM	100265	NPDES	RWO	81296/A	SILETZ KEYS SANITARY DISTRICT	GLENEDEN BEACH	LINCOLN/WVR	12-DEC-86	31-OCT-91
DOM	100266	NPDES	RWO	12800/A	BUTTE FALLS, CITY OF	BUTTE FALLS	JACKSON/SWR	12-DEC-86	31-OCT-91
DOM	100267	NPDES	RWO	48568/A	LAKESIDE, CITY OF	LAKESIDE	COOS/SWR	12-DEC-86	31-AUG-91
IND	100268	NPDES	RWO	74470/A	CPEX-PACIFIC, INC.	ST HELENS	COLUMBIA/NWR	12-DEC-86	31-DEC-91
IND	3805	NPDES	MWO	67592/B	PORTLAND, CITY OF	PARKROSE	MULTNOMAH/NWR	15-DEC-86	31-JAN-89
DOM	100272	NPDES	RWO	74300/A	REDWOOD SANITARY SEWER SERVICE DISTRICT	GRANTS PASS	JOSEPHINE/SWR	17-DEC-86	30-SEP-91

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
WPCF									
DOM	3742	WPCF	MWO	96315/B	WHALERS REST, INC.	SOUTH BEACH	LINCOLN/WVR	10-DEC-86	30-SEP-88
DOM	100262	WPCF	NEW	100126/A	WIMBER, FRED L.	GEARHART	CLATSOP/NWR	12-DEC-86	30-JUN-91
DOM	100264	WPCF	NEW	100150/A	REED, MAXINE	NORTH BEND	COOS/SWR	12-DEC-86	30-SEP-91
IND	100269	WPCF	RWO	9309/A	BOHEMIA INC.	JUNCTION CITY	LANE/WVR	12-DEC-86	30-NOV-91
IND	100270	WPCF	NEW	100167/A	JOHNSON, D.R., LUMBER CO.	RIDDLE	DOUGLAS/SWR	15-DEC-86	31-DEC-91
DOM	100271	WPCF	RWO	64705/A	OREGON STATE DEPARTMENT OF TRANSPORTATION (BEVERLY BEACH STATE PARK)	NEWPORT	LINCOLN/WVR	15-DEC-86	31-OCT-91

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

SUMMARY OF SOLID AND HAZARDOUS WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	FY	Month	FY			
General Refuse							
New	-	2	-	2	-		
Closures	1	1	-	2	3		
Renewals	1	8	1	12	17		
Modifications	5	10	5	11	-		
Total	7	21	6	27	20	182	182
Demolition							
New	-	1	-	2	-		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	1		
Modifications	-	2	-	3	-		
Total	0	3	0	5	1	13	13
Industrial							
New	-	4	-	8	7		
Closures	-	3	-	-	2		
Renewals	1	5	3	5	11		
Modifications	2	5	2	5	-		
Total	3	17	5	18	20	103	103
Sludge Disposal							
New	-	-	-	1	1		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	-		
Modifications	-	1	-	1	-		
Total	0	1	0	2	1	16	16
Total Solid Waste	10	42	11	52	42		

Hazardous Waste

Outputs currently under revision.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

December 1986
(Month and Year)

PLAN ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Lane County	Dow Corning Landfill Springfield Industrial waste lndfl.	12/18/86	Plan approved
Deschutes	Southwest Sanitary Lndfl. North of La Pine Municipal waste landfill	12/24/86	Plan approved

SB6349.C
MAR.3 (5/79)

'RTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

December 1986
(Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Baker	Baker Sanitary Landfill South of Baker Existing municipal waste landfill	12/8/86	Permit issued
Douglas	Roseburg Forest Prod. Co. - Dillard Near Dillard Existing industrial waste landfill	12/8/86	Permit issued
Baker	City of Unity Unity Landfill Existing municipal waste landfill	12/17/86	*Permit amended
Benton	Valley Landfills, Inc. Monroe Transfer Station Near Monroe Existing transfer station	12/17/86	*Permit amended
Clackamas	Portland General Electric Faraday Power Plant Near Estacada Existing industrial waste landfill	12/17/86	*Permit amended
Hood River	Champion Internat'l. Corp. Dee Landfill Near Dee (S. of Hood River) Existing industrial waste landfill	12/17/86	*Permit amended
Hood River	Hood River Garbage Service, Inc. Hood River Transfer Station Existing transfer station	12/17/86	*Permit amended

MAR.6 (5/79) SB6356

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Multnomah	Wastech, Inc. Oregon Processing and Recovery Center Portland Existing recyclable materials recovery facility	12/17/86	Permit amended to change name of permittee
Linn	Western Kraft Albany Pond Sludge Near Millersburg Existing industrial waste landfill	12/23/86	Permit issued
Lane	Dow Corning Corporation Clearwater Landfill Springfield Existing industrial waste landfill	12/29/86	Permit issued
Marion	Marion County Woodburn Landfill Existing municipal waste landfill	12/29/86	Permit amended to change name of permittee and to extend the permit expiration date.

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

Hazardous Waste Disposal Requests Approved Between
01-DEC-86 AND 31-DEC-86 for Chem-Security Systems, Inc., Gilliam Co.

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
23-DEC-86	NON-HAZARDOUS WASTE	NON-RCRA SPILL CLEANUP	450 CU YD

1 Request(s) approved for generators in Alaska

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
03-DEC-86	PCB TRANSFORMERS	COLLEGES & UNIVERSITIES	10 CU YD
03-DEC-86	PCB TRANSFORMERS DRAINED AND FLUSHED	COLLEGES & UNIVERSITIES	1.85 CU YD
08-DEC-86	LAB PACK - FLAMMABLE SOLIDS	COLLEGES & UNIVERSITIES	0.27 CU YD
11-DEC-86	PCBS	COLLEGES & UNIVERSITIES	1 CU YD
11-DEC-86	HAZARDOUS SUBSTANCE - PLANT SUMP	OTHER AGRICULTURAL CHEMICALS	4.32 CU YD
11-DEC-86	HAZARDOUS WASTE SOLID	OTHER AGRICULTURAL CHEMICALS	4.32 CU YD

6 Request(s) approved for generators in Idaho

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
03-DEC-86	PCB CONTAMINATED SOLIDS <100 PPM	CEMENT, HYDRAULIC (PORTLAND)	6 CU YD
03-DEC-86	PCB CONTAMINATED BUSHING	FEDERAL GOV'T	3 CU YD
03-DEC-86	PCB CONTAMINATED DEBRIS	FEDERAL GOV'T	4.05 CU YD
08-DEC-86	HYDROCHLORIC ACID	SAWMILLS & PLANING MILLS	30.56 CU YD
08-DEC-86	WASTE DICHLOROPROPENE	RCRA SPILL CLEANUP	1 CU YD
11-DEC-86	MAGNESIUM PARTS	AIRCRAFT	50 CU YD
11-DEC-86	ZORBALL CONTAMINATED WITH LEAD NITRATE	OTHER ELECTRONIC COMPONENTS	1.08 CU YD
15-DEC-86	WASTEWATER TREATMENT SLUDGE	STORAGE BATTERIES	88 CU YD
15-DEC-86	CCA DOOR PIT RESIDUE CONSISTING OF WATER, CHROME, SOIL, RUST, ARSENIC, COPPER, WOOD, METALS	WOOD PRESERVING	135 CU YD
15-DEC-86	LAB PACK - POISON LIQUID	COLLEGES & UNIVERSITIES	0.28 CU YD
18-DEC-86	GROUND WATER	HW TREAT/STORE/DISPOSE FCLTY	50 CU YD

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
18-DEC-86	CADNIUM CONTAMINATED SOLIDS	NON-SUPERFUND SITE CLEANUP	80 CU YD
23-DEC-86	CHROMIUM-HEX LIQUID	NON-SUPERFUND SITE CLEANUP	1.5 CU YD

13 Request(s) approved for generators in Oregon

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
03-DEC-86	LAB PACK - WASTE OXIDIZER	MEDICAL & SURGICAL HOSPITALS	0.27 CU YD
03-DEC-86	LAB PACK - WASTE ORM-E	MEDICAL & SURGICAL HOSPITALS	0.54 CU YD
03-DEC-86	LAB PACK - ORM-A	MEDICAL & SURGICAL HOSPITALS	0.27 CU YD
03-DEC-86	LAB PACK - FLAMMABLE LIQUID	MEDICAL & SURGICAL HOSPITALS	0.27 CU YD
03-DEC-86	LAB PACK - CORROSIVE	MEDICAL & SURGICAL HOSPITALS	0.27 CU YD
03-DEC-86	LAB PACK - POISON B	MEDICAL & SURGICAL HOSPITALS	0.54 CU YD
03-DEC-86	OIL CONTAMINATED DIRT	GENERAL AUTOMOTIVE REPAIR SHOP	40 CU YD
08-DEC-86	LAB PACK - ORM-C	COLLEGES & UNIVERSITIES	13.5 CU YD
08-DEC-86	HYDRAULIC OIL CONTAMINATED WITH PCB	RESEARCH & DEVELOPMENT LABS	0.54 CU YD
08-DEC-86	DEMOLITION DEBRIS CONTAMINATED WITH PCB	PRIMARY PRODUCTION OF ALUMINUM	300 CU YD
08-DEC-86	WASTE DUST COLLECTOR SOLIDS	HW TREAT/STORE/DISPOSE FCLTY	54 CU YD
11-DEC-86	ASBESTOS CONTAMINATED WASTE FROM BUILDING DEMOLITION	AIRCRAFT	130 CU YD
11-DEC-86	WASTE PESTICIDE MIXTURE	NON-SUPERFUND SITE CLEANUP	3 CU YD
11-DEC-86	ASBESTOS	PRIMARY PRODUCTION OF ALUMINUM	14 CU YD
15-DEC-86	LAB PACK - ORM-B	COLLEGES & UNIVERSITIES	13.5 CU YD
15-DEC-86	FEEDOL 9 CONSISTING OF SODIUM NITRATE, SODIUM ALUMINUM FLOURIDE, SILICA, SODIUM SILICOFLOURIDE, ALUMINUM	HW TREAT/STORE/DISPOSE FCLTY	0.54 CU YD
15-DEC-86	EMPTY TANKER-CLEAN	ENV. SERVICES CONTRACTORS	50 CU YD
15-DEC-86	LAB PACK - COMBUSTIBLE	COLLEGES & UNIVERSITIES	27 CU YD

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
15-DEC-86	LAB PACK - CORROSIVE BASE	COLLEGES & UNIVERSITIES	13.5 CU YD
15-DEC-86	LAB PACK - ORM-E	COLLEGES & UNIVERSITIES	27 CU YD
15-DEC-86	LAB PACK - ORM-A	COLLEGES & UNIVERSITIES	13.5 CU YD
15-DEC-86	LAB PACK - IRRITANT	RESEARCH & DEVELOPMENT LABS	0.27 CU YD
18-DEC-86	GRAVEL	SEMICONDUCTORS	180 CU YD
18-DEC-86	LAB PACK - CORROSIVE SOLID	HW TREAT/STORE/DISPOSE FCLTY	1.35 CU YD
18-DEC-86	LAB PACK - FLAMMABLE LIQUID	HW TREAT/STORE/DISPOSE FCLTY	1.35 CU YD
18-DEC-86	LAB PACK - ORM-E	HW TREAT/STORE/DISPOSE FCLTY	1.89 CU YD
18-DEC-86	COAL TAR & DIRT	NON-SUPERFUND SITE CLEANUP	6 CU YD
23-DEC-86	LAB PACK - POISON B	HW TREAT/STORE/DISPOSE FCLTY	4.05 CU YD
23-DEC-86	LAB PACK - ORM-A	HW TREAT/STORE/DISPOSE FCLTY	5.4 CU YD
23-DEC-86	PCB CONTAMINATED SOLIDS	ELECTRIC SERVICES	0.54 CU YD
23-DEC-86	CAUSTIC SODA CONTAMINATED SOIL	OTHER INDUS. ORGANIC CHEMICALS	500 CU YD

31 Request(s) approved for generators in Washington

51 Requests granted - Grand Total

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit)

December, 1986 (Month and Year)

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated		Final Actions Completed		Actions Pending	
	Mo	FY	Mo	FY	Mo	Last Mo
Industrial/ Commercial	9	62	7	46	221	219
Airports			1	4	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Multnomah	Action Machinery, Portland	12/86	In Compliance
Multnomah	Car Craft, Portland	12/86	In Compliance
Multnomah	Dick's Standard Parts, Portland	12/86	In Compliance
Multnomah	Liquid Carbonic Corporation, Portland	12/86	No Violation
Multnomah	Pacific Machine Manufacturing Company Portland	12/86	In Compliance
Multnomah	Unnamed metal fabricator formerly Gadgets Galore, Portland	12/86	Source Closed
Marion	Mazzi's, Salem	12/86	In Compliance
Multnomah	River Port Helibase, Portland	12/86	Boundary Approved

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1986

CIVIL PENALTIES ASSESSED DURING MONTH OF DECEMBER, 1986:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Kirk Century Farms, Inc. Halsey, Oregon	AQ-FB-86-01 Late field burning.	12/15/86	$400	Paid 12/23/86.
Sam Eicher Albany, Oregon	AQ-FB-86-02 Late field burning.	12/15/86	$300	Paid 1/9/87.
Milford Smucker Harrisburg, Oregon	AQ-FB-86-03 Late field burning.	12/15/86	$300	Paid 1/5/87.
Amos Conrad and Jay Conrad Tangent, Oregon	AQ-FB-86-04 Late field burning.	12/15/86	$300	Paid 1/5/87.
Steve Glaser Tangent, Oregon	AQ-FB-86-05 Late field burning.	12/15/86	$300	Paid 12/30/86.
Wendell Manning dba/Manning Farms Brownsville, Oregon	AQ-FB-86-07 Open burned a field without a permit.	12/15/86	$1,000	Paid 1/13/87.
Richard M. Kirkham dba/Windy Oak Ranches Willamina, Oregon	AQ-FB-86-08 Open burned a field without a permit.	12/15/86	$680	Contested 1/5/87.
Roselawn Seed, Inc. Woodburn, Oregon	AQ-FB-86-09 Open burned a field without a permit.	12/15/86	$500	Paid 1/6/87.
Ernest Glaser Shedd, Oregon	AQ-FB-86-10 Open burned a field without a permit.	12/15/86	$500	In default.
M & W Farms, Inc. Brooks, Oregon	AQ-FB-86-11 Improper propane flaming of a field.	12/15/86	$300	Contested 12/22/86.
Lester L. Stephens & Nancy Stephens dba/Shad-O-Hill Farms McMinnville, Oregon	AQ-FB-86-12 Improper propane flaming of a field.	12/15/86	$200	Paid 12/22/86.
Donald E. Saalfeld Gervais, Oregon	AQ-FB-86-13 Improper propane flaming of a field.	12/15/86	$200	Paid 1/5/87.

DECEMBER, 1986 CIVIL PENALTY ASSESSMENTS (CONTINUED)

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Blue Sky Farm, Inc.	AQ-FB-86-14 Improper propane flaming of a field.	12/15/86	$200	Paid 12/22/86.
Anthony Hendricks Sublimity, Oregon	AQ-AGOB-86-15 Conducted agricultural open burning during prohibited period.	12/15/86	$50	Paid 12/30/86.
Alvin C. Hendrickson Corvallis, Oregon	AQ-AGOB-86-16 Conducted agricultural open burning during prohibited period.	12/15/86	$50	Paid 12/19/86.
Texaco, Inc. Troutdale, Oregon	AQ-NWR-86-136 Failure to use vapor return hose while unloading gasoline delivery truck.	12/30/86	$250	Awaiting response to notice.

VAK:b
GB6372

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

January 1987
(Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans
	Month	FY	Month	FY	Month	FY	Pending
Air							
Direct Sources	8	42	1	24	0	0	18
Small Gasoline Storage Tanks Vapor Controls	-	-	-	-	-	-	-
Total	8	42	1	24	0	0	18
Water							
Municipal	5	82	3	96	0	0	26
Industrial	2	59	4	59	0	0	7
Total	7	141	7	155	0	0	33
Solid Waste							
Gen. Refuse	3	15	1	10	-	-	19
Demolition	1	2	-	2	-	-	2
Industrial	1	10	3	13	-	-	12
Sludge	-	1	-	1	-	-	1
Total	5	28	4	26	0	0	34
Hazardous Wastes	-	0	-	0	-	-	-
GRAND TOTAL	20	211	12	205	0	0	85

MAR.2 (1/83)

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PLAN ACTIONS COMPLETED

Permit Number	County	Plan Action Number	Source Name	Process Description	Date Rcvd	Status Assigned
06 0010	COOS	164	ROSEBURG FOREST PRODUCTS	INSTALL VENEER DRYER	01/06/87	APPROVED

TOTAL NUMBER QUICK LOOK REPORT LINES 1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division	January 1987
(Reporting Unit)	(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			
Direct Sources							
New	2	14	1	15	11		
Existing	1	19	4	12	17		
Renewals	4	74	15	69	74		
Modifications	0	34	5	39	14		
Total	7	141	25	135	116	1373	1401
Indirect Sources							
New	1	9	0	13	4		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	0	1	0	2	0		
Total	1	10	0	15	4	263	267
GRAND TOTALS	8	151	25	150	120	1636	1668

Number of Pending Permits	Comments
11	To be reviewed by Northwest Region
14	To be reviewed by Willamette Valley Region
1	To be reviewed by Southwest Region
11	To be reviewed by Central Region
3	To be reviewed by Eastern Region
15	To be reviewed by Program Operations Section
53	Awaiting Public Notice
8	Awaiting end of 30-day Public Notice Period
116	

MAR.5
AA5323

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.
CLACKAMAS	SANDY SHAKE COMPANY	03 1794	05/15/86	PERMIT ISSUED	12/26/86	RNW
JOSEPHINE	ROGUE VALLEY SASH & DOOR	17 0070	06/16/86	PERMIT ISSUED	12/26/86	NEW
MULTNOMAH	SPECIALTY WOODWORKING	26 2183	05/16/86	PERMIT ISSUED	12/26/86	RNW
MULTNOMAH	BINGHAM INTERNATIONAL INC	26 2749	08/05/86	PERMIT ISSUED	12/26/86	MOD
MULTNOMAH	EASTMORELAND GEN HOSPITAL	26 2896	10/30/86	PERMIT ISSUED	12/26/86	RNW
MULTNOMAH	MANNA PRO CORP	26 3062	05/01/86	PERMIT ISSUED	12/26/86	RNW
UNION	GRANDE RONDE HOSPITAL	31 0027	06/18/86	PERMIT ISSUED	12/26/86	RNW
WASHINGTON	BEAVERTON HIGH SCHOOL	34 2568	10/07/86	PERMIT ISSUED	12/26/86	RNW
PORT.SOURCE	CORBETT ROCK	37 0362	09/23/86	PERMIT ISSUED	12/26/86	EXT
CLACKAMAS	ESTACADA LUMBER COMPANY	03 1778	08/18/86	PERMIT ISSUED	01/16/87	RNW
CLACKAMAS	OMARK INDUSTRIES, INC.	03 2624	07/29/86	PERMIT ISSUED	01/16/87	EXT
MALHEUR	EAGLE-PICHER MINERALS INC	23 0032	12/05/86	PERMIT ISSUED	01/16/87	MOD
MARION	DONALD FEED COMPANY INC.	24 8052	05/20/86	PERMIT ISSUED	01/16/87	EXT
MULTNOMAH	CONSOLIDATED METCO, INC.	26 1890	07/23/86	PERMIT ISSUED	01/16/87	RNW
UMATILLA	BLUE MT FOREST PRODUCTS	30 0056	12/22/86	PERMIT ISSUED	01/16/87	MOD
WASHINGTON	BAKER ROCK CRUSHING CO.	34 2737	08/22/86	PERMIT ISSUED	01/16/87	EXT
BENTON	MORSE BROS., INC.	02 2054	11/19/86	PERMIT ISSUED	01/21/87	RNW
BENTON	OREGON STATE UNIVERSITY	02 2524	10/15/86	PERMIT ISSUED	01/21/87	RNW
JACKSON	OREGON GRAVEL & ASPHALT	15 0190	12/22/86	PERMIT ISSUED	01/21/87	MOD
MARION	NORPAC FOODS, INC.	24 1010	10/20/86	PERMIT ISSUED	01/21/87	RNW
MARION	FAIRVIEW TRAINING CENTER	24 5842	09/16/86	PERMIT ISSUED	01/21/87	MOD
MARION	NORPAC FOODS, INC.	24 7067	10/20/86	PERMIT ISSUED	01/21/87	RNW
MULTNOMAH	THE DEAN COMPANY	26 1996	10/06/86	PERMIT ISSUED	01/21/87	RNW
WASHINGTON	WILSONVILLE CONCRETE PROD	34 2640	12/11/86	PERMIT ISSUED	01/21/87	RNW
PORT.SOURCE	POE ASPHALT PAVING, INC.	37 0241	12/18/86	PERMIT ISSUED	01/21/87	RNW

TOTAL NUMBER QUICK LOOK REPORT LINES 25

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division	January 1987
(Reporting Unit)	(Month and Year)

PERMIT ACTIONS COMPLETED

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

Indirect Sources

MAR.6
AA5324

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality
(Reporting Unit)

December 1986
(Month and Year)

PLAN ACTIONS COMPLETED 7

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
MUNICIPAL WASTE SOURCES 3			
Hood River	Hood River West Side Sewer Project	11-29-87	Comments to City
Marion	Mt. Angel STP Improvements	2-4-87	Provisional Approval
Coos	Bandon Face Rock Court Sewer	2-10-87	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division	January 1987
(Reporting Unit)	(Month and Year)

PLAN ACTIONS COMPLETED 7

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
INDUSTRIAL WASTE SOURCES - 4			
Clackamas	Precision Castparts Corp. Chemical Storage Containment and Spill control Facility	12-17-86	Approved
Coos	Donald Cochran	1-30-87	Approved
Multnomah	McClosky Corporation Oil/water separator	12-5-86	Approved
Multnomah	Landa, Inc. pH Neutralization System	12-22-86	Approved

Summary of Actions Taken On Water Permit Applications in JAN 87

Source Category &Permit Subtype	Number of Applications Filed – Month			Number of Applications Filed – Fiscal Year			Number of Permits Issued – Month			Number of Permits Issued – Fiscal Year			Applications Pending Permits Issuance (1)			Current Number of Active Permits		
	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen
Domestic																		
NEW				1	9					1	7		6	10				
RW				1									1	1				
RWO				37	24		2	2		20	12		49	34				
MW										1			2					
MWO	1	1		3	5					1	4		6	2				
Total	1	1		42	38		2	2		23	23		64	47		232	172	29
Industrial																		
NEW			2	4	7	19	1			3	3	24	7	11	4			
RW													1					
RWO	2	1		26	10		2	1		16	9		25	12				
MW										1			1					
MWO	1		2	3	1	3				7		3	2	2	2			
Total	3	1	4	33	18	22	3	1		27	12	27	36	25	6	172	134	351
Agricultural																		
NEW					1									1				
RW																		
RWO				1	1		1			1	1			1				
MW																		
MWO																		
Total				1	2		1			1	1			2		2	11	56
Grand Total	4	2	4	76	58	22	6	3	0	51	36	27	100	74	6	406	317	436

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

It does include applications pending from previous months and those filed after 31-JAN-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

NOTE: IN ADDITION, 61 GENERAL PERMITS WERE RENEWED IN JANUARY.

CAT	PERMIT NUMBER	TYPE	SUB-TYPE	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
NPDES									
IND	100273	NPDES	RWO	32861/A	GEORGIA-PACIFIC CORPORATION - IRVING RD.	EUGENE	LANE/WVR	09-JAN-87	30-NOV-91
AGR	100275	NPDES	RWO	63883/A	OREGON AQUA-FOODS, INC. - SALMON HATCHERY	SPRINGFIELD	LANE/WVR	09-JAN-87	30-NOV-91
DOM	100276	NPDES	RWO	34040/A	SPRINGFIELD PUBLIC SCHOOLS, DISTRICT NO. 19 - GOSHEN ELEMENTARY	GOSHEN	LANE/WVR	12-JAN-87	30-NOV-91
DOM	100278	NPDES	RWO	94266/A	WEASKU INN, INC.	GRANTS PASS	JOSEPHINE/SWR	12-JAN-87	31-JAN-92
IND	3540	NPDES	NEW	32536/A	GENERAL FOODS CORPORATION	WOODBURN	MARION/WVR	20-JAN-87	31-MAY-87
IND	100280	NPDES	RWO	64300/A	OREGON METALLURGICAL CORPORATION	ALBANY	LINN/WVR	20-JAN-87	31-AUG-91
WPCF									
IND	100274	WPCF	RWO	96138/A	MT. HOOD ASPHALT PRODUCTS, INC.	BRIGHTWOOD	CLACKAMAS/NWR	09-JAN-87	30-NOV-91
DOM	100277	WPCF	RWO	29020/A	FAREWELL BEND, INC.	HUNTINGTON	MALHEUR/ER	12-JAN-87	30-NOV-91
DOM	100279	WPCF	RWO	97725/A	JACKSON COUNTY PARKS AND RECREATION DEPARTMENT - WILLOW LAKE	BUTTE FALLS	JACKSON/SWR	12-JAN-87	30-NOV-91

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division (Reporting Unit) — January 1987 (Month and Year)

SUMMARY OF SOLID AND HAZARDOUS WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions	Sites Under	Sites Reqr'g
	Month	FY	Month	FY	Pending	Permits	Permits
General Refuse							
New	-	2	1	3	-		
Closures	-	1	-	2	3		
Renewals	2	10	-	12	18		
Modifications	-	10	-	11	-		
Total	2	23	1	28	21	182	182
Demolition							
New	-	1	-	2	-		
Closures	-	-	-	-	-		
Renewals	1	1	-	-	2		
Modifications	-	2	-	3	-		
Total	1	4	0	5	2	13	13
Industrial							
New	-	4	-	8	6		
Closures	-	3	-	-	2		
Renewals	-	5	1	6	11		
Modifications	2	7	2	7	-		
Total	2	19	3	21	19	103	103
Sludge Disposal							
New	1	1	1	2	1		
Closures	-	-	-	-	-		
Renewals	-	-	-	-	-		
Modifications	-	1	-	1	-		
Total	1	2	1	3	1	16	16
Total Solid Waste	6	48	5	57	43		

Hazardous Waste

Outputs currently under revision.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

January 1987
(Month and Year)

PERMIT ACTIONS COMPLETED

County	Name of Source/Project /Site and Type of Same	Date of Action	Action
Sherman	Sherman County Landfill SW of Biggs Junction Expanded municipal waste landfill	1/3/87	Permit issued.
Yamhill	Smurfit, Newberg Industrial waste landfill	1/8/87	Permit amended (name change).
Clackamas	Smurfit Newsprint Corp. Molalla Pit Industrial waste landfill	1/20/87	Permit renewed.
Lake	Dept. of Fish & Wildlife Summer Lake Sludge disposal site	1/22/87	Letter authorization issued.
Douglas	International Paper Co. Gardiner Pulp & Paper Mill Industrial waste landfill	1/27/87	Closure permit amended.

MAR.6 (5/79) SB6439.C

Hazardous Waste Disposal Requests Approved Between
01-JAN-87 AND 31-JAN-87 for Chem-Security Systems, Inc., Gilliam Co.

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
08-JAN-87	WASTE METAL HYDROXIDE SLUDGE	PLATING & ANODIZING	100 CU YD

1 Request(s) approved for generators in British Columbia

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
20-JAN-87	CONTAMINATED SOIL & DEBRIS	NON-SUPERFUND SITE CLEANUP	300 CU YD

1 Request(s) approved for generators in California

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
05-JAN-87	BEAD BLASTER SAND	OTHER ELECTRONIC COMPONENTS	0.54 CU YD
05-JAN-87	CHROMIC ACID	MACHINERY, EXCEPT ELECTRICAL	20 CU YD
05-JAN-87	CADMIUM CONTAMINATED SOLIDIFIED SLUDGE	NON-SUPERFUND SITE CLEANUP	14 CU YD
08-JAN-87	EBENOL 'S 30' CONSISTING OF SODIUM HYDROXIDE, SODIUM NITRITE, AND SODIUM NITRATE	NON-SUPERFUND SITE CLEANUP	1.08 CU YD
08-JAN-87	WASTE STORAGE TANK SLUDGE	TRUCKING TERMINAL FACILITIES	100 CU YD
08-JAN-87	ZORBALL CONTAMINATED WITH DIESEL	OTHER ELECTRONIC COMPONENTS	0.27 CU YD
08-JAN-87	PCB EQUIPMENT	ELECTRICAL CONTRACTOR	2.16 CU YD
14-JAN-87	SOIL AND DEBRIS CONTAMINATED WITH SOLVENT	PRIMARY SMELT NONFERROUS METAL	11 CU YD
14-JAN-87	HYDROCHLORIC ACID	PLATING & ANODIZING	15 CU YD
14-JAN-87	PLATING RESIDUE	NON-SUPERFUND SITE CLEANUP	0.41 CU YD
16-JAN-87	FLOOR DRY CONTAMINATED WITH BATTERY ACID	RCRA SPILL CLEANUP	1427 CU YD
20-JAN-87	TRICHLOROETHANE CONTAMINATED FLOOR DRY	HAND SAWS & SAW BLADES	0.27 CU YD
23-JAN-87	LAB PACK - FLAMMABLE	COLLEGES & UNIVERSITIES	2.16 CU YD

13 Request(s) approved for generators in Oregon

Hazardous Waste Disposal Requests Approved Between
01-JAN-87 AND 31-JAN-87 for Chem-Security Systems, Inc., Gilliam Co.

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
05-JAN-87	ARSENIC CONTAMINATED WOOD	PRIMARY PRODUCTION OF COPPER	3000 CU YD
05-JAN-87	NICKEL SULFATE SLUDGE	PLATING & ANODIZING	1.35 CU YD
05-JAN-87	ARSENIC CONTAMINATED DEBRIS	PRIMARY PRODUCTION OF COPPER	10,000 CU YD
05-JAN-87	HOT TANK SLUDGE	MOTOR VEHICLE PARTS & ACCESS.	2.7 CU YD
05-JAN-87	LAB PACK - POLYAMINE/ANHYDRIDE	IND MEASURING & CTRLNG INSTR.	0.54 CU YD
05-JAN-87	LAB PACK - EPOXY RESINS	IND MEASURING & CTRLNG INSTR.	0.54 CU YD
07-JAN-87	LAB PACK - WASTE OXIDIZER NOS	HW TREAT/STORE/DISPOSE FCLTY	2.7 CU YD
07-JAN-87	SPENT PLATING SOLUTION / NICKEL	PLATING & ANODIZING	2 CU YD
14-JAN-87	LEAD WORK DEBRIS	DEPARTMENT OF DEFENSE	41 CU YD
14-JAN-87	ARSENIC CONTAMINATED DEBRIS	PRIMARY PRODUCTION OF COPPER	1500 CU YD
14-JAN-87	SAND BLAST SLAG CONTAMINATED WITH HEAVY METALS	HW TREAT/STORE/DISPOSE FCLTY	150 CU YD
20-JAN-87	PAINT WASTE WITH HEAVY METALS	PULP MILLS	13 CU YD
20-JAN-87	CHROMIC ACID	ELECT LIGHT FIXTURE/COMMERCIAL	1.08 CU YD
23-JAN-87	OIL FILTER CARTRIDGE	ELECTRIC SERVICES	0.54 CU YD
23-JAN-87	ALIPHATIC HYDROCARBON CONTAMINATED ABSORBENT	OTHER INDUS. ORGANIC CHEMICALS	0.54 CU YD
23-JAN-87	PLATING LINE DEBRIS	PLATING & ANODIZING	100 CU YD
23-JAN-87	LAB PACK - ORM-E	CANNED FRUITS & VEGETABLES	0.27 CU YD
23-JAN-87	LAB PACK - POISON B	CANNED FRUITS & VEGETABLES	0.27 CU YD
23-JAN-87	LAB PACK - OXIDIZER	CANNED FRUITS & VEGETABLES	0.27 CU YD

19 Request(s) approved for generators in Washington

34 Requests granted - Grand Total

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program
(Reporting Unit)

January, 1987
(Month and Year)

SUMMARY OF NOISE CONTROL ACTIONS

Source Category	New Actions Initiated		Final Actions Completed		Actions Pending	
	Mo	FY	Mo	FY	Mo	Last Mo
Industrial/ Commercial	7	69	3	49	225	221
Airports			2	6	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program	January, 1987
(Reporting Unit)	(Month and Year)

FINAL NOISE CONTROL ACTIONS COMPLETED

County	Name of Source and Location	Date	Action
Multnomah	Charlie Brown's Restaurant, Portland	01/87	In Compliance
Marion	Donald Feed Company, Donald	01/87	In Compliance
Marion	Flavorland Foods, Inc., Salem	01/87	No Violation
Multnomah	Oregon Health Sciences University Emergency Heliport #2, Portland	01/87	Exception Granted
Deschutes	Whippet Field Airport	01/87	Boundary Approved

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1987

CIVIL PENALTIES ASSESSED DURING MONTH OF JANUARY, 1987:

Name and Location of Violation	Case No. & Type of Violation	Date Issued	Amount	Status
Southern Pacific Transportation Co. Gold Hill, Oregon	AQOB-NWR-87-04 Open burning of prohibited materials (railroad ties).	1/26/87	$500	Response to notice due by 3/10/87.

GB6429

December, 1986/January, 1987
DEQ/EQC Contested Case Log

ACTIONS	LAST MONTH	PRESENT
Preliminary Issues	1	0
Discovery	0	0
Settlement Action	3	4
Hearing to be scheduled	0	0
Department reviewing penalty	0	0
Hearing scheduled	0	2
HO's Decision Due	0	1
Briefing	3	0
Inactive	4	4
SUBTOTAL of cases before hearings officer.	11	11
HO's Decision Out/Option for EQC Appeal	1	0
Appealed to EQC	2	3
EQC Appeal Complete/Option for Court Review	0	0
Court Review Option Taken	1	0
Case Closed	0	3
TOTAL Cases	15	17

15-AQ-NWR-87-178	15th Hearing Section case in 1986 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
AG1	Attorney General 1
AQ	Air Quality Division
AQOB	Air Quality, Open Burning
CR	Central Region
DEC Date	Date of either a proposed decision of hearings officer or a decision by Commission
ER	Eastern Region
FB	Field Burning
HW	Hazardous Waste
HSW	Hazardous and Solid Waste Division
Hrng Rfrl	Date when Enforcement Section requests Hearing Section schedule a hearing
Hrngs	Hearings Section
NP	Noise Pollution
NPDES	National Pollutant Discharge Elimination System wastewater discharge permit.
NWR	Northwest Region
OSS	On-Site Sewage Section
P	Litigation over permit or its conditions
Prtys	All parties involved
Rem Order	Remedial Action Order
Resp Code	Source of next expected activity in case
SS	Subsurface Sewage (now OSS)
SW	Solid Waste Division
SWR	Southwest Region
T	Litigation over tax credit matter
Transcr	Transcript being made of case
Underlining	New status or new case since last month's contested case log
WQ	Water Quality Division
WVR	Willamette Valley Region

CONTES.B

December 1986/January 1987

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WAH CHANG	04/78	04/78		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	Current permit in force. Hearing deferred.
WAH CHANG	04/78	04/78		Prtys	03-P-WQ-WVR-78-2012-J NPDES Permit Modification	Current permit in force. Hearing deferred.
~~HAYWORTH FARMS, INC., and HAYWORTH, John W.~~	~~01/14/83~~	~~02/28/83~~	~~04/04/84~~	~~Prtys~~	~~50-AQ-FB-82-09 FB Civil Penalty of $1,000~~	No appeal from Court of Appeals decision. Penalty Affirmed. Case Closed
McINNIS ENTERPRISES, LTD., et al.	09/20/83	09/22/83		Prtys	56-WQ-NWR-83-79 WQ Civil Penalty of $14,500	Hearing deferred.
McINNIS ENTERPRISES, LTD., et al.	10/25/83	10/26/83		Prtys	59-SS-NWR-83-33290P-5 SS license revocation	Hearing deferred.
FUNRUE, Amos	03/15/85	03/19/85	06/20/85	Dept	05-AQ-FB-84-141 Civil Penalty of $500	EQC affirmed $500 penalty June 13, 1986. Department of Justice to draft final order reflecting EQC action.

December 1986/January 1987

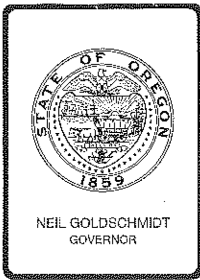
DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
DANT & RUSSELL, INC.	05/31/85	05/31/85	03/21/86	Prtys	15-HW-NWR-85-60 Hazardous waste disposal Civil Penalty of $2,500	Settlement action.
BRAZIER FOREST PRODUCTS	11/22/85	12/12/85	02/10/86	Dept	23-HSW-85 Declaratory Ruling	EQC issued declaratory ruling July 25, 1986. Department of Justice to draft final order reflecting EQC action.
NULF, DOUG	01/10/86	01/13/86	05/05/86	Dept	01-AQFB-85-02 $500 Civil Penalty	Nulf appealed decision imposing $300 civil penalty.
VANDERVELDE, ROY	06/06/86	06/10/86	11/06/86	Prtys	05-WQ-WVR-86-39 $5,500 Civil Penalty	Decision due.
MALLORIE'S DAIRY, INC.	09/08/86	09/08/86	11/24/86	Prtys	07-WQ-WVR-86-91 WPCF Permit violations $2,000 Civil Penalty	Settlement discussions.
MALLORIE'S DAIRY, INC.	09/08/86	09/08/86	11/24/86	Prtys	08-AQOB-WVR-86-92 $1,050 Civil Penalty	Settlement discussions.

December 1986/January 1987

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrrl	Hrng Date	Resp Code	Case Type & No.	Case Status
~~MAGNA CORP., INC.~~	~~09/09/86~~	~~09/10/86~~	~~10/16/86~~	~~Prtys~~	~~09-AQOB-NWR-86-93~~	EQC approved penalty reduction to $400. Case closed.
MONTEZUMA WEST	10/09/86	10/09/86		Prtys	10-HW-SWR-86-46	Settlement action.
~~In re ROBERT "BUCK" FROMAN, dba BUCK'S STOVE PALACE~~	~~11/10/86~~			~~Dept~~	~~Request for Declaratory Ruling ORS 468.635 and OAR 340-21-105.~~	DEQ disclaimed challenged authority. Request withdrawn. Case closed.
M & W FARMS, INC.		12/28/86	02/20/87	Prtys	12-AQ-FB-86-11 $300 civil penalty	Hearing scheduled.
RICHARD KIRKHAM dba, WINDY OAKS RANCH		01/07/87	03/04/87	Prtys	1-AQ-FB-86-08 $680 civil penalty	Hearing scheduled.



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, March 13, 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:

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. (Letters attached.)

Fred Hansen

S. Chew:p
(503) 229-6484
February 18, 1987
MP307

DEQ-46

Proposed March 13, 1987 totals:

Air Quality	$ 60,074.60
Water Quality	-0-
Hazardous & Solid Waste	61,564.00
Noise	-0-
	$121,638.60

1987 calendar year totals for tax credits certified:

Air Quality	$ 71,044.03
Water Quality	288,570.69
Hazardous & Solid Waste	-0-
Noise	-0-
	$359,614.72

SChew
229-6484
February 18, 1986
MP307

Application No. T-1838

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Yaquina Sanitary, Inc.
P.O. Box 643
Newport, OR 97365

The applicant owns and operates a transfer station and recycling center at Newport, Oregon.

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

2. Description of Facility

The facility consists of a full line recycling center in conjunction with a solid waste transfer station. The full line recycling center consists of an area for public recycling of glass, ferrous and non-ferrous metals, used oil, newspaper and cardboard. There is also an area for purchasing quantities of recyclable materials from commercial collectors. In addition, equipment for on-route collection was purchased.

Claimed Facility Cost: $ 46,570.00
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed 7/17/85 less than 30 days before construction commenced on 7/25/85. 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 7/22/86 and the application for final certification was found to be complete on 1/29/87 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 recycle. Approximately 140 tons/year will be removed from the waste stream by this facility. The material would otherwise be landfilled. The facility is in compliance with Department rules.

b. Analysis of Eligible Costs

Following is a listing of major categories of the facility.

Recycling Center	
Bins, drop boxes and storage containers	$5,978
Bailer	7,500
Hysters ($4,000 lb and 2,000 lb)	4,500
Signs	300
Concrete slabs for recycling containers	12,610
On-Route Equipment	
Pickup and bins (for curbside collection route)	3,682
Garbage truck (used - for cardboard collection routes only)	12,000
	$46,570

Average annual cash flow is $2,235. This results from the sale of recyclable materials minus operational costs. Dividing this into costs of the facility ($46,570) gives a return on investment factor of 20.8. Using Table 1 of OAR 340-16-030 for a life of 7 years the return on investment is zero. Therefore the percentage allocable is 100%.

5. Summation

a. The facility was constructed in accordance with all regulatory deadlines. The collection route equipment is also in accordance with all regulatory requirements.

b. The facility and equipment are eligible for final tax credit certification in that the sole purpose of the facility is to recycle.

c. The facility and equipment comply with DEQ statutes and rules.

d. The sole purpose of the facility and equipment is to utilize material that would otherwise be solid waste by recycling;

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

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

e. The portion of the facility and equipment 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 $46,570 with 100% allocated to pollution control, be issued for the facility and equipment claimed in Tax Credit Application No. T-1838.

Ernest A. Schmidt:f
SF1707
(503) 229-5157
February 3, 1987

Application No. T-2072

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Hockett Farms, Inc.
7776 St. Paul Highway, NE
St. Paul, OR 97137

The applicant owns and operates a grass seed farm operation at St. Paul, Oregon.

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

2. Description of Claimed Equipment

The equipment described in this application is a conventional propane flamer used for sanitation of grass seed fields as an approved alternative to open field burning. The 30 foot wide "Field Flamer" was purchased from Rear's Manufacturing Co. of Eugene for $5,595.00 which is the total facility cost.

Claimed Facility Cost: $5,595.00 (Receipts provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

a. The request for preliminary certification was filed March 20, 1986, more than 30 days before installation commenced on July 12, 1986.

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

c. Installation of the facility was substantially completed on August 15, 1986 and the application for final certification was found to be complete on January 6, 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 reduce a substantial quantity of air pollution.

This reduction is accomplished by reduction of air contaminants, as defined in ORS 468.275.

b. Analysis of Eligible Costs

The percent allocable to pollution control (100%) is based on the determination that the sole use of the propane flamer is for field sanitation (pollution control). A negative average annual cash flow is expected because operating expenses for propane flaming exceed those for field burning with no identifiable increase in income afforded.

5. Summation

a. The equipment was purchased and used in accordance with all regulatory deadlines.

b. The equipment is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

c. The equipment complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $5,595.00 with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number T-2072.

SKO'Connell:pd
(503) 686-7837

Application No. 2103

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Golden Valley Farms
7385 Howell Prairie Rd., NE
Silverton, OR 97381

The applicant owns and operates a grass seed farm operation at Silverton, Oregon.

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

2. Description of Claimed Equipment

The facility described in this application is a storage shed (150' x 60' x 20') located at Rt. 1 Box 605, Salem, Oregon (or approximately .5 miles south of Maude Williamson Park on the west side of Highway 221 in Yamhill Co.) The shed will provide cover for 700 tons of grass straw for approximately 7 months each year. The land and building is owned by the applicant. The applicant provides this storage to the owner of the straw on a monthly rental basis. The straw is exported to Japan for feed.

Claimed Facility Cost: $25,364.80
(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 May 21, 1986, more than 30 days before construction commenced on July 10, 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 September 10, 1986 and the application for final certification was found to be complete on November 28, 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 reduce a substantial quantity of air pollution.

      This reduction is accomplished by reduction of air contaminants, as defined in ORS 468.275.

   b. Analysis of Eligible Costs

      The average annual cash flow from leasing storage space for straw is $3850. Dividing this into the cost of the facility ($25,364.80) gives a return on investment factor of 6.588. Using Table 1 of OAR 340-16-030 for a life of 20 years, the annual percent return on investment is 14.0%; therefore, using the reference percent return for 1986 of 17.4% from Table 2 of OAR 340-16-030, the percent allocable to pollution control is 20%.

5. Summation

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

   b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

   c. The equipment complies with DEQ statutes and rules.

   d. The portion of the equipment that is properly allocable to pollution control is 20 percent.

6. Director's Recommendation

   Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $25,364.80 with 20% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number T-2103.

SKO'Connell:pd
(503) 686-7837

Application No. T-2192

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Far West Fibers, Inc.
P.O. Box 503
Beaverton, OR 97075

The applicant owns and operates a cardboard recycling plant at Beaverton, Oregon.

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

2. Description of Facility

The facility consists of a Marathon Model RJ225, Ram Jet Compactor S/N 8825W and a Marathon Forty Cubic Yard Container S/N 8826W.

The compactor is located at: Costco Wholesale Warehouse
13350 S.E. Johnson
Milwaukie, OR 97222

Claimed Facility Cost: $ 14,994

Documentation including copies of invoices and cancelled checks was provided with the application.

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 2, 1986, more than 30 days before installation commenced on November 3, 1986.

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

c. Installation of the facility was substantially completed on November 7, 1986 and the application for final certification was found to be complete on December 22, 1986 within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because The sole purpose of the facility is to reduce a substantial quantity of solid waste. This facility recycles approximately 30 tons of corrigated cardboard each month which would otherwise enter the waste stream and be landfilled. The facility complies with DEQ statutes and rules.

b. Analysis of Eligible Costs

The average annual cash flow is $744. This results from the sale of cardboard minus the purchase price and operational costs. Cost of the installation $14,944 divided by average annual cash flow gives a return on investment factor of 20.15. Using table 1 of OAR 340-16-030 and a 10 year life, a return on investment of zero is obtained. Thus the percentage allocable to pollution control is 100%

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 recycle.

c. The facility complies with DEQ statutes and rules.

d. The sole purpose of the facility is to utilize material that would otherwise be solid waste by recycling.

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

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

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

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $14,994 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2192.

Ernest A. Schmidt:f
SF1695
(503) 229-5157
January 28, 1987

Application No. 2233

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Golden Valley Farms
7385 Howell Prairie Rd., NE
Silverton, OR 97381

The applicant owns and operates a grass seed farm operation at Silverton, Oregon.

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

2. Description of Claimed Equipment

The facility described in this application is a storage shed (175' x 60' x 20') located at 6866 Waconda Rd., Brooks, Oregon. The shed will provide cover for 750 tons of grass straw for approximately 7 months each year. The land and building is owned by the applicant. The applicant provides this storage to the owner of the straw on a monthly rental basis. The straw is exported to Japan for feed.

Claimed Facility Cost: $29,114.80
(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 May 21, 1986, more than 30 days before construction commenced on July 10, 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 September 10, 1986 and the application for final certification was found to be complete on November 28, 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 reduce a substantial quantity of air pollution.

   This reduction is accomplished by reduction of air contaminants, as defined in ORS 468.275.

b. Analysis of Eligible Costs

   The average annual cash flow from leasing storage space for straw is $4200. Dividing this into the cost of the facility ($29,114.80) gives a return on investment factor of 6.932. Using Table 1 of OAR 340-16-030 for a life of 20 years, the annual percent return on investment is 13.25%; therefore, using the reference percent return for 1986 of 17.4% from Table 2 of OAR 340-16-030, the percent allocable to pollution control is 24%.

5. Summation

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

b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of air pollution and accomplishes this purpose by the reduction of air contaminants, as defined in ORS 468.275.

c. The equipment complies with DEQ statutes and rules.

d. The portion of the equipment that is properly allocable to pollution control is 24 percent.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of $29,114.80 with 24% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number T-2233.

SKO'Connell:pd
(503) 686-7837

State of Oregon
Department of Environmental Quality

REISSUANCE OF POLLUTION CONTROL FACILITY CERTIFICATION

1. Certificate issued to:

Bauman Lumber Company
P.O. Box 188
Lebanon, OR 97355

The Certificate was issued for an air pollution control facility.

2. Summation:

The Department has been notified of the purchase of the assets of Bauman Lumber Company by Willamette Industries, effective April 1, 1974. Bauman had received a tax credit certificate for a boiler in 1972. Credit has not been taken on the certificate since the purchase by Willamette. Willamette Industries has asked that the tax credit be transferred to them retroactive to 1974.

ORS 317.116(8) requires that notice be given to the Environmental Quality Commission upon any sale, exchange or other disposition of a certified facility. The Environmental Quality Commission is directed to revoke the certificate as of the date of disposition, and the transferee is permitted to apply for a new certificate to claim the remaining tax credit that was not claimed by the transferor. ORS 468.170(8) provides that the period in which a certificate is valid for tax credit purposes is 10 years from the year of certification. It is clear from the provisions of ORS 468.155 to 468.190 and ORS 317.116(8) that the tax credit is available only to the holder of a certificate for a pollution control facility. The certificates are issued in the name of the person who constructed or acquired the pollution control facility. Therefore, a transferee of a pollution control facility would not be able to claim the credit until the transferee obtains a new certificate in his or her name. Based on this analysis, legal counsel has advised the Department not to issue certificates retroactively, but only from the date of the EQC meeting in which they were approved.

3. Director's Recommendation:

It is recommended that Certificate Number 219 be revoked and reissued to Willamette Industries, Inc., the certificate to be valid only for the time remaining from the date of the first issuance.

M. Conley:p
229-6408
February 17, 1987
MP306

Willamette Industries, Inc.

Executive Offices

3800 First Interstate Tower

Portland, Oregon 97201

503/227-5581

January 30, 1987

Ms. Maggie Conley
Management Services Division
Department of Environmental Quality
P.O. Box 1760
Portland, Oregon 97207

Dear Ms. Conley:

Pursuant to Rule 340-16-040, we hereby request a transfer of Certificate Number 219 from Bauman Lumber Company to Willamette Industries, Inc.

Effective 4/1/74 Willamette purchased substantially all of the assets of Bauman Lumber Company including the boiler described in Certificate Number 219 as of 3/31/74 and grant Willamette Industries, Inc. a new certificate for the balance of available tax credit effective as of 4/1/74.

In accordance with your letter of January 23, 1987 to Mr. Rich Miller, I'm enclosing a copy of the Bill of Sale between Bauman Lumber Company and Willamette Industries, Inc., dated April 1, 1974.

If you need further information, please contact me. Thank you for your attention to this matter.

Cordially,

WILLAMETTE INDUSTRIES, INC.

Don McNeill
Tax Manager

DM/jlm

Enclosure

BILL OF SALE

W I T N E S S E T H :

BAUMAN LUMBER COMPANY in consideration of the sum of Ten Dollars($10) and other good and valuable consideration to it paid by WILLAMETTE INDUSTRIES, INC., the receipt of which is hereby acknowledged, does by these presents bargain, sell, transfer and deliver unto WILLAMETTE INDUSTRIES, INC., its successors and assigns, the following property, rights and privileges, to wit:

All tangible personal property (other than "Excluded Assets" as hereinafter defined) of whatsoever kind and description and whersoever situated owned by Bauman Lumber Company on the date hereof, including, but without limitation, all machinery, equipment, motor vehicles, tools, and equipment, supplies, goods, materials, merchandise, inventories, furniture, furnishings, fixtures, chattels, and all other interests in tangible personal property owned by Bauman Lumber Company on the date hereof; it being the intention of the parties hereto that all tangible personal property (other than said "Excluded Assets") owned by Bauman Lumber Company on the date hereof shall be as fully embraced herein and conveyed hereby as though such property were specifically described herein.

TO HAVE AND TO HOLD the tangible personal property (other than said "Excluded Assets") hereinabove described or referred to unto WILLAMETTE INDUSTRIES, INC., its successors and assigns, forever.

There is, however, expressly excepted and excluded from the operation of this indenture the following described tangible personal property of Bauman Lumber Company (herein referred to as "Excluded Assets"), to wit:

"Excluded Assets" are B.C.K. Company, Inc. and the following automobiles:

Jaguar X.K.E. acquired April 1969
Lincoln acquired March 1973
Ford Thunderbird acquired March 1974.

Bauman Lumber Company covenants that it is the lawful owner

of the foregoing property free and clear of all encumbrances, that it has the right to sell the same, and that it will and its successors shall warrant and defend the title thereto unto WILLAMETTE INDUSTRIES, INC., its successors and assigns, against the lawful claims and demands of all person whomsoever.

DONE by order of the Board of Directors this first day of April, 1974.

BAUMAN LUMBER COMPANY

By [signature]
President

By [signature]
Secretary

STATE OF OREGON)
) ss
County of Linn)

On this 1 day of April, 1974, before me appeared W. H. Bauman and Orval N. Thompson, both to me personally known, who being duly sworn, did say that he, the said W. H. Bauman is President, and he, the said Orval N. Thompson is the Secretary of BAUMAN LUMBER COMPANY, of the within named corporation, and that the said instrument was signed on behalf of said corporation by authority of its Board of Directors, and W. H. Bauman and Orval N. Thompson acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

[signature]
Notary Public for Oregon
My Commission expires: 5/14/77

Certificate No. 219

Date of Issue 3-24-72

Application No. T-259

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

POLLUTION CONTROL FACILITY CERTIFICATE

Issued To: As: Owner	Location of Pollution Control Facility:
Bauman Lumber Company Post Office Box 188 Lebanon, Oregon 97355	Highway 20 between Sweet Home and Lebanon, Oregon Linn County

Description of Pollution Control Facility:

Complete gas/oil-fired package boiler.

Date Pollution Control Facility was completed and placed in operation: May 22, 1970

Actual Cost of Pollution Control Facility: $33,819.50

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

In accordance with the provisions of ORS 449.605 et seq., it is hereby certified that the facility described herein and in the application referenced above is a "pollution control facility" within the definition of ORS 449.605 and that the facility was erected, constructed, or installed on or after January 1, 1967, and on or before December 31, 1978, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air or water pollution, and that the facility is necessary to satisfy the intents and purposes of ORS Chapter 449 and regulations thereunder.

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

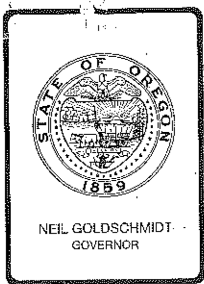
1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing air pollution.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for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

Signed ______________________

Title B. A. McPhillips, Chairman

Approved by the Environmental Quality Commission

on the 24th day of March 1972



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, March 13, 1987, EQC Meeting

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

Background

The field burning program is annually reviewed in an effort to both identify emerging problems and to develop and utilize any new techniques or improvements which can effectively maximize the acres burned each year and minimize smoke intrusions affecting the public. While many improvements are successfully put into practice at an operational level, or through the voluntary efforts of the growers, some occasionally require that new regulations be considered.

The open field burning rules were last revised in early 1984, a major overhaul to modernize, simplify, and add needed flexibility to the daily decision-making process. In the Department's opinion, the program has been fairly successful in recent years, thus only minor refinements directly relating to controls on field burning, per se, are proposed. However, the use of alternative burning practices has markedly increased the past two years, offsetting field burning to some extent but also resulting in some new problems and concerns.

ORS 468.460 gives the Commission authority to regulate the burning of grass seed and cereal grain crops.

Problem

Propane Flaming:

The use of propane flaming as an alternative method of sanitizing grass seed fields is increasing rapidly in the Willamette Valley, resulting in increased summer-time air quality impacts and public complaints.

Propane flamers are devices consisting of a series of torches (nozzles) fueled by a propane tank and covered by a heat-deflecting hood, all mounted on a wheeled chasis. Flamers are slowly pulled across the field in overlapping passes, essentially scorching the crop and combusting any remaining residue. The heat-deflecting hood helps to reduce emissions by enhancing combustion efficiency.

Since propane flaming has, until recently, been used so sparingly without significant problems, the Department has encouraged the practice as an approved and less-polluting alternative to open field burning. Department rules require that the loose straw and as much of the stubble as possible be removed from the field before flaming can be done, thus reducing total fuel consumption and total emissions compared to open field burning. If these conditions are satisfied, propaning can be done on any day, at any time during daylight hours, and in any location without restriction on the number of acres that can be treated. No registration, permits or fees are required (other than a fire permit issued by the local fire district). Propane flamers are even eligible for pollution control facility tax credits.

While no exact information is available, the Department estimated that between 30,000 and 60,000 acres were treated by propane flaming in 1986, with continued increases expected in the years ahead. Up to one-third of the growers may be using or considering propane flaming as an option. These estimates are supported by aerial observations (plume counts) and grower surveys conducted by both the Department (1985 and 1986) and the Oregon Seed Council (1986).

The shift to propane flaming is the result of a number of factors. Certainly the limited regulations give the grower complete control in scheduling propaning activity, unlike field burning which often requires waiting days or weeks for permission to burn. Even under the best of conditions, state law limits field burning to only a percentage of the fields registered. More importantly, though, is the much improved market for grass seed straw. A consultant to the Department on a related research project estimates that some 70,000 tons or more were baled off fields in 1986, most of it exported to Japan as an animal feed. Once straw is removed from a field, open field burning is precluded and propane flaming becomes one of the few viable options for sanitizing the crop. While the cost of propaning (excluding straw removal costs) is higher than for field burning ($15 per acre versus $5-10), its effectiveness is as good or better in most cases. The expense of baling the straw (an additional $40-50 per acre) is usually borne by the buyer at no cost or return to the grower.

Other factors contributing to the increase in propaning include 1) its safety from a fire control perspective, 2) the development of new plant varieties that cannot tolerate the heat of an open burn in the first year(s) of production, and 3) an industry-wide shift toward more production of perennial seed crops, which have a higher profit margin and can accommodate the added costs of propaning. In addition, it is clear that as more efficient and affordable flamers become available, and as more growers invest in the equipment and experience the advantages, the practice will continue to grow despite fluctuations in the straw market.

During 1986, at least six "light" smoke instrusions were measured in populated areas as a direct result of individual propane operations. Some 70 complaints were reported to the Department. General propaning activity also contributed to elevated particulate loadings and hazy conditions throughout the Valley on a number of other days.

Staff principally attribute these problems to the sheer increase in propaning activity overall, often overloading the atmosphere's dispersion capabilities. Propaning appears to be heavier on "stagnant air" days when growers can rule out any change to do field burning and assign crews to the more time consuming task of propaning. It can also be more concentrated near cities or neighborhoods where open field burning is especially constrained. In addition, illegal propaning appears to be on the rise. Four violators were cited in 1985 and 1986. Violations usually involve inadequate field preparation (straw removal) or operating the flamer too fast or in such a manner as to allow the fire to run on its own, resembling an open field burn.

A study of propane flaming sponsored by the Department in 1986 revealed some useful information about the practice and underscores these concerns.[1] As expected, total particulate emissions from propaning were shown to be less than from open field burning when measured on a per acre basis (62 lb/acre versus 200 lb/acre)[2], although not as low as observations might suggest. The emission factor for propaning was found to be more than twice that of field burning when expressed on the basis of material actually consumed (102 lb/T versus about 40 lb/T). This reflects the fact that the residue left on the field and consumed by propaning tends to be "green" and higher in moisture.

More significantly, measurements of smoke immediately downwind from propane flamers showed that ground-level concentrations can be of some concern. When quantified in terms of "exposure" (concentration times period of impact), propaning resulted in an order of magnitude higher exposure than field burning at distances of up to several miles away. This reflects the low plume rise characteristic of smoke from propane operations and the long period of time required to complete a field.

Stack Burning:

The increase in straw removal and propane flaming has also been accompanied by increased interest in burning piles or stacks of loose or baled straw when it cannot otherwise be sold or given away. Since removal of straw from a field ensure that an alternative sanitation method will be used, stack burning can help to reduce field burning smoke. The regulations do not clearly address stack burning. The Department has been allowing it on a temporary basis under the status of fourth priority agricultural burning until more information and a legal interpretation could be obtained.

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[1] Sampling Program to Determine Emissions and Impacts From Propane Flaming and Stack Burning of Grass Seed Crop Residues, OMNI Environmental Services, Inc., January 27, 1987 (Draft Report).

[2] Assumes a straw load of 5 tons per acre.

While the exact amount of stack burning is not precisely known, the practice appears to be quite limited and of minimal concern from an air quality perspective. A grower survey conducted by the Oregon Seed Council suggested that perhaps the equivalent of up to 7,000 acres of straw were disposed of by stack burning last year. Those responding to the survey indicated that most all of the burning was accomplished the first or second day it was allowed. Testing sponsored by the Department in 1986 (see footnotes [1] and [2] on prior page) indicated a low emission factor (26 lb/T versus 40 lb/T) and lower total emissions (83 lb/acre versus 200 lb/acre) compared to open field burning. Straw stacks appear to burn very cleanly. No significant impacts have been attributed to stack burning and few complaints are ever received.

Preparatory Burning:

Preparatory burning is the controlled burning of small areas of selected "problem" fields in order to reduce the fire hazard potential and allow rapid-ignition burning techniques to be used when it's open burned at a later time. While preparatory burning is already recognized by rule, the Department has only recently come to appreciate its benefits and encourage it as a smoke management tool. It has been limited to a few fields each day, 1 to 3 acres in size, and allowed only during the morning hours of 9 a.m. to 11 a.m. when the winds are light and humidity high enough to minimize the risk of fire escape. Backfiring is required, a method of burning characterized by low emissions in which the fire line creeps slowly into the wind.

A total of about 100 preparatory burns were allowed last summer with perceptible benefits to air quality. However, strict application of the field burning rules related specifically to humidity and ventilation would prevent preparatory burning during the morning hours. Staff believe that special and limited exemptions from these restrictions should be considered.

Alternatives and Evaluation

The Department has developed proposed rule changes intended to manage or resolve many of the problems noted above. The process has included surveys and support of basic research to fill information gaps, experimentation, and meetings with growers to discuss key issues. The proposed rule revisions have the general support of the Oregon Seed Council.

With regard to propane flaming, the proposed rules would 1) authorize the Department to prohibit propaning under adverse meteorological or air quality conditions and 2) more clearly define acceptable limits in the way propaning is actually conducted. Minimum design specifications related to nozzle density and hood size are proposed. The hours would be restricted to 9 a.m. to sunset during July and August (9 a.m. to one-half hour before sunset after that) to prevent propaning in the very early morning when humidity is extremely high. A requirement that propaning be conducted in overlapping strips beginning along the downwind side of

the fields would be specified to deter operating in such a way that promotes open flames.

Before new rules were considered, a cooperative voluntary effort to reduce problems from propaning was tried. Prior to the 1986 burn season, the Department and Seed Council jointly developed a set of operational guidelines for propaning which growers were encouraged to follow. These guidelines included many of the same provisions now proposed as rules and more. While many growers complied with the effort, others did not and its effectiveness overall was limited.

With regard to stack burning, new rules are proposed which would continue the current approach to allowing it under the same daily authorizations and conditions that govern fourth priority agricultural burning (orchard prunings, etc.). Such burning is rarely permitted during the summer when field burning occurs, except under stormy conditions or after a hard rain when field burning is precluded. Moderate amounts of moisture do not adversely affect emissions from stack burning. The rules would exempt stack burning from the registration, permits, fees, and other limitations applicable to field burning.

New rules are proposed which would exempt preparatory burning from minimum humidity and ventilation restrictions applicable to open field burning. A limit of 5 acres per burn and 50 acres per day would be imposed.

Other proposed rule changes would 1) clarify the definition of "fluffing," 2) clarify the requirement that growers directly monitor the field burning radio whenever burning, and 3) update the definition of "grower allocation" to reflect current procedures for assigning allocations. Another change would require growers to ensure that their fields are in good burnable condition and to use approved lighting equipment. Regulations adopted recently for the protection of visibility in Class 1 areas would also be referenced.

Attachment 1 contains the Draft Public Notice and Statements of Need, Fiscal and Economic Impact, and Land Use Consistency.

Attachment 2 contains proposed revisions to the Open Field Burning Rules.

Summation

1. The use of propane flaming as an alternative to open field burning has increased sharply in recent years, resulting in significant summertime air quality impacts. This is supported by grower surveys, air monitoring and field testing.

2. A voluntary compliance program to reduce smoke problems from propane flaming was attempted last year with only limited success. New rules are proposed which would allow the Department to prohibit propaning under adverse meteorological and air quality conditions, and would more clearly define operational parameters for the way propaning is done.

3. The practice of burning straw in piles or stacks to dispose of unmarketable crop residues has increased. Observations and testing indicate that the effects on air quality from stack burning are minimal. It also would promote the use of alternative field sanitation methods. The present regulations do not address stack burning. Proposed rules would allow stack burning under the same daily schedule set forth for "fourth priority agricultural burning" and exempt it from field burning regulations.

4. The limited use of preparatory burning as a smoke management tool has demonstrated benefits, however humidity and ventilation requirements prevent this activity during the morning hours when it is best suited. Proposed rules would exempt preparatory burning from these criteria and impose new limits.

5. Other minor and clarifying changes to the field burning rules are proposed.

Director's Recommendation

Based on the Summation, the Director recommends that 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).

Fred Hansen

Attachment:

1. Draft Public Notice and Statements of Need, Fiscal and Economic Impact, and Land Use Consistency.

2. Proposed Revisions to the Open Field Burning Rules (OAR 340-26-001 through 340-26-055).

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Proposed Amendments to Open Field Burning Rules

NOTICE OF PUBLIC HEARING

Date Prepared: 2/17/87
Hearing Date: 4/22/87
Comments Due: 4/22/87

WHO IS AFFECTED: Residents of the State of Oregon and those involved with the grass seed industry.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend the Open Field Burning Rules (OAR 340-26-001 through 340-26-055) particularly related to propane flaming, stack burning, and preparatory burning.

WHAT ARE THE HIGHLIGHTS: The proposed rule changes would:

- Allow the Department to prohibit propane flaming under adverse meteorological and air quality conditions.
- Set restrictions on the way propane flaming operations are conducted to reduce smoke emissions.
- Allow burning of straw stacks under the same daily schedule set for fourth priority agricultural burning, and exempt stack burning from the field burning regulations.
- Exempt preparatory burning from minimum humidity and ventilation requirements and impose limits on the practice.
- Require growers to ensure that their fields are in good burnable condition and to use approved lighting equipment.
- Clarify reqirements related to "fluffing", radio monitoring and allocation procedures, and reference provisions recently adopted to protect visibility in Class 1 areas.

P.O. Box 1760
Portland, OR 97207

8/10/82

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011 and ask for the Department of Environmental Quality.

HOW TO COMMENT:

Copies of the proposed rule package may be obtained from the DEQ Field Burning Office located at 1244 Walnut Street in Eugene. For further information contact Brian Finneran at (503) 686-7837.

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

10:00 a.m.
Wednesday, April 22, 1987
Springfield City Council Chambers
225 N Fifth Street
Springfield, Oregon

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Field Burning Office at 1244 Walnut Street, Eugene, OR 97403, but must be received no later than 5:00 p.m. April 22, 1987.

WHAT IS THE NEXT STEP:

After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The adopted rules will be submitted to the U.S. Environmental Protection Agency as part of the State Clean Air Act Implementation Plan. The Commission's deliberations should come at its May 29, 1987 meeting as part of the agenda of a regularly scheduled Commission meeting.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

RULEMAKING STATEMENTS

Pursuant to ORS 183.335(2), this statement provides information on the intended action to amend rules.

STATEMENT OF NEED:

Legal Authority

Legal authority for this action is ORS 468.460(1).

Need for the Rule

The proposed amendments and additions are needed to address air pollution problems generated by the increased use of propane flaming an an alternative to open field burning in the Willamette Valley. Rules would also address burning of straw stacks and preparatory burning. Other minor or clarifying changes are proposed. Rule revisions will be submitted to the U. S. Environmental Protection Agency as an Amendment to the State Implementation Plan.

Principal Documents Relied Upon

ORS 468.450 through 468.495 and OAR Chapter 340, Division 23, Rules for Open Field Burning.

FISCAL AND ECONOMIC IMPACT STATEMENT

There should be no significant adverse economic impact on small businesses. Proposed restrictions could prohibit propane flaming on some days; however, the extent of curtailment is likely to be negligible.

LAND USE CONSISTENCY STATEMENT

Portions of the proposed rules appear to affect land use and will be consistent with Statewide Planning Goals and Guidelines.

Goal 6 (Air, Water and Land Resources Quality): The proposal is designed to improve and maintain air quality in the affected area and is therefore consistent with the Goal.

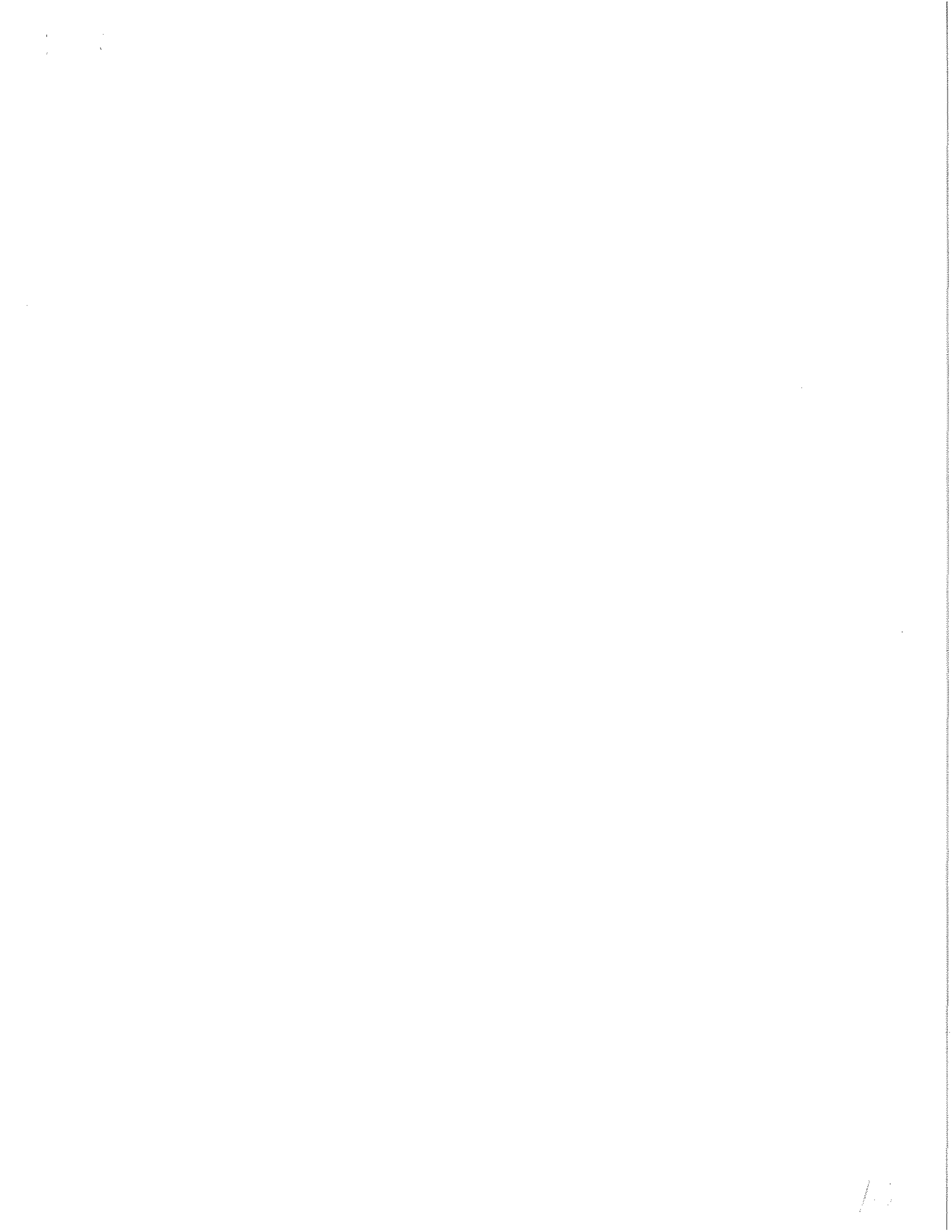
Goal 11 (Public Facilities and Services) is deemed unaffected by the rules.

The proposal does not appear to conflict with other Goals.

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

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

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



ATTACHMENT 2

DIVISION 26

RULES FOR OPEN FIELD BURNING
(Willamette Valley)

Introduction

340-26-001 (1) These rules apply to the open burning of all perennial and annual grass seed and cereal grain crops or associated residue within the Willamette Valley, hereinafter referred to as "open field burning". The open burning of all other agricultural waste material (referred to as "fourth priority agricultural burning") is governed by OAR Chapter 340, Division 23, Rules for Open Burning.

(2) Organization of rules:

(a) OAR 340-26-003 is the policy statement of the Environmental Quality Commission setting forth the goals of these rules:

(b) OAR 340-26-005 contains definitions of terms which have specialized meanings within the context of these rules.

(c) OAR 340-26-010 lists general provisions and requirements pertaining to all open field burning with particular emphasis on the duties and responsibilities of the grower registrant.

(d) OAR 340-26-012 lists procedures and requirements for registration of acreage, issuance of permits, collection of fees, and keeping of records, with particular emphasis on the duties and responsibilities of the local permit issuing agencies.

(e) OAR 340-26-013 establishes acreage limits and methods of determining acreage allocations.

(f) OAR 340-26-015 establishes criteria for authorization of open field burning pursuant to the administration of a daily smoke management control program.

(g) OAR 340-26-025 establishes civil penalties for violations of these field burning rules.

(h) OAR 340-26-031 establishes special provisions pertaining to field burning by public agencies for official purposes, such as "training fires".

(i) OAR 340-26-033 establishes special provisions pertaining to "preparatory burning".

[(i)] (j) OAR 340-26-035 establishes special provisions pertaining to open field burning for experimental purposes.

[(j)] (k) OAR 340-26-040 establishes special provisions and procedures pertaining to emergency open field burning and emergency cessation of burning.

[(k)] (l) OAR 340-26-045 establishes provisions pertaining to approved alternative methods of burning, such as "propane flaming".

(m) OAR 340-26-055 establishes provisions pertaining to "stack burning."

Policy

340-26-003 In the interest of public health and welfare pursuant to ORS 468.455, it is the declared public policy of the State of Oregon to control, reduce, and prevent air pollution from open field burning by smoke management. In developing and carrying out a smoke management control program it is the policy of the Environmental Quality Commission:

(1) To provide for a maximum level of burning with a minimum level of smoke impact on the public, recognizing:

(a) The importance of flexibility and judgement in the daily decision-making process, within established and necessary limits;

(b) The need for operational efficiency within and between each organizational level;

(c) The need for effective compliance with all regulations and restrictions.

(2) To study, develop and encourage the use of reasonable and economically feasible alternatives to the practice of open field burning.

Definitions

340-26-005 As used in these rules, unless otherwise required by context:

(1) "Actively extinguish" means the direct application of water or other fire retardant to an open field fire.

(2) "Approved alternative method(s)" means any method approved by the Department to be a satisfactory alternative field sanitation method to open field burning.

(3) "Approved alternative facilities" means any land, structure, building, installation, excavation, machinery, equipment, or device approved by the Department for use in conjunction with an approved alternative method.

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

(5) "Cumulative hours of smoke intrusion in the Eugene-Springfield area" means the average of the totals of cumulative hours of smoke intrusion recorded for the Eugene site and the Springfield site. Provided the Department determines a smoke intrusion to have been significantly contributed to by field burning, it shall record for each hour of the intrusion which causes the nephelometer hourly

reading to exceed background levels (the average of the three hourly readings immediately prior to the intrusion) by:

(a) 5.0 x 10-4 b-scat units or more, two hours of smoke intrusion;

(b) 4.0 x 10-4 b-scat units or more, for intrusions after September 15 of each year, two hours of smoke intrusion;

(c) 1.8 x 10-4 b-scat units or more but less than the applicable value in subsection (a) or (b), one hour of smoke intrusion.

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

(7) "Director" means the Director of the Department or delegated employe representative pursuant to ORS 468.045(3).

(8) "District allocation" means the total amount of acreage sub-allocated annually to the fire district, based on the district's pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued within the district, subject to daily authorization. District allocation is defined by the following identity:

$$\textbf{District Allocation} = \frac{\textbf{Maximum annual acreage limit}}{\textbf{Total acreage registered in the Valley}} \times \textbf{Total acreage registered in the District}$$

(9) "Drying day" means a 24-hour period during which the relative humidity reached a minimum less than 50% and no rainfall was recorded at the nearest reliable measuring site.

(10) "Effective mixing height" means either the actual height of plume rise as determined by aircraft measurement or the calculated or estimated mixing height as determined by the Department, whichever is greater.

(11) "Field-by-field burning" means burning on a limited restricted basis in which the amount, rate, and area authorized for burning is closely controlled and monitored. Included under this definition are "training fires" and experimental open field burning.

(12) "Field reference code" means a unique four-part code which identifies a particular registered field for mapping purposes. The first part of the code shall indicate the grower registration (form) number, the second part the line number of the field as listed on the registration form, the third part the crop type, and the fourth part the size (acreage) of the field (e.g., a 35 acre perennial (bluegrass) field registered on line 2 of registration form number 1953 would be 1953-2-P-BL-35).

(13) "Fire district" or "district" means a fire permit issuing agency.

(14) "Fire permit" means a permit issued by a local fire permit issuing agency purusant to ORS 477.515, 477.530, 476.380, or 478.960.

(15) "Fires-out time" means the time announced by the Department at which all flames and major smoke sources associated with open field burning should be out, and prohibition conditions are scheduled to be imposed.

(16) "Fluffing" means [a] <u>an approved</u> mechanical method of stirring or tedding crop residues for enhanced [fuel bed] aeration and drying[,] <u>of the full fuel load,</u> thereby improving the field's combustion characteristics.

(17) "Grower allocation" means the amount of acreage sub-allocated annually to the grower registrant, based on the grower registrant's pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued, suject to daily authorization. Grower allocation is defined by the following identity:

Grower Allocation = [1.10 x] <u>Maximum annual acreage limit</u> x Total acreage registered by grower registrant
Total acreage registered in the Valley

(18) "Grower registrant" means any person who registers acreage with the Department for purposes of open field burning.

(19) "Marginal conditions" means conditions defined in ORS 468.450(1) under which permits for open field burning may be issued in accordance with these rules and other restrictions set forth by the Department.

(20) "Nephelometer" means an instrument for measuring ambient smoke concentrations.

(21) "Northerly winds" means winds coming from directions from 290 to 90 in the north part of the compass, averaged through the effective mixing height.

(22) "Open field burning" means burning of any perennial or annual grass seed or cereal grain crop, or associated residue, in such manner that combustion air and combustion products are not effectively controlled.

(23) "Open field burning permit" means a permit issued by the Department pursuant to ORS 468.458.

(24) "Permit issuing agency" or "Permit agent" means the county court or board of county commissioners, or fire chief or a rural fire protection district or other person authorized to issue fire permits pursuant to ORS 477.515, 477.530, 476.380, or 478.960.

(25) "Preparatory burning" means controlled burning of portions of selected problem fields for the specific purpose of reducing the fire hazard potential or other conditions which would otherwise inhibit rapid ignition burning when the field is subsequently open burned.

(26) "Priority acreage" means acreage located within a priority area.

(27) "Priority areas" means the following areas of the Willamette Valley:

(a) Areas in or within three miles of the city limits of incorporated cities having populations of 10,000 or greater.

(b) Areas within one mile of airports servicing regularly scheduled airline flights.

(c) Areas in Lane County south of the line formed by U.S. Highway 126 and Oregon Highway 126.

(d) Areas in or within three miles of the city limits of the City of Lebanon.

(e) Areas on the west and east side of and within 1/4 mile of these highways: U.S. Interstate 5, 99, 99E, and 99W. Areas on the south and north side of and within 1/4 mile of U.S. Highway 20 between Albany and Lebanon, Oregon Highway 34 between Lebanon and Corvallis, Oregon Highway 228 from its junction south of Brownsville to its rail crossing at the community of Tulsa.

(28) "Prohibition conditions" means conditions under which open field burning is not allowed except for individual burns specifically authorized by the Department pursuant to rule 340-26-015(2).

(29) "Propane flaming" means an approved alternative method of burning which employs a mobile flamer device [utilizing] which meets the following design specifications and utilizes an auxiliary fuel such that combustion is nearly complete and emissions significantly reduced[.]:

(a) Flamer nozzles must be not more than 15 inches apart.

(b) A heat deflecting hood is required and must extend a minimum of 3 feet beyond the last row of nozzles.

(30) "Quota" means an amount of acreage established by the Department for each fire district for use in authorizing daily burning limits in a manner to provide, as reasonably as practicable, an equitable opportunity for burning in each area.

(31) "Rapid ignition techniques" means a method of burning in which all sides of the field are ignited as rapidly as practical in order to maximize plume rise. Little or no preparatory backfire burning shall be done.

(32) "Residue" means straw, stubble and associated crop material generated in the production of grass seed and cereal grain crops.

(33) "Responsible person" means each person who is in ownership, control, or custody of the real property on which open burning occurs, including any tenant thereof, or who is in ownership, control or custody of the material which is burned, or the grower registrant. Each person who causes or allows open field burning to be maintained shall also be considered a responsible person.

(34) "Small-seeded seed crops requiring flame sanitation" means small-seeded grass, legume, and vegetable crops, or other types approved by the Department, which are planted in early autumn, are grown specifically for seed production, and which require flame sanitation for proper cultivation. For purposes of these rules, clover and sugar beets are specifically included. Cereal grains, hairy vetch, or field peas are specifically not included.

(35) "Smoke management" means a system for the daily (or hourly) control of open field burning through authorization of the times, locations, amounts and other restrictions on burning, so as to provide for suitable atmospheric dispersion of smoke particulate and to minimize impact on the public.

(36) "Southerly winds" means winds coming from directions from 90 to 290 in the south part of the compass, averaged through the effective mixing height.

(37) "Stack burning" means the open burning of piled or stacked residue from perennial or annual grass seed or cereal grain crops used for seed production.

[(37)] (38) "Test fires" means individual field burns specifically authorized by the Department for the purpose of determining or monitoring atmospheric dispersion conditions.

[(38)] (39) "Training fires" means individual field burns set by or for a public agency for the official purpose of training personnel in fire-fighting techniques.

[(39)] (40) "Unusually high evaporative weather conditions" means a combination of meteorological conditions following periods of rain which result in sufficiently high rates of evaporation, as determined by the Department, where fuel (residue) moisture content would be expected to approach about 12 percent or less.

[(40)] (41) "Validation number" means a unique five-part number issued by a permit issuing agency which validates a specific open field burning permit for a specific acreage in a spcific location on a specific day. The first part of the validation number shall indicate the grower registration (form) number,

the second part the line number of the field as listed on the registration form, the third part the number of the month and the day of issuance, the fourth part the hour burning authorization was given based on a 24-hour clock, and the fifth part shall indicate the size of acreage to be burned (e.g., a validation number issued August 26 at 2:30 p.m. for a 70-acre burn for a field registered on line 2 of registration form number 1953 would be 1953-2-0826-1430-070).

[(41)] (42) "Ventilation Index (VI)" means a calculated value used as a criterion of atmospheric ventilation capabilities. The Ventilation Index as used in these rules is defined by the following identity:

$$\text{VI} = \frac{\text{(Effective mixing height (feet))}}{1000} \times \text{(Average wind speed through the effective mixing height (knots))}$$

[(42)] (43) "Willamette Valley" means the areas of Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill Counties lying between the crest of the Coast Range and the crest of the Cascade Mountains, and includes the following:

(a) "South Valley", the areas of jurisdiction of all fire permit issuing agents or agencies in the Willamette Valley portions of the counties of Benton, Lane, or Linn.

(b) "North Valley", the areas of jurisdiction of all other fire permit issuing agents or agencies in the Willamette Valley.

General Requirements

340-26-010 (1) No person shall cause or allow open field burning on any acreage unless said acreage has first been registered and mapped pursuant to rule 340-26-012(1), the registration fee has been paid, and the registration (permit application) has been approved by the Department.

(2) No person shall cause or allow open field burning without first obtaining (and being able to readily demonstrate) a valid open field burning permit and fire permit from the appropriate permit issuing agent pursuant to rule 340-26-012(2).

(3) No person shall open field burn cereal grain acreage unless that person first issues to the Department a signed statement, and then acts to insure, that said acreage will be planted in the following growing season to a small-seeded seed crop requiring flame sanitation for proper cultivation as defined in rule 340-26-005(34).

(4) No person shall cause or allow open field burning which is contrary to

the Department's announced burning schedule specifying the times, locations and amounts of burning permitted, or to any other provision announced or set forth by the Department or these rules.

(5) Each responsible person open field burning shall have an operating radio receiver and shall directly monitor the Department's burn schedule announcements at all times while open field burning.

(6) Each responsible person open field burning shall actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employe of the Department.

(7) No person shall open field burn priority acreage on the west side of and abutting U.S. Interstate 5 without first providing a non-combustible strip at least 8 feet in width between the combustible materials of said field and the freeway right-of-way, to serve as fireguard for safety purposes.

(8) Each responsible person open field burning within a priority area around a designated city, airport or highway shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the designated city, airport or highway.

(9) Each responsible person open field burning shall make every reasonable effort to expedite and promote efficient burning and prevent excessive emissions of smoke by:

(a) Ensuring that field residues are evenly distributed and in generally good burning condition;

(b) Utilizing approved lighting devices (drip torch, propane torch or other pressurized lighting device) and fire control (recommend minimum 500 gallons water) equipment;

(c) Employing [through employment of] rapid ignition techniques on all acreage where there are no imminent fire hazards or public safety concerns.

(10) Each responsible person open field burning shall attend the burn until effectively extinguished.

(11) Open field burning in compliance with the rules of this Division does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order or decree of the Commission or any other government entity having jurisdiction.

(12) Any revisions to the maximum acreage to be burned, allocation or permit issuing procedures, or any other substantive changes to these rules affecting

open field burning for any year shall be made prior to June 1 of that year. In making rule changes, the Commission shall consult with Oregon State University.

(13) Open field burning shall be regulated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I areas (OAR 340-20-047, sec. 5.2).

Certified Alternative to Open Field Burning

340-26-011 [DEQ 105, f.& ef. 12-36-75;
DEQ 114, f.6-4-76;
DEQ 138, f.6-30-77;
DEQ 140(Temp), f.& ef. 7-27-77 thru 11-23-77;
DEQ 6-1978, f.& ef. 4-18-78 thru 10-5-78;
DEQ 2-1980, f.& ef. 1-21-80;
DEQ 12-1980, f.& ef. 4-21-80;
DEQ 9-1981, f. & ef. 3-19-81;
Repealed by DEQ 5-1984, f. & ef. 3-7-84]

Registration, Permits, Fees, Records

340-26-012 In administering a field burning smoke management program, the Department may contract with counties or fire districts to administer registration of acreage, issuance of permits, collection of fees and keeping of records for open field burning within their permit jurisdictions. The Department shall pay said authority for these services in accordance with the payment schedule provided for in ORS 468.480:

(1) Registration of acreage:

(a) On or before April 1 of each year, all acreage to be open burned under these rules shall be registered with the Department or its authorized permit agent on registration forms provided by the Department. Said acreage shall also be delineated on specially provided registration map materials and identified using a unique field reference code. Registration and mapping shall be completed according to the established procedures of the Department. A non-refundable registration fee of $1 for each acre registered shall be paid at the time of registration. A complete registration (permit application) shall consist of a fully executed registration form, map and fee.

(b) Registration of acreage after April 1 of each year shall require the prior approval of the Department and an additional $1 per acre late registration fee if the late registration is due to the fault of the late registrant or one under his control.

(c) Copies of all registration forms and fees shall be forwarded to the

Department promptly by the permit agent. Registration map materials shall be made available to the Department at all times for inspection and reproduction.

(d) The Department shall act on any registration application within 60 days of receipt of a completed application. The Department may deny or revoke any registration application which is incomplete, false or contrary to state law or these rules.

(e) It is the responsibility of the grower registrant to insure that the information presented on the registration form and map is complete and accurate.

(2) Permits:

(a) Permits for open field burning shall be issued by the Department, or its authorized permit agent, to the grower registrant in accordance with the established procedures of the Department, and the times, locations, amounts and other restrictions set forth by the Department or these rules.

(b) A fire permit from the local fire permit issuing agency is also required for all open burning pursuant to ORS 477.515, 477.530, 476.380, 478.960.

(c) A valid open field burning permit shall consist of:

(A) An open field burning permit issued by the Department which specifies the permit conditions in effect at all times while burning and which identifies the acreage specifically registered and annually allocated for burning;

(B) A validation number issued by the local permit agent on the day of the burn identifying the specific acreage allowed for burning and the date and time the permit was issued; and

(C) Payment of the required $2.50 per acre burn fee.

(d) Open field burning permits shall at all times be limited by and subject to the burn schedule and other requirements or conditions announced or set forth by the Department.

(e) No person shall issue open field burning permits for open field burning of:

(A) More acreage than the amount sub-allocated annually to the District by the Department pursuant to rule 340-26-013(2);

(B) Priority acreage located on the upwind side of any city, airport or highway within the same priority area.

(f) It is the responsibility of each local permit issuing agency to establish and implement a system for distributing open field burning permits to individual grower registrants when burning is authorized, provided that such system is fair, orderly and consistent with state law, these rules and any other

provisions set forth by the Department.

(3) Fees: Permit agents shall collect, properly document and promptly forward all required registration and burn fees to the Department.

(4) Records:

(a) Permit agents shall at all times keep proper and accurate records of all transactions pertaining to registrations, permits, fees, allocations, and other matters specified by the Department. Such records shall be kept by the permit agent for a period of at least five years and made available for inspection by the appropriate authorities.

(b) Permit agents shall submit to the Department on specially provided forms weekly reports of all acreage burned in their jurisdictions. These reports shall cover the weekly period of Monday through Sunday, and shall be mailed and post-marked no later than the first working day of the following week.

Acreage Limitations, Allocations

340-26-013 (1) Limitation of Acreage:

(a) Except for acreage and residue open burned pursuant to rules 340-26-035, 340-26-040 [and], 340-26-045, and 340-26-055 the maximum acreage to be open burned annually in the Willamette Valley under these rules shall not exceed 250,000 acres.

(b) The maximum acreage allowed to be open burned under these rules on a single day in the south Valley under southerly winds shall not exceed 46,934 acres.

(c) Other limitations on acreage allowed to be open burned are specified in rules 340-26-015(7), 340-26-033(2), and 340-26-035(1).

(2) Allocation of Acreage:

(a) In the event that total registration as of April 1 is less than or equal to the maximum acreage allowed to be open burned annually, pursuant to subsection (1)(a) of this rule, the Department may sub-allocate to growers on a pro rata share basis not more than [110] 100 percent of the maximum acreage limit, referred to as "grower allocation". In addition, the Department shall sub-allocate to each respective fire district, its pro rata share of the maximum acreage limit based on acreage registered within the district, referred to as "district allocation".

(c) In order to insure optimum permit utilization, the Department may adjust fire district allocations.

(d) Transfer of allocations for farm management purposes may be made within and between fire districts and between grower registrants on a one-in/one-out basis under the supervision of the Department.

Daily Burning Authorization Criteria

340-26-015 As part of the smoke management program provided for in ORS 468.470 the Department shall set forth the types and extent of open field burning to be allowed each day according to the provisions established in this section and these rules:

(1) During the active field burning season and on an as needed basis, the Department shall announce the field burning schedule over the field burning radio network operated specifically for this purpose. The schedule shall specify the times, locations, amounts and other restrictions in effect for open field burning. The Department shall notify the State Fire Marshal of the burning schedule for dissemination to appropriate Willamette Valley agencies.

(2) Prohibition conditions:

(a) Prohibition conditions shall be in effect at all times unless specifically determined and announced otherwise by the Department.

(b) Under prohibition conditions, no permits shall be issued and no open field burning shall be conducted in any area except for individual burns specifically authorized by the Department on a limited extent basis. Such limited burning may include field-by-field burning[, preparatory burning,] or burning of test fires, except that:

(A) No open field burning shall be allowed:

(i) In any area subject to a ventilation index of less than 10.0[, except for experimental burning specifically authorized by the Department pursuant to rule 340-26-035];

(ii) In any area upwind, or in the immediate vicinity, of any area in which, based upon real-time monitoring, a violation of federal or state air quality standards is projected to occur.

(B) Only test-fire burning may be allowed:

(i) In any area subject to a ventilation index of between 10.0 and 15.0, inclusive[, except for experimental burning specifically authorized by the Department pursuant to rule 340-26-035];

(ii) When relative humidity at the nearest reliable measuring station exceeds 50 percent under forecast northerly winds or 65 percent under forecast

southerly winds.

(3) Marginal conditions:

(a) The Department shall announce that marginal conditions are in effect and open field burning is allowed when, in its best judgement and within the established limits of these rules, the prevailing atmospheric dispersion and burning conditions are suitable for satisfactory smoke dispersal with minimal impact on the public, provided that the minimum conditions set forth in paragraphs (2)(b)(A) and (B) of this rule are satisfied.

(b) Under marginal conditions, permits may be issued and open field burning may be conducted in accordance with the times, locations, amounts, and other restrictions set forth by the Department and these rules.

(4) Hours of burning:

(a) Burning hours shall be limited to those specifically authorized by the Department each day and may be changed at any time when necessary to attain and maintain air quality.

(b) Burning hours may be reduced by the fire chief or his deputy, and burning may be prohibited by the State Fire Marshal, when necessary to prevent danger to life or property from fire, pursuant to ORS 478.960.

(5) Locations of burning:

(a) Locations of burning shall at all times be limited to those areas specifically authorized by the Department, except that:

(A) No priority acreage shall be burned upwind of any city, airport, or highway within the same priority area;

(B) No south Valley priority acreage shall be burned upwind of the Eugene-Springfield non-attainment area.

(6) Amounts of burning:

(a) In order to provide for an efficient and equitable distribution of burning, daily authorizations of acreages shall be issued by the Department in terms of single or multiple fire district quotas. The Department shall establish quotas for each fire district and may adjust the quotas of any district when conditions in its judgement warrant such action.

(b) Unless otherwise specifically announced by the Department, a one quota limit shall be considered in effect for each district authorized for burning.

(c) The Department may issue more restrictive limitations on the amount, density or frequency of burning in any area or on the basis of crop type, when conditions in its judgement warrant such action.

(7) Limitations on burning based on air quality:

(a) The Department shall establish the minimum allowable effective mixing height required for burning based upon cumulative hours of smoke intrusion in the Eugene-Springfield area as follows:

(A) Except as provided in paragraph (B) of this subsection, burning shall not be permitted whenever the effective mixing height is less than the minimum allowable height specified in Table 1, and by reference made a part of these rules.

(B) Notwithstanding the effective mixing height restrictions of paragraph (A) of this subsection, the Department may authorize burning of up to 1000 acres total per day for the Willamette Valley, consistent with smoke management considerations and these rules.

(8) Limitations on burning based on rainfall:

(a) Burning shall not be permitted in an area for one drying day (up to a maximum of four consecutive drying days) for each 0.10 inch increment of rainfall received per day at the nearest reliable measuring station.

(b) The Department may waive the restrictions of subsection (a) of this section when dry fields are available as a result of special field preparation or condition, irregular rainfall patterns, or unusually high evaporative weather condition.

(9) Other discretionary provisions and restrictions:

(a) The Department may require special field preparations before burning, such as, but not limited to, mechanical fluffing of residues, when conditions in its judgement warrant such action.

(b) The Department may designate specified periods following permit issuance within which time active field ignition must be initiated and/or all flames must be actively extinguished before said permit is automatically rendered invalid.

(c) The Department may designate additional areas as priority areas when conditions in its judgement warrant such action.

Winter Burning Season Regulations

340-26-020 [DEQ 29, f.6-12-71, ef. 7-12-71;
DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75;
DEQ 104, f. & ef. 12-26-75;
DEQ 114, f. 6-4-76;
DEQ 138, f. 6-30-77;
DEQ 6-1978, f. 4-18-78;
DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78;
DEQ 2-1980, f. & ef. 1-21-80;

DEQ 12-1980, f. & ef. 4-21-80;
DEQ 9-1981, f. & ef. 3-19-81;
Repealed by DEQ 5-1984, f. & ef. 3-7-84]

Civil Penalties

340-26-025 In addition to any other penalty provided by law:

(1) Any person who intentionally or negligently causes or allows open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380, and 478.960 or these rules shall be assessed by the Department a civil penalty of at least $20, but not more than $40 for each acre so burned.

(2) In lieu of any per-acre civil penalty assessed pursuant to section (1) of this rule, the Director may assess a specific civil penalty for any open field burning violation by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be established consistent with the following schedule:

(a) Not less than $500 nor more than $10,000 upon any person who:

(A) Causes or allows open field burning on any acreage which has not been registered with the Department for such purposes.

(B) Causes or allows open field burning on any acreage without first obtaining and readily demonstrating a valid open field burning permit for all acreage so burned.

(b) Not less than $300 nor more than $10,000 upon any person who fails to actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by any agent or employe of the Department.

(c) Not less than $200 nor more than $10,000 upon any person who:

(A) Conducts burning using an approved alternative method contrary to any specific conditions or provisions governing such method.

(B) Fails to readily demonstrate at the site of the burn operation the capability to monitor the Department's field burning schedule broadcasts.

(d) Not less than $50 nor more than $10,000 upon any person who commits any other violation pertaining to the rules of this Division.

(3) In establishing a civil penalty greater than the minimum amount specified in sections (1) and (2) of this rule, the Director may consider any mitigating and aggravating factors as provided for in OAR 340-12-045.

(4) Any person planting contrary to the restrictions of subsection (1) of

ORS 468.465 pertaining to the open burning of cereal grain acreage shall be assessed by the Department a civil penalty of $25 for each acre planted contrary to the restrictions.

Tax Credits for Approved Alternative Methods, and Approved Alternative Facilities

340-26-030 [DEQ 114, f. & ef. 6-4-76;
DEQ 138, f. 6-30-77;
DEQ 6-1978, f. & ef. 4-18-78;
DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78;
DEQ 2-1980, f. & ef. 1-21-80;
DEQ 12-1980, f. & ef. 4-21-80;
DEQ 9-1981, f. & ef. 3-19-81;
DEQ 5-1984, f. & ef. 3-7-84;
Repealed by DEQ 12-1984, f. & ef. 7-13-84]

Burning by Public Agencies (Training Fires)

340-26-031 Open field burning on grass seed or cereal grain acreage by or for any public agency for official purposes, including the training of fire-fighting personnel, may be permitted by the Department on a prescheduled basis consistent with smoke management considerations and subject to the following conditions:

(1) Such burning must be deemed necessary by the official local authority having jurisdiction and must be conducted in a manner consistent with its purpose.

(2) Such burning must be limited to the minimum number of acres and occasions reasonably needed.

(3) Such burning must comply with the provisions of rules 340-26-010 through 340-26-013.

Preparatory Burning

340-26-033 The Department may allow preparatory burning of portions of selected problem fields, consistent with smoke management considerations and subject to the following conditions:

(1) Such burning must, in the opinion of the Department, be necessary to reduce or eliminate a potential fire hazard or safety problem in order to expedite the subsequent burning of the field.

(2) Such burning shall be limited to the minimum number of acres necessary, in no case exceeding 5 acres for each burn or a maximum of 50 acres each day.

(3) Such burning must employ backfiring burning techniques.

(4) Such burning is exempt from the provisions of rule 340-26-015 but must comply with the provisions of rules 340-26-010 through 340-26-013.

Experimental Burning

340-26-035 The Department may allow open field burning for demonstration or experimental purposes pursuant to the provisions of ORS 468.490, consistent with smoke management considerations and subject to the following conditions:

(1) Acreage experimentally open burned shall not exceed 5,000 acres annually.

(2) Acreage experimentally open burned shall not apply to the district allocation or to the maximum annual acreage limit specified in rule 340-26-013-(1)(a).

(3) Such burning is exempt from the provisions of rule 340-26-015 but must comply with the provisions of rules 340-26-010 and 340-26-012, except that the Department may elect to waive all or part of the $2.50 per acre burn fee.

Emergency Burning, Cessation

340-26-040 (1) Pursuant to ORS 468.475 and upon a finding of extreme hardship, disease outbreak, insect infestation or irreparable damage to the land, the Commission may by order, and consistent with smoke managment considerations and these field burning rules, permit the emergency open burning of more acreage than the maximum annual acreage limitation specified in rule 340-26-013(1)(a). The Commission shall act upon emergency burning requests within 10 days of receipt of a properly completed application form and supporting documentation:

(a) Emergency open burning on the basis of extreme financial hardship must be documented by an analysis and signed statement from a CPA, public accountant, or other recognized financial expert which established that failure to allow emergency open burning as requested will result in extreme financial hardship above and beyond mere loss of revenue that would ordinarily accrue due to inability to open burn the particular acreage for which emergency open burning is requested. The analysis shall include an itemized statement of the applicant's net worth and include a discussion potential alternatives and probable related consequences.

(b) Emergency open burning on the basis of disease outbreak or insect infestation must be documented by an affidavit or signed statement from the County Agent, State Department of Agriculture or other public agricultural expert authority that, based on his personal investigation, a true emergency exists that can only be dealt with effectively and practicably by open burning. The statement shall also specify: time of field investigation; location and description of field, crop and infestation; extent of infestation (compared to normal) and the necessity for urgent control; availability efficacy, and practicability of alternative control procedures, and; probable consequences of non-control.

(c) Emergency open burning on the basis of irreparable damage to the land must be documented by an affidavit or signed statement from the County Agent, State Department of Agriculture, or other public agricultural expert authority that, based on his personal investigation, a true emergency exists which threatens irreparable damage to the land and which can only be dealt with effectively and practicably by open burning. The statement shall also specify: time of field investigation; location and description of field, crop, and soil slope characteristics; necessity for urgent control: availability, efficacy, and practicability of alternative control procedures, and; probable consequences of non-control.

(2) Pursuant to ORS 468.475 and upon finding of extreme danger to public health or safety, the Commission may order temporary emergency cessation of all open field burning in any area of the Willamette Valley.

Approved Alternative Methods of Burning (Propane Flaming)

340-26-045 (1) The use of propane flamers, mobile field sanitizing devices, and other field sanitation methods specifically approved by the Department are considered alternatives to open field burning pursuant to the provisions of ORS 468.472 and 468.480, [provided that] subject to the following conditions:

(a) The field [has] must first be prepared as follows [been]:

(A) Either the field must have [P]previously been open burned and the appropriate fees paid; or

(B) The loose straw must be removed and the remaining field stubble [F]flail -chopped, mowed, or otherwise cut close to the ground and [the loose straw] removed to [reduce the straw fuel load as much as] the extent practicable[;].

(b) Propane flaming operations must comply with the following criteria:

(A) Unless otherwise specifically restricted by the Department, and except for the use of propane flamers in preparing fire breaks, propane flaming may be conducted only between the hours of 9 a.m. and sunset (9 a.m. to one-half hour before sunset on or after September 1).

(B) Propane flamers must be operated in overlapping strips, crosswise to the prevailing wind, beginning along the downwind edge of the field.

[(b)] (C) The remaining field [stubble will] residue must not sustain an open fire[; and].

(c) A fire permit [has been] must first be obtained from the local fire permit issuing agency.

(2) [Propane flaming and other approved alternative burning methods may be conducted on any day during daylight hours and are exempt from rules 340-26-010 through 340-26-015 and are therefore not subject to open field burning requirements related to registration, permits, fees, limitations, allocations and daily burning authorization criteria.] No person shall cause or allow to be initiated or maintained any propane flaming on any day or at any time if the Department has determined and notified the State Fire Marshal that propane flaming is prohibited because of adverse meteorological or air quality conditions.

Stack Burning

340-26-055 (1) The open burning of piled or stacked residue from perennial or annual grass seed or cereal grain crops used for seed production is allowed, subject to the following conditions:

(a) No person shall cause or allow to be initiated or maintained any stack burning on any day or at any time if the Department has notified the State Fire Marshal that such burning is prohibited because of meteorological or air quality conditions. Unless otherwise specified by the Department, stack burning shall be subject to the same daily open burning schedule set forth and announced by the Department for "fourth priority agricultural burning" (which is separately governed under OAR Chapter 340, Division 23, Rules for Open Burning).

(b) A fire permit must be obtained from the local permit issuing agency.

(c) All residue to be burned must be dry to the extent practicable and free of all other combustible and non-combustible material. Covering the stacks is advised when necessary and practicable to protect the material from moisture.

(d) It shall be the duty of each responsible person to make every reasonable effort to extinguish any stack burning which is in violation of any rule of the Commission.

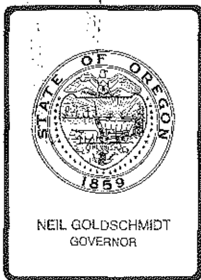
(2) Provided the conditions of this rule are met, stack burning is exempt from rules 340-26-010 through 340-26-015 and is therefore not subject to open field burning requirements related to registration, permits, fees, allocations, and acreage limitations.

TABLE 1

(340-26-015)

MINIMUM ALLOWABLE EFFECTIVE MIXING HEIGHT
REQUIRED FOR BURNING BASED UPON THE CUMULATIVE HOURS
OF SMOKE INTRUSION IN THE EUGENE-SPRINGFIELD AREA

Cumulative Hours of Smoke Intrusion In the Eugene-Springfield Area	Minimum Allowable Effective Mixing Height (feet)
0 - 14	no minimum height
15 - 19	4,000
20 - 24	4,500
25 and greater	5,500



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. F, March 13, 1987, EQC Meeting

Request Authorization to Hold a Public Hearing to Amend National Standards of Performance for New Stationary Sources OAR 340-25-505 to -553.

Background

The U.S. Environmental Protection Agency (EPA) has been adopting New Source Performance Standards (NSPS) for major sources of air pollution since 1971. To acquire delegation to administer these standards, the Commission adopted Oregon Administrative Rules (OAR) 340-25-505 to -705 in September 1975, and amended them in response to new EPA Rules in each of the last 6 years. The Department has received delegation from EPA for those NSPS requested.

EPA has been adopting National Emission Standards for Hazardous Air Pollutants (NESHAPS) since 1973. To acquire delegation to administer these standards, the Commission adopted Oregon Administrative Rules 340-25-450 to -480 in 1975 and amended them twice in response to new EPA Rules. EPA has delegated all the adopted Hazardous Emission Standards to the Department, except ones adopted in 1986 which are still being reviewed.

Problem Statement

EPA regularly adopts and amends New Source Performance Standards (40 CFR 60 of Federal Protection of Environment Rules) and emission standards for hazardous air pollutants (Part 61 of Federal Protection of Environment Rules). The Department of Environmental Quality (DEQ) has historically committed to bring its rules up to date with EPA rules on a once a year basis when the Department believes those rules are reasonable and applicable in Oregon. By generally maintaining delegation to administer these federal rules in Oregon, the Department believes it can provide a

more efficient implementation of the rules and reduce the confusion of industry having to deal with two agencies (DEQ and EPA).

Four new and four amended rules published by EPA in the last year could require new DEQ rule adoptions. These federal rules cover the following source categories:

NSPS New (N) or (A) Amended

Subpart, Section	Rule	Subject of Rule Change	Federal Register Date
D, 60.44(a)	A	Relaxes NO_x standard for Large Boilers.	11/25/86
Db, 60.40b to 60.49b	N	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units	11/25/86
TT, 60.466(c)	A	Testing made more stringent for Coil Coating	06/24/86
Appendix A, Methods 5A, 5D, 6A, 6B, 20	A	Amended Test Methods	09/12/86

NESHAPS New (N) or (A) Amended

NESHAPS Subpart, Section	Rule	Subject of Rule Change	Federal Register Date
F, 61.61 to 61.71	A	National Hazardous Emission Standard for Vinyl Chloride, six pages of revisions.	09/30/86
N, 61.160 to 61.165	N	National Hazardous Emission Standard for Inorganic Arsenic Emissions from Glass Manufacturing Plants.	08/04/86
O, 61.170 to 61.177	N	National Hazardous Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters.	08/04/86
P, 61.180 to 61.186	N	National Hazardous Emission Standard for Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.	08/04/86

Authority for the Commission to act is given in Oregon Revised Statutes (ORS) 468.020 and 468.295(3) where the Commission is authorized to establish emission standards for sources of air contaminants. A public hearing notice and "Statement of Need for Rulemaking" is Attachment 1 of this memorandum.

Alternatives and Evaluation

The Department has agreed, in the Fiscal Year 1987 State and EPA Agreement, to bring its rules up-to-date annually with EPA's NSPS and NESHAPS rule changes, where appropriate and applicable.

Alternatives are:

1. The Commission could take NO ACTION.

   A no-action consequence would be that both the Department and EPA staffs would have to review certain emission sources in Oregon, because the DEQ's rules would not have been kept up to date with EPA's rules.

2. The Commission could adopt all the past year's new and amended federal standards (in Oregon rule form).

   This would further EPA-Department cooperation to achieve single, state jurisdiction and review of certain new and modified sources. This would also fulfill DEQ's commitment to EPA that DEQ would adopt federal NSPS and NESHAPS rule changes once each year (when reasonable and applicable) by the beginning of the first quarter of the federal fiscal year.

3. The Commission could adopt only those rules applicable to sources in Oregon and to sources which might in the future locate in Oregon. This follows past practices and is acceptable to EPA. This would mean that none of the NESHAPS standards would be added: there are no vinyl chloride plants in Oregon, no plants using benzene or vinyl chloride which have equipment leaks, no primary copper smelters, no arsenic production facilities. The one glass manufacturing plant, Owens Illinois, in Northeast Portland, has ceased using arsenic, and has no intention of resuming its use.

The Department prefers Alternative 3 because it keeps the unneeded federal rules out of Oregon's rules, keeping the Oregon rules as brief as practical.

Rule Development Process

The Department has assembled a complete list of amendments to the federal standards, and the Federal Registers describing those rule changes, and has made appropriate changes in wording to fit these rules into the OAR format (see Attachment 2 for the proposed rule language).

PROPOSED RULE CHANGES AND ADDITIONS

Standards of Performance for New Stationary Sources (NSPS)

Fossil-Fuel-Fired Steam Generators, Subpart D of Title 40 Code of Federal Regulations, parts 60.44(a)(1) and (2) (40 CFR 60.44) was amended by Volume 51, Federal Register page 42796 (51FR42796) on November 25, 1986 to relax the NO_x standard to equal the newly promulgated standard in Subpart Db. This change is proposed for OAR 340-25-550(3).

Industrial-Commercial-Institutional Steam Generating Units, Subpart Db, 40CFR 60.40b to 60.49b was added by 51FR42768 on November 25, 1986. Large boilers, with capacity of more than 100 million Btu/hour, have their particulate and NO_x limits set by this standard. SO_x limits will be added later. New or modified large boilers in the state will come under this rule, proposed for addition as 340-25-553. There are about 20 boilers in Oregon of this size presently, which would be affected if they are modified. However, the larger boilers of the utility size, greater than 250 million Btu/hour, come under existing rules 340-25-550 and -610 (federal subparts D and Da).

The test requirements for Subpart TT, Metal Coil Surface Coating, were made more stringent by requiring three, rather than one, test run of 60 minutes each. This change was made by 51FR22938 on June 24, 1986 to 40 CFR 60.466(c). However, no change is necessary to the summary rule 340-25-670, and the change of effective dates in 340-25-535 will cover this change.

Quality assurance and quality control procedures were added to test Methods 5A, 5D, 6A, 6B, and 20 of Appendix A, by 51 FR 32454 on September 12, 1986. However, merely changing the effective date in 340-25-535 will incorporate these test method changes into Oregon Administrative Rules.

Summation

1. EPA adopted the first New Stationary Source Performance Standards (NSPS) in 1971 and the first National Emission Standard for Hazardous Air Pollutants in 1973.

2. To acquire delegation to administer the above federal rules in Oregon, the Commission adopted equivalent administrative rules in 1975 and subsequently received delegation.

3. The Commission has adopted many subsequent amendments to the NSPS and NESHAPS rules to bring them up to date with EPA rules.

4. Historically, the Department has committed to bring its rules up to date with EPA rules on a once a year basis for those rules which the Department believes are reasonable and applicable in Oregon.

5. The proposed rule changes (Attachment 2) would bring the State rules up to date with the current federal rules. The 3 additions and 1 change to the NESHAPS rules are not recommended for adoption because these sources are not found in Oregon, nor are they expected to locate here.

6. The sources affected by this proposed action are the following:

   a. Large Boilers.
   b. Coil coating test procedures.

Director's Recommendation

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

Fred Hansen

Attachments 1. Notice of Public Hearing with Attached Statement of Need for Rulemaking
2. Proposed Rules 340-25-505 to 340-25-553

P.B. Bosserman:a
AA5348
(503) 229-6278
February 3, 1987

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

New Federal Air Quality Rules To Be Made Into State Standards

Date Prepared: February 3, 1987
Hearing Date: May 1, 1987
Comments Due: May 4, 1987

WHO IS AFFECTED: Industry which may build new, reconstruct, or modify air pollution sources in the categories listed below.

WHAT IS PROPOSED: The Department of Environmental Quality (DEQ) is proposing to amend OAR 340-25-505 to 340-25-553 to add one and modify three standards already in force under the federal Environmental Protection Agency (EPA):

Item	40 CFR Subpart	Industry Affected
1.	D, 60.44(a)	Relax NO_x standard for large boilers.
2.	Db, 60.40b to 60.49b	Industrial-Commercial-Institutional Steam Generating Units.
3.	TT, 60.466(c)	Test procedures for coil coaters changed.
4.	Apendix A, 5 test Methods	Test Methods revised for source being tested.

WHAT ARE THE HIGHLIGHTS: The Department proposes to adopt these federal rules and to request EPA to delegate jurisdiction over those sources in Oregon to DEQ. This has been done previously with 37 other sources. This is considered a routine rulemaking action, since the sources must abide by an identical federal rule, already in force.

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from the Air Quality Division in Portland (811 S.W. Sixth Avenue) or the regional office nearest you. For further information contact Peter Bosserman at (503) 229-6278.

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

11:00 a.m.
Friday, May 1, 1987
Room 7B, 7th Floor, Executive Building
811 S.W. 6th, Portland, OR 97204

P.O. Box 1760
Portland, OR 97207

8/16/84

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Air Quality Division, 811 S.W. 6th, Portland, OR 97204, but must be received by no later than May 4, 1987.

WHAT IS THE NEXT STEP:

After public hearing, the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The adopted rules will be submitted to the U. S. Environmental Protection Agency for delegation. The Commission's deliberation should come on July 10, 1987 as part of the agenda of a regularly scheduled Commission meeting.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

AA5349

RULEMAKING STATEMENTS

for
New Federal Rules to be
Made Into State Standards

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 Oregon Administrative Rules 340-25-505 to 340-25-553. It is proposed under authority of Oregon Revised Statutes 468.020(1) and 468.295(3) where the Environmental Quality Commission is authorized to establish different rules for different sources of air pollution.

Need for the Rule

The proposed changes bring the Oregon rules up-to-date with changes and additions to the federal "Standards of Performance for New Stationary Source", 40 CFR 60. As Oregon rules are kept up-to-date with the federal rules, then the federal Environmental Protection Agency (EPA) delegates jurisdiction for their rules to the Department, allowing Oregon industry and commerce to be regulated by only one environmental agency.

Principal Documents Relied Upon

1. Title 40 Code of Federal Regulations, as amended in recent Federal Registers.

40 CFR Subpart	New (N) or (A) Amended Rule	Subject of Rule Change	Register Date
D, 60.44(a)	A	Relaxes NO_x Standard for Large Boilers	11/25/86
Db, 60.40b to 60.49b	N	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units	11/25/86
TT, 60.466(c)	A	Testing made more stringent for Coil Coating	06/24/86
Appendix A, Methods 5A, 5D, 6A, 6B, 20	A	Test Methods Revised	09/12/86

FISCAL AND ECONOMIC IMPACT STATEMENT:

These federal rules are already promulgated by EPA. Adoption by and delegation to DEQ simplifies environmental administration generally at less cost.

Small businesses will incur less cost and processing time if these rules are administered by only one agency.

LAND USE CONSISTENCY STATEMENT:

The proposed rule changes appear to affect land use and appear to be consistent with the Statewide Planning Goals.

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

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

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

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

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

AA5350

Standards of Performance for
New Stationary Sources

Statement of Purpose

340-25-505 The U.S. Environmental Protection Agency has adopted in

Title 40, Code of Federal Regulations, Part 60, Standard of Performance for certain new stationary sources. It is the intent of this rule to specify requirements and procedures necessary for the Department to implement and enforce the aforementioned Federal Regulation.

Definitions

340-25-510 (1) "Administrator" herein and in **Title 40, Code of Federal Regulations, Part 60,** means the Director of the Department or appropriate regional authority.

(2) "Federal Regulation" means **Title 40, Code of Federal Regulations, Part 60,** as promulgated prior to [May 21, 1986.] January 15, 1987.

(3) "CFR" means Code of Federal Regulations.

(4) "Regional authority" means a regional air quality control authority established under provisions of ORS 468.505.

Statement of Policy

340-25-515 It is hereby declared the policy of the Department to consider the performance standards for new stationary sources contained herein to be minimum standards; and, as technology advances, conditions warrant, and Department or regional authority rules require or permit, more stringent standards shall be applied.

Delegation

340-25-520 The Commission may, when any regional authority requests and provides evidence demonstrating its capability to carry out the provisions of these rules, authorize and confer jurisdiction upon such regional authority to perform all or any of such provisions within its boundary until such authority and jurisdiction shall be withdrawn for cause by the Commission.

Applicability

340-25-525 This rule shall be applicable to stationary sources identified in rules 340-25-550 through 340-25-715 for which construction, reconstruction, or modification has been commenced, as defined in **Title 40, Code of Federal Regulations, 40 CFR 60.**

General Provisions

340-25-530 Title 40, CFR, Part 60, Subpart A as promulgated prior to [May 21, 1986] January 15, 1987 is by this reference adopted and incorporated herein. Subpart A includes paragraphs 60.1 to 60.18 which address, among other things, definitions, performance tests, monitoring requirements, and modifications.

Performance Standards

Federal Regulations Adopted by Reference

340-25-535 Title 40, CFR, Parts 60.40 through 60.154, and 60.250 through 60.648, and 60.680 through 60.685 as established as final rules prior to [May 21, 1986] January 15, 1987, is by this reference adopted and incorporated herein, with the exception of the December 27, 1985 federal register revision to 40 CFR 60.11(b). As of [May 21, 1986] January 15, 1987, the Federal Regulations adopted by reference set the emission standards for the new stationary source categories set out in rules 340-25-550 through 340-25-715 (these are summarized for easy screening, but testing conditions, the actual standards, and other details will be found in the **Code of Federal Regulations**).

Standards of Performance for Fossil Fuel-Fired Steam Generators

340-25-550 **The pertinent federal rules are 40 CFR 60.40 to 60.46, also known as Subpart D. The following emission standards, summarizing the federal standards set forth in Subpart D, apply to each fossil fuel-fired and to each combination wood-residue fossil-fuel fired steam generating unit or more than 73 megawatts (250 million BTU/hr) heat input:**

(1) Standards for Particulate Matter. No owner or operator subject to the provision of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which:

(a) Contain particulate matter in excess of 43 nanograms per joule heat input (0.10 lb. per million BTU) derived from fossil fuel or fossil fuel and wood residue.

(B) Exhibit greater than 20 percent opacity except for one six-minute period per hour of not more than 27 percent opacity.

(2) Standards for Sulfur Dioxide. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which contain sulfur dioxide in excess of:

(a) 340 nanograms per joule heat input (0.80 lb. per million BTU) derived from liquid fossil fuel or liquid fossil fuel and wood residue.

(b) 520 nanograms per joule heat input (1.2 lb. per million BTU) derived from solid fossil fuel or solid fossil fuel and wood residue.

(c) When different fossil fuels are burned simultaneously in any combination, the applicable standard shall be determined by proration using the following formula:

$$SO_2 = \frac{y(340) + z(520)}{y + z}$$

where:

(A) y is the percentage of total heat input derived from liquid fossil fuel; and

(B) z is the percentage of total heat input derived from solid fosil fuel; and

(C) SO_2 is the prorated standard for sulfur diozxide when burning different fuels simultaneously, in nanograms per joule heat input derived from all fossil fuels and wood residue fired.

(d) Compliance shall be based on the total heat input from all fossil burned, including gaseous fuels.

(3) Standards for Nitrogen Oxides. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which contain nitrogen oxides, expressed as NO_2 in excess of:

(a) 86 nanograms per joule heat input (0.20 lb. per million BTU) derived from gaseous fossil fuel [or gaseous fossil fuel and wood residue].

(b) 129 [130] nanograms per joule heat input (0.30 lb. per million BTUI) derived from solid fossil fuel, [or] liquid fossil fuel and wood residue, or gaseous fossil fuel and wood residue.

(c) 300 nanograms per joule heat input (0.70 lb. per million BTU) derived from solid fossil fuel or solid fossil fuel and wood residue (except lignite or a solid fossil fuel containing 25 percent, by weight, or more of coal refuse).

(D) When different fossil fuels are burned simultaneously in any combination the applicable standarad shall be determined by proration using the following formula:

$$PNO_x = \frac{w(260) + x(86) + y(130) = z(300)}{w + x + y + z}$$

where:

(A) PNO_x is the prorated standard for nitrogen oxides when burning different fuels simultaneously, in nanograms per joule heat input derived from all fossil fuels and wood residue fired; and

(B) w is the percentage of total heat input derived from lignite; and

(C) x is the percentage of total heat input derived from gaseous fossil fuel; and

(D) y is the percentage of total heat input derived from liquid fossil fuel; and

(E) z is the percentage of total heat input derived from solid fossil fuel (except lignite).

(e) When fossil fuel containing at least 25 percent, by weight, of coal refuse is burned in combination with gaseous, liquid, or other solid fossil fuel or wood residue, section (3) of this rule does not apply.

(f) This rule does not apply to Electric Utility Steam Generating Units for which construction is commenced after September 18, 1978. These units must comply with more stringent rule 340-25-610.

Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

340-25-553 The pertinent federal rules are 40 CFR 60.40b to 60.49b, also known as Subpart Db. The following emission standards, summarizing the federal standards set forth in Subpart Db, apply to each steam generating unit of more than 29 MW (100 million BTU/hr) heat input capacity, which commenced construction, modification, or reconstruction after June 19, 1984:

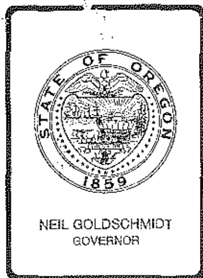
(1) Standards for Particulate Matter. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which:

(a) Contain particulate matter in excess of 22 to 86 nanograms per joule (0.05 to 0.20 lb/million BTU) heat input from firing the fuels as specified in 40 CFR 60.43b.

(b) Exhibit opacity greater than 20 percent (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

(2) Standards for Nitrogen Oxides. No owner or operator subject to the provisions of this rule shall cause to be discharged into the atmosphere from any affected facility any gases which contain nitrogen oxides in excess of 43 to 340 nanograms per joule (0.10 to 0.80 lb/million BTU) heat input, as specified in the table in 40 CFR 60.44b(a).

AS3200.B



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item G, March 13, 1987, EQC Meeting

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

Background

The Air Contaminant Discharge Permit fee revenues are used to support a portion of the permit program. As required by ORS 468.065(2), the fees are set in accordance with the cost to the Department of reviewing and investigating the application, issuing or denying the requested permit, and determining compliance or non-compliance with the permit. The Department is proposing to increase permit revenues to partially offset increasing costs occurring between 1983-1989. Fees would be increased an average of 13.8%. It is proposed to effect this increase by collecting the Application Processing Fee for all regular and minimal source permits upon permit renewal. Currently the Application Processing Fee is levied only at the initial application for a permit or upon major modification of the source. It is also proposed to increase the Application Processing Fees and the Compliance Determination Fees for the boiler classifications to reflect more closely time expended by the Department on this class of sources.

In addition, it is proposed to exempt the small sources in eleven source classes from the permit program and add two additional source classes to the permit program. The following is a list of source classes that are proposed for exemption or addition:

Source Classes Proposed for Exemption

Smoke houses with 5 or more employees. - 4 sources affected.
Coffee roasting less than 30 t/y roasted product. - no known source affected.
Sawmills less than 25,000 bd ft/shift finished product. - 30 sources affected.
Hardwood mills. - 8 sources affected.
Shake and shingle mills. - 29 sources affected.
Mill work less than 25,000 bd ft/shift input. - 32 sources affected.
Veneer manufacturing only. - 21 sources affected.

Furniture and fixtures less than 25,000 bd ft/shift input. - 3 sources affected.
Blending and compounding of lubricating oils and grease. - one source affected.
Nonferrous metals less than 100 t/y metal charged. - 4 sources affected.
Electroplating, polishing and anodizing with 5 or more employees. - 14 sources affected.

Source Classes Proposed for Addition

Sources subject to National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations excluding demolition and renovation. - 7 sources affected.

Sources of Toxic Air Pollutants. - sources emitting air contaminants that could have adverse health affects at relatively low levels as determined by the Department.

The Department considers those source classes proposed for exemption to have negligible air quality impact, and that permit activities for these sources are not cost effective. These are generally small, well-controlled sources which have maintained compliance and have not been the source of public complaint. Provisions are contained in the permit program to place any source on permit if an air quality problem is identified by the Department. The two source classes proposed for inclusion in the permit program are currently regulated, but are not included in the permit program. These sources would include operations which utilize asbestos material, machining of metals containing beryllium and sludge processing which emits mercury. The Department's intent in adding a category to include toxic air pollutants is to ensure that sources of potentially harmful compounds are properly regulated and apprised of our requirements. These sources because of their unique nature are handled on a case-by-case basis. Requiring permits for these classes of sources would allow for more effective regulation of toxic air pollutant sources.

A copy of the proposed fee schedule, Table 1, with proposed rule revisions consistent with the proposed budget is attached. The "Statement of Need for Rulemaking" is also attached.

Alternatives and Evaluation

The Air Contaminant Discharge Permit Fees are comprised of three parts: a non-refundable filing fee, presently $75, submitted with all applications; an application processing fee previously submitted only with applications for new or modified sources; and a compliance determination fee submitted either annually by holders of regular permits or once every five years by holders of minimal source permits. The latter two types of fees differ between source categories depending upon the relative time expended by the Department to draft and issue permits and to determine compliance with the permit.

The impact of the Department's proposed fee package is summarized as follows:

Proposed Exemption of Small Sources	<$42,485>
Addition of Two New Source Classes	2,275
Projected Fee Increase (Boilers)	32,670
Levy of Application Processing Fee at Permit Renewal	60,425
Projected Fees from New Permits	10,635
Total increase	$ 63,520

The fee schedule has not been revised since July 1, 1983 at which time the Compliance Determination Fees were increased an average 7.8% and the Filing Fee was increased $25.

Summation

1. Air Quality permit program costs have risen over the past four year period as a result of inflation and increased compliance assurance activity. Increased activity in this program includes determination of emissions, compliance evaluation, and determination of source impact on air quality.

2. The increased revenue proposed from fee increases represents a 13.8% increase.

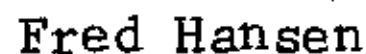
3. The Department is proposing exemption of eleven source categories from the permit requirement that have negligible air quality impact and adding two other classes which require regulation.

4. The Department has proposed a fee schedule (Table 1) with associated rule revisions which would assess the Application Processing Fees at permit renewal, and increase fees for boilers.

5. In order to consider modification of OAR 340-20-155, Table 1, OAR 340-20-165 as proposed with amendments to the State Implementation Plan, EQC authorization for a public hearing is required.

Directors 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 Fees, OAR 340-20-155, Table 1, OAR 340-20-165, and the State Implementation Plan.

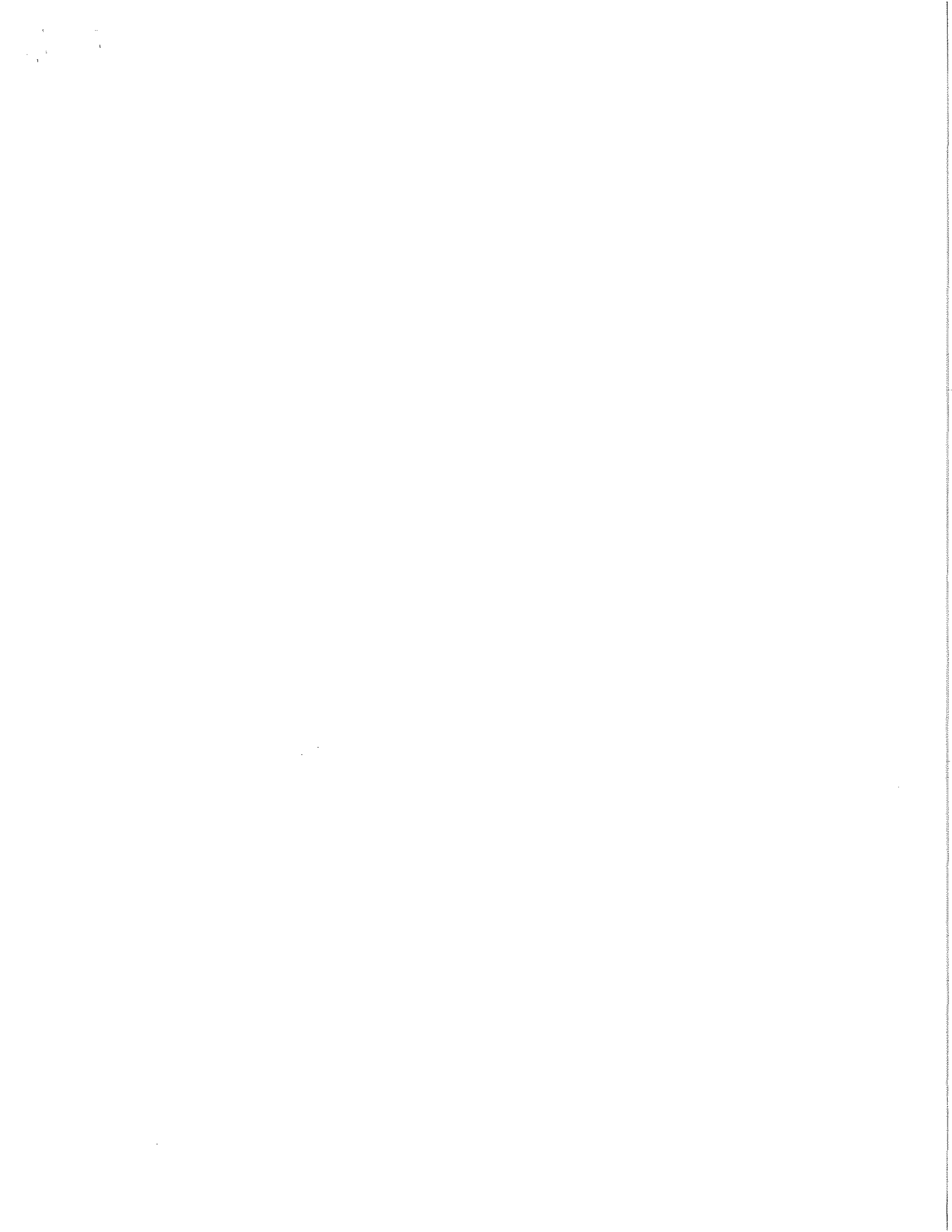


Fred Hansen

Attachments 1. Proposed Amendments to OAR 340-20-155, Table 1, and OAR 340-20-165(1).

2. Statements of Need for Rulemaking and Public Hearing Notice.

William Fuller:d
AD251
229-5749
February 18, 1987



Air Contaminant Discharge Permits

Purpose

340-20-140 The purpose of these rules is to prescribe the requirements and procedures for obtaining Air Contaminant Discharge Permits pursuant to ORS 468.310 to 468.330 and related statutes for stationary sources.

Stat. Auth.: ORS Ch.
Hist: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-86; Renumbered from 340-20-033.02

Definitions

340-20-145 As used in these rules, unless otherwise required by context:

(1) "Department" means Department of Environmental Quality.

(2) "Commission" means Environmental Quality Commission.

(3) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatever.

(4) "Permit" or "Air Contaminant Discharge Permit" means a written permit issued by the Department or Regional Authority in accordance with duly adopted procedures, which by its conditions authorizes the permittee to construct, install, modify, or operate specified facilities, conduct specified activities, or emit, discharge, or dispose of air contaminants in accordance with specified practices, limitations, or prohibitions.

(5) "Regional Authority" means Lane Regional Air Pollution Authority.

Stat. Auth.: ORS Ch.
Hist: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-20-033.04

Notice Policy

340-20-150 It shall be the policy of the Department and the Regional Authority to issue public notice as to the intent to issue an Air Contaminant Discharge Permit allowing at least thirty (30) days for written comment from the public, and from interested State and Federal agencies, prior to issuance of the permit.

Stat. Auth.: ORS Ch.
Hist: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-20-033.06

Permit Required

340-20-155 (1) No person shall construct, install, establish, develop or operate any air contaminant source which is referred to in Table 1, appended hereto and incorporated herein by reference, without first obtaining a permit from the Department or Regional Authority.

(2) No person shall modify any source covered by a permit under these rules such that the emissions are significantly increased without first applying for and obtaining a modified permit.

(3) No person shall modify any source covered by a permit under these rules such that:

(a) The process equipment is substantially changed or added to; or

(b) The emissions are significantly changed without first notifying the Department.

(4) Any source may apply to the Department or Regional Authority for a special letter permit if operating a facility with no, or insignificant, air contaminant discharges. The determination of applicability of this special permit shall be made solely by the Department or Regional Authority having jurisdiction. If issued a special permit, the application processing fee and/or annual compliance determination fee, provided by OAR 340-20-165, may be waived by the Department or Regional Authority.

(5) The Department may designate any source as a "Minimal Source" based upon the following criteria:

(a) Quantity and quality of emissions;

(b) Type of operation;

(c) Compliance with Department regulations; and

(d) Minimal impact on the air quality of the surrounding region. If a source is designated as a minimal source, the annual compliance determination fee, provided by rule 340-20-165, will be collected in conjunction with plant site compliance inspections which will occur no less frequently than every five (5) years.

Stat. Auth.: ORS Ch.
Hist: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-20-033.08; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 13-1981, f. 5-6-81, ef. 7-1-81; DEQ 11-1983, f. & ef. 5-31-83

Multiple-Source Permit

340-20-160 When a single site includes more than one air contaminant source, a single permit may be issued including all sources located at the site. For uniformity such applications shall separately identify by subsection each air contaminant source included from Table 1.

(1) When a single air contaminant source which is included in a multiple-source permit, is subject to permit modification, revocation, suspension, or denial, such action by the Department or Regional Authority shall only affect that individual source without thereby affecting any other source subject to the permit.

(2) When a multiple-source permit includes air contaminant sources subject to the jurisdiction of the Department and the Regional Authority, the Department may require that it shall be the permit issuing agency. In such cases, the Department and the Regional Authority shall otherwise maintain and exercise all other aspects of their respective jurisdictions over the permittee.

Stat. Auth.: ORS Ch.
Hist: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-20-003.10

Fees

340-20-165 (1) All persons required to obtain a permit shall be subject to a three part fee consisting of a uniform non-refundable filing fee of $75, an application processing fee, and an annual compliance determination fee which are determined by applying Table 1. The amount equal to the filing fee, application processing fee, and the annual compliance determination fee shall be submitted as a required part of any application for a new permit. The amount equal to the filing fee and the application processing fee shall be submitted with any application for modification of a permit. The amount equal to the filing fee and the annual compliance determination fee shall be submitted with any application for a renewed permit.

(2) The fee schedule contained in the listing of air contaminant sources in Table 1 shall be applied to determine the permit fees, on a Standard Industrial Classification (SIC) plant site basis.

,application processing fee,

TABLE 1
AIR CONTAMINANT SOURCES AND
ASSOCIATED FEE SCHEDULE

(340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fee for other applicable category.
"Reserved" indicates the applicable paragraph number is reserved for the previous source category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
1. Seed cleaning located in special control areas, commercial operations only (not elsewhere included)	0723	75	100	190	365	[265] 365	175
2.[Smoke houses with 5 or more employees] Reserved	[2013]	[75]	[100]	[135]	[310]	[210]	[175]
3. Flour and other grain mill products in special control areas	2041						
a) 10,000 or more t/y		75	325	375	775	[450] 775	400
b) Less than 10,000 t/y		75	250	160	485	[235] 485	325
4. Cereal preparations in special control areas	2043	75	325	270	670	[345] 670	400
5. Blended and prepared flour in special control areas	2045						
a) 10,000 or more t/y		75	325	270	670	[345] 670	400
b) Less than 10,000 t/y		75	250	135	460	[210] 460	325
6. Prepared feeds for animals and fowl in special control areas	2048						
a) 10,000 or more t/y		75	325	375	775	[450] 775	400
b) Less than 10,000 t/y		75	200	295	570	[370] 570	275

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved" indicates the applicable paragraph number is reserved for the previous source category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
7. Beet sugar manufacturing	2063	75	425	1860	2360	[1935] 2360	500
8. Rendering plants	2077						
a) 10,000 or more t/y Input		75	250	460	785	[535] 785	325
b) Less than 10,000 t/y Input		75	250	270	595	[345] 595	325
9. Coffee roasting- 30 t/y or more roasted product	2095	75	200	245	520	[320] 520	275
10. Sawmills and/or planing mills	2421						
[a)] 25,000 or more bd.ft./shift Finished Product	2426	75	200	375	650	[450] 650	275
[b) Less than 25,000 bd.ft./shift]		[75]	[75]	[270]	[420]	[345]	[150]
11. [Hardwood mills] Reserved	[2426]	[75]	[75]	[245]	[395]	[320]	[150]
12. [Shake and shingle mills] Reserved	[2429]	[75]	[75]	[295]	[445]	[370]	[150]
13. Mill work [with 10 employees or more] (Including structural wood members) 25,000 or more Bd.Ft./shift input	2431	75	150	295	520	[370] 520	225

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved" indicates the applicable paragraph number is reserved for the previous source catagory.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
14. Plywood manufacturing and/or veneer drying	2435 & 2436						
a) [Greater than] 25,000 or more sq,ft./hr, 3/8" basis		75	625	755	1455	[830] 1455	700
b) [Less than] 10,000 to 25,000 sq.ft./hr, 3/8" basis		75	450	510	1035	[585] 1035	525
c) Less than 10,000 sq.ft./hr, 3/8" basis		75	150	270	495	495	225
15. [Veneer manufacturing only (not elsewhere included)] Reserved	2435 & 2436	[75]	[100]	[270]	[445]	[345]	[175]
16. Wood preserving (Excluding waterborne)	2491	75	150	270	495	[345] 495	225
17. Particleboard manufacturing (Including strandboard and waferboard)	2492						
a) 10,000 or more sq.ft./hr., 3/4" basis		75	625	890	1590	[965] 1590	700
b) Less than 10,000 sq.ft./hr., 3/4" basis		75	300	425	800	800	375

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved" indicates the applicable paragraph number is reserved for the previous source catagory.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
18. Hardboard manufacturing (Including fiberboard)	2499						
a) 10,000 or more sq.ft./hr, 1/8" basis		75	625	730	1430	[805] 1430	700
b) Less than 10,000 sq.ft./hr, 1/8" basis		75	300	375	750	750	375
19. Battery separator mfg.	2499	75	100	540	715	[615] 715	175
20. Furniture and fixtures 25,000 or more bd.ft./ shift input	2511	75	150	295	520	520	225
[a) 100 or more employees]		[75]	[200]	[375]	[650]	[450]	[275]
[b) 10 employees or more but less than 100 employees]		[75]	[125]	[245]	[445]	[320]	[200]
21. Pulp mills, paper mills, and paperboard mills (Kraft, sulfite, & neutral sulfite only)	2611 2621 2631	75	1250	3235	4560	[3310] 4560	1325
22. Building paper and building-board mills	2661	75	200	245	520	[320] 520	275
23. Alkalies and chlorine mfg.	2812	75	350	645	1070	[720] 1070	425
24. Calcium carbide manufacturing	2819	75	375	645	1095	[720] 1095	450

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved" indicates the applicable paragraph number is reserved for the previous source category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
25. Nitric acid manufacturing	2819	75	250	325	650	[400] 650	325
26. Ammonia manufacturing	2819	75	250	375	700	[450] 700	325
27. Industrial inorganic and organic chemicals manufacturing (not elsewhere included)	2819	75	325	460	860	[535] 860	400
28. Synthetic resin manufacturing	[2819] 2821	75	250	375	700	[450] 700	325
29. Charcoal manufacturing	2861	75	350	780	1205	[855] 1205	425
30. [Herbicide] Pesticide manufacturing	2879	75	625	3235	3935	[3310] 3935	700
31. Petroleum refining	2911	75	1250	3235	4560	[3310] 4560	1325
32. Asphalt production by distillation	2951	75	250	375	700	[450] 700	325
33. Asphalt blowing plants	2951	75	250	485	810	[560] 810	325
34. Asphaltic concrete paving plants	2951						
a) Stationary		75	250	295	620	[370] 620	325
b) Portable		75	250	375	700	[450] 700	325

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved" indicates the applicable paragraph number is reserved for the previous source category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
35. Asphalt felts and coating	2952	75	250	565	890	[640] 890	325
36. [Blending, compounding, or] Re-refining of lubricating oils and greases, and re-processing of oils and solvents for fuel	2992	75	225	350	650	[425] 650	300
37. Glass container manufacturing	3221	75	250	460	785	[535] 785	325
38. Cement manufacturing	3241	75	800	2370	3245	[2445] 3245	875
39. [Redimix] Concrete manufacturing, including readymix and CTB	3273 3271 3272	75	100	160	335	[235] 335	175
40. Lime manufacturing	3274	75	375	245	695	[320] 695	450
41. Gypsum products	3275	75	200	270	545	[345] 545	275
42. Rock crusher	3295						
a) Stationary		75	225	295	595	[370] 595	300
b) Portable		75	225	375	675	[450] 675	300
43. Steel works, rolling and finishing mills, electro-metallurgical products	3312 3313	75	625	645	1345	[720] 1345	700

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved indicates the applicable paragraph number is reserved for the previous source category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
44. Incinerators	4953						
a) [1000 lbs/hr and greater capacity] 250 or greater tons/day capacity		75	3000	1615	4690	4690	3075
b) [500 lbs/hr to 1000 lbs/hr capacity] 50 to 250 tons/day capacity		75	375	245	695	[320] 695	450
c) [40 lbs/hr to 500 lbs/hr capacity pathological waste only] 2 to 50 tons/day capacity		75	125	190	390	[265] 390	200
d) Crematoriums and pathological waste incinerators, not elsewhere classified		75	125	190	390	[265] 390	200
e) PCB and/or off-site hazardous waste incinerator		75	3000	1615	4690	4690	3075
45. Gray iron and steel foundries	3321						
Malleable iron foundries	3322						
Steel investment foundries	3324						
Steel foundries (not elsewhere classified)	3325						
a) 3,500 or more t/y production		75	625	565	1265	[640] 1265	700
b) Less than 3,500 t/y production		75	150	295	520	[370] 520	225
46. Primary aluminum production	3334	75	1250	3235	4560	[3310] 4560	1325

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved" indicates the applicable paragraph number is reserved for the previous source category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
47. Primary smelting of zirconium or hafnium	3339	75	[6250] 1250	3235	[9560] 4560	[3310] 4560	[6325] 1325
48. Primary smelting and refining of ferrous and nonferrous metals (not elsewhere classified)	3339						
a) 2,000 or more t/y production		75	625	1400	2100	[1475] 2100	700
b) Less than 2,000 t/y production		75	125	540	740	[615] 740	200
49. Secondary smelting and refining of nonferrous metals, 100 or more t/yr metal charged	3341	75	300	375	750	[450] 750	375
50. Nonferrous metals foundries, 100 or more t/y metal charged	[3361] [3362] 3360	75	150	325	550	[400] 550	225
51. [Electroplating, polishing, and anodizing with 5 or more employees] Reserved	[3471]	[75]	[125]	[245]	[445]	[320]	[200]
52. Galvanizing and pipe coating—exclude all other activities	3479	75	125	245	445	[320] 445	200
53. Battery manufacturing	3691	75	150	325	550	[400] 550	225

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved indicates the applicable paragraph number is reserved for the previous source category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
54. Grain elevators--intermediate storage only, located in special control areas	4221						
a) 20,000 or more t/y grain processed		75	225	510	810	[525] 810	300
b) Less than 20,000 t/y grain processed		75	125	245	445	[320] 445	200
55. Electric power generation	4911*						
A) Wood or Coal Fired - [Greater than] 25MW or greater		75	5000	3235	8310	[3310] 8310	5075
B) Wood or Coal Fired - Less than 25 MW		75	3000	1615	4690	[1690] 4690	3075
C) Oil Fired - 25 MW or greater		75	450	780	1305	[855] 1305	525
56. Gas production and/or mfg.	4925	75	475	375	925	[450] 925	550
57. Grain elevators--terminal elevators primarily engaged in buying and/or marketing grain--in special control areas	5153						
a) 20,000 or more t/y grain processed		75	625	645	1345	[720] 1345	700
b) Less than 20,000 t/y grain processed		75	175	245	495	[320] 495	250

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved" indicates the applicable paragraph number is reserved for the previous source category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
58. Fuel Burning equipment within the boundaries of the Portland, Eugene-Springfield and Medford-Ashland Air Quality Maintenance Areas and the Salem Urban Growth Area***	4961**	(Fees will be based on the total aggregate heat input of all [boilers] fuel burning equipment at the site)					
a) Residual or distillate oil fired 250 million or more btu/hr (heat input)		75	[200] 400	[245] 490	[520] 965	[320] 965	[275] 475
b) Residual or distillate oil fired, 10 [or more but less than] to 250 million Btu/hr (heat input)		75	[125] 250	[135] 270	[335] 595	[210] 595	[200] 325
c) Reserved							
59. Fuel burning equipment within the boundaries of the Portland, Eugene-Springfield and Medford-Ashland Air Quality Maintenance Areas and the Salem Urban Growth Area***	4961**						
a) Wood or coal fired, 35 million or more Btu/hr (heat input)		75	[200] 400	[245] 490	[520] 965	[320] 965	[275] 475
b) Wood or coal fired, less than 35 million Btu/hr (heat input)		75	[50] 100	[135] 270	[260] 445	[210] 445	[125] 175
60. Fuel burning equipment outside the boundaries of the Portland, Eugene-Springfield and Medford-Ashland Air Quality Maintenance Areas and the Salem Urban Growth Area.	4961**		(Fees will be based on the total aggregate heat input of all [boilers] fuel burning equipment at the site.)				

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved" indicates the applicable paragraph number is reserved for the previous source category.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
All [wood, coal and] oil fired [greater than 30 x 10^6] 30 million or more Btu/hr (heat input), and all wood and coal fired 10 million or more Btu/hr (heat input)		75	[125] 250	[135] 270	[335] 595	[210] 595	[200] 325
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, or [NO_x or hydrocarbons] Volatile Organic Compounds (VOC), if the source were to operate uncontrolled.							
a) Low cost		75	****	150	****	[225] ****	****
b) Medium cost		75	****	350	****	[425] ****	****
c) High cost		75	****	2000	****	[2075] ****	****
62. New sources not listed herein which would emit significant malodorous emissions, as determined by Departmental or Regional Authority review of sources which are known to have similar air contaminant emissions.							
a) Low cost		75	****	150	****	[225] ****	****
b) Medium cost		75	****	350	****	[425] ****	****
c) High cost		75	****	2000	****	[2075] ****	****

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved" indicates the applicable paragraph number is reserved for the previous source catelog.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
63. Existing sources not listed herein for which an air quality problem is identified by the Department or Regional Authority.							
a) Low cost		75	****	150	****	[225] ****	****
b) Medium cost		75	****	350	****	[425] ****	****
c) High cost		75	****	2000	****	[2075] ****	****
64. Bulk Gasoline Plants regulated by OAR 340-22-120	5100 *****	75	55	160	290	[235] 290	130
65. Bulk Gasoline Terminals	5171 *****	75	1000	540	1615	[615] 1615	1075
66. Liquid Storage Tanks, 39,000 gallons or more capacity, regulated by OAR 340-22-160 (Not elsewhere included)	4200 *****	75	50/tank	110/tank			
67. Can Coating	3411*****						
a) 50,000 or more units/mo.		75	1500	970	2545	[1045] 2545	1575
b) Less than 50,000 units/mo.		75	100	215	390	[290] 390	175
68. Paper Coating	2641 or 3861*****	75	1500	970	2545	[1045] 2545	1575
69. Coating Flat Wood regulated by OAR 340-22-200	2400*****	75	500	325	900	[400] 900	575

AA5941

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved" indicates the applicable paragraph number is reserved for the previous source class.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
70. Surface Coating, Manufacturing	2500, 3300, 3400, 3500, 3600, 3700, 3800, 3900*****						
a) 10-40 tons VOC/yr		75	25	90	190	[165] 190	100
b) 40-100 tons VOC/yr		75	100	215	390	[290] 390	175
c) over 100 tons VOC/yr		75	500	430	1005	[505] 1005	575
71. Flexographic or Rotograveure Printing over 60 tons VOC/yr per plant	2751, 2754*****	75	50/press	160/press			
72. [New sources of VOC not listed herein which have the capacity or are allowed to emit 10 or more tons per year VOC] Reserved	[*****]						
[a) Low cost]		[75]	[****]	[150]	[****]	[225]	[****]
[b) Medium cost]		[75]	[****]	[350]	[****]	[425]	[****]
[c) High cost]		[75]	[****]	[2000]	[****]	[2075]	[****]
73. Sources subject to NESHAPS rules (except demoliton and renovation)		75	100	150	325	325	175

TABLE 1 Continued (340-20-155)

NOTE: Persons who operate [boilers] fuel burning equipment shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable category.
"Reserved"indicates the paragraph number is reserved for the previous source class.

Air Contaminant Source	Standard Industrial Classification Number	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee	Fees to be Submitted with new Application	Fees to be Submitted with Renewal Application	Fees to be Submitted with Application to Modify Permit
74. Sources of toxic air pollutants (not elsewhere classified)		75	250	300	625	625	325

*Excluding hydro-electric and nuclear generating projects, and limited to utilities.
**Including fuel burning equipment generating steam for process or for sale but excluding power generation (SIC 4911).
***Maps of these areas are attached. Legal descriptions are on file in the Department.
****Sources required to obtain a permit under items 61, 62, and 63 [72] will be subject to the following fee schedule to be applied by the Department based upon the anticipated cost of processing.

Estimated Permit Cost	Application Processing Fee
Low cost	$100.00 - $250.00
Medium cost	$250.00 - $1500.00
High cost	$1500.00 - $3000.00

As nearly as possible, applicable fees shall be consistent with sources of similar complexity as listed in Table 1.

***** Permit for sources in categories 64 through [72] 71 are required only if the source is located in the Portland AQMA, Medford-Ashland AQMA or Salem SATS.

AA5941

RULEMAKING STATEMENTS

for
Proposed Changes in
Air Contaminent Discharge Permit Fees
and Other Requirements

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 340-20-155, Table 1, and OAR 340-20-165. It is proposed under authority of ORS Chapter 468, including Sections 065, 310.

Need for the Rule

Additional funds are needed to cover costs of administering the Air Contaminant Discharge Permit Program included in the Department's 1987-89 budget and to revise the source classes requiring permits.

Principal Documents Relied Upon

1. OAR 340-20-155, Table 1, and 340-20-165

2. Proposed DEQ budget for the 1987-89 biennium.

FISCAL AND ECONOMIC IMPACT STATEMENT:

The proposal would be very beneficial to small businesses and industries in those categories that would become exempt from Air Contaminant Discharge Permits. The effect on all other source classes would be an increase in permit fees.

LAND USE CONSISTENCY STATEMENT:

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

AD250

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

Director's Statement

The Department is proposing an increase in Air Contaminant Discharge Permit Fees to meet the statutory requirement that permit fees cover a substantial part of the cost of reviewing and issuing permits and assuring compliance with permit conditions. The proposed increases are consistent with the Governor's proposed budget for the 1987-89 biennium.

The Department is proposing to apply the application processing Fee to permit renewals and to increase the fees for the boiler classifications. These fee increases would bring the fees for permit renewals and for boilers more in line with Department costs.

The Department is also proposing changes to the Air Quality permit program by exempting, from the Air Quality Permit Program, some industrial sources that have little impact on Air Quality and adding two other source classes to the permit program.

Significant Issues

Air Contaminant Discharge Permit Fees would be increased

AD253

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Preposed Increases in Air Contaminant Discharge Permit Fees

NOTICE OF PUBLIC HEARING

Date Prepared: February 27, 1987
Hearing Date: May 1, 1987
Comments Due: May 4, 1987

WHO IS AFFECTED: Industrial and Commercial facilities in Oregon who are required to obtain Air Contaminant Discharge Permits or emit Hazardous or Toxic Air Pollutants.

WHAT IS PROPOSED: The Department of Environmental Quality is proposing to amend OAR 340-20-155, Table 1 and 340-20-165 to increase permit fees for boilers, collect Application Processing Fees for all permits at permit renewal and to delete small sources in eleven catagories that have negligible air quality impact and add two additional categories to the permit program. A hearing will be held in the 4th floor conference room at 811 S.W. Sixth Avenue, Portland, Oregon on May 1, 1987 at 1:00 p.m.

WHAT ARE THE HIGHLIGHTS: Fees will be increased an average of 13.8%. This increase would be effected by levying Application Processing Fees at permit renewal and increasing both Application Processing Fees and Compliance Determination Fees for boilers. Small source in eleven categories that have maintained compliance and that have little effect on air quality would become exempt from the permit requirements. Two additional categories would be added to the permit program. The first would include operations which utilize asbestos material, machining of metals containing beryllium and sludge processing which emits mercury. The other category would include toxic air pollutants which are potentially harmful to health.

SPECIAL CONDITIONS:

HOW TO COMMENT: Copies of the complete proposed rule package may be obtained from the Air Quality Division in Portland (522 S.W. Fifth Avenue) or the regional office nearest you. For further information contact Mary W. Heath at 229-5509.

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

P.O. Box 1760
Portland, OR 97207

8/16/84

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

1:00 p.m.
Friday, May 1, 1987
Executive Building, 4th Floor Conference Room
811 S.W. Sixth Avenue, Portland, OR 97204

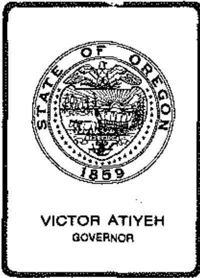
Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Air Quality Division, 811 S.W. Sixth Avenue, Portland, OR 97204, but must be received by no later than 5:00 p.m. May 4, 1987.

WHAT IS THE NEXT STEP:

After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The adopted rules will be submitted to the U. S. Environmental Protection Agency as part of the State Clean Air Act Implementation Plan. The Commission's deliberation should come May 29, 1987 as part of the agenda of a regularly scheduled Commission meeting.

A Statement of Need, Fiscal and Economic Impact Statement, and Land Use Consistency Statement are attached to this notice.

AD251.A



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item H , March 13, 1987, EQC Meeting

Request For Authorization To Hold a Public Hearing On The Construction Grants Management System And Priority List For FY88.

Background

The federal Clean Water Act requires each state to establish criteria for development and management of a sewerage works construction grant project priority list. By administrative rule, the Environmental Quality Commission has established the required priority criteria and management system (OAR Chapter 340, Division 53).

The priority list for FY 88 (October 1, 1987 through September 30, 1988) must be approved by EPA prior to the start of the federal fiscal year on October 1, 1987. To meet this schedule, comply with applicable federal rules, and be consistent with the current agreement between DEQ and EPA, the following must be accomplished:

March 17, 1987 -- Issue Notice of public hearing on priority list. (Federal rules require notice 45 days prior to the hearing.)

April 10, 1986 -- Distribute draft priority list. (Federal rules require distribution of materials 30 days before the hearing.)

May 13, 1987 -- Hold public hearing.

May 15, 1987 -- Close hearing record.

July 10, 1987 -- EQC adoption of priority list. Submit adopted list to EPA for review and approval prior to October 1, 1987.

The purpose of this agenda item is to request authorization for hearing on the FY88 priority list. It is also proposed to simultaneously consider any amendments to the administrative rules that may be necessary to comply with new federal grant program requirements.

Discussion of Current Priority List/Management System Concerns and Issues

Following are several concerns and issues that should be considered during the priority list adoption process.

A. Water Quality Act of 1987

After a long struggle, the Federal Water Pollution Control Act as amended (commonly referred to as the Clean Water Act) was re-authorized. The Act, now known as the Water Quality Act of 1987, was initially passed by Congress in October 1986, and vetoed by President Reagan in November 1986. Identical legislation was re-introduced in Congress in January 1987, again passed and vetoed, and finally adopted by Congressional override of the veto on February 5, 1987.

Passage of the new Water Quality Act removes uncertainties regarding funding. However, the Act contains provisions which will have a significant impact on financing the construction of wastewater treatment facilities in Oregon.

Nationally, $18 billion is authorized for financing of facilities for federal fiscal years 1986-1994. Federal financing is then terminated. The new legislation contains provisions for federal capitalization grants to states for establishing state revolving fund programs. Federal funding for construction grants will only be allowed through 1990. Federal funds provided during fiscal years 1991-1994 must be for capitalization grants to state revolving funds. In effect, construction grants can be made available through 1990 for financing needed wastewater treatment facilities in Oregon; after 1990 loans will be the only financing mechanism available.

B. Availability of funds

For the years 1981-85, Oregon received $27.6 million each year from a national appropriation of $2.4 billion per year. In FY86 the allotment to Oregon was reduced to $20.7 million. The reduced amount, allotted by Congressional Continuing Resolutions, was a result of delays in passage of new legislation.

From FY81-86 the allotment formula used for determining Oregon's share of national appropriations was 1.1515 percent. The allotment formula contained in the new Act is 1.1425 percent. The allotment formula is based on national sewerage needs surveys and demographics.

At this time, Oregon has approximately $20.6 million available for grants in this present fiscal year (FY87). This includes carryover FY86 funds, reallocated funds from prior years, and current FY87 allotment of $11.2 million. Due to the recent reauthorization, Oregon may receive additional FY87 funds amounting to approximately $13.3

million. Overall, Oregon could expect about $34.1 million in federal construction grants funds for commitment to projects in FY87, if the total funds are allotted.

Funding for future years will depend on annual appropriations and the allotment formula. If the entire authorized $18 billion is actually appropriated and if the current allotment formula (1.1425 percent) is sustained, Oregon can expect to receive approximately $150.2 million in FY88-94 for construction grants and for capitalization grants to a state revolving fund.

C. State Revolving Fund (SRF)

As previously noted, the new Water Quality Act allows for capitalization grants to states for the purpose of establishing revolving fund programs. Some of the more important requirements of the Act are as follows:

1. Oregon must enter into an agreement with EPA to ensure that it is capable of administering the SRF.

2. The SRF must be administered by a state agency or department having the process and limitations necessary for fund operation.

3. The SRF may be used solely for providing financial assistance to public agencies for construction of publicly owned treatment works; for implementation of a management program for non-point sources of pollution; and for development and implementation of a management plan for the national estuary program.

4. Of the annual appropriations to Oregon, up to 50 percent in FY87, 75 percent in FY88, and 100 percent in FY89-90 may be used to capitalize the SRF (however, a minimum of 50 percent of the FY89-90 allotment must be used to capitalize the SRF). A full 100 percent of appropriations in FY91-94 can only be used to capitalize the SRF.

5. Oregon will be required to provide at least a 20 percent match to any federal amounts deposited in the SRF. Sources for this match must come from non-federal revenues.

6. All loan repayments (principal and interest) must be deposited in the SRF and the fund balance shall be available in perpetuity for providing assistance to programs noted in item 3 above.

7. Loans made from the SRF can be set at or below market interest rates (including 0 percent) for any term to a maximum term of 20 years.

To enable Oregon to take advantage of the federal funds that will be made available to establish and administer a state revolving fund, proposed legislation (Senate Bill 117) has been prepared to:

1. Establish a revolving fund in the state treasury which is continuously appropriated for the established purpose.

2. Authorize the Environmental Quality Commission to adopt rules for administration of the fund consistent with federal requirements, including policies for loan terms and interest rates.

3. Authorize the Department to administer the fund.

4. Establish financial assistance uses including construction of treatment works.

5. Establish public agency requirements for securing loans.

6. Seek funding to provide for the required 20 percent state match necessitated by the Water Quality Act for capitalization of the fund.

It should be noted that the Commission, on June 13, 1986, modified OAR 340-53-025 to allow the Director to set aside up to 20 percent of the FY87 grant allotment to help capitalize a state revolving fund. The Department is recommending that additional changes be made in the rules to allow reservation of grant funds for fiscal years 1987-94 in accordance with percentage allocations described in the Water Quality Act of 1987. The percentage allocations would be as follows: FY87 -- up to 50 percent; FY88 -- up to 75 percent; FY89-90 -- not less than 50 percent and up to 100 percent; FY91-94 -- not less than 100 percent.

The Department is not recommending further rule changes pertaining to the SRF at this time. If the 1987 Legislature passes enabling legislation to establish and administer a state revolving fund, the Department will request the authorization to prepare rules and conduct public hearings on rules necessary for administration of the state revolving fund.

D. Nonpoint Source Reserve

The new Water Quality Act encourages the development and implementation of nonpoint source pollution control programs. The Act allows reservation of up to one percent of annually allotted funds to the construction grant program for this purpose. The Department believes that nonpoint source pollution is a serious threat to water quality in Oregon. Water quality assessment reports indicate approximately 60 percent of identified pollution to surface streams is attributable to

nonpoint source pollution. The Department is recommending additions to OAR 340-53-025 to establish a nonpoint source planning reserve utilizing one percent of annually allotted funds.

E. National Municipal Policy

Federal law requires all municipalities to comply with federal secondary treatment requirements by July 1, 1988 -- with or without federal grant assistance. This requirement affects a number of projects in Oregon. Although all currently have secondary type facilities, they are unable to meet EPA's current performance definitions. Efforts are being made to achieve compliance by improved operation and maintenance where possible. However, some projects may require construction of facilities to replace older, worn out equipment and achieve compliance. The new federal law emphasizes that use of funds received for a capitalization grant must first be used to assist municipalities to meet the 1988 federal secondary treatment requirements. The EPA has not yet adopted regulations to implement the new Act. After EPA regulation adoption, the Department may propose rule modifications pertaining to priority list development and management as needed to comply with the national municipal policy.

F. Discretionary Authority

OAR 340-53-027 allows the Department to use up to 20 percent of the annual allotment for replacement or rehabilitation of major sewers and elimination of combined sewer overflows but restricts this authority to projects for which planning was substantially complete by December 29, 1981. The Department believes this date restriction should be eliminated for some project needs. The Department is recommending an amendment to OAR 340-53-027 to extend grant eligibility to communities with demonstrated need for replacement or rehabilitation of major sewers or for elimination of combined sewer overflows, and who are under Commission order as of December 31, 1986 to achieve compliance with the national municipal policy. It is further proposed that the rule amendment apply to projects on the FY87 and subsequent years priority lists.

G. Priority List

As in past years, a draft priority list is not attached to this report. Data for compiling a draft priority list is still being assembled. The draft list will be available and distributed April 10, 1987 -- 33 days before the hearing. The draft list will reflect current project needs and priority assessment, submitted project schedules, and best estimates of eligible project costs.

It should be noted that a project appearing on the priority list is not assured of receiving a grant. The facility planning process and predesign process that precedes grant award is expected to provide documentation for project need, extent of grant eligibility, and

eligible costs. Thus, the information shown on the priority list for a project may change during the year.

Existing rules allow such changes to be made. If the changes do not significantly affect other projects, the changes are made administratively. If project priorities are significantly rearranged, additional public participation and the review and approval of the Commission may be warranted.

H. Public Hearing

A public hearing is scheduled for May 13, 1987 at 10:00 a.m. at the DEQ Offices, 4th Floor Conference Room, 811 S.W. Sixth Avenue, Portland, Oregon. Informational materials, including a draft priority list, will be distributed April 10, 1987.

The purpose will be to receive testimony on the draft priority list, and the proposed rule amendment and rule addition to permit allotted funds to be reserved for capitalization of a revolving fund. Public comment on other grant program related issues will also be received.

Summation

1. The Commission must compile and adopt the state priority list for allocating federal construction grant funds for FY88.

2. The Water Quality Act of 1987 was passed which removes uncertainties regarding federal funding, changes Oregon's allotment formula, and enables Oregon to establish a state revolving fund.

3. Approximately $34.1 million in construction grant funds will be available for commitment to projects in FY87.

4. Legislation has been introduced to establish a state revolving fund and allow Oregon to receive federal capitalization grants.

5. An administrative rule modification is proposed to allow reservation of capitalization grant funds for fiscal years 1987-94.

6. An administrative rule addition is proposed to allow reservation of funds for nonpoint source planning in fiscal years 1987-94.

7. An administrative rule modification is proposed to extend eligibility for major sewer replacement and rehabilitation and for elimination of combined sewer overflows to communities under Commission order as of December 31, 1986 to achieve compliance with the national municipal policy.

8. No change in state priority rating criteria is proposed. Changes may be proposed at a future date to assist communities in complying with federal requirements on secondary treatment.

9. A hearing on a proposed priority list and the proposed rule modification has been tentatively scheduled for May 13, 1987.

10. The draft FY87 priority list is scheduled for public distribution April 10, 1987.

Director's Recommendation

Based on the Summation, the director recommends that the Commission authorize a public hearing to solicit public comment on the FY88 priority list, a proposed rule amendment regarding 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.

Fred Hansen

Attachments:
- A. Proposed Administrative Rule
- B. Notice of Public Hearing
- C. Statement of Need for Rulemaking

T.J. Lucas:h
WH1663
229-5415
February 17, 1987

ATTACHMENT A

PROPOSED ADMINISTRATIVE RULE

Note: Bracketed lined through [---] material is deleted.
Underlined ____ material is new.

340-53-025 From the total funds allocated to the state the following reserves will be established for each funding year:

(1) Reserve for grant increases of five (5) percent.

(2) Reserve for Step 1 and Step 2 grant advances of up to ten (10) percent. This reserve shall not exceed the amount estimated to provide advances for eligible small communities projected to apply for a Step 3 or Step 2 plus 3 grant in the current funding year and one funding year thereafter.

(3) Reserve for alternative components of projects for small communities utilizing alternative systems of four (4) percent.

(4) Reserve for additional funding of projects involving innovative or alternative technology of four (4) percent.

(5) Reserve for water quality management planning of not more than one percent of the state's allotment nor less than $100,000.

(6) Reserve for state management assistance of up to four percent of the total funds authorized for the state's allotment.

(7) Reserve for capitalization of state revolving fund [~~of up to twenty (20) percent~~] in accordance with the following:

(a) FY87 — up to fifty (50) percent.
(b) FY88 — up to seventy-five (75) percent.
(c) FY89-90 — not less than fifty (50) percent and up to one hundred (100) percent.
(d) FY91-94 — one hundred (100) percent.

(8) Reserve for nonpoint source management planning of not more than 1 percent of the state's allotment nor less than $100,000.

(9) [~~8~~] The balance of the state's allocation will be the general allotment.

(10) [9] The Director may at his discretion utilize funds recovered from prior year allotments for the purpose of:

(a) Grant increases; or

(b) Conventional components of small community projects utilizing alternative systems; or

(c) The general allotment.

340-53-027 The Director may at the Director's discretion utilize up to twenty (20) percent of the annual allotment for replacement or major rehabilitation of existing sewer systems or elimination of combined sewer overflows provided:

(1) The project is on the fundable portion of the state's current year priority list; and

(2) The project meets the enforceable requirements of the Clean Water Act; and

(3) Planning for the proposed project was complete or substantially complete on December 29, 1981[.]; or the project is necessary for a community that is under a Commission order as of December 31, 1986 to achieve compliance with the requirements of the national municipal policy.

TJL:h
WH1664

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

FY87 CONSTRUCTION GRANTS PRIORITY SYSTEM AND PRIORITY LIST
NOTICE OF PUBLIC HEARING

Notice Issued On: March 17, 1987
Hearing Date: May 13, 1987, 10:00 a.m.
Comment Period Closes: May 15, 1986, 5:00 p.m.

WHO IS AFFECTED: Cities, counties, and special districts seeking U.S. Environmental Protection Agency grants for sewerage projects are directly affected.

WHAT IS PROPOSED: The adoption of the FY88 Priority List for Sewerage Works Construction Grants is proposed by the Environmental Quality Commission. No change in the priority criteria used to establish priority ratings is proposed; one modification to rules governing capitalization of a state revolving fund is proposed; one rule modification to broaden eligibility for major sewer replacement and rehabilitation, and for elimination of combined sewer overflows is proposed; one rule addition to allow reservation of funds for nonpoint source planning is proposed.

WHAT ARE THE HIGHLIGHTS: The Water Quality Act of 1987 authorizes $18 billion for construction grants and state revolving fund provisions. For FY88 a national appropriation of $2.4 billion is expected with an allotment to Oregon of $27.4 million. Legislation is being proposed to allow Oregon to implement a state revolving fund program. If legislation is passed and proposed rules adopted, up to 75 percent of the FY88 allotment to Oregon could be used to capitalize the fund.

HOW TO COMMENT: Public Hearing -- Wednesday, May 13, 1987 - 10:00 a.m.
DEQ Offices, Fourth Floor Conference Room
811 S.W. Sixth Avenue
Portland, Oregon

The proposed Priority List will be mailed to all cities, counties, and sanitary or sewer districts, and interested persons about April 10, 1987. Written comments should be sent to DEQ Construction Grants Section, 811 S.W. Sixth Avenue, Portland, Oregon, 97204. The comment period will close at 5:00 p.m., May 15, 1987.

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

11/1/86

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

OVER

FISCAL AND ECONOMIC IMPACT: The Priority List and the management rules set forth a framework for distribution of a limited amount of federal funds to assist in financing sewerage system improvements for selected, high priority communities.

LAND USE CONSISTENCY: These rules do not directly affect development of local land use programs. Relative project priorities are established on the basis of existing needs for improvements to water quality. After priorities for funding are determined, site specific facilities plans which demonstrate consistency with local comprehensive plans and appropriate statewide goals are developed by applicants.

WH1665

ATTACHMENT C

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended actions to consider revisions to OAR Chapter 340, Division 53 rules.

(1) Legal Authority

ORS 468.020 authorizes the Environmental Quality Commission to adopt rules and standards in accordance with ORS Chapter 183.

(2) Need for the Rule

Rule modifications are necessary to allow the Department to respond to changes in federal law affecting use of Federal Construction Grant Funds and to broaden project eligibility. The new rule is necessary to allow for essential planning studies to control nonpoint sources of pollution.

(3) Principal documents Relied Upon in this Rulemaking

(a) Public Law 92-500, as amended.
(b) OAR 340 Division 53

(4) Fiscal and Economic Impact of Rulemaking

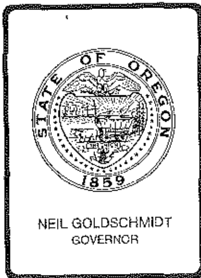
One fiscal impact of this rulemaking is upon municipalities and special districts seeking financial assistance for sewerage projects. The rules affect the distribution of these funds. The proposed rule change pertaining to capitalizing a state revolving fund could have the effect of reducing grant funds available. However, more projects could benefit in the long run from low interest loans being available after federal grant funding is terminated. The proposed rule addition will allow for planning studies necessary to control nonpoint sources of pollution. The proposed rule amendment concerning use of discretionary authority will broaden project eligibility.

There is no anticipated direct impact on small businesses. However, small businesses could indirectly benefit in the future from lower sewer user costs as a result of lower cost financing of construction.

(5) Land Use Consistency

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

WH1666



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item I, March 13, 1987, EQC Meeting

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

Background

In 1975, the Oregon legislature authorized the Environmental Quality Commission to adopt a water quality program fee schedule in order to finance a portion of the water quality source control program. The legislature directed that the fees be based upon anticipated costs of investigating the application, issuing or denying the permit, and an inspection program to determine compliance or noncompliance with the permit (ORS 468.065).

In keeping with this directive, fee rules, and a three-part fee schedule were adopted by the Commission April 20, 1976. The schedule consisted of: (a) a fixed filing fee, (b) an application processing fee varying in amount with the size and complexity of the permitted facility, and (c) an annual compliance determination fee varying in amount with the size and complexity of the permitted facility.

In the 1975-77 biennium appropriation bill (Chapter 445, Oregon Laws 1975), the Department was to raise about $125,000 in user fees as partial support of the water quality source control program. Subsequently, the Department has been directed to periodically review fee revenues and adjust the fee schedule in order to maintain approximately the same proportion of fee support to the source control budget.

In keeping with this approach, fees were increased in 1979. This was done by increasing the permit processing fees to more closely reflect the cost of processing applications.

The fee schedule was also adjusted in 1981. The primary purpose of this adjustment was to replace lost revenue due to the issuance of several general permits covering over 30 percent of the minor sources. This allowed staff time to be diverted from the paperwork associated with issuing permits on minor sources to compliance assurance activities with the major sources. The annual compliance determination fees were increased during this fee schedule adjustment.

The following biennium (1983-85), the fees were raised again in order to address inflation and other increased costs of source control work. Between 1979 and 1985, the average percentage of the source control budget covered by fee revenues was about 17.5 percent.

There have been no Water Quality permit fee increases since 1983. Permit fee revenues have not maintained the same proportion of program support. The increase in fee revenues has not kept pace with inflation and other increased costs associated with source control. Again this biennium, the costs of source control have been going up, primarily due to the following additional requirements:

1. Groundwater impact evaluations for proposed and existing sources. The activities are being conducted pursuant to OAR Chapter 340. Division 41, which details the adopted groundwater protection policy;

2. Evaluation of sludge management practices pursuant to OAR Chapter 340. Division 50;

3. Industrial waste pretreatment program evaluations audits, inspections, and technical assistance for municipalities which treat industrial waste;

4. Biomonitoring and toxics impact evaluations for new and existing sources.

During the 1985-87 biennium, the projected fee revenue is only about 14 percent of the legislatively approved source control budget, as compared to an average of about 17 percent between 1979 and 1985. An increase in permit fees is necessary in order to increase the proportion of the water quality source control budget covered by fee revenues and to meet the fee revenue projections in the Governor's proposed budget for FY87-89. To increase the proportion of the source control budget covered by user fees by 3 percent would require an increase in fees of about $64,000.

Alternatives and Evaluation

Since the permit fee schedule is a three-part fee system, there are several alternatives to raise the additional revenue required. There could be an increase in filing fee, an increase in permit processing fees, an increase in the annual compliance determination fees, or a combination of the three.

The current filing fee is $50. If the filing fee is raised to $75, it will generate about $10,000 per year in additional revenue.

The permit processing fees currently vary between $75 for a simple permit modification to $1,000 for a new major industry application. Industrial waste permit fees, in general, have been substantially higher than sewage (domestic) source fees. The fees for domestic waste source permits should

be higher. Over the last 1-1/2 years, 31 new domestic waste permit applications have been received. Few of these have been issued within the desired time-frames, because of limited staff resources to respond promptly to the applications. Additionally, issues requiring more thorough evaluation and consideration are being addressed. These include evaluation of non-discharge alternatives, the potential impact on the receiving waters, and sludge management. Many of the new permitted sources intend to utilize subsurface sewage disposal of treated effluent. Currently, these sources are required to pay site evaluation fees in accordance with on-site Sewage Disposal Rules to determine the feasibility of subsurface sewage disposal prior to applying for a WPCF permit. It is proposed to eliminate the application of site evaluation fees to these sources proposing to treat and dispose of greater than 5,000 gallons/day to subsurface systems and have them pay a higher permit fee instead. This would eliminate confusion over what fees are applicable, as well as reflect the level of staff effort necessary to evaluate permit applications irrespective of the proposed discharge/disposal alternative. All proposed new sources require at least one site visit prior to permit issuance.

The permit modification fees could be increased to reflect the corresponding increase in necessary evaluation to determine whether the proposed modification is appropriate and consistent with adopted policies and rules. While a proposed modification may actually result in a decrease in pollutant loadings, considerable time may be involved in evaluating the proposal, reviewing engineering plans and specifications and drafting the permit modification.

The permit renewal fees could also be increased to correspond to the increase in staff time and effort to evaluate source performance prior to renewal of a permit New Federal and State initiatives regarding control and evaluation of toxics and monitoring requirements, groundwater impacts, sludge management, and industrial waste pretreatment are issues which routinely are addressed as part of permit renewal activities.

Annual compliance determination fees are collected to partially cover the cost of assuring source compliance and conducting inspections. An increase in the permit renewal fees would produce a predictable increase in revenue. The increase in revenue is viewed as needed to partially cover expenses involved in assuring source compliance with policies and environmental issues outlined above. One method of increasing these fees would be a percentage increase across the board. Another method would be to add a like amount to each fee. A third method would be to evaluate each category of source and make those increases which most accurately represent staff involvement with that category of source.

Recommendations

No increase in filing fee is recommended at this time. The current filing fee of $50 adequately covers the costs associated with logging in a permit application.

The following table shows the proposed increases in permit processing fees. Part of these changes are to make the fee schedule more equitable between municipal and industrial sources. Part of the changes are to increase fees in those areas where an inordinate amount of staff time is spent.

New Applications	Existing	Proposed
Major Industries	$1,000	$2,000
Minor Industries	500	600
Major Domestic	500	1,500
Minor Domestic	250	600
Agricultural	250	300

Permit Renewals with Increase in Effluent Limits	Existing	Proposed
Major Industries	$ 500	$1,000
Minor Industries	250	300
Major Domestic	250	750
Minor Domestic	125	300
Agricultural	125	150

Permit Renewals without Increase in Effluent Limits	Existing	Proposed
Major Industries	$ 250	$ 500
Minor Industries	150	200
Major Domestic	150	500
Minor Domestic	100	200
Agricultural	100	100

Permit Modifications with Increase in Effluent Limits	Existing	Proposed
Major Industries	$ 500	$1,000
Minor Industries	250	300
Major Domestic	250	750
Minor Domestic	125	300
Agricultural	125	150

No change is proposed for permit modifications when no increase in effluent limits in proposed.

The most significant changes in the fee schedule are proposed changes in the annual compliance determination fees. Rather than a straight percentage increase across the board, each category has been evaluated and increased as indicated. Additional housekeeping changes are proposed in the schedule to add categories of sources not now adequately addressed.

The revised fee schedule and the number of sources affected by the changes are tabulated in the following schedule:

Code*	Old Fee	New Fee	Increase	Affected	Increased
DOM-A	$1,050	$1,150	$ 100	8	$ 800
DOM-B	825	900	75	8	600
DOM-C	425	500	75	41	3,075
DOM-D	225	300	75	236	17,700
DOM-E	100	150	50	38	1,900
DOM-F	60	150	90	10	900
DOM-G	(New Category)	100	40	21	840
			Domestic Subtotal		**$25,815**
AG-A	100	100	--	8	--
IW-A	1,325	1,400	75	14	1,050
IW-B	1,325	1,400	75	7	525
IW-D1	1,325	1,400	75	1	75
IW-D2	650	700	50	1	50
IW-E	1,325	1,400	75	2	150
IW-F	1,325	1,400	75	1	75
IW-G	650	700	50	3	150
IW-H	1,325	1,400	75	4	300
IW-J	650	700	50	3	150
IW-K	1,325	1,400	75	1	75
IW-L	1,325	1,400	75	1	75
IW-M1	150	175	25	8	200
IW-M2	100	125	25	32	800
IW-M3	(New Category)	700	550	2	1,100
IW-N	225	300	75	135	10,125
IW-O	125	200	75	66	4,950
IW-Q	100	125	25	18	450
			Industrial Subtotal		**$20,300**
				TOTAL	**$46,115**

Category DOM-F is proposed to be redefined and a new category, DOM-G, has been defined (see Table 2, attached). Those facilities previously categorized under DOM-F are now divided between DOM-F and DOM-G. A new category, IW-M3, has been defined (see Table 2, attached). Some facilities previously under IW-M2 will be re-categorized under IW-M3.

* See attachment (Table 2) for definition.

The Department will take the revised fee schedule to the permittees and other segments of the public for review. The purposes of this proposal before the Commission at this time is to request authorization to hold a public hearing.

<u>Summation</u>

1. The 1975 Oregon legislature authorized collection of permit fees to partially support water quality source control activities. Through the FY75-77 budget appropriation bill, they required the Departmemt to raise about $125,000 per year in user fees to offset general fund appropriations.

2. The Department was subsequently directed to periodically adjust the fees in order to maintain about the same proportion of the source control budget covered by user fee revenues.

3. A three-part water permit fee schedule was first adopted April 30, 1976. It consists of a fixed filing fee, a permit processing fee which varies in amount with the application processed, and an annual compliance determination fee which varies in amount with the size and complexity of the permitted facility.

4. Permit fees were last increased in 1983. Between 1979 and 1985, the proportion of the water source control budget covered by user fees was about 17 percent.

5. An increase of fees is necessary so that fee revenues will continue to support approximately the same proportion of permit related costs.

   These costs have increased because of inflation and additional source evaluation demands. Without an increase in fees the proportion of the source control budget covered by user fees will drop to about 14 percent.

6. An increase in permit processing fees and annual compliance determination fees is proposed. Some minor housekeeping changes in the fee schedule categories are also proposed. This will restore the user fee proportion to about what it was between 1979 and 1985.

Director's Recommendation

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

Fred Hansen

Attachments: (3)

A. Draft Revised Fee Schedule
B. Draft Public Notice
C. Draft Statement of Need and Fiscal Impact Statement

C.K. Ashbaker:h
WH1641
229-5325
February 6, 1987

**Note: Bracketed lined through [---] material is deleted.
Underlined ____ material is new.**

TABLE 2

(340-45-070)

(For multiple sources on one application select only the one with highest fee)

PERMIT FEE SCHEDULE

(1) Filing Fee. A filing fee of $50 shall accompany any application for issuance, renewal, modification, or transfer of an NPDES Waste Discharge Permit or Water Pollution Control Facilities Permit. This fee is non-refundable 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 [~~$50~~] $75 and [~~$1,000~~] $2,000 shall be submitted with each application. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) New Applications

(A) Major industries[1] -- [~~$1000~~] $2000

(B) Minor industries -- [~~$500~~] $600

(C) Major domestic[2] -- [~~$500~~] $1500

(D) Minor domestic -- [~~$250~~] $600

(E) Agricultural -- [~~$250~~] $300

(b) Permit Renewals (including request for effluent limit modification):

(A) Major industries[1]-- [~~$500~~] $1000

(B) Minor industries -- [~~$250~~] $300

(C) Major domestic[2] -- [~~$250~~] $750

(D) Minor Domestic -- [~~$125~~] $300

(E) Agricultural -- [~~$125~~] $150

(c) Permit Renewals (without request for effluent limit modification):

(A) Major industries[1] -- [~~$250~~] $500

(B) Minor industries -- [~~$150~~] $200

(C) Major domestic[2] -- [~~$150~~] $500

(D) Minor domestic -- [~~$100~~] $200

(E) Agricultural -- $100

(d) Permit Modifications (involving increase in effluent limitations):

(A) Major industries[1] -- [~~$500~~] $1000

(B) Minor industries -- [~~$250~~] $300

(C) Major domestic -- [$250] $750

(D) Minor domestic -- [$125] $300

(E) Agricultural -- [$125] $150

(e) Permit Modifications (not involving an increase in effluent limits): All categories -- $75

(3) Annual Compliance Determination Fee Schedule:

(a) Domestic Waste Sources (Select only one category per permit) (Category, Dry Weather Design Flow, and Initial and Annual Fee):

(A) Sewage Disposal -- 10 MGD or more -- [$1050] $1150

(B) Sewage Disposal -- At least 5 but less than 10 MGD -- [$825] $900

(C) Sewage Disposal -- At least 1 but less than 5 MGD -- [$425] $500

(D) Sewage Disposal -- Less than 1 MGD -- [$225] $300

(E) Non-overflow sewage lagoons -- [$100] $150

(F) [On-Site] Subsurface Sewage disposal systems larger than [5000] 20,000 gallons per day -- [$60] $150

(G) Subsurface sewage disposal systems larger than 5000 gallons per day but not greater than 20,000 gallons per day -- $100

(b) Industrial, Commercial and Agricultural Sources (Source and Initial and Annual Fee:

(A) Major pulp, paper, paperboard, hardboard, and other fiber pulping industry -- [$1325] $1400

(B) Major sugar beet processing, potato and other vegetable processing, and fruit processing industry -- [$1325] $1400

(C) Fish Processing Industry:

(i) Bottom fish, crab, and/or oyster processing -- [$125] $175

(ii) Shrimp processing -- [$150] $175

(iii) Salmon and/or tuna canning -- [$225] $300

(D) Electroplating industry (excludes facilities which do anodizing only):

(i) Rectifier output capacity of 15,000 Amps or more -- [$1325] $1400

(ii) Rectifier output capacity of less than 15,000 Amps, but more than 5000 Amps -- [$650] $700

(E) Primary Aluminum Smelting -- [$1325] $1400

(F) Primary smelting and/or refining of non-ferrous metals utilizing sand chlorination separation facilities -- [$1325] $1400

(G) Primary smelting and/or refining of ferrous and non-ferrous metals not elsewhere classified above -- [$650] $700

(H) Alkalies, chlorine, pesticide, or fertilizer manufacturing with discharge of process waste waters -- [$1325] $1400

(I) Petroleum refineries with a capacity in excess of 15,000 barrels per day discharging process waste water -- [$1325] $1400

(J) Cooling water discharges in excess of 20,000 BTU/sec. -- [$650] $700

(K) Milk products processing industry which processes in excess of 250,000 pounds of milk per day -- [$1325] $1400

(L) Major mining operators -- [$1325] $1400

(M) Small mining operations less than 20 tons per day, which:

(i) Discharge directly to public waters -- [$150] $175

(ii) Do not discharge to public waters -- [$100] $125

(iii) Use cyanide or other toxic chemicals for extracting precious metals -- $700

(N) All facilities not elsewhere classified with disposal of process waste water -- [$225] $300

(O) All facilities not elsewhere classified which dispose of non-process waste waters (i.e. small cooling water discharges, boiler blowdown, filter backwash, log ponds, etc.) -- [~~$125~~] $200

(P) Dairies and other confined feeding operations -- [~~$100~~] $125

(Q) All facilities which dispose of waste waters only by evaporation from watertight ponds or basins -- [~~$100~~] $125

---

[1] Major Industries Qualifying Factors:
- -1- Discharges large BOD loads; or
- -2- Is a large metals facility; or
- -3- Has significant toxic discharges; or
- -4- Has a treatment system which, if not operated properly, will have a significant adverse impact on the receiving stream; or
- -5- Any other industry which the Department determines needs special regulatory control.

[2] Major Domestic Qualifying Factors:
- -1- Serving more than 10,000 people; or
- -2- Serving industries which can have a significant impact on the treatment system.

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROPOSED INCREASE IN THE WATER QUALITY PROGRAM PERMIT FEES

Date Prepared: March 13, 1987
Hearing Date: April 22, 1987
Comments Due: April 24, 1987

WHO IS AFFECTED: All water quality program permittees or potential permittees may be affected by these proposed changes.

WHAT IS PROPOSED The water quality program permit fees are being increased in order to provide additional revenue to account for inflation and for other increased costs associated with reviewing permit applications and determining permit compliance.

WHAT ARE THE HIGHLIGHTS: Permit processing fees will be increased. The greatest increase will be for new sources and sources proposing expanded waste loads. The fee increase for major sources is greater than for minor sources.

The annual compliance determination fees will be increased by an amount ranging from $25 per year for some minor sources to $100 per year for some major sources.

HOW TO COMMENT: Public Hearing

(TIME): 1:00 p.m.
(DATE): April 22, 1987
(PLACE): Fourth Floor conference room
811 S.W. Sixth Avenue
Portland, Oregon

Written comments should be sent to Charles K. Ashbaker by 5:00 p.m., April 24, 1987. Copies of the proposed rule and fee schedule modifications are available upon request.

WHAT IS THE NEXT STEP: After reviewing all the public testimony and making appropriate changes, the rules and fee schedule will be presented to the Environmental Quality Commission for adoption at their regular meeting in May.

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.

11/1/86

WH1668

STATEMENT OF NEED FOR RULEMAKING

Pursuant to ORS 183.335(7), this statement provides information on the Environmental Quality Commission's intended action to adopt a rule change.

(1) Legal Authority

ORS 468.065(2) authorizes the Commission to establish a schedule of permit fees.

(2) Need For The Rule

The Water Quality Permit Fees were originally adopted by the Commission as an Administrative Rule on April 30, 1976. When the fees were established the Department was instructed to review the fee schedule and to increase the fees as necessary so that the fee revenues would continue to support approximately the same proportion of permit related costs. There have been no fee increases since 1983. An increase is necessary to account for inflation and other cost increases associated with permit issuance and compliance assurance.

(3) Principal Documents Relied Upon In This Rulemaking

a. OAR 340-45-070, Table 2 - Permit Fee Schedule

b. ORS 468.065(2)

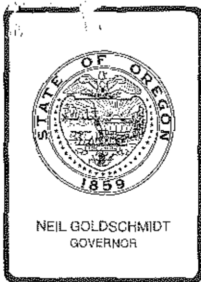
c. Current listing of water quality permittees

FISCAL AND ECONOMIC IMPACT

These fee increases will have an impact on most permittees. The impact will not be great. The increase in annual compliance fees is $100 or less. The increase in permit processing fees is largest for new, major sources and ranges from $25 to $1000.

LAND USE CONSISTENCY

This proposed fee schedule change has no impact on land use or the coordination agreement between the Department and Department of Land Conservation and Development.



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item J , March 13, 1987, EQC Meeting

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

Background

The U.S. Environmental Protection Agency (EPA), under authority of the Resource Conservation and Recovery Act of 1976 (RCRA), has developed a national program for the management of hazardous waste. RCRA places the program within the federal province, but also includes provisions for EPA to authorize a state program to operate in lieu of the federal program. On July 19, 1985, the Commission adopted rules substantially equivalent to the federal hazardous waste rules. On January 31, 1986, EPA granted the State of Oregon Final Authorization to manage the base RCRA program (i.e., that part of the program in existence prior to the Hazardous and Solid Waste Amendments of 1984).

On November 8, 1984, the President signed into law a set of comprehensive amendments to RCRA, entitled the Hazardous and Solid Waste Amendments of 1984 (HSWA). These amendments require EPA to make extensive changes to the federal hazardous waste management rules. States are required to make similar changes to their rules, to maintain authorization for the base RCRA program and to be eligible to continue with authorization to implement HSWA-related regulations.

In accordance with these requirements, the Department is proposing the adoption, by reference, of several new federal hazardous waste management regulations recently promulgated by EPA, and the deletion of existing state rules which conflict with these rules. The Department is also proposing to adopt new state rules pertaining to public availability of information, concerning hazardous waste management facilities, which are also necessary for continued authorization. The Department requests authorization to conduct a public hearing on these matters. The Commission is authorized to adopt hazardous waste management rules by ORS 466.020 and is authorized to take any action necessary to obtain Final Authorization for the RCRA waste fees by ORS 466.165.

Discussion

The Department is proposing the deletion of existing state rules and the adoption of new federal rules, concerning small quantity generators of hazardous waste. Also, minor amendments to the federal rules regarding the definition of solid waste, the listing as hazardous waste of spent pickle liquor from steel finishing operations, and closure/post-closure and financial responsibility requirements for hazardous waste management facilities. The Department is also proposing new state rules concerning public availability of information which parallel the federal Freedom of Information Act and EPA procedures on this subject.

In order to maintain authorization for the RCRA program, the state must adopt all of these proposed rules, except for the small quantity generator rules, by July 1, 1987. The small quantity generator rules do not have to be adopted until July 1, 1989. However, as explained below, these new federal rules are already in effect in Oregon, and subject to enforcement by EPA. The Department believes that this dual regulation is undesirable and that the public would be best served, if the state were to adopt the federal rules as soon as possible. Each of the proposed new rules is discussed separately below.

Small Quantity Generators (Federal Register, March 24, 1986)

Prior to HSWA, a state with Final Authorization, such as Oregon, administered its hazardous waste program in lieu of the federal program. When new, more stringent federal requirements were promulgated, the state was obligated to enact equivalent requirements within specified time frames. However, the new federal requirements did not take effect in the authorized state until they were adopted by the state.

In contrast, new federal requirements and prohibitions, adopted pursuant to HSWA, take effect across the nation without regard to whether a state has an authorized RCRA program or not. States must still adopt HSWA provisions to retain Final Authorization. However, EPA is directed to enforce these requirements until the state adopts them and EPA has granted authorization for the state to manage these new parts of the program.

One such set of HSWA-related regulations, recently promulgated by EPA, concerns small quantity generators of hazardous waste. These regulations impose new requirements on persons who generate between 100 kg (220 lbs) and 1,000 kg (2,200 lbs) of hazardous waste in a calendar month. Prior to EPA adopting these rules, the federal program placed only minimal requirements on persons who generated less than 1,000 kg of hazardous waste a month (40 CFR 261.5). The Department, however, believed that generators of waste below the 1,000 kg level still posed a potentially serious threat to the environment. Consequently, we proposed and the Commission adopted rules more stringent than the federal rules dealing with small quantity generators. Now we find that the new federal regulations affect the same handlers covered by the state's regulations. The federal regulations are, however, different and in some areas more stringent than the state's existing small quantity generator rules in OAR 340-101-005.

As described above, both sets of regulations are currently in effect in Oregon. The Department believes that this dual jurisdiction is causing confusion, within the regulated community. Accordingly, the Department is requesting authorization for a public hearing, to consider the deletion of the state's existing rules and the adoption, by reference, of the new federal rules. A summary of the basic differences between the state and federal small quantity generator rules is as follows:

1. Generator Categories:

   The federal rules recognize three categories of generators. First, fully regulated generators who generate more than 1,000 kg (2,200 lbs.) per month of hazardous waste. Second, small quanatity generators who generate between 100 kg (220 lbs.) and 1,000 kg (2,200 lbs.). Third, a "conditionally exempt generator" who generates less than 100 kg (220 lbs.) of hazardous waste and less than 1 kg (2.2 lbs.) of acutely hazardous waste in a calendar month. Conditionally exempt generators are basically excluded from all federal hazardous waste regulations, as long as they never accumulate more than 1,000 kg (2,200 lbs.) of hazardous waste on their property.

   The state rules are identical to the federal rules in terms of fully regulated generators, but a small quantity generator is defined as one who generates between 200 lbs. and 2,200 lbs. per month. The state does not use the term "conditionally exempt" generator, but the rules basically exempt generators of less than 200 lbs. of hazardous waste and less than 2.2 lbs. of acutely hazardous waste in a calendar month.

2. Disposal Requirements:

   The federal rules provide that all of the waste produced by a "conditionally exempt generator" may be sent to a non-hazardous waste management facility (e.g., a domestic waste landfill).

   The state rules require that, depending upon the specific type of waste generated, no more than 2, 10, 25, or 200 lbs. per month may be disposed of in a non-hazardous waste facility, and then only if the waste is "securely contained" and the approval of the refuse collector or disposal site operator is obtained. All wastes generated in excess of these limits or not meeting these requirements must be managed at an approved hazardous waste facility.

3. Manifest Requirements:

   The federal rules require generators of between 100 and 1,000 kg of hazardous waste in a calendar month to use a "cradle to grave" manifest for shipments of hazardous waste off the premises, unless the waste is being sent to a recycler under a contractural agreement.

   The state rules include no such requirement, for generators of less than 2,000 lbs. of hazardous waste per month.

4. Emergency Planning and Response:

The federal rules require that generators of between 100 and 1,000 kg per month must provide certain emergency response equipment, prepare an emergency response plan, designate an emergency response coordinator, provide employee training and comply with other, related requirements.

The state rules exempt generators of less than 1,000 kg per month from these requirements.

5. Storage Requirements:

The federal rules allow generators of between 100 and 1,000 kg per month to accumulate wastes, without a permit, for up to 180 days or 270 days if shipping more than 200 miles, as long as the accumulation never exceeds 6,000 kg (13,200 lbs.), the waste is properly contained and certain other requirements are met.

The state rules allow generators of between 200 and 2,000 lbs. per month to accumulate wastes, without a permit, for only 90 days and only if the total does not exceed 1,000 kg. Also, if more than 100 containers are accumulated, a leak/spill containment system must be provided. If storing in tanks installed after January 1, 1985, a secondary containment system must be provided.

6. Reporting Requirements:

The federal rules exempt generators of between 100 and 1,000 kg per month from reporting requirements.

The state rules require quarterly reporting by generators of more than 200 lbs. per month.

Note: The Department proposes to retain this existing state requirement. This data provides a more accurate picture of the types and amounts of hazardous waste being generated. This information is also important for such things as planning waste minimization programs, determining the need for new or expanded waste management facilities, and assessing fees.

7. Facility Requirements:

The federal rules require that hazardous waste treatment, storage or disposal facilities have a RCRA permit or be in interim status (i.e., be an existing facility that has applied for a permit), even if the facility only receives wastes from generators of between 100 and 1,000 kg per month.

The state rules allow hazardous waste management facilities that receive wastes only from generators of between 200 and 2,000 lbs. per month to operate without a RCRA permit or interim status, if written authorization from the Department is received.

8. Fees:

The federal rules do not include any fees.

The state rules include fees for generators of hazardous waste, to help provide for maintenance of the state's program.

Note: The Department proposes to retain the fee requirement for generators of more than 220 lbs. per month.

Public Availability of Information

Another important set of HSWA-related regulations concerns the availability to the pubic of information regarding hazardous waste facilities or sites. As amended by HSWA, section 3006(f) of RCRA now specifies that a state may not obtain or maintain final authorization, unless such information is available to the public in substantially the same manner and to the same degree as would be the case if EPA were administering the program. In effect, the state's pubic information laws and regulations must closely parallel the federal Freedom of Information Act, and EPA's policies and procedures.

EPA requires that states incorporate certain of these procedural matters into statutes or rules, to maintain RCRA authorization. The Department's legal counsel has reviewed the state's public records laws and the Department's policies and procedures. The Department currently has no rules on this subject. Counsel has recommended the adoption of several new rules on this subject, including those required by EPA. Briefly, the proposed new rules provide for the following:

1. The Department must respond to a request for information within 20 days. Failure to respond constitutes a denial of the request.

2. If a request is denied, the requester must be notified in writing of the basis for the denial and informed of the right to appeal.

3. If a claim of confidentiality has been made, and cannot be resolved within 20 days of receipt of a public records request, the Department shall notify the requester that the request is denied until the claim of confidentiality has been resolved.

4. The Department shall consider the reduction or waiver of any fees required to provide copies of information, to the press or other communication media and public interest groups.

Technical Corrections to the Definition of Solid Waste (Federal Register, August 20, 1985)

On January 4, 1985, EPA promulgated a final rule which dealt with the question of which materials being recycled (or held for recycling) are solid and hazardous wastes. This rule also provided general and specific standards for various types of hazardous waste recycling activities. EPA issued technical corrections to this rule on April 11, 1985. Since that time, EPA has identified several other provisions that require technical correction or clarification. These rules make those changes.

In summary, the rules specify the following:

1. Discarded hazardous materials used to produce fuel or products that are applied to or placed on the land or which are otherwise contained in fuel or products that are applied to or placed on the land are subject to regulation. Previously it was unclear whether there was any regulatory distinction between materials "produced from" hazardous waste and those "containing" hazardous waste.

2. Fuels produced from the refining of oil-bearing hazardous waste from normal petroleum refining, processing and transportation practices are recyclable materials (i.e., are exempt from most hazardous waste regulations). The rule previously implied that such fuels were exempt only if burned in boilers or industrial furnaces.

3. Oil reclaimed from hazardous waste resulting from normal petroleum refining, processing and transportation practices is recyclable material, and exempt from regulation, if it is refined along with normal process streams at a petroleum refining facility. Previously, the exact scope of this exemption was unclear.

4. Coke that contains hazardous waste from the iron and steel production process is recyclable material. The rule previously implied that this exemption was dependent upon the type of facility in which the coke is burned.

5. Facilities that store recyclable materials before they are recycled are subject to the hazardous waste permit requirements. Only the recycling process itself is exempt from regulation. Previously, the exact scope of this exemption was unclear.

Closure, Post-Closure and Financial Responsibility Requirements (Federal Register, May 2, 1986)

These regulations include a series of technical amendments to the existing standards for owners and operators of hazardous waste treatment, storage and disposal facilities. Many of the amendments conform to a settlement agreement signed by EPA and petitioners in "American Iron and Steel Institute v. U. S. Environmental Protection Agency", renamed "Atlantic Cement Company, Incorporated v. U. S. Environmental Protection Agency". The remainder of the amendments are designed to clarify the regulations and to address issues that have arisen as EPA has implemented the regulations.

The amendments are extensive and many are of a housekeeping nature. However, substantive provisions include the following:

1. Clarification of the contents required in facility closure and post-closure plans. Previously, these requirements were somewhat vague.

2. A new requirement that estimates for closure and post-closure costs must be based on third party costs. Such costs will be substantially higher than first party costs.

3. A new requirement that, in the event of a change in facility ownership or operational control, the new owner or operator must demonstrate financial assurance within six months. Also, the rule specifies that the old owner or operator remains responsible if the new owner or operator fails to meet this deadline.

4. The terms "active life", "final closure", "partial closure" and "hazardous waste management unit" are defined, as they relate to hazardous waste management facilities.

Clarification of an Existing "K-listed" Waste
(Federal Register, May 28, 1986 and September 22, 1986).

These regulations clarify the listing as hazardous waste of spent pickle liquor from steel finishing operations (EPA hazardous waste No. K062). The May 28, 1986 regulations specify that the listing applies only to wastes generated by the iron and steel industry and not to other steel finishing operations. The September 22, 1986 regulations specify that the listing applies to finishing operations of all facilities within the iron and steel industry and not just to the finishing operations of plants that produce iron and steel.

Use of Corporate Guarantee for Liability Coverage for Hazardous Waste Treatment, Storage and Disposal Facilities (Federal Register, July 11, 1986

Owners and operators of hazardous waste treatment, storage, and disposal facilities are required to demonstrate, on a per firm basis, liability coverage for sudden accidental occurrences in the amount of $1 million per occurrence and $2 million annual aggregate, exclusive of legal defense costs. Owners and operators of surface impoundments, landfills and land treatment facilities are also required to demonstrate, on a per firm basis, liability coverage for nonsudden accidental occurrences in the amount of $3 million per occurrence and $6 million annual aggregate, exclusive of legal defense costs".

Financial responsibility can currently be demonstrated through a financial test, liability insurance or a combination of the two. These regulations provide another option - a corporate guarantee. The guarantee is a promise by one corporation to answer for the default of another. As provided in these rules, the guarantor must be the parent corporation of the owner or operator, directly owning at least 50 percent of the voting stock of the corporation that owns or operates the facility; the latter corporation is deemed a "subsidiary" of the parent corporation. Since these rules provide for another alternative, they are considered to be less stringent than the current rules.

In Oregon, however, this new option may not be practical. Oregon insurance laws are such that any corporation wanting to provide this type of guarantee would essentially have to meet all the requirements of being an insurance company. This will likely be a substantial deterent.

Summation

1. The State of Oregon currently has final authorization to operate a comprehensive hazardous waste management program, in lieu of a federally-operated program.

2. In order to maintain final authorization, federal law requires that the state adopt new federal requirements and prohibitions, within specified time frames.

3. EPA has recently promulgated a series of such new regulations. The Department is proposing to adopt these new federal rules by reference and to adopt new state rules concerning public availability of information. Authorization to conduct a public hearing on these matters is requested.

4. The Commission is authorized to adopt hazardous waste management rules by ORS 466.020 and 466.085.

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 the hazardous waste management rules, OAR Chapter 340, Divisions 100-102.

Fred Hansen

Attachments
- I. Statement of Need for Rulemaking
- II. Statement of Land Use Consistency
- III. Draft Hearing Notice
- IV. Draft Rules, OAR 340, Divisions 100-102
- V. Federal Registers (Chronological Order)

Bill Dana:f
ZF1702
229-6266
February 6, 1987

ATTACHMENT I
Agenda Item J
3/13/87 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF AMENDING OAR CHAPTER 340, DIVISIONS 100 TO 102	)))	STATEMENT OF NEED FOR RULEMAKING

STATUTORY AUTHORITY:

ORS 466.020 requires the Commission to:

(1) Adopt rules to establish minimum requirements for the treatment storage, and disposal of hazardous wastes, minimum requirements for operation, maintenance, monitoring, reporting and supervision of treatment, storage and disposal sites, and requirements and procedures for selection of such sites.

(2) Classify as hazardous wastes those residues resulting from any process of industry, manufacturing, trade, business or government or from the development or recovery of any natural resources, which may, because of their quantity, concentration, or physical chemical or infectious characteristics:

   (a) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
   (b) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(3) Adopt rules pertaining to hearings, filing of reports, submission of plans and the issuance of licenses.

(4) Adopt rules pertaining to generators, and to the transportation of hazardous waste by air and water.

ORS 466.085 authorizes the Commission and the Department to perform any act necessary to gain Final Authorization of a hazardous waste regulatory program under the provisions of the federal Resource Conservation and Recovery Act (RCRA).

NEED FOR THE RULES:

The management of hazardous waste is currently under both state and federal control but, by being authorized, a state may manage its own hazardous waste in lieu of a federally operated program. The proposed adoption of new federal rules is required, for the Department to maintain Final Authorization.

PRINCIPAL DOCUMENTS RELIED UPON:

Existing federal hazardous waste management rules, 40 CFR Parts 260 to 266, 270, and 124, and existing State rules, OAR Chapter 340, Divisions 100 to 102.

FISCAL AND ECONOMIC IMPACT:

The new, more stringent federal regulations will increase the costs of hazardous waste management in this state, including costs to small businesses. However, any increased costs associated with these new standards will occur irrespective of the Department's proposed rule amendments. The new standards for small quantity generators, and for owners and operators of hazardous waste management facilities, have already been promulgated by the U.S. Environmental Protection Agency (EPA). In the event that the state does not also adopt these new standards, EPA will enforce them.

ZF1702.1

Attachment II
Agenda Item J
3/13/87 EQC Meeting

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF AMENDING	)	LAND USE CONSISTENCY
OAR CHAPTER 340,	)	
DIVISIONS 100 TO 102	)	

The proposal described appears to be consistent with all statewide planning goals. Specifically, the rules comply with Goal 6 because they modify existing rules in a manner that ensures the safe management of hazardous waste generation, storage, transportation, treatment and disposal, and thereby provide protection for air, water and land resource quality.

The rules comply with Goal 11 by promoting hazardous waste reduction at the point of generation, beneficial use, recycling, treatment, and by controlling disposal site operations. They also intend to assure that current and long-range waste disposal needs will be accommodated.

Public comment on this proposal is invited and may be submitted in the manner described in the accompanying Public Notice of Rules Adoption.

It is requested that local, state and federal agencies review the proposal and comment on possible conflicts with their programs affecting land use and with statewide planning goals within their jurisdiction. The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflicts thereby brought to its attention.

ZF1702.2

Attachment III
Agenda Item J
3/13/87 EQC Meeting

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Public Hearing

Date Prepared: Feb. 17, 1987
Hearing Date: Apr. 17, 1987
Comments Due: Apr. 17, 1987

WHO IS AFFECTED: Persons who manage hazardous waste, including generators, and owners and operators of hazardous waste treatment, storage and disposal facilities.

WHAT IS PROPOSED: The Department of Environmental Quality (DEQ) proposes to amend OAR Chapter 340, Divisions 100-102, to include recently promulgated federal requirements. This is necessary to assure equivalence to the federal program and maintain Final Authorization to manage a comprehensive hazardous waste management program in Oregon.

WHAT ARE THE HIGHLIGHTS:

- New regulations are proposed for generators of between 100 kg (220 lbs.) and 1,000 kg (2,200 lbs.) of hazardous waste in a calendar month. The state's existing small quantity generator rules are proposed to be deleted.
- Amendments to the closure, post-closure and financial responsibility requirements for hazardous waste management facilities are proposed.
- New regulations are proposed concerning public availability of information about hazardous waste management facilities.
- Technical corrections to the federal definition of solid waste and clarification of the listing as hazardous waste of spent pickle liquor from steel finishing operations are also proposed.

HOW TO COMMENT: A Public Hearing is scheduled for:

9:00 a.m.
Friday, April 17, 1987
DEQ's Portland Office
811 S.W. Sixth Ave.
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 December 2, 1986.

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 May 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.

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

11/1/86

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

ZF1702.3

Attachment IV
Agenda Item J
3/13/87 EQC Meeting

Before the Environmental Quality Commission of the State of Oregon

In the Matter of Amending	)	Proposed Amendments
OAR 340, Divisions 100-105	)	

Unless otherwise indicated, material enclosed in brackets [ ] is proposed to be deleted and material that is underlined is proposed to be added.

1. Rule 340-100-002 is proposed to be amended as follows:

340-100-002 (1) Except as otherwise modified or specified by OAR Chapter 340, Divisions 100 to 106, the rules and regulations governing the management of hazardous waste, including its generation, transportation by air or water, treatment, storage and disposal, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Part 260 to 266, 270 and Subpart A of 124, and amendments thereto promulgated prior to May 1, 1985, are adopted and prescribed by the Commission to be observed by all persons subject to ORS [459.410 to 459.450, and 459.460 to 459.695.] 466.005 to 466.080, and 466.090 to 466.215.

(2) In addition to the provisions of section (1) of this rule, the following amendments to Title 40 Code of Federal Regulations, Part 260 to 266, 270 and Subpart A of 124, as published in volumes 50 and 51 of the Federal Register (FR), are adopted and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080, and 466.090 to 466.215:

(a) Technical corrections to the definition of solid waste, in 50 FR 33541-43 (August 20, 1985)

(b) Amendments applicable to generators of between 100 kg (220 lbs) and 1,000 kg (2,200 lbs) of hazardous waste in a calendar month, in 51 FR 10146-76 (March 24, 1986).

(c) Amendments pertaining to closure and post-closure care and financial responsibility for hazardous waste management facilities, in 51 FR 16422-59 (May 2, 1986).

(d) Amendments clarifying the listing for spent pickle liquor from steel finishing operations, in 51 FR 19320-22 (May 28, 1986) and 51 FR 33612 (September 22, 1986).

(e) Amendments pertaining to liability coverage for hazardous waste management facilities, in 51 FR 25350-56 (July 11, 1986).

2. A New Rule, 340-100-005, is proposed to be Adopted as Follows:

340-100-005 (1) Upon request, the Department shall make available Department records regarding facilities and sites for the treatment, storage, and disposal of hazardous waste, in accordance with ORS 192.410 through 192.500.

(2) Within twenty (20) days of receipt of a request for records, under section (1) of this rule, the Department shall either grant or deny the request. If the Department fails to act within twenty (20) days, the request shall be deemed to be denied.

(3) In the event that a request for records is denied, the Department shall notify the requestor, in writing, of the basis for the denial and of the requestor's right to appeal the denial to the Attorney General of the State of Oregon, as provided in ORS 192.450.

(4) In the event that a claim of confidentiality has been made, under OAR 340-100-003, and such claim cannot be resolved within twenty (20) days of receipt of a request for records, the Department shall notify the requestor within that 20-day period that the request is denied until the claim of confidentiality can be resolved.

(5) The Department shall consider the reduction or waiver of any fees required to provide copies of records, if the records are requested by the news media, a non-profit public interest group, or any other person or entity, and the requestor provides a written statement in support of reduction or waiver. The Department may reduce or waive fees, if the Department determines that reduction or waiver serves the public interest, taking into consideration the magnitude of the request, the Department's resources, whether the information would not be obtainable by the requestor without the reduction or waiver and any other factors relevant to the public interest.

3. Rule 340-101-005, special requirements for hazardous waste produced by small quantity generators, is proposed to be deleted as follows:

[Special requirements for hazardous waste produced by small quantity generators.]

[340-101-005 (1) The provisions of 40 CFR 261.5(b) and 261.5(g) are deleted and replaced with sections (2), (3), (4) and (5) of this rule.

(2) Except for those wastes identified in 40 CFR 261.5(e) and (f), a small quantity generator's hazardous wastes are subject to regulation under Divisions 100 to 108 only to the extent of generator compliance with the requirements of OAR 340-101-005(3) and the owner or operator of a treatment or storage facility's compliance with the requirements of OAR 340-101-005(4).

(3) In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under 40 CFR 261.5, the generator must:

(a)(A) Comply with 40 CFR 262.11; and

(B) If he generates more than 200 pounds in a calendar month, comply with 40 CFR 262.12(a), 262.30, 262.31, and 262.32(a).

(b) If he stores his hazardous waste on-site, store it in compliance with the requirements of 40 CFR 261.5(f); and

(c) If the quantity generated in a calendar month exceeds the small quantity disposal exemptions indicated in section (5) of this rule: Either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(A) Permitted under Division 105;

(B) In interim status under 40 CFR Parts 265 and 270;

(C) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(d) If the quantity generated in a calendar month is equal to or less than the small quantity disposal exemptions indicated in section (5) of this rule:

(A) Either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(i) Permitted under Division 105;

(ii) In interim status under 40 CFR Parts 265 and 270;

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271; or

(iv) Permitted, licensed or registered by a state to manage municipal or industrial solid waste. Additionally, the generator shall:

(I) Securely contain the waste to minimize the possibility of waste release prior to burial; and

(II) Obtain permission from the waste collector or from the landfill permittee, as appropriate, before depositing the waste in any container for subsequent collection or in any landfill for disposal. In the event that the waste collector or landfill permittee refuses to accept the waste, the Department shall be contacted for alternative disposal instructions.

(4) The owner or operator of an off-site facility that treats or stores hazardous waste obtained only from small quantity generators in amounts greater than 200 pounds but less than 2000 pounds of hazardous waste in a calendar month must obtain a letter of authorization from the Department as required by rule 340-105-100. Owners or operators of off-site facilities that treat or store more than 2000 pounds per calendar month are fully subject to regulation under Divisions 100 to 108.

(5) The following small quantity exemption levels shall be used for purposes of section (3) of this rule:

Hazardous Waste No.	Small Quantity Disposal Exemption (lb. per month)	Hazardous Waste No.	Small Quantity Disposal Exemption (lb. per month)
D001	25	F001	200
D002	200	F002	200
D003	Determined by the Dept. on an individual basis, but not to exceed 200	F003	25
		F004	200
		F005	25
		F006	200
D004	10	F007	10
D005	200	F008	10
D006	10	F009	10
D007	200	F010	10
D008	200	F011	10
D009	10	F012	10
D010	200	F024	200
D011	200	F020	2
D012	10	F021	2
D013	10	F022	2
D014	10	F023	2
D015	10	F026	2
D016	10	F027	2
D017	10	F028	10

Hazardous Waste No.	Small Quantity Disposal Exemption (lb. per month)	Hazardous Waste No.	Small Quantity Disposal Exemption (lb. per month)
K001	10	K073	200
K002	200	K106	10
K003	200	K031	10
K004	200	K032	10
K005	200	K033	10
K006	200	K034	10
K007	200	K097	10
K008	200	K035	10
K009	200	K036	10
K010	200	K037	10
K011	200	K038	10
K013	200	K039	10
K014	200	K040	10
K015	10	K041	10
K016	200	K098	10
K017	200	K042	10
K018	200	K043	10
K019	200	K099	10
K020	200	K044	200
K021	200	K045	200
K022	200	K046	200
K023	200	K047	200
K024	200	K048	200
K025	200	K049	200
K026	200	K050	200
K027	200	K051	200
K028	200	K052	200
K029	200	K061	200
K093	200	K062	200
K094	200	K069	200
K095	200	K100	200
K096	200	K084	10
K030	200	K101	10
K083	200	K102	10
K103	200	K086	200
K104	200	K060	200
K085	200	K087	200
K105	200	K088	200
K071	10		

P001 to P999 - Commercial chemical products or intermediates	2
P001 to P999 - Spill cleanup	200
P001 to P999 - Process waste as defined in 340-101-040(2)(a)	10

U001 to U999	- Commercial chemical products or intermediates	10
U001 to U999	- Process waste as defined in 340-101-040(2)(b)	10
X001	- Pesticide waste as defined in 340-101-045	10
All F, K, U and X listed spill cleanup		2000]

4. Rule 340-102-041 is proposed to be amended as follows:

340-102-041 (1) The provisions of this rule replace the requirements of 40 CFR 262.41.

(2) A generator [who ships his] of hazardous waste [off-site must submit to the Department Quarterly Reports of the waste shipped] who is required by 40 CFR 262.20 to use a manifest when shipping wastes off-site, shall submit Quarterly Reports to the Department:

(a)(A) The Quarterly Report [consists of copies of the latest quarter's manifest and shipping papers. Alternatively, generators may copy the information from the manifests and shipping papers onto a form of their choice and submit it within the same time schedule.

(Comment: For ease of processing, the Department prefers xerographic or carbon copies of the manifests and shipping papers)]. shall contain at least the following information:

(i) A copy of the completed manifest for each shipment made during the calendar quarter; and

(ii) A listing of all additional waste generated during the quarter that was sent off-site without a manifest or was used, reused or reclaimed on-site. The listing shall include at least:

(I) The generator's name and address;

(II) The generator's U.S. EPA/DEQ Identification Number;

(III) Identification of the calendar quarter in which the waste was generated;

(IV) The type and quantity of each waste generated, by EPA code number; and

(V) The disposition of each waste, including the identity of the receiving party for wastes shipped off-site.

(B) The Quarterly Report must be accompanied by the following certification signed and dated by the generator or his authorized representative:

"I certify under penalty of law that I have personally examined and an familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, includes the possibility of fine and imprisonment."

(b) No later than 45 days after the end of each calendar quarter.

(3) Any generator who treats, stores, or disposes of hazardous waste on-site must submit a report covering those wastes in accordance with the provisions of Divisions 104 and 105.

5. Rule 340-102-044 is proposed to be added as follows:

340-102-044 The provisions of 40 CFR 262.44 are deleted.

40 CFR Parts 261 and 266

[SWH-FRL-2863-8]

Hazardous Waste Management System; Definition of Solid Waste; Technical Corrections

AGENCY: Environmental Protection Agency.

ACTION: Technical Corrections to the Definition of Solid Waste Final Rulemaking.

SUMMARY: On January 4, 1985, EPA promulgated a final rule which dealt with the question of which materials being recycled (or held for recycling) are solid and hazardous wastes. This rule also provided general and specific standards for various types of hazardous waste recycling activities. EPA issued technical corrections to this rule on April 11, 1985. Since that time, EPA has identified several other provisions that require technical correction or clarification. This notice makes these changes and modifies the previous publication accordingly.

EFFECTIVE DATE: These corrections become effective on August 20, 1985.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information contact Matthew A. Straus, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

I. Technical Corrections to Rule

A. Interim Exemption for Hazardous Waste-Derived Fuels Produced From Wastes From Petroleum Refining, Production, or Transportation

On January 4, 1985, EPA amended its existing definition of solid waste. 50 FR 614. This rulemaking defined which materials being recycled (or held for recycling) are solid wastes. EPA promulgated certain technical amendments to these rules on April 11, 1985. 50 FR 14216. One of these corrections concerned the regulatory status of hazardous waste-derived fuels produced from oil-bearing hazardous wastes from petroleum refining, production, and transportation. The technical amendment clarified that such fuels are presently exempt from regulation, pending a substantive decision as to whether regulation is necessary to protect human health and the environment. See 50 FR 14218; see also 50 FR 26389, June 26, 1985, likewise stating that such fuels are presently exempt from regulation.

There is a drafting error in the April 11 technical rule, however, in that the interim exemption was placed in § 266.30 of the regulations. This provision applies to hazardous waste fuels burned in boilers or industrial furnaces; thus, the interim exemption would appear to apply only when the hazardous waste-derived fuel from petroleum refining is to be burned in these types of devices. But fuels can be burned in other devices—in certain space heaters or engines not of integral design, for example—and the Agency intended that these hazardous waste-derived fuels be exempt without regard for the type of unit in which they are burned. We consequently are placing the interim exemption in § 261.6(a)(3), which provision exempts recyclable materials from regulation. These particular hazardous waste fuels thus are presently exempt from regulation without regard for the nature of the device in which they are burned.

This exemption is also applicable to oil reclaimed from petroleum refining hazardous wastes prior to insertion or reinsertion into the petroleum refining process (and, as already stated in the preceding paragraph, to fuels resulting from refining of the reclaimed oil). Such reclaimed oil, *i.e.*, oil reclaimed from petroleum refining hazardous waste, is not presently subject to regulation. This leaves in place the regulatory scheme of the May 19, 1980 rules, whereby such reclaimed oils are exempt from regulation. See 50 FR 647/3. The Agency is determining if and how to regulate such reclaimed oil as part of the rulemaking on hazardous waste fuels proposed on January 11, 1985. See 50 FR 1684.

There are two further points of clarification. As drafted in the April 11 notice, the interim exemption applied to all fuels exempt from the labeling requirements of RCRA section 3004(r). Section 3004(r) applies to hazardous waste-derived fuels produced from, or otherwise containing, oil-bearing hazardous wastes from petroleum refining, production, and transportation that are reintroduced into particular parts of the petroleum refining process. Questions have been raised about the precise scope of some of the terms in section 3004(r). On reflection, EPA does not believe it necessary to refer to section 3004(r) to express its intent to provide an interim exemption. Consequently, we are revising the interim exemption to refer to fuels from petroleum refining that include as ingredients (i.e., that are produced from or otherwise contain) oil-bearing hazardous wastes from normal petroleum refining, production, or transportation practices. We note that these hazardous wastes can be generated off-site, and the resulting fuels are covered by the interim exemption. (Cf. section 3004(r)(3) which also is not limited to wastes generated on-site.) We also note, as we did on April 11 (50 FR at 14218/2), that these wastes must be indigenous to the petroleum refining, production, or transportation process, and so would not include such wastes as spent pesticides.

Second, certain persons have raised the question of whether there is any regulatory distinction between fuels "produced from" hazardous waste and those "containing" hazardous waste, as these terms are used in amended 40 CFR 261.2(c)(2) (B) and (C). The Agency intends no such distinction. Nor did the Congress. See RCRA amended section 3004(q), noting that hazardous waste fuels are those produced from hazardous waste, or that "*otherwise* contai(n)" hazardous waste (emphasis added). Fuels produced from hazardous waste thus are a subset of the class of fuels containing hazardous waste. EPA's amended definition of secondary materials that are wastes when burned for energy recovery is coextensive with this statutory provision. 50 FR 630 (January 4, 1985). The Agency also stated repeatedly in the preamble to the amended definition of solid waste that it claimed authority over all hazardous waste-derived fuels, without regard for how they are generated. Thus, EPA indicated that any fuels that "include hazardous wastes as ingredients" are themselves wastes; that any fuels "derived from these [hazardous] wastes [are] defined as solid wastes"; and that when hazardous wastes are "incorporated into fuels . . . fuels containing these wastes . . . remain solid wastes." 50 FR at 625 n.12, 629/2, and 636/1. Consequently, when a person uses a hazardous waste as a component in the fuel process, the output of the process is defined as a waste (assuming listed wastes are involved, or that the waste-derived fuel exhibits a hazardous waste characteristic). (The question of if and how to regulate such wastes remains for future rulemakings.)

The Agency also notes that these same principles apply with respect to waste-derived products that are used in a manner constituting disposal—they are wastes when a hazardous waste is used as a component of the process that produces them. See, e.g., 50 FR 627-628 (rejecting a standard based on simple mixing) and amended § 266.20(b) (EPA has jurisdiction over hazardous waste-derived products even where incorporated wastes have been

chemically reacted and are not separable by physical means).

In order to eliminate any possible uncertainty on this point, however, the Agency has decided to revise the language of § 261.2(c)(1) (use constituting disposal) and (c)(2) (burning for energy recovery) to recite the language from the Hazardous and Solid Waste Amendments of 1984 (HSWA). Thus, (a) hazardous secondary materials used to produce a fuel or used to produce a material that is applied to the land are defined as wastes; and (b) hazardous secondary materials otherwise contained in such waste-derived products are defined as wastes. In both cases, the waste-derived product is defined as a waste (assuming it too is hazardous as provided in § 261.3) and is potentially subject to regulation under Subtitle C of RCRA.

B. Interim Exemption for Hazardous Waste-Derived Fuels From Iron and Steel Production

On April 11, 1985, EPA also clarified that hazardous waste-derived coke from the iron and steel industry is not subject to regulation when the only hazardous wastes used in the coke-making process and from iron and steel production. This interim exemption was also placed in § 266.30(b) and so is limited by the type of unit in which the waste-derived coke is burned. To avoid any unintended limitation on the scope of this interim exemption, we are now placing it in § 261.6(a)(3).

C. Regulation of the Process of Recycling

EPA stated in the preamble to the final rule that EPA does not presently regulate the actual process of recycling (with the exception of certain uses constituting disposal), only the storage, transport, and generation that precedes it. 50 FR 642/1. The Agency included this thought in §§ 261.6(c)(2) and 266.35 of the regulations, but forgot to include it in § 261.6(c)(1). We consequently are amending § 261.6(c)(1) to state that the enumerated requirements only apply to recyclable materials stored before they are recycled.

D. Correction to Subpart G of Part 266

Subpart G of Part 266 contains rules for spent lead-acid batteries being reclaimed. Due to a typographical error, this provision was misnumbered as "§ 266.30". The correct numbering is § 266.80. Today's notice corrects this error.

E. Clarification of Part A Permit Requirements

In the April 11, 1985 notice, EPA indicated that facilities located in States which do not have finally authorized or interim authorized permit programs need to submit new or amended Part A permit applications to EPA by July 5, 1985. 50 FR 14217/3. Although accurate for States without any EPA authorization, this statement was not correct with respect to Phase I interim authorized States. If a State has any form of authorization, its universe of wastes (as approved by EPA) defines the universe of RCRA regulated entities within the State. Program Implementation Guidance 82-1, November 20, 1981. Thus, a person managing a waste that is not yet part of such an authorized State's universe of hazardous waste is not presently required to submit a Part A application. The new or amended application would have to be submitted when the State's universe of wastes has been amended to reflect changes to Part 261 and has been authorized by EPA.

II. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. Since this notice simply makes typographical and technical corrections and does not change the previously approved final rule, this rule is not a major rule, and, therefore no Regulatory Impact Analysis was conducted.

List of Subjects in 40 CFR Parts 261 and 266

Hazardous wastes, Recycling.

Dated: August 12, 1985.

Allyn M. Davis,

Acting Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority section for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6902, 6912(a), 6921, and 6922).

2. In § 261.2(c)(1)(i), paragraph (B) is revised to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

* * * * *

3. In § 261.2(c)(2)(i), paragraph (C) is removed and paragraph (B) is revised to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

* * * * *

4. In § 261.6(a)(3), paragraphs (v), (vi), and (vii) are added to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(a) * * *

(3) * * *

(v) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

(vi) Oil reclaimed from hazardous waste resulting from normal pertoleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility; or

(vii) Coke from the iron and steel industry that contains hazardous waste from the iron and steel production process.

* * * * *

5. In § 261.6(c) paragraph (1) is amended to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(c)(1) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subparts A through L of Parts 264 and 265 and Parts 270 and 124 of this Chapter and the notification requirement under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation.)

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

6. The authority citation for Part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

7. Section 266.30(b) is amended by deleting paragraphs (b)(3) and (b)(4).

8. FR Doc. 85-3 published in the Federal Register of January 4, 1985 (50 FR 614), is corrected by changing the section number "266.30" under Subpart G to "266.80" on page 667.

[FR Doc. 85-19708 Filed 8-19-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS-42012B; TSH-FRL 2815-5b]

Identification of Specific Chemical Substance and Mixture Testing Requirement; Diethylenetriamine

Correction

In FR Doc. 85-12422, beginning on page 21398, as Part III, in the issue of Thursday, May 23, 1985, make the following correction:

On page 21412, second column, § 799.1575(c)(2)(i)(C), the fifth line should have read: "section or in the *in vivo* cytogenetics test conducted pursuant to paragraph (c)(2)(i)(B) of this section produces a positive result."

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 97

Modification of Footnote US275 to the Table of Frequency Allocations

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Federal Communications Commission amends Parts 2 and 97 of its Rules to prohibit secondary amateur operations in the 902–928 MHz band in the White Sands Missile Range. This action will provide protection to essential primary radiolocation and control operations at White Sands Missile Range.

EFFECTIVE DATE: September 29, 1985.

ADDRESS: Federal Communications Commission, 2035 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Thomas, Office of Science and Technology, 1919 M Street NW., Washington, D.C. 20554, (202) 653-8162.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 97

Amateur radio.

Order

In the matter of amendment of parts 2 and 97 of the Commission's rules to prohibit amateur use of the 902-928 MHz band at White Sands Missile Range in southern New Mexico.

Adopted: August 5, 1985.

Released: August 15, 1985.

By the Commission.

1. This action restricts amateur operations in the 902–928 MHz band in the vicinity of White Sands Missile Range. In the Second Report and Order of General Docket 80–739, Implementation of the Final Acts of the 1979 WARC, the Commission allocated the 902–928 MHz band to the amateur service on a secondary basis; it allocated the band on a primary basis for Government radiolocation and for industrial, scientific and medical applications.[1] This band has recently been added by the Report and Order in PR Docket 84-960 to the frequencies listed in Part 97 as being available for amateur use.[2] However, the Department of the Army has informed the Commission that several critical radiolocation operations, including tracking and control operations of unmanned aircraft, require the use of frequencies in the 902–928 MHz band at the White Sands Missile Range in New Mexico and that amateur operations in this area could impair or seriously disrupt these operations. Therefore, the Army has requested that the Commission place restrictions on amateur operations in the 902–928 MHz band around the White Sands area.

2. In order to protect these critical military operations we are modifying footnote US275 to the Table of Frequency Allocations, § 2.106 of the Commission's Rules, and modifying § 97.7 of the Commission's Rules to restrict amateur operations in this band. The restrictions are as follows: In the band 902–928 MHz the amateur service is prohibited in the area of Texas and New Mexico bounded by latitude 31°41′ N. on the south, longitude 104°11′ W. on the east, latitude 34°30′ N. on the north and longitude 107°30′ W. on the west; in addition, outside this area but within 150 miles of these boundaries of White Sands Missile Range, New Mexico, the service is limited to a maximum peak envelope power output of 50 watts from the transmitter. The necessary amendments to Sections 2.106 and 97.7 of the Commission's Rules are contained in the Appendix.

3. In accordance with section 553 of the Administrative Procedures Act, which excludes matters involving military functions from the notice process (U.S.C. 553(a)(1)), no Notice of Proposed Rule Making will be issued in this matter.

4. Accordingly, it is ordered, that §§ 2.106 and 97.7 are amended as set forth in the Appendix. Authority for this action is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended. These amendments become effective September 29, 1985.

5. Point of contact on this matter is Fred Thomas, (202) 653-8162.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 2 and 97 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

The authority citations in Parts 2 and 97 continue to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Section 2.106 is amended by revising the text of footnote US275 as follows:

§ 2.106 Table of frequency allocations.

* * * * *

US275 The band 902–928 MHz is allocated on a secondary basis to the amateur service subject to not causing harmful interference to the operations of Government stations authorized in this band or to Automatic Vehicle Monitoring (AVM) systems. Stations in the amateur service must tolerate any interference from the operations of industrial, scientific and medical (ISM) devices, AVM systems and

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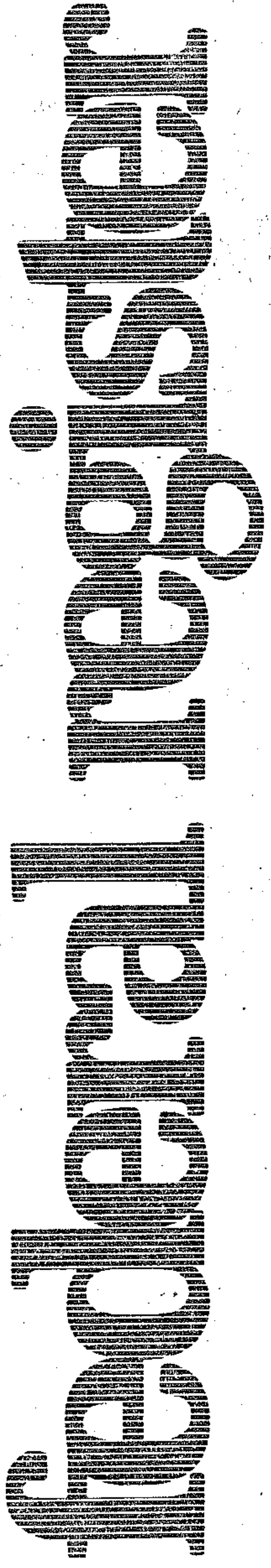
[1] See Second Report and Order in General Docket No. 80-739 FCC 83-511, 49 FR 2357 (adopted November 8, 1983).

[2] See Report and Order in PR Docket No. 84-960 FCC 85-460 (adopted August 9, 1985).

HW 1.21-2



Monday
March 24, 1986

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 263, 270, and 271

Hazardous Waste: Generators of Hazardous Waste (100 to 1000 Kilograms Per Month), on Site Storage, etc.; Final Rule

40 CFR Part 262

Hazardous Waste: Generators of Hazardous Waste (100 to 1000 Kilograms Per Month), Waste Minimization; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 270, and 271

[SWH-FRL-2969-2(b)]

Hazardous Waste Management System: General; Identification and Listing of Hazardous Waste; Standards for Generators of Hazardous Waste; Standards for Transporters of Hazardous Waste; EPA Administered Permit Programs; Authorization of State Hazardous Waste Programs

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On August 1, 1985, the U.S. Environmental Protection Agency (EPA) proposed regulations under the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), that would be applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month ("100–1000 kg/mo generators"). Based in large measure on the existing hazardous waste regulatory program, the proposed rules represented the Agency's efforts to balance the statutory mandate to protect human health and the environment with the statutory directive to keep burdensome regulation of small businesses to a minimum.

EPA is today promulgating final regulations for these generators which modify certain aspects of the proposal. These modifications relate to the "small quantity generator" provisions of § 261.5 and the use of the multi-copy manifest in lieu of the proposed single copy system. Exemptions from exception and biennial reporting as well as from the manifest system for certain reclamation shipments and from certain of the requirements applicable to on-site accumulation have been retained in the final rules. The effect of this rule would be to subject generators of between 100 kg and 1000 kg of hazardous waste in a calendar month to the hazardous waste regulatory program.

DATES: *EFFECTIVE DATE:* September 22, 1986.

Compliance Dates: The Part 262 standards will become applicable to 100–1000 kg/mo generators on September 22, 1986.

The Part 264 and 265 standards will become applicable to 100–1000 kg/mo generators treating, storing, or disposing of hazardous waste on-site using non-exempt management practices on March 24, 1987.

For off-site facilities managing wastes from 100–1000 kg/mo generators, the Part 264 or 265 standards will apply to the wastes from generators of 100–1000 kg/mo on September 22, 1986.

For off-site facilities managing wastes exclusively from generators of less than 1000 kg/mo, the requirement to obtain interim status as a hazardous waste facility for wastes from 100–1000 kg/mo generators will become applicable on September 22, 1986.

Off-site facilities managing waste from both large quantity generators and generators 100–1000 kg/mo will need to modify their Part A permit applications (as well as Part B if already submitted) by September 22, 1986 to reflect these newly regulated wastes from 100–1000 kg/mo generators.

ADDRESSES: The public docket for this rulemaking is located in Rm S-212-C, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. The RCRA Docket is available for viewing 8:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, (800) 424–9346, (in Washington, DC, call 382–3000), the Small Business Hotline, (800) 368–5888, or Robert Axelrad, (202) 382–5218, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

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II. Background and Summary of Final Rule
A. The Hazardous and Solid Waste Amendments of 1984
1. Codification Rule
2. Minimum Rulemaking Requirements
3. March 31, 1986 Hammer Provisions
4. August 1, 1985 Proposal
B. Summary of Final Rule
III. Response to Comments and Anaylsis of Issues
A. EPA's Approach To Regulating 100–1000 kg/mo Hazardous Waste Generators
B. Applicability Issues
1. Definition of "Small Quantity Generator"
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b. Generators of Acutely Hazardous Waste
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C. Part 262 Generator Responsibilities
1. Notification and Identification Number Requirements—section 262.12
2. The Hazardous Waste Manifest System—Part 262, Subpart B
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3. Recordkeeping and Reporting—Part 262, Subpart D
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c. Biennial Reports—section 262.41
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a. Time and Quantity Limitations
b. Standards Applicable to On-site Accumulation
i. Standards for Preparedness and Prevention—Part 265, Subpart C
ii. Standards for Contingency Plans, Emergency Procedures—Part 265, Subpart D, and Personnel Training Requirements
iii. Standards for Accumulation in Containers—Part 265, Subpart I
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5. International Shipments
D. Transportation Issues
E. Part 264/265 Facility Standard Issues
1. Activities Requiring Permits
2. Applicability of Permitting Requirements to Recycled Wastes
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4. Modifications to Part A Permit Applications
IV. Delayed Effective Dates
V. Impact on Authorized States
A. Applicability in Authorized States
B. Effect on State Authorizations
VI. CERCLA Impacts
VII. Executive Order 12291—Regulatory Impact
A. Estimates of Per Firm Costs
1. Part 262 Generator Standards
2. Transportation Costs
3. Treatment, Storage, and Disposal Costs
a. On-site Accumulation
b. Treatment and Disposal
B. Estimates of Nationwide Incremental Cost Burden on Generators of 100–1000 kg/mo
C. Estimates of the Economic Impacts of Today's Rule
VIII. Regulatory Flexibility Act
IX. Paperwork Reduction Act
X. List of Subjects

I. Authority

These regulations are being promulgated under authority of section 2002(a), 3001, 3002, 3004, 3005, 3006, 3010, 3015, 3017, and 3019, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922, 6924, 6925, 6926, 6930, 6935, 6939, 6991, and 6993.

II. Background and Summary of Final Rule

A. The Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the President signed Pub. L. 98-616, titled The Hazardous and Solid Waste Amendments of 1984 (HSWA). These comprehensive amendments will have far-reaching ramifications for EPA's hazardous waste regulatory program and will impact a very large number of businesses in the United States. Further, Congress has established in these amendments ambitious schedules for the imposition of the requirements that EPA must promulgate.

With respect to regulation of small quantity generators (*i.e.*, generators of less than 1000 kg of hazardous waste in a calendar month) the HSWA added a new subsection (d) to Section 3001 of RCRA designed to modify EPA's current regulatory exemption of wastes generated by small quantity generators from full Subtitle C regulation (40 CFR 261.5). Section 3001(d) directs EPA to develop a comprehensive set of standards which will apply to hazardous wastes produced by small quantity generators of between 100 and 1000 kg of hazardous waste in a calendar month ("generators of 100-1000 kg/mo"). EPA is required to promulgate final standards no later than March 31, 1986. Today's final rule satisfied this requirement. In addition, section 3001(d) imposes certain minimum requirements on these generators prior to that date and requires EPA to complete a number of studies before April 1987.

1. Codification Rule

On July 15, 1985, EPA published in the **Federal Register** a Final Rule which codified a number of legislatively mandated provisions contained in the HSWA (see 50 *FR* 28702-28755, July 15, 1985). Among those provisions is the requirement of section 3001(d)(3) that effective 270 days from the date of enactment, all off-site shipments of hazardous waste from generators of greater than 100 kg but less than 1000 kg of hazardous waste during a calendar month must be accompanied by a copy of the Uniform Hazardous Waste Manifest, signed by the generator, and containing the following information:

- The name and address of the generator of the waste;
- The U.S. Department of Transportation (DOT) description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA);
- The number and type of containers;
- The quantity of waste being transported; and
- The name and address of the facility designated to receive the waste.

The information required by this provision (codified at 40 CFR 261.5(h)(3)) corresponds to Items 3, 9, 11, 12, 13, 14, and 16, of EPA form 8700-22 and accompanying instructions promulgated on March 20, 1984 (49 *FR* 10490). These information requirements conform to DOT shipping requirements designed to provide necessary information to handlers of hazardous materials (*e.g.*, transporters and emergency response personnel).[1] The interim manifest requirement applies only until the effective date of the regulations being promulgated today. These final rules will supersede the existing manifest requirements for these generators.

The HSWA provisions, together with existing regulations, distinguish three main classes of small quantity generators for regulatory purposes: (1) Those generating between 100 and 1000 kg of non-acutely hazardous waste per calendar month; (2) those generating up to 100 kg of non-acutely hazardous waste per calendar month; and (3) those generating acutely hazardous wastes in quantities currently set forth in § 261.5(e). These classes of small quantity generator are distinguished in the July 1985 "Codification Rule". Until the effective date of today's final rules, under the regulatory system imposed by 40 CFR 261.5 implementing section 3001(d) of the HSWA, a small quantity generator in the first group (*i.e.*, producing between 100 and 1000 kg of non-acutely hazardous waste in a calendar month) is subejct to the following requirements:

(1) He must determine if his waste is hazardous under 40 CFR 262.11 (§ 261.5(h)(1));

(2) He may conditionally accumulate hazardous waste on-site provided he does not exceed the quantity limitation contained in § 261.5(h)(2);

(3) After August 5, 1985, he must partially complete and sign a single copy of the Uniform Hazardous Waste Manifest to accompany any off-site shipment of hazardous waste (§ 261.5(h)(3)); and

(4) He must treat or dispose of his hazardous waste on-site, or ensure delivery to an off-site treatment, storage, or disposal facility. The on-site or off-site facility must be either: (i) Permitted by EPA pursuant to Section 3005 of RCRA or by a State having an authorized permit program under Part 271; (ii) in interim status under Parts 270 and 265; (iii) permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or (iv) a facility which beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to reuse, recycling or reclamation (§ 261.5(h)(4)).

As discussed in the remainder of this preamble, 100-1000 kg/mo generators will be regulated under Part 262-266 and Parts 270 and 124 when today's rules become effective, to the extent that rules apply.

Generators of less than 100 kg of hazardous waste in a calendar month will remain conditionally exempt from most of the hazardous waste program, as provided in § 261.5(g). For example, generators of less than 100 kg are not required to comply with any manifesting provisions. No additional requirements apply to this class of hazardous waste generator under the existing rules unless the quantity limitations contained in § 261.5(g) are exceeded.

Generators that produce acutely hazardous waste and do not exceed the quantity limitations for such waste under § 261.5(e) will also be conditionally exempt from regulation. No additional requirements apply to this class of generators unless the quantity limitations contained in § 261.5(e) are exceeded, at which point the acutely hazardous waste becomes subject to the full generator requirements of 40 CFR Part 262.

2. Minimum Rulemaking Requirements

Section 3001(d)(1) of the HSWA requires EPA to promulgate, by March 31, 1986, standards under sections 3002, 3003, and 3004, for hazardous wastes generated by a generator in a total quantity greater than 100 but less than 1000 kilograms in a calendar month. Standards developed under this section must be sufficient to protect human health and the environment but *"may vary from the standards applicable to hazardous waste generated by larger quantity generators"* [emphasis added] (section 3001(d)(2)). EPA is further authorized to promulgate standards for generators of less than 100 kg/mo of hazardous waste if the Administrator determine it is necessary to do so to protect human health and the environment (section 3001(d)(4)).

At a minimum, standards issued pursuant to section 3001(d)(1) must require that all treatment, storage, and disposal of hazardous wastes from

[1] While 100-1000 kg/mo generators are not now required to complete the entire manifest under Federal law, many States operating their own hazardous waste programs may already require additional information on the manifest or require use of the State's version of the Uniform Hazardous Waste Manifest.

generators of between 100 and 1000 kg of hazardous waste in a calendar month occur at a facility with interim status or a permit issued under section 3005 of RCRA. The standards must also allow generators of between 100 and 1000 kg of hazardous waste during a calendar month to store waste on-site for up to 180 days without being required to obtain a RCRA permit. If a generator must ship or haul his waste greater than 200 miles, that generator may store up to 6000 kg of hazardous wastes for up to 270 days without a permit (section 3001(d)(6)). These minimum requirements are embodied in today's final rule.

In addition, the Agency has interpreted the statute to require that, at a minimum, EPA's regulations must provide for continuation of the August 1985 requirement that off-site shipments of hazardous waste from 100–1000 kg/mo generators be accompanied by a single copy of the Uniform Hazardous Waste Manifest containing at least the information specified in section 3001(d)(3). See H.R. Report No. 198, 98th Cong, 1st Sess. 25–28 (1983); S. Rep. No. 284, 98th Cong. 1st Sess. 8 (1983); H.R. Rep. No. 133, 98th Cong., 2nd Sess., 101–103 (1984).

The Agency believes that at a minimum Congress intended that the Agency's regulations incorporate the partial Uniform Hazardous Waste Manifest requirements in order to provide notice of the hazardous nature of the waste to transporters and facilities. In addition, the Agency is specifically authorized to expand the manifest requirements if necessary to protect human health and the environment. See section 3001(d)(3). As discussed in Unit III.C.2. of today's preamble, EPA has concluded that additional manifest requirements are necessary to ensure protection of human health and the environment.

3. March 31, 1986 Hammer Provisions

If EPA had failed to promulgate standards for hazardous waste generators producing greater than 100 kg but less than 1000 kg in a calendar month by March 31, 1986, these generators would have been subject to certain legislatively stipulated provisions.

The promulgation of today's final rule prior to March 31, 1986, however, effectively voids the hammer provisions of the HSWA with respect to small quantity generators. Consequently, the requirements promulgated today are the only requirements which 100–1000 kg/mo generators must comply with. As discussed in Unit IV, the Part 262 requirements applicable to 100–1000 kg/mo generators that manage waste off-site will take effect six months from today while the requirements of Parts 264 and 265 applicable to generators that manage waste on-site will take effect twelve months from today.

It should be noted that the HSWA specifically states that the requirements of this Section should not be construed to be determinative of the requirements appropriate for small quantity generators in developing a regulatory program. The hammer provisions of HSWA, therefore, do not dictate the content of these final rules for generators of 100–1000 kg/mo.

4. August 1, 1985 Proposal

On August 1, 1985, EPA proposed rules that would apply to generators of 100–1000 kg/mo of hazardous waste. The proposed rules represented the Agency's efforts to balance the need for regulation of this group of generators in a manner that would protect human health and the environment with the need to minimize the impacts of such regulation on small firms.

The proposed rules modified the existing standards for generators and treatment, storage, and disposal facilities to reflect the generally smaller quantities of waste and small business nature of many of these firms. In essence, EPA concluded that some relief from the administrative and paperwork requirements embodied in the Part 262 Generator Standards was appropriate for generators of 100–1000 kg/mo of hazardous waste.

EPA proposed to remove 100–1000 kg/mo generators from the existing § 261.5 small quantity generator provision, thus subjecting them to Part 262. In addition, the Agency proposed specific amendments to Part 262 to relieve these generators of some of the requirements of that Part. Under the proposed rules, generators of 100–1000 kg/mo would have been required under Part 262 to:

- Determine whether their wastes are hazardous (already required under § 261.5);
- Obtain an EPA identification number;
- Store hazardous waste on-site for no more than 180 or 270 days in compliance with specially modified storage standards (unless they comply with the full regulations for hazardous waste management facilities);
- Offer their wastes only to transporters and facilities with an EPA identification number;
- Comply with applicable Department of Transportation (DOT) requirements for shipping wastes off-site;
- Use a single copy of the Uniform Hazardous Waste Manifest to accompany the waste from the generation site.

The proposed requirements for generators of 100–1000 kg/mo were intended to be less stringent than those applicable to large quantity generators in two significant respects. First, under the proposed rules, generators of 100–1000 kg/mo would not have been required to comply with the full manifest system required of larger hazardous waste generators that ship waste off-site for treatment, storage, or disposal. Instead, the Agency proposed a "single copy" manifest system intended to serve as a "notification" to subsequent handlers of the waste (*i.e.*, transporters and facilities) that the material is a hazardous waste and to provide essential information to those handlers as well as emergency personnel. EPA proposed to specifically exempt these generators from the existing manifest requirements pertaining to number and distribution of manifest copies as well as from the recordkeeping and reporting requirements associated with the full manifest system (*i.e.*, use and retention of manifest copies and exception and biennial reporting). EPA also proposed to exempt 100–1000 kg/mo generators from all of the manifest requirements under certain circumstances where the waste is reclaimed under contractual arrangements where either the generator or a reclaimer retains ownership of the material throughout the generation, transportation, and reclamation of the waste. Under such circumstances, EPA believed that the manifest would be unnecessary, provided that specific conditions are met.

A second significant difference for 100–1000 kg/mo generators was the proposed requirements affecting accumulation (*i.e.*, short-term storage) of hazardous waste on-site prior to shipment of waste off-site or management on-site in a treatment, storage, or disposal facility. The proposed rules implemented the statutory requirement to allow generators of 100–1000 kg/mo to accumulate (*i.e.*, store) waste on-site in tanks or containers for up to 180 days (or 270 days if they must ship their waste over 200 miles for treatment or disposal), without obtaining interim status or a permit. In addition, the proposed rules provided that these generators would need to comply with specific storage requirements which were reduced somewhat from those applicable to large quantity generators. Unlike large quantity generators, those producing between 100–1000 kg/mo would not be required to prepare a written contingency plan or have

formalized personnel training programs. They would, however, be subject to a reduced set of specific requirements for contingency and emergency procedures, and for ensuring that their employees are fully cognizant of those procedures as well as proper hazardous waste handling methods. Generators of 100–1000 kg/mo that accumulate wastes in tanks or containers would, however, be subject to the same requirements of existing Subparts I and J of Part 265 applicable to larger generators as well as to the preparedness and prevention standards contained in Subpart C of Part 265.

EPA also proposed that those 100–1000 kg/mo generators who treat, store, or dispose of their hazardous waste in on-site facilities and who do not qualify for the 180- or 270-day exclusion would be subject to the full set of Parts 264 and 265 facility standards currently applicable to other hazardous waste treatment, storage, and disposal facilities, including the need to obtain interim status and a RCRA permit. EPA saw no basis for reducing the technical standards for these generators since the potential hazards to human health and the environment appeared to be equivalent to those from other fully regulated treatment, storage, and disposal facilities. However, because of the major impact which these facility requirements would be likely to have on many of these firms, the Agency proposed to delay the effective date of this portion of the regulations an additional six months (*i.e.*, 1 year from the date of publication in the **Federal Register** of the final rules) to allow these firms additional time to either arrange for off-site management or to up-grade their on-site practices for compliance with the full set of Parts 264 and 265 facility standards.

B. Summary of Final Rule

Today's final rule adopts most of the provisions of the proposed rules for generators of 100–1000 kg/mo. Today's final rule subjects generators of 100–1000 kg/mo to regulation under Parts 262, 263, 264, 265, and 266 of the hazardous waste regulations by removing these generators from the conditional exclusion provisions of § 261.5. However, the Agency has decided not to formally redefine a "small quantity generator" as one who generates no more than 100 kg of non-acutely hazardous waste since the Agency has concluded that such a redefinition would increase, rather than reduce, confusion. Consequently, the term "small quantity generator" will continue to apply to all generators of less than 1000 kg of hazardous waste in a calendar month.

As a result of today's final rule subjecting generators of 100–1000 kg/mo to the Part 262 requirements, these generators will be required to:

- Determine whether their wastes are hazardous (already required under § 261.5);
- Obtain an EPA identification number;
- Store hazardous waste on-site for no more than 180 or 270 days in compliance with specially modified storage standards (unless they comply with the full regulations for hazardous waste management facilities);
- Offer their wastes only to transporters and facilities with an EPA identification number;
- Comply with applicable Department of Transportation (DOT) requirements for shipping wastes off-site;
- Use a multi-part "round-trip" Uniform Hazardous Waste Manifest to accompany the waste to its final destination; and
- Maintain copies of manifests for three years;

EPA is today finalizing a number of the proposed modifications to the Part 262 requirements applicable to generators of 100–1000 kg/mo. These generators will not be required to submit biennial reports or file exception reports if a copy of the manifest is not returned by the destination facility. In addition, the proposed modifications to the accumulation provisions of § 262.34 exempting these generators from the requirements to prepare a formal contingency plan and conduct formal personnel training are also being finalized, as is the proposed exemption from all manifest requirements for wastes reclaimed under certain contractual arrangements. The Agency is also exempting 100–1000 kg/mo generators from the 50' buffer zone requirements for container storage of ignitable or reactive wastes during periods of on-site accumulation.

The most significant departure from the proposed rules is the Agency's determination that the multiple copy manifest system does not impose a significant burden and that, in fact, the multiple copy manifest system is essential to ensure protection of human health and the environment. Therefore, the modifications to the existing manifest system proposed for 100–1000 kg/mo generators are not being adopted in today's final rule. The reasons for this change are discussed in detail in Unit III.C. of this preamble.

III. Response to Comments and Analysis of Issues

This Section of the preamble addresses the comments received on the August 1, 1985, proposed rules ("Proposal") and describes the Agency's position on the major issues raised in the proposal and during the comment period.

A. EPA's Approach To Regulating 100–1000 kg/mo Hazardous Waste Generators

As discussed in the preamble to the Proposal, EPA's approach in developing standards for 100–1000 kg/mo generators was one of balancing the two competing goals inherent in section 3001(d)—protecting human health and the environment and avoiding unreasonable burdens on the large number of small businesses affected by the standards. In assuring protection of human health and the environment, the Agency deemed it appropriate and consisent with Congressional intent to consider the "relative risk" posed by the small aggregate amounts of waste generated by the 100–1000 kg/mo generators. Given the lower relative risk that these generators pose compared to larger generators in terms of quantity of waste, varying the standards from those applicable to large quantity generators would still assure protection of human health and the environment.

EPA also evaluated the potential impact of full Subtitle C regulations with respect to both administrative and technical considerations, and concluded that the technical requirements were more essential than the administrative requirements to the general goal of protecting human health and the environment because they are directly concerned with controlling releases to the environment. In addition, Congress anticipated reducing administrative requirements, such as reporting and recordkeeping, as a means to reduce impacts on the 100–1000 kg/mo generators. Thus, EPA proposed to relieve these generators of some Part 262 standards that are administrative in nature while retaining all existing technical standards. The relief was only provided to generators who accumulate on-site for the statutorily-prescribed periods, because, given that the amount of waste accumulated would necessarily be limited, the relative risk from releases of such waste would be less than that from the unlimited amounts of waste accumulated by off-site facilities.

Most persons who commented on EPA's approach to regulation in this area supported the concept of reducing

burdens on small businesses and of fashioning the degree of relief provided from the level of risk involved; however, several commenters disagreed on the level of risk posed by waste from 100–1000 kg/mo generators. One commenter argued that the "relative risk" approach was not technically sound because the synergistic and antagonistic properties of waste streams were not considered, and mismanagement of even small quantities of waste, if not controlled or regulated, would eventually have the same impact as larger amounts of waste. One commenter pointed out that the relative risk approach is difficult to justify on a regional or local basis, where 100–1000 kg generators may contribute much more than the 0.3 percent nationwide contribution, and their proximity to populations as compared to large quantity generators should have been considered. Several commenters also asserted that Congress has judged the hazardousness of a given waste to be imparted by its inherent properties, not by its quantity.

As EPA explained in the Proposal, the Agency believes it to be both appropriate and consistent with Congressional intent to consider the relative risk posed by the smaller quantities of waste generated by 100–1000 kg/mo generators. Although it did evaluate several Congressionally-specified factors, such as waste characteristics, the Agency found that the only useful factor in drawing meaningful distinctions between large quantity generators and 100–1000 kg/mo generators was the quantity of waste generated. Thus, the Agency considered both the inherent properties and the quantities of waste generated in developing standards to assure protection of human health and the environment.

The Agency is aware that there can be concentrations of 100–1000 kg/mo generators in populated areas, and that their 0.3 percent nationwide contribution can be increased accordingly in some cases; however, overall the quantities of waste capable of being leaked or spilled during storage or transportation, as compared to that of large quantity generators, still poses relatively less risk. Moreover, the only type of relief being provided is where the technical standards deemed necessary to protect human health and the environment are not compromised in substance. The Agency believes that, by retaining all technical standards for storage, transportation, and treatment required of large quantity generators and by modifying some requirements of an administrative nature for the 100–1000 kg/mo generators, a fair balance between the goals of reducing burdens and protecting health and the environment is reached. The Agency does not believe that exempting the 100–1000 kg/mo generators from these administrative requirements will significantly increase the risks from storage, transportation, or disposal of the waste. In addition, as discussed below, the Agency's decisions to require the multiple-copy manifest, which will allow "tracking" of the waste to ensure proper disposal, will further reduce any potential risks.

Another group of commenters criticized EPA's approach in that it did not consider bases for providing relief in addition to that proposed. For example, several commenters asserted that 100–1000 kg/mo generators use less sophisticated waste management practices than large quantity generators, due in large part to economic constraints. This, along with the lesser relative risks, they asserted, dictates imposing less costly regulatory requirements, such as eliminating on-site storage permitting requirements for longer periods of time and larger quantities than EPA proposed.

While EPA did consider differences in waste management practices that would distinguish 100–1000 kg/mo generators from large quantity generators, it found that both classes use many of the same waste management practices (see 50 *FR* 31285 (Col. 1) (August 1, 1985). The comments received on this subject do not provide evidence indicating otherwise. The Agency has recognized that the 100–1000 kg/mo generators generally have less manpower and fewer economic resources available to them, and that this would affect their ability to comply with the full regulatory requirements applicable to large quantity generators. However, Congress has already provided for on-site storage for longer periods of time to allow for more economical shipments. In addition, as discussed below, EPA is modifying certain facility requirements for on-site accumulation to simplify the requirements for contingency plans, emergency procedures, and personnel training (contained in Part 265, Subpart D and § 265.16). These requirements are being modified because they would be unduly burdensome and the underlying environmental objectives can be achieved in their modified form. However, full Parts 264–265 requirements would apply to generators that store their waste in tanks or containers for very long periods of time (*i.e.*, longer than 180 or 270 days) because the quantity of waste present, over time, becomes significant. Similarly, the potential for release of hazardous waste to the environment becomes significant where 100–1000 kg/mo generators engage in waste management in surface impoundments, waste piles, landfills, or land treatment facilities. Thus, in order to fulfill its mandate to protect human health and the environment, EPA has rejected any suggestions to reduce the Parts 264 and 265 facility standards.

B. Applicability Issues

1. Definition of "Small Quantity Generator"

In the August 1, 1985 proposal, EPA proposed to amend 40 CFR 261.5 to redefine a small quantity generator as one who generates no more than specified quantities of acutely hazardous waste and no more than 100 kg of other hazardous waste in a calendar month. The effect of the proposed redefinition would have been to remove 100–1000 kg/mo generators from the § 261.5 exemption for small quantity generators and subject them, instead, to Parts 262–266, 270, and 124 of the hazardous waste regulatory program. Under the proposed rules, generators of 100–1000 kg/mo would have been one of two classes of large quantity generator. The Agency also proposed changes to Part 262 that would specifically exempt these 100–1000 kg/mo generators from a number of the otherwise applicable administrative requirements.

A number of commenters expressed concern about the proposed redefinition of the small quantity generator provision to exclude generators of 100–1000 kg/mo. In particular, they stated that many of these generators were only now becoming aware of their status as regulated hazardous waste generators and that, for the most part, they recognized themselves as "small quantity generators". Changing these generators to large quantity generators, it was felt, would add to confusion and reduce the likelihood of compliance. It was also pointed out that many of the education materials being used to acquaint these generators with the RCRA requirements, including many of EPA's own materials, referred to this class of generator as "small quantity generators". Commenters suggested several specific labels to differentiate the various classes of generators, including such terms as "small *de minimis*", "very small quantity generators" or "extremely small quantity generators".

In proposing to remove the 100–1000 kg/mo generators from § 261.5, the Agency was attempting to address the complexity and confusion caused by having multiple classes of small quantity generator subject to significantly different standards. The Agency is sympathetic to the concerns of these commenters and in no way intended the redefinition to add to the confusion which many of these firms may experience in becoming subject to the bulk of the RCRA regulatory program for the first time. For the reasons discussed below, EPA has decided not to alter the existing definition of "small quantity generator" but is making modifications to § 261.5 that will provide a more explicit labeling scheme for regulatory purposes.

Section 261.5 has historically addressed those hazardous waste generators that were conditionally exempt from most of the hazardous waste regulatory program. Until the HSWA of 1984 and the subsequent codification of its early enactment provisions on July 15, 1985, only two major classes of small quantity generator existed: those generating or accumulating acutely hazardous wastes below certain quantity cutoffs and those generating or accumulating below 1000 kg of most hazardous wastes. Furthermore, both classes were largely exempt from the standards applicable to large quantity generators.

However, with the addition of a new class of small quantity generator designated by Section 3001(d) of HSWA (*i.e.,* those generating between 100 kg and 1000 kg of hazardous waste in a calendar month) that would be subject to most of the standards applicable to large quantity generators, continued use of the term "small quantity generator" would have no regulatory significance and would lead to confusion for the previously exempt class of generators.

The proposed redefinition was intended to distinguish between small quantity generators that were conditionally exempt from regulation under § 261.5 (*i.e.,* <100 kg/mo) and those that would be subject to most of the requirements applicable to large quantity generators (*i.e.,* 100–1000 kg/mo). By removing the 100–1000 kg/mo generator from § 261.5 and referring to these generators by their actual quantity limitations, the Agency intended to provide a more explicit, and therefore less confusing, regulatory scheme.

The Agency does not believe that the commenters' suggestion of retaining the term "small quantity generator" solely for 100–1000 kg/mo generators or creating new labels for different categories of small quantity generators will reduce confusion; such labels would probably cause more confusion, especially where states have established their own small quantity generator definitions and exclusion levels. In fact, as a result of these comments, the Agency believes that the term small quantity generator is no longer sufficiently precise for most regulatory purposes.

For this reason, the Agency is making three regulatory changes affecting the use of the term "small quantity generator". First, the Agency is adding a definition of "small quantity generator" to Section 260.10 as follows:

"Small quantity generator" means a generator who generates less than 1000 kg of hazardous waste in a calendar month.

This definition *conforms to the existing definition of the term* and is being added to § 260.10 to alleviate any potential confusion over the definition of "small quantity generator".

Second, EPA is finalizing the proposed removal of generators of 100–1000 kg/mo from the conditional exclusion provisions of § 261.5 and will instead refer to these generators in the regulatory language as generators of 100–1000 kg/mo. This will retain the original premise of the redefinition which was to segregate in the regulations those generators that are predominantly exempt from regulation (*i.e.* generators of less than 100 kg/mo of hazardous waste and generators of acutely hazardous waste in less than specified quantities) from those who are more fully regulated (*i.e.* 100–1000 kg/mo generators). Since the 100–1000 kg/mo generators are no longer excluded from most of the Part 262 regulations by inclusion in § 261.5, the applicable portions of Parts 262–266, 270, and 124 will apply to these generators, as proposed.

Finally, the Agency is also modifying references to the term "small quantity generator" in § 261.5 and in other parts of the regulations to provide more explicit descriptions of the various classes of small quantity generator. Thus, generators of less than 100 kg/mo of hazardous waste or less than specified quantities of acutely hazardous waste will also be referred to by their quantity cutoffs or as generators who are conditionally exempt under Section 261.5. Section 261.5 will now be titled "Special Requirements for Hazardous Wastes Generated by Conditionally Exempt Small Quantity Generators."

The removal of the term "small quantity generator" from most regulatory use will in no way preclude continued use of the term "small quantity generator" for general reference and educational purposes. The Agency recognizes the widespread use of the term "small quantity generator" by States, trade associations, Congress and others and has no intention of interfering with the continued use of that term by anyone choosing to use it to refer to the broad class generating less than 1000 kg in a calendar month. EPA will also continue to use the term "small quantity generator" in describing the collective group of generators below 1000 kg/mo but will use the terms "generators of less than 100 kg/mo" and "100–1000 kg/mo generator" for regulatory purposes. For example, in discussing methodology for counting quantities in order to determine generator status, it would be appropriate to refer to the small quantity generator class since it includes both the 100–1000 kg/mo generators and generators of less than 100 kg/mo.

2. Generator Category Determination

In the Proposal, the Agency discussed a number of issues relevant to making a determination of which generator category a given firm belonged to at any given point in time in order to determine what requirements that establishment was actually subject to. Among the issues covered were which wastes need not be included in quantity determinations (*e.g.,* spent lead-acid batteries destined for reclamation and used oil) and how to count wastes for purposes of determining generator status (*e.g.,* counting of wastes reclaimed on-site). The comments received on these proposed rules raised a variety of additional issues with respect to what types of activities and wastes were intended to be covered by the proposed rules, and whether the rules were applicable to "episodic generators" who might be fully regulated in one month but conditionally exempt the next. These issues are discussed below. In addition to the explanation provided in this preamble, the Agency intends to develop detailed, plain-English guidance and education materials to help the 100–1000 kg/mo generators understand and comply with the hazardous waste regulations.

a. Counting Amendment to § 261.5: In an effort to help clarify for small hazardous waste generators which wastes must be counted in determining their generator category, the Agency proposed an amendment to § 261.5.

The proposed amendment stated that for purposes of making quantity determinations under § 261.5, a generator need not count wastes which are specifically exempted from

regulation (see, *e.g.*, § 261.4, or § 264.1(g) (2), (4), (5) and (6)) or which were not subject to substantive regulation under Parts 263, 264, 265, and the on-site accumulation provisions of § 262.34 were not subject to counting for purposes of determining generator status. Wastes that were subject to the provisions of § 261.6 (b) and (c) (recyclable materials), however, would be required to be counted in making quantity determinations. The proposal was designed to ensure that wastes that are not regulated are not counted. In addition, the counting amendment was intended to eliminate the multiple counting of wastes that are reclaimed and then reused many times during the calendar month. In this situation, the waste would only be counted once, even though it is reused and subsequently becomes a hazardous waste again after such reuse.

While the proposed amendment was intended to make it clear that any hazardous waste that is excluded or exempted from substantive regulation need not be included in the quantity determinations, a number of commenters either misunderstood the scope of the amendment or believed that additional clarification was necessary for the amendment to be understood. Although virtually all commenters on the proposed amendment supported the concept, several recommended specific changes to improve the clarity of the provision. Consequently, the Agency is today finalizing a slightly modified version of the amendment to § 261.5 to clarify which wastes are counted in making generator category determinations.

One commenter correctly noted that the amendment, as written, would not apply to generators of 100–1000 kg/mo since the amendment referred only to the quantity determinations under § 261.5. Since, under the rules being promulgated today, 100–1000 kg/mo generators will no longer be subject to the conditional exclusion provisions of § 261.5, the counting amendment would not have applied to these generators as proposed. Since this was contrary to the Agency's intent that the § 261.5(c) amendment be used by all generators in determining their generator status, the final regulatory language of this provision is modified to indicate that the amendment applies to quantity determinations under Parts 261–266 and 270 of the hazardous waste rules.

A second modification to this provision will make it clear that wastes which are not regulated under Parts 262–266 and 270 are not counted in making quantity determinations.

The majority of commenters on this provision asked for clarification on which wastes or processes were actually intended to be exempted from counting since the references to broad regulatory provisions or concepts such as "subject to substantive regulations" left many readers uncertain as to what the Agency considered to be "substantive regulation". For purposes of this provision, the term "substantive regulation" includes regulations which are directly related to the storage, transportation, treatment, or disposal of hazardous wastes. Regulations which would not be considered "substantive" for purposes of this provision would be requirements to notify and obtain an EPA identification number or to file a biennial report.

As a general guide, the following materials are included in the general category of exempted or excluded wastes that would not be counted in making quantity determinations for purposes of determining hazardous waste generator status:

• Any waste excluded from regulation under § 261.4. For example, wastes discharged to publicly owned treatment works (POTWs) and commingled with domestic sewage are not considered to be solid wastes when discharged, under § 261.4(a). Therefore, they are excluded from regulation under Subtitle C of RCRA and not counted for purposes of making quantity determinations (unless they are stored or treated in regulated units prior to being discharged). Such wastes are regulated instead under the Clean Water Act.[2]

• Any waste exempt from regulation under § 261.6 or wastes that are not stored or transported prior to being reclaimed. For example, under § 261.6(a)(3)(ii), spent lead-acid batteries that are returned to a battery manufacturer for regeneration are exempt from regulation under Parts 262–266, 270, and 124, and, therefore, are not counted in the quantity determination.

Also, used oil exhibiting a characteristic of hazardous waste, unless mixed with other hazardous wastes, is also currently exempt under § 261.6(a) and is not counted for purposes of making quantity determinations. EPA recently proposed to list used oil as a hazardous waste and proposed special management standards for used oil that is recycled. (See 50 *FR* 49164, November 29, 1985.) These proposals, if finalized, will continue to exclude used oil from the quantity determinations of Parts 261–266 and 270. Under the proposed rules for used oil, generators would count their used oil separately from their other hazardous wastes against a separate small quantity generator cutoff that would be established for recycled oil. Under those proposed rules, generators would be subject to less stringent standards for their recycled used oil than for their other hazardous wastes, provided they do not mix other hazardous wastes with their used oils or dispose of the used oil rather than recycle it. Used oil which is disposed of, or mixed with other hazardous wastes, would be regulated like any other hazardous waste and counted separately against the 100 kg/mo cutoff being promulgated today for other hazardous waste generators.

• Any waste reclaimed on-site if it is not accumulated prior to recycling in such a way as to become subject to the accumulation provisions of § 262.34 or the permitting requirements for storage facilities under Parts 264 or 265 (*i.e.* if it is not accumulated or stored prior to reclamation on-site). Under the hazardous waste rules, the actual process of reclaiming wastes is not subject to regulation under Parts 262–265 and 270 and 124 of the hazardous waste regulations.

Only the accumulation, transportation, long term storage, or the management of residues or sludges resulting from the reclamation process are actually subject to regulation. For example, wastes which are continuously reclaimed in a still or solvent cleaning machine on-site without intervening storage and which are reused on-site are not regulated and are not required to be counted in determining generator status.

• Wastes exempt from regulation under §§ 264.1 or 265.1, provided they are also not subject to the substantive standards in 40 CFR Parts 262 and 263. For example, wastes treated in elementary neutralization units, wastewater treatment units or totally enclosed treatment facilities as these units are defined in §260.10 are exempt from regulation under Parts 264 and 265.

• Wastes exempt from certain regulations under § 261.4(c). For example, wastes stored in a product or raw material storage tank are not subject to regulation under Parts 262–265, 270, 271, and 124, or to the RCRA 3010 notification requirements, and hence, are not counted.

[2] Waste discharged to a public sewer system is exempted from RCRA to avoid duplicative regulation since such wastes are regulated under the Clean Water Act. While disposal of hazardous wastes in this manner is not a violation of RCRA, the general pretreatment standards under the Clean Water Act contained in 40 CFR 403.5 prohibit the introduction of wastes into POTWs that would interfere with the operation of the treatment plant or subsequent POTW sludge management.

Therefore, generators are required to count for purposes of determining generator status any waste that is subject to the substantive regulations. Wastes are only counted once, however. A number of commenters claimed that although EPA discussed this in the preamble to the proposed rules, this point was not made clear in the actual regulatory language. The Agency agrees, and thus has added § 261.5(d)(3) to make it clear that a generator need not count the hazardous waste generated and then reclaimed and reused at the site of generation if the hazardous waste has already been included in the monthly totals. The Agency also is modifying § 261.5(d)(2) to make it clear that you only count the residue from treatment where the original hazardous waste was not counted.

The following examples may help to illustrate the regulatory scheme:

(Example 1) Manufacturer A uses solvent in a degreasing process yielding 500 kg of spent solvent in a month. If the solvent is to be reclaimed (*e.g.*, distilled) on-site and is not sorted or accumulated prior to reclamation, it will qualify as a solid (and hazardous) waste but it will not be counted in the generator's monthly totals. The 90 kg of still bottoms from the distillation process are also hazardous waste and must be counted since they were not included in the monthly total. Consequently, 'A' will not be a generator of 100–1000 kg during the month in question.

If the solvent is stored or accumulated prior to distillation, the 500 kg of the spent solvent will qualify as a hazardous waste and will be counted in 'A's hazardous waste totals for the month in which it was generated. The still bottoms will also qualify as hazardous waste, but will not be counted because the spent solvents have already been counted once. The regenerated solvent, on the other hand, will not be a solid or hazardous waste. It will remain unregulated, just like the virgin material.

(Example 2) Manufacturer A generates 120 kg of hazardous spent solvent in one month which he distills without intervening storage. The regenerated solvent is then reused. Neither the spent solvent nor the regenerated solvent is counted and "A" is not a 100–1000 kg/mo generator. Alternatively, "A" distills the spent solvent, but stores it for less than 180 days before reclamation, and reuses the regenerated solvent until spent again, and then distills it once again. The spent solvent would be counted because it was stored before reclamation, but it would only be counted once. "A" is now a 100–1000 kg/mo generator. If the spent solvent were stored for more than 180 days before reclamation, "A" would need a storage permit.

(Example 3) "A" generates 500 kg of hazardous spent solvent in one month and stores it in an earthen basin which is an impoundment, not a tank. The spent solvent is then discharged to a POTW. "A" must count the total quantity of spent solvent, as the impoundment is not a wastewater treatment unit by definition (§ 260.10), and hence, "A" is a 100–1000 kg/mo generator.

(Example 4) An automotive services center generates spent lead-acid batteries, which it sends to a battery breaker. The service center does not count the spent batteries in its monthly total because they are exempt from regulation until they reach the battery breaker. (See § 266.80(a).)

b. Generators of Acutely Hazardous Waste: Section 3001(d)(7) of HSWA states that the requirements applicable to generators of acute hazardous waste listed in §§ 261.31, 261.32, or 261.33(e) are not affected by the HSWA amendments.[3] Thus, today's regulatory amendments will not alter those requirements applicable to generators of acutely hazardous wastes and these generators will remain subject to the exclusion limits and requirements contained in § 261.5(e). The same counting rules as those described above are applicable.

c. Generators of Non-acutely Hazardous Waste in Quantities of Less than 100 kg/mo: Section 3001 of HSWA gives EPA authority to promulgate regulations for generators of less than 100 kg of hazardous waste per month if the Administrator determines that such standards are necessary to protect human health and the environment. The Agency is not required to promulgate such regulations and it did not propose to further extend coverage of the hazardous waste program to this class of hazardous waste generator in the August 1, 1985 proposal.

In the Proposal, the Agency stated that it had no data to indicate that additional regulation of generators of less than 100 kg/mo of non-acutely hazardous waste would provide any significant additional level of environmental protection. Generators of less than 100 kg/mo of hazardous waste account for only .07 percent of the total quantity of hazardous waste generated nationally. A review of damage cases also indicated that very few incidents involved quantities below 100 kg. Consequently, none of the regulations promulgated today, with one exception, alter the existing § 261.5 provisions applicable to generators of less than 100 kg/mo. As discussed under the on-site accumulation provisions later in this preamble, the Agency has decided to modify § 261.5(g) to subject generators of less than 100 kg/mo who exceed the accumulation limit of 1000 kg to the modified standards for generators of 100–1000 kg/mo rather than to full regulation.

d. Determination of Generator Status: A number of commenters asked for clarification of the requirements that would apply to generators that do not generate hazardous waste at a uniform rate. Such "episodic generators" may generate, for example, less than 100 kg of hazardous waste one month, quantities of 100–1000 kg other months, or may periodically exceed 1000 kg in a single month.

Several commenters requested clarification of what standards would apply to these episodic generators under different circumstances. Various circumstances for which clarification was requested were raised; for example:

(1) A generator that exceeds the 100 kg/mo exclusion level periodically as a result of special operations such as tank cleaning;

(2) A generator that usually generates between 100 and 1000 kg/mo, but exceeds 1000 kg in one month;

(3) A generator that exceeds 1000 kg/mo several times and accumulates all waste in a single tank;

(4) A generator that periodically exceeds 1000 kg/mo and separates the "under 1000 kg/mo" waste from the "over 1000 kg/mo" waste.

The Agency has always taken the position that a generator may be subjected to different standards at different times, depending upon his generation rate in a given calendar month (See, *e.g.*, 45 *FR* 76620, November 19, 1980). Thus, a generator of less than 100 kg in one calendar month would be deemed a conditionally exempt generator in that month, subject only to the requirements of § 261.5; however, if in the next calendar month, he generates more than 100 kg but less than 1000 kg of any regulated hazardous waste, he is subject to all of the standards being promulgated today, as his generator status has changed. Furthermore, if he generates more than 1000 kg in any calendar month, he is deemed to be a large quantity generator, subject to all applicable standards. Thus, any non-exempts waste that is generated during a calendar month in which the 1000 kg/mo cutoff is exceeded is subject to full regulation until it is removed from the

[3] At this time, only one acute hazardous waste, dioxin, is listed outside of § 261.33(e).

generator's site. If such fully regulated waste is mixed or combined with waste exempt or excluded from regulation or waste that is subject to reduced regulation under today's final rule, then all of the waste is subject to full regulation until the total mixture is removed from the generator's site. If, on the other hand, the generator stores separately that waste generated during a month in which less than 1000 kg (but more than 100 kg) of hazardous waste is generated, from waste generated during a month in which more than 1000 kg is generated, the former is subject to today's reduced requirements, while the latter is subject to full regulation.

Therefore, generators who expect to periodically exceed the 1000 kg/mo cutoff for the reduced requirements being promulgated today should be prepared to ship their waste off-site if they wish to avoid being subject to full regulation.

Several commenters have suggested alternative schemes for determining applicable standards, all of which the Agency must reject. One commenter suggested that generators would determine their generator status on the basis of a "moving average" over a 12 month period. If, for example, a generator exceeded 1000 kg/mo for several months but averaged between 100 and 1000 kg over the course of the year, he would be subject to the reduced standards being promulgated today for 100–1000 kg/mo generators. The major problem with this approach is that generators would not be able to determine what standards they were subject to until as much as a year after they should have been complying with a specific set of requirements. For example, a generator who generates over 1000 kg the first month but who expects his moving average to fall below 1000 kg after 12 months could avoid preparing a contingency plan or complying with the other requirements of Part 262 applicable to large generators. This would also present enforcement problems, since it would be unclear which standards apply at any given point. Thus, the Agency believes that such an approach would not significantly reduce the implementation difficulties it was designed to address.

The second approach suggested was establishment of a uniform time and quantity cutoff for all generators, applying the same standards to the same quantities, regardless of monthly generation rates. Under this approach, all generators would be allowed to utilize the 180- and 270-day storage periods, provided the 6000 kg "cap" was not exceeded for all accumulated hazardous wastes so that the reduced standards of Part 262 for 100–1000 kg/mo generators would be extended to all generators who do not exceed 6000 kg on-site.

While this approach would be simpler to administer, it would be inconsistent with the approach that Congress has directed the Agency to take in developing standards for generators who produce different quantities of waste. While the Agency is authorized to consider such factors as small business impacts and management capabilities for 100–1000 kg/mo generators, it is not explicitly authorized to do so for larger generators. The Agency may not ignore in this rulemaking the fact that the statute has established generation rate as a factor in determining whether business impacts may be considered. Thus, as discussed further in Unit III.C.4., below, the Agency may not extend to all generators the same time and quantity limitations applicable to 100–1000 kg/mo generators.

C. Part 262 Generator Responsibilities

EPA is today finalizing amendments to Section 261.5 that will subject hazardous waste generators of 100–1000 kg/mo to the Part 262 generator standards and simplify a number of those requirements. This section of the preamble discusses the proposed amendments to Part 262 to relieve 100–1000 kg/mo generators of some of the administrative burden of complying with the hazardous waste regulatory program, the comments received on each proposal and the Agency's decision with respect to each of the proposed amendments.

The specific Part 262 requirements that EPA is amending for application to 100–1000 kg/mo generators are as follows:

- § 262.20 (General Manifest Requirements) is amended to exempt generators of 100–1000 kg/mo from all manifest requirements if their hazardous waste is reclaimed under certain contractual agreements provided the generator complies with specific recordkeeping requirements set forth in this section. Some modifications to this amendment are being made in response to comments.
- § 262.34 (Accumulation Time) is amended to extend the period of on-site storage allowed for 100–1000 kg/mo generators without the need to obtain interim status or a RCRA permit from 90 days to 180 (or 270) days for quantities not to exceed 6000 kg. In addition, § 262.34 is amended to specify the requirements that would apply to such on-site storage by these generators.
- A new § 262.44 to Subpart D of Part 262 is added to exempt generators of 100–1000 kg/mo from the requirements to file and maintain records of biennial and exception reports. This exemption does not apply to records pertaining to hazardous waste determinations under § 262.40(d) and the extension of retention periods under § 262.40(c).

1. Notification and Identification Number Requirements—§ 262.12

In the August 1 proposal, EPA proposed that generators of 100–1000 kg/mo be subject to § 262.12, which provides that generators not excluded under § 262.10 or the provisions of § 261.5: (1) Must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without receiving an EPA Identification Number; (2) must obtain an EPA identification number (and may do so by completing and submitting EPA form 8700–12); and (3) must not offer their hazardous waste to transporters or to treatment, storage, and disposal facilities that have not received an EPA identification number.

The majority of commenters on the requirement to obtain and use an EPA identification number supported the Agency's proposal not to exempt 100-1000 kg/mo generators from this provision. EPA believes that a centralized data base of firms subject to regulation under RCRA is essential for effective compliance monitoring and enforcement, as well as for characterizing the regulated community to provide information to Congress and to make resource projections. Use of a unique identifying number is necessary to effectively manage any large data base. Several commenters added that requiring identification numbers for all generators who are subject to substantial regulation minimizes confusion in the regulated community.

Commenters who opposed the requirement cited the Agency's cost estimate of $40.00 per generator to obtain a U.S. EPA Identification Number, the complexity of the application form, and the lack of a specific statutory requirement for Identification Numbers. However, the Agency does not believe that the requirement to obtain a U.S. EPA Identification Number is overly burdensome to these generators, given the important function which this requirement fulfills.

Some commenters who opposed the requirement cited the complexity of the EPA Form 8700–12, "Notification of Hazardous Waste Activity." The Agency does not believe that the form is overly complex. EPA Regional Offices

have already received over 28,000 applications for U.S. EPA ID numbers from generators of less than 1000 kg/mo. In some cases, these applications were prompted by requirements from transporters and facilities that handle waste from these generators. In other cases, States require identification numbers for generators of less than 1000 kg/mo. While the Agency is unaware of any instances of 100–1000 kg/mo generators being unable to complete the form, EPA has initiated a major education program through trade associations, States, and grants to local governments and others, which would widely disseminate information that will help generators comply with today's rule. The Agency has also prepared a supplemental instruction sheet to provide additional information to generators of less than 1000 kg/mo who apply for U.S. EPA Identification Numbers. These instructions will contain the EPA waste codes for wastes commonly produced by these generators. This information will allow many generators to complete the application without additional information or research. In addition, generators may call the RCRA/Superfund Hotline or the Small Business Hotline for information and assistance. These numbers are provided at the beginning of today's notice.

Some commenters suggested establishing a telephone system for obtaining identification numbers. EPA considered this kind of system in the proposal and concluded that the lack of a signed record from the waste handler would allow a high potential for confusion and misrepresentation. The Agency still believes this to be true and no commenter was able to suggest a mechanism for avoiding this.

One commenter suggested that EPA modify the application form to require generators to indicate whether they generate less than 100 kg/mo, 100–1000 kg/mo, or more than 1000 kg/mo. EPA recently modified the form to require generators to indicate whether they generate more than 1000 kg/mo or less than 1000 kg/mo of hazardous wastes.

The Agency does not believe that there is any justification for exempting "infrequent generators" from the Identification Number requirement, as suggested by one commenter. EPA believes that all 100–1000 kg/mo generators should be known to the Agency, however infrequently they fit into the category, to allot follow-up if any problems arise. Also, use of an EPA Identification Number when wastes are shipped off-site helps enforcement authorities to keep track of waste shipments.

The Agency believes that the EPA Identification Number requirement, as proposed, is the best system for ensuring that the Agency has adequate information about these new members of the regulated community. Consequently, EPA is not modifying § 262.12 for generators of 100–1000 kg/mo.

2. The Hazardous Waste Manifest System—Part 262, Subpart B

This Unit discusses the proposed modifications to the hazardous waste manifest system for 100–1000 kg/mo generators for wastes shipped off-site. The issues raised in the comments on the Proposal include the "single" versus "multiple" copy or "round-trip" manifest, the proposed exemption from manifesting for wastes shipped under certain reclamation agreements, and the applicability of the manifest waste minimization certification provisions of the HSWA.

a. Number of Copies and Use of the Manifest: The Proposal for generators of 100–1000 kg/mo of hazardous waste contained several modifications to the Uniform Hazardous Waste Manifest system. The proposed rules would have exempted 100–1000 kg/mo generators from the following requirements: 1) to compete a multiple copy manifest form (§ 262.22), 2) to retain a copy for the generators' records (§ 262.23(a)(3)), and 3) provide multiple copies of the manifest to the waste transporter (§ 262.23(b)). The effect of these proposed modifications to the manifest system would have been to exempt these generators from the "roundtrip" or "tracking" function of the manifest system (*i.e.*, establishment of a paper trail for enforcement purposes) while continuing to require that a single copy of a fully completed manifest accompany the waste shipment as a means to provide notice to subsequent handlers that the waste is hazardous. No modifications were proposed to the requirements to fully complete the manifest form, and to use established systems for obtaining forms from the appropriate State, except for a proposed elimination of the manifest document number from the required information.

These modifications to the manifest system were intended to minimize impacts on small business while still meeting the underlying goal of HSWA to protect human health and the environment. By reducing some of the paperwork requirements associated with the full manifest system, EPA believed that both of those goals could be served. In particular, EPA believed that the requirement for these generators to obtain an EPA identification number, complete a single copy of the manifest for all off-site shipments and for facilities to keep these manifests in its files created a significant legal obligation that the waste would be managed at approved hazardous waste management facilities, as required under the HSWA. The Agency believed that this legal obligation would not be significantly enhanced by requiring the use, distribution, and retention of multiple copies of the manifest form.

In requesting public comment on the issue of the "single copy" manifest system, EPA pointed out that it was not fully convinced that the relief being offered was significant enough to offset the potential confusion which the single copy system might cause, or to offset the loss of the "tracking" function of the manifest as an enforcement mechanism. EPA received extensive negative comment on the proposed amendments which have convinced the Agency that the multiple copy manifest system should be adopted in the final rules.

Many commenters asserted that exempting 100–1000 kg/mo generators from the "round-trip" hazardous waste manifest system (*i.e.* return of a signed copy by the designated facility to the generator as proof that the shipment arrived) would not significantly reduce administrative burden. Most commenters who represented both small and large businesses, State agencies and firms in the waste management industry believed that the information requested on the manifest was not particularly difficult to provide, and they did not object to the proposed requirements to provide essentially full manifest information. Many commenters argued that requiring full manifest information was appropriate for all generators, and that the preparation of multiple copies of the manifest presented no incremental burden over a single copy system since manifests are generally obtained in carbon sets, requiring no real additional effort. These commenters also pointed out that retention of a copy for the generator's files poses a minimal burden due to the limited number of shipments most 100–1000 kg/mo will need to make under the extended accumulation periods being promulgated today for these generators (See Unit III.C.4.). Given the limited number of shipments most generators will need to make to treatment or disposal facilities in a year (*i.e.* 2–4), commenters asserted that filing a manifest copy and replacing it with a copy signed and returned by the designated facility was simply not

burdensome. Furthermore, virtually all commenters, many of whom represented small business, also indicated that retention of a copy of the manifest containing signatures of the transporter and facility would be done in any case, and was essential to demonstrate that a business had met its legal responsibilities in cases where the waste is mishandled by subsequent handlers.

Another major concern of many commenters with respect to the single copy manifest system was the confusion that would result from having two different manifest systems in place for 100–1000 kg/mo generators and for generators of over 1000 kg. While some commenters representing small businesses believed that the single copy manifest system was workable and provided a real reduction in administrative burden, virtually all other members of the waste management and regulated community argued for a uniform manifest system. Many commenters representing larger corporations and firms with multiple facilities argued that a single uniform system would be the least confusing and least burdensome system. In addition, many commenters believed that different State and Federal requirements would make it extremely burdensome for many small businesses to determine which manifest system applied to them. States, waste haulers, and facilities would also have the added burden of trying to verify the generator status of those utilizing a single copy form and because of the difficulty in administering a dual system, they would simply require that all generators comply with the full system.

One commenter also argued that the Agency's proposed single copy manifest was inconsistent with Congressional intent since the hammer provisions of Section 3001(d)(8), which included a requirement for return of a signed manifest by the facility to the generator, were intended by Congress to serve as the minimum regulatory standards. However, the Agency can find no evidence in either the statute or the legislative history that would lead the Agency to this conclusion. The plain language of the hammer provision states ". . . nothing in this section shall be construed to be determinative of those standards appropriate for small quantity generators", and Section 3001(d)(6) explicitly sets out the "minimum" standards that must be included in the regulations. In addition, the legislative history of Section 3001(d) indicates that the provisions of subsection (d)(6) were to be regarded as statutory minimums rather than the hammer provisions of subsection (d)(8). See S. Rep. No. 284, 98th Cong., 1st Sess. 11–12 (1983); H.R. Rep. No. 1133, 98th Cong. 2nd Sess. 101, 103–104 (1984). Thus, the statute and legislative history provide extensive evidence that Congress gave EPA broad authority to establish whatever standards it deemed appropriate for these generators, and to vary the hazardous waste standards to minimize burden, consistent with protection of human health and the environment.

A number of commenters raised concerns with respect to the ineffectiveness of the single copy manifest system in ensuring that waste shipments are properly tracked from generator to transporter to facility. Under the proposed manifest system, a generator would be required to complete a single copy of the manifest and to give it to the transporter who in turn would be required to sign it and turn it over to the designated facility upon delivery of the waste shipment. The Agency felt that this chain created a substantial legal obligation that the waste would be managed at a Subtitle C facility. However, a number of commenters asserted that such a system would serve only to encourage unscrupulous transporters to either alter manifest information or simply dump the waste illegally, since the generator or others do not have any record of his accepting the waste shipment. A number of States were concerned that the absence of multiple copies of the manifest in the records of the generator, transporter, and facility would completely eliminate the ability of EPA or the States to enforce the requirement that the waste be managed at Subtitle C facilities. Further, these commenters felt that, whether or not the Agency takes an aggressive enforcement posture with respect to 100–1000 kg/mo generators, the mere existence of the multiple signed copies of a manifest serve as an essential incentive to properly manage the waste.

The Agency finds persuasive the arguments presented by commenters that requiring only the single copy manifest does not offer significant regulatory relief. The Agency has also concluded, based on public comment, that the single copy system may be insufficient to meet the statutory mandate to promulgate rules for 100–1000 kg/mo generators which are sufficient to protect human health and the environment.

The difference in burden between a single copy of the manifest and a multiple copy of the manifest, both containing essentially full information, appears to be negligible, so there is no real reduction in burden from the single copy system. Retention of a manifest copy by the generator is also minimally burdensome and is in the generator's best interest. The absence of a round-trip or multiple copy manifest could encourage, rather than protect against, mismanagement of these wastes. Most importantly, requiring the generator to retain a copy for his records and provide multiple copies of the manifest to the transporter provides an essential incentive for all parties to fulfill their responsibilities under RCRA. Thus, the Agency has decided not to adopt the single-copy manifest system, as proposed.

Consequently, generators of 100–1000 kg/mo will be subject to all of the requirements of Subpart B of Part 262 with respect to the Uniform Hazardous Waste Manifest except for certain waste reclamation shipments as provided in Section 262.20, discussed below. In addition, these generators will be subject to the recordkeeping provisions of Subpart D of Part 262 with respect to manifest copies but will not be subject to the associated exception and biennial reporting requirements, as discussed in Unit III.C.3, below.

b. Manifest Exemption for Certain Reclamation Shipments: In the Proposal, EPA proposed to exempt generators of 100–1000 kg/mo from all of the manifest requirements of Part 262, Subpart B, provided the waste was reclaimed under certain specific conditions, including:

1. The generator would be required to have a written agreement with a recycling facility to collect and reclaim a specified waste and to deliver regenerated material back to the generator at a specified frequency;

2. The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator must be owned and operated by the reclaimer of the waste;

3. Either the generator or the reclaimer must retain title to the material at all times; and

4. The generator and transporter/reclaimer must comply with specific recordkeeping requirements.

Specific regulatory requirements which would have to be met in lieu of the manifest requirements were proposed as follows:

1. A copy of the reclamation agreement is kept in the files of both the reclaimer and the generator for a period of at least three years;

2. The reclaimer/transporter records (for example, on a log or shipping document) the following information (which would be required of

transporters in a proposed amendment to § 263.20):

- The name, address and EPA identification number of the generator;
- The quantity of waste accepted;
- All DOT required shipping information;
- The date the waste is accepted by the transporter;

3. The above record accompanies the waste as it is shipped from generator to recycling facility; and

4. The reclaimer/transporter keeps these records for at least three years.

In proposing this exemption, EPA indicated that such agreements satisfied the Agency's concerns that subsequent handlers of the waste would have sufficient notification and knowledge of the hazardous nature of the wastes being handled and that the wastes would be tracked properly from the generator to the reclaimer and would not be mismanaged. In addition, the Agency believed that such an exemption would encourage beneficial recycling activities and would avoid discouraging current operations of this nature by not imposing paperwork obligations that have no corresponding environmental benefit. The Agency requested comment on the proposed manifest exemption and sought comment on other situations that might warrant reduced manifest requirements.

While some commenters opposed the proposed manifest exemption as providing an opportunity for "sham recycling", most commenters suggested that the exemption be expanded to cover all recycling situations or to cover a broader scope of activity than that proposed. Some commenters felt that the narrow nature of the exemption would afford some segments of the recycling industry an unfair competitive advantage. One commenter suggested that the exemption apply to reclamation agreements with firms that collect wastes for recycling but do not reclaim the wastes at their own facility, but rather, ship them via a licensed hazardous waste hauler to a separately owned and operated reclamation facility. This commenter argued that the same degree of protection would be afforded under these circumstances as under the proposed system since the waste would still be transported and reclaimed at licensed or permitted facilities. Other commenters argued that the exemption should also apply to legitimate recycling situations where ownership of the material may in fact change hands, such as cases where reclaimed material is not returned to the original generator but is instead sold to a third party. One commenter argued that the mere existence of a contract provides sufficient notice to subsequent handlers of the nature of the waste and that adequate economic incentives exist in any recycling situation to ensure proper management.

The proposed restrictions on applicability of the manifest exemption were intended to serve the same functions that the manifest system does. The most important of these, the "tracking" function of the manifest, must be replaced with adequate contractual relationships and commercial incentives if the exemption is to meet the test of protecting human health and the environment while reducing administrative burden.

The Agency has considered various ways in which to expand the applicability of the exemption, including those suggested by commenters, and has concluded that unless the following proposed restrictions are retained, the exemption would allow unscrupulous persons to easily avoid the hazardous waste management system:

First, the Agency believes that the requirement that the generator and reclaimer have a written agreement for collection and reclamation of a specified waste and for redelivery of regenerated material at a specified frequency is essential. Such an arrangement (usually called a "tolling" arrangement) provides tracking and accounting of waste in place of the manifest system in waste disposal situations. A simple reclamation contract without return of regenerated material to the generator would provide no tracking of the waste, since the generator would have no incentive to check on subsequent waste handling after he turns it over to the transporter or reclaimer. In addition, allowing the exemption in any contractual situation would make no distinction between recycling activities and off-site waste disposal activities, where normally there are also contractual obligations. Requiring return of regenerated material as part of the contractual relationship places the proper incentive on the reclaimer to actually reclaim material for delivery to the generator (otherwise he would be in breach of the contract) and on the generator to scrutinize the practices of the reclaimer. Unlike off-site waste disposal, the generator would have some vested economic interest in ensuring proper management of the waste.

Second, the Agency believes that the vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator must be owned and operated by the reclaimer. This requirement precludes third parties not bound by the reclamation agreement (*i.e.*, independent transporters) from entering the closed loop created by the tolling arrangement. This is necessary to ensure that the waste is not mismanaged. Even if a generator were to ship his waste via a licensed hazardous waste hauler, he would have no assurance that the waste would actually be delivered to the reclamation facility with which he has contracted. In such a third-party transporter situation, where the transporter has no vested interest in proper handling and management of the waste, the Agency would deem it necessary to impose additional significant recordkeeping requirements on all handlers of the waste, and possibly impose additional requirements on the generator. This would defeat the purpose of the manifest exemption, and may even impose greater burden than the manifest itself.

Third, the proposed recordkeeping requirements are an essential ingredient to providing the "paper trail" no longer provided by the manifest system.

While the Agency originally considered the retention of ownership requirement to be another essential element due the vested interest it created (*i.e.*, continuing legal responsibility for the material), a second look at this requirement, in light of comments received, has convinced EPA that it is unnecessary. The requirements of tolling and that the reclaimer and transporter be the same entity appear to adequately address the same concerns underlying the ownership requirement. While the vested interest in proper management of the waste may be theoretically increased if ownership is retained by the reclaimer or generator, it does not appear to add significantly to the economic interest created by the tolling arrangement. In addition, the concern that third parties would break the chain between generator and reclaimer is addressed by the requirement that the reclaimer and transporter be one entity. Moreover, the retention of ownership requirement may result in needless restriction on the type of commercial arrangements allowed between generators and reclaimers (*e.g.*, where a reclaimer buys the waste from the generator and sells regenerated material back to the generator or to other parties). Therefore, the Agency is deleting the ownership requirement from the final rule.

A number of commenters suggested that the Agency be more explicit in the regulation with respect to the periods of retention of the contractual agreements and the transportation logs since the proposed rule did not specify when the

3-year recordkeeping period was to begin. Consequently, the Agency is modifying the regulatory language of this amendment to specify that a copy of the reclamation agreement must be kept in the generator and reclaimer/transporter's files for 3 years after the expiration of the agreement. A copy of the collection log or shipping paper for each shipment must be kept in the transporter's files for a period of 3 years after the date of the shipment.

Several commenters also requested clarification on the applicability of the proposed exemption to waste mixtures where most, but not all, of the constituents were reclaimed. In the specific example cited, the Agency was asked to clarify whether spent cartridge filters used in dry cleaning operations would qualify for the exemption, even though only a portion of the waste constituents are actually reclaimed. The Agency believes such waste mixtures should also qualify for the manifest exemption, provided that the other conditions of the exemption are met. There is no basis for distinguishing between, for example, bulk spent solvents that have impurities removed by a reclaimer, which impurities must be subsequently managed as hazardous waste, and waste constituents in a mixture that may not be reclaimed and must be disposed of as a hazardous waste by the reclaimer. In both cases, the manifest exemption for shipments to the reclaimer would not affect the responsibility of the reclaimer to properly manage the residues from the reclamation process.

Another commenter requested clarification on whether the requirement that reclaimed material be returned to the generator limited the exemption to those situations where the generator received back the *same* waste sent for reclamation. The requirement that the generator receive regenerated material back from the reclaimer was intended to ensure that the generator maintain a vested interest in ensuring that the reclamation facility was in fact engaged in bona fide recycling. However, the Agency recognizes that most reclamation is conducted through commingling of relatively small quantities of recyclable materials from a number of generators. The manifest exemption only requires that the generator receive regenerated material back from the reclaimer, not that it be the identical material as was shipped to the reclaimer. The only requirement for receiving regenerated material back is that it be of the same *type* or *product specification* as the material originally shipped for reclamation. While the Agency recognizes that this requirement will limit the exemption to situations where the generator purchases reclaimed solvent from one source, we do not agree with those commenters who believe this provides an unfair competitive advantage to firms with reclamation facilities. While the manifest exemption may reduce the paperwork burden for some firms who have waste materials collected on a frequent basis, the Agency does not believe that it provides such a reduction in burden that companies qualifying for the exemption would be able to reduce costs significantly.

Other commenters asserted that the proposed exemption would be appropriate for generators of more than 1000 kg/mo who recycle their wastes under the same circumstances. While the Agency recognizes that some of the regulatory amendments being promulgated today for generators of 100–1000 kg/mo could be considered for larger generators, to do so would require extensive review of the existing hazardous waste management system and case-by-case determinations as to the appropriateness of specific requirements. Furthermore, the elements that the Agency must consider in adopting rules for small quantity generators, including the economic impacts of full regulation on small businesses, are not necessarily relevant to the rules applicable to larger quantity generators. Therefore, the Agency is promulgating the manifest exemption today only for 100–1000 kg/mo generators.

c. Waste Minimization: Under section 3002(b) of HSWA, all generators must certify on the manifest required under subsection (a)(5) that they have in place a program to reduce the volume or quantity and toxicity of the waste they generate to a degree determined by the generator to be economically practicable. Generators must also certify that their current method of management is the most practicable method available to minimize present and future threat to human health and the environment.

On July 15, 1985, EPA published a rule codifying a number of interim HSWA requirements (50 FR 28702). A revised Uniform Hazardous Waste Manifest Form (EPA Form 8700–22) was included in the Appendix to Part 262, and contained a revised certification statement incorporating the waste minimization provision. In the Codification Rule, EPA explained that the waste minimization provision did not apply to small quantity generators generating less than the quantities of acutely hazardous waste specified in § 261.5 or to generators of less than 1000 kg of other hazardous waste, unless the generator accumulated quantities which exceeded 1000 kg, and thus became subject to Part 262. The waste minimization requirements were not applicable to these generators because section 3002(b) refers to "the manifest required by [section 3002] subsection (a)(5)" and the interim manifest provisions are imposed by section 3001(d), not 3002(a)(5). However, because section 3001(d) of RCRA requires EPA to establish standards for 100–1000 kg/mo generators under sections 3002, 3003, and 3004, the waste minimization certification requirements would apply to 100–1000 kg/mo generators upon promulgation of such standards. Since EPA did not propose to exempt 100–1000 kg/mo generators from the waste minimization certification requirements of section 3002(b) when it proposed rules for 100–1000 kg/mo generators on August 1, 1985, these generators would be required to certify compliance with the waste minimization provision when the standards under today's rule become effective.

EPA believes that requiring 100–1000 kg/mo generators to comply with the waste minimization certification provision imposes little or no additional administrative or technical burden and could, in fact, have real environmental benefit. However, since the Agency did not provide the public with an opportunity to comment on the appropriateness of this provision for 100–1000 kg/mo generators, EPA is publishing a separate notice elsewhere in today's **Federal Register** which explicitly requests comment on the potential burden which this requirement could impose on generators of 100–1000 kg/mo. The specific reasons for proposing to apply the waste minimization certification provision to these generators are described in detail in that notice. As noted in the other **Federal Register** notice, EPA will accept public comment on this provision for 30 days. If, after consideration of the comments, EPA determines that no exemption from the waste minimization certification requirement is warranted at this time, 100–1000 kg/mo generators will need to comply with the requirement by operation of law as of the date that the other Part 262 requirements take effect (*i.e.*, six months from today).

3. Recordkeeping and Reporting—Part 262, Subpart D

In the proposed rules for generators of 100–1000 kg/mo, EPA attempted to

significantly reduce the recordkeeping and reporting burden on these generators, consistent with the statutory goals of protecting human health and the environment while reducing impacts on small business to the extent feasible. Specific proposed modifications to the recordkeeping and reporting requirements of Subpart D of Part 262 included:

- A proposed exemption from the recordkeeping requirements of § 262.40(a) for manifest retention and § 262.40(b) dealing with retention of Biennial and Exception Reports;
- A proposed exemption from the reporting requirements of § 262.41 (Biennial Reports) and § 262.42 (Exception Reports).

This section of the preamble addresses the comments received on these proposed modifications to recordkeeping and reporting requirements and the Agency's final decision in each of these areas.

a. Recordkeeping—§ 262.40: As noted in Unit III.C.2. of today's preamble, EPA received extensive comment on the proposed single copy manifest system which proposed to eliminate the need for retention of manifest copies as well as requirements for the use of a multiple copy manifest when shipping waste off-site. A large number of commenters were generally supportive of efforts to reduce recordkeeping requirements to the maximum extent feasible, and many felt that no recordkeeping requirements whatsoever should be imposed on 100–1000 kg/mo generators. However, many of these same commenters, when discussing the proposed single copy manifest, pointed out that most generators would opt to retain a copy of the manifest for their own records, in order to have a record of their waste management shipments, regardless of whether it was required by EPA. While some of these commenters did not want the retention of manifest copies to be required, they nevertheless felt such recordkeeping to be prudent. Other commenters believed that retention of manifest copies should be required, and that such a requirement does not impose an unreasonable burden since, as noted above, virtually all generators would retain a copy for their records in any case. These commenters also asserted that the existence of a copy of the manifest in the generator's records, containing the signature of the transporter and ultimately the signature of the designated facility when the manifest copy was returned, was essential.

The Agency agrees with these commenters that retention of manifest copies should be required. Existence of such records may be the only defense a generator would have in enforcement actions or other litigation if the single manifest were to be changed by the transporter or if the waste is mismanaged. The existence of these records would allow a generator to demonstrate to enforcement personnel, should a problem in transporting or subsequent handling arise, that the generator had done his best to ensure proper management by fulfilling his generator responsibilities. While such proof would not eliminate any liabilities the firm may otherwise have under RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"), it could reduce the danger of the generator being considered the primary responsible party in a Superfund action. Also, as one commenter pointed out, given the large number of States, transporters and treatment, storage, and disposal facilities that would insist upon use of the full manifest system, it would not be appropriate for EPA to, in effect, encourage generators to deliver their only copy of the manifest to a transporter.

EPA agrees with those commenters that believe that retention of a copy of a manifest, signed by the designated facility and the transporter, does not pose an unreasonable burden for 100–1000 kg/mo generators, who will most likely be shipping only 2–4 shipments per year. This is particularly true in light of the generally universal agreement on the need for generators to retain a copy for their own protection. EPA also believes that retention of manifest copies provides the necessary incentive for all wastes handlers to execute their responsibilities in the manner required by state and Federal waste management requirements. Therefore, the Agency is not exempting 100–1000 kg/mo generators from the requirement to retain a copy of each manifest in their files for a period of three years from the date of shipment or until a signed copy of the manifest is returned by the designated facility and is substituted for the original manifest for a period of three years.

b. Exception Reports—§ 262.42: As discussed in the proposal, EPA proposed to exempt 100–1000 kg/mo generators from the requirement to file an exception report with EPA if the generator did not receive a signed copy of the manifest back from the designated facility within forty-five days of acceptance of the waste shipment by a hazardous waste transporter (§ 262.42). The proposed exemption from this requirement was based simply on the lack of manifest copies under the proposed single copy manifest system. Under the proposed rule, a copy of the manifest was not required to be returned to the generator by the facility, so that there would have been no basis for a generator to make a determination as to whether or not his shipment actually arrived at the designated facility, and thus no basis for an exception report.

In deciding to return to a full manifest system for 100–1000 kg/mo generators, the Agency deemed it appropriate to evaluate whether also requiring exception reporting would impose an unnecessary administrative burden on these generators in light of the environmental benefit that would be gained. First, the Agency considered the responsibilities that would be imposed on the generators, which would include establishment of an internal tracking system, through filing or by computer, to allow the generator to determine whether a return copy of the manifest is overdue. In addition, the generator must contact the transporter and/or permitted facility to determine the status or location of the waste and manifest, and if unsuccessful, must file a report with a copy of the manifest and a cover letter describing his efforts to locate the waste and the results of his efforts. Several commenters objected to imposition of these requirements and argued that this is the very type of paperwork requirement that Congress intended EPA to scrutinize before applying to small businesses.

Second, the Agency considered the extent to which such reporting is necessary to protect health and the environment. Many commenters contended that the exception reports were essential to alert EPA and the States to lost shipments, and the Agency agrees that the exception report requirement is an important link in the full manifest scheme.[4] However, the Agency has received very few exception reports since the requirement was adopted, leading it to believe that the tracking function of the multiple-copy manifest system is also working as a self-policing mechanism, ensuring that

[4] One commenter cited legislative history as support for its argument that the modified exception reporting requirement of section 3001(d)(6) must be included in the regulations because Congress deemed it to be a minimum requirement. The legislative history of this provision indicates, however, that this was considered to be a minimum requirement only in the event that EPA did not promulgate final regulations by March 31, 1986, and that EPA is authorized to vary the manifesting and reporting requirements as long as the notice requirement is met. See S. Rep. No. 284, 98th Cong., 1st Sess. 11–12 (1983); H.R. Rep. No. 1133, 98th Cong. 2nd Sess. 103 (1984).

wastes reach their proper destination. In addition, the smaller relative risks associated with the smaller quantities of waste generated by 100–1000 kg/mo generators do not necessitate the same degree of double-checking needed for large quantity generator shipments.

In balancing the utility of the exception reporting requirements with the need to minimize the administrative and paperwork burden on small businesses, the Agency has concluded that its decision to require the multiple copy manifest system for 100–1000 kg/mo generators will provide sufficient assurance that waste shipments reach their proper destination, and that the incremental environmental benefits that may be gained by imposing the exception reporting requirement on these generators are outweighed by the associated administrative burdens. The capabilities of small businesses to develop and maintain internal tracking and follow-up systems are limited, and could prove to be very burdensome, especially where such follow-up reporting is seldom necessary. Consequently, while the Agency is today requiring generators of 100–1000 kg/mo to use a multi-part manifest form and requiring designated facilities to return a signed copy to the generator, the Agency has decided not to require generators of 100–1000 kg/mo to comply with the exception reporting provisions of Part 262. However, this exemption should not be construed as relieving the generators of the responsibility of assuring that their wastes are managed at Subtitle C facilities. This obligation, along with CERCLA liability should the waste ultimately be mismanaged, remains. Therefore, while EPA is today exempting generators of 100–1000 kg/mo from the *requirement* to file an exception report under § 262.42, it is specifically *encouraging* generators to perform the necessary follow-up to ensure that their waste shipments reach the designated facility. Should a shipment turn out to be truly lost, it will be in the generator's interest to send a copy of the manifest along with a brief explanatory note to EPA or the authorized State Agency in order to reduce the likelihood that the generator would be held solely responsible in an enforcement or Superfund action.

c. Biennial Reports—§ 262.41: Section 262.41 requires a generator who ships waste off-site to submit a biennial (*i.e.*, every other year) report to the Regional Administrator by March 1 of each even numbered year setting out the quantities of wastes generated during the previous odd numbered calendar year and the disposition of the wastes generated.

EPA proposed to exempt generators of 100–1000 kg/mo from the requirement to complete, file, and retain copies of a biennial report. The Agency's rationale for this exemption was based on four points. First, the extent of error in State summary reports used to compile nationwide waste generated by all small quantity generators. As a result, the value of the data from reports that would be filed by 100–1000 kg/mo generators would not signficantly add to the value of the reports and the burden imposed would far outweigh the benefits to be gained. Second, the Agency explained that the large number of reports it would receive would far outweigh the agency's administrative ability to make use of the reports. Third, under the proposed single copy manifest system, generators would not have had the manifest copies that serve as the basis for preparation of biennial reports. Finally, the Agency explained that information on wastes generated by 100–1000 kg/mo generators would still be available from reports required to be filed by treatment, storage, and disposal facilities.

Several States submitted comments which generally favored retention of the biennial report requirement for 100–1000 kg/mo generators. Although generators would have available to them the manifest information needed to prepare biennial reports under today's final rule imposing the multiple copy manifest, the remaining reasons for proposing this exemption remain valid. In addition, EPA received extensive comment supporting the proposed exemption from biennial reporting requirements as an appropriate means of reducing administrative burden without sacrificing protection of human health and the environment. The Agency agrees that this exemption is appropriate.

One State specifically suggested that EPA require biennial reporting from all generators who generate more than 6000 kg or 12,000 kg in a calendar year and specifically requested clarification of the application of biennial report requirements to "episodic generators" (*i.e.*, generators that produce quantities of hazardous waste that place them in different generator categories from month to month). The Agency does not believe any benefit would be gained by establishing a new generator category based upon a yearly generation rate. Doing so would only add further confusion to an already complex regulatory scheme, and would be inconsistent with the month-to-month approach already established by statute and regulation. Also, episodic generators must comply with the biennial report requirements for those months in which they are "large quantity generators"; that is, they must submit reports on their hazardous waste activities for those months in which their generator activities have changed and as long as the fully regulated waste remains on-site.

Thus, the Agency is today finalizing the proposed exemption from the biennial report requirements of § 262.41 for generators of 100–1000 kg/mo, including an exemption from the provisions of this section requiring a description of efforts taken during the reporting year to minimize waste generation.

4. On-site Accumulation—§ 262.34

As discussed in Unit I.B.I. of today's preamble, generators of 100-1000 kg/mo are no longer conditionally excluded in Section 261.5 from the bulk of the hazardous waste regulatory program. Instead, these generators, like other regulated hazardous waste generators, are subject to the requirements of Parts 262–266, 270, and 124, to the extent those requirements apply. for generators of 100–1000 kg/mo, however, these requirements have been modified in certain instances to reflect their small business nature as well as specific statutory directives.

Section 262.34 contains the requirements for generators that accumulate hazardous waste on-site. Under § 262.34(a), a generator may accumulate hazardous waste on-site in tanks or containers in any quantity for up to 90 days without the need to have interim status or obtain a storage permit under RCRA (or comply with Parts 264 or 265) provided the generator complies with the limited requirements of § 262.34. These requirements specify that: (i) the date upon which the period of accumulation begins is clearly marked on the tank or container; (ii) the tank or container is labeled with the words "Hazardous Waste"; (iii) the generator complies with Subparts C and D of 40 CFR Part 265 (Preparedness and Prevention and Contingency Plan and Emergency Procedures, respectively); and iv) the generator complies with Subpart I of 40 CFR Part 265 if the waste is placed in containers or with Subpart J of 40 CFR Part 265 if the waste is placed in tanks, and he complies with the personnel training requirements of § 265.16.

The proposed rules for generators of 100–1000 kg/mo would have added a number of modifications to the § 262.34 provisions, for 100–1000 kg/mo generators. This section of the preamble

discusses those proposed amendments and the issues raised by commenters to the proposed rules.

a. Time and Quantity Limitations: Section 3001(d)(6) directs EPA, in developing regulations for 100–1000 kg/mo generators, to allow storage of hazardous waste on-site without the need for interim status or a RCRA permit for up to 180 days. In addition, EPA is directed to allow these generators to store up to 6000 kg of hazardous waste for a period of 270 days without the need for interim status or a permit if the generator must ship or haul his waste greater than 200 miles. While no specific quantity cutoff was established for 180 day accumulation in section 3001(d) a de facto limitation of 6000 kg exists. (This is due to the fact that a 100–1000 kg/mo generator could produce no more than 6000 kg in a 180 day period without exceeding 1000 kg/mo at least once during that period, and thus become fully regulated under Part 262 instead of under the modified standards being proposed today for 100–1000 kg/mo generators.) EPA is today amending § 262.34 to allow for such on-side accumulation in tanks and containers by 100–1000 kg/mo generators for up to 180 days (or 270 days for long-distance transport) without the need to obtain interim status or a RCRA permit, in accordance with Section 3001(d)(6) of the HSWA, provided the requirements of § 262.34 are met.

A significant number of commenters suggested variations on the proposed time and quantity limitations for on-site accumulation. A number of States supported the application of the existing 90 day accumulation period to these generators in order to maintain consistency and reduce confusion. Still other commenters argued that the time limit for accumulation for 100–1000 kg/mo generators should be extended to a full year in order to allow economical shipments, provided the 6000 kg cutoff was not exceeded. Some commenters even favored unlimited accumulation time and quantity for these generators.

Because the time and quantity limitations are established in RCRA section 3001(d)(6), the Agency believes that it carries a heavy burden in varying these limitations. Except for emergency circumstances, as discussed below, the Agency does not believe that this burden has been met.

While the 6000 kg cap arguably applies only to the 270-day storage period, the Agency believes that the better interpretation is that the 6000 kg cap applies to both storage periods. As noted above, a maximum of 6000 kg of hazardous waste could be accumulated during a 180-day period if the generator never generated more than 1000 kg in any given calender month. Consequently, any quantity in excess of 6000 kg would mean that the generator was subject to full regulation at least one month during the 6-month period. Therefore, it is logical to apply the accumulation "cap" of 6000 kg to both storage for 180 as well as 270 days. In addition, as explained in the August 1 proposal, the total quantity of 6000 kg remains the same whether or not the waste is accumulated on-site for 180 or 270 days and the Agency could see no substantive difference in potential risk. Finally, EPA believed that the high cost of transportation would dictate that the waste be managed at the closest facility, regardless of the presence or absence of regulatory criteria.

One State commenter felt that the lack of specific criteria for allowing 270-day accumulation could have the effect of encouraging continued reliance on land disposal as there will be decreasing numbers of viable land disposal facilities in the future, and the remaining facilities will increasingly be located more than 200 miles away from the generator. This commenter suggested that EPA allow accumulation for only 180 days for wastes that are destined for disposal but allow accumulation for 270 days for wastes which will be treated or recycled. EPA does not believe that it has authority to make such a distinction since Congress has already established the condition that must be met for accumulation for 270 days: where the waste must be shipped over 200 miles. If the closest facility is a disposal facility located greater than 200 miles from the generator, to allow this generator only 180 days would directly conflict with the plain language of the statute.

Another commenter expressed concern over the enforcement of 180- or 270-day accumulation periods in the absence of any specific criteria. This commenter felt that an inspector would have no way of ascertaining whether wastes which have been stored longer than 180 days but less than 270 days are destined for management at a disposal facility or a treatment or recycling facility that is located further than 200 miles away. This commenter was particularly concerned that the lack of multiple copies of the manifest would eliminate the ability of the inspector to at least make a judgment based on the generator's previous waste shipments.

The Agency has decided not to establish specific criteria for determining if a generator may accumulate hazardous wastes on-site for 180 or 270 days. EPA believes that such criteria would not serve any useful purpose. Under today's final rule, however, generators would retain copies of manifests which could be used to ascertain the location of the facility which the generator has utilized for previous shipments. Therefore, manifest copies (or reclamation agreements) will be available as a means to check the actual location of the destination facility. In addition, the Agency was concerned that establishing criteria for demonstrating that the closest facility was greater than 200 miles from the generation site would be unnecessarily confusing and could have the perverse effect of causing waste to go to less desirable management practices (*e.g.*, where a disposal facility is located within 200 miles while a recycling facility is located over 200 miles from the generator, the generator could be forced to utilize the less desirable disposal facility). The absence of specific criteria will not pose an unreasonable obstacle to enforcement of the accumulation provisions. Thus, EPA is finalizing § 262.34(e) as proposed.

It should be noted that generators that have multiple waste streams which are managed at different facilities may actually be subject to different accumulation time limitations for the different waste streams. A generator may accumulate some wastes for 180 days if they will be managed at a facility under 200 miles away and other wastes for 270 days provided the generator never accumulates a total quantity of hazardous waste on site that exceeds 6000 kg and provided the generator complies with all applicable accumulation provisions.

Today's rules also apply the existing provisions of § 262.34(b) requiring compliance with Parts 264, 265, and 270 to 100–1000 kg/mo generators that exceed the time limitations in proposed § 262.34(d) and (e). Under the existing rules, and under the rules promulgated today, generators that exceed a time or quantity limitation must comply with the interim status requirements and obtain a storage permit. These requirements, as they would apply to 100–1000 kg/mo generators, are contained in new § 262.34(f).

An additional component of the proposed § 262.34(f) amendments would have allowed an additional 30-day accumulation period for generators of 100–1000 kg/mo at the discretion of the Regional Administrator where he determines that such an extension is warranted due to temporary, unforeseen, and uncontrollable circumstances. This amendment was based on an identical provision currently applicable to large quantity

generators. While most commenters on this amendment were supportive of the emergency extension provision, one commenter argued that the storage periods specified in the statute were clearly the maximum periods allowed. The Agency believes that Congress never intended for the Agency to promulgate rules so inflexible that they could not take into account, and accommodate, *legitimate* emergency circumstances. In addition, the Agency assumes that the emergency extension provision is consistent with Congressional intent since it did not explicitly preclude such an extension when it adopted section 3001(d)(6). Therefore, the Agency is promulgating this provision as proposed.

Several commenters requested the Agency to clarify the applicability of the "satellite provision" of 40 CFR 262.34. This provision allows generators to accumulate up to 55 gallons of non-acutely hazardous waste in "satellite" areas where the waste is generated in industrial processes without complying with the 90-day accumulation standards. See 49 FR 49568 (Dec. 20, 1984). Satellite areas are those places (under the control of the operator of the process generating the waste) where wastes are generated in the industrial process and must initially accumulate prior to removal to a central area. Within three days of accumulating over 55 gallons, the generator is required to comply with all applicable RCRA requirements for further management of any waste in excess of 55 gallons. When the satellite rule was promulgated, generators of less than 1000 kg/mo of non-acutely hazardous waste (or less than 1 kg/mo of acutely hazardous waste) were not subject to any of the requirements of the satellite accumulation rule. See 49 *FR* 49568–49570. This is because these generators were exempt from most of the hazardous waste management regulations, including Part 262. However, under today's rule, only generators of less than 100 kg/mo will remain exempt from the regulations. Therefore, 100–1000 kg/mo generators may accumulate up to 55 gallons of non-acutely hazardous waste in satellite areas without meeting the storage requirements being promulgated today, so long as the requirements of § 262.34(c) are met. Of course, as soon as the 55 gallon limit has been exceeded in any satellite area, any excess waste is subject to all applicable RCRA requirements within 3 days. This means that the 180/270 day on-site accumulation provision for 100–1000 kg/mo generators applies to any excess waste three days after the 55 gallon limit has been exceeded.

Two commenters who operate off-shore drilling facilities requested clarification on the applicability of this provision to off-shore facilities and central collection points located on-shore. These commenters cited their desire to avoid manifesting or using transporters with EPA Identification numbers in shipping wastes from off-shore facilities to on-shore collection areas.

The satellite provision was intended to provide for extended accumulation of waste in specific areas of generation to allow for more economical transporting of waste within one site. The applicability of this provision does not address the extent to which a generator must comply with Parts 262 and 263 when it is shipping wastes off-site. EPA does not deem off-shore facilities and on-shore collection facilities to be "on-site", or the same site, as defined by 40 CFR 260.10. To the extent that each facility has various points of waste generation, the satellite provision would apply; however, as in any off-site hazardous waste shipment, the requirements of Parts 262 and 263 must be met when wastes generated at each off-shore facility are transported to an on-shore collection or storage facility.

b. Standards Applicable to On-site Accumulation: EPA proposed to modify certain of the requirements for on-site accumulation by 100–1000 kg/mo generators in order to simplify the requirements for contingency plans and emergency procedures, and personnel training (contained in Part 265, Subpart D, and § 265.16). The specific amendments to § 262.34 would be contained in new paragraphs (d), (e), and (f), specifying the particular requirements applicable to on-site accumulation by generators of 100–1000 kg/mo. No modifications were proposed to the standards for storage in containers and tanks (Part 265, Subparts I and J) or to the requirements for preparedness and prevention contained in Subpart C of Part 265. EPA indicated that it believed these standards were appropriate and necessary and not unduly burdensome. Several commenters have objected to the apparent inconsistency between application of the existing accumulation provisions of § 261.5 and § 262.34 and the proposed standards under Section 3001(d) of the HSWA. Under the existing rules for conditionally exempt small quantity generators under § 261.5 and the accumulation provisions of § 262.34, generators who either generate quantities above specific cutoffs *or who accumulate quantities above those cutoffs over any period of time* become subject to additional requirements. Thus, if the proposed rules were to be finalized, generators of less than 100 kg/mo who accumulated over 1000 kg/mo would be subject to full regulation under Part 262, including a 90 day accumulation time limit followed by permitting requirements for longer on-site storage. Also, if more than 1 kg of acutely hazardous waste were accumulated, full Part 262 standards would apply, including a 90 day accumulation time limit followed by permitting requirements for longer on-site storage. Conversely, generators of 100–1000 kg/mo would be allowed to accumulate up to 6000 kg for up to 180 or 270 days and be subject to the specially reduced standards being promulgated today rather than full Part 262 regulation.

A number of commenters pointed out that generators who fall into different generator categories could be subject to different standards for essentially the same quantities of the same wastes. For example, a generator of just over 1000 kg/mo would be subject to full regulation as would a generator of just under 1000 kg/mo who happens to accumulate above 1000 kg. These regulations include full contingency planning and personnel training (as well as exception and biennial reporting). At the same time, a generator of between 100 and 100 kg per month may accumulate up to 6000 kg and be subject to the special standards being promulgated today, including reduced contingency planning and personnel training requirements and exemptions from exception and biennial reporting. Thus, 6000 kg of hazardous waste could be subject to lesser standards than quantities closer to 1000 kg/mo. Substantial confusion may also result in determining which storage standards apply, when, and for how long. The confusion is particularly troubling for so called "episodic generators" that may move from one generator category to another from month to month. (See Unit III.B.2.e.)

A number of commenters suggested a variety of alternatives schemes for eliminating the inequity and the confusion, including applying the reduced storage standards proposed for 100–1000 kg/mo generators to all quantities of waste accumulated up to 6000 kg., regardless of the source of the waste. These commenters believed that such a scheme would greatly simplify compliance and enforcement since quantity of waste would be the only

criteria needed in determining what storage standards should apply.

The Agency agrees that, in theory, an approach that uniformly applies the same requirements to the same quantities of waste has some merit. However, as discussed above, Congress has directed EPA to consider varying the standards for 100–1000 kg/mo generators only, and to consider their small business nature in determining which standards are appropriate for on-site accumulation. EPA is directed to relieve these generators of unnecessary burden, to the extent feasible, and consistent with protection of human health and the environment. Given that Congress has not extended such economic considerations to large generators, EPA is not authorized to vary applicable storage standards, if they are necessary to protect human health and the environment. EPA has already determined that the existing storage standards applicable to generators of more than 1000 kg/mo are necessary to reduce risks sufficiently. Therefore, EPA is retaining the existing standards for these generators.

With regard to generators of less than 100 kg/mo, EPA has more flexibility because they fall within the "small business" category that Congress was concerned about. The Agency decided in the proposed rules not to modify the accumulation provision for generators of less than 100 kg/mo because such a generator would need to accumulate waste for at least 10 months before exceeding 1000 kg. However, it appears to be inconsistent with Congressional intent that small businesses producing less than 100 kg/mo should be subject to more stringent accumulation standards than 100–1000 kg/mo generators for quantities between 1000 kg and 6000 kg. Therefore, EPA is today finalizing an amendment to § 261.5 that will subject generators of less than 100 kg/mo to the same provisions of § 262.34(d) as are applicable to generators of 100–1000 kg/mo, when they accumulate waste in quantities greater than 1000 kg but less than 6000 kg.

i. Standards for Preparedness and Prevention—Part 265, Subpart C: Under § 262.34(a), generators who accumulate hazardous waste on-site must comply with the requirements of Subpart C of Part 265 which contains requirements for facility preparedness and prevention. In the Proposal, EPA indicated its intention to apply all of the existing provisions of this Subpart, without modification.

The requirements for preparedenss and prevention are as follows:

- Section 265.31 requires that facilities be maintained and operated to minimize the possibility of fire, explosion, or any unplanned release of hazardous waste or hazardous waste constituents to the environment;
- Section 265.32 specifies that facilities must be equipped with certain kinds of equipment (*i.e.*, an internal communications or alarm system, a telephone or other device capable of summoning emergency assistance, and appropriate fire control equipment including fire extinguishers and water at adequate volume and pressure to supply fire control system) *unless* none of the wastes handled at the facility require a particular kind of equipment;
- Section 265.33 requires that this equipment be tested and maintained, as necessary, to assure its proper functioning;
- Section 265.34 requires that all persons involved in hazardous waste handling operations have immediate access to either internal or external alarm or communications equipment, unless such a device is not required under § 265.32;
- Section 265.35 requires the owner or operator of the facility to maintain sufficient aisle space to allow the unobstructed movement of personnel and equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes; and
- Section 265.37 requires the owner or operator to attempt to make certain arrangements with police, fire departments, State emergency response teams, and hospitals, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations. Further, if State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal.

The Agency did not propose any amendments to Subpart C because they are appropriate and necessary and not unduly burdensome. The requirements all involve common sense principles for preparedness and prevention which hazardous waste handlers can and should address in order to ensure safe handling of hazardous wastes. Also, since the requirements are structured such that specific equipment and procedures are required only on an "as needed" basis, the existing regulation provides complete flexibility for hazardous waste generators to tailor their preparedness and prevention activities to the specific kinds of wastes handled at the facility.

Most commenters believed that these requirements provided sufficient flexibility for 100–1000 kg/mo generators to tailor their preparedness activities to their specific waste management activities and needs. While EPA requested comment on the possibility of imposing more specific but less numerous requirements in order to alleviate potential uncertainty over which procedures are appropriate for particular types of wastes, the Agency has decided that the broad principles embodied in Subpart C are preferable to the specific suggestions made by commenters. For example, one commenter felt that the requirement to make arrangements with state and local authorities, as needed, would confuse many generators and suggested that EPA substitute a simpler requirement that a generator simply request a visit from the fire department. EPA believes, however, that such a specific requirement would not provide sufficient preparedness in some cases, while in others it may be overly burdensome, as where no ignitable or flammable wastes are managed at that site.

A number commenters were concerned that the requirement to document refusals to make appropriate arrangements by state and local authorities and health care facilities would prove to be extremely burdensome to small businesses, particularly since refusals are seldom likely to be made in writing. EPA did not intend to convey a need for generators to obtain written refusals from every entity that declined to visit the facility. For purposes of this requirement, EPA will consider a signed and dated letter from the generator to the state or local entity which attempts to make such arrangements to be sufficient documentation of an attempt to make the appropriate arrangements.

One commenter believed that the requirement to make arrangements with appropriate state and local emergency service facilities was unnecessary where generators maintain their own fire, security, and emergency health care personnel at some of their larger facilities and that such facilities should be allowed to fulfill this requirement without making outside arrangements. While the Agency did not intend to preclude the use of on-site emergency personnel to provide preparedness in the case of emergencies, EPA does not agree that such arrangements alone will always be sufficent to comply with the requirements of Subpart C where the nature of the waste management operations at that facility could result in emergencies also requiring the involvement of State and local emergency services.

This commenter was also concerned that EPA's broad definition of "facility"

could require that preparedness and prevention measures be maintained throughout every portion of the generator's property instead of just those areas where waste is accumulated. EPA has never intended its broad definition of "facility" (see 50 FR 28712) to be used in application of the preparedness and prevention regulations; rather, the definition of "facility" in § 260.10 is used. Applying this narrower definition makes clear that the preparedness and prevention regulations only require the generator to take those precautions and maintain that equipment necessary to ensure that they are adequately prepared to respond to emergencies relating to the hazardous waste operations of the facility. If special equipment or precautions are not needed for this purpose in areas of a facility where hazardous wastes are not managed, then a generator is not expected to maintain them in those areas. At the same time, however, other precautions, such as adequate aisle space, may be needed in areas outside of the immediate waste accumulation area in order to ensure adequate access to emergency equipment in the event of a fire, explosion, or release of hazardous waste or hazardous waste constituents.

For the reasons discussed above, the Agency does not believe that modifications to Subpart C of Part 265 are appropriate for generators of 100–1000 kg/mo and is, therefore, applying the existing Subpart C requirements to these generators.

ii. Standards for Contingency Plans and Emergency Procedures—Part 265, Subpart D, and Personnel Training Requirements: Under § 262.34(a), generators who accumulate waste on-site must comply with certain requirements in Part 265, Subpart D, pertaining to contingency plans and emergency procedures and personnel training requirements. These requirements are contained in § 265.16. The § 265.16 requirements are intended to ensure that personnel are adequately prepared to manage hazardous waste and to respond to any emergencies that are likely to arise. EPA considered applying these same requirements to 100–1000 kg/mo generators since, for the most part, the requirements embody common sense principles that are necessary and appropriate for facilities managing hazardous waste. However, these requirements appeared to be unnecessarily burdensome in some cases (*e.g.* requiring formal classroom training and written, detailed contingency plans) and costly and could have unnecessarily severe impacts on many small businesses. The Agency therefore proposed a simpler set of requirements for generators of 100–1000 kg/mo to reduce the administrative burden on small businesses while still protecting human health and the environment.

EPA proposed and requested public comment on the following requirements for 100–1000 kg/mo generators that would be contained in a new § 262.34(d):

- At all times, an "emergency coordinator" (E.C.), (*i.e.*, someone familiar with these requirements), must be on-site (or on call). The coordinator may also designate someone to act in his place.
- The generator must post certain information next to the telephone, including: the name and telephone number of the E.C.; location of fire extinguishers and spill control material; and the phone number of the fire department;
- The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures;
- The generator (or the E.C.) would have to respond to any emergencies that arise. In the case where an emergency was serious enough to warrant a visit by the fire department or when the generator (or E.C.) has knowledge of a spill of hazardous waste that could reach surface water or otherwise threaten human health or the environment, the generator would have to notify the National Response Center and file a report with the EPA Regional Administrator as provided by proposed § 262.34(c)(3)(E).

EPA believed these requirements to be adequate to protect public health and the environment from fires, leaks, spills, or other releases from generators of 100–1000 kg/mo who are accumulating waste on-site prior to shipment off-site.

While many commenters supported the reduced contingency plan, emergency procedures, and personnel training requirements as proposed, a number of commenters did not agree with the proposed modifications. Several commenters believed that relaxing the standards for on-site accumulation for 100–1000 kg/mo generators would not be appropriate given the increased quantities of waste which can be accumulated (*i.e.*, 6000 kg) and the generally less sophisticated waste management expertise of smaller firms. Some commenters suggested various approaches including requiring full Subpart D compliance for all quantities accumulated above specific limits, such as 1000 kg or 3000 kg. Other commenters argued that the reduced standards were appropriate not only for generators of 100–1000 kg/mo, but also to larger generators and suggested that the reduced standards apply to all accumulated quantities between 1000 kg and 6000 kg.

Since the Agency recognized in the proposed rules that applying standards to 100–1000 kg/mo generators accumulating waste on-site in quantities up to 6000 kg was of some concern, it was careful to modify the standards only where administrative requirements not essential to the substantive functioning of the standards were involved. Thus, the standards, as modified, are sufficient to protect human health and the environment from release of wastes accumulated by 100–1000 kg/mo generators.

EPA does not believe it is appropriate to apply the reduced standards to wastes accumulated by generators of more than 1000 kg/mo. As previously discussed, EPA's authority to consider areas in which to reduce burdens extends to small quantity generators. Also, as discussed in Unit III.A. above, the relative risks posed by wastes accumulated by large quantity generators are greater. Thus, generators of greater than 1000 kg/mo must comply with the requirements of Subpart D of Part 265 if wastes are accumulated on-site prior to shipment off-site.

A number of commenters also suggested several modifications to the proposed standards. Some commenters were concerned that the requirement that each business designate an emergency coordinator to be on call at all times would impose an undue burden because this would require that the emergency coordinator be trained in emergency response procedures. One commenter believed that the term "emergency coordinator" would be confusing since it implies that the individual must have a high degree of training in risk assessment and abatement.

The intent of this requirement was simply to ensure that each generation facility had at least one person available at all times who could be contacted and would know what steps to take in the event that an emergency should arise. EPA envisioned that for most small businesses, the owner or manager already fulfills this requirement by being available 24 hours a day in case an emergency, such as a fire or burglary, occurs at that facility. EPA does not intend that generators must hire and train a new employee for this task. Viewed in this light, this requirement is reasonable and not unduly burdensome. In addition, there is no reason why small businesses would confuse the

term "emergency coordinator" with the more formal On-Scene Coordinators at Superfund clean-up sites.

With regard to the proposed personnel training requirement that a generator ensure that all employees be made thoroughly familiar with waste handling and emergency procedures, several commenters were in favor of more stringent personnel training requirements. One commenter noted that personnel training is necessary to manage tanks properly and to prevent tank contamination and recommended that the Agency adopt more stringent personnel training requirements if more than 15 drums or 7,500 pounds (approximately 3400 kg) are accumulated on-site. Another commenter objected to allowing 100–1000 kg/mo generators, who typically have fewer resources and less expertise than large quantity generators, to accumulate 6000 kg on-site with reduced personnel training standards, and suggested that personnel training plans be required whenever more than 3000 kg are accumulated on-site. This commenter suggested that criteria such as the nature of the waste and the history of spills and releases from the generator be established to allow EPA or State agencies to require a generator of 100–1000 kg/mo to establish and implement a personel training plan.

In the absence of any justification provided by commenters, the Agency does not believe that establishing an intermediate limit on accumulation, after which more formal personnel training requirements apply, would result in any significant increase in protection to human health and the environment. While EPA agrees that risks involved increases as waste is accumulated, it believes that the requirements adopted are adequate to protect against the risks from fires, leaks, spills, or other releases. The proposed requirements embody the same principles contained in the existing personnel training requirements, but rely less on the preparation of written plans in order to reduce the burdens on 100–1000 kg/mo generators.

One commenter suggested that if a 100–1000 kg/mo generator at any time is required to prepare a personnel training plan because he generated more than 1000 kg in any one month, he should be required to maintain the personnel training plan for at least the following six months even though he produces no more than 1000 kg/mo during that period. The commenter suggested that this requirement would impose little burden because the plan would already be in existence and would only need to be implemented. The Agency is not adopting this suggestion. No rationale was offered by this or other commenters regarding any additional protection that this approach would provide. In addition, the Agency disagrees with the conclusion that little burden would be imposed in maintaining a plan. For example, the generator would be required to update job titles, job descriptions, job qualifications, names of employees in each position, and standards for the introductory and continuing training needed for persons in each position. Furthermore, even if not required by regulations to maintain and follow their plans, many of the generators of 100–1000 kg/mo who were previously generators of more than 1000 kg/mo will nevertheless continue to use their plans as the basis for their personnel training program.

Another commenter in favor of more stringent personnel training requirements argued that the approach proposed by EPA is too broad and unenforceable, and that the Agency should require employees to sign a document stating the "what, when, and were of employee training." The Agency believes that such an approach would add considerable burden to the generator without providing any subtantial additional degree of protection, particularly since the "what, when, and where" are not explicitly prescribed under either the current rules or today's amendments.

Two commenters argued that 100–1000 kg/mo generators should be exempt from all personnel training requirements on the basis that personnel training would be too costly and burdensome for most small businesses and because less than 1000 kg/mo would be "too small to endanger the environment or public health". The Agency does not agree that 100–1000 kg/mo generators should be exempt from all personnel training requirements. While the Agency agrees that the risk to human health and the environment posed by 100–1000 kg/mo generators is less than the risk posed by large quantity generators, some risk is still present. The Agency has, therefore, proposed less stringent rules for 100–1000 kg/mo generators, which will mitigate this risk while minimizing the regulatory burden upon these generators.

A number of commenters suggested that the Agency limit the scope of the training requirement since it is inappropriate to require that all employees of a generator receive personnel training, regardless of their job responsibilities. According to these commenters, some firms, particularly large companies, may have clerical and office staff as well as some part-time and temporary personnel "who will never be involved or even remotely associated with the firm's handling of hazardous waste", and requiring these employees to be thoroughly familiar with hazardous waste management techniques would be a poor use of the firm's resources. One commenter suggested that this requirement be applied only to those employees who handle hazardous waste as part of their job.

The Agency agrees that it would not make sense to require training in topics not germane to an employee's areas of responsibility since this would add considerable burden to some firms without corresponding environmental or health benefits. Thus, the Agency has amended the regulations to clarify this issue. The rule promulgated today states that generators "must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their job responsibilities during normal facility operations and emergencies," just as for large quantity generators subject to § 265.16, implicit in the regulations is the requirement that the type and amount of training necessary for each employee stems from his specific responsibilities. Employees who handle hazardous wastes as part of their normal job responsibilities or are likely to handle wastes in an emergency situation must be thoroughly familiar with proper waste handling and emergency procedures. Employees who work in or adjacent to areas where hazardous wastes are generated, handled, or stored but do not handle hazardous wastes, must still be trained to be thoroughly familiar with basic emergency procedures. Part-time or temporary employees must also receive appropriate training.

iii. Standards for Accumulation in Containers—Part 265, Subpart I: Section 262.34 requires that in order to accumulate hazardous waste on-site without a permit, the generator must meet certain requirements. If the waste is stored in containers, the generator must comply with Subpart I of Part 265 (§§ 265.170 thru 265.177) which contains the following general requirements applicable to the management of hazardous waste storage containers:

• They must be kept in good condition and any leaking containers replaced (§ 265.171);

• The containers must be compatible with the hazardous waste stored in them (§ 265.172);

• Containers holding hazardous waste must always be closed during storage (except when necessary to add or remove wastes) and must not be handled in a way that would cause them to rupture or leak (§ 265.173);

• Containers must be inspected at least weekly to check for leaks and any signs of corrosion (§ 265.174);

• Containers holding ignitable or reactive wastes must be placed at least 50 feet from the facility's property line § 265.176); and

• Incompatible wastes must not be placed in the same container so as to cause fires, leaks, or other discharge of hazardous waste or hazardous waste constituents (§§ 265.177 and 265.17(b)).

In addition, § 262.34(a)(2) requires that the date upon which each period of storage begins is clearly marked on each container and § 262.34(a)(3) requires that each container be marked with the words "Hazardous Waste".

Since these requirements embody common sense "good housekeeping" requirements necessary to avoid releases into the environment, EPA proposed no modifications to these standards for 100–1000 kg/mo generators. Comments received generally indicate that these requirements were not unduly burdensome and would be appropriate for 100–1000 kg/mo generators. The one major concern raised by a number of commenters, however, is the requirement that a buffer zone of at least 50' from the property boundary be maintained for reactive or ignitable wastes. Since many smaller generators are located in urban areas, it is not uncommon for these generators to be located on lots that would not permit the maintenance of a 50-foot buffer zone.

EPA agrees with commenters that this requirement would put many small businesses in a situation in which it would be impossible to comply. Since the Agency has already proposed to modify the buffer zone requirement to increase flexibility in such situations (49 FR 43290, June 5, 1984), it would make sense for the Agency to exempt 100–1000 kg/mo generators from the 50-foot buffer zone requirement until the Agency promulgates final storage standards. Whether the Agency ultimately decides to apply the proposed standards to these generators or to propose a more tailored set of standards, it would be inconsistent with the directives contained in HSWA Section 3001(d) to consider impacts on small business to include, in the interim, the existing buffer zone requirement. Therefore, as an interim measure, the Agency is exempting 100–1000 kg/mo generators from the § 265.176 requirement that containers holding ignitable or reactive wastes must be placed at least 50 feet from the property boundary. Of course, 100–1000 kg/mo generators should endeavor to store ignitable or reactive wastes as far from the property boundary as is practicable.

With the exception of the modified buffer zone requirement, EPA is incorporating by reference the requirements of Subpart I of Part 265 into § 262.34(d).

iv. Standards for On-site Accumulation in Tanks—Part 265, Subpart J: As in Subpart I, Subpart J contains general standards that must be followed by generators storing hazardous waste in tanks under § 262.34:

• Wastes must not be placed in tanks if they could cause ruptures, leaks, corrosion, or otherwise cause the tank to fail (§ 265.192(b));

• Uncovered tanks must be operated with at least 60 centimeters (2 feet) of freeboard or a secondary containment dike or trench to prevent overfilling spillage (§ 265.192(c));

• Where waste is continuously fed into a tank, the tank must be equipped with a waste feed cutoff or bypass system to stop the inflow to the tank (§ 265.192(d));

• At least once each operating day, a generator must inspect, where present, discharge control equipment (*e.g.*, waste feed cut-off systems and drainage systems), data gathered from monitoring equipment (*e.g.*, pressure and temperature gauges), and the level of waste in the tank to assure compliance with the above freeboard requirements (§ 265.194 (a)(1), (a)(2), and (a)(3));

• At least weekly, a generator must further inspect the construction materials of the tank and the area immediately surrounding the tank to detect corrosion or obvious signs of leakage (§ 265.194 (a)(4) and (a)(5));

• Special requirements apply to ignitable or reactive waste, and incompatible waste that are more or less analogous to those in Subpart I. The major difference is in the requirements for ignitable or reactive waste which, when stored in a covered tank, must be in compliance with buffer zone requirements contained in Tables 2–1 through 2–6 of the National Fire Protection Association's (NFPA) "Flammable and Combustible Liquids Code." These requirements are based on the hazardous characteristics of all combustible and flammable liquids and, as such, are applicable to any type and size of tank. While the Agency is modifying the buffer zone requirements for containers, as discussed in the previous section, the Agency did not receive any comments indicating that compliance with the NFPA code with respect to tanks would be impossible for small quantity generators. Therefore, the existing buffer zone requirements for tanks will apply to generators of 100–1000 kg/mo.

The requirements of Subpart J are meant not only to protect human health and the environment, but are in the generator's best interest by reducing the likelihood of damages or injuries caused by leaks and spills. The Agency did not propose to modify these standards for 100–1000 kg/mo generators, and no commenters raised any objections to application of the existing Subpart J requirements to 100–1000 kg/mo generators. Thus, the Agency has no reason to believe that the existing tank requirements present a problem for these generators, and is including them in this rule.

As discussed in detail in the Proposal, the Agency is developing new management standards for tank storage that may require secondary containment for accumulation tanks. These proposed amendments to Subpart J (50 FR 26444, June 26, 1985) could impose additional costs if applied to generators of 100–1000 kg/mo who accumulate hazardous waste in tanks. In the Proposal, the Agency requested and received public comment on a variety of options related to the proposed tank amendments. However, the Agency has not yet completed its evaluation of this issue and has not issued any final amendments to Subpart J. Accordingly, the Agency is today applying to generators of 100–1000 kg/mo only those Subpart J requirements currently required under § 262.34. Application of any modified tank standards to generators of 100–1000 gk/mo will be evaluated in the final tank rule after consideration of all comments received on both the August 1 Proposal and the tank proposal of June 26, 1985.

The requirements of existing Subpart J of Part 265 are, therefore, incorporated by reference in § 262.34(d), and are applicable to generators of 100–1000 kg/mo.

5. International Shipments

On March 13, 1986, EPA proposed regulations under § 3017 of HSWA regarding exports of hazardous waste (See 51 FR 8744). The proposed regulations would prohibit export of hazardous waste unless certain requirements are met. These requiremens include advance written notification to EPA of any plans to export hazardous waste, prior written consent to such plan by the receiving country, attachment of a copy of the consent to the manifest accompanying

each waste shipment, and conformance of the shipment to such consent. EPA also proposed a manifest pursuant to 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage or disposal facility in a foreign country as the facility to which the waste will be sent. Under 40 CFR 261.5 and today's final rule all generators, including those generating less than 100 kg/mo, would qualify as exporters under the export proposal. Although the Agency is not aware of any exports by generators of less than 1000 kg/mo, and hence, did not propose to change the applicability of the export requirements to these generators, the Agency has requested comment from generators of less than 1000 kg/mo on whether the Agency should partially or totally exempt them from the proposed export requirements. Thus, generators affected by today's final rule should be aware that they may be subject to additional regulatory requirements in exporting hazardous waste, and that they have the opportunity to submit comments regarding the applicability of those requirements to the public docket established for the export proposal.

D. Transportation Issues

The existing standards for transporters of hazardous waste are contained in 40 CFR Part 263, and are applicable to any form of hazardous waste transportation that requires the use of a hazardous waste manifest (§ 263.10(a)). These standards pertain to compliance with the manifest system, recordkeeping, and actions to be taken in response to spills or discharges of hazardous waste. Taken in conjunction with U.S. Department of Transportation (DOT) requirements under the Hazardous Materials Transportation Act (HMTA) regarding labeling, marking, packaging and placarding (incorporated in 40 CFR Part 262, Subpart C), such standards are deemed by the Agency to be those necessary to protect human health and the environment during the transportation of hazardous waste.

In directing EPA to develop standards for generators of 100–1000 kg/mo, Section 3001(d)(7) of RCRA, as amended, specifically states that "nothing in this subsection shall be construed to affect or impair the validity of regulations pursuant to the Hazardous Materials Transportation Act." Consequently, EPA did not propose any substantive amendments to applicable DOT requirements or to Part 263. However, several minor amendments are necessary to bring the transporter standards into conformance with today's final standards for 100–1000 kg/mo generators.

In addition, commenters on the proposed rules raised a number of transportation-related issues. The Agency is finalizing proposed § 263.20(h) to specify certain recordkeeping requirements for transporters (who are also reclaimers) accepting unmanifested hazardous waste from generators utilizing the § 262.20(e) exemption for wastes reclaimed under contractual agreements. While one commenter argued that these recordkeeping requirements were too burdensome, the Agency does not agree. The manifest exemption is an entirely voluntary arrangement that substantially reduces the paperwork for both generators and transporters. The transporter need not maintain the prescribed records if he chooses instead to comply with the manifest system. A number of commenters were concerned about the lack of established transportation networks for the collection and transportation of less than full truckloads of hazardous waste. Three commenters stated that EPA should take steps to encourage such networks, and suggested various alternatives. Two commenters suggested that EPA encourage the establishment of collection centers for waste from 100–1000 kg/mo generators by extending the current 10-day period for transportation to 21 days and accelerating the issuance of storage permits for facilities which serve as collection and transfer stations for small quantity generator waste. One of these commenters specifically suggested that development of a class permit concept for these facilities might be a viable solution.

EPA agrees that the development of networks and centralized collection centers will help to increase compliance with these regulations. However, commenters have not adequately demonstrated a need for longer transportation time than the 10 days currently provided. Nor does EPA believe that the establishment of an expedited permit process for these facilities is feasible. Both of these issues are discussed in greater detail in the following section on facility standards. It should be noted here, however, that such networks can be established at any time within the confines of the applicable regulations.

Some commenters expressed concern about EPA's discussion in the proposed rules of self-transportation of hazardous wastes, stating that all of the standards for hazardous waste transportation should be imposed on such generators. In the proposal, EPA explained that self-transportation of hazardous waste by generators was not precluded by the regulations, provided the generator obtained a U.S. EPA ID number and complied with the provisions of Part 263 and the applicable portions of Department of Transportation regulations. EPA did not intend to create the impression that self-transportation could be conducted without compliance with the full Part 263 standards for hazardous waste transportation.

Other commenters supported the concept of licensing transporters to assume the responsibilities of the generator with respect to manifesting. As EPA explained in the Proposal, transporters may currently assume most of the generators' manifesting responsibilities except for signing the certification statement. One commenter believed that the transporter of a hazardous waste shipment should assume liability for the waste if that transporter completed the manifest and removed the waste from the generator's establishment. EPA may not alter the liabilities established by statutes such as CERCLA, which applies the concept of joint and several liability to all handlers of a hazardous substance. In addition, EPA believes that removing RCRA liability from generators would remove an important incentive for them to ensure that their wastes are properly transported and managed. EPA, therefore, is taking no action that would alter a generator's liability under current regulations and statutes.

Two States requested an amendment to § 262.20(e) to allow generators of 100–1000 kg/mo to transport waste to a temporary collection site of a hazardous waste clean-up program or Amnesty Day without the need to complete a manifest. They stated that the requirement to complete a manifest may discourage some establishments from participating. Under most "Amnesty Day" programs of which the Agency is aware, homeowners are encouraged to bring their unwanted household hazardous wastes to a central collection point where they are sorted, packaged, and subsequently transported to an approved hazardous waste management facility. In some cases, small quantity generators have been allowed to discard their wastes through similar programs.

Section 261.4(b)(1) exempts household waste from all of the hazardous waste requirements of RCRA. Thus, no manifesting is required for transport of wastes that are exempt from regulation under § 261.5. However, because quantities of hazardous wastes from generators of 100–1000 kg/mo could pose a substantial risk if improperly

managed, the Agency has decided to impose manifest requirements on these generators, except in the case of certain reclamation agreements. The existence of a State-approved collection center does not, on its own, provide assurance that the waste would be transported or handled properly prior to or during transportation to such a facility, or indeed, that the shipment would ever reach such a facility. Consequently, development of some recordkeeping and transportation requirements would be needed which would offset any potential savings of such an exemption.

E. Part 264/265 Facility Standard Issues

The requirements for facilities that treat, store, or dispose of hazardous waste are contained in Parts 264 and 265 of the hazardous waste regulations. The Part 265 standards are applicable to facilities under interim status, a condition which allows a facility to continue operating until it receives a full RCRA permit. (See HSWA section 3005(e)). The Part 264 standards establish the minimum standards to be incorporated into a full RCRA permit by EPA or a State with an EPA authorized hazardous waste program.

Section 261.5(b) previously exempted generators of 100–1000 kg/mo of hazardous waste from the facility requirements of Parts 264 and 265 that cover the on-site treatment, storage, or disposal of hazardous waste, provided the facility is at least approved by a State to manage municipal or industrial (non-hazardous) solid waste and no more than 1000 kg of hazardous waste were accumulated at any time. Under the rules promulgated today, this exemption will continue to apply only to generators of less than 100 kg/mo of hazardous waste. Generators of 100–1000 kg/mo of hazardous waste will be subject to full regulation under Parts 264 and 265 if they accumulate hazardous waste on-site for greater than 180 (or 270) days, exceed the 6000 kg accumulation limit, engage in waste treatment in other than tanks, or manage their waste in surface impoundments, waste piles, landfills, or land treatment facilities. In addition, those State-approved municipal or industrial waste facilities that manage wastes only from generators of 100–1000 kg/mo will also no longer be exempted from the Part 264 and 265 permit requirements. In the proposed rule, the Agency requested comments concerning the application of the uniform Part 264 and 265 requirements to generators of 100–1000 kg/mo and to the treatment, storage, and disposal facilities that accept waste from the generators.

1. Activities Requiring Permits

Under today's final rules, 100–1000 kg/mo generators will be required to obtain a permit if they treat or dispose of hazardous waste on-site (except for treatment in tanks or containers during the 180/270 day accumulation period in conformance with Subparts J or I of Part 265, respectively) or accumulate hazardous waste on-site in tanks or containers for more than 180 (or 270) days.

A number of commenters agreed with the need to manage wastes from generators of 100–1000 kg/mo at fully permitted facilities. They argued that no special exemptions or requirements should be applied to the management of waste from these generators because the characteristics of the waste, not the source of the waste, poses the threat to human health and the environment.

Two commenters opposed the requirement for generators of 100–1000 kg/mo who accumulate waste on-site for longer than 180 (or 270) days to obtain RCRA permit, and argued that the accumulation time limit before permitting is required should be extended. One of the commenters also maintained that determining the maximum quantity of hazardous waste that may be accumulated at a non-permitted facility should be based on the degree of hazard posed by the waste and the generator's capacity to transport the waste off-site. The EPA disagrees with both of these positions. As noted in Unit III.C.4.a. of today's preamble, the HSWA of 1984 clearly limit Agency discretion in this matter. The Agency carries a heavy burden in extending the time limits established under section 3001(d)(6), and except for emergency circumstances, the Agency does not believe there to be sufficient justification for extending the limits Congress has established.

Another commenter opposed any permitting requirement due to the economic burden that would be placed on a small number of generators. While some generators of 100–1000 kg/mo may be burdened financially by the requirements promulgated today, Congress has already judged that outside of the accumulation limits allowed for in Section 3001(d)(6), disposal of wastes from these generators at permitted facilities is necessary to protect human health and the environment. In addition, since the rules allow generators to manage their hazardous wastes off-site, they are able to avoid the cost of acquiring a RCRA permit, if they so choose.

Several commenters suggested exemptions from the RCRA permitting requirements or reduced permit requirements for on-site waste treatment. Some commenters stated that there is a need to encourage on-site treatment to reduce the amount of wastes sent off-site and that the permitting requirements may hamper the ability of generators to treat wastes at their facilities.

The Agency disagrees that on-site treatment should be encouraged by exempting those generators of 100–1000 kg/mo from the RCRA permitting requirements. To the extent that these generators are conducting the same treatment/storage or treatment/disposal as other permitted facilities, their on-site treatment activities pose a potential risk to human health and the environment. Therefore, reduced or eliminated permitting requirements would be inappropriate.

Of course, no permitting would be required if a generator chooses to treat their hazardous waste in the generator's accumulation tanks or containers in conformance with the requirements of § 262.34 and Subparts J or I of Part 265. Nothing in § 262.34 precludes a generator from treating waste when it is in an accumulation tank or container covered by that provision. Under the existing Subtitle C system, EPA has established standards for tanks and containers which apply to both the storage and treatment of hazardous waste. These requirements are designed to ensure that the integrity of the tank or container is not breached. Thus, the same standards apply to a tank or a container, regardless of whether treatment or storage is occurring. Since the same standards apply to treatment in tanks as applies to storage in tanks, and since EPA allows for limited on-site storage without the need for a permit or interim status (90 days for over 1000 kg/mo generators and 180/270 days for 100–1000 kg/mo generators), the Agency believes that treatment in accumulation tanks or containers is permissible under the existing rules, provided the tanks or containers are operated strictly in compliance with all applicable standards. Therefore, generators of 100–1000 kg/mo are not required to obtain interim status and a RCRA permit if the only on-site management which they perform is treatment in an accumulation tank or container that is exempt from permitting during periods of accumulation (180 or 270 days).

Two commenters suggested that a mechanism should be created to tailor RCRA permits to the circumstances of individual facilities. For example, one commenter specifically asked for a simplified and streamlined permit for the incineration of spent paint spray

booth filters. The Agency accepts the need to consider individual circumstances when drafting RCRA permits. However, in order to protect human health and the environment, the Agency must impose certain minimum permit requirements for each waste management facility. Additional provisions may be incorporated into a permit to account for unique circumstances at individual facilities (see § 270.32). At the present time, the Agency has decided not to take any action regarding the tailoring of regulatory requirements for permitting specific types of waste management activities for generators of 100–1000 kg/mo. At a future date, the Agency may consider altering the regulatory requirements for specific waste types or handling practices that pose a low potential for harm to human health and the environment.

Two commenters discussed the need for establishing regional collection centers for the temporary storage of wastes from generators of 100–1000 kg/mo before being sent to treatment, storage, or disposal facilities. One of these commenters suggested that the collection centers may also offer waste identification and packaging services and could be sponsored by State or local governments. Both commenters contended that regional collection centers will be needed because most waste shipments from generators of 100–1000 kg/mo will be too small to justify the expense of direct transportation to TSDFs in less than truckload quantities. The commenters further stated that these collection centers should not be required to meet the full RCRA permit requirements for storage facilities.

While the rules promulgated today may increase the cost of waste transportation services for many generators of 100–1000 kg/mo, generators of 100–1000 kg/mo are allowed to accumulate hazardous waste at their facilities for 180 (or 270) days, thereby reducing the need for frequent shipment off-site and off-site collection centers. Nevertheless, if regional collection and storage facilities are established, these centers will probably accumulate significant volumes of various types of hazardous waste. The storage of large amounts of hazardous waste, regardless of its point of origin, poses the potential for harm to human health and the environment. Therefore, the Agency believes that the requirements for storage and disposal facilities as described in Parts 264 and 265 must also apply to regional collection facilities. Furthermore, wastes shipped from a generator of more than 100 kg/mo to a collection center must be properly identified, manifested, packaged, labeled, marked, placarded, and transported in accordance with Parts 262 and 263 and applicable regulations promulgated under the Hazardous Materials Transportation Act.

One commenter proposed that generators of 100–1000 kg/mo be exempted from the full corrective action for continuing releases provisions of RCRA section 3004(u), which apply to all solid waste management units at a Subtitle C facility seeking or issued a permit. EPA disagrees with the suggestion. Section 3004(u) applies to releases to all media; however, the Agency believes that action is required only where necessary to protect human health and the environment. Section 3004(u) requires that all permits issued to Subtitle C facilities after November 1984 shall include schedules of compliance and financial assurance for completing any necessary corrective actions for releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which such waste was placed in such unit. The clear statutory directive precludes a reading of the statute that limits an owner's or operator's responsibilities to waste placed in units during his or her tenure or for releases from solid waste management units that are not "regulated units."

The corrective action requirements will apply only to the few generators of 100 to 1000 kg/mo who choose to seek permits. Thus, the potential burden of corrective action must be accepted by those who choose to manage their hazardous waste on-site. Should such a generator become subject to the corrective action provisions, the Agency is considering the advisability of taking into account the firm's ability to pay when establishing a compliance schedule and thereby reduce the burden to generators of 100–1000 kg/mo. Nonetheless, the goal of these rules is to reduce the risk to human health and the environment from uncontrolled releases of hazardous waste. The risks associated with such releases depend on the nature of each individual release, not on the quantity of hazardous waste generated by the facility. There is no rational basis for distinguishing between generators of 100 to 1000 kg/mo and larger quantity generators when determining whether a release, once it occurs, poses an imminent threat to human health and the environment and needs to be cleaned up.

2. Applicability of Permitting Requirements to Recycled Wastes

Several commenters addressed the issue of recycled wastes. One commenter stated that generators of 100–1000 kg/mo who recycle the generated products should not be required to meet full Parts 264 and 265 facility standards. The commenter argued that since recyclable wastes are frequently handled as if they were original products, they should not be subject to regulation. This approach has already been considered by the Agency and rejected (See 50 FR 614, 617 (January 4, 1985). At the time, EPA indicated that wastes often have little independent economic value, but are recycled to avoid disposal costs. Unless the wastes are extremely valuable (as in the case of precious metal-containing wastes), there is little incentive to avoid leaks and spills. EPA sees no reason to reconsider the issue at this time.

Two other commenters sought clarification concerning whether the proposed rule requires on-site waste recycling operations to be permitted under Parts 264 and 265. While the actual recycling operation is generally not subject to permitting, the rule does, indeed, require (or will require) permitting for certain recycling activities and for storage associated with recycling activities. Generators of 100–1000 kg/mo of recyclable materials must obtain a permit or interim status if all of the following conditions are met:

(1) The material is a solid waste. Whether or not a material qualifies as a solid waste depends upon both what the material is and how it is being recycled. See §§ 261.2 and 261.4(a).

(2) The solid waste is a hazardous waste. Generally, the waste must be listed or exhibit one of four characteristics. See §§ 261.3 and 261.4(b).

(3) The hazardous waste is not exempt from regulation under § 261.6. Exempted materials include industrial ethyl alcohol that is reclaimed and scrap metal.

(4) The non-exempt hazardous waste is stored on-site for more than 180 days (or 270 days if it is to be transported at least 200 miles). See § 262.34(d).

If the solvent is stored in anticipation of reclamation for more than 180 days, however, the generator must obtain a permit or interim status. See § 262.34(f). In addition, use constituting disposal and burning for energy recovery would also be recycling activities requiring a permit.

3. Permit By Rule

Two commenters argued that generators of 100–1000 kg/mo should be allowed to obtain a RCRA "permit by rule" (under § 270.62) and by-pass the Parts 264 and 265 permitting process. Permits by rule have been granted by EPA to facilities already regulated and permitted under other Federal laws, provided that the facilities are in compliance with their permits and other specified requirements. For example, ocean disposal barges or vessels are granted permits by rule under RCRA § 270.60(a) for ocean dumping because those activities are already permitted under the authority of the Marine Protection, Research, and Sanctuaries Act, as amended U.S.C. 1420 *et seq.*

The commenters are requesting EPA to apply permits by rule in such a manner that could effectively exempt generators of 100–1000 kg/mo from Federal requirements. They have suggested that the proposed rule requiring full Part 264 and 265 standards for generators of 100–1000 kg/mo would be too burdensome. One commenter noted that a permit by rule would allow for relief from full RCRA requirements and thus allow for continued waste treatment/minimization activities on-site. The second commenter explained that 100–1000 kg/mo generators are already regulated under State and local environmental programs. This commenter suggested that permits by rule should be issued for generators of 100–1000 kg/mo who are in compliance with "adequate State and local environmental programs and permits."

EPA does not believe that it is appropriate to effectively exempt these generators from Parts 264 and 265. First of all, Congress explicitly directed EPA to require that wastes from these generators be managed at Subtitle C facilities. Second, EPA believes that compliance with the permitting process is essential to provide protection of human health and the environment. EPA disagrees that State and local regulatory programs for generators of 100–1000 kg/mo are sufficient to maintain proper protection of human health and the environment, since most State programs do not now require that such waste be managed at Subtitle C facilities. Of course, States with authorized RCRA programs may adopt equivalent (or broader or more stringent) requirements and administer State programs for these generators.

4. Modifications to Part A Permit Applications

One commenter questioned whether requiring revisions to Part A and Part B permits for facilities handling waste from generators of 100–1000 kg/mo will be too time-consuming and may delay the implementation of the proposed rule.

EPA is aware that the rule promulgated today will require changes in the Part A applications for off-site facilities that manage wastes from 100–1000 kg/mo generators. As explained in the preamble to the proposed rule, off-site interim status facilities managing wastes from both fully regulated large quantity generators and generators of 100–1000 kg/mo may be required to modify their Part A permit applications under § 270.72 to account for wastes from 100–1000 kg/mo generators if those wastes are currently being managed as exempt pursuant to § 261.5 and are not currently identified on the Part A application. Thus, facilities that receive wastes from generators of 100–1000 kg/mo only, which previously were not required to fill out Part A forms under § 270.41 are now required to do so. Similarly, facilities that receive wastes from generators of 100–1000 kg as well as large quantity generators, must modify their permits to reflect the wastes received from 100–1000 kg/mo generators.

The Agency does not believe that the proposed changes requiring facilities receiving wastes from generators of 100–1000 kg/mo to add new information to Part A applications or requiring facilities to begin filing Part A applications will be overly time-consuming.

One commenter sought to clarify that facilities that only handle hazardous waste from generators who generate no more than 100 kg/mo will still operate under a blanket exemption from Part 264 and Part 265.

Under the Hazardous and Solid Waste Amendments of 1984, generators of less than 100 kg/mo and those treatment, storage, or disposal facilities that serve those generators will continue to operate under the conditional exemption from Part 264 and Part 265 that is contained in in Section 261.5.

IV. Delayed Effective Dates

EPA proposed that the effective date of the regulatory requirements for 100–1000 kg/mo generators be six months from the date of promulgation of the rules. It was also proposed that the effective date of the Parts 264 and 265 facility standards for generators that manage waste on-site be delayed an additional six months, to become effective one year from the date of promulgation.

Of the four comments received on this issue, one opposed any delay in effective dates beyond March 31, 1986, on grounds that it is one of the hammer provisions and would not be in the best interest of enforcement. Another commenter suggested a one year delay for all of the requirements. The Agency does not agree with either commenter. First, the plain language of section 3001(d)(9) states that the last sentence of section 3010(b), which allows for a less than six month effective date under certain circumstances, shall not apply to standards issued under section 3001(d). Thus, the language of the statute appears to preclude an effective date of less than six months. Although it is arguable that the statute and its legislative history indicate some intent that the regulations become effective immediately,[5] the Agency believes that a better reading of the statute requires a delay in the effective date of the rules for at least six months.

Second, the Agency believes that a six month effective date for the generator requirements is essential from a policy perspective in order to allow these small businesses to become familiar with the hazardous waste regulations, obtain an EPA Identification number, and find hazardous waste transporters and Subtitle C management facilities. Finally, EPA has determined that the six month effective date is consistent with the statutory directive to promulgate rules for these generators that attempt to minimize the burden on small business. Thus, EPA believes that allowing six months for these generators to comply with most of the provisions of the newly applicable hazardous waste management system is a reasonable response to the directives of section 3001(d). As discussed below, the Agency does not believe, however, that a full year is needed for compliance with rules other than those relating to on-site waste management.

With regard to the additional six month delay for compliance with on-site management standards, one commenter supported the proposal while another opposed it as legally unjustifiable and not protective of public health. This commenter asserted that the effective

[5] While the Agency does not believe that the hammer provisions in section 3001(d)(8) dictate the content of the final rules, it is arguable that a March 31, 1986 effective date was intended. The fact that Congress required final rules to be promulgated by March 31, 1986, under section 3001(d)(8), in conjunction with a statement in the Conference Report that the section 3010(b) six month delay in effective dates does not apply to 3001(d)(1) regulations (see H.R. Rep. No. 1133, 98th Cong. 2d Sess. 101 (1984)) raises some question regarding the applicability of the six month delay of section 3010(b). Since the plain meaning of the statutory language in section 3001(d)(9) is so clear, however, the Agency does not believe that the legislative history should prevail.

dates for on-site and off-site activities should be the same.

EPA disagrees that the effective dates for compliance must be the same for on-site and off-site management activities. The same concerns regarding undue burdens that would be imposed by an immediate effective date for the full set of regulations led the Agency to conclude that a reasonable period of time was necessary for on-site compliance with Parts 264 and 265.

Generators of 100–1000 kg/mo who engage in on-site management activities will generally have to change their waste management practices in more dramatic ways than those generators who simply ship their wastes for management off-site. Most will modify their current practices in one of the following ways: (1) By adopting on-site management practices exempt from Parts 264 and 265, (2) by shifting to off-site management practices, or (3) by adjusting any non-exempt on-site practices so they comply with the full Parts 264 and 265 facility standards. The delayed effective date will permit these generators to effect the necessary changes in a safe and effective manner. Under the final rule, 100–1000 kg/mo generators will have an additional six months to qualify for interim status and come into compliance with the Part 265 interim status facility standards if they manage their wastes on-site, as opposed to off-site. The interim status facility standards include a number of requirements that call for substantial time and investment, especially the requirement for implementation of a ground-water monitoring program. The installation, operation and maintenance of the monitoring system to determine impact on ground-water quality includes installation of wells, which will require some time to be constructed. In the meantime, there will be some protection to health and the environment by the need for approval by States for these generators to manage municipal or industrial (non-hazardous) solid waste.

Generators who manage their waste off-site will not need this additional time to comply with today's rule. In many cases, their current waste management practices will be allowed under this rule. Even if they must arrange for new off-site management, six months should be sufficient time for this transition.

Therefore, the Agency is retaining the proposed effective dates.

V. Impact on Authorized States

A. Applicability in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce their own hazardous waste programs pursuant to Subtitle C (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 3013 and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any hazardous waste management facilities which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames, however; the new Federal requirements did not take effect in an authorized State until the requirements were adopted as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

Today's final rule is promulgated pursuant to section 3001(d) of RCRA, a provision added by HSWA. Therefore, it is being added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final status for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA will implement the standards in authorized States until they revise their programs to adopt these rules and the revisions are approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State adoption of these regulations under section 3006(b) are described in 40 CFR 271.21 (49 *FR* 21678, May 22, 1984). The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs within one year from the date of today's promulgation of EPA's regulations if only regulatory changes are all that are necessary, or within two years if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce them as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to States in their efforts to implement their programs rather than take separate action under Federal authority.

States that submit official applications for final authorization less than 12 months after today's promulgation of EPA's regulations could be approved without including standards equivalent to those promulgated. Once authorized, however, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time period discussed above.

VI. CERCLA Impacts

Today's final rule does not change existing CERCLA requirements relating to releases of reportable quantities of CERCLA hazardous substances. Whenever a hazardous waste or waste stream is listed under section 3001 of RCRA, it automatically becomes a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). Section 103 of CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Reponse Center (NRC) (at (800)

424–8802 or (202) 426–2675) of the release. (See 50 FR 13456–13522, April 4, 1985).

The term "hazardous substance" includes all substances designated in § 302.4(a) of the April 4, 1985 final rule (50 FR 13474), as well as unlisted hazardous wastes exhibiting the RCRA characteristics of ignitability, corrosivity, reactivity, and extraction procedure toxicity. (See § 302.4(b) of the April 4, 1985 final rule.)

All persons who release a reportable quantity of a CERCLA hazardous substance into the environment, including small quantity generators, are subject to notification provisions of section 103 of CERCLA (see 40 CFR 302.6(a) and (b)). However, as stated in CERCLA section 103(f)(1), no notification shall be required under CERCLA sections 103(a) and (b) for any release of a hazardous substance which is required to be reported (or specifically exempted from a requirement for reporting) under subtitle C of the Solid Waste Disposal Act or regulations thereunder and which has been reported to the National Response Center (NRC).

VII. Executive Order 12291—Regulatory Impact

Executive Order 12291 (46 *FR* 13193, February 9, 1981) requires that a regulatory agency determine whether a new regulation will be "major" and if so, that a Regulatory Impact Analysis be conducted.

The Administrator has determined that today's final rule is not a major rule, because it has total estimated costs of less than $100 million per year, and has no significant adverse economic effects. These conclusions, are based on an economic analysis of today's proposal. This analysis involved developing cost estimates of both current waste management practices used by 100–1000 kg/mo generators and practices required by today's final rule. Some of these estimates were firm-specific and others were waste stream-specific. These costs were used along with estimates of the changes in waste management practices likely to result from today's final rule to estimate the annual incremental compliance costs to 100–1000 kg/mo generators ($46.9 milllion). These costs were added to the estimated government costs of implementing the regulation of $12 million for a total social cost of $58.9 million.

A. Estimates of Per Firm Costs

1. Part 262 Generator Standards

The estimated incremental compliance costs attributable to Part 262 requirements can be divided into an initial, one-time, cost of $2267 per firm, and an annual recurring cost of $222 per firm. These costs will be incurred by all 100–1000 kg/mo generators that would be subject to the requirements of today's regulation with two exceptions—generators disposing of their wastes by sending them to POTW's and generators that have their waste reclaimed under certain contractural agreements. Generators sending wastes to POTW's will incur no Part 262 related costs as a result of the regulation (unless the waste is accumulated prior to discharge; see 3.a. of this Unit). Generators using reclamation agreements would incur a cost of $1694 initially and no annual costs.

2. Transportation Costs

Under today's rule, generators of 100–1000 kg/mo will be required to either contract with an authorized hazardous waste transporter or haul the hazardous waste to a hazardous waste management facility that has a permit from the Agency or an authorized State, or is in interim status. Incremental transport costs depend on current generator practices, the distance which wastes are transported, the quantity of wastes transported, and the number of times wastes are loaded and transported each year.

In many cases, there will be no incremental transportation costs due to these regulations because current waste management practices involve waste transportation. Where this is not the case, average incremental costs that would be imposed on 100–1000 kg/mo generators for the transportation of their hazardous waste are estimated to be between $838 per year (for generators that ship 600 kg of waste a short distance twice yearly) and $1882 per year (for generators that ship 6000 kg of waste a longer distance twice yearly).

3. Treatment, Storage and Disposal Costs

a. On-Site Accumulation: Under today's final rule, generators of 100–1000 kg/mo would be allowed to store hazardous waste on-site without a permit or interim status for up to 180 days, or for up to 270 days if the waste is to be shipped over 200 miles.

Generators of 100–1000 kg/mo who store hazardous waste on-site, within the 180-day (or 270-day) period specified under the provisions of the storage exemption, will have to comply with Part 265, Subpart C (Preparedness and Prevention), a reduced set of requirements in Subpart D (Contingency Plan and Emergency Procedures), and limited requirements for personnel training (Section 265.16 of Subpart B). The incremental compliance costs for facilities that choose this management option are divided into an initial start-up cost of $1447 and an annual cost of $53.

Generators that store hazardous waste on-site within the 180-day (or 270-day) period may also incur costs related to storage container (Subpart I) and storage tank (Subpart J) requirements. The incremental costs for these requirements depend on a number of factors, including the current practices of the generator, the generator's storage capacity, and the composition of the hazardous waste being stored. The range of incremental costs, as a result, is fairly large. For container storage, initial incremental costs range from practically zero to $1854 and annual costs range from $404 to $447. The corresponding incremental cost estimates for the existing rules for tanks are $155 for initial costs, and $770 for annual costs.

b. Treatment and Disposal: After analyzing the cost of on-site treatment and disposal for 100–1000 kg/mo generators relative to off-site costs, the Agency has determined that in nearly all cases, the least expensive hazardous waste management alternatives available to these generators involve off-site activities. The small quantities of waste generated by these establishments simply do not permit them to operate expensive on-site management facilities on an economically efficient basis. The costs of off-site commercial treatment and disposal upon which this conclusion is based are derived from a composite of various existing sources of data on commercial waste management prices. They range from $150 to $250 per metric ton (for secure landfills) to $200 to $1200 per metric ton (for either treatment or incineration), depending on the characteristics of the wastes.

B. Estimates of Nationwide Incremental Cost Burden on Generators of 100–1000 kg/mo

The aggregate costs for today's rule were developed by comparing the costs of current (baseline) management practices with hazardous waste management practices which are required by the rule. The Agency has determined, based on this analysis, that the annual incremental compliance cost for this proposal would be approximately $46.9 million.

On a per metric ton basis, the average incremental compliance cost over all wastes is about $180. Because of differences in baseline practices, and, hence, the cost of compliance, the incremental costs vary substantially among different wastes. In fact, the baseline method of waste management by these generators is adequate to comply with the regulations in many cases. Others will have to change waste management practices in order to comply. Much of the $46.9 million in compliance cost, is focused on a few types of wastes (spent solvents dry cleaning filtration residues, acids, and

alkalies, and ignitable wastes) that constitute a large proportion of the wastes generated by these generators.

C. Estimates of the Economic Impacts of Today's Final Rule

An analysis of the effects of compliance costs on the sales and profitability of 289 model plants indicates that in over 80 percent of plants the incremental costs are less than 10 percent of profits. A few of the plants, particularly in service industries, show incremental costs of greater than 10 percent of profits. Nearly three quarters of the models most affected by the proposal have annual revenues of less than $500,000. Some of these establishments are low profit or nonprofit by design, such as public or private golf courses, hospitals, and other public institutions.

Only six plants have incremental compliance costs which exceed 1 percent of sales and 25 percent of profits. For each of these model plants, a more detailed evaluation was conducted to determine whether these plants would be likely to close. This analysis indicated that plant closings as a result of this regulation would be unlikely.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), requires the Agency to evaluate the impacts of regulations on small businesses, small organizations and small governmental jurisdictions. The Regulatory Impact Analysis for today's final rule includes such an evaluation. The Administrator has determined that this regulation will not have a significant impact on a substantial number of small firms.

Today's proposed regulations are expected to primarily affect small firms. Therfore, the Regulatory Flexibility Act requirement concerning effects on small businesses is addressed to a large extent by the overall economic analysis performed in conjunction with this rulemaking.

Throughout the development of today's final rule, the Agency's goal has been promulgation of requirements that would be the least burdensome to small businesses and also meet the Congressional mandate of protecting human health and the environment. In our effort to design regulations that would meet this goal, we have worked closely with small business organizations, trade associations, State and local governments, EPA's Small Business Ombudsman in the Office of Small and Disadvantaged Business Utilization, and the Federal Small Business Administration to assess the needs and capabilities of small businesses. EPA believes that this rule is a balanced approach to regulating hazardous waste from these generators while considering their small business nature.

For purposes of this analysis, "small entities" were defined as firms comprised of fewer than 50 employees for all of the sectors except manufacturing (<100 employees). In many cases, these classifications are approximations because the Small Business Administration establishes size standards in terms of sales levels, and the size standards vary within sectors. For example, most small entity size standards for manufacturing industries range between 500 and 1000 employees.

The results of this analysis indicate that less than 10 percent of small entities within the impacted industries will be affected by the regulations. Most small businesses will not be affected by these regulations because they: 1) Do not generate hazardous waste, 2) generate less than 100 kg/mo, or 3) generate over 1000 kg/mo and are already subject to hazardous waste regulations.

Even though only a relatively small percentage of potentially affected small businesses will probably be affected, the more important issue to analyze is whether or not a large number of those which are affected will be severely impacted. Three commonly accepted tests were used to measure whether or not businesses would be severely impacted:

(1) Annual compliance costs will increase the relevant production costs for small entities by more than five percent;

(2) Capital costs of compliance will represent a significant portion of the capital available to small entities,

(3) The costs of the regulation will likely result in closure of small entities.

To analyze the significance of compliance costs on small businesses, data were developed for 25 different types and sizes of model plants representing those most likely to be severely impacted by the proposed regulations. Compliance costs were computed for these model plants based on the economic analysis described in the previous section of this preamble.

In general, these regulations will not cause significant impacts on small firms. None of the model plants established for this analysis show cost increases of more than five percent as a direct result of compliance costs. The regulations require no significant capital outlays and thus should not affect capital requirements or availability. Even the most severely impacted model plants would not close under the assumptions of this exercise and would continue to operate at a profit.

In summary, it appears that the impact on small firms will not cause a significant number of hardships. There will be isolated cases, involving on-site management or transportation over long distances, where compliance costs for some individual firms may be severe. In the case of on-site management, however, the Agency believes that most 100–1000 kg/mo generators will switch to off-site practices rather than face the high costs of obtaining interim status or a permit. Furthermore, approximately 70 percent of these generators are in metropolitan areas, and would thus be able to reduce transportation costs by allowing transporters to consolidate shipments by picking up waste from more than one generator at a time.

IX. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–0028 (Notification) and 2050–0039 (Manifest).

List of Subjects

40 CFR Part 261

Intergovernmental relations, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 262

Intergovernmental relations, Hazardous materials, Labeling, Packaging and containers, Reporting requirements, Waste treatment and disposal.

40 CFR Part 263

Intergovernmental relations, Hazardous materials transportation, Waste treatment and disposal.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 14, 1986.

Lee M. Thomas,
Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended, as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

2. Section 260.10 is amended by adding a new definition, alphabetically, as follows:

§ 260.10 Definitions.

* * * * *

"Small Quantity Generator" means a generator who generates less than 1000 kg of hazardous waste in a calendar month.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

4. Section 261.1 is amended by revising paragraph (a)(1) to read as follows:

§ 261.1 Purpose and scope.

(a) * * *

(1) Subpart A defines the terms "solid waste" and "hazardous waste", identifies those wastes which are excluded from regulation under Parts 262 through 266 and 270 and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.

* * * * *

5. Section 261.5 is revised to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 266 and Parts 270 and 124 of this chapter, and the notification requirements of Section 3010 of RCRA, provided the generator complies with the requirements of paragraphs (f), (g), and (j) of this section.

(c) Hazardous waste that is not subject to regulation or that is subject only to § 262.11, § 262.12, § 262.40(c), and § 262.41 is not included in the quantity determinations of this Part and Parts 262 through 266 and 270 and is not subject to any of the requirements of those Parts. Hazardous waste that is subject to the requirements of § 261.6 (b) and (c) and Subparts C, D, and F of Part 266 is included in the quantity determination of this Part and is subject to the requirements of Parts 262 through 266 and 270.

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) Hazardous waste when it is removed from on-site storage; or

(2) Hazardous waste produced by on-site treatment (including reclamation) of his hazardous waste, so long as the hazardous waste that is treated was counted once; or

(3) Spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under Parts 262 through 266 and Parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA:

(1) A total of one kilogram of acute hazardous wastes listed in §§ 261.31, 261.32, or 261.33(e).

(2) A total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in §§ 261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraph (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) Section 262.11 of this chapter;

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all of those accumulated wastes are subject to regulation under Parts 262 through 266 and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit;

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(i) Permitted under Part 270 of this chapter;

(ii) In interim status under Parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) Section 262.11 of this chapter;

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Part 262 applicable to generators of between 100 kg and 1000 kg of hazardous waste in a calendar month as well as the requirements of Parts 263 through 266 and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;

(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment, or disposal facility, either of which is:

(i) Permitted under Part 270 of this chapter;

(ii) In interim status under Parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in Subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Subpart E of Part 266 of this chapter if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

6. In Section 261.33 the introductory text of paragraph (f) is revised to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof

* * * * *

(f) The commercial chemical products, manfacturing chemical intermediates, or off-specification commercial chemical products referred to in paragraphs (a) through (d) of this section, are identified as toxic wastes (T), unless otherwise designated and are subject to the small quantity generator exclusion defined in § 261.5 (a) and (g).

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

7. The authority citation for Part 262 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3002, 3003, 3004, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, and 6937).

8. Section 262.20 is amended by adding new paragraph (e) to read as follows:

§ 262.20 General requirements.

* * * * *

(e) The requirements of this Subpart do not apply to hazardous waste produced by generators of greater than 100 kg but less than 1000 kg in a calendar month where:

(1) The waste is reclaimed under a contractual agreement pursuant to which:

(i) The type of waste and frequency of shipments are specified in the agreement;

(ii) The vehicle used to transport the waste to the recycling facility and to deliver regenerated material back to the generator is owned and operated by the reclaimer of the waste; and

(2) The generator maintains a copy of the reclamation agreement in his files for a period of at least three years after termination or expiration of the agreement.

9. Section 262.34 is amended by revising the introductory text to paragraph (a) and by adding new paragraphs (d), (e), and (f).

§ 262.34 Accumulation time.

(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that:

* * * * *

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) The quantity of waste accumulated on-site never exceeds 6000 kilograms;

(2) The generator complies with the requirements of paragraph (a)(1) except the generator need not comply with § 265.176.

(3) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section and the requirements of Subpart C of Part 265; and

(4) The generator complies with the following requirements:

(i) At all times there must be at least one employee either on the premises or on call (*i.e.*, available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d)(3)(iv) of this section. This employee is the emergency coordinator.

(ii) The generator must post the following information next to the telephone:

(A) The name and telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(iv) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(C) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include the following information:

(1) The name, address, and U.S. EPA Identification Number of the generator;

(2) Date, time, and type of incident (*e.g.*, spill or fire);

(3) Quantity and type of hazardous waste involved in the incident;

(4) Extent of injuries, if any; and

(5) Estimated quantity and disposition of recovered materials, if any.

(e) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site treatment, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of paragraph (d) of this section.

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 40 CFR

Parts 264 and 265 and the permit requirements of 40 CFR Part 270 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. Such extension may be granted by EPA if hazardous wastes must remain on-site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

10. In Subpart D of Part 262, add the following new § 262.44:

Subpart D—Recordkeeping and Reporting

* * * * *

§ 262.44 Special Requirements for Generators of between 100 and 1000 kg/mo.

A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month is exempt from the requirements of this subpart, except for the recordkeeping requirements in paragraphs (a), (c), and (d) in § 262.40 and the requirements of § 262.43.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

11. The authority citation for Part 263 continues to read as follows:

Authority: Sections 2002(a), 3002, 3003, 3004, and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 and as amended by the Quiet Communities Act of 1978 (42 U.S.C. 6912(a), 6922, 6923, 6924, and 6925).

12. In § 263.20 paragraph (h) is added to read as follows:

§ 263.20 The manifest system.

* * * * *

(h) A transporter transporting hazardous waste from a generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month need not comply with the requirements of this section or those of § 263.22 provided that:

(1) The waste is being transported pursuant to a reclamation agreement as provided for in § 262.20(e);

(2) The transporter records, on a log or shipping paper, the following information for each shipment:

(i) The name, address, and U.S. EPA Identification Number of the generator of the waste;

(ii) The quantity of waste accepted;

(iii) All DOT-required shipping information;

(iv) The date the waste is accepted; and

(3) The transporter carries this record when transporting waste to the reclamation facility; and

(4) The transporter retains these records for a period of at least three years after termination or expiration of the agreement.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

13. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

14. Section 270.1 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(2) * * *

(i) Generators who accumulate hazardous waste on-site for less than the time periods provided in 40 CFR 262.34.

* * * * *

15. Section 270.10 is amended by adding paragraph (e)(1)(iii) to read as follows:

§ 270.10 General application requirements.

* * * * *

(e) * * *

(1) * * *

(iii) For generators generating greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and treats, stores, or disposes of these wastes on-site, by March 24, 1987.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

16. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

17. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of Regulation	Federal Register reference
*	* *	*
Mar. 24, 1986	Regulations for Generators of 100–1000 kg/mo of Hazardous Waste.	51 FR [insert page number]
*	* *	*

[FR Doc. 86-6224 Filed 3-21-86; 8:45 am]

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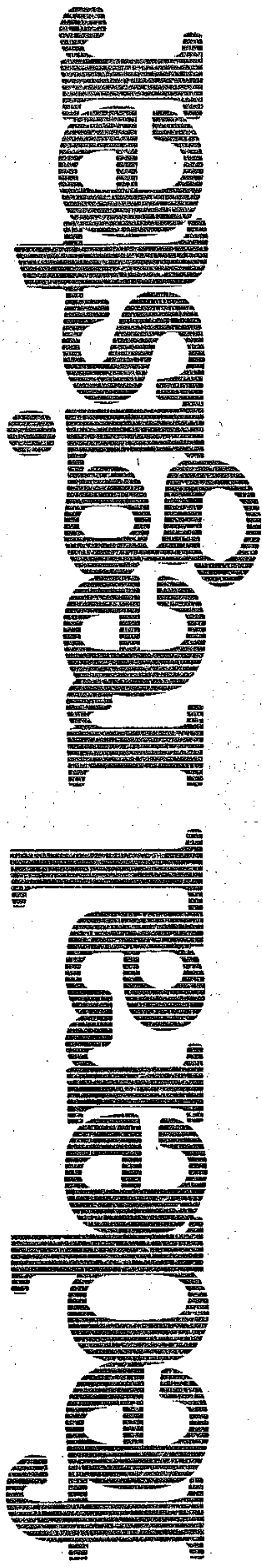

Friday
May 2, 1986

Part II

Environmental Protection Agency

40 CFR Parts 260, 264, 265, and 270
Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Closure, Post-Closure and Financial Responsibility Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, 265, and 270

[SWH-FRL 2891-9]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Closure/Post-Closure and Financial Responsibility Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 19, 1985, the Environmental Protection Agency (EPA) proposed to amend portions of the closure and post-closure care and financial responsibility requirements applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) (50 *FR* 11068). EPA is today promulgating the amendments in final form. Many of the amendments conform to a settlement agreement signed by EPA and petitioners in *American Iron and Steel Institute* v. *U.S. Environmental Protection Agency*, renamed *Atlantic Cement Company Incorporated* v. *U.S. Environmental Protection Agency* (D.C. Cir., No. 81-1387 and Consolidated Cases). The remainder of the amendments are designed to clarify the regulations and to address issues that have arisen as EPA has implemented the regulations.

DATES: These regulations shall become effective on October 29, 1986, except for § 270.14(b)(14), which shall be effective on May 2, 1986.

Wording changes for financial instruments issued before the effective date of these regulations must be made at the same time changes are required under §§ 264.142(b), 264.144(b), 265.142(b), and 265.144(b).

ADDRESSES: The public docket for this rulemaking is available for public inspection at Room S-212-E, U.S. EPA, 401 M Street SW., Washington, DC. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. The docket number is F-86-FCPC. Call (202) 475-9327 to make an appointment with the docket clerk. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline toll free at (800) 424-9346 or in Washington at (202) 382-3000; or Nancy D. McLaughlin, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 475-6677.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background

A. Subtitle C of the Resource Conservation and Recovery Act (RCRA)
B. Regulations Affected by Today's Amendments
C. Atlantic Cement Company, Incorporated (*ACCI*) Litigation and Settlement
D. Subparts G and H Implementation Experience
E. Hazardous and Solid Waste Amendments of 1984 Codification Rule

II. Analysis of Rules

A. Definitions (Part 260)
1. Active Life of the Facility (§ 260.10)
2. Final Closure (§ 260.10)
3. Hazardous Waste Management Unit (§ 260.10)
4. Partial Closure (§ 260.10)
B. Standards for Permitted Facilities (Part 264) and Conforming Changes to Interim Status Standards (Part 265)
1. Closure and Post-Closure Care (Subpart G)
a. Closure performance standard (§§ 265.111 and 265.111)
b. Requirement to furnish closure and post-closure plans to the Regional Administrator (§§ 264.112(a), 264.118(c), 265.112(a) and 265.118(b))
c. Clarification of contents of closure plan (§§ 264.112(b) and 265.112(b))
d. Description of removal or decontamination of facility structures and soils in closure plan (§§ 264.112(b)(4) and 265.112(b)(4))
e. Requirements to estimate the expected year of closure (§§ 264.112(b)(7) and 265.112(b)(7))
f. Amendments to closure and post-closure plans (§§ 264.112(c), 264.118(d), 265.112(c) and 265.118(d))
g. Notification of partial closure and final closure (§§ 264.112(d) and 265.112(d))
h. Removal of hazardous wastes and decontamination or dismantling of equipment (§§ 264.112(e) and 265.112(e))
i. Time allowed for closure (§§ 264.113 and 265.113)
j. Disposal or decontamination of equipment, structures, and soils (§§ 264.114 and 265.114)
k. Certification of closure (§§ 264.115 and 265.115)
l. Survey plat (§§ 264.116 and 265.116)
m. Post-closure care and use of property (§§ 264.117 and 265.117)
n. Post-closure plans (§§ 264.118 and 265.118)
o. Post-closure notices (§§ 264.119 and 265.119)
p. Certification of completion of post-closure care (§§ 264.120 and 265.120)
2. Financial Assurance Requirements (Subpart H)
a. Cost estimates for closure and post-closure care (§§ 264.142(a), 264.144(a), 265.142(a) and 265.144(a))
b. Anniversary date for updating cost estimates for inflation (§§ 264.142(b), 264.144(b), 265.142(b) and 265.144(b))
c. Revisions to the cost estimates (§§ 264.142(c), 264 144(c), 265.142(c) and 265.144(c))
d. Post-closure cost estimate (§§ 264.144(c), and 265.144(c))
e. Trust fund pay-in period (§§ 264.143(a)(3) and 265.143(a)(3))
f. Reimbursements for closure and post-closure expenditures from trust fund and insurance (§§ 264.143(a)(10), 264.143(e)(5), 264.145(a)(11), 264.145(e)(5), 265.143(a)(10), 265.143(d)(5), 265.145(a)(11), and 265.145(d)(5))
g. Final order required (§§ 264.143(b)(4)(ii), 264.145(b)(4)(ii), 265.143(b)(4)(ii) and 265.145(b)(4)(ii))
h. Final administrative determination required (§§ 264.143 (c)(5) and (d)(8), 264.145 (c)(5) and (d)(9), and 265.143(c)(8), 265.145(b)(5) and 265.145(c)(9))
i. Cost estimates for owners or operators using the financial test or corporate guarantee must include UIC cost estimates for Class I wells (§§ 264.143(f)(1)(i) (B) and (D) and (f)(1)(ii) (B) and (D), 264.145(f)(1)(i) (B) and (D) and (f)(1)(ii) (B) and (D), 265.143(e)(1)(i) (B) and (D) and (e)(1)(ii) (B) and (D), 265.145(e)(1)(i) (B) and (D) and (e)(1)(ii) (B) and (D))
j. Cost estimates must account for all facilities covered by the financial test or corporate guarantee (§§ 264.143(f)(2), 264.145(f)(2), 265.143(e)(2) and 265.145(e)(2))
k. Release of the owner or operator from the requirements of financial assurance for closure and post-closure care (§§ 264.143(i), 264.145(i), 265.143(h), and 265.145(h))
l. Period of liability coverage (§§ 264.147(e) and 265.147(e))
m. Wording of instruments (§ 264.151)
C. Interim Status Standards (Part 265)
1. Applicability of Requirements (§ 265.110)
2. Waste Pile Closure Requirements Included by Reference in the Closure Performance Standard (§ 265.111(c))
3. Submission of Interim Status Closure and Post-Closure Plans (§§ 265.112(d), 265.118(e))
4. Written Statements by Regional Administrator of Reasons for Refusing to Approve or Reasons for Modifying Closure or Post-Closure Plan (§§ 265.112(d) and 265.118(f))
D. Typographical Errors
E. Permitting Standards (Part 270)
1. Contents of Part B: General Requirements (§§ 270.14(b) (14), (15) and (16))
2. Minor Modifications of Permits (§ 270.42(d))
3. Changes During Interim Status (§ 270.72(d))

III. State Authority

A. Applicability of Rules in Authorized States
B. Effect on State Authorization

IV. Executive Order 12291
V. Paperwork Reduction Act
VI. Regulatory Flexibility Act
VII. Supporting Documents
VIII. Effective Date

I. Background

A. Subtitle C of the Resource Conservation and Recovery Act (RCRA)

Subtitle C of RCRA creates a "cradle-to-grave" management system to ensure that hazardous wastes are transported, treated, stored, and disposed of in a manner that ensures the protection of human health and the environment. Section 3004 of Subtitle C requires the Administrator of EPA to promulgate regulations establishing such performance standards applicable to owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs), as may be necessary to protect human health and the environment. Section 3005 requires the Administrator to promulgate regulations requiring each person owning or operating a TSDF to have a permit, and to establish requirements for permit applications.

Under Section 3005(a), on the effective date of the Section 3004 standards, all treatment, storage and disposal of hazardous waste is prohibited except in accordance with a permit that implements the Section 3004 standards. Recognizing, however, that not all permits would be issued within six months of the promulgation of Section 3004 standards, Congress created "interim status" in Section 3005(e) of RCRA. Owners and operators of existing hazardous waste TSDFs who qualify for interim status will be treated as having been issued a permit until EPA takes final administrative action on their permit application. Interim status does not relieve a facility owner or operator of complying with Section 3004 standards. The privilege of carrying on operations in the absence of a permit carries with it the responsibility of complying with appropriate portions of the Section 3004 standards.

B. Regulations Affected by Today's Amendments

EPA has issued several sets of regulations to implement the various sections of Subtitle C. Part 260 of 40 CFR, among other provisions, includes definitions that apply to all other parts of the regulations. Part 264 provides standards for owners and operators of TSDFs that have been issued RCRA permits. Part 265 provides interim status standards for owners and operators of TSDFs Part 270 establishes permitting procedures for TSDFs. These four parts are amended by today's final rule.

C. Atlantic Cement Company, Incorporated (ACCI) Litigation and Settlement

Shortly after EPA promulgated the January 12, 1981 regulations, which, among other requirements, included standards for closure and post-closure care and financial assurance, individual companies and industry trade associations filed 17 separate lawsuits challenging those standards. These cases were consolidated as *American Iron and Steel Institute* v. *U.S. Environmental Protection Agency* (D.C. Cir., No. 81–1387 and Consolidated Cases). On August 16, 1984, the parties (with the exception of several parties who voluntarily dismissed their lawsuits) filed a settlement agreement with the Court. The American Iron and Steel Institute voluntarily dismissed its lawsuit rather than join in the settlement; the case has been renamed *Atlantic Cement Company Incorporated* v. *U.S. Environmental Protection Agency* ("ACCI Litigation").

Under the terms of the settlement agreement, EPA agreed to propose and take final action upon certain amendments to the closure and post-closure regulations that were promulgated on January 12, 1981. The rules proposed on March 19, 1985 contained amendments conforming to the *ACCI* settlement agreement. Among the regulations EPA is promulgating today are amendments to 40 CFR Parts 260, 264, 265, and 270 that are in most cases consistent with the *ACCI* settlement agreement. In addition, certain of these amendments require conforming amendments to financial responsibility regulations in Subpart H of Parts 264 and 265. Those changes are also being made today.

D. Subparts G and H Implementation Experience

Since January 12, 1981, EPA and authorized states have developed considerable experience with the implementation of Subparts G and H. Based on this implementation experience, EPA is today making additional changes to 40 CFR Parts 260, 264, 265, and 270.

E. Hazardous and Solid Waste Amendments of 1984 Codification Rule

On July 15, 1985, EPA published in 50 *FR* 28702 final rules implementing provisions included in the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter referred to as the "codification rule"). Some of today's final rules have been promulgated to conform to HSWA and to the requirements of the July 15, 1985 codification rule.

II. Analysis of Rules

The following sections of this preamble include discussions of the major issues and summaries of the comments received in response to the March 19, 1985 proposed rule, as well as explanations of EPA's rationale for promulgating the final rules. The preamble is arranged in a section-by-section sequence for ease of reference. Because many of the regulatory amendments to Interim Status Standards (Part 265) are parallel to the Standards for Permitted Facilities (Part 264), only those changes to the Part 265 Interim Status Standards that differ from the Part 264 standards are addressed separately.

A. Definitions (Part 260)

1. Active Life of the Facility (§ 260.10).

In the March 19, 1985 proposed rule, the Agency proposed to redefine "active life" to extend the period from the initial receipt of hazardous wastes until the Regional Administrator receives certification of final closure. Sections 264.112(b) and 265.112(b) previously defined active life of a facility as that period during which wastes are periodically received.

The key concern raised by the commenters was that certain requirements applicable to operating facilities may not be practical or feasible to conduct during the closure period (e.g., inspections, paperwork requirements).

The Agency does not agree that defining the closure period as part of the active life would be burdensome or require activities not otherwise required at the facility. For example, §§ 264.73 and 265.73 now require that the owner or operator maintain the operating record until closure of the facility. The Agency would also expect an owner or operator to conduct inspections as part of a routine closure activities. As discussed in the preamble to the proposed rule, the Agency is primarily concerned with ensuring that all monitoring activities are continued until closure is completed. Therefore, the Agency is promulgating the definition of active life of the facility as proposed.

2. Final Closure (§ 260.10)

In order to clarify the distinction between partial closure and final closure, the Agency proposed to define final closure as closure of all hazardous waste management units at a facility not otherwise covered by the provisions of

§ 262.34 (exemptions from Subpart G requirements for facilities accumulating hazardous wastes for less than 90 days), in accordance with Subpart G requirements. Closure of the last unit of the facility would be defined as final closure of the facility. No comments were received on this proposal, and the Agency is promulgating the definition as proposed.

3. Hazardous Waste Management Unit (§ 260.10)

The Agency proposed to define a new term—"hazardous waste management unit"—as the smallest area of land on or in which hazardous waste is placed, or the smallest structure on or in which hazardous waste is placed, that isolates hazardous waste within a facility. The proposed definition was designed to be consistent with the preamble to the July 26, 1982 land disposal regulations (47 *FR* 32289), expanded to include storage and treatment tanks and container storage units. The following were defined as hazardous waste management units in the March 19, 1985 proposed rule: a landfill cell, surface impoundment, waste pile, land treatment area, incinerator, tank system (i.e., individual tank and its associated piping and underlying containment system), and a container storage area (i.e., the containers and the land or pad on which they are placed).

A number of commenters were concerned that the proposed definition was still somewhat ambiguous. In particular, the definition did not adequately distinguish between landfill cells, which were defined in the proposed rule as units, and subcells, which are integral subsections of cells and should not be closed separately from the cell as a whole. Another commenter expressed concern that the term "isolates" in the definition implies that all units necessarily isolate wastes, which may not always be the case (e.g., land treatment area).

The Agency agrees that the proposed definition is somewhat ambiguous and not completely consistent with the definition of unit included in the July 26, 1982 preamble. Moreover, the Agency wishes to make the definition consistent with the codification rule. (See 50 *FR* 28706 and 28712, July 15, 1985). Therefore, today's rule defines hazardous waste management unit as a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area. Units include: surface impoundments, waste piles, landfill cells, incinerators, land treatment areas, tanks and their associated piping and underlying containment systems, and container storage areas (i.e., the container and any underlying pad). As discussed in the preamble to the proposed rule, the Agency does not consider each container to be a unit.

4. Partial Closure (§ 260.10).

The March 19, 1985 proposed rule redefined partial closure as closure of a hazardous waste management unit. Partial closures may involve: (1) closing a hazardous waste management unit while another hazardous waste management unit at the facility continues operating (e.g., a surface impoundment or container storage area is closed but a landfill continues to operate), or (2) closing one or more hazardous waste management units while other units associated with the same process remain operational (e.g., one landfill cell of a ten-cell landfill is closed, one tank and its underlying piping is removed from a tank farm). Closure of the *last* hazardous waste management unit at the facility would be considered a *final* closure rather than a partial closure.

The Agency received no substantive comments on the proposed definition of partial closure. The definition is being adopted substantially as proposed, with the following change: In the list of examples, "tank system" has been changed to "tank (including its associated piping and underlying containment system)".

B. Standards for Permitted Facilities (Part 264) and Conforming Changes to Interim Status Standards (Part 265)

1. Closure and Post-Closure Care (Subpart G).

a. *Closure performance standard (§§ 264.111 and 265.111).* The previous sections 264.111 and 265.111 established general closure performance standards applicable to all TSDFs that specified that a facility must be closed in a manner that (1) minimizes the need for further maintenance, and (2) controls, minimizes or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous wastes, hazardous waste constituents, leachate, contaminated rainfall, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere. The language in § 265.111 differed slightly and specified that the facility must be closed in a manner "that . . . controls, minimizes or eliminates, to the extent necessary to *protect* human health and the environment. . . ."

In the March 19, 1985 preamble, the Agency proposed to (1) incorporate into the general standard a reference to the process-specific closure standards included in 40 CFR §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and the parallel interim status provisions; (2) make the language in § 265.111 parallel to that in § 264.111; (3) revise the language to require that hazardous constituents, as well as hazardous waste constituents, be appropriately managed at closure; and (4) make a minor change to the wording of the regulation for purposes of clarification.

The Agency proposed to incorporate reference to the specific technical closure requirements into the performance standard to ensure that owners or operators of TSDFs comply with both the general performance standard and the applicable process-specific standards. No comments were submitted on this proposal. The Agency is promulgating the language of §§ 264.111(c) and 265.111(c) substantially as proposed. The reference to § 265.178 in § 265.111(c) has been dropped because there are no process-specific standards for container storage facilities in interim status; in addition, references to §§ 265.381 and 265.404 which had been inadvertently omitted from the proposed rule, are inlcuded in § 265.111(c).

Because the Agency believes that for clarity and consistency the closure performance standard for interim status and permitted facilities should be parallel, the Agency proposed to amend § 265.111(b) to make the language parallel to that in § 264.111(b). One commenter stated that the use of the phrase "prevent threats" could require an owner or operator to conduct closure activities that were not cost-effective and should be replaced by a site-specific risk assessment.

The Agency believes that the environmental goals of closure should be the same for both interim status and permitted facilities. Although the previous language of the closure performance standard in Parts 264 and 265 differed slightly, as discussed in the preamble to the proposed rule, the Agency interpreted them as having the same meaning. As a result, the Agency proposed to amend § 265.111 to be consistent with the Part 264 standards and included the language "to prevent threats".

For the sake of clarity and to be consistent with the statutory language in RCRA mandating EPA to promulgate standards to *protect* human health and the environment, however, the final rule

amends the language of § 264.111(b) to be consistent with the wording of § 265.111(b). The language in § 264.111(b) now specifies that the facility must be closed in a manner "that . . . controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment" the post-closure escape of hazardous wastes, hazardous constituents, etc.

The Agency also proposed to expand the language in §§ 264.111(b) and 265.111(b) to require that closure must control, minimize or eliminate, to the extent necessary, the post-closure escape of *hazardous constituents* instead of only hazardous waste constituents as the previous regulation required. One commenter opposed the proposal on the grounds that requiring owners and operators to address all Appendix VIII constituents rather than only hazardous waste constituents could have costly implications for closure and post-closure care. Moreover, the commenter argued that the Agency did not provide a rationale for this change in the March 19, 1985 proposed rule.

The Agency believes it is necessary to include hazardous constituents in the closure performance standard to ensure that *all* contamination is adequately addressed at closure. Furthermore, this change is consistent with the HSWA. For example, RCRA Section 3004(u) requires corrective action for all releases of hazardous wastes or *hazardous constituents* from any solid waste management unit. Similarly, Section 3001(f) requires the Agency in evaluating delisting petitions to consider, among other things, constituents other than those for which the waste was listed as hazardous. As a result of these considerations, the Agency is adopting §§ 264.111(b) and 265.111(b) as proposed.

Finally, the Agency proposed to clarify the wording in §§ 264.111(b) and 265.111(b) by replacing the phrase "contaminated rainfall" with "contaminated run-off." No comments were received and this change is being promulgated as proposed. In addition, the phrase "waste decomposition products" was changed to "*hazardous* waste decomposition products." Wastes which are not hazardous are not subject to the closure performance standards.

b. *Requirement to furnish closure and post-closure plans to the Regional Administrator (§§ 264.112(a), 264.118(c), 265.112(a), 265.118(b)).* Sections 264.112(a), 264.118(a), 265.112(a), and 265.118(a) previously required the owner or operator of a TSDF to keep a copy of the closure and post-closure plan and all revisions at the facility until closure is completed and certified. (In the case of permitted facilities and interim status facilities with approved plans, the approved plans were to be kept on-site.) Post-closure plans were to be retained at the facility until the post-closure care period began. Petitioners in the *ACCI* litigation argued that a hazardous waste management facility may not be properly equipped to maintain files at the facility and safeguard closure and post-closure plans and that the plans could be kept more efficiently and safely at nearby offices of the owner or operator of the facility. The EPA, however, was concerned that the plans be available on-site to an inspector on the day of inspection.

The Agency proposed to drop the requirement that the closure and post-closure plans be kept at the facility, but to require that they be furnished to the Regional Administrator upon request, including request by mail, and during site inspections, on the day of inspection. This was consistent with the terms of the *ACCI* settlement.

Most of the commenters focused on the applicability of the requirements to permitted facilities, arguing that if the Agency already has a copy of the plan on file, requiring it to be made available on the day of inspection is unnecessary. Another argued that plans should be kept at the facility during the closure period to make them readily available for an unannounced inspection at that time.

The Agency agrees with those commenters who argued that for facilities with approved closure and post-closure plans on file, it is not necessary to make them available on the day of inspection. For interim status facilities, however, the plans may not have been reviewed and it is important that they be available on the day of inspection. Even in the case of unannounced inspections, it should be possible to deliver a copy of the plan to the facility within the same day. Therefore, the Agency is promulgating §§ 264.112(a) and 264.118(c) to require that the plans be furnished only upon request, including request by mail; §§ 265.112(a) and 265.118(b) require that for interim status facilities with *approved* closure and post-closure plans, the plans must be furnished upon request, including request by mail. For facilities without approved plans, the plans must also be provided during site inspections.

Under the requirements of §§ 264.228 and 264.258, an owner or operator of a surface impoundment or waste pile not designed in accordance with the specified liner design standards must prepare a contingent closure and post-closure plan for closure as a landfill. To ensure that such owners and operators recognize that these contingent plans are subject to the requirements of Part 264 Subpart G, the final rule modifies the proposed rule slightly. The final rule clarifies that if a facility is required to have a contingent closure and post-closure plan under § 264.228 or § 264.258, these plans are also subject to the requirements of §§ 264.112 and 264.118.

In some cases, owners or operators of surface impoundments or waste piles not otherwise required to prepare contingent closure and post-closure plans may be required to close their units or facilities as landfills. To clarify that these facilities also must have post-closure plans, the final rule specifies in §§ 264.118(a) and 265.118(a) that an owner or operator must prepare a post-closure plan within 90 days of the date that the owner or operator or Regional Administrator determines that the facility must be closed as a landfill.

c. *Clarification of contents of closure plan (§§ 264.112(b), 265.112(b)).* The Agency proposed a number of changes to §§ 264.112(a) and 265.112(a) to make explicit the level of detail that must be included in the closure plan to eliminate potential ambiguities in the closure plan requirements. First, the proposed rule clarified that the plan must address explicitly the activities to be conducted at all partial closures as well as final closure. The proposed rule also stated in §§ 264.112(b)(6) and 265.112(b)(6) that a schedule for closure activities must be provided for closure of each unit as well as for final closure. In addition, the proposed rule also elaborated on the types of information that should be included in the plan.

For example, the owner or operator must include in the plan not only an estimate of the maximum inventory over the life of the facility, but also a detailed description of the procedures that will be used to handle the hazardous wastes during partial and final closure (e.g., all proposed methods for removing, transporting, treating, or disposing of hazardous wastes at partial and final closure). The plan must also address all ancillary activities necessary during the partial and final closure periods, such as ground-water monitoring, leachate collection, and run-on and run-off control, as applicable.

The Agency received a number of comments supporting increased level of detail in the plans. Most of these commenters favored including even more specificity in the closure plan regulations (e.g., criteria for "how clean is clean"). A number of commenters however, also disagreed with the

Agency's proposed amendments, arguing that the level of detail proposed in unnecessary and burdensome, especially if the plan must be changed several times to reflect future changes in technology. One commenter expressed concern that the level of detail specified, combined with the permit modification procedures required to make changes to the plan, could lock an owner or operator into an outmoded closure plan.

The Agency believes that it is necessary to require detailed closure and post-closure plans to ensure accurate cost estimates and adequate financial assurance. Implementation experience has shown that poorly detailed plans have been accompanied by inadequate cost estimates. The plans should include sufficient detail to allow a third party to conduct closure or post-closure care in accordance with the plan if the owner or operator fails to do so. Therefore, the Agency is promulgating the final rule as proposed.

The Agency disagrees with those commenters who contend that requiring a greater level of detail will force owners or operators to revise their plans frequently. The types of changes that would require a revision to the closure plan are likely to be the result of a change in facility design or routine operations (e.g., a change in the cover design, off-site vs. on-site management of wastes at closure, closure of a surface impoundment or waste pile as a landfill). These types of changes are unlikely to occur frequently. The Agency does not intend that the owner or operator should revise the plan for insignificant changes (e.g., a change in the particular off-site facility used to handle wastes at closure or the contractor used to install the final cover). The Agency also does not intend this requirement to preclude an owner or operator from revising the plan as appropriate to incorporate technological innovations or to lock owners or operators into outmoded closure plans.

A number of commenters requested that the Agency address "how clean is clean" and include this standard as part of the closure requirements. The Agency is currently developing a policy on this broad issue outside the scope of this rulemaking.

d. *Description of removal or decontamination of facility structures and soils in closure plan (§§ 264.112(b)(4), 265.112(b)(4)).* Sections 264.112(a) (3) and 265.112(a) (3) previously required owners or operators to include a description of the steps needed to decontaminate facility equipment at closure. The proposed amendment expanded this provision to require that the closure plan also must include a description of steps necessary to decontaminate or remove contaminated facility structures, containment systems, and soils in a manner that satisfies the closure performance standard. The plan must include, but not be limited to, a description of the methods for decontaminating the facility, sampling and testing procedures, and criteria to be used for evaluating contamination levels.

Because responsible owners or operators will clean up drips and spills associated with hazardous waste management activities as they occur (see, e.g., 40 CFR § 264.175), many of the activities described in the closure plan for removing or decontaminating soils should be similar to those conducted during the operating life of the facility as part of routine operations. For some types of units (e.g., tanks or container storage), soil testing may not be a routine operating activity and may not be conducted until closure. For these types of units it is especially important that the plan address how the owner or operator intends to determine the extent of soil contamination at closure. The Agency's intent is that the plan should address cleanup of the maximum extent of contamination (including contaminated soil) resulting from the facility's hazardous waste operations that the owner or operator expects to be on-site anytime over the active life of the facility.

While most commenters agreed with the proposal to address contaminated soils, some suggested clarifications. Some commenters were concerned about the ambiguity of the terms "contaminated" and "containment systems." The language might be construed to require decontamination or removal of leachate collection systems and liners. It was suggested that the regulation identify the equipment and structures subject to the decontamination requirement. Another commenter stated that the preamble to the proposed rule implied that the plan must address soil contamination from production activities, which is outside the scope of RCRA.

The Agency agrees that the plan must address soil contamination *only* from hazardous waste management operations. The Agency also does not intend this rule to require that an owner or operator remove structures otherwise required by process-specific requirements to be maintained and used after closure. For example, if an owner or operator closes a surface impoundment as a landfill, the Agency does not intend that the owner or operator remove the containment system as part of closure decontamination procedures. (Similarly, the overlying hazardous wastes are not removed when a disposal facility is closed.) The Agency believes that the language of the proposed rule can be interpreted reasonably and it is not necessary to list in the regulation every piece of equipment and facility that must be decontaminated at every type of facility. As a result, the Agency is promulgating the final rule as proposed.

e. *Requirements to estimate the expected year of closure (§§ 264.112(b)(7) and 265.112(b)(7)).* Sections 264.112(a)(4) and 265.112(a)(4) previously required each owner or operator of a TSDF to include in its written closure plan an estimate of the expected year of closure. Petitioners in the *ACCI* litigation argued that compliance with that provision was unnecessarily burdensome for owners or operators of on-site TSDFs, such as storage and treatment facilities associated with industrial processes. In the case of those facilities, the expected date of closure may not be determined by the hazardous waste management activities but by the primary industrial activity with which the facility is associated, the closure date of which, in many cases, may be difficult to predict.

The Agency was concerned that in the case of owners or operators using trust funds to provide financial assurance, an estimate of the expected year of closure is necessary to enable both the owners or operators and EPA to determine whether appropriate payments have been made into the trust fund. In addition, for interim status facilities without approved closure plans, an estimate of the year of closure is important to allow the Agency the opportunity to conduct facility inspections near the end of the facility's life and ensure that closure will be performed in a manner that will protect human health and the environment. Therefore, the Agency proposed to amend the regulation to require only those owners or operators of permitted facilities who use trust funds to establish financial assurance under § 264.143 and whose facilities are expected to close prior to expiration of their initial permit to estimate the expected year of closure. For owners or operators of interim status facilities, those without approved closure plans or those who use trust funds to demonstrate financial assurance and whose remaining operating life is less than 20 years, would be required to estimate the year of closure.

Most commenters agreed with the Agency's proposed amendment to limit the requirement to owners or operators

using trust funds; some questioned retaining the requirement for all interim status facilities without approved closure plans. Those commenters who opposed the proposal argued that it is difficult to predict closure and a date should not be required. Consistent with the discussion in the March 19, 1985 preamble, the Agency feels that a date of closure is imperative for owners or operators using trust funds and for facilities without approved plans and is promulgating the rule as proposed.

f. *Amendments to closure and post-closure plans (§§ 264.112(c), 264.118(d), 265.112(c) and 265.118(d)).* Sections 264.112(b) and 265.112(b) previously allowed an owner or operator to amend the closure plan at any time during the active life of the facility if there was a change in operating plans or facility design which affected the closure plan or if there was a change in the expected year of closure. The Agency proposed amendments to make this regulation consistent with other proposed regulatory amendments. In addition, the proposed amendments established procedures and deadlines for requesting modifications to closure and post-closure plans.

The definition of active life now includes the closure period. Therefore, the language of the previous regulation would have allowed an owner or operator to request modifications to the closure plans during the operating life of the facility through the closure period. To minimize threats to human health and the environment, the Agency considers it important to avoid undue delays in the completion of closure once activities have begun. Therefore, the Agency proposed §§ 264.112(c) and 265.112(c) allowing an owner or operator to modify the closure plans only *prior* to the notification of partial or final closure, or during closure only if unexpected events occur during the closure period that affect the closure plan (e.g., adverse weather conditions, fire, or more extensive soil contamination than anticipated resulting in the need to close the unit as a disposal unit rather than as a storage unit). Consistent with the proposed amendment to §§ 264.112(b)(7) and 265.112(b)(7), the Agency also proposed that the closure and post-closure plans must be amended if there is a change in the expected year of closure *only* for those facilities required to include an expected year of closure in the plan.

One commenter argued that allowing owners or operators to revise their closure plans during closure only to account for "unexpected events" is too restrictive and would preclude the owner or operator from changing the plan to reflect optimum closure methods identified after notification of closure. While the Agency wishes to provide flexibility to owners or operators in developing closure plans and implementing closure, it does not want to prolong the closure period unnecessarily once the unit has ceased operating and is prepared to close. Therefore, the Agency believes that changes in the plan that the owner or operator could reasonably have anticipated should be make *prior* to the beginning of closure. For example, owners or operators should have sufficient time prior to the notification of closure to revise the closure plan to reflect optimum closure methods. Therefore, the Agency believes that changes made during the closure period should be limited only to those events that the owner or operator reasonably could not have expected.

Another commenter was concerned that allowing the plan to be modified during closure *only* if *unexpected* events occur during the closure period could preclude owners or operators of surface impoundments or waste piles required to close as landfills but not otherwise required to have contingent closure plans from amending their plans. The Agency does not agree with this interpretation. The Agency believes that if the owner or operator or Regional Administrator determines *prior* to closure that the unit or facility must be closed as a landfill, this determination would qualify as a change in facility operation or design. Therefore, the owner or operator must amend the closure plan as required by §§ 264.112(c)(2)(i) and 265.112(c)(1)(i) to reflect the fact that the facility is now a disposal facility. If the determination was not foreseen prior to the time of partial or final closure, this determination could be considered an "unexpected" event requiring a modification to the closure plan as specified in §§ 264.112(c)(2)(iii) and 265.112(c)(1)(iii).

To clarify this requirement and avoid potential ambiguities, the final rule specifies in §§ 264.112(c)(3), 264.118(d)(3), 265.112(c)(2), and 265.118(d)(2) that an owner or operator of a surface impoundment or waste pile not otherwise required to prepare a contingent closure or post-closure plan, must revise the closure plan and prepare a post-closure plan following a determination that the unit or facility must be closed as a landfill.

Another commenter stated that modifications to the closure plan during the closure period should be required only if the unexpected event adversely affects human health and the environment. The Agency disagrees on the grounds that the purpose of the closure plan is to describe the activities that will be conducted at closure in the event that a third party is required to conduct closure and to serve as a basis for cost estimates for financial responsibility. In addition, because the purpose of the closure certification is to ensure that closure has been performed in accordance with the approved closure plan, the plan should be modified to reflect the activities that are performed.

In light of the above considerations, the Agency is promulgating today's final rule as proposed to require that plans be modified *prior* to the notification of closure or approval of the plans, whichever is later, or during closure if unexpected events occur during the closure period that affect the plans.

The Agency also proposed a number of procedural changes to the Parts 264 and 265 regulations for modifying closure and post-closure plans. First, the proposed §§ 264.112(c) and 264.118(e) clarified that an owner or operator of a permitted facility must use the permit modification procedures specified in Parts 124 and 270 to amend the closure or post-closure plans. Second, proposed §§ 265.112(c) and 265.118(g) required owners or operators of interim status facilities with approved plans to submit a request to the Regional Administrator to amend the plan. The proposed rule gave the Regional Administrator the discretion to provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments and/or to hold a public hearing on the amendment to the plan.

Many commenters were concerned with the procedural requirements proposed for modifying the plans. Several argued that the Part 270 permit modification requirements are too cumbersome for minor changes in the plan. Another was concerned that modifications to interim status plans should be subject to public participation and should not be left to the Regional Administrator's discretion.

The Agency agrees with many of the commenters that the minor modification procedures in Part 270 are too limited in scope. As part of a forthcoming rulemaking on permit modifications, the Agency will expand the provisions of §270.42 to identify the types of plan amendments that would be considered minor modifications.

The Agency also believes that the modification procedures for interim status facilities with approved closure

and post-closure plans should be consistent with those for permitted facilities. Therefore, the final rule specifies in §§ 265.112(c)(3) and 265.118(d)(3) that the criteria of §§ 270.41 and 270.42 must be used to determine if a change to the approved closure plan is a "major" or "minor" change. Major changes to the plans are subject to the public participation procedures of §§ 265.112(d)(4) and 265.118(f); minor changes to the plans are not subject to public participation, which is consistent with the procedures of § 270.42.

Another commenter suggested that the Agency establish deadlines for acting upon written requests to modify closure and post-closure plans, after which time, if no action had been taken, the modification would be automatically approved (the commenter suggested 60 days from the day of request). The Agency agrees that it should act expeditiously in approving or disapproving amendments to the plan. However, the Agency cannot agree that the amendment should be considered automatically approved if the Regional Administrator fails to make a determination within the allotted time frame. As a result, §§ 264.112(c), 265.112(c), 264.118(d), 265.118(d) and 265.118(g) have been revised to adopt deadlines for reviewing requests for modifications but do not provide for automatic approval of modifications when the Regional Administrator fails to meet a deadline. For permitted facilities, the Regional Administrator must comply with the procedures established in Parts 124 and 270; for interim status facilities, the deadlines of §§ 265.112(d)(4) and 265.118(f) will apply.

The proposed amendments to the Parts 264 and 265 regulations also specified deadlines for requesting closure and post-closure plan modifications, to ensure that all requests are made in a timely fashion and that the level of financial assurance is adjusted, as necessary, to reflect any approved changes. The proposed rule stated that an owner or operator of a permitted facility or an interim status facility with an approved closure or post-closure plan must submit a written request to the Regional Administrator for approval of a closure or post-closure plan modification within 60 days prior to the change in facility design or operation that resulted in a change in the plan, or within 60 days after an unexpected event has occurred that requires a change to the plans. If an unexpected event occurs during partial or final closure that will affect the closure plan, a request to modify the closure plan must be made within 30 days. As discussed above, requirements applicable to amending plans also apply to owners or operators of surface impoundments or waste piles not otherwise required to prepare contingent plans. Consistent with these requirements, §§ 264.112(c)(3) and 265.112(c)(3) now specify that an owner or operator of a surface impoundment or waste pile not otherwise required to prepare contingent plans must submit a revised closure plan to the Regional Administrator for approval no later than 60 days after the determination is made that the unit or facility must be closed as a landfill. If the determination is made during partial or final closure, the revised plan must be submitted no later than 30 days after the determination is made. For interim status facilities without approved closure plans, owners or operators must prepare a revised closure plan and maintain it at the facility and submit it to the Regional Administrator upon request.

Owners or operators of surface impoundments or waste piles not otherwise required to prepare contingent post-closure plans must submit them to the Regional Administrator for approval no later than 90 days after the determination that the unit or facility must be closed as a landfill. Owners or operators of interim status facilities without approved plans are not required to submit the plan.

The final rule also modifies slightly the language in the proposed rule to make explicit that under § 264.112(c)(3) and 264.118(d), the owner or operator must submit a copy of the revised plan with the written request for a permit application. Similarly, for interim status facilities with approved plans, the revised plan must be submitted to the Regional Administrator for approval.

In analyzing the procedures for modifying the closure and post-closure plans, the Agency also considered whether the Regional Administrator should be given the authority to amend the closure or post-closure plan, especially in circumstances where unexpected events require plan modifications. The Agency believes that the Regional Administrator should be granted the authority to request modifications of the plans. Modifications that are considered "major" under the criteria of §§ 270.41 and 270.42 are subject to Parts 124 and 270 requirements for permitted facilities and to the provisions of §§ 265.112 and 265.118 for interim status facilities.

Consistent with deadlines in §§ 264.112(c)(3), 264.118(d)(3), 265.112(c)(3) and 265.118(d)(3), an owner or operator must submit the modified plan no later than 60 days after the Regional Administrator's request or 30 days if the request is made during partial or final closure. These provisions are included in today's final rule in §§ 264.112(c)(4), 264.118(d)(4), 265.112(c)(4), and 265.118(d)(4).

g. *Notification of partial closure and final closure (§§ 264.112(d), 265.112(d)).* Sections 264.112(c) and 265.112(c) formerly required owners or operators of TSDFs to notify the Regional Administrator at least 180 days prior to the date they expected to begin closure. The following changes were proposed: (1) clarification that the notification requirements apply to partial closures of hazardous waste disposal units and final closure of all TSDFs; (2) modification of some deadlines for notifying the Regional Administrator of partial and final closures, and (3) definition of the "expected date of closure."

The *ACCI* petitioners were concerned that subjecting partial closures of non-land disposal facilities to notification requirements would disrupt routine business operations. The Agency wishes to encourage partial closures and at the same time ensure that partial closures are conducted in accordance with an approved plan. The Agency believes that for permitted facilities and interim status facilities with approved closure plans, it should be possible at the time of final closure to evaluate whether previous closures of non-disposal units have been in accordance with the approved plan. In the case of interim status facilities that do not have approved closure plans, the owner or operator will still be responsible for ensuring that all partial closure activities of incinerators, tanks, and container storage areas are consistent with the closure performance standard of § 265.111 and any process-specific closure standards.

Moreover, all previous partial closure activities will be subject to review when the plans are subsequently approved. For example, if at the time of final closure the Agency determines that additional soil decontamination is required at units that were previously partially closed, the owner or operator will be responsible for completing this activity. In light of these requirements, the Agency proposed to limit the notification requirement to partial closures of hazardous waste disposal units and final closure of non-disposal units. This provision is consistent with the provisions of § 265.112(e) discussed below. No comments were submitted on

this proposal and the Agency is promulgating the final rule as proposed.

The proposed rule also amended the deadlines for notification of partial closure for disposal units and final closure, in response to the concerns of petitioners in the *ACCI* litigation. The petitioners argued that the 180-day notice period is unreasonable for many types of facilities and unnecessary for the Agency's purposes (i.e., adequate time to schedule facility inspections). The Agency agreed that for facilities with approved closure plans 180 days prior notice of closure may be unnecessary. The Agency therefore proposed § 264.112(d)(1), which would require the owner or operator to notify the Regional Administrator at least 60 days prior to the date he expects to begin closure of a landfill, land treatment, surface impoundment, or waste pile unit, or final closure of a facility with these types of units. An owner or operator must notify the Regional Administrator at least 45 days prior to the date he expects to begin final closure of a facility with only an incinerator, container storage, or tank units remaining to be closed.

For interim status facilities *without* approved closure plans, the Agency proposed a 180-day notification requirement for partial closure of a landfill, land treatment facility, surface impoundment, or waste pile unit, or final closure of a facility with such units to allow sufficient time to review the plans. For interim status land disposal facilities with approved closure plans (i.e., those that received approval of the entire plan prior to a previous partial closure), the Agency proposed to reduce the notification period to 60 days to be consistent with the deadlines applicable to permitted facilities.

The Agency also proposed, consistent with the interim status deadlines in the *ACCI* settlement agreement, that an owner or operator of an interim status facility without an approved closure plan provide at least 45 days notice prior to the date he expects to begin final closure of a facility with only tanks, incinerators, or container storage areas remaining to be closed.

Several commenters objected to the changes in deadlines, arguing that the same deadlines should apply to all TSDFs. Some argued that a 45-day notice period for tanks, container storage areas, and incinerators does not allow sufficient time for public participation, while others contended that 45 or 90 days is adequate notice for all types of facilities.

The Agency considered these comments and is promulgating the deadlines as proposed. The Agency believes that review of the plans for interim status land disposal units without approved plans is likely to be complex and a 180-day notification requirement is appropriate. Although the Agency recognizes that it may not always be possible to complete the review process for interim status facilities that include only tanks, container storage, and incinerators within 45 days, the provisions of § 265.112(e) allow the owner or operator to remove all hazardous wastes and decontaminate the equipment prior to the completion of the approval process. However, the owner or operator will not be discharged from all obligations or be released from financial responsibility until the closure plan has been approved and a certification of compliance with the approved plan has been submitted.

The third proposed change clarified the definition of the "expected date of closure." The previous regulation stated in a comment to §§ 264.112(c) and 265.112(c) that the expected date of closure should be interpreted as within 30 days of receipt of the "final volume of wastes." The Agency proposed to require explicitly in §§ 264.112(d)(2) and 265.112(d)(2) that an owner or operator notify the Regional Administrator within 30 days after the date on which a hazardous waste management unit received the known final volume of hazardous waste, or, if it is likely that the unit will receive additional hazardous wastes, within one year of receipt of the most recent volume of hazardous waste. To provide flexibility to long-term storage operations, the Agency also proposed to allow an owner or operator of a tank or container storage facility the opportunity to request an extension to the one-year limit if he can demonstrate that he has the capacity to receive additional hazardous wastes and is taking all steps necessary to protect human health and the environment in the interim, including compliance with all applicable permit conditions or interim status requirements.

Several comments were submitted on the proposed requirement. Although an extension to the one-year deadline was proposed for tank and container storage facilities, some commenters felt the requirement still imposed unnecessary burdens on other types of facilities that infrequently handled hazardous wastes (e.g., a storage facility used for hazardous wastes generated as a result of a spill or for off-specification commercial products). Commenters also questioned the need for owners or operators of facilities otherwise in compliance with all applicable regulations to close if hazardous wastes have not been accepted within a year. One commenter suggested that tank and container storage units be exempt from the requirements rather than be required to request extensions to the deadlines. Another commenter was concerned that the variance provisions may discourage resource recovery by requiring owners or operators to close their facilities if additional capacity is not available at their facility and technologies are not available within the allotted deadlines.

The Agency agrees that if hazardous waste management units have the capacity to receive additional hazardous wastes and are otherwise in compliance with all operating requirements they should not necessarily be required to close if hazardous wastes have not been received within a year.

If the Agency is concerned that a particular unit or facility may pose a threat to human health and the environment, if it remains open, a number of other authorities exist to allow the Agency to force a facility to close. For example, the Agency may call in the Part B of a facility in interim status, and require that the facility close if it does not satisfy permitting criteria. Moreover, a number of land disposal facilities may be required to close in response to HSWA provisions. In addition, because the owner or operator is required to maintain financial assurance for closure until final closure has been certified, funds will be available if the owner or operator fails to cover the costs when he does close the facility. In light of these considerations, the final rule extends the variance provisions to all hazardous waste management units.

The Agency does not believe, however, that facilities should be *exempt* from the deadline requirements. To ensure that the owner or operator does not use the variance provision as a way to prolong unnecessarily the commencement of closure, the Agency is allowing the variance *only* if the facility has additional capacity available and the owner or operator demonstrates compliance with all applicable regulations. In the case of a storage facility filled to capacity but intending to employ resource recovery that is not yet on-line, the Agency would extend the one-year variance on the closure deadlines if the owner or operator could demonstrate that on-site resource recovery capacity would be available to handle these hazardous wastes. If the wastes were intended to be sent to an off-site facility that was not yet in operation, unless the owner or operator could demonstrate that the off-site services would be available within a

year, he would be required to use alternate technologies to handle the hazardous wastes to avoid prolonging the closure period unnecessarily.

h. *Removal of hazardous wastes and decontamination or dismantling of equipment (§§ 264.112(e) and 265.112(e)).* Sections 264.112 and 265.112 previously did not address whether activities such as removing hazardous waste and decontaminating or dismantling equipment could be undertaken prior to closure. The proposed amendment clarified this issue.

Petitioners in the *ACCI* litigation argued that requiring 180-day notification and, in the case of interim status facilities, requiring the completion of all closure plan approval procedures before any hazardous wastes can be removed or facility equipment can be dismantled, unreasonably interferes with routine business operations. In addition, the petitioners argued that postponing the removal of wastes for 180 days or until the approval of the closure plan, whichever is later, might be environmentally unsound.

Consistent with these two concerns, EPA proposed new subsections §§ 264.112(e) and 265.112(e) providing that nothing in §§ 264.112 or 265.112 shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved closure plan at any time before or after notification of partial or final closure. Because the approved closure plan is part of the permit conditions, all such activities at permitted facilities, regardless of when they are undertaken, must be in accordance with the approved closure plan. In the case of interim status facilities, the activities must be in accordance with the subsequently approved closure plan.

The Agency received several comments in response to this Section. Many petitioners objected to the requirement that the removal of hazardous wastes and dismantling of equipment at interim status facilities be in accordance with the *approved* closure plan, arguing that it was contrary to the intent of the *ACCI* settlement agreement. They contended that this requirement either forced an owner or operator of an interim status facility to submit the plan for approval prior to these activities, or subjected him to *post hoc* judgments if the subsequently approved plan differed from the activities previously undertaken. Other commenters opposed allowing owners or operators of interim status facilities to remove hazardous wastes or dismantle equipment without prior approval on the grounds that the provision could be subject to abuse, resulting in potential environmental threats. Others suggested that, at a minimum, the Agency should be notified of such actions so that an inspection can be scheduled.

The Agency does not agree that requiring the removal of hazardous wastes or decontamination of equipment to be in accordance with the approved closure plan is inconsistent with the provisions of the settlement agreement. The Agency agreed with the petitioners in the *ACCI* litigation that, under the previous rules challenged by the petitioners, the owner or operator is not precluded from removing wastes and decontaminating and/or dismantling equipment at any time without providing notice to EPA and, for interim status facilities, prior to submission of a closure plan. Moreover, the Agency agreed with petitioners that it is environmentally sound to remove hazardous wastes as quickly as possible to minimize threats. As a result, the Agency agreed to make this point explicit in the regulations and proposed §§ 264.112(e) and 265.112(e).

The Agency, however, never intended nor agreed that the Agency should be precluded from ensuring that such activities meet the closure standards. The Agency believes that any such activities, like any other hazardous waste management activities, must be in accordance with the regulatory requirements established under RCRA. The Agency does not believe that this requirement will result in an undue burden on owners or operators, even for interim status facilities without approved closure plans. As long as the removal of hazardous wastes and the dismantling or decontamination of equipment conducted prior to the submission of the closure plan are consistent with the closure requirements set forth in the Part 265 regulations, these activities would be approved in the subsequent closure plan and would not render unacceptable activities previously undertaken. Activities would only be rendered unacceptable if they are inconsistent with the closure regulations.

Moreover, the Agency believes that the types of activities that would be included in removing hazardous wastes or dismantling or decontaminating equipment can easily be handled in an environmentally responsible manner that does not give rise to the need for any second-guessing by a regulatory agency. In the infrequent situations where the adequacy of such an activity may be open to serious question, prior Agency review is appropriate and the facility is encouraged to submit its closure plan for approval prior to the commencement of the activity to ensure that the activity satisfies the closure performance standard. In any event, the choice is left to the owner or operator whether to seek approval prior to conducting the activity or to proceed without Agency review and approval.

The Agency does not agree with those commenters who criticized the provision on the grounds that it may allow owners or operators undue discretion in conducting closure activities prior to notification. The language in §§ 264.112(e) and 265.112(e) explicitly limits the types of activities that can be undertaken prior to notification of the removal of hazardous wastes and decontamination/dismantling of equipment. It thus precludes the possibility that an owner or operator could conduct other types of activities that must be subject to EPA notice (e.g., cover installation).

The Agency considered whether to require explicitly in §§ 264.112(e) and 265.112(e) that documentation be prepared to support activities conducted prior to notification. The Agency decided that such a requirement is not necessary for a number of reasons. First, for hazardous wastes sent off-site, the owner or operator is required under § 262.40 to maintain copies of the manifests accompanying the shipments. Second, for wastes handled on-site, information on how it was managed must be included in the operating record as specified in §§ 264.73 and 265.73. Finally, because an independent registered professional engineer must certify that the entire facility has been closed in accordance with the approved closure plan, the owner or operator will need to provide the engineer with appropriate documentation demonstrating that all previous activities have been performed in accordance with the approved closure plan. Therefore, this section is promulgated as proposed.

i. *Time allowed for closure (§§ 264.113 and 265.113).* Sections 264.113(a) and 265.113(a) previously required the owner or operator to treat, remove from the site, or dispose of all hazardous wastes in accordance with the approved closure plan within 90 days after receiving the final volume of hazardous wastes. The Regional Administrator was authorized to extend the deadline if the owner or operator demonstrated, among other things, that there was a reasonable likelihood that a person other than the owner or operator would recommence operation of the facility, and the owner or operator had taken and would

continue to take all steps necessary to prevent threats to human health and the environment. Sections 264.113(b) and 265.113(b) required the owner or operator to complete closure activities within 180 days after receiving the final volume of wastes unless the Regional Administrator granted a longer period.

Petitioners in the *ACCI* litigation argued that the deadlines imposed by §§ 264.113 and 265.113 might preclude the *original* owner or operator from temporarily suspending operations as a result of fluctuations in the market or economic conditions. The Agency agreed with these concerns and proposed to amend §§ 264.113(a)(1)(ii)(B), 265.113(a)(1)(ii)(B), 264.113(b)(1)(ii)(B), and 265.113(b)(1)(ii)(B) to allow an owner or operator two one-year extensions to the deadlines for removing hazardous wastes and completing closure. These extensions may be granted if the owner or operator can demonstrate that the partial or final closure will take longer than 90 days (for removal of hazardous wastes) or 180 days (to complete closure) *or*: (1) the facility has the capacity to receive additional hazardous wastes; (2) there is a reasonable likelihood that the owner or operator or another person will recommence operation of the facility; (3) closure would be incompatible with continued operation of the facility; and (4) the necessary steps have been and will be taken to ensure protection of human health and the environment, including compliance with all applicable permit conditions or interim status requirements.

The proposed rule specified that requests for extensions must be made at least 30 days prior to the expiration of the 90-day period established in §§ 264.113(a) and 265.113(a) and the 180-day period established in §§ 264.113(b) and 265.113(b), or within 90 days of the effective date of the regulation, whichever is later. In addition, for interim status facilities the proposed rule stated that extensions must be granted in accordance with the procedures of § 265.112(d).

One commenter correctly noted that the proposed rule was inconsistent with the terms of the *ACCI* settlement. First, in § 265.113(a), the proposal inadvertently omitted the language in the agreement which specified that the 90-day period would be triggered by the approval of the closure plan, if that is later than the final receipt of hazardous wastes. Second, the 180-day period for completing closure was inadvertently shortened to 90 days in §265.113(b). Third, requiring owners or operators to follow the elaborate procedures in § 265.112(d) to extend the time for completion of interim status closure activities would be burdensome and contrary to the parties' intent. Fourth, the settlement did not specify the maximum length of the time extension; the proposed rule included a maximum time period of 2½ years for the completion of closure. (A number of commenters also contended that, to avoid imposing unnecessary burdens on owners or operators, no deadlines should be specified.)

The Agency is making a number of changes from the proposal that will result in a final rule that is consistent with the *ACCI* settlement language. First, the final rule includes the language inadvertently omitted from the proposed rule. The specified 90-day period in § 265.113(a) will begin only after the approval of the closure plan, if that is later than the final receipt of hazardous waste. This will ensure that a reasonable compliance period is provided after the closure requirements are fixed in an approved plan. Second, § 265.113(b) retains the previous period of 180 days to complete closure.

The Agency also agrees with some commenters that including the phrase "using the procedures of § 265.112(d)" in § 265.113 (a) and (b) would have required overly elaborate procedures for what is essentially a minor change to the closure activities. Under the provisions of § 270.42, an extension to the closure period is considered a minor modification for permitted facilities. EPA believes the requirements for interim status facilities should be consistent with the Part 264 standards. As a result, an extension of the closure period for interim status facilities is not subject to the detailed procedures of § 265.112(d).

The Agency also agrees that limiting the length of the closure period to a maximum of 2½ years may be inconsistent with the settlement provisions. Moreover, if the unit or facility has additional capacity to receive additional hazardous wastes and the owner or operator is in compliance with all applicable operating requirements, an owner or operator should not be restricted to the 2½ years for completing closure. Consistent with the discussion above for allowing variances to the expected date of closure for all types of hazardous waste management units, the Agency has a number of authorities already available to ensure that a unit or facility does not pose a threat to human health and the environment. Therefore, the final rule states that the Regional Administrator may approve an extension to the 90- or 180-day periods subject to the conditions of §§ 264.113 and 265.113.

The Agency received a number of other comments applicable to schedules for closing the facility. One commenter noted that a request to extend the closure period should be an option in the permit application. This option, however, is already available to the owner or operator under § 270.32.

Another commenter expressed concern that the requirement to request an extension to the closure period within 90 days of the effective date of the final rule would not provide adequate time to make the required demonstration. In general, the Agency believes that owners and operators should be able to anticipate the likelihood that an extension will be necessary. Moreover, the effective date of today's promulgation is six months from today which should provide more than adequate notice to owners or operators. Because the effective date is six months after promulgation, the final rule drops the provision allowing the owner or operator to request an extension within 90 days of the effective date of the regulation if that is later than the deadlines for removing all hazardous wastes upon completing closure.

In the March 19, 1985 proposed rule, the Agency also proposed to require that closure be completed within 180 days after the final receipt of *hazardous* wastes rather than after the final receipt of wastes. The change makes §§ 264.113(b) and 265.113(b) consistent with §§ 264.113(a) and 265.113(a). Paragraph (a) requires that owners or operators treat, remove from the site, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan within 90 days after receiving the final volume of hazardous wastes. Paragraph (b) requires that the owner or operator complete those activities within 180 days of receiving the final volume of wastes. The Agency was concerned that owners or operators might misinterpret paragraph (b) and delay compliance with the closure performance standards by ceasing to handle hazardous wastes but continuing to manage non-hazardous wastes. The change to §§ 264.113(b) and 265.113(b) is also consistent with the language in §§ 264.112(d)(2) and 265.112(d)(2). These latter sections explain that the date, when the owner or operator expects to begin closure, is no later than 30 days after the date on which a hazardous waste management unit receives the final volume of *hazardous* wastes (or under certain circumstances, one year

after receipt of the most recent volume of hazardous wastes). It is only logical that if the expected date to begin closure is after the receipt of the final volume of *hazardous* wastes, the date to complete closure would also be after the final receipt of hazardous waste.

One commenter challenged this proposed change, contending that this is inconsistent with the Congressional intent evidenced in the HSWA legislative history regarding closure of surface impoundments. The Agency disagrees with the commenter's reading of HSWA and its legislative history. HSWA contains no provisions addressing the question of whether disposal surface impoundments that cease to accept hazardous waste should be required to close or allowed to stay open to receive non-hazardous waste. HSWA merely addresses retrofitting requirements for surface impoundments by adding Section 3005(j) of RCRA, which requires interim status surface impoundments that receive, store or treat hazardous waste after November 1, 1988 to retrofit to install double liners and leachate collection systems. The legislative history contains a brief discussion that indicates that this provision does not require the closure of an impoundment that ceases to receive hazardous waste but continues to receive non-hazardous wastes, and that requiring such closure would not be proper if the management of the impoundment is protective of human health and the environment.

The legislative history of Section 3005(j) of RCRA merely evidences the fact that Section 3005(j) itself does not mandate closure of interim status surface impoundments that cease to receive hazardous waste. It leaves unimpaired EPA's pre-existing authority to establish by regulation appropriate closure requirements for interim status surface impoundments as necessary to protect human health and the environment. EPA's analysis, set forth below, concludes that the expeditious closure of hazardous waste disposal surface impoundments after they are no longer receiving hazardous waste for disposal would significantly improve protection of human health and the environment. Requiring such closure is thus consistent with Section 3005(j) of RCRA and its legislative history.

The hazardous waste regulations incorporate a two-part "prevention and care" system whose overall goal is to minimize the formation and migration of leachate to the adjacent subsurface soil, ground water, or surface water. The regulatory goal of minimizing the formation and migration of leachate is achieved through the design and operating standards that require (1) the use of a liner that is designed and installed to prevent any migration of waste out of the unit to the adjacent subsurface soil or ground water or surface water throughout the active life of the unit; (2) the installation of leachate collection and removal systems and run-on controls for waste piles and landfills, and the removal or solidification of hazardous wastes and hazardous waste residues at closure for surface impoundments; and (3) the placement of a final cover (cap) placed on top to minimize the percolation of liquids into the unit. EPA is relying principally on the final cover (cap) rather than the bottom liner to provide post-closure protection of ground water.

While the regulations contain provisions for waivers from the liner and leachate collection and removal requirements, no such waivers were allowed for the closure provisions. In addition to providing ground-water protection, the final cover also: (a) Prevents the "bathtub" effect (i.e., filling with leachate and over-flowing); (b) protects surface water from run-off; and (c) discourages direct access to the hazardous waste.

EPA guidance calls for placing final covers at closure or for landfills, preferably, as filling of the cell ends. The purpose of the cover is to minimize infiltration of rain water and the subsequent formation and migration of leachate from the unit. Because liners are intended to perform during the active life of the unit and are not expected to provide long term protection, final covers play a particularly important role in long-term protection of human health and the environment. In addition, many older units are not lined, so early placement of the final cover may be the only way to reduce leachate generation from the unit.

While some units may have liners and leachate collection systems, the expected life of these systems is limited, leachate collection systems can become clogged, and all liners will eventually leak. Therefore, the cap is critical for the long term control of the unit. In addition, while new surface impoundments are required to have leak detection systems, most existing units do not and, therefore, it is often not known whether the unit is leaking until it is detected by ground-water monitoring. Therefore, the cap should be applied to these as soon as possible to minimize infiltration.

In light of these considerations, the final rule retains the proposed requirements to require that closure be completed within 180 days of the final receipt of hazardous waste.

In the proposed rule, the Agency requested comments on the desirability of defining a "reasonable likelihood" for purposes of §§ 264.113 (a) and (b) and 265.113 (a) and (b). One commenter was concerned that the proposed language allowed too much discretion on the part of the permitting agency and the permittee, and that a more objective standard, such as a purchase agreement, should be applied. Another commenter stated that the Agency should wait to develop the "reasonable likelihood" standard until it has accumulated experience with the provision. In the absence of additional information, the Agency is not establishing standards for determining what constitutes a "reasonable likelihood."

j. *Disposal or decontamination of equipment, structures, and soils (§§ 264.114 and 265.114).* Sections 264.114 and 265.114 previously required owners and operators to dispose of or decontaminate all facility equipment and structures. The proposed rule required owners or operators to remove all contaminated soils as part of partial and final closure, as needed.

The comments made concerning these proposed changes were similar to those made on §§ 264.112(b) and 265.112(b). One commenter was concerned that the requirements could be interpreted to require that if it was not possible to remove all contaminated soil from a tank facility, the tank would have to be demolished and the facility converted into a landfill. The Agency believes that at most tank facilities it should be possible to remove all the contamination. In those cases where soil contamination is so extensive as to preclude its removal, stringent closure requirements would indeed be appropriate. HSWA clearly contemplates that contamination remaining at closure must be corrected in a manner that protects human health and the environment (e.g., Section 206 of HSWA, 3004(u) of RCRA). Therefore, the Agency is promulgating §§ 264.114 and 265.114 substantially as proposed. The final rule also clarifies that if the owner or operator removes any hazardous wastes or hazardous constituents during partial or final closure, he may become a generator subject to additional regulations.

k. *Certification of closure (§§ 264.115 and 265.115).* Sections 264.115 and 265.115 previously provided that when closure is completed, an owner or operator must submit certifications from himself and from an independent registered professional engineer that the

facility has been closed in accordance with the specifications in the approved closure plan. Petitioners in the *ACCI* litigation challenged the need for an *independent* engineer on the grounds that an in-house engineer would be in the best position to observe closure activities. As agreed to in the *ACCI* settlement, the Agency proposed to drop the requirement that the registered professional engineer be independent.

Some commenters supported the proposal to drop the "independent" requirement while others favored retaining the existing rule. The Agency has reconsidered the issue and is dropping the proposed rule to allow an in-house registered professional engineer to certify closure. Because certification of final closure is the final step in the closure process and triggers the release of the owner or operator from financial responsibility requirements for closure and the third-party liability coverage requirements of §§ 264.147 and 265.147, the Agency believes that the certification should be made by a person who is least subject to conscious or subconscious pressures to certify to the adequacy of a closure that in fact is not in accordance with the approved closure plan. The Agency's position in this regard is consistent with other types of certification programs which require certifications to be made by independent parties. For example, the Securities and Exchange Commission requires that all publicly-traded companies provide independent audits of financial information. Similarly, grants issued under the Clean Water Act must be accompanied by independent audits.

The Agency also proposed a requirement that owners and operators certify partial closures for the closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit; certification of incinerators, tanks, and container storage units could be submitted any time prior to, or at final closure. Deadlines were also proposed for submitting certifications—45 days after the completion of each partial closure, if applicable, and 30 days after final closure. Documentation supporting the certification must be furnished to the Regional Administrator upon request.

The Agency received several comments on the proposed rule to certify, as they are performed, partial closures of all units except tanks, incinerators, and container storage. Most commenters agreed that partial closures should be certified. Some supported the proposal that certification of tanks, containers, and incinerators should not be required until final closure on the grounds that this is consistent with the provisions of §§ 264.112(e) and 265.112(e), which allows an owner or operator to remove wastes or decontaminate equipment without prior notification. Moreover, unlike land disposal units, it should be easy to certify these types of units at final closure. Others, however, argued that *all* partial closures must be certified as soon as they are performed to ensure protection of human health and the environment. The Agency does not consider it necessary to certify these types of units as they are closed and, consistent with the provisions of §§ 264.112(d) and (e) and 265.112(d) and (e), the final rule does not require certification of tanks, container storage, and incinerators until final closure.

A number of commenters disagreed with the proposed deadlines for submitting certifications, arguing that no distinctions should be made between partial and final closure, and that 45 days may be too short. The Agency agrees and is amending the final rule to require certifications for partial and final closures to be submitted within 60 days of the completion of partial or final closure, as applicable.

One commenter also was concerned about the lack of a deadline for maintaining documentation supporting the independent registered professional engineer's certification. The Agency agrees and is requiring that documentation be furnished upon request to the Regional Administrator until the owner or operator is released from financial assurance requirements under §§ 264.143(i) and 265.143(h).

In the proposed rule, the Agency requested comments on three issues relating to closure certification: (1) should the regulations specify the qualifications of engineers who may certify closure; (2) what types of supporting documentation should be required for certification and should they be submitted to the Agency; and (3) should the Regional Administrator formally approve the certification.

A number of comments were submitted on these issues. Most commenters opposed specifying the type of engineer that would be qualified to certify closure, although one commenter suggested that the language in the certification should state explicitly that the engineer has the appropriate qualifications to certify closure. The Agency generally agrees with these commenters and is not specifying qualifications for engineers.

In response to the Agency's request for comments on the appropriateness of requiring that supporting documentation be submitted with the closure certification, one commenter argued that the submission of documentation was unnecessary, while another was concerned that unless the documentation was submitted, it would not be available for public review.

The Agency recognizes the concern of the commenter for ensuring that the documentation be readily available to the public for review. However, rather than requiring that all documentation be submitted, the Regional Administrator may request submission of the documentation if there is a request from the public for review or if the Regional Administrator determines that there is a need for the Agency to review it. Therefore, all interested parties will have access to documentation upon request. In addition, the Regional Administrator may request that documentation be submitted at any other time under the provisions of §§ 264.74 and 265.74.

The Agency received one comment supporting Agency approval of the certification. The Agency has considered this issue further and, in light of the burdens and costs associated with developing criteria and procedures for formally approving the certification, the Agency is not promulgating such procedures at this time. However, the Regional Administrator has the discretion under the authority of §§ 264.143(i) and 265.143(h) not to release the owner or operator from financial responsibility requirements if he has reason to believe that partial or final closure has not been in accordance with the approved closure plan.

l. *Survey plat (§§ 264.116 and 265.116).* Sections 264.119 and 265.119 required the owner or operator of a disposal facility to submit to the local zoning authority, or the authority with jurisdiction over local land use, within 90 days after closure is completed, a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. Because the survey plat must note the location and dimensions of each disposal area, it must be prepared prior to the completion of closure of that unit. Therefore, the Agency proposed to require that the survey plat be submitted to the appropriate local land use authority no later than the certification of closure of each hazardous waste disposal unit. The Agency also added a requirement that the plat must be prepared and certified by a professional land surveyor, to ensure that the surveyor is licensed by a State and can

be held legally responsible for the survey work.

One commenter questioned the applicability of the survey plat requirement to injection wells. Another challenged the need to submit a plat after each partial closure, arguing that as long as the plat is submitted prior to final closure, adequate protection will be provided. Another commenter was concerned that the deadline for filing the plat was inadequate.

The Agency agrees that the survey plat requirement is not applicable to injection wells. Injection wells are not subject to the requirements of Subparts G and H and therefore are not required to comply with the survey plat provisions (see §§ 264.1(d) and 265.430(a)).

The Agency disagrees with the argument that the plat need not be filed until final closure. First, the Agency is concerned that the local land authority should have information on closed units in a timely fashion in the event that a closed portion of a facility is sold prior to final closure. Second, since the plat must be prepared prior to the completion of the partial closure, the Agency does not consider it burdensome to require it to be submitted at that time. Therefore, the Agency is promulgating §§ 264.116 and 256.116 to require that the survey plat be filed after closure of each hazardous waste disposal unit.

The Agency agrees that the proposed 45-day deadline may not always be adequate. The proposed regulation used the certification date as the deadline for submission of the survey plat. Since the certification date has been extended from 45 days to 60 days, the deadline for filing the survey plat is now within 60 days after completion of partial or final closure. No changes were required to the proposed language of §§ 264.116 and 265.116.

m. *Post-closure care and use of property (§§ 264.117 and 265.117).* Sections 264.117(a) and 265.117(a) previously required post-closure care to continue for 30 years after the date of completing closure. In addition, the regulation allowed requests to reduce or extend the period based on cause to be submitted during the post-closure care period. The previous regulations did not specify whether the period began with closure of a single unit or of the entire facility. Because of the importance of beginning post-closure monitoring and maintenance activities as soon as a hazardous waste management unit has been closed, the Agency proposed to require that the post-closure care period for each hazardous waste management unit subject to post-closure care requirements begin after the closure of each unit.

In determining when the 30-year post-closure care period should begin, the Agency proposed that the 30-year care period apply to each unit (i.e., partial closure) rather than to the entire facility to reduce the burden on an owner or operator who partially closes units prior to closure. The Regional Administrator, however, still retained the authority under the proposed §§ 264.117 and 265.117 to extend the length of the post-closure care period as necessary to protect human health and the environment. Moreover, if the Regional Administrator extended the post-closure care period for any unit during the active life of the facility (i.e., prior to receipt of certification of final closure), the post-closure cost estimate and level of financial assurance must also be adjusted.

The Agency did not receive many comments on the proposal to trigger the beginning of the 30-year post-closure care period with partial closure. Two commenters were concerned that it would be difficult to correlate monitoring results with specific units and, as a result, the 30-year period should be triggered at final closure of the facility. The Agency agrees that at some facilities it may be difficult or impossible to differentiate monitoring results for different units. Therefore, unless the owner or operator can demonstrate that separate monitoring systems are established for each unit, the Regional Administrator may decide to extend the post-closure period for that unit to be consistent with the post-closure care period for the remainder of the units. In developing the final rule, the Agency reconsidered the provisions for requesting reductions or extensions of the post-closure period. Although the Agency believes that in many cases, sufficient data may not be available prior to the beginning of the post-closure care period to support a petition to reduce or extend the period, the Agency does not wish to impose unnecessary requirements. Therefore, §§ 264.117(a)(2), 265.117(a)(2) and 264.118(g) of the final rule allow the Regional Administrator to reduce or extend the post-closure care period based on cause at any time.

n. *Post-closure plans (§§ 264.118, and 265.118).* Sections 264.118(a) and 265.118(a) required owners or operators of hazardous waste disposal facilities to have post-closure plans. In addition, under §§ 264.228(c) and 264.258(c), storage and treatment surface impoundments and waste piles that do not meet the liner design standards are required to prepare contingent closure and post-closure plans in the event that they are closed as landfill facilities.

Because the Agency was concerned that interim status impoundments and waste piles and permitted impoundments and waste piles that meet the design standard may still be required to close as landfills, the Agency proposed in §§ 264.118(b) and 265.118(a) that *these* facilities must prepare post-closure plans if they become subject to post-closure care.

One commenter noted that for interim status surface impoundments and waste piles that do not meet the liner design standard, owners or operators should be able to anticipate prior to the time of closure that they will be unable to remove all contaminated soils, and will be required to close their facilities as landfills. Under the proposed rule, such owners or operators would not be required to prepare revised closure plans or post-closure plans until the time of closure, thus delaying the closure process. This commenter suggested that the regulations require owners and operators of interim status surface impoundments and waste piles that do not meet the design standard of §§ 264.228 and 264.258 to prepare contingent closure and post-closure plans. This would be consistent with the requirements of §§ 264.228 and 264.258 applicable to permitted facilities.

The Agency agrees that it may not be possible to remove *all* contamination at interim status surface impoundments and waste piles not designed in accordance with the liner design standards of §§ 264.228 or 264.258. Requiring that such facilities revise closure plans and prepare post-closure plans would ensure that the owners or operators have adequately planned for closure of the facility as a landfill.

However, owners and operators of interim status facilities with surface impoundments or waste piles were required to make certain certifications and submissions as specified in Section 213 of the Hazardous and Solid Waste Amendments (HSWA, the "Loss of Interim Status" provision), or the facility's interim status would be terminated. Approximately two-thirds of such facilities failed to meet those requirements, and thus had their interim status terminated. Consequently, those owners and operators were required to submit their closure plans by November 23, 1985 and begin closure. The Agency expects that most of the remaining third of these land-based facilities will continue to operate and become subject to the Part 264 standards through the permitting process.

Today's final rule specifies in §§ 265.118(a) and 264.118(a) that an owner or operator of an interim status facility with a surface impoundment or waste pile or a permitted facility with a surface impoundment or waste pile which is *not* required to prepare a contingent plan must submit a post-closure plan to the Regional Administrator for approval within 90 days of the determination that the unit must be closed as a landfill. This is consistent with the proposed rule. In addition, these facilities must submit revised closure plans in accordance with the requirements of §§ 264.112(c) and 265.112(c).

The Agency is also now clarifying in §§ 264.118(a) and 265.118(d) that owners or operators of permitted facilities must comply with all Parts 124 and 270 procedures applicable to modifying the conditions of their permit. Owners or operators of interim status facilities must submit their post-closure plans in accordance with the provisions of § 265.118(d).

The Agency also has clarified in the final rule in §§ 264.118(b) and 265.118(c) that the post-closure plan must explicitly address the post-closure care activities and the frequency of these activities applicable to each disposal unit.

o. *Post-closure notices (§§ 264.119 and 265.119).* Sections 264.119 and 265.119 previously required the owner or operator of a facility subject to post-closure care to submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator a record of the wastes disposed of within each cell or area of a land disposal facility within 90 days after final closure. Sections 264.120 and 265.120 required that a notation be filed on the deed to the property indicating its use as a disposal facility and indicating that the plat and record of wastes had been filed with the appropriate local land use authority.

The Agency proposed to (1) extend the requirements to partial closure activities; and (2) require owners or operators to request permission from the Regional Administrator if they wish to remove hazardous wastes during the post-closure care period and to remove the notice from the deed.

The Agency considers the deed notation to be an important means of ensuring that prospective and subsequent owners of the property are informed of the presence of hazardous wastes, the existence of federal restrictions on land use, and the availability of the survey plat and waste record from the local land use authority. Therefore, the Agency proposed to require that no later than 60 days after the certification of closure of each hazardous waste disposal unit, the owner or operator record the notation on the deed and submit to the Regional Administrator both the certification stating that the notation has been recorded and a copy of the recorded document. Consistent with this requirement, the Agency proposed that the record of waste also be filed with the local land authority and the Regional Administrator within 60 days after closure of each hazardous waste disposal unit.

A number of comments were received on the deadlines for submitting the record of waste to the local land authority and for filing the notices in the deed. Suggestions included: submitting notices and the record of wastes to the local land authority at final closure only; filing the notice in the deed after the first partial closure and verifying its accuracy at final closure; and filing a notice in the deed prior to transfer of ownership. One commenter expressed concern, that, in many jurisdictions, filing a notice in the deed after each partial closure may be especially burdensome because of the need to transact a dummy "sale" as a condition of filing a deed notation.

The Agency disagrees that submitting the record of hazardous waste to the local land authority and Regional Administrator within 60 days after each partial closure of a hazardous waste disposal unit would be burdensome. Under §§ 264.73 and 265.73, an owner or operator must record, as it becomes available, and maintain in the facility operating record information on the types and quantities of hazardous wastes handled at the facility and the location of hazardous waste within each disposal area. Therefore, the owner or operator would simply be required to submit a copy of readily available records to the local land authority and the Regional Administrator. In light of these considerations, the final rule retains the requirement that within 60 days after the certification of closure of each hazardous waste disposal unit the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a record of the type, location, and quantity of hazardous wastes disposed of within that disposal cell or unit.

The Agency agrees with those commenters who argued that filing a notice in the deed after closure of each hazardous waste disposal unit could impose significant burdens, especially if "dummy" sales were required, and would not be necessary to ensure that future purchasers of the land were aware of the land's prior uses. Filing a notice after the first partial closure of a hazardous waste disposal unit and verification of the accuracy of the notice after closure of the last disposal unit should adequately alert all future owners of the land's prior use. Therefore §§ 264.119(b) and 265.119(b) are revised to require that the notice in the deed, as well as the certification to Regional Administrator that the notice has been filed, be filed within 60 days after certification of closure of the first hazardous waste disposal unit. Sixty days after closure of the last disposal unit, the deed and notice to the local land authority must be amended, as necessary. It should be noted that these post-closure notice requirements do not affect the partial closure certification requirements of §§264.115 and 265.115; all partial closures of hazardous waste disposal units must be certified as they are performed.

Section 264.120(b) previously provided that if the owner or operator of a hazardous waste facility subsequently removed all hazardous wastes and waste residues, the liner (if any), and all contaminated underlying and surrounding soils, he could either remove the deed notation required by § 264.120(a), or add a notation indicating that the hazardous wastes have been removed. No similar provisions were allowed for interim status facilities.

The Agency proposed in § 264.119(c) that an owner or operator of a permitted facility must request a modification to the post-closure permit in accordance with Part 270 requirements prior to removing hazardous wastes. For interim status facilities, the proposed language of § 265.119(c) specified that if an owner or operator wishes to remove hazardous wastes, he must request the approval of the Regional Administrator prior to the removal of the hazardous wastes to amend the approved post-closure plan. In addition, the owner or operator must demonstrate compliance with the criteria in §§ 264.117(c) and 265.117(c) for post-closure use of property. Moreover, because the owner or operator would be conducting hazardous waste management activities, he must comply with all applicable generator requirements and with all post-closure permit conditions, if applicable.

One commenter suggested that a subsequent owner or operator who wishes to remove hazardous wastes should notify the previous owner or operator as well as the generators of the wastes in order to alert them of activities of the facility which could subsequently result in future Superfund

liabilities. The Agency has refrained from adopting this approach because it is not relevant to the standards in Section 3004 of RCRA of protecting human health and the environment.

Finally, the proposed rule required the owner or operator to seek Regional Administrator approval before deleting the deed notation or placing a new notation in the deed regarding removal of the wastes. One commenter argued that this requirement could delay future sales of TSDFs. Because the Agency wishes to ensure that all hazardous wastes have been adequately removed prior to removal of the notice to the deed, the Agency is promulgating the rule as proposed.

In the preamble to the proposed rule, the Agency requested comments on notifying parties with rights-of-way on property used to dispose of hazardous wastes of its prior use. One commenter suggested that TSDF owners or operators should be responsible for notifying such parties, including parties with subsurface rights. While the Agency agrees that it is important to ensure that all interested parties are aware of the prior uses of land used to dispose of hazardous wastes, it does not want to impose unnecessary burdens on owners or operators. The Agency therefore investigated whether state laws currently requires notice to the holders of rights-of-way, easements, or subsurface rights of changes to the land by the owner that could affect their interests or safety.

It appears that in most States there is no duty to inform, but there is a duty not to take actions that render the exercise of the right unreasonable or burdensome. Private rules of property and tort, however, will vary concerning notice. In addition, it is likely that the facility will be subject to security measures as specified by §§ 264.117(b) and §§ 265.117(b) and that these security measures will provide notice to parties who have rights-of-way on land used to dispose of hazardous wastes or subsurface rights on the land. Therefore, the Agency is continuing to analyze options for ensuring that all parties are provided adequate notice of hazardous waste disposal activities. This does not, however, relieve the owner or operator of potential liabilities with respect to such parties.

p. *Certification of completion of post-closure care (§§ 264.120 and 265.120).* The previous regulations did not require that the owner or operator certify that post-closure care activities have been conducted in accordance with the approved post-closure plan. Because of the importance of ensuring that post-closure care has been conducted properly prior to releasing the owner or operator from these obligations (including post-closure care financial responsibility), the Agency proposed that an owner or operator submit to the Regional Administrator within 30 days after completing the established post-closure care period for each disposal unit, a certification signed by him stating that all post-closure care activities have been conducted in accordance with the approved post-closure plan. The Agency also requested comments on the desirability of requiring post-closure certifications on an annual or periodic basis (e.g., every five years) rather than only at the end of the 30-year post-closure care period.

Some commenters questioned the need for any post-closure care certification, arguing that the information provided would duplicate data already available to the Agency (e.g., monitoring results Agency inspection reports). Most of the commenters focused on the appropriate frequency of these certifications. Suggestions included: once at the end of the post-closure care period associated with each unit; every five years; and annually. One commenter requested that an extension to the 30-day period for submitting certifications be provided. Finally, it was suggested that the certification be performed by an independent registered professional engineer consistent with the closure certification.

The Agency remains convinced that certification of post-closure care is necessary both to ensure that the post-closure care activities are conducted in accordance with the approved plan, and to trigger the release of the owner or operator from financial assurance obligations under §§ 264.145(i) and 265.145(h). The Agency agrees with some commenters that annual or periodic certifications may not be necessary and thus is requiring that the the certification be submitted at the end of the post-closure care period of each unit. The Agency is also extending the deadline for submitting the certification to 60 days after the completion of the established post-closure care period for each unit. In developing the final rule, the Agency made two other changes to the proposed rule. First, the Agency added a requirement that the certification be submitted by registered mail, to ensure that a dated record of the submission is available. This requirement is consistent with the closure certification which must be submitted by registered mail. Second, the Agency is convinced that an independent registered professional engineer should also certify the completion of the post-closure care period. This requirement would parallel the closure certification requirement in §§ 264.115 and 265.115. Therefore, §§ 264.120 and 265.120 require that an owner or operator submit a certification prepared by himself and an independent professional engineer stating that the post-closure care activities have been conducted in accordance with the approved post-closure plan.

2. Financial Assurance Requirements (Subpart H)

a. *Cost estimates for closure and post-closure care (§§ 264.142(a), 264.144(a), 265.142(a) and 265.144(a)).* The previous provisions in §§ 264.142(a), 264.144(a), 265.142(a) and 265.144(a) required owners or operators to prepare written estimates of the costs of closure and post-closure care. The previous regulations did not specify the level of detail and did not indicate whether cost estimates should be based on the cost to the owner or operator of supplying his own labor and equipment (first-party costs) or the cost of hiring contractor labor and renting equipment (third-party costs). The previous regulations also did not address whether credit for salvage value from hazardous waste equipment and the like would be credited toward the cost estimate.

In developing the final rules, the Agency has been made aware of confusion over the level of detail required in the cost estimates. The previous regulations stated that the owner or operator must prepare a written cost estimate but did not specify the level of detail. As a result, some have argued that a bottom line estimate should be sufficient. Because the cost estimates are based directly upon the closure and post-closure plans and serve as the basis for financial assurance, the cost estimates must contain sufficient detail to allow them to be evaluated. The Agency expects the detailed cost estimates to support the detailed activities described in the closure and post-closure plans. The Agency is today amending §§ 264.142(a), 265.142(a), 264.144(a), and 265.144(a) to clarify that a detailed cost estimate is required.

In the March 19, 1985 proposed rule, the Agency specified that closure and post-closure cost estimates be based on the costs to the owner or operator of hiring a third party to perform closure or post-closure care activities. The Agency reasoned that use of third-party costs would ensure that if an owner or operator failed to conduct closure or post-closure care, adequate funds would be available to hire a third party to do so. The Agency also proposed to specify explicitly that salvage value may not be

incorporated into the closure cost estimate.

A number of commenters supported the Agency's proposal to require third-party costs. Other commenters opposed the proposed change on three separate grounds: use of third-party costs will increase the cost estimates considerably; cost estimates generated by a third party will not be as accurate as estimates prepared by the owner or operator; and third-party costs will be difficult to generate due to the limited number of contractors available. It also was argued that parties using the financial test should not be required to use third-party costs.

The Agency firmly believes that the cost estimates must be based on third-party costs to ensure that adequate funds are available to cover the costs of closure and post-closure care in the event that the owner or operator fails to cover the costs. The Agency recognizes, however, that in some cases, using third-party costs could increase the size of the estimate. This is especially likely with respect to the costs of on-site vs. off-site disposal of hazardous wastes. Because the objective is to ensure that sufficient funds are available to cover the costs of closure if the owner or operator fails to do so, the Agency will allow the cost estimate to incorporate the costs of on-site disposal of hazardous wastes by a third party if the owner or operator can demonstrate that on-site capacity will always be available over the life of the facility. This will minimize the additional costs of a third-party requirement. Aside from these on-site vs. off-site disposal costs, basing the cost estimate on first or third-party costs will not make much difference for land disposal units. The cost estimates will be similar because many of the activities required for closure will be done by a third party whether or not the cost estimate is first or third-party based. For example, firms may not have the expertise to place a final cover on a landfill themselves or they may not wish to do so because the company selling the materials for the cover normally will not guarantee its impermeability unless it (or its authorized representative) installs it. Certification costs will also be similar whether the cost estimate is based on first or third-party costs as EPA requires that an independent registered professional engineer must certify closure.

The Agency does not agree with commenters who argued that contractor estimates will not be as accurate as estimates made by the owner or operator or that it will be difficult to develop third-party cost estimates because of a lack of contractors. The proposed rule did not require that the cost estimate be prepared by a contractor, but rather required that the cost estimate incorporate the costs incurred if a contractor performed the work. Therefore, the owner or operator may develop the cost estimate using costs estimating manuals or personal experience (e.g., prices charged for off-site management of hazardous wastes). Furthermore, the Agency has found, in developing cost estimates for closure and post-closure care, that standard cost estimating manuals as well as information from contractors are readily available to develop third-party estimates. The Agency believes, therefore, that cost estimates based on third-party costs will be *more* accurate as general information exists on contractor costs which does not exist for first-party costs.

The Agency also remains convinced that eligibility to use the financial test as demonstration of financial assurance should be based on third-party costs. First, the third-party cost estimates are likely to be more accurate than those based on first-party costs. Second, the financial test is intended to ensure that an owner or operator who passes the test has the financial capability to establish one of the alternative forms of assurance should he later fail the test. The criteria of the test that are dependent on the size of the cost estimates are intended to provide an adequate margin of safety so that the alternative mechanisms can be established before any potential insolvency occurs. Because the other forms of financial assurance will be based on third-party costs, the multiples must also be based on third-party costs.

In light of these considerations, the Agency is promulgating a third-party cost estimate requirement in today's final rule. The final rule specifies explicitly that the cost estimate may incorporate the costs of on-site disposal of hazardous wastes by a third party if the owner or operator can demonstrate that capacity will always be available over the life of the facility.

The final rule adds a definition of a third party to Subpart H. For purposes of Subpart H, §§ 264.142(a)(2), 264.144(a)(1), 265.142(a)(2) and 265.144(a)(1) state that a third party is a party who is neither a parent nor a subsidiary of the owner or operator.

On the issue of salvage value, the Agency proposed to disallow salvage value as a credit when calculating cost estimates on the grounds that the Agency cannot be assured that the hazardous wastes will be saleable or that a third party will take them at no charge at closure. One commenter supported the proposal while one argued that salvage value should be allowed if brokers or dealers for used equipment can be identified. The Agency still is convinced that allowing salvage value to be credited towards the cost estimate is inconsistent with the goal of ensuring that adequate funds are available in the event that the owner or operator fails to cover the costs. As a result, in the final rule, §§ 264.142(a)(3) and 265.142(a)(3) prohibit the incorporation of salvage value in the closure cost estimates.

In addition to disallowing a credit for salvage value for hazardous wastes, the Agency also is specifying explicitly in the final rule that an owner or operator cannot assume that at closure a third party will take hazardous wastes at no charge. Consistent with the arguments above, the Agency cannot be assured that if an owner or operator fails to close the facility, a third-party would take the hazardous waste at no charge. To avoid potential ambiguities in the regulatory language, the Agency is explicitly stating in §§ 264.142(a)(4) and 265.142(a)(4) that an owner or operator may not incorporate in the closure cost estimate a zero cost for handling hazardous wastes with potential value.

b. *Anniversary date for updating cost estimates for inflation (§§ 264.142(b), 264.144(b), 265.142(b) and 265.144(b)).* The previous regulations required owners or operators to update their closure and post-closure cost estimates for inflation within 30 days after the anniversary of the date that the first cost estimates were prepared. To ensure that the financial assurance instrument accounts for the most recent cost estimate (including updates to inflation), the Agency proposed to require owners or operators to revise their cost estimates within 60 days *prior* to the anniversary date of the establishment of their financial assurance instrument. For firms using the financial test, the cost estimate should be updated within 30 days of the end of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in §§ 264.143(f)(3) and 265.143(e)(3).

Most commenters supported the proposal to update the cost estimates prior to the anniversary date of the establishment of the financial instrument and, as a result, the Agency is promulgating the rule as proposed.

The Agency also proposed in the March 19, 1985 promulgation to allow owners or operators the option of recalculating the cost estimates based on current costs as an alternative to

using the Implicit Price Deflator for GNP published in the *Survey of Current Business*. In addition, the Agency proposed to require that owners or operators use the most recently published annual Implicit Price Deflator in order to reflect the most recent inflation.

One commenter suggested that owners or operators be *required* to recalculate annually the cost estimate based on current costs on the grounds that the Implicit Price Deflator will not account for increases in costs due to reasons other than inflation (e.g., increases in costs of landfilling). While the Agency agrees that requiring owners or operators to recalculate the cost estimate annually based on current costs may result in the most accurate estimate, the Agency recognizes that this could impose a significant burden on owners or operators and would not always be necessary. Therefore, the Agency is promulgating the rule as proposed.

c. *Revisions to the cost estimates (§§ 264.142(c), 264.144(c), 265.142(c) and 265.144(c)).* The previous regulations required the owner or operator to revise the closure and post-closure cost estimates during the operating life of the facility whenever a change in the plans increases the costs of closure or post-closure care. No deadlines were imposed for revising the estimates.

The Agency proposed to require that owners or operators with approved plans adjust their cost estimates within 30 days after the Regional Administrator has approved the modification if the change increases the costs of closure or post-closure care. For interim status facilities without approved closure or post-closure plans, the adjustment must be made within 30 days of the change in the plans if the change increases the cost estimates. Section 264.142(c) of the proposed regulations inadvertently required that the revision be made if the change in the closure plan *affects* the cost of closure. The final rule has been revised to correct this inconsistency. It now reads as it did originally, that the revision is required if the change in the closure plan *increases* the cost of closure.

d. *Post-closure cost estimates (§§ 264.144(c) and 265.144(c)).* Sections 264.144(c) and 265.144(c) previously required the owner or operator to revise the post-closure cost estimates during the operating life of the facility whenever a change in the post-closure plan increased the cost of post-closure care. The previous rules did not define operating life.

The Agency intended that post-closure financial assurance be adjusted as necessary until the facility was closed. Consistent with the new definition of active life, the Agency proposed to require that the post-closure cost estimate be revised as necessary during the active life of the facility. The Agency received no comments to this proposed change and is promulgating §§ 264.144(c) and 265.144(c) as proposed.

e. *Trust fund pay-in period (§§ 264.143(a)(3) and 265.143(a)(3)).* The existing language of § 264.143(a)(3) requires the payments to the trust fund to be made over the term of the initial permit or over the remaining life of the facility, whichever is shorter. For interim status facilities, the pay-in period is 20 years or the remaining operating life of the facility, whichever is shorter. Although the trust fund may cover a number of units with different operating lives, the current regulation ties the pay-in period to the life of the facility rather than to particular units. In the March 19, 1985 proposal, the Agency requested comments on approaches to handling the trust fund pay-in period for multiple process facilities.

Some commenters argued that the pay-in period should be based on the shortest operating life of any unit at a multiple process facility; others suggested retaining the existing requirements. One commenter recommended that, within three years, the trust fund should contain enough funds to close the unit likely to incur the highest closure costs.

As discussed in the preamble to the January 12, 1981 Subpart H regulations, the Agency allowed a 20-year pay-in period to minimize the potential adverse economic impacts on smaller firms most likely to be using trust funds (See 46 *FR* 2823). The Agency is concerned that if the trust fund pay-in period is based on the shortest operating life of a unit of the facility, owners or operators intending to partially close facilities in the near future would face very high costs. For example, if an owner or operator closed a landfill cell after one year rather than at the end of the facility's operating life, he would be required to fully fund the trust fund much earlier than originally intended. Moreover, the Agency is concerned that such an accelerated pay-in period could discourage owners or operators from partially closing their facilities. Therefore, the Agency intends to examine further such questions as the cost effects and enforcement implications of changing the trust fund pay-in period for such facilities before proposing any changes to the current requirements.

f. *Reimbursement for closure and post-closure expenditures from trust fund and insurance (§§ 264.143(a)(10), 264.143(e)(5), 264.145(a)(11), 264.145(e)(5), 265.143(a)(10), 265.143(d)(5), 265.145(a)(11) and 265.145(d)(5)).* The previous closure/post-closure trust fund and insurance provisions allowed an owner or operator, or any other person authorized to conduct closure or post-closure care, to request reimbursement for expenditures from the trust fund or insurance policy by submitting itemized bills to the Regional Administrator. Within 60 days, the Regional Administrator would instruct the trustee or insurer to make reimbursements, if he determined that the activities were in accordance with the approved plans or were otherwise justified. The Regional Administrator could withhold reimbursements if he determined that the total costs of closure would exceed the value of the trust or insurance policy.

In response to a concern from the *ACCI* petitioners that a decision to withhold reimbursements should be supported by a written explanation that can serve as a record for review, the proposed rule required the Regional Administrator to provide a detailed written statement of reasons to the owner or operator if he does not instruct the trustee or insurer to make requested reimbursements. The proposed rule also specified provisions for handling reimbursements for partial closure activities. Under the proposed rule, an owner or operator could be reimbursed for partial closure activities if the partial closure reduced the maximum extent of operation of the facility and the Regional Administrator found that the activities had been in accordance with the approved plan or were otherwise justified.

Commenters generally supported the proposal to require a detailed written statement of reasons why the Regional Administrator was withholding reimbursement. A few commenters were concerned that the Regional Administrator should not be allowed to withhold reimbursements for minor violations of the closure or post-closure plan and/or permit requirements. Other commenters argued that the Regional Administrator should not be allowed to withhold more than 20 percent of the funds, and that reimbursements should be automatic unless, within a specified time, the Regional Administrator provides a statement of reasons for refusing the reimbursements.

It was also suggested that reimbursements for partial closures should be allowed if there are adequate funds remaining in the trust fund or insurance policy to cover the maximum

costs of closing the facility over its remaining life.

The Agency agrees with commenters that the regulations should not preclude reimbursements for minor paperwork violations. The Agency believes, however, that the proposed regulatory language provides the necessary flexibility to the Regional Administrator by allowing reimbursements if the activities are in accordance with the approved plan, or if the activities are otherwise justified. Therefore, the final rule specifies that an owner or operator is eligible for reimbursements if the activities have been performed in accordance with the approved plans or are otherwise justified. As discussed below, reimbursements will be made only if sufficient funds are remaining in the trust fund or insurance policy.

The Agency does not agree that the Regional Administrator should be allowed to withhold only up to 20 percent of the value of the trust fund or insurance policy. As discussed in the preamble to the April 7, 1982 rules, (See 47 *FR* 15040), the Agency is concerned that in some instances where the cost estimate is found to be seriously inadequate, more than 20 percent should be held in reserve. The Agency also disagrees with the suggestion that reimbursements should be made automatically if the Regional Administrator does not act upon the request within a specified length of time. Because of the complexity of certain closure activities and the importance of ensuring that the activities protect human health and the environment, the Agency considers it inappropriate to establish such deadlines. Therefore, the Agency is promulgating the rule substantially as proposed.

The Agency is making a clarifying change to the language in the final rule. The proposed rule allowed reimbursements if partial closure reduced the maximum extent of operation. In developing the final rule for reimbursement provisions, the Agency considered it more appropriate to examine the amount of funds remaining in the fund than the maximum extent of operation. As a result, the final rule specifies that an owner or operator may request reimbursements only if sufficient funds, exclusive of future inflation adjustments, are remaining in the trust fund or insurance policy to cover the maximum costs of closing the facility at any time over its remaining life.

g. *Final administrative order required (§§264.143(b)(4)(ii), 264.145(b)(4)(ii), 265.143(b)(4)(ii) and 265.145(b)(4)(ii)).* The previous regulations provided that an owner or operator may satisfy the financial assurance requirements for closure and/or post-closure care by obtaining a financial guarantee surety bond. The bond provides that if the owner or operator fails to fund a standby trust fund in an amount equal to the penal sum of the bond within 15 days after an order to begin closure or post-closure care is issued by the Regional Administrator or by a court, the surety will become liable. In response to the *ACCI* petitioners, the Agency proposed to provide additional procedural protections to owners or operators by requiring that a *final* administrative order is necessary before action can be required by the surety. EPA wishes to emphasize that only final *administrative* action, not judicial review, is required in all these cases.

No comments were received concerning this amendment, and the Agency is promulgating the rule as proposed.

h. *Final administrative determination required (§§ 264.143(c)(5) and (d)(8), 264.145(c)(5) and (d)(9), 265.143(c)(8), 265.145(b)(5) and 265.145(c)(9)).* The Part 264 regulations provide that an owner or operator may demonstrate financial assurance for closure and/or post-closure care by obtaining a surety bond guaranteeing performance. Under Parts 264 and 265, an owner or operator also could satisfy the financial assurance requirements by obtaining a letter of credit. Under the terms of the performance bond and letter of credit, the surety or bank issuing the letter of credit would become liable on the bond or letter of credit obligation when the owner or operator fails to perform closure or post-closure care as guaranteed by the bond or letter of credit. The previous regulations provided that such a failure was indicated by a determination made pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure or post-closure care in accordance with the closure or post-closure plan and other applicable requirements. In response to concerns of the *ACCI* petitioners, the Agency proposed to require that a "final" administrative determination under Section 3008 of RCRA be required before the surety must perform closure or post-closure care or deposit the penal sum of the bond into a trust fund or the Regional Administrator may draw on a letter of credit.

No comments were received concerning this amendment. However, as explained above, the final rule specifies that the determination must be a final determination.

i. *Cost estimates for owners or operators using the financial test or corporate guarantee must include UIC cost estimates for Class I wells (§§ 264.143(f)(1)(i) (B) and (D) and (f)(1)(ii) (B) and (D), 264.145(f)(1)(i) (B) and (D) and (f)(1)(ii) (B) and (D), 265.143(e)(1)(i) (B) and (D) and (e)(1)(ii) (B) and (D), 265.145(e)(1)(i) (B) and (D), and 265.145(e)(1)(ii) (B) and (D)).* On March 19, 1985, the Agency proposed a requirement that an owner or operator seeking to use the financial test to demonstrate financial responsibility must include the most current cost estimates of the plugging and abandonment costs of Class I underground injection control (UIC) facilities, if applicable, when calculating the sum of closure and post-closure cost estimates for the financial test. EPA has established in 40 CFR Part 144 financial responsibility requirements for the owners or operators of Class I UIC facilities paralleling those established in 40 CFR Parts 264 and 265, including the same set of criteria for passing the financial test. Neither the UIC financial test nor the RCRA financial test, however, currently requires inclusion of the most current cost estimates for the other program. EPA was concerned that a firm able to pass the UIC and RCRA financial tests separately might not have the financial strength to take the required actions if UIC plugging and abandonment and RCRA closure and/or post-closure care activities were required simultaneously. Therefore, the Agency proposed that the most current cost estimates prepared as part of the Part 144 requirements be included in the total cost estimate required under 40 CFR Subpart H to evaluate whether a firm is able to pass the financial test.

Commenters generally favored the inclusion of UIC plugging and abandonment cost estimates in the Subpart H financial test requirements, and the Agency is promulgating the rule as proposed. In addition, the Agency is promulgating the proposed language in §§ 264.141 and 265.141 which defines the "current plugging and abandonment cost estimate" as the most recent cost estimates prepared under § 144.62.

j. *Cost estimates must account for all facilities covered by the financial test and corporate guarantee (§§ 264.143(f)(2), 264.145(f)(2), 265.143(e)(2) and 265.145(e)(2)).* The previous regulations specified that the phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of §§ 264.143 and 264.145, and paragraph (e)(1) of §§ 265.143 and 265.145, refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (*See*

§ 264.151(f)). The Agency proposed a minor change to include by reference the UIC cost estimates.

No comments were received concerning this proposal, and the Agency is adopting the rule as proposed.

K. *Release of the owner or operator from the requirements of financial assurance for closure and post-closure care (§§ 265.143(i), 264.145(i), 265.143(h) and 265.145(h)).* Previously, §§ 265.143(i) and 265.143(h) required the owner or operator to submit certification to the Regional Administrator from himself and from an independent registered professional engineer that closure had been accomplished in accordance with the closure plan. Within 60 days after receiving the certifications, unless the Regional Administrator had reason to believe that closure was not in accordance with the plan, the Regional Administrator was required to notify the owner or operator that he is no longer required to maintain financial assurance for closure. Sections 264.145(i) and 265.145(h) specified that the owner or operator was relieved of his post-closure financial assurance obligations when the owner or operator has completed, to the satisfaction of the Regional Administrator, all post-closure care requirements.

The Agency proposed to drop the reference to the "independent" registered professional engineer in §§ 264.143(i) and 265.143(h) to be consistent with the proposed changes to §§ 264.115 and 265.115. The proposed rule also added a requirement to §§ 264.143(i), 264.145(i), 265.143(h), and 265.145(h) that the Regional Administrator must provide the owner or operator with a detailed written statement of any reasons to believe that closure or post-closure care has not been in accordance with the approved plans.

For the same reasons that the final rule is retaining the independent registered professional engineer certification requirement, the final rule also retains the reference to the independent registered professional engineer in §§ 264.143(i) and 265.143(h). Similarly, because the final rule requires in §§ 264.120 and 265.120 that an owner or operator must submit a certification from himself and an independent registered professional engineer that post-closure care has been completed in accordance with the approved post-closure plan, §§ 264.145(i) and §§ 265.145(h) are revised to specify that within 60 days after receiving the required post-closure care certifications the Regional Administrator will notify the owner or operator in writing that he is no longer required to maintain financial assurance for post-closure care for that unit (or facility). Today's rule promulgates as proposed the requirement that the Regional Administrator must provide the owner or operator with a detailed written statement of any reasons to believe that closure or post-closure care has not been in accordance with the approved plans.

l. *Period of liability coverage (§§ 264.147(e) and 265.147(e)).* The regulations previously required owners or operators to provide sudden accidental and, if applicable, nonsudden accidental liability coverage until certifications of closure have been received by the Regional Administrator. Because the Agency proposed to require that partial closures of disposal units be certified, units within a facility may be closed and certified while other units continue to operate. The Agency does not consider it appropriate to alter the amount of financial assurance required for sudden or nonsudden liability coverage as a result of such partial closures. Therefore, the proposed rule clarified that an owner or operator must provide liability coverage continuously as required until the certification of *final* closure is received by the Regional Administrator.

The Agency also believes that release from liability coverage requirements should be consistent with the procedures for releasing the owner or operator from closure financial responsibility requirements under §§ 264.143(i) and 265.143(h). Therefore, today's final rule states that owners or operators must maintain liability coverage until the Regional Administrator notifies the owner or operator in writing that he is released from this obligation.

m. *Wording of instruments (§ 264.151).* On March 19, 1985 the Agency proposed two changes to the wording of the instruments allowed under §§ 264.143, 264.145, 265.143, and 265.145. These changes, intended to ensure consistency with the other amendments in the proposal, modified § 264.151(b) to provide that the surety is responsible for funding the standby trust fund within 15 days after a "final" order to begin closure has been issued, and modified § 264.151(f) by adding an additional paragraph requiring owners and operators using the financial test to list the most current cost estimates associated with their Class I UIC facilities under the Part 144 financial responsibility requirements.

Because some owners or operators may use the financial test to cover closure and post-closure costs as well as liability coverage, the final rule adds a parallel paragraph to § 264.151(f), new paragraph (g), to require these owners or operators to list cost estimates associated with their Class I UIC facilities under the Part 144 final responsibility requirements.

Those firms with surety bonds or letters from the chief financial officer issued before the effective date of these regulations must change those instruments to reflect these wording changes as §§ 264.143, 265.143, 264.145 and 265.145 require that the wording of these instruments be identical to the applicable wording in §264.151. For owners or operators using surety bonds, the wording changes must be made within 60 days prior to the anniversary date of the establishment of the financial instrument(s), as per §§ 264.142(b), 265.142(b), 264.144(b) and 265.144(b). For owners or operators using the financial test or corporate guarantee, the changes must be made within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator, as specified in §§ 264.142(f), 265.142(e), 264.145(f), and 265.145(g).

C. Interim Status Standards (Part 265)

1. Applicability of Requirements (§ 265.110(b))

Section 265.110(b) specified that the post-closure care regulations apply to all hazardous waste disposal facilities. Surface impoundments and waste piles that are unable to remove all hazardous wastes are required under §§ 265.228 and 265.258 to be closed as landfills and must comply with the post-closure care requirements. Therefore, in order to clarify the applicability of §§ 265.117–265.120, the Agency proposed in § 265.110(b) that the post-closure care requirements apply to the owners or operators of all hazardous waste disposal facilities and piles and surface impoundments for which the owner or operator intends to remove the wastes at closure but is required to close the facility as a landfill.

The Agency received no comments on this clarification and is promulgating the final rule as proposed.

2. Waste Pile Closure Requirements Included by Reference in the Closure Performance Standard (§ 265.111(c))

Section 265.112(a)(1) previously required the closure plan to include a description of how and when the facility will be partially closed, if applicable, and finally closed. The description must specify how the applicable requirements of the closure performance standard

specified in § 265.111 and the process-specific standards in Subparts J through Q will be met. The Agency proposed to incorporate the technical standards in the process-specific regulations into the closure performance standard in § 265.111 and to revise § 265.111 to include a reference to § 265.258, which establishes closure requirements for waste piles. Closure requirements specific to waste pile facilities had not been promulgated prior to the promulgation of the Subpart G regulations, and thus were not previously referenced.

No comments were received concerning this proposal, and the Agency is adopting the rule as proposed.

3. Submission of Interim Status Closure and Post-Closure Plans (§§ 265.112(d), 265.118(e))

Sections 265.112(c) and 265.118(c) required owners or operators to submit their closure and post-closure plans 180 days prior to final closure. The proposed amendment specified that owners or operators of facilities with a landfill, surface impoundment, waste pile, or land treatment unit must submit their closure and post-closure plans for review and approval 180 days prior to the first partial closure. Facilities with only container storage, storage or treatment tanks, or incinerators must submit the closure plan 45 days prior to final closure. After the closure plan has been approved, the owner or operator is required to notify the Regional Administrator prior to all partial closures of landfills, surface impoundments, waste piles, and land treatment units and prior to final closure. Unless changes are made to the approved closure plan, however, the proposed rule did not require the owner or operator to seek reapproval of the closure plan for each subsequent partial closure or final closure.

Some commenters suggested that owners or operators be required to submit only that portion of the closure plan applicable to the unit being closed. The Agency disagrees with this suggestion. All owners or operators of interim status facilities were required to have their plans available on-site by May 19, 1981. Therefore, no additional burden is imposed on the owner or operator by requiring that the entire plan be submitted.

The Agency believes that it is necessary that the entire plan be submitted to ensure that the plans adequately address the activities required at the entire facility. Especially if the owner or operator intends to handle some of the hazardous wastes on-site, it is essential to ensure that the facility has incorporated these requirements into the closure plan. If necessary to ensure protection of human health and the environment, the Regional Administrator may approve only that portion of the plan applicable to the partial closure.

4. Written Statements by Regional Administrator of Reasons for Refusing to Approve or Reasons for Modifying Closure or Post-Closure Plan (§§ 265.112(d)(4), 265.118(f))

Sections 265.112(d) and 265.118(d) previously specified that the Regional Administrator would approve, modify, or disapprove the closure plan and, if applicable, post-closure plan within 90 days of their receipt from the owner or operator. If the Regional Administrator did not approve the plan, the owner or operator was required to modify the plan or submit a new plan for approval within 60 days. If the Regional Administrator modified the plan, this modified plan became the approved closure and post-closure plan.

In response to the contention of the *ACCI* petitioners that this provision provided the Regional Administrator with undue discretion, the Agency proposed in §§ 265.112(d) and 265.118(f) to require the Regional Administrator to provide a detailed written statement of reasons for refusing to approve or reasons for modifying a closure or post-closure plan. In addition, to be consistent with the provisions of § 265.112(d) applicable to approving the closure plan, the Agency also proposed in § 265.118(f) that the Regional Administrator will hold a public hearing on approving the post-closure plan whenever such a hearing would clarify the issues.

The commenters generally favored these proposed changes and the Agency is promulgating the rule as proposed.

D. Typographical Errors

The final rule corrects a number of typographical errors included in the proposed rule.

E. Permitting Standards (Part 270)

1. Contents of Part B: General Requirements (§§ 270.14(b) (14), (15), and (16))

Section 270.14(b)(14) specified that the Part B application must include documentation that the notice in the deed required under § 264.120 has been filed. Because many Part B applications will be filed prior to closure of a hazardous waste disposal unit, it will not be possible to include documentation indicating that the notices have been filed. Therefore, the Agency proposed to amend § 270.14(b)(14) to require documentation to be included in the Part B application only for facilities with hazardous waste disposal units closed prior to the submission of the application. In addition, because the notice in the deed requirement is now included in § 264.119, the reference in § 270.14(b)(14) to § 264.120 has also been amended.

Section 270.14(b) (15) and (16) previously specified that the Part B application must include a copy of the most recent closure and post-closure cost estimates as required by §§ 264.142 and 264.144 and documentation required to demonstrate closure and post-closure financial assurance in accordance with the requirements of §§ 264.143 and 264.145, if applicable. Sections 264.143 and 264.145 require that for new facilities, demonstration of financial assurance must be made at least 60 days prior to the initial receipt of hazardous wastes. Because an owner or operator of a new facility may submit the Part B application more than 60 days prior to the initial receipt of hazardous wastes, the Agency also proposed to amend §§ 270.14(b) (15) and (16) to specify that a copy of the demonstration of financial assurance must be included with the submission of the Part B application, or at least 60 days prior to the initial receipt of hazardous wastes, whichever is later.

The Agency received no comments on any of these proposed changes and is promulgating them as proposed.

2. Minor Modifications of Permits (§ 270.42(d))

Section 270.42(d) previously stated that a change in ownership or operational control of a facility may be considered a minor permit modification provided that the Director determines that no other change is necessary in the permit and that a written agreement has been submitted to the Director which specifies the date for transfer of permit responsibility, coverage, and liability between the current and new permittees. The Agency wishes to ensure that facilities are transferred to financially viable firms and thus proposed to require that the new owner demonstrate compliance with the Subpart H regulations within three months of the transfer of ownership. The preamble inadvertently stated that the proposed rule allowed for a six-month deadline for demonstrating financial assurance although the proposed rule referred to the requirements of § 270.72 which proposed a three-month deadline.

Some commenters argued that a six-month time limit was too short while others argued that it was too long. Another commenter was concerned that the regulation did not state whether the old owner or operator remains responsible if the new owner or operator fails to demonstrate financial assurance within the allotted time period. Finally, one commenter noted that the reference to the deadlines in § 270.72, which address requirements for interim status facilities, is confusing for permitted facilities.

The Agency disagrees with those commenters who argued that six months is insufficient time to demonstrate financial assurance. The Agency is extending the three-month period allowed in the proposed rule to six months. EPA is also clarifying the Agency's intent that the old owner or operator is responsible for financial assurance obligations if the new owner or operator fails to meet his obligations. Finally, the final rule clarifies the language of § 270.42. The proposal included a reference in § 270.42 to the deadlines of § 270.72. Because § 270.72 refers to interim status facilities, the Agency was concerned that owners or operators may not recognize that the deadlines in § 270.72 also applied to permitted facilities under § 270.42. To avoid potential ambiguities, the final rule states explicitly in § 270.42(d) that the new owner or operator must demonstrate financial assurance within six months of the transfer of ownership.

3. Changes During Interim Status (§ 270.72(d))

Section 270.72(d) stated that when there is a transfer of ownership or operational control of an interim status facility, the old owner or operator is responsible for complying with the Subpart H requirements until the new owner or operator demonstrates compliance with the financial responsibility requirements. Consistent with the proposed changes to § 270.42(d) for permitted facilities, the Agency proposed to require that the new owner or operator demonstrate financial assurance within three months of the transfer of ownership.

For the reasons discussed above, the Agency is allowing the new owner or operator six months to demonstrate financial assurance. The old owner or operator is responsible for financial assurance until the new owner or operator fulfills his obligations under Subpart H.

III. State Authority

A. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (*See* 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under Sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to HSWA amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA are applied in authorized States in the interim.

B. Effect on State Authorizations

Today's announcement promulgates standards that will not be effective in authorized States since the requirements will not be imposed pursuant to the HSWA. Thus, the requirements will be applicable only in those States that do not have final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must revise their programs to include equivalent standards within a year of promulgation of these standards if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State requirements have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State requirements are approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit official applications for final authorization less than 12 months after promulgation of these standards may be approved without including equivalent standards. However, once authorized, a State must revise its program to include equivalent standards within the time period discussed above. The process and schedule for revision of State programs is described in 40 CFR § 271.21.

It should be noted that authorized States are only required to revise their programs when EPA promulgates standards more stringent than the existing standards. Under Section 3009 of RCRA, States are allowed to impose standards which are more stringent than those in Federal program. Some of the standards promulgated today are considered to be less stringent than or reduce the scope of the previous Federal requirements. Those provisions appear in Sections: 264.112(a), 264.118(a), 265.112(a), 265.118(a), 264.112(b)(7), 264.112(e), 265.112(e), 264.113, 265.113, 264.115, 265.115, 264.143(a)(10), 264.143(e)(5), 264.145(a)(11), 264.145(e)(5), 265.143(a)(10), 265.143(d)(5), 265.145(a)(11), 265.145(d)(5), 264.143(b)(4)(ii), 264.145(b)(4)(ii), 265.143(b)(4)(ii), 265.145(b)(4)(ii), 264.143(c)(5), 264.143(d)(8), 264.145(c)(5), 264.145(d)(9), 265.143(c)(8), 265.145(c)(9), 265.112(b)(7), 264.112(d), 265.112(d), 265.118(e), and 265.118(f). Authorized States will not be required to revise their programs to adopt requirements equivalent or substantially equivalent to the provisions identified above.

IV. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being promulgated today to Subparts G and H are not "major rules." Some of the amendments are technical corrections

designed to clarify the intent of the regulations issued January 12, 1981. The changes are not likely to result in a significant increase in costs and thus are not a major rule. No Regulatory Impact analysis has been prepared.

V. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050–0008.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 801 *et seq.*), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). Many of the changes promulgated today clarify the existing regulations and thus result in no additional costs. For those amendments that will result in an increase in costs, the costs are not significant enough to impact adversely the viability of small entities.

Accordingly, I certify that this regulation will not have a significant impact on a substantial number of small entities.

VII. Supporting Documents

A background document was prepared for the Subpart G closure and post-closure care regulations and for the financial assurance regulations promulgated on January 12, 1981. In addition, background documents were prepared for the financial assurance regulations published on April 7, 1982. Supporting materials, including a background document, discussing the most significant issues raised by the amendments promulgated today have been prepared and are included in the docket for these regulations.

The supporting materials are available for review in the public docket, Room S–212–E U.S. EPA, 401 M Street, SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

EPA will prepare guidance manuals to assist owners or operators and regulatory officials and will make them available from EPA Headquarters and the Regional Offices.

VIII. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow sufficient lead time for the regulated community to prepare to comply with major new regulatory requirements. Section 553(d) of the Administrative Procedures Act prohibits "publication of service of a substantive rule . . . less than 30 days before its effective date except for good cause." For the amendment to § 270.14(b)(14) promulgated today, however, the Agency believes that an effective date six months or 30 days after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be contrary to the interest of the regulated community and the public.

Today's amendment to § 270.14(b)(14) requires that an owner or operator seeking a permit submit documentation that notices required under § 264.119 have been filed only for hazardous waste disposal units that have been closed. The previous regulations required that documentation of such notices be submitted for the entire facility, whether or not units have been closed at the time the permit application is submitted.

The Agency believes it makes little sense that the intended relief from this requirement be delayed for six months. This is especially true in light of the requirement that owners or operators of land disposal facilities submit their permit applications by November 8, 1985 (see HSWA § 213). Consequently, the Agency is setting an effective date of May 2, 1986, for the amendment to § 270.14(b)(14) promulgated in this rulemaking action.

Dated: March 8, 1986.

Approved:

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

40 CFR Part 260 is amended as follows:

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939 and 6974).

Subpart B—Definitions

2. In 40 CFR Part 260 Subpart B, § 260.10 is amended by adding the following terms alphabetically to the existing list of terms:

§ 260.10 Definitions.

* * * * *

"Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Regional Administrator receives certification of final closure.

"Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Parts 264 and 265 of this Chapter are no longer conducted at the facility unless subject to the provisions in § 262.34.

"Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Parts 264 and 265 of this Chapter at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 264 is amended as follows:

1. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924 and 6925).

2. 40 CFR Part 264 Subpart G, §§ 264.110–264.120 are revised to read as follows:

Subpart G—Closure and Post-Closure

Sec.
264.110 Applicability.
264.111 Closure performance standard.
264.112 Closure plan; amendment of plan.
264.113 Closure; time allowed for closure.
264.114 Disposal or decontamination of equipment, structures and soils.
264.115 Certification of closure.
264.116 Survey plat.
264.117 Post-closure care and use of property.
264.118 Post-closure plan; amendment of plan.
264.119 Post-closure notices.
264.120 Certification of completion of post-closure care.

Subpart G—Closure and Post-Closure

§ 264.110 Applicability.

Except as § 264.1 provides otherwise:

(a) Sections 264.111–264.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 264.116–264.120 (which concern post-closure care) apply to the owners and operators of:

(1) All hazardous waste disposal facilities; and

(2) Waste piles and surface impoundments from which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in §§ 264.228 or 264.258.

§ 264.111 Closure performance standard.

The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance; and

(b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

(c) Complies with the closure requirements of this Subpart including, but not limited to, the requirements of §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310 and 264.351.

§ 264.112 Closure plan; amendment of plan.

(a) *Written plan.* (1) The owner or operator of a hazardous waste management facility must have a written closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure are required by §§ 264.228(c)(1)(i) and 264.258(c)(1)(i) to have contingent closure plans. The plan must be submitted with the permit application, in accordance with § 270.14(b)(13) of this Chapter, and approved by the Regional Administrator as part of the permit issuance procedures under Part 124 of this Chapter. In accordance with § 270.32 of this Chapter, the approved closure plan will become a condition of any RCRA permit.

(2) The Regional Administrator's approval of the plan must ensure that the approved closure plan is consistent with §§ 264.111–264.115 and the applicable requirements of §§ 264.90 *et seq.*, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351. Until final closure is completed and certified in accordance with § 264.115, a copy of the approved plan and all approved revisions must be furnished to the Regional Administrator upon request, including request by mail.

(b) *Content of plan.* The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility will be closed in accordance with § 264.111;

(2) A description of how final closure of the facility will be conducted in accordance with § 264.111. The description must identify the maximum extent of the operations which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of the off-site hazardous waste management units to be used, if applicable; and

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard; and

(5) A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included.)

(7) For facilities that use trust funds to establish financial assurance under §§ 264.143 or 264.145 and that are expected to close prior to the expiration of the permit, an estimate of the expected year of final closure.

(c) *Amendment of plan.* The owner or operator must submit a written request for a permit modification to authorize a change in operating plans, facility design, or the approved closure plan in accordance with the procedures in Parts 124 and 270. The written request must include a copy of the amended closure plan for approval by the Regional Administrator.

(1) The owner or operator may submit a written request to the Regional Administrator for a permit modification to amend the closure plan at any time prior to the notification of partial or final closure of the facility.

(2) The owner or operator must submit a written request for a permit modification to authorize a change in the approved closure plan whenever:

(i) Changes in operating plans or facility design affect the closure plan, or

(ii) There is a change in the expected year of closure, if applicable, or

(iii) In conducting partial or final closure activities, unexpected events require a modification of the approved closure plan.

(3) The owner or operator must submit a written request for a permit modification including a copy of the amended closure plan for approval at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must request a permit

modification no later than 30 days after the unexpected event. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to prepare a contingent closure plan under §§ 264.228(c)(1)(i) or 264.258(c)(1)(i), must submit an amended closure plan to the Regional Administrator no later than 60 days from the date that the owner or operator or Regional Administrator determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of § 264.310, or no later than 30 days from that date if the determination is made during partial or final closure. The Regional Administrator will approve, disapprove, or modify this amended plan in accordance with the procedures in Parts 124 and 270. In accordance with § 270.32 of this Chapter, the approved closure plan will become a condition of any RCRA permit issued.

(4) The Regional Administrator may request modifications to the plan under the conditions described in § 264.112(c)(2). The owner or operator must submit the modified plan within 60 days of the Regional Administrator's request, or within 30 days if the change in facility conditions occurs during partial or final closure. Any modifications requested by the Regional Administrator will be approved in accordance with the procedures in Parts 124 and 270.

(d) *Notification of partial closure and final closure.*

(1) The owner or operator must notify the Regional Administrator in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, or final closure of a facility with such a unit. The owner or operator must notify the Regional Administrator in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed.

(2) The date when he "expects to begin closure" must be either no later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit.

(3) If the facility's permit is terminated, or if the facility is otherwise ordered, by judicial decree or final order under Section 3008 of RCRA, to cease receiving hazardous wastes or to close, then the requirements of this paragraph do not apply. However, the owner or operator must close the facility in accordance with the deadlines established in § 264.113.

(e) *Removal of wastes and decontamination or dismantling of equipment.* Nothing in this Section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

§ 264.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1)(i) The activities required to comply with this paragraph will, of necessity, take longer than 90 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes at the hazardous waste management unit or facility. The Regional Administrator may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1)(i) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable permit requirements.

(c) The demonstrations referred to in § 264.113(a) and (b) must be made as follows: (1) The demonstrations in paragraph (a) must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a); and (2) the demonstration in paragraph (b) must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b).

§ 264.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of or decontaminated unless otherwise specified in §§ 264.228, 264.258, 264.280, or 264.310. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of Part 262 of this Chapter.

§ 264.115 Certification of closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Regional Administrator, by

registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for closure under § 264.143(i).

§ 264.116 Survey plat.

No later than the submission of the certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a survey plat indicating the location and dimensions of landfills cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use, must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable Subpart G regulations.

§ 264.117 Post-closure care and use of property.

(a)(1) Post-closure care for each hazardous waste management unit subject to the requirements of §§ 264.117–264.120 must begin after completion of closure of the unit and continue for 30 years after that date and must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N of this Part.

(2) Any time preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular unit, the Regional Administrator may, in accordance with the permit modification procedures in Parts 124 and 270:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(b) The Regional Administrator may require, at partial and final closure, continuation of any of the security requirements of § 264.14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Regional Administrator finds that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in § 264.118.

§ 264.118 Post-closure plan; amendment of plan.

(a) *Written Plan.* The owner or operator of a hazardous waste disposal unit must have a written post-closure plan. In addition, certain surface impoundments and waste piles from which the owner or operator intends to remove or decontaminate the hazardous wastes at partial or final closure are required by §§ 264.228(c)(1)(ii) and 264.258(c)(1)(ii) to have contingent post-closure plans. Owners or operators of surface impoundments and waste piles not otherwise required to prepare contingent post-closure plans under §§ 264.228(c)(1)(ii) and 264.258(c)(1)(ii) must submit a post-closure plan to the Regional Administrator within 90 days from the date that the owner or operator or Regional administrator determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of §§ 264.117–264.120. The plan must be submitted with the permit application, in accordance with § 270.14(b)(13) of this Chapter, and approved by the Regional Administrator as part of the permit issuance procedures under Part 124 of this Chapter. In accordance with § 270.32 of this Chapter, the approved post-closure plan will become a condition of any RCRA permit issued.

(b) For each hazardous waste management unit subject to the requirements of this Section, the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this Part during the post-closure care period; and

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, and N of this Part; and

(ii) The function of the monitoring equipment in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

(3) The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period.

(c) Until final closure of the facility, a copy of the approved post-closure plan must be furnished to the Regional Administrator upon request, including request by mail. After final closure has been certified, the person or office specified in § 264.188(b)(3) must keep the approved post-closure plan during the remainder of the post-closure period.

(d) *Amendment of plan.* The owner or operator must request a permit modification to authorize a change in the approved post-closure plan in accordance with the applicable requirements of Parts 124 and 270. The written request must include a copy of the amended post-closure plan for approval by the Regional Administrator.

(1) The owner or operator may submit a written request to the Regional Administrator for a permit modification to amend the post-closure plan at any time during the active life of the facility or during the post-closure care period.

(2) The owner or operator must submit a written request for a permit modification to authorize a change in the approved post-closure plan whenever:

(i) Changes in operating plans or facility design affect the approved post-closure plan, or

(ii) There is a change in the expected year of final closure, if applicable, or

(iii) Events which occur during the active life of the facility, including partial and final closures, affect the approved post-closure plan.

(3) The owner or operator must submit a written request for a permit modification at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous waste at closure and is not otherwise required to submit a contingent post-closure plan under §§ 264.228(c)(1)(ii) and 264.258(c)(1)(ii) must submit a post-closure plan to the Regional Administrator no later than 90 days after the date that the owner or operator or Regional Administrator determines that the hazardous waste management unit must be closed as a landfill, subject to the requirements of § 264.310. The Regional Administrator will approve, disapprove or modify this plan in accordance with the procedures in Parts 124 and 270. In accordance with § 270.32 of this Chapter, the approved post-closure plan will become a permit condition.

(4) The Regional Administrator may request modifications to the plan under the conditions described in § 264.118(d)(2). The owner or operator must submit the modified plan no later than 60 days after the Regional Administrator's request, or no later than 90 days if the unit is a surface impoundment or waste pile not previously required to prepare a contingent post-closure plan. Any modifications requested by the Regional Administrator will be approved, disapproved, or modified in accordance with the procedures in Parts 124 and 270.

§ 264.119 Post-closure notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

(1) Record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under 40 CFR Subpart G regulations; and

(iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by § 264.116 and § 264.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Regional Administrator; and

(2) Submit a certification, signed by the owner or operator, that he has recorded the notation specified in paragraph (b)(1) of this Section, including a copy of the document in which the notation has been placed, to the Regional Administrator.

(c) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated soils, he must request a modification to the post-closure permit in accordance with the applicable requirements in Parts 124 and 270. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of § 264.117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this Chapter. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the Regional Administrator approve either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search; or

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

§ 264.120 Certification of completion of post-closure care.

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 264.145(i).

Subpart H—Financial Requirements

40 CFR Part 264 Subpart H is amended as follows:

1. In § 264.141, the following term is added to paragraph (f) in alphabetical order:

§ 264.141 Definitions of terms as used in this subpart.

* * * * *

(f) * * *

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with § 144.62(a), (b), and (c) of this title.

* * * * *

2. In § 264.142, paragraphs (a), introductory text of (b) and (c) are revised to read as follows:

§ 264.142 Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 264.111–264.115 and applicable closure requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the

most expensive, as indicated by its closure plan (see § 264.112(b)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 264.141(d).) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 264.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 264.143(f)(3). The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business*, as specified in paragraphs (b)(1) and (b)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after the Regional Administrator has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 264.142(b).

* * * * *

3. In § 264.143, paragraphs (a)(10), (b)(4)(ii), (c)(5), (d)(8), (e)(5), (f)(1)(i)(B), (f)(1)(i)(D), (f)(1)(ii)(B), (f)(1)(ii)(D), (f)(2), and (i) are revised to read as follows:

§ 264.143 Financial assurance for closure.

* * * * *

(a) * * *

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for partial or final closure activities, the Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with § 264.143(i) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(b) * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(c) * * *

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

* * * * *

(d) * * *

(8) Following a final administrative determination pursuant to section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the Regional Administrator may draw on the letter of credit.

* * * * *

(e) * * *

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Regional Administrator will instruct the insurer to make reimbursements in such amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be signficantly greater than the face amount of the policy, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with § 264.143(i), that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the

sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * * * *

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this title).

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

4. In § 264.144, paragraphs (a), the introductory text of (b), and paragraph (c) are revised to read as follows:

§ 264.144 Cost estimate for post-closure care.

(a) The owner or operator of a disposal surface impoundment, land treatment, or landfill unit, or of a surface impoundment or waste pile required under §§ 264.228 and 264.258 to prepare a contingent closure and post-closure plan, must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 264.117–264.120, 264.228, 264.258, 264.280, and 264.310.

(1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 264.141(d).)

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under § 264.117.

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 264.145. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the Regional Administrator as specified in § 264.145(f)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business* as specified in § 264.145(b)(1) and (b)(2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate within 30 days after the Regional Administrator has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in § 264.144(b).

* * * * *

5. In § 264.145, the introductory paragraph and paragraphs (a)(11), (b)(4)(ii), (c)(5), (d)(9), (e)(5), (f)(1)(i)(B), (f)(1)(i)(D), (f)(1)(ii)(B), (f)(1)(ii)(D), (f)(2), and (i) are revised to read as follows:

§ 264.145 Financial assurance for post-closure care.

The owner or operator of a hazardous waste management unit subject to the requirements of § 264.144 must establish financial assurance for post-closure care in accordance with the approved post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or the effective date of the regulation, whichever is later. He must choose from the following options:

(a) * * *

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure care activities, the Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(b) * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(c) * * *

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

* * * * *

(d) * * *

(9) Following a final administrative determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in accordance with the approved post-

closure plan and other permit requirements, the Regional Administrator may draw on the letter of credit.

* * * * *

(e) * * *

(5) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure care expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure care activities, the Regional Administrator will instruct the insurer to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure care expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * * * *

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (f)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this Title).

* * * * *

(i) *Release of the owner or operator from the requirements of this Section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Regional Administrator will notify the owner or operator that he is no longer required to maintain financial assurance for post-closure care of that unit, unless the Regional Administrator has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Regional Administrator shall provide the owner or operator with a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

* * * * *

6. In § 264.147, paragraph (e) is revised to read as follows:

§ 264.147 Liability requirements.

* * * * *

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this Section to maintain liability coverage for that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

* * * * *

7. In § 264.151 paragraph (b) is revised and paragraphs (f)(5) and (g)(5) are added to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(b) A surety bond guaranteeing payment into a trust fund, as specified in § 264.143(b) or § 264.145(b) or § 265.143(b) or § 265.145(b) of this Chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Financial Guarantee Bond

Date bond executed:

Effective date:

Principal: [legal name and business address of owner or operator]

Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: ________

Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: ________

Total penal sum of bond: $ ________

Surety's bond number: ________

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA), to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by an EPA Regional Administrator or a U.S. district court or other court of competent jurisdiction,

* * * * *

(f) * * *

(5) This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:

* * * * *

(g) * * *

(5) This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and

abandonment is required under Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:

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PART 265—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 265 is amended as follows:

1. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005 and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925 and 6935).

2. In 40 CFR Part 265 Subpart G, §§ 265.110–265.120 are revised as follows:

Subpart G—Closure and Post-Closure

265.110 Applicability.
265.111 Closure performance standard.
265.112 Closure plan; amendment of plan.
265.113 Closure; time allowed for closure.
265.114 Disposal or decontamination of equipment, structures and soils.
265.115 Certification of closure.
265.116 Survey plat.
265.117 Post-closure care and use of property.
265.118 Post-closure plan; amendment of plan.
265.119 Post-closure notices.
265.120 Certification of completion of post-closure care.

Subpart G—Closure and Post-Closure

§ 265.110 Applicability.

Except as § 265.1 provides otherwise:

(a) Sections 265.111–265.115 (which concern closure) apply to the owners and operators of all hazardous waste management facilities; and

(b) Sections 265.116–265.120 (which concern post-closure care) apply to the owners and operators of:

(1) All hazardous waste disposal facilities; and

(2) Waste piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these Sections are made applicable to such facilities in §§ 265.228 or 265.258.

§ 265.111 Closure performance standard.

The owner or operator must close the facility in a manner that:

(a) Minimizes the need for further maintenance, and

(b) Controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere, and

(c) Complies with the closure requirements of this Subpart including, but not limited to, the requirements of §§265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381 and 265.404.

§ 265.112 Closure plan; amendment of plan.

(a) *Written plan.* By May 19, 1981, the owner or operator of a hazardous waste management facility must have a written closure plan. Until final closure is completed and certified in accordance with § 265.115, a copy of the most current plan must be furnished to the Regional Administrator upon request, including request by mail. In addition, for facilities without approved plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Agency who is duly designated by the Administrator.

(b) *Content of plan.* The plan must identify steps necessary to perform partial and/or final closure of the facility at any point during its active life. The closure plan must include, at least:

(1) A description of how each hazardous waste management unit at the facility will be closed in accordance with § 265.111; and

(2) A description of how final closure of the facility will be conducted in accordance with § 265.111. The description must identify the maximum extent of the operation which will be unclosed during the active life of the facility; and

(3) An estimate of the maximum inventory of hazardous wastes ever on-site over the active life of the facility and a detailed description of the methods to be used during partial and final closure, including, but not limited to methods for removing, transporting, treating, storing or disposing of all hazardous waste, identification of and the type(s) of off-site hazardous waste management unit(s) to be used, if applicable; and

(4) A detailed description of the steps needed to remove or decontaminate all hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to satisfy the closure performance standard; and

(5) A detailed description of other activities necessary during the partial and final closure period to ensure that all partial closures and final closure satisfy the closure performance standards, including, but not limited to, ground-water monitoring, leachate collection, and run-on and run-off control; and

(6) A schedule for closure of each hazardous waste management unit and for final closure of the facility. The schedule must include, at a minimum, the total time required to close each hazardous waste management unit and the time required for intervening closure activities which will allow tracking of the progress of partial and final closure. (For example, in the case of a landfill unit, estimates of the time required to treat or dispose of all hazardous waste inventory and of the time required to place a final cover must be included.); and

(7) An estimate of the expected year of final closure for facilities that use trust funds to demonstrate financial assurance under §§ 265.143 or 265.145 and whose remaining operating life is less than twenty years, and for facilities without approved closure plans.

(c) *Amendment of plan.* The owner or operator may amend the closure plan at any time prior to the notification of partial or final closure of the facility. An owner or operator with an approved closure plan must submit a written request to the Regional Administrator to authorize a change to the approved closure plan. The written request must include a copy of the amended closure plan for approval by the Regional Administrator.

(1) The owner or operator must amend the closure plan whenever:

(i) Changes in operating plans or facility design affect the closure plan, or

(ii) There is a change in the expected year of closure, if applicable, or

(iii) In conducting partial or final closure activities, unexpected events require a modification of the closure plan.

(2) The owner or operator must amend the closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator must amend the closure plan no later than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who

intended to remove all hazardous wastes at closure, but are required to close as landfills in accordance with § 265.310.

(3) An owner or operator with an approved closure plan must submit the modified plan to the Regional Administrator at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the closure plan. If an unexpected event has occurred during the partial or final closure period, the owner or operator must submit the modified plan no more than 30 days after the unexpected event. These provisions also apply to owners or operators of surface impoundments and waste piles who intended to remove all hazardous wastes at closure but are required to close as landfills in accordance with § 265.310. If the amendment to the plan is a major modification according to the criteria in § 270.41 and §270.42, the modification to the plan will be approved according to the procedures in § 265.112(d)(4).

(4) The Regional Administrator may request modifications to the plan under the conditions described in paragraph (c)(1) of this Section. An owner or operator with an approved closure plan must submit the modified plan within 60 days of the request from the Regional Administrator, or within 30 days if the unexpected event occurs during partial or final closure. If the amendment is considered a major modification according to the criteria in §§ 270.41 and 270.42, the modification to the plan will be approved in accordance with the procedures in § 265.112(d)(4).

(d) *Notification of partial closure and final closure.*

(1) The owner or operator must submit the closure plan to the Regional Administrator at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment, or landfill unit, or final closure if it involves such a unit, whichever is earlier. The owner or operator must submit the closure plan to the Regional Administrator at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units. Owners or operators with approved closure plans must notify the Regional Administrator in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, landfill, or land treatment unit, or final closure of a facility involving such a unit. Owners and operators with approved closure plans must notify the Regional Administrator in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

(2) The date when he "expects to begin closure" must be either within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous waste. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all interim status requirements, the Regional Administrator may approve an extension to this one-year limit.

(3) The owner or operator must submit his closure plan to the Regional Administrator no later than 15 days after:

(i) Termination of interim status except when a permit is issued simultaneously with termination of interim status; or

(ii) Issuance of a judicial decree or final order under Section 3008 of RCRA to cease receiving hazardous wastes or close.

(4) The Regional Administrator will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the plan within 90 days of its receipt. If the Regional Administrator does not approve the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved closure plan. The Regional Administrator must assure that the approved plan is consistent with §§ 265.111 through 265.115 and the applicable requirements of §§ 265.90 *et seq.*, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(e) *Removal of wastes and decontamination or dismantling of equipment.* Nothing in this section shall preclude the owner or operator from removing hazardous wastes and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator demonstrates that:

(1)(i) The activities required to comply with this paragraph will, of necessity, take longer than 90 days to complete; or

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is a reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements.

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of

hazardous wastes at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Regional Administrator may approve an extension to the closure period if the owner or operator demonstrates that:

(1) (i) The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

(ii) (A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes; and

(B) There is reasonable likelihood that he or another person will recommence operation of the hazardous waste management unit or the facility within one year; and

(C) Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

(2) He has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including compliance with all applicable interim status requirements.

(c) The demonstrations referred to in § 265.113(a) and (b) must be made as follows: (1) The demonstrations in paragraph (a) must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a); and (2) The demonstrations in paragraph (b) must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b).

§ 265.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in §§ 265.228, 265.258, 265.280, or 265.310. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of Part 262 of this Chapter.

§ 265.115 Certification of closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for closure under § 265.143(h).

§ 265.116 Survey plat.

No later than the submission of the certification of closure of each hazardous waste disposal unit, an owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a survey plat indicating the location and dimensions of landfill cells or other hazardous waste disposal units with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority, or the authority with jurisdiction over local land use must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with the applicable Subpart G regulations.

§ 265.117 Post-closure care and use of property.

(a)(1) Post-closure care for each hazardous waste management unit subject to the requirements of §§ 265.117–265.120 must begin after completion of closure of the unit and continue for 30 years after that date. It must consist of at least the following:

(i) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

(ii) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N of this part.

(2) Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular hazardous waste disposal unit, the Regional Administrator may:

(i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

(ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(b) The Regional Administator may require, at partial and final closure, continuation of any of the security requirements of § 265.14 during part or all of the post-closure period when:

(1) Hazardous wastes may remain exposed after completion of partial or final closure; or

(2) Access by the public or domestic livestock may pose a hazard to human health.

(c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the Regional Administrator finds that the disturbance:

(1) Is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(2) Is necessary to reduce a threat to human health or the environment.

(d) All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in § 265.118.

§ 265.118 Post-closure plan; amendment of plan.

(a) *Written plan.* By May 19, 1981, the owner or operator of a hazardous waste disposal unit must have a written post-closure plan. An owner or operator of a surface impoundment or waste pile that intends to remove all hazardous wastes at closure must prepare a post-closure plan and submit it to the Regional Administrator within 90 days of the date that the owner or operator or Regional Administrator determines that the hazardous waste management unit or facility must be closed as a landfill, subject to the requirements of §§ 265.117–265.120.

(b) Until final closure of the facility, a copy of the most current post-closure

plan must be furnished to the Regional Administrator upon request, including request by mail. In addition, for facilities without approved post-closure plans, it must also be provided during site inspections, on the day of inspection, to any officer, employee or representative of the Agency who is duly designated by the Administrator. After final closure has been certified, the person or office specified in § 265.118(c)(3) must keep the approved post-closure plan during the post-closure period.

(c) For each hazardous waste management unit subject to the requirements of this Section, the post-closure plan must identify the activities that will be carried on after closure of each disposal unit and the frequency of these activities, and include at least:

(1) A description of the planned monitoring activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this Part during the post-closure care period; and

(2) A description of the planned maintenance activities, and frequencies at which they will be performed, to ensure:

(i) The integrity of the cap and final cover or other containment systems in accordance with the requirements of Subparts K, L, M, and N of this Part; and

(ii) The function of the monitoring equipment in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

(3) The name, address, and phone number of the person or office to contact about the hazardous waste disposal unit or facility during the post-closure care period.

(d) *Amendment of plan.* The owner or operator may amend the post-closure plan any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved post-closure plan must submit a written request to the Regional Administrator to authorize a change to the approved plan. The written request must include a copy of the amended post-closure plan for approval by the Regional Administrator.

(1) The owner or operator must amend the post-closure plan whenever:

(i) Changes in operating plans or facility design affect the post-closure plan, or

(ii) Events which occur during the active life of the facility, including partial and final closures, affect the post-closure plan.

(2) The owner or operator must amend the post-closure plan at least 60 days prior to the proposed change in facility design or operation, or no later than 60 days after an unexpected event has occurred which has affected the post-closure plan.

(3) An owner or operator with an approved post-closure plan must submit the modified plan to the Regional Administrator at least 60 days prior to the proposed change in facility design or operation, or no more than 60 days after an unexpected event has occurred which has affected the post-closure plan. If an owner or operator of a surface impoundment or a waste pile who intended to remove all hazardous wastes at closure in accordance with §§ 265.228(b) or 265.258(a) is required to close as a landfill in accordance with § 265.310, the owner or operator must submit a post-closure plan within 90 days of the determination by the owner or operator or Regional Administrator that the unit must be closed as a landfill. If the amendment to the post-closure plan is a major modification according to the criteria in §§ 270.41 and 270.42, the modification to the plan will be approved according to the procedures in § 265.118(f).

(4) The Regional Administrator may request modifications to the plan under the conditions described in above paragraph (d)(1). An owner or operator with an approved post-closure plan must submit the modified plan no later than 60 days of the request from the Regional Administrator. If the amendment to the plan is considered a major modification according to the criteria in §§ 270.41 and 270.42, the modifications to the post-closure plan will be approved in accordance with the procedures in § 265.118(f). If the Regional Administrator determines that an owner or operator of a surface impoundment or waste pile who intended to remove all hazardous wastes at closure must close the facility as a landfill, the owner or operator must submit a post-closure plan for approval to the Regional Administrator within 90 days of the determination.

(e) The owner or operator of a facility with hazardous waste management units subject to these requirements must submit his post-closure plan to the Regional Administrator at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date he "expects to begin closure" of the first hazardous waste disposal unit must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous waste or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit the post-closure plan to the Regional Administrator no later than 15 days after:

(1) Termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) Issuance of a judicial decree or final orders under Section 3008 of RCRA to cease receiving wastes or close.

(f) The Regional Administrator will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the post-closure plan and request modifications to the plan no later than 30 days from the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a post-closure plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the plan within 90 days of its receipt. If the Regional Administrator does not approve the plan he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this modified plan becomes the approved post-closure plan. The Regional Administrator must ensure that the approved post-closure plan is consistent with §§ 265.117 through 265.120. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(g) The post-closure plan and length of the post-closure care period may be modified any time prior to the end of the post-closure care period in either of the following two ways:

(1) The owner or operator or any member of the public may petition the Regional Administrator to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause, or alter the requirements of the post-closure care period based on cause.

(i) The petition must include evidence demonstrating that:

(A) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan (e.g., leachate or ground-water monitoring results, characteristics of the wastes, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the facility is secure), or

(B) The requested extension in the post-closure care period or alteration of post-closure care requirements is necessary to prevent threats to human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

(ii) These petitions will be considered by the Regional Administrator only when they present new and relevant information not previously considered by the Regional Administrator. Whenever the Regional Administrator is considering a petition, he will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Regional Administrator will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.) After considering the comments, he will issue a final determination, based upon the criteria set forth in paragraph (g)(1) of this section.

(iii) If the Regional Administrator denies the petition, he will send the petitioner a brief written response giving a reason for the denial.

(2) The Regional Administrator may tentatively decide to modify the post-closure plan if he deems it necessary to prevent threats to human health and the environment. He may propose to extend or reduce the post-closure care period applicable to a hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

(i) The Regional Administrator will provide the owner or operator and the affected public, through a newspaper notice, the opportunity to submit written comments within 30 days of the date of the notice and the opportunity for a public hearing as in subparagraph (g)(1)(ii) of this section. After considering the comments, he will issue a final determination.

(ii) The Regional Administrator will base his final determination upon the same criteria as required for petitions under paragraph (g)(1)(i) of this section. A modification of the post-closure plan may include, where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Regional Administrator would then determine whether the requirement(s) should be permanently discontinued or reinstated to prevent threats to human health and the environment.

§ 265.119 Post-closure notices.

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Regional Administrator, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

(1) Record, in accordance with State law, a notation on the deed to the facility property—or on some other instrument which is normally examined during title search—that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under 40 CFR Subpart G regulations; and

(iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by § 265.116 and § 265.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Regional Administrator; and

(2) Submit a certification signed by the owner or operator that he has recorded the notation specified in paragraph (b)(1) of this Section and a copy of the document in which the notation has been placed, to the Regional Administrator.

(c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he must request a modification to the approved post-closure plan in accordance with the requirements of § 265.118(g). The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of § 265.117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of this Chapter. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the Regional Administrator approve either:

(1) The removal of the notation on the deed to the facility property or other instrument normally examined during title search, or

(2) The addition of a notation to the deed or instrument indicating the removal of the hazardous waste.

§ 265.120 Certification of completion of post-closure care.

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 265.145(h).

Subpart H—Financial Requirements

40 CFR Part 265 Subpart H is amended as follows:

1. In § 265.140, paragraph (a) is revised as follows:

§ 265.140 Applicability.

(a) The requirements of §§ 265.142, 265.143 and 265.147 through 265.150 apply to owners or operators of all

hazardous waste facilities, except as provided otherwise in this section or in § 265.1.

* * * * *

2. In 40 CFR § 265.141, the following term is added to paragraph (f) in alphabetical order:

§ 265.141 [Amended]

* * * * *

(f) * * *

"Current plugging and abandonment cost estimate" means the most recent of the estimates prepared in accordance with § 144.62(a), (b), and (c) of this Title.

* * * * *

3. In § 265.142, paragraphs (a) and the introductory text of paragraph (b), and paragraph (c) are revised. Paragraphs (b)(i) and (b)(ii) are correctly designated as paragraphs (b)(1) and (b)(2), respectively.

§ 265.142 Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 265.111–265.115 and applicable closure requirements of §§ 265.178, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381 and 265.404.

(1) The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 265.112(b)); and

(2) The closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of parent corporation in § 265.141(d).) The owner or operator may use costs for on-site disposal if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The closure cost estimate may not incorporate any salvage value that may be realized by the sale of hazardous wastes, facility structures or equipment, land or other facility assets at the time of partial or final closures.

(4) The owner or operator may not incorporate a zero cost for hazardous waste that might have economic value.

(b) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 265.143. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 265.143(e)(3). The adjustment may be made by recalculating the closure cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business*, as specified in paragraphs (b)(1) and (b)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) During the active life of the facility, the owner or operator must revise the closure cost estimate no later than 30 days after a revision has been made to the closure plan which increases the cost of closure. If the owner or operator has an approved closure plan, the closure cost estimate must be revised no later than 30 days after the Regional Administrator has approved the request to modify the closure plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate must be adjusted for inflation as specified in § 265.142(b).

* * * * *

4. In § 265.143, paragraphs (a)(10), (b)(4)(ii), (c)(8), (d)(5), (e)(1)(i)(B), (e)(1)(i)(D), (e)(1)(ii)(B), (e)(1)(ii)(D), (e)(2), and (h) are revised as follows:

§ 265.143 Financial assurance for closure.

* * * * *

(a) * * *

(10) After beginning partial or final closure, an owner or operator or another person authorized to conduct partial or final closure may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with § 265.143(h) that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

* * * * *

(b) * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

* * * * *

(c) * * *

(8) Following a final administrative determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform final closure in accordance with the approved closure plan when required to do so, the Regional Administrator may draw on the letter of credit.

* * * * *

(d) * * *

(5) After beginning partial or final closure, an owner or operator or any other person authorized to conduct closure may request reimbursements for closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining operating life. Within 60 days after receiving bills for closure activities, the Regional Administrator will instruct the insurer to make reimbursements in such amounts as the Regional Administrator specifies in writing if the Regional Administrator determines that the partial or final closure expenditures are in accordance with the approved closure plan or otherwise justified. If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with § 265.143(h), that the owner or operator is no longer required

to maintain financial assurance for final closure of the particular facility. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this Title).

* * * * *

(h) *Release of the owner or operator from the requirements of this Section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this Section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

5. In § 265.144, paragraphs (a), introductory text of (b) and (c) are revised to read as follows:

§ 265.144 Cost estimate for post-closure care.

(a) The owner or operator of a hazardous waste disposal unit must have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in §§ 265.117–265.120, 265.228, 265.258, 265.280, and 265.310.

(1) The post-closure cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct post-closure care activities. A third party is a party who is neither a parent nor subsidiary of the owner or operator. (See definition of parent corporation in § 265.141(d).)

(2) The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under § 265.117.

(b) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 265.145. For owners or operators using the financial test or corporate guarantee, the post-closure care cost estimate must be updated for inflation no later than 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator as specified in § 265.145(d)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business* as specified in § 265.145 (b)(1) and (b)(2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

* * * * *

(c) During the active life of the facility, the owner or operator must revise the post-closure cost estimate no later than 30 days after a revision to the post-closure plan which increases the cost of post-closure care. If the owner or operator has an approved post-closure plan, the post-closure cost estimate must be revised no later than 30 days after the Regional Administrator has approved the request to modify the plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in § 265.144(b).

* * * * *

4. In § 265.145, the introductory paragraph and paragraphs (a)(11), (b)(4)(ii), (c)(9), (d)(5), (e)(1)(i)(B), (e)(1)(i)(D), (e)(1)(ii)(B), (e)(1)(ii)(D), (e)(2), and (h) are revised as follows:

§ 265.145 Financial assurance for post-closure care.

By the effective date of these regulations, an owner or operator of a facility with a hazardous waste disposal unit must establish financial assurance for post-closure care of the disposal unit(s).

* * * * *

(a) * * *

(11) An owner or operator or any other person authorized to conduct post-closure care may request reimbursements for post-closure expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure care activities, the Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

* * * * *

(b) * * *

(4) * * *

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Regional Administrator becomes final, or within 15 days after an order to begin final closure is issued by a U.S. district court or other court of competent jurisdiction; or

(iii) * * *

* * * * *

(c) * * *

(9) Following a final administrative determination pursuant to Section 3008 of RCRA that the owner or operator has failed to perform post-closure care in

accordance with the approved post-closure plan and other permit requirements, the Regional Administrator may draw on the letter of credit.

* * * * *

(d) * * *

(5) An owner or operator or any other person authorized to perform post-closure care may request reimbursement for post-closure care expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for post-closure care activities, the Regional Administrator will instruct the insurer to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the post-closure expenditures are in accordance with the approved post-closure plan or otherwise justified. If the Regional Administrator does not instruct the insurer to make such reimbursements, he will provide a detailed written statement of reasons.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

* * * * *

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates.

(2) The phrase "current closure and post-closure cost estimates" as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f)). The phrase "current plugging and abandonment cost estimates" as used in paragraph (e)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this Title).

* * * * *

(h) *Release of the owner or operator from the requirements of this Section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period has been completed in accordance with the approved post-closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this Section to maintain financial assurance for post-closure care of that unit, unless the Regional Administrator has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Regional Administrator will provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

* * * * *

7. In § 265.147, paragraph (e) is revised to read as follows:

§ 265.147 Liability Requirements.

* * * * *

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this Section to maintain liability coverage for that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

Subpart B—Permit Application

40 CFR Part 270 Subpart B is amended as follows:

2. In § 270.14, paragraphs (b)(14), (15) and (16) are revised to read as follows:

§ 270.14 Contents of Part B application: General requirements.

* * * * *

(b) * * *

(14) For hazardous waste disposal units that have been closed, documentation that notices required under §264.119 have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with §264.142 and a copy of the documentation required to demonstrate financial assurance under § 264.143. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(16) Where applicable, the most recent post-closure cost estimate for the facility prepared in accordance with § 264.144 plus a copy of the documentation required to demonstrate financial assurance under § 264.145. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

* * * * *

3. In § 270.42, paragraph (d) is revised to read as follows:

§ 270.42 Minor modifications of permits.

* * * * *

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the Director. Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR 264, Subpart H (Financial Requirements), until the new owner or operator has demonstrated to the Director that he is complying with the requirements of that Subpart. The new owner or operator must demonstrate compliance with Subpart H requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the old owner or operator in writing that he no longer needs to comply with

Subpart H as of the date of demonstration.

* * * * *

4. In § 270.72, paragraph (d) is revised to read as follows:

§ 270.72 Changes during interim status.

* * * * *

(d) Changes in the ownership or operational control of a facility may be made if the new owner or operator submits a revised Part A permit application no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of 40 CFR 265, Subpart H (Financial Requirements), until the new owner or operator has demonstrated to the Director that he is complying with the requirements of that Subpart. The new owner or operator must demonstrate compliance with Subpart H requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the Director by the new owner or operator of compliance with Subpart H, the Director shall notify the old owner or operator in writing that he no longer needs to comply with Subpart H as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change of ownership or operational control of the facility.

* * * * *

[FR Doc. 86-6368 Filed 5-1-86; 8:45 am]

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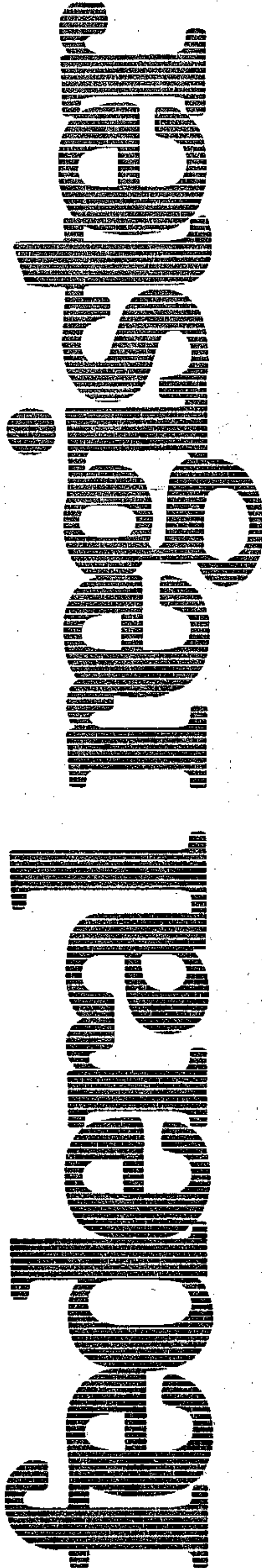
File: HW 1.21-4



Friday
July 11, 1986

Part IV

Environmental Protection Agency

40 CFR Parts 264 and 265

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage; Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[SWH-FRL-3015-3]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: On August 21, 1985 (50 FR 33902), the Environmental Protection Agency (EPA or the Agency) published a notice of proposed rulemaking to amend the financial responsibility requirements concerning liability coverage for owners and operators of hazardous waste treatment, storage, and disposal facilities (50 FR 33902). The proposal set forth several regulatory options under consideration by the Agency to provide relief for owners and operators who have encountered difficulties in obtaining insurance necessary to comply with these requirements. EPA is today amending these requirements in interim final form to allow use of one additional financial responsibility mechanism: A corporate guarantee. This action will facilitate greater compliance with the liability coverage requirements. The Agency is also requesting comments on the form of the guarantee.

EFFECTIVE DATE: These regulations shall become effective September 9, 1986.

ADDRESSES: The public must send an original and two copies of their comments on the interim final rule no later than August 11, 1986, to: EPA RCRA docket, (S-212) (WH-562) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the docket #F-86-CGIF-FFFFF on your comments. The comments received plus the record supporting this rulemaking are available for public inspection at the docket room from 9:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The public must make an appointment to review docket materials. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact Carlos M. Lago, Office of Solid Waste (HW-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4780.

SUPPLEMENTARY INFORMATION:

I. Authority
II. Background
 A. Current Liability Coverage Requirements
 B. August 21, 1985, Proposed Rule
III. Authorization of the Corporate Guarantee
IV. Response to Comments on Corporate Guarantee
V. Effective Date
VI. State Authority
VII. Request for Comments
VIII. Executive Order 12291
IX. Paperwork Reduction Act
X. Regulatory Flexibility Act
XI. Supporting Documents
XII. List of Subjects

I. Authority

This regulation is being promulgated under the authority of sections 2002(a), 3004, and 3005 of the Solid Waste Disposal Act; as amended by the Resource Conservation and Recovery Act, as amended [42 U.S.C. 6912(a), 6924, and 6925].

II. Background

A. Current Liability Coverage Requirements

Section 3004(a)(6) of the Resource Conservation and Recovery Act, as amended (RCRA), requires EPA to establish financial responsibility standards for owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment.

On April 16, 1982, EPA promulgated regulations requiring owners and operators to demonstrate liability coverage during the operating life of the facility for bodily injury and property damage to third parties resulting from accidental occurrences arising from facility operations (47 FR 16554). Under the liability coverage regulations (40 CFR 264.147 and 265.147), owners and operators of hazardous waste treatment, storage, and disposal facilities are required to demonstrate, on a per firm basis, liability coverage for sudden accidental occurrences in the amount of $1 million per occurrence and $2 million annual aggregate, exclusive of legal defense costs. Owners and operators of surface impoundments, landfills and land treatment facilities are also required to demonstrate, on a per firm basis, liability coverage for nonsudden accidental occurrences in the amount of $3 million per occurrence and $6 million annual aggregate, exclusive of legal defense costs. "First-dollar" coverage is required; that is, the amount of any deductible must be covered by the insurer, who may have a right of reimbursement of the deductible amount from the insured. Financial responsibility can be demonstrated through a financial test, liability insurance, or a combination of the two.

The requirements for coverage of sudden accidental occurrences became effective on July 15, 1982. The requirements for nonsudden accidental occurrences were phased in gradually according to annual dollar sales or revenue figures of the owner or operator. January 16, 1985 was the final phase-in date.

Congress has expressed its support for financial responsibility requirements in section 213 of the Hazardous and Solid Waste Amendments of 1984 (RCRA section 3005(e)). That section provides for the termination of interim status for all land disposal facilities by November 8, 1985, unless: (1) The owner or operator applies for a final determination regarding the issuance of a permit by that date and (2) certifies that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements for liability coverage, closure, and post-closure care. Prior to the enactment of HSWA, a facility's interim status could be terminated only when final administrative disposition of the permit application was made, or if the facility failed to furnish the necessary application information.

B. August 21, 1985, Proposed Rule

Some owners and operators have encountered difficulties in obtaining insurance necessary to comply with the liability coverage requirements. In the notice of proposed rulemaking published by EPA on August 21, 1985 (50 FR 33902), the Agency considered taking one or a combination of the following five regulatory actions in response to this problem:

(1) Maintain the existing requirements;

(2) Clarify the required scope of coverage and/or lower the required levels of coverage;

(3) Authorize other financial responsibility mechanisms;

(4) Authorize waivers; and

(5) Suspend or withdraw the liability coverage requirements.

The Agency has decided at this time to authorize owners and operators to use a corporate guarantee as another mechanism to comply with the liability coverage requirements. EPA is still considering the other options proposed in the August 21, 1985, Notice of Proposed Rulemaking, and will publish its decision in the future. Comments on the proposed rule that address the corporate guarantee are discussed in Section IV of this preamble. Comments on other issues raised by the proposal

will be addressed in subsequent publications.

III. Authorization of the Corporate Guarantee

To enable more firms to comply with the liability coverage required during a facility's operating life, the Agency has decided to revise 40 CFR 264.147, 264.151, and 265.147 to authorize, in addition to insurance and the financial test, the use of the corporate guarantee. The Agency believes this will provide owners and operators with greater flexibility while still ensuring that funds will be available to pay third-party liability claims. Use of the corporate guarantee is consistent with EPA's closure and post-closure financial responsibility regulations (40 CFR 264.143, 264.145, 265.143 and 265.145) and with Congressional intent. In the 1984 Hazardous and Solid Waste Amendments (HSWA), Congress provides that RCRA financial responsibility for liability insurance may be established by, among other options, guarantees and self-insurance (HSWA section 205; section 3004(t) of RCRA).

A corporate guarantee is a promise by one corporation to answer for the default of another. It is a collateral undertaking and presupposes another obligation which is identified in the guarantee. There is ordinarily a contract or other agreement between the principal (obligor) and a third party creating the primary obligations. The guarantee is then a contract between the principal and the guarantor, guaranteeing payment of the primary obligation. However, in the corporate guarantee that is the subject of today's rule, the obligation between the principal and third party will generally arise out of tort liability, not contract. In any case, if the principal defaults on the primary obligation, then the guarantor is liable to the third party on the obligation created by the guarantee. As provided in §§ 264.147(g)(1) and 265.147(g)(1) of today's rule, the guarantor must be the parent corporation of the owner or operator, directly owning at least 50 percent of the voting stock of the corporation that owns or operates the facility; the latter corporation is deemed a "subsidiary" of the parent corporation.

The Agency has decided to allow use of the corporate guarantee only if the guarantor is the parent corporation of the owner or operator because it believes such a guarantee is more likely to be enforceable under state law, and because the parent corporation is interested in its subsidiaries' performance, and is in a better position than other corporate entities to ensure that the facilities in question are being operated in conformance with EPA regulations.

The corporate guarantee that is the subject of today's rule differs from the corporate guarantee for closure or post-closure care in several ways. First, and most important, the guarantee is not made to the Environmental Protection Agency, as obligee. Instead, the corporate guarantee for liability coverage is made by the corporate parent on behalf of the owner or operator "to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facilities covered by [the] guarantee". Unlike the corporate guarantee for closure or post-closure care, EPA cannot take action to enforce the terms of the corporate guarantee for liability coverage. Action to notify the corporate guarantor of an obligation to pay under the terms of the guarantee will have to be taken by injured parties who are covered by the guarantee.

Second, the Agency has modified the cancellation provisions. The guarantee for closure and/or post-closure care may be terminated 120 days or later, after notice is provided to the EPA Regional Administrator. In that case, the guarantor is responsible for providing alternative financial assurance if the owner or operator fails to provide such assurance. Today's rule, however, provides guarantor cannot terminate a liability coverage guarantee unless and until the owner or operator obtains alternative liability coverage that the Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located approve(s). We believe that this formulation will better provide continued assurance of financial responsibility. In addition, while the Regional Administrator can require an owner or operator to undertake closer or post-closure actions, and may decide to invoke that authority upon receipt of a cancellation notice, no comparable authority exists for third-party liability.

Finally, the Agency has added a requirement, not found in the corporate guarantee for closure or post-closure care, that the guarantee is to be interpreted and enforced in accordance with the laws of the State of incorporation of the guarantor. This clause is intended to operate in conjunction with the regulatory requirement in § 264.147(g)(2) to ensure that the corporate guarantee for liability is valid and enforceable under the relevant State law. Section 264.147(g)(2) provides that the corporate guarantee may be used to satisfy the liability coverage requirements only if the Attorney General(s) or insurance commissioner(s) of the State(s) in which the guarantor is incorporated and the State(s) in which the facility(ies) covered by the guarantee is (are) located have submitted a written statement to EPA that a corporate guarantee executed as required is a legally valid and enforceable obligation in that State. The Agency expects in this way to ensure that State limitations on the powers of corporations to undertake guarantee obligations will not affect the operation of the corporate guarantee for liability.

Because EPA recognizes that a subsidiary's assets and liabilities are usually consolidated into the balance sheet of parent corporations, the Agency has decided not to allow a corporate subsidiary to use the financial test in combination with the corporate guarantee. However, an owner or operator may use insurance in combination with either the financial test or the corporate guarantee to comply with the liability requirements (§ 264.147(a)(3) and § 265.147(a)(3)).

EPA has decided to allow use of the corporate guarantee because it may provide relief for some owners and operators who are unable to obtain insurance. However, the Agency has concerns about the enforceability of the guarantee under State insurance law. This is a major reason why the guarantee is restricted to parents. In addition, because the validity of the corporate guarantee will depend on applicable state law, the guarantee will be allowed only for facilities in States where the State Attorney General or State insurance commissioner has certified to EPA that the guarantee is fully valid and enforceable by third-parties who are injured by accidents arising from the operations of the facility involved. EPA has sent requests to the Attorney General in each State for an opinion on this subject. A list of non-authorized States where the parent corporate guarantee is fully valid and enforceable will then be compiled by the Agency to be published in the **Federal Register** in the near future.

IV. Summary of and Response to Comments on Corporate Guarantee

In the August 21, 1985 notice of proposed rulemaking, the Agency requested comments on whether the corporate guarantee should be authorized as an alternative mechanism for demonstrating financial assurance for liability coverage. The Agency previously considered authorizing the corporate guarantee as an alternative

financial assurance mechanism for liability coverage, but had major questions about the validity and enforceability of such an arrangement, especially with respect to State insurance laws (47 FR 16547 (April 16, 1982)).

The Agency requested comments on the potential advantages and disadvantages of authorizing owners and operators to use a corporate guarantee to demonstrate financial assurance for liability coverage. In particular, comments were requested on the validity and the enforceability of this mechanism with respect to State laws. Most commenters on the proposed rule strongly endorsed the corporate guarantee as an additional financial responsibility alternative for satisfying liability coverage requirements.

Commenters stated that the corporate guarantee is a common commercial instrument and that most States' general corporation laws authorize corporations to enter into guarantee contracts. The commenters who provided information about State insurance laws generally stated that the corporate guarantee for liability coverage would be valid under their State's statutes. For example, one commenter from North Carolina said that initial research showed that the corporate guarantee would be a valid and enforceable obligation under North Carolina law. In addition, a commenter noted that Colorado and Montana currently allow the corporate guarantee for liability coverage. One commenter in Kentucky said that normal transporters, including hazardous waste transporters, are allowed to self-insure through their parent corporations to satisfy the Kentucky Department of Transportation's requirements for transporters.

Several commenters stated that if a corporate guarantee were allowed as an alternate mechanism, they would take advantage of that option. One commenter suggested that allowing the corporate guarantee to demonstrate financial assurance for liability coverage could increase compliance with the liability coverage requirements. Louisiana strongly supported the use of the corporate guarantee, stating that preliminary analysis showed that it would allow medium-sized companies and commercial hazardous waste disposers to comply with the liability coverage rules.

Several commenters noted that use of the corporate guarantee might simplify the task of preparing financial assurance documentation, which would result in increased compliance with the regulations. Because many subsidiaries consolidate their financial statements with parent corporations, they do not have separately audited financial statements. According to some commenters, requiring each subsidiary to comply with the financial test greatly increases the cost of compliance and generates significant quantities of duplicate documentation.

Commenters also offered various other arguments in support of use of the corporate guarantee for liability coverage. Several said that the guarantee is consistent with existing business practices. Financial institutions have used corporate guarantees to assure repayment of debt by a subsidiary. The commenters believed that corporate guarantees would provide a cost-effective alternative to obtaining insurance. One commenter suggested that the corporate guarantee would better achieve the goal of the liability coverage regulations, because, unlike many insurance policies, it would provide financial assurance for liability exposure from pre-existing contamination.

Commenters who opposed use of the corporate guarantee as an alternative mechanism for demonstrating financial assurance for liability coverage made several arguments. First, some commenters were concerned that the guarantee would not be valid or enforceable. The Agency shares that concern, and is thus requiring that before a corporate guarantee can be used to demonstrate financial assurance, the State Attorney General(s) or insurance commissioner(s) in the State(s) where the guarantor is incorporated and where the facility(ies) is (are) located must issue a written statement that under the laws of that (these) State(s) such a guarantee is valid and enforceable.

Second, some commenters suggested that the corporate guarantee would not be an effective financial assurance mechanism in the long run because parent corporations eventually would find themselves in the situation currently faced by some private insurance companies, that is, subject to extensive litigation and clean-up expenses. The Agecy believes that a parent will have a strong interest in ensuring that a guaranteed subsidiary has sufficient pollution monitoring and safety measures to prevent and minimize accidential releases and third party damages from occurring at the subsidiaries' TSDFs. In addition, where third party damages occur, the parent guarantor's financial liability will be limited to the amount of the guarantee, exclusive of legal defense costs.

One commenter asked whether it was advisable for a corporate parent to advance a guarantee to a company that cannot obtain liability insurance, and wondered if that opened the door to a lawsuit against the parent's directors and officers. Parent corporations should use good judgment about the guarantees that they provide to subsidiaries. Nevertheless, the inability of a subsidiary to obtain liability insurance is not necessarily an indication that the subsidiary's facilities are likely to cause damages to third parties and should be closed.

Commenters argued that a parent corporation might guarantee subsidiaries for which the parent did not have the funding to provide liability coverage. The Agency disagrees. The requirement that a parent corporation seeking to provide a corporate guarantee must satisfy the requirements of the financial test will provide assurance that the parent corporation has sufficient financial strength to issue the guarantee.

Commenters who were concerned about the November 8, 1985, deadline for certifying compliance with the liability coverage requirements suggested combining the corporate guarantee with another alternative, such as waivers. Commenters suggested that the Agency should grant waivers to those facility owners and operators who could not certify compliance with the financial responsibility requirements for liability coverage, closure, and post-closure care on November 8, but who could use the corporate guarantee once it is authorized. The Agency cannot adopt this suggestion. Under section 3005(e) of RCRA, facilities who did not certify compliance with the liability coverage regulations by November 8, 1985, lost interim status. The Agency does not have authority to nullify that event.

One commenter suggested that the following concerns should be addressed in developing any corporate guarantee: (1) Whether funds would be required to be set aside or otherwise available for third party claims; and (2) whether, because of the complexity of the guarantee, third parties would be inhibited from obtaining access to "legitimate" compensation funds or whether inordinate time and resources would be required to enforce the guarantee. The Agency has considered these issues in promulgating the corporate guarantee. Although the guarantor is not required to set aside funds for third party compensation, it must pass the financial test and thereby demonstrate that it has sufficient funds to implement its guarantee, if necessary. Second, as discussed in detail in Section

III, the Agency has attempted to design the corporate guarantee to allow for the easiest possible enforcement by third parties.

In summary, the Agency disagrees with those commenters who opposed use of the corporate guarantee as an alternative mechanism. Although certain State laws may not authorize use of the corporate guarantee for liability coverage, the Agency believes that in most States the guarantee will be valid and enforceable. Under a corporate guarantee, the parent corporation guarantees its subsidiary's obligations and therefore has a direct financial stake in its subsidiaries' actions. The strict requirements of the financial test will deter a parent corporation from issuing a guarantee for a subsidiary when it does not have adequate financial strength to assure the availability of funds for third party liability claims. The Agency believes that expanding the number of available options is desirable, given the present state of the insurance market and the high level of assurance provided by the corporate guarantee.

V. Effective Date

This regulation is being published in "interim final form". This means that although the regulation will be effective in 60 days, the Agency solicits comments on the regulation (in particular the form of the corporate guarantee), and may modify it in response to additional public comment.

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto generally take effect six months after their promulgation. The purpose of this requirement is to allow sufficient lead time for the regulated community to prepare to comply with major new regulatory requirements. The statute allows for a shorter period prior to the effective date, however, for "good cause" (among other reasons), which the Agency believes exists here. The Agency believes that an effective date six months after promulgation for the amendment promulgated today, would cause substantial and unnecessary disruption in the implementation of the existing regulations and would be contrary to the interest of the regulated community and the public.

Today's amendment adopts the corporate guarantee as another mechanism for complying with third-party liability coverage requirements and thus makes it easier for some owners and operators to act in accordance with the RCRA liability coverage regulations. The Agency believes that it makes little sense to delay needed relief to owners or operators by an additional four months. However, because the Agency may wish to revise the form of the guarantee on the basis of public comment, the amendments to §§ 264.147, 264.151 and 265.147 promulgated in this rulemaking action will not be effective until 60 days from the date of this **Federal Register** notice.

VI. State Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Today's announcement will be automatically applicable only in those States that do not have final authorization. In authorized States, the requirements will not be applicable unless and until the State revises its program to adopt equivalent requirements under State law.

It should be noted that authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose standards in addition to those in the Federal program.

The standards promulgated today are considered to be less stringent than the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions listed above.

VII. Request for Public Comment

Although the use of a corporate guarantee was proposed August 21, 1985, the Agency did not specify what form the guarantee would take. We believe that the guarantee form included in § 264.151 of today's rule will generally be valid and enforceable. At a minimum, section 3004(t) of RCRA provides for a right of direct action against guarantors in the event of bankruptcy of the owner or operator, or if a court's jurisdiction cannot be obtained over an owner or operator likely to be insolvent at the time of judgment. Moreover, we believe that a right of action under the guarantee set forth in today's rule will lie against the guarantor whenever a judgment has been obtained against the owner or operator or a settlement agreement has been executed.

However, due to the unusual nature of the guarantee (i.e., it is a general guarantee designed to assure payment of tortious, rather than contractual, obligations to unidentified third parties), the Agency would appreciate public comments *on the form itself*. In particular, the Agency requests comments on whether any modifications to the form would be desirable to facilitate claims by injured third parties against the guarantor. We do *not* solicit comments on the § 264.147 and § 265.147 requirements themselves.

Two copies of all comments should be sent, no later than 30 days after the date of this notice to: EPA public docket, room S-212, U.S. EPA, 401 M Street SW., Washington, DC 20460, where they may be inspected by all interested parties.

VIII. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being considered today to the liability coverage requirements are not "major rules". The options under consideration will not likely result in a significant increase in costs (but are likely to decrease costs) and thus are not a major rule; no Regulatory Impact Analysis has been prepared.

IX. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*., and have been assigned OMB control number 2050-0036.

X. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1950 (5 U.S.C. 601 *et seq.*), Federal Agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). The option under consideration relaxes the existing insurance requirements and thus commonly reduces costs associated with compliance.

Accordingly, I certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

XI. Supporting Documents

Supporting documents available for this interim final rule include comments on the August 21, 1985 proposed rule, summary of the comments, and background documents on the financial test for liability coverage. In addition, background documents prepared for previous financial assurance regulations are also available.

All of these supporting materials are available for review in the EPA public docket (RCRA docket #F-86-CGIF-FFFFF), Room S-212, Waterside Mall, 401 M Street SW., Washington, DC 20460.

List of Subjects

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

Dated: July 3, 1986.

Lee M. Thomas,

Administrator.

For reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES: LIABILITY COVERAGE

40 CFR Part 264 is amended as follows:

1. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

2. In § 264.147, paragraph (g) is redesignated as paragraphs (h), paragraph (a)(3), (b)(2), (a)(2), and (b)(3) are revised, and a new paragraph (g) is added, to read as follows:

§ 264.147 Liability requirements.

(a) * * *

(2) An owner operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraph (g) of this section.

(3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amount of coverage demonstrated must total at least the minimum amounts required by this paragraph.

(b) * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amounts of coverage demonstrated must total at least the minimum amounts required by this paragraph.

* * * * *

(g) Corporate guarantee for liability coverage.

(1) Subject to subparagraph (2), an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantee must meet the requirements for owners or operators in paragraphs (f)(1) through (7) of this section. The wording of the corporate guarantee must be identical to the wording specified in § 264.151(h)(2). A certified copy of the corporate guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. The terms of the corporate guarantee must provide that:

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Regional Administrator(s). This guarantee may not be terminated unless and until the EPA Regional Administrator(s) approve(s) alternate liability coverage complying with section 264.147 and/or 265.147.

(2) A corporate guarantee may be used to satisfy the requirements of this section only if the Attorney General(s) or insurance commissioner(s) of the State in which the guarantor is incorporated *and* the State(s) in which the facility(ies) covered by the guarantee is (are) located has (have) submitted a written statement to EPA that a corporate guarantee executed as described in this section and Section 264.151(h)(2) is a legally valid and enforceable obligation in that State.

* * * * *

3. In § 264.151, paragraph (g) is revised to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(g) A letter from the chief financial officer, as specified in § 264.147(f) or § 265.147(f) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter From Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located.]

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in Subpart H of 40 CFR Parts 264 and 265.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265:———.

The firm identified above guarantees, through the corporate guarantee specified in Subpart H of 40 CFR Parts 264 and 265, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following subsidiaries of the firm:———.

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following four paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility:_____.

2. The firm identified above guarantees, through the corporate guarantee specified in Subpart H of 40 CFR Parts 264 and 265, the closure and post-closure care of the following facilities owned or operated by its subsidiaries. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility:_____.

3. In States where EPA is not administering the financial requirements of Subpart H of 40 CFR Parts 264 and 265, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility:_____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in Subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:_____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under Part 144. The current closure cost estimates as required by 40 CFR 144.62 are shown for each facility:_____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this form ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

* * * * *

4. In § 264.151, introductory paragraph (h) is redesignated as paragraph (h)(1) and a new paragraph (h)(2) is added to read as follows:

§ 264.151 Wording of the instruments.

* * * * *

(h)(2) A corporate guarantee, as specified in § 264.147(g) or § 265.147(g) of this Chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, on behalf of our subsidiary [owner or operator] of [business address], to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.147(g) and 265.147(g).

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for [insert dollar amount] of coverage.

3. For value received from [owner or operator], guarantor gurarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] acidential occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage identified above.

4. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator] that he intends to provide alternate liability coverage as specified in 40 CFR 264.147 and 265.147, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

5. The guarantor agrees to notify the EPA Regional Administrator by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

6. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in 40 CFR 264.147 or 265.147 in the name of [owner or operator], unless [owner or operator] has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by 40 CFR 264.147 and 265.147, provided that such modification shall become effective only if a Regional Administrator does not disapprove the modification within 30 days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of 40 CFR 264.147 and 265.147 for the above-listed facility(ies), except as provided in paragraph 9 of this agreement.

9. Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator], provided that this gurarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s) alternate liability coverage complying with 40 CFR 264.147 and/or 265.147.

10. This guarantee is to be interpreted and enforced in accordance with the laws of [State of incorporation of guarantor].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 264.151(h)(2).

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

* * * * *

PART 265—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES: LIABILITY COVERAGE

40 CFR Part 265 is amended as follows:

1. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6908, 6912(a), 6924 and 6925).

2. In § 265.147, paragraph (g) is redesignated as paragraph (h), paragraphs (a)(2), (a)(3), (b)(2), and (b)(3) are revised, and a new paragraph (g) is added, to read as follows:

§ 265.147 Liability requirements.

(a) * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraph (g) of this section.

(3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amounts of coverage demonstrated must total at least the minimum amounts required by this paragraph.

(b) * * *

(2) An owner or operator may meet the requirements of this section by passing a financial test or using the corporate guarantee for liability coverage as specified in paragraphs (f) and (g) of this section.

(3) An owner or operator may demonstrate the required liability coverage through use of the financial test, insurance, the corporate guarantee, a combination of the financial test and insurance, or a combination of the corporate guarantee and insurance. The amounts of coverage demonstrated must total at least the minimum amounts required by this paragraph.

* * * * *

(g) Corporate guarantee for liability coverage.

(1) Subject to subparagraph (2), an owner or operator may meet the requirements of this section by obtaining a written guarantee, hereinafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (f)(1) through (7) of this section. The wording of the corporate guarantee must be identical to the wording specified in § 264.151(h)(2). A certified copy of the corporate guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. The terms of the corporate guarantee must provide that:

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Regional Administrator(s). This guarantee may not be terminated unless and until the EPA Regional Administrator(s) approve(s) alternate liability coverage complying with § 264.147 and/or 265.147.

(2) A corporate guarantee may be used to satisfy the requirements of this section only if the Attorney General(s) or insurance commissioner(s) of the State in which the guarantor is incorporated *and* the State(s) in which the facility(ies) covered by the guarantee is (are) located has (have) submitted a written statement to EPA that a corporate guarantee executed as described in this section and Section 264.151(h)(2) is a legally valid and enforceable obligation in that State.

* * * * *

[FR Doc. 86-15673 Filed 7-10-86; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-3082-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protecton Agency.

ACTION: Final rule; correction.

SUMMARY: On May 28, 1986 (51 FR 19320), EPA promulgated a rule to amend the regulations for hazardous waste management under the Resources Conservation and Recovery Act by stating more clearly that the listing for spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K062) applies only to wastes generated by iron and steel facilities. Since promulgation, the Agency has received several questions and comments as to the scope of the modified listing. This notice clarifies the listing and corrects an error.

DATE: This rule becomes effective on September 22, 1986.

FOR FURTHER INFORMATION CONTACT: For general information contact: the RCRA Hotline at (800) 424-9346 toll-free or (202) 382-3000. For information on specific aspects of this rule contact: Jacqueline Sales, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. 20460, (202) 382-4440.

I. SUPPLEMENTARY INFORMATION

A. Background

On May 28, 1986 (51 FR 19320), EPA promulgated a final rule amending the listing for spent pickle liquor (EPA Hazardous Waste No. K062) from steel finishing operations to apply only to spent pickle liquor wastes generated by iron and steel facilities. Previously, the Agency has been interpreting the listing to apply to all industries engaged in steel finishing operations. As a result of this broad interpretation, the Agency received a rulemaking petition from several porcelain enamel companies to amend or clarify the listing to apply only to spent pickle liquor generated by the iron and steel industry. These companies did not agree with the Agency that the pickle liquor generated from their processes was covered under the spent pickle liquor listing. Rather, they assested that spent pickle liquor generated by non-iron and steel industries would be considered hazardous only if it exhibited one or more of the characteristics of hazardous wastes such as corrosivity or extraction procedure (EP) toxicity. After reviewing the original listing, the background documents, and the additional information supplied as a result of the rulemaking petition, the Agency concluded that the correct reading of the scope of the listing would apply the listing only to spent pickle liquor generated by the iron and steel industry.

However, in promulgating the final rule to amend the spent pickle liquor listing, an error was made in defining the scope of the listing. In one section of the preamble and in the regulatory language, the listing was stated incorrectly as applying only to those steel finishing operations that "produce" iron and steel. The Agency had intended the listing to apply to all facilities within the iron and steel industry that generate spent pickle liquor. In fact, this is specified in several other areas of the preamble to the final rule (see 51 *FR* 19320/1 (summary), 51 *FR* 19321/1, and 51 *FR* 12 19301/2). In addition, by applying the listing to spent pickle liquor generated from steel finishing operations of all facilities within the iron and steel industry, the Agency is being consistent with the June 5, 1984, final rule (49 *FR* 23284) which excludes lime stabilized waste pickle liquor sludge (LSWPLS) generated by plants in the iron and steel industry from the "derived-from" rule in 40 CFR 261.3 (c)(2)(i). (LSWPLS is the residue from the treatment of spent pickle liquor.) We thus are correcting and clarifying the language of the final rule to reflect the Agency's stated interest.

B. Correction

The following error has been identified in the preamble of this rule: On page 19321, column, 2, second complete paragraph, line 15—change "finishing operations of plants that produce iron and steel" to "finishing operations of facilities within the iron and steel industry (SIC codes and 331 and 332)".

Dated: September 11, 1986.

J.W. McGraw,

Acting Assistant Administrator

The following correction is made in FR Doc. 86-11869, 51 FR 19320 (May 28, 1986).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to reads follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. Section 261.32 is amended by revising the entry under the iron and steel industry for the hazardous waste listing K062 to read as follows:

§ 261.32 Hazardous Wastes From Specific Sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Iron and Steel: x x x k062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	(C,T)

* * * * *

[FR Doc. 86-21387 Filed 9-19-86; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

Additions to List of Abandonment Docket Numbers

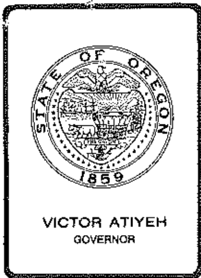
AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: In the appendix to Part 1152 of the Interstate Commerce Commission regulations in the *Code of Federal Regulations*, there is a list of abandonment docket numbers (AB numbers) to be used by rail lines as identification numbers when filing an abandonment application with the Commission. The list of numbers currently in the appendix has not been updated since 1976. This notice adds to that list of AB numbers.

EFFECTIVE DATE: This notice is effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Wyjean Garrett (202) 275-7141.



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item K, March 13, 1987, EQC Meeting

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

I. Background and Problem Statement - Submittal of Recycling Reports

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

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

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

Alternatives and Evaluation

Without adoption of the proposed rules, the Department could not require submittal of information and data from wastesheds about curbside recycling programs and promotion and education efforts. As a solid waste disposal site permit condition, the Department now requires quarterly reporting of amounts of materials recycled at some

disposal sites. That information would continue to be received, but it is only a partial indicator of the amount of recycling going on in a community, since it would not include recyclable material from on-route collection. The Department could continue to annually survey end-users of recycled materials about the volumes of materials received. This data, which can be obtained only if the end-user wishes to provide it, would indicate the overall increase or decrease in recycling in the state, but would give no information on the level of success of individual recycling programs.

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

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

Some collectors and recyclers have commented that the Department does not need to require the collection of setout data, since data on the quantity of material recycled could be used to judge recycling participation rates. The Department believes that data on the actual number of setouts gathered in addition to the quantity of materials gathered would be necessary for the following reasons:

1. Counts of recycling setouts would be valuable in confirming the information on the quantity of material recycled on-route. Many collectors do not maintain separate records on how much material is collected on-route versus how much is collected through depots, paper drives, and other opportunities they provide.

2. The amount of material available per capita differs between wastesheds. For example, newspapers are on average thicker in the Portland area as compared to other parts of the state.

3. Requiring that recyclers collect and report data on the number of people using their programs should help collectors evaluate their own programs and perhaps give them added incentive to promote their programs and build better participation.

4. Section 8 of the Recycling Opportunity Act requires that before the Environmental Quality Commission can require mandatory source separation, it must evaluate "the level of participation by generators".

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

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

Summation

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

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

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

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

Based on the annual review of principal recyclable material lists (Agenda Item D, December 12, 1986, EQC Meeting), the Department has determined that there are some wastesheds where a material is listed as a principal recyclable material but has not been found to be recyclable in any location in the wasteshed where the opportunity to recycle is required. The Department is recommending that the list of principal recyclable materials be amended to remove these materials, and in one case to add a material that is recycled but is not presently on the list for that wasteshed. The recommended technical changes are as follows:

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

The Department is still considering whether to recommend that yard debris be listed as a principal recyclable material in the Portland metropolitan wasteshed.

Alternatives and Evaluation

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

Summation

In certain wastesheds, there are materials that are on the list of principal recyclable material even though that material is not on the list of recyclable material anywhere in the wasteshed where the opportunity to recycle is required. It is recommended that the lists be changed so they conform with the legal definition of principal recyclable material.

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

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

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

Alternatives

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

Summation

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

IV. Rule Development Process

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

Public Hearing and Written Testimony

The Department held two public hearings on January 21, 1987 to consider the proposed rule amendments (see attached public notice). Three persons testified at the hearing, and ten others submitted written testimony. The hearings officer's report for these hearings is attached.

Almost all testimony presented was directed at the proposed draft of the form to be used to report recycling, rather than the actual proposed rule amendments. A copy of the latest draft of the reporting form is attached.

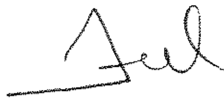
Two main criticisms of the draft reporting form were repeated by most testifiers. The first criticism was directed at the proposed requirement to separately report total setouts from trucks providing newspaper only collection and setouts from trucks providing full-line collection. There apparently was a misunderstanding in that it was believed that the Department would require collectors to separately keep track of the number of people who setout only newspaper versus the number of people who set out other materials. The Department had originally proposed such a requirement, but later agreed with advice from the Recycling Subcommittee that such a data recording system would be difficult for collectors on-route. The proposed form on which people testified did not ask for this information. Instead it asked that if companies pick up newspapers (and newspapers only) weekly on their garbage trucks, then the total setouts from these garbage trucks should be recorded in a different place on the data-reporting form than the total setouts from the trucks that provide full-line recycling collection. The Recycling Subcommittee has since agreed that this information is reasonable to request, and has worked with the Department to make the form much more clear as to what we are requesting.

The second criticism concerned the questions about how many apartment complexes participate in recycling, and how many do not. Garbage collectors commented that by adding these two numbers together, the Department would have a count of the total number of apartment complexes served by the collector, which they consider to be proprietary information. The Department has since agreed to drop the question on how many apartment complexes do not participate in

recycling. There is legal authority to ask for this information in order to determine participation rates, but much of the necessary information should be available through census data and similar sources.

Director's Recommendation

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



Fred Hansen

Attachments I. Proposed Revision of OAR 340-60-010 (Definitions); OAR 340-60-030 (Principal Recyclable Material); OAR 340-60-045 (Standards for Recycling Reports), and OAR 34-061-062 (Oil Recycling Signs)
II. Final Public Notice
III. Rulemaking Statements
IV. Hearings Officer's Report
V. Draft Recycling Collector Data Reporting Form

Peter Spendelow:b
YB6453
229-5253
February 24, 1987

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Hazardous wastes as defined in ORS 459.410

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

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

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

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

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

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

340-60-030

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

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

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

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

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

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

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

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

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

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

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

(a) Malheur wasteshed

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

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

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

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

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

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

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

(a) Gilliam wasteshed
(b) Wheeler wasteshed

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

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

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

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

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

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

Standards for Recycling Reports

340-60-045

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

340-61-062 USED OIL RECYCLING SIGNS.

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

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

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

(a) Oil Recycling logo;

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

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

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

(d) Information on how to recycle used oil;

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

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

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

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

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

PROPOSED REVISION OF RULES RELATING TO RECYCLING

NOTICE OF PUBLIC HEARING

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

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

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

WHAT ARE THE HIGHLIGHTS:

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

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

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

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

Columbia	Morrow
Gilliam	Wallowa
Milton-Freewater	Wheeler

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

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

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

FOR FURTHER INFORMATION:

Contact the person or division identified in the public notice by calling 229-5696 in the Portland area. To avoid long distance charges from other parts of the state, call 1-800-452-4011.

HOW TO COMMENT:

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

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

(Time) 3:30 p.m. and 7:00 p.m.
(Date) Wednesday, January 21, 1987
(Place) Portland Building, Meeting Room C
1120 S. W. Fifth Avenue, Portland

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

WHAT IS THE NEXT STEP:

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

HOW TO COMMENT:

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

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RULEMAKING STATEMENTS

for

Proposed Revision of Rules Relating to Recycling

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

STATEMENT OF NEED:

Legal Authority

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

Need for the Rule

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

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

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

Principal Documents Relied Upon

1. Recycling Opportunity Act, ORS 459.165 to 459.200.

2. Used Oil Recycling Act, ORS 468.850 to 468.871.

3. Rules for the Implementation of the Recycling Opportunity Act, OAR 340-60-005 to 340-60-085.

4. Oil Recycling Sign Rule, OAR 340-61-062.

FISCAL AND ECONOMIC IMPACT STATEMENT:

The proposed rule requiring annual recycling reports (OAR 340-60-045) would have a moderate fiscal impact on the affected persons in that it contains a new requirement for recordkeeping on volumes of material recycled and recycling setout data, and for submittal of recycling information to the Department on an annual basis. Many of the affected persons are small businesses involved in on-route collection and recycling depot operation. Many of the recycling programs already collect the information required in the proposed rule. The proposed rule would standardize the method of data collection to enable the Department to analyze the effectiveness of the various programs. No fiscal impact is anticipated for the other proposed rule changes.

LAND USE CONSISTENCY STATEMENT:

The proposed rule appears to affect land use and appears to be consistent with the Statewide Planning Goals.

With regard to Goal 6 (air, water and land resources quality), the rules provide for recycling of solid waste in a manner that encourages the reduction, recovery and recycling of material which would otherwise be solid waste, and thereby provide protection for air, water and land resource quality.

With regard to Goal 11 (public facilities and services), the rules provide for solid waste disposal needs by promoting waste reduction at the point of generation through beneficial use and recycling. The rules also intend to assure that current and long-range waste disposal needs will be reduced by the provision of the opportunity to recycle.

The rules do not appear to conflict with other goals.

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

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

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

LP:m
SM387.E

To: Environmental Quality Commission

From: Peter Spendelow, Hearings Officer

Subject: Report on Public Hearings held on January 21, 1987 regarding Proposed Amendments to OAR 340-60 and 340-61 to Require Annual Submittal of Recycling Reports, Amend List of Principal Recyclable Materials, and Change Telephone Number on Used Oil Recycling Signs.

Summary of Procedure

Public hearings were held on January 21st at 3:30 and 7:00 pm in Portland to accept testimony on proposed revisions to recycling rules. Peter Spendelow of the Hazardous and Solid Waste Division presided as hearings officer. Three persons presented formal oral testimony. Written testimony was received from five additional persons. After formal oral testimony was presented at each hearing, the Department held an informal discussion with people in attendance. Most of this discussion concerned the proposed requirements for data collection and the proposed form on which these data would be reported, rather than a direct discussion of the rule amendments.

The following persons presented formal oral testimony:

Estle Harlan, Oregon Sanitary Service Institute (OSSI)
Jeff Andrews, Albany-Lebanon Sanitation
Gaylen Kiltow, PASSO and PRROS

The following additional persons were in attendance at the hearing:

Bruce Louis, PASSO
Rick Campbell, Corvallis Disposal
Mary Kanz, Mid Valley Waste Management Association
Maureen Ernst, OSSI
Terry Ege, Ege Sanitary Service
Dean Kampfer, Kampfer's Sanitary Service
Wallace Borgens, Borgens Disposal Service

Written testimony was submitted by the following persons:

Mike Miller, Deschutes Wasteshed Representative
Glenn Pierce, Wasco and Sherman Wastesheds Representative
Estle Harlan, OSSI
Jeff Andrews, Albany-Lebanon Sanitation
Michael Borg, Oak Grove Disposal Company Inc.
Samuel A. Brentano, Mid-Valley Waste Management Association
David G. Phillips, Clackamas Wasteshed Representative
Elizabeth R. Kuenzi, Ralph's Sanitation & Pacific Sanitation
Dale Neliton, D & O Garbage Service, Inc.
Patrick Fahey, Southern Oregon Sanitation

Summary of Testimony - Formal Oral Testimony

Estle Harlan, OSSI, testified that she supported most of the rule changes proposed by the Department, but that OSSI did not have adequate time to review the proposed reporting form prior to the hearing. Her comments on the proposed form are:

1. Regarding the number of residential recycling setouts collected, delete the column for reporting setouts derived from separate collection of newspaper, so that setouts from all recycling collection would be combined. Estle thought that the only system where this separate data collection would be necessary would be if Portland's proposed "dual provider" recycling collection system were adopted.

2. Delete the question that asked how many apartment complexes did not participate in a recycling program (question 5b). Combining this count with the count of how many complexes did participate (question 5a) would result in reporting how many apartment complexes each hauler serves, which OSSI believes to be proprietary information.

3. Real measurement for success is the increased tonnage of materials recycled. Data from end users is the best way to measure overall success.

4. The requirement to gather data on recycling setouts would pose a substantial burden on some recycling collectors.

Estle stated that if the first two problem areas addressed above are deleted from the form, then the form would be considered a workable compromise.

Departmental response

1. The Department believes that there was a misunderstanding as to what information was requested on the proposed data form. The Department has since worked with Estle and with other members of the Recycling Subcommittee of the Department's Hazardous and Solid Waste Advisory Task Force to clear up

this misunderstanding and to make the instructions for the form more clear. See page 5 of the staff report for agenda item K, March 13, 1987 EQC meeting for further discussion.

2. The Department has agreed to delete question 5b, since most of the necessary information is available through other sources such as census data.

3. The Department believes that although the measures discussed by Estle are valuable, the additional information provided by the recycling setout data is also very important. See page 2 of the staff report for agenda item K, March 13, 1987 EQC meeting for further discussion.

4. The Department recognizes that the data-gathering requirement will pose some additional burden on collectors. At the February 5th meeting of the Recycling Subcommittee, committee members advised the Department that the most efficient way to gather the data would be to have a "clicker" mounted on the dashboard of each truck that provides recycling collection. The Department is working with recycling collectors to obtain a quantity of these mountable clickers at a reasonable price.

Jeff Andrews of Albany-Lebanon Sanitation stated that he was disappointed that the Department changed the draft form for reporting data without sufficient input from affected parties prior to the hearing. He appreciated the fact that the latest draft did not contain the question in the earlier draft that asked for the number of collection service customers. He requested that the Department delete the question that asked for the number of apartment complexes not participating in recycling, since he considers his garbage customer count to be proprietary. He was very concerned about the inclusion of separate reporting counts for full service recycling and newspaper only recycling. He requested that the column for collection of newspaper only be deleted from the form.

Departmental Response: see above response to Estle Harlan.

Gaylen Kiltow of Portland Association of Sanitary Service Operators (PASSO) and Portland Recycling Refuse OperatorS (PRROS) asked first if he was interpreting the draft data form correctly in that each truck collecting recycled material would only have to record the number of setouts, and would not have to distinguish between setouts of different materials. When assured that this was the case, Gaylen testified that he thought that the time factor required to collect the data would be reasonable.

Written Testimony

Glenn Pierce, Wasteshed representative for both Wasco and Sherman Wastesheds, felt that the proposed amendments requiring detailed annual reporting would be an unwarranted added administrative and

fiscal burden on the local affected persons, and suggested the following:

1. A biannual report to outline any changes that may have occurred from the last report.

2. The Department assume responsibility (instead of local affected persons) to gauge the effectiveness of the program.

3. The Department investigate more thoroughly the possibility of polling as a way to gauge effectiveness.

Departmental Response

1. At least during the first few years of the new recycling programs, the Department would prefer annual reporting in order to better monitor the success of the programs.

2. The Department plans to assume a large portion of the responsibility for data-gathering, including the preparation and sending of data forms directly to recycling service providers and the follow-up on those service providers who did not send in their data forms by the deadline. Other wasteshed representatives have stated that they prefer to have the data come to them before it is forwarded to DEQ in order that they can directly receive data by which they can judge the success of the local programs.

3. Polling can provide useful information, and the Department has conducted two polls on recycling in the past couple of years. However, it would be prohibitively expensive to poll an adequate sample of each of the 100+ on-route collection programs in the state to evaluate the success of each individual program.

Mike Miller, Deschutes Wasteshed Representative, commented on an early draft of the proposed data reporting form. Mike believed that although it may be useful to differentiate between setouts of newspaper only and setouts of newspaper and other materials, there was no reason to record separately the number of setouts of materials not including newspaper. Mike also noted that it would be much more difficult to record setout data for weekly "newspaper on the can" recycling collection than it would be to record setouts for monthly collection by a separate recycling collection vehicle, and suggested that the time period for reporting separate newspaper collection be shortened. In short, Mike agreed with the need to collect data, but was concerned that asking for too much detail would compromise the willingness of some service providers to cooperate.

Departmental response: The Department has modified the form along the lines suggested by Mr. Miller.

Michael Borg of Oak Grove Disposal stated that he provides recycling collection in conjunction with garbage collection, and that he would find it "very difficult, if not impossible, to maintain an accurate individual household participation rate of recyclables, and still maintain a regular garbage collection record for the daily duties, which we have a full crew plus recycle van operators all participating at different levels in our multi-material curb side program".

Samuel A. Brentano, Mid-Valley Waste Management Association (MVWMA), stated that MVWMA "does not and will not endorse the proposed reporting of A) Number of apartment complexes participating and not participating in recycling ... B) Separation of full-line collection and newspaper-only collection". MVWMA believes that the apartment information constitutes proprietary information and will not be made available to become public information within the Department's files, and that the most accurate measure of success of the recycling act will be total tonnage.

David G. Phillips, Clackamas Wasteshed Representative, stated that an agreement was reached at the DEQ advisory committee meeting that the data reporting form would only have one column for number of setouts, without differentiating by material, and that the proposed double column would be difficult for haulers to keep track of. It was also agreed to not include counts of households eligible for service. The same would apply to apartment complexes. The Department should be able to obtain information on the number of apartment complexes from the Census Bureau.

Dave Neliton, D & O Garbage Service, Inc. believed that counting customers who recycle would be too costly in time as they are already operating in an overtime situation, and that not all drivers would have access to materials needed for recording accurately.

Departmental response to Michael Borg, Samuel Brentano, David Phillips, and Dave Neliton: see above response to Estle Harlan.

Elizabeth Kuenzi, Ralph's Sanitation Service and Pacific Sanitation, also objected to providing separate newspaper collection figures and reporting the total number of apartment complexes participating and not participating in recycling. She also objected to a question regarding the type of equipment used for collecting and carrying recyclables, saying that this information has no bearing on whether or not a recycling program is successful.

Departmental Response: The question regarding the type of equipment used for collecting recyclables was asked so we could compile and share information on the large number of ways that different businesses are managing to provide the opportunity to recycle, rather than as a way to evaluate the success of the programs.

Patrick D. Fahey, Southern Oregon Sanitation, requested that Glass be deleted from the list of principal recyclable material (in the Josephine and Jackson wasteshed), because "the high cost of handling and transporting makes any thought of economic feasibility a mere fantasy". Mr. Fahey provided some figures on the cost of handling and transporting recycled glass.

Departmental Response: For a material to be deleted from the list of recyclable material in a wasteshed, it must not be a recyclable material anywhere in the wasteshed where the opportunity to recycle is required. Glass in large quantities from commercial customers is a recyclable material, as evidenced by one commercial firm who successfully recycles glass on a profit basis in the Josephine and Jackson wastesheds. It may be that glass is not a recyclable material at some of the individual locations where Southern Oregon Sanitation is providing the opportunity to recycle. The economics of glass recycling in Southern Oregon may be changing, as a large commercial recycling company is opening a new operation locally, and at least on a trial basis is offering the local on-route collectors a better deal for recycling their glass. The Department will be working with Southern Oregon Sanitation to determine the specific locations in the wasteshed where glass can and cannot be included as part of a group of recyclable material.

Written testimony of Estle Harlan and Jeff Andrews was similar to their oral testimony summarized above.

Summary of additional ideas presented in following informal discussion.

Some persons present were reluctant to present their ideas in formal testimony, but freely discussed these ideas and reactions in an informal session following each hearing. A summary of the major ideas presented follows:

Terry Ege, Ege Sanitary Service, did not think the value of gathering the data was worth the effort and expense of collecting and reporting the data. He was concerned with the large amount of paperwork that small businesses are required by the government to fill out. Terry (and others present) was also concerned that comparison of the figures reported by different recycling programs would be misleading due to differences between collection systems, and that the Department would not evaluate and report the results correctly.

Jeff Andrews, Albany-Lebanon Sanitation, thought that participation could best be gauged by the quantity of material recycled and not the number of setouts. Jeff thought it best to keep the report fair and simple in order to get support and

cooperation from those required to gather the data, and thus get more valid results.

Bruce Louis, representing PASSO, thought the form was not clear, and that people on each truck would have to separately record the number of "news only" setouts and the number of "other material" setouts. Bruce also thought that "clicker counts" of setouts would prove to be inaccurate, and that tonnage amounts would be the most reliable.

Estle Harlan, OSSI, believed that the agreement reached at the meeting of the hazardous and solid waste task force was to only ask that the total number of setouts be reported, without any differentiation based on the materials set out.

Mary Kanz, Mid Valley Waste Management Association, wondered what would be the use of the Salem-area collectors keeping separate track of the number of "newspaper only on the can" setouts versus the number of additional setouts from the weekly curbside full-line collection.

Dean Kampfer, Kampfer's Sanitary Service, asked how long we would require them to report data, and wondered what would be the use of continuing to gather and report data after the programs had stabilized and become well-used. Dean also thought that if we were asking people to gather setout data each quarter, we should require them to report it to us each quarter rather than hold the information until the end of the year. Dean also believed that tonnage was the best measure of success, and was concerned about double-counting in those programs that provide more than one recycling collection service (such as programs with separate collection of newspaper in addition to full-line collection). Dean was also concerned that other recyclers such as non-profit groups are not required to report, and that recycling by these people may make his program look bad when newspaper prices are high, encouraging many non-profit groups to compete to recycle newspaper.

Gaylen Kiltow, PRROS and PASSO, thought we should make the best effort we could to survey other recyclers such as non-profit groups and end users in order to get the most complete results possible of the amount of material being recycled.

Departmental response: The Department will be surveying the recyclers who are providing recycling services not required by the Oregon Recycling Opportunity Act as to the amount of material they recycle. However, we do not feel we have legislative authority to require these other recycling firms to report to us the quantity of materials they recycle, as they are not providing recycling opportunities under the Act.

RECYCLING REPORT DATA FORM

January 1 - December 31, 1987
(wasteshed name) Wasteshed

Organization: (organization name)
Address: (address)
(city, state zip)
Phone: (phone #)
Contact person: (contact person name)

Department of Environmental Quality records indicate that (organization name) provides recycling opportunities in (wasteshed name) wasteshed as follows:

On-route residential and/or commercial collection for the following cities or areas:

(either "None" or list of cities, optionally followed by "(part)" for those cities only partly served by this collector.)

Recycling depots operated in conjunction with, or as a more convenient location for, the following disposal sites.

(either "None" or list of disposal site names and permit numbers.)

Please make any necessary additions or corrections to the above information, and then answer the questions on the following pages about recycling at these locations.

1) State the total amount of each of the following materials you collected for recycling in 1987. Please also state the amount or estimated amount of material that was collected on-route versus the amount collected from depots. Use an asterisk (*) after any number which is an estimate rather than an actual measured amount.

Material	unit of measurement	total	---- amount recycled from ---- on-route residential	on-route commercial	depots
Ferrous scrap					
Non-ferrous scrap					
Used motor oil					
Newspaper					
Glass containers					
Corr. Cardboard					
Aluminum					
Hi-grade paper					
Tin cans					
Other ________					
Other ________					

2) (optional) Please indicate the recycler or market who receives each of the materials you collect for recycling. If you delivered a material to more than one recycler during the period, please so indicate. This information is requested in order to allow the Department of Environmental Quality to avoid the "double-counting" of recycled materials.

Material	Recycler or market receiving the material
Ferrous scrap	
Non-ferrous scrap	
Used motor oil	
Newspaper	
Glass containers	
Corr. Cardboard	
Aluminum	
Hi-grade paper	
Tin cans	
Other ________	
Other ________	

On-route residential recycling collection only.

Answer questions 3 through 9 only if you provide on-route residential recycling collection.

3) What is the frequency of recycling collection (weekly, bi-weekly, monthly, etc.) you provide for:

newspaper: ________________
other materials: ________________

4) Describe the days on which your customers receive recycling collection (for example, monthly on 1st garbage pickup day of month, monthly on last Saturday of month, weekly with garbage service, etc.)?

5) In the area for which you provide on-route recycling, how many apartment complexes (5 or more units) participate in the recycling program? (note - answer the number of apartment complexes, not the number of apartment units in the complexes)

6) Is the same truck used for combined collection of both recyclables and garbage, or is recycling collection performed using a separate vehicle?

____ Combined collection on garbage truck.
____ Separate recycling vehicle
____ Both of above

7) Please briefly describe any separate recycling vehicle or trailer that you use for collection. If you collect garbage and recyclable materials using the same truck, indicate whether you use bumper boxes, side boxes, or some other method to carry recyclables on the truck.

8) Is on-route recycling collection provided to garbage service customers only, or to customers and non-customers alike?

____ Garbage service customers only.
____ Customers and non-customers alike.

ON-ROUTE RESIDENTIAL RECYCLING SETOUTS - APRIL, 1987

Use this form to report the number of on-route residential recycling setouts you collected in April, 1987. A "set-out" is any amount of recyclable material set out at or near a residence for recycling.

Company name ______________________________
Area where you provide on-route collection: ____________________
____

Do any of your trucks offer separate collection of newspaper only (for example, newspaper only weekly on the can picked up by the garbage truck)?

____ Yes ____ No

If yes, place the total number of recycling setouts for those trucks in column 2. Totals for all other trucks offering full-line recycling collection should be placed in column 1. If no, place totals for all trucks in column 1.

day		---------- number of setouts ----------	
		trucks providing full-line recycling (column 1)	trucks collecting newspaper only (column 2)
1	Wednesday		
2	Thursday		
3	Friday		
4	Saturday		
5	Sunday		
6	Monday		
7	Tuesday		
8	Wednesday		
9	Thursday		
10	Friday		
11	Saturday		
12	Sunday		
13	Monday		
14	Tuesday		
15	Wednesday		
16	Thursday		
17	Friday		
18	Saturday		
19	Sunday		
20	Monday		
21	Tuesday		
22	Wednesday		
23	Thursday		
24	Friday		
25	Saturday		
26	Sunday		
27	Monday		
28	Tuesday		
29	Wednesday		
30	Thursday		
TOTAL APRIL 1987			

NEIL GOLDSCHMIDT
GOVERNOR

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item L, March 13, 1987, EQC Meeting

Proposed Adoption of Order Requiring the City of Portland to Provide the Opportunity to Recycle

Background

The Recycling Opportunity Act requires that affected persons within a wasteshed must provide the opportunity to recycle to all persons within the wasteshed by no later than July 1, 1986. The opportunity to recycle includes (1) recycling depots at each disposal site; (2) On-route collection of source separated recyclable materials at least once a month from all collection service customers; and (3) a public education and promotion program which informs people of the recycling opportunities available to them and encourages them to recycle.

An "affected person" means a person or entity involved in the solid waste collection service process including but not limited to a recycling collection service, disposal site permittee or owner, city, county and metropolitan service district. ORS 459.005(1). The City of Portland and Metro are both affected persons within the Portland wasteshed. If the Commission finds that all or part of the opportunity to recycle is not being provided within a wasteshed, the Commission must order the opportunity to recycle to be provided. ORS 459.185(6).

As an affected person, the City of Portland hired a consultant and established a technical advisory committee to study the various methods the City could use to provide recycling. On June 4, 1986, the Portland City Council considered five options for implementing a recycling program for the City, and adopted the contract option recommended by City staff. The plan envisioned three to six contractors providing monthly curbside collection of recyclable materials, and permitted garbage haulers providing weekly collection of newspapers at the garbage can.

On September 12, 1986, the Environmental Quality Commission granted the City an extension to January 31, 1987 with the condition that it follow an implementation schedule to get the contract program on line. The City selected a contractor to assist with a comprehensive education and promotion program, and prepared documents requesting bids for providing recycling collection service under contract with the City. In October, 1986, after hearing arguments from the garbage haulers who favored a permit option, the City Council refused to authorize issuance of the request for bids. After that, none of the tasks on the implementation schedule were accomplished.

When Commissioner Koch took office in January and the responsibility for recycling was shifted to him, he requested a second extension in order to restudy the City's recycling options. The EQC denied that request on January 23, 1987 and directed the Department to begin enforcement proceedings.

The Department prepared a report disapproving the Portland Wasteshed Recycling Report. The report found that the opportunity to recycle is being provided at the disposal sites and within the City of Maywood Park, but it is not being provided to all persons within the City of Portland and its urban services boundary. (See Attachment I). A hearing was held on February 17, 1987 to accept public comment on the Department's determination that the opportunity to recycle is not being provided as required by law. The hearing testimony confirmed the Department's findings. (See Attachment II, the Hearings Officer's Report).

In the meantime, Commissioner Koch decided not to appoint a committee to restudy the recycling options. Instead, on February 12, 1987 he took to City Council a proposed ordinance again requesting authorization to call for bids for a contract recycling program. After hearing the testimony, Commissioner Koch moved to table his proposed ordinance. The motion passed 3-2. Council then directed City staff to prepare an ordinance to require garbage haulers to recycle as a condition of their permits. The Council passed that ordinance on February 26, 1987. The ordinance becomes effective thirty days from that date.

The ordinance adds the following requirement to garbage hauler permits:

> As of June 1, 1987, permit holders serving four-plex or smaller residential units inside the urban services boundary of the City shall provide the opportunity to recycle to those residential units by providing weekly collection of newspapers at the customer's garbage can and at least monthly collection of all other source-separated recyclable materials.

The garbage haulers have submitted a much more comprehensive proposal to the City. It establishes standards for service and enforcement procedures, and acknowledges the City as responsible for promotion, with haulers assisting in distribution of promotional materials. This proposal is being analyzed by City staff, who have been given four weeks to develop code amendments and permit conditions to flesh out the permit proposal.

On its face, the ordinance does not require a program which meets the requirements of law. It does not address education and promotion. Nor does it require service to multi-family housing of more than four units and to commercial and industrial establishments.

Under the permit proposal, all 120 haulers permitted by the City would provide recycling to their own customers. There would be no consistent recycling day in a neighborhood or even for next-door neighbors, and therefore no peer pressure working to encourage people to recycle. Each hauler would have to provide his or her own equipment and market the material collected. If there were good participation, the box on the garbage truck or the small pickup would no longer be adequate to carry all the recyclables and more capital outlay would be required of each hauler. Haulers may contract with one another in order to consolidate recycling routes and equipment, but that is unlikely because they are afraid that the recycler may solicit their garbage customers. Haulers opposed having a contractor provide recycling service for that reason.

Under the permit proposal, there is no economic incentive to the hauler to increase recycling participation. Collection and marketing costs are borne by the collector and offset by revenues received from sale of recyclables and fees charged to customers.

Throughout the study process, the City has assumed that it will maintain control over the education and promotion efforts. Even that is not sure anymore. Mayor Clark has stated that the City should not be involved in any way with the recycling program, but should let free enterprise do it all. The inefficiency and ineffectiveness of having 120 garbage companies devise and carry out their own promotional campaign is beyond calculation.

The Department and Commission have consistently stated that the permit option would not be acceptable. In a June 4, 1986 letter to Mayor Clark and City Commissioners, Fred Hansen stated:

> Option D, which would add recycling requirements to each waste hauler's permit, is not an acceptable method to implement the recycling program required by law. According to your own report, this option would be difficult to implement, inefficient, nearly impossible to publicize, and most costly of all the options. Because of these problems, there would be less participation (15% compared to an estimated 20% for the other options) and less materials recycled (4,463 tons per year compared to an estimated 5,950 - 6,693 tons for the other options)... .
>
> An option which is doomed to fail will not comply with the purpose of the Act. Option D is therefore an unacceptable choice.

In a December 12, 1986 letter to City Council signed by all five Commission members, they stated:

> DEQ Director Fred Hansen wrote you in June that the Department's role was not to tell you how to implement a recycling program but to ensure that any program implemented met the requirements of the law and our rules. He indicated at that time that the only alternative of the five being considered which would not be an acceptable method for providing recycling service was the permit option.

According to your own report, the permit option is the most costly option because of its inefficiencies, would be difficult to implement and regulate, and nearly impossible to promote. The revised permit option unfortunately retains those same drawbacks. It would not only be the most expensive, but would also be the least successful in terms of the goals of the Recycling Opportunity Act, which are to increase recycling participation by citizens and thus increase the volumes of materials recycled.

Alternatives and Evaluation

ORS 459.185(6) requires the Commission to order the opportunity to recycle to be provided if it finds that all or part of the opportunity to recycle is not being provided within a wasteshed. The Department has found that the opportunity to recycle is not being provided, and the Hearings Officers Report on the public hearing verifies that determination. There was no testimony claiming that the opportunity to recycle is currently being provided to each citizen within the Portland urban services boundary.

If the Commission adopts the Department's Disapproval of Wasteshed Report for the Portland Wasteshed, and finds that the opportunity to recycle is not being provided, then the Commission has no choice but to order the City to provide a recycling program. The issue then becomes what that order should be.

ORS 459.185(6) gives the Commission a large amount of flexibility in designing the order. The order can be very specific. It can designate the manner in which recyclable material is to be collected, the methods for providing the public education and promotion program, who is to provide what service, and require the City to contract or franchise for service. Alternatively, the order can be very general, setting only a timetable for implementation, and allowing the City total discretion as to how its program is constituted, so long as the implementation date is met. Or the order can set a timetable and standards for the program, and let the City decide how to provide a program within that framework.

Under the first option, the Commission could order the City to implement the contract plan that has been recommended and developed since last June. The contract documents are ready and the promotion plan is developed and an ad agency chosen. This option has the most potential to be a successful recycling program. It is efficient and therefore least costly (no overlap of routes, needs 6 trucks instead of 120 and can market materials in large volumes for better prices). It is easy to promote and easy to enforce, and the recyclers have a contractual economic incentive to increase participation rates.

The contract option is, however, anathema to garbage haulers who claim that the contract recyclers will steal their garbage customers. It has also been rejected by three of the five City Commissioners.

A very general order could require the City to provide recycling collection service and education and promotion to all persons within the urban services boundary by June 1, 1987. Under this scenario, the City would presumably go forward with its decision to require recycling by permitted garbage haulers. The Commission would have no say over how either the collection or education components of the programs are designed, implemented and enforced.

The third alternative would be for the Commission to set standards for the recycling program in an attempt to cure some of the flaws of the permit options. This method would allow the City to provide a program through its permitted garbage haulers as it has chosen to do, but would also set parameters to make the success of the program more likely.

The Department recommends this third alternative, and has prepared an order which ensures that (1) the City manages the education and promotion efforts, with distribution assistance from the permitted garbage haulers; (2) service be provided to all customers, not only to those who live in four-plex or smaller residential units; and (3) the City establishes and funds an enforcement program which does not rely entirely on customer complaints. See Attachment III.

The order would require the City or its contractor to design and produce all promotional materials for the recycling program. The City would also be required to establish a "hotline" telephone for customer information and complaints and to list that telephone number on all promotional materials.

If the City continues with its decision to require recycling by each permittee, then the City would have to require all permittees to submit to the City customer lists, including names and addresses. This is necessary information to allow the City to notify each customer about the recycling service, and to monitor the service being provided by each permittee. The City would also require monthly reports on volumes of material recycled and number of setouts by generator.

One of the problems with the permit option is that there is no economic incentive for the garbage haulers to encourage household participation in the program. If the collector offers a convenient, visible recycling program and actively solicits participation, that collector will have higher participation rates and higher costs than a collector who does not encourage participation. The costs of collecting, processing and marketing the recyclable materials cannot be totally offset by the revenue from sales of the materials. The program therefore needs to give the collectors an economic incentive to encourage generator participation in the recycling program. Metro holds the key to offering such an incentive because Metro sets the rates and collects the fees for disposing of garbage in the Portland wasteshed. In its Waste Reduction Program approved by the Commission on June 24, 1986, Metro committed to offering such an incentive through its certification program for local collection service.

Metro is to provide an incentive for recycling through the rates it charges for disposal of wastes at Metro facilities. Metro's 1987 Rate Study (October, 1986) recommended that the certification non-compliance fee should be $4.50 per ton of waste disposed from non-certified areas. This is the estimated cost to collectors for recycling collection service, and promotion and administrative expenses.

Though the Waste Reduction Program has not been amended, Metro is not implementing the certification program nor offering rate incentives.

Because the Department believes that rate incentives are necessary to give garbage haulers an incentive to recycle, the Department recommends that Metro, as an affected person in the wasteshed, be ordered to provide such an incentive. The incentive could be either the certification and rate incentive program adopted in the Waste Reduction Program, or a diversion credit to each garbage hauler for each ton of materials diverted from the landfill by recycling.

Summation

1. ORS 459.180 requires that the affected persons within a wasteshed shall implement the opportunity to recycle within the wasteshed not later than July 1, 1986. The City of Portland and Metro are affected persons within the Portland wasteshed.

2. The City received an extension to January 31, 1987 for providing the opportunity to recycle. The conditions of the extension were not met and the opportunity to recycle is still not provided to every person in the wasteshed.

3. On February 9, 1987 the Department disapproved the Portland Wasteshed Recycling Report based on the findings that (a) the opportunity to recycle is not being provided to all persons within the City's urban services boundary and (b) an effective public education and promotion program which meets the requirements of OAR 340-60-040 has not been implemented within the City's urban services boundary.

4. On February 17, 1987, pursuant to ORS 459.185(5) which requires the Commission to hold a public hearing within the affected area of the wasteshed, EQC Hearings Officer Linda Zucker held a public hearing at 811 S. W. Sixth Avenue, Portland. The testimony verified the Department's findings that the opportunity to recycle is not provided to every person within the Portland wasteshed.

Director's Recommendation

It is recommended that 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

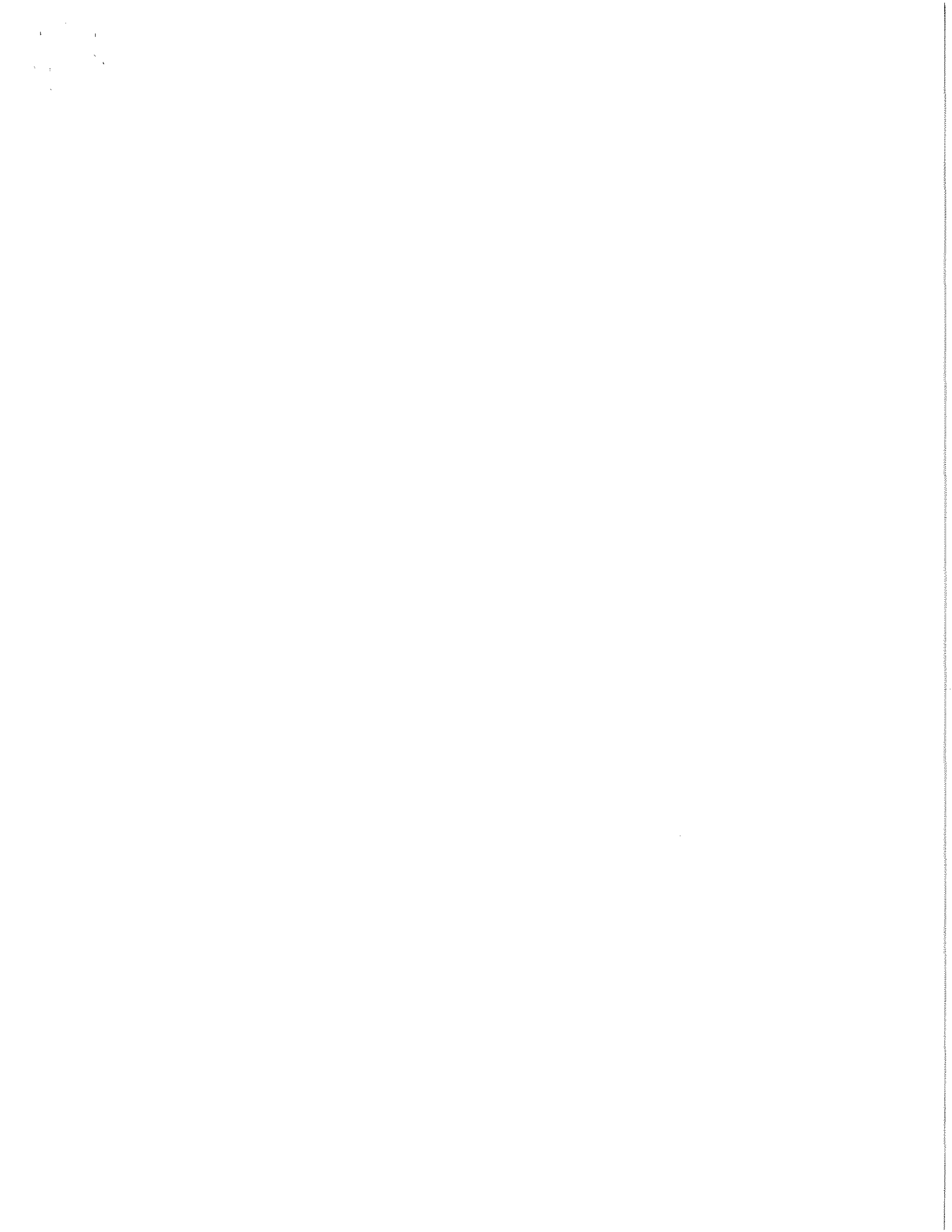
at the disposal sites within the Portland wasteshed; and (2) the opportunity to recycle is not being provided within the City of Portland and the area within its urban services boundary.

It is further recommended that the Commission require the opportunity to recycle to be provided by adopting the attached order (See Attachment III), 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.

Fred Hansen

Attachments
- I. Disapproval of Portland Wasteshed Recycling Report, February 9, 1987
- II. Hearing Officer Report for hearing held February 17, 1987.
- III. Proposed Order.

Lorie Parker:m
SM835
229-5826
March 10, 1987



Attachment I
Agenda Item L
3/13/87 EQC Meeting

DEPARTMENT OF ENVIRONMENTAL QUALITY
Waste Reduction Program
Hazardous & Solid Waste Division

DISAPPROVAL OF WASTESHED RECYCLING REPORT

Issued in accordance with the provisions of ORS 459.185 and OAR 340-60-045

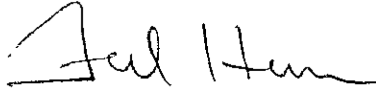
ISSUED FOR:

Portland Wasteshed

WASTESHED REPRESENTATIVE:

Delyn Kies
City of Portland
Bureau of Environmental Services
1120 S. W. Fifth
Portland, Oregon 97204

ISSUED BY DEPARTMENT OF ENVIRONMENTAL QUALITY



FEB 0 9 1987

Fred Hansen, Director — Date

Summary of Portland Wasteshed Recycling Programs

The Portland Wasteshed is defined as all of the area within the City of Maywood Park, the City of Portland, and the area within the City of Portland's urban services boundary. The principal recyclable materials for the Portland Wasteshed are ferrous and nonferrous metals, used motor oil, newspaper, container glass, aluminum, corrugated cardboard, tin cans, and high-grade office paper. The opportunity to recycle is required to be provided through at least monthly on-route collection of source-separated recyclable materials within the entire wasteshed, recycling depots located at each disposal site, and an ongoing recycling notification, education and promotion program which informs people of the recycling opportunities available and encourages them to recycle. The opportunity to recycle is being provided in the manner described below:

A. Disposal Sites:

There are four disposal sites in the Portland Wasteshed. The St. Johns Landfill is the general-purpose landfill which serves the tri-county Portland metropolitan area. All materials which are required to be recycled are collected for recycling at the site.

Disposal Sites: (Continued)

St. Johns also accepts and stores source-separated yard debris, but efforts to process this material into a recycled product have not been successful to date. Tires are also collected for recycling at the site. Flyers with information about recycling are available at the gate.

St. Johns Landfill offers recyclers a discount on disposal fees. If a customer has at least one-half cubic yard of source-separated recyclable materials, then the minimum disposal charge is waived and the customer is charged only for the volume of waste that will be disposed of. St. Johns also periodically offers a reduced rate for drop-off of source-separated yard debris.

The Killingsworth landfill is a construction/demolition disposal site in northeast Portland. All materials which are required to be recycled are collected for recycling at the site. Flyers with information about recycling are not yet available at the gate, but they will be available in the near future.

The Oregon Processing and Recovery Center (OPRC) disposal site is a "dump and pick" resource recovery facility where reasonably clean commercial loads are tipped at a cost less than the cost of disposal at the St. Johns Landfill. The waste is then mechanically separated and cardboard and high-grade ledger paper are sorted from the nonrecyclable waste and recycled. OPRC also buys scrap metal, glass, tin cans, aluminum, newspaper, corrugated cardboard and ledger paper from recycling collectors and the general public and accepts used oil from the public.

Sunflower Recycling Co-op operates a small composting facility in Portland. The company collects compostable garbage from its customers on-route, and composts the material at its facility. A recycling depot is also available for drop-off of all principal recyclable materials and scrap paper.

Four additional multi-material recycling depots are located throughout the Portland Wasteshed for people who prefer to drop off their materials.

B. On-route Collection

The Portland Wasteshed consists of three areas: the City of Portland, the City of Maywood Park, and the unincorporated areas within Multnomah County which have been designated as Portland's urban services area and targeted for future annexation to the city. The City of Portland and Multnomah County have entered into an agreement which states that the City of Portland will be responsible for developing and administering a recycling program for all citizens within Portland's urban services boundary.

The City of Maywood Park is a community of 300 homes. The local solid waste collector, Parkrose Sanitary Service, has agreed to provide the opportunity to recycle to all citizens of Maywood Park. The collector provides monthly on-route collection of source-separated glass, newspaper, tin cans, aluminum, cardboard and used motor oil.

B. <u>On-route Collection</u> (Continued)

The City of Portland has approximately 120 garbage haulers servicing approximately 400,000 people within its urban services boundary. Garbage collection in Portland is an unregulated system, and haulers can solicit customers anywhere in the city and the urban services boundary. The city surveyed its permitted haulers in February, 1986 to determine what level of recycling service was available to its citizens. Only 68 of the haulers responded to the survey. Of those 68, 29 recycled all of the required materials by at least monthly on-route collection, 37 collected some but not all of the required materials, and 2 did not offer recycling collection service. The method of collecting the recyclable materials varies.

In the fall of 1985 the City of Portland convened an advisory committee of local government officials, recycling collectors, solid waste collectors and citizens to recommend a recycling plan to the city. On June 4, 1986 the city considered the recycling options and city staff's recommendations, and adopted a contract option as the recycling program for the city.

The plan adopted by the city calls for contractors to provide monthly collection at the curb of recyclable materials and garbage haulers permitted by the city to provide weekly collection of newspapers at the garbage can. The city would contract for a city-wide education and promotion program to explain the recycling program and encourage citizens to recycle. The city requested an extension of the July 1, 1986 deadline in the Recycling Opportunity Act to implement the program.

On September 12, 1986, the Environmental Quality Commission granted the city an extension to January 31, 1987 with the condition that it follow an implementation schedule. The schedule called for issuing a request for bids for recycling contractors in September. In October, the City Council refused to authorize issuance of the request for bids. Since then, none of the tasks on the implementation schedule have been accomplished.

On January 6, 1987, the city requested a second extension for 90 days to "review the recycling plan and alternative proposals, make a recommendation and allow the new City Council time to decide on how to proceed with implementation." The Environmental Quality Commission denied this request on January 23, 1987.

C. <u>Education, Promotion and Notification</u>

The education, promotion and notification program in the Portland Wasteshed will be provided by the City of Portland and the City of Maywood Park.

The City of Maywood Park has notified its citizens of recycling services through information in its city newsletter, which is sent to each household in the city. The newsletter also serves as an ongoing reminder which encourages people to recycle. The recycling collector also plans to distribute flyers and garbage can stickers to his customers.

C. Education, Promotion and Notification (Continued)

The City of Portland has selected a contractor to assist with the city's recycling promotion program. The city staff will work with the contractor to develop and distribute recycling promotion and education materials. The contract has not yet been signed and work has not yet begun, however, because the city has not implemented its program for recycling collection.

Criteria for Approval

The Department shall review the recycling report to determine whether the opportunity to recycle will be provided to all persons in the wasteshed. The Department shall approve the recycling report if it determines that the wasteshed will:

1. Provide the opportunity to recycle, as defined in OAR 340-60-020, for:

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

   b. Other materials which are recyclable material at specific locations where the opportunity to recycle is required.

2. Have an effective public education and promotion program which meets the requirements of OAR 340-60-040.

Evaluation

The Department finds that:

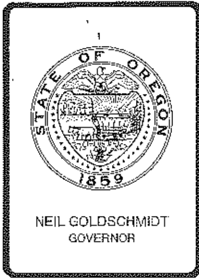
1. The opportunity to recycle is not being provided throughout the wasteshed for each material on the list of principal recyclable materials. The opportunity to recycle is being provided at the four disposal sites and through monthly on-route collection of source separated recyclable materials in the City of Maywood Park. The opportunity to recycle is not being provided to all persons in the City of Portland and the Portland urban services boundary. The City of Portland has not implemented the recycling program it adopted in June, 1986.

2. An effective public education and promotion program which meets the requirements of OAR 340-60-040 has not been implemented throughout the Portland Wasteshed. Initial written notice and ongoing reminders have been distributed to the citizens of Maywood Park through its newsletter. The City of Portland has developed a plan for notifying the citizens of Portland, including persons in the Portland urban services boundary, of recycling opportunities available and for an ongoing recycling education and promotion program. However, the city has not yet initiated the work under the promotion program.

Conclusion

Based on the findings above, the Portland Wasteshed Recycling Report is disapproved.

SM763 (RECYCL.1 7/23/86)



Environmental Quality Commission

Attachment II

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

MEMORANDUM

To: Environmental Quality Commission

From: Linda K. Zucker, Hearings Officer

Subject: Hearing to Determine Whether All or Part of the Opportunity to Recycle is Being Provided in the Portland Wasteshed

Date: March 3, 1987

Background

On February 9, 1987, DEQ formally disapproved the Portland Wasteshed Recycling Report. The disapproval recognized that the opportunity is being provided in Portland to some persons in the wasteshed, but found:

1. The opportunity to recycle is not being provided throughout the wasteshed for each material on the list of principal recyclable materials. The opportunity to recycle is being provided at the four disposal sites and through monthly on-route collection of source separated recyclable materials in the City of Maywood Park. The opportunity to recycle is not being provided to all persons in the City of Portland and the Portland urban services boundary. The City of Portland has not implemented the recycling program it adopted in June, 1986.

2. An effective public education and promotion program which meets the requirements of OAR 340-60-040 has not been implemented throughout the Portland Wasteshed. Initial written notice and ongoing reminders have been distributed to the citizens of Maywood Park through its newsletter. The City of Portland has developed a plan for notifying the citizens of Portland, including persons in the Portland urban services boundary, of recycling opportunities available and for an ongoing recycling education and promotion program. However, the City has not yet initiated the work under the promotion program.

On February 17, 1987, as previously announced, a hearing was conducted at DEQ's Portland offices by the Environmental Quality Commission through its hearings officer. The purpose of the hearing was to examine DEQ's disapproval action. The testimony provided at the hearing is summarized below.

Summary of Testimony

Estle Harlan

Estle Harlan spoke for the Tri-County Council composed of representatives from Clackamas County Refuse Disposal Association, Multnomah County Refuse Disposal Association, Oregon Sanitary Service Institute, Portland Association of Sanitary Service Operators, Teamsters Local 281, and Washington County Refuse Disposal Association.

The Council supports the Opportunity to Recycle Act and implementation of this opportunity through a permit system. In response to a City of Portland request, the Council submitted a plan with strong enforcement provisions to ensure compliance by the solid waste industry and maximum participation levels by residents. The Council plans to submit to the City a letter of commitment to the plan and an agreement to try to bring about speedy, effective implementation.

Currently, approximately 60 firms provide the opportunity to recycle. Some of these subcontract with PRROS, providing the opportunity to 75,000 residences in the Portland/mid-Multnomah County area. Many of these firms were providing full line recycling service prior to the 1983 legislation. Portland has one of the highest recovery rates for newsprint in the nation. The strong support of the solid waste industry to be allowed to do recycling as a permit condition is a strong reason why the permit system is desirable. Many haulers attended the hearing. Two submitted receipts reflecting their recycling activity.

Flaws in the contract system have contributed to delay in implementation of the Act. Cost figures being used are conjectural. The cost of the contract system has increased 41% over the original estimates. The permit system would be the most cost effective plan.

While Portland is not currently in compliance, it could be if it builds on the present excellent recycling systems in place by the solid waste industry and requires that all solid waste haulers in the city provide the opportunity to recycle as a permit condition.

Written testimony available.

Judy Dehen

Judy Dehen of the Sierra Club urged the Environmental Quality Commission to pressure Portland to action to provide the recycling opportunity residents need. She believes the present situation approaches an emergency. Despite Metro's proposal of a mass garbage burner which will spew dioxins, despite DEQ being required to take responsibility to site a landfill, and despite previous extensions, the City of Portland has not approved any plan to date.

Marguerite Truttman

Marguerite Truttman of Alpine Disposal and Recycling has for years worked in conjunction with Truttman Sanitary Services to provide free weekly recycling to garbage customers. She believes that if provided the opportunity, haulers will group together cooperatively for effective use of equipment and resources to deliver a recycling program. She has nearly a 50% participation rate from among her customers, while Portland has been hoping for a 20% rate. Under a contract system, Portland would lose out on recycling customers.

Gresham Sanitary Service diverts recylables from the landfill at a rate of 81 pounds per customer, as compared to 108 pounds for her customers. DEQ will be unable to make comparisons using information collected in 1987 because it has not previously requested tonnage reports for cardboard. DEQ should talk to haulers to find out what is being diverted from the landfill.

Dick Weitzel

Dick Weitzel of R.E. Weitzel & Son Refuse and Recycling Service is the third of four generations in the refuse and recycling service. Although trucks have only begun to advertise recycling, DEQ and the Legislature did not discover recycling. Weitzel's grandfather was the best recycler of all and recycling was a big part of his early business income. However, recycling waned as it became uneconomic. Weitzel began a recycling program again about ten years ago. At that time the media provided significant attention. While the notoriety was short-lived, the hard work was durable. Weitzel feels his early efforts have been repudiated by the current government debate. He began recycling in response to competition from Portland State University students who began by collecting recyclables and proceeded to collect the garbage, which was profitable. Weitzel expects current disposal and recycling businesses to provide the best recycling service in the world because they are dedicated and competitive and will fight to do what is right.

Ross Dey

Ross Dey represents the Home Builders of Metropolitan Portland which has 1,100 members. The group supports the permit system for garbage hauling and recycling. Dey is frustrated by the incorrect view that

Portland is not recycling. Haulers and citizens of Portland are doing a superb job of recycling. His group is concerned that recycling efforts will outstrip the market. It will be difficult to publicize. The group suggests use of a hot line to provide information on recycling depots.

Jean Robinette

Jean Robinette of Oregonians for Cost-Effective Government, asks that Portland be given time to put together an effective program. She is concerned about the advice the Environmental Quality Commission will give in its order at the conclusion of this hearing. Whatever decision is made, the tax payers will bear the costs. Her group favors the permit system over the contract option. She has identified a number of incentive suggestions. They include: 1) Require haulers to provide the opportunity to recycle as a permit condition; 2) Allow those who do not want to get into the recycling business to contract for that service with a City licensed recycle firm, or own a share in their own recycle firm; 3) Assure an economic place to dump or store recyclable materials that have no current market; 4) Encourage a two-fee system, adding a surcharge for mixed load cans and assuring the customer is informed of the reason for price increases; 5) Raise tipping fees at the landfill for mixed loads, using the revenues to fund a limited government role of monitoring and storing for currently unmarketable recyclables; and 6) Give the haulers the incentives to make the system work, so that it will be in their interest to meet DEQ's participation rates. She urges that government maintain a minimum role, that franchise protection and costly government administration be minimized, and that waste generators pay for disposal in proportion to the volume of nonrecylable waste they produce.

Written testimony available.

John Ryan

John Ryan of Pacific Waste and Refuse Company supports the permit system. Pacific does not yet recycle because of uncertainty of the prospects of the franchise system. He believes other haulers have been similarly deterred. Without a contract, some haulers will be put out of business.

Jeanne Meddaugh

Jeanne Meddaugh of the Oregon Environmental Council believes DEQ has correctly determined, and the City of Portland has conceded, that the opportunity to recycle, as defined by law, is not being provided to every resident within the Portland wasteshed. The Portland City Council tabled an ordinance that would have implemented a curbside recycling program through six contract recyclers, and directed its staff to come back with another proposed ordinance that would provide recycling services through existing haulers -- a proposal which has been previously rejected by the Environmental Quality Commission. Promotion and education requirements of the law will not be met until the Portland City Council decides what method to utilize to provide the curbside program.

The Environmental Quality Commission should move quickly to begin enforcement action against the City for the failure to comply with law.

Written testimony available.

Jeanne Roy

Jeanne Roy of the League of Women Voters of Portland states that the opportunity to recycle is not being offered. While some haulers offer multi-material recycling, some offer none at all and some offer a partial opportunity by collecting newspaper weekly and glass, tin and motor oil monthly. Although her hauler does provide limited recycling opportunity, many do not know about it. Haulers are not necessarily concerned with the convenience of the customers. The League believes that adequate curbside recycling requires either a contract system or franchise system. It is not possible to monitor a large number of haulers. There is no economic incentive to the haulers to increase the amount of material that is recycled. Because the City has no current adequate plan, the Environmental Quality Commission must act. According to a City of Portland survey, except for a consortium, most haulers picked up only newspaper and cardboard. Only seven offer full multi-material collection. Of 424 tons per month of residential material, 40% is newspaper, 36% is collected by three haulers, and the remaining 17% haul only 1.8 tons of recyclables a month, each.

Ron Tunstall

Ron Tunstall of Trout Brothers services the southwest area. They have collected newspaper for a year and a half, and oil for a year. Everyone in southwest Portland he hauls for has received flyers on cans and in their billings at least three times. Ten thousand notices of the opportunity to recycle have been distributed. He is recycling ten tons of material per month, including newspaper, glass and tin.

John Trout

John Trout, Secretary/Treasurer of Teamsters Local 281, is a former waste hauler. He states that although the Portland wasteshed is technically out of compliance in terms of education and notification requirements, the public does have the opportunity to recycle. Over 60 Portland programs are offered. All the public has to do is telephone one. The permit option strengthens enforcement and provides for education and notification. In 1971, the League of Women Voters gave the waste hauling industry the opportunity to participate in a six-month pilot project. Many of the current recycling businesses were formed out of that opportunity.

Sandra Gee

Sandra Gee favors the contract program. She believes DEQ should encourage its implementation. Neither of the places that she has lived in Portland have offered recycling service. While she is willing to make a great effort to recycle, most people will not do so, and convenience is

important. The City must act responsibly in providing the opportunity to recycle.

Jim Nicolaisen

Jim Nicolaisen of the Multi-Family Housing Council believes that the existing waste system in the Portland wasteshed is meeting the needs of recycling. The problem is that citizens do not know of its availability. Nicolaisen described the experience of attempting to educate middle income tenants to the program, informing them of the location of the containers, methods, and schedules. Little response was obtained. A good public relations campaign will be necessary to change people's habits. The problem is not the hauler system; the problem is citizen attitude. Thirty-six cents a can is a minimal amount for citizen education.

Jeri Grimm

Jeri Grimm reported the inadequacy of the recycling service provided by her hauler. When called, the hauler promises pickup, but does not provide it promptly.

Stan Myers

Stan Myers works part-time on a garbage truck. The owner has given all of his customers recycling instructions for pickup on the first Friday of each month. Most people, instead, put the recyclables out daily, scattered around the garbage can rather than in bags or boxes. When corrected, the people stop recycling. Most of the recyclers are retired and seem to have the time to make the effort. He believes that if people are charged for a full can of refuse, they will fill the can.

Written testimony available.

Dan L. Kniesher

Dan Kniesher was disappointed that curbside pickup was not provided in his area last summer. He does not believe a program will be implemented until it is forced. He believes DEQ should penalize the City for not having a curbside policy. He is tired of delays.

Written testimony available.

The record also includes recycling receipts from Jack Young and Fred Wrench.

Linda K. Zucker:y
HY4051
229-5383
March 3, 1987

sSI

Oregon Sanitary Service Institute

4372 Liberty Rd. S., Salem, Oregon 97302   Phone 399-7784

Research
Standards
Service

Reply to: 2202 SE Lake Road
Milwaukie, OR 97222 (654-9533)

February 17, 1987

TESTIMONY BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
Re: City of Portland Compliance with the Opportunity to Recycle Act

(This testimony is given on behalf of the Tri-County Council which consists of representatives from Clackamas County Refuse Disposal Association, Multnomah County Refuse Disposal Association, Oregon Sanitary Service Institute, Portland Association of Sanitary Service Operators, Teamsters Local 281, and Washington County Refuse Disposal Association.)

The City of Portland has not adopted a formal recycling program yet, but they have expressed informal approval of requiring each solid waste collector in Portland to provide such opportunity as a condition of their solid waste permit. The Council will vote on that plan on February 18, 1987. The solid waste industry in Portland, as represented by the Tri-County Council, supports the Opportunity to Recycle Act and implementation of this opportunity through the Permit System.

The City asked the Tri-County Council to submit a plan with strong enforcement provisions that would insure compliance by the solid waste industry and maximum participation levels by the residents. Such a plan has been submitted to the City on February 16, 1987, and at the February 18, 1987 Council Hearing, a letter of commitment signed by each of the representatives of the solid waste associations in Portland will be filed with the City. We have further committed to making any refinements necessary in the plan to effect speedy, effective implementation. The solid waste industry is willing to do its part to bring the City of Portland and Mid-Multnomah County into full compliance with the Opportunity to Recycle Act.

But all the discussion about lack of full compliance tends to shade the outstanding recycling that is already going on in Portland. It should be noted that there are currently approximately 60 firms providing the opportunity to recycle in accordance with the Act. Some of these firms sub-contract with PRROS, and that entity alone provides the opportunity to approximately 75,000 residences in the Portland/Mid-Multnomah County area. Many of these firms were providing full-line recycling service long before the 1983 Legislature passed Senate Bill 405. Because of this, Portland has one of the highest recovery rates for newsprint in the nation.

We believe the Environmental Quality Commission should look at the high level of recycling service that is being provided to over half the households in the area, and recognize that the solid waste industry has made a commitment to the City of Portland, and to all

residents of the City and County and they will be provided with the opportunity to recycle just as soon as the City plan for the Permit System is implemented. Thus, while the City and mid-County may only be in partial compliance today, full compliance can be achieved under the Permit System much more quickly than under the Contract System because of the strong support of the solid waste industry to be allowed to do recycling as a condition of their Permit.

There has been much discussion by DEQ that the Permit System would be more costly than the Contract System. I would remind the state that one reason why there is no plan in place today in the City is because of the problems the City has had with the numbers they were provided for cost of the Contract System. Because of the obvious flaws in the numbers, as well as other flaws in the whole Contract concept, the City Council failed to move on in October with the plan they had initially approved in June, 1986. When confusion with the cost figures still prevailed in December, Commissioner Bogle removed decision on a recycling plan from the agenda. Cost figures were still being computed the morning of the City Council Meeting of February 12, and when questions posed by the City Commission on the numbers could not be answered, the Contract plan was ultimately rejected. The only known cost figures are those for city administration promotion and education. All other figures are strictly conjecture, as evidenced by the way they have changed over the months. On the morning of the last City Council meeting alone, the Consultant's office told me it appeared the cost of the Contract system had increased 42% over the original estimates. There is no doubt that the most cost-effective plan with the least over-all administrative costs would be the Permit System, and the City has given informal approval to that system.

Is the City in full compliance today? No. Will the City be in full compliance if they build on the present excellent recycling systems in place by the solid waste industry and require that all solid waste haulers in the City provide the opportunity to recycle as a condition of their permit? Unquestionably, yes.

Respectfully submitted,

EH:e

ESTLE HARLAN, Consultant for
Solid Waste Industry

Copy: TRI-COUNTY COUNCIL
OSSI

February 17, 1987
Summary of spoken testimony

Oregonians for Cost-Effective Government is pleased the City has developed a permit system option that will be <u>more</u> <u>cost-effective</u> <u>than</u> the <u>contract option</u> as now proposed.

Attached find our testimony on the financial incentives which could greatly increase the participation rate under a permit option, while cutting the cost of regulatory processes.

We recommend that EQC <u>advise the City to</u>:

- Submit a workable recycle option, allowing the private sector to provide cost-effective recycle service
- Urge the City to develop, as the year goes on, necessary financial incentives to increase participation.

Taxpayers and ratepayers must pay the costs. Let their elected representatives work with the industry to detail a workable option.

Jeanne Robnette
Executive Director
Oregonians for Cost-Effective Government
P.O. Box 384 Lake Oswego OR 97034

OREGONIANS for COST-EFFECTIVE GOVERNMENT
P.O. Box 384 • Lake Oswego, OR 97034 • (503) 636-4003

February 10, 1987

TO: Mayor Clark
Portland City Commissioners

FROM: Jeanne Robinette
Executive Director

Government regulation, protection and price setting drive up the costs of products and services, and they're not necessary when you have competitive private firms ready and capable of doing the job.

That's why we are most fortunate in Portland to have over 100 private firms ready to take on the job of processing recyclable materials. **There's now no need for the City or the State to get into the garbage business,** with all the extra costs to taxpayers and ratepayers that will create.

Now that most haulers are willing to pick up recyclables from their own customers, we don't even need the City as a contract administrator. The City can fulfill its responsibilities through its permit and licensing process and by helping these competitive Oregon businesses make their case before DEQ.

In the name of the taxpayers and ratepayers I want to thank those competitive Portland area businesses today, for being willing to take on this new state requirement. They certainly deserve the applause of those who will ultimately pay the bill.

We urge you to reconsider your Government Contract Method, in light of the new evidence, and let the haulers themselves do any necessary contracting. **With strategic incentives in place a Permit Method will be even more cost-effective than Option B. With the budget cuts you are facing I don't think you need any unnecessary government costs.**

In January, I outlined some incentives which the City could quickly put into place, which would modify the permit method enough to remove DEQ'S objections. As I understand it, such incentives have not been considered.

All the City needs to do is put appropriate incentives* in place and the haulers, as entrepreneurs, will get the job done. Within weeks they will modify the nature of their businesses to meet the new demands because they will have to to stay in business. It really can be that simple.

It's because those incentives were lacking in the original Option D that your consultant found the regulatory and administrative costs were so high and the expected participation was so low.

As I understand it, it will be a month before DEQ can get through the process that determines whether or not you are in compliance and another month before they take any action.

We urge you to use the month to work with the haulers on a package of incentives that will help them handle their new recycle responsibilities. The haulers and the recyclers and the taxpayers can then go with you to the EQC and demand that the State let us use the most cost-effective option.

As you make your decision I think you should keep two other government programs in mind: a success and a failure. The failure is the national farm program, administered by the U.S. Congress, the success is Oregon's Bottle Bill.

Think for a moment what government programs have done to American farmers. Government regulation and protection and price setting have driven the cost of farm products and farm land so high that our farm products are not marketable worldwide and farmers and farmer's banks are bankrupt. I understand the U.S. imported more agricultural products last year than we exported! We would all have been better off if government had let farmers run their own businesses, bought their own equipment, set the prices for their own crops. But no one believed that when the programs began, just as DEQ does not understand Portland's recycle options today.

The success story is Oregon's Bottle Bill. At the time the problem was identified, the state could have hired hundreds of public employees to run up and down the highways with thousands of bags, picking up bottles as fun loving taxpayers threw them out of car windows. Or they could have contracted with private bottle pick-up franchises all across the State.

Thankfully, they didn't. Those would have been a very expensive solutions. Instead, they set a simple $.05 incentive in place. Suddenly thousands of private citizens and grocers solved the problem, at not cost to the taxpayer. Yes, some of the grocers are complaining that they have too much responsibility. They want protection and regulation and price setting. But if we keep the incentives in the right place, they'll continue to do the job for us, for $.05.

We hope you'll ask the experienced, competitive firms who have hauled Portland's garbage all these years to do the same. We hope you will delay a decision on the Government Contract method today and use the month you have to work with all parties to build a workable Permit Method.

Remember, DEQ isn't offering to pay the bill for a new expensive method. Portland's ratepayer, taxpayers and businesses will pay the bill, just as we're paying the bill for the farm subsidies.

Thank your for your consideration.

I will be pleased to leave for your consideration the incentive suggestions we've made.*

*

- Require haulers to provide the opportunity to recycle as a condition of their permit.

- Allow those who don't want to get into the recycle business to contract for that service with a city licensed recycle firm, or to own a share in their own recycle firm.

- Assure them an economic place to dump or store recyclable that have no current market.

- Encourage them to set 2 fees, adding a surcharge for mixed load cans (encourage them publicly so the customer does not blame them for necessary price increases)

- Raise tipping fees at the land fill for mixed loads; use the revenues to fund a limited government role of monitoring and storage for currently unmarketable recyclable.

- Give the haulers the incentives to make the system work. They're directly involved. They know where the cardboard is; they know who is throwing away glass and metal; they know who would recycle with a litle encouragement; they can meet DEQ's participation rates when it's in their interests to do so.

Trust the incentives for a year; structure a cost-effective monitoring system and you'll find it's true.

OREGONIANS for COST-EFFECTIVE GOVERNMENT
P.O. Box 384 • Lake Oswego, OR 97034 • (503) 636-4003

January 22, 1987

Ralph R. Wright
Chairman

John Bradshaw
Carol Gee
Douglas Nicoli
Vice Chairmen

Joseph Beemer
Secretary
Treasurer

Jeanne Robinette
Executive
Director

TO: Delyn Kies
Estle Harlan

FROM: Jeanne Robinette

SUBJECT: "Let's give the cost-effective private system a chance, before we opt for more costly government regulation, protection and administration."

Since I understand that the design of the solid waste pickup/recycle system is again open for discussion, I have searched my mind for some modifications in the "Proposed revised D" discussed in November, which (a) could meet City and DEQ standards, (b) would rely on the private firms who have served Portland for years, and would (c) assure a cost-effective system for customers.

Given my lack of experience in the field, I am reluctant to put ideas on paper. But it seems time to make several points, now, while they can be considered along with other suggestions.

If Portland is to have a garbage pickup/recycle system cost-effective to customers and taxpayers, it would seem to me the system we choose must assure that:

(1) **private firms are assured a business climate** that allows them to do what they do best: provide customer responsive service in a cost-effective manner;

(2) **waste generators** have **incentives to sort** out recyclables (increasing participation);

(3) **haulers have incentives to** modify the nature of their service as necessary to **make recycling work;**

(4) **government has a minimum necessary role** (setting standards, monitoring results, creating incentives that work);

(5) **there is a minimum of franchise protection and costly government administration,** assuring enough competition and customer choice to keep costs to customers and taxpayers down and to encourage business entrepreneurs;

(6) **waste generators** pay for disposal **in proportion to the volume of non-recyclable waste they produce.**

<u>SUGGESTIONS:</u> I'd like to recommend some recycle system components that would meet the above tests. The more of these components you include in Portland's system, the more cost-effective it will be. Tests met are indicated by number references.)

- Require each hauler to offer recycle service to its customers as a condition of its permit. Allow individual haulers to pick up recyclables themselves, or contract with existing recycle firms, or form and own stock in a new recycle firm that serves them and neighboring areas. Value of stock in recycle companies would appreciate as recycle participation increased and the nature of collection service changed. (1) (3) (5)

- Recycle firms could contract to serve several hauler areas, but only by individual contract or arrangement, not formation of price setting consortiums. Recycling firms could pool or share ownership of equipment, storage, etc, through individual arrangements (1) (3)

- Allow haulers to dump clean loads of non-polluting material (glass, etc.) at no charge, in designated public or private locations, where clean fill is desirable or in storage for future sale, when markets for material disappear. This should decrease need for permanent mixed-material "landfills", while eliminating penalty for picking up unmarketable material. (1) (3)

- Suggest haulers raise the monthly charge per can for mixed waste cans +/- $.30, providing a bonus for those who earn a "RECYCLER" label on their can. City could provide publicity to make the label a badge of honor and to explain that any hauler who finds it necessary to change its fees on unsorted material to cover recycle costs does so at the City's recommendation. (1) (2) (3) (4) (5) (6)

- Let haulers run their own businesses, deal with their own customers and pocket the dollars earned from sale of recyclables. As they experience diminishing returns from hauling mixed loads, they should experience increased returns from processing sorted loads. Thus, they will change the nature of their service over time, meeting customer and city needs, but they will remain in a viable, competitive business, serving customer needs in a cost-effective way. (1) (3) (4) (5) (6)

- City/METRO could raise tipping fees for mixed loads or cut rates for cleaner loads to pay for minimum city monitoring function. Commercial accounts that recycle would pay less also. (1) (2) (3) (4) (6)

- City would provide publicity, awards, etc., to those who make the system work. (2) (3) (4)

- As recycle participation increases, it would seem the per can residential fee, being less elastic, would remain constant (with source separators paying smaller monthly charge) as tipped volume of unsorted waste dropped and sale of recycled material rose, compensating the hauler for the added expense of the system. (1) (2)

In the search for cost-effective ways to provide "public services", our organization believes the City should rely on innovative private firms, in cases where they can provide service to customers and to the City in the most cost-effective way.

Increased regulation and public administration will add costs to taxpayers and impede the entrepreneurship necessary to meet changing public goals, such as DEQ's recycling requirement. Let's give the cost-effective private system a chance first. If volume of landfilled waste does not decrease under this system, more expensive government involvement could be considered.

I hope the above suggestions help you develop a solution that creates a sound business climate for haulers while achieving results specified by DEQ.

Thanks for your consideration.

Jeanne Robinette
Executive Director
JR:mt

// OREGON ENVIRONMENTAL COUNCIL
2637 S.W. Water Avenue, Portland, Oregon 97201
Phone: 503/222-1963

Comments of
Oregon Environmental Council
before the Department of Environmental Quality
February 17, 1987

RE: Proposed Determination of non-compliance with the Recycling Opportunity Act for the Portland Wasteshed

The Oregon Environmental Council believes DEQ has correctly determined that the opportunity to recycle, as defined in ORS chapter 459, is not being provided to every resident within the Portland wasteshed. In order to arrive at that conclusion it is not even necessary to survey a cross-section of Portland households or conduct any other research. It is not necessary because the Portland City Council concedes that the opportunity to recycle is not being provided. The Council met on February 12 to take public testimony on a proposed ordinance that would have implemented a curbside recycling program through six contract recyclers. After hearing public testimony, the Council voted 3-2 to table that ordinance and directed the staff to come back with another proposed ordinance that would provide recycling services through existing haulers. This proposal has already been previously rejected by the EQC.

At no time during the hearing did any member of the public or any Council member suggest that the City is already complying with the

provisions of the Recycling Opportunity Act. Commissioner Blumenauer specifically stated that the City "is not complying with state law" and he expressed his concern over that. No one on the Council debated his statement.

Although as a technical matter each resident of Portland may have the opportunity to recycle if they are patient enough to call through the existing list of 100-plus haulers, it seems very clear that the promotion and education requirements of the Act as not being met. The schedule for implementation of promotional activites for Portland, listed in Attachment III of the staff report to the EQC at their September 12, 1986, meeting (Agenda Item J), has not been met and will not be met until the Council decides which method they plan to utilize to provide the curbside program.

DEQ has correctly determined that the Portland wasteshed is out of compliance with state law. The Department should move expeditiously to begin enforcement actions against the City for this failure.

2-12-87

Hazardous & Solid Waste Division
Dept. of Environmental Quality
RECEIVED
FEB 17 1987

Dear Lorie Parker

I work part time on a garbage truck.

the owner has given all his Customers recycling instructions. To be picked up 1st Friday of each month. Most people will not follow instructions and put it out all weeks of The month, scattered arround The garbage can, not in bags or boxes.

then when we tell them how it is to be done ~~they~~ stop recycling.

Most of the ones recycling are retired & have nothing else To do.

Then I read in the paper "recycle to reduce the amount of garbage

Taken to the land fill"!
these people are not about
To give us a can $\frac{2}{3}$ full.
They Fill it up with
Something. Sod etc.

Metro should pay the
garbage haulers to
recycle, then they can
do a better job getting it
over to the public &
help pay for the extra
time & expenses.

Stan Myers

Stan Myers
1510 N.E. 155th Ave.
Portland, Oreg. 97230

Hazardous & Solid Waste Division
Dept. of Environmental Quality
RECEIVED
FEB 18 1987

11644 S.E. Morrison
Portland, OR 97216
February 16, 1987

DEQ - Recycling:

I am writing to submit my thoughts to you on the status of recycling in my neighborhood. I cannot attend the hearing on this subject tomorrow, so please accept this letter as my testimony.

Last summer I looked forward with enthusiasm to the startup of curbside recycling pickup as mandated by Oregon law. So did my parents who live in Rockwood at 91 S.E. 187th. To my disgust it didn't happen. Curbside recycling does not exist in our neighborhoods today.

I called my garbage hauler and my parent's hauler many times to inquire why not. I concluded they will not take the initiative to start recycling. They're dragging their feet. I called Metro Recycling Information only to find out they are powerless to do anything other than place wistful ads in the Oregonian.

Currently I am taking our recyclables to East County Recycling at 122nd & San Rafael. I drop the newspaper bundles in the big drop box at Fred Meyer's at 122nd & Stark.

When are we going to get curbside recycling !?

I think the garbage haulers (those that don't recycle) are waiting for City of Portland to drop the other shoe and hoping the City never does.

I think the DEQ should fine the City of Portland for not having a curbside policy. When the City has a policy, the haulers (or special contractors as the ~~alt~~ alternative) will fall into line — both inside the city and out here in the county area.

I'm tired of these delays. I want curbside recycling ASAP.

Sincerely,
Dan L. Kniesner
Dan L. Kniesner

To EQC - re: recyle hearing. 2/17/87

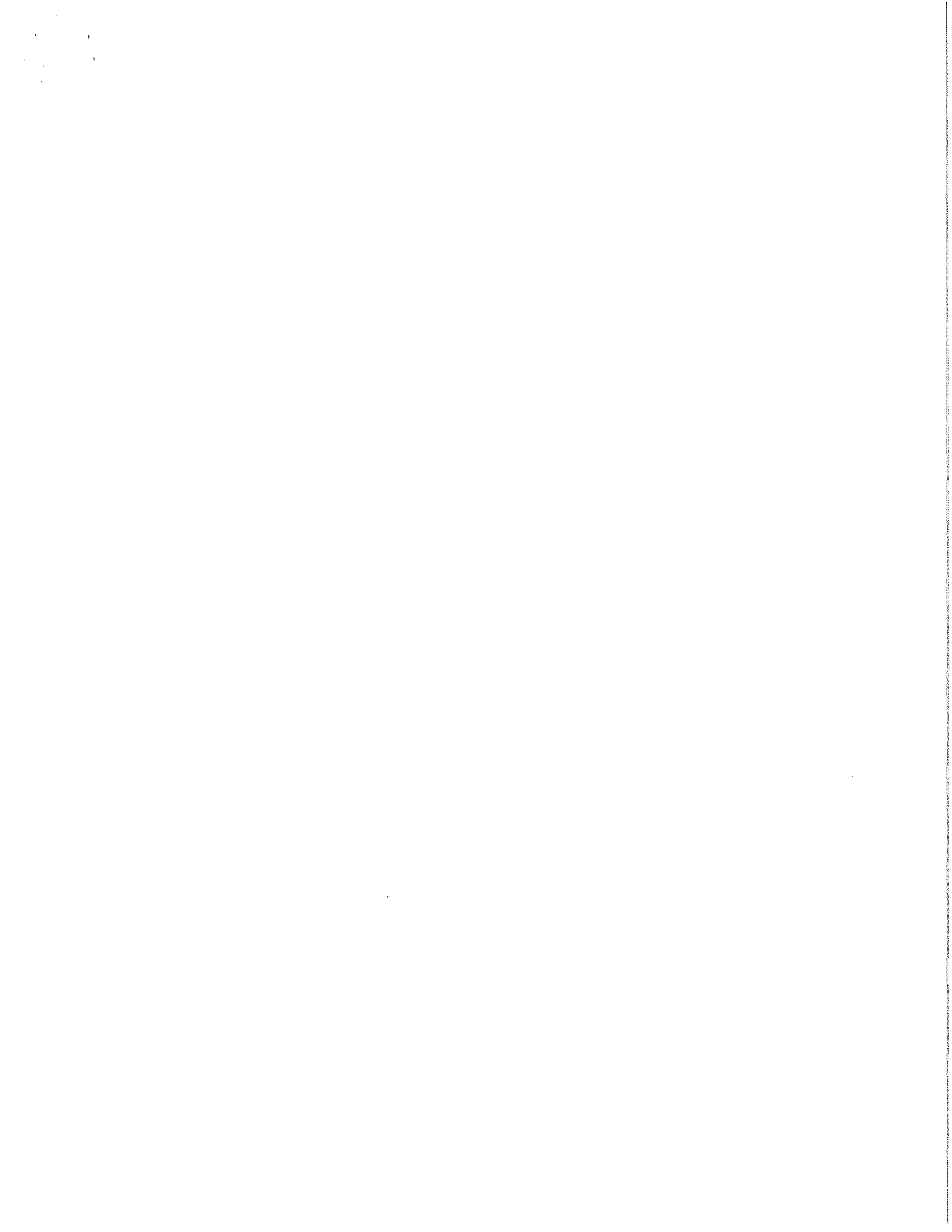
I wish to comment on how well we are being give the opportunity to recycle under service provided by our hauler, McGinnis and Sons. During the five months I have been living here and observing, and I know the previous tenants of this house reported the same; the service has been very poor.

On the appointed day, each month, we put out our sorted material and at the end of the day , there it sits. I would call the next morning and get a promise of pickup - but often it wouldn't h ppen until the third day.

This is terribly unsightly, first off, and frustrating. When service is promised, it should be delivered - and this has not been the case. I would like to know how EQC is going to make sure that the haulers - given the contracts to recylce, will follow through - or will we simply be sorting material to go into the landfill. This is a travisty of the intent of the law and I, for one, voice my frustration and discontent with the implementation of SB 405.

Jere Grimm
1734 N.W. Aspen
Portland, OR
97210

Hazardous & Solid Waste Division
Dept. of Environmental Quality
RECEIVED
FEB 20 1987



Resource Conservation Consultants

1206 N.W. 21st ; 97209
P. O. Box 10540
Portland, Oregon 97210
(503) 227-1319

Hazardous & Solid Waste Division
Dept. of Environmental Quality
RECEIVED
MAR 06 1987

March 5, 1987

Solid Waste Hearings Officer
Oregon Department of Environmental Quality
811 SW 6th
Portland, OR 97204

Dear Hearings Officer:

Resource Conservation Consultants (RCC) requests that this letter be placed in the Department of Environmental Quality's file of record regarding City of Portland compliance with the Opportunity to Recycle Act. We recognize that the public comment period on this matter is closed, however,misleading statements made by Estle Harlan of the Oregon Sanitary Service Institute (OSSI) in her February 17, 1987 testimony have prompted this response.

RCC prepared cost estimates for a residential recycling collection program under contract to the City of Portland. Cost estimates for five collection options were reviewed by the city's technical advisory committee, which included representatives from the waste hauling industry. OSSI's contention that the cost estimates had "obvious flaws" and are "strictly conjecture" is particularly disturbing because of the input waste hauling representatives had in developing the estimates. RCC responded to verbal and written comments from Mrs. Harlan and other waste hauling representatives during formulation of the cost estimates. No written information was submitted to RCC or the City that contested the validity of the cost estimates.

OSSI's claim regarding increase in the cost estimate for the contract option is deliberately misleading because Mrs. Harlan was fully aware of the factors causing the changes. Two significant factors resulted in increased cost estimates for every collection option, including the permit option, between the original submission in May 1986 and City Council consideration in February 1987. First,

a sixth service area was added to provide recycling collection to approximately 25,000 more households in East Multnomah County. Secondly, the program operating period was shortened from five years to two years, causing cost increases because equipment depreciation is spread over a shorter period. This information was discussed in public meetings and in private conversations with Mrs. Harlan, and she was aware that these factors would substantially increase costs for every collection option.

In summary, it is unfortunate that OSSI has resorted to the use of deceptive tactics. We hope our comments clarify the deciscionmaking process that actually took place and that future discussions will occur in a more honest manner.

Sincerely,

Jerry Powell
President

cc: Lorie Parker, DEQ
Deyln Kies, City of Portland
Wayne Rifer, Metro

1 ENVIRONMENTAL QUALITY COMMISSION, OF THE STATE OF OREGON, (Commission)) ENVIRONMENTAL QUALITY COMMISSION ORDER
2) No. WR-87-01
v.)
3)
4 CITY OF PORTLAND (City))
5)

6 I

7 Pursuant to ORS 459.185(6), the Commission makes the following
8 findings:
9 1. ORS 459.180 requires that the affected persons within a wasteshed
10 shall implement the opportunity to recycle within the wasteshed not later
11 than July 1, 1986.
12 2. The City is an affected person within the Portland wasteshed.
13 3. The City received an extension to January 31, 1987 for providing
14 the opportunity to recycle. The conditions of the extension were not met
15 and the opportunity to recycle is still not provided to every person in the
16 wasteshed.
17 4. On February 9, 1987 the Department disapproved the Portland
18 Wasteshed Recycling Report based on the findings that (a) the opportunity
19 to recycle is not being provided to all persons within the City's urban
20 services boundary; and (b) an effective public education and promotion
21 program which meets the requirements of OAR 340-60-040 has not been
22 implemented within the City's urban services boundary.
23 5. Pursuant to ORS 459.185(5) which requires the Commission to hold
24 a public hearing within the affected area of the wasteshed, EQC Hearings
25 Officer Linda Zucker held a public hearing on February 17, 1987 at
26 811 S. W. Sixth Avenue, Portland. The testimony verified the

1 Department's findings that the opportunity to recycle is not provided to
2 every person within the Portland wasteshed.
3 6. Based on the Department's findings as stated in the Disapproval
4 of Wasteshed Recycling Report dated February 9, 1987 and upon the hearing
5 record, the Commission has determined that the opportunity to recycle is
6 not being provided within the Portland urban services boundary.
7 7. Ordinance No. 159457, adopted by the City on February 26, 1987,
8 does not require a recycling program which provides recycling collection
9 service and notification to every garbage collection customer within the
10 City's urban services boundary. The program has not yet been implemented,
11 and even if it were, it would not provide the opportunity to recycle as
12 required by law.
13 II.
14 Based on these findings, it is hereby ordered that:
15 1. By June 1, 1987, the City shall ensure that at least monthly
16 recycling collection service is provided to every garbage service customer
17 within the Portland urban services boundary.
18 2. The City shall manage the recycling promotion and education
19 program. The City shall design and produce, or hire a contractor to design
20 and produce, promotional materials as required by OAR 340-60-040. The City
21 shall also provide educational and promotional materials to local media and
22 community organizations. The City shall either mail the promotional
23 materials to each garbage service customer within the Portland urban
24 services boundary, or require each permittee to deliver the promotional
25 materials to his or her customers.
26 ///

1 3. By May 13, 1987, the City shall either mail or cause the
2 contractor(s) or permittees to distribute to their customers' doors the
3 initial notification of recycling service which will be available to that
4 customer beginning in June. The notice shall include:
5 a. reasons why people should recycle;
6 b. the name, address and telephone number of the person providing
7 on-route collection;
8 c. a list of the materials that can be recycled and instructions
9 for preparation of those materials;
10 d. a listing of depots for recyclable materials serving the area;
11 and
12 e. a City telephone number for customer information and complaints.
13 4. By June 1, 1987, the City shall design and produce additional
14 educational materials, including but not limited to a notice for customers
15 who have improperly prepared recyclable materials.
16 If the City requires each garbage hauler permittee to provide
17 recycling collection service, then it is also ordered that:
18 5. The City shall require all permittees to submit to the City
19 customer lists, including names and addresses. These lists shall be
20 required to be updated at least quarterly.
21 6. By May 13, 1987, the City shall establish a hotline telephone
22 number for customer information and complaints. The telephone number shall
23 be listed on all promotional materials distributed to each garbage service
24 customer.
25 7. The City shall establish requirements for generator preparation
26 of recyclable materials. Permittees shall be required to collect and

recycle all recyclable materials that are prepared according to the City specifications.

8. By June 1, 1987, the City shall establish an enforcement program that ensures that all permittees are providing the required recycling collection service and distributing promotional materials as directed by the City. The enforcement program shall not rely entirely on customer complaints. The City shall institute a continuous system of random checks to verify permittee compliance.

9. The City shall require permittees to submit monthly reports on volumes of material recycled and number of setouts by generator.

10. By July 1, 1988, the City shall submit a report to the Commission on the first year of the recycling program. The report shall include an explanation of all program features, including but not limited to number of collectors, the types and number of collection vehicles, all promotional activities, number of complaints, enforcement procedures and actions, volumes recycled and number of setouts. The Commission reserves the right to revise its order if, upon review of the Portland recycling program's performance over the first year, the Commission determines that the program does not achieve recycling rates at least comparable to recycling rates elsewhere in the state and the nation.

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IT IS SO ORDERED:

ENVIRONMENTAL QUALITY COMMISSION

______________________	______________________
Date	James E. Petersen, Chairman
______________________	______________________
Date	Mary V. Bishop, Member
______________________	______________________
Date	Wallace B. Brill, Member
______________________	______________________
Date	Arno H. Denecke, Member
______________________	______________________
Date	A. Sonia Buist, M.D., Member

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item M, March 13, 1987, EQC Meeting

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

Background

On November 21, 1986, the Department issued an Air Contaminant Discharge Permit to Husky Industries for their charcoal production plant in White City. (Husky Industries has subsequently changed its name to Royal Oak Enterprises, Inc.). On December 10, 1986, William H. Carlson, Area Vice President of Husky Industries, submitted a letter (Attachment 1) appealing the allowable annual emission limits contained in the permit (Attachment 2). On February 6, 1987, Mr. Carlson submitted additional information supporting the Husky appeal (Attachment 3).

Discussion

Husky is appealing the allowable annual particulate tonage of 147 tons/year which is contained in Condition 7 of the Air Contaminant Discharge Permit. The allowable emissions that were established in this permit have been reduced from Husky's previous permit limit of 213 tons/year for particulate. The previous permit limit was established prior to the adoption by the Commission in 1981 of new rules establishing requirements for Plant Site Emission Limits (OAR 340-20-300 through 310, Attachment 4).

Husky's concern relates to how plant site emission limits are established in Air Contaminant Discharge Permits. Pursuant to the Commission's rules, the plant site emission limits for a facility are determined based on the actual baseline emissions in 1977 or 1978. Increases or decreases from baseline are determined from other rules which may require emission reductions or allow for emission growth. In the Medford-Ashland Air

Quality Maintenance Area (AQMA), emissions growth is stringently regulated by the New Source Review rules (OAR 340-20-220 through 276, Attachment 4). These rules require that any proposed emissions increase be offset by a corresponding decrease in emissions elsewhere in the AQMA. These offsets may be internal within a facility or external offsets may be provided from other nearby facilities. A small growth allocation of 5 tons/year is available for plant modifications that are not considered significant.

The stringent rules that apply to new sources and source modifications in air quality nonattainment areas are necessary to prevent increases in emissions that would exacerbate existing standards exceedances. These rules were adopted by the Commission in 1981 to satisfy Clean Air Act requirements for Federally approvable State Implementation Plans. In some nonattainment areas, a growth margin has been developed to accommodate industrial growth. However, because of the severe particulate nonattainment situation in the Medford-Ashland AQMA, no growth margin has been available or is projected to become available.

The Medford-Ashland AQMA continues to experience exceedances of the particulate standards. The current control strategies do not appear to be adequate to achieve the air quality standards. The Department has delayed work on new control strategies until EPA promulgates a fine particulate standard. Based on the proposed standards being considered, it appears that the Medford-Ashland AQMA will significantly exceed the new standard when it is finally promulgated. At that time, new control strategies will be needed to reduce particulate emissions. It seems very probable that some of these strategies will require consideration of further emission controls for industries.

Husky has recently proposed to install a turbine generator to generate electricity from unused waste heat from their charcoal furnace. This modification would allow Husky to utilize previously unused operating capacity for their charcoal furnace and their hogged fuel boiler. Emissions would be increased proportionatly.

The Department has done an extensive review of the draft permit for the Husky facility in White City. In particular, the Department has reviewed the application of the Plant Site Emission Limit (PSEL) rule in establishing the emission baseline for this facility. These calculations are detailed in the review report for the attached permit (Attachment 2).

The draft permit is written such that emission credits from Husky's hogged fuel boiler may be "bubbled" with the charcoal furnace. The bubble allows Husky the flexibility of operating the charcoal furnace and the hogged fuel boiler in combination as long as the total Plant Site Emissions are not exceeded. The charcoal furnace can be operated up to the capacity that Husky is requesting if the hogged fuel boiler is left on standby.

In establishing this permit, the Department also considered Husky's most recent intention to install a turbine generator to generate electricity by operating both the hogged fuel boiler and the charcoal furnace waste heat boiler at full capacity. In both the Notice of Construction and the final Tax Credit concerning the charcoal furnace waste heat boiler, it was stated by Husky that the new installation would allow the hogged fuel boiler to be placed on standby once the waste heat boiler came on line. Husky was exempted from New Source Review on this basis. If the hogged fuel boiler and the waste heat boiler were operated at maximum capacity in order to generate steam for new electrical generation, Husky would have an increase in emissions above baseline which would constitute a major modification under both State and Federal requirements which would be subject to New Source Review.

Husky has several options for increasing plant capacity and/or steam production. One option would be to reduce the allowable emission levels below the levels specified in the regulations and transfer those credits to increased production. This option would be available if the hogged fuel boiler or the charcoal furnace are consistently performing below the regulatory limits. A second option would be to increase the level of control for either the hogged fuel boiler or the charcoal furnace. A third option would be to obtain external offsets. This option may be possible if Husky intends to develop new steam customers that would be able to shutdown existing boilers.

In the Commission policy statement (OAR 340-20-300) for the Plant Site Emission Rule, it is stated that the Commission does not intend to limit existing production capacity. This policy is qualified, however, by the statement that "Plant Site Emission Limits can be established at levels higher than baseline, provided a demonstrated need exists to emit at a higher level and PSD (Prevention of Significant Deterioration) increments and air quality standards would not be violated and reasonable further progress in implementing control strategies would not be impeded." In essence, this means increases in allowable emissions above baseline can be granted if airshed capacity is available. The Department has granted increases above baseline to industries in other areas of the state when airshed capacity was available. Airshed capacity for increased particulate emissions in the Medford airshed is not available and an increase in Husky's emissions above baseline would further contribute to the high rate of air quality standard violations and would interfere with reasonable further progress toward implementing control strategies. For comparison purposes, Husky's requested increase would be like adding an equivalent emission increase equal to about 360 new woodstoves to the airshed or another new Biomass One facility (Biomass One did provide offsets as required by the New Source Review Rule).

Furthermore, the Department does not agree that Husky's proposed changes are within the existing productive capacity of the facility. Historically, Husky has never operated at the levels proposed. The increased operating levels would not be possible without the installation of new electrical generating facilities. This plant modification makes possible a new industrial activity which did not occur at this site previously. This modification would clearly subject the facility to the New Source Review requirements unless internal emission offsets are provided such that no net emission increase would occur from the facility. The New Source Review requirements would include Lowest Achievable Emission Rate (LAER) control technology and emission offsets.

Alternatives

The Commission has two alternatives.

1. The Commission can uphold the existing rules requiring Husky to either operate within their existing allowable emissions or go through the New Source Review requirements to obtain an emission increase.

2. The Commission could seek to relax the rules to allow for Husky's expansion by changing the criteria for establishing Plant Site Emission Limits or by attempting to develop a particulate growth margin for the Medford-Ashland AQMA. These changes would constitute a revision of the EPA approved State Implementation Plan. Any relaxation of criteria or standards would need to be made up by more stringent requirements for other sources in the airshed.

Summation

1. Husky Industries (now re-named Royal Oak Enterprises, Inc.) has appealed their Air Contaminant Discharge Permit which was issued by the Department on November 21, 1986.

2. Husky disputes the baseline used to establish the Plant Site Emission Limits for their facility. Husky maintains that limits should be set based on the productive capacity of the facility rather than the historical operating rate. Husky also maintains that the installation of electrical generating facilities which will require additional steam generation, should not be considered a plant modification.

3. The Department has conducted an extensive review of Husky's emissions and is convinced that the emission limits were properly established in accordance with the Commission's rules.

4. The Department concludes that Husky is proposing to increase steam generation rates over historical rates by installing electrical generating equipment and that the Commission's rules do not allow for these emission increases when no airshed capacity is available, as is the case in the Medford-Ashland AQMA.

5. The Commission can require Husky to operate in accordance with the existing rules or can devise a means to relax the rules to accommodate Husky's case.

6. Because of the severe air quality problems in the Medford-Ashland Air Quality Maintenance Area, any rule relaxation in one area would require more stringent rules in another area to compensate for the increased emissions. Since it appears that more stringent control strategies will be required to achieve the air quality standards, it does not seem appropriate to relax standards for industrial sources.

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.

Fred Hansen

Attachments:
1. Letter from Husky Industries
2. Air Contaminant Discharge Permit for Husky Industries
3. Additional Information from Husky Industries
4. New Source Review and Plant Site Emission Limit Rules

L. KOSTOW:a
AA5965
229-5186
February 10, 1987

Attachment 1
Agenda Item __
March 13, 1987,
EQC Meeting

HUSKY INDUSTRIES
Inc.

POST OFFICE BOX 2367, WHITE CITY, OREGON 97501 / TELEPHONE (503) 826-2756

December 8, 1987

Mr. Fred Hansen, Director
Dept. Of Environmental Quality
Executive Building
811 S.W. Sixth Ave.
Portland, Or 97204

RE: Permit Number 15-0058

Dear Mr. Hansen:

I am receipt of the draft permit for Husky Industries in White City, as well as Lloyd Kostow's cover letter. Mr. Kostow indicated in his letter that the permit conditions can be appealed to the Environmental Quality Commission. We wish to appeal the allowable annual particulate tonnage of 147 tons total to the EQC. This is a substantial reduction from our current tonnage and represents a major limit on our proposed future operation.

We would appreciate your expediting our appeal since we need to get this matter cleared up as soon as possible so that we can proceed with proposed projects.

Sincerely,

William H. Carlson
Area Vice President

WHC/vad

OFFICE OF THE DIRECTOR

AIR CONTAMINANT DISCHARGE PERMIT

Department of Environmental Quality
811 Southwest Sixth Avenue, Portland, OR 97204
Telephone: (503) 229-5696

Issued in accordance with the provisions of ORS 468.310
and subject to the land use compatibility statement referenced below

ISSUED TO:

Husky Industries, Inc.
P.O. Box 2367
White City, OR 97503

INFORMATION RELIED UPON:

Application No. 8064

Date Received: 9-21-83

PLANT SITE:

7930 Agate Road
White City, OR 97503

ISSUED BY DEPARTMENT OF ENVIRONMENTAL QUALITY

Fred Hansen, Director

NOV 21 1986
Dated

Source(s) Permitted to Discharge Air Contaminants:

Name of Air Contaminant Source	Standard Industry Code as Listed
Charcoal Manufacturing	2861
Fuel Burning Equipment - inside AQMA, woodfired, ~~10-250~~ > 35 million Btu/hr	4961

Permitted Activities

The permittee is herewith allowed to discharge exhaust gases containing air contaminants only in accordance with the permit application and the limitations contained in this permit. Until such time as this permit expires or is modified or revoked, the permittee is herewith allowed to discharge exhaust gases from those processes and activities directly related or associated thereto in accordance with the requirements, limitations, and conditions of this permit from the air contaminant source(s) listed above.

The specific listing of requirements, limitations and conditions contained herein does not relieve the permittee from complying with all other rules and standards of the Department, nor does it allow significant levels of emissions of air contaminants not limited in this permit or contained in the permit application.

Performance Standards and Emission Limits

1. The permittee shall at all times maintain and operate all air contaminant generating processes and all contaminant control equipment at full efficiency and effectiveness, such that the emissions of air contaminants are kept at the lowest practicable levels.

2. Particulate emissions from any single air contaminant source (except for the Herreshoff furnace, waste heat boiler, bark dryer, and the boiler) shall not exceed any of the following:

   a. 0.1 grains per standard cubic foot.

   b. An opacity equal to or greater than twenty percent (20%) for a period aggregating more than three (3) minutes in any one (1) hour.

3. The permittee shall operate and control the steam generating boiler in accordance with the following list of boiler operating parameters and emission limitations:

Boiler Identification	Fuel Used	Maximum Emission Limits Opacity (1)	Particulates (2)	Maximum Capacity (3)
Wyatt & Kipper	Hogged Fuel	20	0.050	50,000 #/hr

4. The permittee shall not operate the hogged-fuel boiler with other fuels or at greater steam generating rates than those established during the Department approved particulate emissions source test.

5. The permittee shall control and operate the charcoal plant so as to limit the particulate emissions from the charcoal furnace, bark dryer, and any other equipment using furnace off gases to no more than 10.0 pounds per ton of char produced as an annual average. Emissions from char storage, briquet making, the hogged fuel boiler, and fugitive sources are excluded from this limit.

6. Visible emissions from the Herreshoff furnace, waste heat boiler and bark dryer shall not exceed an opacity equal to or greater than twenty percent (20%) for a period aggregating more than three (3) minutes in any one (1) hour.

Plant Site Emission Limits

7. Emissions from the sources listed shall not exceed the following:

Source	Particulate lbs/hr	Particulate tons/yr	CO tons/yr	NO_x tons/yr	VOC tons/yr
Herreshoff Furnace waste heat boiler, bark dryer, and hogged fuel boiler	79.5	145	571	375	162
Baghouses	0.5	2	-	-	-
Totals	80.0	147	571	375	162

Compliance Demonstration Schedule

8. The permittee shall demonstrate that the hogged fuel boiler is capable of steaming at its maximum operating capacity in continuous compliance with Condition 3 by performing at least one source test each calendar year for particulate emissions from the boiler stack.

   All test data and results shall be submitted to the Department for review no later than 60 days after the test date. Compliance shall have been demonstrated upon written approval, by the Department, of the test data and results. All tests shall be conducted in accordance with the testing procedures on file at the Department or in conformance with applicable standard methods approved in advance by the Department.

9. The permittee shall demonstrate that the waste heat boiler and bark dryer are capable of operating at its maximum operating capacity in continuous compliance with Condition 5 by performing at least one source test each calendar year for particulate emissions.

   All test data and results shall be submitted to the Department for review no later than 60 days after the test date. Compliance shall have been demonstrated upon written approval, by the Department, of the test data and results. All tests shall be conducted in accordance with the testing procedures on file at the Department or in conformance with applicable standard methods approved in advance by the Department.

Special Conditions

10. The hogged fuel boiler shall be operated in a standby mode only to provide steam when the waste heat boiler is not operating or is operating at reduced levels. If the hogged fuel boiler is not operated in a particular year, the permittee may be excused from the testing required by Condition 8.

11. After May 31, 1984 the permittee shall implement Department approved operation/maintenance and fugitive emission control plans.

Monitoring and Reporting

12. The permittee shall report to the Department of Environmental Quality by January 15 of each year this permit is in effect at least the following information for the preceding calendar year:

    a. Type and amount (tons/year) of wood waste burned in the hogged-fuel boiler.

    b. Total charcoal plant operating time (hours/year)

    c. Total Herreshoff Furnace operating time (hours/year)

    d. Total hogged-fuel boiler operating time (hours/year)

    e. Total char production (tons/year)

    f. Annual steam production for the boiler (pounds/year)

    g. Maximum hourly steam production for the boiler (pounds/hour)

    h. Total charcoal briquet production (tons/year)

    i. Total annual and maximum hourly particulate emissions from the waste heat boiler, bark dryer, and hogged fuel boiler (tons/year, pounds/hour)

Fee Schedule

13. The Annual Compliance Determination Fee for this permit is due October 1 of each year this permit is in effect. An invoice indicating the amount, as determined by Department regulations, will be mailed prior to the above date.

Notice Provision

14. Boise Cascade Corporation has obtained an option for the baseline emission credits pertaining to the hogged fuel boiler subject to this permit. When and if Boise Cascade Corporation exercises said option, the emission credit transfer will be made according to applicable Department regulations in effect at that time.

P15005.8

General Conditions and Disclaimers

G1. The permittee shall allow Department of Environmental Quality representatives access to the plant site and pertinent records at all reasonable times for the purposes of making inspections, surveys, collecting samples, obtaining data, reviewing and copying air contaminant emission discharge records and otherwise conducting all necessary functions related to this permit.

G2. The permittee is prohibited from conducting open burning except as may be allowed by OAR Chapter 340, Sections 23-025 through 23-115.

G3. The permittee shall notify the Department in writing using a Departmental "Notice of Construction" form, or Permit Application Form, and obtain written approval before:

a. Constructing or installing any new source of air contaminant emissions, including air pollution control equipment, or

b. Modifying or altering an existing source that may significantly affect the emission of air contaminants, or

c. Making any physical change which increases emissions, or

d. Changing the method of operation, the process, or the fuel use, or increasing the normal hours of operation to levels above those contained in the permit application and reflected in this permit and which result in increased emissions.

G4. The permittee shall notify the Department at least 24 hours in advance of any planned shutdown of air pollution control equipment for scheduled maintenance that may cause a violation of applicable standards.

G5. The permittee shall notify the Department by telephone or in person within one (1) hour of any malfunction of air pollution control equipment or other upset condition that may cause a violation of the applicable standards or within one (1) hour of the time the permittee knew or reasonably should have known of its occurrence. Such notice shall include the nature and quantity of the increased emissions that have occurred and the expected duration of the breakdown. The Departmental telephone numbers are:

Portland	229-5263	Medford	776-6010
Salem	378-8240	Pendleton	276-4063
Bend	388-6146		

G6. The permittee shall at all times conduct dust suppression measures to meet the requirements set forth in "Fugitive Emissions" and "Nuisance Conditions" in OAR Chapter 340, Sections 21-050 through 21-060.

G7. Application for a modification of this permit must be submitted not less than 60 days prior to the source modification. A Filing Fee and an Application Processing Fee must be submitted with an application for the permit modification.

G8. Application for renewal of this permit must be submitted not less than 60 days prior to the permit expiration date. A Filing Fee and an Annual Compliance Determination Fee must be submitted with the application for the permit renewal.

G9. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

G10. This permit is subject to revocation for cause as provided by law.

Permit Number: 15-0058
Application No.: 8064

Department of Environmental Quality
Air Quality Control Division

AIR CONTAMINANT DISCHARGE PERMIT APPLICATION REVIEW REPORT

Husky Industries, Inc.
P.O. Box 2367
White City, OR 97503

Background

1. Air contaminant source activities.

SIC	SIC No.
Charcoal Manufacturing	2861
Fuel Burning Equipment, Inside AQMA, Woodfired, 10 or more but less than 250 million BTU/hour	4961

2. The baseline year 1978 operating schedule was:

   a. Char furnace: 24 hours/day x 7 days/week x 50 weeks/year.

   b. Boiler(s): 24 hours/day x 7 days/week x 51 weeks/year.

3. Reported plant production for baseline year 1978 was:

   a. Amount of steam generated in boiler 1............428 million lbs/yr

   b. Max. (1 hr. avg.) steam generated in boiler 1...50,000 lbs/hr

   c. Amount of hogged fuel burned in boiler 1.........93,700 wet tons/year

   d. Amount of char produced from furnace ....17,106 tons/year

   e. Amount of charcoal briquets produced.............31,056 tons/year

4. The current normal operating schedule is different from the baseline year and is:

   a. Char furnace: 24 hours/day x 7 days/week x 50 weeks/year.

5. The current normal plant production is different from the baseline year and is:

   a. Amount of steam generated in boiler 1 and 2.....164 million lbs/yr

   b. Amount of hogged fuel burned in boiler 1........36,000 wet tons/year

   c. Amount of char produced from furnace............20,376 tons/year

   d. Amount of charcoal briquets produced............32,590 tons/year

e. Normal charcoal briquet production increased as a result of expansion of the briquet dryer and changes to briquet formulation.

6. The proposed permit is a renewal for an existing Air Contaminant Discharge Permit which expired on November 1, 1983.

7. Additional background information:

   a. The permittee has submitted two compliance source tests which indicate that the Herreshoff furnace complies with applicable rule, 340-30-040. This rule allows 10 lbs of particulate matter to be emitted per ton of char produced in the Herreshoff furnace. Thus, compliance determination and PSEL's are based on char production.

   b. The char furnace usually emits from the waste heat boiler stack which generates steam from the hot gases produced in the after combustion chamber. When the waste heat boiler is not in use, the Herreshoff furnace gases vent directly from the after combustion chamber. A portion, approximately 3000 SCFM, of the hot gases from the after combustion chamber are routinely diverted to the bark dryer.

Evaluation

8. Existing visible and particulate emission sources at the plant site consist of the following:

   a. 1 Hogged fuel boiler (on standby)

   b. 3 Baghouse filter(s)

   c. 1 Herreshoff furnace and waste heat boiler

   d. 1 Bark dryer

   All of the above sources are in compliance with limitations contained in the proposed permit.

9. Boiler identification:

ID No.	Manufacturer	Type	Date Installed	Rated Capacity
1	Wyatt & Kipper	Hogged fuel	3-69	50,000 @ 300 PSIG
2	Waste heat boiler	Cleaned furnace off gas	5-79	98,000 @ 600 PSIG

10. Source Test Information:

Source	Test Date	Results
After combustion chamber - waste heat boiler stack	11-16-83	0.093 gr/dscf 32.6 lbs/hr
	12-11-84	0.124 gr/dscf 45.3 lbs/hr
Hogged fuel boiler	11-17-83	0.046 gr/dscf @ 12% CO_2 8.7 lbs/hr
Bark dryer	11-16-83	2.4 lbs/hr
	12-11-84	3.3 lbs/hr

11. Visible Emission Observations:

Source	Date Observed	Results
After combustion chamber waste heat boiler	8-17-83 12-11-84	Compliance
Hogged fuel boiler	8-16-83 12-11-84	Compliance
Bark dryer	10-25-83 12-11-84	Compliance
Char separation cyclone/baghouse, 25 HP	2-24-83 12-11-84	Compliance
Char separation cyclone/baghouse, 10 HP	2-24-83 12-11-84	Compliance
Charcoal production and packaging baghouse	2-24-83 12-11-84	Compliance

12. In 1979 and 1980, the Department approved the installation of a waste heat boiler on the Herreshoff furnace which was designed to control air pollution emissions and recover useful energy. (See NC 1579, March 24, 1980). The existing hogged fuel fired boiler was placed on standby at that time and is now used only when the Herreshoff furnace is not operating or is operating at reduced rates. The baseline emissions of the existing hogged fuel boiler have been incorporated into the Plant Site Emission Limit for the Herreshoff waste heat boiler to allow for production increases.

13. Pollutants TSP, CO, VOC and NO_x will be included in the permit as plant site emission limits.

Permit Number: 15-0058
Application No.: 8064

14. Plant site emissions of current operations are as follows:

Short-Term Emissions - Pounds/Hour

Source	TSP	CO	NO_x	VOC
Herreshoff furnace waste heat boiler, and hogged fuel boiler	79.5	179	199	81
Baghouses	0.5	-	-	-
Totals	80.0	179	199	81

Annual Emissions - Tons/Year

Source	TSP	CO	NO_x	VOC
Herreshoff furnace, waste heat boiler, and hogged fuel boiler	140	571	375	162
Baghouses	2	-	-	-
Totals	142	571	375	162

Fugitives are negligible.

(1) Operating parameters and emission determination details are shown on the attached Plant Site Emission Detail Sheets.

15. The proposed permit plant site emission limits are equal to the 1978 baseline emission rates adjusted pursuant to Department rules. The allowable increases above baseline emissions are:

Suspended Particulate 5 tons/year

Permit Number: 15-0058
Appl. No.: 8064
Page: A-1

PLANT SITE EMISSIONS DETAIL SHEET

Pollutant/Source Suspended Particulate

Emission Point	Operating Parameters	Emission Factor		Emissions	
		Rate	Reference	lbs/hr	tons/yr
Baseline					
Herreshoff Furnace (including bark dryer)	7.0 tons/hour char 20,376 tons/year char	10 lbs/ton char	OAR 340-30-040	70.0	102
Hogged Fuel Boiler	50,000 lbs stm/hr 428 x 10^6 lbs stm/yr	0.050 gr/scf	OAR 340-30-015	9.5	38
Three Baghouses (Two of three operate at any one moment)		1 ton/yr/baghouse		0.5	2
			TOTALS	80.0	142
Allowable increase above baseline for the Herreshoff Furnace				-	5
			Plant Site Emission Limit	80.0	147

AEDS (5/83) P15005.8T

Permit Number: 15-0058
Appl. No.: 8064
Page: A-2

PLANT SITE EMISSIONS DETAIL SHEET

Pollutant/Source Carbon Monoxide

Emission Point	Operating Parameters	Emission Factor		Emissions	
		Rate	Reference	lbs/hr	tons/yr
Baseline					
Herreshoff Furnace including Bark Dryer	7 tons/hr, 20,376 tons/year char	10 lbs/ton (97% control)	AP-42 pg 5.4-1	70	102
Hogged Fuel Boiler	50,000 lbs stm/hr 428×10^6 lbs stm/yr	10 lbs/ton (1)	AP-42 pg 1.6-3	109	469
Baghouses			No combustion gases	___	___
			TOTALS	179	571

NOTES: (1) 93,700 wet tons/yr.

Permit Number: 15-0058
Appl. No.: 8064
Date: 4-1-85
Page: A-3

PLANT SITE EMISSIONS DETAIL SHEET

Pollutant/Source Nitrogen Oxides

Emission Point	Operating Parameters	Emission Factor		Emissions	
		Rate	Reference	lbs/hr	tons/yr
Baseline					
Herreshoff Furnace including Bark Dryer	7 tons/hr 20,367 tons/yr char	24 lbs/ton	AP-42 pg 5.4-1	168	244
Hogged Fuel Boiler	50,000 lbs stm/hr 428 x 10^6 lbs stm/yr	2.8 lbs/ton (1)	AP-42 pg. 1.6-3	31	131
Baghouses			No combustion gases	—	—
			TOTALS	199	375

NOTES: (1) 93,700 tons annually

AEDS (5/83) P15005.8T

Permit Number: 15-0058
Appl. No.: 8064
Date: 4-1-85
Page: A-4

PLANT SITE EMISSIONS DETAIL SHEET

Pollutant/Source VOC

Emission Point	Operating Parameters	Emission Factor		Emissions	
		Rate	Reference	lbs/hr	tons/yr
Baseline					
Herreshoff Furnace including Bark Dryer	7 tons/hr, 20,367 tons/yr char	9.4 lbs/ton (97% control)	AP-42 pg 5.4-1	66	96
Hogged Fuel Boiler	50,000 lbs stm/hr 428×10^6 lbs stm/yr	1.4 lbs/ton (1)	AP-42 pg 1.6-3	15	66
Baghouses			No combustion gases	—	—
			TOTALS	81	162

NOTES: (1) 93,700 tons annually

Attachment 3
Agenda Item __
~~March 13, 1987,~~
EQC Meeting

ROYAL OAK®

Enterprises, Inc.

Manufacturers of Charcoal Briquets and Activated Carbon

February 2, 1987

Members of the Environmental Quality Commission
James Petersen, Chairman
Mary Bishop
Wallace Brill
A. Sonia Buist
Arno Denecke, Vice-Chairman

Dear Ladies and Gentlemen:

Royal Oak Enterprises (formerly Husky Industries) and its predecessor companies have operated a charcoal production furnace in White City for the last 18 years. Originally built by Olson Lawyer Lumber Company as an alternative to the wigman burner for disposing of waste bark and sawdust, the facility has since consumed over 3,000,000 tons of wood waste. Combined with the charcoal briquet plant it supports, this facility provides stable employment for about 60 employees. In addition, the facility provides process steam to an adjacent Boise Cascade sawmill and veneer plant.

The facility has always operated under an air contaminant discharge permit and has undergone substantial change over the years, the first major one being the installation of a hogged fuel dryer in the mid 1970's that allowed increased plant capacity. Shortly thereafter, a scrubber was installed on the hogged fuel boiler to limit particulate emissions. In 1979-80, a major capital effort was undertaken to add pollution control equipment to the furnace itself, to comply with the Department's 1978 Rules for the Medford-Ashland AQMA. In 1981-82 a waste heat boiler was added to capture heat from the now clean furnace gases to increase total steam generating capability.

Two things stand out as constants in the changes that have taken place in this facility. One is that this facility has continued to be the primary point of disposal for excess mill wastes in Jackson and Josephine counties. This facility allowed the timely shutdown of wigman burners in our area, the last four of which occurred since 1980 and in each case immediately began

P.O. Box 2367
7930 Agate Rd.
White City, OR. 97503
(503) 826-2756

sending its wastes to Royal Oak. The second constant is that the Department has recognized the role of this facility as an environmentally acceptable disposal option by extending pollution control and solid waste tax credits for each major addition, including the original furnace construction.

A dispute between the Department and Royal Oak that threatens the future of this facility is what has prompted Royal Oak to request an appearance before the Commission and to prepare this letter. This dispute is over a new air contaminant discharge permit for the facility. We are currently operating under a permit that was issued in 1978, and which expired on November 1, 1983. The 1978 permit allowed 10 lbs. of particulate emission per ton of charcoal produced for the furnace and a boiler grain loading of 0.05 gr/acf for the hogged fuel boiler. Annual tonnage for the two sources was 175 tons of emission for the furnace and 38 tons for the boiler, a total of 213 tons annually.

In June 1983 Royal Oak applied for a new permit as a routine matter. After many discussions and letters we have only recently received a draft permit. That draft permit contains the same emission limits, but lowers furnace annual tonnage to only 107 tons, with 38 tons for the hogged fuel boiler and 2 tons for baghouses.

Annually, Royal Oak has tested these two sources and they have consistently been found to be in compliance with emission limits. In addition, our annual production of charcoal has been substantially less than the 35,000 ton per year limit imposed by the 175 ton allowable emission at 10 lbs/ton. Thus, the dispute is not about the degree of pollution control for either source, or about the 38 annual tons for the hogged fuel boiler. Both of these are acceptable to both parties. In dispute is the annual tonnage allowed to be emitted from the furnace, its plant site emission limit.

As stated previously, the expired permit allowed Royal Oak to produce 35,000 tons per year of charcoal. Historically, the furnace has produced only 16,000-21,000 tons annually, due to a combination of market factors and mechanical breakdowns and bottlenecks. For instance, during the period 1980-83 the furnace was plagued by a limit on gas moving capability (and thus production) that was introduced with the installation of pollution control equipment. Also during the 1980's the cost of building, operating and maintaining pollution control equipment (10% of total costs) and raw material shortages have contributed to a loss of some markets due to price, that have forced lengthy fall shutdowns of the furnace. The full production capability

of the furnace has not been used in recent years, even though annual compliance tests show it has the capability to produce well in excess of the 35,000 annual tons.

As a consequence of the low annual tonnage output in recent years the Department now proposes to remove a substantial portion of the allowable furnace tonnage in the draft permit. The 107 annual tons allowed for the furnace in the draft permit would limit charcoal production to 21,400 tons per year. The Department quotes as its authority to drastically reduce the plant sites emission limit (PSEL) the criteria for establishing PSEL's in OAR 340-20-310 that reads in part, "for existing sources, PSEL's shall be based on the baseline emission rate for a particular pollutant at a source...". In OAR 340-20-305 the baseline emission rate is defined as "the average actual emission rate during the baseline period" and the baseline period "means either calendar years 1977 or 1978". Thus, the Department wishes to reduce Royal Oak's allowable furnace tonnage from 175 to 107 because the furnace did not produce sufficient tonnage in the baseline period or since.

The cited provision certainly has validity if we are perhaps talking about adding an additional shift or a sixth or seventh day per week. Our furnace, on the other hand, has always operated on a 24 hour/day 7 day/week basis. It simply was operated at lower throughout when charcoal sales were curtailed, and in many cases was down with mechanical problems. It is the nature of the process and equipment that it must be operated continually.

It is also the nature of our pollution control equipment that it operates most efficiently, not at low loads, but at high loads. This is because it depends largely on high temperature combustion of waste gases to destroy the particulate matter. This is a phenomenon that can be verified by local DEQ officials who check our facility continually. Also, on again-off again operation of the furnace maximizes particulate emissions since the majority of emissions occur during startup and shutdown. The most efficient form of operation from an environmental standpoint is a continual high output operation of the furnace, the very type of operation that will not be permitted by the annual limit imposed by the new draft permit.

All of the above discussion would be moot, and Royal Oak could accept the draft permit, if it were possible for our facility to continue to survive as it has the last several years. This is not the case. In late 1984 the Department permitted a large controversial cogeneration facility, Biomass One L.P. fueled by wood waste and also located in White City. This facility has the capability to consume massive quantities of wood waste, a situation which has turned wood waste from a disposal problem into a very valuable commodity in Southern Oregon. If Royal Oak were to continue to operate as they have it would not be long before far higher raw material costs forced us out of business.

Instead of letting this happen, Royal Oak has chosen another path that will lead instead to a higher market share, a protected raw material supply, actually lower overall costs, and increased employment opportunities. Royal Oak intends to install a turbine-generator which uses unused waste heat from its furnace to generate electricity for sale as well as additional steam it can trade for wood waste to nearby mills. This will make both Royal Oak and the mills served with steam more competitive, and increase their ability to survive.

This will be accomplished by operating exactly the same equipment that we have operating today (plus the turbine-generator) on exactly the same schedule (24 hr/day, 7 day/wk) that we do today. It will simply be operated more consistently and utilizing more of its existing capability. As explained earlier, the prospect of lower overall emissions is likely. In any event, our average output will still be well below that tested on several occasions for compliance, at which times compliance was demonstrated.

This mode of operation will produce about 3.5 tons/hr of charcoal (1/2 permitted capacity) and about 29,000 tons annually. While this is considerably less than the current 35,000 ton limit, it is substantially more than the 21,400 tons allowed by DEQ under the draft permit. Royal Oak is certainly willing to allow the new permit to reduce the furnace PSEL to 145 tons/yr (29,000 annual tons), with additional tonnage for boiler and baghouses. However, to accept a tonnage any less than this is to doom our facility to extinction by taking away the only viable option available to us.

The resolution to this dispute properly lies with the Environmental Quality Commission. The Department feels they are constrained by the baseline year criteria when establishing PSEL's, even though Royal Oak would agree to a limit somewhat less than in the expired permit. Also, we would expect the Department to agree that Royal Oak has been diligent (and has spent a lot of money) in bringing its facility into compliance, and in maintaining that compliance, and has been an active industry participant on other air quality issues.

It is the Environmental Quality Commission, however, that established the following policy at the beginning of OAR 340-20-300, the section under which DEQ establishes PSEL's:

"Policy

340-20-300 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 340-20-301 through 340-20-320. However, by the adoption of these 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. PSELs can be established at levels higher than baseline provided a demonstrated need exists to emit at a higher level and PSD increments and air quality standards would not be violated and reasonable further progress in implementing control strategies would not be impeded."

Clearly, from the above, it is plain that the Commission was able to anticipate situations such as this where establishing a PSEL would not fall neatly into one compartment or another. We are asking quite simply, that our existing production capacity not be unduly limited by permit, and that we do not suffer undue hardship as a result of the inability to use this existing production capacity. We respectfully ask you to establish a PSEL for our facility at 145 tons for the furnace, 38 tons for the hogged fuel boiler, and 2 ton for baghouses.

To do otherwise would be to destroy both the economic viability and the economic value of our facility. Royal Oak needs resolution of this dispute at this time as we must begin work immediately on the turbine-generator facility.

We respectfully apologize for the length of the letter, but it is a complex subject with a long history between Royal Oak and the Department. We will be pleased to appear at your March 13, 1987 meeting and answer any questions you or the Department may have, or to provide additional clarification.

Sincerely,

William H. Carlson
Vice President - Production

WHC/mg

cc Fred Hansen, DEQ

Attachment 4

Agenda Item __

March 13, 1987, EQC Meeting

New Source Review

340-20-220	Applicability
340-20-225	Definitions
340-20-230	Procedural Requirements
340-20-235	Review of New Sources and Modifications for Compliance With Regulations
340-20-240	Requirements for Sources in Nonattainment Areas
340-20-241	Growth Increments
340-20-245	Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration)
340-20-250	Exemptions
340-20-255	Baseline for Determining Credit for Offsets
340-20-260	Requirements for Net Air Quality Benefit
340-20-265	Emission Reduction Credit Banking
340-20-270	Fugitive and Secondary Emissions
340-20-276	Visibility Impact Assessment

Plant Site Emission Limits

340-20-300	Policy
340-20-301	Requirement for Plant Site Emission Limits
340-20-305	Definitions
340-20-310	Criteria for Establishing Plant Site Emission Limits
340-20-315	Alternative Emission Controls (Bubble)
340-20-320	Temporary PSD Increment Allocation

Stack Heights and Dispersion Techniques

340-20-340	Definitions
340-20-345	Limitations

New Source Review

Applicability

340-20-220 (1) No owner or operator shall begin construction of a major source or a major modification of an air contaminant source without having received an Air Contaminant Discharge Permit from the Department of Environmental Quality and having satisfied OAR 340-20-230 through 340-20-280 of these rules.

(2) Owners or operators of proposed non-major sources or non-major modifications are not subject to these New Source Review rules. Such owners or operators are subject to other Department rules including Highest and Best Practicable Treatment and Control Required (OAR 340-20-001), Notice of Construction and Approval of Plans (OAR 340-20-020 to 340-20-032), Air Contaminant Discharge Permits (OAR 340-20-140 to 340-20-185), Emission Standards for Hazardous Air Contaminants (OAR 340-25-450 to 340-25-480), and Standards of Performance for New Stationary Sources (OAR 340-25-505 to 340-25-545).

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Definitions

340-20-225 (1) "Actual emissions" means the mass rate of emissions of a pollutant from an emissions source:

(a) In general, actual emissions as of the baseline period shall equal the average rate at which the source actually emitted the pollutant during the baseline period and which is representative of normal source operation. Actual emissions shall be calculated using the source's actual operating hours, production rates and types of materials processed, stored, or combusted during the selected time period.

(b) The Department may presume that existing source-specific permitted mass emissions for the source are equivalent to the actual emissions of the source if they are within 10% of the calculated actual emissions.

(c) For any newly permitted emission source which had not yet begun normal operation in the baseline period, actual emissions shall equal the potential to emit of the source.

(2) "Baseline Concentration" means that ambient concentration level for a particular pollutant which existed in an area during the calendar year 1978. If no ambient air quality data is available in an area, the baseline concentration may be estimated using modeling based on actual emissions for 1978. The following emission increases or decreases will be included in the baseline concentration:

(a) Actual emission increases or decreases occurring before January 1, 1978; and

(b) Actual emission increases from any major source or major modification on which construction commenced before January 6, 1975.

(3) "Baseline Period" means either calendar years 1977 or 1978. The Department shall allow the use of a prior time period upon a determination that it is more representative of normal source operation.

(4) "Best Available Control Technology (BACT)" means an emission limitation (including a visible emission standard) based on the maximum degree of reduction of each air contaminant subject to regulation under the Clean Air Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event, shall the application of BACT result in emissions of any air contaminant which would exceed the emissions allowed by any applicable new source performance standard or any standard for hazardous air pollutants. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard shall, to the degree possible, set forth the emission reduction achievable and shall provide for compliance by prescribing appropriate permit conditions.

(5) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-31-120.

(6) "Commence" means that the owner or operator has obtained all necessary preconstruction approvals required by the Clean Air Act and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.

(7) "Construction" means any physical change (including fabrication, erection, installation, demolition, or modification of an emissions unit) or change in the method of operation of a source which would result in a change in actual emissions.

(8) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of these provisions, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.

(9) "Emissions Unit" means any part of a stationary source (including specific process equipment) which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

(10) "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.

(11) "Fugitive emissions" means emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

(12) "Growth Increment" means an allocation of some part of an airshed's capacity to accommodate future new major sources and major modifications of sources.

(13) "Lowest Achievable Emission Rate (LAER)" means that rate of emissions which reflects: the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stingent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. In no event, shall the application of this term permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable new source performance standards or standards for hazardous air pollutants.

(14) "Major Modification" means any physical change or change of operation of a source that would result in a net significant emission rate increase (as defined in definition (22)) for any pollutant subject to regulation under the Clean Air Act. This criteria also applies to any pollutants not previously emitted by the source. 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, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations for that pollutant, whichever time is more recent. If accumulation of emission increases results in a net significant emission rate increase, the modification causing such increases become subject to the New Source Review requirements including the retrofit of required controls.

(15) "Major Source" means a stationary source which emits, or has the potential to emit, any pollutant regulated under the Clean Air Act at a Significant Emission Rate (as defined in definition (22)).

(16) "Nonattainment Area" means a geographical area of the State which exceeds any state or federal primary or secondary ambient air quality standard as designated by the Environmental Quality Commission and approved by the Environmental Protection Agency.

(17) "Offset" means an equivalent or greater emission reduction which is required prior to allowing an emission increase from a new major source or major modification of a source.

(18) "Plant Site Emission Limit" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source.

(19) "Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and

operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(20) "Resource Recovery Facility" means any facility at which municipal solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing municipal solid waste for reuse. Energy conversion facilities must utilize municipal solid waste to provide 50% or more of the heat input to be considered a resource recovery facility.

(21) "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from off-site support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.

(22) "Significant emission rate" means:

(a) Emission rates equal to or greater than the following for air pollutants regulated under the Clean Air Act:

Table 1: Significant Emission Rates for Pollutants Regulated Under the Clean Air Act

Pollutant	Significant Emission Rate
(A) Carbon Monoxide	100 tons/year
(B) Nitrogen Oxides	40 tons/year
(C) Particulate Matter*	25 tons/year
(D) Sulfur Dioxide	40 tons/year
(E) Volatile Organic Compounds*	40 tons/year
(F) Lead	0.6 ton/year
(G) Mercury	0.1 ton/year
(H) Beryllium	0.0004 ton/year
(I) Asbestos	0.007 ton/year
(J) Vinyl Chloride	1 ton/year
(K) Fluorides	3 tons/year
(L) Sulfuric Acid Mist	7 tons/year
(M) Hydrogen Sulfide	10 tons/year
(N) Total reduced sulfur (including hydrogen sulfide)	10 tons/year
(O) Reduced sulfur compounds (including hydrogen sulfide)	10 tons/year

NOTE: *For the nonattainment portions of the Medford-Ashland Air Quality Maintenance Area, the Significant Emission Rates for particulate matter and volatile organic compounds are defined in Table 2.

(b) For pollutants not listed above, the Department shall determine the rate that constitutes a significant emission rate.

(c) Any emissions increase less than these rates associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m^3 (24 hour average) shall be deemed to be emitting at a significant emission rate (see Table 2).

(23) "Significant Air Quality Impact" means an ambient air quality impact which is equal to or greater than those set out in Table 3. For sources of volatile organic compounds (VOC), a major source or major modification will be deemed to have a significant impact if it is located within 30 kilometers of an ozone nonattainment area and is capable of impacting the nonattainment area.

(24) "Significant impairment" occurs when visibility impairment in the judgment of the Department interferes with the management, protection, preservation, or enjoyment of the visual experience of visitors within a Class I area. The determination must be made on a case-by-case basis considering the recommendations of the Federal Land Manager; the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be considered with respect to visitor use of the Class I areas, and the frequency and occurrence of natural conditions that reduce visibility.

(25) "Source" means any building, structure, facility, installation or combination thereof which emits or is capable of emitting air contaminants to the atmosphere and is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control.

(26) "Visibility impairment" means any humanly perceptible change in visual range, contrast or coloration from that which would have existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84

Procedural Requirements

340-20-230 (1) Information Required. The owner or operator of a proposed major source or major modification shall submit all information necessary to perform any analysis or make any determination required under these rules. Such information shall include, but not be limited to:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(b) An estimate of the amount and type of each air contaminant emitted by the source in terms of hourly, daily, seasonal, and yearly rates, showing the calculation procedure;

(c) A detailed schedule for construction of the source or modification;

(d) A detailed description of the system of continuous emission reduction which is planned for the source or modification, and any other information necessary to determine that best available control technology or lowest

achievable emission rate technology, whichever is applicable, would be applied;

(e) To the extent required by these rules, an analysis of the air quality and/or visibility impact of the source or modification, including meteorological and topographical data, specific details of models used, and other information necessary to estimate air quality impacts; and

(f) To the extent required by these rules, an analysis of the air quality and/or visability impacts, and the nature and extent of all commercial, residential, industrial, and other source emission growth which has occurred since January 1, 1978, in the area the source or modification would affect.

(2) Other Obligations:

(a) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to these rules or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving an Air Contaminant Discharge Permit, shall be subject to appropriate enforcement action.

(b) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within 18 months of the scheduled time. The Department may extend the 18-month period upon satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

(c) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state or federal law.

(3) Public Participation:

(a) Within 30 days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted. The date of the receipt of a complete application shall be, for the purpose of this section, the date on which the Department received all required information.

(b) Notwithstanding the requirements of OAR 340-14-020, but as expeditiously as possible and at least within six months after receipt of a complete application, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

(A) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(B) Make available for a 30-day period in at least one location a copy of the permit application, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(C) Notify the public, by advertisement in a newspaper of general circulation in the area in which the proposed source or modification would be constructed, of the application, the preliminary determination, the extent of increment consumption that is expected from the source or modification, and the opportunity for a public hearing and for written public comment.

(D) Send a copy of the notice of opportunity for public comment to the applicant and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency, any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification, and the Environmental Protection Agency.

(E) Upon determination that significant interest exists, provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations. For energy facilities, the hearing may be consolidated with the hearing requirements for site certification contained in OAR Chapter 345, Division 15.

(F) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 working days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed source or modification.

(G) Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

(H) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the source or modification.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 18-1984, f. & ef. 10-16-84

Review of New Sources and Modifications for Compliance With Regulations

340-20-235 The owner or operator of a proposed major source or major modification must demonstrate the ability of the proposed source or modification to comply with all applicable requirements of the Department of Environmental Quality, including New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, and shall obtain an Air Contaminant Discharge Permit.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Requirements for Sources in Nonattainment Areas

340-20-240 New major sources and major modifications which are located in designated nonattainment areas shall meet the requirements listed below:

(1) Lowest Achievable Emission Rate. The owner or operator of the proposed major source or major modification must demonstrate that the source or modification will comply with the lowest achievable emission rate (LAER) for each nonattainment pollutant. In the case of a major modification, the requirement for LAER shall apply only to each new or modified emission unit which increases emissions. For phased construction projects, the determination of LAER shall be reviewed at the latest reasonable time prior to commencement of construction of each independent phase.

(2) Source Compliance. The owner or operator of the proposed major source or major modification must demonstrate that all major sources owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in the state are in compliance or on a schedule for compliance, with all applicable emission limitations and standards under the Clean Air Act.

(3) Growth Increment or Offsets. The owner or operator of the proposed major source or major modification must demonstrate that the source or modification will comply with any established emissions growth increment for the particular area in which the source is located or must provide emission reductions ("offsets") as specified by these rules. A combination of growth increment allocation and emission reduction may be used to demonstrate compliance with this section. Those emission increases for which offsets can be found through the best efforts of the applicant shall not be eligible for a growth increment allocation.

(4) Net Air Quality Benefit. For cases in which emission reductions or offsets are required, the applicant must demonstrate that a net air quality benefit will be achieved in the affected area as described in OAR 340-20-260 (Requirements for Net Air Quality Benefit) and that the reductions are consistent with reasonable further progress toward attainment of the air quality standards.

(5) Alternative Analysis:

(a) An alternative analysis must be conducted for new major sources or major modifications of sources emitting volatile organic compounds or carbon monoxide locating in nonattainment areas.

(b) This analysis must include an evaluation of alternative sites, sizes, production processes, and environmental control techniques for such proposed source or modification which demonstrates that benefits of the proposed source or modification significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

(6) Special Exemption for the Salem Ozone Nonattainment Area. Proposed major sources and major modifications of sources of volatile organic compounds which are located in the Salem Ozone nonattainment area shall comply with the requirements of sections (1) and (2) of this rule but are exempt from all other sections of this rule.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83

Growth Increments

340-20-241 The ozone control strategies for the Medford-Ashland and Portland ozone nonattainment areas establish growth margins for new major sources or major modifications which will emit volatile organic compounds. The growth margin shall be allocated on a first-come-first-served basis depending on the date of submittal of a complete permit application. No single source shall receive an allocation of more than 50% of any remaining growth margin. The allocation of emission increases from the growth margins shall be calculated based on the ozone season (April 1 to October 31 of each year). The amount of each growth margin that is available is defined in the **State Implementation Plan** for each area and is on file with the Department.

[**Publications:** The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of Environmental Quality.]

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 5-1983, f. & ef. 4-18-83

Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration)

340-20-245 New Major Sources or Major Modifications locating in areas designated attainment or unclassifiable shall meet the following requirements:

(1) Best Available Control Technology. The owner or operator of the proposed major source or major modification shall apply best available control technology (BACT) for each pollutant which is emitted at a significant emission rate (OAR 340-20-225 definition (22)). In the case of a major modification, the requirement for BACT shall apply only to each new or modified emission unit which increases emissions. For phased construction projects, the determination of BACT shall be reviewed at the latest reasonable time prior to commencement of construction of each independent phase.

(2) Air Quality Analysis:

(a) The owner or operator of the proposed major source or major modification shall demonstrate that the potential to emit any pollutant at a significant emission rate (OAR 340-20-225 definition (22)), in conjunction with all other applicable emissions increases and decreases, (including secondary emissions), would not cause or contribute to air quality levels in excess of:

(A) Any state or national ambient air quality standard; or

(B) Any applicable increment established by the Prevention of Significant Deterioration requirements (OAR 340-31-110); or

(C) An impact on a designated nonattainment area greater than the significant air quality impact levels (OAR 340-20-225 definition (23)). New sources or modifications of sources which would emit volatile organic compounds which may impact the Salem ozone nonattainment area are exempt from this requirement.

(b) Sources or modifications with the potential to emit at rates greater than the significant emission rate but less than 100 tons/year, and are greater than 50 kilometers from a nonattainment area are not required to assess their impact on the nonattainment area.

(c) If the owner or operator of a proposed major source or major modification wishes to provide emission offsets such that a net air quality benefit as defined in OAR 340-20-260 is provided, the Department may consider the requirements of section (2) of this rule to have been met.

(3) Exemption for Sources Not Significantly Impacting Designated Nonattainment Areas:

(a) A proposed major source or major modification is exempt from OAR 340-20-220 to 340-20-270 if:

(A) The proposed source or major modification does not have a significant air quality impact on a designated nonattainment area; and

(B) The potential emissions of the source are less than 100 tons/year for sources in the following categories or less than 250 tons/year for sources not in the following source categories:

(i) Fossil fuel-fired steam electric plants of more than 250 million BTU/hour heat input,

(ii) Coal cleaning plants (with thermal dryers),

(iii) Kraft pulp mills.

(iv) Portland cement plants.

(v) Primary Zinc Smelters,

(vi) Iron and Steel Mill Plants,

(vii) Primary aluminum ore reduction plants,

(vii) Primary copper smelters,

(ix) Municipal Incinerators capable of charging more than 250 tons of refuse per day,

(x) Hydrofluoric acid plants,

(xi) Sulfuric acid plants,

(xii) Nitric acid plants,

(xiii) Petroleum Refineries,

(xiv) Lime plants,

(xv) Phosphate rock processing plants,

(xvi) Coke oven batteries,

(xvii) Sulfur recovery plants,

(xviii) Carbon black plants (furnace process),

(xix) Primary lead smelters,

(xx) Fuel conversion plants,

(xxi) Sintering plants,

(xxii) Secondary metal production plants,

(xxiii) Chemical process plants,

(xxiv) Fossil fuel fired boilers (or combinations thereof) totaling more than 250 million BTU per hour heat input,

(xxv) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels,

(xxvi) Taconite ore processing plants,

(xxvii) Glass fiber processing plants,

(xxviii) Charcoal production plants.

(b) Major modifications are not exempted under this section unless the source including the modifications meets the requirements of paragraphs (a)(A) and (B) above. Owners or operators of proposed sources which are exempted by this provision should refer to OAR 340-20-020 to 340-20-032 and OAR 340-20-140 to 340-20-185 for possible applicable requirements.

(4) Air Quality Models. All estimates of ambient concentrations required under these rules shall be based on the applicable air quality models, data bases, and other requirement specified in the **"Guidelines on Air Quality Models"** (OAQPS 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April 1978). Where an air quality impact model specified in the **"Guideline on Air Quality Models"** is inappropriate, the model may be modified or another model substituted. Such a change must be subject to notice and opportunity for public comment and must receive approval of the Department and the Environmental Protection Agency. Methods like those outlined in the **"Workbook for the Comparison of Air Quality Models"**(U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, May, 1978) should be used to determine the comparability of air quality models.

(5) Air Quality Monitoring:

(a)(A) The owner or operator of a proposed major source or major modification shall submit with the application, subject to approval of the Department, an analysis of ambient air quality in the area impacted by the proposed project. This analysis shall be conducted for each pollutant potentially emitted at a significant emission rate by the proposed source or modification. As necessary to establish ambient air quality, the analysis shall include continuous air quality monitoring data for any pollutant potentially emitted by the source or modification except for nonmethane hydrocarbons. Such data shall relate to, and shall have been gathered over the year preceding receipt of the complete application, unless the owner or operator demonstrates that such data gathered over a portion or portions of that year or another representative year would be adequate to determine that the source or modification would not cause or contribute to a violation of an ambient air quality standard or any applicable pollutant increment. Pursuant to the requirements of these rules, the owner or operator of the source shall submit for the approval of the Department, a preconstruction air quality monitoring plan.

(B) Air quality monitoring which is conducted pursuant to this requirement shall be conducted in accordance with **40 CFR 58 Appendix B, "Quality Assurance Requirements for Prevention of Significant Deterioation (PSD) Air Monitoring"** and with other methods on file with the Department.

(C) The Department may exempt a proposed major source or major modification from monitoring for a specific pollutant if the owner or operator demonstrates that the air quality impact from the emissions increase would be less than the amounts listed below or that the concentrations of the pollutant in the area that the source or modification would impact are less than these amounts:

(i) Carbon monoxide - 575 ug/m^3, 8 hour average,

(ii) Nitrogen dioxide - 14 ug/m^3, annual average,

(iii) Total suspended particulate - 10 ug/m^3, 24 hour average,

(iv) Sulfur dioxide - 13 ug/m^3, 24 hour average,

(v) Ozone - Any net increase of 100 tons/year or more of volatile organic compounds from a source or modification subject to PSD is required to perform an ambient impact analysis, including the gathering of ambient air quality data,

(vi) Lead - 0.1 ug/m^3, 24 hour average,

(vii) Mercury - 0.25 ug/m^3, 24 hour average.

(viii) Beryllium - 0.0005 ug/m^3, 24 hour average,

(ix) Fluorides - 0.25 ug/m^3, 24 hour average,

(x) Vinyl chloride - 15 ug/m^3, 24 hour average,

(xi) Total reduced sulfur - 10 ug/m^3, 1 hour average,

(xii) Hydrogen sulfide - 0.04 ug/m^3, 1 hour average,

(xiii) Reduced sulfur compounds - 10 ug/m^3, 1 hour average.

(b) The owner or operator of a proposed major source or major modification shall, after construction has been completed, conduct such ambient air quality monitoring as the Department may require as a permit condition to establish the effect which emissions of a pollutant (other than nonmethane hydrocarbons) may have, or is having, on air quality in any area which such emissions would affect.

(6) Additional Impact Analysis:

(a) The owner or operator of a proposed major source or major modification shall provide an analysis of the impairment to, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification, the owner or operator may be exempted from providing an analysis of the impact on vegetation having no significant commercial or recreational value.

(b) The owner or operator shall provide an analysis of the air quality concentration projected for the area as a result of general commercial, residential, industrial and other growth associated with the major source or modification.

(7) Sources Impacting Class I Areas:

(a) Where a proposed major source or major modification impacts or may impact a Class I area, the Department shall provide written notice to the Environmental Protection Agency and to the appropriate Federal Land Manager within 30 days of the receipt of such permit application, at least 30 days prior to Department Public Hearings and subsequently, of any preliminary and final actions taken with regard to such application.

(b) The Federal Land Manager shall be provided an opportunity in accordance with OAR 340-20-230(3) to present a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality related values (including visibility) of any federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increment for a Class I area. If the Department concurs with such demonstration the permit shall not be issued.

[**Publications:** The publication(s) referred to or incorporated by reference in this rule are available from the office of the Department of Environmental Quality.]

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84

Exemptions

340-20-250 (1) Resource recovery facilities burning municipal refuse and sources subject to federally mandated fuel switches may be exempted by the Department from requirements OAR 340-20-240 sections (3) and (4) provided that:

(a) No growth increment is available for allocation to such source or modification: and

(b) The owner or operator of such source or modification demonstrates that every effort was made to obtain sufficient offsets and that every available offset was secured.

NOTE: Such an exemption may result in a need to revise the State Implementation Plan to require additional control of existing sources.

(2) Temporary emission sources, which would be in operation at a site for less than two years, such as pilot plants and portable facilities, and emissions resulting from the construction phase of a new source or modification must comply with OAR 340-20-240(1) and (2) or OAR 340-20-245(1), whichever is applicable, but are exempt from the remaining requirements of OAR 340-20-240 and OAR 340-20-245 provided that the source or modification would impact no Class I area or no area where an applicable increment in known to be violated.

(3) Proposed increases in hours of operation or production rates which would cause emission increases above the levels allowed in an Air Contaminant Discharge Permit and would not involve a physical change in the source may be exempted from the requirement of OAR 340-20-245(1) (Best Available Control Technology) provided that the increases cause no exceedances of an increment or standard and that the net impact on a nonattainment area is less than the significant air quality impact levels. This exemption shall not be allowed for new sources or modifications that received permits to construct after January 1, 1978.

(4) Also refer to OAR 340-20-245(3) for exemptions pertaining to sources smaller than the Federal Size-Cutoff Criteria.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Baseline for Determining Credit for Offsets

340-20-255 The baseline for determining credit for emission offsets shall be the Plant Site Emission Limit established pursuant to OAR 340-20-300 to 340-20-320 or, in the absence of a Plant Site Emission Limit, the actual emission rate for the source providing the offsets. Sources in violation of air quality emission limitations may not supply offsets from those emissions which are or were in excess of permitted emission rates. Offsets, including offsets from mobile and area source categories, must be quantifiable and enforceable before the Air Contaminant Discharge Permit is issued and must be demonstrated to remain in effect throughout the life of the proposed source or modification.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Requirements for Net Air Quality Benefit

340-20-260 Demonstrations of net air quality benefit must include the following:

(1) A demonstration must be provided showing that the proposed offsets will improve air quality in the same geographical area affected by the new source or modification. This demonstration may require that air quality modeling be conducted according to the procedures specified in the "Guideline on Air Quality Models". Offsets for volatile organic compounds or nitrogen oxides shall be within the same general air basin as the proposed source. Offsets for total suspended particulate, sulfur dioxide, carbon monoxide and other pollutants shall be within the area of significant air quality impact.

(2) For new sources or modifications locating within a designated nonattainment area, the emission offsets must provide reductions which are equivalent or greater than the proposed increases. The offsets must be appropriate in terms of short term, seasonal, and yearly time periods to mitigate the impacts of the proposed emissions. For new sources or modifications locating outside of a designated nonattainment area which have a significant air quality impact (OAR 340-20-225 definition (23)) on the nonattainment area, the emission offsets must be sufficient to reduce impacts to levels below the significant air quality impact level within the nonattainment area. Proposed major sources or major modification which emit volatile organic compounds and are located within 30 kilometers of an ozone nonattainment area shall provide reductions which are equivalent or greater than

the proposed emission increases unless the applicant demonstrates that the proposed emissions will not impact the nonattainment area.

(3) The emission reductions must be of the same type of pollutant as the emissions from the new source or modification. Sources of respirable particulate (less than three microns) must be offset with particulate in the same size range. In areas where atmospheric reactions contribute to pollutant levels, offsets may be provided from precursor pollutants if a net air quality benefit can be shown.

(4) The emission reductions must be contemporaneous, that is, the reductions must take effect prior to the time of startup but not more than one year prior to the submittal of a complete permit application for the new source or modification. This time limitation may be extended as provided for in OAR 340-20-265 (Emission Reduction Credit Banking). In the case of replacement facilities, the Department may allow simultaneous operation of the old and new facilities during the startup period of the new facility provided that net emissions are not increased during that time period.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83

Emisison Reduction Credit Banking

340-20-265 The owner or operator of a source of air pollution who wishes to reduce emissions by implementing more stringent controls than required by a permit or by an applicable regulation may bank such emission reductions. Cities, counties or other local jurisdictions may participate in the emissions bank in the same manner as a private firm. Emission reduction credit banking shall be subject to the following conditions:

(1) To be eligible for banking, emission reduction credits must be in terms of actual emission decreases resulting from permanent continuous control of existing sources. The baseline for determining emission reduction credits shall be the actual emissions of the source or the Plant Site Emission Limit established pursuant to OAR 340-20-300 to 340-20-320.

(2) Emission reductions may be banked for a specified period not to exceed ten years unless extended by the Commission, after which time such reductions will revert to the Department for use in attainment and maintenance of air quality standards or to be allocated as a growth margin.

(3) Emission reductions which are required pursuant to an adopted rule shall not be banked.

(4) Permanent source shutdowns or curtailments other than those used within one year for contemporaneous offsets as provided in OAR 340-20-260(4) are not eligible for banking by the owner or operator but will be banked by the Department for use in attaining and maintaining standards. The Department may allocate these emission reductions as a growth increment. The one year limitation for contemporaneous offsets shall not be applicable to those shutdowns or curtailments which are to be used as internal offsets within a plant as part of a specific plan. Such a plan for use of internal offsets shall be submitted to the Department and receive written approval within one year of the permanent shutdown or curtailment. A permanent source shutdown or curtailment shall be considered to have occurred when a permit is modified, revoked or expires without renewal pursuant to the criteria established in OAR 340-14-005 through 340-14-050.

(5) The amount of banked emission reduction credits shall be discounted without compensation to the holder for a particular source category when new regulations requiring emission reductions are adopted by the Commission. The amount of discounting of banked emission reduction credits shall be calculated on the same basis as the reductions required for existing sources which are subject to the new regulation. Banked emission reduction credits shall be subject to the same rules, procedures, and limitations as permitted emissions.

(6) Emission reductions must be in the amount of ten tons per year or more to be creditable for banking except as follows:

(a) In the Medford-Ashland AQMA emission reductions must be at least in the amount specified in Table 2 of OAR 340-20-225(20);

(b) In Lane County, the Lane Regional Air Pollution Authority may adopt lower levels.

(7) Requests for emission reduction credit banking must be submitted to the Department and must contain the following documentation:

(a) A detailed description of the processes controlled;

(b) Emission calculations showing the types and amounts of actual emissions reduced;

(c) The date or dates of such reductions;

(d) Identification of the probable uses to which the banked reductions are to be applied;

(e) Procedure by which such emission reductions can be rendered permanent and enforceable.

(8) Requests for emission reduction credit banking shall be submitted to the Department prior to or within the year following the actual emissions reduction. The Department shall approve or deny requests for emission reduction credit banking and, in the case of approvals, shall issue a letter to the owner or operator defining the terms of such banking. The Department shall take steps to insure the permanence and enforceability of the banked emission reductions by including appropriate conditions in Air Contaminant Discharge Permits and by appropriate revision of the State Implementation Plan.

(9) The Department shall provide for the allocation of the banked emission reduction credits in accordance with the uses specified by the holder of the emission reduction credits. When emission reduction credits are transfered, the Department must be notified in writing. Any use of emission reduction credits must be compatible with local comprehensive plans, Statewide planning goals, and state laws and rules.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83

Fugitive and Secondary Emissions

340-20-270 Fugitive emissions shall be included in the calculation of emission rates of all air contaminants. Fugitive emissions are subject to the same control requirements and analyses required for emissions from identifiable stacks or vents. Secondary emissions shall not be included in calculations of potential emissions which are made to determine if a proposed source or modification is major. Once a source or modification is identified as being major, secondary emis-

340-20-276 - Visibility Impact [Assessment:]

New major sources or major modifications located in Attainment, Unclassified or Nonattainment Areas shall meet the following visibility impact [assessment] requirements:

(1) Visibility Impact Requirements and Analysis.

(a) The owner or operator of a proposed major source or major modification shall demonstrate that the potential to emit any pollutant at a significant emission rate (OAR 340-20-225, definition (22)) in conjunction with all other applicable emission increases or decreases (including secondary emissions) permitted since January 1, 1984, shall not cause or contribute to significant impairment of visibility within any Class I area.

added

Proposed sources which are exempted under OAR 340-20-245(3), excluding section (3)(a)(A) are not required to complete a visibility impact assessment to demonstrate that the sources do not cause or contribute to significant visibility impairment within a Class I area. The visibility impact assessment for sources exempted under this section shall be completed by the Department.

sions must be added to the primary emissions and become subject to these rules.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Stack Heights

340-20-275 [DEQ 25-1981, f. & ef. 9-8-81; Repealed by DEQ 5-1983, f. & ef. 4-18-83]

Visibility Impact Assessment

340-20-276 New major sources or major modifications located in Attainment, Unclassified or Nonattainment Areas shall meet the following visibility impact assessment requirements:

(1) Visibility impact analysis:

(a) The owner or operator of a proposed major source or major modification shall demonstrate that the potential to emit any pollutant at a significant emission rate (OAR 340-20-225, definition (22)) in conjunction with all other applicable emission increases or decreases (including secondary emissions) permitted since January 1, 1984, shall not cause or contribute to significant impairment of visibility within any Class I area. ~~Proposed sources which emit less than 250 tons/year of TSP, SO_2 or NO_x and are located more than 30 Km from a Class I area are exempt from the requirements of this rule.~~

(b) The owner or operator of a proposed major source or major modification shall submit all information necessary to perform any analysis or demonstration required by these rules pursuant to OAR 340-20-230(1).

(2) Air quality models. All estimates of visibility impacts required under this rule shall be based on the models on file with the Department. Equivalent models may be substituted if approved by the Department. The Department will perform visibility modeling of all sources with potential emissions less than 100 tons/year of any individual pollutant and locating closer than 30 Km to a Class I area, if requested.

(3) Determination of significant impairment: The results of the modeling must be sent to the affected land managers and the Department. The land managers may, within 30 days following receipt of the source's visibility impact analysis, determine whether or not impairment of visibility in a Class I area would result. The Department will consider the comments of the Federal Land Manager in its consideration of whether significant impairment will result. Should the Department determine that impairment would result, a permit for the proposed source will not be issued.

(4) Visibility monitoring:

(a) The owner or operator of a proposed major source or major modification which emit more than 250 tons per year of TSP, SO_2 or NO_x shall submit with the application, subject to approval of the Department, an analysis of visibility in or immediately adjacent to the Class I area impacted by the proposed project. As necessary to establish visibility conditions within the Class I area, the analysis shall include a collection of continuous visibility monitoring data for all pollutants emitted by the source that could potentially impact Class I area visibility. Such data shall relate to and shall have been gathered over the year preceding receipt of the complete application, unless the owner or operator demonstrates that data gathered over a shorter portion of the year for another representative year, would be adequate to determine that the source of major modification would not cause or contribute to significant impairment. Where applicable, the owner or operator may demonstrate that existing visibility monitoring data may be suitable. Pursuant to the requirements of these rules, the owner or operator of the source shall submit, for the approval of the Department, a preconstruction visibility monitoring plan.

(b) The owner or operator of a proposed major source or major modification shall, after construction has been completed, conduct such visibility monitoring as the Department may require as a permit condition to establish the effect which emissions of pollutant may have, or is having, on visibility conditions with the Class I area being impacted.

(5) Additional impact analysis: The owner or operator of a proposed major source or major modification subject to OAR 340-20-245(6)(a) shall provide an analysis of the impact to visibility that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or major modification.

(6) Notification of permit application:

(a) Where a proposed major source modification impacts or may impact visibility within a Class I area, the Department shall provide written notice to the Environmental Protection Agency and to the appropriate Federal Land Manager within 30 days of the receipt of such permit application. Such notification shall include a copy of all information relevant to the permit application, including analysis of anticipated impacts on Class I area visibility. Notification will also be sent at least 30 days prior to Department Public Hearings and subsequently of any preliminary and final actions taken with regard to such application.

(b) Where the Department receives advance notification of a permit application of a source that may affect Class I area visibility, the Department will notify all affected Federal Land Managers within 30 days of such advance notice.

(c) The Department will, during its review of source impacts on Class I area visibility pursuant to this rule, consider any analysis performed by the Federal Land Manager that is provided within 30 days of notification required by subsection (a) of this section. If the Department disagrees with the Federal Land Manager's demonstration, the Department will include a discussion of the disagreement in the Notice of Public Hearing.

(d) The Federal Land Manager shall be provided an opportunity in accordance with OAR 340-20-230(3) to present a demonstration that the emissions from the proposed source of modification would have an adverse impact on visibility of any Federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source of modification would not cause or contribute to concentrations which would exceed the maximum allowable increment for a Class I area. If the Department concurs with such demonstration, the permit shall not be issued.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 18-1984, f. & ef. 10-16-84

Plant Site Emission Limits

Policy

340-20-300 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 340-20-301 through 340-20-320. However, by the adoption of these 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. PSELs can be established at levels higher than baseline provided a demonstrated need exists to emit at a higher level and PSD increments and air quality standards would not be violated and reasonable further progress in implementing control strategies would not be impeded.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Requirement for Plant Site Emission Limits

340-20-301 (1) Plant site emission limits (PSEL) shall be incorporated in all Air Contaminant Discharge Permits except minimal source permits and special letter permits as a means of managing airshed capacity. All sources subject to regular permit requirements shall be subject to PSELs for all federal and state regulated pollutants. PSELs will be incorporated in permits when permits are renewed, modified, or newly issued.

(2) The emissions limits established by PSELs shall provide the basis for:

(a) Assuring reasonable further progress toward attaining compliance with ambient air standards.

(b) Assuring that compliance with ambient air standards and Prevention of Significant Deterioration increments are being maintained.

(c) Administering offset, banking and bubble programs.

(d) Establishing the baseline for tracking consumption of Prevention of Significant Deterioration Increments.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Definitions

340-20-305 (1) "Actual Emissions" means the mass rate of emissions of a pollutant from an emissions source:

(a) In general, actual emissions as of the baseline period shall equal the average rate at which the source actually emitted the pollutant during a baseline period and which is representative of normal source operation. Actual emissions shall be calculated using the source's actual operating hours, production rates and types of materials processed, stored, or combusted during the selected time period.

(b) The Department may presume that existing source-specific permitted mass emissions for the source are equivalent to the actual emissions of the source if they are within 10% of the calculated actual emissions.

(c) For any newly permitted emissions source which had not yet begun normal operation in the baseline period, actual emissions shall equal the potential to emit of the source.

(2) "Baseline Emission Rate" means the average actual emission rate during the baseline period. Baseline emission rate shall not include increases due to voluntary fuel switches or increased hours of operation that have occurred after the baseline period.

(3) "Baseline Period" means either calendar years 1977 or 1978. The Department shall allow the use of a prior time period upon a determination that it is more representative of normal source operation.

(4) "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.

(5) "Plant Site Emission Limit (PSEL)" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Criteria for Establishing Plant Site Emission Limits

340-20-310 (1) For existing sources, PSELs shall be based on the baseline emission rate for a particular pollutant at a source and shall be adjusted upward or downward pursuant to Department Rules:

(a) If an applicant requests that the Plant Site Emission Limit be established at a rate higher than the baseline emission rate, the applicant shall:

(A) Demonstrate that the requested increase is less than the significant emission rate increase defined in OAR 340-20-225(22); or

(B) Provide an assessment of the air quality impact pursuant to procedures specified in OAR 340-20-240 to 340-20-245. A demonstration that no air quality standard or PSD increment will be violated in an attainment area or that a growth increment or offset is available in a nonattainment area shall be sufficient to allow an increase in the Plant Site Emission Limit to an amount not greater than the plant's demonstrated need to emit as long as no physical modification of an emissions unit is involved.

(b) Increases above baseline emission rates shall be subject to public notice and opportunity for public hearing pursuant to the Department's permit requirements.

(2) PSELs shall be established on at least an annual emission basis and a short term period emission basis that is compatible with source operation and air quality standards.

(3) Mass emission limits may be established separately within a particular source for process emissions, combustion emissions, and fugitive emissions.

(4) Documentation of PSEL calculations shall be available to the permittee.

(5) For new sources, PSELs shall be based on application of applicable control equipment requirements and projected operating conditions.

(6) PSELs shall not allow emissions in excess of those allowed by any applicable federal or state regulation or by any specific permit condition unless specific provisions of OAR 340-20-315 are met.

(7) PSELs may be changed pursuant to Department rules when:

(a) Errors are found or better data is available for calculating PSELs;

(b) More stringent control is required by a rule adopted by the Environmental Quality Commission;

(c) An application is made for a permit modification pursuant to the Air Contaminant Discharge Permit requirements and the New Source Review requirements and approval can be granted based on growth increments, offsets.

or available Prevention of Significant Deterioration increments;

(d) The Department finds it necessary to initiate modifications of a permit pursuant to OAR 340-14-040.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Alternative Emission Controls (Bubble)

340-20-315 Alternative emission controls may be approved for use within a plant site such that specific mass emission limit rules are exceeded provided that:

(1) Such alternatives are not specifically prohibited by a permit condition.

(2) Net emissions for each pollutant are not increased above the Plant Site Emission Limit.

(3) The net air quality impact is not increased as demonstrated by procedures required by OAR 340-20-260 (Requirements for Net Air Quality Benefit).

(4) No other pollutants including malodorous, toxic or hazardous pollutants are substituted.

(5) Best Available Control Technology (BACT) and Lowest Achievable Emission Rate (LAER) where required by a previously issued permit and New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) where required, are not relaxed.

(6) Specific mass emission limits are established for each emission unit involved such that compliance with the PSEL can be readily determined.

(7) Application is made for a permit modification and such modification is approved by the Department.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Temporary PSD Increment Allocation

340-20-320 (1) PSELs may include a temporary or time-limited allocation against an otherwise unused PSD increment in order to accommodate voluntary fuel switching or other cost or energy saving proposals provided it is demonstrated to the Department that:

(a) No ambient air quality standard is exceeded.

(b) No applicable PSD increment is exceeded.

(c) No nuisance condition is created.

(d) The applicant's proposed and approved objective continues to be realized.

(2) When such demonstration is being made for changes to the PSEL, it shall be presumed that ambient air quality monitoring shall not be required of the applicant for changes in hours of operation, changes in production levels, voluntary fuel switching or for cogeneration projects unless, in the opinion of the Department, extraordinary circumstances exist.

(3) Such temporary allocation of a PSD increment must be set forth in a specific permit condition issued pursuant to the Department's Notice and Permit Issuance or Modification Procedures.

(4) Such temporary allocations must be specifically time limited and may be recalled under specified notice conditions.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 25-1981, f. & ef. 9-8-81

Stack Heights and Dispersion Techniques

Definitions

340-20-340 (1) "Dispersion Technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by using that portion of a stack which exceeds good engineering practice stack height, varying the rate of emission of a pollutant according to ambient concentrations of that pollutant, or by addition of a fan or a reheater to obtain a less stringent emission limitation. The preceeding sentence does not include:

(a) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(b) The use of smoke management in agricultural or silvicultural programs; or

(c) Combining the exhaust gases from several stacks into one stack.

(2) "Excessive Concentrations" for the purpose of determining good engineering practice stack height in a fluid modeling evaluation or field study means a maximum concentration due to downwash, wakes, or eddy effects produced by structures or terrain features which is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(3) "Good Engineering Practice (GEP) Stack Height" means the greater of:

(a) 65 meters;

(b) $Hg = H + 1.5 L$, where

Hg = good engineering practice stack height, measured from the ground level elevation at the base of the stack;

H = height of nearby structure or structures measured from ground level elevation at the base of the stack;

L = lesser dimension (height or width) of the nearby structure or structures;

(c) The height demonstrated by a fluid modeling evaluation or a field study which is approved by the Department and ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of downwash, wakes, or eddy effects created by the source itself, nearby structures, or terrain obstacles.

(4) "Nearby Structures" means those structures within a distance of five times the lesser of the height or the width dimension of a structure but not greater than one-half mile. The height of the structure is measured from the ground level elevation at the base of the stack.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 5-1983, f. & ef. 4-18-83

Limitations

340-20-345 (1) The degree of emission limitation required for any source shall not be affected in any manner by so much of the stack height as exceeds good engineering practice (GEP) or by any other dispersion technique. This provision applies to new sources and, modifications of sources, and to existing sources proposing to increase stack heights.

(2) An emission limitation established pursuant to the proposed construction of a stack under the criteria established in OAR 340-20-340(3)(c) shall be subject to notice and opportunity for public comment concerning the fluid modeling evaluation or field study that was used to demonstrate the need for the increased stack height.

Stat. Auth.: ORS Ch. 468
Hist.: DEQ 5-1983, f. & ef. 4-18-83

Table 2
(340-20-225)

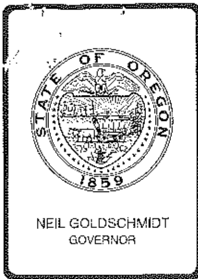
Significant Emission rates for the Nonattainment Portions of the Medford-Ashland Air Quality Maintenance Area.

	Emission Rate					
	Annual		Day		Hour	
Air Contaminant	Kilograms	(tons)	Kilograms	(lbs)	Kilograms	(lbs)
Particulate Matter (TSP)	4,500	(5.0)	23	(50.0)	4.6	(10.0)
Volatile Organic Compound (VOC)	18,100	(20.0)	91	(200)	—	—

Table 3
(340-20-225)

Significant Air Quality
ambient air quality impact
which is equal to or greater than:

		Pollutant Averaging Time			
Pollutant	Annual	24-hour	8-hour	3-hour	1-hour
SO_2	1.0 ug/m^3	5 ug/m^3		25 ug/m^3	
TSP	0.2 ug/m^3	1.0 ug/m^3			
NO_2	1.0 ug/m^3				
CO			0.5 mg/m^3		2 mg/m^3



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item N, March 13, 1987, EQC Meeting

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

Background

At its January 23, 1987 meeting, the Environmental Quality Commission requested an update on the status of the Ogden Martin Systems facility in Brooks, Oregon. This report is intended to satisfy that request.

Solid Waste Aspects

1. Operational Status

Wastes are currently being delivered to the Ogden Martin Systems of Marion, Inc. energy recovery facility at Brooks from Marion and Polk counties, from the Metropolitan Service District (MSD) and from Clark County, Washington. For safety reasons, private citizens are not allowed to deliver wastes to the facility, but must use the transfer stations in Salem and near Woodburn.

Wastes are delivered in transfer vehicles from the transfer stations in Marion County and in Oregon City. Commercial solid waste collection companies' compactor trucks and roll-off (drop-box) containers from Marion County, Polk County (West Salem), MSD area, and from Clark County also deliver wastes directly to the facility.

Waste quantities from Marion County, including commercially collected wastes from the West Salem area of Polk County, average about 8,000 tons per month in compaction waste collection trucks, 3,500 tons per month in commercial roll-off containers, and 1,500 tons per month from private citizens through transfer stations. Waste quantities from the other areas are approximately 500 tons per month. Total waste deliveries are thus approximately equal to the 160,000 tons per year limit contained in the Air Contaminant Discharge Permit.

On March 1, 1987, the disposal fee will increase from $12.00 per ton for commercial waste collection vehicles on to a charge of $26.00 per ton. Marion County expects that some wastes will be diverted to other disposal facilities after this disposal charge increase. This expectation is based upon a decrease in the quantity of wastes delivered to the county disposal sites after the April 1, 1985 increase from $6.00 per ton to $12.00 per ton. The decrease in volume delivered by commercial collection companies was regained within a few months. This situation will probably be repeated. Wastes delivered by the public dropped from 3,000 tons per month to 1,500 tons per month after April 1, 1985 and has stayed down.

The Metropolitan Service District (MSD) has contracted with Marion County for disposal of up to 40,000 tons of waste per year, conditional upon available capacity in the facility. This waste is delivered to the facility from the MSD transfer station at Oregon City. Recently, waste quantities generated in Marion County temporarily increased to the maximum amount that could be burned. This precluded the transfer of wastes from the MSD transfer station in Oregon City for a week and a half.

2. Combustion Residues

The Department specified in the Solid Waste Disposal Permit that composite samples of the mixed combustion residues (consisting of mixed grate siftings, cinders, slag and fly ash) be prepared and chemically analyzed following the EPA Extraction Procedure Toxicity Test. The results were to be evaluated using a statistical procedure to determine whether the residues exceeded the allowable concentrations for classification as a nonhazardous waste contained in the federal and state hazardous waste rules.

The initial sampling program was inadequate to determine compliance. Ogden-Martin met with the Department and proposed a revised sampling protocol and a more intensive test program to collect more representative samples and to correct apparent problems in the laboratory analytical procedures of the initial tests. The Department approved the revised protocol and is currently evaluating the results of this second series of samples from the company's contract laboratory. The Department laboratory also analyzed samples from this second series and some samples were sent to a third laboratory for quality control/quality assurance purposes. It could be a number of weeks before this issue is finally resolved.

The combustion residues are in temporary storage in a lined cell with leachate containment at the Woodburn landfill pending the decision concerning its classification. Samples of the water coming into contact with these residues are also being analyzed to determine the concentrations of various metals and chemical compounds that actually occur in this monofill (single waste type) environment. Initial sampling shows very low lead and cadmium concentrations.

The Office of Solid Waste of EPA recently contacted Ogden-Martin Systems, Inc. concerning the possibility of EPA studying the residue in the monofill during a long-term test program, since the Brooks facility is the first energy recovery facility in the U.S. to incorporate an acid gas scrubbing/baghouse air contaminant control system. Fly ash captured by these controls is mixed with the bottom ash from the combustion chambers. Ogden-Martin Systems, Inc. has written to EPA to confirm the company's willingness to cooperate in this study. Combustion residue management remains of concern, not only to Oregon, but also to EPA and to other states in which energy recovery facilities have been operating (some up to 15 years) or are being proposed.

The Department has encountered the same problems as have other states in reaching a decision to classify the residues as a non-hazardous or as a hazardous waste. California has decided to make the determination on a case-by-case basis, although no facilities are operational in California at this time. New York and Massachusetts are conducting test programs and have not made any determinations. The major problems have been due to problems in obtaining small samples (as specified in the applicable federal and state rules) which truly represent the large quantities of combustion residues, preparation and analysis of the samples, and the variability of the wastes burned in the facility.

Air Quality Considerations

1. Compliance Status

The Department required Ogden-Martin to conduct source testing to demonstrate compliance with the air pollutant emission limits established in the Air Contaminant Discharge Permit. Testing was conducted by Ogden-Martin from September 22 to October 8, 1986, for all pollutants limited by the permit. Testing was also conducted to demonstrate that the required exhaust gas temperature and residence time requirements for control of toxic organic pollutant emissions are being met. Except for nitrogen oxides, the emissions were less than the permit limits for each pollutant. The requirements for exhaust gas temperature and residence time were also met.

The following table shows the permitted emission levels compared to the actual tested emissions.

Pollutant	PERMIT LIMITS lbs/hr	ACTUAL EMISSIONS lbs/hr
Nitrogen Oxides	94.0	122.2
Sulfur Dioxide	73.0	30.7
Carbon Monoxide	55.0	4.6
Total Suspended Particulate	20.0	4.5
Lead	0.52	.006
Volatile Organic Compounds	3.1	0.4
Fluorides	1.6	0.092
Mercury	0.17	0.06
Hydrogen Chloride	<23	3.6
	Millionth lbs/hr	Millionth lbs/hr
Beryllium	2.9	<0.44
Dioxin (TCDD only)	1.7	0.038

In addition to the testing required by the Department, Ogden-Martin conducted analysis for a series of organic compounds and heavy metal compounds to provide additional information about energy recovery facility emissions. Analysis of the source test results shows dioxin and other organic compound emissions to be among the lowest levels measured on energy recovery facilities. No facility in the United States appears to have lower emissions and many are operating at levels 10 to 100 times higher.

The acid gas control system is also exceeding control requirements, as shown by the hydrogen chloride (HCl) and sulfur dioxide emission data. The permit required installation of an acid gas control system and contained an upper bound on HCl emissions. Since actual HCl emissions were expected to be dependent on the control system used, the permit requires establishment of HCl limits following the initial source test. More stringent emission limits for HCl will be proposed as part of a permit modification which is being considered by the Department.

The nitrogen oxide (NO_x) levels exceed the permit limits. The Department is currently considering a request from Ogden Martin for an Air Contaminant Discharge Permit modification to increase the NO_x emission limit. The increase is due partly to the high temperature required for control of dioxins and other toxic organic compounds. The NO_x level is also affected by the amount of yard debris contained in the waste. Yard debris contains nitrogen which is converted into NO_x during combustion. At the time of the source test, high levels of yard debris appear to have been in the waste stream. Other facilities with modern combustion systems design are emitting NO_x at comparable concentrations. For this facility the actual NO_x emission rate is considered to qualify as Best Available Control Technology, and the Department is, therefore, proposing to modify the permit to allow that rate.

Odgen Martin has also requested an increase in the annual throughput limit, from 160,000 tons per year to 200,750 tons per year. The facility was constructed to have less downtime than was originally proposed, resulting in higher annual capacity. The agreement to accept Metropolitan Service District waste at the facility was based on this increased capacity. As shown by the emissions test results, the increased throughput could be accomodated without exceeding the current permit limits for any pollutant except NO_x.

The ambient air quality impacts of the proposed permit modifications were evaluated. The maximum annual NO_x impact would increase from 0.71 micrograms per cubic meter (ug/M^3) to 0.92 ug/M^3 compared to the standard of 100 ug/M^3. Ambient impacts of the other pollutants would be lower than the previous modeling predictions, due to the reduced actual emission rates. The Department considers the proposed impact levels to be acceptable.

It is expected that a proposed permit modification will be on public notice at the time of the Commission meeting.

2. National Testing Program

EPA has selected this facility for extensive air emissions testing to support development of national standards for energy recovery facilities because of the state-of-the-art control equipment in use. To initiate the testing EPA conducted testing at a location between the boiler and the pollution control equipment in conjunction with the required stack testing conducted by Ogden-Martin. Results of EPA's testing should be available in the spring. Further testing is scheduled for this summer, at an estimated cost of one million dollars. This testing will focus on the mechanisms by which dioxin and other toxic pollutants are controlled in the combustion process and in the control equipment.

Noise Control

Ogden Martin's noise compliance program is well underway and nearing completion. To date, all steam venting has been terminated, induced draft fan speeds have been reduced to correct a 125 Hertz humming noise violation, and steps are being taken to mitigate a high pitched screeching noise from the ash screw conveyer system. Upon completion of these actions, an interim compliance analysis will be performed by the company's acoustical consultant. If these strategies fail to attain compliance, Ogden Martin has agreed to install an acoustical barrier at the cooling tower circulating pumps.

Subsequent to completion of their noise compliance program, the Noise Section will independently affirm compliance or request additional noise control.

Summary

1. The Ogden Martin Systems of Marion, Inc. energy recovery facility at Brooks, Oregon is operating at capacity and without public complaints to the Department.

2. The classification of the combustion residue has not been determined. Further analysis is being conducted to determine if lead and cadmium levels exceed the allowable concentrations for classification as a nonhazardous waste.

3. The 1986 source tests established that the facility is operating in compliance with all Air Contaminant Discharge Permit requirements, with the exception of nitrogen oxide emissions.

4. The Department is proposing to approve a requested Air Contaminant Discharge Permit modification to increase the allowable nitrogen oxide emissions and annual waste throughput.

5. EPA is planning to conduct an extensive air emissions testing program at the facility to help in setting national standards. EPA is also preparing a test program for the combustion residues.

6. Noise control improvements have been made and the company is in the final phases of their noise abatement program.

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 is recommended that the Commission concur in this course of action.

Fred Hansen

WL Sims:d
AD237
229-6414
February 26, 1987

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item O, March 13, 1987, EQC Meeting

Informational Report: Proposed Approach for Establishing Total Maximum Daily Loads as a Management Tool on Water Quality Limited Segments

Background

Considerable discussion has occurred over water quality management in Oregon during the past several months. The Department has prepared this staff report in response to that discussion and to describe several water quality management activities required by Federal law. The report provides the Commission with background information on the issue of total maximum daily loads (TMDLs) and proposes recommendations for Department action.

Historically, the Department of Environmental Quality has implemented water quality control activities in accordance with a general management plan. This plan sets forth an overall program to preserve and enhance water quality statewide and to provide for the beneficial uses of the water resource. It is intended to fulfill the policy of the State of Oregon regarding water pollution control as expressed in the Oregon statutes. This management plan is also designed to satisfy water quality planning and management activities identified in the Federal Clean Water Act (CWA) of 1972.

Section 303 of the CWA (Attachment I) contains the basic Federal requirements for water quality management planning. This section deals specifically with water quality standards and implementation plans, and introduces the concept of a total maximum daily load (TMDL). According to the CWA, total maximum daily loads are to be developed on those waters where minimum treatment controls for point sources are not stringent enough to meet the established water quality standards. These waters are said to be "water quality limited". Attachment A provides specific details on the requirements of Section 303, including the issue of total maximum daily loads as they relate to water quality management in Oregon. Further background information on Oregon's present water quality management plan is presented in Attachment B.

Among other requirements, Section 303(d) specifies the timing for each state to submit a list of identified "water quality limited" segments and established loads. The first submission is required within 180 days after the EPA Administrator publishes the "identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives" pursuant to Section 304(a)(2). This notice was published on December 28, 1978 (Attachment J). In a literal sense, the state was not required to submit anything to EPA until June 26, 1979.

In 1973, the Department classified stream segments to satisfy the first requirement identified in Section 303(d) (Attachment C). Basically, the Department was faced with the choice of designating waterways as being either "effluent limited" or "water quality limited" as required in the Act. An "effluent limited" segment is a reach where water quality standards can be met by the application of technology based minimum controls for all dischargers. In contrast, a "water quality limited" segment is a reach where greater than technology based/secondary treatment requirements are needed to continually achieve water quality standards. The "water quality limited" label better conveyed the impression that the loading capacity of stream segments is limited; that case-by-case analysis of the effect of a proposed new or expanded discharge is necessary; and that highest and best practicable treatment and control is needed to minimize adverse effects on water quality. Thus, for these and other advantages, the label of "water quality limited" seemed to best serve Oregon's interests and was applied to all water bodies of the State.

This label seemed appropriate because Oregon (via limitations established in discharge permits) had achieved waste load allocation for degradable organics (BOD) which resulted in substantial water quality standards compliance statewide. Remaining standards violations were related mostly to the effects of diminished stream flows, higher than desirable temperatures due to solar heating, seasonal turbidity from stormwater-induced soil erosion, bacteria from occasional sewage bypasses and land runoff, and natural conditions. The use of total maximum daily loads and waste load allocations to address these problems did not seem logical at the time.

The primary disadvantage of labeling streams "water quality limited", however, was the need to establish TMDLs. The Department believed the process necessary to establish TMDLs would require substantial resource at the expense of other priority water quality issues. A total maximum daily load is basically equivalent to the loading capacity of a water body. This loading capacity is the greatest amount of pollutant loading that a water can receive without violating water quality standards. The 1985 EPA regulations (Attachment K) defined a TMDL as the sum of the individual waste load allocations (WLA) for point sources plus the load allocations (LA) for nonpoint sources and natural background. EPA further defined WLA as the portion of a receiving water's loading capacity that is allocated to existing or future point sources of pollution. Similarly, the LA is the

portion of a receiving water's loading capacity that is attributed to existing or future nonpoint sources or to natural background sources.

On December 12, 1986, the Northwest Environmental Defense Center (NEDC) filed a suit in the Federal District Court of Oregon against Lee Thomas, Administrator of EPA, to require him to ensure that TMDLs are established and implemented for waters within Oregon identified as being "water quality limited" (Attachment D). That suit specifically identified the Tualatin River and generally other streams in Oregon that are designated as water quality limiting. Subsequently, NEDC filed a "Notice of Intent" to sue, naming 27 other water bodies requiring TMDLs be established (Attachment E).

The pending law suit contends that Section 303 requires EPA to establish TMDLs on "water quality limited" stream segments and that this is a non-discretionary function. Therefore, EPA is obligated by statute to establish TMDLs. The Department has reviewed the suit with the State Attorney General's office to establish our legal position. Essentially, the Department has two alternatives:

1. Develop the TMDLs and WLAs itself consistent with a state developed process and available resources, or

2. Have EPA develop the TMDLs and WLAs.

The Department believes that establishing TMDLs and, particularly, WLAs will be quite controversial. There will be a number of different alternatives for achieving the WLAs including flow augmentation, modified treatment method, no discharge, land application, or a combination of these or other alternatives. If for example, phosphorus levels are of concern, a ban on detergents containing phosphorus may be considered. Because of this, the staff would like to use a process that involves as much public participation as practicable so that all potential alternative WLAs and potential implementation strategies are given appropriate evaluation. EPA's approach, as established by Federal guidance and regulation, does not allow for more than minimal public participation.

The Department feels that it is more consistent with the overall approach of the state's environmental control program that we take the lead in establishing TMDLs and WLAs. Therefore, we have been an active participant in the negotiations between EPA and NEDC to develop an acceptable approach to settle the suit.

On February 10, 1987 the Department met with the U.S. Justice Department and EPA to finalize a settlement proposal. The Justice Department and EPA presented the proposal developed to NEDC on February 11, 1987. The Department has not heard officially from the U.S. Justice Department and EPA, but apparently the settlement offer was rejected by the plaintiffs.

Consequently, the Department has decided to move forward in a positive fashion to propose to the Commission that we proceed to implement the TMDL process contained in the settlement offer.

Proposed Approach

The following section describes how the Department proposes to address the issue of TMDLs on "water quality limited" segments. For these segments, the allowable pollutant loadings need to be determined so that water quality standards will not be exceeded. Once established, the allowable pollutant loading needs to be allocated to individual point sources as well as nonpoint sources.

The proposed approach to establish and implement TMDLs and WLAs consists of the following key elements:

1. Identify the water quality limited stream segments on which TMDLs and WLAs will be developed and describe how other waterbodies will be assessed and additional "water quality limited" segments will be identified, ranked, and addressed in the future.

2. Describe how TMDLs/WLAs will be developed.

3. Establish a generic process to be used by the Department to develop and adopt the TMDLs/WLAs for each "water quality limited" segment.

4. Describe how the Department will address applications for discharge permits during the period from the time a water quality limit segment is identified and the time TMDLs/WLAs are adopted.

5. Describe the basic procedure for developing strategies which will be used to implement the TMDLs/WLAs through the NPDES permit process.

Department staff have evaluated the 1986 305(b) report, the NEDC suit, and the NEDC "Notice of Intent" to file suit to determine what "water quality limited" segments may be due to point sources. These segments represent those most appropriate for the initial establishment of TMDLs.

These point source affected segments are listed in Attachment F. For each waterbody, the table presented in Attachment F includes the water quality parameter(s) of concern, a proposed date for completing the initial steps, and a list of NPDES permits which discharge to the stream.

Attachment F is intended to be a starting point for initiating the TMDL/WLA process in Oregon. The recently amended Federal CWA contains provisions under which the Department will conduct an evaluation of segments where nonpoint sources or toxics could lead to the non-attainment of water quality standards. The Department will conduct a nonpoint source assessment over the next 18 months and a water quality status assessment over the next twelve (12) months. These assessments will determine whether TMDLs are appropriate for other segments within the State. As these assessments are completed and new information becomes available, other

segments may be identified as "water quality limited". The schedule for conducting new TMDL/WLA work will be negotiated with EPA annually during the development of the State/EPA Agreement. As further assessment work is completed on remaining waterbodies, presently considered non-point source limited and any other waterbodies identified in 305(b) efforts may be added to the "water quality limited" segments list. This approach will provide the Department the flexibility to add new "water quality limited" segments and to prioritize TMDL and WLA development annually through the State/EPA Agreement.

After the "water quality limited" segments have been identified the Department must develop appropriate TMDLs and WLAs. This process begins by evaluating the standard(s) being violated and determining what factors contribute to these violations. Attachment H describes how the Department conducted this evaluation on the Tualatin River. This approach will be used on the other "water quality limited" segments, with appropriate modifications, to address different standard violations and their associated causes.

The Department proposes to divide the total allowable pollutant loadings among the point sources, nonpoint sources, and natural background sources. The natural background sources can be separated from the nonpoint sources through carefully designed monitoring surveys. Attachment L provides potential strategies for allocating the point source load among the permitted dischargers within a segment.

Once the allowable pollutant loadings have been allocated, various strategies for achieving these loadings will have to be evaluated and selected. These strategies may include utilizing flow augmentation, modifying treatment methods, eliminating discharges, utilizing land application, or a combination of these or other alternative. If for example, phosphorus levels are of a concern, a ban on detergents containing phosphorus may be considered as a potential strategy for meeting the TMDL.

The Department has identified a generic process which can be used to develop TMDLs and WLAs for "water quality limited" segments. The process has been divided into four phases as follows:

Phase I:

1. Department staff will develop TMDLs for "water quality limited" segments and associated problem parameters.

2. Director proposes TMDLs and presents the evaluation and hearing process schedule to EQC as an informational item.

3. Place TMDLs on 30-day public notice for public review and comment.

4. Respond to public comment and Director issues list of TMDLs.

Phase II:

1. Establish a local Water Users Advisory Committee.

2. Advisory Committee reviews TMDLs and considers various alternatives to achieve TMDLs, exploring strategies for point and nonpoint sources, and for allocating the point source load among the permitted dischargers within a segment (Attachment L).

3. DEQ prepares staff report proposing a revision in the river basin plan rules to establish TMDLs, waste loads and implementation strategy.

4. Staff presents report to EQC with a request for authorization to hold a rule-making hearing.

5. DEQ holds public hearing; local advisory committee formally presents their findings at the hearing (30 days' public notice for hearing).

Phase III:

1. DEQ prepares staff report responding to hearing testimony and proposing final basin plan rule revision to the EQC for adoption.

2. EQC meeting for rule adoption.

3. Department submits TMDLs/WLAs to EPA for approval.

Phase IV:

1. DEQ implements rule via NPDES permit program and NPS activities after it is adopted and approved by EQC.

Interim Period

There has been some question over how the Department will address applications for discharge permits for sources within a water quality limited segment before TMDLs and WLAs are adopted. Applications could be for permit renewal for existing sources, or a permit request for new sources.

For permit renewals where no increase in discharge is requested, the Department intends to reissue without modification of permit limits. For new sources and existing sources that propose expansion, the Department would propose to accommodate increased discharges providing that in our judgment there would be no conflict with what might be the ultimate control strategy for the basin.

TMDL/WLA Implementation

After the TMDLs and WLAs have been adopted, it will be the Department's responsibility to address point source permits consistent with the implementation strategy adopted. Current administrative rules (OAR 340-45-055) allow the Department to modify existing permits and to include new limits for complying with established waste loads if the implementation strategy would so dictate. Should reduced limits be placed in permits, compliance schedules for reaching those limits would be specified and would be consistent with the adopted implementation strategy.

Tualatin Basin

In November 1985, the Department began an intensive assessment of water quality and pollution sources in the Tualatin Basin. One purpose of the Tualatin study is to develop water quality management tools to be used in other Oregon basins. Consequently, the Tualatin River is the most appropriate area for initiating TMDLs in Oregon. The process proposed by the Department indicates that a hearing process schedule for establishing TMDLs/WLAs on a particular segment will be presented to the Commission. Attachment G presents this schedule for completing TMDL work in the Tualatin Basin.

In addition to a hearing process schedule, a TMDL is also being proposed for the Tualatin River. The technical evaluation for developing the TMDL is presented in Attachment H. Ammonia and phosphorus are the two water quality parameters initially addressed. The stretch of the Tualatin River below Rock Creek currently violates the dissolved oxygen standard during summer low flow. The dissolved oxygen depression in the river is due primarily to the nitrification of ammonia. Concerns have also been raised about nuisance algal growth in the lower Tualatin and Lake Oswego. Although phosphorus is not the only factor which stimulates algal growth, studies indicate it can have a major effect on the abundance and type of algae produced. At this time, pending review of public comments, the Department believes that ammonia and phosphorus are the two critical parameters that are directly related to water quality problems for the point sources in the basin.

Table 1 presents the proposed TMDLs for ammonia and phosphorus in the lower Tualatin River. These loads are based on flows for the Tualatin River at Farmington gage.

The recommended approach for the Tualatin is to identify a set of loads for varying flow conditions. This technique will better address the dynamic nature of the river. This approach will also allow a range of options to be considered in the process of establishing WLAs that meet water quality standards. Alternatives could include permit conditions specified in terms

Table 1. Proposed Maximum Allowable Pollutant Loads for the Tualatin River

Tualatin River at Farmington, Discharge (cfs)	Maximum Ammonia Load in River (lbs/day)	Maximum Total Phosphorus Load in River (lbs/day)
100 - 150	540	80
150 - 200	810	120
200 - 250	1080	160
250 - 300	1350	200
300 - 350	1620	240
350 - 400	1880	280

of receiving water flows. Another option might be to identify the use of upstream reservoir storage capacity to augment stream flows.

Summary

- The Department has identified water quality limited segments on several rivers in Oregon.
- The Federal Clean Water Act under Section 303 requires the establishment of total maximum daily loads (TMDLs) for stream segments identified as "water quality limited".
- TMDLs have not been formally established in Oregon.
- The Northwest Environmental Defense Center (NEDC) has sued EPA requiring them to establish TMDLs.
- NEDC has also filed a Notice of Intent to sue, identifying 27 water bodies requiring TMDLs.
- EPA is obligated by statute to establish TMDLs; this is a non-discretionary function.
- The Department can choose to develop the TMDLs and WLAs. If DEQ chooses not to, EPA will have to develop the TMDLs and WLAs.
- The Department has developed a process and schedule for establishing TMDLs on water quality limited segments.
- TMDLs are proposed for ammonia and phosphorus in the lower Tualatin River.

- The Department intends to place the proposed TMDLs for the Tualatin on public notice for public comment in April.

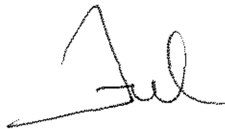
- The Department will be working until April to refine the technical information provided in Attachment H. Refinements will include input from a technical advisory committee being established for the Tualatin project.

Director's Recommendation

It is recommended that 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.



Fred Hansen

Attachments: (6)

A. Total Maximum Daily Loads and Water Quality Management in Oregon
B. Background for Oregon's Present Water Quality Management Plan
C. Oregon's Initial Stream Classification Submittal to Satisfy Section 303(d)
D. Federal District Court Civil Complaint 86-1578-PA: NEDC and John R. Churchill vs. USEPA
E. Notice of Intent Dated January 6, 1987: NEDC to USEPA, et.al
F. Proposed List of Waterbodies Needing Total Maximum Daily Loads
G. Proposed Schedule for Establishing TMDLs/WLAs/LAs on the Tualatin River
H. Technical Evaluation for Proposed Tualatin TMDLs
I. Section 303 of the Clean Water Act
J. EPA Guidance on Total Maximum Daily Loads - 1978
K. EPA Water quality Planning and Management Final Rules - 1985
L. Point Source Waste Load Allocation Methods.

R. Nichols/N. Mullane:h
WH1650
229-5284
February 10, 1987

ATTACHMENT A

TOTAL MAXIMUM DAILY LOADS AND WATER QUALITY MANAGEMENT IN OREGON

FEDERAL REQUIREMENTS FOR TOTAL MAXIMUM DAILY LOADS

The Federal Clean Water Act (CWA) sets out planning and management activities to be undertaken by States and local governments. The activities described establish the water quality goals and standards (as was done in Oregon prior to passage of the CWA) and develop programs to meet those goals. The water quality management program is defined in Sections 106, 205(g), 205(j), 208, 303, and 305 of the CWA.

This Federal legislation was initially passed by Congress and signed into law in 1972. Section 303 of the CWA deals specifically with water quality standards and implementation plans. Section 303(d) introduced a concept referred to as a total maximum daily load (TMDL). According to the CWA, total maximum daily pollutant loads are to be developed on those waters where minimum treatment controls for point sources are not stringent enough to meet the established water quality standards.

The process identified by Section 303(d) requires each state to perform several tasks. These include:

1. Identify waters where "Best Practicable Control Technology" (BPT) for industrial point sources and "Secondary Treatment" for municipal sources are not stringent enough to implement established water quality standards, and establish a priority ranking for such waters. (The EPA administrator is required to define BPT and Secondary treatment by rules.)

2. For the waters identified and in accordance with the priority ranking, establish the "total maximum daily load" (TMDL) for those pollutants which the EPA Administrator identifies pursuant to Section 304(a)(2) as suitable for TMDL measurement correlated with the achievement of water quality objectives.

3. Identify waters where controls on thermal discharges required in Section 301 are not stringent enough to protect aquatic life and estimate the total maximum daily thermal load required to assure protection of aquatic life.

4. From time to time, submit priority lists and established TMDLs to the Administrator for approval. The Administrator must approve or disapprove within 30 days. If disapproved, the Administrator shall within 30 days identify the waters and establish TMDLs as necessary to implement water quality standards.

5. For the purpose of developing information, identify all other waters of the state (not included in the above requirements) and estimate TMDLs for pollutants identified by the EPA Administrator pursuant to

Section 304(a)(2) at a level to assure protection of a balanced indigenous population of fish, shellfish and wildlife.

The first submission of the waters identified and loads established by each state is also defined in Section 303(d). It is required within 180 days after the EPA Administrator publishes the "identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives" pursuant to Section 304(a)(2). This notice was published on December 28, 1978. In a literal sense, the state was not required to submit anything to EPA until about June 28, 1979.

Specific guidance from EPA regarding the implementation of Section 303(d) was initially vague and sparse. A 1973 policy statement from EPA placed the greatest water quality management emphasis on the issuance of NPDES permits for industrial and municipal sources. Permit limits were to be based on effluent limits (BPT or secondary treatment) if such limits were adequate to meet water quality standards. More stringent controls were to be implemented if the technology based effluent limits would not assure compliance with water quality standards. At that time, the establishment of TMDL's was a low EPA priority.

DEPARTMENT ACTIVITIES RELATED TO SECTION 303(d)

In 1973, the Department classified streams segments to comply with Section 303(d). This list was initially submitted to EPA on February 15, 1973 and approved by them on July 17, 1973 (Attachment C). The classification was subsequently refined in 1976. The Department was faced with the choice of designating waterways as being either effluent limited or water quality limited. The Department considered the advantages and disadvantages as follows in making its choices:

1. Effluent Limited Segments

   a. Definition

      An effluent limited segment is a reach where water quality standards can be met by the application of technology based minimum controls for all dischargers.

   b. Advantages

      1) Less cost to dischargers
      2) Easier to operate plants
      3) Less solids to dispose

c. Disadvantages

1) The "effluent limiting" label would give the impression that increased waste loads could be accommodated without justification or water quality impact evaluation -- all that was necessary was to meet effluent guidelines. This was inconsistent with the Commision policy to protect high quality waters and to minimize discharges to streams.

2) A classification of "effluent limiting" might have limited the ability of Oregon to require controls more stringent than federal minimums -- or at least make it more difficult to require more stringent controls to protect high quality waters. The focus of the federal law was the clean up of dirty water. Abatement was the issue. Prevention programs were ignored. Oregon felt continually frustrated in efforts to protect existing high quality waters.

3) There was concern that construction grant assistance for municipal facilities might be directed to "water quality limited" segments. This could have hampered Oregon's efforts to protect high quality waters. In addition, Oregon was expecting a better level of performance of secondary treatment technology than that defined by EPA (20/20 vs. 30/30). Again, there was concern that cities would be disqualified from receiving grants if 20/20 treatment was required on effluent limited streams. Oregon did not want to relax state treatment requirements to prevent diminished water quality over time as growth occurred. Also, minor plant upsets at a 30/30 plant would more severely affect uses, especially during critical summer flows.

2. Water Quality Limited Segments

a. Definition

A water quality limited segment is one where greater than technology based/secondary treatment requirements are needed to continually achieve water quality standards.

b. Advantages

1) The "water quality limited" label better conveyed the impression that the assimilative capacity of the stream is limited; that case-by-case analysis of the impact of a proposed new or expanded discharge is necessary in each case; and that highest and best practicable

treatment and control to minimize adverse impact on water quality is necessary and appropriate.

2) There would not be any major change in the existing Oregon program or requirements. Oregon had all sources under State Waste Discharge Permits. These permits contained effluent limits consistent with Oregon requirements of a minimum of secondary treatment or control equivalent to secondary treatment (highest and best practicable treatment and control). For instance, conventional technology is capable of routinely achieving 10/10 effluent quality in larger plants with the full time attention of operators.

3) Grants would continue to be available to all municipalities

4) Better able to limit discharge loads to maintain and enhance water quality. By going this route, Oregon would get a significant jump on maintaining high quality waters and would, in addition, provide a greater cushion to accommodate new industry and growth.

5) Minor upsets at treatment plant not likely to severely stress water quality of receiving streams.

c. Disadvantages

1) Requires better trained operators because of operation complexity.
2) More solids to dispose
3) Need to establish TMDL's which was predicted to be resource intensive.

3. Total Maximum Daily Loads (TMDL)

a. Definition

A total maximum daily load is essentially equivalent to the loading capacity of a water body. The loading capacity is the greatest amount of pollutant loading that a water can receive without violating water quality standards. In 1985, EPA published regulations governing water quality planning and management activities. These regulations state that a TMDL shall be expressed as the sum of the individual waste load allocations (WLA) for point sources plus the load allocations (LA) for nonpoint sources and natural background. EPA further defined WLA as the portion of a receiving water's loading capacity that is allocated to existing or future point sources of pollution. The LA is the portion of a receiving water's loading capacity that is

attributed to existing or future nonpoint sources or to natural background sources.

b. Advantages

1) In those streams or sub-basins where stringent requirements set by EQC are not enough, a mechanism is available to establish higher requirements
2) Concept is valid in basins having:

   a) Limited water quantity
   b) Pollution problems caused by existing point sources
   c) High density population and industrial growth potential

c. Disadvantages

1) Provides opening for request to relax treatment requirements if TMDL limit is higher than existing loads. In order to maintain high quality waters a strong anti-degradation policy must be included and adhered to.
2) Time consuming to establish reasonable TMDL without being challenged by regulated community regarding database used.
3) Value or usefulness of TMDL on nonpoint source water quality limited segments is questionable.

Based on the above, the Department classified all waterways in the state of Oregon as water quality limiting in 1973. The classification was reviewed and refined in the 1976 water quality management plans. This designation was made because certain desirable water quality levels are not always met even if highest and best practicable treatment (30/30) of point source wastes is achieved in the basin.

Oregon has already implemented waste load allocations for degradable organics (BOD) necessary to achieve water quality standards where point sources were involved. In 1972, substantial water quality standards compliance had been achieved statewide. Water quality had been improved in the Willamette to meet the dissolved oxygen standard. Planning and construction was underway in the Tualatin Basin to provide new facilities that, when completed, were expected to achieve compliance with standards, (10/10 or better treatment on the mainstream, phosphorus reduction, dilution, 5/5 or better on tributaries).

Standards violations remaining were related mostly to the effects of diminished stream flows, higher than desirable temperatures due to solar heating, seasonal turbidity from stormwater induced soil erosion, bacteria from occasional sewage bypasses and land runoff, and natural conditions.

None of these conditions were considered appropriate for total maximum daily loads and waste load allocations.

Thus, by 1976, the Department viewed load allocation to be necessary and appropriate only in the case of BOD. The existing allocations in permits were deemed to be adequate. EPA expected future submittals to be included in the State/EPA Agreement for each fiscal year. The implication was that approval of the State/EPA Agreement and award of program grants included approval of revisions of segment classification and new or revised TMDL/WLA's. If EPA had assumed otherwise, approval of the State/EPA Agreement would have been denied and program grant funds would have been withheld.

In summary, classification as "water quality limiting" seemed to cause no extra work, seemed consistent with the existing program, and seemed to best serve Oregon's interests.

FUTURE WATER QUALITY MANAGEMENT DIRECTION

Water quality management in Oregon must continue to evolve in order to respond to emerging needs. Most major point sources already apply the best technology available for conventional wastewater treatment. Additional treatment, to address pollutants of concern in the 1980's and beyond (e.g., nutrients and heavy metals) will be expensive and require major investments. Decisions regarding treatment requirements must continue to protect the uses dependent on water quality and must continue to be supported by a sound technical basis. Also of concern is the threat of legal challenges regarding water quality management decisions made by the Commission and by the Department.

To address terms of Section 303(d), the Department has proposed an orderly approach in updating the Statewide Water Quality Management Plan. First, a set of key terms needs to be clearly defined which relate to the development of total maximum daily loads. These definitions should be incorporated into the Oregon Administrative Rules. The terms to be defined include:

- Water quality limited segment
- Allowable pollutant loading
- Wasteload allocation

Next, a more formal process needs to be established which identifies waters of the state where application of conventional waste treatment and control technology for point sources will not result in compliance with water quality standards established under ORS 468.735. The Department has prepared an initial list of these "water quality limited" streams. Water bodies other than those currently identified will need to be ranked for more detailed assessment in the future.

In selecting and ranking other basins, streams, or lakes for setting TMDL's in the future, the Department should at least consider these criteria:

1. Projections of growth and new developments
2. Severity of pollution concerns
3. Decisions that must be made regarding permit renewals or new permits based on Item 1 above.
4. Minimum instream flows set by Water Resources Commission
5. Other factors which would influence water quality and are unique to individual stream segments, including the relative significance of nonpoint sources.

Once the waters of the state are identified and prioritized, allowable pollutant loadings need to be defined. These loadings should be set so that water quality standards will not be exceeded. Then an approach needs to be developed to specify that portion of the allowable pollutant loading which would be allocated to point sources. A procedure for allocating loads among multiple point sources also needs to be established. The entire allowable loading/wasteload allocation process would be treated much like water quality standards and would include public participation.

A concern of the Department when TMDL's are established is that the regulated communities may request relaxation of existing treatment criteria, especially if streams can accommodate large loads. To address this concern, the Department will need to:

1. Re-evaluate present policies
2. Revise, restructure, and cross reference present policies as appropriate
3. Add new policies to the Water Quality Management Plan

If total maximum daily loads are limited to truly water quality limited segments and the corresponding parameters, the concern of relaxation of treatment criteria should not be a problem.

BC:c
WC1444

BACKGROUND FOR OREGON'S PRESENT WATER QUALITY MANAGEMENT PLAN

HISTORICAL PERSPECTIVE OF STATE REQUIREMENTS

The purpose of water quality management in Oregon is to set forth a program to preserve and enhance water quality statewide and to provide for the beneficial uses of the water resource. Historically, the Department of Environmental Quality and its predecessor agency, the Oregon State Sanitary Authority, implemented water quality control programs in accordance with a general management plan. This plan was intended to fulfill the policy of the State of Oregon regarding water pollution as expressed in the Oregon Revised Statutes (ORS). The plan consists of the following components:

1. Legislated water quality management objectives (policy) set forth in ORS 468.710.

2. Water quality standards adopted by the Environmental Quality Commission pursuant to ORS 468.735 and in accordance with the policy contained in ORS 468.710.

3. The policy of the Environmental Quality Commission (and the State Sanitary Authority) to evaluate each source, activity, proposal, or problem on its own merits based on available information regarding past history, present status, and projected future occurrences.

4. The specifically applicable provisions of ORS Chapters 454 and 468, and Oregon Administrative Rules Chapter 340, Divisions 1, 4, 5, and 8, which contain limitations, requirements, and guidance for consideration in the process of making each decision.

In accordance with the applicable provisions of Oregon Law (ORS Chapter 468) and Section 303(e) of Public Law 92-500, water quality management plans were formally developed in 1976 for each of 20 designated river basins in Oregon. The purpose of these plans is to guide logical and orderly planning and to implement waste treatment which is necessary to accomodate planned future growth and development without sacrificing water quality.

WATER QUALITY MANAGEMENT POLICIES IN OREGON

The historic water quality management plan has continuously evolved as need, experience, and background data permit. Oregon's program today resulted from a major policy shift in the late 1960's, prior to the passage of Federal Clean Water Act (Public Law 92-500) in 1972.

In 1967, the Environmental Quality Commission (then the Oregon State Sanitary Authority) changed the management approach for water quality control in Oregon. The historic approach of UTILIZE THE FULL WASTE HANDLING CAPACITY OF THE STREAM to reduce treatment costs was judged a failure and rejected. The 1967 approach was designed to KEEP AS MUCH WASTE

OUT OF STREAMS AS POSSIBLE. The use of best practicable technology was initiated.

The program focused on water pollution prevention rather than remedial action. Water quality management in Oregon consisted of several key elements to support the program. These elements included:

1. Establish standards to describe the water quality necessary to protect identified beneficial uses.

   Recognized beneficial uses of the water resource in Oregon have been set by the Water Resources Department. Water quality standards to protect these beneficial uses have been adopted by EQC. The water quality standards include descriptive and numerical limits for physical, chemical, and biological parameters. The data base for standards development will never be adequate, but will improve over time. The best available information is used to establish standards for those parameters that appear most significant. Existing standards are reviewed periodically and adjusted where appropriate. Standards for new parameters are added where needed and sufficient information exists.

   Changes are undertaken with caution. Frequent changes cause sources to be reluctant to construct required facilities in the face of perceived instability in requirements.

2. Protect and maintain high quality waters.

   Existing high quality waters (quality better than established standards) in the majority of Oregon's streams is one of the state's greatest assets. Discharges and activities have been controlled to the extent practicable so as to protect and maintain these existing high quality waters (the Anti-degradation clause in EQC rules).

3. Minimize wastewater discharges.

   Whenever possible, production processes that do not generate waste are used. To the extent practicable, wastewater is recycled or reused. An example is the use of treated wastewater for irrigation of appropriate crops. Treatment and discharge to public waters is the last resort.

4. Require technology based minimum controls (BPT) for all dischargers.

   All sources are required to provide at least "Best Practicable Treatment and Control of Wastes (BPT)", regardless of impact of their discharge on water quality.

   In 1967, BPT was defined as use of conventional waste treatment technology to achieve secondary treatment technology or equivalent control -- (30/30) for BOD and suspended solids concentrations.

Today, conventional secondary treatment technology can achieve even better levels of treatment (10/10).

5. Require more stringent controls where BPT is used and point sources cause continued water quality standards violations.

   Where BPT is employed, and monitoring, data analysis, and experience indicates that standards are not or will not be met as a result of point source discharges, more stringent treatment requirements will be imposed. These requirements are likely to be "technology forcing". (Example: Tualatin Basin -- main stem 10/10, tributaries 5/5 with summer phosphorus removal).

6. Use the best available information to determine more stringent treatment requirements.

   Data is rarely sufficient to adequately define either short- or long-range pollution abatement requirements. Rather than wait for lengthy data collection and study efforts, use available information together with experience and professional judgement to formulate requirements. Negotiate programs and schedules accordingly. Recognize "reasonable further progress" and do not penalize the discharger if water quality standards are not quite achieved. Negotiate further programs and schedules as necessary.

7. Provide for an orderly phasing of new requirements.

   To the extent practicable, minimize disruption to sources by scheduling new control requirements to coincide with expansion, modification, or reconstruction activities. This allows reasonable opportunity to finance facilities and amortize investments. Since the planning, design, and construction of pollution control facilities frequently requires 2 - 8 years, anticipation of future needs is essential.

   If the pollution problem is such that irreparable damage will result to a resource, immediate compliance or termination of discharge may be appropriate.

8. Accommodate growth by improving waste treatment and control efficiency, yet maintain a growth margin for new sources.

   Existing sources should plan to accomodate growth by improving waste treatment and control efficiency so that discharged waste loads (organic) will not increase over present permitted levels (unless otherwise approved by the EQC).

   In general, a growth margin should be maintained such that the EQC can authorize a new source discharge in the public interest without the need to go back to existing sources and require waste load reductions.

9. Pursue control of dispersed (non point) sources of pollution resulting from land management activities.

BC:c
WC1444

ATTACHMENT C

U.S. ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JUL 1 8 1973
OFFICE OF THE DIRECTOR

REGION X
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

REPLY TO ATTN OF: M/S 405

JUL 17 1973

Honorable Tom McCall
Governor of Oregon
State Capitol
Salem, Oregon 97310

Dear Governor McCall:

The remaining elements of the State of Oregon's proposed continuing planning process required under Section 303(e) of the Federal Water Pollution Control Act Amendments of 1972 have been reviewed by this office. I am pleased to approve the planning methodology and the classification of stream segments submitted on June 6, 1973, and the provision for public participation submitted on June 25, 1973, as conforming with the requirements of the Federal Water Pollution Control Act Amendments of 1972.

Full approval of your continuing planning process is hereby granted based upon your State's commitment that significant elements of the process will be the subject of public participation in accordance with Section 101(e) of the Act to be completed by September 30, 1973.

The State of Oregon is to be commended for the development of your continuing planning process. We look forward to working with the Department of Environmental Quality as they prepare basin plans, revise water quality standards and develop an annual water pollution control strategy pursuant to the planning process.

Sincerely,

James L. Agee
Regional Administrator

cc: Mr. Diarmuid F. O'Scannlain, Director
Oregon Department of Environmental Quality

ATTACHMENT C
Page 2

DEPARTMENT OF ENVIRONMENTAL QUALITY

1234 S.W. MORRISON STREET • PORTLAND, ORE. 97205 • Telephone (503) 229- 5357

TOM McCALL
GOVERNOR

DIARMUID F. O'SCANNLAIN
Director

June 6, 1973

Mr. James L. Agee
Regional Administrator
U. S. Environmental Protection Agency
REGION X
1200 Sixth Avenue
Seattle, Washington 98101

Dear Mr. Agee:

By letter dated February 15, 1973, Governor McCall submitted Oregon's Continuous Planning Process for approval pursuant to Section 303 (e) of PL92-500. In accordance with that submittal, we are herewith transmitting the required information on planning methodolgy and classification of stream segments.

This completes the description of Oregon's Continuous Planning Process for your approval.

Very truly yours,

DIARMUID F. O'SCANNLAIN
Director

E. J. Weathersbee
Deputy Director

HLS:ak
Encl.

DEQ-1

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

River Basin Planning Methodology
June 6, 1973

Objective

The general objective of the river basin plan is to set forth a program of action designed to preserve and enhance water quality and quantity in the basin by giving consideration to (1) beneficial water uses, (2) compliance with water quality standards, (3) future waste treatment needs, and (4) restoration of streamflows where needed; as related to projected growth and development.

Methodology

The methodology involved in developing a river basin plan is essentially that of determining present and future waste sources and loads for each stream segment and estimating and regulating their present and future impact.

The procedure employed in developing river basin plans follows:

Basin Description. A study is made of basin topography, geology, hydrology, land use, economy and population. Quantitative projections are made for years 1980 and 1990 for those activities and developments which are anticipated as having an effect on water quality and quantity.

The present status of planning for municipal sewerage systems and the recommendations of these planning studies are set out.

Water Quality and Control Standards. The beneficial uses of basin waters are described as set out in accordance with State law by the Oregon Water Resources Board. Oregon's statutory policy on water pollution is stated, water quality standards are itemized and the State waste discharge permit program is discussed.

Pollution Sources and Waste Loads. All possible sources of pollution, point and non-point are identified, and described. Present raw waste loads are determined for each source. Raw waste load characteristics considered in this analysis are BOD, suspended solids, nitrogen, phosphorous and coliform organisms.

Based upon land use, economic and population projections, raw waste load projections are made for 1980 and 1990.

Existing controls for the management of waste loads are discussed in this section.

Municipal and industrial waste discharge permits and their requirements are itemized.

Water Quality Characteristics. Instream water quality data developed by Oregon Department of Environmental Quality are evaluated in relation to water quality standards. The principal parameters used for this evaluation are temperature, turbidity, dissolved oxygen, pH, coliform bacteria and plant nutrients (phosphorous and nitrogen). Water quality violations are identified by stream segment.

Where other parameters have an effect on instream water quality, evaluation will be made.

Existing controls for the management of water quality parameters are discussed in this section.

Evaluation of Water Quality. All material developed to this point is analyzed and evaluated for the development of a basinwide water quality management plan.

Inasmuch as BOD is common to nearly all wastes discharged into Oregon streams, this is the principal parameter used for quantitatively analyzing and evaluating present and future wasteloads and their impact on receiving streams.

In this section, only those wasteloads that are entering streams are considered for analysis and evaluation. In most river basins this will be treated municipal and industrial wastes and non-point agricultural wastes. Non-point agricultural waste loads are based upon the best available information; however, further study is indicated to fully understand and quantify these loads.

The technique employed for analyzing wasteloads in the stream is essentially the establishment of a BOD wasteload profile from the first upstream, man made, waste contribution; thence on downstream, by river mile to the mouth of the stream. The BOD wasteload profile established under present conditions, with consideration given to an average decay rate for the stream, provides the level upon which non-degradation is based. The BOD profile when related to streamflows shows those stream segments where abatement of pollution or upgrading of water quality is needed and where water quality is presently adequate provides a non-degradation level that can be evaluated in regard to anticipated changes in streamflow.

Utilization of this technique provides a system whereby various management alternatives such as higher treatment levels, flow augmentation and/or waste diversion may be analyzed and evaluated. The impact of management alternatives on the stream is shown.

Classification of Stream Segments

Pursuant to 40 CFR 130.11 "Classification of Stream Segments," all Oregon waters subject to the FWPCA are classified as Water Quality Limiting. This general assignment of classification is based on either 1) the actual fact of existing water quality criteria violations not expected to be fully abated by best practicable treatment at point sources; or 2) a non-degradation framework (based on Oregon Water Quality Standards) applied to waters where existing quality is higher than water quality criteria.

Waste Load Allocations

The Department will utilize the waste discharge permit program to assign allowable waste loads to individual point source discharges. Allowable point source waste discharges will be limited by the most stringent of the following controls:

-- National effluent limitation guidance.
-- Minimum Standards for Treatment and Control of Wastes promulgated for for Specific Basins under Oregon Water Quality Standards.
-- Highest and best practicable treatment and/or control consistent with non-degradation of existing high quality waters (Oregon Water Quality Standards Section 41-010).
-- Compliance with water quality criteria where point source control is capable of achieving this.

Waste load allocations will be made as appropriate for those stream segments where point source controls exceeding the National effluent limitation guidance are necessary to upgrade existing water quality to achieve compliance with water quality criteria.

Implementation of Management Needs. Standards revisions, control of point-source waste discharges via specific waste discharge permit limits and recommendations for evaluating and controlling non-point sources will be set out as the final river basin plan.

Tasks, compliance schedules and program milestones will be established for each source as needed to meet water quality criteria for each stream segment. A list of funding requirements for publicly owned treatment works required for plan implementation will be included.

Upon completion of the technical aspects of the plan, Oregon Department of Environmental Quality will present the plan at one or more public meetings to obtain public comment. After receiving and considering such comment, the Department will then act to approve the plan and request U. S. Environmental Protection Agency approval prior to official adoption as a legal requirement of the State.

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY DIVISION - RIVER BASIN PLANNING
(Preliminary)

Stream Classification

River Basin	River Segment	Classification/Basis
North Coast Basin (11)		
Necanicum River	All	*WQL/non-degradation
Nehalem Bay	0 - 9	WQL/coli
Nehalem River	9 -	WQL/flow, temp.
Wilson River	0 - 7	WQL/flow, coli, temp.
Wilson River	7 -	WQL/flow, non-degradation
Trask River	0 - 6	WQL/flow, coli, temp.
Trask River	6 -	WQL/flow, non-degradation
Tillamook Bay	All	WQL/coli
Tillamook River	0 - 15	WQL/coli,**(NPS)
Tillamook River	15 -	WQL/non-degradation
Nestucca Bay	All	WQL/coli (NPS)
Nestucca River	0 - 15	WQL/flow, coli (NPS)
Nestucca River	15 -	WQL/flow, non-degradation
Netarts Bay	All	WQL/non-degradation
Mid-Coast Basin (12)		
Salmon River	All	WQL/non-degradation
Siletz Bay	All	WQL/non-degradation
Siletz River	All	WQL/flow, temp.
Yaquina Bay	0 - 21	WQL/temp., coli (NPS)
Yaquina River	21 -	WQL/flow, temp.
Alsea Bay	0 - 13	WQL/non-degradation
Alsea River	13 -	WQL/flow, temp.
Siuslaw Bay	0 - 20	WQL/temp, coli
Siuslaw River	20 -	WQL/flow, temp.

*WQL - Water Quality Limiting
**NPS - Non Point Source

River Basin	River Segment	Classification/Basis
Umpqua Basin (13)		
Umpqua Bay	0 - 27	WQL/non-degradation
Umpqua River	27 - 111	WQL/temp., non-degradation
North Umpqua	All	WQL/non-degradation
South Umpqua	0 - 50	WQL/flow, temp., coli
South Umpqua	50 -	WQL/flow, temp.
South Coast Basin (14)		
Coos Bay	All	WQL/coli, D.O.*
Coos River	All	WQL/flow, temp., coli (NPS)
Coquille Bay	0 - 35	WQL/flow, temp., coli (NPS)
Coquille River	35 -	WQL/flow, temp.
Rogue River Basin (15)		
Rogue River	All	WQL/flow, temp., non-degradation
Bear Creek	All	WQL/flow, temp., turbidity, coli
Columbia River	0 - 309	WQL/temp., gas supersaturation, non-degradation
Lower Columbia Basin (21)		
Skipanon River	All	WQL/flow, D.O.
Lewis & Clark River	All	WQL/flow, D.O., coli (NPS)
Klaskanine River	All	WQL/flow, temp., coli (NPS)
Willamette Basin (22)		
Willamette River	0 - 187	WQL/flow, temp., coli, waste load alloca
Clackamas River	All	WQL/flow, non-degradation
Tualatin River	0 - 62	WQL/flow, temp., coli, D.O.
Tualatin River	62 -	WQL/flow, non-degradation
Molalla River	All	WQL/flow, temp.
Pudding River	All	WQL/flow, temp.
Yamhill River	All	WQL/flow, temp.

*D.O. - Dissolved Oxygen

River Basin	River Segment	Classification/Basis
Willamette Basin (continued)		
Rickreall Creek	All	WQL/flow, temp.
Ludkiamute River	All	WQL/flow, temp.
Mary's River	All	WQL/flow, temp., coli
Santiam River	0 - 12	WQL/non-degradation
North Santiam R.	All	WQL/non-degradation
South Santiam R.	0 - 21	WQL/flow, coli, D.O.
South Santiam R.	21 -	WQL/non-degradation
Calapooia River	All	WQL/flow, temp.
Long Tom River	All	WQL/flow, temp., coli
McKenzie River	All	WQL/non-degradation
Coast Fork Will.	All	WQL/non-degradation
Middle Fork Will.	All	WQL/non-degradation
Sandy Basin (23)		
Sandy River	All	WQL/flow, non-degradation
Hood Basin (24)		
Hood River	0 - 14	WQL/flow, coli
East Fork Hood R.	All	WQL/non-degradation
Middle Fork Hood R.	All	WQL/non-degradation
West Fork Hood R.	All	WQL/non-degradation
Deschutes Basin (25)		
Deschutes River	0 - 120	WQL/non-degradation
Deschutes River	120 - 166	WQL/flow, non-degradation
Deschutes River	166 -	WQL/non-degradation
Crooked River	All	WQL/flow, irrigation
John Day Basin (26)		
John Day River	All	WQL/flow, temp., non-degradation

River Basin	River Segment	Classification/Basis
Umatilla Basin (27)		
Umatilla River	All	WQL/flow, temp., coli, non-degradation
Walla Walla Basin (28)		
Walla Walla River	All	WQL/flow, temp.
Snake River	176 - 409	WQL/temp., D.O., coli, gas supersaturation
Grande Ronde Basin (31)		
Grande Ronde River	All	WQL/flow, temp.
Wallowa River	All	WQL/coli (NPS)
Powder Basin (32)		
Powder River	All	WQL/flow, temp.
Burnt River	All	WQL/flow, temp.
Malheur Basin (33)		
Malheur River	All	WQL/flow, temp., irrigation
Owyhee Basin (34)		
Owyhee River	All	WQL/flow, temp., coli (NPS)
Malheur Lake Basin (41)		
Silvies River	All	WQL/flow, coli (NPS)
Donner & Blitzen	All	WQL/flow, coli (NPS)
Goose and Summer Lakes Basin (42)		
Chewaucan River	All	WQL/flow, temp., coli (NPS)
Klamath Basin (43)		
Williamson River	All	WQL/non-degradation
Sprague River	All	WQL/non-degradation
Klamath River	210-250	WQL/flow, temp., D.O., coli
Lost River	All	WQL/flow, temp., D.O., coli, irrigation

TOM McCALL
GOVERNOR

OFFICE OF THE GOVERNOR
STATE CAPITOL
SALEM 97310

February 15, 1973

Mr. James L. Agee
Regional Administrator
Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101

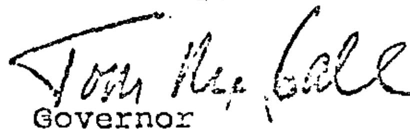
Dear Mr. Agee:

We are submitting for your approval a description of Oregon's continuing planning process in water quality management pursuant to Section 303(e) of the Federal Water Pollution Control Act Amendments of 1972. Five copies of the planning process submission are attached.

A continuing planning process for the preparation of water quality management plans in Oregon has been under way since June 1, 1972. The Department of Environmental Quality has overall responsibility for this effort, which will result in the development of plans for twenty river basins. As you know, this planning process is currently being supported by a grant from your agency.

The State of Oregon intends to achieve full compliance with the requirements of Section 303(e) of the Act by July 1, 1975. This will be accomplished during the actual planning process in the development and adoption of plans, in the implementation of the plans, and in a step-by-step improvement of the State's planning program over a period of time.

Sincerely,



Governor

TM:dm

Enclosures

Oregon Department of Environmental Quality

State Continuing Planning Process

The State continuing planning process constitutes Oregon's commitment to the preparation of water quality management plans for the navigable waters of the State. The elements of this process are outlined below, pursuant to EPA's Guidelines for Developing a State Continuing Planning Process for FY 1973:

1. Establishment of Planning Areas

A planning framework of twenty basins has been established in the state using hydrologic boundaries. The boundaries of these basins are delineated on the attached State map, along with a map of larger scale for each basin.

2. Classification of Waters

As part of the planning process, an identification of stream segments will be submitted not later than April 15, 1973. Each segment in each basin will be classified as either a water quality segment or an effluent limitation segment per the criteria set forth in 40 CFR Part 130.

3. Planning Methodology

The planning methodology being used in developing the basin plans will be submitted not later than April 15, 1973. This submission will include consideration of instream water quality and water quality standards, waste sources and loads, compliance schedules, funding requirements for publicly owned treatment works, and a summary of expected water quality improvement.

4. Planning Agencies

The Department of Environmental Quality has overall basin planning responsibility, coordination of basin planning effort, and final plan preparation.

The continuing planning process will be coordinated with the water quality management study and planning activities of the State Water Resources Board, Fish

Commission of Oregon, Oregon State Game Commission, Department of Agriculture, Division of State Lands, and the Federal Environmental Protection Agency, Corps of Engineers, Forest Service, Bureau of Land Management, Geological Survey, Bureau of Outdoor Recreation, and Bureau of Sport Fisheries and Wildlife.

Coordination between State and Federal agencies will be accomplished via direct involvement in the plan preparation for their particular areas of interest and expertise. The State Water Resources Board (SWRB) will be directly involved in preparing the basin descriptions and basin hyrology. The SWRB River Basin Reports and Official Basin Plans will be considered and adhered to in the development of any water quality management plan. Each of the State and Federal Natural Resource Agencies will be directly involved in the defining and control of dispersed pollutional influences.

5. Phasing of Planning

A phased schedule of planning to be accomplished during the fiscal years 1973, 1974, and 1975 is attached. The schedule provides for completing preliminary draft plans for all 20 basins by September 1973; refinement of draft plans including inclusion of regional-metro plans and interagency programs for non point sources by September 1974; and hearings, adjustments and final adoption by July 1, 1975.

6. Priority Lists

The priority lists, formulas, and criteria used in preparing the State's Discharge Control Priority List, Municipal Facilities List, and Industrial Permit List will be submitted as part of the Program Plan Submittal on April 15, 1973.

7. Public Participation

One or more public hearings on each basin plan will be held prior to the adoption or any substantive revision of the plan.

8. Legal Authority

Authority to establish stream standards and waste treatment requirements and to plan, adopt, implement, and enforce the comprehensive water quality management program statewide is contained in ORS Chapter 449 and OAR Chapter 340. Copies are attached.

9. Reports

A. On April 15, 1973, the State will submit initial reports on:

(1) pollution problems in the State,

(2) anticipated construction grants and scheduling of municipal permits to be issued,

(3) industrial permits to be issued,

(4) scheduling necessary monitoring activities, and

(5) anticipated enforcement actions.

Final reports on the above subjects will be submitted June 30, 1973.

B. Reports on milestones for achieving objectives, abatement load reduction, and improvement in water quality will be submitted semi-annually.

All reports will be made through the State program plan submissions.

RIVER BASIN PLANNING

Activity Schedule

River Basin

7-1-72 | 10-1-72 | 1-1-73 | 4-1-73 | 7-1-73 | 9-1-73 | 10-1-73 | 1-1-74 | 4-1-74 | 7-1-74 | 9-1-74 | 10-1-74 | 1-1-75 | 4-1-75 | 7-1-75

Draft Report

Review, Interagency Coordination, Interstate Coordination, Plan Adjustment.

Agency Studies, Regional-Metropolitan Studies, Final Plan.

Hearings, Modifications and Final Plan Adoption.

FINAL PLAN ADOPTION

Umpqua
Mid-Coast
North Coast
Lower Columbia
Willamette
Klamath
Deschutes
Sandy
Hood River
Rogue
John Day
Umatilla
Walla Walla
Grande Ronde
Powder
Malheur
Owyhee

Malheur Lake
Goose & Summer Lakes
South Coast (Currently being prepared by Stevens, Thompson and Runyon, Inc.)

ATTACHMENT D

JEFFREY A. STRANG
5525 SW Kelly Ave.
Portland, OR 97201
(503) 245-7641
Attorney for Plaintiffs

IN THE FEDERAL DISTRICT COURT

FOR THE DISTRICT OF OREGON

Northwest Environmental Defense Center (NEDC), and John R. Churchill, Plaintiffs v. Lee Thomas, in his official capacity as Administrator of the Environmental Protection Agency, Defendant	CIVIL NO. 86-1578-PA COMPLAINT ENVIRONMENTAL LITIGATION

PRELIMINARY STATEMENT

Plaintiffs bring this suit to require the defendant to comply with and enforce the federal Clean Water Act, and the federal Administrative Procedure Act, as it applies to waters of the United States within the state of Oregon, specifically the Tualatin River Basin and Lake Oswego in Oregon.

When the Clean Water Act was passed in 1972, Congress stated in the first section of the Act that it was a goal of Congress to "restore and maintain the chemical, physical, and biological

1 integrity of the Nation's waters." This was to be achieved by
2 the complete elimination of the discharge of pollutants by 1985.
3 Until the discharge of pollutants was completely eliminated, an
4 interim goal of achieving water quality sufficient for the
5 protection of beneficial uses by July 1, 1983. 33 U.S.C. § 1251.
6
7 Congress decided that the problem with water quality (or
8 lack thereof), and its effect on uses made of the water, was not
9 lack of knowledge, but lack of action to protect the uses
10 threatened by degradation in water quality. The time for action
11 to improve water quality had come.

12 The Act evinces clear Congressional intent that these goals
13 be implemented by prompt state action to solve water quality
14 problems. Congress provided for a fast track schedule under
15 which the states and the Environmental Protection Agency were to
16 act to protect uses and water quality. The deadlines for the
17 various steps in the Clean Water Act show that Congress intended
18 that Total Maximum Daily Loads of pollutants (TMDL's) be
19 established by June 1974 at the latest. Total Maximum Daily
20 Loads were to be established with "a margin of safety which takes
21 into account any lack of knowledge", as required by Clean Water
22 Act § 303(d)(1)(C), 33 U.S.C. § 1313(d)(1)(C).
23
24 Each step of the process was intended by Congress to be done
25 as expeditiously as possible. The Environmental Protection
26 Agency has responded to its mandate by delaying any action
27 required of it. It did not list pollutants for which TMDL's are
suitable, until forced to do so by a court order in 1978 (more

1 than five years after the statutorily mandated deadline).
2 Continuing in the same vein, it has allowed the states to delay
3 any action required of them by the Clean Water Act.
4
5 Plaintiffs and other environmental organizations have over a
6 period of several years unsuccessfully used the administrative
7 process in an attempt to persuade the EPA and Oregon to fulfill
8 their statutory duties under the Act. The Congressional mandate
9 to eliminate pollution has never been realized in the Tualatin
10 River and Lake Oswego. The water quality in both continues to
11 deteriorate, and algae growth continues unabated. Lake Oswego
12 residents are being forced to spend tens of thousands of dollars
13 for algacides in attempts to control this algal growth downstream
14 from the sewage treatment plants discharging into the Tualatin
15 River.
16
17 More than two dozen technical studies have been made of the
18 Tualatin River basin from 1940 through 1986. Virtually all of
19 these have described excessive algal growth as a continuing water
20 quality problem, and have pointed to nutrient discharges from the
21 area's sewage treatment plants as the primary cause of the
22 problem.
23 Without doubt, establishment, and enforcement, of maximum
24 allowable loadings for these nutrients has been needed for years.
25 Clearly the Tualatin River and Lake Oswego are "waters ... for
26 which the effluent limitations ... are not stringent enough to
27 implement any water quality standard applicable to such waters",

1 under 33 U.S.C. § 1313(d)(1)(A), and clearly these are waters for
2 which TMDL's should be established and enforced to bring these
3 nutrient discharges down to those levels necessary to implement
4 water quality standards.
5
6 The evidence of the need for action is overwhelming. The
7 1972 Clean Water Act requires that these remedial actions be
8 promptly undertaken. Instead of meeting its statutory
9 obligations and responding to manifest biological reality, the
10 state of Oregon has begun yet another two year study to determine
11 the whether action is even necessary. When faced with such
12 frustration of act's goals and purposes EPA is under a
13 nondiscretionary duty to implement the provisions of the Clean
14 Water Act relating to identifications of water quality limited
15 segments and total maximum daily loads itself, under 33 U.S.C. §
16 1313(d)(2). EPA has not only agreed to DEQ's continuing delays,
17 but is providing federal funding for the study's conduct.
18 Plaintiffs and other citizens suffer the continuing
19 deprivation of opportunities for recreation in and on the waters
20 of Tualatin River and Lake Oswego. Instead of waters suitable
21 for recreation according to the goals and objectives of the act,
22 they live with floating mats of putrefying algal scum.
23
24 Plaintiffs seek declaratory and injunctive relief:
25 A. To require the Administrator to fulfill his
26 statutory duties under the Clean Water Act to ensure that waters
27 of the United States within the state of Oregon that are Water

1 Quality Limited Segments are identified as such; and
2
3 B. To require the administrator to fulfill his statutory duties under the Clean Water Act to ensure that Total
4 Maximum Daily Loads are established and implemented for waters
5 within the state of Oregon identified as being Water Quality
6 Limited Segments and that they are adequate under the Clean Water
7 Act to protect water quality.
8
9 JURISDICTION
10
11 1. The jurisdiction of this court is invoked pursuant to the provisions of:
12
13 A. The Clean Water Act, 33 U.S.C. § 1365, this being
14 an action arising because of defendant's failure to perform non-
15 discretionary duties under the Clean Water Act.
16
17 B. 28 U.S.C. § 1331 for claims arising under the
18 federal Administrative Procedures Act, 5 U.S.C. § 706. This is
19 the claim for the defendant's arbitrary and capricious decision
20 which was not based on any evidence in the record.
21 VENUE
22
23 2. Venue is proper in the district of Oregon under 28
24 U.S.C. § 1391(e).
25 RELIEF
26
27 3. Plaintiffs' action for declaratory and injunctive relief is authorized by:

A. 33 U.S.C. § 1365 which relates to judicial review of defendant performance of nondiscretionary duties under the Clean Water Act; and,

B. 5 U.S.C. § 706 which relates to judicial review of federal administrative actions.

PLAINTIFFS

4. Plaintiff Northwest Environmental Defense Center (NEDC) is a non-profit, tax-exempt, public interest environmental membership organization, incorporated under the law of the state of Oregon. Plaintiff NEDC is dedicated to the protection of the environment and natural resources including the waters of the Pacific Northwest. Plaintiff NEDC seeks to achieve these objectives by, inter alia, taking action on behalf of itself and its members to ensure that defendant performs his statutory mandate to protect the environment. Some of plaintiff NEDC's members live, work, and enjoy recreational activities (including canoeing, bird watching, swimming) in areas that will be directly affected by defendant's failure to comply with his statutory duties. NEDC's offices are located at 10015 SW Terwilliger Blvd., Portland, Oregon, 97219. Plaintiff NEDC and its members are adversely affected by pollution in the Tualatin River and Lake Oswego, and other waters of the United States within the state of Oregon. Plaintiff NEDC brings this suit on its own behalf and on behalf of its members.

1 5. Plaintiff John R. Churchill is a member of NEDC and a
2 member of the Board of Directors of NEDC, and resides at 788 SW
3 Cabana Way, Lake Oswego, Oregon, 97304, on the shores of Lake
4 Oswego. Plaintiff Churchill is adversely affected by the
5 pollution in Lake Oswego, and because part of the flow of the
6 Tualatin River is diverted into Lake Oswego, is adversely affect
7 by the pollution in the Tualatin River. The aesthetic and
8 monetary value of Plaintiff Churchill's property is diminished by
9 the pollution and resulting algae growth in Lake Oswego.
10
11 DEFENDANT

12 6. Defendant Lee Thomas is the Administrator of the United
13 States Environmental Protection Agency, as such he is the federal
14 officer duly authorized to administer the the Clean Water Act,
15 and is sued in his official capacity. Defendant is hereinafter
16 also referred to as EPA.
17
18 FACTUAL ALLEGATIONS

19 7. Notice of Plaintiffs' intent to commence an action
20 against the Administrator because of his failure to perform the
21 acts or duties described herein was given by letter dated August
22 16, 1986, (a copy of which is attached hereto as Exhibit #1, ans
23 is incorporated by reference herein) and mailed on August 16,
24 1986 by Certified Mail to defendant as Administrator of the
25 Environmental Protection Agency, and to Edwin Meese as Attorney
26 General of the United States. A copy of this notice of intent to
27 sue was also sent to the chief administrative officer of the

1 agency charged with controlling water pollution for the state of
2 Oregon.
3
8. The Tualatin River and its tributaries lie primarily
4 within Washington County, Oregon. The Tualatin River is itself
5 tributary to the Willamette River. Lake Oswego lies within
6 Clackamas County, Oregon. Some portion of the flow of the
7 Tualatin River is diverted into Lake Oswego before the Tualatin
8 River reaches the Willamette River. The Tualatin River and its
9 tributaries, and Lake Oswego are part of the navigable waters of
10 the United States as defined in the Clean Water Act, 33 U.S.C. §
11 1362.
12
13 9. The Clean Water Act and the implementing regulations
14 define Water Quality Standards (WQS's) as consisting of the
15 designated uses of the waters and the water quality criteria
16 based on those uses, under 33 U.S.C. § 1313(c)(2); 40 C.F.R. §
17 130.2(c).
18
10. The Clean Water Act required each state to identify
19 those waters within the state where effluent limits are not
20 stringent enough to meet applicable Water Quality Standards,
21 under 33 U.S.C. § 1313(d)(1)(A), 40 C.F.R. § 130.7(b)(1). These
22 waters are called Water Quality Limited Segments, pursuant to 40
23 C.F.R. § 130.2(i).
24
25 11. The state of Oregon, through its Department of
26 Environmental Quality (DEQ) has within its biennial report to the
27 defendant EPA required by 33 U.S.C. § 1315(b), repeatedly

identified the middle and lower Tualatin River and Lake Oswego, as well as other bodies of water within Oregon, as being bodies of water where designated uses are not being fully supported. This biennial report is known as the 305(b) Report.

12. In its 1984 305(b) Report DEQ identified river miles 0-9 of the Tualatin as being degraded during the ten years from 1972 to 1982. DEQ listed the designated beneficial uses not fully supported for the Tualatin River as being swimming, and for Lake Oswego as being aesthetics. In its 1986 305(b) Report DEQ added aquatic life to swimming (now called "contact recreation") as a use not fully supported for the Tualatin River, and changed the use not fully supported for Lake Oswego from aesthetics to contact recreation.

13. In both its 1984 and its 1986 305(b) Reports DEQ identified the pollutants causing problems in the Tualatin as dissolved oxygen, fecal coliform bacteria, and nutrients. In both its 1984 and its 1986 305(b) Reports DEQ identified the pollutants causing problems in Lake Oswego as nutrients. DEQ has identified the sources of the pollution for the lower Tualatin (river miles 0-9), as being municipal wastes (33 1/3%), urban runoff (33 1/3%), and natural (33 1/3%). DEQ identified the sources of the pollution for the middle Tualatin (river miles 9-39),as being municipal waste (40%), agriculture and other nonpoint sources (20%), urban runoff (20%), and natural (20%). DEQ has identified the source of pollutants in Lake Oswego as municipal waste (50%) and urban runoff (50%) from the Tualatin

River.

14. In its 1986 305(b) Report DEQ admitted that it has only assessed approximately 9,665 stream miles, of an estimated 90,000 stream miles in Oregon, as fully supporting designated beneficial uses. Of the water bodies assessed as not fully supporting designated beneficial uses (approximately 2190 stream miles, 79,300 acres of lakes and reservoirs, 160.5 square miles of ground water supply, 40,156 acres of bays and estuaries); the failure to support is caused by nutrients and algae growth in approximately 191 miles of stream segments, 62,182 acres of lakes and reservoirs, and 159 square miles of ground water. DEQ provided information similar to that provided for the Tualatin River and Lake Oswego, including uses not fully supported, pollutants causing the failures to support, and sources of those pollutants, for these other waters within Oregon that do not fully support designated uses.

15. The information contained in Oregon's 305(b) Reports shows that the Tualatin River, and Lake Oswego as well as other waters within Oregon are "waters ... for which the effluent limitations ... are not stringent enough to implement any Water Quality Standard applicable to such waters" within the meaning of Clean Water Act § 1313(d), and that the pollution is getting worse in the Tualatin River and Lake Oswego.

16. Despite the information contained in the 305(b) Reports, Oregon has failed to "identify" under the Clean Water Act the Tualatin River and Lake Oswego, or any other body of

1 water, as waters where effluent limitations are not stringent
2 enough to prevent violation of applicable Water Quality
3 Standards, contrary to the purposes and requirements of the Clean
4 Water Act, as required by CWA section 1313(d)(1)(A), and 40
5 C.F.R. § 130.7(b)(1).
6
7 17. Each state, including Oregon, was required by Clean
8 Water Act section 1313(d)(1)(C) to establish Total Maximum Daily
9 Loads (TMDL's) for those pollutants identified by defendant EPA
10 under CWA section 1314(a)(2)(D), for those Water Quality Limited
11 Segments identified by the state under CWA section 1313(d)(1)(A).
12
13 18. Oregon has failed to establish TMDL's for the Tualatin
14 River, Lake Oswego, or any other body of water in violation of a
15 Water Quality Standards as required by CWA § 1313(d)(1)(A).
16 19. Each state, including Oregon, was required by the Clean
17 Water Act § 1313(d)(2) to submit a list of waters identified as
18 being Water Quality Limited Segments to defendant EPA as
19 Administrator of the Environmental Protection Agency, and TMDL's
20 established for those waters no later than 180 days after the
21 date of publication by defendant EPA of pollutants identified as
22 being suitable for determination of TMDL's.
23
24 20. Defendant EPA made the necessary identifications on
25 December 28, 1978 by publication in the Federal Register at 43
26 Fed. Reg. 60662-66 (Dec. 28, 1978). Defendant EPA identified all
27 pollutants as being suitable for the calculations of TMDL's. 43
Fed. Reg. at 60665. Therefore states, including Oregon, were

required to submit TMDL's by June 26, 1979 for all pollutants for those waters identified as not meeting Water Quality Standards.

21. Oregon has failed for over seven years now to submit proposed TMDL's and to identify Water Quality Limited Segments. This failure is a constructive submission of no TMDL's and a constructive submission of no identifications. Oregon's failure to identify these waters as required by section 1313(d)(1)(A) and to establish TMDL's for these waters as required by section 1313(d)(1)(C), within 180 days of Dec. 28, 1978, is contrary to the purposes and requirements of the Clean Water Act.

22. Defendant EPA is aware that Oregon has not identified to the EPA, the Tualatin River, Lake Oswego or any other waters within Oregon, as waters not meeting applicable Water Quality Standards; that Oregon is required to do so; and that Oregon's failure to do so is contrary to the purposes and requirements of the Clean Water Act.

23. EPA is aware that Oregon has not submitted to the defendant, TMDL's for the Tualatin River, Lake Oswego, or any other body of water; that Oregon is required to do so; and that Oregon's failure to do so is contrary to the purposes and requirements of the Clean Water Act.

24. The facts set forth herein are known, have been known or reasonably should have been known by the EPA.

/ / / / / /

FIRST CLAIM FOR RELIEF

25. Plaintiffs reallege paragraphs 1 - 24.

26. Defendant EPA is under a nondiscretionary duty to review the identifications and TMDL's submitted by the states to determine whether they are adequate under the act. Defendant EPA is also under a nondiscretionary duty to approve or disapprove submissions by a state of its identification of waters not meeting WQS's and the state's establishment of TMDL's, under U.S.C. § 1313(d)(2) within 30 days of the date of submission.

27. Defendant EPA has failed to perform these nondiscretionary duties:

A. To review the constructive submissions by Oregon of no identifications and no TMDL's; and

B. To approve or disapprove these constructive submissions.

SECOND CLAIM FOR RELIEF

28. Plaintiffs reallege paragraphs 1 - 24, and 26 - 27.

29. Defendant EPA is under a duty to disapprove any submission of either an identification of waters not meeting WQS's, or of TMDL's established, if EPA finds that such submissions are contrary to the purposes and requirements of Clean Water Act section 1313(d)(2).

30. Defendant EPA's failure to disapprove Oregon's

1 constructive submission of no identifications of Water Quality
2 Limited Segments, and Oregon's constructive submission of no
3 Total Maximum Daily Loads, when there is no evidence in the
4 supporting this failure to disapprove, is arbitrary and
5 capricious. Effluent limitations for the Tualatin River, Lake
6 Oswego, and other waters are not stringent enough to prevent
7 violation of Water Quality Standards or even to prevent
8 degradation of the water quality, therefore any approval by the
9 defendant of Oregon's constructive submission of no
10 identifications of waters not meeting WQS's or of no TMDL's is an
11 arbitrary and capricious decision not supported by any evidence
12 in the record, in violation of the Administrative Procedures Act.
13
14 THIRD CLAIM FOR RELIEF
15
16 31. Plaintiffs reallege paragraphs 1 - 24, paragraphs 26 -
17 27, and paragraphs 29 - 30.
18 32. Defendant EPA has failed to perform a nondiscretionary
19 duty to make identifications of Water Quality Limited Segments
20 and to establish Total Maximum Daily Loads. Since Oregon's
21 identifications or loads should have been disapproved by EPA, EPA
22 is under a nondiscretionary duty to, within 30 days of the
23 disapproval, make the identifications and establish such loads as
24 determined necessary to implement the applicable Water Quality
25 Standards. 33 U.S.C. § 1313(d)(2). Defendant has failed to make
26 the identifications and establish the TMDL's.
27 / / / / / /

1 REQUESTED RELIEF

2 WHEREFORE, plaintiffs request an order of this court:

3

4 A. declaring that Oregon's failure to identify Water
5 Quality Limited Segments and/or to establish Total Maximum Daily
6 Loads for those Water Quality Limited Segments substantially
7 unlawful and procedurally invalid;

8

9 B. ordering the Administrator of the Environmental
10 Protection Agency to disapprove Oregon's constructive submission
11 of no identifications of Water Quality Limited Segments and
12 Oregon's constructive submission of no Total Maximum Daily Loads;

13 C. declaring that the Administrator's failure to
14 disapprove Oregon's constructive submission of no identifications
15 of Water Quality Limited Segments, and Oregon's constructive
16 submission of no TMDL's is arbitrary and capricious, and not
17 supported by any evidence in the record;

18

19 D. ordering the Administrator of the Environmental
20 Protection Agency to identify Water Quality Limited Segments in
21 Oregon, and to establish and implement Total Maximum Daily Loads
22 for those segments within the time frame specified in the Clean
23 Water Act;

24 E. awarding plaintiffs their attorney fees incurred
25 in pursuit of this suit pursuant to the Equal Access to Justice
26 Act, 28 U.S.C. § 2412, and the Clean Water Act 33 U.S.C. § 1365;

27 F. awarding plaintiffs their cost incurred herein; and,

1 G. ordering, declaring or awarding such other relief

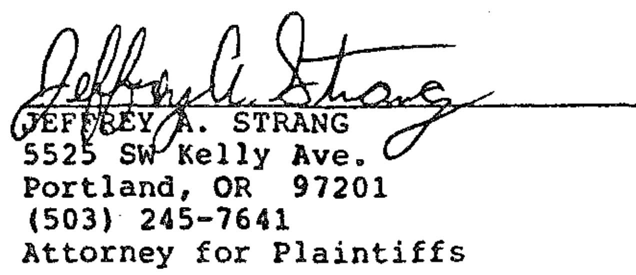
2 as the court deems necessary.

3

4 DATED: DECEMBER 12, 1986 Respectfully submitted,

5

6



7 JEFFREY A. STRANG
5525 SW Kelly Ave.
8 Portland, OR 97201
(503) 245-7641
9 Attorney for Plaintiffs

10

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FILED

DEC 12 3 35 PM '86

CLERK, U.S. [illegible] COURT
DISTRICT OF OREGON
BY ______

1
2
3
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5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF OREGON
10)
11 PLAINTIFF,) CIVIL NO. 86-1578 PA
12 VS.) ORDER
13)
14 DEFENDANT.)

15 THE FOLLOWING SHALL OCCUR WITHIN 120 DAYS OF THE FILING OF THE COMPLAINT:

16 • AMENDMENT OF PLEADINGS AND JOINDER OF OTHER PARTIES

17 • FILING OF MOTIONS

18 • COMPLETION OF DISCOVERY

19 THE PRETRIAL ORDER OR AN ORDER WAIVING THE PRETRIAL ORDER MUST BE LODGED WITH

20 150 DAYS OF THE FILING OF THE COMPLAINT.

21 MOTIONS FOR EXTENSION OF ANY TIME LIMIT MUST BE SUPPORTED BY AN AFFIDAVIT WIT

22 SUFFICIENT REASONS DEMONSTRATING BOTH GOOD CAUSE AND APPROPRIATE USE OF PRIOR TIM

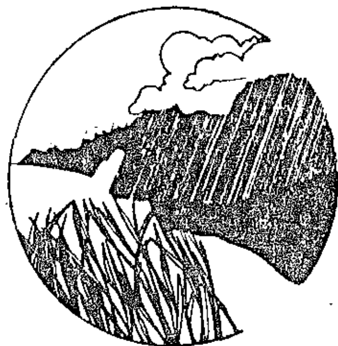
23 DATED: DEC 12 1986

24 ROBERT M. CHRIST, CLERK

25

26 BY [signature]
DEPUTY CLERK

ATTACHMENT E



Northwest Environmental Defense Center
10015 S.W. Terwilliger Blvd., Portland, Oregon 97219
(503) 244-1181 ext.707

January 6, 1987

Lee Thomas
Administrator,
Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Robi Russell
Administrator, Region X
Environmental Protection Agency
1200 6th Avenue
Seattle, WA 98101

Edwin Meese, III
U.S. Attorney General
Room 5111, Main Justice Bldg.
10th & Constitution Avenues, N.W.
Washington, D.C. 20530

Fred Hansen
Director,
Oregon Department of Environmental Quality
811 S.W. 6th Avenue
Portland, OR 97204

Dear People:

This letter is to give you notice as required by 33 U.S.C. § 1365(b)(2) (Clean Water Act § 505(b)(2)) that the Northwest Environmental Defense Center (NEDC) and other Oregon citizens intend to file suit under § 1365(a)(2), after expiration of sixty days, against the Environmental Protection Agency (EPA) for a failure to perform nondiscretionary duties under the Clean Water Act.

Specifically:

Oregon's Actions are Contrary to the Purposes and Requirements of the Clean Water Act

Among other things:

1) Each state was required to identify those waters where effluent limitations are not stringent enough to implement any water quality standard. 33 U.S.C. § 1313(d)(1)(A); 40 C.F.R. § 130.7(b)(1). These waters are called water quality limited segments. 40 C.F.R. § 130.2(i). Water quality standards consist of the designated uses of the waters and the water quality criteria based on those uses. 33 U.S.C. § 1313(c)(2); 40 C.F.R. § 130.2(c).

The State of Oregon, through its Department of Environmental Quality (DEQ), has identified the following and other waters of the state as being bodies of water where designated uses are not being fully supported. See Oregon 1986 Water Quality Program Assessment and Program Plan for Fiscal Year 1987, at Appendix A, pp. 147-181. (This is DEQ's 1986 305(b) Report to EPA as required by section 305(b) of the Clean Water Act. 33 U.S.C. § 1315(b)).

Neacoxie Creek	
Necanicum River	
Nestucca River and Nestucca Bay	*
Schooner Creek and Siletz Bay	*
Yaquina River and Yaquina Bay	*
North Florence Groundwater Aquifer	
South Umpqua River	*
Calapooya Creek	
Coquille River and Coquille Estuary	*
Bear Creek	*
Willamette River	*
Coast Fork Willamette River	*
Mary's River	*
Calapooyia River	*
South Yamhill River	
Yamhill River	
Pudding River	*
Columbia Slough	
Deschutes River	
Crooked River	*
John Day River	*
Umatilla River	*
Grande Ronde River	
Powder River	*
Malheur River	*
Owyhee River	*
Klamath River	*

Those waters on the above list that are followed by an asterisk (*) are waters that were identified by DEQ as being bodies of water where designated uses were not being fully supported as long ago as 1972 (the

original year of enactment of the Clean Water Act, PL 92-500). See DEQ's 1984 305(b) Report, at Table 2 (rivers & streams), Table 4 (lakes), and Table 6 (estuaries). Those waters on the above list not followed by an asterisk are bodies of water whose use supporting status in 1972 was unknown by DEQ or whose status was identified by DEQ as being degraded since 1972, the year EPA began administration of the Clean Water Act.

In its 1984 305(b) report to EPA, DEQ listed swimming, shellfish harvesting, fisheries, and cold water fisheries as uses not fully supported among the above listed waters. In its 1986 305(b) report, the uses listed by DEQ as not fully supported among the above listed waters had become contact recreation, shellfish harvesting, aquatic life, and domestic water supply.

DEQ has listed fecal coliform bacteria, dissolved oxygen, suspended solids, algal growth and nutrients, ammonia, pH, toxic organics and heavy metals as water quality concerns causing uses to be not fully supported among the above listed waters. DEQ has identified the causes of pollution of the above waters to be agricultural nonpoint sources, on-site septic tank and drainfield systems, urban and residential runoff, municipal point sources, industrial point sources, forest harvesting, low flow, and natural background levels. See 1986 305(b) Report, at Appendix A.

The information contained in Oregon's 1984 and 1986 305(b) reports shows that the waters listed above are clearly "waters ... for which the effluent limitations ... are not stringent enough to implement any water quality standard applicable to such waters" within the meaning of § 1313(d) and that the pollution of these waters is progressively becoming worse.

Oregon has failed to identify any of the waters listed above, or any other bodies of water, as waters where effluent limitations are not stringent enough to prevent violation of applicable water quality standards contrary to the purposes and requirements of the Clean Water Act as required by 33 U.S.C. § 1313(d)(1)(A) and 40 C.F.R. § 130.7(b)(1).

2) Each state was required to establish the total maximum daily load (TMDL), for those pollutants identified by EPA under § 1314(a)(2)(D), for those water quality limited segments identified by the state under § 1313(d)(1)(A). 33 U.S.C. § 1313(d)(1)(C); 40 C.F.R. § 130.7(c).

Oregon has failed to establish TMDL's for any of the above listed waters, or any other body of water in violation of any water quality standard, as required by § 1313(d)(1)(A).

3) Each state was required to submit this list of waters identified as being water quality limited segments, and the TMDL's established for those waters, to the EPA no later than 180 days after publication by EPA of the pollutants identified as being suitable for calculation of TMDL's under § 1314(a)(2)(D). 33 U.S.C. § 1313(d)(2); 40 C.F.R. § 130.7(d).

EPA made the necessary identification of pollutants on December 28, 1978 by publication in the Federal Register. 43 F.R. 60662-66 (Dec. 28, 1978). The EPA identified all pollutants as being suitable for the calculations of TMDL's. 43 F.R. at 60665. Therefore states were required to submit TMDL's by June 26, 1979 for all pollutants for those waters identified as not meeting water quality standards.

"If a state fails over a long period of time to submit proposed TMDL's, this prolonged failure may amount to the 'constructive submission' by that state of no TMDL's." Scott v. City of Hammond, Ind., 741 F.2d 992, 996 (7th Cir. 1984).

Oregon has failed over a long period of time to submit proposed TMDL's and to identify water quality limited segments. This failure is a constructive submission of no TMDL's and a constructive submission of no identifications. Oregon's failure to identify these waters as required by § 1313(d)(1)(A) and to establish TMDL's for these waters as required by § 1313(d)(1)(C), within 180 days of December 28, 1978, is contrary to the purposes and requirements of the Clean Water Act. 33 U.S.C. § 1313(d)(1)(A), (C).

EPA's Failures Under the Clean Water Act

Among other things:

1) EPA is under a nondiscretionary duty to review reports submitted by the states under the Clean Water Act. 40 C.F.R. § 130.8. EPA is aware, or because the information is contained in Oregon's 305(b) reports should be aware, that the above listed waters and other waters of the state of Oregon do not fully support their designated uses.

Water quality standards include designated uses. EPA is aware, or should be aware, that Oregon has not identified to the EPA any of those waters listed above or any other bodies of water as waters not meeting applicable water quality standards, that Oregon is required to do so, and that Oregon's failure to do so is contrary to the purposes and requirements of the Clean Water Act.

EPA is aware, or should be aware, that Oregon has not submitted to EPA the TMDL's for any pollutant for any of the waters listed above or for any other body of water, that Oregon is required to do so, and that Oregon's failure to do so is contrary to the purposes and requirements of the Clean Water Act.

2) EPA is under a nondiscretionary duty to review the identifications and TMDL's submitted by the states to determine whether they are adequate and sufficient under the Act. EPA is under a nondiscretionary duty to approve or disapprove submissions by a state of its identification of

waters not meeting water quality standards and its establishment of TMDL's under § 1313(d) within 30 days of the date of the state's submission. 33 U.S.C. § 1313(d)(2). If the failure by the state is a constructive submission of no identifications and no TMDL's, "then EPA is under a duty to either approve or disapprove the 'submission.'" Scott v. City of Hammond, at 997.

EPA has failed to perform nondiscretionary duties: (1) to review the constructive submissions by Oregon of no identifications and no TMDL's for the above listed waters or any other waters; and (2) to approve or disapprove Oregon's constructive submissions.

3) EPA is under a duty to disapprove any submission of either an identification of waters not meeting water quality standards or of TMDL's, if EPA finds that such identification of waters not meeting water quality standards or submissions of TMDL's is contrary to the purposes and requirements of the Clean Water Act. 33 U.S.C. § 1313(d)(2). Because effluent limitations for the above listed and other waters are not stringent enough to prevent violation of water quality standards or even to prevent degradation of water quality, any approval by the EPA of Oregon's constructive submission of no identifications of waters not meeting water quality standards or of no TMDL's is an arbitrary and capricious decision not supported by the evidence in the record in violation of the Administrative Procedures Act.

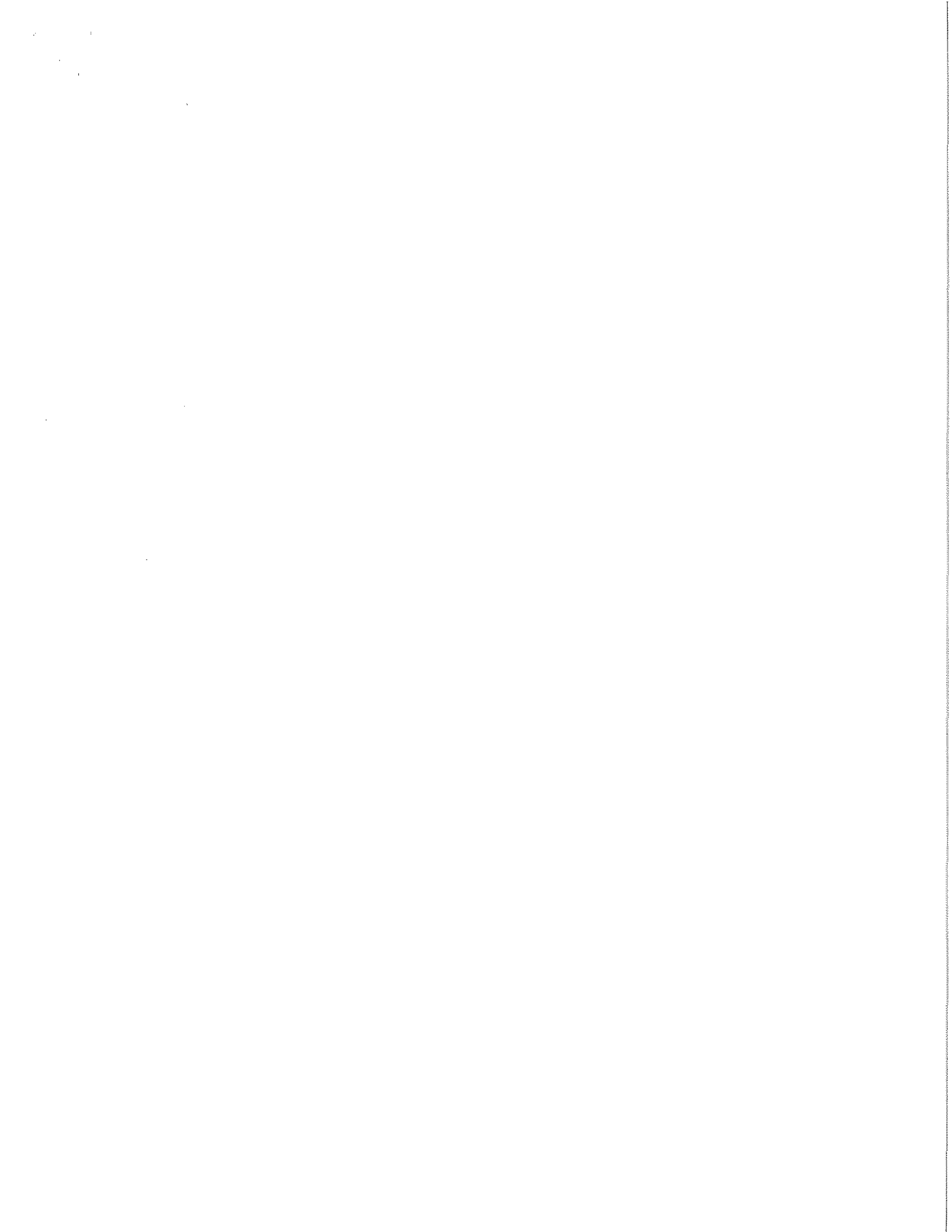
4) If EPA disapproves Oregon's constructive submissions of no identifications and no TMDL's, then EPA is under a nondiscretionary duty to, within 30 days of the disapproval, make the identifications and establish such TMDL's as determined necessary to implement the applicable water quality standards. 33 U.S.C. § 1313(d)(2). EPA has failed to perform a nondiscretionary duty to make the identifications and establish TMDL's, if Oregon's submissions are not approved.

Sincerely yours,

J. Douglas Smith
President,
Northwest Environmental Defense Center

cc: Governor-elect Neil Goldschmidt

JDS:pc



PROPOSED LIST OF WATERBODIES NEEDING TOTAL MAXIMUM DAILY LOADS

The purpose of this attachment is to identify those "water quality limited" segments with the greatest current need for establishing TMDLs. EPA's 1978 regulations indicated that each state should consider a number of factors in developing priorities for TMDLs. Obviously, the severity of pollution should be taken into account. A second important factor for consideration is that the calculation of TMDLs should be given higher priority when they are expected to result in effluent limitations in NPDES permits.

In order to discuss TMDL needs in Oregon, a brief review of the process for identifying "water quality limited segments" is appropriate. In 1986, the Department completed a biennial water quality status assessment. A set of basin summaries were assembled. These basin reports were intended to serve as reference documentation for water quality planning. Included in each basin summary was a list of waterbodies of concern. The ambient waters which appear in these inventories are not necessarily "water quality limited" segments. The waterbodies, however, do provide a starting point for identifying TMDL needs.

A number of water quality parameters have criteria values which have been adopted as regulatory standards in Oregon. Included are dissolved oxygen, temperature, turbidity, pH, fecal coliform bacteria, and dissolved chemical substances. Ambient water quality monitoring data has been collected statewide for these parameters by the Department. This monitoring information provides a basis for evaluating ambient water quality in terms of the standards.

When comparing ambient monitoring data to the water quality standards, it is desirable to provide some description of the magnitude of concern. In 1985, EPA provided guidance on quantitative measures for distinguishing minor, moderate, and severe problems using water quality data. These measures appear in Table F-1 and were used to indicate the severity of water quality standards violations for individual parameters.

A statistically based evaluation procedure offers several advantages. First, quantitative procedures provide a greater degree of consistency in the assessment process. Secondly, areas with greater pollution concerns can be distinguished from segments experiencing "technical violations". These "technical violations" may be caused by naturally occurring conditions which occassionally result in concentrations exceeding the standards, such as droughts.

In short, the Department's leading factor for prioritizing waterbodies which need TMDLs is severity. "Water quality limited" segments with moderate and severe exceedances of water quality standards were identified first. A further review was conducted of these segments to address the Department's second major concern: give higher priority to TMDLs which may affect in effluent limitations in NPDES permits. This resulted in a list of 11 streams which the Department feels are the highest priority for developing TMDLs in Oregon.

Table F-1. Quantitative Measures for Evaluating the Severity of Water Quality Standards Violations*

Severity of W.Q. Standards Violation	Quantitative Measure
Minor/No Impairment of uses	Standard is exceeded in 0 - 10% of the analyses and the mean is less than the standard.
Moderate	Standard is exceeded in 11 - 25% of the analyses and the mean measured value is less than the standard; or standard is exceeded in 0 - 10% of analyses and mean measured value exceeds the standard.
Severe	Standard is exceeded in more than 25% of analyses and the mean measured value is less than the standard; or standard is exceeded in 11 - 25% of analyses and mean measured value exceeds the standard.
*Source: EPA Guidance: 1986 State Water Quality Assessments (Section 305(b) Reports); June 1985.	

The segments which represent those most appropriate for the initial establishment of TMDLs are presented in Table F-2. This table includes the parameter(s) which exceed water quality standard values, the severity of the exceedance, the pollutant(s) appropriate for developing a TMDL, and the point source(s) which discharge year round to the segment. Also identified in Table F-2 is a proposed date for completing Phase I. Phase I presents to the Commission an initial TMDL for the segment and a hearing process schedule. Phase I continues by placing the TMDL and schedule on 30-day public notice for review and comment, thus, formally initiating the entire TMDL/WLA process for the segment.

The violation of water quality standards is a major determinant in identifying where TMDLs should be established. However, the parameter which violates the standard is not necessarily the pollutant for which the TMDL will be developed. Section 303(d) requires TMDL's to be established on "water quality limited" segments "for those pollutants which the Administrator identifies under Section 304(a)(2) as suitable for such calculation."

The regulation which identified these pollutants was published on December 28, 1978. This regulation stated that: "All pollutants, under the proper technical conditions, are suitable for the calculation of total maximum daily loads." TMDLs can only be calculated by using a specified numerical limit. EPA's 1978 regulation also stated: "Such numerical limits may be specified in the water quality standards or may be based upon the level of control necessary to prevent the violation of a quantitative or nonquantitative water quality criterion." Thus, a TMDL can be calculated for a particular pollutant not specifically addressed in the standards, if the concentration limit for that pollutant is necessary to prevent the violation of a standard for another parameter.

Table F-3 summarizes examples of water quality problems and related processes and variables. This provides a basis for identifying the appropriate pollutants for developing TMDL's needed to address the problems.

Table F-2. Proposed List of Waterbodies Needing Total Maximum Daily Loads

WQL Segment	Parameter Exceeding Water Qual. Standard Value	Severity of Exceedance	Pollutants for which TMDL will be Developed	Phase I Completed	NPDES Permits with Year-Round Discharges	Permit Expiration Date
Tualatin River	Diss. Oxygen Chlorophyll a	Severe Severe	Ammonia Phosphorus	03/87	USA - Durham USA - Rock Creek	02/91 07/91
Yamhill River	pH	Moderate	Phosphorus	08/87	McMinnville Lafayette	05/89 02/89
S. Umpqua River	Diss. Oxygen pH Ammonia Tox.	Severe Severe Severe	BOD Phosphorus Ammonia	11/87	Roseburg Urban Sanitary Authority Winston Green Sanitary District Myrtle Creek Canyonville Riddle* Glendale*	05/89 07/88 04/91 11/87 02/87 11/87
Bear Creek	Diss. Oxygen pH	Moderate Moderate	BOD Phosphorus	11/87	Ashland*	09/86
Coquille River	Diss. Oxygen	Moderate	BOD	02/88	Bandon Coquille Roseburg Lumber - Coquille Myrtle Point*	05/87 07/89 12/90 10/88
Pudding River	Diss. Oxygen	Severe	BOD	02/88	Woodburn Molalla General Foods - Woodburn Mt. Angel Silverton Stayton Canning	03/87 12/86 03/87 03/89 12/89 04/90
Garrison Lake	Chlorophyll a	Moderate	Phosphorus	02/88	Port Orford	10/85
Klamath River	Diss. Oxygen Ammonia Tox. Chlorophyll a pH	Severe Severe Severe Moderate	BOD Ammonia Phosphorus	04/88	South Surburban S.D. Klamath Falls Weyerhaeuser - Klamath Falls	08/87 01/88 09/86
Umatilla River	pH	Moderate	Phosphorus	04/88	Pendleton	01/91
Calapooia River	Diss. Oxygen	Moderate	BOD/Ammonia	06/88	Oregon Metallurgical Corporation*	08/91
Grande Ronde River	pH	Moderate	Phosphorus	06/88	La Grande Union Elgin	03/88 09/86 02/89

* Discharge is to a tributary to the segment.

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Table F-3. Water Quality Problems and Related Processes and Variables

Water Quality Problem	Specific Pollutants	Important Processes	Significant Influence Factors
Most Commonly Addressed Problems			
Depletion of Dissolved Oxygen (DO)	CBOD, NBOD	Organic Matter Decomposition, Nitrification, Reaeration, Photospynthesis, Respiration	Velocity, Depth, Temperature, Elevation
Eutrophication and Algal Blooms	Nutrients (N and P Compounds)	Photosynthesis, Nutrient Cycling, Light Attenuation	Light, Daylength, Temperature
Ammonia Toxicity	Ammonia (NBOD)	Organic Matter Decomposition, Nitrification, Photosynthesis, Volatilization	pH, Alkalinity, Temperature
Toxicity	Organic & Metal Toxicants Complex Effluents	Fate Processes,* Bioaccumulation Additivity, Antagonism, Synergism	Hardness, pH, Suspended Materials, Light
Other Problems			
Pathogenic Organisms	Fecal Bacteria, Viruses, & Parasites	Dis-Off, Adsorption, Sedimentation	Salinity, Light, Toxicity
High Temperature	Excess Heat	Atmospheric Radiation, Back Radiation, Conduction, Evaporation	Meteorological Conditions, Water Temperature, Waterbody Configuration
Salinity (TDS)	Ca, Mg, Na, K, SO_4, Cl	Evaporation, Chemical Precipitation	Air Temperature, Rel. Humidity
Sedimentation	Silts, Clays, Organic Detritus	Settling, Scour, Coagulation/ Flocculation	Velocity, Salinity

* Biodegradation, volatilization, adsorption, hydrolysis, photolysis, precipitation, speciation.

Source: EPA Technical Guidance Manual for Performing Waste Load Allocations: Book 1 General Guidance 1985 (Draft).

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ATTACHMENT G

PROPOSED SCHEDULE FOR ESTABLISHING TMDLs/WLAs/LAs ON THE TUALATIN RIVER

		Proposed Schedule for Work Completed
Phase I:		
1.	DEQ staff with assistance of EPA develop TMDLs for the water quality limited segments and associated problem parameters according to attached schedule. A TMDL is defined as the technically based maximum assimilation capacity and does not include the WLA.	02/18/87
2.	Director proposes TMDLs and presents the evaluation and hearing process schedule to EQC as an informational item.	03/13/87
3.	Place TMDLs on 30-day public notice for public review and comment.	04/13/87
4.	Respond to public comment and Director issues list of TMDLs.	05/01/87
Phase II:		
1.	Establish a local Water Users Advisory Committee.	04/01/87
2.	Advisory Committee reviews TMDLs and considers various alternatives to achieve TMDLs, looking at strategies for point and nonpoint sources.	09/01/87
3.	DEQ prepares staff report proposing a revision in the river basin plan rules to establish TMDLs, waste loads and implementation strategy.	10/28/87
4.	Staff report is presented to EQC with a request for authorization to hold a rule making hearing.	11/20/87
5.	DEQ holds public hearing, local advisory committee makes a formal presentation of their findings at the hearing (30 days' public notice for hearing).	12/21/87
Phase III:		
1.	DEQ prepares staff report responding to hearing testimony and proposing final basin plan rule revision to the EQC for adoption.	01/31/88
2.	EQC meeting for rule adoption.	02/88 - 03/88
3.	TMDLs/WLAs submitted to EPA for approval.	Immediately after AG's office certifies process above followed state law.
Phase IV:		
1.	DEQ implements rule via NPDES permit program and NPS activities. On-going after adoption and approval by EQC.	

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DEVELOPMENT OF PROPOSED TUALATIN TMDL'S

OVERVIEW

Areas where water quality standards are not or would not be met after the implementation of technology-based effluent limitations are said to be "water quality limited". A management tool specified in the Federal Clean Water Act (CWA) for use on "water quality limited" segments is a total maximum daily load (TMDL). For pollutants of concern, a loading capacity must first be defined. The loading capacity is the greatest amount of pollutant loading that a water can receive without violating water quality standards. Obviously, the loading capacity is also dependent upon the flow characteristics of the receiving water.

The purpose of this document is to present available technical information needed to develop TMDLs for the Tualatin River. A framework will be established for determining appropriate loading capacities. This approach will ensure that acceptable water quality conditions will be achieved or maintained and that a sound technical rationale is applied. The data base for developing TMDLs may never be adequate, but will improve over time. Consequently, it is important that the approach also provides a basis for conducting subsequent technical analyses, if future information might suggest a modification to the TMDL.

APPLICABLE WATER QUALITY STANDARDS AND PARAMETERS OF CONCERN

Currently, a number of water quality parameters have criteria values which have been adopted as regulatory standards for the Tualatin Basin. Included are dissolved oxygen, temperature, turbidity, pH, fecal coliform bacteria, and dissolved chemical substances. A comparison of ambient monitoring data to the water quality standards has focused attention on two parameters: dissolved oxygen and chlorophyll a.

According to the standards, the dissolved oxygen concentration of the Tualatin River "shall not be less than 6 mg/L". The stretch of the Tualatin River below Rock Creek currently violates the dissolved oxygen standard during summer low flow. The dissolved oxygen depression in the river is due primarily to the nitrification of ammonia.

Concerns have also been raised about nuisance algal growth in the lower Tualatin River. A Nuisance Phytoplankton Growth Rule (OAR 340-412-150) was adopted by the Commission on March 14, 1986. According to this rule, waterbodies where phytoplankton growth may create a nuisance condition are to be identified using chlorophyll a values. The average concentration is established at 15 ug/L chlorophyll a. The average monthly concentration of chlorophyll a measured in the Tualatin River at Stafford Road during 1986 by the Department was nearly 18 ug/L.

The violation of water quality standards is a major determinant in identifying where TMDLs should be established. However, the parameter

which violates the standard is not necessarily the pollutant for which the TMDL will be developed.

A TMDL can be calculated for a particular pollutant not specifically addressed in the standards, if a concentration limit for that pollutant is necessary to prevent the violation of a standard for another parameter.

Dissolved oxygen and chlorophyll a are the parameters which currently exceed Tualatin River water quality standards. However, other pollutants contribute to these standards violations. High levels of ammonia in the Tualatin, through nitrification, ultimately lead to the violation of the dissolved oxygen standard. Although phosphorus is not the only factor which stimulates algal growth, studies indicate it can have a major effect on the abundance and type of algae produced. This can lead to an exceedance of the chlorophyll a value. Thus, an upper limit for phosphorus in the Tualatin should be established.

Section 304(a)(1) of the CWA requires the Environmental Protection Agency (EPA) to publish and periodically update ambient water quality criteria. These criteria are not rules and they do not have a regulatory impact. Rather, these criteria present scientific data and guidance. The information can sometimes be used as a starting point to derive regulatory requirements based on considerations of the water quality effects.

No explicit state water quality standards or EPA criteria exist for phosphorus or ammonia nitrification, the two pollutants currently of greatest concern in the Tualatin. However, it is still possible to establish TMDLs for these parameters. A potential approach is to develop criteria for new substances of concern and for which standards have not been adopted. These numbers are then referred to as "water quality guidance values". The guidance values are used pending completion of the administrative rulemaking process. This process also includes a technical evaluation of parameter specific information.

The use of water quality guidance values is recommended for Oregon. Guidance values encourage a more thorough analysis of the supporting data which ultimately leads to a standard. Guidance values also offer an opportunity to utilize site specific information for key parameters on individual stream segments where a particular problem has been identified. Guidance values also can provide another means to ensure that significant issues have been identified and addressed prior to proposing a TMDL as a formal rule.

In summary, water quality guidance values will be used for phosphorus and ammonia as a basis to develop TMDLs in the Tualatin. A value of 0.15 mg/L total phosphorus is proposed to address algal growth concerns. To ensure the attainment of the dissolved oxygen standard, a value of 1.0 mg/L ammonia is proposed. The technical information used to derive these values is presented in the next two sections.

AMMONIA

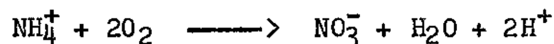
The dissolved oxygen standard for the lower Tualatin River is 6 mg/L. To determine a target ammonia concentration which leads to the attainment of the dissolved oxygen standard, several factors must be considered. Re-aeration and photosynthesis add dissolved oxygen to a river. Carbonaceous oxidation, benthic demands, algal respiration, and nitrogenous oxidation diminish D.O. levels.

One objective of the Department's Tualatin study is to gather data to determine a TMDL for oxygen demand in the lower river. Table H-1 summarizes dissolved oxygen and nitrogen data collected during three cooperative USA/DEQ intensive surveys in 1986. A preliminary analysis of this information using a water quality model has been used to examine the influence of various reaction rates.

Table H-1. Summer 1986 Tualatin River Ambient Water Quality Average Concentrations in mg/L

	Rood Rd. RM 38.7	Farmington RM 33.5	Scholls RM 27.1	Elsner RM 16
Organic Nitrogen	0.40	0.41	0.23	0.48
Ammonia	0.05	2.41	1.64	0.74
NO2+NO3	0.33	0.85	1.41	1.47
Total Nitrogen	0.78	3.61	3.28	2.70
Dissolved Oxygen	8.6	6.1	4.7	5.6

An initial estimate of a target concentration for ammonia can be made. From the 1986 data, it appears reasonable to assume that the depletion rate of dissolved oxygen caused by carbonaceous oxidation, benthic demand, and algal respiration is roughly equal to the addition of oxygen to the river due to reaeration and photosynthesis. A simplified analysis can then be conducted using the stoichiometric equation which describes the nitrification process:



$$NH_4^+ + 2O_2 \longrightarrow NO_3^- + H_2O + 2H^+$$

Important factors considered in this anlaysis which reflect the actual nitrification dynamics of the Tualatin River were travel times, reaction rates, and stoichiometric coefficients.

The 1986 intensive survey data provided enough information to develop preliminary calculations. The Tualatin River from river mile (RM) 38 to

river mile 8 was evaluated using this simplified approach. The rationale for analyzing this segment is as follows: USA's Rock Creek treatment plant provides a major source of ammonia at RM 38. At RM 8, the Tualatin begins to act more as a lake than as a river during summer low flow. In addition, the lowest D.O. concentrations in the Tualatin were observed at Scholls (RM 27).

Key equations describing nitrification were programmed on an IBM-PC using LOTUS. Coefficients were estimated from the 1986 data. To attain a dissolved oxygen concentration of at least 6 mg/L in the Tualatin River at RM 8, the maximum ammonia concentration at RM 38 should not exceed 1 mg/L.

It is recognized that this preliminary modeling approach has some limitations. Improved techniques are currently being developed as part of the Tualatin Basin Study. However, the simplified model provides a rational framework for determining target ammonia concentrations needed to attain the dissolved oxygen standard in the Tualatin River. Assumptions, coefficients, and reaction rates will continue to be assessed as the project continues.

PHOSPHORUS

The development of a standard to address nuisance algal growths is a complicated task. First of all, EPA's Technical Guidance Manual for Performing Waste Load Allocations states: "In certain cases, there may be a concern with the actual levels of biomass concentration, although normally this will not be the target of a WLA analysis for streams and rivers. As discussed in the chapter, there is no general value for chlorophyll concentration which describes acceptable versus unacceptable conditions in terms of general aesthetics." For the purpose of developing a TMDL, a chlorophyll a value of 15 ug/L is used as a target. This is consistent with OAR 340-41-150.

Many studies suggest that phosphorus is a major factor leading to excessive algal growth. Most of these studies also indicate that a reduction of phosphorus can influence the abundance of algae. However, it is not clear that a particular phosphorus concentration results in a predictable chlorophyll concentration. Nor can one conclude that a given phosphorus reduction will lead to a known and predictable decrease in algae.

To begin, EPA's latest available criteria document (the 1986 Gold Book) was reviewed. According to this publication, a desired goal for the prevention of plant nuisances in streams or other flowing waters is 0.10 mg/L total P. However, there are also natural conditions that would dictate the consideration of either a more or less stringent phosphorus level. For instance, phosphorus may not be the limiting nutrient, which would substantially diminish the need for phosphorus controls.

EPA's 1986 Gold Book cited a number of specific exceptions which can occur to reduce the threat of phosphorus as a contributor to nuisance aquatic

growths. One of these exceptions stated: "In some waters, phosphorus control cannot be sufficiently effective under present technology to make phosphorus the limiting nutrient." EPA's Gold Book discussion on phosphorus concluded with "No national criterion is presented for phosphate phosphorus for the control of eutrophication." In other words, development of criteria for phosphate phosphorus is a site specific concern. To treat the development of a phosphorus target level for the Tualatin as a site specific problem is appropriate.

The most comprehensive study which addressed algal growth in the Tualatin was conducted by Portland State University (PSU) (Carter, Petersen, Roe; 1976). The report presented two specific conclusions important to algal growth issues in the Tualatin. First, "the concentrations of phosphorus in the streambed sediments, and of phosphorus in the waters at Hillsboro indicate that ambient levels of phosphorus are high enough to support algal blooms." The Hillsboro site used in the study was above the Rock Creek STP. Secondly, "algal assays using natural river waters and the test algae species Selanastrum capricornutum, suggest that additions of sewage effluents to the Tualatin River can stimulate and support (at least potentially) from two to six times the algal biomass when effluents are not present."

In response to ambient levels at Hillsboro being high enough to support algal blooms, there are very few waters of the state which will not support algal growth of some form (from the perspective of a fish, this is a fortunate phenomena -- algae is a primary producer on the food chain). However, the second conclusion regarding increased productivity with increased concentrations is very important. This conclusion is based on the results of algal assays, a test to assess the effects of the addition of nutrients upon biomass and the growth of algae in the river.

Figure H-1 summarizes the productivity results of the PSU study. The information is displayed relative to phosphorus concentrations in Tualatin River samples. Although more detailed and conclusive tests need to be made, a relationship between phosphorus and algal productivity can be seen. Improved techniques are currently being developed as part of the Tualatin study. Other factors must also be considered, such as the role of nitrogen and carbon.

The phosphorus/algae analysis is continued by using site specific Tualatin ambient monitoring information. Figure H-2 displays total phosphorus and chlorophyll a data for the Tualatin River. At concentrations greater than 0.15 mg/L total phosphorus, 95 percent of the exceedances of the chlorophyll a target level (15 ug/L) were observed. A TMDL based on a guidance value of 0.15 mg/L total phosphorus should eliminate most of the chlorophyll a exceedances. The chlorophyll a value is expressed as a 3-month average. Thus, the remaining five percent exceedances should keep the 3-month average in the Tualatin River below 15 ug/L with a margin of safety.

Again, additional information will continue to be collected and assessed as the Tualatin study progresses. The evaluation described provides a framework for future analysis of site specific information on the Tualatin. The

Figure H-1 Tualatin Algal Assay Summary

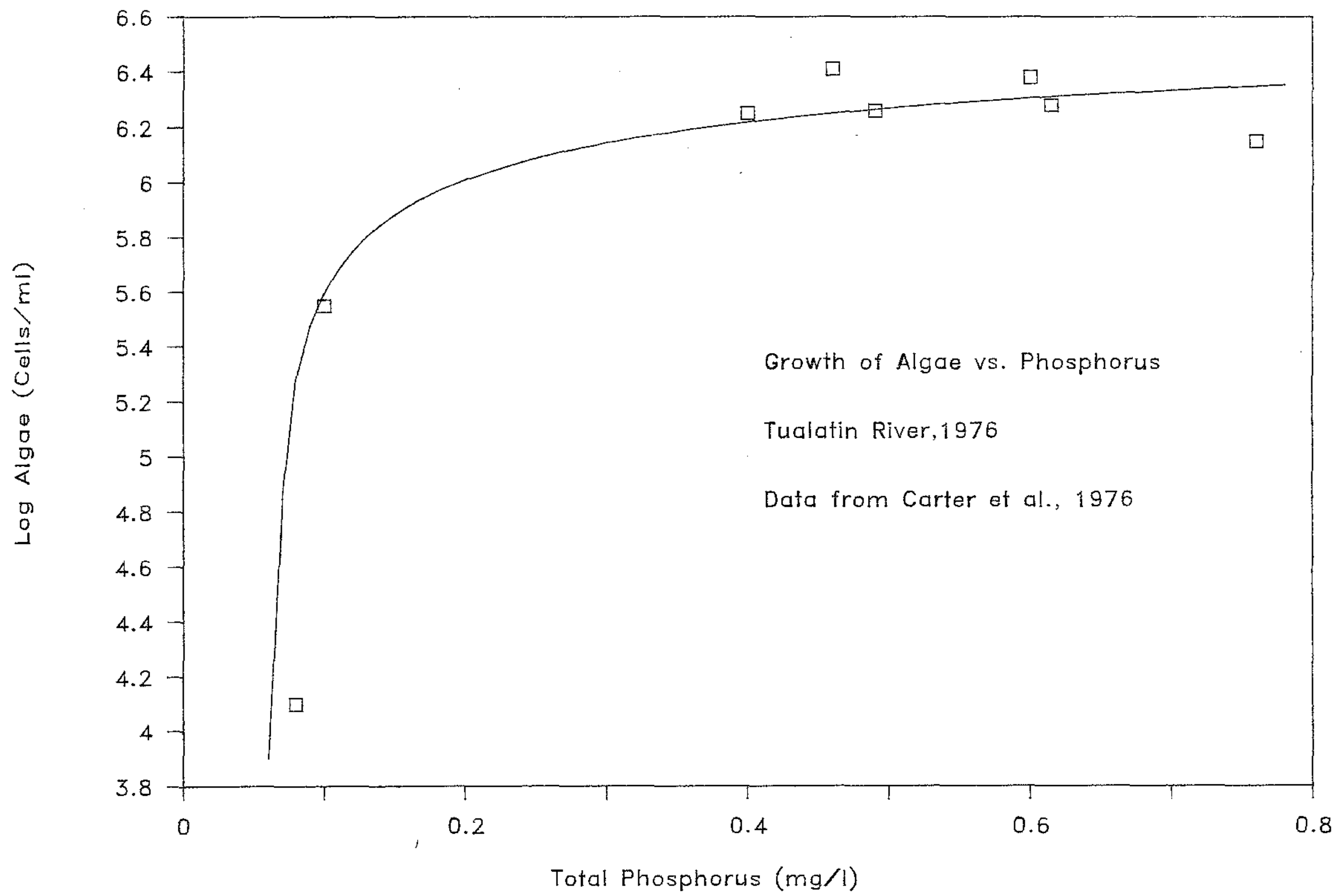
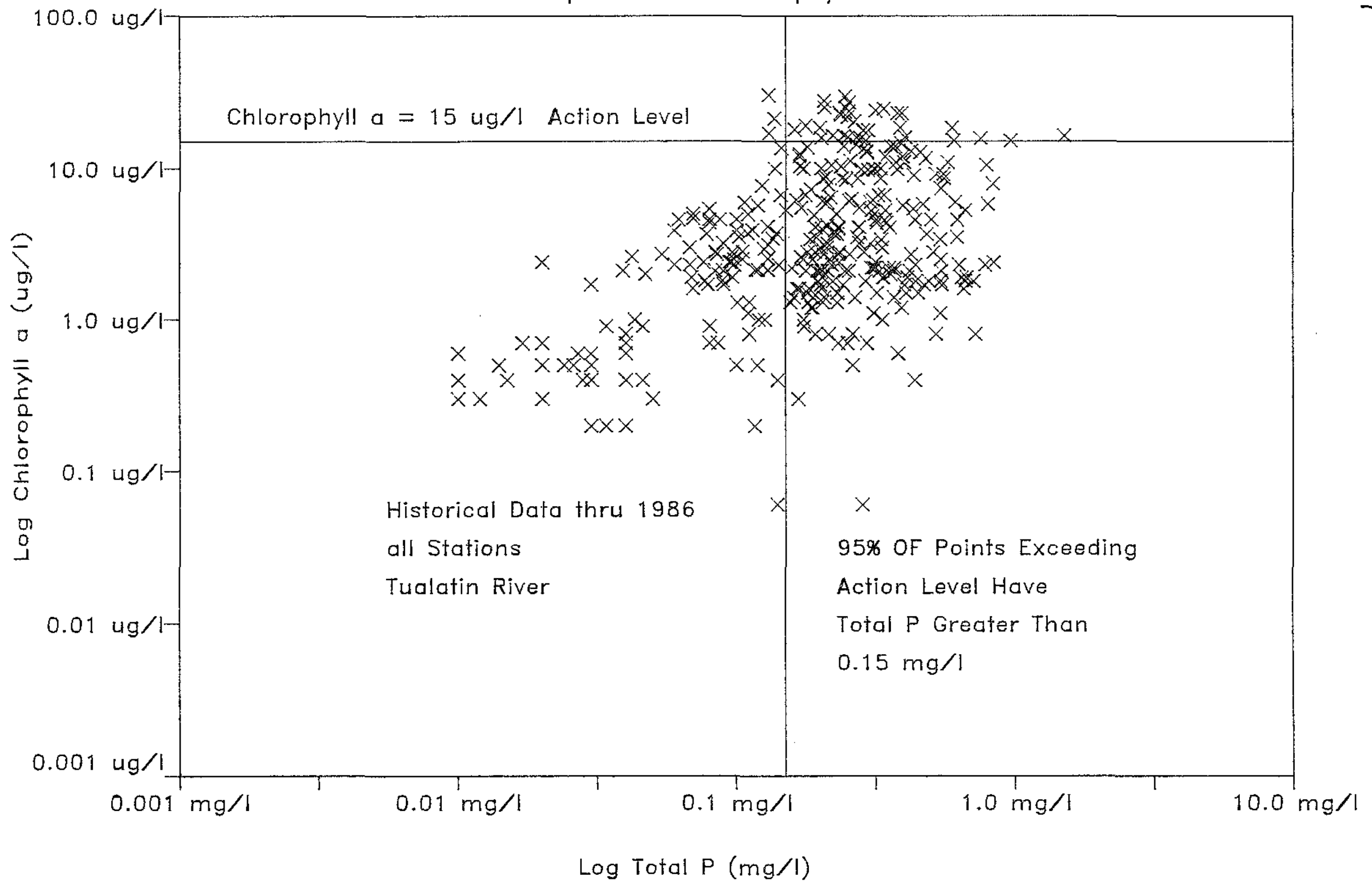


Figure H-2 Analysis of Tualatin River



Department is currently forming a technical advisory committee to provide input on the Tualatin project. One of the first tasks will be to review the Department's technical evaluation and to make recommendations.

ALLOWABLE POLLUTANT LOADINGS

Once target concentrations have been determined for parameters of concern, a TMDL can then be identified. Some states have chosen to specify just one TMDL value per pollutant. This is computed from some critical flow condition, such as the minimum average 7-day flow with a recurrence interval of 10 years (7Q10). Identifying this design flow can sometimes be as difficult as determining the target concentration. However, nothing could be found in the Federal regulations or statutes which indicates that other options cannot be employed.

The recommended approach for Oregon is to identify a set of loads for varying flow conditions. This technique will better address the dynamic nature of rivers in a manner which will meet water quality goals. This approach will also allow a variety of options to be pursued without violating water quality standards. Alternatives could include specifying permit conditions in terms of receiving water flows. Another option might be identifying the use of upstream reservoir storage capacity to increase stream flows.

By using varying flow conditions and the target concentrations, maximum allowable pollutant loads have been calculated. These loads are presented in Table H-2. Flows are based on the Tualatin River at Farmington gage operated by Oregon Water Resources Department.

Table H-2. Maximum Allowable Pollutant Loads
for the Lower Tualatin River

Tualatin River at Farmington, Discharge (cfs)	Maximum Ammonia Load in River (lbs/day)	Maximum Total Phosphorus Load in River (lbs/day)
100 - 150	540	80
150 - 200	810	120
200 - 250	1080	160
250 - 300	1350	200
300 - 350	1620	240
350 - 400	1880	280

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achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 402, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) of this section no later than July 1, 1987, if it is also determined that such innovative system has the potential for industrywide application.

(l) The Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 307(a) (1) of this Act.

WATER QUALITY RELATED EFFLUENT LIMITATIONS

SEC. 302. (a) Whenever, in the judgment of the Administrator, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 301 (b)(2) of this Act, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

(b) (1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained (including the attainment of the objective of this Act) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

(2) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.

(c) The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 301 of this Act.

WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS

SEC. 303. (a)(1) In order to carry out the purpose of this Act, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is

awaiting approval by, the Administrator pursuant to this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall, within three months after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(2) Any State which, before the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator ithin thirty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this Act unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3)(A) Any State which prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

(b)(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State

in accordance with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, if—

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section,

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

(c)(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with the date of enactment of the Federal Water Pollution Control Act Amendments of 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this Act, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this Act, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this Act, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this Act.

The Administrator shall promulgate any revised or new standard

under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this Act.

(d)(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 301 are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 304(a)(2) as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(D) Each State shall estimate for the waters identified in paragraph (1)(D) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 304(a)(2)(D), for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

(3) For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection

and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 304(a)(2) as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife.

(e)(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this Act.

(2) Each State shall submit not later than 120 days after the date of the enactment of the Water Pollution Control Admendments of 1972 to the Administrator for his approval a proposed continuing planning process which is consistent with this Act. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act. The Administrator shall not approve any State permit program under title IV of this Act for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 301(b)(1), section 301 (b)(2), section 306, and section 307, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable areawide waste management plans under section 208, and applicable basin plans under section 209 of this Act;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302.

(f) Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 301(b)(1) and 301(b)(2) nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

(g) Water quality standards relating to heat shall be consistent with the requirements of section 316 of this Act.

(h) For the purposes of this Act the term "water quality standards" includes thermal water quality standards.

INFORMATION AND GUIDELINES

SEC. 304. (a)(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

(2) The Administrator, after consulation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) for the purpose of section 303, on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

(4) The Administrator shall, within 90 days after the date of enactment of the Clean Water Act of 1977 and from time to time thereafter, publish and revise as appropriate information identifying conventional pollutants, including but not limited to, pollutants classified as biological oxygen demanding, suspended solids, fecal coliform, and pH. The thermal component of any discharge shall not be identified as a conventional pollutant under this paragraph.

(5)(A) The Administrator, to the extent practicable before consideration of any request under section 301(g) of this Act and within six months after the date of enactment of the Clean Water Act of 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(B) The Administrator, to the extent practicable before consideration of any application under section 301(h) of this Act and within six months after the date of enactment of the Clean Water Act of 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(6) The Administrator shall, within three months after enactment of the Clean Water Act of 1977 and annually thereafter, for purposes of section 301(h) of this Act publish and revise as appropriate information identifying each water quality standard in effect under this Act of State law, the specific pollutants associated with such water quality standard, and the particular waters to which such water quality standard applies.

(b) For the purpose of adopting or revising effluent limitations under this Act the Adminitrator shall, after consultaton with appropriate Federal and State agencies and other interested person, publish within one year of enactment of this title, regulations, providing guidelines for effluent limitations, and, at east annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

(1)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b)(1) of section 301 of this Act shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(2)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best measures and practices available to comply with subsection (b)(2) of section 301 of this Act to be applicable to any point source (other than publicly owned treatment works) within such categories of classes. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(3) identify control measures and practices available to eliminate the discharge of pollutants from categories and classes of

point sources, taking into account the cost of achieving such elimination of the discharge of pollutants; and

(4) (A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best conventional pollutant control technology (including measures and practices) for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best conventional pollutant control technology measures and practices to comply with section 301(b)(2)(E) of this Act to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best conventional pollutant control technology (including measures and practices) shall include consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived and the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources, and shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate.

(c) The Administrator, after consultation, with appropriate Federal and State agencies and other interested persons, shall issue to the States and appropriate water pollution control agencies within 270 days after enactment of this title (and from time to time thereafter) information on the processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 306 of this Act. Such information shall include technical and other data, including costs, as are available on alternative methods of elimination or reduction of the discharge of pollutants. Such information, and revisions thereof, shall be published in the Federal Register and otherwise shall be made available to the public.

(d)(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after enactment of this title (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within nine months after the date of enactment of this title (and from time to time thereafter) information on alternative waste treatment management techniques and systems available to implement section 201 of this Act.

(3) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall promulgate

within one hundred and eighty days after the date of enactment of this subsection guidelines for identifying and evaluating innovative and alternative wastewater treatment processes and techniques referred to in section 201(g)(5) of this Act.

(4) *For the purposes of this subsection, such biological treatment facilities as oxidation ponds, lagoons, and ditches and trickling filters shall be deemed the equivalent of secondary treatment. The Administrator shall provide guidance under paragraph (1) of this subsection on design criteria for such facilities, taking into account pollutant removal efficiencies and, consistent with the objective of the Act, assuring that water quality will not be adversely affected by deeming such facilities as the equivalent of secondary treatment.*

(e) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, may publish regulations, supplemental to any effluent limitations specified under subsections (b) and (c) of this section for a class or category of point sources, for any specific pollutant which the Administrator is charged with a duty to regulate as a toxic or hazardous pollutant under section 307(a)(1) or 311 of this Act, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which the Administrator determines are associated with or ancillary to the industrial manufacturing or treatment process within such class or category of point sources and may contribute significant amounts of such pollutants to navigable waters. Any applicable controls established under this subsection shall be included as a requirement for the purposes of section 301, 302, 306, 307, or 403, as the case may be, in any permit issued to a point source pursuant to section 402 of this Act.

(f) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall issue to appropriate Federal agencies, the States, water pollution control agencies, and agencies designated under section 208 of this Act, within one year after the effective date of this subsection (and from time to time thereafter) information including (1) guidelines for identifying and evaluating the nature and extent of nonpoint sources of pollutants, and (2) processes, procedures, and methods to control pollution resulting from—

(A) agricultural and silvicultural activities, including runoff from fields and crop and forest lands;

(B) mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines;

(C) all construction activity, including runoff from the facilities resulting from such construction;

(D) the disposal of pollutants in wells or in subsurface excavations;

(E) salt water intrusion resulting from reductions of fresh water flow from any cause, including extraction of ground water, irrigation, obstruction, and diversion; and

(F) changes in the movement, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities.

Such information and revisions thereof shall be published in the Federal Register and otherwise made available to the public.

(g)(1) For the purpose of assisting States in carrying out programs under section 402 of this Act, the Administrator shall publish, within one hundred and twenty days after the date of enactment of this title, and review at least annually thereafter and, if appropriate, revise guidelines for pretreatment of pollutants which he determines are not susceptible to treatment by publicly owned treatment works. Guidelines under this subsection shall be established to control and prevent the discharge into the navigable waters, the contiguous zone, or the ocean (either directly or through publicly owned treatment works) of any pollutant which interferes with, passes through or otherwise is incompatible with such works.

(2) When publishing guidelines under this subsection, the Administrator shall designate the category or categories of treatment works to which the guidelines shall apply.

(h) The Administrator shall, within one hundred and eighty days from the date of enactment of this title, promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of the Act or permit application pursuant to section 402 of this Act.

(i) The Administrator shall (1) within sixty days after the enactment of this title promulgate guidelines for the purpose of establishing uniform application forms and other minimum requirements for the acquisition of information from owners and operators or point-sources of discharge subject to any State program under section 402 of this Act, and (2) within sixty days from the date of enactment of this title promulgate guidelines establishing the minimum procedural and other elements of any State program under section 402 of this Act which shall include:

(A) monitoring requirements;

(B) reporting requirements (including procedures to make information available to the public);

(C) enforcement provisions; and.

(D) funding, personnel qualifications, and manpower requirements (including a requirement that no board or body which approves permit applications or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit).

(j) The Administrator shall issue information biennually on methods, procedures, and processes as may be appropriate to restore and enhance the quality of the Nation's publicly owned freshwater lakes.

(k)(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act.

(2) The Administrator is authorized to transfer to the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior and the heads of such other departments, agencies, and in-

strumentalities of the United States as the Administrator determines, any funds appropriated under paragraph (3) of this subsection to supplement funds otherwise appropriated to programs authorized pursuant to any agreement under paragraph (1).

(3) There is authorized to be appropriated to carry out the provisions of this subsection $100,000,000 per fiscal year for the fiscal years 1979 through 1983.

WATER QUALITY INVENTORY

SEC. 305. (a) The Administrator, in cooperation with the States and with the assistance of appropriate Federal agencies, shall prepare a report to be submitted to the Congress on or before January 1, 1974, which shall—

(1) describe the specific quality, during 1973, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, of all navigable waters and the waters of the contiguous zone;

(2) include an inventory of all point sources of discharge (based on a qualitative and quantitative analysis of discharges) of pollutants, into all navigable waters and the waters of the contiguous zone; and

(3) identify specifically those navigable waters, the quality of which—

(A) is adequate to provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allow recreational activities in and on the water;

(B) can reasonably be expected to attain such level by 1977 or 1983; and

(C) can reasonably be expected to attain such level by any later date..

(b)(1) Each State shall prepare and submit to the Administratro by April 1, 1975, and shall bring up to date by April 1, 1976, and biennially thereafter, a report which shall include—

(A) a description of the water quality of all navigable waters in such State during the preceding year, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, correlated with the quality of water required by the objective of this Act (as identified by the Administrator pursuant to criteria published under section 304(a) of this Act) and the water quality described in subparagraph (B) of this paragraph;

(B) an analysis of the extent to which all navigable waters of such State provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water;

(C) an analysis of the extent to which the elimination of the discharge of pollutants and a level of water quality which provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water, have been or will be achieved by the requirements of this Act, together with recommendations as to additional action necessary to achieve such objectives and for what waters such additional action is necessary;

expected to be met through the implementation of technology-based effluent limitations. EPA has carefully considered these requirements in issuing its identification, and we believe that the identification published today will have the least disruptive effect on ongoing State programs designed to meet water quality objectives.

EPA's identification will make the requirement for establishment of TMDL's part of the States' ongoing section 208 and section 303 planning processes. The identification should therefore not require States which are carrying out their functions under sections 208 and 303 to devote additional resources to wasteload allocations and TMDL development. Priority ranking systems will be established to keep the development of TMDL's within available resources.

This identification shall be effective as of December 28, 1978.

Dated: December 22, 1978.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

IDENTIFICATION AND IMPLEMENTATION INFORMATION

A. IDENTIFICATION

EPA's identification is as follows: *All pollutants, under the proper technical conditions, are suitable for the calculation of total maximum daily loads.*

The Agency believes that under the proper technical conditions total maximum daily loads (TMDL's) and wasteload allocations can be developed for all pollutants. The requirements to perform TMDL's will be adjusted according to a priority ranking as envisioned by section 303(d) of the Clean Water Act (33 U.S.C. 1251 *et seq.*) to avoid over-loading either the States or EPA during the phased development of TMDL's.

B. INFORMATION—CALCULATION OF TMDL'S

1. *Water Quality Standards.* Section 303(d)(1)(C) of the Clean Water Act provides that TMDL's will be calculated in order to establish an upper limit on pollution loading which will still allow meeting applicable water quality standards for the particular body of water. The water quality standard for each body of water consists of the designated use (classification) of the body of water, the associated numerical and non-numerical water quality criteria necessary to protect the designated use, and antidegradation requirements. See 43 FR 29588-92 (July 10, 1978) for a recent detailed statement on water quality standards.

TMDL's can only calculated for water bodies and pollutants with a specified numerical limit based upon approved or promulgated ambient water quality standards. Such numerical limits may be specified in the water quality standards or may be based upon the level of control necessary to prevent the violation of a quantitative or nonquantitative water quality criterion. For example, a TMDL could be calculated for a certain concentration limit for a toxic substance, when this particular pollutant is not specifically addressed in the numerical criteria, if the concentration limit used is necessary to prevent the violation of a general prohibition against the discharge of toxic substances in toxic amounts.

Since TMDL's must be established at levels necessary to implement the applicable water quality standards, any change in numerical criteria for pollutants contained in water quality standards will impact the TMDL's calculated for such a pollutant. Therefore, TMDL's should be reviewed each time the corresponding water quality standards are revised.

Finally, EPA recognizes that State development of TMDL's and wasteload allocations for all water quality limited segments will be a lengthy process. Water quality standards will continue to be enforced during this process. Development of TMDL's pursuant to section 303(d) is not a necessary prerequisite to adoption or enforcement of water quality standards, and, therefore, will not determine the validity of existing, revised or new water quality standards.

2. *Methods for TMDL Calculation.* Water pollutants can generally be classified as either conservative or nonconservative. Technical conditions for calculation of TMDL's and wasteload allocations vary with the type of pollutant, with one method of calculation for pollutants which are generally classified as conservative and another method for pollutants generally classified as nonconservative. Conservative pollutants (such as certain dissolved solids) are those pollutants which persist in the water column of the aquatic environment. The amount of a conservative pollutant in a given segment will remain essentially constant over time. Nonconservative pollutants (such as many organic compounds) decay or are otherwise removed over time. This decrease in concentration may be due to a number of factors including chemical breakdown and biodegradation.

EPA recognizes that the dividing line between conservative and nonconservative pollutants is not sharp and the classification of a given pollutant may vary depending upon the level of sophistication required in a particular analytical situation. The classification is helpful, however, in determining which method of calculation should be used. See *Simplified Mathematical Modeling of Water Quality,* EPA, March 1971, and *Addendum to Simplified Mathematical Modeling of Water Quality,* EPA, May 1972.

a. *Conservative Pollutant TMDL (C-TMDL).* The C-TMDL of a body of water is that pollutant loading which, by simple dilution with the receiving body of water, results in an ambient concentration equal to the specified numerical concentration limit for that pollutant, i.e., the concentration limit based upon the applicable water quality standards. Since the C-TMDL depends upon simple dilution, the C-TMDL varies directly with the volumes or flows of dischargers and the receiving body of water, with a larger flow providing a larger C-TMDL.

b. *Nonconservative Pollutant TMDL (N-TMDL).* The N-TMDL is not an intrinsic property of a body of water, since the N-TMDL varies with a number of factors, e.g., flow or volume of the receiving body of water, flow from dischargers, and the configuration of discharge locations on the body of water. Therefore, the N-TMDL can only be calculated with fairly sophisticated techniques such as mathematical modeling, which takes these factors into account. As with the C-TMDL, the N-TMDL results in an ambient concentration of the pollutant equal to the specified numerical concentration limit for that pollutant, i.e., the concentration limit based upon the applicable water quality standards.

C. INFORMATION—PRIORITY RANKING

EPA's proposed identification of pollutants is not designed to require States to devote additional resources to wasteload allocations and TMDL development. As stated previously, it is envisioned that establishment of TMDL's would be part of States' ongoing sections 208 and 303(e) planning processes funded under sections 106 and 208 of the Act. To keep the requirements of developing TMDL's within available resources and to meet statutory schedules for preparing TMDL's, States must establish priority rankings.

1. *Statutory Requirements.* Section 303(d)(1)(A) requires States to identify waters where water quality standards will not be met by application of effluent limitations required under sections 301(b)(1) (A) and (B) of the Act. These waters are designated as water quality limited segments. The process of stream segment classification has been largely completed as part of basin planning under section 303(e) of the Act. Section 303(d)(2) requires States to submit their first segment identifications and TMDL calculations within 180 days of the Administrator's final identification pursuant to section 304(a)(2)(D). After the States' first submission, subsequent segment iden-

tifications and TMDL calculations must be submitted from "time to time." Section 303(d)(2). Priority rankings of waters will ensure compliance under a reasonable schedule with the Act's "time to time" requirement. In addition to State's obligations under section 303(d)(1)(C) to calculate TMDL's, section 303(d)(3) requires States to estimate TMDL's for informational purposes for all waters not identified in sections 303(d)(1) (A) and (B). This latter requirement may be assigned lower priority by the States in their TMDL programs.

Section 303(d)(1)(A) required the States to establish a priority ranking for those waters which States identify as water quality limited. In establishing the priority ranking, § 303(d)(1)(A) requires the States to take into account (1) the severity of pollution and (2) the uses to be made of the waters identified. In assessing severity of pollution, States should consider the type of pollutants involved as well as the violations of water quality standards. In addition, States are not limited to addressing only segments with existing problems but may also take into account the need to protect existing high quality waters.

2. *Priority Ranking Agreements.* Since calculation of TMDL's will be part of State water quality management planning, priorities for TMDL's will be negotiated as part of the State/EPA agreement under the water quality management regulations. 40 CFR 130.11; see proposed 40 CFR 35.1507, 43 FR 40742 (September 12, 1978). EPA's recently proposed regulations would require States to establish priority ranking as part of the State strategy. The priority ranking, timing, resource needs, level of technical detail and other specifics of TMDL development will be negotiated by the States and EPA, and then set forth in the work program.

3. *Content of Priority Ranking.* In developing the priority ranking in the work programs for water quality segments on which TMDL's will be calculated during each following year, the States should consider at least the following factors.

First, section 303(d)(1)(A) requires States to take into account (1) the severity of pollution and (2) the uses to be made of the waters identified. (See discussion, part II.C.1).

Second, States should also consider other factors in establishing priority ranking of segments or priorities for calculation of TMDL's among the high ranking segments. Some of the factors for consideration in ranking may include the following:

(1) Calculation of TMDL's should be given higher priority when they are expected to result in effluent limitations in NPDES permits. If NPDES permits are not scheduled for reissuance in the near future, the calculation of TMDL's for that segment may receive a low priority. Similarly, if implementation of national effluent limitation guidelines would eliminate water quality standards violations for certain stream segments, calculation of TMDL's may receive low priority. These considerations will avoid use of limited resources where implementation of the TMDL's would not be likely in the near future.

(2) Resources may be concentrated on segments and pollutants where acceptable models and adequate data are available at reasonable cost.

(3) Since the Act requires TMDL's to be established at levels necessary to implement water quality standards, TMDL's should be designed to result in the attainment of standards.

(4) States should also consider coordinating the development of TMDL's with other water quality analyses. These analyses include intensive surveys and fixed station analyses under the Basic Water Monitoring Program, water quality standard revisions, preparation of the section 305(b) report and advanced waste treatment reviews conducted under section 208.

(5) States should also consider any national priorities developed by EPA.

States may consider the above factors as well as additional factors they deem important to the priority ranking process for development of TMDL's. States will be required to set forth justification for the priority ranking of each stream segment but will not be required to develop a system which sets forth each factor considered and the weight given to each factor. States will be required to rank every water quality segment in the State. However, States need not reclassify segments already classified.

D. STATE SUBMISSIONS AND EPA APPROVAL

To comply with the requirements of the Act, States must submit the following information within 180 days of EPA's final identification of pollutants suitable for TMDL calculation.

(1) An identification of waters for which effluent limitations required by sections 301(b)(1) (A) and (B) are not stringent enough to implement applicable water quality standards. This requirement can be satisfied by referencing documents already submitted to EPA, e.g., section 305(b) reports.

(2) The TMDL established under section 303(d)(1)(A) for one or more of the above waters. This requirement can be satisfied by referencing documents already submitted to EPA or by submitting TMDL's based on information available in other water quality studies. States should indicate whether those loads previously submitted to EPA are still regarded as adequate.

Priority rankings are not required within 180 days. They will be submitted pursuant to schedules established in the State/EPA agreements. Subsequent submission of TMDL's shall also be submitted pursuant to State/EPA agreements.

Under section 303(d)(2), EPA must approve or disapprove State submissions. In reviewing State submissions, EPA may conditionally approve the submissions with the understanding that States will provide supplementary information within a reasonable time and according to a schedule established by the State/EPA agreement. After EPA approval, section 303(e) requires States to incorporate the TMDL's into their water quality management plans pursuant to section 303(e)(3)(C).

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[6560-01-M]

[FRL 1029-6; OPP-50397]

ISSUANCE OF AN EXPERIMENTAL USE PERMIT

The Environmental Protection Agency (EPA) has issued an experimental use permit to the following applicant. Such a permit is in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 11273-EUP-13. Sandoz, Incorporated, San Diego, California 92108. This experimental use permit allows the use of the remaining supply of approximately 240 pounds of the herbicide norflurazon in or on apples, pears, grapes, citrus crops, almonds and almond hulls to evaluate control of certain grassy and broadleaf weeds. A total of 74 acres is involved; the program is authorized only in the States of Arizona, California, Oregon, and Washington. The experimental use permit is effective from November 30, 1978 to November 30, 1979. Temporary tolerances for residues of the active ingredient in or on apples, pears, grapes, citrus crops, almonds and almond hulls have been established. (PM 23, Room: E-351, Telephone: 202-755-1397).

Interested parties wishing to review the experimental use permit are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W. Washington, D.C. 20460. The descriptive paragraph for the permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made

agencies, it does not have a direct effect on small entities.

List of Subjects

40 CFR Part 35

Air pollution control, Grant programs—environmental protection, Indians, Pesticides and pests, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 130

Water pollution control, Environmental Protection.

Dated: January 4, 1985.

William D. Ruckelshaus,

Administrator.

PART 35—[AMENDED]

For the reasons set out in the preamble, Part 35 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority cite for Part 35 reads as follows:

Authority: Sec. 501(a), Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

§§ 35.1500, 35.1502, 35.1503, 35.1505, 35.1507, 35.1509—35.1509-3, 35.1511—35.1511-2, 35.1519—35.1519-3, 35.1521—35.1521-6, 35.1523—35.1523-6, 35.1525, 35.1527, 35.1529, 35.1531—35.1531-3 and 35.1533—35.1533-4 [Removed]

2. Part 35 is amended by removing §§ 35.1500, 35.1502, 35.1503, 35.1505, 35.1507, 35.1509—35.1509-3, 35.1511—35.1511-2, 35.1519—35.1519-3, 35.1521—35.1521-6, 35.1523—35.1523-6, 35.1525, 35.1527, 35.1529, 35.1531—35.1531-3 and 35.1533—35.1533-4.

3. 40 CFR Chapter I is amended by adding a new Part 130, reading as follows:

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

Sec.
130.0 Program summary and purpose.
130.1 Applicability.
130.2 Definitions.
130.3 Water quality standards.
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130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.
130.8 Water quality report.
130.9 Designation and de-designation.
130.10 State submittals to EPA.
130.11 Program management.
130.12 Coordination with other programs.

Authority: 33 U.S.C. 1251 *et seq.*

§ 130.0 Program summary and purpose.

(a) This subpart establishes policies and program requirements for water quality planning, management and implementation under sections 106, 205(j), non-construction management 205(g), 208, 303 and 305 of the Clean Water Act. The Water Quality Management (WQM) process described in the Act and in this regulation provides the authority for a consistent national approach for maintaining, improving and protecting water quality while allowing States to implement the most effective individual programs. The process is implemented jointly by EPA, the States, interstate agencies, and areawide, local and regional planning organizations. This regulation explains the requirements of the Act, describes the relationships between the several components of the WQM process and outlines the roles of the major participants in the process. The components of the WQM process are discussed below.

(b) Water quality standards (WQS) are the State's goals for individual water bodies and provide the legal basis for control decisions under the Act. Water quality monitoring activities provide the chemical, physical and biological data needed to determine the present quality of a State's waters and to identify the sources of pollutants in those waters. The primary assessment of the quality of a State's water is contained in its biennial Report to Congress required by section 305(b) of the Act.

(c) This report and other assessments of water quality are used in the State's WQM plans to identify priority water quality problems. These plans also contain the results of the State's analyses and management decisions which are necessary to control specific sources of pollution. The plans recommend control measures and designated management agencies (DMAs) to attain the goals established in the State's water quality standards.

(d) These control measures are implemented by issuing permits, building publicly-owned treatment works (POTWs), instituting best management practices for nonpoint sources of pollution and other means. After control measures are in place, the State evaluates the extent of the resulting improvements in water quality, conducts additional data gathering and planning to determine needed modifications in control measures and again institutes control measures.

(e) This process is a dynamic one, in which requirements and emphases vary over time. At present, States have completed WQM plans which are generally comprehensive in geographic and programmatic scope. Technology based controls are being implemented for most point sources of pollution. However, WQS have not been attained in many water bodies and are threatened in others.

(f) Present continuing planning requirements serve to identify these critical water bodies, develop plans for achieving higher levels of abatement and specify additional control measures. Consequently, this regulation reflects a programmatic emphasis on concentrating planning and abatement activities on priority water quality issues and geographic areas. EPA will focus its grant funds on activities designed to address these priorities. Annual work programs negotiated between EPA and State and interstate agencies will reflect this emphasis.

§ 130.1 Applicability.

(a) This subpart applies to all State, interstate, areawide and regional and local CWA water quality planning and management activities undertaken on or after February 11, 1985 including all updates and continuing certifications for approved Water Quality Management (WQM) plans developed under sections 208 and 303 of the Act.

(b) Planning and management activities undertaken prior to February 11, 1985 are governed by the requirements of the regulations in effect at the time of the last grant award.

§ 130.2 Definitions.

(a) *The Act.* The Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

(b) *Pollution.* The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(c) *Water quality standards (WQS).* Provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

(d) *Load or Loading.* An amount of matter or thermal energy that is introduced into a receiving water; to introduce matter or thermal energy into a receiving water. Loading may be either man-caused (pollutant loading) or natural (natural background loading).

(e) *Loading capacity.* The greatest amount of loading that a water can receive without violating water quality standards.

(f) *Load allocation (LA).* The portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best

estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.

(g) *Wasteload allocation (WLA).* The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

(h) *Total maximum daily load (TMDL).* The sum of the individual WLAs for point sources and LAs for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.

(i) *Water quality limited segment.* Any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.

(j) *Water quality management (WQM) plan.* A State or areawide waste treatment management plan developed and updated in accordance with the provisions of sections 205(j), 208 and 303 of the Act and this regulation.

(k) *Areawide agency.* An agency designated under section 208 of the Act, which has responsibilities for WQM planning within a specified area of a State.

(l) *Best Management Practice (BMP).* Methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

(m) *Designated management agency (DMA).* An agency identified by a WQM plan and designated by the Governor to implement specific control recommendations.

§ 130.3 Water quality standards.

A water quality standard (WQS) defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. States and EPA adopt WQS to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (CWA). "Serve the purposes of Act" (as defined in section 101(a)(2) and 303(c) of the Act) means that WQS should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value for public water supplies, propagation of fish, shellfish, wildlife, recreation in and on the water, and agricultural, industrial and other purposes including navigation.

Such standards serve the dual purposes of establishing the water quality goals for a specific water body and serving as the regulatory basis for establishment of water quality-based treatment controls and strategies beyond the technology-based level of treatment required by sections 301(b) and 306 of the Act. States shall review and revise WQS in accordance with applicable regulations and, as appropriate, update their Water Quality Management (WQM) plans to reflect such revisions. Specific WQS requirements are found in 40 CFR Part 131.

§ 130.4 Water quality monitoring.

(a) In accordance with section 106(e)(1), States must establish appropriate monitoring methods and procedures (including biological monitoring) necessary to compile and analyze data on the quality of waters of the United States and, to the extent practicable, ground-waters.

(b) The State's water monitoring program shall include collection and analysis of physical, chemical and biological data and quality assurance and control programs to assure scientifically valid data. The uses of these data include determining abatement and control priorities; developing and reviewing water quality standards, total maximum daily loads, wasteload allocations and load allocations; assessing compliance with National Pollutant Discharge Elimination System (NPDES) permits by dischargers; reporting information to the public through the section 305(b) report and reviewing site-specific monitoring efforts.

§ 130.5 Continuing planning process.

(a) *General.* Each State shall establish and maintain a continuing planning process (CPP) as described under section 303(e)(3)(A–H) of the Act. Each State is responsible for managing its water quality program to implement the processes specified in the continuing planning process. EPA is responsible for periodically reviewing the adequacy of the State's CPP.

(b) *Content.* The State may determine the format of its CPP as long as the mininum requirements of the CWA and this regulation are met. The following processes must be described in each State CPP, and the State may include other processes at its discretion.

(1) The process for developing effluent limitations and schedules of compliance at least as stringent as those required by section 301(b)(1), section 301(b)(2), section 306 and section 307, and at least stringent as any requirements contained in applicable water quality standards in effect under authority of section 303 of the Act.

(2) The process for incorporating elements of any applicable areawide waste treatment plans under section 208, and applicable basin plans under section 209 of the Act.

(3) The process for developing total maximum daily loads (TMDLs) and individual water quality based effluent limitations for pollutants in accordance with section 303(d) of the Act and § 130.7(a) of this regulation.

(4) The process for updating and maintaining Water Quality Management (WQM) plans, including schedules for revision.

(5) The process for assuring adequate authority for intergovernmental cooperation in the implementation of the State WQM program.

(6) The process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance, under section 303(c) of the Act.

(7) The process for assuring adequate controls over the disposition of all residual waste from any water treatment processing.

(8) The process for developing an inventory and ranking, in order of priority of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302 of the Act.

(9) The process for determining the priority of permit issuance.

(c) *Regional Administrator review.* The Regional Administrator shall review

(3) Total maximum daily loads (TMDLs) (303(d)); and

(4) Water quality management (WQM) plan and certified and approved WQM plan updates (208, 303(e)).

(Subsection (b)(1)(4) approved by OMB under the control number 2010-0004).

(c) The form and content of required State submittals to EPA may be tailored to reflect the organization and needs of the State, as long as the requirements and purposes of the Act, this Part and, where applicable, 40 CFR Parts 29, 30, 33 and 35, Subparts A and J are met. The need for revision and schedule of submittals shall be agreed to annually with EPA as the States annual work program is developed.

§ 130.11 Program management.

(a) State agencies may apply for grants under sections 106, 205(j) and 205(g) to carry out water quality planning and management activities. Interstate agencies may apply for grants under section 106 to carry out water quality planning and management activities. Local or regional planning organizations may request 106 and 205(j) funds from a State for planning and management activities. Grant administrative requirements for these funds appear in 40 CFR Parts 25, 29, 30, 33 and 35, Subparts A and J.

(b) Grants under section 106 may be used to fund a wide range of activities, including but not limited to assessments of water quality, revision of water quality standards (WQS), development of alternative approaches to control pollution, implementation and enforcement of control measures and development or implementation of ground water programs. Grants under section 205(j) may be used to fund water quality management (WQM) planning activities but may not be used to fund implementation of control measures (see Part 35, Subpart A). Section 205(g) funds are used primarily to manage the wastewater treatment works construction grants program pursuant to the provisions of 40 CFR 35, Subpart J. A State may also use part of the 205(g) funds to administer approved permit programs under sections 402 and 404, to administer a statewide waste treatment management program under section 208(b)(4) and to manage waste treatment construction grants for small communities.

(c) Grant work programs for water quality planning and management shall describe geographic and functional priorities for use of grant funds in a manner which will facilitate EPA review of the grant application and subsequent evaluation of work accomplished with the grant funds. A State's 305(b) Report, WQM plan and other water quality assessments shall identify the State's priority water quality problems and areas. The WQM plan shall contain an analysis of alternative control measures and recommendations to control specific problems. Work programs shall specify the activities to be carried out during the period of the grant; the cost of specific activities; the outputs, for example, permits issued, intensive surveys, wasteload allocations, to be produced by each activity; and where applicable, schedules indicating when activities are to be completed.

(d) State work programs under sections 106, 205(j) and 205(g) shall be coordinated in a manner which indicates the funding from these grants dedicated to major functions, such as permitting, enforcement, monitoring, planning and standards, nonpoint source implementation, management of construction grants, operation and maintenance of treatment works, ground-water, emergency response and program management. States shall also describe how the activities funded by these grants are used in a coordinated manner to address the priority water quality problems identified in the State's water quality assessment under section 305(b).

(e) EPA, States, areawide agencies, interstate agencies, local and Regional governments, and designated management agencies (DMAs) are joint participants in the water pollution control program. States may enter into contractual arrangements or intergovernmental agreements with other agencies concerning the performance of water quality planning and management tasks. Such arrangements shall reflect the capabilities of the respective agencies and shall efficiently utilize available funds and funding eligibilities to meet Federal requirements commensurate with State and local priorities. State work programs under section 205(j) shall be developed jointly with local, Regional and other comprehensive planning organizations.

§ 130.12 Coordination with other programs.

(a) Relationship to the National Pollutant Discharge Elimination System (NPDES) program. In accordance with section 208(e) of the Act, no NPDES permit may be issued which is in conflict with an approved Water Quality Management (WQM) plan. Where a State has assumed responsibility for the administration of the permit program under section 402, it shall assure consistency with the WQM plan.

(b) Relationship to the municipal construction grants program. In accordance with sections 205(j), 216 and 303(e)(3)(H) of the Act, each State shall develop a system for setting priorities for funding construction of municipal wastewater treatment facilities under section 201 of the Act. The State, or the agency to which the State has delegated WQM planning functions, shall review each facility plan in its area for consistency with the approved WQM plan. Under section 208(d) of the Act, after a waste treatment management agency has been designated and a WQM plan approved, section 201 construction grant funds may be awarded only to those agencies for construction of treatment works in conformity with the approved WQM plan.

(c) Relationship to Federal activities—Each department, agency or instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility or engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants shall comply with all Federal, State, interstate and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner and extent as any non-governmental entity in accordance with section 313 of the CWA.

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for water quality limited segments shall continue to be submitted to EPA for review and approval. Schedules for submission of WLAs/LAs and TMDLs shall be determined by the Regional Administrator and the State.

The Regional Administrator shall either approve or disapprove such listing and loadings not later than 30 days after the date of submission. If the Regional Administrator approves such listing and loadings, the State shall incorporate them into its current WQM plan. If the Regional Administrator disapproves such listing and loadings, he shall, not later than 30 days after the date of such disapproval, identify such waters in such State and establish such loads for such waters as determined necessary to implement applicable WQS. The Regional Administrator shall promptly issue a public notice seeking comment on such listing and loadings. After considering public comment and making any revisions he deems appropriate, the Regional Administrator shall transmit the listing and loads to the State, which shall incorporate them into its current WQM plan.

(e) For the specific purpose of developing information and as resources allow, each State shall identify all segments within its boundaries which it has not identified under paragraph (b) of this section and estimate for such waters the TMDLs with seasonal variations and margins of safety, for those pollutants which the Regional Administrator identifies under section 304(a)(2) as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife. However, there is no requirement for such loads to be submitted to EPA for approval, and establishing WLAs/LAs and TMDLs for those waters identified in paragraph (b) of this section shall be given higher priority.

§ 130.8 Water quality report.

(a) Each State shall prepare and submit biennially to the Regional Administrator a water quality report in accordance with section 305(b) of the Act. The water quality report serves as the primary assessment of State water quality. Based upon the water quality data and problems identified in the 305(b) report, States develop water quality management (WQM) plan elements to help direct all subsequent control activities. Water quality problems identified in the 305(b) report should be analyzed through water quality management planning leading to the development of alternative controls and procedures for problems identified in the latest 305(b) report. States may also use the 305(b) report to describe ground-water quality and to guide development of ground-water plans and programs. Water quality problems identified in the 305(b) report should be emphasized and reflected in the State's WQM plan and annual work program under sections 106 and 205(j) of the Clean Water Act.

(b) Each such report shall include but is not limited to the following:

(1) A description of the water quality of all waters of the United States and the extent to which the quality of waters provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water.

(2) An estimate of the extent to which CWA control programs have improved water quality or will improve water quality for the purposes of section 1 above and recommendations for future actions necessary and identifications of waters needing action.

(3) An estimate of the environmental, economic and social costs and benefits needed to achieve the objectives of the CWA and an estimate of the date of such achievement.

(4) A description of the nature and extent of nonpoint source pollution and recommendations of programs needed to control each category of nonpoint sources, including an estimate of implementation costs.

(c) States may include a description of the nature and extent of ground-water pollution and recommendations of State plans or programs needed to maintain or improve ground-water quality.

(d) In the years in which it is prepared the biennial section 305(b) report satisfies the requirement for the annual water quality report under section 205(j). In years when the 305(b) report is not required, the State may satisfy the annual section 205(j) report requirement by certifying that the most recently submitted section 305(b) report is current or by supplying an update of the sections of the most recently submitted section 305(b) report which require updating.

§ 130.9 Designation and de-designation.

(a) Designation—Areawide planning agencies may be designated by the Governor in accordance with section 208(a) (2) and (3) of the Act or may self-designate in accordance with section 208(a)(4) of the Act. Such designations shall subject to EPA approval in accordance with section 208(a)(7) of the Act.

(b) De-designation—The Governor may modify or withdraw the planning designation of a designated planning agency other than an Indian tribal organization self-designated § 130.6(c)(2) if:

(1) The areawide agency requests such cancellation; or

(2) the areawide agency fails to meet its planning requirements as specified in grant agreements, contracts or memoranda of understanding; or

(3) the areawide agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundaries.

(c) Impact of de-designation—Once an areawide planning agency's designation has been withdrawn the State agency shall assume direct responsibility for continued water quality planning and oversight of implementation within the area.

(d) Designated management agencies (DMA)—In accordance with section 208(c)(1) of the Act, management agencies shall be designated by the Governor in consultation with the designated planning agency. EPA shall approve such designations unless the DMA lacks the legal, financial and managerial authority required under section 208(c)(2) of the Act. Designated management agencies shall carry out responsibilities specified in Water Quality Management (WQM) plans. Areawide planning agencies shall monitor DMA activities in their area and recommend necessary plan changes during the WQM plan update. Where there is no designated areawide planning agency, States shall monitor DMA activities and make any necessary changes during the WQM plan update.

§ 130.10 State submittals to EPA.

(a) The following must be submitted regularly by the States to EPA:

(1) The section 305(b) report, in FY 84 and every two years thereafter, and the annual section 205(j) certification or update of the 305(b) water quality report; (Approved by OMB under the control number 2040-0071)

(2) The annual State work program(s) under sections 106 and 205(j) of the Act; and (Approved by OMB under the control number 2010-0004)

(3) Revisions or additions to water quality standards (WQS) (303(c)). (Approved by OMB under 2040-0049)

(b) The Act also requires that each State initially submit to EPA and revise as necessary the following:

(1) Continuing planning process (CPP) (303(e));

(2) Identification and a ranking by priority of water quality limited segments (303(d));

(iv) Procedures for coordination of ground-water protection programs among State agencies and with local and Federal agencies.

(v) Procedures for program management and administration including provision of program financing, training and technical assistance, public participation, and emergency management.

(d) *Planning on Indian lands.* (1) To the maximum extent feasible, States and areawide agencies shall coordinate with Indian tribal organizations within and adjacent to their planning areas in the development of water quality management (WQM) plans. Where appropriate, the Regional Administrator shall work with the State and Indian tribal organization to ensure development of WQM planning on Indian lands. The WQM planning area must include all lands within the reservation regardless of ownership.

(2) Where the Regional Administrator, after consultation with the State, determines that a State lacks authority to carry out effective WQM planning and implementation on Indian lands, the Regional Administrator may approve a self-designation application by an Indian tribal organization under section 208(a)(4) of the Act if the Indian tribal organization has the authority and capability to undertake effective WQM planning. After receipt of such a designation, the Indian tribal organization becomes responsible for developing and maintaining a WQM plan in accordance with sections 208 and 303 of the Act and section 130.6 of this Part.

(e) *Update and certification.* State and/or areawide agency WQM plans shall be updated as needed to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals. Regional Administrators may require that State WQM plans be updated as needed. State Continuing Planning Processes (CPPs) shall specify the process and schedule used to revise WQM plans. The State shall ensure that State and areawide WQM plans together include all necessary plan elements and that such plans are consistent with one another. The Governor or the Governor's designee shall certify by letter to the Regional Administrator for EPA approval that WQM plan updates are consistent with all other parts of the plan. The certification may be contained in the annual State work program.

(f) *Consistency.* Construction grant and permit decisions must be made in accordance with certified and approved WQM plans as described in § 130.12(a) and 130.12(b).

§ 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.

(a) *General.* The process for identifying water quality limited segments still requiring wasteload allocations, load allocations and total maximum daily loads (WLAs/LAs and TMDLs), setting priorities for developing these loads; establishing these loads for segments identified, including water quality monitoring, modeling, data analysis, calculation methods, and list of pollutants to be regulated; submitting the State's list of segments identified, priority ranking, and loads established (WLAs/LAs/TMDLs) to EPA for approval; incorporating the approved loads into the State's WQM plans and NPDES permits; and involving the public, affected dischargers, designated areawide agencies, and local governments in this process shall be clearly described in the State Continuing Planning Process (CPP).

(b) Identification and priority setting for water quality limited segments still requiring WLAs/LAs and TMDLs.

(1) Each State shall identify those water quality limited segments still requiring WLAs/LAs and TMDLs within its boundaries for which:

(i) technology-based effluent limitations required by sections 301(b), 306, 307, or other sections of the Act;

(ii) more stringent effluent limitations (including prohibitions) required by either State or local authority preserved by section 510 of the Act, or Federal authority (e.g., law, regulation, or treaty); and

(iii) other pollution control requirements (e.g., best management practices) required by local, State, or Federal authority

are not stringent enough to implement any water quality standard (WQS) applicable to such waters. The State shall, establish a priority ranking for such water quality limited segments still requiring WLAs/LAs and TMDLs, taking into account the severity of the pollution and the uses to be made of such waters and shall identify the pollutants causing or expected to cause violations of the water quality standards.

(2) Each State shall identify those water quality limited segments still requiring WLAs/LAs and TMDLs or parts thereof within its boundaries for which controls on thermal discharges under section 301 or State or local requirements are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish and wildlife.

(c) Development of TMDLs and individual water quality based effluent limitations.

(1) Each State shall establish WLAs/LAs and TMDLs for the water quality limited segments identified in paragraph (b)(1) of this section, and in accordance with the priority ranking. For pollutants other than heat, WLAs/LAs and TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Determinations of WLAs/LAs and TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.

(i) TMDLs may be established using a pollutant-by-pollutant or biomonitoring approach. In many cases both techniques may be needed. Site-specific information should be used wherever possible.

(ii) TMDLs shall be established for all pollutants preventing or expected to prevent attainment of water quality standards as identified pursuant to paragraph (b)(1) of this section. Calculations to establish WLAs/LAs and TMDLs shall be subject to public review as defined in the State CPP.

(2) Each State shall estimate for the water quality limited segments still requiring WLAs/LAs and TMDLs identified in paragraph (b)(2) of this section, the total maximum daily thermal load which cannot be exceeded in order to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in the identified waters or parts thereof.

(d) *Submission and EPA approval.* (1) Each State shall submit to the Regional Administrator from time to time for approval the listing of water quality limited segments requiring WLAs/LAs and TMDLs identified under paragraph (b) of this section. All WLAs/LAs and TMDLs established under paragraph (c)

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approved State CPPs from time to time to ensure that the planning processes are consistent with the Act and this regulation. The Regional Administrator shall not approve any permit program under Title IV of the Act for any State which does not have an approved continuing planning process.

§ 130.6 Water quality management plans.

(a) *Water quality management (WQM) plans.* WQM plans consist of initial plans produced in accordance with sections 208 and 303(e) of the Act and certified and approved updates to those plans. Continuing water quality planning shall be based upon WQM plans and water quality problems identified in the latest 305(b) reports. State water quality planning should focus annually on priority issues and geographic areas and on the development of water quality controls leading to implementation measures. Water quality planning directed at the removal of conditions placed on previously certified and approved WQM plans should focus on removal of conditions which will lead to control decisions.

(b) *Use of WQM plans.* WQM plans are used to direct implementation. WQM plans draw upon the water quality assessments to identify priority point and nonpoint water quality problems, consider alternative solutions and recommend control measures, including the financial and institutional measures necessary for implementing recommended solutions. State annual work programs shall be based upon the priority issues identified in the State WQM plan.

(c) *WQM plan elements.* Sections 205(j), 208 and 303 of the Act specify water quality planning requirements. The following plan elements shall be included in the WQM plan or referenced as part of the WQM plan if contained in separate documents when they are needed to address water quality problems.

(1) *Total maximum daily loads.* TMDLs in accordance with sections 303(d) and 303(e)(3)(C) of the Act and § 130.7 of this Part.

(2) *Effluent limitations.* Effluent limitations including water quality based effluent limitations and schedules of compliance in accordance with section 303(e)(3)(A) of the Act and § 130.5 of this Part.

(3) *Municipal and industrial waste treatment.* Identification of anticipated municipal and industrial waste treatment works, including facilities for treatment of stormwater-induced combined sewer overflows; programs to provide necessary financial arrangements for such works; establishment of construction priorities and schedules for initiation and completion of such treatment works including an identification of open space and recreation opportunities from improved water quality in accordance with section 208(b)(2) (A) and (B) of the Act.

(4) *Nonpoint source management and control.*

(i) The plan shall describe the regulatory and non-regulatory programs, activities and Best Management Practices (BMPs) which the agency has selected as the means to control nonpoint source pollution where necessary to protect or achieve approved water uses. Economic, institutional, and technical factors shall be considered in a continuing process of identifying control needs and evaluating and modifying the BMPs as necessary to achieve water quality goals.

(ii) Regulatory programs shall be identified where they are determined to be necessary by the State to attain or maintain an approved water use or where non-regulatory approaches are inappropriate in accomplishing that objective.

(iii) BMPs shall be identified for the nonpoint sources identified in section 208(b)(2)(F)–(K) of the Act and other nonpoint sources as follows:

(A) *Residual waste.* Identification of a process to control the disposition of all residual waste in the area which could affect water quality in accordance with section 208(b)(2)(J) of the Act.

(B) *Land disposal.* Identification of a process to control the disposal of pollutants on land or in subsurface excavations to protect ground and surface water quality in accordance with section 208(b)(2)(K) of the Act.

(C) *Agricultural and silvicultural.* Identification of procedures to control agricultural and silvicultural sources of pollution in accordance with section 208(b)(2)(F) of the Act.

(D) *Mines.* Identification of procedures to control mine-related sources of pollution in accordance with section 208(b)(2)(G) of the Act.

(E) *Construction.* Identification of procedures to control construction related sources of pollution in accordance with section 208(b)(2)(H) of the Act.

(F) *Saltwater intrusion.* Identification of procedures to control saltwater intrusion in accordance with section 208(b)(2)(I) of the Act.

(G) *Urban stormwater.* Identification of BMPs for urban stormwater control to achieve water quality goals and fiscal analysis of the necessary capital and operations and maintenance expenditures in accordance with section 208(b)(2)(A) of the Act.

(iv) The nonpoint source plan elements outlined in § 130.6(c)(4)(iii)(A)(G) of this regulation shall be the basis of water quality activities implemented through agreements or memoranda of understanding between EPA and other departments, agencies or instrumentalities of the United States in accordance with section 304(k) of the Act.

(5) *Management agencies.* Identification of agencies necessary to carry out the plan and provision for adequate authority for intergovernmental cooperation in accordance with sections 208(b)(2)(D) and 303(e)(3)(E) of the Act. Management agencies must demonstrate the legal, institutional, managerial and financial capability and specific activities necessary to carry out their responsibilities in accordance with section 208(c)(2)(A–I) of the Act.

(6) *Implementation measures.* Identification of implementation measures necessary to carry out the plan, including financing, the time needed to carry out the plan, and the economic, social and environmental impact of carrying out the plan in accordance with section 208(b)(2)(E).

(7) *Dredge or fill program.* Identification and development of programs for the control of dredge or fill material in accordance with section 208(b)(4)(B) of the Act.

(8) *Basin plans.* Identification of any relationship to applicable basin plans developed under section 209 of the Act.

(9) *Ground water.* Identification and development of programs for control of ground-water pollution including the provisions of section 208(b)(2)(K) of the Act. States are not required to develop ground-water WQM plan elements beyond the requirements of section 208(b)(2)(K) of the Act, but may develop a ground-water plan element if they determine it is necessary to address a ground-water quality problem. If a State chooses to develop a ground-water plan element, it should describe the essentials of a State program and should include, but is not limited to:

(i) Overall goals, policies and legislative authorities for protection of ground-water.

(ii) Monitoring and resource assessment programs in accordance with section 106(e)(1) of the Act.

(iii) Programs to control sources of contamination of ground-water including Federal programs delegated to the State and additional programs authorized in State statutes.

Table L-1. Waste Load Allocation Methods*

1. Equal percent removal (equal percent treatment)
2. Equal effluent concentrations
3. Equal total mass discharge per day
4. Equal mass discharge per capita per day
5. Equal reduction of raw load (pounds per day)
6. Equal ambient mean annual quality (mg/L)
7. Equal cost per pound of pollutant removed
8. Equal treatment cost per unit of production
9. Equal mass discharged per unit of raw material used
10. Equal mass discharged per unit of production

11a. Percent removal proportional to raw load per day

11b. Larger facilities to achieve higher removal rates

12. Percent removal proportional to community effective income

13a. Effluent charges (dollars per pound, etc.)

13b. Effluent charge above some load limit

14. Seasonal limits based on cost-effectiveness analysis

15. Minimum total treatment cost

16. BAT (industry) plus some level for municipal inputs

17. Divide assimilative capacity to require an "equal effect among all dischargers"

18a. Municipal: treatment level proportional to plant size

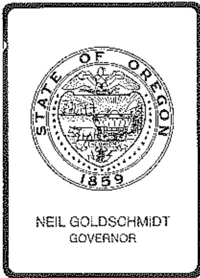
18b. Industrial: equal percent between BPT and BAT, i.e.,

$$\text{Allowable} = \text{BPT} - \frac{x}{100}(\text{BPT} - \text{BAT})$$

19. Industrial discharges given different treatment levels for different stream flows and seasons. For example, a plant might not be allowed to discharge when stream flow is below a certain value. Above that value, but below another value, the plant would be required to use a higher level of treatment than BPT. Finally, when stream flow is above an upper value, the plant would be required to treat to a level comparable to BPT.

*Source: Chadderton, R.A., A.C. Miller, and A.J. McDonnell, 1981; "Analysis of Waste Load Allocation Procedures"; Water Resources Bulletin, Vol. 17.

BC:h
WH1716



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item P, March 13, 1987, EQC Meeting

Issue Paper: Determination of Percent Allocable For Pollution Control Tax Credits

During the Commission's consideration of the tax credit application for the Ogden-Martin facility in Marion County, legal and policy questions arose. The Department brings this issue paper to the Commission in an attempt to outline the issues and promote discussion of them by the Commission, resulting in the Department receiving policy direction from the Commission.

Background

The pollution control tax credit statute (ORS 468.190) states that the Commission shall consider five factors in establishing the percent of the pollution control facility cost allocable to pollution control. These factors are as follows:

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

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

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

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

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

In the past, the Department has selected only one factor which was in most cases factor (b), return on investment. In a few cases other factors, as applicable, have been considered in the staff report and used to establish percent allocable.

In reviewing the application for tax credit for the Ogden-Martin resource recovery facility, the Commission decided that it was important for all five factors to be considered by the Commission in determining percent allocable. In doing this, the Commission weighted the relevant factors and arrived at a percent allocable which was a combination of these weighted factors.

The issues which now must be addressed are, first, how all five factors should be considered and, second, when all five factors are considered, whether and how they should be weighted.

1. Consideration of the five factors.

   a. Legal counsel has determined that in order to satisfy statutory requirements, the Commission must consider all five factors in establishing percent allocable for all tax credit certifications. Since Department staff reports are usually adopted as findings of the Commission, if the Commission agrees with staff findings, the statutory requirement will be met if the staff reports appropriately discuss our consideration of all five factors.

      Though all five factors would be analyzed in all cases, the Department would expect to base the determination of percent allocable in most cases on factor (b), return on investment. Because of the nature of the model used to determine return on investment, factor (a), the extent to which the facility recovers and converts waste into a salable or usable commodity and factor (d), any related savings resulting from the facility, are taken into account. For example, in reviewing an application for a scrubber system which collects wood fibers in exhaust gas, DEQ would consider the savings which result from returning wood fibers to the process. These would be considered as part of the annual operating expenses used in the return on investment calculation.

      In the example above, it could be argued thet the sole purpose of the facility was air pollution and that sole purpose should be considered an "other" factor under (e). However, the Department recommends eliminating from consideration those factors which the Department considers in determining eligibility (e.g. principal or sole purpose).

   b. The tax credit rule (OAR 340-16-030(2)) states that the Commission shall consider the five factors "if applicable". Based on legal advice regarding interpretation of the statute to require consideration of all five factors in all cases, rather than only applicable factors, the rule should be amended to more accurately parallel the statute.

2. Using the five factors to determine percent allocable.

In those cases where more than one factor is considered applicable, the Commission may wish to develop a method to determine which factor or combination of factors should be used and if a combination of factors is used, how they should be weighted.

a. Which factor or combination of factors.

Currently, the tax credit rule (OAR 340-16-030(5)) states that the Commission shall choose the factor or combination of factors which result in the least percent allocable. Some question has been raised by legal counsel as to whether this rule is actually within the authority granted to the Commission which states that "the Commission may adopt rules to establish methods to determine the portion of costs properly allocable" to pollution control (ORS 468.190(3)). Since this rule appears to be beyond statutorily granted rule making authority, the Commission should consider amending the rules to delete this section.

b. The Department needs criteria to use in deciding whether more than one factor should be used in determining percent allocable in a particular case. We also need a process to determine if all factors used should be weighted equally. We could have all factors weighted equally except in those cases determined by the Commission to be unique because of the nature of the facility, in which case the Commission would determine the weighting.

Return on Investment Calculation

Another issue which needs to be addresed is whether the Department's present return on investment calculation, which is an internal rate of return method using cash flow analysis, is the most appropriate. The Department needs to review alternatives and decide how best to approach an evaluation of the current method and any potential revision of it.

Director's Recommendation

The Department requests that the Commission discuss the conceptual framework it wishes to have the Department use in drafting rules on issues covered in this paper.

Fred Hansen

MConley:y
MY3905
229-6408
February 19, 1987

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201
Phone: 503/222-1963

COMMENTS SUBMITTED TO THE ENVIRONMENTAL QUALITY COMMISSION
March 13, 1987, During the Public Forum: by Jean Meddaugh
Associate Director:

OEC would like to go on record as opposed to the Department's decision to approve an air quality permit for Entek in Lebanon allowing a discharge of 120 tons a year of trichlor oethylene (TCE), a hazardous air pollutant that is classified as a probable human carcinogen by EPA (p.3 DEQ fact sheet).

OEC responded to the opportunity for public comment on the permit and requested that a public hearing be held in Lebanon before a decision was made on the permit. In spite of an overwhelming display of public interest in this case - a total of 62 letters and calls were received - the Department went ahead and issued the permit and then held a public information session to tell the people of Lebanon what had already been decided.

At that hearing, DEQ personnel stated that when Entek initially applied for a permit they requested an emissions level lower than 120 tons/year. DEQ air quality staff apparently increased the permitted emissions to 120 tons/year, inspite of the fact that they now claim that they expect emissions to be less (p.3). If that's the case why not issue a permit at a lower level in the first place? Where is the incentive for Entek to emit at a lower level now?

DEQ air quality staff assert that the ambient air impact of 120 tons a year of TCE will be less than 3/10 of 1% of the strictest workplace safety standard. They arrive at this conclusion by dividing the NIOSH standard of 25ppm by a safety factor of 300. The problem is that the NIOSH standard is devised to provide protection for healthy young males exposed at 8 hour intervals; it's not intended to protect the young or the elderly exposed continuously over a lifetime. That's why DEQ chose the safety factor. My concern is that they have not carried this process further and done a chronic exposure risk assessment.

I spoke with John Vandenberg of EPA's risk Assessment unit in North Carolina and he explained how to do a risk assessment for this ambient air standard of 25ppm/300, which equals .083ppm. Using a conversion factor for TCE of 1ppm = 5380 mg/m^3 and multiplying by the unit risk factor for TCE (1.3×10^{-6}), the numbers indicate that 5.8, or roughly 6, individuals in 10,000 (Lebanon has a population of 10,380 in the 1984 census) are likely to contract cancer as a result of lifetime exposures at .083ppm. Typically, the acceptable risk for cancer exposure is considered to be one in 100,000 or one in one million.

Based on many phone calls that I've received from citizens in the Lebanon area, I can assure you that they are concerned about this risk and about what they perceive as DEQ's refusal to consider their concerns as part of the decision making process.

ROUTING AND TRANSMITTAL SLIP

Date 3/5/87

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. Jean Meddaugh		
2.		
3.		
4.		
5.		

	Action		File		Note and Return
	Approval		For Clearance		Per Conversation
	As Requested		For Correction		Prepare Reply
	Circulate		For Your Information		See Me
	Comment		Investigate		Signature
	Coordination		Justify		

REMARKS

1 ppm = 5380 ug/m³ (Health Assessment Document)
× .083 ppm
448 ug/m³
× 1.3×10⁻⁶ (UNIT RISK FACTOR)
5.8×10⁻⁴ = 5.8 CHANCES IN 10000 THAT AN INDIVIDUAL EXPOSED TO .083 ppm FOR THEIR LIFETIME WILL CONTRACT CANCER.
LET ME KNOW IF YOU HAVE ANY QUESTIONS

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
John Vandenberg EPA/OAQPS	Phone No. 919 541 5352

5041-102

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

☆ GPO : 1981 O - 361-529 (145)

FACTS ABOUT ENTEK MANUFACTURING INC.

WHO WE ARE

Entek Manufacturing Inc. is a locally owned Oregon corporation located in an industrial area in Lebanon. Entek will supply products nationwide for automotive batteries and other products in the growing high technology microporous membrane industry.

Practically all of Entek's current staff of twelve employees, mostly engineers, scientists, and technicians, live in Lebanon and Entek expects to employ about 70 Lebanon residents by the end of the year.

Upon receipt of the DEQ discharge permit, Entek began construction of the plant and installation of equipment in order to fill orders for its product on schedule. Entek is investing 8 million dollars in the Lebanon community.

OUR PHILOSOPHY

Entek Manufacturing has a stake in the welfare of Lebanon, both as individual citizens with families in the area and as an employer. We are determined to be a good neighbor and a desirable neighbor. Our system for controlling air emissions is the best available technology and we are spending about 25 percent of the plant equipment costs to obtain the best pollution abatement equipment available anywhere in this country.

We want our neighbors in Lebanon to feel that Entek is an asset and to realize that we are interested in their welfare.

PUBLIC AND EMPLOYEE SAFETY

Concerns have been voiced by some persons on Entek's use of Trichloroethylene (TCE) in our manufacturing operations. We have conducted extensive research on TCE, a common solvent that has been used without ill effects by many industries for over fifty years. We have found that epidemiological studies of workers exposed to TCE have shown that it is a safe solvent when handled with the same care that people use with ordinary gasoline for their automobiles. Studies also show that it is not carcinogenic to humans.

OSHA has determined the safe level of TCE for use in the work place. Despite concern to the contrary, there is a safe level. Our advanced pollution control equipment will reduce the emissions of TCE so that they are less than 7 percent of this allowable safe level. This low level emission is quickly diluted in the atmosphere to extremely low concentrations which have been shown to pose no risk to human health.

YOUR NAME WILL APPEAR IN THE MARCH 11, 1987 ISSUE OF THE LEBANON EXPRESS IF YOU SIGN THIS ARTICLE. A $2.00 CONTRIBUTION PER SIGNATURE IS REQUESTED TO PAY FOR PUBLICATION.

THANK YOU ENTEK

We , the undersigned, support Entek Manufacturing of Lebanon. We give permission to have our name used in a promotional advertisement to appear in the Lebanon Express on Wednesday, March 11, 1987.

The advertising copy will read:

ENTEK

We're glad you came to Lebanon. We support you. We appreciate the jobs you're providing. We think you've taken great care to provide a safe, new industry in Lebanon.

THANK YOU ENTEK

NAME	ADDRESS
Don & Cindi Cunningham	580 7th St Lebanon
Layton E. Arnold & Mary E. Arnold	1700 2nd St Lebanon
Jack & Ernestine Edwards	34772 Meridian Rd Lebanon, Ore
Dick and Leslie Hobbs	P.O. Box 770 Lebanon, Ore.
Rowena Larkin	493 Park St "
Opal Woods	" " " "
Fran Rieke	33770 Bellinger Scale Rd Lebanon Ore

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>
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>
> THANK YOU ENTEK

NAME	ADDRESS	
(RAY KOPCZYNSKI)	30860 TURQUOISE PL, LEBANON	✓
Pat Kopczynski (PAT KOPCZYNSKI)	30860 TURQUOISE PL, LEBANON	✓
SEN. MAE YIH 3/5	34465 YIH LANE ALBANY 97321	✓
REP. LIZ VAN LEEUWEN 3/5	27070 IRISH BEND LOOP HALSEY	✓
Tony Pickens	536 MAIN, Lebanon	✓
Wally Williams	225 Lebanite DR Lebanon	✓
Karen Manning	696 Main Lebanon	✓
George Lybarger	30823 SW 5th Lebanon	✓
Nancy Richmond	754 Main St Lebanon	✓
Joe & Joan Lang	764 Main St Lebanon	✓
Jean Lang	764 Main St Lebanon	✓
Lisa R Corbat	540 W. MAPLE #24	
Lucille McMains	681 Main St. Leb	✓
Denise Howard	2009 S 2nd Lebanon Or.	
Susan L. Wuerst (SUSAN WUERST)	30868 7th St (Waterloo)	
Larry L Spool (LARRY SPOOL)	30868 7TH ST (WATERLOO)	
Douglas Gaslin (Doug Gaslin)	552 SE. 38th Albany OR 97321	
Dennis Yocom (DENNIS YOCOM)	775 Randall Dr Lebanon Or. 97355	

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THANK YOU ENTEK

NAME	ADDRESS
Jack G. Buchanan	850 Brushaller St. - Lebanon
Roy D. Hurley	680 West Ash Lebanon (17 yrs)
F. G. (Jerry) Baker	685 Wilborn Dr. Lebanon (45 yrs)
Barbara Alley	711 Glenwood St., Lebanon
Royce Sutter	760 Wagon Wheel Dr.
Margaret Chapman	130 Hiatt St. Lebanon
Ivan Stutzman	30466 S 4th Lebanon
Dave Allison	610 Park St Lebanon
Alice Leisy	1386 Williams, Lebanon
Mike McDaniel	36839 Rock Hill Drive - Lebanon
David Peer	480 E Vine Lebanon
Dolores Stellin	2880 Hazel St. Lebanon
Chris Zuerker	2728 9Th ST LEB. OR.
Gerald A. Hugley	31863 Eastway Lebanon
[illegible] Gilliam	30780 Hazen Rd. Leb.
R H Billings	34480 Tennessee Rd Leb.
Mildred Smith	32600 Denny Sch Rd. Leb.
Judy Gray	33896 Mt Pleasant Rd - Lebanon
Linda Morgan	1110 W Oak - Lebanon
Sharon Leader	1901 Long St. Sweet Home, 97386

(20)

Rowland 2.00

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THANK YOU ENTEK

Name	Address
Ron Baker	820 Binshadler Lebanon
Kathy Baker	820 Binshadler Lebanon
[illegible]	293 E. Ash St Lebanon
Sandi Jensen	39089 Plagman Dr, Lebanon
H. Glen Warner (H.Glen warner)	626 Kay Ave, Brownsville
Dan Nixon	975 West Vine Lebanon
Walter Johnson	37198 Meridith Dr. Lebanon
Katherine L Graves	39003 1/4 Hope Dr Lebanon, OR
[illegible] L. Jackson	34704 Spicer School Rd, Lebanon, Or
Barbara J. Alley	257 Filbert St Lebanon, OR
Bill Lane	27707 Bond Lane Halsey Or.
Ben Gerry	1775 PARK DR. LEBANON, OR
Jane G. Gerry	1775 Park Dr. Lebanon, Or.
[illegible] Hansen	1773 POST LEBANON
Rhonda S Hansen	1773 Post St Lebanon
Tom Davis	1651 Hiatt Lebanon
Margie Meyers	140 Bromil Lebanon
John Stolsig	630 7th LEBANON
Barbara Kelker	775 Ralston Dr Lebanon
Bob Kelker	775 Ralston Dr Lebanon

I

J. Michael Collins
Kristine Collins
Warren Gill
Bill Steele
Daisy Miller
Chris Denny
Nancy L. Pinzino
Janet L. Nadig
Patrick L. Collins
Amy Hayes
Virginia Drew
Jack B. Albion
Connie Shaffer
Jon Jensen
Joella M. Larsen
George Lohner
Carl V. Larsen Col/USMC, Ret
L.C. Edwards
Buzz Collins
Betty Collins

II

Sherry Steele
Jerry McVein
Don Johnson
Francis E. Bresler
Patricia M. Bresler

II

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THANK YOU ENTEK

Name	Address
Sherry Steele	2830 Cascade Dr, Lebanon
JERRY McVEIN	630 E ST. LEBANON, OR.
Don Johnson	1893 R.R. LEBANON, OR
Francis E. Bresler	511 Carlson Dr Lebanon Or.
Patricia M. Bresler	511 Carlson Dr. Lebanon Or.

I

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THANK YOU ENTEK

Name	Address
J. Michael Collins	460 W. Vine St. Lebanon OR
Kristine L. Collins	" " " " "
Warren Gill	530 E. Vine St. Lebanon, OR.
[illegible]	2830 Cascade Dr Lebanon
Daisy Miller	313 - 2nd - Lebanon, Or
Christy Dewey	35409 Laurahan
Nancy L. [illegible]	33489 Millview Way, Lebanon, Or
Janet L. Nadig	610 E. ELMORE, LEBANON, OR 97355
Patrick L. Collins	659 E. Sherman
Amy Hayes	30747 S.W. Fifth, Lebanon
Virginia Drew	320 7th St. Lebanon
Jack B. Allison	2340 4th St.
Connie Shaffer	36279 Middle Ridge
Jon Jensen	34415 Yih Lane, NE Albany
Zella M. Larsen	480 E. Ash. Lebanon, Or
George Lohner	110 [illegible] Rd
[illegible]	480 E. Ash - Lebanon -
J. C. Edwards	529 [illegible] Dr. Eugene
Buzz Collins	659 East Sherman St.
Betty M. Collins	659 E. SHERMAN Lebanon

YOUR NAME WILL APPEAR IN THE MARCH 11, 1987 ISSUE OF THE LEBANON EXPRESS IF YOU SIGN THIS ARTICLE. A $2.00 CONTRIBUTION PER SIGNATURE IS REQUESTED TO PAY FOR PUBLICATION.

THANK YOU ENTEK

Ads to be at first sat at 12:00

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THANK YOU ENTEK

NAME	ADDRESS
Tim SHANKS	38649 PAYNE DR., LEBANON
Glenda Holland	2276 May Ln Lebanon
Sharon K. Luscher	29141 Fairview Rd, Lebanon
Geraldine Voll	573 Harden Dr.
Albert Voll	573 Harden Dr.
Nadine Luscher	530 E. Carolina, Leb
Karin Grace	31321 Blackberry Ln.

Return to: Dennis Yocom no later than noon Monday March 9.

THANK YOU ENTEK

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THANK YOU ENTEK

Name	Address
Anita Allen	PO Box 874 Lebanon, Or
Mercedes I. Altizer, MD	435 W. Maple, Lebanon

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THANK YOU ENTEK

NAME	ADDRESS
Mary L. Sitzler	655 E. Elmore, Lebanon

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THANK YOU ENTEK

Lorraine Zimbrick	735 Walnut Lebanon, Or 97355
Jack Zimbrick	735 S Walnut Lebanon Ore. 97355
W.L. Swander	35861 S Santiam Hwy
Joe Colonnese	38470 Harrington Dr.
B L McCallie	37123 Dogwood Dr.
Robert Ragsdale	31180 South Main Rd.
John Mackey	33911 Eastgate Circle - Corvallis
Joe Abbott	540 Carlson Dr Lebanon Or. 97355
Don Myrtue	185 No Santiam Hwy, Lebanon, Or 97355
Elva Borland	35247 Edo Rd Lebanon 97355
Dan Simmons "LA CABANA"	25 N. SANTIAM Hwy
George Kunders	960 MAIN St. LEBANON
Shirley Kunders	960 MAIN St LEBANON
Bernard Motzinger	Wheeler Loop Lebanon
Lou M Estep	100 Jennings St. Lebanon
Billie Smith	411 MAYER DRIVE Lebanon
Lenwood Smith	" " " "
Lyon Lawrence	41041 Baptist Ch. Dr. LEBANON, OR
Robert J Canay	2796 S Main Rd Lebanon Or 97355
Irene Lawrence	41041 Baptist Ch. Drive, Lebanon

Return to: Dennis Yocom no later than noon Monday March 9.

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THANK YOU ENTEK

Name	Address
Gary Weatherly	960 W Rose Lebanon
Robert E. Weatherly Jr	330 "F" St Lebanon
Carl Lorenz (HB)	348 W. Grant
Coralee & Edwards	PO Box 651 35285 Washburn Hoyts Dr
Edwin D. Otta	40238 Fish Hatchery Dr, Scio Home 1055 Tangent Lebanon Work
Robert E Weatherly SR	1055 Tangent St Lebanon
Lynn J Buchanan	30729 S.W. Larson Lebanon
Jerry L. Hubbard	41370 Keel Mtn. Dr. Lebanon
Third Force for Forestry	(Lynn Buchanan - vice pres)
Rand Hurst (Hurst)	3198 S. Pine St. Lebanon
Sandra L. Stephens	1112 - 5th St. Lebanon
(HB) [illegible] Weatherly	895 W. Sherman, Lebanon
John C. Lutz	31971 Moss St.
Richard L. Gray	410 W. Oak
Stanley C Clayton	608 Jury Lane Lebanon
Edwin R. [illegible]	500 Airport Rd.
Dale W. Stewart	860 W. Oak St.
# 20.00 Steve [illegible]	P.O. Box 624 Lebanon
Geraldine Dubois	591 "D" St. Lebanon
Sue Evans	600 Tangent St.
Tom Evans	600 Tangent St.

Sue + Tom [illegible]

(21)

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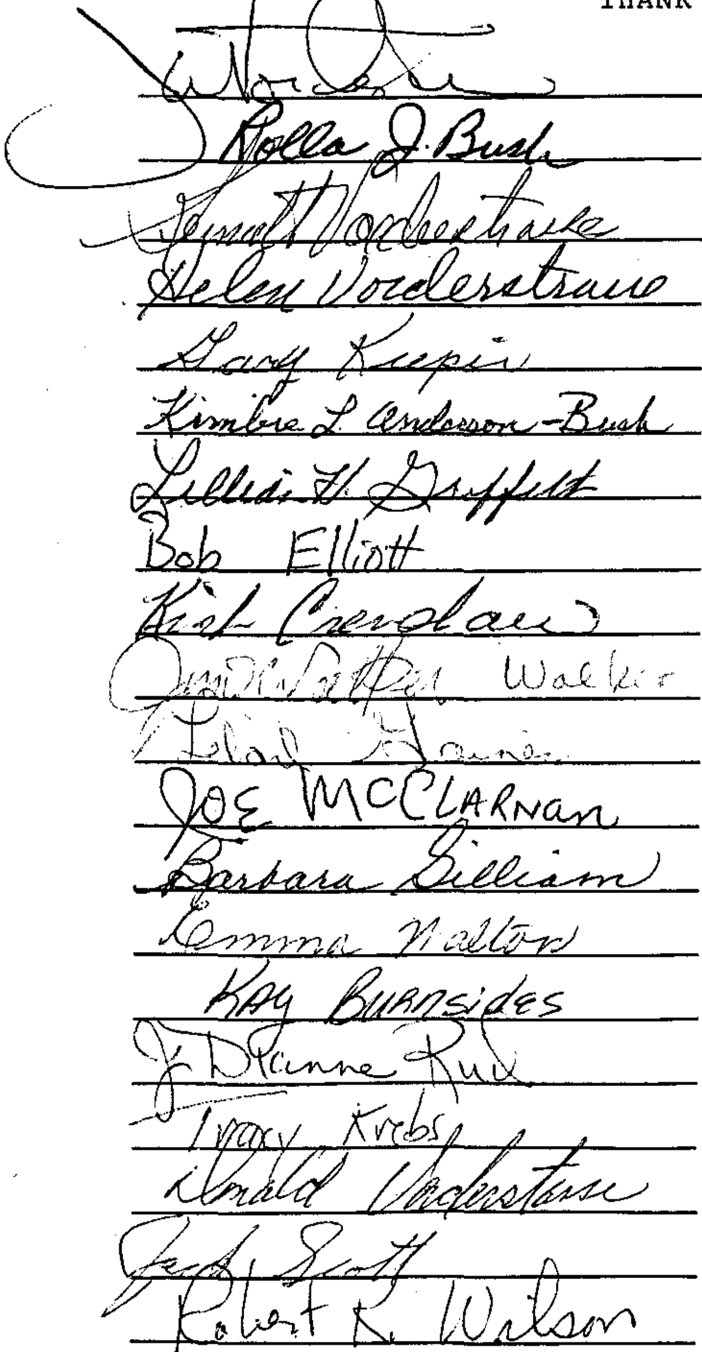
THANK YOU ENTEK



30651 Fisher St Lebanon
725 Cleveland St, Lebanon
30651 Fisher St Lebanon
30651 Fisher st. Lebanon
41079 Baptist Ch Dr. Lebanon
725 CLEVELAND ST LEBANON
491 "B" St, Lebanon, Or. 97355
865 W. Isabella Lebanon, Or 97355
1650 Airway Place, Lebanon
[illegible]
38604 Meridian Rd Scio, Ore
403 Hillview, Leb
30780 Hazen Rd. Lebanon
1191 W. Oak Lebanon
745 Lebanita Dr.
31530 Berlin Rd, Lebanon OR
1611 Post St Lebanon
38750 Golden Valley Dr. Lebanon
33673 Tennesse Rd
35240 Santiam Hwy

20

THANK YOU ENTEK

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THANK YOU ENTEK

Name	Address
[illegible]	990 2nd Lebanon, Or.
Larry Clark	2799 9TH ST, Leb, Or.
Claudia Clark	2799 9th St. Leb. Or

Employees & Family of Jack Thomas Ford

Jack Thomas
Thomas E. Clark
Robert P Thomas
Harry Carter
Dan Barnes
Michael Bell
James B Andrelik
Cynthia Gaskey
Terry Mcthaney
Belinda Morris.
Al Whitehead
Greg Hildebrand
Carl Ames
Jim ~~[illegible]~~ Ragan
John Pettner
Daniel Bishop
David Widmark
Brenda Clark
Sheryl Kindopp
Barbara Thomas.
Mike Lee
Larry Clark
Claudia Clark

~~[illegible]~~ 23x2 = 46.00

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THANK YOU ENTEK

Thomas E Clark 2155 So 5th Lebanon Ore 97355
Robert P Thomas 990 2nd St Lebanon, Ore 97355
[illegible] 33438 Brewster Rd Lebanon, Or
[illegible] 1616 Fir St Sweet Home OR
Michael Bell 1820 39th AV. SE Albany ORE
James B. [illegible] 1239 Grove St. Leb. OR 97355
Cynthia R. [illegible] 973 29th ave Sweet Home, OR 97386
[illegible] ~~[illegible]~~ 990 2nd Lebanon Or 97355
[illegible] 3823 S.E. Glendale St Albany
Belinda Morris 44594 Whiskey Butte R. Sweet Home
[illegible] Thomas 735 Glenwood St. Lebanon
[illegible] 990 Second St Lebanon
[illegible] Ames 880 W. Carolina St. Lebanon
Jim [illegible] 530 West D Street
John K [illegible] 355 12TH st
Daniel A. Bishop 2324 May Lane Lebanon
[illegible] 310 W. Oak Lebanon
Brenda Clark 2155 So 5th Lebanon
[illegible] 820 [illegible] St Lebanon
Barbara Thomas 735 Glenwood St Lebanon

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THANK YOU ENTEK

NAME	ADDRESS
Jack Bullard	715 Ralston Dr. Lebanon
Richard L Alley	711 Glenwood St Lebanon
John L. Williams	30235 Fairview Rd Lebanon
Don Stitz	730 C St Lebanon, Or

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THANK YOU ENTEK

Name	Address
Donna Arnold	2723 8th St. - Leb
Joyce A. McCoy	722 Randall Dr, Lebanon
[illegible], RKI, Inc	1175 Main St.
Mitch Gordon, RKI, Inc	1175 Main St.
Barry Johnson, [illegible]	30775 Walnut Albany
Diane Bishop	10295 Weldon Ct SW, Albany
Betty Edwards	1010 West 'E' St
Mattie [illegible]	110 Central Ave
Donna Whitaker	130 Central Ave.
~~Alan~~ & Penny McKinney	289 Cedar Dr.
Diana Satrum	860 W. Carolina
[illegible]	327 W 1 ST Albany, OR
LaVonne Messmer	340 View Lane Lebanon
Vickie R. Coberly	710 Elmore Lebanon
Gary L. Coberly	710 Elmore Lebanon

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THANK YOU ENTEK

Bruce Paxton	431 - D - St Lebanon
Duane Miller	39684 Baptist Church Dr. Lebanon
Debbie Hostetler	34070 Powell Hills Loop Shedd, O
Jerry Palmer	865 W. E St. LEBANON
Devin E. Baker	140 Kees St. Lebanon
Corinne M. Oeder	755 8th St Lebanon
Jon Davis	1651 HIATT ST.
Machelle Elder	42152 UPPER BERLIN RD.
Ron Garber Garber	20 Groshong Rd, Lebanon
Ronnie Marshall	1340 Franklin Lebanon
Rod Herbardson	720 16th St Lebanon Ore
Kerry A. Beach	1405 Franklin Lebanon, Or
Jeff Cole Jeff	890 W. Grant St.

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THANK YOU ENTEK

Name	Address
James Oeder	1050 W. OAK
Mark Wilson	1050 W. Oak st.
Mike Harber	30573 Fairview Rd
Gary Ryan	30178 Fairview Rd.
Bert French	39766 McDowell Cr Dr.
John Williams	30235 Fairview Rd
Raymond E Dorby	30534 Merry Lane Leb.
Doyle Waltenburg	30552 Merry Lane Leb.
? Alan Eggen	168 W Vine Leb
Ruth A. Coddington	37170 Rock Hill Dr. Leb.
Anita J. Surmon	1830 S. Main Leb.
Lester W Surmon	1830 So Main Lebanon
Robin Atkin	469 W. Sherman Lebanon
Perry L Bush	30204 Sodaville Mt Home Rd Lebanon
Wenona V. Bush	" " " " "
Marjorie A Eggen	168 W Vine Lebanon Oregon
Mary K. MacLean	1040 - 6th St Lebanon
D. Atkin	33573 Jotem Pole Rd. Leb. Ore
Dolores Atkin	33573 Totem Pole Rd Lebanon, Ore
Alan D. Atkin	469 West Sherman Lebanon, Ore
D Potter	2639 10th St Leb Ore

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THANK YOU ENTEK

Name	Address
Dale Mines	607 3rd Sweet Home, OR. 97386
Mr & Mrs Ron Danielson	1129 2nd Ave Sweet Home, Or
Don L. Schwartzengraber	249 D St. Lebanon OR 97355
Dean Wirbs	766 Elmore Lebanon Ore 97355
Todd Whitehead	33997 Totem Pole Rd ORE 97355
Leona Wallam	2681 Stoltz Hill Rd. Lebanon, Ore.
Vila E Adkins	1895 Cascade Dr Lebanon
Laura Hulsen	249 F St. Lebanon, Oregon
Eleanor Reemer	1280 - 13th Pl. Lebanon, Ore. 97355
Irene Smith	42325 Fish Hatchery Dr Scio 97374
MR & Mrs. Richard A Pierce	825 Tangent Apt #6 Lebanon Or
Aaron D Croshong	1050 W. Oak Lebanon Ore.
Mr. & Mrs. James M. Joslin	4/0 910 Central Ave Lebanon, Or. 97355
Mary A. Small	2723 8th St. Lebanon, Ore
Linda A. Oeder	755 8th St. Lebanon, Ore.
Timothy J. Frost	376 Kees St Lebanon Ore
Jim Wolfe	204 Cascade Dr Lebanon, Or.
Cheryl Brown	36680 Edgemont Dr Leb. Or
Glenn & Marge Yocom	2796 S Main # 33 Leb Or

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THANK YOU ENTEK

Sally Wolfe	204 Cascade Dr. Lebanon
Kay Rilke	33770 Belleisle, Scale Rd.
Bobby K. Rilke	320 12th St. Lebanon Ore.
Linda Wolfe	959 Cleveland St. Lebanon
Aleta Summers	273 Larkspur, Lebanon
Ronald D. Wolfe	959 Cleveland St. Lebanon

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THANK YOU ENTEK

Robin R. Castle	37519 KGAL Dr., Lebanon
Karen L. Boef	130 Kari Pl. Lebanon
Clara Cummings	115 Central Ave. Leb.
Betty Alston	P.O. Box 86 Lebanon
Betty Scott	251 E. Oak St Lebanon
Yvonne Oeder	755 - 8th Lebanon
Jacinta + Kathryn Thomson D.O.	441 Main Lebanon
Susan B. Windell	550 E. Vine, Lebanon

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THANK YOU ENTEK

[signature]	PO Box 247 Lebanon
Lee Scott	351 E. Oak St Lebanon
James P. [illegible]	PO Box 247 Lebanon
Kathleen Coddington	452 C St.

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THANK YOU ENTEK

[signature] 550 E. VINE ST.	Randy Wilson 40 E. MAPLE LEBANON
Delmer Johnson	555 16th St
Donna Johnson	555 16th St
Philip [illegible]	40 E Maple Lebanon
Chuck Begley	1590 W. 16th Place

3

Don Barnes

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THANK YOU ENTEK

Name	Address
Steve Baker	30430 Ty Valley Rd
Cindy Baker	30430 Ty Valley Rd

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THANK YOU ENTEK

Name	Address
[illegible] 1910 Violet St.	
Faith Headley	39482 Star St [illegible]
Jim Johnson 39472 Star Street	
[illegible] Johnson	39472 Star St.
Larry James	29272 Mt Home Rd
Bruce Willems	725 Lebanite Dr
Matt [illegible]	38129 [illegible] Drive
Robert L. Wood	36345 Hillside Lane [illegible]
Donald A Johnson	38644 Green [illegible] Lebanon
Peggy Fuller	75 Berry - Lebanon
Dorothy Thompson	37628 [illegible] Dr. Lebanon OR
Jean James	782 Randall Dr Lebanon

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THANK YOU ENTEK

NAME	ADDRESS
SHARON BRIGGS SB	590 MAIN ST.
GREG GOURLEY GG	P.O. BOX 523
BOB WOLFER RLW.	540 E. ROSE ST.
NANCY MEHR	30755 BROWNSVILLE RD
JACK PHILLIPS JP	65 EAST ASH LEBANON, ORE.
LINDA EMMERT	36789 HONEY SIGN LEBANON
DUANE EMMERT	36789 HONEY SIGN LEBANON
Cody Crenshaw	1639 Park Drive Lebanon
[illegible]	38500 Ulerich Dr. Lebanon
Ben Brandon	4390 Santiam Hwy
VERN WOLD	525 W-12th APT #7 LEBANON
Thomas O'Hearn	33864 Tennessee Road
Ron Peters	33532 Bellinger Scale Rd.
Helen Thomas	1590 S. Second St. Lebanon
Albert L. Stock	1561 Franklin St. Leb
John Hermans	520 Crowfoot Rd.
Jessie Butler	111 Crowfoot Leb.
Mack McMullan	38129 Ulerich RD
Michael [illegible]	772 S Main Leb.

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THANK YOU ENTEK

NAME	ADDRESS
Cliff Campbell	1570 16th Pl
Gene Moseman	657 W Vine
Alan Anderson	P.O. Box 799 Lebanon, Ore
Barbara A. Reed	39842 Laconch Dr. Lebanon, OR
Albert L Miller	86 Cedar Drive Lebanon, Oregon
Imogene M. Miller	86 Cedar Drive Lebanon, Oregon
Dorothy Abraham	2870 Hazel Dr. Lebanon OR.
Katherine M Smith	1130 W Maple Lebanon O
Marvin Hicks	1296 So. MAIN Lebanon O.
Marge Lowe	405 Edgewater Dr. Lebanon, Ore.
Gary Heintzman	585 E Rose Lebanon OR
[illegible] Hall	375 Wasson Lebanon
Christine L. McConnell	375 Wasson Lebanon
[illegible] Hall	375 WASSON Lebanon
Bernita Clark	2479 Porter St. Leb.
Dale R. Bilyeu	880 Main St. Lebanon, Or
Ronald McBride (Ronald McBride)	890 Main St Lebanon O
Marvin Pelton	750 Baker St
Wm C. Walsh	37150 Dogwood Dr.
Kurt M. Towranko	134 2nd St. Lebanon, OR

20

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THANK YOU ENTEK

Name	Address
Thelma K. Toombs	1299 Franklin Lebanon
Kenneth I. Toombs	1299 Franklin Lebanon
Harry L. Moore	43180 Island Inn Dr Lebanon
Kimberly K. Toombs	1299 Franklin Lebanon

YOUR NAME WILL APPEAR IN THE LEBANON
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THANK YOU ENTEK

	NAME	ADDRESS
2-	Dure W Lott	742 Randall Dr Lebanon OR.
2-	Jay W White	32973 Tennessee Rd Lebanon Ore
2-	[illegible]	755 Lebanite Dr, Lebanon
2-	Joe Yearus	30610 Santiam Hwy Lebanon
2-	Merle Hester	295 A. St. Lebanon Oregon
2-	Thomas J Reuter	31242 S. Main Lebanon, Oregon
2-	James F [illegible]	32388 Berlin Rd Lebanon
-0-	Ken Evenhus	390 Main ST.

8

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	NAME	THANK YOU ENTEK	ADDRESS
10.00	Dave Copley DAVE COPLEY		38756 RIVER DR LEBANON
5.00	Karla Finney		523 S.E. 32nd Ave #2
5.00	Mary E. Mess		865 Lebanite Lebanon
	G S Mess		865 Lebanite Dr. Leb
$2.00	Louise Butler		91 Crowfoot Rd.
$2.00	HARLAN FAIRMAN		180 WILLIAMS ST.
	Joyce K Copley		38756 River Dr Leb
	Hal Brayton		1510 South 7th, Leb.

7

a $2.00 donation to help cover the cost of the $600.00 ad would help. Thanks

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THANK YOU ENTEK

NAME-	ADDRESS-
Donald L Cummins	1151 FRANKLIN - LEB -
Petie Cummins	1151 Franklin - Leb.
[illegible]	635 Elens Dr.
Bud Moss	31513 - So. 5th Lebanon.
Dee Gentry	897 Hiatt, Lebanon, Oregon
Renee L Good	942 W. Vine #3 Lebanon
Helen Davis	2431 82nd St. apt. 1 #
Sharla Irain	P.O. Box 766 Lebanon
Bruce Overbeck	631 E. Ash Lebanon
Nancy Simpson	3179 Columbia Lebanon
Bill Dixon	668 Main street Lebanon
Ruth L. Gould	38129 Weirich Dr. Sp. 7 Lebanon Ore
Norma I. Forbes	61 E. Jennings Lebanon, Ore.
Frances L. Gray	38960 River Dr. Lebanon. Or
Martha King	37233 Meredith Dr. Leb. Or.
Janet Sundberg	PO Box 532 Lebanon
David J. Andalik	697 Tangent St. Lebanon
Hazel Byrd	1396 Cascade Dr.

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A $2.00 DONATION WOULD HELP COVER COST OF AD -- THANKS --

THANK YOU ENTEK

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THANK YOU ENTEK

Name	Address
LaVona L. Howe	1390 Evergreen Sweet Home Ore
Lynda L Holder	27335 Fern Ridge Rd Sweet Home Ore
Eleanor E. Hoyt	315 8th St. Lebanon, Ore
Alma Broughton	969 Cleveland St. Lebanon
Allen R Gordon	2796 So Main Road Sp 96
Ethel M. Gordon	2796 So. Main Road Sp 96
Albert E Gentry	897 Hiatt St Leb
Donna Reed	242 6th St. Leb.

9

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THANK YOU ENTEK

NAME	ADDRESS
Warren Beeson	3044 Columbine, Lebanon
Barbara Beeson	3044 Columbine, Lebanon
Don [illegible]	506 Wheeler St. Lebanon Or.
Sharon Ricke	467 Mary St. Lebanon, OR.
[illegible] (Kwong Mah)	327 Kees Lebanon
Eleanor Schulte	280 12th ST
Bill Olson	1142 W. OAK ST. Leb
[illegible]	760 E Elmore Lebanon
[illegible]	38615 First Creek Lebanon
[illegible]	30620 Butte Creek Rd Lebanon
Belinda Pruett	2004 S. 2nd #9 Lebanon, OR.
[illegible]	785 WEST 'E'. LEBANON OR.
Tom Mechals	186 CEDAR DR LEBANON, ORE.
John Richard	315 W 11th Leb
Walt Griffith	30994 Old Santiam Hwy Lebanon
Kimberly R Griffith	30994 Old Santiam Hwy Lebanon

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THANK YOU ENTEK

NAME	ADDRESS
Molly J. Krech	3630 S Santiam #1, Lebanon
~~[illegible]~~	~~1040 Park St, Lebanon~~
Richard A Mudrow	470 E [illegible] St, Lebanon
[illegible]	37087 [illegible], Lebanon, Ore

3

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THANK YOU ENTEK

Melvin M Haagland	205 Honeysuckle, Lebanon
Bryan Honey	38129 Weirich Dr., Lebanon
Melvin L Wilson	212 E. Vine St. Lebanon
Kori Price	616 Vaughn Ln, Lebanon
Rose M. Dagland	205 Honeysuckle ✓
Susan Bresler	746 Rhododendron ✓
Mike Price	616 Vaughn LN ✓
Nyla R. Lott	742 Randall Lebanon

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THANK YOU ENTEK

NAME	ADDRESS
R. G. [illegible]	
James L. Ricks	467 MARY ST. Leb
Brenda A. Rohin	42 Market #14

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DEAN CRITTENDEN
JIM McCAMMON
JOHN FERGUSON
TONY SEDIVY
SHIRLEY WARD
BOB LARKMAN
MINNIE RIEMER
GERALD JOHNSON
ANN JOHNSON

JILL CUMMINGS
LUCINDA GRACE
LESLIE JENSEN
DONALD SCHMITZ
RANDY FERGUSON
MARK GUNNISON

ARLENE McPHERSON
MRS. S.C. MYERS
EARLENE GILSON
GARY WIDRIG
LOUISE CRITTENDEN
MARION PRICE
ZOE ANN PULLIAM
LARRY PRICE
BILL PULLIAM
PAT GRUEBELE
SKIP BECKLER
GLORIA STANLEY
ROSI SMITH
JOANN COAKLEY
LESLIE BOIES
ALVENA BOIES
KELLY RIETZ
DONNA NORTON
PHYLLIS TACY

Return to: Dennis Yocom no later than noon Monday March 9.

THANK YOU ENTEK

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THANK YOU ENTEK

Name	Address
Jill Cummings	41938 Cutoff Dr Leb
Lucinda Grace	140 Walker Road
Leslie Jensen	30270 Townsend Rd. L.O.
[illegible] Donald Schmitz	30786 Sodaville cutoff Dr Leb
[illegible]	625 W 12 #2 Lebanon
Randy Fugon	2413 So. Santiam Lebanon

6

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THANK YOU ENTEK

Name	Address
Dean Crittenden	37152 Deadwood Dr Lebanon
Jim McCammon	36835 Edgemont Dr Leb.
John Vergun	1400 Williams Apt Lebanon
Tony Sedivy	31776 Savannah St Lebanon
Shirley Ward	790 Tangent St.
Sal Lachman	2760 S Santiam
Minnie Reimer	2752 S Santiam Hwy
Gerald Johnson	1665 Post Lebanon
Ann Johnson	1665 Post Lebanon

Monday March 9

THANK YOU ENTEK

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THANK YOU ENTEK.

Name	Address
Arlene McPherson	1397 Grove St., Lebanon
Mrs. S. C. Myers	262 E. Vine St "
Earline Gibson	212 E. Vine "
Gary Widrig	625 F Street "
Louise Crittenden	37152 Deadwood "
Marion Price	110 Kari Place
Zoe Ann Pulliam	966 Cleveland Leb
LARRY PRICE	110 KARI PLACE
Bill Pulliam	966 Cleveland Leb.
Pat Gruebele	30770 S.W. Larson Leb
Debbie Gruebele	" " " "
Skip Beckler	1751 S main Lebanon
Gloria L Stanley	1060 So Main Leb Ore
Rosie Smith	1188 Main
Joann Coakley	2570 S. 5th St Lebanon
Leslie a Boies	2885 S SANTIAM LEBANON
Alvena E. Boies	2885 S. Santiam Lebanon
Kelly Kutz	2840 S. 2nd Lebanon
Vonna L. Norton	P.O. Box 114 Lebanon
Phyllis E. Lacy	34433 Meridian Lebanon, Oregon

20

THANK YOU ENTEK

We , the undersigned, support Entek Manufacturing of Lebanon. We give permission to have our name used in a promotional advertisement to appear in the Lebanon Express on Wednesday, March 11, 1987.

The advertising copy will read:

ENTEK

We're glad you came to Lebanon. We support you. We appreciate the jobs you're providing. We think you've taken great care to provide a safe, new industry in Lebanon.

THANK YOU ENTEK

Name	Address
Ike Kauffman (Ike Kauffman)	30807 Ty Valley Rd. Lebanon, Or.
Marv Emmert	28191 Liberty Road Sweet Home OR
Guy Justice	465 Edgewater Dr. Leb.
Jon & Connie ERWIN	1280 Filbert St Lebanon.
Arlen Emmert	28122 Liberty Rd. Sweet Home
R.R. Burkitt M.D.	515 N. Santiam Hwy, Lebanon
Galen Burkey	30801 Ty Valley Rd Leb. Ore.
Nancy Burkey	30801 Ty Valley Rd, Leb. Or.
Steven Burkey	30801 TY VALLEY RD LEB. OR
Jack Powell	35914 Tennessee Road Alb Or.
Herb Pierce	33634 Sunny Ln. Lebanon
Cricket Braught	38109 Vine St Lebanon
Cheryl Ray	1590 David St, Lebanon
B.J. Dadd	P.O. Box 755 Lebanon
Bobby R. Clark	2860 Hazel Dr Lebanon
Pauline E. Clark	2860 Hazel Dr Lebanon
Diana L. Hobbs	925 Cleveland Lebanon

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THANK YOU ENTEK

Name	Address
[signature] (EBBERT)	882 GARWOOD, Lebanon, OR.
Larry L. Black (BLACK)	28030 MERIDIAN HTS LP SWEET HOME
[signature] E. Wagoner (WAGONER)	38110 Hwy 228 Brownsville OR
[signature] (WARD)	227 E. Isabella Lebanon Or
Lawnna Devlin (DEVLIN)	41023 Hwy 228 - Sweet Home
[signature] (THOMPSON)	36304 BLUEBERRY Hill Rd, LEBANON
Russell B. Hurst (HURST)	789 50TH AVE Sweet Home
Greg E. Cruzan (CRUZAN)	P.O. BOX 1561 ALBANY OR
Susan H. Ebbert (EBBERT)	882 Garwood St, Lebanon
Greg M. Toepfer (TOEPFER)	33827 Tennessee Rd
Allen L. Henderson (HENDERSON)	762 RANDALL Dr.
Allen R Green (Skip)	3038 Bartley Pl, S.E., Albany, Or
Wayne Robbins	160 Oak Lane, Lebanon Or.

13

YOUR NAME WILL APPEAR IN THE MARCH 11, 1987 ISSUE OF THE LEBANON EXPRESS IF YOU SIGN THIS ARTICLE. A $2.00 CONTRIBUTION PER SIGNATURE IS REQUESTED TO PAY FOR PUBLICATION.

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THANK YOU ENTEK

NAME	ADDRESS
-0- Milo D. Savage (SAVAGE)	582 E GRANT LEBANON

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THANK YOU ENTEK

NAME	ADDRESS
Delita N. Ellis	37707 River Dr. Lebanon
Dorothy A. Snyder	500 E. Oak Lebanon
Betty Schackmann	370 W Sherman Lebanon
Roger R. Wickey	29879 Bartles Cr. Dr. Lebanon
R. C. Kern	670 East Rose Lebanon
Allen King	37233 Meridith Lebanon
Dorla Van Epps.	489 Walker Rd. Lebanon
J. W. Townsend	1960 9th St. Lebanon
Glen Van Epps	489 Walker Rd. Lebanon
Fisher / Shield Realty	1155 Park, Lebanon, OR
Larry Nelson	2720 Cascade Dr. Lebanon
Robert B. Ayers Jr.	120 Cedar St. Lebanon
Valley Auto Body	2777 So. Main Leb.
Jim Klee	3166 St Main Leb.
James Van Over	31166 Berlin Rd.
Olivia Rutherford	30299 Horseshoe Loop.
Mary Van Over	31166 Berlin Rd. Leb.

17

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THANK YOU ENTEK

NAME	ADDRESS
Leon J. Olson	1055 Pleasant Valley Rd. Sweet Home
Margaret C. Reeves	620 E. Rose, Lebanon, OR.
Frank Girod	625 E Rose, Lebanon, OR.
Nadine Girod	625 E Rose, Lebanon Or.
Floyd Graham	180 E Rose - Lebanon Or
Frances Way Graham	" " "
Mary J. Walker	P.O. Box 51 Lebanon, Or

Wkday-noon

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THANK YOU ENTEK

Name	Address
David E. Bennett	37245 Skyline Dr.
William A. Rauch (RAUCH)	29394 Spease Rd.
Wm. R. Thomas	1570 S. 2nd Lebanon, Ore.
Vincent F. Bishop	740 W Isabella Lebanon
[illegible]	485 Harrison St- Lebanon, Or.
Esther F. Walker	890 W. D Street, Lebanon, OR
Janice Horner	28223 Pleasant Vlly Rd., Sweet Home OR
Veris Davenport	835 W. D Lebanon, OR 97355
Donnie [illegible]	1810 Strawberry Lane Lebanon OR
Roy Graves	375 6th St Lebanon, Ore
Lawrence Morley	Mayer Lane Lebanon Ore
[illegible] McHill	80 E. Maple St, Lebanon
Kevin J. Freeman	147 Main St Lebanon

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THANK YOU ENTEK

Dean Barnes	2080 Omire Lane Lebanon OR
Sarah Barnes	2080 O'mire Ln. Lebanon Or.
Janna Barnes	2080 Omire Ln. Lebanon Or.
L. E. Abraham	404 E. Isabella St. Lebanon, Ore.
[illegible] (MARK)	370 Center ST Lebanon
Roy M. Johnson	595 W. Maple St. Lebanon, Ore
Maxine Abraham	404 E. Isabella St - Lebanon
PO. Bob McGuire	33757 Santiam Hwy.
Dave Jensen	30270 TOWNSEND ROAD

8

FACTS ABOUT ENTEK MANUFACTURING INC.

WHO WE ARE

Entek Manufacturing Inc. is a locally owned Oregon corporation located in an industrial area in Lebanon. Entek will supply products nationwide for automotive batteries and other products in the growing high technology microporous membrane industry.

Practically all of Entek's current staff of twelve employees, mostly engineers, scientists, and technicians, live in Lebanon and Entek expects to employ about 70 Lebanon residents by the end of the year.

Upon receipt of the DEQ discharge permit, Entek began construction of the plant and installation of equipment in order to fill orders for its product on schedule. Entek is investing 8 million dollars in the Lebanon community.

OUR PHILOSOPHY

Entek Manufacturing has a stake in the welfare of Lebanon, both as individual citizens with families in the area and as an employer. We are determined to be a good neighbor and a desirable neighbor. Our system for controlling air emissions is the best available technology and we are spending about 25 percent of the plant equipment costs to obtain the best pollution abatement equipment available anywhere in this country.

We want our neighbors in Lebanon to feel that Entek is an asset and to realize that we are interested in their welfare.

PUBLIC AND EMPLOYEE SAFETY

not a [illegible] product – [illegible]

Concerns have been voiced by some persons on Entek's use of Trichloroethylene (TCE) in our manufacturing operations. We have conducted extensive research on TCE, a common solvent that has been used without ill effects by many industries for over fifty years. We have found that epidemiological studies of workers exposed to TCE have shown that it is a safe solvent when handled with the same care that people use with ordinary gasoline for their automobiles. Studies also show that it is not carcinogenic to humans.

OSHA has determined the safe level of TCE for use in the work place. Despite concern to the contrary, there is a safe level. Our advanced pollution control equipment will reduce the emissions of TCE so that they are less than 7 percent of this allowable safe level. This low level emission is quickly diluted in the atmosphere to extremely low concentrations which have been shown to pose no risk to human health.

No new evidence not considered by the Dept
The Dept did hold an informational hearing – no new evidence
There is no reason to reconsider the issuance of the permit

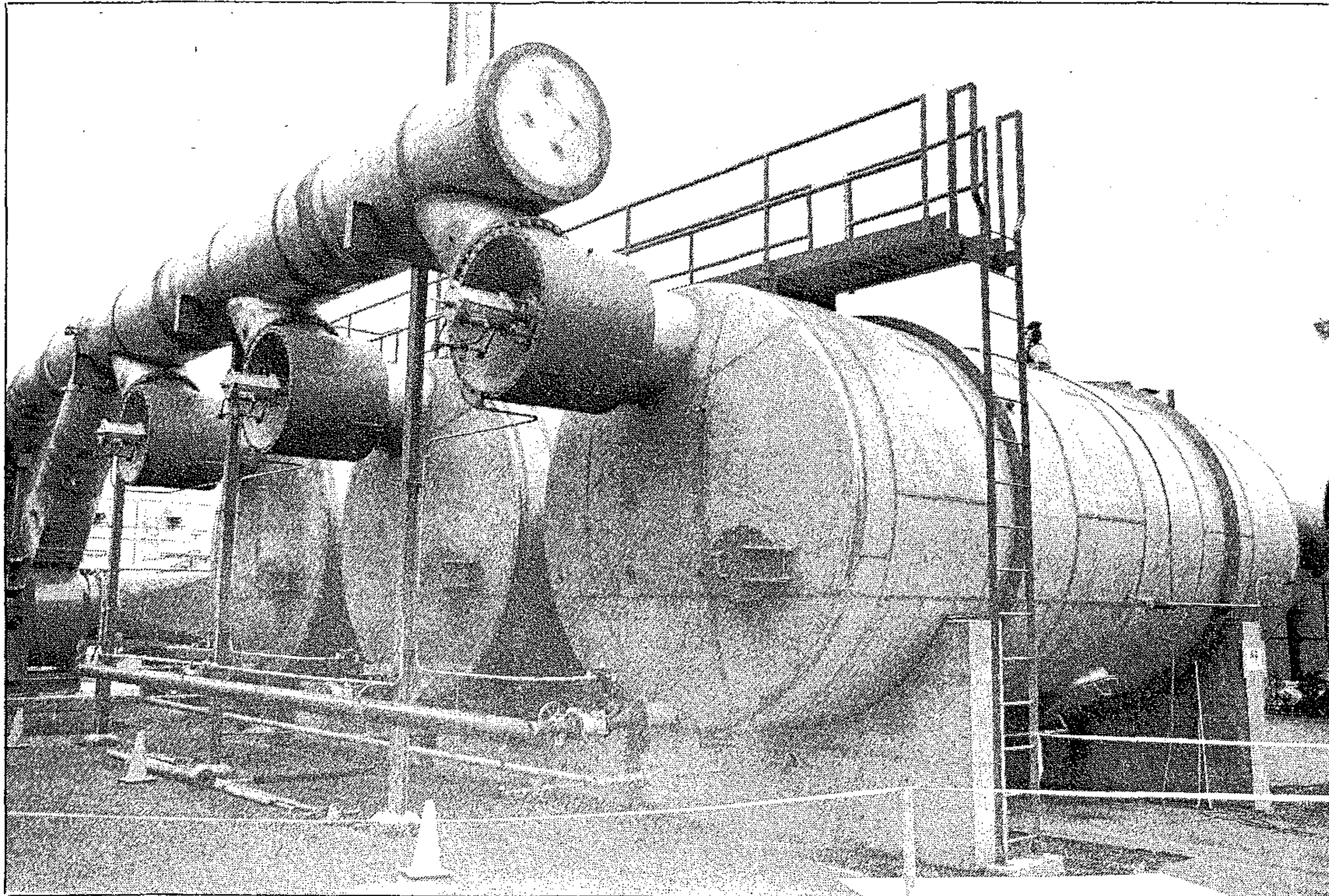

Photo by Hal Brayton

Expensive safety equipment

This is the safety and pollution control equipment to be used by Entek Manufacturing to meet DEQ emission and protection standards for discharge of TCE into the workplace and into the air. It costs approximately $1.7 million. The three large round tanks hold the equivalent of 20 million acres of activated carbon beds which take the TCE out of the air. There is also a distillation column to purify the water, built in back up systems, and extensive monitoring and control systems in the machinery.

Fiddlers hold meeting here; state championships planned

Some of the top fiddlers in the West who are members of the Old Time Fiddlers Association held their March meeting on Sunday, March 1, at the American Legion Hall in Lebanon.

The meeting was hosted by District No. 6 and there were fiddlers from six districts who joined them, some from the Oregon coast, Portland and the state of Washington.

American Legion's Santiam Post No. 51 and Auxiliary of Lebanon served a free dinner to a capacity crowd of senior citizens at noon. Later, the Auxiliary served homemade pies, with proceeds going to the veterans and rehabilitation projects at the Veterans Hospital in Roseburg.

An oldtime fiddling program was presented by 46 members of the association, including the Booker family which has eight children and grandparents playing the fiddle.

Dancing was enjoyed by the crowd from 1 to 5 p.m,.

The Old Time Fiddlers again will hold their state championships at Lebanon Union High School May 8 and 9, 1987.

Jack Walker, Noti, president of District No. 6, announced they will return Oct. 11 to Lebanon for their fall meeting at the American Legion Hall.

Waterloo receives $25,000 for street

WATERLOO — The City of Waterloo has received a $25,000 grant from the Oregon State Highway Department.

At the March 3 council meeting, it was voted to contract services from JMS Engineering of Salem to design and oversee paving of 4th Street.

Councilor Ernest Scott moved to accept 4th Street and Davis Street which have been deeded back by John Wilmot. The vote was unanimous.

The next city council meeting will be at 7 p.m. on Tuesday, April 7.

Shop At
Gore's

Expensive safety equipment

This is the safety and pollution control equipment to be used by Entek Manufacturing to meet DEQ emission and protection standards for discharge of TCE into the workplace and into the air. It costs approximately $1.7 million. The three large round tanks hold the equivalent of 20 million acres of activated carbon beds which take the TCE out of the air. There is also a distillation column to purify the water, built in back up systems, and extensive monitoring and control systems in the machinery.

Pros, cons are aired at Entek session

Approximately 125 persons attended a public information session March 3 on the granting of an air discharge permit to Entek Manufacturing of Lebanon. The meeting was held at Lebanon High School by state Department of Environmental Quality (DEQ) representatives.

Not all persons were "hostile" about the permit being granted, as has been reported in at least one statewide newspaper. Perhaps as many as 15 or 20 persons strongly questioned the permit granting. Approximately an equal number indicated their support of the granting. The remaining members of the audience either listened only or asked general information questions.

The meeting was held, according to Carolyn Young, a public affairs manager for DEQ, because many of the 62 letters received by the state agency asked for more information.

Young stressed that the March 3 meeting was a public information session only, not a public hearing on the permit application.

In fact, by the time of the meeting, DEQ officials had announced they would grant Entek a permit to discharge up to 120 tons of tricholorethylene (TCE) per year from its Lebanon manufacturing plant. Entek will make thin microporous membrane plastic sheets for car batteries and other products. Owner Jim Young said he plans to employ up to 70 persons by the end of the year. Limited production is expected to begin in approximately two months.

DEQ did not hold a public hearing on Entek's application. After the public comment period ended February 16, the state agency approved the request within a few days because, as Young said, the TCE levels will be "well within the margins of safety, even in a worst-case scenario." The permit was issued on health and environmental factors, not on popularity, Young added.

Opponents of the permit granting were upset that a public hearing had not been held, or that the permit granting had not been delayed longer so more information could be obtained.

Young said that TCE is commonly used by a lot of Oregon businesses, and that DEQ has a lot of experience with TCE. Lloyd Kostow, in charge for air quality for DEQ, said his agency had no justification for holding up the Entek permit.

Some questioners expressed fear for the future health of their children. Others asked to be protected 100 percent, or have written guaranties that people living close to Entek will be safe 20 or 30 years from now.

Persons asked questions about air contamination, leaks into ground water, monitoring procedures, clean up of spills, how TCE mixes with the air, will the ground around Entek be sampled periodically, are baseline samples being done, is the 65-foot height of the stack high enough to properly dissipate the TCE vapors, what are the limits of air pollution in the mid-valley, and how the equipment Entek will use to keep TCE at safe levels will work?

DEQ officials answered or attempted to answer all questions. The meeting lasted approximately two and a half hours.

Chamber supports Entek and serial levy

Entek Manufacturing and the Lebanon High School serial levy got a solid show of support, while the National Forest Service's preferred alternative for the Siuslaw National forest got a thumbs down Friday from the Lebanon Chamber of Commerce Board of Directors.

The board unanimously approved a motion to show its backing of Entek and urged other Lebanon groups to write letters

tery separators. Fumes from the chemicals are discharged into the air, requiring a permit from the Oregon Department of Environmental Quality. The DEQ reported that emission levels are within safe margins, and granted the permit.

The board also gave unanimous support to the Lebanon High School serial levy. The serial levy, which is for $750,000 over a three-year period,

"undeveloped areas", even though 21,136 acres was set aside in three wilderness areas on the Siuslaw in the 1984 Oregon Wilderness Bill.

The chamber resolution calls for the National Forest to withdraw its plan and replace it with one that meets the following conditions: 1) maintain the economic needs of communities adjacent to the Siuslaw National Forest by providing a sustained

board appointed Steve Hudson of Northwestern Telephone to fill a two-year term on the board; decided to oppose a county-wide room tax if the proceeds are to be administered by the Albany Convention and Tourism Bureau; heard a report from Dave Cloud, chair of the chamber's economic development and management committee, outline the committee's goals; learned that Warren Beeson, chamber manager, has

Shop A
Fo

$
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• Pepsi Free
• Diet Pepsi
• Pepsi Light
• Mtn. Dew
• Slice & Diet Slice
ALL FLAVORS
Orange
Cherry
Apple

Chamber supports Entek and serial levy

Entek Manufacturing and the Lebanon High School serial levy got a solid show of support, while the National Forest Service's preferred alternative for the Siuslaw National forest got a thumbs down Friday from the Lebanon Chamber of Commerce Board of Directors.

The board unanimously approved a motion to show its backing of Entek and urged other Lebanon groups to write letters and sign a petition to show its support.

"I think you can write off our future for a considerable length of time, if Entek doesn't happen," said Coralee Edwards, a board member. "It will affect everyone."

Entek, which manufactures plastic for car batteries and other products, announced last December that it would be moving its Tangent-based operations to the former Commodore mobile home plant on Hansard Avenue in Lebanon. The company said it expected to employ some 70 persons by the end of the year.

However, the firm has come under fire from a few area residents who are concerned about the use of trichloroethylene (TCE), a solvent used in manufacturing battery separators. Fumes from the chemicals are discharged into the air, requiring a permit from the Oregon Department of Environmental Quality. The DEQ reported that emission levels are within safe margins, and granted the permit.

The board also gave unanimous support to the Lebanon High School serial levy. The serial levy, which is for $750,000 over a three-year period, would be used to replace and insulate the roof. A mail vote will be utilized with ballots being distributed on Friday.

In another key issue, the board unanimously approved a resolution opposing the National Forest Service's preferred alternative on the proposed land and resource management plan and draft environmental impact statement for the Siuslaw National Forest.

The preferred alternative would close 40 percent, or 248,000 acres, of the forest to any type of timber management. Of the 248,000 acres, 154,000 acres would be set aside for spotted owls, pileated woodpeckers, silverspot butterflies, riparian areas, and other non-timber uses. National Forest Service planners also want to set aside 11,470 acres as "undeveloped areas", even though 21,136 acres was set aside in three wilderness areas on the Siuslaw in the 1984 Oregon Wilderness Bill.

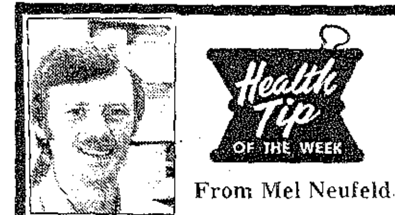
The chamber resolution calls for the National Forest to withdraw its plan and replace it with one that meets the following conditions: 1) maintain the economic needs of communities adjacent to the Siuslaw National Forest by providing a sustained allowable timber sale of 400 to 450,000 million board feet of timber per year; 2) provide multiple use management in areas dedicated to timber production to protect the environment and provide wildlife and recreation; 3) use the existing plan as a basis to refine the planning process.

"We hear the plan for the Siuslaw National Forest could set the tone for other plans, and the Willamette plan is next up for revision," said Hal Brayton, president. "If what happens on the Siuslaw happens on other national forests, we could be looking at a 30 percent cut in timber sales which would mean a number of jobs would be cut."

Comment period ends March 16.

In other developments, the board appointed Steve Hudson of Northwestern Telephone to fill a two-year term on the board; decided to oppose a county-wide room tax if the proceeds are to be administered by the Albany Convention and Tourism Bureau; heard a report from Dave Cloud, chair of the chamber's economic development and management committee, outline the committee's goals; learned that Warren Beeson, chamber manager, has won a scholarship to attend the Institute for Organization Management which will be held in July in San Jose, Calif.

Pigeons were the first tame birds. About 5,000 years ago, people living near the Mediterranean Sea raised pigeons for food.



From Mel Neufeld

SURGERY? DON'T SMOKE

If you smoke, and are scheduled for surgery, it is wise to abstain from smoking at least 12 hours before the operation. In that time the blood can rid itself of 'carboxyhemoglobin', which is useless in carrying oxygen from the lungs to body tissues, and it's effect on the body is like that of anemia.

Without smoking, the body can better tolerate the trauma of surgery and anesthesia.

AMERICAN FAMILY PHYSICIAN (26#5:239)

Preventive Medicine Is the Best Medicine!

Changing brown eyes to blue is as simple as this...

We now have DuraSoft® Colors--the first contact lenses that can change even the darkest eyes to stunning light colors.
Now you can go from brown to baby blue, hazel to emerald green, grey to

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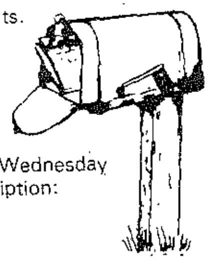

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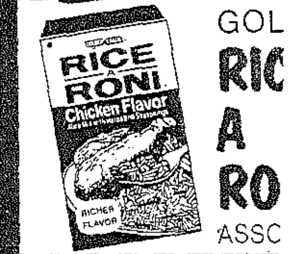

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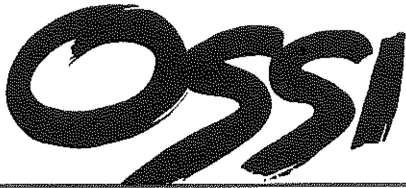


Reply to: 2202 SE Lake Road
Milwaukie, OR 97222 (654-9533)

MEMBER
NSWMA
National Solid Wastes
Management Association

OREGON SANITARY SERVICE INSTITUTE

March 13, 1987

TESTIMONY BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

(This testimony is given on behalf of the OSSI Recycling Task Force)

Re: Agenda Item K - 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.

The Recycling Task Force of Oregon Sanitary Service Institute has met several times with the Department of Environmental Quality to develop a workable recycling report form. We had considerable concern over the original format of the report and the validity of the information that would have been obtained. The raw data that must be obtained by the solid waste industry in order to complete the form will be time consuming, and that creates an economic impact on an already costly program.

We appreciate the willingness of the Department to meet with us until a compromise could be reached. The form that is the subject of this amendment does represent a compromise, and we would recommend its approval.

Respectfully submitted,

Estle Harlan

EH:e

ESTLE HARLAN, Consultant for
Solid Waste Industry

Copy: OSSI

UNIVERSITY OF CALIFORNIA, SAN DIEGO

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

SANTA BARBARA • SANTA CRUZ

DIVISION OF PHARMACOLOGY
DEPARTMENT OF MEDICINE, M-013H
SCHOOL OF MEDICINE

LA JOLLA, CALIFORNIA 92093

4 December 1986

Ms. Diana Paulson
3620 Page St.
Redwood City, CA 94063

Dear Ms. Paulson:

Thank you for your call about dioxin emissions and *trash-to-energy* facilities. My own opinions about *trash-to-energy* plants have evolved during my tenure as a member of the Scientific Review Panel of the Air Resources Board, largely in the past year when I was lead person in the consideration of the the toxic potential of dioxin (TCDD) in the environment. I've attached a copy of our findings, which were adopted by the ARB in late July. Since the ARB accepted that no level of dioxin could be deemed safe, I would imagine that the SANDER project will need to meet this stringent requirement (although I do not know what the legal status of this ARB ruling is). In addition to the SRP report, I would add two opinions:

1). The argument that a single facility will contribute negligibly to air pollution is not acceptable. Each automobile owner could claim as much. The reality is, the air is already too polluted and we can tolerate no more.

2.) *Waste-to-energy* facilities, although possibly a good idea on the surface, actually encourage the throw-away consumerism that is so damaging to the environment. We should emphasize making less waste rather than concentrating on means to deal with more waste.

I hope these remarks are helpful to you.

Sincerely,

Laurence L. Brunton

Laurence L. Brunton, Ph.D.
Associate Professor of Medicine

LLB:mc

State of California
AIR RESOURCES BOARD

Resolution 86-71

August 21, 1986

Agenda Item No.: 86-9-2

WHEREAS, Sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the "Board") to do such acts and to adopt such regulations as may be necessary for the proper execution of the powers and duties granted to, and imposed upon, the Board by law;

WHEREAS, Chapter 3.5 (commencing with Section 39650) of Part 2 of Division 26 of the Health and Safety Code establishes procedures for the identification of toxic air contaminants by the Board;

WHEREAS, Section 39655 of the Health and Safety Code defines a "toxic air contaminant" as an air pollutant which may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health;

WHEREAS, Section 39662 of the Health and Safety Code directs the Board to list, by regulation, substances determined to be toxic air contaminants, and to specify for each substance listed a threshold exposure level, if any, below which no significant adverse health effects are anticipated;

WHEREAS, chlorinated dioxins and dibenzofurans are emitted from a variety of combustion processes and have been measured in the emissions from sources similar to those now operating or proposed for construction in California;

WHEREAS, pursuant to the request of the Board, the Department of Health Services (DHS) evaluated the health effects of chlorinated dioxins and dibenzofurans in accordance with Section 39660 of the Health and Safety Code;

WHEREAS, DHS staff found that some chlorinated dioxins and dibenzofurans are proven animal carcinogens and concluded that dibenzo-p-dioxins and dibenzofurans chlorinated in the 2, 3, 7 and 8 positions and containing four, five, six or seven chlorine atoms (hereafter referred to as chlorinated dioxins and dibenzofurans) should be considered potential human carcinogens; chlorinated dioxins and dibenzofurans should be treated as substances without a carcinogenic threshold; health effects other than cancer are not expected to occur at predicted ambient levels; and the maximum excess lifetime cancer risk from exposure to these specific chlorinated dioxins and dibenzofurans are estimated to range from 0.6 to 38 cases per million people exposed per picogram per cubic meter;

WHEREAS, for the reasons set forth in its evaluation, DHS has concluded that, in the absence of strong positive evidence that carcinogenic substances act only through mechanisms which ought to have a threshold, these substances should be treated as acting without a threshold, and DHS has determined that insufficient evidence of a carcinogenic threshold exists at this time to allow the identification of a threshold exposure level with respect to chlorinated dioxins and dibenzofurans;

WHEREAS, upon receipt of the DHS evaluation, staff of the Board prepared a report including and in consideration of the DHS evaluation and recommendations and in the form required by Section 39661 of the Health and Safety Code and, in accordance with the provisions of that section, made the report available to the public and submitted it for review to the Scientific Review Panel (SRP) established pursuant to Section 39670 of the Health and Safety Code;

WHEREAS, in accordance with Section 39661 of the Health and Safety Code, the SRP reviewed the staff report, including the scientific procedures and methods used to support the data in the report, the data itself, and the conclusions and assessments on which the report was based, considered the public comments received regarding the report, and, on April 16, 1986 adopted for submittal to the Board, the following findings:

1. Chlorinated dioxins and dibenzofurans are potent toxins and are known carcinogens and/or promoters of carcinogenesis in animals.

2. Chlorinated dioxins and dibenzofurans, especially those chlorinated in the 2,3,7, and 8 positions and containing 4,5,6, or 7 chlorine atoms, are potential carcinogens or promoters of carcinogenesis in humans.

3. The current and planned waste-to-energy facilities in California will provide a high potential for emissions of chlorinated dioxins and dibenzofurans into air in the state.

4. An exposure level below which no significant health effects will occur cannot be identified.

WHEREAS, the SRP found the staff report to be without serious deficiency, and included in its findings the statement that the Panel agreed that chlorinated dioxins and dibenzofurans chlorinated in the 2, 3, 7 and 8 positions and containing four, five, six or seven chlorine atoms should be listed by the Air Resources Board as toxic air contaminants with no determined threshold below which adverse health effects will not occur;

WHEREAS, the staff has clarified that the purpose of this report is to assess the present and potential risk to public health posed by chlorinated dioxins and dibenzofurans for purposes of identifying these substances as toxic air contaminants under Section 39662 of the Health and Safety Code and is not

intended to serve as the basis for risk management decisions; a report containing an evaluation of the need and appropriate degree of regulation for these substances will be prepared by staff and considered in the future;

WHEREAS, new data relating to emissions of dioxins were presented which supplement the staff report and these data will be considered in the risk management phase of the process;

WHEREAS, the California Environmental Quality Act and Board regulations require that no activity having significant adverse environmental impacts be approved as originally proposed if feasible alternatives or mitigation measures are available;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with provisions of Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2 of the Government Code;

WHEREAS, in consideration of the staff report, including DHS' evaluation and recommendations, the available evidence, the findings of the SRP, and the written comments and public testimony it has received, the Board finds that:

Some chlorinated dioxins are proven animal carcinogens and concludes that chlorinated dioxins and dibenzofurans chlorinated in the 2, 3, 7 and 8 positions and containing four, five, six or seven chlorine atoms should be considered potential human carcinogens; and

There is not sufficient available scientific evidence at this time to support the identification of a threshold exposure level for these specific chlorinated dioxins and dibenzofurans; and

These specific chlorinated dioxins and dibenzofurans are air pollutants which, because of their carcinogenicity, may cause or contribute to an increase in mortality and an increase in serious illness, and pose a hazard to human health; and

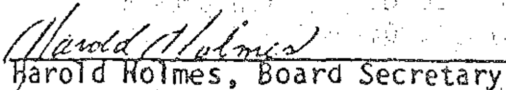
Although some chlorinated dioxin and dibenzofuran emissions from waste-to-energy facilities were identified by the SRP and have been the subject of a large amount of public concern, the staff report has identified significant other sources of these pollutants now in operation and has recommended that all sources and potential sources be evaluated, and risk management recommendations should take into consideration the relative risk posed by different sources of these substances; and

Future recommendations on the management of risk due to emissions of chlorinated dioxins and dibenzofurans should reflect recent scientific developments in this area, because new information on these substances is continually becoming available; and

WHEREAS, the Board has determined, pursuant to the requirements of the California Environmental Quality Act and Board regulations, that this regulatory action will have no significant adverse impact on the environment.

NOW, THEREFORE BE IT RESOLVED, that the Board adopts the proposed regulatory amendments to Section 93000, Title 17, California Administrative Code, as set forth in Attachment A.

I hereby certify that the above is a true and correct copy of Resolution 86-71, as adopted by the Air Resources Board.



Harold Holmes, Board Secretary

Attachment A

Amend Title 17, California Administrative Code, Section 93000 to read as follows:

93000. Substances Identified As Toxic Air Contaminants. Each substance identified in this section has been determined by the state board to be a toxic air contaminant as defined in Health and Safety Code Section 39655. If the state board has found there to be a threshold exposure level below which no significant adverse health effects are anticipated from exposure to the identified substance, that level is specified as the threshold determination. If the board has found there to be no threshold exposure level below which no significant adverse health effects are anticipated from exposure to the identified substance, determination of "no threshold" is specified. If the board has found that there is not sufficient available scientific evidence to support the identification of a threshold exposure level, the "Threshold" column specifies "None identified."

Substance	Threshold
Benzene (C_6H_6)	None identified
Ethylene Dibromide ($BrCH_2CH_2Br$; 1,2-dibromoethane)	None identified
Ethylene Dichloride ($ClCH_2CH_2Cl$; 1,2-dichloroethane)	None identified
Hexavalent Chromium*, Cr(VI)	None identified
Asbestos* [asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite, (amosite), tremolite, actinolite, and anthophyllite]	None identified
Dibenzo-p-dioxins and Dibenzofurans chlorinated in the 2,3,7 and 8 positions and containing 4,5,6 or 7 chlorine atoms	None identified

NOTE: Authority cited: Sections 39600, 39601 and 39662, Health and Safety Code. Reference: Sections 39650, 39660, 39661 and 39662, Health and Safety Code.

*Note: Compounds identified by an asterisk have been identified as toxic air contaminants by the Air Resources Board but not yet approved by the Office of Administrative Law.

Findings of the Scientific Review Panel on
the Report on Chlorinated Dioxins and Dibenzofurans
as adopted at the April 16, 1986 meeting

In accordance with the provisions of the AB 1807 and Health and Safety Code Section 39661, the Scientific Review Panel (SRP) has reviewed the reports of the staffs of the ARB and DHS on the public exposure and biologic and health effects of chlorinated dioxins and dibenzofurans ("dioxins"), and the public comments on these reports. Based on this review, the SRP finds that:

1. Dioxins are potent toxins and are known carcinogens and/or promoters of carcinogenesis in animals.

2. Dioxins, especially those chlorinated in the 2,3,7, and 8 positions and containing 4,5,6, or 7 chlorine atoms, are potential carcinogens or promoters of carcinogensis in humans.

3. The current and planned waste-to-energy facilities in California will provide a high potential for emissions of dioxins into air in the state.

4. An exposure level which no significant health effects will occur cannot be identified.

For these reasons, we agree that dioxins should be listed by the ARB as toxic air contaminants with no determined threshold below which adverse health effects will not occur.

While the SRP finds the analyses of the ARB and DHS staffs generally acceptable scientifically, we submit the following comments which may help direct future action on these compounds:

1. Dioxins and dibenzofurans are stable, lipophilic compounds that may be expected to accumulate up the food chain. Thus, airborne dioxins emitted during combustion may contribute to dioxin intake by humans not only via inhalation but by other routes such as ingestion of food. Assessment of dioxin intake only via inhalation may thus underestimate total intake.

2. There are, already, measurable levels of dioxins and dibenzofurans in human adipose tissue in the general population, approximately 10 ppt (pg/g).

3. In making its estimates of risk (Part B), DHS has assumed that the biological half life ($t_{1/2}$) of dioxin in humans is similar to that in laboratory rodents, one to two months. Preliminary evidence, indicates that the $t_{1/2}$ of TCDD (2,3,7,8-tetrachlorodibenzo-p-dioxin) in humans may be much longer, possibly in the range of four to six years. Thus, the body burden of dioxin could be greater than DHS estimates (by as much as 72x, or the ratio of the half times, six years/one month), and the daily intake to achieve measured human adipose tissue levels may, therefore, be modest. If these data are correct, then:

    a. there may, already, be a significant background level of exposure to dioxins;

b. significant accumulations of TCDD can occur in humans with low exposure levels;

c. current overall exposure to dioxins may already be in the range of that predicted by ARB for the future as a result of emissions from waste-to-energy facilities;

d. current and projected exposures may need to be evaluated for their potential to produce health effects other than cancer, such as immunotoxicity.

4. Earlier versions of Part A of this report (September and December, 1985, January 1986) emphasized the problems and expense associated with the routine monitoring of dioxins in air. We feel that data on ambient levels of dioxins in California air are needed and that the technology for such measurements exists and is accessible to the ARB. Given that tissue levels of these compounds are measurable, we expect measurable levels in air, and we feel that the expense involved in obtaining baseline data is small compared to the potential risk. Monitoring of ambient dioxin levels should be commenced before any waste-to-energy facilities go on line.

5. In addition to considerations of risk in the state as a whole due to the average ambient dioxin content, the staffs of the ARB and DHS should continue to give close attention to "hot spots" of dioxin production, such as in areas adjacent to waste-to-energy facilities (as analyzed in section III of Part A of the Dioxin Report).

6. DHS has chosen to present only a no-threshold extrapolation in Part B. The Ontario (Canada) Ministry of the Environment has made a different analysis and has actually established an acceptable daily intake level for TCDD. The SRP wishes to emphasize that different interpretations of existing data are possible. It is difficult to find a model applicable to a compound like TCDD, and to extrapolate with certainty from animal data to human health effects at concentrations several orders of magnitude lower.

7. Since there is good evidence that dioxins can enhance the action of other carcinogens, the potential for the harmful interaction of dioxins with other environmental toxins could be important and must not be forgotten or underestimated when considering research reports on the actions of dioxins alone.

8. Data on human exposure to TCDD and related compounds, on their accumulation in human tissues, and on their effects on human health are becoming increasingly available. The ARB should continue to

JUN 13 1986

State of California
AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF A REGULATORY AMENDMENT IDENTIFYING CHLORINATED DIOXINS AND DIBENZOFURANS AS TOXIC AIR CONTAMINANTS.

The Air Resources Board (the "Board") will conduct a public hearing at the time and place noted below to consider the adoption of a regulatory amendment identifying dibenzo-p-dioxins and dibenzofurans chlorinated in the 2,3,7 and 8 positions and containing four, five, six or seven chlorine atoms (hereafter referred to as chlorinated dioxins and dibenzofurans) as toxic air contaminants and specifying that there is not sufficient available scientific evidence to support the identification of a threshold exposure level below which no significant adverse health effects are anticipated to result.

DATE: July 24, 1986

TIME: 10:00 a.m.

PLACE: Sacramento Convention Center
Yolo Room
1100 14th Street
Sacramento

This item may be taken up after 10:00 a.m., July 24 or after 8:30 a.m., July 25. Please consult the agenda for the meeting, which will be available at least 10 days before May 22, 1986, for information on the order in which scheduled items are expected to be considered.

Informative Digest of Proposed Action

Sections affected: Section 93000, Title 17, California Administrative Code.

Assembly Bill 1807 (Stats 1983, ch 1047; Health and Safety Code Section 39650 et seq., Food and Agricultural Code Section 14021 et seq.) sets forth procedures for the identification and control of toxic air contaminants in California. In accordance with those procedures, staff is proposing that the Board amend Section 93000 of Title 17, California Administrative Code, by adding chlorinated dioxins and dibenzofurans to the list of toxic air contaminants and specifying that there is not sufficient available scientific evidence to support the identification of a threshold exposure level below which no significant adverse health effects are anticipated to result.

In accordance with Health and Safety Code Sections 39660 and 39661, the Department of Health Services (DHS) has prepared an evaluation of the health effects of chlorinated dioxins and dibenzofurans, and the staff has prepared a report on chlorinated dioxins and dibenzofurans which includes the DHS health effects evaluation. Chlorinated dioxins and dibenzofurans are being reviewed together, because this group of chemicals share common sources, chemical structures, chemical properties and biological properties. DHS staff found that some chlorinated dioxins are proven animal carcinogens and concluded that all chlorinated dioxins and dibenzofurans should be considered potential human carcinogens. DHS staff found there was not sufficient scientific evidence to

Denton CARB 916 445 3187

support the identification of an exposure level below which carcinogenic effects would not have some probability of occurring and recommended that chlorinated dioxins and dibenzofurans be treated as having no threshold. The Scientific Review Panel (SRP), established pursuant to Health and Safety Code Section 39670, has reviewed the report and the data on which it was based, and has submitted written findings to the Board, in accordance with Health and Safety Code Section 39661.

The SRP found the report on chlorinated dioxins and dibenzofurans to be acceptable, and recommended that chlorinated dioxins and dibenzofurans be identified as toxic air contaminants with no determined threshold level below which adverse health effects will not occur.

No control measures for chlorinated dioxins and dibenzofurans are proposed for adoption at this hearing. If chlorinated dioxins and dibenzofurans are listed as toxic air contaminants, a report on the need for and appropriate degree of control measures to reduce chlorinated dioxin and dibenzofuran emissions will be developed in accordance with Health and Safety Code Sections 39665 and 39666.

Availability of Documents and Contact Person

The Board staff has prepared a Staff Report on this proposal. The Staff Report consists of the report reviewed by the SRP (an overview; Part A, "A Review of Chlorinated Dioxin and Dibenzofuran Sources, Emissions and Public Exposure," prepared by ARB staff; Part B, "Health Effects of Chlorinated Dioxins and Dibenzofurans", prepared by the DHS; and Part C, "Public Input Requests, Comments, and Responses," prepared by ARB staff and the DHS). Attached to the Staff Report are the SRP's findings. The Staff Report includes an initial statement of the reasons for the proposed action and a summary of the environmental impacts of the proposal. The Staff Report, the full text of the proposed regulation, and any other information on which the proposal is based, will be available for inspection at the ARB Public Information Office, P. O. Box 2815, Sacramento, CA 95812, (916) 322-2990, at least 45 days prior to the scheduled hearing. Copies of the Staff Report and the text of the proposed regulation may be obtained at the above Public Information Office. Further inquiries regarding this matter should be directed to Mr. William Loscutoff, Chief, Toxic Pollutants Branch, Stationary Source Division, at (916) 322-6023, P. O. Box 2815, Sacramento, CA 95812.

Costs to Public Agencies and to Businesses and Persons Affected

The identification of chlorinated dioxins and dibenzofurans as toxic air contaminants is not expected to result in any economic impacts. Economic impacts identified with respect to any specific control measures which may be developed in the future pursuant to Health and Safety Code Sections 39665 and 39666 will be addressed in connection with the consideration of such measures.

The Board's Executive Officer has determined that the proposed action will not create costs or savings, as defined in Government Code Section 11346.5(a)(6), to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to Section 2231 of the Revenue and Taxation Code, or other nondiscretionary savings to local agencies.

OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue, Portland, Oregon 97201
Phone: 503/222-1963

COMMENTS SUBMITTED TO THE ENVIRONMENTAL QUALITY COMMISSION March 13, 1987, regarding Agenda Item L, Proposed Adoption of Order Requiring the City of Portland to Provide the Opportunity to Recycle: presented by Jean Meddaugh, Associate Director

On September 12, 1986, the Environmental Quality Commission granted the City of Portland an extension for compliance with the Recycling Opportunity Act with the condition that it follow an implementation schedule aimed at getting the contract program in place.

On December 12, 1986, your letter to the City Council reiterated that the permit option was "not an acceptable method for providing recycling service." (p.3, Item L) To continue to quote your letter, you noted that "the revised permit option... retains the drawbacks (of being) the most costly option because of its inefficiency, (of being) difficult to implement and regulate, and (of being) nearly impossible to promote."

In order to be consistent with your past statements and actions, OEC encourages the Commission not to sign the order prepared by the Department as a "third alternative," but instead to order the City of Portland to implement the contract plan that has been recommended and developed since last June. As noted on page four of the staff report, "the contract documents are ready and the promotion plan is developed and an ad agency chosen. This option has the most potential to be a successful recycling program. It is efficient and therefore least costly. It is easy to promote and easy to enforce, and the recyclers have a contractual economic incentive to increase participation rates."

If the Department believes this, it is hard to understand why they are recommending that you sign a contradictory order. It should be equally hard for you to do so.

Problems of Mass Solid Waste Incineration (MSWI)

Looking at a finished MSWI facility, we see large, pleasantly-decorated buildings, a "smokeless" smoke stack, and well-landscaped grounds. In the past 20 years many facilities that started with that same image have been shut down as unsafe, unprofitable, or because they are threatened with liability claims for long-term damages.[1&2] Many scientists conclude that incinerators are being built before the technology to make them safe is available.[3] Denmark and Sweden have declared a moratorium on further MSWI construction.[4]

Allis-Chalmers, American Can, Carborundum, Continental Can, General Electric, Hercules, Monsanto, Occidental Petroleum, Union Electric, and Westinghouse are American industrial giants once seeking business in this field, but now out of it[1]. A ship that was designed solely for garbage incineration at sea is tied up at a Tacoma dock, having made no trips for its planned task. The same decisions have been reached along the Atlantic coast regarding sea-going incinerators.

Japan, often cited as an example of the cleanliness and "safety" of this process, burns only separated garbage. There are no plastics, aluminum cans, glass, bulky items, hazardous wastes or newspapers going into their energy recovery incinerators.[6]

"Smokeless" smokestacks actually release more than 75 tons of products into the airshed from every 100 tons of garbage burned. Much of this invisible emission is harmless water vapor and carbon dioxide. However, let us look at a FEW of the thousands of other products that intermittently concentrate in the emissions, intermittent because garbage is not homogenized. Paints, medicines, plastic toys and packaging materials, herbicides, solvents, insecticides, spray can contents, human waste in plastic diapers, treated wood, urea-formaldehyde resins, kitchen wastes in varying degrees of decay, electrical insulation, and lead batteries are a few of the raw materials that enter as garbage.

These raw materials in a flame form vapors of lead, mercury, cadmium and zinc and release carbon monoxide, sulfur dioxide, nitrogen oxides, hydrogen fluoride, hydrogen chloride, formaldehyde, hydrocarbons, and a relatively new and insidious group of poisons, polychlorinated dibenzo dioxins (PCDD's) and polychlorinated dibenzo furans (PCDF's) whose presence in trace amounts that can be absorbed through the skin, through lung tissue, or ingested on foods, may accumulate in fatty tissues until enough is present to cause genetic damage, mutations, miscarriages, and cancer.[5]

Other bioaccumulative poisons include lead, mercury, and cadmium. It may take several years before the effects of bioaccumulative poisons are felt, but the damage has been done. Volumes of literature testify to the effects of these heavy metal poisons.[8] We are just beginning to get the information together on the effects of dioxins and furans. We know that 2 micrograms of dioxin per kilogram of body weight kills guinea pigs.[9] In simpler terms, one billionth of a pound of dioxin is a fatal dose to a one pound guinea pig. We know that many of us already have measurable amounts of dioxins and furans in

our fatty tissues.[5] Love Canal, and Times Beach, Missouri are names we associate with the devastating damage of dioxins. Although human guinea pigs haven't been purposely tested, the Federal Center for Disease Control in 1983 set "safe" levels for humans at less than one part per billion.[10]

MSWI's are the largest single source of dioxins and furans, accounting for 25% of the total amount in the environment.[7] At the grate of an incinerator and in the fireball above it, conditions are correct for sythesizing dioxins and furans. They do not have to be present in the garbage, but are formed from the chemical fragments needed that are in the raw materials listed on the previous page. If a burner is also fitted with a scrubber to remove or neutralize the gases that form acid rain, and if the burner has a bag house for collection of "fly ash", the production of these materials may increase sevenfold.[4] Fly ash acts as a catalyst that holds the reactants while they join chemically. Not all fly ash is large enough to be caught in the bag house so it is released from the stacks with dioxin attached.[11]

The most recent European technology recognizes the danger of the fly ash being the place where dioxins congregate and keeps it separate from the bottom ash or cinders. Fly ash is sealed in metal drums for delivery to hazardous waste dumps. At the Ogden Martin plant in Marion County this fly ash is mixed with bottom ash and sent to the landfill or it may be used as road base when mixed with gravels.

Who is liable for long-term effects of such a plant? The DEQ in granting an emissions permit to Ogden Martin files a disclaimer that they "shall not sustain any liability on account of the issuance of this permit or on account of the construction or maintenance of facilities because of this permit"[12] Does this mean that liability rests with the city of Gresham on whose site a burner might stand, the Metropolitan Service District who chose both the technology and the site, or solely with the firm that builds and operates the burner?

Hooker Chemical declared bankruptcy over Love Canal. Johns-Manville declared bankruptcy over the asbestos problem. This seems the way out for owner-operators of facilities that cause harm to the environs. Where is the public's protection?

Portland has the 14th most polluted airshed of the 40 largest cities cited by the Presidant's Council on Environmental Quality.[11] East southeasterly prevailing winds in winter and fall will deliver emissions from this stack into that fragile airshed. There is a finite limit for emissions in east county air before bad things begin to happen. When that limit is exceeded, no more industry will be allowed. If all Gresham's pollution eggs are in the MSWI basket, that city's industrial growth may grind to a halt.

Dispersion of the 75% of waste that goes up the stack is related to stack height, topography and meteorological conditions. A 180 foot stack on a site 83 feet above sea level is merely 118 feet above downtown Fairview, 65 feet above Reynolds High School, but 66 feet <u>below</u> Glisan hill residences and homes in the vicinity of 223rd and Stark, 57 feet <u>below</u> downtown Gresham, 150 feet <u>below</u> the hill at N W 5th and Birdsdale, and hundreds of feet <u>below</u> the residential areas

south of Powell Boulevard. Emissions will flow along the ground in those areas during the months of April to October when northwesterlies are prevalent.

In the light of the information above, it seems imprudent to consider MSWI as a feasible system for relief of the metropolitan garbage problem. Let us explore the alternatives Metro is charged with investigating. Perhaps some of the large projected capital outlay for MSWI could be used to subsidize recycling or be used to assist in finding markets for compost or refuse-derived pellets.

In summary, let us consider again the major ideas of this presentation:

(1) Burning makes more product than we start with in terms of weight bec ause we have chemically added oxygen and nitrogen from air to the other materials.
(2) The Law of Conservation of Matter and Energy has not been repealed. Neither matter nor energy can be created or destroyed in non-nuclear reactions. Matter and energy can merely be changed in form.
(3) Invisible materials may kill you. Don't be fooled by the saying "Out of sight, out of mind".
(4) Dioxins, lead, mercury, and cadmium are bioaccumulative poisons. Most of us have absorbed measurable amounts already.
(5) "Safe" limits of poisons are ever-changing. What was allowable radiation for x-ray and radiology technicians has been reduced greatly over recent years. DEQ "allowable limits" will also change with time and testing.
(6) Industrial development will be limited by the capacity of the airshed to accept more contaminants.
(7) The most densely populated areas of East Multnomah county are above the top of the proposed stack. Emissions in spring and summer months will be at ground level for those people.
(8) In looking over the arguments against a MSWI, one must conclude that any other method of solid waste treatment would be better.

Submitted by Leland P. Johnson
Troutdale, Oregon
February 14, 1987

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[3] LBID, 108:16, OCT 31'85

[4] IBID, 108:34, NOV 7 '85

[5] "THE BURNING QUESTION": GARBAGE INCINERATION VS. TOTAL RECYCLING IN NEW YORK CITY, NYPIRG,INC.,'86 P.9, P.60

[6] "DIOXIN DANGER FROM GARBAGE INCINERATION", ANALYTICAL CHEMISTRY, VOL 58, NO 6, MAY '86 PP.633A-634A.

[7] "JAPAN EXCELS IN ITS GARBAGE MANAGEMENT", INFORM, VOL 6, NO 5, SEPT. - OCT'86 PP. 1-5.

[8] PAMPHLET HOW TO SURVIVE THE NEW HEALTH CATASTROPHES, RUDOLPH ALSLEBEN,M.D. & WILFRID SHUTE, M.D. PP.2-41

[9] DATA CENTER FILES, JAN/FEB '81, P.58

[10] "EPA REPLY ORDERED ON STUDY OF DIOXIN", OREGONIAN, FEB.4 '87

[11] CANADIAN RESEARCH, VOL 13, NO.5 SEPT.'80

[12] TESTIMONY OF LARRY A BOLINGER BEFORE OREGON CITY COUNCIL, '81.

LEAGUE of WOMEN VOTERS OF PORTLAND

610 DEKUM BUILDING — 519 S.W. THIRD
PORTLAND, OREGON 97204
TELEPHONE: (503) 228-1675

March 9, 1987

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
MAR 10 1987
OFFICE OF THE DIRECTOR

Environmental Quality Commission
811 S. W. Sixth Avenue
Portland, Oregon 97204

Dear Commissioners:

The curbside recycling plan approved by the City of Portland should not be approved as meeting requirements of the Recycling Opportunity Act. The law was adopted to make recycling so convenient it would encourage those not already doing so to begin recycling. The haulers' plan will not do this. The approximately 60 haulers who do not presently offer any recycling service will be no more motivated to do so under the plan than they are right now. Picking up recyclables separately will cost them more money; yet they won't get anything in return whereas a contract system would offer a large exclusive area plus an incentive payment, and a franchise system would offer protection of customers. Therefore this permit system is likely to bring little change in the volume of recyclables already being collected.

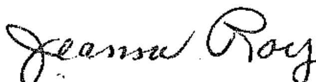
Haulers doing curbside collection for their own customers will not get enough material to justify a separate truck. Therefore they will either add racks to their compactors and collect on garbage day, or they will use a pickup. To keep costs down, they will tend to minimize service. For example, a hauler could offer collection on Saturday at 7:00 a.m. Instead of driving the whole route, the hauler could wait for calls and then provide pickup within 24 hours without penalty. How many customers are willing to have their recyclables out at the curb from Friday night to Sunday afternoon? How many customers would be willing to make repeated phone calls trying to reach a hauler on a weekend? Even if the hauler did drive the route and fill up his truck, he could accept perhaps 100 set-outs which would be 7% of a typical 1500 customer base.

Most haulers will probably just add side racks to their compactor trucks. The side racks could provide 2 yards of space at most, or enough room for perhaps 15 set-outs. (There will not be room for cardboard.) What will he do when the side racks are full? Drive all the way to a storage site to empty the sideracks? More likely he will either leave the recyclables on the curb or dump them in with the garbage. Where will the small one-truck haulers store the eight categories of materials? In summary this curbside program will probably result in newspaper collection only and will not attract people who don't already recycle.

The haulers have testified that they are doing a good job of curbside recycling. A few companies are. See the pounds per participant for three local companies (table on next page) compared to other cities nationally. (attached sheet). However, our city's curbside collection system as a whole is nowhere near its potential. See pounds-per-person column comparing Portland with other cities nationally on Attachment 3.

I don't think the City of Portland is taking seriously the solid waste crisis in the metropolitan area. Our region cannot handle the waste we produce right now. We are sending some of it to Marion County and some to Yamhill County because St. John's Landfill is filling so quickly. Nobody wants a new landfill near them, and even if one is sited this summer, it may not be open for 3½ years. We must reduce the amount of waste. We must have a recycling program which will make a difference.

Yours truly,



Jeanne Roy
League of Women Voters of Portland

cc: Fred Hanson, Director, Department of Environmental Quality
John Lang, Administrator, Portland Bureau of Environmental Services

Recycling Company	Tons/mo.	Recycling Customers	Lbs./participant	* Participation
Cloudburst Recycling	41	1500	55	100%
PROS	102	7000	29	11%
Sunflower Recycling	50	3000	33	95%

*Participation means per cent of all customers who recycle.

Prepared for the City of Portland by Resource Conservation Consultants, February 1987

TABLE 1

RECOVERY LEVELS AND PARTICIPATION FOR MULTI-MATERIAL PROGRAMS WITH WEEKLY SERVICE

Community	Monthly Recovery (lbs/participant)(1)	Participation(2)	
		Monthly	Weekly
Austin, TX	32.5	(35) %	30
Bedford, MA	unk.	22	--
Berlin, NJ	unk.	90	90
Bound Brook, NJ	unk.	25	--
Davis, CA	54.5	(65)	30
El Cerrito, CA	26.4	(50)	--
Haddonfield, NJ	50.5	90	60
Hyde Park, IL	11.1	70	--
Islip, NY	136.0	(20)	--
Kitchener, ON	29.2	80	40
Longmeadow, MA	16.3	80	--
Marin Co., CA	47.3	(35)	--
Newington, CT	unk.	22	--
Palo Alto, CA	65.8	(65)	55
Redondo Beach, CA	33.1	25	--
San Jose, CA	32.7	55	--
San Luis Obispo, CA	unk.	63	--
Summit, NJ	unk.	30	--
Sunnyvale, CA	46.2	58	--
West Linn, OR	32.5	(33)	--
West Orange, NJ	unk.	55	--
Woodbury, NJ	73.1	90	--
Average	45.8	52.6	50.8
Number	(N=15)	(N=22)	(N=6)
Range	11.1-136.0	20-90	30-90

(1) Total pounds per participating household recovered in one month.

(2) Participation was reported for:
   A. Number of households participating in any one month.
   B. Number of households participating on the day of collection.

TABLE 2

RECOVERY LEVELS AND PARTICIPATION FOR MULTI-MATERIAL PROGRAMS WITH BI-MONTHLY SERVICE(1)

Community	Monthly Recovery (lbs/participant)	Participation on Monthly Basis
		%
Burbank, CA	20.7	60
Lynwood, NJ	20.7	30
Montclair, NJ	44.3	70
Monroe Twsp., NJ	17.7	30
Santa Monica, CA	18.8	35
St. Louis Park, MN	unk.	28
Waterbury, CT	unk.	27
Average	24.4	40
Number	(N=5)	(N=7)
Range	18.8-44.3	27-70

(1) Bi-monthly service is twice a month.

TABLE 3

RECOVERY LEVELS AND PARTICIPATION FOR MULTI-MATERIAL PROGRAMS WITH MONTHLY SERVICE

Community	Monthly Recovery (lbs/participant)	Participation on Monthly Basis
		%
Abington, PA	unk.	21
Ann Arbor, MI	34.3	21
Berkeley, CA	17.5	13
Boulder, CO	56.3	35
Durham, CT	unk.	20
Edina, MN	66.7	21
Fresno, CA	47.8	17
Minneapolis, MN	32.8	22
Mound, MN	52.4	20
Plymouth, MN	50.0	30
Richfield, MN	unk.	20
St. Cloud, MN	45.5	44
Average	44.8	23.7
Number	(N=9)	(N=12)
Range	17.5-66.7	17-44

CURBSIDE COLLECTION PROGRAMS

Year	City	Tons/mo.	Population	Lbs./person	Participation
'81-'82	Davis, Calif.	198[1]	36,900	10.7	65%
	Marin County, Calif.	1500[3]	225,000	13.0	50%
	Berkeley, Calif.	210[2]	103,000	3.9	13%
'84	Fresno/Clovis, Calif.	333[3]	315,000	2.0	17%
	Palo Alto, Calif.	245[1]	55,400	9.0	65%
'84	Minneapolis, Min..	574[3]	358,000	3.2	20%
	Santa Rosa, Calif.	262[1]	84,700	6.0	
	Downey, Calif.	132[1]	82,400	3.2	30%
'84	Austin, Texas	333[2]	397,000	1.7	35%
	Islip, New York	1480[3]	300,000	9.9	50%
'84	Boulder, Colo.	417[2]	77,000	10.8	40%
'86	West Linn, Ore.	30[5]	11,358	5.3	33%
'85	Portland, Ore.	426[4]	430,000	2.0	10%

[1] Office of Appropriate Technology, State of California, 1982.

[2] Data on Selected Curbside Recycling Collection Programs, Resource Conservation Consultants, Portland, Oregon, 1985.

[3] Background Report For City of Portland, RCC, 1985.

[4] City of Portland survey, 1985.

[5] West Linn report to Department of Environmental Quality, 1986.

3-12-87
Summary

City of Portland
Recycling Plan

Service

* At least monthly recycling collection service to all customers is a minimum requirement of permits issued to all garbage haulers providing service in Portland's Urban Services Boundary.

* In addition, weekly news collection at the garbage can is the minimum level of service for four-plexes and smaller residences.

* Customers can give materials to hauler, individuals, charitable groups, or recycling companies who must be permitted by City.

* The City designated recycler is the customer's garbage hauler. This is the service that will be promoted by the City.

* Haulers may subcontract recycling service or provide service jointly.

Funding

* Collection and marketing costs are borne by the hauler and offset by revenues received from sale of recyclables and fees charged to customers.

* City costs for administration and the promotion program are recovered through permit fees. Garbage haulers and for-profit recyclers will pay an annual permit fee. Garbage haulers will pay a quarterly tonnage fee on waste disposed to encourage diversion of waste by recycling. Non-profit recyclers will pay no fee for a permit.

Enforcement

* City monitors service by recording of complaints, requests.

* City requires corrective action and response by hauler.

* City assesses fines, revokes permit for noncompliance.

* City Hearings Officer conducts hearings on appeals.

* City does random service checks and customer surveys to verify compliance.

* Recycling review committee of haulers and customers advises City on promotion and education, advise individual haulers on performance, and advises the City on enforcement.

Incentives

During first year in coordination with Metro and Recycling Review Committee:

* Develop incentives to haulers for increased volumes of recyclables.

* Develop incentives to customers for increased participation.

Administration

* Monthly reports on volume and participation will be required of haulers and other recyclers. Receipts from sales of material will also be required.

* City reports to haulers on how they are doing individually and as a group.

* City establishes a base for evaluation: average volumes collected in last year; number of customers who recycle.

* In the annual permit application, the City will require customer lists by name and address, to be updated quarterly. Also required is information on frequency and location of collection, storage and marketing procedures, and contact information for hauler and any subcontractor.

* City evaluates first twelve months of reported data and reports to Council within one month after data received.

* City sets up hotline phone number for customer information and complaints.

Promotion

* City promotes hauler recycling service only by minimum promotion as required by law: initial notice of service availability, reminders each six months, and notice on how to prepare materials with assistance of promotion consultant and recycling review committee.

* City develops additional program and materials and does media and community events with assistance from promotion consultant and agreement of recycling review committee.

* Individual haulers distribute notices, talk directly with customers, and can do any additional promotion such as T-shirts and containers.

METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

March 13, 1987

Mr. James Peterson, Chairman
Environmental Quality Commission
522 S. W. Fifth Avenue
Portland, OR 97204

Metro Council

Richard Waker
Presiding Officer
District 2

Jim Gardner
Deputy Presiding Officer
District 3

Mike Ragsdale
District 1

Corky Kirkpatrick
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Mike Bonner
District 8

Tanya Collier
District 9

Larry Cooper
District 10

David Knowles
District 11

Gary Hansen
District 12

Executive Officer
Rena Cusma

Dear Mr. Chairman:

I am sorry that business keeps me away from your meeting this morning. I have not had the opportunity to come before the Commission since my election but am looking forward to meeting you and working with you in the future.

For the present, let me give you these thoughts in writing.

You are considering today a proposed action to direct the DEQ staff to work with Metro staff to prepare an order to be issued by the EQC to Metro to provide rate incentives to encourage recycling.

I want to assure you that as Metro executive, I agree that financial incentives and other plans to actually reduce waste and divert it from landfills are of the utmost urgency.

That is why my staff has been working since I took office in January to develop the policies and programs to actually make the waste reduction plan work.

We have focused our efforts on those changes we believe will have the greatest and most immediate impact on diverting material from the St. Johns Landfill, thus extending its life.

Within two weeks, I will be presenting to the Metro Council a list of recommendations for diverting waste from the St. Johns Landfill. The options will include diversion of wastes to material recovery facilities and using rate incentives to make sure that recyclable materials actually end up at the recyclers - and not in the landfill.

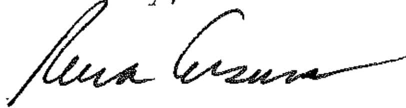
The report is currently in draft form and most of the data is in the process of being finalized. Until such time as I

have all the figures and have had an opportunity to brief the Metro Council on the data's effect on policy, it is inappropriate for me to discuss the plan in detail. The Commission will receive the report when it has been presented to the Metro Council.

I also understand you're concerned about the City of Portland's ability to make its curbside recycling program work. Metro is willing to cooperate with both the City and the Department of Environmental Quality to develop methods of making curbside recycling an effective program in Portland.

I look forward to cooperating with your staff and am prepared to begin work immediately.

Sincerely,



Rena Cusma
Metro Executive Officer

RC:shc

QUESTIONS FOR RENA CUSMA

Is it true that you believe that recycling can best be provdded to Portland citizens through the existing permitted hauler system?

> (Her acting solid waste administrator testified to the City Council in favor of the permit system, saying "Don't fix what isn't broken.")

Do you believe that permitted garbage haulers operating in an open competitive system can be expected to encourage recycling participation without a financial incentive to offset the costs of the program?

Doesn't the Metro Waste Reduction Program which the Commission approved have a financial incentive element?

> (Certification program linked to differential tipping fee rates.)

Are you implementing that program on schedule? (No.)

Are you cooperating with the City of Portland in working out the mechanics for funding the City's recycling promotion and administration costs?

> (The City plans to fund the program by charging a fee per ton of garbage dumped at the landfill. Metro has refused to consider billing this fee along with the bills they already send to haulers, and may even charge the City for the tonnage information.)

Are you implementing any part of the yard debris program promised in the Metro Waste Reduction Program?

We understand that you are developing a ne3w Waste Reduction Program. What is wrong with the Program adopted last year by the Metro Council?

How will your new program encourage source separation recycling?

OREGON SANITARY SERVICE INSTITUTE

Reply to: 2202 SE Lake Road
Milwaukie, OR 97222 (654-9533)

MEMBER
NSWMA
National Solid Wastes Management Association

March 13, 1987

TESTIMONY BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

(This testimony is given on behalf of the Tri-County Council, comprised of representatives from Clackamas County Refuse Disposal Association, Multnomah County Refuse Disposal Association, Oregon Sanitary Service Institute, Portland Association of Sanitary Service Operators, Teamsters Local 281, and Washington County Refuse Disposal Association)

Re: Agenda Item L. Proposed Adoption of Order Requiring the City of Portland to Provide the Opportunity to Recycle.

The Tri-County Council supports the proposed Order No. WR-87-01.

For the record, however, we would wish to make the following additional comments:

1. The staff report indicates that the Portland Recycling Plan would not require service to multi-family housing. Both Commissioner Koch and the solid waste industry have agreed to language that would require providing the opportunity to recycle to all customers.

2. The staff report stated that haulers may contract with one another in order to consolidate recycling routes and equipment, "but that is unlikely because they are afraid that the recycler may solicit their garbage customer." That was the industry's fear under the contract plan. If the recycling contractor solicited a garbage customer, there was nothing the solid waste collector could do to defend against this unfair advantage. However, if a solid waste collector sub-contracts with another collector, and if that collector solicits customers, it is highly unlikely that the sub-contract relationship will survive. Therefore, there is strong expectation that those solid waste collectors who do not have the equipment or desire to do their own recycling, or who simply see sub-contracting as an efficiency for their operation, will sub-contract with another company. This should reduce the number of trucks on the street and reduce the over-all systems cost.

3. In recommending the permit alternative for the Portland Recycling Plan, the staff also expressed the concern that the city manage the education and promotion efforts, with distribution assistance from the permitted garbage haulers, and that the city establish an enforcement program which did not rely entirely on customer complaints. We agree with both of those recommendations. In fact, the plan never did rely on just customer complaints. Any willful violation of the plan would be automatic cause for permit revocation, with or without customer complaints.

Requiring the solid waste industry to provide recycling as a condition of their permit is a strong, efficient, effective system - it will work.

Estle Harlan
Consultant

1880 Lancaster Drive NE • Suite 112 • Salem, Oregon 97305 • (503) 399-7784 • Toll-Free in Oregon: **1-800-527-7624**

Copy: TRI-COUNTY COUNCIL
OSSI

100% Recyclable Paper

February 18, 1987

HONORABLE MAYOR CLARK and
CITY COMMISSIONERS
City of Portland

The following organizations support the Opportunity to Recycle through implementation of the Permit System in the City of Portland. We are in complete support of the Permit System Plan submitted to the City on February 16, 1987, including the strong enforcement provisions contained in the plan.

We commit to working with the City on any necessary refinements in order that the plan can be speedily and effectively implemented.

CLACKAMAS COUNTY REFUSE DISPOSAL ASSOCIATION

By ______________________
(25 members, 9 in Portland/ Mid-Multnomah County)

MULTNOMAH COUNTY REFUSE DISPOSAL ASSOCIATION

By ______________________
(27 Members in Portland/Mid-Multnomah County)

PORTLAND ASSOCIATION OF SANITARY SERVICE OPERATORS

By ______________________
(36 members, all in Portland/Mid-Multnomah County)

TEAMSTERS LOCAL 281

By ______________________
(77 members in Portland/Mid-Multnomah County)

WASHINGTON COUNTY REFUSE DISPOSAL ASSOCIATION

By Tom Miller
(22 members, 7 in Portland/Mid-Multnomah County

GREEN RIDGE HILLS
farming since 1965

DR. THOMAS B. HABECKER
POST OFFICE BOX 753
FOREST GROVE, OR 97116

13 Mar 87

REMARKS BEFORE THE EVIRONNENTAL QUALITYY COMMISSION
811 S W 6th AVE
PORTLAND, OR 97204

HONORABLE COMMISSIONERS

DISPLAY CALENDAR PICTURE OF CRATER LAKE

I hear Crater Lake is getting cloudy. Whose fault is that?Feds? Oh, well that's someone else's problem. (toss it)

I live on a farm in the Tualatin Valley, many miles from any city water supply.

My domestic water is drawn from the shallow aquafer, wide spread over the Valley, on which most Valley households rely. The next layer of water is usually over a thousand feet down, and is reportedly not too palatable. The ground water on which I rely is recharged from surface water, such as rain. With this knowledge, I refrain from contaminating my own well with such blunders as spills of fuel oil, draining vehicle radiators, and so on. I also know that if my well yields contaminated water, a new well will not be any better, as it is the ground water which is contaminated.

A business activity which is becoming prevalent here in Washington County, is the container nursery. These nurseries use at least thirteen chemicals in their daily operation. Several of these chemicals, such as aldicarb, karmex, and simazene have been implicated in the headlines as bad actors.

All of these chemicals have at least some solubility in water. As they are used, the spray solutions fall to the ground, or are washed to and into the ground. Being soluble means that water will carry a solution through any normal filter, including soil. Thus these chemicals enter the ground water as part of the normal cycle of water moving in nature.

In the Tualatin Valley, this ground water contamination is a great concern to all domestic well users. As this ground water flows and becomes surface water in streams and rivers, the contamination is a threat to all users of those waters. For example, Lake Oswego residents swim in their lake, as well as boat and water-ski, and are directly exposed as a result of Lake Oswego water coming from the Tualatin River. Another example is the trout in the creek flowing by my home - what of the fisherman and the effects of pollution on the fish?

I urge the Environmental Quality Commission to act promptly, setting water loading standards for all waters, wherever found.

I further urge the Environmental Quality Commission to set strict standards, that safer threshholds are used to start with.

As the state has appropriated control of all waters, the state must also recognize control must be of quality as well as mere quantity.

Pick up calendar - "is not pure water all our concern?"

REMEQC01:WESTII

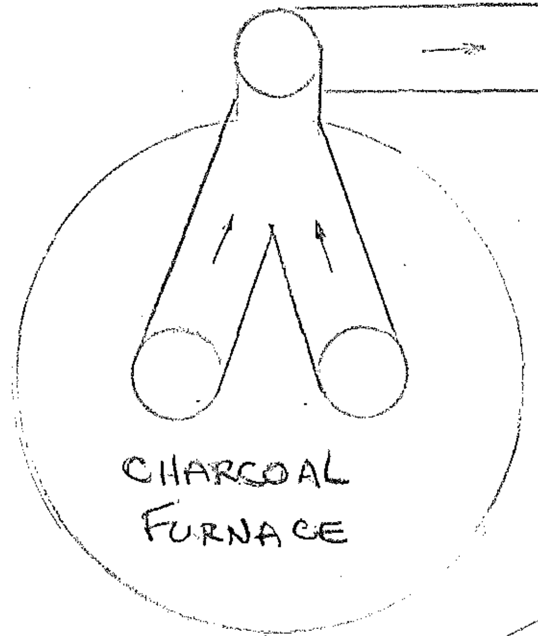
HUSKY CHARCOAL FURNACE

SCRUBBER

HOGGED FUEL BOILER

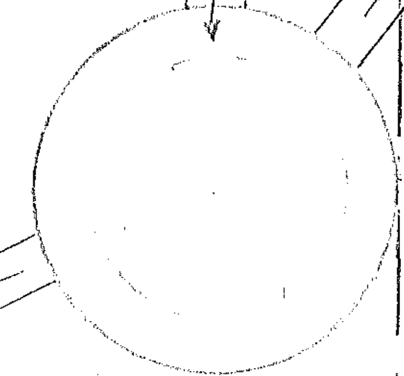
CYCLONES

FAN



DRYER

AREA 1
1969



AFTER COMBUSTION
CHAMBER

AREA 2
1979–80
$1,000,000+

WASTE HEAT
RECOVERY UNIT
(BOILER)

FAN

STACK

AREA 3
1982
$600,000+

AREA 4
1987–88
$2,750,000

TURBINE
GENERATOR

STEAM TO
INDUSTRIAL USERS

1 ENVIRONMENTAL QUALITY COMMISSION, OF THE STATE OF OREGON, (Commission)
2 v.
3
4 CITY OF PORTLAND (City)
5

ENVIRONMENTAL QUALITY COMMISSION ORDER No. WR-87-01

6 I

7 Pursuant to ORS 459.185(6), the Commission makes the following
8 findings:
9 1. ORS 459.180 requires that the affected persons within a wasteshed
10 shall implement the opportunity to recycle within the wasteshed not later
11 than July 1, 1986.
12 2. The City is an affected person within the Portland wasteshed.
13 3. The City received an extension to January 31, 1987 for providing
14 the opportunity to recycle. The conditions of the extension were not met
15 and the opportunity to recycle is still not provided to every person in the
16 wasteshed.
17 4. On February 9, 1987 the Department disapproved the Portland
18 Wasteshed Recycling Report based on the findings that (a) the opportunity
19 to recycle is not being provided to all persons within the City's urban
20 services boundary; and (b) an effective public education and promotion
21 program which meets the requirements of OAR 340-60-040 has not been
22 implemented within the City's urban services boundary.
23 5. Pursuant to ORS 459.185(5) which requires the Commission to hold
24 a public hearing within the affected area of the wasteshed, EQC Hearings
25 Officer Linda Zucker held a public hearing on February 17, 1987 at
26 811 S. W. Sixth Avenue, Portland. The testimony verified the

1 Department's findings that the opportunity to recycle is not provided to
2 every person within the Portland wasteshed.
3 6. Based on the Department's findings as stated in the Disapproval
4 of Wasteshed Recycling Report dated February 9, 1987 and upon the hearing
5 record, the Commission has determined that the opportunity to recycle is
6 not being provided within the Portland urban services boundary.
7 7. Ordinance No. 159457, adopted by the City on February 26, 1987,
8 does not require a recycling program which provides recycling collection
9 service and notification to every garbage collection customer within the
10 City's urban services boundary. The program has not yet been implemented,
11 and even if it were, it would not provide the opportunity to recycle as
12 required by law.
13 II.
14 Based on these findings, it is hereby ordered that:
15 1. By June 1, 1987, the City shall ensure that at least monthly
16 recycling collection service is provided to every garbage service customer
17 within the Portland urban services boundary.
18 2. The City shall manage the recycling promotion and education
19 program. The City shall design and produce, or hire a contractor to design
20 and produce, promotional materials as required by OAR 340-60-040. The City
21 shall also provide educational and promotional materials to local media and
22 community organizations. The City shall mail promotional materials to each
23 garbage service customer within the Portland urban services boundary, and
24 require each permittee to deliver promotional materials to his or her
25 customers.
26 ///

1 3. By May 13, 1987, the City shall mail an announcement of the
2 beginning of the City's recycling program and cause the contractor(s) or
3 permittees to distribute to their customers' doors the initial notification
4 of recycling service which will be available to that customer beginning in
5 June. The notice shall include:
6 a. reasons why people should recycle;
7 b. the name, address and telephone number of the person providing
8 on-route collection;
9 c. a list of the materials that can be recycled and instructions
10 for preparation of those materials;
11 d. a listing of depots for recyclable materials serving the area;
12 and
13 e. a City telephone number for customer information and complaints.
14 4. By June 1, 1987, the City shall design and produce additional
15 educational materials, including but not limited to a notice for customers
16 who have improperly prepared recyclable materials.
17 If the City requires each garbage hauler permittee to provide
18 recycling collection service, then it is also ordered that:
19 5. The City shall require all permittees to submit to the City,
20 customer lists, including names and addresses. These lists shall be
21 required to be updated at least quarterly.
22 6. By May 13, 1987, the City shall establish a hotline telephone
23 number for customer information and complaints. The telephone number shall
24 be listed on all promotional materials distributed to each garbage service
25 customer.
26 7. The City shall establish requirements for generator preparation

1 of recyclable materials. Permittees shall be required to collect and
2 recycle all recyclable materials that are prepared according to the City
3 specifications.

4 8. By June 1, 1987, the City shall establish an enforcement program
5 that ensures that all permittees are providing the required recycling
6 collection service and distributing promotional materials as directed by
7 the City. The enforcement program shall not rely entirely on customer
8 complaints. The City shall institute a continuous system of random checks
9 to verify permittee compliance.

10 9. The City shall require permittees to submit monthly reports on
11 volumes of material recycled and number of setouts by generator.

12 10. By July 1, 1988, the City shall submit a report to the Commission
13 on the first year of the recycling program. The report shall include an
14 explanation of all program features, including but not limited to number of
15 collectors, the types and number of collection vehicles, all promotional
16 activities, number of complaints, enforcement procedures and actions,
17 volumes recycled and number of setouts. The Commission reserves the right
18 to revise its order if, upon review of the Portland recycling program's
19 performance over the first year, the Commission determines that the program
20 does not achieve recycling rates at least comparable to recycling rates
21 elsewhere in the state and the nation.

22 ///
23 ///
24 ///
25 ///
26 ///

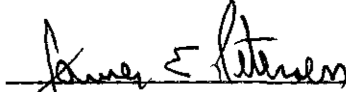
1 IT IS SO ORDERED:

2

3 ENVIRONMENTAL QUALITY COMMISSION

4

5

6 MAR 13 1987 

7 Date James E. Petersen, Chairman

8

9

10 3/13/87

11 Date Mary V. Bishop, Member

12

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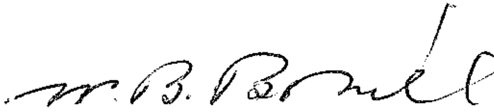
14 MAR 13 1987 

15 Date Wallace B. Brill, Member

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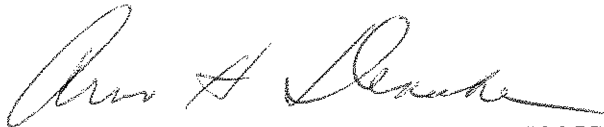
18 MAR 13 1987 

19 Date Arno H. Denecke, Member

20

21

22 MAR 13 1987

23 Date A. Sonia Buist, M.D., Member

24

25

26

Page

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY | INTEROFFICE MEMORANDUM

TO: Fred Hansen, Tina | **DATE:** March 17, 1987

FROM: Harold Sawyer

SUBJECT: Followup on EQC Meeting per 3/17/87 Staff Review

The following are things that require followup based on the staff discussion following the EQC Meeting.

** Mike Huston is to draft a memo to the commission clarifying the factual status of the McGinnis cases. This is to be run by Linda Zucker for concurrence.

** Carolyn Young will prepare a memo detailing options for achieving better consistency in the determinations of when to hold a public meeting or hearing on proposed permits.

** Permit Fees -- Special attention will have to be paid to staff reports on fee increases when they come back to the commission. They are not all that convinced that the increases are justified.

** Portland Recycling -- Schedule review for the March 1988 EQC meeting.

** Carolyn Young will check with Sue Payseno regarding the contract for followup on public speaking training to assure that the training embraces "sensitivity to public and EQC concerns".

** 4/22/87 -- The EQC will meet for Breakfast following the 4/21/87 landfill hearing. The purpose will be to direct questions to the Department to be followed up on prior to a final decision.

** The final landfill siting decision meeting may be rescheduled to either June 12, or June 29 to achieve assure of all EQC members.

** A draft order for each site should be available for review by interested persons (public) at least a week prior to the EQC decision.

** EQC agenda item mailing will be on Friday, 2 weeks before the meeting. Agenda items not in the package will be pulled from the agenda. (We are unacceptably falling behind on our schedule.)