

12/11/1987

**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS**



**State of Oregon
Department of
Environmental
Quality**

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OREGON ENVIRONMENTAL QUALITY COMMISSION MEETING

December 11, 1987

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

TENTATIVE AGENDA

9:00 a.m. - CONSENT ITEMS

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

- A. Minutes of the Special Meeting, October 2, 1987, and regular EQC Meeting, October 9, 1987. *10/2/87 minutes APPROVED*
10/9/87 minutes APPROVED with corrections
- B. Monthly Activity Reports September and October. *APPROVED*
- C. Tax Credits *APPROVED*

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 Public Hearings on Proposed On-Site Fee Increases, OAR 340-71-140. *APPROVED*
- E. Request for Authorization to Conduct a Public Hearing on Proposed Amendments to Rules of Practice and Procedure, OAR Chapter 340, Division 11. *APPROVED*

ACTION ITEMS

Public testimony will be accepted on the following except items for which a public hearing has previously been held. Testimony will not be taken on items marked with an asterisk (*). However, the Commission may choose to question interested parties present at the meeting.

- F. 9:30 - Conference Call: Appeal of Hearings Officer's Decision in DEQ vs. Nulf (by conference call). *Civil penalty fine reduced to \$100.*

- G. Appeal of Hearings Officer's Decision in DEQ vs. Vandervelde.
APPROVED hearings officer's decision.
- H. Appeal of Hearings Officer's Decision in DEQ vs. Kirkham.
DISMISSED the civil penalty.
- I. Proposed Adoption of Pollution Control Tax Credit Rule Amendments, Chapter 340, Division 16. *APPROVED*
- J. Proposed Adoption of Amendments to the State Implementation Plan: Redesignation of the Salem Area to Attainment for Ozone, OAR 340-20-047. *APPROVED*
- K. Proposed Adoption of Rules regarding Assessment Deferral Loan Program Revolving Fund (Safety Net Loan Fund - OAR 340-81-110).
APPROVED
- L. Proposed Adoption of Amendments to the Hazardous Waste Management Rules, OAR Chapter 340, Divisions 100, 102 and 104. *APPROVED*
- M. Request by the City of Joseph for an Increase in Mass Discharge Load and Deferral in Implementing the Minimum Design Criteria for Treatment and Control of Sewage Wastes. *APPROVED*
- N. 10:00 - Informational Report: A Proposal for Managing Oregon's Water - Water Resources Commission
- O. Informational Report: Review of Lists of Principal Recyclable Materials.

WORK SESSION

Yard Debris Recycling Work Session: To discuss proposed program for yard debris recycling in the Portland metropolitan area with a panel of affected persons (2 hours). *Identified yard debris as a principal recyclable material to become effective upon adoption of additional rules at a future meeting.*

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 a.m. to avoid missing any item of interest.

The Commission will have breakfast (7:30) at the DEQ offices, 811 S. W. Sixth Avenue, Portland. Agenda items may be discussed at breakfast. The Commission will also have lunch at the DEQ offices.

The next Commission meeting will tentatively be January 29, 1987, in Portland, Oregon.

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, telephone 229-5301, or toll-free 1-800-452-4011. Please specify the agenda item letter when requesting.

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the One Hundred Eighty-Third Meeting
October 9, 1987

Bend School District Building
520 N. W. Wall Street
Bend, Oregon

Commission Members Present:

James Petersen, Chairman
Arno Denecke, Vice Chairman
Wallace Brill
Sonia Buist

Mary Bishop was not present.

Department of Environmental Quality Staff Present:

Fred Hansen, Director
Michael Huston, Assistant Attorney General
Program Staff Members

NOTE:

Staff reports presented at this meeting, which contain the Director's recommendations, are on file in the Office of the Director, Department of Environmental Quality, 811 S. W. Sixth Avenue, Portland, Oregon 97204. Written material submitted at this meeting is made a part of this record and is on file at the above address.

BREAKFAST MEETING

Several local officials attended the breakfast meeting. In attendance were: State Representative Bill Bellamy, State

Representative Bob Pickard, Sisters Mayor Linda Swearingen, and LaPine Sewer District Board Member Ken Travis.

John Hector, DEQ Region Manager, briefed the Commission on several issues affecting the Central Region: Implementation of the new fine particulate standard (PM-10) in Klamath Falls; concerns about excessive smoke in the Central Oregon area; sewer installation progress in LaPine, Klamath Falls (Pelican City), and the Bend area; storm water discharges to drill holes; and cyanide leaching operations for gold recovery. John also provided the Commission with a written report covering significant issues in the region. A copy of this report is included in the files of the Commission.

Chairman Petersen introduced Bill Hutchison, who will be joining the EQC as its newest member at the next meeting. Mr. Hutchison will be replacing Commissioner Buist.

The Commission decided to reschedule the December 4 EQC meeting to December 11. This meeting will be held in Portland at the Department of Environmental Quality offices. The Commission also decided to meet the evening before (December 10) to discuss legislative concepts for the 1989 legislative session.

FORMAL MEETING

Chairman Petersen called the meeting to order and introduced the members of the Commission. He also introduced Bill Hutchison who will become a member starting with the next meeting.

CONSENT ITEMS:

Agenda Item A: Minutes of the August 28, 1987, EQC meeting.

ACTION: It was MOVED by Commissioner Buist, seconded by Commissioner Brill and passed by Commissioners Denecke, Buist and Brill that the minutes of the August 28 meeting be approved. Chairman Petersen abstained from voting since he was not present at the August 28 meeting.

Agenda Item B: Monthly Activity Reports for July and August.

ACTION: It was MOVED by Commissioner Buist, seconded by Commissioner Brill and passed unanimously that the July and August 1987 activity reports be approved.

Agenda Item C: Tax Credits.

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

Issue tax credit certificate for pollution control facility:

T-1888, Willamette Industries-Korpine Division;
wastewater pipeline

PUBLIC FORUM:

Shannon Bauhofer spoke to the Commission about the air quality of the Bend area. She talked about the effects of slash burning and indicated that the air quality this summer seemed worse.

Tom Throop, Deschutes County Commissioner, thanked the Department for its decision on the Benham Falls Hydroelectric project and agreed with the Department's decision on the Salt Caves hydroelectric project.

Carol Moorehead, American Lung Association of Oregon, told the Commission that the air quality in Bend had been deteriorating. Her organization would like to work in cooperation with the Department to implement daily reporting of Bend's air quality status.

Dennis Hanson, Bend Chamber of Commerce, said the air quality was affecting Bend's quality of life and tourism. He would like to see a long-term, consistent monitoring program developed for the Bend area.

SPECIAL ITEM: Bacona Road Decision

Chairman Petersen began the discussion with a summary of the issue. At the special meeting on October 2, the Commission had reviewed the contested case Hearing Officer's recommendations, considered exceptions, and agreed with the Hearing Officer on all but two issues--groundwater and landslides. The Commission had requested the transcript on those issues for review. Today, the Commission needs to address the issues of groundwater and landsliding and finalize that portion of the process.

The Commission asked questions of Mr. Greenwood about certain testimony in the transcript relating landslides. Commissioner Denecke stated that he interpreted the testimony to indicate the only concern for landslides was during the process of construction. Commissioner Buist indicated that although the

experts disagree, her conclusion was that the data base on this issue was adequate for this stage of the proceeding. Chairman Petersen disagreed. He said that landsliding was the critical issue because the integrity of the liner system for leachate collection and groundwater protection was dependent upon the area being free of landsliding. He said the Commission had to make a decision and it could not be conditional. He said he has seen nothing in the record to indicate the site is not an appropriate site. However, he does not believe the information on landsliding is adequate to enter the legally required finding that the site is appropriate until additional studies are completed. He indicated this was a very close question and he, therefore, was inclined to rely on the Hearings Officer who sat through the entire testimony. Chairman Petersen also stated he was convinced that shallow landslides could be dealt with in the design; his concern was with deep slides.

Michael Huston reviewed the requirements of the statute with respect to the decision. He said the legal requirement was a fairly low threshold--substantial evidence in the record. Substantial evidence is any evidence that a reasonable person would use in making a serious business-like decision. He said the Commission may choose to want more than that, however. Mr. Huston agreed with the Chairman that conditions cannot substitute for the required statutory findings.

Commissioner Denecke MOVED that the Commission continue the contested case hearing to gather additional information on a leachate treatment system and on the landslide issue. This additional information would satisfy the Commission that substantial evidence is on the record to meet the statutory standards for a decision. The motion was seconded by Commissioner Brill. The motion PASSED by a three to one vote with Commissioner Buist voting NO.

Chairman Petersen asked for an update on the status of the permitting process for the potential Eastern Oregon sites. Steve Greenwood indicated that while one application had been received, it still was incomplete. However, the Department is proceeding with review of that application.

Chairman Petersen stated he would like to have Judge Howell continue to serve as Hearings Officer for the contested case hearing.

Director Hansen told the Commission there had been indications that the Port of Portland was reluctant about a transfer station being located on port property. Chairman Petersen asked the Department to investigate the matter. If the Department found any reluctance from the Port, the Commission authorized, by consensus,

that the Chairman write a letter to the Port's Executive Director about their commitment to assist.

ACTION AND INFORMATIONAL ITEMS:

Agenda Item D: Request for Authorization to Conduct a Public Hearing on Pollution Control Tax Credit Rule Amendments, Chapter 340, Division 16.

House Bill 2023, passed by the 1987 Legislature, includes several amendments to the pollution control tax credit statute (ORS 468.150 to 468.190). For the tax credit rules to be consistent with the bill and to implement portions of the bill, rule amendments are necessary. Additionally, legal counsel identified portions of the current rule that do not accurately reflect statutory intent. These portions should be changed to bring the rules into compliance with enabling legislation.

DIRECTOR'S RECOMMENDATION: Based on the staff report summation, it is recommended the Commission authorize public hearings to take testimony on the proposed Pollution Control Tax Credit Rule Amendments, Chapter 340, Division 16.

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

Agenda Item E: Request for Authorization to Hold a Public Hearing on Rules for the Hazardous Substances Remedial Action Fee (on treatment or disposal of hazardous wastes and PCBs).

In 1985, Oregon Revised Statutes (ORS) 466.685 established a \$10 per ton fee on the treatment by incineration and land disposal of hazardous wastes and PBCs. The EQC adopted procedures (OAR 340-105-120) for collecting the fee. Senate Bill 122, now known as Chapter 735, Oregon Laws 1987, repeals ORS 466.685. A new section of the bill reestablishes the hazardous waste fee at \$20 per ton effective July 1, 1987. The Department proposes amending OAR 340-105-120 to incorporate the fee increase required by SB 122 as well as other minor housekeeping changes.

DIRECTOR'S RECOMMENDATION: Based upon the staff report summation, it is recommended the Commission authorize a public hearing and take testimony on the proposed amendments to the rule concerning the Hazardous Substances Remedial Action Fee, OAR 340-105-120, as presented in Attachment I of the staff report.

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

Agenda Item F: Request for Authorization to Conduct a Public Hearing on Proposed Rules to Establish Chapter 340, Division 130, Procedures Governing the Issuance of Environmental Hazard Notices.

During the 1985 legislative session, the Legislature enacted a rule which authorizes the EQC to list sites where environmental notice must be given and use restrictions must be imposed. This legislation is codified as ORS 466.360 to 466.385. Amendments were made in 1987 to include sites where remedial action had occurred and were added to the definition of sites where environmental notice may be appropriate. An advisory committee has assisted the Department in drafting rules to implement this legislation. The Department now requests authorization to conduct a public hearing to adopt rules to implement ORS 466.360 to 466.385.

DIRECTOR'S RECOMMENDATION: Based upon the staff report summation, it is recommended the Commission authorize the Department to conduct a public hearing and to take testimony on the proposed rules establishing procedures governing the issuance environmental hazard notices.

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

Agenda Item G: Request for Authorization to Conduct Public Hearing on Proposed Rules for the Oregon Underground Storage Tank Program, ORS 468.901 to 468.917.

Subtitle I of the Resource Conservation and Recovery Act (RCRA) authorized the implementation of a Federal underground storage tank program and encouraged the development of state-operated programs. The 1987 Legislature passed Senate Bill 115 which expands the Department's authority over underground storage tanks to include all federal provisions and certain additional state requirements. Based on the authority of SB 115, the Department proposes that interim underground storage tank rules be adopted so that the Department can develop an underground tank program that meets state program approval.

DIRECTOR'S RECOMMENDATION: Based upon the staff report summation, it is recommended the Commission authorize public hearings to take testimony on the proposed underground storage tank rules.

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

Agenda Item H: Request for Variance from Portions of OAR 340-60-040(1)(a) and (2), Relating to Education and Promotion of the Opportunity to Recycle, for the Gilliam, Jefferson, Morrow, Sherman, Wasco and Wheeler Wastesheds.

The Gilliam, Jefferson, Morrow, Sherman, Wasco and Wheeler Wastesheds are requesting a variance from the opportunity to recycle program required by Oregon Administrative Rules (OAR) 340-60-040. The request is based on special conditions in all or part of the wastesheds. The counties are requesting to be relieved of the requirement of providing a written recycling notice to each rural garbage customer.

Les Ruark, Arlington, Oregon, spoke about his concerns on Gilliam County's variance request. He said the County had not provided citizens with the opportunity to comment at the local level. He expressed concern about the lack of County support for recycling. He also expressed concern about the Waste Management proposal and wanted to make sure conditional use permit conditions are fulfilled. Mr. Ruark encouraged the connection between the proposed regional solid waste landfill operation and the County's request for a variance. Additionally, he asked the Commission to consider Gilliam County for a pilot recycling project. The Commission advised Mr. Ruark that most of his concerns appeared to relate to local government in his area and could not be controlled by the Commission.

Mr. Ruark asked about Waste Management's solid waste disposal permit application. Director Hansen said the opportunity to recycle must be included in the permit, if approved. Additionally, Director Hansen said the permit would not be approved until all information had been received from Waste Management which includes a waste reduction plan.

Commissioner Denecke noted for the record that letters had been received on this matter from Ron Davis and Richard Harper.

DIRECTOR'S RECOMMENDATION:

Gilliam Wasteshed:

Based upon the findings in the summation, it is recommended the Commission grant variances from the requirements of OAR 340-60-040(1)(a) and (2) to the Gilliam Wasteshed with the following conditions:

1. The wasteshed implement an education and promotion program which includes the following:

- a. Signs at the two wasteshed landfills and at public locations throughout the wasteshed which promote the full-line recycling which is available in The Dalles and Hermiston.
 - b. Information about recycling in The Dalles and Hermiston distributed to local media and community groups on at least a semi-annual basis. This information must include all the information required under OAR 340-60-040(1)(a)(B).
 - c. Promotion of recycling in schools in the wasteshed, including using the recycling curriculum provided by the Department.
2. This variance shall be in effect only as long as the Gilliam Wasteshed is served only by the existing small rural sites.

Jefferson Wasteshed:

Based upon the findings in the summation, it is recommended that the Commission grant variances from the requirements of OAR 340-60-040(1)(a) and (2) to the Jefferson Wasteshed with the condition that the wasteshed implement an education and promotion program which includes the following.

1. Signs at the two wasteshed landfills and at public locations throughout the wasteshed which promote the recycling available in Madras and Bend.
2. Information about recycling in Madras and Bend distributed to local media and community groups on at least a semi-annual basis. This information must include all the information required under OAR 340-60-040(1)(a)(B).
3. Promotion of recycling in schools in the wasteshed, including using the recycling curriculum provided by the Department.
4. Distribution of either a one-time notice or a periodic, at least semi-annual, recycling reminder to all collection service customers.

Morrow Wasteshed:

Based upon the findings in the summation, it is recommended that the Commission grant variances from the requirements of OAR 340-60-040(1)(a) and (2) to the Morrow Wasteshed with the following conditions:

1. The wasteshed implement an education and promotion program which includes the following:
 - a. Signs at the Turner Landfill and at public locations throughout the wasteshed which promote both the recycling available at the single-material depots in the Morrow Wasteshed and the full-line recycling available in Hermiston.
 - b. Information about recycling opportunities available in the Morrow Wasteshed and in Hermiston distributed to local media and community groups on at least a semi-annual basis. This information must include all the information required under OAR 340-60-040(1)(a)(B).
 - c. Promotion of recycling in schools in the wasteshed, including using the recycling curriculum provided by the Department.
2. This variance shall be in effect only as long as the Morrow Wasteshed is served only by the existing small rural sites and the Hermiston Landfill.

Sherman Wasteshed:

Based upon the findings in the summation, it is recommended that the Commission grant variances from the requirements of OAR 340-60-040(1)(a) and (2) to the Sherman Wasteshed with the condition that the wasteshed implement an education and promotion program which includes the following:

1. Signs at the county landfill and at public locations throughout the wasteshed which promote both the recycling available at the county landfill and the full-line recycling available in The Dalles.
2. Information about recycling in the Sherman Wasteshed and in The Dalles distributed to local media and community groups on at least a semi-annual basis. This information must include all the information required under OAR 340-60-040(1)(a)(B).
3. Promotion of recycling in schools in the wasteshed, including using the recycling curriculum provided by the Department.

Wasco Wasteshed:

Based upon the findings in the summation, it is recommended that the Commission grant variances from the requirements of OAR 340-60-040(1)(a) and (2) to that portion of Wasco Wasteshed outside of the UGB of The Dalles with the condition that the wasteshed implement an education and promotion program which includes the following:

1. Signs at the small rural sites and at public locations throughout the wasteshed which promote both the recycling available at the North Wasco and Box Canyon Landfills and the full-line recycling centers available in The Dalles.
2. Information about recycling in the wasteshed distributed to local media and community groups on at least a semi-annual basis. This information must include all the information required under OAR 340-60-040(1)(a)(B).
3. Promotion of recycling in schools in the wasteshed, including using the recycling curriculum provided by the Department.
4. Promotion of recycling in schools in the wasteshed, including using the recycling curriculum provided by the Department.

Wheeler Wasteshed:

Based upon the findings in the summation, it is recommended that the Commission grant variances from the requirements of OAR 340-60-040(1)(a) and (2) to the Wheeler Wasteshed with the condition that the wasteshed implement an education and promotion program which includes the following:

1. Signs at the Mitchell and Spray Landfills and at public locations throughout the wasteshed which promote the recycling available at the Fossil Landfill.
2. Information about recycling in the Fossil Landfill distributed to local media and community groups on at least a semi-annual basis. This information must include all the information required under OAR 340-60-040(1)(a)(B).
3. Promotion of recycling in schools in the wasteshed, including using the recycling curriculum provided by the Department.

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

Agenda Item I: Status Report on Yard Debris Recycling in the Portland Metropolitan Area.

When the EQC restricted backyard burning in 1983, they identified yard debris recycling as an alternative disposal method. Since that time, the Department has been working with local governments and private industry to develop yard debris collection and processing programs. In December 1984, the Commission discussed, as a part of the Opportunity to Recycle Act, whether yard debris should be designated as a principal recyclable material in the Portland Wasteshed. A series of information meetings were held, and many issues were identified. Many of these issues have been resolved; however, even after considerable effort by the Department and local government over the past seven years, several major issues have not been resolved.

John Charles, Oregon Environmental Council, told the Commission he felt the Department needed to work more with involved parties to resolve existing issues. He said there were no target dates for closure on the yard debris problem and no incentives existed for further implementation. Mr. Charles said there were too many people who would prefer to do nothing. He proposed that the Department talk with the processors about expanding curbside pick-up capacity.

Commissioner Denecke asked Mr. Charles if OSSSI's (Oregon Sanitary Service Institute) written statement, which is made part of this record, is correct in its assumption that the market for yard debris is falling off; Mr. Charles indicated the trend for yard debris was going up.

Chairman Petersen expressed the desire to address this issue as soon as possible. The Commission, by consensus, agreed that a proposed rule should be developed listing yard debris as a principal recyclable material in the Portland metropolitan area and establishing an implementation date. This proposed rule would then become a focal point for testimony and a decision.

Agenda Item I: Proposed Salt Caves Hydroelectric Project:

1. City of Klamath Falls Appeal of the Department's Denial to the Environmental Quality Commission filed September 4, 1987.
2. Northwest Environmental Defense Center, et. al., Cross-Appeal filed September 9, 1987.

The City of Klamath Falls has requested a contested case hearing on the Department's denial of the City's 401 certification request. The Northwest Environmental Defense Center has filed a cross-appeal. The City has suggested in their appeal letter that the contested case hearing may be resolved if 401 certification were to be issued subject to higher summertime water flows. The Department believes it is inappropriate for the Commission to consider this proposal. Certification decisions, by law and by Commission rule, are made by the Director.

Additional issues to be addressed by the Commission include appointment of a Hearings Officer, establishment of procedures for the hearing including whether Attorney General Model Rules should be substituted for existing Commission rules, determination of the status of the cross-petition, if the cross petitioners are granted party status, and if the issues they raise should be addressed in the hearing.

George Flitcraft, Mayor of the City of Klamath Falls, told the Commission he had two areas of concern: lack of cooperation and lack of fairness from the Department. He indicated the DEQ has rejected their offers to cooperate in solving the one problem resulting in denial of their 401 certification. The City proposed increased minimum flow releases to meet temperature concerns as soon as they became aware of DEQ's concern. They were upset when DEQ said it did not have time to consider their proposal. The lack of time was a result of DEQ's long delay in starting substantive review on their application.

Mayor Flitcraft indicated that while the City is still willing to cooperate and compromise, it appears DEQ is not. The City would like a certificate issued subject to a condition that they provide flows that will solve the temperature problem. Alternatively, they want DEQ to reconsider its denial and work with the City in solving the temperature problem. However, DEQ will not cooperate and insists the City file a new application. The City does not wish to spend more time and money on a new application and will strongly resist another year-long application process. He urged the Commission to grant the City's request.

Mayor Flitcraft then addressed the fairness issue. The City is concerned that DEQ has shifted the rules the middle of the process. DEQ had no definition of its temperature standard to apply to the City's project until late June 1987. In August when the certification was denied, DEQ changed the standard. Further, DEQ is proposing to change the rules for holding of a contested case hearing. The changes proposed would allow opponents of the project to reopen issues already solved and would be detrimental to the City. He asked the Commission to reject the Department's proposal.

Commissioner Buist asked Mayor Flitcraft whether the City had found DEQ to be cooperative in other areas. Mayor Flitcraft said he had heard the cooperation toward the end of the process was good; however, initially the cooperation was not good.

Cyrus Smith, representing Save Our Klamath Jobs, spoke to the Commission about the history of the Salt Caves project, how it fits into the Oregon Comeback and their frustration with DEQ's denial of their certification request. They expect reasonable cooperation from government, not needless confrontation. Government must be flexible to achieve the Oregon Comeback.

Joseph Riker, III, Planning Director for Klamath Falls, spoke in support of the Salt Caves project. He felt the differences between the Department and City were solvable. He said he had seen the consultant proposals for solving the temperature problem and believes they will meet DEQ concerns. Mr. Riker said DEQ should work with the City toward a mutual goal of approving the project.

Peter Glaser, attorney for Klamath Falls, told the Commission of his frustration with the confrontational position of the Department. He reviewed the reasons for the City's concerns, including that the temperature standard was written for a point source discharge and not for a hydroelectric project. He said they had no clarification from DEQ staff of what the standard would be and how it would be measured until the City received a letter from the department in late June 1987. They did not agree with the Department's interpretation of measurable temperatures and model accuracy. In August, DEQ changed its interpretation of the temperature standard. The City continues to believe the project as originally proposed will comply with the temperature standard; however, they are willing to compromise and release additional water. As soon as the City discovered that DEQ believed there would be a temperature problem, they sent a letter to DEQ saying they were willing to release additional water and asked that a certificate be issued subject to that condition. Unfortunately, that letter came very late in the one-year process since DEQ has delayed substantive review of their application.

Commissioner Denecke asked Mr. Glaser if certification would have been waived based on federal interpretation if the Department had not acted by August 25, 1987. Mr. Glaser indicated that was true but also noted there was an open issue between the Department and the City about whether DEQ action was sufficient to prevent waiver.

Mr. Glaser indicated they believe there is a way to resolve the problem short of the contested case hearing. They have sent a letter to the Department requesting reconsideration of the denial based on their offer to provide additional water flows.

However, DEQ indicated to the City that they must submit a new application. The City questions the necessity of submitting a new application; therefore, they want the certificate issued subject to a condition that the flows be resolved. If the Commission is not willing to issue the certificate at this time, the City wants the Department to work with them and to resolve the problem in a scheduled time.

Mr. Glaser then addressed the NEDC petition for cross-appeal. He expressed the view that the Department's proposals to adopt the Attorney General's Model Rules, treat the NEDC petition as a petition for party status, and consider the other issues raised by NEDC way a method to grant a petition that is without legal or procedural right. He indicated that approval of the Department's proposals would constitute an unfair rule change.

Jeff Rola, representing the Deschutes River Chapter of Trout Unlimited and the Coalition for the Deschutes, told the Commission these groups were not "anti-hydro". However, they did believe that responsible development could provide many benefits to the community and the environment. He agreed with the Department of Fish and Wildlife's recommendation that the Salt Caves project would be a detriment to wild fish production and the fisheries recreation industry in Klamath County. Mr. Rola suggested the City should investigate geothermal technology for industrial development sites.

In response to a request from the Commission, Michael Huston, Assistant Attorney General, reviewed three legal issues related to the Department's recommendation and the City's response. These include: 1) the request to either issue a conditional certification or direct the Department to reconsider the matter; 2) the use of the AG Model Rules versus the existing Commission rules for contested cases; and 3) the matter of party status.

Mr. Huston indicated his office has advised the agency that the Commission does not have the authority to direct the terms of a 401 certificate except within the context of a contested case hearing. He has additional concerns about the Commission reaching the merits of this case at this time. A special statute gives the Director the responsibility of approving or denying a 401 certificate. Through rulemaking, the Commission has allowed a contested case appeal of the Director's decision. Having done this, the Commission should adhere strictly to the contested case process.

With respect to the second issue, Mr. Huston advised that the Commission's contested case rules were primarily designed for enforcement cases and civil penalty matters. Those rules have special provisions that allow the hearings officer to make the final decision. A case only reaches the Commission if the

hearings officer's final order is appealed. The AG Model Rules provide greater flexibility and often a quicker decision in a case such as the Salt Caves 401 Certification appeal. Mr. Huston further indicated that in his experience, the Commission has not used the existing EQC rules when considering other than a normal enforcement/civil penalty case. The Commission has either adopted the Model Rules for the case or reached agreement with the parties to use alternative procedures.

With regard to party status, Mr. Huston stated the AG Model Rules establish a liberal standard for determining whether party status should be granted. The existing EQC rules are not clear on whether intervention by third parties is allowed. The Commission has been very clear that a third party cannot trigger a contested case. However, the Commission has not, to Mr. Huston's knowledge, held that third parties cannot intervene in an existing contested case. The problem in the existing Commission rules has not been confronted since third parties do not typically get involved in civil penalty cases. Finally, Mr. Huston advised that if party status were denied, a possible result would be that the department would be faced with a contested case hearing and a circuit court case being pursued at the same time. Allowing party status would have the potential benefit of placing all the issues in a single forum.

Chairman Petersen asked whether the 401 Certification was the only outstanding state permit or approval for the Salt Caves project. Mr. Huston indicated that at least two significant state processes have not been completed: the Water Appropriation Permit decision by the Department of Water Resources and the Site Certificate decision by the Energy Facility Siting Council. The state also claims ownership of the beds and banks of the Klamath River and must issue a lease before the project can proceed.

Fred Hansen then advised the Commission of the Department's position about the serious charges made by the spokespersons for the City of Klamath Falls. He stated the Department takes total exception with the charges of being uncooperative and changing procedures.

Mr. Hansen briefly reviewed the history of the City's application. The application was filed incomplete on August 25, 1986 since it lacked the land use compatibility statement required by EQC rules. On November 15, 1986, the City petitioned the EQC to waive its rule on application content with respect to the land use compatibility statement. On December 12, 1986, the EQC rejected the petition by the City, and directed the Department to develop a proposed modification to the 401 certification rules, providing an alternative method for an applicant to submit the needed land use information. Such rule modification was developed on a short timeframe. A public hearing on the rule modification

was held at the January 23, 1987, EQC meeting and a rule modification was immediately adopted--a very fast timeframe for development and adoption of a significant rule change. On February 2, 1987, the City filed land use information pursuant to the new rule amendment. Under the procedures of the rule, their application was finally deemed complete for processing on March 10, 1987. On April 2, 1987, the Department issued public notice of the completed application, public hearings were held on May 12, and May 15, and the public comment period closed May 18. Review of the extensive record continued over the next several months. In addition, a number of meetings and discussions were held with the City's consultants. A decision was made on August 19, 1987.

Mr. Hansen noted the Department did not wait until March 10 when the application was deemed "officially complete" to begin review of the documents. Department review began in August 1986 when the application (six to seven volumes) were received. Intensive review began on February 2, 1987, when the City submitted the land use information.

Mr. Hansen then addressed the charges about the Department changing its interpretation of the temperature standard and unwillingness to consider consider an alternative proposal. In meeting with the City's consultants in June, and by letter dated June 26, 1987, the Department made it clear that the applicable temperature standard would be "no measurable increase." Department concerns about temperature were discussed at subsequent meetings with the consultants. The Department was surprised when the applicant's first proposal to increase minimum stream flows for addressing temperature concerns raised in June came by a letter delivered after 5 p.m. on Friday, August 14, 1987, several days before the one-year FERC interpreted deadline for a final decision. This letter did not propose a specific flow level, rather it was indicated that higher flows would be considered and suggested a condition in a certificate to work out flow levels later. The Department contacted FERC to determine if an extension of the one-year deadline could be obtained if DEQ and the City agreed. FERC's response was "absolutely not." Based on this response and on the City's position that no part of their August 14, 1987, letter would preclude any assertion by the City of other legal rights in the future, the Department had no choice but to deny certification.

Shortly after the denial letter was issued, the Department met with Mr. Glaser and representatives of the City. The Department discussed whether it would accept re-application and the process and timetable for acting on a revised application. DEQ advised the City that if the revised application only modified the minimum stream flow and did not change other project conditions, department review would focus on temperature and could be completed within 90 days unless unforeseen circumstances arise.

Mr. Hansen stressed that the department believes it is the responsibility of the applicant to submit the project proposal. Since any modification of a project to address an environmental concern may have impacts on other areas of the project, the applicant must be responsible for proposing changes.

Mr. Hansen advised the Commission that he would like to respond to specific charges about the interpretation and application of the temperature standard; however, legal counsel had advised those were substantive issues that should only be addressed in the contested case proceeding.

Commissioner Buist stated the information provided by Mr. Hansen answered her questions about department cooperation.

Roy Elicker, staff attorney for the National Wildlife Federation, was present to represent that organization and the Oregon Wildlife Federation. He indicated that the responses by Mr. Huston and Mr. Hansen had clarified the issues for the Commission, and he agreed with their statements and with the staff analysis. He expressed the view that the Commission and Department were doing a good job and carrying out the public's wishes. He advised that Mr. Karl Anuta, who filed the petition for cross-appeal on behalf of NEDC and other environmental organizations could not be present. As a representative of one of those environmental organizations, Mr. Elicker further requested that the NEDC cross-appeal be treated as a motion for intervention. He urged the Commission to adopt the Director's recommendation.

Molly Holt, representing NEDC and the Sierra Club, also stated that the EQC was carrying out the public's interest. She further stated that DEQ had always been cooperative and fair. She urged the Commission to adopt the AG Model Rules to ensure a full and fair hearing occurs.

John Putnam, representing Save Our Klamath Jobs, advised the Commission that the City of Klamath Falls Salt Caves Project was not funding the cost of citizen attendance at the EQC meeting. He further indicated there had been no fisherman on the section of the Klamath River where the Salt Caves Project would be located all summer.

Mr. Glaser requested the opportunity to respond to comments made by Mr. Hansen. Chairman Petersen indicated he was unwilling to open the matter for such responses unless the Commission voted to do so.

Commissioner Brill expressed concern about adopting the AG Model Rules. Chairman Petersen indicated he initially shared the same view; however, he concluded the contested case rules do not go

into effect until there is a contested case hearing. Since the hearing has not commenced, no one in this matter has been operating under the contested case rules and adopting the Model Rules would not change rules. Mr. Huston agreed with the Chairman and further noted that the party issue will have to be addressed regardless of the rules the Commission follows.

Chairman Petersen expressed the view that the 401 certification process is a unique component of federal law and is different from other issues the Commission has been involved with. He stated his belief that 401 certification is the Director's decision and the Commission should not be involved outside the contested case process. He also stated it is in the public's interest to have the opportunity to participate in this decision since so many people are interested in the project.

DIRECTOR'S RECOMMENDATION: Based on the discussion in the staff report, the Director recommends that the Commission:

1. Reject the request by the City of Klamath Falls to consider the issuance of 401 certification subject to increased summertime flows because it is inappropriate for the Commission to consider the matter outside the pending contested case hearing.
2. Authorize the Chairman to appoint a Hearings Officer to preside over the Contested Case Hearing requested by the City of Klamath Falls regarding the Director's denial of 401 Certification for the proposed Salt Caves Hydroelectric Project.
3. Adopt Attachment D which would adopt the Attorney General's Model Rules for Contested Case Hearings in lieu of the Commissions existing contested case procedural rules, to apply to the contested case hearing on the Director's decision to deny 401 certification on the proposed Salt Caves Hydroelectric Project, and instruct the Department to file Attachment D with the Secretary of State in the manner provided by ORS 183.355.
4. Recognize the petition of NEDC, et. al., as a petition for party status in the contested case hearing and grant the petitioners party status.
5. Authorize expansion of the scope of the contested case hearing to include the additional issues raised by NEDC in its petition for party status.

ACTION:

It was MOVED by Commissioner Buist, seconded by Commissioner Denecke and passed unanimously that Director's recommendation No. 1 be approved.

It was MOVED by Commissioner Denecke, seconded by Commissioner Buist and passed unanimously that Director's recommendation No. 2 be approved.

It was MOVED by Commissioner Denecke, seconded by Commissioner Buist and passed three to one, with Commissioner Brill voting NO, that Director's recommendation No. 3 be approved.

Commissioner Denecke suggested that the determinations in Director's recommendations 4 and 5 be left to the Hearings Officer. Commissioner Buist MOVED that Director's recommendation No. 5 be approved. That motion died for lack of a second. Therefore, these issues are left to the Hearings Officer to decide. In further discussion, the Commission, by consensus, agreed that the Chairman could appoint either himself or another Commission member as a joint Hearings Officer to assure that ruling on critical motions and petitions reflected the concern of the members that the hearing fully address the issues.

Chairman Petersen announced that today was Commissioner Buist's last meeting since her term as commissioner had ended. He thanked her on behalf of all the Commission for her contribution to the meetings, her insightful comments on technical issues, her sense of humor, and her service as an outstanding commissioner.

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

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the October 2, 1987, Special Meeting

Multnomah County Courthouse
Room 602
1021 S. W. Fourth Avenue
Portland, Oregon

Commission Members Present:

James Petersen, Chairman
Arno Denecke, Vice Chairman
Mary Bishop
Sonia Buist
Wallace Brill

Department of Environmental Quality Staff Present:

Fred Hansen, Director
Michael Huston, Assistant Attorney General
David Ellis, Former Assistant Attorney General
Division Administrators and Program Staff Members

The special meeting was held so that the Environmental Quality Commission could hear objections to the Hearings Officer's findings in the landfill siting selection of the Bacona Road site.

Judge Ed Howell, the Hearings Officer for the contested case hearing of the landfill site selection, spoke about the findings submitted by the Department of Environmental Quality. Judge Howell had reservations about the Department's findings on noise, wetlands and fires. However, Judge Howell felt those issues could be resolved.

Judge Howell said that he could not agree on landslide and underground water concerns. He felt the tests performed did not establish an adequate amount of monitoring. Concluding, Judge Howell said the evidence produced at the contested case hearing was insufficient to allow either acceptance or rejection of the Bacona Road site.

Chairman Petersen thanked Judge Howell for serving as Hearings Officer and for his willingness, time and patience.

Steve Greenwood, manager of the Department's Solid Waste Division, told the Commission about the Department's recommendations and why the siting process should continue. Mr. Greenwood discussed the leachate, landslide and groundwater issues raised by Judge Howell.

Because an error was made by the consulting firm about leachate amounts, the Department agrees with the Hearings Officer's recommendation. This recommendation would be that the contested case hearing be continued on that issue, and that the Department would further investigate leachate volumes and treatment.

In reference to the landslide issue, Mr. Greenwood felt some confusion had occurred about the different types of landslide testing. He said that there was conclusive evidence there was no potential for a deep-seated slide. While shallow or localized slides could occur in the natural course of events in the development phases of the landfill, the slides would not impact the feasibility of the site. Mr. Greenwood agreed that additional testing was needed around the site only to ensure that excavation and construction proceed without landslide problems.

Mr. Greenwood cited the tests that had been done at the site to determine groundwater characteristics. He said that in addition to the natural protective rock, direction of the ground flow and flow patterns, state-of-the-art lining systems, leachate collection systems and leak detection systems would be used.

Dave Ellis, former Assistant Attorney General, represented the Department in the contested case hearing. Mr. Ellis spoke about the legal obligations of the Commission and issues raised by the petitioners of the contested case hearing. He said there was no legal requirement for the Commission to postpone their decision while further evidence is gathered on the groundwater and landslide issues. Further information on the leachate issue should be brought before the Hearings Officer before the Commission's decision was made final.

Mr. Ellis discussed the petitioners' belief that the Hearings Officer applied the incorrect standard to the statewide land use goals. The Hearings Officer's findings demonstrate compliance with land use goals as well as due consideration. He spoke about the issues raised about the cost and site life at the Bacon Road site. Further study of the site may change cost estimates and that the site-life estimate the Commission decided upon was acceptable. In reference to the Commission deciding on the site based upon a feasibility analysis, Mr. Ellis said to go beyond

feasibility in a siting decision would be impracticable from a cost point of view.

Mr. Ellis reminded the Commission that the purpose of the landfill siting process was to provide a local solution to a local problem. He said that the proposal to establish a site on the other side of the mountains may not be a practicable solution. Concluding, Mr. Ellis felt the Bacona Road site met statutory criteria, and the site could be developed in an environmentally sound manner.

John Junkin, counsel to Washington County and legal counsel to the Unified Sewerage Agency (USA), told the Commission that the County had raised issues about planning, land development and transportation. Mr. Junkin discussed the location of the proposed landfill and the boundaries of USA. The County concurs with Judge Howell's finding about leachate treatment. He said the Department assumed the leachate would be handled by USA. Mr. Junkin indicated that the timetable outlined by the Department for leachate treatment was very ambitious. For this timetable to occur, an extension of service and boundary would need to be made. Additionally, USA is concerned with the water quality of the Tualatin River.

Edward Sullivan, representing the Helvetia/Mountaindale Preservation Coalition, presented objections to the Hearings Officer's findings. Mr. Sullivan objected to testimony provided at this hearing, to the role of the Department of Justice, to the Department's interpretation of due consideration and compliance, to the site selection process and to the conditions imposed in the process. Mr. Sullivan further discussed groundwater, landslide and noise issues. He asked the Commission to adopt the Helvetia/Mountaindale Preservation Coalition petitioners' exceptions and terminate the Bacona Road proceedings.

Henry Kane, city attorney for the City of Banks, told the Commission he accepted and adhered to Mr. Sullivan's position. Mr. Kane said the site was not in compliance with enabling statutes. Additionally, he spoke about the leachate issue and how it could affect the City of Bank's water supply.

Ed Martiszus, who lives on the Nehalem River, said he agreed with Judge Howell's findings for the most part. Mr. Martiszus expressed concern for the Nehalem River, health protection and waste reduction.

Jay Waldron, attorney with Schwabe, Williamson, representing Waste Management of Oregon, spoke to the Commission about wetland requirements. Mr. Waldron asked the Commission to consider Waste Management's proposed site as further investigation occurs of the Bacona Road site.

Stephen Janik, representing the Port of Portland, told the Commission that the Port supported the Department's recommendation.

After hearing the above statements, Commissioner Denecke moved that the Commission close their deliberations; Commissioner Buist seconded the motion. The motion passed unanimously. Representatives of Channel 8, THE OREGONIAN and the HILLSBORO ARGUS were present during the closed session.

The Commission returned to open session, and then Chairman Petersen stated that the Commission was unwilling to make a decision about the suitability of the site in the areas of landslides and groundwater. They indicated that they needed to independently and to individually review the contested case transcript on those issues and asked the Department to provide them with a copy of the transcript on the issues of landslide and groundwater testimony. At the October 10 EQC meeting to be held in Bend, the Commission will make their determination.

The following motion was made:

The Commission would affirm the existence of sufficient information to demonstrate compliance with Chapter 679 in all areas where the Hearings Officer made positive findings, except for the areas of landslide and groundwater, to direct the Department to generate additional information on the availability of facilities to properly treat and dispose of leachate generated by the Bacona Road landfill, to direct the Department to provide the Commission copies of transcript relating to the landslide and groundwater issue immediately or as soon as possible, to continue the contested case hearing to consider the sufficiency of additional information generated on leachate treatment and disposal, to direct the Department to include the Hearings Officer's recommendations for fire protection, highway lighting and noise mitigation in the Neighborhood Protection Plan and adopt Attachment A, which would keep in effect the Attorney General's model rules for purposes of continued contested case hearing.

Commissioner Bishop moved acceptance of the motion, it was seconded by Commissioner Buist and the motion passed unanimously.

There was no further business, and the special meeting was adjourned at 11:00 a.m.

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ENVIRONMENTAL QUALITY COMMISSION

Minutes of the One Hundred Eighty-Fourth Meeting
December 11, 1987

811 S. W. Sixth Avenue
Conference Room 4
Portland, Oregon

Commission Members Present:

James Petersen, Chairman
Arno Denecke, Vice Chairman
Wallace Brill
Bill Hutchison
Mary Bishop

Department of Environmental Quality Staff Present:

Fred Hansen, Director
Michael Huston, Assistant Attorney General
Program Staff Members

NOTE: Staff reports presented at this meeting, which contain the Director's recommendations, are on file in the Office of the Director, Department of Environmental Quality, 811 S. W. Sixth Avenue, Portland, Oregon 97204. Written material submitted at this meeting is made a part of this record and is on file at the above address.

BREAKFAST MEETING

Sacks Catalog: Carolyn Young told the Commission about the preparation and distribution of DEQ SACKS CATALOG, a document which gives the public information and tips on recycling.

Incinerator Ash: Mike Downs spoke to the Commission about the Department's involvement with the U. S. Environmental Protection Agency relative to the disposal of garbage incinerator ash. A final determination has not yet been made as to whether such ash should be disposed as a hazardous waste. He briefly talked about the difficulty in sampling the ash, the potential impacts of the ash on groundwater as a result of leaching from rainwater, and the present handling of ash at the Marion County facility.

Bergsoe: Director Hansen gave an update on the financial assurance and closure plan of the Bergsoe plant in St. Helens. He discussed the removal of all the material from the site and clean up of the groundwater. This clean up will cost approximately \$14.2 million. Post-closure care (for 30 years) will cost approximately \$1.7 million. Settlement negotiations are proceeding.

FORMAL MEETING

Vice Chairman Denecke assisted Chairman Petersen in presiding over the meeting since Chairman Petersen was unable to speak (laryngitis). Vice Chairman Denecke called the meeting to order and introduced Commissioner Hutchison who is beginning a four-year appointment to the Commission.

CONSENT ITEMS:

Agenda Item A: Minutes of the Special Meeting, October 2, 1987, and Regular EQC Meeting, October 9, 1987.

ACTION: It was MOVED by Commissioner Bishop, seconded by Commissioner Brill and passed unanimously that the minutes of the October 2 meeting be approved; it was MOVED by Commissioner Hutchison, seconded by Commissioner Brill and passed unanimously that the October 9 minutes be approved with the following corrections:

Page 5, Agenda Item E, Director's recommendation:
...it is recommended the Commission authorize a public hearing [and] to take testimony on the proposed amendments to the rule concerning the Hazardous Substances Remedial Action fee...

Page 11, Agenda Item I, Proposed Salt Caves Hydroelectric Project: This agenda item should be J.

Page 14, Agenda Item J, second paragraph, fifth line:
...NEDC [way] as a method to grant...

Agenda Item B: Monthly Activity Reports for September and October.

Michael Huston, Assistant Attorney General, briefed the Commission on the status of the McInnis case. The criminal case is now

scheduled for January 1988 in circuit court. He indicated that both the District Attorney and the Attorney General had recently been approached for settlement discussions. Chairman Petersen indicated he would like the Department to continue with the civil penalty proceedings regardless of the criminal case outcome. Michael Huston said it will be necessary to determine how to proceed, since it was the hearings officer's decision to delay the civil case pending resolution of the criminal case in circuit court.

Commissioner Hutchison noted that the Salt Caves 401 denial contested case had not yet been added to the contested case log and requested a status report. Director Hansen introduced Beth Normand to the Commission. Beth is working for the Department as a temporary hearings officer and will be the hearings officer for the Salt Caves contested case hearing. Director Hansen summarized the status of the case. A pre-hearing conference was held on December 4, 1987. Chairman Petersen ruled on petitions and motions as follows: (1) Party status was granted to the environmental groups; (2) Issues raised by the environmental groups are appropriate to address in the hearing; (3) Proposals regarding increased flows cannot be considered in the hearing because they were not part of the application acted upon by the Department; (4) If the City chooses to file a revised application, the contested case proceeding will be suspended pending a determination on the revised application.

Vice Chairman Denecke asked about the status of the Dant and Russell and Brazier contested cases. Michael Huston advised that Dant and Russell are in Bankruptcy and the asset distribution decision had been appealed to the Ninth Circuit Court of Appeals. The EQC issued to Brazier a declaratory ruling that Brazier's waste pile was subject to Commission rules and permit requirements. The Department recently inspected the site and settlement discussions are ongoing.

ACTION: It was MOVED by Commissioner Bishop, seconded by Commissioner Brill and passed unanimously that the September and October 1987 Activity Reports be approved.

Agenda Item C: Tax Credits

ACTION: It was MOVED by Commissioner Bishop, seconded by Commissioner Brill and passed unanimously that the tax credits listed in the Director's recommendation be approved. Those tax credit certificates are: 1887, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1903, 1904, 2089, 2090, 2098, 2121, 2127, 2128, 2151, 2159, 2165, 2166, 2171, 2173, 2177, 2178, 2198, 2282, 2351, and 2352.

In order to accommodate people who had an interest in particular agenda items, the Commission elected to depart from the order of the printed agenda.

Agenda Item M: Request by the City of Joseph for an Increase in Mass Discharge Load.

This agenda item proposes that the City of Joseph and the Wallowa Lake County Service District be given temporary exceptions to the Grande Ronde Basin water quality standards and allowed to increase the quantity of effluent discharged to Prairie Creek. The City would be required to submit a new facility plan and schedule for within one year after a performance evaluation report on their upgraded treatment system. The performance evaluation report is to be provided after two years operation of the upgraded facility.

The Commission was provided with an addendum to the staff report which summarized the hearing held in Joseph on December 2, 1987, and presented a final director's recommendation.

The following representatives of the City of Joseph and the Wallowa Lake County Service District spoke to the Commission:

LeRoy Childers, Wallowa County Judge, on behalf of the
Wallowa Lake County Service District;
Paul Castilleja, Mayor, City of Joseph;
Stephen C. Anderson, Consulting Engineer;
Ralph Swinehart, Consulting Engineer;
Jim Chandler, operator of a bible camp at the south end of
Wallowa Lake and a businessman in the City of Joseph.

They briefed the Commission on the background of their proposal and the alternatives they evaluated. They supported Commission approval of the director's recommendation.

DIRECTOR'S RECOMMENDATION: Based on the findings in the report summation and on public testimony, it is recommended that the City of Joseph be permitted to discharge increased mass loads and 30 mg/l BOD and solid concentrations, as described in Alternative 2 of the original EQC staff report. It is also recommended that the City's revised compliance schedule for facility planning requested during the public hearing be approved, to allow for sufficient plant operational data to be accumulated. As described in the Department's response to their public hearing testimony, their facility plan would be submitted one year after

submittal of their performance evaluation report. Other concerns regarding soil stability and pipeline breakage that were raised at the hearing would be covered in the Department's review of the plans and specifications.

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

Agenda Item F: Appeal of Hearings Officer's Decision in DEO vs. Nulf.

Mr. Nulf appealed the Hearings Officer's decision to the Commission. He was present through a telephone conference call and represented himself; Michael Huston represented the Department.

Michael Huston summarized the current status for the record. The Department assessed a \$500 civil penalty for two violations related to open field burning--late burning and failure to actively extinguish the fire on September 5, 1985. The Department assessed a \$500 total penalty based on consideration of aggravating and mitigating factors. The Hearings Officer found that the fire was not out until approximately 6:15 p.m., about one hour and forty-five minutes after the announcement that fires were to be out by 4:30 p.m. The Hearings Officer found that only about 10 percent of the field was involved in the late burn. The Hearings Officer heard new evidence from Mr. Nulf about his financial condition. Based on the new evidence, the Department agreed that the penalty should be reduced to \$300. The Department urged that the Hearings Officer's decision be sustained.

Mr. Nulf explained to the Commission that one of the reasons he was fined was because his water tank was sitting idle. He stated the tank was being filled at the time, and the department did not realize that. Mr. Nulf indicated he cannot sell his seed and, therefore, has a financial hardship; he requested some relief.

ACTION: It was MOVED by Commissioner Bishop, seconded by Commissioner Brill and passed unanimously that the civil penalty assessment be reduced to \$100.

PUBLIC FORUM:

Gary Newkirk, Portland, spoke to the Commission about his sewer problem. Mr. Newkirk owns a vacation/rental home, which is connected to the Twin Rocks Sanitary District's sewerage system.

Raw sewage has backed up into the house on several occasions over a period of years. Mr. Newkirk's house is situated so that it is 18 inches lower than the lowest manhole in the sewer system.

Mr. Newkirk contended that the Department is responsible for requiring the District to correct any problem with his property since the Department reviewed and approved the original design plans for the sewerage system. The Department contends that Oregon Revised Statutes (ORS) 468.742 and rules adopted to implement that statute state the Department does not warrant the plans and specifications submitted for approval. The term "approval" indicates that such plans are consistent with standards and that the sewerage system should be able to meet effluent standards as required.

After considering the matter, the Commission asked the Department to investigate the potential for an on-site sewage disposal system on Mr. Newkirk's property (so that he could disconnect from the sewer system). The Commission also asked the Department to send a letter to the district advising them of their responsibilities in the matter. Michael Huston, Assistant Attorney General, was asked to further investigate other possible legal authorities for addressing this matter.

Agenda Item N: Information Report: A Proposal for Managing Oregon's Water.

Bill Blosser, Chairman of the Water Resources Commission, briefed the Commission on a new proposal they are developing for coordinating the actions of 12 natural resource agencies involved in managing the waters of the state. Their proposal includes development of a biennial work program to support the collective budgets of the agencies. It also includes a coordinated effort for updating and enhancing the water resource management plans of the 18 designated basins in Oregon. The Water Resources Department hopes to achieve the following:

1. Improved communication and broader understanding of agency roles.
2. Greater support for budgets to carry out important water programs.
3. More integrated state agency positions on federal water actions.
4. Direct opportunity to participate in setting water policies.

5. Predictable scheduling of management activities.
6. Better atmosphere for resolving conflict.

Mr. Blosser requested the Commission to support the new proposal for managing water in Oregon.

ACTION: By consensus, the Commission requested that the Department draft a letter to the Water Resources Commission expressing support for their proposal. The letter would be forwarded to all Commission members for signature.

PUBLIC FORUM: (Continued)

Jim Brown, Executive Director of the Grande Ronde Resources Council in LaGrande, indicated that smoke from agricultural burning and forest slash burning was making people "prisoners" in their own homes. He specifically requested the Commission to direct the Department to conduct daily monitoring and develop a smoke management plan for Eastern Oregon.

Director Hansen indicated the Department agreed with Mr. Brown about the need for further monitoring, analysis, and development of a smoke management strategy for Eastern Oregon, particularly the LaGrande and Central Oregon areas. The Department is proceeding with an analysis and will be developing recommendations for further action.

John Charles, Oregon Environmental Council (OEC), urged the Commission to take a leadership role in developing legislative proposals to address the public health ramifications of tobacco smoke. Specifically, he urged efforts to prohibit smoking in more public places and to strengthen the Oregon Indoor Clean Air Act.

Commissioner Hutchison asked the Department to add this issue to the legislative concepts being developed, and that the tobacco smoke issue be further discussed and evaluated.

Agenda Item H: Appeal of Hearings Officer's Decision in DEQ vs. Kirkham.

Richard Kirkham appealed the Hearings Officer's decision assessing a civil penalty of \$680 for open field burning of an unregistered 40-acre cereal field without a field burning permit or a local fire district permit.

Mr. Kirkham represented himself in this matter; the Department was represented by Michael Huston.

Mr. Kirkham said the field was burned to accommodate a golf tournament to raise funds for busing and extra-curricular activities eliminated as a result of the school budget defeat. He believed he had obtained all required permits. Mr. Kirkham paid DEQ \$80 and thought that was all he had to do. He did not intend to break any laws. He relied on the local fire district, and they burned the field as a practice burn.

Michael Huston summarized that the Department assessed the minimum penalty under the rules for this type of violation, plus the amount of fees that would have been required had they been paid in advance (\$ 680). Mr. Kirkham then requested a hearing. The Hearings Officer agreed with the Department about the existence of the violation and amount of the penalty. Mr. Kirkham then appealed to the Commission. While Mr. Kirkham did not dispute the existence of the violation, he made an equitable argument that the burning was done for a charitable purpose. He said that factual circumstances caused him to feel misled. The Department contends the record clearly establishes that registration of the field was not sufficient; a permit to burn was still required. Mr. Kirkham acknowledged it was unclear to what extent the local fire chiefs contributed to confusion about the legal requirements of a practice burn.

Brian Finneran, Field Burning Program Manager, indicated the Department's permit agent (Sheridan Fire District) did not issue a permit to burn the field, and the burning was conducted on a "no burn" day. The location of the field was in the Willamina Fire District which does no field burning and is not a DEQ agent for issuing permits. To assist Mr. Kirkham, the Department was working to have the neighboring Sheridan District handle the permitting. The field was registered with the Sheridan District; however, the Willamina District conducted the practice burn.

The Commission noted the record reflects some confusion about the advice given by the Department's agent on the need for a permit, and there was no apparent intent to violate the law. The Commission felt bound by the apparent actions of the Department's agent.

ACTION: It was MOVED by Commissioner Bishop, seconded by Commissioner Denecke and passed unanimously that the civil penalty be dismissed.

add to

Agenda Item K: Adoption of Rules Regarding Assessment Deferral Loan Program Revolving Fund (Safety Net Loan Fund) - OAR 340-81-110.

This agenda item proposes rules that will set up a revolving loan program to assist low-income homeowners to pay for sewer assessments. These proposed rules are in response to a law passed by the last Oregon Legislative session, which directed the Department to set up such a program. Senate Bill 878 was introduced at the request of the City of Portland to aid homeowners in Mid-Multnomah County as well as other parts of the state.

The proposed rules include a 5 percent simple interest rate provision for Department loans to public agencies, a method for allocating funds based on number of connections and property owners financial hardship, and a deadline of February 1, 1988, for submittal of applications to the Department. After Department review of the application, the Commission will be requested to make the allocation to qualifying public agencies.

Rich Cannon, Chairman of Portland's Citizens Sewer Advisory Board and Brad Higbee representing the City of Portland appeared in support of the director's recommendation.

DIRECTOR'S RECOMMENDATION: The Director recommends that the Commission accept the informational report on December 3, 1987, Emergency Board Meeting Regarding Assessment Deferral Loan Program Revolving Fund (Safety Net Loan Fund) and adopt the proposed alternative rule language as a part of the proposed rules, as revised and presented in Attachment 4 of the staff report.

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

Agenda Item G: Appeal of Hearings Officer's Decision in DEO vs. Vandervelde.

Roy Vandervelde appealed civil penalties totaling \$5,500 assessed by the Department of Environmental Quality for unpermitted pollution caused by silage and manure discharges from his property. The Hearings Officer affirmed the Department's penalty assessment. Mr. Vandervelde appealed the Hearings Officer's decision to the Commission.

Mr. Vandervelde did not appear in this matter nor did any representative appear on his behalf. Kurt Burkholder, Assistant Attorney General, represented the Department.

Kurt Burkholder urged the Commission to dismiss the appeal.

ACTION: It was MOVED by Commissioner Hutchison, seconded by Commissioner Bishop and passed unanimously that the Order and Penalty issued by the Hearings Officer be affirmed.

Agenda Item I: Proposed Adoption of Pollution Control Tax Credit Rule Amendments, Chapter 340, Division 16.

Legislative changes made in 1987 modified the eligibility for facilities for pollution control facility tax credit. Commission rules are being modified to reflect the legislative changes.

Several types of facilities or activities are eliminated from eligibility for tax credit. Energy recovery facilities are eliminated from eligibility. Material recovery facilities continue to be eligible and are defined as facilities whose major purpose is recycling.

Property used for clean up of spills or unauthorized releases are no longer eligible. Facilities used for the clean up of unanticipated releases from facilities operating in compliance with a DEQ permit are still eligible as are facilities used to detect or prevent future spills.

In addition, the rules are amended to allow reinstatement of revoked tax credits.

Tom Donaca, Associated Oregon Industries (AOI), appeared in support of the proposed amendments.

DIRECTOR'S RECOMMENDATION: Based on the report summation, it is recommended that the Commission adopt the proposed Pollution Control Tax Credit Rule Amendments, Chapter 340, Division 16.

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

HEARING AUTHORIZATIONS:

Agenda Item D: Request for Authorization to Conduct Public Hearings on Proposed On-Site Fee Increases, OAR 340-71-140.

Through this agenda item, the Department requested authority to conduct public hearings on the proposed amendment to the current on-site sewage disposal fee schedule. The proposed fee increase will generate sufficient fee revenue, at present activity levels, to cover approximately 89 percent of program costs.

DIRECTOR'S RECOMMENDATION: Based on the summation report, the Director recommended that the Commission authorize the Department to hold public hearings on the proposed amendment to the on-site fee schedule, Alternative 2.

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

Agenda Item E: Request for Authorization to Conduct a Public Hearing on Proposed Amendments to Rules of Practice and Procedure, OAR Chapter 340, Division 11.

On several occasions, the existing contested case rules in OAR Chapter 340, Division 11, have been the subject of discussion before the Commission. On two contested cases, the EQC elected to adopt the Attorney General's (AG) Model Rules instead of the existing EQC rules.

In response to an informal EQC request, the Department reviewed the existing rules in Division 11 and prepared proposed amendments for consideration.

The proposed amendments would:

1. Adopt the AG Model Rules for rulemaking in lieu of the existing EQC rules.
2. Adopt the AG Uniform Rules for petitions for rulemaking in lieu of existing EQC rules.
3. Adopt the AG Uniform Rules for petitions for declaratory rulings in lieu of existing EQC rules.
4. Adopt the AG Model Rules for contested cases in lieu of the existing EQC rules.
5. Continue the existing EQC rule which gives authority to enter a final order in a contested case to the Hearings Officer,

applicable to contested cases resulting from appeal of civil penalty assessments only.

7. Allow non-attorney representation in contested cases as required by 1987 legislation.

DIRECTOR'S RECOMMENDATION: Based on the report summation, the Director recommended that the Commission authorize a hearing on proposed amendments to the Rules of Practice and Procedure, OAR Chapter 340, Division 11, as set forth in Attachment C of the report.

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

ACTION ITEMS: (Continued)

Agenda Item J: Proposed Adoption of Amendments to the State Implementation Plan, OAR 340-20-047: Redesignation of the Salem Area to Attainment for Ozone.

The Salem area has been classified as being in non-attainment with the ozone ambient air quality standard since 1979. In June 1979, the Commission adopted a controls strategy to bring the area into attainment with the standard. In September 1980, the Commission revised the control strategy. Since 1981, Salem area ozone monitoring has shown no violation of the standard.

This agenda item proposed redesignation of the Salem area to attainment with the ozone standard. Total airshed capacity for volatile organic compounds (VOC), which are involved in ozone formation, is conservatively estimated as 7,000 tons per year. Since the current emission rate in the area is less than 6,000 tons per year, about 1,000 tons per year is available as an ample growth cushion for new or modified VOC source through the year 2,000.

DIRECTOR'S RECOMMENDATION: Based on the report summation, it is recommended that the Commission adopt the proposed amendment to the State Implementation Plan which redesignates the Salem area as in attainment for ozone, and replaces the Salem ozone attainment strategy with an ozone maintenance strategy, OAR 340-20-047 (Section 4.5 of the State Implementation Plan).

ACTION: It was MOVED by Commissioner Hutchison, seconded by

Commissioner Bishop and passed unanimously that the Director's recommendation be approved.

Agenda Item L: Proposed Adoption of Amendments to the Hazardous Waste Management Rules, OAR Chapter 340, Division 100, 102 and 104.

In order to maintain authorization of the Hazardous Waste Program, the Commission must adopt new federal requirements and prohibitions within specified time frames, and make sure that state regulations are not less stringent than new federal regulations.

EPA has recently promulgated a series of new regulations. The Department is proposing to adopt a group of these by reference. The Department is also proposing to repeal one less stringent rule, and amend another less stringent rule. A hearing has been held, and final action to adopt the rule amendments is now proposed.

DIRECTOR'S RECOMMENDATION: Based on the findings in the report summation, it is recommended that the Commission adopt these proposed amendments to the hazardous waste management rules, OAR Chapter 340, Divisions 100, 102 and 104.

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

Agenda Item O: Informational Report: Review of Lists of Principal Recyclable Materials.

This agenda item concerns the requirement of Oregon Administrative Rules (OAR) 340-60-030 that the Department at least annually review the principal recyclable material list for each wasteshed. With the possible exception of yard debris in the Portland metropolitan area wastesheds, which will be discussed as a separate agenda item, it is recommended that no changes be made in the lists of principal material for each wasteshed.

DIRECTOR'S RECOMMENDATION: It is recommended that no changes be made at this time in OAR 340-60-030, the lists of principal recyclable materials. The Department feels that greater gains will be made by concentrating on improving the effectiveness of existing programs rather than spending considerable time adding new materials to the collection programs.

ACTION: Since no changes were proposed, the Commission deferred any formal action until the yard debris issue is reviewed in the afternoon work session.

The meeting was then recessed until the afternoon work session on yard debris.

WORK SESSION

Work Session on Yard Debris Recycling in the Portland Metropolitan Area.

At the October 9, 1987, EQC meeting the Commission instructed the Department to move forward on the issue of yard debris recycling in the Portland metropolitan area.

In 1985, the Department developed a draft rule which would add yard debris to the list of principal recyclable materials in the five Portland area wastesheds. After several public hearings in 1986 and 1987, the Department concluded that the identification of yard debris as a principal recyclable material would not result in a substantial increase in yard debris recycling, and might have a significant negative impact. To date, no final action has been taken on this rulemaking action.

Since there is a wide range of opinions on yard debris recycling, the Department felt a formal presentation by representatives of some of the interested groups would help clarify some of the complex issues. For this purpose, a work panel of seven persons was created.

DEPARTMENT RECOMMENDATION: The three concepts discussed in the staff report have their strengths and weaknesses and may or may not result in a consensus of the parties involved. The Department feels that it is imperative to develop, as much as is possible, a consensus approach to recycling yard debris. Therefore, it is recommended that the Commission discuss these and other concepts with the panel and attempt to reach an agreement on a conceptual yard debris recycling program for the Portland Metropolitan area.

After the Commission has had an opportunity to hear the public discussion of these three concepts, the Department can, with Commission direction, develop the specific rules necessary for implementation. Any such new rules would be subject to the full rule-making requirements including public notice and public hearing.

The Commission asked questions of the following panelists:

Estle Harlan, Oregon Sanitary Service Institute
Rod Grimm, Grimm's Fuel
Dennis Mulvihill, METRO
Delyn Kies, City of Portland
Bob Sigloh, Associated Oregon Recyclers
John Charles, Oregon Environmental Council
Dave Phillips, Clackamas County

Issues discussed included the potential markets for yard debris, capacity for processing yard debris, collection programs, problems of contamination with plastic and metals, costs for facilities, local government involvement, and ramifications of designation of yard debris as a principal recyclable material.

Wasteshed
ACTION: It was MOVED by Commissioner Denecke, seconded by Chairman Petersen and passed unanimously that the proposed rule amendment, identifying yard debris as a principal recyclable material in the Clackamas, Multnomah, Portland, Washington and West Linn Wastesheds which was presented to the Commission on January 31, 1986 and taken to public hearing on March 3, 4, 5, and 6, 1986 and January 28, 1987 be adopted by the Commission with the following change:

OAD 340-60-030 (1)(j) Yard Debris, effective [January 1, 1987] upon adoption by the Commission of additional rules which clarify the range of acceptable alternative methods for providing the opportunity to recycle source separated yard debris.

The Commission decided on the following meeting dates for 1988.

January 22
March 11
April 29
June 3
July 8
August 19
October 7
November 18
January 6, 1989

There was no further business and the meeting adjourned at 3:10 p.m.

MINUTES ARE NOT FINAL UNTIL APPROVED BY THE EOC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of a Special Work Session on Legislative Concepts
December 10, 1987

811 S. W. Sixth Avenue
Conference Room 4
Portland, Oregon

Commission Members Present:

James Petersen, Chairman
Arno Denecke, Vice Chairman
Wallace Brill
William Hutchison
Mary Bishop

Department of Environmental Quality Staff Present:

Fred Hansen, Director
Michael Huston, Assistant Attorney General
Program Staff Members

NOTE: Staff legislative concept drafts presented at this meeting are on file in the Office of the Director, Department of Environmental Quality, 811 S. W. Sixth Avenue, Portland, Oregon 97204. Written material submitted at this meeting is made a part of this record and is on file at the above address.

WORK SESSION

Fred Hansen started the work session by reviewing how the legislative concepts were developed. He noted that the Department is developing the concepts sooner this time. Concepts must be finalized for consideration by the Governor by mid-summer. Mr. Hansen stated it was his intent to have an advisory committee involved in the development of all major pieces of new legislation. Stan Biles provided background on the legislative process and legislative environment.

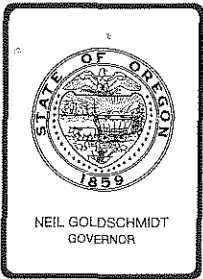
The Commission had been provided with copies of concept papers developed to date, and department staff members provided further explanation of several of the concepts.

EQC Minutes
Page 2
December 10, 1987

Others present who addressed the Commission included:

Jean Meddaugh, representing the Oregon Environmental Council
Tom Donaca, representing Associated Oregon Industries
Bill Johnson, representing End Noxious Unhealthy Fumes, Inc.
(E.N.U.F.)
Sara Laumann, representing Oregon Student Public Interest
Research Group (OSPIRG)
Howard Baker, a citizen from the Sweet Home area

The Commission concurred that the Department should proceed with developing and refining the legislative concept proposals. Concern was expressed about the revolving fund mentioned in the wood stove/indoor air legislative concept. The Commission would like the issues of packaging/styrofoam and bottle bill expansion further investigated as a means of minimizing solid waste.



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, December 11, 1987, EQC Meeting
September and October, 1987 Program Activity Report

Discussion

Attached is the July and August, 1987 Program Activity Report.

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

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

The purposes of this report are:

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

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

C.Nuttall:y
MD26
229-6484
Attachment

DEPARTMENT OF ENVIRONMENTAL QUALITY

Monthly Activity Report

September and October, 1987

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
 Water Quality Division
Hazardous & Solid Waste Division
 (Reporting Unit)

September & October, 1987
 (Month and Year)

SUMMARY OF PLAN ACTIONS

	Plans Received		Plans Approved		Plans Disapproved		Plans Pending
	Month	FY	Month	FY	Month	FY	
<u>Air</u>							
Direct Sources	18	34	25	40	0	0	24
Total	18	34	25	40	0	0	24
<u>Water</u>							
Municipal	18	36	41	55	0	0	53
Industrial	12	26	15	31	0	0	9
Total	30	62	56	86	0	0	62
<u>Solid Waste</u>							
Gen. Refuse	2	13	4	4	2	2	50
Demolition	1	1	0	0	0	0	4
Industrial	3	3	4	5	1	1	19
Sludge	1	1	0	0	0	0	4
Total	7	18	8	9	3	3	77
<u>GRAND TOTAL</u>	55	114	89	135	3	3	163

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PLAN ACTIONS COMPLETED

Permit Number	Source Name	County	Date Scheduled	Action Description	Date Achieved
02	2515 EVANS PRODUCTS BSP	BENTON	01 09/04/87	COMPLETED-APRVD	09/04/87
			01 09/23/87	COMPLETED-APRVD	10/02/87
07	0005 OCHOCO LUMBER COMPANY	CROOK	01 07/02/87	COMPLETED-APRVD	09/02/87
10	0036 INTERNATIONAL PAPER CO.	DOUGLAS	01 08/03/87	COMPLETED-APRVD	09/25/87
15	0012 SOUTHWEST FOREST INDUSTR.	JACKSON	01 07/31/87	COMPLETED-APRVD	10/02/87
15	0015 KOGAP MANUFACTURING	JACKSON	01 07/22/87	COMPLETED-APRVD	09/15/87
15	0025 TIMBER PRODUCTS COMPANY	JACKSON	01 08/26/87	COMPLETED-APRVD	08/27/87
22	1034 NORTHWEST PELLET MILLS	LINN	01 06/25/87	COMPLETED-APRVD	09/01/87
22	5196 LEBANON PLYWOOD, INC.	LINN	01 08/06/87	COMPLETED-APRVD	09/24/87
26	3009 SIMPSON TIMBER CO	MULTINOMAH	01 08/12/87	COMPLETED-APRVD	09/04/87

TOTAL NUMBER QUICK LOOK REPORT LINES 10

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

September, 1987
(Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
	<u>Month</u>	<u>FY</u>	<u>Month</u>	<u>FY</u>			
<u>Direct Sources</u>							
New	3	8	3	10	13		
Existing	4	7	4	7	10		
Renewals	4	20	4	14	50		
Modifications	<u>4</u>	<u>16</u>	<u>4</u>	<u>19</u>	<u>14</u>		
Total	15	51	15	50	87	1398	1422
<u>Indirect Sources</u>							
New	0	0	0	5	0		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	<u>0</u>	<u>2</u>	<u>1</u>	<u>1</u>	<u>1</u>		
Total	<u>0</u>	<u>2</u>	<u>1</u>	<u>6</u>	<u>1</u>	<u>276</u>	<u>276</u>
<u>GRAND TOTALS</u>	15	53	16	56	88		

Number of
Pending Permits

Comments

13	To be reviewed by Northwest Region
14	To be reviewed by Willamette Valley Region
5	To be reviewed by Southwest Region
1	To be reviewed by Central Region
1	To be reviewed by Eastern Region
14	To be reviewed by Program Operations Section
28	Awaiting Public Notice
<u>11</u>	Awaiting end of 30-day Public Notice Period
87	

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PERMITS ISSUED

Permit Number	Source Name	County Name	Appl. Rcvd.	Status	Date Achvd.	Type Appl.
02	2490 EVANITE PERMACLAS INC	BENTON	07	09/02/86 PERMIT ISSUED	09/03/87	RNW
04	0004 JAMES RIVER CORP OF NEV	CLATSOP	39	08/10/87 PERMIT ISSUED	08/29/87	MOD
07	0002 AMERICAN MOULDING & MILL	CROOK	40	07/27/87 PERMIT ISSUED	09/08/87	MOD
10	0135 LOWER UMPQUA CREMATORY	DOUGLAS	01	05/29/87 PERMIT ISSUED	09/29/87	NEW
14	0015 HOOD RIVER SAND & GRAVEL	HOOD RIVER	22	00/00/00 PERMIT ISSUED	10/05/87	MOD
15	0180 MEDFORD READY-MIX	JACKSON	15	08/24/87 PERMIT ISSUED	09/29/87	RNW
15	0199 GOLDEN STATE MOULDING CO	JACKSON	01	05/11/87 PERMIT ISSUED	09/29/87	NEW
18	0013 WEYERHAEUSER COMPANY	KLAMATH	58	07/31/87 PERMIT ISSUED	09/03/87	MOD
19	0002 OSTRANDER CONSTRUCTION	LAKE	25	10/08/86 PERMIT ISSUED	09/29/87	RNW
19	0005 WOODGRAIN MOULDINGS, INC.	LAKE	09	08/27/87 PERMIT ISSUED	09/08/87	MOD
19	0020 LAKEVIEW POWER COMPANY	LAKE	01	01/14/87 PERMIT ISSUED	10/05/87	NEW
21	0047 LINCOLN CITY SHAKE INC	LINCOLN	14	06/10/87 PERMIT ISSUED	09/08/87	RNW
22	0358 AMERICAN GEMWOOD CORP	LINN	06	08/05/87 PERMIT ISSUED	08/29/87	
26	1876 OWENS-ILLINOIS GLASS CONT	MULTNOMAH	25	04/22/87 PERMIT ISSUED	08/31/87	RNW
26	2204 THE BOEING COMPANY	MULTNOMAH	26	04/16/87 PERMIT ISSUED	08/31/87	MOD
26	3009 SIMPSON TIMBER CO	MULTNOMAH	20	06/05/87 PERMIT ISSUED	09/29/87	MOD
26	3069 COLUMBIA ALUMINUM CORP	MULTNOMAH	23	08/25/87 PERMIT ISSUED	09/08/87	MOD
34	2743 LONGBOTTOM COFFEE & TEA	WASHINGTON	01	03/26/87 PERMIT ISSUED	09/08/87	EXT
37	0369 KYNSI CONSTRUCTION	PORT.SOURCE	01	06/08/87 PERMIT ISSUED	09/08/87	NEW
37	0371 QUADCO CONSTRUCTION CORP	PORT.SOURCE	01	06/12/87 PERMIT ISSUED	09/18/87	NEW
37	0374 WILDER CONSTRUCTION CO	PORT.SOURCE	01	06/12/87 PERMIT ISSUED	09/08/87	NEW
37	0375 C M GENERAL CONTRACTING	PORT.SOURCE	01	05/29/87 PERMIT ISSUED	08/29/87	NEW

TOTAL NUMBER QUICK LOOK REPORT LINES

22

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division

(Reporting Unit)

September, 1987

(Month and Year)

PERMIT ACTIONS COMPLETED

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

Indirect Sources

Washington	Fujitsu American, Inc. Campus Development, 2,400 Spaces, File No. 34-8508 (Modification)	09/11/87	Addendum No. 1 Issued
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MAR.6
AA5324

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

September 1987
(Month and Year)

PLAN ACTIONS COMPLETED -

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

INDUSTRIAL WASTE SOURCES - 9

Tillamook	Del Thornton Manure Control Facility	8-13-87	Approved
Washington	Permapost Products Tank Farm	8-5-87	Approved
Lane	Jack Konyon Dairy Manure Control System	9-10-87	Approved
Marion	J & J Farm Manure Control Facility	9-17-87	Approved
Jackson	Cascade Wood Products Antistain Control System	9-11-87	Approved
Clackamas	Staeheley Brothers Manure Control Facility	8-20-87	Approved
Lane	Southern Pacific Pipe Lines Eugene Terminal Oil/Water Separator	9-22-87	Approved
Marion	Rucf Fur Ranch Manure Control Facility	9-17-87	Approved
Clatsop	Gene Engblom Manure Control Facility	9-22-87	Approved

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality
(Reporting Unit)

September 1987
(Month and Year)

PLAN ACTIONS COMPLETED - 43

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

MUNICIPAL WASTE SOURCES - 34

Multnomah	Portland (Mid-County)	9-10-87	Provisional Approval
	- NE Knott St. Interceptor		
	- Burnside Basin Interceptor		
	- SE 103rd & Foster Rd. Interceptor		
	- S Mid-County Int/Phase I		
	- S Mid-County Int/Phase II		
	& S.E. Holgate Pump Station		
	- S Mid-County Int/Phase III		
	- N.E. Lombard Interceptor		
	- Flavel St. Interceptor		
	- Culley Interceptor		
	- NE Skidmore St and NE 92nd		
	and Marx Pump Stations		
	- N.E. Broadway Interceptor		
	- NE 94th and NE 88th &		
	Broadway pump stations		
	- Brooklyn and Altamead		
	Interceptors/Brooklyn		
	and Altamead Pump Statios		
Multnomah	Gresham	9-8-87	Provisional Approval
	WWTP Improvements		
Multnomah	Gresham	9-14-87	Provisional Approval
	Mid County Interceptor Sewers		
	(Glisan, Linneman & Johnson		
	Creek Interceptors; Rockwood		
	Park Pump Station)		
Klamath	Klamath Falls	9-17-87	Provisional Approval
	North Suburban Sanitary		
	Sewerage Project		
Douglas	RUSA	9-14-87	Provisional Approval
	Sewer Replacement and		
	Rehabilitation Project		

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality
(Reporting Unit)

September 1987
(Month and Year)

PLAN ACTIONS COMPLETED - 43

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

MUNICIPAL WASTE SOURCES (Cont'd)

Marion	Salem Pringle Creek Relief Sewer	9-18-87	Provisional Approval
Coos	Coos Bay - WWTP No. 1 Improvements (Contract No. 1) - Wastewater Conveyance System Improvements (Contract No. 2) - Sludge System Improvements (Contract No. 3)	9-14-87	Provisional Approval
Douglas	Oregon DOT - Highway Div. South Umpqua Safety Rest Area (NB Unit) Recirculating gravel filter (2000 gpd)	9-22-87	Provisional Approval
Douglas	RUSA Saddle Butte Estates S S 2nd Addition	9-25-87	Provisional Approval
Tillamook	Wheeler (NTGSA) Vern Scovel SS Blocks 63-65	9-25-87	Provisional Approval
Josephine	Redwood SSS Dist. Leon Stutzman SS Extension off Dowell Road	9-25-87	Provisional Approval
Douglas	Green Sanitary District - Pine Knoll Estates SS (Lance Short's Subd) - Jackie Street SS (Buell Prop.) - Rolling Hills Estates SS, 3rd addition (Howard Burdette's Subd)	9-25-87	Provisional Approval
Jackson	BCVSA Whetstone Laterals - Whetstone Laterals, Phase I, Schedule A - Whetstone Laterals, Phase I, Schedule B	9-25-87	Provisional Approval

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality
(Reporting Unit)

September 1987
(Month and Year)

PLAN ACTIONS COMPLETED - 43

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

Municipal Waste (Cont'd)

Clackamas	CCSD No. 1 Kellogg WWTP Sludge Grinders at Digesters	10-7-87	Provisional Approval	
Linn	Linn County Parks & Sunnyside RV Park	9-26-87	Comments to Designer	
Marion	Silverton East Silverton Project # 428	9-25-87	Provisional Approval	
Clackamas	Estacada WWTP Expansion	9-22-87	Provisional Approval	

Summary of Actions Taken
On Water Permit Applications in SEP 87

13 OCT 87

Source Category & Permit Subtype	Number of Applications Filed						Number of Permits Issued						Applications Pending Permits Issuance (1)			Current Number of Active Permits		
	Month			Fiscal Year			Month			Fiscal Year			NPDES	WPCF	Gen	NPDES	WPCF	Gen
	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen						
Domestic																		
NEW		3		1	9			3			6		5	22				
RW										1								
RWO	10	4		17	7		3	3		16	15		49	25				
MW													1					
MWO							19			19	2		6	1				
Total	10	7		18	16		22	6		36	23		61	49		225	176	29
Industrial																		
NEW		2	1		4	10		1	1		4	11	4	15	5			
RW																		
RWO	3	5		4	8		1	1		1	1		18	22				
MW													1					
MWO	1	1	1	4	1	1	2			5	2		1	2	1			
Total	4	8	2	8	13	11	3	2	1	6	7	11	24	39	6	165	134	391
Agricultural																		
NEW						1						170		1				
RW																		
RWO				1									1					
MW																		
MWO												1						
Total				1		1						171	1	1		2	12	227
Grand Total	14	15	2	27	29	12	25	8	1	42	30	182	86	88	6	392	322	647

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

It does include applications pending from previous months and those filed after 30-SEP-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

PERMIT CAT NUMBER	TYPE	SUB- TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
<u>General: Suction Dredges</u>									
IND	700	GEN07	NEW	102970/A	CAPOBIANCO, PAUL		MOBILE SRC/ALL	08-SEP-87	31-JUL-91
<u>NPDES</u>									
IND	3754	NPDES	MWO	OR000079-5	21328/A JAMES RIVER CORPORATION OF NEVADA	CLATSKANIE	CLATSOP/NWR	11-SEP-87	30-SEP-88
DOM	100375	NPDES	RWO	OR002045-1	43129/A JEFFERSON, CITY OF	JEFFERSON	MARION/WVR	16-SEP-87	31-JUL-92
DOM	100379	NPDES	RWO	OR002032-0	16310/A CHILOQUIN, CITY OF	CHILOQUIN	KLAMATH/CR	16-SEP-87	30-JUN-92
IND	100374	NPDES	RWO	OR003112-7	26788/A ELECTRONIC CONTROLS DESIGN, INC.	MULINO	CLACKAMAS/NWR	18-SEP-87	31-JUL-92
DOM	3633	NPDES	MWO	OR002630-1	46763/A KLAMATH FALLS, CITY OF	KLAMATH FALLS	KLAMATH/CR	29-SEP-87	31-JAN-88
DOM	3666	NPDES	MWO	OR002046-0	48100/A LA GRANDE, CITY OF	LA GRANDE	UNION/ER	29-SEP-87	31-MAR-88
DOM	3711	NPDES	MWO	OR002636-1	20151/A CORVALLIS, CITY OF	CORVALLIS	BENTON/WVR	29-SEP-87	31-MAY-88
DOM	3721	NPDES	MWO	OR003122-4	55999/A METROPOLITAN WASTEWATER MANAGEMENT COMMISSION	EUGENE	LANE/WVR	29-SEP-87	31-JUL-88
DOM	3734	NPDES	MWO	OR003125-9	89700/A TRI-CITY SERVICE DISTRICT	OREGON CITY	CLACKAMAS/NWR	29-SEP-87	31-JUL-88
DOM	3792	NPDES	MWO	OR002025-7	60597/A NEWBERG, CITY OF	NEWBERG	YAMHILL/WVR	29-SEP-87	30-NOV-88
DOM	3822	NPDES	MWO	OR002614-0	62795/A OAK LODGE SANITARY DISTRICT	MILWAUKIE	CLACKAMAS/NWR	29-SEP-87	31-JAN-89
DOM	3823	NPDES	MWO	OR002021-4	13691/A CANBY, CITY OF	CANBY	CLACKAMAS/NWR	29-SEP-87	28-FEB-89
DOM	3853	NPDES	MWO	OR002619-1	54866/A MCMINNVILLE, CITY OF	MCMINNVILLE	YAMHILL/WVR	29-SEP-87	31-MAY-89
DOM	3868	NPDES	MWO	OR002622-1	16590/A CLACKAMAS COUNTY SERVICE DISTRICT #1	MILWAUKIE	CLACKAMAS/NWR	29-SEP-87	31-MAY-89
DOM	3874	NPDES	MWO	OR003135-6	76771/A ROSEBURG URBAN SANITARY AUTHORITY	ROSEBURG	DOUGLAS/SWR	29-SEP-87	31-MAY-89
DOM	3881	NPDES	MWO	OR002690-5	70725/A PORTLAND, CITY OF	PORTLAND	MULTNOMAH/NWR	29-SEP-87	31-JUL-89

PERMIT CAT NUMBER	TYPE	SUB- TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
DOM 3887	NPDES	MWO	OR002016-8	90745/A	UNIFIED SEWERAGE AGENCY OF WASHINGTON COUNTY	FOREST GROVE	WASHINGTON/NWR	29-SEP-87	31-JUL-89
DOM 100036	NPDES	MWO	OR002358-2	19821/A	COOS BAY, CITY OF	EMPIRE	COOS/SWR	29-SEP-87	30-NOV-89
DOM 100083	NPDES	MWO	OR002880-1	1098/A	ALBANY, CITY OF	ALBANY	LINN/WVR	29-SEP-87	31-MAR-90
DOM 100159	NPDES	MWO	OR002811-8	90735/A	UNIFIED SEWERAGE AGENCY OF WASHINGTON COUNTY	TIGARD	WASHINGTON/NWR	29-SEP-87	28-FEB-91
DOM 100227	NPDES	MWO	OR002977-7	90770/A	UNIFIED SEWERAGE AGENCY OF WASHINGTON COUNTY	HILLSBORO	WASHINGTON/NWR	29-SEP-87	31-JUL-91
DOM 100231	NPDES	MWO	OR002640-9	78140/A	SALEM, CITY OF	SALEM	MARION/WVR	29-SEP-87	30-JUN-91
DOM 100232	NPDES	MWO	OR002336-1	61419/A	NORTH BEND, CITY OF	NORTH BEND	COOS/SWR	29-SEP-87	31-JAN-90
IND 100384	NPDES	MWO	OR000078-7	21489/A	JAMES RIVER CORPORATION OF NEVADA	WEST LINN	CLACKAMAS/NWR	30-SEP-87	31-JUL-92
DOM 100385	NPDES	RWO	OR002689-1	70735/A	PORTLAND, CITY OF	LAKE OSWEGO	CLACKAMAS/NWR	30-SEP-87	30-SEP-87
<hr/>									
WPCF									
<hr/>									
IND 100372	WPCF	RWO		73262/A	R-DMAC, INC.	LA GRANDE	UNION/ER	02-SEP-87	30-JUN-92
IND 100376	WPCF	NEW		102749/A	MEDURI FARMS, INC.	TURNER	MARION/WVR	16-SEP-87	31-AUG-92
DOM 100377	WPCF	RWO		98644/B	ROBERTSON, BOB & JUDITH P.	FLORENCE	LANE/WVR	16-SEP-87	31-AUG-92
DOM 100378	WPCF	NEW		102815/A	REDMOND SCHOOL DISTRICT	TERREBONNE	DESCHUTES/CR	16-SEP-87	31-JUL-92
DOM 100380	WPCF	RWO		56737/A	MILL CITY, CITY OF	MILL CITY	MARION/WVR	16-SEP-87	31-JUL-92
DOM 100381	WPCF	RWO	OR003114-3	75541/A	MAGAR, MAGAR. E.		COLUMBIA/NWR	28-SEP-87	30-SEP-92
DOM 100382	WPCF	NEW		100149/A	BROWN, WILLIAM C.	SEAL ROCK	LINCOLN/WVR	28-SEP-87	30-SEP-92
DOM 100383	WPCF	NEW		100173/A	OWEN DEVELOPMENT GROUP, INC.	GEARHART	CLATSOP/NWR	28-SEP-87	31-AUG-92

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

September 1987
(Month and Year)

SUMMARY OF HAZARDOUS WASTE PROGRAM ACTIVITIES

PERMITS

	<u>No.</u>	<u>ISSUED Fiscal Year to Date (FYTD)</u>	<u>Planned in FY 88</u>
Treatment	-0-	-0-	-0-
Storage	-0-	-0-	7
Disposal	-0-	-0-	1

INSPECTIONS

	<u>No.</u>	<u>COMPLETED FYTD</u>	<u>Planned in FY 88</u>
Generator	6	13	38
TSD	3	3	29

CLOSURES

	<u>No.</u>	<u>PUBLIC NOTICED</u>		<u>CERTIFICATIONS ACCEPTED</u>		
		<u>FYTD</u>	<u>Planned in FY88</u>	<u>No.</u>	<u>FYTD</u>	<u>Planned in FY 88</u>
Treatment	-0-	-0-	-0-	-0-	-0-	-0-
Storage	-0-	-0-	3	1	1	4
Disposal	-0-	-0-	2	0	1	3

SB5285.A
MAR.2 (9/87)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

September 1987
(Month and Year)

SUMMARY OF SOLID WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	FY	Month	FY			
<u>General Refuse</u>							
New	-	2	-	1	3		
Closures	-	1	-	-	5		
Renewals	2	3	-	1	16		
Modifications	-	9	-	9	-		
Total	2	15	0	11	24	176	176
<u>Demolition</u>							
New	-	-	-	-	-		
Closures	-	-	-	-	-		
Renewals	-	-	-	1	1		
Modifications	-	1	-	1	-		
Total	0	1	0	2	1	12	12
<u>Industrial</u>							
New	-	2	-	4	4		
Closures	-	-	-	-	1		
Renewals	-	2	-	-	6		
Modifications	-	7	-	7	-		
Total	0	11	0	11	11	104	104
<u>Sludge Disposal</u>							
New	-	-	-	-	1		
Closures	1	1	-	-	1		
Renewals	-	-	-	-	-		
Modifications	-	1	-	1	-		
Total	1	2	0	1	2	17	17
Total Solid Waste	3	29	0	25	38	309	309

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

September 1987
(Month and Year)

PERMIT ACTIONS COMPLETED

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

- None -

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

September 1987
(Month and Year)

PLAN ACTIONS COMPLETED

* County	* Name of Source/Project * /Site and Type of Same	* Date of * Action	* Action	*
Lane	Bohemia, Inc. Dorena Landfill Existing industrial waste landfill	9/1/87	Plan disapproved	*
Lincoln	Georgia-Pacific - Toledo Existing industrial waste landfill	9/8/87	Plan approved	*
Multnomah	METRO St. Johns Landfill Existing municipal waste landfill	9/9/87	Plan approved (refilling in subarea 2)	*
Columbia	Boise-Cascade Corp. St. Helens Sludge Lndfl. Existing industrial waste landfill	9/11/87	Plan approved	*
Lane	Lane County Franklin Landfill Existing municipal waste landfill	9/15/87	Groundwater study approved	*
Grant	Grant County Hendrix Landfill Existing municipal waste landfill	9/16/87	Plan disapproved	*
Multnomah	Riedel Waste Disposal Systems, Inc. Killingsworth Disp. Site Existing demolition waste landfill	9/18/87	Groundwater study approved	*
Marion	Marion County Brown's Island Closed municipal waste landfill	9/18/87	Groundwater study approved	*

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
28-SEP-87	API SEPARATOR SLUDGE	PETROLEUM REFINING/RELATED IND	554 CU YD
1 Request(s) approved for generators in Alaska			
09-SEP-87	LEAD/HYDROCARBON CONTAMINATED SOIL	RCRA SPILL CLEANUP	300 CU YD
1 Request(s) approved for generators in British Columbia			
01-SEP-87	WASTE 2,4-D ACID	OTHER AGRICULTURAL CHEMICALS	2.70 CU YD
02-SEP-87	GRAPHITE SUMP SLUDGE	GLASS CONTAINERS	27 CU YD
02-SEP-87	NITRIC ACID CONTAMINATED SOLID	STEEL INVESTMENT FOUNDRIES	0.81 CU YD
02-SEP-87	LAB PACK - POISONOUS SOLID	FEDERAL GOV'T	0.14 CU YD
21-SEP-87	LAB PACK-IGNITABLE POISON LIQUID	FEDERAL GOV'T	0.27 CU YD
21-SEP-87	ACID MIXTURE B	STEEL INVESTMENT FOUNDRIES	4 CU YD
28-SEP-87	FIRE DEBRIS CONTAMINATED WITH LEAD	NON-SUPERFUND SITE CLEANUP	30 CU YD
28-SEP-87	ELECTROPLATING SOLIDS	NON-SUPERFUND SITE CLEANUP	7.29 CU YD
8 Request(s) approved for generators in Oregon			
09-SEP-87	DIRT/STICKS/PETROLEUM PRODUCTS	NON-SUPERFUND SITE CLEANUP	320 CU YD
09-SEP-87	ACETONE STILLBOTTOMS	MISCELLANEOUS PLASTIC PRODUCTS	4.32 CU YD
09-SEP-87	MIXED ACIDIC WASTE/SOLIDS W/HEAVY METALS	RADIO & TV TRANSMIT, SIGNALING	100 CU YD
21-SEP-87	CONTAMINATED SOIL & DEBRIS	NON-SUPERFUND SITE CLEANUP	6000 CU YD
21-SEP-87	FERROUS OXIDE/CAUSTIC SODA	METAL COATING, ALLIED SERVICES	20 CU YD
21-SEP-87	ASBESTOS	ENV. SERVICES CONTRACTORS	50.00 CU YD

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
21-SEP-87	LAB PACK - ORM-E	OTHER GOVERNMENT AGENCY	1 CU YD
28-SEP-87	MELAMINE FORMALDEHYDE RESIN	PLASTICS MATERIALS, SYNTHETICS	5.4 CU YD
28-SEP-87	DRILL CUTTINGS CONTAMINATED WITH VOLATILE ORGANICS	NON-SUPERFUND SITE CLEANUP	2.43 CU YD
28-SEP-87	COBALT SULFATE	RESEARCH & DEVELOPMENT LABS	0.14 CU YD
28-SEP-87	LAB PACK - ORM-A	OTHER GOVERNMENT AGENCY	1 CU YD
28-SEP-87	INDUSTRIAL SEWER SLUDGE	NON-SUPERFUND SITE CLEANUP	3.24 CU YD
28-SEP-87	LAB PACK - POISON B	OTHER GOVERNMENT AGENCY	1 CU YD
28-SEP-87	GALLIUM ARSENIDE	RESEARCH & DEVELOPMENT LABS	0.54 CU YD
28-SEP-87	PCB CONTAMINATED SOIL AND SOLIDS	NON-SUPERFUND SITE CLEANUP	270 CU YD
28-SEP-87	WASTE PENTACHLOROPHENOL	WOOD PRESERVING	0.27 CU YD

16 Request(s) approved for generators in Washington

26 Requests granted - Grand Total

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit)	September, 1987 (Month and Year)
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SUMMARY OF NOISE CONTROL ACTIONS

<u>Source Category</u>	New Actions Initiated		Final Actions Completed		Actions Pending	
	<u>Mo</u>	<u>FY</u>	<u>Mo</u>	<u>FY</u>	<u>Mo</u>	<u>Last Mo</u>
	Industrial/ Commercial	7	41	20	50	237	250
Airports			0	2	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

County	* Name of Source and Location *	* Date *	* Action *
Clackamas	La Plante Body Shop, Milwaukie	9/87	In compliance
Clackamas	Mail-Well Envelope Company, Milwaukie	9/87	In compliance
Clackamas	Milwaukie City Water Pump #47 Milwaukie	9/87	In compliance
Multnomah	Alder Creek Lumber Company, Sauvie Island	9/87	No Violation
Multnomah	Ash Grove Cement Co. Lime Plant, Rivergate, Portland	9/87	In compliance
Multnomah	Fluid Air Components, Inc. Portland	9/87	In compliance
Multnomah	Market Basket Thriftway, 1214 SE Tacoma, Portland	9/87	In compliance
Multnomah	Odonto Prosthetics, Portland	9/87	In compliance
Multnomah	Oregon Steel Mills, Rivergate Portland	9/87	In compliance
Washington	Baseline Thriftway, Aloha	9/87	In compliance
Washington	Beaverton Volkswagen-Subaru, Beaverton	9/87	No violation
Washington	Bob's Camper and Motor Home Sales, Beaverton	9/87	No violation
Washington	DMH, Inc., Forest Grove	9/87	In compliance
Washington	Hoody Corporation, Beaverton	9/87	In compliance

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

<u>Noise Control Program</u> (Reporting Unit)	<u>September, 1987</u> (Month and Year)
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FINAL NOISE CONTROL ACTIONS COMPLETED

<u>County</u>	<u>* Name of Source and Location *</u>	<u>* Date *</u>	<u>* Action *</u>
Washington	Kaady Car Wash, Hillsboro	9/87	In compliance
Washington	Kimball Auto Repair, Aloha	9/87	In compliance
Washington	Permapost Products Company, Hillsboro	9/87	In compliance
Washington	Times Litho, Inc., Forest Grove	9/87	In compliance
Marion	Oregon State Fairground, L.B. Day Amphitheater, Salem	9/87	Music discontinued
Coos	Moore Mill & Lumber Company, Bandon	9/87	Source closed

CIVIL PENALTY ASSESSMENTS
DEPARTMENT OF ENVIRONMENTAL QUALITY
1987

CIVIL PENALTIES ASSESSED DURING MONTH OF SEPTEMBER, 1987:

<u>Name and Location of Violation</u>	<u>Case No. & Type of Violation</u>	<u>Date Issued</u>	<u>Amount</u>	<u>Status</u>
Roger DeJager Jefferson, Oregon	WQ-WVR-87-68 Discharged manure from manure storage pond into public waters.	9/18/87	\$1,000	Respondent intends to file a hearing request and answer by 10/16/87.

September, 1987
DEQ/EQC Contested Case Log

<u>ACTIONS</u>	<u>LAST MONTH</u>	<u>PRESENT</u>
Preliminary Issues	1	1
Discovery	0	0
Settlement Action	3	2
Hearing to be scheduled	0	2
Department reviewing penalty	0	0
Hearing scheduled	1	0
HO's Decision Due	0	1
Briefing	0	0
Inactive	<u>4</u>	<u>4</u>
SUBTOTAL of cases before hearings officer.	9	10
HO's Decision Out/Option for EQC Appeal	1	0
Appealed to EQC	3	4
EQC Appeal Complete/Option for Court Review	1	0
Court Review Option Taken	0	0
Case Closed	<u>5</u>	<u>2</u>
TOTAL Cases	14	16

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

§ Civil Penalty Amount
ACDP Air Contaminant Discharge Permit
AGI Attorney General 1
AQ Air Quality Division
AQOB Air Quality, Open Burning
CR Central Region
DEC Date Date of either a proposed decision of hearings officer or a decision by Commission

ER Eastern Region
FB Field Burning
HW Hazardous Waste
HSW Hazardous and Solid Waste Division
Hrng Rfrl Date when Enforcement Section requests Hearing Section schedule a hearing
Hrngs Hearings Section
NP Noise Pollution
NPDES National Pollutant Discharge Elimination System wastewater discharge permit.

NWR Northwest Region
OSS On-Site Sewage Section
P Litigation over permit or its conditions
Prtys All parties involved
Rem Order Remedial Action Order
Resp Code Source of next expected activity in case
SS Subsurface Sewage (now OSS)
SW Solid Waste Division
SWR Southwest Region
T Litigation over tax credit matter
Transcr Transcript being made of case
Underlining New status or new case since last month's contested case log

WQ Water Quality Division
WVR Willamette Valley Region

September 1987

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WAH CHANG	04/78	04/78		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	Current permit in force. Hearing deferred.
WAH CHANG	04/78	04/78		Prtys	03-P-WQ-WVR-78-2012-J NPDES Permit Modification	Current permit in force. Hearing deferred.
McINNIS ENTERPRISES, LTD., et al.	09/20/83	09/22/83		Prtys	56-WQ-NWR-83-79 WQ Civil Penalty of \$14,500	Hearing deferred.
McINNIS ENTERPRISES, LTD., et al.	10/25/83	10/26/83		Prtys	59-SS-NWR-83-33290P-5 SS license revocation	Hearing deferred.
FURNUE, Ames	03/15/85	03/19/85	06/20/85	Resp.	05-AQ-FB-84-141-- Civil Penalty of \$500	EQC order affirming penalty issued 7/14/87. Court review option available. Penalty paid. Appeal dismissed.
DANT & RUSSELL, C/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.

September 1987

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrl	Hrng Date	Resp Code	Case Type & No.	Case Status
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. <u>EQC to review at 12/4/87 meeting.</u>
VANDERVELDE, ROY	06/06/86	06/10/86	11/06/86	Prtys	05-WQ-WVR-86-39 \$5,500 Civil Penalty	<u>EQC to review at December 4, 1987 meeting.</u>
RICHARD KIRKHAM dba, WINDY OAKS RANCH		01/07/87	03/04/87	Resp	1-AQ-FB-86-08 \$680 civil penalty	<u>EQC to review at December 4, 1987 meeting.</u>
PAUL D. HOWELL dba, HOWELL ENTERPRISES	04/30/87	05/04/87	08/03/87	Hrgs/ Prtys	2-AQ-SWR-87-17 \$5,000 asbestos penalties	Settlement action. August 3 hearing deferred.
KURT ANTONI dba-CASCADE SEPTIC-TANK SERVICE	05/29/87	05/29/87	07/14/87	Prtys	3-OS-NWR-87-33 \$500-civil-penalty	<u>No appeal of Hearing Officer's decision modifying penalty to \$100. Case closed.</u>
MERIT USA, INC.	05/30/87	06/10/87	<u>09/14/87</u>	Prtys	4-WQ-NWR-87-27 \$3500 civil penalty (oil)	<u>Hearing Officer's decision due.</u>
PACIFIC COATINGS, INC.	07/09/87	07/10/87			5-AQ-NWR-87-40 \$500 civil penalty (odor)	<u>To be scheduled.</u>
VANPORT MFG.	09/14/87	09/16/87		Hrg	6-WQ-NWR-87-45 <u>\$800 civil penalty (turbidity)</u>	<u>To be scheduled.</u>

September 1987

DEQ/EQC Contested Case Log

<u>Pet/Resp</u> <u>Name</u>	<u>Hrng</u> <u>Rqst</u>	<u>Hrng</u> <u>Rfrl</u>	<u>Hrng</u> <u>Date</u>	<u>Resp</u> <u>Code</u>	<u>Case</u> <u>Type & No.</u>	<u>Case</u> <u>Status</u>
<u>THE WESTERN</u> <u>COMPLIANCE</u> <u>SERVICES, INC.</u>	09/11/87	09/15/87		Prtys	7-HW-NWR-87-48 <u>RCRA & PCB violations</u>	Preliminary issues.

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DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PLAN ACTIONS COMPLETED

Permit Number	Source Name	County	Date Scheduled	Action Description	Date Achieved
02	2515 ENANITE BATTERY SEPARATOR	BENTON	09/23/87	COMPLETED-APRVD	10/02/87
			09/24/87	COMPLETED-APRVD	10/02/87
09	0015 BEND MILLWORK SYSTEMS INC	DESCHUTES	09/16/87	COMPLETED-APRVD	10/27/87
10	0036 INTERNATIONAL PAPER CO.	DOUGLAS	08/03/87	COMPLETED-APRVD	09/25/87
12	0004 OREGON PINE LUMBER, INC.	GRANT	08/18/87	COMPLETED-APRVD	10/12/87
15	0012 SOUTHWEST FOREST INDUSTR.	JACKSON	07/31/87	COMPLETED-APRVD	10/02/87
15	0159 BIOMASS-ONE OPERATING CO.	JACKSON	09/16/87	COMPLETED-APRVD	10/12/87
18	0006 JELD-WEN INC.	KLAMATH	10/15/87	COMPLETED-APRVD	10/28/87
22	5193 WILLAMETTE INDUSTRIES	LINN	08/24/87	COMPLETED-APRVD	10/26/87
22	5196 LEBANON PLYWOOD, INC.	LINN	08/06/87	COMPLETED-APRVD	09/24/87
22	7128 WILLAMETTE INDUSTRIES	LINN	09/02/87	COMPLETED-APRVD	10/19/87
24	8025 TRUS JOIST CORP	MARION	10/09/87	COMPLETED-CNCLD	10/23/87
26	2931 GRAPHIC ARTS CENTER INC	MULTNOMAH	08/10/87	COMPLETED-APRVD	10/26/87
26	3238 REICHOLD CHEM-SWIFT DIV	MULTNOMAH	10/06/87	COMPLETED-APRVD	10/13/87
26	3239 TEKTRONIX, INC.	MULTNOMAH	10/26/87	COMPLETED-APRVD	10/28/87
36	8010 WILLAMINA LUMBER CO	YAMHILL	09/01/87	COMPLETED-APRVD	10/13/87

TOTAL NUMBER QUICK LOOK REPORT LINES

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

October, 1987
(Month and Year)

SUMMARY OF AIR PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sources Under Permits	Sources Reqr'g Permits
	<u>Month</u>	<u>FY</u>	<u>Month</u>	<u>FY</u>			
<u>Direct Sources</u>							
New	4	12	5	15	12		
Existing	2	9	1	8	11		
Renewals	7	27	5	19	53		
Modifications	<u>6</u>	<u>22</u>	<u>8</u>	<u>27</u>	<u>11</u>		
Total	19	70	19	69	87	1398	1422
<u>Indirect Sources</u>							
New	4	4	0	5	4		
Existing	0	0	0	0	0		
Renewals	0	0	0	0	0		
Modifications	<u>0</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>0</u>		
Total	<u>4</u>	<u>6</u>	<u>1</u>	<u>7</u>	<u>4</u>	<u>276</u>	<u>280</u>
<u>GRAND TOTALS</u>	23	76	20	76	91	1674	1702

Number of
Pending Permits

Comments

11	To be reviewed by Northwest Region
15	To be reviewed by Willamette Valley Region
4	To be reviewed by Southwest Region
0	To be reviewed by Central Region
1	To be reviewed by Eastern Region
18	To be reviewed by Program Operations Section
25	Awaiting Public Notice
<u>13</u>	Awaiting end of 30-day Public Notice Period
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DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

MONTHLY ACTIVITY REPORT

DIRECT SOURCES
PERMITS ISSUED

Permit Number	Source Name	County Name	Appl. Rcvd.	Status	Date Achvd.	Type Appl.
03	2577 CLACKAMAS HIGH SCHOOL	CLACKAMAS	07/06/87	PERMIT ISSUED	11/05/87	RNW
03	2583 MILWAUKIE HIGH SCHOOL	CLACKAMAS	07/06/87	PERMIT ISSUED	11/05/87	RNW
04	0041 CAVENHAM FOREST INDUST.	CLATSOP	06/02/87	PERMIT ISSUED	11/06/87	MOD
05	2367 CASCADE AGGREGATES INC	COLUMBIA	09/17/87	PERMIT ISSUED	10/23/87	RNW
22	6018 RAINIER WOOD PRODUCTS INC	LINN	10/21/87	PERMIT ISSUED	11/05/87	MOD
24	5956 MORSE BROS INC	MARION	06/08/87	PERMIT ISSUED	11/06/87	EXT
24	7106 NORPAC FOODS, INC.	MARION	10/21/87	PERMIT ISSUED	11/05/87	MOD
24	8057 MORSE BROS., INC.	MARION	06/08/87	PERMIT ISSUED	11/06/87	NEW
26	3217 WILBUR ELLIS COMPANY	MULTNOMAH	00/00/00	PERMIT ISSUED	10/13/87	MOD
31	0013 UNION FOREST PRODUCTS	UNION	08/06/87	PERMIT ISSUED	11/02/87	MOD
31	0039 SCHUBERT & SON'S READYMIX	UNION	07/20/87	PERMIT ISSUED	11/05/87	NEW
34	2619 MORSE BROS., INC.	WASHINGTON	10/06/87	PERMIT ISSUED	10/15/87	MOD
34	2670 PEERLESS CORPORATION	WASHINGTON	10/19/87	PERMIT ISSUED	11/02/87	MOD
34	2677 CANACO CORPORATION	WASHINGTON	10/08/87	PERMIT ISSUED	10/15/87	MOD
37	0159 FOWLER CRUSHING	PORT.SOURCE	09/10/87	PERMIT ISSUED	10/23/87	RNW
37	0185 TILLAMOOK CO. ROAD DEPT	PORT.SOURCE	10/14/87	PERMIT ISSUED	11/02/87	RNW
37	0376 BART ASSOCIATES, INC.	PORT.SOURCE	07/14/87	PERMIT ISSUED	10/08/87	NEW
37	0377 CIRCLE CONSTRUCTION CO.	PORT.SOURCE	07/13/87	PERMIT ISSUED	10/08/87	NEW
37	0378 SCHUBERT & SON'S READYMIX	PORT.SOURCE	07/20/87	PERMIT ISSUED	11/05/87	NEW

TOTAL NUMBER QUICK LOOK REPORT LINES

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Air Quality Division
(Reporting Unit)

October, 1987
(Month and Year)

PERMIT ACTIONS COMPLETED

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

Indirect Sources

Multnomah	Portland International Airport, 25,335 Spaces, File No. 26-7908 (Modification)	10/27/87	Addendum No. 3 Issued
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AA5324

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality
(Reporting Unit)

October 1987
(Month and Year)

PLAN ACTIONS COMPLETED - 13

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

MUNICIPAL WASTE SOURCES - 7

Umatilla	Milton-Freewater Wastewater Project, Storage and Irrigation	10-7-87	Provisional Approval
Clackamas	Tri City Service District Contract C-8 Misc Plant Additions	10-23-87	Provisional Approval
Clatsop	Midway Mobile Home Park Treatment and Disposal System, 8050 gpd RGF	11-2-87	Provisional Approval
Tillamook	WI-NE-MA Christian Church Camp Recirculating gravel filter seepage bed 14,365 gpd	10-20-87	Provisional Approval
Harney	BLM Complex, Burns Bottomless Sand Filter 1000 gpd	10-30-87	Comments to Region
Douglas	South Umpqua SRA (revised) RFG, 2089 gpd	10-22-87	Final Comments to ODOT
Lane	Country Squire Inn Holding/polishing pond (revised)	11-2-87	Comments to Engineer

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Water Quality Division
(Reporting Unit)

October 1987
(Month and Year)

PLAN ACTIONS COMPLETED - 13

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

INDUSTRIAL WASTE SOURCES - 6

Marion	Merrill Hog Farm	10-8-87	Approved
Multnomah	McCormick & Baxter Retort Drip Pads	10-6-87	Approved
Multnomah	Cascade Corporation Waste Coolant & Chip Disposal Contaminated Area	10-8-87	Approved
Columbia	Steinfeld's Products Groundwater Monitoring Wells	10-13-87	Approved
Tillamook	E.R. Filosi Manure Control Facility	10-22-87	Approved
Tillamook	Benjamin Hathaway Manure Control System	10-30-87	Approved

Summary of Actions Taken
On Water Permit Applications in OCT 87

Source Category & Permit Subtype	Number of Applications Filed						Number of Permits Issued						Applications Pending Permits Issuance (1)			Current Number of Active Permits		
	Month			Fiscal Year			Month			Fiscal Year			NPDES	WPCF	Gen	NPDES	WPCF	Gen
	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen	NPDES	WPCF	Gen						
Domestic																		
NEW		2		1	12						8		4	23				
RW										1								
RWO	7	1		24	8		2	2		17	16		55	26				
MW													1					
MWO										19	2		6	1				
Total	7	3		25	20		2	2		37	26		66	50		225	177	29
Industrial																		
NEW			2		4	13		2	4		6	14	3	13	6			
RW																		
RWO	2	2		7	10			2		1	3		21	22				
MW													1					
MWO		1		4	2	1	2	1		6	3		1	2	1			
Total	2	3	2	11	16	14	2	5	4	7	12	14	26	37	7	165	135	393
Agricultural																		
NEW						1			171			171			1			
RW																		
RWO		1		1	1								1	1				
MW																		
MWO									1			1						
Total		1		1	1	1			172			172	1	2		2	12	228
Grand Total	9	7	2	37	37	15	4	7	176	44	38	186	93	89	7	392	324	650

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

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

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PERMIT CAT NUMBER	TYPE	SUB- TYPE OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
<u>General: Cooling Water</u>								
AGR	100	GEN01 MWO	OR003239-5	96973/A	WILLAMETTE EGG FARMS, INC.	CANBY	CLACKAMAS/NWR	08-OCT-87 31-DEC-90
<u>General: Placer Mining</u>								
IND	600	GEN06 NEW		38200/B	VALLEY HIGH OIL, GAS & MINERALS, INC.		BAKER/ER	09-OCT-87 31-JUL-91
<u>General: Suction Dredges</u>								
IND	700	GEN07 NEW		103129/A	WOODWARD, WARREN R.		MOBILE SRC/ALL	01-OCT-87 31-JUL-91
IND	700	GEN07 NEW		103190/A	BRANDON, TOM		JACKSON/SWR	28-OCT-87 31-JUL-91
<u>General: Subsurface Suction (potential)</u>								
AGR	800	GEN08 NEW		12903/A	C & B LIVESTOCK, INC	HERMISTON OR	UMATILLA/ER	01-OCT-87 31-JUL-92
AGR	800	GEN08 NEW		7479/A	BELTVIEW FARMS, INC.	YAMHILL	YAMHILL/WVR	01-OCT-87 31-JUL-92
AGR	800	GEN08 NEW		103018/A	NEAHRING, STEVE	NEHALEM	TILLAMOOK/NWR	02-OCT-87 31-JUL-92
AGR	800	GEN08 NEW		103022/A	MOSS CREEK VALLEY DAIRY	BAY CITY	TILLAMOOK/NWR	02-OCT-87 31-JUL-92
AGR	800	GEN08 NEW		103024/A	ALLER, ROBERT	COQUILLE	COOS/SWR	02-OCT-87 31-JUL-92
AGR	800	GEN08 NEW		103026/A	PEARN, RICHARD	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87 31-JUL-92
AGR	800	GEN08 NEW		103028/A	DE JONG, JERRY & GALE	SCIO	LINN/WVR	02-OCT-87 31-JUL-92

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PERMIT CAT NUMBER	TYPE	SUB- TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
AGR	800	GEN08	NEW	103030/A	PLUM NELLIE FARM	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103032/A	LOVE, JOHN L	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103034/A	WALDISPUHL, JOHN	SCIO	LINN/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103036/A	ZWEIFEL, LARRY & PAMELA	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103038/A	BLANCHARD, TOM	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103041/A	KNIGHT, JOHNNY & VIRGINIA	MYRTLE POINT	COOS/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103042/A	GIETEMA, CLARENCE	SALEM	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103044/A	SUMICH & SONS, A.	BLACHLY	BENTON/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103046/A	FORSTER FARM, INC.	NEHALEM	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103048/A	HURLIMAN, RON AND VONNIE	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103050/A	EARLY, J. PETER	SCIO	LINN/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103053/A	HAYES DAIRY	EAGLE POINT	JACKSON/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103055/A	BOQUIST, CLARENCE	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103057/A	THUN JERSEYS	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103059/A	WALDRON, DENNIS & BARBARA	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103061/A	DURRER, ROBERT & ELAINE	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103067/A	VELLINGA, LEON	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103069/A	DERUYTER, JOHN	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103071/A	BLACK DIAMOND HOLSTEINS	JUNCTION CITY	LANE/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103073/A	SHREVE'S TRIPLE-K, DAIRY FARM, INC.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103075/A	MISTY MEADOW DAIRY	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103077/A	HURLIMAN, GEORGE J.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103079/A	VAN VELDHUIZEN, ARTHUR B.	TURNER	MARION/WVR	02-OCT-87	31-JUL-92

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CAT	PERMIT NUMBER	TYPE	SUB-TYPE OR NUMBER	FACILITY FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
AGR	800	GEN08	NEW	103081/A SCHURIG, GERHARD	MCMINNVILLE	YAMHILL/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103084/A CHADWICK, VIRGIL	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103086/A TWIGG FARM	CORNELIUS	WASHINGTON/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103088/A DERSHAM, HAROLD	CORNELIUS	WASHINGTON/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103091/A FAIRVIEW ACRES DAIRY FARMS, INC.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103093/A MEADOW VIEW DAIRIES, INC.	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103095/A PORTER, WALTER	NEHALEM	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103097/A SANDER DAIRY	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103099/A FOREMAN, HAROLD J.	GRANTS PASS	JOSEPHINE/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103101/A WETZEL, HENRY & MARJORIE	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103104/A NOBLE, JERRY	GRANTS PASS	JOSEPHINE/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103106/A LONELY LANE FARMS	MT. ANGEL	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103108/A HERMENS DAIRY FARM	MCMINNVILLE	YAMHILL/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103110/A BRASSFIELD, HOWARD A.	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103112/A TRASKVIEW FARM INC.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103114/A GLST, DOROTHY	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103116/A SHEDD DAIRY	SHEDD	LINN/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103118/A DAILY BLESSING DAIRY	NYSSA	MALHEUR/ER	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103120/A BOSCH DAIRY	CENTRAL POINT	JACKSON/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103122/A JANES, GERALD	MCMINNVILLE	YAMHILL/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103124/A GERMANY, VANCE	OREGON CITY	CLACKAMAS/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103126/A NUGENT, DAVE	COOS BAY	COOS/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103128/A SCHROCK, CLEMENTS	MCMINNVILLE	YAMHILL/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103131/A DEVRIES, HANS	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92

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PERMIT CAT NUMBER	TYPE	SUB- TYPE OR NUMBER	FACILITY FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
AGR	800	GEN08 NEW	103133/A DEJONG, JOHN	SCIO	LINN/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103135/A ZYLSTRA, TED	DAYTON	YAMHILL/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103137/A C. H. LOOS	SCAPPOSE	COLUMBIA/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103139/A A & H DAIRY	GERVAIS	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103141/A MEEUWSEN, WILLIS	BANKS	WASHINGTON/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103143/A OHLING, ORVILLE L.	ALBANY	LINN/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103145/A PLANTENGA, LOUIE	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103147/A HARMON & SON DAIRY	GRANTS PASS	JOSEPHINE/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103149/A AAMODT DAIRY, INC.	HUBBARD	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103151/A GILLINS, LEE	MONMOUTH	POLK/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103153/A OLDENKAMP FARM INC.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103155/A GIENGER FARM'S	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	102971/A DAVIS, LEIGHTON & SON	CORVALLIS	BENTON/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	102973/A HOFFMAN, WILLIAM J, DAIRY	DEER ISLAND	COLUMBIA/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	102975/A SHERMAN, MAX W.	CANBY	CLACKAMAS/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	102977/A HURLIMAN, JOHN E. AND MILDRED R.	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	102979/A MOISAN DAIRY	SALEM	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	102981/A FIR RIDGE HOLSTEIN FARM	SCIO	LINN/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	102983/A MARTELLA, STAN & ELAINE	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	102985/A VETSCH DAIRY	PORTLAND	MULTNOMAH/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	102988/A GERREN AT SMA	MT. ANGEL	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103007/A BEYER, JAMES H.	SILVERTON	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	102990/A DAIRY CENTER-OREGON STATE UNIV.	CORVALLIS	BENTON/WVR	02-OCT-87	31-JUL-92

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CAT	PERMIT NUMBER	TYPE	SUB- TYPE	OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
AGR	800	GEN08	NEW		102992/A	COASTAL VIEW DAIRY INC.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102994/A	CRAVEN FARMS, INC.	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102996/A	FITCH, MELVIN & DELORIS	BEAVER	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102998/A	WIDMER FARMS, INC.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		103000/A	HURLIMAN, PETE & PAULA	NEHALEM	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		103002/A	DE JONA, WILLIAM	BONANZA	KLAMATH/CR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		103004/A	ROSS DAIRY	COOS BAY	COOS/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		103157/A	O'DELL, TERRY & CAROL	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		103005/A	HANCOCK, ANTHONY & SUSAN	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		103003/A	CHERRY GROVE DAIRY	COOS BAY	COOS/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		103001/A	GODINHA DAIRY, TONY	SCIO	LINN/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102999/A	MEADOWS, VERDE	GOLD HILL	JACKSON/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102997/A	SINKO, DOUGLAS Y.	MYRTLE POINT	COOS/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102995/A	KUNOERT, CHARLES (JR)	ALBANY	LINN/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102993/A	AVERILL, DON & JO	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102991/A	JORRITSMA DAIRY	AURORA	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102989/A	DE JONG, TOM	KLAMATH FALLS	KLAMATH/CR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102987/A	J AND J FARMS	MT. ANGEL	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102986/A	SILVA BROS. DAIRY CO.	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102984/A	WILSONVIEW DAIRY, INC.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102982/A	KENNEDY, CALVIN	RICKREALL	POLK/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102980/A	JENCK, KENNETH M.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102978/A	DUTCH ACRES DAIRY	WOODBURN	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW		102976/A	DAIRYFOLKS FARMS	FOREST GROVE	WASHINGTON/NWR	02-OCT-87	31-JUL-92

PERMIT CAT NUMBER	TYPE	SUB- TYPE OR NUMBER	FACILITY FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
AGR	800	GEN08 NEW	102974/A VANDER STELT, CORNELIUS	HALSEY	LINN/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	102972/A METCALFE, JAMES A. AND WILDA L.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103156/A JOHNSON DAIRY	NORTH BEND	COOS/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103152/A KAY, THOMAS	COQUILLE	COOS/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103150/A SHANKS, MARK G.	LEBANON	LINN/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103148/A DELFORD, CORNING	SCIO	LINN/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103146/A HATHAWAY FARMS	TREE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103144/A ROTH, THOMAS	DAYTON	YAMHILL/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103142/A SHORTLIDGE, JAMES & DONNA	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103140/A HEMENWAY FARMS	COTTAGE GROVE	LANE/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103138/A DOUBLE C-M DAIRY	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103136/A VAN LEEUWEN, EUGENE, ERNEST, & IVY	SCIO	LINN/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103134/A ASCHOFF, CARL	BORING	CLACKAMAS/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103132/A LEONNIG, WILLIAM	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103130/A LOVE, DENNIS	HEBO	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103127/A SUNSHINE ACRES	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103125/A LOUIS HILLECKE & SONS	HILLSBORO	WASHINGTON/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103123/A MISSION LANE FARMS, INC.	ST. PAUL	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103121/A JOHNSON, DWIGHT A.	MCMINNVILLE	YAMHILL/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103119/A VAN SMOORENBURG, WILLIAM H. & ANN	GERVAIS	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103117/A GOLDEN ACRES DAIRY	NEWBERG	YAMHILL/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103115/A TOHL, C. DEAN & PATTI	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103113/A TISUE HOLSTEINS	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92

CAT	PERMIT NUMBER	TYPE	SUB-TYPE OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
AGR	800	GEN08	NEW	103111/A	FABERS RIVERBEND HOLSTEINS	SALEM	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103109/A	GANN, DENNIS	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103107/A	KALBERTA ACRES	BEAVERTON	WASHINGTON/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103105/A	NAEGEL, MATT & KATHY	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103102/A	WEAVER, HAROLD L.	ASTORIA	CLATSOP/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103100/A	WINANS, ROSS L.	RAINIER	COLUMBIA/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103098/A	ANDERSON, DON	COLTON	CLACKAMAS/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103096/A	BARLOW TRAIL DAIRY	EAGLE CREEK	CLACKAMAS/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103094/A	THOMPSON, EMERY L.	COQUILLE	COOS/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103092/A	NES-TILL FARMS, INC.	BEAVER	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103089/A	HURLIMAN, NICK	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103087/A	KJELDE DAIRY	COTTAGE GROVE	LANE/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103085/A	ODETTE, MICHAEL	ONTARIO	MALHEUR/ER	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103083/A	BOULDER CREEK DAIRY	BEAVER	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103080/A	STRAUB, OTTO	HUBBARD	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103078/A	GOODMAN, WILLIAM G. & VICTORIA L.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103076/A	WOODRUFF AND SONS, JOHN R.	EUGENE	LANE/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103074/C	HALE, KARL & DONNA	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103072/A	HOODVIEW DAIRY	CANBY	CLACKAMAS/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103070/A	BELLTREE HOLSTEINS	TURNER	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103068/A	PENNEY, DAVID A. & PATRICIA J.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103066/A	BOERSMA DAIRY	GRANTS PASS	JOSEPHINE/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103060/A	SCHRIBER, JOE A.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08	NEW	103058/A	MILLER, RANDY & LYNNE	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92

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PERMIT CAT NUMBER	TYPE	SUB- TYPE OR NUMBER	FACILITY FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
AGR	800	GEN08 NEW	103056/A COLEMAN RANCH INC.	ST. PAUL	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103054/A NICKODEMUS, STEPHEN E.	MT. ANGEL	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103052/A BLEDSOE, LYLE C.	BEAVER	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103049/A BUCK, WILLIAM DALE	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103047/A CHRISTIANSEN, MARSHALL	TURNER	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103045/A BLASER, MARTIN C.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103043/A 4-D DAIRY	KLAMATH FALLS	KLAMATH/CR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103041/A KNIGHT, JOHNNY & VIRGINIA	MYRTLE POINT	COOS/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103039/A GREEN, RUTH	CLOVERDALE	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103037/A MULHOLLAND FARM INC.	GASTON	WASHINGTON/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103035/A WILLIAMS VALLEY DAIRY	WILLIAMS	JOSEPHINE/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103033/A GRIESER, JESSE	JEFFERSON	MARION/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103031/A HAIGHT, CALVIN	AMITY	YAMHILL/WVR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103029/A RENCKEN, DON & RUTH	MILTON FREEWATER	UMATILLA/ER	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103027/A THUNDERBIRD DAIRY, THE	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103025/A TANNLER, NEIL A.	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103023/A LANDOLT, RAMON & SUSAN	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103021/A KISTNER & WEBER	BANKS	WASHINGTON/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103020/A BRETZEL, EDWARD	BROADBENT	COOS/SWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103019/A DONALDSON DAIRY	TILLAMOOK	TILLAMOOK/NWR	02-OCT-87	31-JUL-92
AGR	800	GEN08 NEW	103082/A BOSCHMA DAIRY	HILLSBORO	WASHINGTON/NWR	07-OCT-87	31-JUL-92

PERMIT CAT NUMBER	TYPE	SUB- TYPE OR NUMBER	FACILITY	FACILITY NAME	CITY	COUNTY/REGION	DATE ISSUED	DATE EXPIRES
<u>General: Oily Stormwater Runoff</u>								
IND	1300	GEN13 NEW	OR003240-9	103159/A	SOUTHERN PACIFIC PIPE LINES, INC.	EUGENE	LANE/WVR	08-OCT-87 31-JUL-88
<u>NPDES</u>								
DOM	100387	NPDES RWO	OR003116-0	90917/A	UNITED NUCLEAR CORP		BAKER/ER	07-OCT-87 30-JUN-92
IND	100218	NPDES MWO	OR002645-0	97246/B	FOSTER FOODS OF OREGON, INC.	CRESWELL	LANE/WVR	09-OCT-87 30-JUN-91
IND	3636	NPDES MWO	OR000179-1	15825/B	GEORGIA-PACIFIC CORPORATION	LEBANON	LINN/WVR	20-OCT-87 29-FEB-88
DOM	100389	NPDES RWO	OR002061-3	57871/A	MONMOUTH, CITY OF	MONMOUTH	POLK/WVR	21-OCT-87 31-OCT-92
<u>WPCF</u>								
DOM	100386	WPCF RWO		11364/B	BLACK BUTTE RANCH CORPORATION		DESCHUTES/CR	01-OCT-87 31-AUG-92
IND	100340	WPCF MWO		24192/B	SUNSEEDS GENETICS, INC.	BROOKS	MARION/WVR	05-OCT-87 30-APR-92
IND	100388	WPCF RWO		82980/A	SOKOL BLOSSER WINERY, INC.	DAYTON	YAMHILL/WVR	19-OCT-87 31-OCT-92
IND	100390	WPCF RWO		47262/A	KNUDSEN-ERATH WINERY	DUNDEE	YAMHILL/WVR	23-OCT-87 31-OCT-92
IND	100391	WPCF NEW		102509/A	SUFOLLA INC.	SANDY	CLACKAMAS/NWR	23-OCT-87 31-OCT-92
IND	100392	WPCF NEW		102593/A	BEND GOLF & COUNTRY CLUB	BEND	DESCHUTES/CR	26-OCT-87 31-JUL-92
DOM	100393	WPCF RWO		100036/B	MILL-MAPLE PROPERTIES, INC.		CLACKAMAS/NWR	29-OCT-87 28-FEB-89

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DEPARTMENT OF ENVIRONMENTAL QUALITY
MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

October 1987
(Month and Year)

SUMMARY OF HAZARDOUS WASTE PROGRAM ACTIVITIES

PERMITS

	<u>No.</u>	ISSUED Fiscal Year to Date (FYTD)	<u>Planned in FY 88</u>
Treatment	-0-	-0-	-0-
Storage	-0-	-0-	7
Disposal	-0-	-0-	1

INSPECTIONS

	<u>No.</u>	COMPLETED FYTD	<u>Planned in FY 88</u>
Generator	6	19	38
TSD	5	8	29

CLOSURES

	<u>No.</u>	PUBLIC NOTICED		CERTIFICATIONS ACCEPTED		
		<u>FYTD</u>	<u>Planned in FY88</u>	<u>No.</u>	<u>FYTD</u>	<u>Planned in FY 88</u>
Treatment	-0-	-0-	-0-	-0-	-0-	-0-
Storage	-0-	-0-	3	1	2	4
Disposal	-0-	-0-	2	0	1	3

SB5285.A
MAR.2 (9/87)

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

October 1987
(Month and Year)

SUMMARY OF SOLID WASTE PERMIT ACTIONS

	Permit Actions Received		Permit Actions Completed		Permit Actions Pending	Sites Under Permits	Sites Reqr'g Permits
	Month	FY	Month	FY			
<u>General Refuse</u>							
New	1	3	-	1	4		
Closures	-	1	-	-	5		
Renewals	1	4	-	1	17		
Modifications	1	10	1	10	-		
Total	3	18	1	12	26	176	176
<u>Demolition</u>							
New	-	-	-	-	-		
Closures	-	-	-	-	-		
Renewals	-	-	-	1	1		
Modifications	-	1	-	1	-		
Total	0	1	0	2	1	12	12
<u>Industrial</u>							
New	-	2	-	4	4		
Closures	-	-	-	-	1		
Renewals	-	2	-	-	6		
Modifications	-	7	-	7	-		
Total	0	11	0	11	11	104	104
<u>Sludge Disposal</u>							
New	-	-	-	-	1		
Closures	-	1	-	-	1		
Renewals	-	-	-	-	-		
Modifications	-	1	-	1	-		
Total	0	2	0	1	2	17	17
Total Solid Waste	3	32	1	26	40	309	309

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

October 1987
(Month and Year)

PERMIT ACTIONS COMPLETED

* County	* Name of Source/Project * /Site and Type of Same	* Date of * Action	* Action	*
Multnomah	Metropolitan Service Dist. St. Johns Landfil Existing municipal waste landfill.	10/21/87	Addendum issued.	

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Hazardous and Solid Waste Division
(Reporting Unit)

October 1987
(Month and Year)

PLAN ACTIONS COMPLETED

* County	* Name of Source/Project * /Site and Type of Same	* Date of * Action	* Action	* *
Marion	Marion County Woodburn Ash Storage Facility New incinerator ash storage facility.	10/2/87	Plan approved.	*
Multnomah	ESCO Corporation ESCO - Sauvie Island Landfill Existing industrial waste landfill.	10/20/87	Plan approved.	*
Umatilla	Rahn Athena Landfill Existing municipal waste landfill.	10/28/87	Plan diasproved.	*

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
22-OCT-87	MERCURY CONTAMINATED ELECTRICAL EQUIPMENT	LOCAL & SUBURBAN TRANSIT	30.00 CUBIC YARDS
1 Request(s) approved for generators in British Columbia			
06-OCT-87	ACID CONTAMINATED WASTE	SEMICONDUCTORS	20.00 CUBIC YARDS
1 Request(s) approved for generators in Idaho			
06-OCT-87	PCB CONTAMINATED SOLIDS	NON-RCRA SPILL CLEANUP	0.27 CUBIC YARDS
06-OCT-87	PCB EQUIPMENT	ELEMENTARY & SECONDARY SCHOOLS	1.35 CUBIC YARDS
16-OCT-87	ELECTROPLATING SOLIDS	NON-SUPERFUND SITE CLEANUP	7.83 CUBIC YARDS
16-OCT-87	SOIL CONTAMINATED WITH PENTACHLORPENOL	WOOD PRESERVING	500.00 CUBIC YARDS
16-OCT-87	SLUDGE CAKE CONTAINING HEAVY METALS	OTHER ELECTRONIC COMPONENTS	120.00 CUBIC YARDS
22-OCT-87	CHROME SLUDGE	SEMICONDUCTORS	3.24 CUBIC YARDS
22-OCT-87	HAZARDOUS WASTE SOLID NOS-SPENT FILTERS	OTHER ELECTRONIC COMPONENTS	6.48 CUBIC YARDS
22-OCT-87	PCB EQUIPMENT	PCB REMOVAL & CLEANUP ACTIVITY	0.54 CUBIC YARDS
22-OCT-87	WASTE SOLIDIFIED CREOSOTE	RCRA SPILL CLEANUP	1.62 CUBIC YARDS
22-OCT-87	PCB CONTAMINATED SOIL	PCB REMOVAL & CLEANUP ACTIVITY	5.40 CUBIC YARDS
22-OCT-87	WASTE SOLIDIFIED COPPER-8-QUINOLATE	RCRA SPILL CLEANUP	2.16 CUBIC YARDS
22-OCT-87	LAB PACK - MISCELLANEOUS	OTHER GOVERNMENT AGENCY	0.41 CUBIC YARDS
22-OCT-87	LAB PACK - POISON	MEDICAL & SURGICAL HOSPITALS	0.2 CUBIC YARDS
22-OCT-87	DRAIN SLUDGE	MINING MACHINERY	2.70 CUBIC YARDS

14 Request(s) approved for generators in Oregon

DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
06-OCT-87	LAB PACK - ORM-E	COLLEGES & UNIVERSITIES	0.54 CUBIC YARDS
06-OCT-87	LAB PACK - POISON B	COLLEGES & UNIVERSITIES	0.54 CUBIC YARDS
06-OCT-87	LAB PACK - OXIDIZER	COLLEGES & UNIVERSITIES	0.54 CUBIC YARDS
06-OCT-87	LAB PACK - CORROSIVE LIQUID	COLLEGES & UNIVERSITIES	0.54 CUBIC YARDS
06-OCT-87	LAB PACK - POISON B	COLLEGES & UNIVERSITIES	1.08 CUBIC YARDS
08-OCT-87	API SEPARATOR SLUDGE/LIME SLUDGE	HW TREAT/STORE/DISPOSE FCLTY	172.80 CUBIC YARDS
16-OCT-87	SOIL, SOLIDS CONTAMINATED WITH DIESEL OIL	NON-SUPERFUND SITE CLEANUP	2500.00 CUBIC YARDS
16-OCT-87	SPENT POTLINING	PRIMARY PRODUCTION OF ALUMINUM	5000.00 CUBIC YARDS
16-OCT-87	THERMOMETER MERCURY & GLASS	PETROLEUM REFINING (& ASPHALT)	0.27 CUBIC YARDS
16-OCT-87	LAB PACK-HISTORICAL TARRY WASTE	OTHER GOVERNMENT AGENCY	0.14 CUBIC YARDS
16-OCT-87	STILL BOTTOMS	SPORTING & ATHLETIC GOODS	0.54 CUBIC YARDS
16-OCT-87	SAND & PAINT RESIDUE/LEAD	OTHER GOVERNMENT AGENCY	100.00 CUBIC YARDS
16-OCT-87	SAND & PAINT RESIDUE/LEAD	OTHER GOVERNMENT AGENCY	100.00 CUBIC YARDS
22-OCT-87	ASBESTOS	HW TREAT/STORE/DISPOSE FCLTY	80.00 CUBIC YARDS
22-OCT-87	SODIUM BICHROMATE/SOIL DEBRIS	RCRA SPILL CLEANUP	20.00 CUBIC YARDS
22-OCT-87	LAB PACK - FLAMMABLE LIQUID	OTHER GOVERNMENT AGENCY	1.00 CUBIC YARDS
22-OCT-87	LAB PACK - POISON B	OTHER GOVERNMENT AGENCY	1.00 CUBIC YARDS
22-OCT-87	SUMP SEDIMENT WITH HEAVY METALS	HW TREAT/STORE/DISPOSE FCLTY	385.00 CUBIC YARDS
22-OCT-87	SOIL CONTAMINATED WITH PHENOL	RCRA SPILL CLEANUP	40.00 CUBIC YARDS
22-OCT-87	SOLIDIFIED ANILINE MIXTURE	SIC UNKNOWN	0.2 CUBIC YARDS
22-OCT-87	PAINT/EPOXY/RESINS/ADHESIVES/VARNISH	HW TREAT/STORE/DISPOSE FCLTY	250.00 CUBIC YARDS
22-OCT-87	MCGRAW EDISON ST33NT BATTERIES	RAILROADS, LINE-HAUL OPERATING	250.00 CUBIC YARDS
22-OCT-87	SAPSTAIN(KOPPERS NP-1)DIP TANK	WOOD PRESERVING	20.00 CUBIC YARDS
26-OCT-87	CONTAMINATED DRUMS/CANS-CRUSHED	HW TREAT/STORE/DISPOSE FCLTY	100.00 CUBIC YARDS

24 Request(s) approved for generators in Washington

|DISPOS-R

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

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DATE	WASTE TYPE	SOURCE	DISPOSE ANNUALLY
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40 Requests granted - Grand Total

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DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

Noise Control Program (Reporting Unit)	October, 1987 (Month and Year)
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SUMMARY OF NOISE CONTROL ACTIONS

<u>Source Category</u>	New Actions Initiated		Final Actions Completed		Actions Pending	
	<u>Mo</u>	<u>FY</u>	<u>Mo</u>	<u>FY</u>	<u>Mo</u>	<u>Last Mo</u>
	Industrial/ Commercial	4	45	15	65	226	237
Airports			3	5	1	1

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

<u>County</u>	<u>* Name of Source and Location *</u>	<u>* Date *</u>	<u>* Action *</u>
Clackamas	Design Group, Lake Oswego	10/87	In compliance
Clackamas	Morrow's Palisades Grocery, Lake Oswego	10/87	In compliance
Clackamas	Plaid Pantry Market #127, Lake Oswego	10/87	No violation
Clackamas	Tualatin Valley Builders Supply, Lake Oswego	10/87	In compliance
Multnomah	Port of Portland, Terminal #4, Portland	10/87	In compliance
Multnomah	Schmitt Forge, Inc., Portland	10/87	In compliance
Washington	Cobb Crushed Rock, SW Kohler Road, Beaverton	10/87	No violation
Washington	Forest Grove Lumber Co., Forest Grove	10/87	In compliance
Washington	Ken Leahy Construction, Cornelius	10/87	In compliance
Washington	Tigard Thriftway, Tigard	10/87	In compliance
Washington	Van Dyke Grain Elevators, Inc., North Plains	10/87	In compliance
Marion	The Ranch Restaurant and Lounge, Salem	10/87	In compliance
Coos	Air National Guard Radar Station, Hauser	10/87	In compliance
Wasco	Union Pacific Railroad, The Dalles	10/87	In compliance

DEPARTMENT OF ENVIRONMENTAL QUALITY

MONTHLY ACTIVITY REPORT

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

County	* Name of Source and Location *	* Date *	* Action *
Umatilla	Pace Pallet Co., Adams	10/87	In compliance
Multnomah	Portland Temporary Private (Norcrest China) Helistop, Portland	9/87	Boundary approved
Yamhill	Newberg Community Hospital Emergency Heliport, Newberg	10/87	Exception granted
Wallowa	Smith Mountain Ranch Airport 8.5 miles NW of Wallowa	10/87	Boundary approved

CIVIL PENALTY ASSESSMENTS

DEPARTMENT OF ENVIRONMENTAL QUALITY
1987

CIVIL PENALTIES ASSESSED DURING MONTH OF OCTOBER, 1987:

<u>Name and Location of Violation</u>	<u>Case No. & Type of Violation</u>	<u>Date Issued</u>	<u>Amount</u>	<u>Status</u>
Randall C. Meyers, Inc. Lake Oswego, OR	AQOB-NWR-87-75 Open burned construc- tion waste.	10/2/87	\$250	Paid 10/22/87
JB Rock Products, Inc. Jefferson, OR	AQ-WVR-87-70 Operating a rock crusher without an air contaminant discharge permit.	10/21/87	\$2,000	Awaiting response to the notice.
Charles C. Leathers dba/Leathers Oil Co. Portland, OR	AQ-NWR-87-86 Unloaded gasoline without using vapor control hoses.	10/26/87	\$150	Paid 11/4/87.

October, 1987
DEQ/EQC Contested Case Log

<u>ACTIONS</u>	<u>LAST MONTH</u>	<u>PRESENT</u>
Preliminary Issues	1	1
Discovery	0	0
Settlement Action	2	2
Hearing to be scheduled	2	2
Department reviewing penalty	0	0
Hearing scheduled	0	0
HO's Decision Due	1	0
Briefing	0	0
Inactive	<u>4</u>	<u>4</u>
SUBTOTAL of cases before hearings officer.	10	9
HO's Decision Out/Option for EQC Appeal	0	0
Appealed to EQC	4	5
EQC Appeal Complete/Option for Court Review	0	0
Court Review Option Taken	0	0
Case Closed	<u>2</u>	<u>0</u>
 TOTAL Cases	 16	 14

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

§ Civil Penalty Amount

ACDP Air Contaminant Discharge Permit

AG1 Attorney General 1

AQ Air Quality Division

AQOB Air Quality, Open Burning

CR Central Region

DEC Date Date of either a proposed decision of hearings officer or a decision by Commission

ER Eastern Region

FB Field Burning

HW Hazardous Waste

HSW Hazardous and Solid Waste Division

Hrng Rfrl Date when Enforcement Section requests Hearing Section schedule a hearing

Hrngs Hearings Section

NP Noise Pollution

NPDES National Pollutant Discharge Elimination System wastewater discharge permit.

NWR Northwest Region

OSS On-Site Sewage Section

P Litigation over permit or its conditions

Prtys All parties involved

Rem Order Remedial Action Order

Resp Code Source of next expected activity in case

SS Subsurface Sewage (now OSS)

SW Solid Waste Division

SWR Southwest Region

T Litigation over tax credit matter

Transcr Transcript being made of case

Underlining New status or new case since last month's contested case log

WQ Water Quality Division

WVR Willamette Valley Region

October 1987

DEQ/EQC Contested Case Log

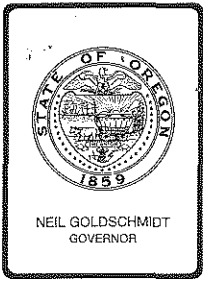
Pet/Resp Name	Hrng Rqst	Hrng Rfrl	Hrng Date	Resp Code	Case Type & No.	Case Status
WAH CHANG	04/78	04/78		Prtys	16-P-WQ-WVR-78-2849-J NPDES Permit Modification	Current permit in force. Hearing deferred.
WAH CHANG	04/78	04/78		Prtys	03-P-WQ-WVR-78-2012-J NPDES Permit Modification	Current permit in force. Hearing deferred.
McINNIS ENTERPRISES, LTD., et al.	09/20/83	09/22/83		Prtys	56-WQ-NWR-83-79 WQ Civil Penalty of \$14,500	Hearing deferred.
McINNIS ENTERPRISES, LTD., et al.	10/25/83	10/26/83		Prtys	59-SS-NWR-83-33290P-5 SS license revocation	Hearing deferred.
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.

56

October 1987

DEQ/EQC Contested Case Log

Pet/Resp Name	Hrng Rqst	Hrng Rfrl	Hrng Date	Resp Code	Case Type & No.	Case Status
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. <u>EQC to review at December 11, 1987 meeting.</u>
VANDERVELDE, ROY	06/06/86	06/10/86	11/06/86	Prtys	05-WQ-WVR-86-39 \$5,500 Civil Penalty	<u>EQC to review at December 11, 1987 meeting.</u>
RICHARD KIRKHAM dba, WINDY OAKS RANCH		01/07/87	03/04/87	Resp	1-AQ-FB-86-08 \$680 civil penalty	<u>EQC to review at December 11, 1987 meeting.</u>
PAUL D. HOWELL dba, HOWELL ENTERPRISES	04/30/87	05/04/87	08/03/87	Hrgs/ Prtys	2-AQ-SWR-87-17 \$5,000 asbestos penalties	Settlement action. August 3 hearing deferred.
MERIT USA, INC.	05/30/87	06/10/87	09/14/87	Prtys	4-WQ-NWR-87-27 \$3500 civil penalty (oil)	<u>Hearing Officer's reduced penalty to \$2,000. Merit appealed to EQC.</u>
59 PACIFIC COATINGS, INC.	07/09/87	07/10/87			5-AQ-NWR-87-40 \$500 civil penalty (odor)	To be scheduled.
VANPORT MFG.	09/14/87	09/16/87		Hrg	6-WQ-NWR-87-45 \$800 civil penalty (turbidity)	To be scheduled.
THE WESTERN COMPLIANCE SERVICES, INC.	09/11/87	09/15/87		Prtys	7-HW-NWR-87-48 RCRA & PCB violations	Preliminary issues.



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

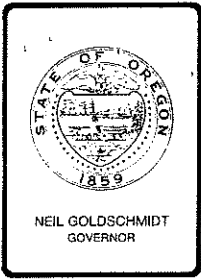
Subject: Agenda Item C, December 11, 1987, EQC Meeting

TAX CREDIT APPLICATIONS

Director's Recommendations

It is recommended that the Commission issue tax credit certificates for the following pollution control facilities:

<u>Appl. No.</u>	<u>Applicant</u>	<u>Facility</u>
T-1887	Teledyne Industries	Fugitive emissions collection and scrubber improvements
T-1891	Teledyne Industries	Wastewater clarifier improvements
T-1892	Teledyne Industries	Crucible dump station and fume control
T-1893	Evanite Battery Separator, Inc.	Industrial waste treatment and ground-water monitoring wells.
T-1894	Portland General Electric (Bull Run Plant)	Oil spill containment.
T-1895	Pacific Power and Light (Tongue Point Substation)	Oil spill containment.
T-1896	Pacific Power and Light (Seaside Substation)	Oil spill containment.
T-1897	Pacific Power and Light (Young's Bay Substation)	Oil spill containment.
T-1898	Pacific Power and Light (J. C. Boyle Substation)	Oil spill containment.
T-1899	Pacific Power and Light (Maple Street Substation)	Oil spill containment.



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, December 11, 1987, EQC Meeting

TAX CREDIT APPLICATIONS

Director's Recommendations

It is recommended that the Commission issue tax credit certificates for the following pollution control facilities:

<u>Appl. No.</u>	<u>Applicant</u>	<u>Facility</u>
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T-1891	Teledyne Industries	Wastewater clarifier improvements
T-1892	Teledyne Industries	Crucible dump station and fume control
T-1893	Evanite Battery Separator, Inc.	Industrial waste treatment and ground-water monitoring wells.
T-1894	Portland General Electric (Bull Run Plant)	Oil spill containment.
T-1895	Pacific Power and Light (Tongue Point Substation)	Oil spill containment.
T-1896	Pacific Power and Light (Seaside Substation)	Oil spill containment.
T-1897	Pacific Power and Light (Young's Bay Substation)	Oil spill containment.
T-1898	Pacific Power and Light (J. C. Boyle Substation)	Oil spill containment.
T-1899	Pacific Power and Light (Maple Street Substation)	Oil spill containment.

T-1900	Pacific Power and Light (Minam Substation)	Oil spill containment.
T-1901	International Paper Co. (Gardiner Mill)	Carbon monoxide monitors.
T-1903	Portland General Electric (Sullivan Plant)	Oil spill containment.
T-1904	Portland General Electric (Faraday Plant)	Oil spill containment.
T-2089	Timothy Christensen	Manure holding facility.
T-2090	Pennwalt Corporation	Industrial waste treatment
T-2098	H&P Mini Storage	Solid Waste Recycling.
T-2121	Maynard Kirkelie	Straw storage shedd
T-2127	Portland General Electric (McClain Substation)	Oil spill containment.
T-2128	Portland General Electric (University Substation)	Oil spill containment.
T-2151	Bend Mill Works Systems	Fugitive dust control.
T-2159	Portland General Electric (Salem Substation)	Oil spill containment.
T-2165	Portland General Electric (Rockwood Substation)	Oil spill containment.
T-2166	Portland General Electric (Mt. Angel Substation)	Oil spill containment.
T-2171	Portland General Electric (Rainier Substation)	Oil spill containment.
T-2173	Portland General Electric (Hogan North Substation)	Oil spill containment.
T-2177	Portland General Electric (Colton Substation)	Oil spill containment.
T-2178	Portland General Electric (Mt. Pleasant Substation)	Oil spill containment.
T-2198	Portland General Electric (Willamina Substation)	Oil spill containment.

T-2282	Tom Blanchard	Manure holding facility.
T-2351	Portland General Electric (Oak Grove Plant)	Oil spill containment.
T-2352	Portland General Electric (Fairmont Substation)	Oil spill containment



Fred Hansen

C Nuttall:y
(503) 229-6484
November 10, 1987
MY6353

Proposed October 9, 1987 Totals:

Air Quality	\$ 243,107.14
Water Quality	842,091.50
Hazardous/Solid Waste	16,500.00
Noise	<u>-0-</u>
	\$1,101,698.64

1987 Calendar Year Totals not including Tax Credits Certified at this EQC meeting.

Air Quality	\$1,017,695.63
Water Quality	1,596,749.93
Hazardous/Solid Waste	555,799.00
Noise	<u>-0-</u>
	\$3,170,244.56

MY6353

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates a zirconium, hafnium, tantalum and niobium production plant at 1600 Old Salem Road Albany, Oregon.

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

2. Description of Facility

Area ventilation fugitive emission collection and scrubber system improvements for the sand chlorination process area.

Claimed Facility Cost: \$76,693
(Accountant's Certification was provided).

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190, and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed August 6, 1984, less than 30 days before construction commenced in September, 1984. However, according to the process provided in OAR 340-16-015(1)(b) the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that construction could commence.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on September 30, 1985, and the application for final certification was found to be complete on July 23, 1987, within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to prevent a substantial quantity of air pollution in the form of chlorine or chloride emissions (toxic pollutants).

The facility consists of a modification to the existing area ventilation fugitive emission collection and scrubber system for the Sand Chlorination area. The system is used to collect and control the fumes resulting from equipment failure and maintenance operations. The modification consists primarily of replacing existing 4-inch flexible hoses with larger fiberglass reinforced permanent ductwork, installation of fiberglass caps for each nozzle opening and the installation of three large fiberglass reinforced butterfly valves replacing one existing butterfly valve.

- b. There is no economic benefit to the applicant and the previous existing system had never been certified as a pollution control system; therefore, there is no return on the investment in the facility and 100% of the facility cost is allocable to pollution control.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of air pollution and accomplishes this purpose by the redesign and modification of the existing area ventilation fugitive emission collection and scrubber system to eliminate an air contamination source as defined in ORS 468.275.
- c. The facility complies with DEQ statutes and rules and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$76,693 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1887.

W.J. Fuller:cdj
AD1597
(503) 229-5749
October 8, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

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

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

2. Description of Facility

The facility consists of a concrete bottom to an existing wastewater clarifier, a concrete 35' x 60' equalization sump, and a trash screen.

Claimed Facility Cost: \$208,912.00
(Accountant's Certification was provided).

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed July 10, 1985 more than 30 days before construction commenced on August 22, 1985.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on December 17, 1985 and the application for final certification was found to be complete on July 27, 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 prevent a substantial quantity of water pollution.

This prevention is accomplished by redesign to eliminate industrial waste as defined in ORS 468.700.

Prior to installation of the claimed facility, wastewater flowed through an unlined earthen sump prior to entering the wastewater clarifier. The 100' diameter clarifier had concrete sides but was constructed with an earthen bottom. Effluent from the clarifier flows through settling ponds prior to discharging to Truax Creek. The earthen sump was replaced with a 35' x 60' concrete equilization basin. This basin was also designed to collect floating oils. A self-cleaning trash screen was installed in a channel leading to the basin. In addition, a concrete bottom was poured in the existing clarifier.

The concrete basin and clarifier bottom were installed to prevent the potential for groundwater contamination. The trash screen was installed to minimize down time of the clarifier. The new facilities have functioned quite well. Oils collected in the equilization basin have been removed by oil absorption pads which have been disposed as solid waste. The quantity of oil collected has been minimal.

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of water pollution and accomplishes this purpose by the redesign to eliminate industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

Application No. T-1891

Page 3

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$208,912.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1891.

L.D. Patterson:c

WC2667

(503) 229-5374

October 30, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates a zirconium, hafnium, tantalum and niobium production plant at 1600 Old Salem Road, Albany, OR.

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

2. Description of Facility

Crucible dump station and fume control.

Claimed Facility Cost: \$62,233.
(Accountant's Certification was provided).

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190, and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed April 29, 1985, more than 30 days before construction commenced on June 6, 1985.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on September 16, 1985, and the application for final certification was found to be complete on August 6, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department.

The claimed facility is a crucible dump station and fume control and was installed to eliminate removing the contents of the crucible in the open. The contents which were extremely hot, smoked and frequently burned. Attempts to control these fugitive emissions by placing sand around the contents of the crucible met with minimal success while at the same time creating solid waste.

The claimed facility eliminated this condition by providing an unloading station in an existing building. This facility includes a complete ventilation control system consisting of duct work leading to a scrubber system. The claimed facility also includes a new breakout pad, storage pad, and other associated equipment designed to enclose the crucible during breakout and storage to prevent fugitive emissions (fumes) from escaping to the atmosphere.

- b. There is no economic benefit from operating the crucible dump station; therefore, there is no return on the investment in the facility and 100% of the facility cost is allocable to pollution control.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution
- c. The facility complies with DEQ statutes and rules, and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$62,233 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1892.

WJ Fuller:cdj
AD1570
(503) 229-5749
Ocyober 6, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

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

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

2. Description of Facility

The facility consists of five double lined stainless steel sumps with above-ground pumps and piping, a stainless steel liner for an existing concrete sump, two stainless steel tanks, an air stripper, and four groundwater monitoring wells.

Claimed Facility Cost: \$140,650.00
(Accountant's Certification was provided).

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed May 22, 1986 more than 30 days before construction commenced on July 1, 1986.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on April 16, 1986 and the application for final certification was found to be complete on August 21, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to prevent water pollution.

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

Prior to installation of the claimed facility, waste waters contaminated with TCE were blended with other waste streams and conveyed to the biological waste water treatment system. Due to concern about the possible impact on groundwater of TCE leakage from sumps, underground pipes, and from the unlined treatment ponds, the Department required the applicant to take special precautions to protect groundwater.

Five double lined stainless steel sumps were installed to collect all waste waters containing TCE. Pumps and above-ground piping convey the waters to a TCE separator. Oil and TCE removed from the separator is stored in two stainless steel tanks for recycle in the process. Effluent from the separator is pumped through a stripping column where TCE is exhausted to the atmosphere. The treated water flows to a concrete transfer sump which has been lined with stainless steel. Water is pumped from the transfer sump to the biological treatment system prior to discharge to the Willamette River.

The entire system, including the emissions from the air stripper, were reviewed by the Department prior to approval. TCE has not been found in any of the groundwater monitoring wells.

b. Analysis of Eligible Costs

One hundred percent (100%) of the cost of the facility is allocable to pollution control. There is no return on investment from this facility. Although TCE is recycled to the process, the operating expense of the recovery system is far greater than the value of the TCE.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to prevent water pollution and accomplishes this purpose by the treatment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

Dear Sirs,

I am writing to you regarding the matter of the late Mr. John Doe. I have been informed that you are the executor of his estate. I am the beneficiary of a trust established for the benefit of my children. I am sure you will understand the need for prompt action in this matter.

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I am sure you will understand the need for prompt action in this matter. I am sure you will understand the need for prompt action in this matter.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$140,650.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1893.

L.D. Patterson:h
WH2412
(503) 229-5374
October 20, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates the Bull Run hydroelectric plant near Sandy, Oregon.

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

2. Description of Facility

The facility consists of oil level alarms for each of six oil cooled transformers.

Claimed Facility Cost: \$17,440.99

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed July 26, 1983 more than 30 days before installation commenced on February 15, 1984.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Installation of the facility was substantially completed on September 26, 1985 and the application for final certification was found to be complete on August 20, 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 prevent a substantial quantity of water pollution.

This prevention is accomplished through warning devices which allow for containment of industrial waste as defined in ORS 468.700.

Prior to installation of the claimed facilities, there were no devices to warn plant operators of leaks in the transformer cooling systems. Any release of insulating oils from the transformers could have gone undetected and entered the Bull Run River. Oil level alarms were placed on the six transformers to warn operators of any change in oil level. Should the alarms activate, operators could immediately deploy containment devices to prevent oil releases from the plant.

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of water pollution and accomplishes this purpose through warning devices which allow for containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$17,440.99 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1894.

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates an electrical substation (Tongue Point Substation) near Astoria, Oregon.

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

2. Description of Facility

The facility described in this application is an oil spill containment system consisting of an oil/water separator and 92' of 5"x3" angle iron.

Claimed Facility Cost: \$7,454.32

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed September 13, 1985 more than 30 days before construction commenced on December 12, 1985.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on January 6, 1986 and the application for final certification was found to be complete on August 25, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

Prior to installation of the claimed facility, there were no means to contain oil spills from transformers at the Tongue Point

Substation. To comply with requirements of the federal government, the applicant installed oil spill containment facilities around the transformers. Five inch high angle iron was anchored around the perimeter of the transformer foundation slab. Surface runoff, along with any oil, is routed to a new oil catch basin. With this system in place, all drainage from the transformer area is controlled prior to entering storm sewers.

b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution and accomplishes this purpose by containing industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$7,454.32 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1895.

L.D. Patterson:c
WC2616
(503) 229-5374
October 21, 1987

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

1. Applicant

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

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

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

2. Description of Facility

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

Claimed Facility Cost: \$20,359.95
(Accountant's certification was provided)

3. Procedural Requirements

The facility governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed September 13, 1985 more than 30 days before construction commenced on December 15, 1985.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on January 6, 1986 and the application for final certification was found to be complete on August 25, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

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

b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution and accomplishes this purpose by containing industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$20,359.95 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1896.

L.D. Patterson:c
WC2615
(503) 229-5374
October 21, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates an electrical substation (Youngs Bay Substation) in Astoria, Oregon.

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

2. Description of Facility

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

Claimed Facility Cost: \$13,980.43

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed September 13, 1985 more than 30 days before construction commenced on November 15, 1985.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on January 6, 1986 and the application for final certification was found to be complete on August 25, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

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

b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution and accomplishes this purpose by containing industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$13,980.43 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1897.

L.D. Patterson:c
WC2614
(503) 229-5374
October 21, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates an electrical substation (J.C. Boyle Substation) near Klamath Falls, Oregon.

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

2. Description of Facility

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

Claimed Facility Cost: \$43,084.43
(Accountant's certification was provided.)

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed November 26, 1985 less than 30 days before construction commenced on December 6, 1985. The application was reviewed by DEQ staff and the applicant was notified that the application was complete and that construction could commence.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on January 7, 1986 and the application for final certification was found to be complete on August 25, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

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

b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution and accomplishes this purpose by containing industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$43,084.43 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1898.

L.D. Patterson:c
WC2613
(503) 229-5374
October 21, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates an electrical substation (Maple Street Substation) in Myrtle Point, Oregon.

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

2. Description of Facility

The facility described in this application is an oil spill containment system consisting of an oil/water separator with shutoff valves, 150' of concrete diversion wall, and 35' of earth berm.

Claimed Facility Cost: \$16,054.03

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed November 5, 1985 more than 30 days before construction commenced on December 6, 1985.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on January 7, 1986 and the application for final certification was found to be complete on August 25, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

The Maple Street Substation is located adjacent to storm sewers that drain to the Coquille River. Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with requirements of the federal government, the applicant installed oil spill containment facilities around the perimeter of the substation. A small concrete diversion wall was installed on the down-slope sides of the substation and an earth berm was constructed on the up-slope side. Surface drainage is routed through a new oil/water separation sump with shutoff valves. With this system in place, all drainage from the transformer area is controlled prior to entering the storm sewers.

b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution and accomplishes this purpose by containing industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$16,054.03 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1899.

L.D. Patterson:c
WC2617
(503) 229-5374
October 21, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

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

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

2. Description of Facility

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

Claimed Facility Cost: \$14,080.15

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed November 5, 1985 more than 30 days before construction commenced on August 20, 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 19, 1986 and the application for final certification was found to be complete on August 25, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution. This control is accomplished by redesign to contain industrial waste as defined in ORS 468.700.

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

b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to control water pollution and accomplishes this purpose by containing industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$14,080.15 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1900.

L.D. Patterson:c
WC2612
(503) 229-5374
November 18, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

International Paper Company
Industrial Packaging Group
6400 Poplar Avenue
Memphis, TN 38197-4844

The applicant owns and operates an unbleached pulp and paper mill utilizing the kraft process at Gardiner, Oregon.

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

2. Description of Facility

Two microprocessor based in-situ carbon monoxide analyzers with controls, automated calibration, and installation.

Claimed Facility Cost: \$53,781.14
(Accountant's Certification was provided).

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190, and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed March 18, 1985, more than 30 days before installation commenced on May 22, 1985.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Installation of the facility was substantially completed on January 5, 1986 and the application for final certification was found to be complete on August 31, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with an Environmental Quality Commission approved compliance schedule to operate the two recovery furnaces in compliance with the permitted level of 5 ppm total reduced sulfur (TRS) continuously.

To achieve this level of control continuously in-situ carbon monoxide (CO) analyzers were installed on both recovery furnaces which have been upgraded to a "state of the art" design. The in-situ carbon monoxide analyzers provide the necessary information to properly control recovery furnace air distribution which is necessary to minimize TRS emissions. The request for Certification for Tax Credit for upgrade of both recovery furnaces will be submitted on separate applications at a later date.

- b. The slight increase in recovery furnace efficiency resulting from better distribution of recovery furnace air is not expected to produce any significant economic benefit to the applicant. Therefore, there would be no return on the investment in the air pollution control facility and 10% of the facility cost is allocable to pollution control.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution
- c. The facility complies with DEQ statutes and rules, Commission orders and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 10%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$53,781.14 with 10% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1901.

WJ Fuller:cdj
AD1569
(503) 229-5749
October 6, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates the Sullivan Plant hydroelectric plant near West Linn, Oregon.

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

2. Description of Facility

The facility is an oil spill containment system consisting of an oil stop valve, and concrete curbing.

Claimed Facility Cost: \$7,814.32

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed April 29, 1985, more than 30 days before construction commenced on June 2, 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 August 25, 1986, and the application for final certification was found to be complete on September 18, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with the federal requirements, the applicant installed oil spill containment facilities. The perimeter of the transformer area was curbed with concrete such that runoff and any oil spillage would be directed to an existing sump. An oil stop valve was plumbed into the sump. With this system in place, all drainage from the substation is controlled prior to entering the Willamette River.

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$7,814.32 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1903.

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

The applicant owns and operates the Faraday hydroelectric plant near Estacada, Oregon.

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

2. Description of Facility

The facility consists of oil level alarms for each of three transformers.

Claimed Facility Cost: \$15,594.01

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed July 31, 1984 more than 30 days before installation commenced on September 1, 1985.
- 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 30, 1986 and the application for final certification was found to be complete on September 18, 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 prevent a substantial quantity of water pollution.

This prevention is accomplished through warning devices which allow for containment of industrial waste as defined in ORS 468.700.

Prior to installation of the claimed facilities, there were no devices to warn plant operators of leaks in the transformer systems. Any release of insulating oils from the transformers could have gone undetected and entered the Clackamas River. Oil level alarms were placed on the three transformers to warn operators of any change in oil level. Should the alarms activate, operators could immediately deploy containment devices to prevent oil releases from the plant.

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of water pollution and accomplishes this purpose through warning devices which allow for containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$15,594.01 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-1904.

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Timothy Christensen
10735 Highway 101, S.
Tillamook, OR 97141

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

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

2. Description of Facility

The facility is a manure control system consisting of a 15,538 cubic foot solids storage area, 6,584 square foot roof over an existing manure accumulation slab, and 258 feet of concrete curbing.

Claimed Facility Cost: \$44,050.00
(Accountant's Certification was provided).

The Accountant certified a facility cost of \$44,050.00. The U.S. Department of Agriculture Stabilization and Conservation Service reimbursed the applicant \$32,602.00. This amount will be subtracted by the applicant from the amount of tax credit for which he is eligible when he files his State Income Tax Form.

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed April 28, 1986 more than 30 days before construction commenced on June 6, 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 July 29, 1986 and the application for final certification was found to be complete on September 4, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to control a substantial quantity of water pollution.

This control is accomplished by elimination of industrial waste

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

Prior to installation of control facilities, manure was spread on land throughout the year, which frequently resulted in these materials entering Tillamook Bay via local ditches. The new manure solids holding area allows for storage of animal manure during wet weather conditions. The application of manure to land during the drier summer months has greatly reduced contamination of field runoff. Concrete curbing has been installed around the edge of the manure collection slabs for containment. A roof was constructed over an existing manure accumulation slab to minimize the collection of rainwater in the contaminated area. This provides more holding capacity for manure in the storage area.

The claimed facility provides no return on investment. It should be understood that manure was spread on land prior to installation of the control facilities. The timing of the land application can now be controlled to minimize contamination of storm runoff. The sole purpose of this facility is to control wastes from the farm operation to reduce the contamination of the Tillamook Bay Drainage Basin.

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

b. Analysis of Eligible Costs

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

5. Summation

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

- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to control a substantial quantity of water pollution and accomplishes this purpose by the elimination of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$44,050.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2089.

L.D. Patterson:c
WC2619
(503) 229-5374
October 21, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Pennwalt Corporation
Inorganic Chemicals Division
6400 N.W. Front
Portland, OR 97208

The applicant owns and operates a chlorine, caustic soda, sodium chlorate, and hydrochloric acid production plant in Portland, Oregon.

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

2. Description of Facility

The facility is an automatic sodium metabisulfite addition system to neutralize residual chlorine in waste water. The system consists of a metabisulfite storage tank, a circulating pump, chlorine analyzers, associated piping and control equipment.

Claimed Facility Cost: \$53,203.99
(Accountant's Certification was provided).

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed April 17, 1986 more than 30 days before construction commenced on June 1, 1986.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on May 2, 1987 and the application for final certification was found to be complete on August 11, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce water pollution. The requirement is to comply with a condition of a waste discharge permit which was based on a federal effluent guideline.

This reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468.700.

Pennwalt's NPDES permit which was issued in March 1986, required a substantial reduction of total residual chlorine in their waste water discharged to the Willamette River. All effluent streams with potential for residual chlorine contamination flow through existing tanks prior to discharge to the river. However, the new permit limits could not be achieved due to insufficient neutralization capability and to the lack of adequate chlorine analyzers.

Chlorine analyzers were installed in the existing tanks to control a new automatic chlorine neutralization system. Sodium metabisulfite is automatically metered into the waste water prior to entering the existing tanks. If the analyzers do not detect residual chlorine, the water is allowed to discharge to the Willamette River. If residual chlorine is detected in the second tank, the water is diverted to a lined impoundment where it can be metered back through the system.

Since installation of the facility, Pennwalt has easily complied with the permit limitations. There has been no return on investment from this facility.

- b. Analysis of Eligible Costs

One hundred percent (100%) of the facility cost is allocable to pollution control.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce water pollution and accomplishes this purpose by the treatment of industrial waste as defined in ORS 468.700.

- c. The facility complies with permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$53,203.99 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2090.

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

H & P Mini Storage
P.O. Box 6000
Grants Pass, OR 97527

The applicant owns and operates a Garbage Collection and Recycling business at Grants Pass, Oregon.

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

2. Description of Facility

The facility described in this application consists of five recycling depots located at Rogue River, Eagle Point, Gold Hill, Cave Junction and Grants Pass. The depots consist of five metal storage buildings (10' X 20').

Claimed Facility Cost: \$16,500 (Total facility cost was under \$20,000 and copies of invoices and cancelled checks were provided to the Department).

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed May 15, 1986 less than 30 days before construction commenced on June 1, 1986. However, according to the process provided in OAR 340-16-015(1)(b), the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that construction could commence.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on March 1, 1987 and the application for final certification was found to be complete on November 2, 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 solid waste by recycling.

This reduction is accomplished by the use of a resource recovery process. Approximately 127 tons of material per 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

Costs consist solely of five 10 X 20 metal buildings. Total cost of the five buildings was \$16,500.

Average annual cash flow is \$1500. This results from the value of recycled material minus operational costs. Dividing the annual average cash flow into the cost of the facility gives a return on investment factor of 11. Using table 1 of OAR 340-16-030, for a life of 10 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.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of solid waste by recycling.

This reduction is accomplished by the use of a resource recovery process.

- c. The facility complies with DEQ statutes and rules.
- d. The sole purpose of the facility is to utilize material that would otherwise be solid waste by recycling.

The end product of the utilization, 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 \$16,500 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2098.

Steve Greenwood
SF2618
(503) 229-5782
November 3, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Maynard E. Kirkelie
30312 Walnut Drive S.W.
Albany, Oregon 97321

The applicant owns the land and building and proposes to lease the building to the straw owner.

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

2. Description of Claimed Facility

The facility described in this application is a storage shed (104' x 144') located on Oakville Road, one and one-half miles north of Highway 34 in Albany, Oregon. The building will provide cover for 1152 tons of straw per year. The land and building are 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: \$31,064.00
(Accountant's Certification was provided).

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190, and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed June 9, 1986, less than 30 days before construction commenced on June 17, 1986. However, according to the process provided in OAR 340-16-015(1)(b), the application was received by DEQ staff and the applicant was notified that the application was complete, and construction could commence.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Installation of the facility was substantially completed on October 4, 1986, and the application for final certification was found to be complete on September 21, 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 is accomplished by providing covered storage of hay which would otherwise have been field burned. This hay will be sold when market conditions are good. The facility meets the definition provided in OAR 340-16-025(2) (g) (A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

- b. Analysis of Eligible Costs

The average annual cash flow from leasing storage space for straw is \$4,760.00. Dividing this into the cost of the facility (\$31,064.00) gives a return on investment factor of 6.526. Using Table 1 of OAR 340-16-030 for a life of ten years, the annual percent return on investment is 8.5%; 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 51%.

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. The facility 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 facility that is properly allocable to pollution control is 51%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$31,064.00, with 51% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-2121.

B. Finneran:p

MP1129

(503) 686-7837

November 23, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system at the McClain Substation in Salem, Oregon. The facility consists of approximately 300 feet of pressure treated 2 x 14 lumber, mason's sand, and 3/4 minus crushed rock.

Claimed Facility Cost: \$11,180.38

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed June 19, 1986 less than 30 days before construction commenced on July 15, 1986. However, according to the process provided in OAR 340-16-015 the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that construction could commence.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on September 9, 1986 and the application for final certification was found to be complete on September 3, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

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

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

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

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$11,180.38 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2127.

L. D. Patterson:c
WC2627
(503) 229-5374
October 21, 1987

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

1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system at the University Substation in Salem, Oregon. The facility consists of approximately 360 feet of pressure treated 2 x 14 lumber, 122 feet of railroad tires, mason's sand, and 3/4 minus crushed rock.

Claimed Facility Cost: \$10,781.96

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed June 19, 1986 less than 30 days before construction commenced on July 8, 1986. However, according to the process provided in OAR 340-16-015(1)(b), the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that construction could commence.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on September 3, 1986 and the application for final certification was found to be complete on September 18, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

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

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

The untrenched sides of the substation are bermed with rock covered railroad ties, or a double layer of 2x14 pressure treated lumber which are partially buried in native soils. Normal storm runoff will flow towards the trenches and pass through the sand under the timber. In the event of an oil spill, the sand would retard the oil and provide time for the cleanup crew to be dispatched to the site. Equipment monitors would warn crews of any failure. The crews would remove the oil and contaminated sand, and reconstruct the facility following site cleanup.

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$10,781.96 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2128.

L. D. Patterson:c

WC2685

(503) 229-5374

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Bend Millwork Systems
Division of Nortec, Inc.
62845 Boyd Acres Road
Bend, OR 97701

The applicant owns and operates a facility for manufacturing wood moulding, windows and doors in Bend, Oregon.

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

2. Description of Facility

The facility is an enclosure around the lower part of a bin for loading trucks with wood residue. It is constructed of a steel frame work with metal siding and end curtains. Wood fines which previously could be wind blown from the site are now contained.

Claimed Facility Cost: \$19,336.00
(Accounting records and invoices were provided).

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed July 14, 1986, less than 30 days before construction commenced on August 1, 1986. However, according to the process provided in OAR 340-16-015(1)(b), the application was reviewed by DEQ staff and the applicant was notified that the application was complete and that in accordance with OAR 340-16-015(d) construction could commence immediately.
- 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 1, 1986, and the application for final certification was found to be complete on September 19, 1987, within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to reduce air pollution.

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

An inspection by DEQ personnel indicates that the facility is adequately containing fugitive dust and is in compliance with emission standards and Air Contaminant Discharge Permit Conditions.

- b. The claimed costs are for material and the installation of the enclosure around the bottom of an existing bin. The small amount of wood fines collected would have negligible economic value. There is no financial benefit to the company from operating the facility, hence no return on the investment and 100% of the claimed and documented costs should be allocated as pollution control tax credit.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department reduce air pollution and accomplishes this purpose by the elimination of air contaminants as defined in ORS 468.275.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$19,336.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2151.

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system at the Salem Substation in Salem, Oregon. The facility consists of an oil/water separator with an oil stop valve.

Claimed Facility Cost: \$10,488.50

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed August 11, 1986, more than 30 days before construction commenced on October 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 October 24, 1986 and the application for final certification was found to be complete on September 3, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

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

Prior to installation of the claimed facility, there were no means to contain oil spills. To comply with the federal requirements, the applicant installed oil spill containment facilities. A new oil/water separator with an oil stop valve was installed in the existing storm drain in the substation. With this system in place, all drainage from the substation is controlled prior to entering the Willamette River.

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$10,488.50 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2159.

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system at the Rockwood Substation Gresham, Oregon. The facility consists of 320 feet of pressure treated 2 x 14 lumber, mason's sand, and 3/4 minus crushed rock.

Claimed Facility Cost: \$13,664.94

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed August 14, 1986 less than 30 days before construction commenced on August 26, 1986. However, according to the process provided in OAR 340-16-015(1)(b) 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 May 31, 1987 and the application for final certification was found to be complete on September 18, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

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

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

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

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$13,664.94 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2165.

L. D. Patterson:c

WC2683

(503) 229-5374

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system at the Mt. Angel Substation in Mt. Angel, Oregon. The facility consists of approximately 200 feet of pressure treated 2 x 12 lumber, mason's sand, and 3/4 minus crushed rock.

Claimed Facility Cost: \$8,799.40

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed August 14, 1986 less than 30 days before construction commenced on August 26, 1986. The application was reviewed by DEQ staff and the applicant was notified that the application was complete and that construction could commence.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on March 31, 1987 and the application for final certification was found to be complete on September 11, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

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

Two sides of the Mt. Angel Substation have been trenched and backfilled with mason's sand. A 2 x 12 pressure treated wood timber has been partially buried in the sand to act as a containment berm. The sand has been covered with crushed rock.

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

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

Application No. T-2166

Page 3

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$8,799.40 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2166.

L. D. Patterson:c

WC2626

(503) 229-5374

October 21, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system at the Rainier Substation in Rainier, Oregon. The facility consists of approximately 230 feet of pressure treated 2 x 14 lumber, mason's sand, and 3/4 minus crushed rock.

Claimed Facility Cost: \$12,725.72

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed August 20, 1986 more than 30 days before construction commenced on January 6, 1987.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on January 30, 1987 and the application for final certification was found to be complete on September 11, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

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

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

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

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$12,725.72 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2171.

L. D. Patterson:c
WC2625
(503) 229-5374
October 21, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system at the Hogan North Substation in Gresham, Oregon. The facility consists of 286 feet of pressure treated 2 x 12 lumber, mason's sand, and 3/4 minus crushed rock.

Claimed Facility Cost: \$15,447.48

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed September 2, 1986 less than 30 days before construction commenced on September 30, 1986. However, according to the process provided in OAR 340-16-015(1)(b) the application was received 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 November 25, 1986 and the application for final certification was found to be complete on September 11, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

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

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

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

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

Application No. T-2173

Page 3

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$15,447.48 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2173.

L. D. Patterson:c

WC2624

(503) 229-5374

October 21, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system at the Colton Substation in Colton, Oregon. The facility consists of 184 feet of pressure treated 2 x 14 lumber, mason's sand, and 3/4 minus crushed rock.

Claimed Facility Cost: \$9,983.14

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed September 10, 1986 less than 30 days before construction commenced on September 16, 1986. However, according to the process provided in OAR 340-16-015(1)(b) 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 April 17, 1987 and the application for final certification was found to be complete on September 11, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

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

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

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

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$9,983.14 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2177.

L. D. Patterson:c
WC2623
(503) 229-5374
October 21, 1987

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system at the Mt. Pleasant Substation in Oregon City, Oregon. The facility consists of approximately 450 feet of pressure treated 2 x 12 lumber, mason's sand, and 3/4 minus crushed rock.

Claimed Facility Cost: \$15,183.59

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed September 10, 1986 less than 30 days before construction commenced on September 15, 1986. However, according to the process provided in OAR 340-16-015(1)(b), 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 February 15, 1987 and the application for final certification was found to be complete on September 11, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

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

Four sides of the Mt. Pleasant Substation have been trenched and backfilled with mason's sand. A 2 x 12 pressure treated wood timber has been partially buried in the sand to act as a containment berm. The sand has been covered with crushed rock.

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

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$15,183.59 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2178.

L. D. Patterson:c

WC2670

(503) 229-5374

October 30, 1987

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

1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system at the Willamina Substation in Willamina, Oregon. The facility consists of 310 feet of pressure treated 2 x 12 lumber, mason's sand, and 3/4 minus crushed rock.

Claimed Facility Cost: \$12,084.93

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed October 13, 1986 less than 30 days before construction commenced on November 11, 1986. However, according to the process provided in OAR 340-16-015(1)(b) 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 November 23, 1986 and the application for final certification was found to be complete on September 18, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

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

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

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

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$12,084.93 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2198.

L. D. Patterson:c

WC2682

(503) 229-5374

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

1. Applicant

Tom Blanchard
10000 Chance Road
Tillamook, OR 97141

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

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

2. Description of Facility

The facility is a manure control system consisting of a 20' diameter x 7.5' high concrete manure tank and 76' of PVC pipe.

Claimed Facility Cost: \$8,819.66

The U.S. Department of Agriculture Stabilization and Conservation Service reimbursed the applicant \$3500.00. This amount will be subtracted by the applicant from the amount of tax credit for which he is eligible when he files his State Income Tax Form.

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed May 19, 1987 less than 30 days before construction commenced on May 20, 1987. However, according to the process provided in OAR 340-16-015(1)(b) 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 June 10, 1987 and the application for final certification was found to be complete on August 13, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to control a substantial quantity of water pollution.

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

Prior to installation of control facilities, manure was spread over land throughout the year, which frequently resulted in these materials entering the Trask River. The new liquid manure tank allows for storage of animal manure during wet weather conditions. The application of manure to land during the drier summer months has greatly reduced contamination of field runoff. PVC piping was installed to convey milk parlor and milkhouse wastes to the manure tank.

The claimed facility provides no return on investment. It should be understood that manure was spread over land prior to installation of the control facilities. The timing of the land application can now be controlled to minimize contamination of storm runoff. The sole purpose of this facility is to control wastes from the farm operation to reduce the contamination of the Tillamook Bay Drainage Basin.

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

- b. Analysis of Eligible Costs

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

5. Summation

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

- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to control a substantial quantity of water pollution and accomplishes this purpose by the elimination of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$8,819.66 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2282.

L.D. Patterson:h
WH2411
(503) 229-5374
10/19/87

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Portland General Electric Company
Oak Grove Hydroelectric Plan
121 S.W. Salmon Street
Portland, OR 97204

The applicant owns and operates the Oak Grove hydroelectric plant near Three Lynx, Oregon.

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

2. Description of Facility

The facility consists of oil level alarms for each of six oil cooled transformers.

Claimed Facility Cost: \$82,031.15
(Accountant's Certification was provided)

3. Procedural Requirements

The facility is governed by by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed September 29, 1983 more than 30 days before installation commenced on October 31, 1984.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Installation of the facility was substantially completed on November 21, 1986 and the application for final certification was found to be complete on September 3, 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 prevent a substantial quantity of water pollution.

This prevention is accomplished through warning devices which allow for containment of industrial waste as defined in ORS 468.700.

Prior to installation of the claimed facilities, there were no devices to warn plant operators of leaks in the transformer cooling systems. Any release of insulating oils from the transformers could have gone undetected and entered the Clackamas River. Oil level alarms were placed on the six transformers to warn operators of any change in oil level. Should the alarms activate, operators could immediately deploy containment devices to prevent oil releases from the plant.

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of water pollution and accomplishes this purpose through warning devices which allow for containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$82,031.15 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2351.

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

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

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

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

2. Description of Facility

The facility is an oil spill containment system at the Fairmont Substation in Salem, Oregon. The facility consists of 306 feet of pressure treated 2 x 12 lumber, mason's sand, and 3/4 minus crushed rock.

Claimed Facility Cost: \$28,222.03
(Accountant's Certification was provided)

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16.

The facility met all statutory deadlines in that:

- a. The request for preliminary certification was filed July 16, 1985 more than 30 days before construction commenced on October, 1985.
- b. The request for preliminary certification was approved before application for final certification was made.
- c. Construction of the facility was substantially completed on January 22, 1986 and the application for final certification was found to be complete on September 3, 1987 within 2 years of substantial completion of the facility.

4. Evaluation of Application

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

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

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

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

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

- b. Analysis of Eligible Costs

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the federal Environmental Protection Agency to prevent water pollution and accomplishes this purpose by the containment of industrial waste as defined in ORS 468.700.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

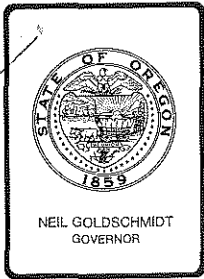
6. Director's Recommendation

Based upon the findings in the Summation, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$28,222.03 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2352.

L. D. Patterson:c

WC2684

(503) 229-5374



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Public Forum, December 11, 1987, EQC Meeting

Informational Report: Mr. Gary Newkirk;
Twin Rocks Sanitary District

The Department staff have discussed and have been corresponding with Mr. Gary Newkirk regarding a sewer problem. Mr. Newkirk owns a vacation or rental home which is connected to the Twin Rocks Sanitary District's sewerage system and has had raw sewage back up into the house on several occasions over a period of years. He has indicated he will appear before the Commission at the December 11, 1987 meeting to discuss his problems in additional detail.

This situation concerns two major issues: the Department's responsibility when waters of the state are threatened, and how problems are handled when sewage is deposited in a private residence. This report includes a summary of the Department's research and conclusions regarding Mr. Newkirk's complaints.

DISCUSSION

In recent conversations between Mr. Newkirk and staff, it is Mr. Newkirk's contention that the Department is responsible for requiring the District to correct any problem with his property because the Department reviewed and approved the original design plans for the sewerage system. ORS 468.724 requires the Department to review and approve plans for sewerage facilities. In addition, facilities must be constructed in accordance with approved plans. We believe the District has complied with this statute.

The Commission has adopted rules to implement ORS 468.724. These rules specifically state that the Department does not warrant the plans and specifications submitted for approval; approval indicates that such plans are consistent with standards and that the sewerage system should be able to meet effluent standards as required (OAR 340-52-030).

The Department's primary authority relative to the control of water pollution is derived from ORS 468.700 through 468.742. This authority centers on protecting the quality of the waters of the state and controlling the placing of pollutants into waters of the state or in a location where the pollutants are likely to enter waters of the state. The Department does not believe the statute grants authority to regulate the discharge of sewage onto private property unless it can be shown to enter or potentially enter public waters. The Department does not believe that the sewage entering Mr. Newkirk's home is likely to enter public waters. Therefore the Department does not believe it has authority under ORS 468 to require corrective actions by the District to solve Mr. Newkirk's problem.

In addition to ORS 468.700 through 468.742, ORS 454.645 provides the Department with enforcement powers when health hazards exist due to the failure of a subsurface sewage disposal system, alternative sewage disposal system or a nonwater-carried sewage disposal facility. A public health hazard is defined as "a condition whereby there are sufficient types and amounts of biological, chemical or physical, ... agents relating to water or sewage which are likely to cause human illness, disorders or disability."

Staff has interpreted this statute to encompass private sewage disposal systems regulated by the on-site sewage disposal regulations (Chapter 340, Division 71) and its application would not extend to individual sewage lines between a private residence and a municipal sewerage system operated under a NPDES permit. Responsibility for problems with individual lines is considered a private matter between the municipal sewerage system and the private residence as provided by OAR 340-45-015.

The Oregon State Health Division, Environmental Services Section was consulted regarding their responsibility in situations like Mr. Newkirk's. Their position is the same as the Department's; that problems are a private matter between the individual and the municipal sewerage system. Their only involvement would be if the situation involved an area-wide problem or (as an example) if sewage was flowing down a public street.

BACKGROUND

Mr. Newkirk owns property located in Barview, which is serviced by the Twin Rocks Sanitary District. The property is directly adjacent to the Tillamook Bay near the Jetty pump station. Correspondence from Mr. Newkirk indicates that raw sewage has backed up into this house approximately once per year since about 1980. The Department does not have a full chronological report of the back up incidences or the exact circumstances of each one.

The Department was first informed of the situation in 1984 when Mr. Newkirk indicated his dissatisfaction with the Sanitary District's efforts to resolve the problem. As a measure to alleviate any sewage back up problems at Mr. Newkirk's property, initial approval was given to the District to allow installation of a bypass pipe with discharge to Tillamook Bay. After further review, this approval was rescinded by the Department due to considerations for protection of the shellfish growing waters of Tillamook Bay. This action was necessary in order to maintain consistency with a protection program developed in cooperation with the Oregon State Health Division, Federal Food and Drug Administration, and locally involved governments. The District was urged to work with a consultant to resolve the problem without constructing a bypass. In the event that a bypass was the only alternative available, the District was informed that prior approval by all three agencies would be required before such action could be considered.

The District installed a check valve on the line to Mr. Newkirk's property in June, 1984 in an effort to prevent any back up of sewage from the main line into Mr. Newkirk's line. The District has apparently offered several times to install a private pump station on his property. The District feels that this would correct any problems due to the low elevation of the property. Mr. Newkirk has refused these offers, apparently because of other conditions the District may have included in the offer. Mr. Newkirk and the Sanitary District are currently involved in litigation regarding the sewage back up issues.

The District informed the Department of a small (5-10 gallon) sewage spill from a manhole adjacent to Mr. Newkirk's residence which occurred sometime between August 16-28, 1987. No sewage actually reached the bay. The District reported that the spill occurred as the result of a temporary plugging of the 8-inch main line at that location. The District also stated that Mr. Newkirk had reported a sewage back up into his home at this time. This information was confirmed by Mr. Newkirk in a letter to the Department.

In response to the report of a sewage spill adjacent to the bay, staff met with the Twin Rocks Sanitary District on September 16, 1987 to inspect the Jetty pump station. The sewage inlet pipe was found to be submerged by sewage in the wet well. Staff believe that this situation could have contributed to the temporary plugging in the line by allowing an accumulation of solids to form in the inlet pipe. The District has corrected this by resetting level control switches on the pumps. This readjustment should allow a free flow of sewage to the wet well.

The current alarm system was also examined and was determined to be inadequate. The present alarm at the pump station is an audio/visual system which relies on someone hearing the alarm horn or seeing a flashing light. At the time of the inspection, only the light was working. It was also noted that this is primarily a seasonal residential area and it is unsure whether or not an individual would know whom to contact in a timely manner. In addition, the reliability of the pump compressor was discussed as no backup system was in place.

On October 7, 1987, in a letter to the District, the Department requested the following action: the District was to clean and inspect that portion of the lines between the pump station and the manhole where the spill had occurred and report findings; the District was to investigate and install a backup compressor at the Jetty pump station; and the District was to investigate and install a more reliable alarm system at the Jetty pump station to provide direct notification to District staff of malfunctions.

On October 16, 1987 the District reported that a backup air compressor had been installed at the Jetty pump station. The District had a portion of the main line cleaned on October 30, 1987 and indicated that results were good. However, the response received from the District regarding the report on the cleaning operation results and the alarm installation is considered inadequate and further information has been requested. The District does not feel that adjustment of the wet well level was necessary and would like to reset it to the previous point above the inlet pipe. The District also stated that they will not be installing a direct contact alarm system as there is a possibility that the legal case with Mr. Newkirk will be resolved soon.

Environmental Quality Commission
Page Five
December 11, 1987

The Department has requested that the District have a more reliable alarm system installed by December 31, 1987. The Jetty pump station will be placed on the malfunction notification procedure system for Tillamook Bay. The District has been informed that the reason the enhanced alarm system is necessary is to provide adequate protection to public waters due to the pump station's proximity to the Bay.

CONCLUSION

With respect to this particular situation, the Department has required the Twin Rocks Sanitary District to take specific corrective actions. This requirement was made on the basis of the August, 1987 incident which resulted in a discharge of sewage onto the ground in a location where it was likely to enter public waters.

The specific actions which the Department has required of the District as the result of the spill may possibly help to reduce the frequency of sewage backups into Mr. Newkirk's property. The Department would suggest that Mr. Newkirk continue to work with the District in reaching a final resolution to the problem. An opinion by an independent consulting engineer might be helpful to the District and Mr. Newkirk.

The Department has consistently encouraged both the District and Mr. Newkirk to work together in an effort to resolve any problems experienced in this portion of the District's system. However, the Department believes the statutes that direct the Department do not grant authority to force the District to correct Mr. Newkirk's problem.



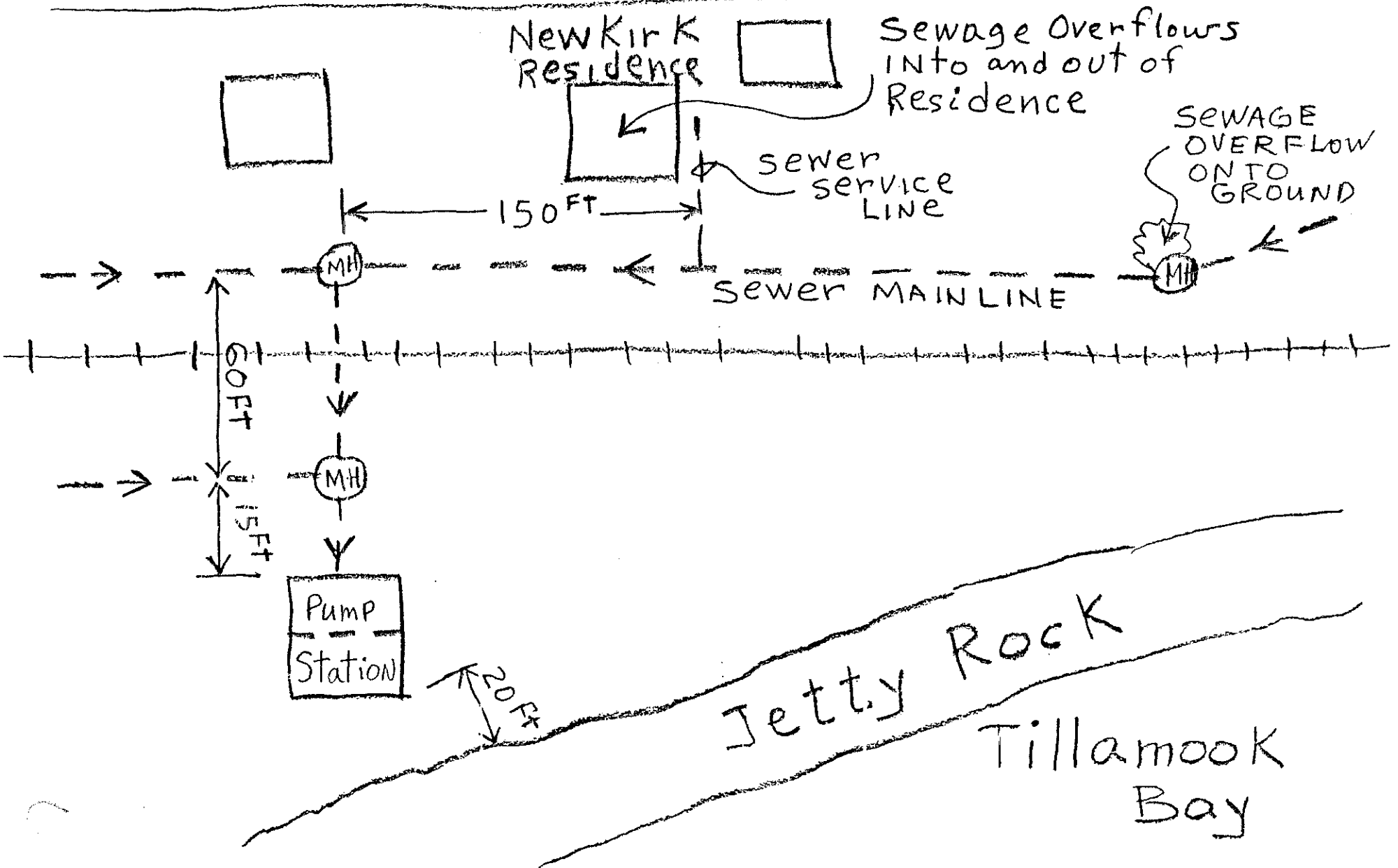
Fred Hansen

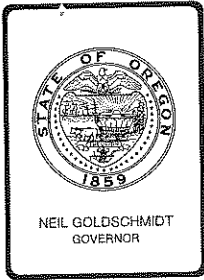
Attachment: 1) diagram of Newkirk property/Jetty pump station

L.J. McCulloch
229-5336
12/7/87

Jetty Pump Station at Twin Rocks

U.S. 101





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, December 11, 1987 EQC Meeting

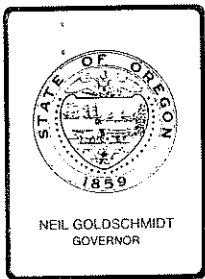
Request For Authorization To Conduct Public Hearings On Proposed Increases to the On-Site Sewage Disposal Fee Schedule (OAR 340-71-140) and Proposed Modification to the Definition of "Repair" of An On-Site System.

Background and Problem Statement

Maximum fees for providing on-site sewage disposal services were established by the 1973 legislature but provision was made by the 1979 legislature to allow the Environmental Quality Commission to approve fee increases if they do not exceed actual cost of providing services. The Commission has periodically approved fee increases for Lane, Linn, Jackson, Clackamas, Marion, and Multnomah Counties that exceeded the statewide schedule. They also periodically approved fee increases for the statewide fee schedule and approved addition of a surcharge fee on some activities to be collected to help finance rule development, training, and technical assistance activities conducted by Department staff.

The last increase to the statewide on-site sewage disposal fee schedule was approved by the Commission on May 20, 1983. Since that time, fee revenues have been insufficient to cover the expenses of conducting on-site sewage disposal activities, resulting in higher general fund support than that which is budgeted. General funds of \$131,686 in FY 81-83, \$368,336 in FY 83-85, and \$133,217 in FY 85-87 were budgeted over the last three bienniums totaling \$633,239. By comparison over \$900,000 in general fund support was required to cover the fee revenue shortfall. The Department's FY 87-89 general fund budget for supporting on-site sewage disposal activities, including support for higher travel costs in eight Eastern Region counties, is approximately \$133,000. The beginning fund fee revenue balance for the FY 87-89 biennium is less than \$40,000.

Current projections for the FY 87-89 biennium indicate that the costs for providing direct service will exceed direct service fee revenue by \$176,727 even with the \$133,000 general fund support and a reduction of approximately 2 FTE in resource assigned to on-site sewage disposal activities. A fee revenue shortfall of approximately \$340,000 is projected if no general fund support were to be considered. The goal of the Legislature and the Department is to operate the on-site sewage disposal program on a fee for service basis with only limited general fund support. Even with budgeted general fund support, this goal cannot be achieved under the current fee schedule.



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, December 11, 1987 EQC Meeting

Request For Authorization To Conduct Public Hearings On Proposed Increases to the On-Site Sewage Disposal Fee Schedule (OAR 340-71-140) and Proposed Modification to the Definition of "Repair" of An On-Site System.

Background and Problem Statement

Maximum fees for providing on-site sewage disposal services were established by the 1973 legislature but provision was made by the 1979 legislature to allow the Environmental Quality Commission to approve fee increases if they do not exceed actual cost of providing services. The Commission has periodically approved fee increases for Lane, Linn, Jackson, Clackamas, Marion, and Multnomah Counties that exceeded the statewide schedule. They also periodically approved fee increases for the statewide fee schedule and approved addition of a surcharge fee on some activities to be collected to help finance rule development, training, and technical assistance activities conducted by Department staff.

The last increase to the statewide on-site sewage disposal fee schedule was approved by the Commission on May 20, 1983. Since that time, fee revenues have been insufficient to cover the expenses of conducting on-site sewage disposal activities, resulting in higher general fund support than that which is budgeted. General funds of \$131,686 in FY 81-83, \$368,336 in FY 83-85, and \$133,217 in FY 85-87 were budgeted over the last three bienniums totaling \$633,239. By comparison over \$900,000 in general fund support was required to cover the fee revenue shortfall. The Department's FY 87-89 general fund budget for supporting on-site sewage disposal activities, including support for higher travel costs in eight Eastern Region counties, is approximately \$133,000. The beginning fund fee revenue balance for the FY 87-89 biennium is less than \$40,000.

Current projections for the FY 87-89 biennium indicate that the costs for providing direct service will exceed direct service fee revenue by \$176,727 even with the \$133,000 general fund support and a reduction of approximately 2 FTE in resource assigned to on-site sewage disposal activities. A fee revenue shortfall of approximately \$340,000 is projected if no general fund support were to be considered. The goal of the Legislature and the Department is to operate the on-site sewage disposal program on a fee for service basis with only limited general fund support. Even with budgeted general fund support, this goal cannot be achieved under the current fee schedule.

To address this concern, the Department convened a Citizen's Advisory Committee in January 1987 to evaluate this and other on-site sewage disposal program issues and propose changes where the Committee determined they were needed to improve efficiency and address the gap between fee revenues and program expenses.

Alternatives and Evaluation

1. Authorize a public hearing for a fee schedule which increases fees to cover the entire cost of conducting the program.

The Department's projected FY 87-89 on-site sewage disposal program expenses are \$961,939, plus indirect expenses on fee revenue collected. Approximately \$734,572 is projected to be needed to conduct direct service program activities in 13 counties for which the Department has the responsibility. Direct service fee revenues for the FY85-87 biennium were \$393,538. Assuming the same level of activity through the 1987-89 biennium, and no continued general fund support, the direct service fees would need to be increased by slightly more than 100 percent to cover the entire program costs with fees. Attachment A shows fee revenues for direct services provided during calendar year 1986 under current fees and surcharges. It also shows projected fee revenues with the same level of activity and a 100 percent increase in fees. No change in surcharge is shown. A doubling of fees would result in total direct service fee revenue for the biennium of approximately \$712,660, as compared to current fee revenue of \$393,538. Fee income would be slightly less than the projected direct service cost of \$734,572.

A fee schedule to generate the total revenue needed would be inequitable because a portion of the fees collected in populated counties would subsidize direct service activities in sparsely populated counties. The Citizen's Advisory Committee recommended that the Department pursue revisions to the fee schedule, however, they suggested that a 100 percent fee increase would result in unreasonably high fees that could possibly discourage voluntary public participation in the program.

2. Authorize a public hearing for a fee schedule which increases fees sufficiently to cover most of the costs of conducting the program.

A table comparing the current fee schedule with the proposed fee schedule and estimated cost of providing these services appears in Attachment B. These costs are based on the estimated time to perform each activity within a 20 mile radius of the office (Attachment C), a conservative hourly cost of providing technical assistance and the cost of clerical assistance. The hourly rate of \$27.00 consists of the basic salary for a Waste Management Specialist plus overhead, supplies, services and travel, and benefits. The clerical assistance cost is \$38.80 for each activity. Proposed fee increases range from 6 to 450 percent. A discussion of activities where the cost to provide service is substantially higher than the current fee is presented below.

- a. Current repair permit fees are substantially lower than the cost to conduct this activity. Repair permit fees for residential system repairs have been intentionally kept low to encourage repair of failing systems. Current repair fees cover about 25% of the cost of repair activities,

In addition, many failures occur either on small lots or on parcels with serious soil or groundwater limitations that complicate successful repairs. As a result, staff spends considerably more time providing technical assistance to resolve problems associated with issuing a repair permit than they do issuing a new construction installation permit.

Linn County petitioned the Environmental Quality Commission in June 1986 to approve a repair fee above the maximum allowed in DEQ rules. Their request was based on a time study of on-site sewage disposal services provided by the County that showed on the average they spend 4.17 hours of technical staff time on each residential repair permit. During the period of their study, the average rate of income for all permit related activities was \$23.87 per hour, whereas the overall hourly cost of the County to provide technical services to conduct the on-site program was determined to be \$39 per hour. The average repair permit costs Linn County \$163 -- (4.17 hours x \$39). Since the County could not charge more than \$35 at that time, the difference was subsidized by the County general fund.

The Commission approved this request and Linn County raised their repair permit fee to \$75. Linn County records, since the fee increase June 13, 1987, indicate that the fee increase does not appear to discourage people from applying for a repair permit.

The Citizens Advisory Committee agreed that existing repair fees were too low, but were reluctant to suggest raising the fee to cover the entire cost if it would discourage people from repairing failing systems. They recommended that repair fees be raised to more nearly cover cost of services. In addition, they suggested a surcharge be added to the repair fee. The Committee suggested the Department distinguish between major repairs, involving replacement of the soil absorption system, and minor repairs such as replacement of a septic tank or broken pipe. They suggested a \$75 fee for a major repair and \$50 fee for a minor repair. The Department's costs for conducting repair activities are \$145 for major repairs and \$100 fee for minor repairs.

- b. A significantly higher fee also is being proposed for conducting loan inspections (existing system evaluation). Loan inspections are a service that lending institutions require. The current \$60 fee does not cover the expense of providing this service. The Citizen's Advisory Committee members agreed the fee should be raised to pay for the service. The Committee also agreed that inspection responsibilities need not be limited to the Department or its Agents,

but can be conducted by any person lending institutions deem capable, since the Department does not require existing system evaluations for loan purposes. Lending institutions may request this service be provided by others such as licensed installers and on-site consultants. This will allow the Department and its agents to address higher priority activities. However, when lending institutions request this activity be conducted by the Department or County staff, the proposed fee of \$100 would be adequate to cover the cost.

- c. The fee to conduct an authorization notice file review to enable connection of a system to building plumbing (beyond one year of issuance of a Certificate of Satisfactory Completion) is proposed to be increased from \$10 to \$55.
- d. Pumper truck inspection fees are proposed to be increased from \$25 to \$95 for the first vehicle each visit and from \$25 to \$50 for each additional vehicle during the same inspection visit.

Fees for providing other on-site services are also too low to cover the cost of services (Attachment B). All proposed fee increases are suggested based on actual costs or recommendations of the Citizen's Advisory Committee. No fee increase is proposed for some types of activities where either the fee is in line with the cost to provide service or the fee is set by statute.

A proposed fee schedule is shown in Attachment E. The proposed definition of "repair" to differentiate between major and minor fees is shown as Attachment D. These fees would generate \$166,420 (\$83,210 per year) of additional revenue during the 1987-89 biennium based on the current level of activity. This fee schedule would result in fee revenue covering approximately 89% of the projected program costs, with the remaining costs to be covered by the budgeted general fund support.

3. Do not authorize public hearing on the proposed fee increase:

This alternative will likely result in a direct service fee revenue shortfall of \$176,727 during the FY 87-89 biennium.

Summation

1. The 1973 Oregon Legislature made the Department of Environmental Quality responsible for the on-site sewage treatment and disposal program and authorized collection of fees for specified activities. The 1979 legislature made provision for the Environmental Quality Commission to approve fee increases if they did not exceed actual cost of providing services.
2. The last major fee increase was approved May 20, 1983. In spite of the fee increase, the Department has not been able to operate the on-site program within the fee revenues resulting in a continuing need for general fund monies above that which are budgeted.

3. The Department convened a Citizens Advisory Committee January 7, 1987 to evaluate the current on-site sewage disposal program and recommend changes where the Committee determined they were needed to improve efficiency and reduce the gap between fee revenues and program expenditures.
4. Two fee increase alternatives were evaluated. An across-the-board increase of 100% was considered unreasonable. The Citizens Advisory Committee recommended a fee increase sufficient to cover the actual cost of providing minimum services, except for repair activities. They recommended that the fees not be raised too high because of concern that voluntary participation for repairs would be discouraged.
5. The proposed fee increase will generate sufficient fee revenue, at present activity levels, to cover approximately 89% of the program costs with fees.

Directors Recommendation

Based on the summation, the Director recommends that the Commission authorize the Department to hold public hearings on the proposed amendment to the on-site fee schedule, Alternative 2.

Fred Hansen



Attachments: 7

- A. DEQ Direct Service County Fee Revenue for Calendar Year 1986 Compared to Fee Revenue if Current Fees Were Increased 100 Percent
- B. Current Fee Schedule Compared to Proposed Fee Schedule, and Estimated Cost of Providing Service.
- C. Estimated Time Required to Perform Various On-Site Activities
- D. Proposed Rule Language for the Definition of Repair
- E. Proposed On-Site Fee Schedule
- F. Draft Public Notice
- G. Statement of Need for Rulemaking

Mary Halliburton:cl
WC2694
229-6099
November 23, 1987

Attachment A

Current DEQ Direct Service County Fee Revenue For Calendar Year 1986
Compared to Fee Revenues If Current Fees Were Increased 100 Percent

	1986 Fee Revenue (\$)	Fee Revenue (\$) with 100% Increase in 1986 Fees
SITE EVALUATIONS		
1st Lot	77,220	147,420
Additional Lots	14,500	27,500
CONSTRUCTION PERMITS		
Standard System		
Less than 6 months *	14,625	28,125
More than 6 months *	21,000	41,160
Capping Fill Systems	2,205	4,365
Holding Tank Systems	1,375	2,695
Pres. Dist. Systems	2,250	4,410
Sand Filter	3,705	7,345
Other Alt. Systems	625	1,225
Alterations	2,800	5,600
REPAIRS		
Single Family	7,805	15,610
RENEWALS		
Field Visit	845	1,625
No Field Visit	870	1,450
AUTHORIZATION NOTICES		
Field Visit	21,320	41,000
No Field Visit	750	1,250
EXISTING SYSTEM EVALUATION	9,900	19,800
DENIAL REVIEWS	840	1,680
PUMPER TRUCK INSPECTION	775	1,550
ANNUAL INSPECTION	1,260	2,520
TOTAL	184,670	356,330

* If the applicant files a permit application within 6 months of site evaluation, lower fee for standard system applies. If longer than 6 months, higher fee applies.

Attachent B

Current Fee Schedule Compared to Proposed Fee Schedule,
and Estimated Cost of Providing Service.

	Current Fee (\$)	Proposed Fee (\$)	Estimated Cost of Providing Service
SITE EVALUATIONS			
1st Lot	\$ 150	\$ 160 *	\$ 145
Additional Lots	130	130 *	115
CONSTRUCTION PERMITS			
<u>Standard System</u>			
Less than 6 months **	60	105	110
More than 6 months **	120	160	155
Capping Fill Systems	240	275	300
Holding Tank Systems	120	160	170
Pres. Dist. Systems	120	160	170
Sand Filter	280	295	345
Other Alt. Systems	120	160	170
Alterations	95	140	145
REPAIRS			
Single Family	35	75	145
RENEWALS			
Field Visit	60	100	100
No Field Visit	10	55	55
AUTHORIZATION NOTICES			
Field Visit	60	100	100
No Field Visit	10	55	55
EXISTING SYSTEM EVALUATION	60	100	100
DENIAL REVIEWS	60	100	100
PUMPER TRUCK INSPECTION	25	95	95
ANNUAL INSPECTION	60	100	100

* Even though the proposed fee is above the estimated cost, the estimated cost is generally a conservative estimate. In addition, the advisory committee recommended this fee level in full recognition of the lower estimated cost.

** If the applicant files a permit application within 6 months of site evaluation, lower fee for standard system applies. If longer than 6 months, higher fee applies.

Estimated Time Required To Perform Various On-Site Activities

SITE EVALUATION AND PERMIT (Standard System) 20 Mi. FROM OFFICE

<u>Site Evaluation Activities</u>	No, <u>Minutes</u>	<u>Permit Activities</u> (No Site Visit Required)	No. <u>Minutes</u>	<u>Permit Activities</u> (Site Visit Required)	No. <u>Minutes</u>
Review of Application	10				
Call to Applicant	10	Pull and Review Site Evaluation	10	Pull and Review Site Evaluation	10
Travel to Site	30	Review Application	10	Review Application	10
Site Evaluation (Test Holes)	60	Complete Permit	<u>10</u>	Travel to Site	30
Field Notes	15			Site Review	30
Travel (Return)	30		30 min.	Field Notes	10
Call to Applicant	15		.5 hrs.	Travel (Return)	30
Complete Record	<u>30</u>			Issue Permit	<u>15</u>
	230 min.	<u>Certificate of Satisfactory Completion</u>			135 min.
	3.8 hrs.				2.25 hrs.
<u>Second Site Visit Necessary</u>		Travel to Site	30	<u>Certificate of Satisfactory Completion</u>	
Travel (To and From)	60	Inspection of System	30	Travel to Site	30
Site Review	30	Field Notes	15	Inspection of System	30
Field Notes	15	Travel (Return)	30	Field Notes	15
Completion of Record	<u>15</u>	Complete Record	<u>15</u>	Travel (Return)	30
	120 min.		120 min.	Complete Record	<u>15</u>
	2 hrs.		2 hrs.		120 min.
					2 hrs.
Total 5.8 hrs.		Total 2.5 hrs.		Total 4.25 hrs.	

ALTERATION OR REPAIR PERMIT 20 MI. FROM OFFICE

SITE VISIT ONLY 20 MI. FROM OFFICE FOR FOLLOWING ACTIVITIES:

<u>Permit Activities</u>	<u>No. Minutes</u>
Review Application	10
Travel to Site	30
Site Review	20
Field Notes	15
Travel (Return)	30
Issue Permit	<u>15</u>
	120 min.
	2 hrs.

Denial Review -
Authorization Notice -
Annual Evaluation Alternative System -
Annual Evaluation Large System -
Annual Evaluation Temporary Mobile Home -

Certificate of Satisfactory Completion

Travel to Site	30
Inspection of system	20
Field Notes	15
Travel (Return)	30
Complete Record	<u>15</u>
	110 min.
	1.8 hrs.

TOTAL 3.8 hrs. Major Repair
2.25 hrs. Minor Repair

Activities

<u>Activities</u>	<u>No. Minutes</u>
Review of Application	10
Travel to site	30
Review site	30
Field Notes	15
Travel (Return)	30
Complete Record	<u>15</u>

TOTAL 2.1 hrs.

130 min.
2.1 hrs.

OREGON ADMINISTRATIVE RULES FOR
ON-SITE SEWAGE DISPOSAL
CHAPTER 340, DIVISION 71

Note: Bracketed [] material is proposed to be deleted.
Underlined _____ material is proposed to be inserted.

340-71-100 DEFINITIONS.

- (93) "Repair" means installation of all portions of a system necessary to eliminate a public health hazard or pollution of public waters created by a failing system. Major repair is defined as the replacement of the soil absorption system. Minor repair is defined as the replacement of a septic tank, broken pipe, or any part of the on-site sewage disposal system except the soil absorption system.

Note: Bracketed [] material is proposed to be deleted.
Underlined material is proposed to be inserted.

340-71-140 FEES-GENERAL.

- (1) Except as provided in section (5) of this rule, the following nonrefundable fees are required to accompany applications for site evaluations, permits, licenses and services provided by the Department.

ON-SITE SEWAGE DISPOSAL SYSTEMS	MAXIMUM FEE
(a) New Site Evaluation:	
(A) Single Family Dwelling:	
(i) First Lot.....	[\$150] <u>\$160</u>
(ii) Each Additional Lot Evaluated During Initial Visit	\$130
(B) Commercial Facility System:	
(i) For First One Thousand (1000) Gallons Projected Daily Sewage Flow	\$150
(ii) Plus For Each Five Hundred (500) Gallons or Part Thereof Above One Thousand (1000) Gallons, for Projected Daily Sewage Flows up to [Ten Thousand (10,000)] <u>Five Thousand (5,000)</u> Gallons.....	\$ 50
[(iii) Plus For Each One Thousand (1000) Gallons or Part Thereof Above Ten Thousand (10,000) Gallons.....	\$ 20]
(C) Site Evaluation Report Review	[\$ 60] <u>\$100</u>
(D) Fees for site evaluation applications made to an agreement county shall be in accordance with that county's fee schedule.	
(E) Each fee paid for a site evaluation report entitles the applicant to as many site inspections on a single parcel or lot as are necessary to determine site suitability for a single system. The applicant may	

request additional site inspections within ninety (90) days of the initial site evaluation, at no extra cost.

- (F) Separate fees shall be required if site inspections are to determine site suitability for more than one (1) system on a single parcel of land.

(b) Construction-Installation Permit:

- (A) For First One Thousand (1000) Gallons Projected Daily Sewage Flow:

(i) Standard On-Site System	[\$120]	<u>\$160</u>
(ii) Alternative System:		
(I) Aerobic System.....	[\$120]	<u>\$160</u>
(II) Capping Fill	[\$240]	<u>\$275</u>
(III) Cesspool.....	[\$120]	<u>\$160</u>
(IV) Disposal Trenches in Saprolite...	[\$120]	<u>\$160</u>
(V) Evapotranspiration-Absorption...	[\$120]	<u>\$160</u>
(VI) Gray Water Waste Disposal Sump...	[\$ 60]	<u>\$ 80</u>
(VII) Holding Tank	[\$120]	<u>\$160</u>
(VIII) Pressure Distribution	[\$120]	<u>\$160</u>
(IX) Redundant	[\$120]	<u>\$160</u>
(X) Sand Filter	[\$280]	<u>\$295</u>
(XI) Seepage Pit	[\$120]	<u>\$160</u>
(XII) Seepage Trench	[\$120]	<u>\$160</u>
(XIII) Steep Slope	[\$120]	<u>\$160</u>
(XIV) Tile Dewatering	[\$120]	<u>\$160</u>

- (iii) The permit fee required for standard, cesspool, disposal trenches in saprolite, seepage pit, steep slope and seepage trench systems may be reduced to sixty dollars [(\$60)] \$105 providing the permit application is submitted to the Agent within six (6) months of the site evaluation report date, the system will serve a single family dwelling, and a site visit is not required before issuance of the permit.

- (B) For systems with projected daily sewage flows greater than one thousand (1000) gallons, the Construction-Installation permit fee shall be equal to the fee required in OAR 340-71-140 (1)(b)(A) plus \$10 for each five hundred (500) gallons or part thereof above one thousand (1000) gallons.

NOTE: Fees for construction permits for systems with projected daily sewage flows greater than five thousand (5,000) gallons

shall be in accordance with the fee schedule for WPCF permits.

(C) Commercial Facility System, Plan Review:

- (i) For a system with a projected daily sewage flow of less than six hundred (600) gallons, the cost of plan review is included in the permit application fee.
- (ii) For a system with a projected daily sewage flow of six hundred (600) gallons, but not more than one thousand (1000) gallons projected daily sewage flow \$ 60
- (iii) Plus for each five hundred (500) gallons or part thereof above one thousand (1000) gallons, to a maximum sewage flow limit of five thousand (5000) gallons per day \$ 15
- (iv) Plan review for systems with projected sewage flows greater than five thousand (5,000) gallons per day shall be pursuant to OAR 340, Division 52.

(D) Permit Renewal:

- (i) If Field Visit Required..... [\$ 60] \$100
- (ii) No Field Visit Required..... [\$ 10] \$ 55

NOTE: Renewal of a permit may be granted to the original permittee if an application for permit renewal is filed prior to the original permit expiration date. Refer to OAR 340-71-160(10).

(E) Alteration Permit [\$ 95] 140

(F) Repair Permit:

- (i) Single Family Dwelling: [..... \$ 35]
- Major \$ 75
- Minor \$ 50

- (ii) Commercial Facility ... The appropriate fee identified in paragraphs (1)(b) (A) and (B) of this rule applies.

- (G) Permit Denial Review [\$ 60] \$100
- (c) Authorization Notice:
 - (A) If Field Visit Required [\$ 60] \$100
 - (B) No Field Visit Required [\$ 10] \$ 55
 - (C) Authorization Notice Denial Review [\$ 60] \$100
- (d) Annual Evaluation of Alternative System
 (Where Required) [\$ 60] \$100
- (e) Annual Evaluation of Large System (2501 to
 5000 GPD) [\$ 60] \$100
- (f) Annual Evaluation of Temporary or Hardship
 Mobile Home..... \$ 60
- (g) Variance to On-Site System Rules \$225

NOTE: The variance application fee may be waived if the applicant meets the requirements of OAR 340-71-415(5).

- (h) Rural Area Variance to Standard Subsurface Rules:
 - (A) Site Evaluation [\$150] \$160

NOTE: In the event there is on file a site evaluation report for that parcel that is less than ninety (90) days old, the site evaluation fee shall be waived.

- (B) Construction-Installation Permit....The appropriate fee identified in subsection (1)(b) of this rule applies.
- (i) Sewage Disposal Service:
 - (A) Annual Business License \$150
 - EXCEPTION: The application fee for a license valid during the period July 1, 1983 through June 30, 1984 shall be \$100.
 - (B) Transfer of or Amendments to License \$ 75
 - (C) Reinstatement of Suspended License \$100

(D) Pumper Truck Inspection, [Each] <u>First</u> Vehicle		
<u>Each Visit</u>	[\$ 25]	<u>\$95</u>
<u>Each Additional Vehicle, Each Visit</u>	\$ 50	

(j) Experimental Systems:

Permit \$100

(k) Existing System Evaluation Report [\$ 60] \$100

NOTE: The fee shall not be charged for an evaluation report on any proposed repair, alteration or extension of an existing system.

(2) Contract County Fee Schedules. Pursuant to ORS 454.745(4), fee schedules which exceed maximum fees in ORS 454.745(1), and Section (1) of this rule, are established for Contract Counties as follows:

(a) Multnomah County: See OAR 340-72-070.

(b) Jackson County: See OAR 340-72-080.

(c) Linn County: See OAR 340-72-090.

(3) Contract County Fee Schedules, General:

(a) Each county having an agreement with the Department under ORS 454.725 shall adopt a fee schedule for services rendered and permits and licenses to be issued.

(b) A copy of the fee schedule and any subsequent amendments to the schedule shall be forwarded to the Department.

(c) Fees shall not:

(A) Exceed actual costs for efficiently conducted services; or

(B) Exceed the maximum established in Section (1) of this rule, unless approved by the Commission pursuant to ORS 454.745(4).

Activity	Surcharge
(a) Site evaluation, for each site examined, based on a projected flow of:	
1,000 gallons or less	\$ 15
1,001 gallons to 2,000 gallons	\$ 30
2,001 gallons to 3,000 gallons	\$ 45
3,001 gallons to 4,000 gallons	\$ 60
4,001 gallons or more	\$ 75
 (b) Construction-Installation Permit	 \$ 5
[EXCEPTION: Repair permits are not subject to a surcharge.]	
 (c) Repair Permit	 \$ 5
 <u>(d)</u> [(c)] Alteration Permit	 \$ 5
 <u>(e)</u> [(d)] Authorization Notice	 \$ 5
 (5) Refunds. The Agent may refund a fee accompanying an application if the applicant withdraws the application before the Agent has done any field work or other substantial review of the application.	

Attachment F

**PROPOSED AMENDMENT TO THE ON-SITE SEWAGE DISPOSAL RULE,
OAR 340-71-140, TO INCREASE FEES**

Date Prepared:
Notice Issued:
Comments Due:

WHO IS AFFECTED: Persons submitting applications for on-site sewage disposal activities.

WHAT IS PROPOSED: The DEQ is proposing a fee increase to help offset program expenditures. A copy of the proposed fee schedule may be obtained by writing the Department of Environmental Quality, Sewage Disposal Section, 811 S.W. Sixth Avenue, Portland, OR 97204.

WHAT ARE THE HIGHLIGHTS: The fee increase is proposed to raise fee revenues to cover a greater percentage of the costs of providing on-site services.

HOW TO COMMENT: Public hearings, are scheduled to begin at 10 a.m. on January 4, 1988, at the following locations:

<u>Bend</u>	<u>Newport</u>	<u>Medford</u>
State Office Bldg. Conference Room 2150 N.E. Studio Rd. Bend, OR	Lincoln Co. Public Service Bldg. Public Meeting Room 210 S.W. Second Street Newport, OR	Jackson County Courthouse Room 300 10 S. Oakdale Medford, OR
<u>Pendleton</u>	<u>Portland</u>	
State Office Bldg. Suite 360 700 S.E. Emigrant Pendleton, OR	Department of Environmental Quality Room 4, 4th floor 811 S.W. Sixth Avenue Portland, OR	

A Department of Environmental Quality staff member or an Environmental Quality Commission Hearing Officer will be named to preside over and conduct the hearings.

Written comments may be sent to the Department of Environmental Quality, Sewage Disposal Section, 811 S.W. Sixth Avenue, Portland, Oregon 97204, but must be received by 5:00 p.m. on January 4, 1988.

WHAT IS THE NEXT STEP: After reviewing all the public testimony and making appropriate changes, the fee schedule will be presented to the Environmental Quality Commission, for adoption at their regular meeting January 29, 1988.

STATEMENT OF NEED FOR RULE MAKING

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

(1) Legal Authority

ORS 454.625 authorizes the Environmental Quality Commission to adopt rules to carry out the on-site sewage disposal program.

ORS 454.745 established fees for services provided under ORS 454.655 and ORS 454.695 and makes provision for the Commission to adopt fee increases if they do not exceed actual cost of providing services.

(2) Need For The Rule

On-site sewage disposal fees were originally adopted by 1973 Legislature. The Commission has periodically approved fee increases to offset the cost of providing on-site services. The last major fee increase was approved May 20, 1983. In spite of this fee increase, the Department has not been able to operate within fee revenues resulting in continuing need for general fund monies.

(3) Principal Documents Relied Upon In The Rulemaking

- (a) Oregon Revised Statute 454.745(4).
- (b) Oregon Administrative Rules 340-71-140.
- (c) Current DEQ direct service county fee revenue for calendar year 1986 compared to fee revenue if proposed fee increase is adopted.
- (d) Proposed on-site fee schedule.

Land Use Compatability Statement

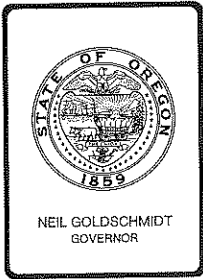
The proposed rule change (fee increase) doe not affect land use as defined in the Department's coordination program approve by the Land Conservation and Development Commission.

Fiscal and Economic Impact

The proposed fee increase for on-site services is not expected to have an adverse fiscal or economic impact on small business. Over 95 percent of all on-site services are provided either to owners of single family residences or to property owners who proposed to build a single family residence. These individuals as well as a small number of small business owners will pay increased costs for on-site sewage disposal service provided by the Department.

Robert C. Paeth

WC2694



Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission

From: Director

Subject: Agenda Item E, December 11, 1987, EQC Meeting

Request for Authorization to Conduct a Public Hearing on Proposed Amendments to Rules of Practice and Procedure, OAR Chapter 340, Division 11.

Problem Statement

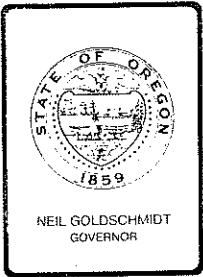
The Rules of Practice and Procedure in OAR Chapter 340, Division 11, generally address the following topics:

- Public Informational Hearings
- Rulemaking
- Petition to Promulgate, Amend, or Repeal a Rule
- Declaratory Rulings
- Contested Cases

The present rules were initially adopted in March 1974. Amendments were adopted in September 1974, June 1976, August 1976, and June 1979. In 1987, the Commission has elected in two instances to adopt the Attorney General's Model Rules for Contested Cases in lieu of the existing EQC Rules of Practice and Procedure.

The existing EQC Rules of Practice and Procedure need to be reviewed and revised as appropriate based on the following actions or concerns:

1. The 1987 Legislature amended the Administrative Procedures Act with respect to fiscal impact statements in rulemaking and representation by counsel in contested case proceedings (Chapters 833 and 861, Oregon Laws 1987).
2. The Attorney General's "Uniform and Model Rules of Procedure under the Administrative Procedures Act"



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adopted in March 1986 designated certain rules to be "uniform" rules which cannot be varied by agency decision. These include rules regarding petitions to amend rules and petitions for declaratory rulings. Agencies with their own rules of procedure on petitions to amend rules and on declaratory ruling processes were advised to repeal those rules. To date, this has not been done.

3. The EQC has adopted the Attorney General's Model Rules for Contested Cases to be applicable in two specific instances in part because the existing EQC contested case rules do not adequately address issues regarding petitions for party status and are somewhat less flexible than the model rules.
4. The Assistant Attorney General representing the Department has identified significant concerns regarding the existing EQC contested case rules. The rules define the Department to be a party in a contested case proceeding before the Commission or its Hearings Officer. This establishes an artificial (or fictional) distinction between the Commission and the Department that is not contemplated by statute or the Attorney General's Model Rules. This makes it extremely difficult for the Attorney General's office to provide the statutorily required representation of both the Department and the Commission in contested case matters without being in violation of professional ethical standards.

Following is a discussion of the requirements for adoption of procedural rules, background on the existing EQC Rules of Practice and Procedure, comparison of the existing EQC rules and the Attorney General's Uniform and Model Rules, discussion of significant issues, and finally a proposal for modification of the EQC Rules of Practice and Procedure to address current requirements and concerns.

Requirements for Procedural Rules

The Administrative Procedures Act (APA) establishes basic requirements for agencies to follow when exercising delegated legislative and adjudicative powers (commonly referred to as "administrative" responsibilities). Rules of Procedure governing these administrative actions are intended to inhibit governmental arbitrariness, assure advance information to affected individuals, protect individual interests, and assure timely action.

The Attorney General is required by the APA to adopt "uniform rules" of procedure related to agency declaratory rulings and to rulemaking petitions filed by interested persons. The Attorney General is further required to adopt "model rules" of procedure with respect to rulemaking and contested cases.

Each agency is then required to adopt specific rules of procedure as follows:

- a. Agencies must use the Attorney General's Uniform Rules for Declaratory Rulings and Petitions for Rulemaking. Agency rules should not conflict with or appear to preempt the Attorney General's uniform rules.
- b. Agencies must adopt by rule a specific process for notice in rulemaking proceedings. The agency's rule must assure a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend, or repeal rules. Each agency must tailor its notice rule to identify its own particular constituencies. The Assistant Attorney General assigned to an agency must approve the agency's rules pertaining to notice requirements. All rulemaking procedures of the APA must be followed when adopting the required notice rule.
- c. Agencies must adopt rules of procedure for use in Rulemaking and in Contested Cases. Agencies are strongly encouraged to adopt the Model Rules prepared by the Attorney General. However, since the model rules may not address specific requirements of individual agency enabling legislation, agencies may adopt modifications of the model rules or may adopt alternative rules of procedure for rulemaking and contested cases. An agency may adopt all or part of the model rules by reference without compliance with the notice requirements of the APA. Any amendment of the model rules by an agency requires compliance with all rulemaking procedures.

Background on Existing EQC Rules of Practice and Procedure

In March 1974 (Temporary) and May 1974 (Permanent), the EQC rules of Practice and Procedure were replaced with a totally new set of rules. The agenda item before the EQC at that time does not include any rationale for the specific provisions of the new rules. No testimony was received regarding the proposed rules.

Amendments were subsequently adopted in September 1974, June 1976, August 1976, and June 1979. Amendments proposed in 1974 included no explanation of the rationale for changes. Staff reports for the 1976 and 1979 amendments include a discussion of the rationale for proposed changes.

In 1974 and 1976, there was significant testimony offered by Environmental Organizations regarding proposed rule amendments. In general, they sought to maintain and enhance access by citizens through the informational hearings process and through the rulemaking and declaratory ruling process. In 1979, the only testimony offered was by the Attorney General's office.

Attachment A provides a more detailed background chronology of the current procedural rules.

Comparison of Existing EQC Rules and the Attorney General's Uniform and Model Rules

Attachment B presents a side-by-side comparison of the existing EQC Rules of Practice and Procedure, and the Attorney General's Uniform and Model Rules. Explanatory notes are included where appropriate.

Following is a brief summary of the major similarities and differences in the two sets of rules:

<u>EQC Procedure Rules</u>	<u>AG Uniform & Model Rules</u>
<u>Definitions</u> Rule 11-005 defines 12 terms. Definitions for "license", "order", "person", and "rule" refer to statutory definitions in ORS 183.310. The definition for "party" refers to ORS 183.310 but goes on to <u>add</u> the department to the definition. Definitions for "adoption", "agency notice", "Commission", "Department", "Director", "filing", and "presiding officer" are included.	Rule 01-005 makes reference to the statutory definitions in ORS 183.310. Statutorily defined terms include "agency", "contested case", "economic effect", "license", "order", "party", "person", "rule", and "small business".

EQC Procedure Rules

AG Uniform & Model Rules

Public Informational Hearings

Rule 11-007 establishes general procedures for hearings that are neither a rulemaking hearing nor a contested case hearing.

(No comparable provision)

Rulemaking

Rules 11-010, 11-025, 11-030, and 11-035 address the following topics:

- Notice of Rulemaking
- Conduct of Rulemaking Hearing
- Presiding Officer's Report
- Action of the Commission

Although worded differently, the content of these rules is not significantly different from the comparable provisions of the AG Model Rules.

Rules 01-017, 01-030, 01-040, 01-050, and 01-060 address the following topics:

- Limitation of Economic Effect on Small Businesses
- Conduct of Hearing
- Presiding Officer's Report
- Action of Agency
- Notice of Agency Action; Certification to Secretary of State

EQC rules do not address two of these topics: economic effect on small business, and certification to the Secretary of State. The model rules do not address "notice of rulemaking" because each agency is required to adopt rules to address this issue.

EQC Procedure Rules

Petition to Promulgate, Amend,
or Repeal Rule; Contents of
Petition, Filing of Petition

Rule 11-047 is generally similar in content to the AG Uniform Rule but is worded differently. It requires the Department to mail a copy of the petition to interested persons named in the petition. It further requires that an order be entered and served upon the petitioner if a petition is denied.

A provision is included to default to the AG Model Rules if a conflict occurs.

Temporary Rulemaking

Rule 11-052 refers to procedures established in statute [ORS 183.335(5) and 183.355(2)].

Periodic Rule Review

(No provision addressing this topic)

AG Uniform & Model Rules

Rule 01-070 establishes the requirements for content of a petition. It provides that the agency may provide a copy of the petition to all persons named in the petition. It requires that action be taken on a petition within 30 days of receipt. This 30 day time limit is established in statute (ORS 183.390).

Rule 01-080 establishes requirements for notice relative to adoption of a temporary rule when no notice was given prior to adoption.

Rule 01-085 defines minimum process for the general rule review required by statute to be undertaken every three years.

EQC Procedure Rules

Declaratory Rulings

Rule 11-062 establishes process for acting upon petitions for declaratory rulings. The process is generally consistent with the AG Uniform Rules, but is worded differently and contains a tighter time table. The time schedule established in the rule allows:

- 30 days to decide whether or not to issue a ruling.
- 60 days to issue a decision following completion of the proceeding (hearing and briefs).

A provision states that the AG Model Rules will prevail in the event of a conflict with EQC rules.

CONTESTED CASES

Notice

Rule 11-097 establishes a process for service of written notice or a final order upon a party.

Rule 11-100 establishes additional requirements for content of a notice.

AG Uniform & Model Rules

Coverage of this topic is divided into 6 logical rules: 02-001, 02-020, 02-030, 02-040, 02-050, and 02-060. Rule establishes time limits for acting on a petition:

- 60 days to decide whether or not to issue a ruling;
- 60 days to issue a decision following completion of the proceeding (hearing and briefs).

Rule 03-001 refers to statute (ORS 183.415(2)) for notice requirements.

Rule 03-002 defines rights of parties in contested cases. These rights must, in part, be communicated in a notice.

EQC Procedure Rules

AG Uniform & Model Rules

Answer Required

Rule 11-107 generally requires a party served with a notice of the opportunity to request a contested case hearing to file an answer and hearing request within 20 days. The rule further describes the required content of the answer, and the result of failure to file.

(No similar provision)

Request by Person to Participate as a Party or Limited Party

(No provision covering this topic)

Rule 03-005 establishes a procedure and standards for acting upon petitions for party status.

Request by Agency to Participate as a Party or an Interested Agency

(No provision covering this topic)

Rule 03-007 establishes a procedure for acting upon an agency request.

Immediate Suspension or Refusal to Renew a License

(This topic is covered in Rule 11-100 on notice of opportunity for a hearing.)

Rule 03-010 establishes procedures for immediate suspension or refusal to renew a license, including notice and opportunity for hearing.

Subpoenas and Depositions

Rule 11-116 establishes procedures and responsibilities for subpoenas and witness fees.

(No similar provision)

EQC Procedure Rules

Conduct of Hearing

Rules 11-120 and 11-121 establish procedures for conduct of a contested case hearing. These procedures are generally more detailed and less flexible than the procedures established in the AG Model Rules.

Evidentiary Rules

Rule 11-125 establishes procedures for determining the admissibility of evidence.

Ex Parte Communications

(No provision covering this topic)

AG Uniform & Model Rules

Rule 03-040 establishes procedures for conduct of a contested case hearing.

Rule 03-050 establishes procedures for determining the admissibility of evidence.

This rule goes further than the EQC rule to clarify procedures for submitting affidavits, certificates, or other documents as evidence and requesting opportunity to cross-examine the preparers or custodians of such evidence.

Rule 03-055 defines ex parte communication and establishes procedures for disclosure, response, and inclusion in the record of the contested case.

7

EQC Procedure Rules

Proposed Orders in Contested Cases, Filing of Exceptions, Argument, and Adoption of Order

(No provision covering this topic; EQC rules have the Hearings Officer enter a final order appealable to the Commission)

Hearing Officer's Final Order; Appeal to the Commission

Rule 11-132 establishes a process for the Hearing Officer to enter a Final Order, and serve copies upon the parties. The Hearing Officer's Final Order is stayed if the Final Order is appealed to the EQC within 30 days.

The rule further sets forth a very detailed procedure for the appeal to the EQC.

Presiding Officer's Proposed Order in Hearing Before the Department

Rule 11-134 establishes a process for a contested case hearing when conducted before the Department rather than the Commission.

AG Uniform & Model Rules

Rule 03-060 establishes the process to follow when a majority of the decision makers are not present at the contested case hearing. A proposed order is prepared by the Hearings Officer and served upon the parties, parties may file exceptions, and an opportunity is provided for argument to the decision makers before a final order is entered.

(No similar provisions)

(No similar provision)

EQC Procedure Rules

Final Orders

Rule 11-135 describes the content of a final order as well as the requirement to serve the final order upon all parties.

Default Orders

(No provision covering this topic)

Reconsideration and Rehearing

(No provision covering this topic)

Request for Stay

(No provision covering this topic)

Power of the Director

Rule 11-136 authorizes the Director to execute written orders on behalf of the EQC.

Miscellaneous Provisions

Rule 11-140 provides for implementation of rule amendments adopted in 1976.

AG Uniform & Model Rules

Rule 03-070 describes the content of a final order. It differs from the EQC rule by requiring the order to include a citation of the statutes under which the order may be appealed.

Rule 03-075 establishes procedures for entering a default order.

Rule 03-080 establishes procedures for filing and acting upon petitions for reconsideration and rehearing of a final order.

Rules 03-090, 30-091, 03-092, and 03-093 establish procedures for filing and acting upon a request for stay of a final order.

(No similar Provision)

(No similar provision)

EQC Procedure Rules

(No similar provision)

Rules 11-141 and 11-142 enact the AG Model Rules in lieu of the EQC rules for specifically named contested case proceedings.

AG Uniform & Model Rules

Rule 04-010 provides that any person may be expelled from an agency proceeding for disruptive conduct.

(No similar provision)

Discussion of Significant Issues

A number of issues are raised by the preceding discussion on background on the existing EQC rules and the comparison with the AG Model Rules. These issues are identified and discussed in the following sections.

STYLE

The Department has historically drafted rules so that the statutory requirements are repeated and interpreted within the rule. This style has the benefit of giving the reader a complete picture of the requirements in a single document. The disadvantage of this style is that rules are longer, and there is a risk of misinterpretation when the statutory requirements are summarized or paraphrased.

The Attorney General's Uniform and Model Rules were drafted using a style which avoids repeating the statute in the rules. This requires the reader to simultaneously read the Administrative Procedures Act and the rules in order to fully understand the requirements.

As rules are modified, a conscious decision should be made on the style to be pursued. The Department has reprinted and distributed the rules as published by the Secretary of State. If it were concluded that rules should reference appropriate statutes rather than restating those statutes, it would be possible to print the rules in a format that reproduces the quoted statute as a note or footnote so that a complete picture of the requirements can be obtained from the distributed rule copy.

It is desirable to minimize the length of the rules and the potential for incorrect paraphrasing of statute into the rules. However, it is also important to take steps to assure that the

public understands the rules. Therefore, it is suggested that statutory requirements be referenced rather than quoted or paraphrased except in special situations. It is further suggested that the Department print it's rules with key statutory references attached as footnotes where appropriate.

PETITIONS FOR RULEMAKING AND DECLARATORY RULINGS.

Existing EQC rules on petitions for rulemaking and petitions for declaratory rulings differ from the Attorney General's Uniform Rules of Procedure. The EQC rules are generally similar in content to the AG Uniform Rules, but are slightly more stringent in the timetable for response on a declaratory ruling petition, and somewhat less flexible in the process for rulemaking petitions.

The Attorney General advises that individual agency rules on these topics are not allowed by law and should be repealed to avoid confusion.

The Department recommended repealing these sections in favor of the AG Model Rules in 1976. Environmental organizations objected because the AG Model Rules were not actually adopted as rules and thus were not enforceable unless specifically codified into the agency rules. At that time, the issue was resolved by adding the provision to state that the AG Model Rules would prevail upon a party's request if a conflict occurred.

At present, the AG Uniform Rules are clearly adopted as rule and are enforceable for all agencies. Therefore, the apparent reason for continuation of separate EQC rules on these topics appears to no longer exist.

It appears appropriate to repeal the existing EQC rules on these topics and clarify the intent to use the Attorney General's prescribed Uniform Rules of Procedure.

PROCEDURAL RULES FOR RULEMAKING AND CONTESTED CASES -- AG MODEL RULES OR SPECIAL EQC RULES

In a very general sense, many of the procedures in the AG Model Rules and the existing EQC rules are similar. The most significant differences are:

- ** The AG Model Rules for rulemaking contain sections on "Economic Impact on Small Businesses", "Filing with the

Secretary of State", and "Periodic Rule Review" for which there is not counter part in existing EQC rules.

** The EQC contested case rules contain sections on "Answer Required", "Subpoenas", "Hearing Officer's Final Order", and "Powers of the Director" for which there is no counter part in the AG Model Rules.

** The AG Model Rules for contested cases contain sections on "Party Status", "Ex Parte Communications", "Presiding Officer's Proposed Order", "Default Order", "Reconsideration or Rehearing" and "Request for Stay" for which there is no counter part in the EQC rules.

The primary issue is whether the EQC should follow the AG Model Rules where such rules exist, or whether distinctly separate rules should be maintained.

Use of the AG Model Rules to the maximum extent practicable seems desirable to minimize confusion and potential litigation that could grow out of different rules. Use of the AG Model Rules would also assure that topics not covered in current EQC rules would be addressed (party status, ex parte communications, default orders, reconsideration and rehearing, request for stay). It is recognized that it may be appropriate or necessary to supplement the rules in special cases to address issues unique to DEQ.

CONTESTED CASE PROCEDURAL ISSUES

General Procedures not Covered in AG Model Rules

Existing EQC rules have provisions under the following headings that do not have a counterpart in the AG Model Rules:

Service of Written Notice
Answer Required: Consequences of Failure to Answer
Subpoenas
Power of the Director

These sections do not appear to conflict with the AG Model Rules but instead clarify issues not otherwise addressed. The "Answer Required" rule is intended to speed the contested case process and reduce the cost to the Department by narrowing the scope of the contested case hearing to issues specifically raised in the hearing notice and the answer by the person requesting the contested case hearing. It is proposed to amend the rule, however, to clarify that the presiding officer may expand the

scope of a contested case hearing beyond issues raised in the notice and answer if such issues are raised in a subsequent petition for party status and deemed appropriate issues to be addressed in the proceeding.

It seems reasonable to continue these sections with clarifying amendments.

Contested Cases before the Department

The EQC rules were amended in 1974 to distinguish between contested cases before the Department and the Commission. In practice, contested cases arise when actions of the Director are appealed to the Commission. EQC rules governing civil penalties, permit denial, 401 certification denial, etc. provide for this process.

The AG Model Rules use the term "agency". A contested case arises from the actions of an agency and the contested case is before the agency. ORS 183.310 provides that "Agency" means any state board, commission, department, or division thereof, or officer authorized by law to make rules or issue orders, except those in the legislative or judicial branch. Thus, the "agency" in the model rules could be either the Commission or the Department, depending on context and other statutory authorities and requirements.

If the AG Model Rules are adopted, there does not appear to be a need to distinguish in the rules between contested cases before the Commission and the Department.

Final Order in Contested Cases

If the EQC were using the AG Model Rules for contested cases, and they were not hearing the contested case themselves, they would designate a presiding officer (hearing officer) to conduct the hearing, prepare findings and a proposed order (decision) and serve it upon the parties. The parties would then have an opportunity to file exceptions to the proposed order. The Commission then has an opportunity to review the proposed order, the exceptions, and hear arguments before it makes a final decision which is included in a final order.

By rule amendment adopted in 1979, existing EQC rules establish a process whereby the Hearing Officer enters a final order. This final order can be appealed to the Commission by one of the

parties. The Commission is not involved in the decision unless the Hearing Officer's final order is appealed. This is a significant delegation of authority from the Commission to the Hearing Officer. Under this process, and the definition of "party" adopted in 1974, the Department is considered to be a "party" and may appeal the Hearing Officer's final order to the Commission.

Legal Counsel has expressed concern regarding the existing definition of "party" because there is not a fundamental distinction in statute between the Department and the Commission that would allow the Department to be a "party" in a proceeding before the Commission. Counsel argues that in a contested case proceeding, the Department functions in a manner similar to the parties in the case, but is distinguished from them by being part of the decision making "agency". Counsel suggests the current definition of "party" be deleted in favor of the definition in the Administrative Procedures Act.

The process for entering a final order was in large part a result of experience with contested cases growing out of civil penalty assessments. The procedure removed a significant number of cases from the Commission agenda because the Hearing Officer's decision was accepted.

It is noteworthy that the procedure for the Hearing Officer entering a final order has not been followed in a number of contested cases that do not involve civil penalty assessments. In these cases, the EQC has either adopted the AG Model Rules on a case by case basis, or alternative procedures have been established by agreement with the party requesting the contested case hearing.

It seems appropriate and in the public interest for the Commission to make the final determinations and enter the final order in cases where significant program or policy issues are involved. This is often the case in contested cases growing out of denial of permits or approvals.

It also seems appropriate to continue the current process for contested cases growing out of civil penalty assessments. The Commission has previously given informal guidance to the Hearing Officer regarding mitigation of penalties. It may be appropriate to add a section to the rule to reflect Commission guidance on the limits of the authority of the Hearing Officer. Potential rule language to accomplish this is included in Attachment C on pages C-18 (bottom) and C-19 (top).

CHANGES NECESSITATED BY 1987 LEGISLATION

Legislation enacted in 1987 specifically provides that a person may be represented in a contested case before the Commission or Department by an attorney or an authorized representative. Specific limitations are included in the statute. However, the EQC must first adopt a rule allowing a person to appear by an authorized representative. Provisions regarding fiscal impact statements in rulemaking were also modified.

The department has not identified any changes to existing rules that need to be made to comply with these new statutory requirements regarding fiscal impact statements. Addition of a rule to authorize a person to appear in a contested case hearing by an authorized representative is proposed.

CHANGES IN THE ATTORNEY GENERAL'S UNIFORM AND MODEL RULES

The Attorney General is currently in the process of updating the Uniform and Model Rules to reflect 1987 legislation. Rule amendments may be adopted within the next 60 to 90 days. If the Commission elects to adopt the Model Rules, a further proceeding would be necessary to adopt later updates of the model rules. However, pursuant to ORS 183.341, adoption of the model rules by reference may be accomplished without complying with the notice and hearing procedures required by ORS 183.335.

Alternatives and Evaluation

Based on the preceding discussion, it is apparent that some revision of the existing EQC Rules of Practice and Procedure is necessary to be consistent with statutory requirements of the Administrative Procedures Act.

There appear to be two basic alternatives as follows:

1. Adopt the Attorney General's Uniform and Model Rules of Procedure and supplement those rules as required by law or as necessary and desirable to meet unique agency concerns.
2. Adopt the Attorney General's Uniform Rules of Procedure with respect to Petitions for Rulemaking and Declaratory Rulings, and continue to maintain separate EQC procedural rules for rulemaking and contested cases, with amendments as may be necessary.

For reasons cited in the preceding discussion, the Department believes there are advantages to the first alternative. Attachment C contains proposed amendments to the existing EQC rules to adopt the Attorney General's Uniform and Model Rules, repeal the appropriate sections of existing EQC rules, and make conforming amendments to the existing rules that are retained. If amendments are made to the Model Rules prior to final action by the EQC on rule amendments, the Department would recommend that the latest version of the Model Rules be adopted.

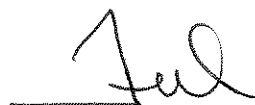
Summation

1. Existing EQC Rules of Practice and Procedure contain provisions that the Attorney General advises should be repealed because agencies are required to follow the Attorney General's Uniform Rules of Procedure rather than adopt their own rules.
2. The EQC has recently substituted the AG Model rules for contested cases in two specific cases because the existing EQC rules lack provisions dealing with party status and are less flexible than the Model Rules.
3. The Department has prepared a comparison of the existing EQC rules and the Attorney General's Uniform and Model Rules to highlight the differences between these rules.
4. The Department believes that the public interest will be best served by amending the existing EQC Rules of Practice and Procedure to incorporate the Attorney General's Uniform and Model Rules, repeal appropriate existing EQC rule provisions, and making conforming amendment to the existing rules that are maintained.

Director's Recommendation

Based on the Summation, the Director recommends that the Commission authorize a hearing on proposed amendments to the Rules of Practice and Procedure, OAR Chapter 340, Division 11, as set forth in Attachment C.

Fred Hansen



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December 11, 1987
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Attachments:

Attachment A	Rule Adoption Events Chronology
Attachment B	Rule Comparison (side by side)
Attachment C	Proposed Amendments
Attachment D	Rulemaking Statements
Attachment E	Draft Public Notice

Harold Sawyer:h
229-5776
November 23, 1987

ADMINISTRATIVE PROCEDURES RULES

Events Chronology

- November 24, 1959 Administrative Procedures Rules 334-31-005 through 31-115 were adopted by the Sanitary Authority.
- February 13, 1962 Amendments to Administrative Procedures Rules were filed with the Secretary of State. Rules published 3-1-62 included rules 31-005 through 31-170.
- July 1, 1969 Sanitary Authority was replaced by the Department of Environmental Quality. Existing rules were recodified into OAR Chapter 340. Administrative Procedures Rules were coded into Division 1, Subdivision 1, OAR 340-11-005 through 11-170. Rules were republished by the Secretary of State under date of 2-15-70.
- March 22, 1974 Temporary Rule adopted. Repealed 340-11-005 to 11-170 and adopted 11-005 through 11-135 in lieu thereof.
- Note: The record of the EQC agenda item does not contain any discussion of the rationale for changes in the procedural rules. It simply notes there is a need for update.
- May 24, 1974 Public Hearing held, March 22, 1974 Temporary Rules adopted as Permanent Rules.
- Note: No testimony was received at the hearing. The record contains no discussion of the rationale for various provisions of the rules.
- June 21, 1974 Hearing was authorized by the EQC on modifications to existing procedural rules as well as adoption of new civil penalty rules.
- Note: Proposed amendments were not included with the agenda item. The hearing was scheduled for the 7/19/74 EQC meeting.

July 19, 1974

Hearing was held before the EQC as authorized June 21, 1974. The hearing was continued to the September 4, 1974 Commission meeting.

Note: The staff report to the EQC at this meeting contained proposed new civil penalty rules to replace existing rules and amendments to the rules of practice and procedure including addition of the current definition for "party"; amendment of contested case hearing section to distinguish between hearings before the Commission and Department; addition of sections on public informational hearings, service of written notice, answer required, and presiding officers proposed order in hearing before commission, presiding officers proposed order in hearing before department.

There is no discussion of the rationale for the changes in the record.

September 4, 1974

The Hearing was continued, and amended rules were adopted.

Note: There was extensive testimony and discussion of the rule amendments by industry and environmental groups. Modifications were made to the initial staff proposals as a result. However, basic rationale for the modifications remains unclear.

December 12, 1975

The EQC authorized a hearing on Revision of the Administrative Procedures Rules.

Note: No proposed amendment language was included with the staff report.

June 25, 1976

The EQC considered proposed revisions to the rules, adopted amendments to rule 11-132 (regarding the hearings officers proposal and the record in contested case matters), and delayed a decision on the rest of the rule package to the next meeting.

Note: The staff report at this meeting contained discussion and rationale for the proposed amendments. Oregon Environmental Council was objecting to changes that were designed to either

reduce DEQ costs or be consistent with the AG Model Rules.

August 27, 1976

The EQC adopted revisions to the Administrative Procedures Rules.

Note: The staff report proposed further changes and options, and discussed the reasons for the recommendations.

February 23, 1979

The EQC authorized a hearing on proposed amendments to the contested case rules. A hearing was held on June 5, 1979.

June 25, 1979

Amendments to the Rules were adopted by the EQC.

Note: The final form of the amendments was prepared by Robb Haskins and contained a discussion of the rationale for the proposed amendments. The amended sections included subpoenas, a definition for "filing", and changes to the contested case rules to provide for a final order by the hearings officer and appeal of the final order to the Commission.

Definitions

340-11-005 Unless otherwise required by context, as used in this Division:

- (1) "Adoption" means the carrying of a motion by the Commission with regard to the subject matter or issues of an intended agency action.
- (2) "Agency Notice" means publication in OAR and mailing to those on the list as required by ORS 183.335(6).
- (3) "Commission" means the Environmental Quality Commission.
- (4) "Department" means the Department of Environmental Quality.
- (5) "Director" means the Director of the Department or any of his authorized delegates.
- (6) "Filing" means receipt in the office of the Director. Such filing is adequate where filing is required of any document with regard to any matter before the Commission, Department or Director, except a claim of personal liability.
- (7) "License" has the same meaning as given in ORS 183.310.
- (8) "Order" has the same meaning as given in ORS 183.310.
- (9) "Party" has the same meaning as given in ORS 183.310 and includes the Department in all contested case hearings before the Commission or Department or any of their presiding officers.
- (10) "Person" has the same meaning as given in ORS 183.310.
- (11) "Presiding Officer" means the Commission, its Chairman, the Director, or any individual designated by the Commission or the Director to preside in any contested case, public, or other hearing. Any employee of the Department who actually presided in any such hearing is presumptively designated by the Commission or Director, such presumptive designation to be overcome only by a written statement to the contrary bearing the signature of the Commission Chairman or the Director.
- (12) "Rule" has the same meaning as given in ORS 183.310.

Permanent Rulemaking -- Definitions

137-01-005

The words and phrases used in 137-01-005 to 137-03-092 have the same meaning given them in ORS 183.310.

(ORS 183.310)

ORS 183.310 defines the following terms:

- Agency
- Contested case
- Economic effect
- License
- Order
- Party
- Person
- Rule
- Small business

Additions made in the EQC definition of "party" cause significant concern to DEQ legal counsel.

Public Informational Hearings

340-11-007

- (1) Whenever there is required or permitted a hearing which is neither a contested case hearing nor a rule making hearing as defined in ORS Chapter 183, the Presiding Officer shall follow any applicable procedural law, including case law and rules, and take appropriate procedural steps to accomplish the purpose of the hearing. Interested persons may, on their own motion or that of the Presiding Officer, submit written briefs or oral argument to assist the Presiding Officer in his resolution of the procedural matters set forth herein.
- (2) Prior to the submission of testimony by members of the general public, the Presiding Officer shall present and offer for the record a summary of the questions the resolution of which, in the Director's preliminary opinion, will determine the matter at issue. He shall also present so many of the facts relevant to the resolution of these questions as he then possesses and which can practicably be presented in that forum.
- (3) Following the public information hearing, or within a reasonable time after receipt of the report of the Presiding Officer, the Director or Commission shall take action upon the matter. Prior to or at the time of such action, the Commission or Director shall address separately each substantial distinct issue raised in the hearings record. This shall be in writing if taken by the Director or shall be noted in the minutes if taken by the Commission in a public forum.

Limitation of Economic Effect on Small Businesses

137-01-017

- (1) Based upon its economic effect analysis or upon comments made in response to its rulemaking notice, the agency shall, before adoption of a rule, determine whether the economic effect upon small business is significantly adverse; and
- (2) If the agency determines there is a significant adverse effect, it shall, as provided in ORS 183.540, limit the rule's economic impact on small business to the extent consistent with the public health and safety purposes of the rule.

(ORS 183.540)

Notice of Rulemaking

340-11-010

- (1) Notice of intention to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws and rules, including ORS Chapter 183 and sections (2) and (3) of this rule.
- (2) In addition to the news media on the list established pursuant to ORS 183.335(6), a copy of the notice shall be furnished to such news media as the Director may deem appropriate.
- (3) In addition to meeting the requirements of ORS 183.335(1), the notice shall contain the following:
 - (a) Where practicable and appropriate, a copy of the rule proposed to be adopted;
 - (b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained and a description of the subject and issues involved in sufficient detail to inform a person that his interest may be affected;
 - (c) Whether the Presiding Officer will be a hearing officer or a member of the Commission;
 - (d) The manner in which persons not planning to attend the hearing may offer for the record written testimony on the proposed rule.

Each agency is required to adopt a notice rule to address statutory requirements that may be unique to the agency. The agency rule must be approved by the Attorney General.

Conduct of Rulemaking Hearing

340-11-025

- (1) The hearing shall be conducted before the Commission, with the Chairman as Presiding Officer, or before any member of the Commission or other Presiding Officer.
- (2) At the commencement of the hearing, any person wishing to be heard shall advise the Presiding Officer of his name and address and affiliation on a provided form for listing witnesses, and such other information as the Presiding Officer may deem appropriate. Additional persons may be heard at the discretion of the Presiding Officer.

Conduct of Hearing

137-01-030

- (1) The hearing to consider a rule shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body, or any other person designated by the agency.
- (2) If the presiding officer or any decision maker has a potential conflict of interest as defined in ORS 244.020(4), that officer shall comply with the requirements of ORS chapter 244 (e.g., ORS 244.120 and 244.130).

Existing EQC Procedure Rules

- (3) At the opening of the hearing the Presiding Officer shall state, or have stated, the purpose of the hearing.
- (4) The Presiding Officer shall thereupon describe the manner in which persons may present their views at the hearing.
- (5) The Presiding Officer shall order the presentations in such manner as he deems appropriate to the purpose of the hearing.
- (6) The Presiding Officer and any member of the Commission shall have the right to question or examine any witness making a statement at the hearing. The Presiding Officer may, at his discretion, permit other persons to examine witnesses.
- (7) There shall be no rebuttal or additional statements given by any witness except as requested by the Presiding Officer. However, when such additional statement is given, the Presiding Officer may allow an equal opportunity for reply by those whose statements were rebutted.
- (8) The hearing may be continued with recesses as determined by the Presiding Officer until all listed witnesses present and wishing to make a statement have had an opportunity to do so.
- (9) The Presiding Officer shall, where practicable and appropriate, receive all physical and documentary exhibits presented by witnesses. Unless otherwise required by law or rule, the exhibits shall be preserved by the Department for a period of one year, or, at the discretion of the Commission or Presiding Officer, returned to the persons who submitted them.
- (10) The Presiding Officer may, at any time during the hearing, impose reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter. Persons with a concern distinct from those of citizens in general, and those speaking for groups, associations, or governmental entities may be accorded preferential time limitations as may be extended also to any witness who, in the judgment of the Presiding Officer, has such expertise, experience, or other relationship to the subject matter of the hearing as to render his testimony of special interest to the agency.

Attorney General's Model Rules

- (3) At the commencement of the hearing, any person wishing to be heard shall provide name, address, and affiliation to the presiding officer. Additional persons may be heard at the discretion of the presiding officer. The presiding officer may provide an appropriate form for listing witnesses which shall indicate the name of the witness, whether the witness favors or opposes the proposed action, and such other information as the presiding officer may deem appropriate.
- (4) At the commencement of the hearing, the presiding officer may summarize the content of the notice provided pursuant to ORS 183.335, unless requested by a person present to read the notice in full.
- (5) Subject to the discretion of the presiding officer, the order of presentation shall be:
 - (a) Statement of proponents;
 - (b) Statement of opponents; and
 - (c) Statements of any other witness present and wishing to be heard.
- (6) The presiding officer or any member of the agency may question any witness making a statement at the hearing. The presiding officer may permit other persons to question witnesses.
- (7) There shall be no rebuttal or additional statements given by any witness unless requested or permitted by the presiding officer. The presiding officer may allow an opportunity for reply.
- (8) The hearing may be continued with recesses as determined by the presiding officer until all listed witnesses have had an opportunity to testify.
- (9) The presiding officer shall, when practicable, receive all physical and documentary evidence presented by witnesses. Each exhibit shall be marked and shall identify the witness offering the exhibit. Any written exhibits shall be preserved by the agency pursuant to any applicable retention schedule for public records under ORS 192.001 et seq.
- (10) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.

Notes

(11) A verbatim oral, written, or mechanical record shall be made of all the hearing proceedings, or, in the alternative, a record in the form of minutes. Question and answer periods or other informalities before or after the hearing may be excluded from the record. The record shall be preserved for three years, unless otherwise required by law or rule.

(11) The presiding officer may provide for a verbatim oral, written, or mechanical record of all the proceedings or, in the alternative, may provide for a record in the form of minutes.

(ORS 183.341)

Presiding Officer's Report

Presiding Officer's Report

340-11-030

137-01-040

(1) Where the hearing has been conducted before other than the full Commission, the Presiding Officer, within a reasonable time after the hearing, shall provide the Commission with a written summary of statements given and exhibits received, and a report of his observations of physical experiments, demonstrations, or exhibits. The Presiding Officer may also make recommendations to the Commission based upon the evidence presented, but the Commission is not bound by such recommendations.

Upon request by the agency, the presiding officer shall, within a reasonable time after the hearing, provide the agency with a written summary of statements given and exhibits received and a report of the officer's observations of physical experiments, demonstrations, or exhibits. The presiding officer may make recommendations, but such recommendations are not binding upon the agency.

(ORS 183.341)

(2) At any time subsequent to the hearing, the Commission may review the entire record of the hearing and make a decision based upon the record. Thereafter, the Presiding Officer shall be relieved of his duty to provide a report thereon.

Action of the Commission

Action of Agency

340-11-035

137-01-050

Following the rulemaking hearing by the Commission, or after receipt of the report of the Presiding Officer, the Commission may adopt, amend, or repeal rules within the scope of the notice of intended action.

At the conclusion of the hearing, or after receipt of the presiding officer's requested report and recommendation, if any, the agency may adopt, amend, or repeal rules covered by the notice of intended action. The agency shall fully consider all written and oral submissions.

(ORS 183.335)

Notice of Agency Action; Certification to Secretary of State

137-01-060

- (1) The agency shall file in the office of the Secretary of State a certified copy of each rule adopted, including rules that amend or repeal any rule.
- (2) The rule shall be effective upon filing with the Secretary of State unless a different effective date is required by statute or a later effective date is specified in the rule.

(ORS 183.355)

**Petition to Promulgate, Amend, or Repeal Rule: Contents of
Petition, Filing of Petition**

340-11-047

- (1) Any Person may petition the Commission requesting the adoption (promulgation), amendment, or repeal of a rule. The petition shall be in writing, signed by or on behalf of the petitioner, and shall contain a detailed statement of:
- (a) The rule petitioner requests the Commission to promulgate, amend, or repeal. Where amendment of the existing rule is sought, the rule shall be set forth in the petition in full with matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining or bold face;
 - (b) Ultimate facts in sufficient detail to show the reasons for adoption, amendment, or repeal of the rule;
 - (c) All propositions of law to be asserted by petitioner;
 - (d) Sufficient facts to show how petitioner will be affected by adoption, amendment, or repeal of the rule;
 - (e) The name and address of petitioner and of another persons known by petitioner to have special interest in the rule sought to be adopted, amended, or repealed.
- (2) The petition, either in typewritten or printed form, shall be deemed filed when received in correct form by the Department. The Commission may require amendments to petitions under this section but shall not refuse any reasonably understandable petition for lack of form.
- (3) Upon receipt of the petition:
- (a) The Department shall mail a true copy of the petition together with a copy of the applicable rules of practice to all interested persons named in the petition. Such petition shall be deemed served on the date of mailing to the last known address of the person being served;

**Petition to Promulgate, Amend, or Repeal Rule: Contents of
Petition, Filing of Petition**

137-01-070

- (1) An interested person may petition an agency to adopt, amend, or repeal a rule. The petition shall be legible, signed by or on behalf of the petitioner, and shall contain a detailed statement of:
- (a) The rule petitioner requests the agency to promulgate, amend, or repeal. When a new rule is proposed, the petition shall set forth the proposed language in full. When amendment of an existing rule is sought, the affected portion of the rule shall be set forth in the petition in full with matter proposed to be deleted enclosed in brackets and proposed additions shown by underlining or boldface.
 - (b) Facts or arguments in sufficient detail to show the reasons for adoption, amendment, or repeal of the rule.
 - (c) All propositions of law to be asserted by petitioner.
 - (d) Sufficient facts to show the effect of adoption, amendment, or repeal of the rule.
 - (e) The name and address of petitioner and of any other person known by petitioner to be interested in the rule sought to be adopted, amended, or repealed.
- (2) The petition shall be deemed filed when received by the agency.
- (3) Upon receipt of the petition, the agency:
- (a) May provide a copy of the petition, together with a copy of the applicable rules of practice, to all persons named in the petition.
 - (b) May schedule oral presentations.
 - (c) Shall, in writing, within 30 days after date of submission of the petition, either deny the petition or initiate rulemaking proceedings in accordance with 137-01-017 to 137-01-080.

The Attorney General's rule on this topic is a "uniform" rule -- it is applicable to all agencies. It cannot be modified by agency action.

The Attorney General advises that individual agency rules on this topic should be repealed to avoid conflict.

(ORS 183.390)

- (b) The Department shall advise the petitioner that he has fifteen (15) days in which to submit written views;
 - (c) The Department may schedule oral presentation of petitions if the petitioner makes a request therefore and the Commission desires to hear the petitioner orally;
 - (d) The Commission shall, within 30 days after the date of submission of the properly drafted petition, either deny the petition or initiate rule making proceedings in accordance with applicable procedures for Commission rulemaking.
- (4) In the case of a denial of a petition to adopt, amend, or repeal a rule, the Commission shall issue an order setting forth its reasons in detail for denying the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.
- (5) Where procedures set forth in this section are found to conflict with those prescribed by the Attorney General, the latter shall govern upon motion of any party other than the Commission or Department.

Temporary Rules

340-11-052 The Commission may adopt temporary rules and file the same, along with supportive findings, pursuant to ORS 183.335(5) and 183.355(2).

Temporary Rulemaking

137-01-080

- (1) If no notice has been provided before adoption of a temporary rule, the agency shall give notice of its temporary rulemaking to persons, entities, and media specified under ORS 183.335(1) by mailing or personally delivering to each of them a copy of the rule or rules as adopted and a copy of the statements required under ORS 183.335(5). If a temporary rule or rules are over ten pages in length, the agency may provide a summary and state how and where a copy of the rule or rules may be obtained. Failure to give this notice shall not affect the validity of any rule.
- (2) A temporary rule is effective for less than 180 calendar days if a shorter period is specified in the rule, or for 180 calendar days if the rule does not specify a shorter period.

(ORS 183.335; 183.355)

Periodic Rule Review

137-01-085

- (1) Pursuant to ORS 183.545, the agency shall review and analyze all of its rules at least once every three years, including rules reviewed during prior reviews and rules adopted after the last review.
- (2) As part of the review, the agency shall invite public comment upon the rules pursuant to ORS 183.335(1).
- (3) The notice shall identify the rules under review by rule or division number and subject matter. It shall state that the agency invites written comments concerning the continued need for the rule; the complexity of the rule; the extent to which the rule duplicates, overlaps, or conflicts with other state rule, federal regulations, and local government regulations; the degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule; the rule's potential for enhancement of job-producing enterprises; and the legal basis for the rule.
- (4) The notice shall state the date by which written comments must be received by the agency and the address to which the comments should be sent.
- (5) If the agency provides a public hearing to receive oral comments on the rules, the notice shall include the time and place of the hearing.

(ORS 183.545)

**Declaratory Rulings: Institution of Proceedings,
Consideration of Petition and Disposition of Petition****Declaratory Rulings -- Contents of Petition**

340-11-062

137-02-010

- (1) Pursuant to the provisions of ORS 183.410 and the rules prescribed thereunder by the Attorney General, and upon the petition of any person, the Commission may, in its discretion, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts or any rule or statute enforceable by the Department or Commission.
- (2) The petition to institute proceedings for a declaratory ruling shall contain:
 - (a) A detailed statement of the facts upon which petitioner requests the Commission to issue its declaratory ruling;
 - (b) The rule or statute for which petitioner seeks declaratory ruling;
 - (c) Sufficient facts to show how petitioner will be affected by the requested declaratory ruling;
 - (d) All propositions of law or contentions to be asserted by the petitioner;
 - (e) The question presented for decision by the Commission;
 - (f) The specific relief requested;
 - (g) The name and address of petitioner and of any other person known by the petitioner to have special interest in the requested declaratory ruling.
- (3) The petition shall be typewritten or printed and in the form provided in Appendix 1 to this rule 340-11-062. The Commission may require amendments to petitions under this rule but shall not refuse any reasonably understandable petition for lack of form.

The petition to institute proceedings for declaratory ruling shall contain:

- (1) The rule or statute that may apply to the person, property, or state of facts;
- (2) A detailed statement of the relevant facts; including sufficient facts to show petitioner's interest;
- (3) All propositions of law or contentions asserted by petitioner;
- (4) The questions presented;
- (5) The specific relief requested; and
- (6) The name and address of petitioner and any other persons known by petitioner to be interested in the requested declaratory ruling.

(ORS 183.410)

The Attorney General's rules on this topic (OAR 137-02-010 through 02-060) are "uniform" rules which apply to all agencies. These rules cannot be modified by individual agency action.

The Attorney General advises that individual agency rules on this topic should be repealed to avoid conflict.

- (4) The petition shall be deemed filed when received by the Department.
- (5) The Department shall, within thirty (30) days after the petition is filed, notify the petitioner of the Commission's decision not to issue a ruling or the Department shall, within the same thirty days, serve all specially interested persons in the petition by mail:
 - (a) A copy of the petition together with a copy of the Commission's rules of practice; and
 - (b) A notice of the hearing at which the petition will be considered. This notice shall have the contents set forth in section (6) of this rule.

- (6) The notice of hearing at which time the petition will be considered shall set forth:
 - (a) A copy of the petition requesting the declaratory ruling;
 - (b) The time and place of hearing;
 - (c) A statement that the Commission will conduct the hearing or a designation of the Presiding Officer who will preside at and conduct the hearing.

Filing and Service of Petition

137-02-020

- (1) The petition shall be deemed filed when received by the agency.
- (2) Within 60 days after the petition is filed, the agency shall notify the petitioner whether it will issue a ruling. If the agency decides to issue a ruling, it shall serve all persons named in the petition by mailing:
 - (a) A copy of the petition together with a copy of the agency's rules of practice; and
 - (b) Notice of any proceeding at which the petition will be considered. (See 137-02-030 for contents of notice.)
- (3) Notwithstanding subsection (2), the agency may decide at any time that it will not issue a declaratory ruling in any specific instance.

(ORS 183.410)

Contents of Notice of Hearing

137-02-030

The notice of proceeding for a declaratory ruling shall set forth:

- (1) A copy of the petition requesting the declaratory ruling;
- (2) The time and place of the proceeding; and
- (3) The designation of the presiding officer.

(ORS 183.410)

- (7) The hearing shall be conducted by and shall be under the control of the Presiding Officer. The Presiding Officer may be the Chairman of the Commission, any Commissioner, the Director, or any other person designated by the Commission or its Chairman.
- (8) At the hearing, petitioner and any other party shall have the right to present oral argument. The Presiding Officer may impose reasonable time limits on the time allowed for oral argument. Petitioner and other parties may file with the agency briefs in support of their respective positions. The Presiding Officer shall fix the time and order of filing briefs.
- (9) In those instances where the hearing was conducted before someone other than the Commission, the Presiding Officer shall prepare an opinion in form and in content as set forth in section (11) of this rule.

Conduct of Hearing, Briefs, and Oral Argument

137-02-040

- (1) The proceeding shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body or any other person designated by the agency.
- (2) At the proceeding, petitioner and any other interested person shall have the right to present oral argument. The presiding officer may impose reasonable time limits on the time allowed for oral argument. Petitioner, agency staff, and interested persons may file briefs in support of their respective positions. The presiding officer shall fix the time and order of filing briefs.

(ORS 183.410)

Presiding Officer's Opinion

137-02-050

Except when the presiding officer is the decision maker, the presiding officer shall prepare an opinion in accordance with 137-02-060 for consideration by the decision maker.

(ORS 183.410)

- (10) The Commission is not bound by the opinion of the Presiding Officer.
- (11) The Commission shall issue its declaratory ruling within sixty (60) days of the close of the hearing, or, where briefs are permitted to be filed subsequent to the hearing, within sixty (60) days of the time permitted for the filing of briefs. The ruling shall be in the form of a written opinion and shall set forth:
 - (a) The facts being alleged by petitioner;
 - (b) The statute or rule being applied to those facts;
 - (c) The Commission's conclusions as to the applicability of the statute or rule to those facts;
 - (d) The Commission's conclusion as to the legal effect or result of applying the statute or rule to those facts;
 - (e) The reasons relied upon by the agency to support its conclusions.
- (12) A declaratory ruling issued in accordance with this section is binding between the Commission, the Department, and the petitioner on the state of facts alleged, or found to exist, unless set aside by a court.
- (13) Where procedures set forth in this section are found to conflict with those prescribed by the Attorney General, the latter shall govern upon motion by any party other than the Commission or Department.

Decision of Agency; Time, Form, and Service

137-02-060

- (1) The agency shall issue its declaratory ruling within 60 days of the close of the proceeding or within 60 days of the time permitted for the filing of briefs, whichever is later.
- (2) The ruling shall be in writing and shall include:
 - (a) The facts upon which the ruling is based;
 - (b) The statute or rule in issue;
 - (c) The agency's conclusion as to the applicability of the statute or rule to those facts;
 - (d) The agency's conclusion as to the legal effect or result of applying the statute or rule to those facts; and
 - (e) The reasons relied upon by the agency to support its conclusion.

(ORS 183.410)

CONTESTED CASES**Service of Written Notice**

340-11-097

- (1) Whenever a statute or rule requires that the Commission or Department serve a written notice or final order upon a party other than for purposes of ORS 183.335 or for the purposes of notice to members of the public in general, the notice or final order shall be personally delivered or sent by registered or certified mail.
- (2) The Commission or Department perfects service of a written notice when the notice is posted, addressed to, or personally delivered to:
 - (a) The party; or
 - (b) Any person designated by law as competent to receive service of a summons or notice for the party; or
 - (c) Following appearance of Counsel for the party, the party's counsel.
- (3) A party holding a license or permit issued by the Department or Commission or an applicant therefore, shall be conclusively presumed able to be served at the address given in his application, as it may be amended from time to time, until the expiration date of the license or permit.
- (4) Service of written notice may be proven by a certificate executed by the person effecting service.
- (5) In all cases not specifically covered by this section, a rule, or a statute, a writing to a person if mailed to said person at his last known address, is rebuttably presumed to have reached said person in a timely fashion, notwithstanding lack of certified or registered mailing.

CONTESTED CASES**Contested Case Notice**

137-03-001

In addition to the requirements of ORS 183.415(2), a contested case notice may include a statement that the record of the proceeding to date, including the agency file or files on the subject of the contested case, automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

(ORS 183.415; 183.450)

Written Notice of Opportunity for a Hearing

340-11-100

- (1) Except as otherwise provided in ORS 183.430 and ORS 670.285, before the Commission or Department shall by order suspend, revoke, refuse to renew, or refuse to issue a license, or enter a final order in any other contested case as defined in ORS Chapter 183, it shall afford the licensee, the license applicant or other party to the contested case an opportunity for hearing after reasonable written notice.
- (2) Written notice of opportunity for a hearing, in addition to the requirements of ORS 183.415(2), may include:
 - (a) A statement that an answer will or will not be required if the party requests a hearing, and, if so, the consequence of failure to answer. A statement of the consequence of failure to answer may be satisfied by serving a copy of rule 340-11-107 upon the party;
 - (b) A statement that the party may elect to be represented by legal counsel;
 - (c) A statement of the party or parties who, in the contention of the Department or Commission, would have the burden of coming forward with evidence and the burden of proof in the event of a hearing.

Rights of Parties in Contested Cases

137-03-002

- (1) In addition to the information required to be given under ORS 183.413(2) and ORS 183.415(7), before commencement of a contested case hearing, the agency shall inform a party, if the party is an agency, corporation, or an unincorporated association, that such party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise.
- (2) Except as otherwise required by ORS 183.415(7), the information referred to in 137-03-002(1) may be given in writing or orally before the commencement of the hearing.
- (3) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. Informal settlement may be made in license revocation proceedings by written agreement of the parties and the agency consenting to a suspension, fine, or other form of intermediate sanction.
- (4) Unless precluded by law, informal disposition includes, upon agreement between the agency and the parties, but is not limited to, a modified contested case proceeding, nonrecord abbreviated hearing, nonbinding arbitration, and mediation, but does not include binding arbitration.

(ORS 183.413, 183.415)

Answer Required: Consequences of Failure to Answer

340-11-107

- (1) Unless waived in the notice of opportunity for a hearing, and except as otherwise provided by statute or rule, a party who has been served written notice of opportunity for a hearing shall have twenty (20) days from the date of mailing or personal delivery of the notice in which to file with the Director a written answer and application for hearing.
- (2) In the answer, the party shall admit or deny all factual matters and shall affirmatively allege any and all affirmative claims or defenses the party may have and the reasoning in support thereof. Except for good cause shown:
 - (a) Factual matters not controverted shall be presumed admitted;
 - (b) Failure to raise a claim or defense shall be presumed to be waiver of such claim or defense;
 - (c) New matters alleged in the answer shall be presumed to be denied unless admitted in subsequent pleading or stipulation by the Department or Commission; and
 - (d) Evidence shall not be taken on any issue not raised in the notice and the answer.
- (3) In the absence of a timely answer, the Director on behalf of the Commission or Department may issue a default order and judgment, based upon a prima facie case made on the record, for the relief sought in the notice.

Request by Person to Participate as Party or Limited Party

137-03-005

- (1) When an agency gives notice that it intends to hold a contested case hearing, persons who have an interest in the outcome of the agency's proceeding or who represent a public interest in such result shall upon request be given the opportunity to participate as parties or limited parties.
- (2) A person requesting to participate as a party or a limited party shall file a petition, with sufficient copies for service on all parties, with the agency at least 14 business days before the date set for hearing. Petitions untimely filed shall not be considered unless the agency determines that good cause has been shown for failure to file timely.
- (3) The petition shall include the following:
 - (a) Names and addresses of the petitioner and of any organization which the petitioner represents.
 - (b) Name and address of the petitioner's attorney, if any.
 - (c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought.
 - (d) If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding.
 - (e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest.
 - (f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interests identified in 137-03-005(3)(d) or (e).

- (4) The agency shall serve a copy of the petition on each party personally or by mail. Each party shall have seven business days from the date of personal service or agency mailing to file a response to the petition.
- (5) If the agency determines that good cause has been shown for failure to file a timely petition, the agency at its discretion may:
 - (a) Shorten the time within which answers to the petition shall be filed, or
 - (b) Postpone the hearing until disposition is made of the petition.
- (6) If a person is granted participation as a party or a limited party, the agency may postpone or continue the hearing to a later date when it appears that commencing or continuing the hearing would jeopardize or unduly burden one or more of the parties in the case.
- (7) In ruling on petitions to participate as a party or a limited party, the agency shall consider:
 - (a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding.
 - (b) Whether any such affected interest is within the scope of the agency's jurisdiction.
 - (c) The qualifications the petitioner represents in cases in which a public interest is alleged.
 - (d) The extent to which the petitioner's interest will be represented by existing parties.
- (8) A petition to participate as a party may be treated as a petition to participate as a limited party.
- (9) The agency has discretion to grant petitions for persons to participate as a party or a limited party. The agency shall specify areas of participation and procedural limitations as it deems appropriate.

- (10) An agency ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner and all parties. The agency shall also serve petitioner with the notice of rights required by ORS 183.413(2).

(ORS 183.310; 183.415)

Request by Agency to Participate as a Party or an Interested Agency

137-03-007

- (1) When an agency gives notice that it intends to hold a contested case hearing, it may name any other agency that has an interest in the outcome of that proceeding as a party or as an interested agency, either on its own initiative or upon request by that other agency.
- (2) An agency named as a party or as an interested agency has the same procedural rights and shall be given the same notices, including notice of rights, as any party in the proceeding.
- (3) An agency may not be named as a party under this rule without written authorization of the Attorney General.

(ORS 180.060; 183.310; 183.413)

Immediate Suspension or Refusal to Renew a License, Notice of Opportunity for Hearing, Service

137-03-010

- (1) If the agency finds there is a serious danger to the public health or safety, it may immediately suspend or it may refuse to renew a license.
- (2) The agency shall give notice to the party upon immediate suspension or refusal to renew a license. The notice shall be served personally or by registered or certified mail and shall include:
 - (a) The statements required under ORS 415(2) and (3).
 - (b) The effective date of the suspension or refusal to renew the license.
 - (c) A statement that any demand for a hearing must be received within 90 days of date of notice or the hearing is waived.
 - (d) A statement giving reasonable grounds and supporting the finding that a serious danger to the public health and safety would exist without the immediate suspension or refusal to renew the license.

(ORS 183.430)

Subpoenas and Depositions

340-11-116 Subpoenas

- (1) Upon a showing of good cause and general relevance any party to a contested case shall be issued subpoenas to compel the attendance of witnesses and the production of books, records and documents.
- (2) Subpoenas may be issued by:
 - (a) A hearing officer; or
 - (b) A member of the Commission; or
 - (c) An attorney of record of the party requesting the subpoena.
- (3) Each subpoena authorized by this section shall be served personally upon the witness by the party or any person over 18 years of age.
- (4) Witnesses who are subpoenaed, other than parties or officers or employees of the Department or Commission, shall receive the same fees and mileage as in civil actions in the circuit court.
- (5) The party requesting the subpoena shall be responsible for serving the subpoena and tendering the fees and mileage to the witness.
- (6) A person present in a hearing room before a hearing officer during the conduct of a contested case hearing may be required, by order of the hearing officer, to testify in the same manner as if he were in attendance before the hearing officer upon a subpoena.
- (7) Upon a showing of good cause a hearing officer or the Chairman of the Commission may modify or withdraw a subpoena.
- (8) Nothing in this section shall preclude informal arrangements for the production of witnesses or documents, or both.

Conduct of Hearing

340-11-120

- (1) (a) Contested case hearings before the Commission shall be held under the control of the chairman as Presiding Officer, or any Commission member, or other person designated by the Commission or Director to be Presiding Officer.
- (b) Contested case hearings before the Department shall be held under the control of the Director as Presiding Officer or other person designated by the Director to be Presiding Officer.
- (2) The Presiding Officer may schedule and hear any preliminary matter, including a pre-hearing conference, and shall schedule the hearing on the merits. Reasonable written notice of the date, time, and place of such hearings and conferences shall be given to all parties.

Except for good cause shown, failure of any party to appear at a duly scheduled pre-hearing conference or the hearing on the merits shall be presumed to be a waiver of right to proceed any further, and, where applicable:

- (a) A withdrawal of the answer;
- (b) An admission of all the facts alleged in the notice of opportunity for a hearing; and
- (c) A consent to the entry of a default order and judgment for the relief sought in the notice of opportunity for a hearing.
- (3) At the discretion of the Presiding Officer, the hearing shall be conducted in the following manner:
- (a) Statement and evidence of the party with the burden of coming forward with evidence in support of his proposed action;
- (b) Statement and evidence of defending party in support of his alleged position;
- (c) Rebuttal evidence, if any;
- (d) Surrebuttal evidence, if any.

Conducting Contested Case Hearings

137-03-040

- (1) The contested case hearing shall be conducted by and under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, a member of its governing body, or any other person designated by the agency.
- (2) If the presiding officer or any decision maker has a potential conflict of interest as defined in ORS 244.020(4), that officer shall comply with the requirement of ORS chapter 244 (e.g., ORS 244.120 and 244.130).
- (3) The hearing shall be conducted, subject to the discretion of the presiding officer, so as to include the following:
- (a) The statement and evidence of the proponent in support of its action.
- (b) The statement and evidence of opponents, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited.
- (c) Any rebuttal evidence.
- (d) Any closing arguments.

The EQC rules on this topic create the option for a contested case hearing before the Department as well as the Commission.

The reason for this distinction, adopted in 1974, is not apparent. All contested cases currently appear to arise by appeal of Department actions to the Commission.

Existing EQC Procedure Rules

- (4) Except for good cause shown, evidence shall not be taken on any issue not raised in the notice and the answer.
- (5) All testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths of affirmations to witnesses.
- (6) The following persons shall have the right to question, examine, or cross-examine any witness:
 - (a) The Presiding Officer;
 - (b) Where the hearing is conducted before the full Commission, any member of the Commission;
 - (c) Counsel for the Commission or the Department;
 - (d) Where the Commission or the Department is not represented by counsel, a person designated by the Commission or the Director;
 - (e) Any party to the contested case or such party's counsel.
- (7) The hearing may be continued with recesses as determined by the Presiding Officer.
- (8) The Presiding Officer may set reasonable time limits for oral presentation and shall exclude or limit cumulative, repetitious, or immaterial matter.
- (9) The Presiding Officer shall, where appropriate and practicable, receive all physical and documentary evidence presented by parties and witnesses. Exhibits shall be marked, and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the Department as part of the record of the proceeding. Copies of all documents offered in evidence shall be provided to all other parties, if not previously supplied.
- (10) A verbatim oral, written, or mechanical record shall be made of all motions, evidentiary objections, rulings, and testimony.
- (11) Upon request of the Presiding Officer or upon a party's own motion, a party may submit a pre-hearing brief, or a post-hearing brief, or both.

Attorney General's Model Rules

- (4) Presiding officers or decision makers, interested agencies, and parties shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency.
- (5) The hearing may be continued with recesses as determined by the presiding officer.
- (6) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter.
- (7) Exhibits shall be marked and maintained by the agency as part of the record of the proceedings.
- (8) If the presiding officer or any decision maker receives any written or oral ex parte communication on a fact in issue during the contested case proceeding, that person shall notify all parties and otherwise comply with the requirements of 137-03-055.

(ORS 183.415)

Notes

The Record

340-11-121 The Presiding Officer shall certify such part of the record as defined by ORS 183.415(7) as may be necessary for review of final orders and proposed final orders. The Commission or Director may review tape recordings of proceedings in lieu of a prepared transcript.

Evidentiary Rules

340-11-125

- (1) In applying the standard of admissibility of evidence set forth in ORS 183.450, the Presiding Officer may refuse to admit hearsay evidence inadmissible in the courts of this state where he is satisfied that the declarant is reasonably available to testify and the declarant's reported statement is significant, but would not commonly be found reliable because of its lack of corroboration in the record or its lack of clarity and completeness.
- (2) All offered evidence, not objected to, will be received by the Presiding Officer subject to his power to exclude or limit cumulative, repetitious, irrelevant, or immaterial matter.
- (3) Evidence objected to may be received by the Presiding Officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.

Evidentiary Rules

137-03-050

- (1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.
- (2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.
- (3) All offered evidence, not objected to, will be received by the presiding officer subject to the officer's power to exclude irrelevant, immaterial, or unduly repetitious matter.
- (4) Evidence objected to may be received by the presiding officer. Rulings on its admissibility or exclusion, if not made at the hearing, shall be made on the record at or before the time a final order is issued.
- (5) Any time ten days or more before a hearing, the agency, an interested agency, and any party may serve upon every party, interested agency, and the agency a copy of any affidavit, certificate, or other document proposed to be introduced in evidence. Unless cross-examination is requested of the affiant, certificate preparer, or other document preparer or custodian, within five days prior to hearing, the affidavit, certificate, or other document may be offered subject to the same standards and received with the same effect as oral testimony.
- (6) If cross-examination is requested of the affiant, certificate preparer, or other document preparer or custodian as provided in 137-03-050(5), and the requestor is informed within five days prior to the hearing that the requested witness will not appear for cross-examination, the affidavit, certificate, or other document may be received in evidence, if the agency or presiding officer determines that the party requesting cross-examination would not be unduly prejudiced or injured by lack of cross-examination.

(ORS 183.450)

Ex Parte Communications

137-03-055

- (1) An ex parte communication is an oral or written communication to an agency decision maker or the presiding officer not made in the presence of all parties to the hearing, concerning a fact in issue in the proceeding, and includes communication of any new facts from staff.
- (2) If an agency decision maker or presiding officer receives an ex parte communication during the pendency of the proceeding, the officer shall:
 - (a) Give all parties notice of the substance of the communication, if oral, or a copy of the communication, if written; and
 - (b) Provide any party who did not present the ex parte communication an opportunity to rebut the substance of the ex parte communication at the hearing, at a separate hearing for the limited purpose of receiving evidence relating to the ex parte communication, or in writing.
- (3) The agency's record of a contested case proceeding shall include:
 - (a) The ex parte communication, if in writing;
 - (b) A statement of the substance of the ex parte communication, if oral;
 - (c) The agency or presiding officer's notice to the parties of the ex parte communication; and
 - (d) Rebuttal evidence.

(ORS 183.415(8); 183.462)

**Proposed Orders in Contested Cases, Filing of Exceptions,
Argument, and Adoption of Order**

137-03-060

- (1) If a majority of the officials who are to render the final order in a contested case have neither attended the hearing nor reviewed and considered the record, and the order is adverse to a party, a proposed order including findings of fact and conclusion of law shall be served upon the parties.
- (2) When the agency serves a proposed order on the parties, the agency shall at the same time or at a later date notify the parties:
 - (a) When written exception must be filed to be considered by the agency; and
 - (b) When and in what form argument may be made to the officials who will render the final order.
- (3) The agency decision maker, after receiving exceptions and argument, may adopt the proposed order or prepare a new order.

(ORS 183.460)

Appeal of Hearing Officer's Final Order

340-11-132

- (1) **Hearing Officer's Final Order:** In a contested case if a majority of the members of the Commission have not heard the case or considered the record, the Hearing Officer shall prepare a written Hearing Officer's Final Order including findings of fact and conclusions of law. The original of the Hearing Officer's Final Order shall be filed with the Commission and copies shall be served upon the parties in accordance with rule 340-11-097 (regarding service of written notice).
- (2) **Commencement of Appeal to the Commission:**
 - (a) The Hearing Officer's Final Order shall be the final order of the Commission unless within 30 days from the date of mailing, or if not mailed then from the date of personal service, any of the parties or a member of the Commission files with the Commission and serves upon each party a Notice of Appeal. A proof of service thereof shall also be filed, but failure to file a proof of service shall not be a ground for dismissal of the Notice of Appeal.
 - (b) The timely filing and service of a Notice of Appeal is a jurisdictional requirement for the commencement of an appeal to the Commission and cannot be waived; a Notice of Appeal which is filed or served late shall not be considered and shall not affect the validity of the Hearing Officer's Final Order which shall remain in full force and effect.
 - (c) The timely filing and service of a sufficient Notice of Appeal to the Commission shall automatically stay the effect of the Hearing Officer's Final Order.
- (3) **Contents of Notice of Appeal.** A Notice of Appeal shall be in writing and need only state the party's or a Commissioner's intent that the Commission review the Hearing Officer's Final Order.

This procedure has the Hearing Officer issue a final order which can be appealed to the Commission by any party. Since the definition of "party" includes the Department, the Department may appeal the decision if it disagrees with the Hearing Officer's Final Order.

This procedure was adopted by the EQC by amendment in 1979 when most contested cases resulted from appeal of civil penalty assessments.

This procedure constitutes a significant delegation of authority by the EQC to the Hearing Officer and has reduced the contested case ruling load on the Commission.

Alternative procedures have been followed in some recent cases which involve significant program or policy actions. This has been done either by informally waiving the process of this rule or by adopting the AG Model Rules for the specific case.

(4) Procedures on Appeal:

- (a) Appellant's Exceptions and Brief -- Within 30 days from the date of service or filing of his Notice of Appeal, whichever is later, the Appellant shall file with the Commission and serve upon each other party written exceptions, brief and proof of service. Such exceptions shall specify those findings and conclusions objected to and reasoning, and shall include proposed alternative findings of fact, conclusions of law, and order with specific references to those portions to the record upon which the party relies. Matters not raised before the Hearing Officer shall not be considered except when necessary to prevent manifest injustice. In any case where opposing parties timely serve and file Notices of Appeal, the first to file shall be considered to be the appellant and the opposing party the cross appellant.
- (b) Appellee's Brief -- Each party so served with exceptions and brief shall then have 30 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party an answering brief and proof of service.
- (c) Reply Brief -- Except as provided in subsection (d) of this section, each party served with an answering brief shall have 20 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party a reply brief and proof of service.
- (d) Cross Appeals -- Should any party entitled to file an answering brief so elect, he may also cross appeal to the Commission the Hearing Officer's Final Order by filing with the Commission and serving upon each other party in addition to an answering brief a Notice of Cross Appeal, exceptions (described in subsection (a) of this section), a brief on cross appeal and proof of service, all within the same time allowed for an answering brief. The appellant-cross appellee shall then have 30 days in which to serve and file his reply brief, cross answering brief and proof of service. There shall be no cross reply brief without leave of the Chairman or the Hearing Officer.

- (e) Briefing on Commission Invoked Review -- Where one or more members of the Commission commence an appeal to the Commission pursuant to subsection (2)(a) of this rule, and where no party to the case has timely served and filed a Notice of Appeal, the Chairman shall promptly notify the parties of the issue that the Commission desires the parties to brief and the schedule for filing and serving briefs. The parties shall limit their briefs to those issues. Where one or more members of the Commission have commenced an appeal to the Commission and a party has also timely commenced such a proceeding, briefing shall follow the schedule set forth in subsections (a), (b), (c), (d), and (f) of this section.
- (f) Extensions -- The Chairman or a Hearing Officer, upon request, may extend any of the time limits contained in this section. Each extension shall be made in writing and be served upon each party. Any request for an extension may be granted or denied in whole or in part.
- (g) Failure to Prosecute -- The Commission may dismiss any appeal or cross appeal if the appellant or cross appellant fails to timely file and serve any exceptions or brief required by these rules.
- (h) Oral Argument -- Following the expiration of the time allowed the parties to present exceptions and briefs, the Chairman may at his discretion schedule the appeal for oral argument before the Commission.
- (i) Scope of Review -- In an appeal to the Commission of a Hearing Officer's Final Order, the Commission may, substitute its judgment for that of the Hearing Officer in making any particular finding of fact, conclusion of law, or order. As to any finding of fact made by the Hearing Officer the Commission may make an identical finding without any further consideration of the record.

- (j) Additional Evidence -- In an appeal to the Commission of a Hearing Officer's Final Order the Commission may take additional evidence. Requests to present additional evidence shall be submitted by motion and shall be supported by a statement specifying the reason for the failure to present it at the hearing before the Hearing Officer. If the Commission grants the motion, or so decides of its own motion, it may hear the additional evidence itself or remand to a Hearing Officer upon such conditions as it deems just.

Presiding Officer's Proposed Order in Hearing Before the Department

340-11-134

- (1) In a contested case before the Department, the Director shall exercise powers and have duties in every respect identical to those of the Commission in contested cases before the Commission.
- (2) Notwithstanding section (1) of this rule, the Commission may, as to any contested case over which it has final administrative jurisdiction, upon motion of its Chairman or a majority of its members, remove to the Commission any contested case before the Department at any time during the proceedings in a manner consistent with ORS Chapter 183.

Staff is unable to recall any contest case hearing held before or on behalf of the Department rather than the Commission.

Final Orders in Contested Cases Notification

Final Orders

340-11-135

137-03-070

- (1) Final orders in contested cases shall be in writing or stated in the record, and may be accompanied by an opinion.
- (2) Final orders shall include the following:
 - (a) Rulings on admissibility of offered evidence if not already in the record;
 - (b) Findings of fact, including those matters which are agreed as fact, a concise statement of the underlying facts supporting the findings as to each contested issue of fact and each ultimate fact, required to support the Commission's or the Department's order;
 - (c) Conclusions of law;
 - (d) The Commission's or the Department's Order.
- (3) The Department shall serve a copy of the final order upon every party or, if applicable, his attorney of record.

- Final orders on contested cases shall be in writing and shall include the following:
- (1) Rulings on admissibility of offered evidence when the rulings are not set forth in the record.
 - (2) Findings of fact -- those matters that are either agreed as fact or that, when disputed, are determined by the fact finder on substantial evidence to be facts over contentions to the contrary. A finding must be made on each fact necessary to reach the conclusions of law on which the order is based.
 - (3) Conclusion(s) of law -- applications of the controlling law to the facts found and the legal results arising therefrom.
 - (4) Order -- the action taken by the agency as a result of the facts found and the legal conclusions arising therefrom.
 - (5) A citation of the statutes under which the order may be appealed.

(ORS 183.470)

Default Orders

137-03-075

- (1) When the agency has given a party an opportunity to request a hearing and the party fails to make a request within a specified time, or when the agency has set a specified time and place for a hearing and the party fails to appear at the specified time and place, the agency may enter a final order by default.
- (2) The agency may issue an order of default only after making a prima facie case on the record. The record may be made at an agency meeting, at a scheduled hearing on the matter, or, if the notice of intended action states that the order will be issued or become effective upon the failure of the party to timely request a hearing, when the order is issued.
- (3) If the notice of intended action contains an order that is to become effective unless the party requests a hearing, the record shall be complete at the time of the notice of intended action.
- (4) The record may consist of oral (transcribed, recorded, or reported) or written evidence or a combination of oral and written evidence. When the record is made at the time the notice or order is issued, the agency file may be designated as the record. In all cases, the record must contain substantial evidence to support the findings of fact.
- (5) When the agency has set a specified time and place for a hearing in a matter in which only one party is before the agency and that party subsequently notifies the agency that the party will not appear at such specified time and place, the agency may enter a default order, cancel the hearing, and follow the procedure described in 137-03-075(2) and (4).
- (6) When a party requests a hearing after the time specified by the agency, but before the agency has entered a default order, the agency may grant the request or make further inquiry as to the existence of the reasons specified in 137-03-075(7)(a) for the request being tardy. If further inquiry is made, the agency may require an affidavit to be filed with the agency. The agency shall enter an order granting or denying the request as described in 137-03-075(7)(e).

- (7) (a) When a party requests a hearing after entry of a default order, the party may request to be relieved from the default order only on grounds of mistake, inadvertence, surprise, or excusable neglect.
- (b) The request shall be filed with the agency, and a copy delivered or mailed to all persons and agencies required by statute, rule, or order to receive notice of the proceeding, within a reasonable time. If the request is received more than 75 days after delivery or mailing of a copy of the order of default to the party or the party's attorney, it shall be presumed that such a request is not timely. This presumption may be rebutted by evidence showing that the request is reasonably timely.
- (c) The request shall state why the party should be relieved from the default order.
- (d) The agency may make further inquiry, including holding a hearing, as it deems appropriate.
- (e) If the request is allowed by the agency, it shall enter an order granting the request and schedule a hearing in due course. If the request is denied, the agency shall enter an order setting forth its reasons for such denial.
- (8) The agency shall notify a defaulting party of the entry of a default order by delivering or mailing a copy of the order as required by ORS 183.330(2).

(ORS 183.415; 183.470)

Reconsideration and Rehearing

137-03-080

- (1) A party may file a petition for reconsideration or rehearing of a final order with the agency within 60 days after the order is served. A copy of the petition shall also be delivered or mailed to all parties any other persons and agencies required by statute, rule, or order to receive notice of the proceeding.
- (2) The petition shall set forth the specific grounds for reconsideration or rehearing. The petition may be supported by written argument.
- (3) A rehearing may be limited by the agency to specific matters.
- (4) The petition may include a request for stay of a final order if the petition complies with the requirements of 137-03-090(2)(f) through (i).
- (5) The agency may consider a petition for reconsideration or rehearing as a request for either or both. The petition may be granted or denied by summary order and, if no action is taken, shall be deemed denied as provided in ORS 183.482.
- (6) Any member of an agency's governing body may move for reconsideration or rehearing of an agency final order within 60 days after the order is served. Reconsideration or rehearing shall be granted if approved by the governing body. The procedural effect of granting reconsideration or rehearing on an agency's own motion shall be identical to the effect of granting a party's petition for reconsideration or rehearing.
- (7) Reconsideration or rehearing shall not be granted after the filing of a petition for judicial review, except in the manner provided by ORS 183.482(6).
- (8) A final order remains in effect during reconsideration or rehearing until changed.
- (9) At the conclusion of a reconsideration or rehearing, an agency must enter a new order, which may be an order affirming the existing order.

(ORS 183.482)

Request for Stay

137-03-090

- (1) Any person entitled to judicial review of an agency order who files a petition for judicial review may request the agency to stay the enforcement of the agency order that is the subject of judicial review.
- (2) The stay request shall contain:
 - (a) The name of the person filing the request, identifying that person as a petitioner and the agency as the respondent;
 - (b) The full title of the agency decision as it appears on the order and the date of the agency decision;
 - (c) A summary of the agency decision; and
 - (d) The name, address, and telephone number of each of the following:
 - (A) The petitioner;
 - (B) All other parties to the agency proceeding. When the party was represented by an attorney in the proceeding, then the name, address, and telephone number of the attorney shall be provided and the address and telephone number of the party may be omitted.
 - (e) A statement advising all persons whose names, addresses and telephone numbers are required to appear in the stay request as provided in 137-03-090(2)(d), that they may participate in the stay proceeding before the agency if they file a response in accordance with 137-03-091 within ten days from delivery or mailing of the stay request to the agency.

- (f) A statement of facts and reasons sufficient to show that the stay request should be granted because:
 - (A) The petitioner will suffer irreparable injury if the order is not stayed;
 - (B) There is a colorable claim of error in the order; and
 - (C) Granting the stay will not result in substantial public harm.
 - (g) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitation or conditions, petitioner shall propose an amount of bond or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries.
 - (h) A description of additional procedures, if any, the petitioner believes should be followed by the agency in determining the appropriateness of the stay request.
 - (i) An appendix of affidavits containing all evidence (other than evidence contained in the record of the contested case out of which the stay request arose) upon which the petitioner relies in support of the statements required under 137-03-090(2)(f) and (g). The record of the contested case out of which the stay request arose is a part of the record of the stay proceeding.
- (3) The request must be delivered or mailed to the agency and on the same date a copy delivered or mailed to all parties identified in the request as required by 137-03-090(2)(d).

(ORS 183.482)

Request for Stay -- Motion to Intervene

137-03-091

- (1) Any party identified under 137-03-090(2)(d) desiring to participate as a party in the stay proceeding may file a response to the request for stay.
- (2) The response shall contain:
 - (a) The full title of the agency decision as it appears on the order;
 - (b) The name, address, and telephone number of the person filing the response, except that if the person is represented by an attorney, then the name, address, and telephone number of the attorney shall be included and the person's address and telephone number may be deleted;
 - (c) A statement accepting or denying each of the statements of facts and reasons provided pursuant to 137-03-090(2)(f) in the petitioner's stay request;
 - (d) A statement accepting, rejecting, or proposing alternatives to the petitioner's statement on the bond or undertaking amount or other reasonable conditions that should be imposed on petitioner should the stay request be granted.
- (3) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement required under 137-03-091(2)(c) and (d).
- (4) The response must be delivered or mailed to the agency and to all parties identified in the stay request within ten (10) days of the date of delivery or mailing to the agency of the stay request.

(ORS 183.482)

Request for Stay -- Agency Determination

137-03-092

- (1) The agency may allow the petitioner to amend or supplement the stay request to comply with 137-03-090(2)(a)-(e) or (3). All amendments and supplements shall be delivered or mailed as provided in 137-03-090(3), and the deadlines for response and agency action shall be computed from the date of delivery or mailing to the agency.
- (2) After the deadline for filing of responses, the agency shall:
 - (a) Decide upon the basis of the material before it; or
 - (b) Conduct such further proceedings as it deems desirable; or
 - (c) Allow the petitioner within a time certain to submit responsive legal arguments and affidavits to rebut any response. Petitioner may not bring in new direct evidence through such affidavits. The agency may rely on evidence in such affidavits only if it rebuts intervenor evidence.
- (3) The agency's order shall:
 - (a) Grant the stay request upon findings of irreparable injury to the petitioner or a colorable claim of error in the agency order and may impose reasonable conditions, including but not limited to a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time; or
 - (b) Deny the stay request upon a finding that the petitioner failed to show irreparable injury or a colorable claim of error in the agency order; or
 - (c) Deny the stay request upon a finding that a specified substantial public harm would result from granting the stay, notwithstanding the petitioner's showing of irreparable injury and a colorable claim of error in the agency order.

- (4) Nothing in 137-03-055 or in 137-03-090 to 137-03-092 prevents an agency from receiving evidence from agency staff concerning the stay request. Such evidence shall be presented by affidavit within the time limits imposed by 137-03-091(3). If there are further proceedings pursuant to 137-03-092(2), the agency staff may present additional evidence in the same manner that parties are permitted to present additional evidence.

Request for Stay -- Time Frames

137-03-093

- (1) Unless otherwise agreed to by the agency, petitioner, and respondents, the agency shall commence any proceeding instituted pursuant to 137-03-092(2) within 20 days after receiving the stay request.
- (2) Unless otherwise agreed to by the agency, petitioner, and respondents, the agency shall grant or deny the stay request within 30 days after receiving it.

(ORS 183.482)

Power of the Director

340-11-136

- (1) Except as provided by rule 340-12-075, the Director, on behalf of the Commission, may execute any written order which has been consented to in writing by the parties adversely affected thereby.
- (2) The Director, on behalf of the Commission, may prepare and execute written orders implementing any action taken by the Commission on any matter.
- (3) The Director, on behalf of the Commission, may prepare and execute orders upon default where:
 - (a) The adversely affected parties have been properly notified of the time and manner in which to request a hearing and have failed to file a proper, timely request for a hearing; or
 - (b) Having requested a hearing, the adversely affected party has failed to appear at the hearing or at any duly scheduled prehearing conference.
- (4) Default orders based upon failure to appear shall issue only upon the making of a prima facie case on the record.

Miscellaneous Rules -- Unacceptable Conduct

137-04-010

A presiding officer may expel a person from an agency proceeding if that person engages in conduct that disrupts the proceeding.

Miscellaneous Provisions

340-11-140 OAR Chapter 340, rules 340-11-010 to 340-11-140, as amended and adopted June 25, 1976, shall take effect upon prompt filing with the Secretary of State. They shall govern all further administrative proceedings then pending before the Commission or Department except to the extent that, in the opinion of the Presiding Officer, their application in a particular action would not be feasible or would work an injustice, in which event, the procedure in former rules designated by the Presiding Officer shall apply.

Procedures for Conduct of Contested Case on Order of Environmental Quality Commission Selecting a Land Fill Disposal Site Under Authority of 1985 Oregon Laws, Chapter 679.

340-11-141 Rules/Applicability.

- (a) The Environmental Quality Commission hereby adopts the Attorney General's Model Rules numbered OAR 137-03-001 through 137-03-093 and OAR 137-04-010 (Model Rules) for application to any contested case conducted by or for the Commission on its order selecting a landfill disposal site pursuant to 1985 Oregon Laws, Chapter 679.
- (b) The Model Rules shall only apply to the contested case (or cases) described in subsection 340-11-141(a). The Commission's rules for conduct of contested cases, OAR 340-11-097 through 340-11-140, shall continue to apply in all other cases. These rules shall become effective upon filing of the adopted rule with the Secretary of State.

Procedures for Conduct of Contested Case on Denial Pursuant to OAR 340-48-035 of 401 Certification of the Proposed Salt Caves Hydroelectric Project.

340-11-142 Rules/Applicability.

- (1) The Environmental Quality Commission hereby adopts the Attorney General's Model Rules numbered OAR 137-03-001 through 137-03-093 and OAR 137-04-010 (Model Rules) for application to any contested case conducted by or for the Commission on denial pursuant to OAR 340-48-035 of 401 certification of the proposed Salt Caves Hydroelectric Project.
- (2) The Model Rules shall only apply to the contested case (or cases) described in subsection 340-11-142(1). The Commission's rules for conduct of contested cases, OAR 340-11-097 through 340-11-140, shall continue to apply in all other cases. These rules shall become effective upon filing of the adopted rule with the Secretary of State.

PROPOSED AMENDMENTS

Oregon Administrative Rules
Chapter 340, Division 11

RULES OF PRACTICE AND PROCEDURE

Definitions

340-11-005 The words and phrases used in this Division have the same meaning given them in ORS 183.310. Additional terms are defined as follows unless context requires otherwise: ~~{Unless otherwise required by context, as used in this Division.}~~

- (1) "Adoption" means the carrying of a motion by the Commission with regard to the subject matter or issues of an intended agency action.
- (2) "Agency Notice" means publication in OAR and mailing to those on the list as required by ORS 183.335(6).
- (3) "Commission" means the Environmental Quality Commission.
- (4) "Department" means the Department of Environmental Quality.
- (5) "Director" means the Director of the Department or any of his authorized delegates.
- (6) "Filing" means receipt in the office of the Director. Such filing is adequate where filing is required of any document with regard to any matter before the Commission, Department or Director, except a claim of personal liability.
- ~~{(7) "License" has the same meaning as given in ORS 183.310.~~
- ~~{(8) "Order" has the same meaning as given in ORS 183.310.~~
- ~~{(9) "Party" has the same meaning as given in ORS 183.310 and includes the Department in all contested case hearings before the Commission or Department or any of their presiding officers.~~
- ~~{(10) "Person" has the same meaning as given in ORS 183.310.~~
- ~~{(11)}~~(7) "Presiding Officer" or "Hearing Officer" means the Commission, its Chairman, the Director, or any individual designated by the Commission or the Director to preside in any contested case, public, or other hearing. Any employee of the Department who actually presided in any such hearing

is presumptively designated by the Commission or Director, such presumptive designation to be overcome only by a written statement to the contrary bearing the signature of the Commission Chairman or the Director.

~~{(12)}-"Rule"-has-the-same-meaning-as-given-in-ORS-183-310-}~~

Public Informational Hearings

340-11-007

- (1) Whenever there is required or permitted a hearing which is neither a contested case hearing nor a rule making hearing as defined in ORS Chapter 183, the Presiding Officer shall follow any applicable procedural law, including case law and rules, and take appropriate procedural steps to accomplish the purpose of the hearing. Interested persons may, on their own motion or that of the Presiding Officer, submit written briefs or oral argument to assist the Presiding Officer in ~~{his}~~ resolution of the procedural matters set forth herein.
- (2) Prior to the submission of testimony by members of the general public, the Presiding Officer shall present and offer for the record a summary of the questions the resolution of which, in the Director's preliminary opinion, will determine the matter at issue. ~~{He}~~The Presiding Officer shall also present so many of the facts relevant to the resolution of these questions as ~~{he then possesses}~~ are available and which can practicably be presented in that forum.
- (3) Following the public information hearing, or within a reasonable time after receipt of the report of the Presiding Officer, the Director or Commission shall take action upon the matter. Prior to or at the time of such action, the Commission or Director shall address separately each substantial distinct issue raised in the hearings record. This shall be in writing if taken by the Director or shall be noted in the minutes if taken by the Commission in a public forum.

Rulemaking

Notice of Rulemaking

340-11-010

- (1) Notice of intention to adopt, amend, or repeal any rule(s) shall be in compliance with applicable state and federal laws

and rules, including ORS Chapter 183 and sections (2) and (3) of this rule.

- (2) In addition to the news media on the list established pursuant to ORS 183.335(6), a copy of the notice shall be furnished to such news media as the Director may deem appropriate.
- (3) In addition to meeting the requirements of ORS 183.335(1), the notice shall contain the following:
 - (a) Where practicable and appropriate, a copy of the rule proposed to be adopted;
 - (b) Where the proposed rule is not set forth verbatim in the notice, a statement of the time, place, and manner in which a copy of the proposed rule may be obtained and a description of the subject and issues involved in sufficient detail to inform a person that his interest may be affected;
 - (c) Whether the Presiding Officer will be a hearing officer or a member of the Commission;
 - (d) The manner in which persons not planning to attend the hearing may offer for the record written testimony on the proposed rule.

Rulemaking Process

340-11-024

The rulemaking process shall be governed by the Attorney General's Model Rules, OAR 137-01-017 through 137-01-060. As used in those rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be the "Department" where context requires.

~~[Conduct of Rulemaking Hearing~~

~~340-11-025~~

- ~~(1) The hearing shall be conducted before the Commission, with the Chairman as Presiding Officer, or before any member of the Commission or other Presiding Officer.~~
- ~~(2) At the commencement of the hearing, any person wishing to be heard shall advise the Presiding Officer of his name and address and affiliation on a provided form for listing~~

witnesses, and such other information as the Presiding Officer may deem appropriate. -- Additional persons may be heard at the discretion of the Presiding Officer.

- (3) At the opening of the hearing the Presiding Officer shall state, or have stated, the purpose of the hearing.
- (4) The Presiding Officer shall thereupon describe the manner in which persons may present their views at the hearing.
- (5) The Presiding Officer shall order the presentations in such manner as he deems appropriate to the purpose of the hearing.
- (6) The Presiding Officer and any member of the Commission shall have the right to question or examine any witness making a statement at the hearing. -- The Presiding Officer may, at his discretion, permit other persons to examine witnesses.
- (7) There shall be no rebuttal or additional statements given by any witness except as requested by the Presiding Officer. -- However, when such additional statement is given, the Presiding Officer may allow an equal opportunity for reply by those whose statements were rebutted.
- (8) The hearing may be continued with recesses as determined by the Presiding Officer until all listed witnesses present and wishing to make a statement have had an opportunity to do so.
- (9) The Presiding Officer shall, where practicable and appropriate, receive all physical and documentary exhibits presented by witnesses. -- Unless otherwise required by law or rule, the exhibits shall be preserved by the Department for a period of one year, or, at the discretion of the Commission or Presiding Officer, returned to the persons who submitted them.
- (10) The Presiding Officer may, at any time during the hearing, impose reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, or immaterial matter. -- Persons with a concern distinct from those of citizens in general, and those speaking for groups, associations, or governmental entities may be accorded preferential time limitations as may be extended also to any witness who, in the judgment of the Presiding Officer, has such expertise, experience, or other relationship to the subject matter of the hearing as to render his testimony of special interest to the agency.
- (11) A verbatim oral, written, or mechanical record shall be made of all the hearing proceedings, or, in the alternative, a record in the form of minutes. -- Question and answer periods or other informalities before or after the hearing may be

~~excluded from the record. The record shall be preserved for three years, unless otherwise required by law or rule.~~

Presiding Officer's Report

340-11-030

- (1) ~~Where the hearing has been conducted before other than the full Commission, the Presiding Officer, within a reasonable time after the hearing, shall provide the Commission with a written summary of statements given and exhibits received, and a report of his observations of physical experiments, demonstrations, or exhibits. The Presiding Officer may also make recommendations to the Commission based upon the evidence presented, but the Commission is not bound by such recommendations.~~
- (2) ~~At any time subsequent to the hearing, the Commission may review the entire record of the hearing and make a decision based upon the record. Thereafter, the Presiding Officer shall be relieved of his duty to provide a report thereon.~~

Action of the Commission

~~340-11-035--Following the rulemaking hearing by the Commission, or after receipt of the report of the Presiding Officer, the Commission may adopt, amend, or repeal rules within the scope of the notice of intended action.}~~

Petition to Promulgate, Amend, or Repeal Rule: Contents of Petition, Filing of Petition

340-11-046

The filing of petitions for rulemaking and action thereon by the Commission shall be in accordance with the Attorney General's Uniform Rule of Procedure set forth in OAR 137-01-070. As used in that rule, the term "agency" generally refers to the Commission but may refer to the Department if context requires.

{340-11-047

- (1) ~~Any Person may petition the Commission requesting the adoption (promulgation), amendment, or repeal of a rule. The petition shall be in writing, signed by or on behalf of the petitioner, and shall contain a detailed statement of:~~

- (a) ~~The rule petitioner requests the Commission to promulgate, amend, or repeal. Where amendment of the existing rule is sought, the rule shall be set forth in the petition in full with matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining or bold face.~~
 - (b) ~~Ultimate facts in sufficient detail to show the reasons for adoption, amendment, or repeal of the rule.~~
 - (c) ~~All propositions of law to be asserted by petitioner.~~
 - (d) ~~Sufficient facts to show how petitioner will be affected by adoption, amendment, or repeal of the rule.~~
 - (e) ~~The name and address of petitioner and of another persons known by petitioner to have special interest in the rule sought to be adopted, amended, or repealed.~~
- (2) ~~The petition, either in typewritten or printed form, shall be deemed filed when received in correct form by the Department. The Commission may require amendments to petitions under this section but shall not refuse any reasonably understandable petition for lack of form.~~
- (3) ~~Upon receipt of the petition:~~
- (a) ~~The Department shall mail a true copy of the petition together with a copy of the applicable rules of practice to all interested persons named in the petition. Such petition shall be deemed served on the date of mailing to the last known address of the person being served.~~
 - (b) ~~The Department shall advise the petitioner that he has fifteen (15) days in which to submit written views.~~
 - (c) ~~The Department may schedule oral presentation of petitions if the petitioner makes a request therefore and the Commission desires to hear the petitioner orally.~~
 - (d) ~~The Commission shall, within 30 days after the date of submission of the properly drafted petition, either deny the petition or initiate rule-making proceedings in accordance with applicable procedures for Commission rulemaking.~~
- (4) ~~In the case of a denial of a petition to adopt, amend, or repeal a rule, the Commission shall issue an order setting forth its reasons in detail for denying the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.~~

~~(5) Where procedures set forth in this section are found to conflict with those prescribed by the Attorney General, the latter shall govern upon motion of any party other than the Commission or Department.~~

Temporary Rules

340-11-052

The Commission may adopt temporary rules and file the same, along with supportive findings, pursuant to ORS 183.335(5) and 183.355(2) and the Attorney General's Model Rule OAR 137-01-080.

Periodic Rule Review

340-11-053

Periodic review of agency rules shall be accomplished once every 3 years in accordance with ORS 183.545 and the Attorney General's Model Rule OAR 137-01-085.

Declaratory Rulings: Institution of Proceedings, Consideration of Petition and Disposition of Petition

340-11-061

The declaratory ruling process shall be governed by the Attorney General's Uniform Rules of Procedure, OAR 137-02-010 through 137-02-060. As used in those rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be the "Department" where context requires.

~~340-11-062~~

- ~~(1) Pursuant to the provisions of ORS 183.410 and the rules prescribed thereunder by the Attorney General, and upon the petition of any person, the Commission may, in its discretion, issue a declaratory ruling with respect to the applicability to any person, property, or state of facts or any rule or statute enforceable by the Department or Commission.~~
- ~~(2) The petition to institute proceedings for a declaratory ruling shall contain:~~
 - ~~(a) A detailed statement of the facts upon which petitioner requests the Commission to issue its declaratory ruling;~~

- (b) ~~The rule or statute for which petitioner seeks declaratory ruling;~~
 - (c) ~~Sufficient facts to show how petitioner will be affected by the requested declaratory ruling;~~
 - (d) ~~All propositions of law or contentions to be asserted by the petitioner;~~
 - (e) ~~The question presented for decision by the Commission;~~
 - (f) ~~The specific relief requested;~~
 - (g) ~~The name and address of petitioner and of any other person known by the petitioner to have special interest in the requested declaratory ruling.~~
- (3) ~~The petition shall be typewritten or printed and in the form provided in Appendix 1 to this rule 340-11-062. The Commission may require amendments to petitions under this rule but shall not refuse any reasonably understandable petition for lack of form.~~
- (4) ~~The petition shall be deemed filed when received by the Department.~~
- (5) ~~The Department shall, within thirty (30) days after the petition is filed, notify the petitioner of the Commission's decision not to issue a ruling or the Department shall, within the same thirty days, serve all specially interested persons in the petition by mail:~~
- (a) ~~A copy of the petition together with a copy of the Commission's rules of practice; and~~
 - (b) ~~A notice of the hearing at which the petition will be considered. This notice shall have the contents set forth in section (6) of this rule.~~
- (6) ~~The notice of hearing at which time the petition will be considered shall set forth:~~
- (a) ~~A copy of the petition requesting the declaratory ruling;~~
 - (b) ~~The time and place of hearing;~~
 - (c) ~~A statement that the Commission will conduct the hearing or a designation of the Presiding Officer who will preside at and conduct the hearing.~~

- ~~(7) The hearing shall be conducted by and shall be under the control of the Presiding Officer. The Presiding Officer may be the Chairman of the Commission, any Commissioner, the Director, or any other person designated by the Commission or its Chairman.~~
- ~~(8) At the hearing, petitioner and any other party shall have the right to present oral argument. The Presiding Officer may impose reasonable time limits on the time allowed for oral argument. Petitioner and other parties may file with the agency briefs in support of their respective positions. The Presiding Officer shall fix the time and order of filing briefs.~~
- ~~(9) In those instances where the hearing was conducted before someone other than the Commission, the Presiding Officer shall prepare an opinion in form and in content as set forth in section (11) of this rule.~~
- ~~(10) The Commission is not bound by the opinion of the Presiding Officer.~~
- ~~(11) The Commission shall issue its declaratory ruling within sixty (60) days of the close of the hearing, or, where briefs are permitted to be filed subsequent to the hearing, within sixty (60) days of the time permitted for the filing of briefs. The ruling shall be in the form of a written opinion and shall set forth:~~
- ~~(a) The facts being alleged by petitioner;~~
 - ~~(b) The statute or rule being applied to those facts;~~
 - ~~(c) The Commission's conclusions as to the applicability of the statute or rule to those facts;~~
 - ~~(d) The Commission's conclusion as to the legal effect or result of applying the statute or rule to those facts;~~
 - ~~(e) The reasons relied upon by the agency to support its conclusions.~~
- ~~(12) A declaratory ruling issued in accordance with this section is binding between the Commission, the Department, and the petitioner on the state of facts alleged, or found to exist, unless set aside by a court.~~
- ~~(13) Where procedures set forth in this section are found to conflict with those prescribed by the Attorney General, the latter shall govern upon motion by any party other than the Commission or Department.]~~

CONTESTED CASES

Service of Written Notice

340-11-097

- (1) Whenever a statute or rule requires that the Commission or Department serve a written notice or final order upon a party other than for purposes of ORS 183.335 or for the purposes of notice to members of the public in general, the notice or final order shall be personally delivered or sent by registered or certified mail.
- (2) The Commission or Department perfects service of a written notice when the notice is posted, addressed to, or personally delivered to:
 - (a) The party; or
 - (b) Any person designated by law as competent to receive service of a summons or notice for the party; or
 - (c) Following appearance of Counsel for the party, the party's counsel.
- (3) A party holding a license or permit issued by the Department or Commission or an applicant therefore, shall be conclusively presumed able to be served at the address given in his application, as it may be amended from time to time, until the expiration date of the license or permit.
- (4) Service of written notice may be proven by a certificate executed by the person effecting service.
- (5) In all cases not specifically covered by this section, a rule, or a statute, a writing to a person if mailed to said person at his last known address, is rebuttably presumed to have reached said person in a timely fashion, notwithstanding lack of certified or registered mailing.

Contested Case Proceedings Generally

340-11-098

Except as specifically provided in OAR 340-11-132, contested cases shall be governed by the Attorney General's Model Rules of Procedure, OAR 137-03-001 through 137-03-093. Contested cases generally arise when a decision of the Director or Department is appealed to the Commission. Therefore, as used in the Model

Rules, the terms "agency", "governing body", and "decision maker" generally should be interpreted to mean "Commission". The term "agency" may also be interpreted to be Department where context requires.

~~Written Notice of Opportunity for a Hearing~~

~~340-11-100~~

- ~~(1) Except as otherwise provided in ORS 183.430 and ORS 670.285, before the Commission or Department shall by order suspend, revoke, refuse to renew, or refuse to issue a license, or enter a final order in any other contested case as defined in ORS Chapter 183, it shall afford the licensee, the license applicant or other party to the contested case an opportunity for hearing after reasonable written notice.~~
- ~~(2) Written notice of opportunity for a hearing, in addition to the requirements of ORS 183.415 (2), may include:~~
- ~~(a) A statement that an answer will or will not be required if the party requests a hearing, and, if so, the consequence of failure to answer. -- A statement of the consequence of failure to answer may be satisfied by serving a copy of rule 340-11-107 upon the party;~~
 - ~~(b) A statement that the party may elect to be represented by legal counsel;~~
 - ~~(c) A statement of the party or parties who, in the contention of the Department or Commission, would have the burden of coming forward with evidence and the burden of proof in the event of a hearing.}~~

Non-Attorney Representation

340-11-102

Pursuant to the provisions of Section 3 of Chapter 833, Oregon Laws 1987, a person may be represented by an attorney or by an authorized representative in a contested case proceeding before the Commission or Department.

Answer Required: Consequences of Failure to Answer

340-11-107

- (1) Unless waived in the notice of opportunity for a hearing, and except as otherwise provided by statute or rule, a party who

has been served written notice of opportunity for a hearing shall have twenty (20) days from the date of mailing or personal delivery of the notice in which to file with the Director a written answer and application for hearing.

- (2) In the answer, the party shall admit or deny all factual matters and shall affirmatively allege any and all affirmative claims or defenses the party may have and the reasoning in support thereof. Except for good cause shown:
 - (a) Factual matters not controverted shall be presumed admitted;
 - (b) Failure to raise a claim or defense shall be presumed to be waiver of such claim or defense;
 - (c) New matters alleged in the answer shall be presumed to be denied unless admitted in subsequent pleading or stipulation by the Department or Commission; and
 - (d) Evidence shall not be taken on any issue not raised in the notice and the answer unless such issue is specifically raised by a subsequent petitioner for party status and is determined to be within the scope of the proceeding by the presiding officer.
- (3) In the absence of a timely answer, the Director on behalf of the Commission or Department may issue a default order and judgment, based upon a prima facie case made on the record, for the relief sought in the notice.

Subpoenas ~~{and-Depositions}~~

340-11-116 Subpoenas

- (1) Upon a showing of good cause and general relevance any party to a contested case shall be issued subpoenas to compel the attendance of witnesses and the production of books, records and documents.
- (2) Subpoenas may be issued by:
 - (a) A hearing officer; or
 - (b) A member of the Commission; or
 - (c) An attorney of record of the party requesting the subpoena.
- (3) Each subpoena authorized by this section shall be served

personally upon the witness by the party or any person over 18 years of age.

- (4) Witnesses who are subpoenaed, other than parties or officers or employees of the Department or Commission, shall receive the same fees and mileage as in civil actions in the circuit court.
- (5) The party requesting the subpoena shall be responsible for serving the subpoena and tendering the fees and mileage to the witness.
- (6) A person present in a hearing room before a hearing officer during the conduct of a contested case hearing may be required, by order of the hearing officer, to testify in the same manner as if he were in attendance before the hearing officer upon a subpoena.
- (7) Upon a showing of good cause a hearing officer or the Chairman of the Commission may modify or withdraw a subpoena.
- (8) Nothing in this section shall preclude informal arrangements for the production of witnesses or documents, or both.

~~Conduct of Hearing~~

~~340-11-120~~

- ~~(1) (a) Contested case hearings before the Commission shall be held under the control of the chairman as Presiding Officer, or any Commission member, or other person designated by the Commission or Director to be Presiding Officer.~~
- ~~(b) Contested case hearings before the Department shall be held under the control of the Director as Presiding Officer or other person designated by the Director to be Presiding Officer.~~
- ~~(2) The Presiding Officer may schedule and hear any preliminary matter, including a pre-hearing conference, and shall schedule the hearing on the merits. Reasonable written notice of the date, time, and place of such hearings and conferences shall be given to all parties.~~

~~Except for good cause shown, failure of any party to appear at a duly scheduled pre-hearing conference or the hearing on the merits shall be presumed to be a waiver of right to proceed any further, and, where applicable:~~

- (a) ~~A withdrawal of the answer;~~
 - (b) ~~An admission of all the facts alleged in the notice of opportunity for a hearing; and~~
 - (c) ~~A consent to the entry of a default order and judgment for the relief sought in the notice of opportunity for a hearing.~~
- (3) ~~At the discretion of the Presiding Officer, the hearing shall be conducted in the following manner:~~
- (a) ~~Statement and evidence of the party with the burden of coming forward with evidence in support of his proposed action;~~
 - (b) ~~Statement and evidence of defending party in support of his alleged position;~~
 - (c) ~~Rebuttal evidence, if any;~~
 - (d) ~~Surrebuttal evidence, if any.~~
- (4) ~~Except for good cause shown, evidence shall not be taken on any issue not raised in the notice and the answer.~~
- (5) ~~All testimony shall be taken upon oath or affirmation of the witness from whom received. The officer presiding at the hearing shall administer oaths of affirmations to witnesses.~~
- (6) ~~The following persons shall have the right to question, examine, or cross-examine any witness:~~
- (a) ~~The Presiding Officer;~~
 - (b) ~~Where the hearing is conducted before the full Commission, any member of the Commission;~~
 - (c) ~~Counsel for the Commission or the Department;~~
 - (d) ~~Where the Commission or the Department is not represented by counsel, a person designated by the Commission or the Director;~~
 - (e) ~~Any party to the contested case or such party's counsel.~~
- (7) ~~The hearing may be continued with recesses as determined by the Presiding Officer.~~
- (8) ~~The Presiding Officer may set reasonable time limits for oral~~

~~presentation and shall exclude or limit cumulative, repetitive, or immaterial matter.~~

- ~~(9) The Presiding Officer shall, where appropriate and practicable, receive all physical and documentary evidence presented by parties and witnesses. Exhibits shall be marked, and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the Department as part of the record of the proceeding. Copies of all documents offered in evidence shall be provided to all other parties, if not previously supplied.~~
- ~~(10) A verbatim oral, written, or mechanical record shall be made of all motions, evidentiary objections, rulings, and testimony.~~
- ~~(11) Upon request of the Presiding Officer or upon a party's own motion, a party may submit a pre-hearing brief, or a post-hearing brief, or both.~~

~~[The Record~~

~~340-11-121--The Presiding Officer shall certify such part of the record as defined by ORS 183.415 (7) as may be necessary for review of final orders and proposed final orders. The Commission or Director may review tape recordings of proceedings in lieu of a prepared transcript.]~~

~~[Evidentiary Rules~~

~~340-11-125~~

- ~~(1) In applying the standard of admissibility of evidence set forth in ORS 183.450, the Presiding Officer may refuse to admit hearsay evidence inadmissible in the courts of this state where he is satisfied that the declarant is reasonably available to testify and the declarant's reported statement is significant, but would not commonly be found reliable because of its lack of corroboration in the record or its lack of clarity and completeness.~~
- ~~(2) All offered evidence, not objected to, will be received by the Presiding Officer subject to his power to exclude or limit cumulative, repetitive, irrelevant, or immaterial matter.~~
- ~~(3) Evidence objected to may be received by the Presiding Officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.]~~

~~[Appeal of Hearing Officer's Final Order]~~

Alternative Procedure for Entry of a Final Order in Contested Cases Resulting from Appeal of Civil Penalty Assessments

340-11-132

In accordance with the procedures and limitations which follow, the Commission's designated Hearing Officer is authorized to enter a final order in contested cases resulting from appeal of civil penalty assessments:

- (1) Hearing Officer's Final Order: In a contested case if a majority of the members of the Commission have not heard the case or considered the record, the Hearing Officer shall prepare a written Hearing Officer's Final Order including findings of fact and conclusions of law. The original of the Hearing Officer's Final Order shall be filed with the Commission and copies shall be served upon the parties in accordance with rule 340-11-097 (regarding service of written notice).
- (2) Commencement of Appeal to the Commission:
 - (a) The Hearing Officer's Final Order shall be the final order of the Commission unless within 30 days from the date of mailing, or if not mailed then from the date of personal service, any of the parties or a member of the Commission files with the Commission and serves upon each party a Notice of Appeal. A proof of service thereof shall also be filed, but failure to file a proof of service shall not be a ground for dismissal of the Notice of Appeal.
 - (b) The timely filing and service of a Notice of Appeal is a jurisdictional requirement for the commencement of an appeal to the Commission and cannot be waived; a Notice of Appeal which is filed or served late shall not be considered and shall not affect the validity of the Hearing Officer's Final Order which shall remain in full force and effect.
 - (c) The timely filing and service of a sufficient Notice of Appeal to the Commission shall automatically stay the effect of the Hearing Officer's Final Order.
- (3) Contents of Notice of Appeal. A Notice of Appeal shall be in writing and need only state the party's or a Commissioner's intent that the Commission review the Hearing Officer's Final Order.

(4) Procedures on Appeal:

- (a) Appellant's Exceptions and Brief -- Within 30 days from the date of service or filing of his Notice of Appeal, whichever is later, the Appellant shall file with the Commission and serve upon each other party written exceptions, brief and proof of service. Such exceptions shall specify those findings and conclusions objected to and reasoning, and shall include proposed alternative findings of fact, conclusions of law, and order with specific references to those portions to the record upon which the party relies. Matters not raised before the Hearing Officer shall not be considered except when necessary to prevent manifest injustice. In any case where opposing parties timely serve and file Notices of Appeal, the first to file shall be considered to be the appellant and the opposing party the cross appellant.
- (b) Appellee's Brief -- Each party so served with exceptions and brief shall then have 30 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party an answering brief and proof of service.
- (c) Reply Brief -- Except as provided in subsection (d) of this section, each party served with an answering brief shall have 20 days from the date of service or filing, whichever is later, in which to file with the Commission and serve upon each other party a reply brief and proof of service.
- (d) Cross Appeals -- Should any party entitled to file an answering brief so elect, he may also cross appeal to the Commission the Hearing Officer's Final Order by filing with the Commission and serving upon each other party in addition to an answering brief a Notice of Cross Appeal, exceptions (described in subsection (a) of this section), a brief on cross appeal and proof of service, all within the same time allowed for an answering brief. The appellant-cross appellee shall then have 30 days in which to serve and file his reply brief, cross answering brief and proof of service. There shall be no cross reply brief without leave of the Chairman or the Hearing Officer.
- (e) Briefing on Commission Invoked Review -- Where one or more members of the Commission commence an appeal to the Commission pursuant to subsection (2)(a) of this rule, and where no party to the case has timely served and filed a Notice of Appeal, the Chairman shall promptly notify the parties of the issue that the Commission desires the parties to brief and the schedule for filing

and serving briefs. The parties shall limit their briefs to those issues. Where one or more members of the Commission have commenced an appeal to the Commission and a party has also timely commenced such a proceeding, briefing shall follow the schedule set forth in subsections (a), (b), (c), (d), and (f) of this section.

- (f) Extensions -- The Chairman or a Hearing Officer, upon request, may extend any of the time limits contained in this section. Each extension shall be made in writing and be served upon each party. Any request for an extension may be granted or denied in whole or in part.
 - (g) Failure to Prosecute -- The Commission may dismiss any appeal or cross appeal if the appellant or cross appellant fails to timely file and serve any exceptions or brief required by these rules.
 - (h) Oral Argument -- Following the expiration of the time allowed the parties to present exceptions and briefs, the Chairman may at his discretion schedule the appeal for oral argument before the Commission.
 - (i) Scope of Review -- In an appeal to the Commission of a Hearing Officer's Final Order, the Commission may, substitute its judgment for that of the Hearing Officer in making any particular finding of fact, conclusion of law, or order. As to any finding of fact made by the Hearing Officer the Commission may make an identical finding without any further consideration of the record.
 - (j) Additional Evidence -- In an appeal to the Commission of a Hearing Officer's Final Order the Commission may take additional evidence. Requests to present additional evidence shall be submitted by motion and shall be supported by a statement specifying the reason for the failure to present it at the hearing before the Hearing Officer. If the Commission grants the motion, or so decides of its own motion, it may hear the additional evidence itself or remand to a Hearing Officer upon such conditions as it deems just.
- (5) In exercising the authority to enter a final order pursuant to this rule, the Hearing Officer:
- (a) Shall give deference to the Director's determination of penalty amount where facts regarding the violation are not in dispute and no new information has been revealed in the contested case hearing regarding mitigating and aggravating circumstances.

- (b) May mitigate a penalty based upon new information in the record regarding mitigating and aggravating circumstances, but shall not mitigate the penalty below the minimum established in the schedule of Civil Penalties contained in Commission rules.
- (c) May elect to prepare proposed findings of fact and a proposed order and refer the matter to the Commission for entry of a final order pursuant to the general procedure for contested cases prescribed under OAR 340-11-098.

~~{Presiding Officer's Proposed Order in Hearing Before the Department~~

~~340-11-134~~

- ~~(1) In a contested case before the Department, the Director shall exercise powers and have duties in every respect identical to those of the Commission in contested cases before the Commission.~~
- ~~(2) Notwithstanding section (1) of this rule, the Commission may, as to any contested case over which it has final administrative jurisdiction, upon motion of its Chairman or a majority of its members, remove to the Commission any contested case before the Department at any time during the proceedings in a manner consistent with ORS Chapter 183.~~

~~{Final Orders in Contested Cases Notification~~

~~340-11-135~~

- ~~(1) Final orders in contested cases shall be in writing or stated in the record, and may be accompanied by an opinion.~~
- ~~(2) Final orders shall include the following:~~
- ~~(a) Rulings on admissibility of offered evidence if not already in the record;~~
- ~~(b) Findings of fact, including those matters which are agreed as fact, a concise statement of the underlying facts supporting the findings as to each contested issue of fact and each ultimate fact, required to support the Commission's or the Department's order;~~
- ~~(c) Conclusions of law;~~

- ~~(d) The Commission's or the Department's Order.~~
- ~~(3) The Department shall serve a copy of the final order upon every party or, if applicable, his attorney of record.]~~

Power of the Director

340-11-136

- (1) Except as provided by rule 340-12-075, the Director, on behalf of the Commission, may execute any written order which has been consented to in writing by the parties adversely affected thereby.
- (2) The Director, on behalf of the Commission, may prepare and execute written orders implementing any action taken by the Commission on any matter.
- (3) The Director, on behalf of the Commission, may prepare and execute orders upon default where:
 - (a) The adversely affected parties have been properly notified of the time and manner in which to request a hearing and have failed to file a proper, timely request for a hearing; or
 - (b) Having requested a hearing, the adversely affected party has failed to appear at the hearing or at any duly scheduled prehearing conference.
- (4) Default orders based upon failure to appear shall issue only upon the making of a prima facie case on the record.

Miscellaneous Provisions

~~[340-11-140-~~

~~GAR Chapter 340, rules 340-11-010 to 340-11-140, as amended and adopted June 25, 1976, shall take effect upon prompt filing with the Secretary of State. They shall govern all further administrative proceedings then pending before the Commission or Department except to the extent that, in the opinion of the Presiding Officer, their application in a particular action would not be feasible or would work an injustice, in which event, the procedure in former rules designated by the Presiding Officer shall apply.]~~

Procedures for Conduct of Contested Case on Order of

Environmental Quality Commission Selecting a Land Fill Disposal Site Under Authority of 1985 Oregon Laws, Chapter 679.

340-11-141 Rules/Applicability.

- (a) The Environmental Quality Commission hereby adopts the Attorney General's Model Rules numbered OAR 137-03-001 through 137-03-093 and OAR 137-04-010 (Model Rules) for application to any contested case conducted by or for the Commission on its order selecting a landfill disposal site pursuant to 1985 Oregon Laws, chapter 679.
- (b) The Model Rules shall only apply to the contested case (or cases) described in subsection 340-11-141(a). The Commission's rules for conduct of contested cases, OAR 340-11-097 through 340-11-140, shall continue to apply in all other cases. These rules shall become effective upon filing of the adopted rule with the Secretary of State.

Procedures for Conduct of Contested Case on Denial Pursuant to OAR 340-48-035 of 401 Certification of the Proposed Salt Caves Hydroelectric Project.

340-11-142 Rules/Applicability.

- (1) The Environmental Quality Commission hereby adopts the Attorney General's Model Rules numbered OAR 137-03-001 through 137-03-093 and OAR 137-04-010 (Model Rules) for application to any contested case conducted by or for the Commission on denial pursuant to OAR 340-48-035 of 401 certification of the proposed Salt Caves Hydroelectric Project.
- (2) The Model Rules shall only apply to the contested case (or cases) described in subsection 340-11-142(1). The Commission's rules for conduct of contested cases, OAR 340-11-097 through 340-11-140, shall continue to apply in all other cases. These rules shall become effective upon filing of the adopted rule with the Secretary of State.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF)
AMENDING RULES OF) RULEMAKING STATEMENTS
PRACTICE AND PROCEDURE:)
OAR CHAPTER 340, DIVISION 11)

Statutory Authority

Authority to adopt and amend rules of practice and procedure (administrative procedures) is contained in ORS Chapter 183 and ORS 468.020.

Need for Rule Amendments

Existing rules of administrative practice and procedure need to be amended to reflect requirements of the Attorney General's Uniform Rules of Procedure, and to conform to legislation passed during the 1987 legislative session. In addition, amendment is appropriate to properly reflect the discretionary policy decisions of the Environmental Quality Commission.

Principal Documents Relied Upon

Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure under the Administrative Procedures Act; March 1986.

OAR Chapter 340, Division 11;

ORS Chapter 183.

Chapter 833, Oregon Laws 1987.

Fiscal and Economic Impact

Amendment of rules of practice and procedure is not expected to have a significant fiscal or economic affect.

Adoption of the Attorney General's Uniform and Model Rules may have some benefit to persons or small businesses by standardizing procedures used in rulemaking and contested cases. However, since most people do not get involved in the rulemaking process or in a contested case hearing, the economic benefits of using standardized rules of procedure are expected to be very small.

Adoption of a rule to allow a person to appear by authorized representative at contested case hearings before the EQC may create the ability for some persons or small businesses to reduce their costs associated with a contested case hearing.

Land Use Consistency

This proposal affects administrative procedures for rulemaking, declaratory rulings and contested cases only and does not affect land use.

Department of Environmental Quality

D R A F T Public Notice

A Chance to Comment on
AMENDMENTS TO RULES OF PRACTICE AND PROCEDURE

Date Prepared: November 23, 1987

Hearing Date:

Comments Due:

**WHO IS
AFFECTED:**

Persons who wish to participate in rulemaking processes before the Environmental Quality Commission (EQC); persons who are a party to or have an interest in a contested case hearing before the EQC.

**WHAT IS
PROPOSED:**

The EQC is proposing to adopt amendments to Rules of Practice and Procedure (OAR Chapter 340, Division 11). These rules govern administrative procedures before the EQC relative to rulemaking, declaratory rulings, and contested cases.

**WHAT ARE THE
HIGHLIGHTS:**

The Attorney General's Uniform and Model Rules of Procedure will be adopted in lieu of existing EQC procedural rules for rulemaking, declaratory rulings, and contested cases. Several existing EQC rules will be maintained including rules regarding notice in rulemaking and an alternative procedure for entering a final order in contested cases involving appeals of civil penalty assessments.

A new rule is proposed to allow a person to appear in a contested case by an authorized representative pursuant to Chapter 833, Oregon Laws 1987.

**HOW TO
COMMENT:**

Copies of the proposed rule amendments can be obtained from:

Department of Environmental Quality
Attn: Receptionist -- 6th Floor
811 S. W. Sixth Avenue
Portland, Oregon 97204
Telephone:
Toll-Free Telephone: 1-800-452-4011

Written comments should be sent to the same address before _____.
Verbal comments may be given during the public hearing scheduled as follows:

(Time)
(Date)
(Room)
(Address)

**WHAT IS THE
NEXT STEP:**

After the public hearing, the Environmental Quality Commission may adopt rules identical to those proposed, modify the rules or decline to act. The Commission's deliberations will be scheduled as a part of the agenda at a regularly scheduled commission meeting as soon as practicable after the hearing.

ATTACHMENTS:

Rulemaking Statements (Need, Fiscal Impact, Land Use Consistency)

Proposed Rule Amendments



Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE: (503) 229-8026

DEC 27 1985

CERTIFIED MAIL NO. P 194 973 972

» Doug Nulf
25946 Ferguson Road
Junction City, OR 97448

Re: Notice of Assessment
of Civil Penalty
AQ-FB-85-02
Lane County

The Department's rules require any person conducting open field burning to monitor the Department's field burning schedule broadcast, to conduct the burning operation in accordance with the announced schedule, and to actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department. Pursuant to Oregon Administrative Rule (OAR) 340-26-005(1), actively extinguish means the direct application of water or other fire retardant to an open field fire.

On September 5, 1985, you open burned a field contrary to Department's announced burning schedule. Fires-out time for that day was at 4:30 p.m., yet your field continued to burn until after 6:30 p.m. Your efforts to actively extinguish the field were not adequate.

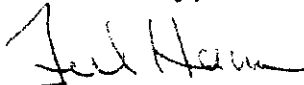
Therefore, I am sending you the enclosed Notice in which I have assessed a \$500 civil penalty against you. In determining the amount of your penalty, I have considered the mitigating and aggravating factors listed in Oregon Administrative Rule 340-12-045.

The penalty is due and payable. Payment should be mailed to the address on this letterhead. Appeal procedures are outlined within Paragraph VII of the enclosed Notice. If you fail to either pay the penalty or appeal the action within twenty (20) days, a Default Order and Judgment will be entered against you.

I encourage you to comply with the field burning rules in the future and look forward to your cooperation. However, if a similar violation does occur, it may well result in the assessment of a larger civil penalty. The civil penalty schedule provides for penalties up to \$10,000 for each violation.

If you have any questions, please contact Van Kollias of the Department's Enforcement Section in Portland, toll-free at 1-800-452-4011.

Sincerely,


Fred Hansen
Director

VAK:b
GB5309.L

Enclosure

cc: Field Burning Program
Air Quality Division
Oregon Department of Justice
Environmental Protection Agency

F

1 IV

2 The air contamination source resulting from the field burning activity
3 described in Paragraph III would normally not be in existence for five
4 days.

5 V

6 Pursuant to the civil penalty schedule contained in OAR
7 340-26-025(2)(b) and (d), the Director hereby assesses upon Respondent a
8 civil penalty of \$500 for the violation cited in Paragraph III. That
9 violation involved one or more aggravating factors which warrant the
10 assessment of a civil penalty larger than the minimum penalty set forth in
11 the civil penalty schedule. The mitigating and aggravating factors
12 considered by the Director in establishing the amount of the penalty are
13 attached hereto and incorporated herein by this reference.

14 VI

15 The penalty is due and payable immediately upon receipt of this
16 notice. Respondent's check or money order in the amount of \$500 should
17 be made payable to "State Treasurer, State of Oregon" and should be sent to
18 the Director of the Department of Environmental Quality.

19 VIII

20 Respondent has the right, if Respondent so requests, to have a formal
21 contested case hearing before the Environmental Quality Commission or its
22 hearing officer regarding the matters set out above pursuant to ORS Chapter
23 183, ORS 468.135(2) and (3), and OAR Chapter 340, Division 11 at which
24 time Respondent may be represented by an attorney and subpoena and
25 cross-examine witnesses. **That request must be made in writing to the**
26 **Director, must be received by the Director within twenty (20) days from**

1 the date of mailing of this notice (or if not mailed, the date of personal
2 service), and must be accompanied by a written "Answer" to the charges
3 contained in this notice. In the written "Answer," Respondent shall
4 admit or deny each allegation of fact contained in this notice and shall
5 affirmatively allege any and all affirmative claims or defenses to the
6 assessment of this civil penalty that Respondent may have and the reasoning
7 in support thereof. Except for good cause shown:

8 A. Factual matters not controverted shall be presumed admitted;

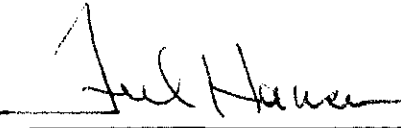
9 B. Failure to raise a claim or defense shall be presumed to be a
10 waiver of such claim or defense;

11 C. Evidence shall not be taken on any issue not raised in the notice
12 and the "Answer."

13 If Respondent fails to file a timely "Answer" or request for hearing
14 or fails to appear at a scheduled hearing, the Director on behalf of the
15 Environmental Quality Commission may issue a default order and judgment,
16 based upon a prima facie case made on the record, for the relief sought
17 in this notice. Following receipt of a request for hearing and an
18 "Answer," Respondent will be notified of the date, time and place of
19 the hearing.

20
21 **DEC 27 1985**

22 _____
Date

23 

Fred Hansen, Director
Department of Environmental Quality

24
25 Certified Mail P 194 973 972
26

CIVIL PENALTY: MITIGATING AND AGGRAVATING FACTORS

(OAR 340-12-045(1))

RESPONDENT: Doug Nulf

COUNTY: Lane

CASE NUMBER: AQ-FB-85-02

TYPE OF VIOLATION: Failure to actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department and burning contrary to Department's announced burning schedule.

PENALTY LIMITS:	<u>Minimum</u>	<u>Maximum</u>
Burning contrary	\$ 50	\$10,000
Failure to actively extinguish	\$300	\$10,000

(each violation or day of violation)

1. Prior violations:

Department sent Respondent a warning letter on December 17, 1984 for conducting late open field burning on September 2, 1984.

2. History of Respondent in taking all feasible steps or procedures necessary or appropriate to correct any violation:

Respondent claims that at the 4:30 p.m. fires-out time on 9-5-85, he used up the remaining water in his 300-gallon water tank and then used sacks in an attempt to extinguish the fire.

3. The economic and financial condition of the Respondent:

Unknown - not considered.

4. The gravity and magnitude of the violation:

Department's inspector arrived at the field at 5:45 p.m. He saw no one at the field although Respondent later said he was on the other side of the field at that time. The field was about 50% burned, burning slowly and producing heavy amounts of smoke. It was lightly raining. The field was still burning at 6:30 p.m., 2 hours late.

5. Whether the violation was repeated or continuous:

Single event.

6. Whether a cause of the violation was an unavoidable accident, or negligence or an intentional act of the Respondent:

Negligence.

7. The opportunity and degree of difficulty to correct the violation:

The amount of water Respondent applied to the field at fires-out time was insufficient to extinguish all flames and major smoke sources. Respondent could have had much more water on hand or called the fire department for assistance or promptly refilled his water tank and continued fire extinguishing efforts.

8. Respondent's cooperativeness and efforts to correct the violation:

Respondent said he made efforts to extinguish the fire as stated in item 2 above. Respondent also said he left the field at 6:30 p.m. to check on his crew's refilling of the tank and to call the permit agent to inform her of the late fire. When he returned to the field, the fire was almost out from the rain. Respondent said he finished extinguishing the fire from the refilled water tank. Respondent's efforts to correct the violations were inadequate. Respondent could have had more water on hand. It should not have taken Respondent almost 2 hours to refill the 300-gallon tank. Respondent also could have called for fire department assistance.

9. The cost to the Department of investigation and correction of the violation prior to the time the Department receives Respondent's answer to the written notice of assessment of civil penalty:

20 staff-hours, estimated.

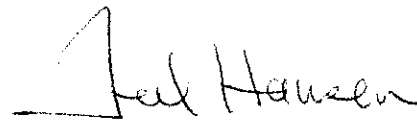
10. Any other relevant factor:

None.

I have considered the above factors in establishing the amount of Respondent's civil penalty. The major aggravating factors were the lateness of this fire and Respondent's prior violation. A minor mitigating factor was that Respondent ran out of water while attempting to extinguish the field.

DEC 27 1985

Date



Fred Hansen
Director

EOC
Hearing Section

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

RECEIVED
JAN 08 1986

Dear Sirs: JAN 10 1986

OFFICE OF THE DIRECTOR

I request a hearing regarding the fine (penalty). I don't feel I was negligent for fire being passed time out, because we were allowed to burn on a day that turned out to be not permissible to burn. If it hadn't been for the rain that followed after lighting the fire would have been all out by 4:30^{pm}. NO problem. We fought the fire a little over a hour with our water-tank until we ran out of water after 5:30, which we started using burlap sacks. It only takes 1/2 hour to refill water tank, your letter sent to me was wrong. We didn't start fighting the fire until nearly 4:30 because we didn't know if fire would be out by 4:30 or not. After we realized that fire would not be out by 4:30, we debated about calling fire department, but knowing how long it takes fire department to come out from J.C. We knew that the Fire Department would not have gotten fire out before 6:00 pm. So we thought we could put fire out within that

(2)
time which we almost did. The fire was not out at 6:00 pm, but before 6:30 pm. We had all the equipment necessary or required by the D.E.Q. that we had for the past 20 years & we used this equipment to the best of our ability to put the fire ^{out} in the required time. I feel the D.E.Q. made very poor judgement in letting me burn on a day that was going to start raining shortly after lighting a 45 acre field. Also this was a fescue field which didn't help matters at all either, because of the green regrowth. Also Marney said this might be the last chance I had to burn!

Thanks

Gary Nulf

P.S. The one-inch of rainfall in July didn't help at all in doing a good fast job at burning time.

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 DEPARTMENT OF ENVIRONMENTAL QUALITY)
4 OF THE STATE OF OREGON,)
5 Department,)
6 v.)
7 DOUG NULF,)
8 Respondent.)

9 HEARINGS OFFICER'S
10 FINDINGS OF FACT,
11 CONCLUSIONS OF LAW AND
12 FINAL ORDER
13 NO. 01-AQ-FB-85-02
14 LANE COUNTY

8 BACKGROUND

9 Doug Nulf has appealed from a Notice of Civil Penalty issued by the
10 Department of Environmental Quality (DEQ). The notice alleged violation
11 of DEQ's open field burning rules, OAR 340-26-010(4) and (6), by late
12 burning and by failing to actively extinguish all flames and major smoke
13 sources when burning was prohibited. DEQ levied a single \$500 civil
14 penalty saying there were aggravating factors.

15 A hearing was conducted on May 5, 1986 in Salem, Oregon. DEQ was
16 represented by Arnold Silver, Assistant Attorney General. Nulf provided
17 his own testimony.

18 On August 1, 1986, the hearings officer issued a Draft Order,¹ and
19 asked DEQ whether, on the basis on the draft findings and conclusions,
20 DEQ wished to reconsider the penalty amount and prepare a new penalty
21 analysis before a final order was issued. On November 24, 1986, the
22 Director of DEQ informed the hearings officer as follows:

23 I have reviewed the new information which was presented
24 during the Nulf hearing. Based upon the new evidence
25 regarding acreage burned after fires-out time, I agree to
26 reduce the penalty to the minimum of \$300.00.

¹The Draft Order contained Findings of Fact identical to those set out below
and Conclusions of Law identical to Conclusions of Law 1 - 3 set out below.

1 FINDINGS OF FACT

2 1. In March, 1985 Nulf registered a 57 acre perennial grass seed
3 field (the field) for open field burning eligibility. The field is in
4 the Willamette Valley, Oregon, as defined in agency rules.

5 2. At approximately 3:15 p.m. on September 5, 1985, Nulf was
6 authorized to burn the field. The announced fires-out time was 4:30 p.m.

7 3. Assisted by a crew of three, Nulf lighted the field. Ordinarily,
8 the field can be burned in an hour. However, on this day it began
9 to rain shortly after the field was lighted and the field did not burn
10 quickly. Shortly before 4:30 p.m., Nulf realized that the fire would not
11 be out in time and he began to extinguish the fire using first a 300 gallon
12 water tank he had at the field. When this water source was depleted his
13 crew made some effort to smother the fire using burlap sacks. Nulf's
14 father refilled the tank.

15 4. Concerned about his responsibility, Nulf called the field burning
16 clerk for advice. She advised him to continue to put the fire out.

17 Nulf debated whether to call the fire department but concluded that
18 his own efforts would be as fast and effective as those of the volunteer
19 fire department.

20 5. DEQ's field inspector photographed a portion of the field at
21 5:50 p.m. At that time, there were flames in the field. The water tank
22 is visible in one photograph. The tank was not in use.

23 6. The fire was out by 6:15 p.m.

24 7. DEQ did not prove that Nulf conducted late open field burning
25 on a prior occasion.

26 ///

1 8. From 1980 through 1984 Nulf was employed as a mill-worker. His
2 farming losses during those years exceeded his wages. His net loss in
3 1980 and 1981 was approximately \$2,500. In 1982 and 1983 it was
4 approximately \$6,000. In 1984 his wages were slightly more than his
5 farming loss. Nulf does have assets of approximately \$70,000,
6 significantly composed of farm equipment, the tools of his trade.

7 9. Late burning occurred on approximately 10 percent of the field.

8 10. Nulf was not negligent in conducting the burning and did not
9 act unreasonably in deciding not to seek fire department assistance.

10 CONCLUSIONS OF LAW

11 1. The Commission has jurisdiction.

12 2. Nulf violated OAR 340-26-010(4) by allowing his field to burn
13 past the announced burning schedule. Nulf violated OAR 340-26-010(6) by
14 failing to actively extinguish all flames and major smoke sources after
15 prohibition conditions were imposed.

16 3. The hearing record developed information about Nulf's economic
17 and financial condition that was not available to the DEQ at the time the
18 penalty was assessed. The hearing record did not establish that
19 Nulf had committed a prior violation as believed by DEQ at the time
20 the penalty in this case was assessed. The hearing record did not
21 establish that 50 percent of the field was still burning after fires-out
22 time as believed by the DEQ when the penalty in this case was assessed. The
23 hearing record did not establish that the violations were the result of
24 negligence.

25 ///

26 ///

3 - HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER
HR1337

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

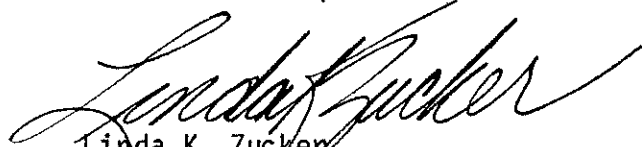
DEPARTMENT OF ENVIRONMENTAL QUALITY,)	
)	
Department,)	
)	
v.	)	FINAL ORDER AND JUDGMENT
	)	CASE NO. 01-AQ-FB-85-02
DOUG NULF,	)	LANE COUNTY
)	
Respondent.)	

The Commission, through its hearings officer, orders that Doug Nulf is liable to the State of Oregon in the sum of \$300.00 and that the state have judgment for and recover that amount pursuant to a civil penalty assessment on December 27, 1985.

Review of this order is by appeal to the Environmental Quality Commission pursuant to OAR 340-11-132. A request for review must be filed within 30 days of the date of this order.

Dated this 3rd day of December, 1986.

ENVIRONMENTAL QUALITY COMMISSION


Linda K. Zucker
Hearings Officer

95-81-21

Sean Linda,

I appeal, the decision on the basis that the water tank in the picture was being filled at that time it was taken so therefore it was not in use, I feel it was not negligent.

Thomas

Strong Muff

OCT 13 1987

Dear D.E.Q

I still would like for you to hear my appeal on the grounds that the picture of my water tank sitting idle was because it was being filled with water at that time. The time on the back of the picture will correspond with my verbal testimony. Also I did everything humanly possible to extinguish fire. I was not found negligent, and I really feel I should not be fined. I've had a very hard time making it financially, showing a loss every year for the past 15 years, ~~except~~ except 2 of those years. Please give me a break.

I respect the D.E.Q's laws and regulations + I carry them out to the best of my ability. The rain I had during the fire just did me in, I was also burning fecue which didn't help either. I've had very little trouble in the past complying with D.E.Q, and I don't expect any in the future. Your having my mercy in this matter would be greatly appreciated.

Sincerely
Doug Huff

1 and manure were present on the property. The dairy does not have a permit
2 to discharge wastewater into state waters.

3 2. On March 4, 1986, DEQ staff went to the dairy to investigate
4 a water pollution complaint. Denied access to the property, the
5 investigators took three off-site samples. The first was from a drainage
6 ditch near the silage liquor lagoon. The discharge here was green and
7 slimy and smelled like silage liquor, the leachate from fodder fed to
8 livestock. The second sample was taken from a ditch at a point
9 approximately 1/3 to 1/2 mile from the dairy. The ditch was slimy and
10 the water at this site was chocolate colored and smelled like cow manure.
11 The third sample was taken approximately 100 yards from the property.
12 This site also smelled of cow manure, was discolored and had marked slime
13 growth.

14 3. The water courses at the three sample points eventually reach
15 Salt Creek. The ditches and Salt Creek are state waters.

16 4. The samples were analyzed at DEQ's laboratory. The results are
17 as reported in Exhibits 6 and 7 which are attached and incorporated in
18 these findings.

19 5. Test results of Sample 1 are consistent with water having a high
20 content of silage material. As silage liquor decomposes in water, it
21 depletes the water's oxygen content. Introduction of silage liquor into
22 water increases the nutrient content of the water. Nutrients encourage
23 algae and bacteria growth. Depletion of oxygen and increase in nutrient
24 content to the levels identified in Sample 1 make the water harmful to
25 aquatic life; that is, polluted.

26 6. Test results of Samples 2 and 3 show the presence of extremely

1 high quantities of fecal coliform, bacteria which originate in the
2 intestines of warm blooded animals, and which indicate the presence of
3 fecal material in the water. The presence of fecal coliform in water at
4 the levels identified in Samples 2 and 3 tends to render the water
5 detrimental to public health and harmful to aquatic life; that is,
6 polluted. .

7 7. The configuration of the dairy property is such that surface water
8 from it flows into the surrounding ditches.

9 On March 4, 1986 surface water contaminated by manure liquor flowed
10 from the dairy property into a drainage ditch which empties into Salt
11 Creek. On March 4, 1986 silage liquor flowed from the dairy silage liquor
12 collection pond's emergency overflow pipe into an open agricultural
13 drainage ditch which empties into Salt Creek.

14 8. Agricultural tiles deflect water from neighboring property and
15 from the dairy property into the surrounding ditches which feed into Salt
16 Creek. While neighboring property is, then, a source of creek water, it
17 is not found to be a source of any significant contamination or pollution.
18 At most, a few head of livestock are maintained on neighboring land. The
19 scale of the measured contamination was too great to have been caused by
20 contamination associated with a few head of domestic livestock or by
21 wildlife.

22 9. A penalty was assessed against Roy Vandervelde for an unpermitted
23 March 14, 1984 discharge of silage and manure wastewater which polluted
24 public waters. The penalty was appealed to the Environmental Quality
25 Commission and affirmed by hearings officer's order. Further appeal was
26 dismissed as not timely.

1 10. Since the assessment described above, Roy Vandervelde has
2 spent \$40,000 to construct a lagoon and collection pond for storage and
3 treatment of animal waste and silage liquor prior to on-site use of these
4 wastes. However, the facilities have not been operated with reasonable
5 effort to avoid waste discharge. The case record shows incomplete
6 construction and misuse of the facility, neither promptly addressed by
7 dairy management. This failure may have reflected the dairy management's
8 view that lagoons and ponds were costly but ineffective dairy facilities.

9 11. The case record does not support a finding that the violations
10 were minor compared to other farming and business practice in Oregon.

11 12. DEQ failed to provide Vandervelde with a sample analysis report
12 as requested in time for Vandervelde to obtain valid sample analyses
13 independently. The failure appears to have been the result of a
14 misunderstanding.

15 CONCLUSIONS OF LAW

16 1. The Environmental Quality Commission has jurisdiction.

17 2. On March 4, 1986 Roy Vandervelde caused pollution of state waters
18 by permitting silage liquor to discharge from his property into state
19 waters in violation of ORS 468.720(1) and OAR 340-51-020(1).

20 3. On March 4, 1986 Roy Vandervelde caused pollution of state waters
21 by permitting manure liquor to discharge from his property into state
22 waters in violation of ORS 468.720(1) and OAR 340-51-020(1).

23 4. On March 4, 1986 Roy Vandervelde discharged waste from his dairy
24 operation into state waters without a permit in violation of ORS 468.740
25 and OAR 340-45-015(1)(a).

26 5. Penalties greater than the minimum scheduled for the proved

1 violations are supported by aggravating factors which include: Prior
2 violation of the statutes and regulations violated in this case; failure
3 to take all feasible steps or procedures necessary or appropriate to
4 correct the violation (although a costly pollution control facility was
5 installed); and the gravity and magnitude of the violation.* The penalties
6 assessed are within the range of authorized discretion. OAR 340-12-045(2);
7 340-12-055(2)(b) (cited by DEQ in error as OAR 340-12-055(1)(c)).

8 6. Roy Vandervelde is liable for civil penalties of \$2,500, \$2,500
9 and \$500, or a total of \$5,500.

10
11 Dated this _____ day of _____, 19____.

12
13
14 Linda K. Zucker
Hearings Officer

15
16 NOTICE: If you disagree with this Order you may request review by the
17 Environmental Quality Commission. Your request must be in writing
18 directed to the Environmental Quality Commission, 811 SW 6th
19 Avenue Portland, Oregon 97204. The request must be received by
20 the Environmental Quality Commission within 30 days of the date
21 of mailing or personal service of Order. If you do not file a
22 request for review within the time allowed, this order will become
23 final and thereafter shall not be subject to review by any agency
24 or court.

25 A full statement of what you must do to appeal a hearings
26 officer's order is in Oregon Administrative Rule (OAR)
340-11-132. That rule is enclosed.

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* Vandervelde has not suggested the existence of a specific remedy for DEQ's failure to provide him timely sample analysis results. Vandervelde was aware of the investigation and could have taken samples independently or pursued his request more attentively. The issue has not been considered in evaluating the penalty.

EGAL

DEPARTMENT OF ENVIRONMENTAL QUALITY
Request for Analysis

EXHIBIT
#6

Ex 6

Laboratory No. 86-0150

Location/Site: VanderVelde Dairy, Amity Date: 3-4-86

Date Received Lab: MAR 04 1986 1250

Collected By: Tom Fiolter Program: wg 3256D

Date Reported: _____

Purpose: Document runoff from Dairy of waste into state water. Report Data To: _____

Comments: _____

lab prepared

Note: (P) unpreserved; Nutrient (R) add H₂SO₄ in field; Metals (Tm) HNO₃ added in lab--don't rinse; Organic(X) mason jar

Item No.	Sampling Point Description (include time)	*Sample Container (bottle) #'s				Test Required
		Nutrients Basic	DO BOD	Metals Organic	Fecal Coliform	
1	9:20 AM Drainage Ditch of Bottom of VanderVelde Dairy along Loncefield Rd	S195	0783		128	pH, Bod, NO ₃ , NH ₃ , TP04, TOC, Fecal Coliform
2	9:40 AM Drainage Ditch at culvert on Amity at Belleme highway by Rt. 1 Box H. - ICFs	S196	0731		028	" "
3	10:02 AM Drainage Ditch on Hughes property approximately 1/3 mile SE of Dairy Buildings. ICFs	S208	0374		161	" "
4						
5						
6						

Laboratory comments would like results by 3-14-86

rec'd 3/19/87

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY)
OF THE STATE OF OREGON,)

DEPARTMENT,)

Case No. 05-WQ-WVR-86-39

v.)

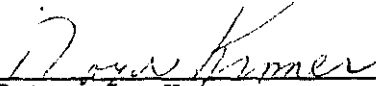
NOTICE OF APPEAL AND
REQUEST FOR REVIEW

ROY VANDERVELDE,)

RESPONDENT.)

Respondent Roy Vandervelde hereby gives notice of appeal from the decision and determination of the hearings officer of the Department of Environmental Quality by Linda Zuecker on or about the 19th day of February 1987 and further requests review of the hearing officer's final order by the Department of Environmental Quality.

Dated: March 19, 1987.



Roger L. Kromer
Attorney for Respondent

I hereby certify that I served the Notice of Appeal and Request for Review on the 19th day of March 1987, by hand delivering the original notice in a sealed envelope and addressed to the Department of Environmental Quality at 811 S.W. Sixth Avenue, Portland, Oregon, and by hand delivering a true copy sealed in an
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1 envelope and addressed to Linda Zuecker, Hearings Officer,
2 Department of Environmental Quality, 811 S.W. Sixth Avenue,
3 Portland, Oregon and by mailing a true copy to the Department
4 of Justice, 500 S. W. Yamhill, Portland, Oregon 97204.

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7 Roger L. Kromer
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13 **CERTIFIED A TRUE COPY**
14 **ROGER L. KROMER**
15 BY _____
16 **ATTORNEY FOR** _____
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rec'd 3/19/87

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY)
OF THE STATE OF OREGON,)

DEPARTMENT,)

Case No. 05-WQ-WVR-86-39

v.)

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Attorney for Respondent

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CERTIFIED A TRUE COPY
ROGER L. KROMER
BY _____
ATTORNEY FOR _____

0-25/87

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

3	DEPARTMENT OF ENVIRONMENTAL QUALITY)	
4	OF THE STATE OF OREGON,)	
)	
5	Department,)	No. 05-WQ-WVR-86-39
)	
6	v.)	RESPONDENT'S APPELLATE
	)	BRIEF
7	ROY VANDERVELDE,)	
)	
8	Respondent.)	

Roy Vandervelde hereby appeals from civil penalties assessed by DEQ and takes exception to the Hearing Officer's Findings of Fact, Conclusions of Law and Final Order dated February 19, 1987. The grounds for the appeal are as follows:

1.

The Department's exhibits numbers 6 and 7 should not have been allowed into evidence. There was no proper foundation set for the admission of these documents. The documents offered were photocopies. There was no evidence that the documents introduced were true and correct copies of the originals.

These documents were offered to show that pollution had occurred. No testimony was offered to establish that the tests that allegedly were conducted by the DEQ were done in a proper manner or according to established standards. That is, there was no showing that these exhibits are showing that proper tests were conducted and that the exhibits were a compilation of the result of those tests.

Further, being that this information is hearsay, respondent

1 did not have an opportunity to cross examine to verify whether
2 the tests were conducted properly or the results shown by the
3 documents were an accurate reflection of those tests. In short,
4 introduction of Exhibits 6 and 7 without a foundation was the
5 offer of hearsay in its most blatant form. Oregon Rule of Evi-
6 dence 801.

7 The Department contends that the exhibits in question should
8 be admitted under an exception of the hearsay rule that these
9 documents were public records. There was no offer of evidence at
10 the hearing that the documents were being offered as public
11 records. There was no evidence that Exhibits 6 and 7 were docu-
12 ments that were kept or compiled by the Department in the ordi-
13 nary course of its regularly conducted business or activity.
14 Without some foundation, as to the maintenance or custody of
15 these documents, their purpose and use, procedurally, it is
16 impossible to establish that they are public records. For these
17 reasons, there was insufficient evidence introduced to find
18 Vandervelde guilty of the three claims of pollution as alleged by
19 the Department.

20 2.

21 Even if it had been established that a pollution had oc-
22 curred at the three test sites conducted by the DEQ, there is no
23 evidence that any of it, if at all, ever reached or was likely to
24 reach or escape into the waters of the state. First the tests
25 were taken adjacent to the respondent's property. The sources of
26 the tests were ditches adjacent to the Vandervelde Dairy. There

1 was no evidence introduced to show or establish that any pollu-
2 tion reached any waterway of the state such as creeks or rivers.
3 No tests were taken from any other sites which would establish
4 that this had occurred. Mr. Fisher, the agent of the DEQ who
5 took the tests, testified that no additional tests were taken at
6 any other sources other than adjacent to the Vandervelde Dairy.
7 Therefore, there is no evidence in the record that any alleged
8 pollutants in fact reached Salt Creek or any other waterway of
9 the state. An opposite conclusion could logically be reached that
10 if there had been any pollutants discharged into the ditches that
11 any such pollutants could have dissipated through normal drainage
12 into the ground or naturally filtered out before reaching any
13 state waterway.

14 There is no clear definition as to what is meant by "waters
15 of the state." ORS 468.720 does not establish what that means.
16 It would seem that that means more than a ditch.

17 3.

18 In the event either of respondent's exceptions to the Hear-
19 ing Officer's Final Order are denied, respondent offers by way of
20 mitigation of the penalty the following factors:

21 A. There was no evidence that respondent intentionally
22 allowed any pollutants to drain into or enter any waterways of
23 the State of Oregon.

24 B. There is a substantial question based on the evidence in
25 the record as to the source of the waters running into the ditch
26 from which tests two and three were taken near Bridewell Road and

1 considering the location of the tests, a reasonable conclusion
2 could be reached that if there was any pollution in that ditch,
3 that the source of the pollution should be considered suspect.
4 Also, test site No. 3 was a substantial distance from the Vander-
5 velde Dairy. The boundary of the Vandervelde Dairy was several
6 hundred yards away and the dairy buildings were at least 2/3 of a
7 mile away from that test site. In any event, the source of the
8 water entering into the ditch near the test site was not certain
9 as the evidence used at the hearing indicates.

10 C. There was evidence that the storage lagoon that was
11 constructed on the Vandervelde Dairy was faulty and unusable.
12 Mr. Boatwright, the engineer, testified that he made final in-
13 spection in January, 1986, and did not return to recheck the
14 storage lagoon until October, when called there because of com-
15 plaints by the respondent. His testimony was that was a specific
16 leakage found upon his inspection in October and had the lagoon
17 been used to any considerable extent, there would have been
18 leakage and the leakage would have increased proportionately by
19 the amount of the usage until the leakage problem had been cor-
20 rected. There was also testimony that respondent had attempted
21 on numerous occasions to contact the engineer to inspect the
22 lagoon to determine the cause of the leakage, which was suspected
23 to have been caused by a tile drainage system not discovered by
24 the engineer in the construction process. There was justifica-
25 tion by the respondent in not using the lagoon to any extent
26 because of this problem. Otherwise, Mr. Boatwright testified

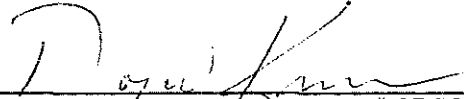
1 that the amount of leakage that he discovered was occurring upon
2 his inspection was an unacceptable amount for a water storage
3 facility of its kind.

4 D. To the knowledge of the respondent, there have been no
5 subsequent complaints of any water pollution occurring at or near
6 the Vandervelde Dairy which could be attributed to the respon-
7 dent.

8 CONCLUSION

9 The Hearing Officer's decision and order should be reversed
10 on the grounds that there is insufficient evidence to establish
11 that a pollution occurred or in the alternative that any pollu-
12 tion resulted in pollution reaching or would likely reach a
13 waterway of the State of Oregon.

14 Respectfully Submitted,

15 
16 _____
17 Roger L. (Kromer) OSB #67097
18 Attorney for Respondent

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CERTIFICATE - TRUE COPY

I hereby certify that the foregoing copy of Respondent's Appellate Brief is a complete and exact copy of the original.

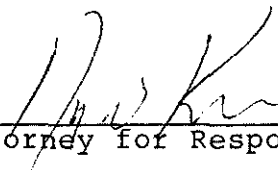
Dated June 24, 1987.

Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Respondent's Appellate Brief on Department of Justice, attorney of record for Environmental Quality Commission, by mailing to said attorney(s) a true copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at said attorney(s) last known address, to-wit: Department of Justice, 500 Pacific Building, 520 SW Yamhill, Portland, Oregon 97204 and deposited in the post office at Portland, Oregon, on said day.

Dated June 24, 1987.



Attorney for Respondent

8/14/87

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

3	DEPARTMENT OF ENVIRONMENTAL)	
	QUALITY OF THE STATE OF OREGON,)	
4		)	No. 05-WQ-WVR-86-39
	Department,)	
5		)	MOTION TO DISMISS APPEAL
	v.	)	AND IN THE ALTERNATIVE
6		)	DEPARTMENT'S (APPELLEE)
	ROY VANDERVELDE,	)	RESPONSE BRIEF
7)	
	Respondent.)	

The Department of Environmental Quality (DEQ) moves the Environmental Quality Commission (EQC) to dismiss Respondent's appeal for failure to comply with OAR 340-11-132(4)(a) and in the alternative files its Brief in Response to Respondent's Appellate Brief.

MOTION TO DISMISS APPEAL

OAR 340-11-132(4)(a) requires the Appellant (Respondent) to specify those Findings and Conclusions of the Order objected to with reasoning, and to include proposed alternative Findings of Fact, Conclusions of Law and Order with specific references to those portions to the record upon which Appellant relies. Appellant has failed to comply with this rule and his appeal should be dismissed.

Rather than bifurcate this process and prolong the appeal, the Department also submits its Appellate Brief in the event this Motion is denied.

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DEPARTMENT OF JUSTICE
500 PACIFIC BLDG., 520 S.W. YAMHILL
PORTLAND, OREGON 97204-1381
TELEPHONE 238-5725

1 DEPARTMENT MEMORANDUM - BRIEF

2 1.

3 Respondent summarizes his first ground of appeal as follows:

4 "In short introduction of Exhibits 6 and 7
5 without a foundation was the offer of hearsay
6 in its most blatant form. Oregon Rule of
7 Evidence 801."

8 (Brief, Lines 3-6, p. 2)

9 Respondent's major ground of appeal is not well taken.
10 ORS 40.015 (Rule 101) describes the applicability of the Oregon
11 Evidence Code. Subsection (1) states in part:

12 "The Oregon Evidence Code applies to
13 all courts in this state * * * "

14 (Emphasis added.)

15 This proceeding, is not a proceeding in the courts in this
16 state, and Respondent's citation to Rule 801 does not apply to
17 this proceeding.

18 The statute that is applicable to this proceeding is
19 ORS 183.450. Subsection (1) of this statute provides that
20 "irrelevant immaterial or unduly repetitious evidence shall be
21 excluded * * * .". Respondent does not claim Exhibits 6 or 7
22 fall into this category. Subsection (1) then goes on to state in
23 part:

24 " * * * all other evidence of a type commonly
25 relied upon by reasonably prudent persons in conduct
26 of their serious affairs shall be admissible."

27 Exhibits 6 and 7 were state governmental documents. The
28 documents were identified by department witnesses to be state

1 governmental records of test results conducted by a state govern-
2 mental laboratory. Such documentary evidence is of a type com-
3 monly relied upon by reasonably prudent persons in conduct of
4 their serious affairs.

5 The admission of reports in administrative hearings does
6 not, by their hearsay nature, constitute a denial of due process.
7 Felling v. Motor Vehicles Division, 30 Or App 479 (1977).
8 Hearsay evidence may be used to support an agency's action.
9 Higley v. Edwards, 67 Or App 488, 491 (1984).

10 Thus, in Felling a written police report without the police
11 officer being present to testify was the sole evidence relied
12 upon at the hearing to suspend an operator's license. The
13 suspension was affirmed by the court citing ORS 183.450(1).

14 While it is Respondent's counsel's view that it is
15 "ridiculous" to suggest he could cross-examine the testers by way
16 of subpoena, (Page 172 Tran), the Court of Appeals disagrees with
17 him.

18 "In this proceeding * * * the petitioner
19 had available the power to request an agency
20 subpoena if the presence of a witness was desired.
21 ORS 183.440."

22 Felling v. MVD, p. 481-482, supra.

23 The Court of Appeals followed the logic of the United States
24 Supreme Court in Richardson v. Perales, 402 US 389 (1971). The
25 Richardson court said:

26 / / /

/ / /

1 "Although the claimant complains of the lack
2 of opportunity to cross-examine the reporting phy-
3 sicians, he did not take the advantage of the
4 opportunity afforded him * * * to request sub-
5 poenas for the physicians * * * ."

6 402 US at 404-405.

7 Finally, ORS '183.460(1) applicable to administrative hearings
8 in Oregon, provides that "any part of the evidence may be
9 received in written form." ORS 183.460(2) further provides
10 "Documentary evidence may be received in the form of copies or
11 experts or by incorporation by reference." Nothing in these
12 statutes requires exhibits to be certified, notarized or to carry
13 a seal. While a certification may be required for a court pro-
14 ceeding, certifications are generally desired by lawyers in an
15 administrative hearing only because lawyers traditionally feel
16 "comfortable" when a document has a certification.

17 Finally, even if the Oregon Evidence Code was applicable to
18 Respondent's contention, the Code would defeat his argument.
19 First, the exhibits in question were records of a regularly con-
20 ducted activity, as shown by department witnesses. Rule 803,
21 ORS 40.460(6). "Activity and business" includes public activity.
22 State v. Roisland, 1 Or App 68 (1969) (Jail). Second, the exhi-
23 bits were "public records" under ORS 192.410(4). They were
24 authenticated and identified by department staff. Rule 901,
25 ORS 40.505(1), (2)(a),(g). A certification or seal is not
26 required under this rule.

27 / / /

28 / / /

Respondent next contends there is no evidence that pollution reached the waters of the state because the tests were taken in ditches adjacent to Respondent's dairy. Respondent further contends no evidence was introduced to show or establish any pollution reached any waterways of the state. The problem with this contention is that it overlooks the fact that ditches are the waters of the state. ORS 468.700(8) defines "waters of the state." This statutory subsection provides:

"(8) 'Water' or 'the waters of the state' include lakes, bays, ponds impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction."

Ditches of water are, at least within "all other bodies of surface waters natural or artificial, inland or coastal, fresh or salt, public or private * * * which are wholly or partially within or bordering Oregon or within its jurisdiction." In addition, the ditches involved in this proceeding combine with other natural surface waters. The ditches flow into Salt Creek (p. 51, Tran) which in turn flows into the South Yamhill River. (P. 61, Tran).

/ / /

/ / /

DEPARTMENT OF JUSTICE
 500 PACIFIC BLDG., 520 S.W. YAMHILL
 PORTLAND, OREGON 97204-1381
 TELEPHONE 229-5725

1 the source of the polluted waters running into ditches and Salt
2 Creek. The hearings officer found in Finding 8, p. 3, Order:

3 "8. Agricultural tiles deflect water from
4 neighboring property and from the dairy property
5 into the surrounding ditches which feed into Salt
6 Creek. While neighboring property is, then, a
7 source of creek water, it is not found to be a
8 source of any significant contamination or pollu-
tion. At most, a few head of livestock are main-
tained on neighboring land. The scale of the
measured contamination was too great to have been
caused by contamination associated with a few head
of domestic livestock or by wildlife."

9 C. STORAGE LAGOON

10 There was no evidence that the treatment lagoon was faulty
11 and unusable. On the contrary, the evidence shows that the
12 lagoon was properly constructed and that Respondent intentionally
13 decided not to utilize the lagoon; implement necessary ancillary
14 steps and abused its construction specifications.

15 The engineering firm that designed the lagoon, designed it
16 to be both a storage and treatment lagoon. The lagoon would
17 reduce the nutrient level in the liquors inside the ponds.
18 (Tran, p. 110). Respondent was notified by the engineering firm
19 the lagoon's earthwork and piping was completed. Respondent was
20 required to perform additional pollution abatement work: (a) a
21 pump stand to irrigate the liquor; (2) plant earth surfaces to
22 minimize erosion; (3) fence livestock; (4) roof drains; (5)
23 diversionary groundwater trenching; (6) collector system; and
24 (7) solids separator. (Tran pps. 112-113.) Respondent failed to
25 complete this pollution abatement program.

26 / / /

1 Respondent's cited violation was March 4, 1986. The
2 Department's Notice of Violation was dated May 14, 1986. The
3 first attempt by Respondent to claim there was a problem with
4 the lagoon was in June, 1986, after the Department's Notice of
5 Violation. (Tran, p. 17.) It seems fairly clear that Respondent
6 attempted to "manufacture" a lagoon defect to counter the
7 Department's Notice of Violation.

8 The engineering firm inspected the lagoon on or about
9 October 9, 1986. In addition to Respondent's son being present
10 at the inspection, Respondent's counsel also attended. (Tran,
11 p. 113.) The inspection showed Respondent did not even attempt
12 to utilize the lagoon to make it operable. (Tran, p. 115.)

13 Respondent continued to allow livestock to graze on the
14 sides of the dikes, damaging the surface and causing premature
15 erosion. (Tran, pp 2. 119-120 et seq.)

16 The record demonstrates Respondent never intended to use the
17 lagoon. For example, he was not in favor of its construction.
18 He terms the lagoon a "monstrosity." (Tran, p. 216.) Respondent
19 feels he does not need the lagoon. (Tran, p. 249.) While not an
20 engineer, he claims it was not a "completed" lagoon. (Tran, p. 218.)
21 He did not even attempt to put water into it, until after being
22 cited by the Department. (Tran, p. 218.) The record shows
23 Respondent just flat-out did not want to complete the lagoon
24 because he was not going to get any federal money to assist him
25 in the completion of the project. (Tran, pps. 219-220.)

26 / / /

1 Respondent further refused to allow Department staff onto his
2 property to take samples or inspect the lagoon. (Tran, p. 234.)

3 **D. SUBSEQUENT COMPLAINTS**

4 The argument is totally irrelevant to the cited violation.
5 If there are a lack of complaints it is probably due to
6 Respondent's going out of the dairy business and the removal of
7 his dairy herd.

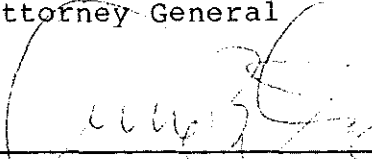
8 **CONCLUSION**

9 The hearings officer's Findings, Conclusion and analysis
10 were not only fair, but accurate and correct based on the evi-
11 dence presented. The Order should be affirmed.

12 DATED this 13th day of August, 1987.

13 Respectfully submitted,

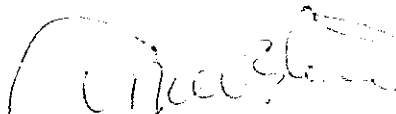
14 DAVE FROHNMAYER
15 Attorney General

16 
17 _____
18 ARNOLD B. SILVER
19 Assistant Attorney General
20 Of Counsel for the Department
21 of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of August, 1987, the within MOTION TO DISMISS APPEAL/DEPARTMENT'S (APPELLEE) RESPONSE BRIEF was served on the attorney for Respondent by placing said document in a postage prepaid envelope and depositing it in the United States mail at Portland, Oregon addressed as follows:

Roger L. Kromer
Attorney at Law
1500 Plaza Building
Suite 540
1500 N.E. Irving Street
Portland, Oregon 97232



ARNOLD B. SILVER
Assistant Attorney
Of Attorneys for Department

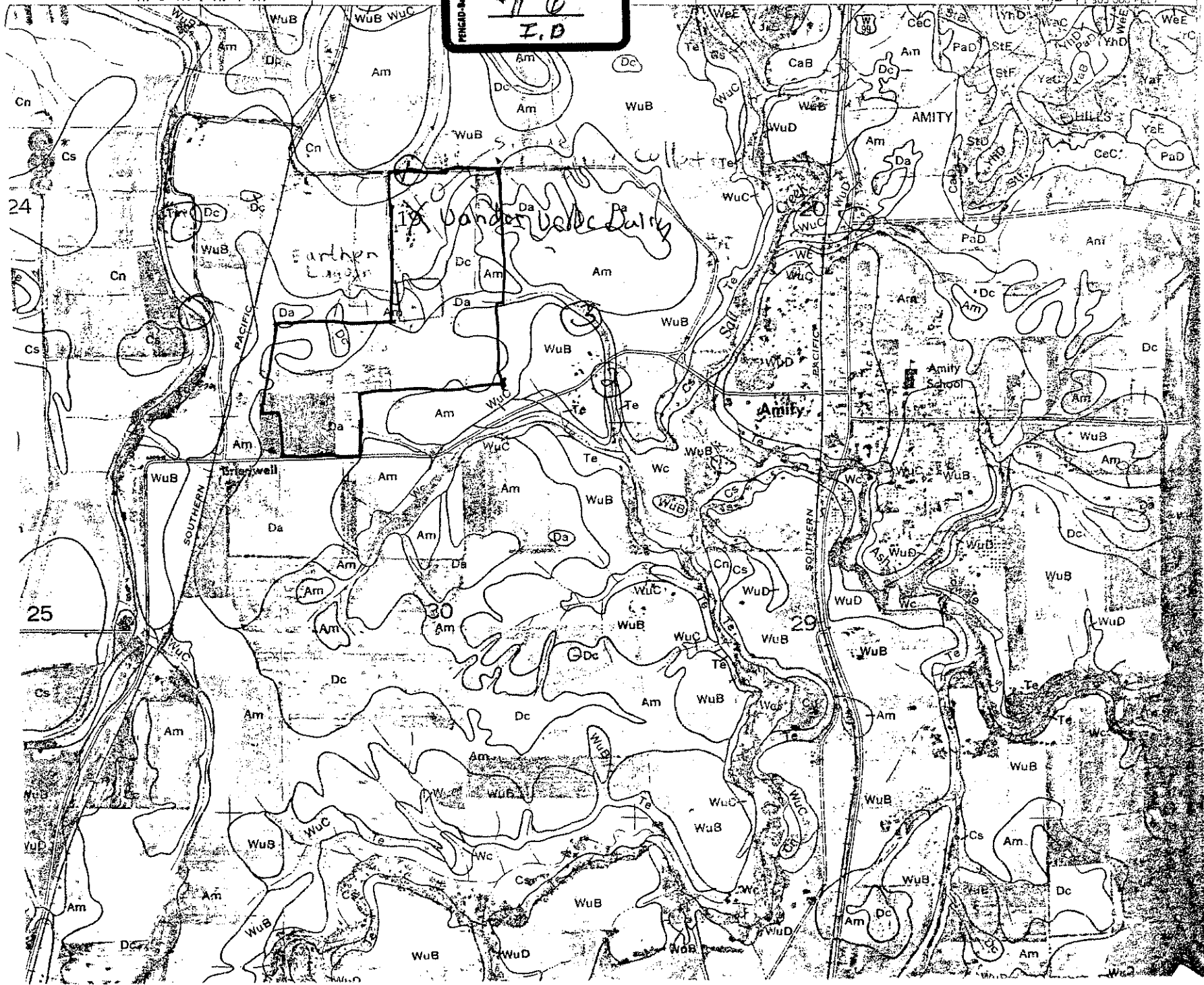
CERTIFICATE OF SERVICE

Ex 1

R. 5 W. | R. 4 W.

EXHIBIT
70
I.D.

YHD 1:305,000 FEET



T-2



PENGAD-Bayonne
EXHIBIT
T-2

3-14-86; 9:20 a.m.

Tom Fisher collecting a sample from the discharge at the bottom of the Vandervelde driveway along Lancefield Road. Also in the picture are the dairy buildings and the silage liquor collection pond.

E+3



3-4-86; 9:40 a.m.

Tom Fisher collecting a sample in the drainage ditch below the culvert along the Amity-Briedwell Highway. This is approximately 100 yards downstream from the sample taken on the Hughes' property.



Ex 4



3-4-80

Dyke Mace pointing to Vandervelde Dairy and the drainage ditch on the Hughes' property.

PENGAD-8/10/80
EXHIBIT
774

Ex 5



3-4-86; 10:02 a.m.

Tom Fisher collecting sample of run off from the Vandervelde Dairy. Picture was taken from the Hughes' property, approximately 1/3 mile southeast of dairy buildings.

PERGAP-Bayonne,
EXHIBIT
75

LEGAL



Ex 6

DEPARTMENT OF ENVIRONMENTAL QUALITY
Request for Analysis

Laboratory No. 86-0150

Location/Site: VanderVelde Dairy, Amity Date: 3-4-86

Date Received Lab: MAR 04 1986 1250

Collected By: Tom Fidler Program: wg 3256 D

Date Reported: Mar 10 1986

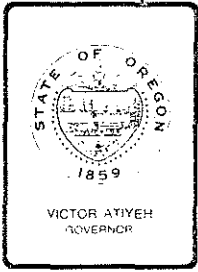
Purpose: Document runoff from Dairy of waste into state water. Report Data To: _____

Comments: _____

Basic: (P) unpreserved; Nutrient (R) add H₂SO₄ in field; Metals (Tm) HNO₃ added in lab--don't rinse; Organic(X) mason jar lab prepared

Item No.	Sampling Point Description (include time)	*Sample Container (bottle) #'s				Test Required
		Nutrients	DO	Metals	Fecal	
		Basic	BOD	Organic	Coliform	
1	9:20 Am Drainage Ditch of Bottom of VanderVelde Dairy along Loncafield Rd	S195	0783		128	PH, Bod, NO ₃ , NH ₃ , TP04, TOC, Fecal Coliform KO
2	9:40 Am Drainage Ditch at culvert on Amity East Bellevue highway by Rt. 1 Box H. - ICFs	S196	0731		028	
3	10:02 AM Drainage Ditch on Hughes property approximately 1/3 mile SE of Dairy Buildings, ICFs	S208	0374		161	
4						
5						
6						

Laboratory comments would like results by 3-14-86



Department of Environmental Quality
WILLAMETTE VALLEY REGION

895 SUMMER, N.E., SALEM, OR 97310 PHONE (503) 378-8240

June 16, 1986

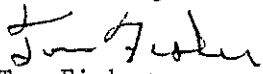
Mr. Roger L. Kromer, Attorney at Law
Suite 400, Riviera Plaza
1618 SW First Avenue
Portland, OR 97201-5761

RE: DEQ vs. Roy Vandervelde
Case No. 20-WQ-WVR-80-01

Enclosed are the sample results from my March 4, 1986 sampling of the runoff from the Vandervelde Dairy.

If you have questions, please contact me at the above number.

Sincerely,


Tom Fisher
Environmental Analyst

TRF/wr

Attachment: Sample results.

cc: Van Kollias, Regional Operations w/att

Ex 8

LEGAL

DEPARTMENT OF ENVIRONMENTAL QUALITY

Request for Analysis

Laboratory No. 86-0150

Location/Site: VanderVelde Dairy, Amity Date: 3-4-86

Date Received Lab: 1250

Collected By: Tom Fisher Program: Wq 3256D

Date Reported: _____

Purpose: Document runoff from Dairy of waste into state water. Report Data To: _____

Comments: _____

lab prepared

* Basic (P) unpreserved; Nutrient (R) add H₂SO₄ in field; Metals (Tm) HNO₃ added in lab--don't rinse; Organic(X) mason jar

Item No.	Sampling Point Description (include time)	*Sample Container (bottle) #'s				Test Required
		Nutrients	DO	Metals	Fecal	
		Basic	BOD	Organic	Coliform	
9:20 AM 1	Drainage Ditch of Bottom of VanderVelde Dairy along Loncesfield Rd	S195	0783		128	pH, Bod, NO ₃ , NH ₃ , TP04, TUC, Fecal Coliform
9:40 AM 2	Drainage Ditch at culvert on Amity Exit 3 Bellevue highway by Rt. 1 Box H. - ICRS	S196	0731		028	" "
10:02 AM 3	Drainage Ditch on Hughes property approximately 1/3 mile SE of Dairy Buildings, ICRS	S208	0374		161	" "
4						
5						
6						

RECEIVED

MAR 31 1986

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
SALEM, OFFICE

Laboratory comments would like results by 3-14-86

LEGAL

DEPARTMENT OF ENVIRONMENTAL QUALITY
Laboratory Data Sheet

Laboratory No: 86-0150
Program Code: 32560
Page: 1 of: 2
Analysis Completed:

Vanderweide Dairy

Fisher

Item No.	Test Results (All units in mg/l or $\mu\text{g/l}$)										
	basic	nutrient	BOD	pH	NO ₃ ⁻ NO ₂ ⁻ -N	NH ₃ -N	T-PO ₄ as P	TOC			
1	0783	5195	3500	4.9	0.18	7.1	46	1820			
2	0731	5196	75	6.8	1.3	4.4	3.60	41			
3	0374	5208	120	6.8	5.6	5.5	4.12	75			

Comments: BODs set up in the lab 3/5/86.
results available (preliminary) phoned to T. Fisher 3-11-86

LEGAL

DEPARTMENT OF ENVIRONMENTAL QUALITY
Water Bacteriological Membrane Filter Analysis

Location/Site: Vanderuelde

Laboratory No.: 86-0150

Date/Time Tested: 3-4/1330

Collected By: T. Fisher

Program Code: 325610

Date Reported: 3-5-86

Date Collected: 3-4-86

Date/Time Received: 1250

Reported By: L. Schwind

COMMENTS:

ITEM #	BOTTLE #	SAMPLING POINT DESCRIPTION (time)	IN LAB #	TOTAL COLIFORMS			FECAL COLIFORMS			FECAL STREPTOCOCCI		
				Dil. (ml)	MF Count	No. /100 ml	Dil. (ml)	MF Count	No. /100 ml	Dil. (ml)	MF Count	No. /100 ml
1	STP 128	Drainage Ditch of bottom of Vanderuelde Dairy along Lancefield Rd (0920) Cl ₂ Turb. 3+	97	10			50		est. 19,400	10		
				1			10			1		
				0.1			1	194		0.1		
				0.01			0.1	106,13		0.01		
				0.001			0.01	2		0.001		
2	STP 028	Drainage ditch @ culvert on Amity - Bellewerry by Rt 1 Box 16 ICFS (0940) Cl ₂ Turb. 3+	98	10			50		est. 680,000	10		
				1			10			1		
				0.1			1	TNTC		0.1		
				0.01			0.1	TNTC		0.01		
				0.001			0.01	106,68		0.001		
3	STP 161	Drainage ditch on Hughes property 2 1/3 mi. SE of dairy bldgs ICFS (1002) Cl ₂ Turb. 3+	99	10			50		est. 760,000	10		
				1			10			1		
				0.1			1	TNTC		0.1		
				0.01			0.1	TNTC		0.01		
				0.001			0.01	106,76		0.001		
				10			50			10		
				1			10			1		
				0.1			1			0.1		
				0.01			0.1			0.01		

EX 9

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

3	STATE OF OREGON by and through)	
	the Department of Environmental)	
4	Quality,)	
)	
5	Plaintiff,	)	NO WQ-WVR-86-39
)	
6	v.	)	Yamhill County
)	
7	ROY VANDERVELDE,	)	AFFIDAVIT
)	
8	Defendant.)	

STATE OF OREGON

I, Segrid Schwind, being duly sworn, depose and say:

1. I am now and have been with the Department of Environmental Quality for seven years. Part of my duties include performing tests on samples taken by DEQ investigators in relation to possible environmental quality statute and rule violations:

2. I have received a B.A. in Biology from Willamette University and a M.S. in Water Quality from the University of Washington. I have been working for DEQ as a Microbiologist for four years, and prior to that as a Lab Technician for three years.

3. The form marked as plaintiff's Exhibit #15 is the LEGAL SAMPLE Chain of Custody. This document indicates that at the Vandervelde site near Amity, Tom Fisher took nine (9) samples between 09:20 and 10:02 on March 4, 1986. The document also indicates that these samples were received by the DEQ labs at 12:50 on March 4, 1986. The samples were numbered 0374, 0731,

DEPARTMENT OF JUSTICE
500 PACIFIC BLDG., 520 S.W. YAMHILL
PORTLAND, OREGON 97204-1381
TELEPHONE 228-5725

1 0783, S196, S195, S208, STP 028, STP 161 and STP 128. The docu-
2 ment also indicates that the samples were received by Laurie
3 McCulloch who was the sample tracker.

4 4. The document marked plaintiff's Exhibit #16 is the
5 Chain of Custody list which I compiled for the samples taken by
6 Tom Fisher at the Vandervelde Dairy. The Chain of Custody indi-
7 cates every time a sample is handled or moved and who handles the
8 sample.

9 5. Exhibit #15 indicates that at 12:50 on March 4, 1986,
10 the samples marked STP 128, STP 028, and STP 162 were given to me
11 for bacteriological analysis.

12 6. I performed the fecal coliform tests. The fecal coli-
13 form test reveals the amount of fecal coliform present in the
14 water sample.

15 7. Fecal coliform is an indicator organism which indicates
16 the fecal material present in the water system. Fecal coliform
17 also indicates the possibility that other pathagenic, or disease
18 causing, organisms are present in the water.

19 8. The document marked as plaintiff's Exhibit #17 is the
20 data sheet from the Department of Environmental Quality Water
21 Bacteriological Membrane Filter Analysis. I was the person who
22 performed this test at 13:30 on March 4, 1986. This test is done
23 by taking a volume of the sample, filtering the volume, and
24 extracting the bacteria on a membrane. The membrane is composed
25 of a material upon which bacteria will grow. As the bacteria
26 grow they will form colonies. After a period of time the number

1 of colonies are counted. The number of colonies indicate the
2 amount of fecal coliforms in the water.

3 9. Item #1 on Exhibit #17 indicates that first sample,
4 bottle STP 128, was taken from the drainage ditch at the
5 Vandervelde Dairy along Lancefield Road. The lab number for the
6 sample is 97. The number under the heading FECAL COLIFORMS, No.
7 /100 ml. indicates there were approximately 19,400 fecal coliform
8 bacteria per 100 milileters of water.

9 10. Item #2 on Exhibit #17 indicates the second sample,
10 bottle STP 028, was taken from the drainage ditch culvert on
11 Amity-Bellevue Highway. The sample's lab number is 98. The
12 test indicates the fecal coliform level was approximately 680,000
13 per 100 milileters of water.

14 11. Item #3 on Exhibit #17 indicates that the third sample,
15 bottle STP 161, was taken from the drainage ditch on the Hughes
16 property, one-third of a mile southeast of the dairy buildings.
17 The lab number for the sample is 99. The fecal coliform count
18 was approximately 760,000 per 100 milileters of water.

19 12. The est. before the fecal coliforms stands for esti-
20 mate. The reason the numbers are estimates and not actual counts
21 is that the fecal coliform count was so high. With counts of
22 this magnitude it is impossible to achieve an exact count.

23 13. The fecal coliform count in these three samples are
24 extremely high. The numbers would not occur this high naturally.
25 These numbers indicate that there is an introduction of fecal
26 material into the water system.

1 14. As previously mentioned fecal coliform is an indicator
2 organism for other bacteria. The high numbers in these three
3 tests are significant in that with numbers this high there is a
4 strong possibility that other pathogenic organisms are present
5 such as: salmonella; which causes food poisoning and gastro
6 intestinal diseases, viruses such as hepatitis; and other viruses
7 causing flu-like symptoms. This water could be a health hazard.

8
9
10 Segrid Schwind
11 SEGRID SCHWIND

12 SUBSCRIBED AND SWORN to before me this 2nd day of

13 Catene, 1986.

14
15 Carroll Spittler
16 NOTARY PUBLIC for Oregon
17 My Commission Expires: 12/19/86

EX10

Dyke MACE
Jim Wagner (Sheriff's Dept.)
SCMee P.S.

3/4/86
1st Sample Taken at Driveway. (Lancefield Rd.)

- Nutrient - 5195 [acid placed in sample (12 drops)]
- Bacteriological - STP 128

9:20 AM

- BOD - STP-0783

Silage Discharge - Pictures #1, 2 & 3

* Briardwell Road Discharge point appeared to be running clear - \approx 1/2 mile west of Dairy

Bellvue Hwy Ditch - green; sticks like manure; sporadic bacteria

9:40 AM

Pictures #4 & 5 & 6

- Bacteriological - 028 STP
- Nutrient - 5196 (12 drops of acid placed in bottle to "fix" the sample)
- BOD - STP-0731

Hughes Property Discharge Point - \approx 1/2 mi SE of Dairy - Tributary of Salt Creek

* Pictures #7 & 8 (COWS (11-12) on DIKE around the lagoon)

- Bacteriological - STP 161
- Nutrient - 5208 [acid placed in sample (12 drops)]
- BOD - 0374

10:02 AM

* picture #9 - Dyke pointing at creek & under/under barn
(ICFS)

X

LEGAL

DEPARTMENT OF ENVIRONMENTAL QUALITY

Request for Analysis

Laboratory No. 86-0150

Location/Site: VanderVelde Dairy, Amity Date: 3-4-86

Date Received Lab: MAR 11 1986 1250

Collected By: Tom Fisher Program: W

Date Reported: _____

Purpose: Document runoff from Dairy of wo

Report Data To: _____

Comments: _____

lab prepared

Basic (P) unpreserved; Nutrient (R) add H₂SO₄ in field;

added in lab--don't rinse; Organic(X) mason jar

Handwritten notes:
 3
 10/11/86
 07/13/86
 07/13/86
 07/13/86

Item No.	Sampling Point Description (include time)	*Sampl Nutr.		e) #'s		Test Required
		Basic		Is anic	Fecal Coliform	
9:20 AM 1	Drainage Ditch of Bottom of VanderVelde Dairy along Loncefield Rd	5195	0783		128	PH; Bod, NO ₃ , NH ₃ , TP04, TUC, Fecal Coliform
9:40 AM 2	Drainage Ditch at culvert on Amity exit Bellevue highway by Rt. 1 Box H. - ICFS	5196	0731		628	/"
10:02 AM 3	Drainage Ditch on Hughes property approximately 1/3 mile SE of Dairy Buildings - ICFS	5208	0374		161	/"
4						
5						
6						

Laboratory comments would like results by 3-14-86

EGAL

DEPARTMENT OF ENVIRONMENTAL QUALITY
Water Bacteriological Membrane Filter Analysis

Location/Site: Vanderveelde

Laboratory No.: 86-0150

Date/Time Tested: 3-4/1330

Collected By: T. Fisher

Program Code: 3256D

Date Reported: 3-5-86

Date Collected: 3-4-86

Date/Time Received: 1250

Reported By: S. Schwind

COMMENTS:

TIME #	BOTTLE #	SAMPLING POINT DESCRIPTION (time)	IN LAB #	TOTAL COLIFORMS			FECAL COLIFORMS			FECAL STREPTOCOCCI		
				DIL. (ml)	MF Count	No. /100 ml	DIL. (ml)	MF Count	No. /100 ml	DIL. (ml)	MF Count	No. /100 ml
1	STP 128	Drainage Ditch of bottom of Vanderveelde Dairy along Lancefield Rd (0920) Cl ₂ Turb. 3+	97	10			50		est. 19,400	10		
				1			10			1		
				0.1			1	194		0.1		
				0.01			0.1	106,13		0.01		
				0.001			0.01	2		0.001		
2	STP 028	Drainage ditch @ Culvert on Amity - Bellevue by Rt 1 Box 16 ICF5 (0940) Cl ₂ Turb. 3+	98	10			50		est. 680,000	10		
				1			10			1		
				0.1			1	TNTC		0.1		
				0.01			0.1	TNTC		0.01		
				0.001			0.01	106,68		0.001		
3	STP 161	Drainage ditch on Hughes property 2 1/3 m. SE of dairy bldgs ICF5 (1002) Cl ₂ Turb. 3+	99	10			50		est. 760,000	10		
				1			10			1		
				0.1			1	TNTC		0.1		
				0.01			0.1	TNTC		0.01		
				0.001			0.01	106,76		0.001		
				10			50		10			
				1			10		1			
				0.1			1		0.1			
				0.01			0.1		0.01			



DEPARTMENT OF ENVIRONMENTAL QUALITY
 Laboratories and Applied Research Division
 1712 S.W. 11th Avenue, Portland, OR 97201

LEGAL SAMPLE

Chain of Custody Record

Site Name: Vandervelde
 Location: Amity
 Date Sampled: March 4, 1986
 Time Sampled: 0920-1002
 Collected By: Tom Fisher

Laboratory Number: 86-0150
 Program Code: 3256D
 Date Received: March 4, 1986
 Time Received: 1250

Sample Container Information

Container Type/Number	Container Type/Number	Container Type/Number
<u>1 gal poly /0374</u>	<u>glass bact. /STP028</u>	<u>/</u>
<u>same /0731</u>	<u>same /STP161</u>	<u>/</u>
<u>same /0783</u>	<u>same /STP128</u>	<u>/</u>
<u>500 ml poly /5196</u>	<u>/</u>	<u>/</u>
<u>same /5195</u>	<u>/</u>	<u>/</u>
<u>same /5208</u>	<u>/</u>	<u>/</u>

Total Number of Containers Received: 9 (nine)

Relinquished By: Tom Fisher
 (signature)

Received By: Harriet McCulloch
 (signature)

Initial Placement in Refrigerator # _____

Subsequent Out of Laboratory Transfers:

Relinquished By: _____
 (time/date)

Received By: _____
 (time/date)



Chain of Custody
Vandervelde Dairy
86-0150

3-4-86	9:20-10:02	Samples collected by Tom Fisher (DEQ)
3-4-86	12:50	Samples received from Tom Fisher and logged in by Laurie McCulloch (DEQ laboratories). Samples STP 128, STP 028, STP 162 given to Sigrid Schwind (DEQ Laboratories) for Bacteriological analysis. Samples 0783, 0731, 0374, given to Ken Aldrich (DEQ Laboratories) for pH analysis.
3-4-86	1324	Samples S195, S196 & S208 placed in legal refrigerator 5067 by Laurie McCulloch.
3-4-86	1330	Samples STP 128 & 028, and 161 analyzed for fecal coliform by Sigrid Schwind.
3-4-86	1410	0783, 0731, 0374, STP 128, STP 028 and 161 placed in legal refrigerator 5067 by Laurie McCulloch.
3-5-86	1310	S195, S196 & S208 removed for TOC analysis by Kim Orrett (DEQ Laboratories)
3-5-86	1330	Bottles 0783, 0731, 0374 removed for BOD analysis by Al Van Hoeter (DEQ Laboratories).
3-5-86	1515	Bottles S195, S196, and S208 returned to legal refrigerator #5067 by Kim Orrett and bottles 0783, 0731 and 0374 returned to refrigerator #5067 by Al Van Hoeter.
3-7-86	0900	Bottles S195, S196 & S208 removed for $\text{NO}_3 + \text{NO}_2 - \text{N}$, $\text{NH}_3 - \text{N}$ analysis by Joy Dela Rosa.
3-7-86	0935	Bottles S195, S196 and S208 returned to refrigerator #5067 by Laurie McCulloch.
3-10-86	1105	Bottles S195, S196, and S208 removed for T-PO_4 analysis by Ken Aldrich.
3-10-86	1300	Bottles S195, S196, S208 returned to refrigerator #5067 Laurie McCulloch.
3-11-86	1400	Bottles S195, S196, and S208 removed for TOC analysis by Kim Orrett.



3-18-86

Analysis results logged out of DEQ Laboratories by Laurie McCulloch.

6-18-86 1115

Samples STP 128, 028, and 161, S195, S196, S208, 0783, 0731, and 0374 transferred to shelves in cage by Steve Fortuna (DEQ Laboratories).

SS:ah

LEGAL



DEPARTMENT OF ENVIRONMENTAL QUALITY
Water Bacteriological Membrane Filter Analysis

Location/Site: Vanderveelde

Laboratory No.: 86-0150

Date/Time Tested: 3-4/1330

Collected By: T. Fisher

Program Code: 3256D

Date Reported: 3-5-86

Date Collected: 3-4-86

Date/Time Received: 1250

Reported By: A. Schwind

COMMENTS:

ITEM #	BOTTLE #	SAMPLING POINT DESCRIPTION (time)	IN LAB #	TOTAL COLIFORMS			FECAL COLIFORMS			FECAL STREPTOCOCCI			
				Dil. (ml)	MF Count	No. /100 ml	Dil. (ml)	MF Count	No. /100 ml	Dil. (ml)	MF Count	No. /100 ml	
1	STP 128	Drainage Ditch of bottom of Vanderveelde Dairy along Wancefield Rd (0920) Cl ₂ Turb. 3+	97	10			50	est. 19,400	10				
				1			10		1				1
				0.1			1		194				0.1
				0.01			0.1		106,13				0.01
				0.001			0.01		2				0.001
2	STP 028	Drainage ditch @ Culvert on Amity - Bellevue by Rt 1 Box 16 (0940) Cl ₂ Turb. 3+	98	10			50	est. 680,000	10				
				1			10		1				1
				0.1			1		TNTC				0.1
				0.01			0.1		TNTC				0.01
				0.001			0.01		106,68				0.001
3	STP 161	Drainage ditch on Hughes property 2 1/3 m. SE of dairy bldgs (1002) Cl ₂ Turb. 3+	99	10			50	est. 760,000	10				
				1			10		1				1
				0.1			1		TNTC				0.1
				0.01			0.1		TNTC				0.01
				0.001			0.01		106,76				0.001
				10			50		10				
				1			10		1				1
				0.1			1						0.1
				0.01			0.1						0.01
				0.001			0.01						0.001



Department of Environmental Quality

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

MAY 19 1986

HAND DELIVERY

- Roy Vandervelde
Route 1, Box 229
McMinnville, OR 97128

Re: Notice of Assessment
of Civil Penalty
WQ-WVR-86-39
Yamhill County

Although this Department has sent you formal warning notices in 1977 and 1983, and a civil penalty assessment in 1984, you have continued to allow manure and silage waste water to discharge from your dairy farm into public waters. You know that such discharges are in violation of state law.

A March 4, 1986 investigation by staff of the Department, and the Yamhill County Sheriff's office and Land Management Section, revealed that you were again allowing the discharge of silage liquor and manure into waters of the state. These latest discharges occurred more than six weeks after Tom Fisher of our staff wrote you and stressed the importance of ensuring that discharges of your waste go only into your earthen storage lagoon, and not into public waters. Mr. Fisher warned you then of additional enforcement action if there was additional pollution of public waters.

Consequently, I have enclosed a formal notice assessing you a civil penalty of \$5,500 for your discharges into public waters. In determining the amount of the penalty, I have considered Oregon Administrative Rule 340-12-045. The Department's civil penalty schedule provides for penalties of from \$50 to \$10,000 for each day of each violation. Further discharges will likely result in larger penalty assessments and/or other enforcement action.

The penalty is due and payable immediately. Your check in the amount of \$5,500 should be sent to the address on this letterhead. Appeal procedures are outlined in Paragraph VII of the enclosed notice. If you fail to either pay the penalty or appeal this action within twenty (20) days, a Default Order and Judgment will be entered against you.

Roy Vanderveide
Page 2

Questions regarding this letter or the enclosed notice should be directed to Mr. Larry Cwik with the Department's Enforcement Section in Portland at 229-5152, or toll-free at 1-800-452-4011.

Sincerely,



Fred Hansen
Director

LC:b

GB5679.L

Enclosures(s)

cc: Willamette Valley Region, DEQ
Water Quality Division, DEQ
Oregon Department of Justice
Oregon Department of Agriculture
Environmental Protection Agency
Yamhill County Board of Commissioners
Yamhill Soil & Water Conservation District
Yamhill County Legal Counsel

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 DEPARTMENT OF ENVIRONMENTAL QUALITY,) NOTICE OF ASSESSMENT
4 OF THE STATE OF OREGON,) OF CIVIL PENALTY
5 Department,) No. WQ-WVR-86-39
6 v.) YAMHILL COUNTY
7 ROY VANDERVELDE,)
8 Respondent.)

8 I

9 This notice is given to Respondent, Roy Vandervelde, pursuant to
10 Oregon Revised Statutes (ORS) 468.125 through 468.140, ORS Chapter 183 and
11 Oregon Administrative Rules (OAR) Chapter 340, Divisions 11 and 12.

12 II

13 The following notices are on file with the Environmental Quality
14 Commission in this case and are incorporated herein by this reference:

15 Notice of Violation and Intent to Assess Civil Penalty WQ-SNCR-77-216,
16 dated September 19, 1977, from Fred M. Bolton to Respondent, received
17 by Respondent on October 10, 1977.

18 Notice of Violation and Intent to Assess Civil Penalty WQ-WVR-83-93,
19 dated October 14, 1983, from Fred M. Bolton to Respondent, received by
20 Respondent on October 19, 1983.

21 Notice of Assessment of Civil Penalty WQ-WVR-84-01, dated May 23, 1984,
22 from Fred Hansen to Respondent, received by Respondent on May 29, 1984.

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1 Through these notices, the Department notified Respondent that Respondent
2 had committed one or more violations and that a civil penalty would be
3 assessed if any of these violations continued or if any similar violation
4 occurred five or more days after receipt of these notices, as is more fully
5 set forth in these notices.

6 III

7 A. On or about March 4, 1986, Respondent caused or allowed liquid waste
8 to discharge from Respondent's silage liquor collection pond located on real
9 property described as Tax Lots 700 and 800, Section 19, Township 5 South,
10 Range 4 West, Yamhill County, Oregon, into an intermittent tributary of Salt
11 Creek, waters of the state, causing pollution thereof, in violation of ORS
12 468.720(1) and OAR 340-51-020(1).

13 B. On or about March 4, 1986, Respondent discharged animal waste
14 (manure) into a different intermittent tributary of Salt Creek, waters of the
15 state, causing pollution thereof, in violation of ORS 468.720(1) and OAR
16 340-51-020(1).

17 C. Respondent discharged waste on March 4, 1986 into waters of the state
18 as described above, without first obtaining a permit from the Director of the
19 Department, in violation of ORS 468.740(1) and OAR 340-45-015(1)(a).

20 IV

21 The Director hereby imposes upon the Respondent a civil penalty of
22 \$2,500 for the one or more violations alleged in Paragraph IIIA, \$2,500 for
23 the one or more violations alleged in Paragraph IIIB, and \$500 for the one
24 or more violations alleged in Paragraph IIIC, for a total civil penalty of
25 \$5,500, plus interest until paid in full.

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V

The one or more violations alleged in Paragraph III involve aggravating factors which support the assessment of a civil penalty larger than the minimum civil penalty which may be assessed pursuant to the schedule of civil penalties contained in OAR 340-12-055(1)(c). The mitigating and aggravating factors considered by the Director in establishing the amount of the penalty are attached hereto and incorporated herein by this reference.

2b and 3. LK3

VI

This penalty is due and payable immediately upon receipt of this notice. Respondent's check or money order in the amount of \$5,500 should be made payable to "State Treasurer, State of Oregon" and should be sent to the Director of the Department of Environmental Quality.

VII

Respondent has the right, if Respondent so requests, to have a formal contested case hearing before the Environmental Quality Commission or its hearing officer regarding the matters set out above pursuant to ORS Chapter 183, ORS Chapter 468.135(2) and (3), and OAR Chapter 340, Divisions 11 and 12 at which time Respondent may be represented by an attorney and subpoena and cross-examine witnesses. That request must be made in writing to the Director, must be received by the Director within twenty (20) days from the date of mailing of this notice (or if not mailed, the date of personal service), and must be accompanied by a written "Answer" to the charges contained in the notices referenced above. In the written "Answer," Respondent shall admit or deny each allegation of fact contained in the notices referred to above and Respondent shall affirmatively allege any and

1 all affirmative claims or defenses to the assessment of this civil penalty
2 that Respondent may have and the reasoning in support thereof. Except for
3 good cause shown:

4 A. Factual matters not controverted shall be presumed admitted;

5 B. Failure to raise a claim or defense shall be presumed to be a
6 waiver of such claim or defense;

7 C. Evidence shall not be taken on any issue not raised in the notice
8 and the "Answer."


9 If Respondent fails to file a timely "Answer" or request for hearing
10 or fails to appear at a scheduled hearing, the Director on behalf of the
11 Environmental Quality Commission may issue a default order and judgment,
12 based upon a prima facie case made on the record, for the relief sought
13 in this notice. Following receipt of a request for hearing and an
14 "Answer," Respondent will be notified of the date, time and place of the
15 hearing.

16 VIII

17 If the one or more violations set forth in Paragraph III continue,
18 or if any similar violation occurs, the Director will impose an additional
19 civil penalty upon the Respondent.

20 MAY 19 1986

21 Date



22 Fred Hansen, Director
23 Department of Environmental Quality

24 HAND DELIVERY

25

26

CIVIL PENALTY: MITIGATING AND AGGRAVATING FACTORS

(OAR 340-12-045(1))

RESPONDENT: Roy and Renne Vandervelde

COUNTY: Yamhill

CASE NUMBER: WQ-WVR-86-39

TYPE OF VIOLATION: Oregon Revised Statutes and
Oregon Administrative Rules

PENALTY LIMITS: Minimum \$50 Maximum \$10,000
(each violation or day of violation)

1. Prior violations:

Notice of Violation and Intent to Assess Civil Penalty No. WQ-SNCR-77-216, dated September 19, 1977, sent to Respondent for discharge of manure and milk parlor wash-down waters into waters of the state.

Notice of Violation and Intent to Assess Civil Penalty No. WQ-WVR-83-93, dated October 14, 1983, sent to Respondent for placement of silage in a location where liquid wastes from the silage entered waters of the state.

Notice of Assessment of Civil Penalty No. WQ-WVR-84-01, dated May 23, 1984, sent to Respondent for discharge of waste water from Respondent's silage pile into waters of the state and discharge of animal waste, manure, into public waters.

2. History of Respondent in taking all feasible steps or procedures necessary or appropriate to correct any violation:

Respondent complied with the 1977 notice. Respondent did not correct the violations in the 1983 notice, resulting in the 1984 civil penalty.

Since Respondent received the 1984 civil penalty, Respondent has installed a lagoon to store animal wastes from Respondent's farming operations. However, Respondent has apparently not ensured that animal wastes are always placed in this lagoon. This has resulted in the discharge of waste to public waters.

Also, although Respondent in the fall of 1984 installed a collection pond to store silage liquor, Respondent nonetheless allowed such liquor to discharge into public waters, through an overflow pipe intended only for emergency use.

3. The economic and financial condition of the Respondent:

Unknown - not considered.

4. The gravity and magnitude of the violation:

Respondent's discharges have caused animal manure and silage waste to enter tributaries of Salt Creek. Neighbors near Respondent's dairy operation have complained of the pollution. Sample results show the magnitude of the pollution to be significant.

Samples were taken on March 4, 1986 from the intermittent tributary into which Respondent's animal waste entered. The samples contained more than 600,000 fecal coliform bacteria per one hundred milliliters of sample, indicating a very high level of manure contamination. Also, that tributary had a strong odor of manure.

Samples were also collected on March 4, 1986 from the intermittent tributary into which Respondent's silage waste water entered. On that date, the emergency overflow pipe from Respondent's silage liquor collection pond was discharging. The samples contained a biochemical oxygen demand of 3,500 milliliters per liter of sample, indicating a very high level of organic pollution.

5. Whether the violation was repeated or continuous:

Repeated.

6. Whether a cause of the violation was an unavoidable accident, or negligence or an intentional act of the Respondent:

Negligent or intentional.

7. The opportunity and degree of difficulty to correct the violation:

Respondent has installed pollution control facilities. Respondent had the opportunity to prevent manure from entering public waters by using those facilities. Respondent needs to ensure that the earthen lagoon is consistently used for Respondent's animal waste, and that Respondent follows the technical assistance for such use provided by Respondent's consultant. Also, Respondent needs to ensure that its management practices regarding the silage liquor collection pond are improved. Excess silage liquor should not be allowed to discharge through the emergency overflow pipe to waters of the state, as it did on March 4, 1986, unless there is an emergency. Such excess should be pumped to a suitable location on Respondent's property, such as the earthen lagoon for Respondent's animal wastes. It is not difficult to pump such excess wastes.

8. Respondent's cooperativeness and efforts to correct the violation:

Respondent has been generally uncooperative. Although Respondent has installed the earthen storage lagoon, Respondent has not ensured that it is consistently used. Although Respondent has installed the silage liquor collection pond, Respondent has not ensured that it is maintained so as to prevent overflow to public waters.

9. The cost to the Department of investigation and correction of the violation prior to the time the Department receives Respondent's answer to the written notice of assessment of civil penalty:

Not considered.

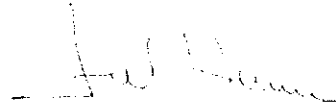
10. Any other relevant factor:

None.

I have considered the above factors in establishing the amount of Respondent's civil penalty. The major aggravating factors were Respondent's previous history of discharges to public waters and that the current discharges were preventable through the use of sound waste management practices. There were no major mitigating factors.

MAY 19 1986

Date



Fred Hansen
Director

4

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY)	
OF THE STATE OF OREGON,)	
)	
Department,	)	ORDER AND JUDGMENT
v.	)	CASE NO. 01-AQ-FB-86-08
	)	POLK COUNTY
Richard M. Kirkham, dba)	
Windy Oaks Ranches)	
Respondent.)	

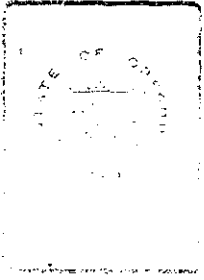
The Environmental Quality Commission, through its hearings officer, orders that Richard M. Kirkham is liable to the State of Oregon in the sum of \$680 and that the State have judgment for that amount pursuant to a civil penalty assessment on December 15, 1986.

Review of this order is by appeal by the Environmental Quality Commission pursuant to OAR 340-11-132. A request for review must be filed within 30 days of the date of this order.

Dated this 22nd day of May, 1986.

ENVIRONMENTAL QUALITY COMMISSION

Linda K. Zucker
Hearings Officer



file

Environmental Quality Commission

511 SW SIXTH AVENUE, PORTLAND, OR 97204 PHONE (503) 229-5113

May 22, 1987

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Richard M. Kirkham
dba Windy Oaks Ranches
9225 Steel Bridge Road
Willamina, OR 97396

Re: DEQ v. Kirkham
No. 1-AQ-FB-86-08
Polk County

Enclosed are my Findings of Fact, Conclusions of Law and Final Order in your contested case.

Please note that you and the Department each have thirty (30) days from the date of mailing or personal delivery of this letter to file with the Environmental Quality Commission, and serve on each other, a request (Notice of Appeal) that the Commission review my decision. Unless this request for Commission review is filed within the 30 days, my decision will be final.

A request for review by the Commission is considered filed only after being actually received in the office of the Director of the Department of Environmental Quality at 522 S.W. Fifth Avenue, Portland, Oregon 97204.

If you wish to appeal my decision to the Commission, you will note the following:

1. You have 30 days from the date you file your Notice of Appeal to also file with the Commission, and also send to the Department, your written exceptions to my decision and a brief.
2. These exceptions must include your proposed alternative findings of fact, conclusions of law and final order, with specific references to the parts of the hearing record on which you are basing your exceptions.
3. If you do not file these required exceptions and brief within 30 days from the date you file your Notice of Appeal, your appeal may be dismissed and my decision will be final.

Richard Kirkham
Page 2

Enclosed is a copy of Oregon Administrative Rule (OAR) 340-11-132 which details the appeal process. Please read it carefully.

If you have questions, my phone number in Portland is 229-5383, or I can be reached toll-free at 1-800-452-4011.

Sincerely,

Linda K. Zucker
Hearings Officer

LKZ:p
HP649.A
Enclosure

cc: Environmental Quality Commission
Arnold Silver, Assistant Attorney General, Department of Justice
Fred Hansen, Director, DEQ
Regional Operations Division, DEQ
Enforcement Section, DEQ
Air Quality Division, DEQ
Field Burning Program, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 DEPARTMENT OF ENVIRONMENTAL QUALITY)
4 OF THE STATE OF OREGON,)
5 Department,)
6 v.)
7 Richard M. Kirkham, dba)
8 Windy Oaks Ranches)
9 Respondent.)
10 HEARING OFFICER'S
11 FINDINGS OF FACT,
12 CONCLUSIONS OF LAW AND
13 FINAL ORDER
14 NO. 1-AQ-FB-86-08

8 BACKGROUND

9 Richard A. Kirkham has appealed from a Notice of Civil Penalty issued
10 by the Department of Environmental Quality (DEQ). The notice alleged open
11 field burning of an unregistered 40 acre cereal field without a field
12 burning permit or a local fire district permit.

13 A hearing was conducted on March 3, 1987. DEQ was represented by
14 Arnold Silver, Assistant Attorney General. Kirkham presented his own
15 defense.

16 FINDINGS OF FACT

17 1. Kirkham lives in Willamina, Oregon. By official notice,
18 Willamina has a population of 1,775. Although Willamina is located in
19 the Willamette Valley as defined in DEQ's Agricultural Smoke Management
20 Rules, field burning is seldom conducted in the area. Occasional requests
21 to open field burn are managed by the neighboring Sheridan Fire District
22 rather than the Willamina Fire Department which is staffed by volunteers.

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1 2. Every year Willamina residents engage in a variety of fund
2 raising events as the sole support of extracurricular activities for local
3 school children. In 1986 the Willamina Booster Club met with local
4 volunteer fire district officials and other community leaders and proposed
5 to conduct a charitable golf tournament--a Cow Pasture Open. Kirkham
6 offered to provide and prepare the site.

7 3. As part of his effort to determine whether the project was
8 feasible and to obtain official authorization for the fundraiser, Kirkham
9 called the DEQ field burning office in Eugene for information and
10 assistance about burning the site, a wheat field. DEQ said the idea was
11 possible but would need further approval. Later DEQ called back and
12 informed Kirkham that it looked like something could be worked out. DEQ
13 explained that because the normal registration period was past, Kirkham
14 would have to wait for another grower to give up his allocation--the pro
15 rata share of registered acreage eligible for burning. Then, when an
16 allocation was obtained, Kirkham would have to wait for an authorized
17 burning day.

18 4. In the meantime, Kirkham was instructed to register the acreage
19 with the Sheridan Fire District. Kirkham did so. The form asked the
20 purpose for burning. Kirkham filled in "golf tournament". Kirkham
21 submitted, as instructed, a check for \$80 as the registration fee. He
22 thought he had performed all duties necessary to adequately register the
23 field.

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1 5. DEQ called Kirkham and explained that burning approval could not
2 be given unless Kirkham planned to plant a small seeded crop the following
3 year. Kirkham replied that his practice was to rotate his crops; he had
4 previously planted clover and could do so again. DEQ completed the form
5 with this information.

6 6. Project assistance was provided by a number of local officials.
7 Polk County helped with sanitation and a permit. A publicity crew was
8 developing public interest. Funds were received. Other commitments were
9 made.

10 7. Some time passed. Kirkham received no information regarding
11 DEQ approval. Kirkham became increasingly concerned that a permit to burn
12 under the DEQ smoke management program would not be available in time.

13 8. Kirkham spoke with the Willamina and Sheridan fire chiefs.
14 Various options were considered. One was to solicit an allocation from
15 a local farmer. The Sheridan fire chief suggested a different idea. The
16 local fire chief, he said, has jurisdiction over practice burns. As an
17 alternative, the field could be burned as a practice burn.

18 9. Kirkham would not have pushed the limits of the law if he had not
19 already made a commitment to the community. He reasoned that if it was
20 all right to burn the field for a golf tournament as long as he planned
21 later to plant to clover, it was also all right to burn the field for a
22 golf tournament as long as the volunteer firemen received some real
23 training in the process.

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1 10. The fire chief had not received any training from DEQ and was
2 not aware that DEQ imposed any restriction on his otherwise full authority
3 to arrange training fires. He believed he had full authority to authorize
4 the burning. Burning the Kirkham wheat field combined an opportunity to
5 train with a new piece of donated equipment and a chance for needed
6 practice in controlled starting and stopping of field fires. He acted
7 both with the purpose of providing proper training and to help Kirkham
8 and the community.

9 11. The fire chief did not issue a permit for this field burning
10 because he believed it unnecessary when the volunteer firemen burned the
11 field themselves.

12 12. At 8 a.m. on Sunday morning, August 27, 1986, the regularly
13 scheduled drill time, the Willamina Volunteer Fire Department burned the
14 field. They conducted the burning as a training exercise. DEQ had not
15 approved the burn.

16 13. Although burning would be allowed later in the day, DEQ had not
17 yet authorized burning when the field drill was conducted.

18 CONCLUSIONS OF LAW

19 1. The Commission has jurisdiction.

20 2. Kirkham violated ORS 468.475(1) by burning a cereal field without
21 first obtaining a valid open field burning permit. Kirkham is liable for
22 a civil penalty for this violation.

23 3. The penalty assessed, \$680.00, is within the Agency's discretion
24 and Kirkham is liable for its payment.

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1 DISCUSSION

2 As a general proposition, wheat fields such as Kirkham's cannot be
3 burned without DEQ registration, a local fire district permit, and a DEQ
4 field burning permit. ORS 468.475(1)). DEQ's position is that Kirkham
5 obtained none of these. However, DEQ assessed a penalty only under OAR
6 340-26-025(2) (a) (B) which provides that a penalty of not less than \$500
7 nor more than \$10,000 may be assessed upon any person who causes open field
8 burning without first obtaining a valid open field burning permit.
9 Consequently, whether the field was registered when DEQ retained the fees
10 and registration form which Kirkham submitted, and whether the requirement
11 that a local fire district permit be obtained was met when the fire
12 district itself burned the field, need not be resolved.

13 It is DEQ's position that the general statute requiring a permit
14 applies. Kirkham believes he comes under an exception to the general
15 requirement. The exception is contained in OAR 340-26-031 which provides:

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

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

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

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

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1 DEQ says Kirkham did not bring himself within the exception because
2 his burn was not "permitted by the Department on a prescheduled basis. . ."
3 DEQ is correct. DEQ proved the terms of its rule were not met. Therefore,
4 Kirkham was bound by the general rule and is liable for a penalty for
5 failure to obtain a DEQ field burning permit.

6 The amount of the penalty was developed by adding the burning fees
7 to the minimum scheduled penalty. In setting the penalty amount, DEQ was
8 aware of the essential case facts. DEQ considered the factors required
9 by ORS 468.130 and OAR 340-12-045. The amount set is within the agency's
10 discretion.

11
12
13 Dated this _____ day of _____, 19____.

14
15
16
17 Linda K. Zucker
Hearings Officer

18
19 NOTICE: If you disagree with this Order you may request review by the
20 Environmental Quality Commission. Your request must be in writing
21 directed to the Environmental Quality Commission, Box 1760,
22 Portland, Oregon 97207. The request must be received by the
23 Environmental Quality Commission within 30 days of the date of
mailing or personal service of Order. If you do not file a
request for review within the time allowed, this order will become
final and thereafter shall not be subject to review by any agency
or court.

24 A full statement of what you must do to appeal a hearings
25 officer's order is in Oregon Administrative Rule (OAR)
340-11-132. That rule is enclosed.

Aug 31 1987

Environmental Quality Commission
Linda K. Zucker
Hearings officer
Portland, Oregon

EQC
Hearing Section

SEP 1 1987

RE: D.E.Q. v. Kirkham
Case No. 1-AQ-FB-86-08 Poik (only)

Dear Linda:

We are requesting a reduction in the \$680⁰⁰ fine. In fact since this was a community service project D.E.Q. should drop the case.

The following are our reasons for the request:

- (1) The golf tournament was for a good cause i.e. raising money for the local school district.
- (2) The Willamina Fire Department received training in the practice burn. Since these firemen are volunteers, having the equipment in order is a benefit to all Oregon residents. If a D.E.Q. fine gets away another

page 2

local fire department knows how to work with the D.E.Q.

- ③ The Willamina Fire Department learned that D.E.Q. apparently has the law on their side.
- ④ I learned that even though the D.E.Q. initially participated in trying to give me a permit to burn for a "Golf Tournament" they can give the money back and not perform or issue a permit.

In summary this was a community event to raise money for the local school district. All of the money went to the School District. We received the necessary permits from all other government agencies, D.E.Q. indicated that a permit was possible but it did not materialize.

Hopefully you will reduce the fine or drop the charges, thanks for your consideration.

Sincerely
Rud Hubble

AVE FROHNMAYER
ATTORNEY GENERAL

WILLIAM F. GARY
DEPUTY ATTORNEY GENERAL



DEPARTMENT OF JUSTICE

PORTLAND OFFICE
500 Pacific Building
520 S.W. Yamhill
Portland, Oregon 97204
Telephone: (503) 229-5725

September 11, 1987

Ms. Linda Zucker
Hearings Officer
Environmental Quality Commission
Executive Building
811 S.W. 6th Avenue
Portland, Oregon 97204

Re: Richard M. Kirkham dba Windy Oaks Ranches
No. 1- AQ-FB-86-08

Dear Ms. Zucker:

Enclosed please find the Department's Brief in Support of
Hearing Officer's Final Order in the above referenced case.

Sincerely,

Arnold B. Silver
Assistant Attorney General

ABS:aa
#122/kirk5
Enclosure
cc: Van Kollias

1 fees, to reach the penalty amount of \$680. The penalty
2 amount is proper and appropriate.

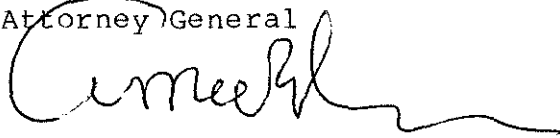
3 CONCLUSION

4 The hearing officer's Order should be upheld without reduc-
5 tion or modification.

6 DATED this 11th day of September, 1987.

7 Respectfully submitted,

8 DAVE FROHNMAYER
9 Attorney General



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ARNOLD B. SILVER
12 Assistant Attorney General
13 Of Attorneys for Department
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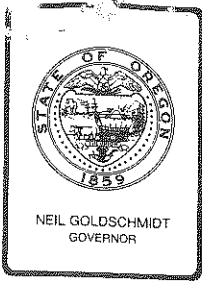
CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 1987, a true and correct copy of the DEPARTMENT'S BRIEF IN SUPPORT OF HEARING OFFICER'S FINAL ORDER was sent to respondent by placing such document in a postage prepaid envelope and placing it in the United States mail at Portland, Oregon, addressed as follows:

Richard M. Kirkham
Windy Oaks Ranches
9225 Steel Bridge Road
Willamina, Oregon 97396



ARNOLD B. SILVER
Assistant Attorney General



Department of Environmental Quality

811 S.W. SIXTH AVENUE, PORTLAND, OREGON 97204 PHONE: (503) 229-5696

MEMORANDUM

To: Environmental Quality Commission
From: Director
Subject: Agenda Item D, December 11, 1987, EQC Meeting

Proposed Adoption of Pollution Control Tax Credit Rule
Amendments, Chapter 340, Division 16

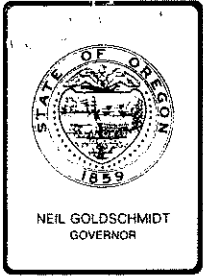
Background

HB2023, passed by the 1987 legislature, includes several amendments to the pollution control statute (ORS 468.150 to .190). In order for the tax credit rules to be consistent with HB2023 and in order to implement portions of HB2023, rule amendments are necessary. In addition, legal counsel has identified portions of the current rule which do not accurately reflect statutory intent and which should be changed to bring the rules within the scope of the enabling legislation.

Certain amendments to the tax credit program made by HB2023 are not reflected in the proposed rule amendments. Most important of these is the reduction of the amount of tax credit available from 50 percent to 25 percent of the eligible cost for facilities commenced after June 30, 1989 and completed before December 31, 1990. Since these amendments were made to the Department of Revenue statutes, rule amendments, as needed, will be made by the Department of Revenue.

It should be noted that no amendments are proposed to the return on investment formula. Simplifying the return on investment formula which is used to determine the percent of the certified facility cost allocable to pollution control, has been discussed in the past. Due to the upcoming sunset date of the program in 1990, it was determined that major amendments of this type are not warranted.

The following is a summary of the highlights of the proposed rule amendments:



Department of Environmental Quality

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The following is a summary of the highlights of the proposed rule amendments:

1. Elimination of Energy Recovery Facilities from Eligibility (OAR 340-16-010(7), 340-16-025(2)(d), and 340-16-025(4)(c)(B)).

HB2023 amended ORS 468.155(1)(b)(D) which identifies methods of preventing, controlling, or reducing pollution which are eligible for tax credit. The statute previously listed "resource recovery processes" as eligible. This term was changed to "material recovery processes" by HB2023. The intent of the amendment was to eliminate garbage burners and other types of energy recovery facilities from eligibility. Under the term "material recovery processes," operations which obtain useful material, other than energy, from waste are still eligible for tax credit.

The rules have been amended to reflect this change (OAR 340-16-025(2)(d)) and to include a definition of "material recovery process" (OAR 340-16-010(7)). This definition specifically excludes processes in which the major purpose is to produce fuel for heat or energy production. This would exclude pelletizers, resource derived fuel plants and other similar facilities which change waste to a product which can be used for fuel or heat. A facility would be eligible for tax credit if the facility is used principally for recycling and a minor bi-product of the facility is fuel for recycling. One example of this type of eligible facility is a gravel separator used with log yard debris to separate wood waste from gravel. The principal purpose of this equipment is to allow the gravel to be recycled, however, a bi-product is wood waste which may be used for energy production. An example of a facility which would not be eligible is a resource derived fuel plant where over half of the garbage brought to the plant is burned and only a small fraction is recycled.

The definition also makes clear that pollution control devices, such as electrostatic precipitators, used in association with energy recovery processes which produce energy from waste, continue to be eligible even though equipment used for energy recovery is no longer eligible.

Other relevant portions of the rule have been amended to delete references to garbage burning and energy production facilities as eligible pollution control facilities.
(OAR 340-16-025(4)(c)(B)).

2. Deletion of 120 Day Deadline for Review of Tax Credit Applications by EQC. (OAR 340-16-020(2)(a) and (c)).

HB2023 amended ORS 468.170 (2) to delete the requirement that a completed tax credit application must be reviewed by the EQC within 120 days or be rejected. Though no specific problems with the 120 day deadline have occurred, the Legislature felt

that rejection of an application due to failure to meet the deadline would place an undue burden on the applicant. The proposed rule amendment reflects this change.

3. Extension of Sunset Date of Tax Credit Program Until December 31, 1990. (OAR 340-16-020(2)(b)(D)).

HB2023 amended ORS 468.170(4)(c) to change the sunset date from December 31, 1988 to December 31, 1990. To be eligible for tax credit, a facility must be completed before December 31, 1990. The proposed rule amendments reflect this change. It should be noted that previous sunset dates of the statute have required facilities to be commenced by the sunset date, rather than completed by the sunset date, as the current statute requires. The result is that the final date by which any applicants could apply for the tax credits is December 31, 1992.

4. Require the EQC to Make Findings When Certifying Tax Credits. (OAR 340-16-020(2)(b)(A) and 340-16-030(2) and (4)).

Previously, no language was included in the rules regarding the need to have findings made by the EQC when it certifies a facility. Current practice is for the EQC to adopt the findings made in Department staff reports. The Oregon Environmental Council requested the inclusion of this language in order to ensure that findings will always be made regarding the five factors considered when determining percent allocable and to provide consistency with other parts of the rules that currently require findings to be made (see OAR 340-16-020(2)(c) and 340-16-035(1) and (6)).

5. Elimination of Property Installed, Constructed or Used for Cleanup of Spills or Unauthorized Releases from Eligibility. (OAR 340-16-010(12), 340-16-025(2)(g) and (3)(g)).

HB2023 amended ORS 468.155 to state that property installed, constructed or used for clean up of emergency spills or unauthorized releases, as defined by the Commission, is no longer eligible for tax credit. In the past, the Commission has certified tax credits for facilities, such as groundwater monitoring wells, used in association with the clean up of spills.

Under the proposed rules, pollution control facilities used for cleanup of spills or unauthorized releases after they have occurred would not be eligible (OAR 340-16-025(3)(g)).

However, "spill or unauthorized release" is defined to not include the unanticipated release of polluting substances in conjunction with a pollution control activity required by DEQ

or EPA (OAR 340-16-010(12)). Therefore, cleanup of the unanticipated release of polluting substances, for example, from hazardous waste storage lagoons operated in compliance with a DEQ permit would be eligible for tax credit. However, facilities required by DEQ or EPA which are not operating in compliance with DEQ or EPA requirements when the unanticipated release of polluting substances occurs would not be eligible for tax credit.

The section of the proposed rule regarding spills and unauthorized releases has been reorganized since the public hearing and amended to eliminate the clause which allowed tax credits for cleanup of spills resulting from pollution control activities for which there was no DEQ requirement. This clause was eliminated because of Department concerns that this language could have effectively resulted in most spill cleanups being eligible for tax credit. This would be contrary to the legislative intent of eliminating most spill cleanups from eligibility. Current proposed rule language would eliminate spills from eligibility, without penalizing those activities which were following DEQ or EPA requirements to control pollution when the unanticipated release of polluting substances from the pollution control activity occurred.

The proposed rule states that facilities used to detect, deter or prevent future spills will continue to be eligible (OAR 340-16-025(2)(g)). Therefore, facilities such as curbing, used to catch spills, and groundwater monitoring wells, used to detect leaks which might occur in the future, would still be eligible. This section was included in the definition section of the proposed rule that went to public hearing. Staff determined that it is more appropriately located in the list of eligible facilities.

6. Reinstatement of Revoked Tax Credits. (OAR 340-16-035(5), (6), and (7)).

HB2023 amended ORS 468.185 to allow the commission to reinstate a tax credit revoked due to fraud or misrepresentation used in obtaining a certificate or failure to operate the facility to control pollution. The proposed rule reflects this amendment. To date, no revocations of tax credits have occurred. It is felt that with the ability to reinstate revoked tax credits, it will be more likely that the Department will recommend revocation of tax credits as an enforcement tool.

The burden for initiating the reinstatement of the tax credit is put on the applicant who must notify the EQC that the facility has been inspected by DEQ and found to be in compliance

(OAR 340-16-035(6)). It was deemed appropriate to put the burden of asking for reinstatement of tax credit on the certificate holder since the initial responsibility for applying for the certificate was also placed on the applicant.

The Commission may revoke the tax credit of the non-complying facility as well as any other held by the company for a facility whose purpose is to reduce or prevent pollution to the same media and which is located contiguously to the non-complying facility (OAR 340-16-035(5)). Two examples which help explain where the Department believes this will be used are as follows:

- a) A facility has two types of pollution control equipment in a row to control air emissions from a boiler; a scrubber and a baghouse. If the baghouse is out of compliance the Commission could revoke the tax credit on the baghouse and the scrubber.
- b) A facility has a combination of four baghouses acting in tandem. One is non-complying. The Commission could revoke the tax credit on all four.

The proposed rule states that the period for which certificates are revoked is from the date on which the Commission takes action to revoke the certificate to the date when the Commission takes action to reinstate the certificate (OAR 340-16-035(7)).

7. Amendment of Statutory References.

ORS 459 was amended by the 1985 legislature to delete certain sections related to hazardous waste and move them to ORS Chapter 466. Throughout the proposed rules housekeeping amendments have been made to change all references from ORS 459.410 to 466.005.

8. Determination of Percent Allocable. (OAR 340-16-030(2) and (4))

- a. Consideration of the five factors.

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 in December, 1986, the Commission and the Assistant Attorney General decided that it was necessary for all five factors to be considered by the Commission in determining percent allocable. In doing this, the Commission weighed the relevant factors and arrived at a percent allocable figure which was a combination of these weighted factors.

Legal counsel has determined that the Commission must consider all five factors in establishing percent allocable for all tax credit certifications; therefore, the rule must be amended. In order to have the Commission consider all five factors in all cases, the proposed rule amendments delete language which makes consideration of all five factors optional and requires appropriate findings to be made. (OAR 340-16-030(2)).

The rule also allows the EQC the option of assigning different weights to the different factors as was done in Ogden-Martin's case. Rather than proposing a formula to use in determining percent allocable, it is recommended that a case by case determination be made of whether weighting is appropriate.

- b. Deletion of the Requirement to Choose the Least Percent Allocable (OAR 340-16-030(4)).

Currently, the tax credit rule states that the Commission shall choose the factor or combination of factors which result in "the least percent allocable." Legal counsel has indicated that this rule is not 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 goes beyond statutorily granted rule making authority, the proposed rule amendments delete this section. (OAR 340-16-030(4)).

9. Deletion of Portions of Rule Regarding Percent Allocable Determination for Facilities Completed Before 1984. (OAR 340-16-030(3)).

OAR 340-16-030(3) addresses allocation of percent allocable for facilities completed before 1984. Tax credits for these facilities were issued in increments of 20 percent. Tax credits for facilities completed after 1984 are issued in 1 percent increments.

Since all facilities completed before 1984 had to apply for final tax credit by December 31, 1986 and would no longer be eligible to apply, this section of the rule is obsolete. The proposed rule, therefore, deletes this section.

Rule Development Process

The Department mailed notice of the proposed rule adoption to a mailing list of over 200, including Associated Oregon Industries, Oregon Environmental Council, Willamette Industries, and Tektronix. Thirty-one parties requested and were mailed copies of the proposed rules. The hearing was held in Portland on November 2, 1987. The Hearing Officer's Report is Attachment VI.

Testimony was received on the following issues:

1. Testimony from Oregon Environmental Council supported the definition of "material recovery" (OAR 340-16-010). It also recommended the addition to the rules of language specifically requiring findings to be made when certifying and revoking tax credits. The proposed rules have been amended to incorporate this suggestion (OAR 340-16-020(2)(b)(A) and 340-16-030(2) and (4)).

2. Testimony from Bob Hall of Portland General Electric recommended amending the definition of "property installed, constructed or used for cleanup of emergency spills or unauthorized releases" to allow eligibility of facilities used to clean up spills from activities operating in compliance with EPA requirements, as well as DEQ requirements. The proposed rules have been amended to incorporate this suggestion (OAR 340-16-010(12)).

Alternatives and Evaluation

1. The definition of "material recovery process" (OAR 340-16-010(7)) could be defined to include facilities which produce fuel. This would not, however, be consistent with the legislative intent of excluding from eligibility energy recovery facilities. Production of fuel is integrally related to energy recovery and cannot be considered a separate process. Furthermore, fuel production has not traditionally been accepted as a method of reusing or recycling waste under ORS Chapter 466. It would, therefore, not qualify as a material recovery process under the definition in ORS 466 since fuel production does not result in recycling or reuse as required under this definition.

"Material recovery" could also be defined to eliminate from eligibility all pollution control devices associated with energy recovery processes. There does not, however, appear to be any reason to make pollution control devices ineligible when they are attached to energy recovery facilities since these same pollution control devices would be eligible if associated with any other type of process. Furthermore, DEQ testimony was given before the House Energy and Environment Committee that the Department intended pollution control devices attached to energy recovery facilities to be eligible under this definition.

2. The rule section addressing types of facilities eligible for tax credit (OAR 340-16-025(2)) could be written to eliminate from eligibility pollution control facilities used to deter, detect or prevent spills or unauthorized releases. This would, however, seem inconsistent with the intent of the pollution control statute which is to provide financial assistance to individuals or corporations that prevent, control or reduce pollution.
3. The definition of "spill or unauthorized release" could be written to eliminate from eligibility those facilities used for cleanup of releases of polluting substances from facilities operating in compliance with a DEQ or EPA requirement. It does not, however, seem appropriate to penalize for spills or unauthorized releases those who make reasonable efforts to control pollution by complying with DEQ or EPA requirements.

This definition could also be written to provide tax credit to facilities not operating under a DEQ or EPA requirement, but operating with due care. By doing this most types of spill cleanups would be eligible for tax. However, the Legislature intended to eliminate from eligibility most types of spill cleanups. Therefore, this type of definition would be contrary to legislative intent.

4. The proposed rule amendments (OAR 340-16-030(4)) could include a formula indicating how the five factors would be weighted in all percent allocable determinations. The Department determined that this would be inappropriate since each pollution control facility is different and merits an individual determination of how the factors are to be weighted.
5. Many of the proposed amendments are housekeeping amendments necessary to make the rules consistent with the recent statutory changes. There is no alternative to updating the rules to reflect these amendments.

Summation

1. HB2023 passed during the 1987 legislative session made several changes to the pollution control tax credit statute (ORS 468.150 to .190). As a result, the tax credit rules must be updated to reflect and implement these amendments.
2. Legal counsel has recommended that the tax credit rules relating to percent allocable determinations be amended to bring them within the scope of the enabling legislation. The proposed rules would accomplish this purpose.

Director's Recommendation

Based on the summation, it is recommended that the Commission adopt the proposed Pollution Control Tax Credit Rule Amendments, Chapter 340, Division 16.



Fred Hansen

- Attachments
- I Statement of Need for Rules
 - II Statement of Land Use Consistency
 - III Draft Public Notice of Rules Adoption
 - IV Proposed Amendments to Chapter 340, Division 16
 - V House Bill 2023
 - VI Hearing Officer's Report
 - VII Written Testimony

Maggie Conley:p
MP1014
229-6408
November 25, 1987

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF AMENDING)
OAR CHAPTER 340,) STATEMENT OF NEED FOR RULES
DIVISION 16)

Statutory Authority:

Amendment of the Pollution Control Tax Credit Rules is consistent with enabling legislation, ORS 468.150 to 468.190 and amendments made to the statute by HB2023 approved during the 1987 legislature.

Need for Rule Amendments:

In order to implement recent statutory changes, amendment of the tax credit rules is necessary. In addition, legal counsel has determined that portions of the current rules need to be amended to bring them within the scope of the enabling legislation.

Principal Documents Relied Upon:

Existing state statute, ORS 468.150 to 468.190, existing state rules OAR Chapter 340-16-010 to 340-16-050, and HB2023 (1987).

Fiscal and Economic Impact:

Amending the rules to include a definition of "material recovery" which identifies as ineligible those facilities used in energy production, including those used to produce fuel, would reduce the number of facilities eligible for tax credit.

Amending the rules to define "property installed, constructed or used for cleanup of emergency spills or unauthorized releases" so that facilities used to prevent spills continue to be eligible would result in more applicants being eligible for tax credit. Facilities used to clean up spills or unauthorized releases after they have occurred would only be eligible if operated in compliance with permit conditions or, if no permit is required, if operated with due care. This will probably result in a reduced number of facilities being eligible for tax credit.

Amending the rules to delete the requirement that in determining percent allocable the Commission use the combination of factors which results in the least percent allocable may result in larger percent allocable determinations. Therefore, larger tax credits for applicants would be expected.

Amending the rules to allow reinstatement of revoked tax credits, as required by statutory amendments, may result in more revoked tax credits being reinstated.

Amending the sunset date for the tax credit program, as required by statutory amendments, will extend the program two years from December 31, 1988 to December 31, 1990 thereby allowing more tax credits to be certified.

The net effect of the rules will probably be a reduction in the number of tax credits certified and a reduction in the impact on the general fund.

The overall impact of the rule would not be significant or adverse to small business.

MC:p
MP1015
229-6408
November 12, 1987

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF AMENDING)
OAR CHAPTER 340,)
DIVISION 16) LAND USE CONSISTENCY

The proposal described appears to be consistent with all statewide planning goals. Specifically, the rule amendments comply with Goal 6 because they would provide tax credits for pollution control facilities, thereby contributing to the protection of air, water and land resource quality.

Public comment on this proposal is invited and may be submitted in the manner described in the accompanying Public Notice of Rules Adoption.

It is requested that local, state and federal agencies review the proposal and comment on possible conflicts with their programs affecting land use and with statewide planning goals within their jurisdiction. The Department of Environmental Quality intends to ask the Department of Land Conservation and Development to mediate any apparent conflicts thereby brought to its attention.

After public hearing, the Commission may adopt permanent rules identical to the proposal, adopt modified rules on the same subject matter, or decline to act. The Commission's deliberation should come on December 11, 1987 as part of the agenda of a regularly scheduled Commission meeting.

MC:p
MD146.B

Oregon Department of Environmental Quality

ATTACHMENT III
Agenda Item No.
December 11, 1987 EQC
Meeting

A CHANCE TO COMMENT ON...

Pollution Control Tax Credit Rule Amendments Public Hearing

Date Prepared: September 9, 1987
Hearing Date: November 2, 1987
Comments Due: November 2, 1987

**WHO IS
AFFECTED:**

Amendment of the rules will affect people applying for pollution control tax credits.

**WHAT IS
PROPOSED:**

The DEQ proposes to adopt amendments to the Pollution Control Tax Credit Rules (OAR 340-16-010 through 340-16-050) to reflect statutory amendments made by the 1987 legislature and to bring the rules within the bounds of the enabling legislation.

**WHAT ARE THE
HIGHLIGHTS:**

Amendments to the rules would implement recent statutory changes including elimination from eligibility of facilities which produce energy from waste and some facilities which are used for spill clean-up. They would also reflect statutory changes which amend the sunset date for the tax credit program from December 31, 1988 to December 31, 1990 and which allow restoration of a revoked tax credit if the facility is brought into compliance.

Amendments to the rules would require the Environmental Quality Commission to consider all five factors listed in the statute and allow the Commission to give them different weights when determining percent allocable rather than considering less than five of the factors. The amendments would no longer require the Commission to use the method for determining percent allocable which results in the least percent allocable.

**HOW TO
COMMENT:**

Copies of the proposed rule amendments can be obtained from:

Christie Nuttall
Management Services Division
811 SW Sixth Avenue
Portland, OR 97204
Telephone: 229-6484
Toll-free 1-800-452-4011



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.

Written comments should be sent to the same address by November 2, 1987. Verbal comments may be given during the public hearing scheduled as follows:

3:00 p.m.
November 2, 1987
Fourth Floor Conference Room
811 SW Sixth Avenue
Portland, Oregon

**WHAT IS THE
NEXT STEP:**

After the public hearing, the Environmental Quality Commission may adopt rules identical to those proposed, modify the rules or decline to act. The Commission's deliberations should come on December 4, 1987 as part of the agenda of a regularly scheduled Commission meeting.

ATTACHMENTS:

Statement of Need for Rules (including Fiscal Impact)
Statement of Land Use Consistency

OREGON ADMINISTRATIVE RULES
FOR POLLUTION CONTROL TAX CREDITS
CHAPTER 340, DIVISION 16

340-16-005 PURPOSE

The purpose of these rules is to prescribe procedures and criteria to be used by the Department and Commission for issuance of tax credits for pollution control facilities. These rules are to be used in connection with ORS 468.150 to 468.190 and apply only to facilities on which construction has been completed after December 31, 1983, except where otherwise noted herein.

340-16-010 DEFINITIONS

- (1) "Circumstances beyond the control of the applicant" means facts, conditions and circumstances which applicant's due care and diligence would not have avoided.
- (2) "Commencement of erection, construction or installation" means the beginning of a continuous program of on-site construction, erection or modification of a facility which is completed within a reasonable time, and shall not include site clearing, grading, dredging, landfilling or similar physical change made in preparation for the facility.
- (3) "Commission" means Environmental Quality Commission.
- (4) "Department" means Department of Environmental Quality.
- (5) "Facility" means a pollution control facility.
- (6) "Like-for-like replacement cost" means the current price of providing a new facility of the same type, size and construction materials as the original facility.
- (7) "Material recovery process" means any process for obtaining from solid waste, hazardous waste or used oil, 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. This does not include any process in which the major purpose is the production of fuel from solid waste, hazardous waste or used oil

which can be utilized for heat content or other forms of energy. It does not include any type of process which burns waste to produce energy or to reduce the amount of waste. However, it does not eliminate from eligibility a pollution control device associated with a process which burns waste if such device is otherwise eligible for pollution control tax credit under these rules.

- (8) [7] "Principal purpose" means the most important or primary purpose. Each facility may have only one principal purpose.
- (9) [8] "Reconstruction or replacement" means the provision of a new facility with qualities and pollution control characteristics equivalent to the original facility. This does not include repairs or work done to maintain the facility in good working order.
- (10) [9] "Sole purpose" means the exclusive purpose.
- (11) [10] "Special circumstances" means emergencies which call for immediate erection, construction or installation of a facility, cases where applicant has relied on incorrect information provided by Department personnel as demonstrated by letters, records of conversations or other written evidence, or similar adequately documented circumstances which directly resulted in applicant's failure to file a timely application for preliminary certification. Special circumstances shall not include cases where applicant was unaware of tax credit certification requirements or applied for preliminary certification in a manner other than that prescribed in 340-16-015(1).
- (12) "Spill or unauthorized release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of oil, hazardous materials or other polluting substances into the air or into or on any land or waters of the state, as defined in ORS 468.700, except as authorized by a permit issued under ORS Chapter 454, 459, 468 or 469, ORS 466.005 to 466.385, 466.880(1) and (2), 466.890 and 466.995(1) and (2) or federal law while being stored or used for its intended purpose.

For purposes of determining eligibility for tax credits under these rules, polluting substances released into the environment in conjunction with operation of a previously approved facility or activity where such facility or activity was operated in compliance with requirements imposed by the Department or the Federal Environmental Protection Agency and where the polluting substances which must now be cleaned up is determined by the Department to have been an unanticipated result of the approved facility or activity is not deemed to be a "spill or unauthorized release".

- (13) [11] "Substantial completion" means the completion of erection, installation, modification, or construction of all elements of the facility which are essential to perform its purpose.
- (14) [12] "Useful life" means the number of years the claimed facility is capable of operating before replacement or disposal.

(1) Filing of Application

- (a) Any person proposing to apply for certification of a pollution control facility pursuant to ORS 468.165, shall file an application for preliminary certification with the Department of Environmental Quality 30 days before the commencement of erection, construction or installation of the facility. The application shall be made on a form provided by the Department. The preliminary certificate need not be issued prior to construction for compliance with this requirement.
- (b) If the application is filed less than 30 days before commencement of construction, the application will be rejected as incomplete due to failure to comply with ORS 465.175(1) and OAR 340-16-015(a). However, if the Department reviews the application within 30 days of filing, and finds it complete, the Department shall notify the applicant in writing that the application is complete and ready for processing, and that the applicant may proceed with construction without waiting 30 days and without being rejected as incomplete.
- (c) The Commission may waive the filing of the application if it finds the filing inappropriate because special circumstances render the filing unreasonable and if it finds such facility would otherwise qualify for tax credit certification pursuant to ORS 468.150 to 468.190.
- (d) Within 30 days of the filing of an application the Department shall request any additional information that applicant needs to submit in order for the application to be considered complete. After examination thereof, the Department may request corrections and revisions to the plans and specifications. The Department may, also, require any other information necessary to determine whether the proposed construction is in accordance with Department statutes, rules and standards.
- (e) The application shall not be considered complete until the Department receives the information requested and notifies the applicant in writing that the application is complete and ready for processing. However, if the Department does not make a timely request pursuant to subsection (d) above, the application shall be deemed complete 30 days after filing.
- (f) Notice of the Department's recommended action to deny an application shall be mailed at least seven days before the Commission meeting where the application will be considered unless the applicant waives the notice requirement in writing.

(2) Approval of Preliminary Certification

- (a) If the Department determines that the proposed facility is eligible it shall issue a preliminary certificate approving the erection, construction or installation within 60 days of receipt of a completed application. It is not necessary for this certificate to include a

determination of the full extent a facility is eligible for tax credit.

- (b) If within 60 days of the receipt of a completed application, the Department fails to issue a preliminary certificate of approval and the Commission fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued. The construction must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted.
- (c) Issuance of a preliminary tax credit certification does not guarantee final tax credit certification.

(3) Denial of Preliminary Certification

If the Department determines that the erection, construction or installation does not comply with the Department statutes, rules and standards, the Commission shall issue an order denying certification within 60 days of receipt of a completed application.

(4) Appeal

Within 20 days from the date of mailing of the order the applicant may demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the Director of the Department. The hearing shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550.

340-16-020 PROCEDURES FOR RECEIVING FINAL TAX CREDIT CERTIFICATION

(1) Filing of Application

- (a) A written application for final tax credit certification shall be made to the Department on a form provided by the Department.
- (b) Within 30 days of receipt of an application, the Department shall request any additional information that applicant needs to submit in order for the application to be considered complete. The Department may also require any other information necessary to determine whether the construction is in accordance with Department statutes, rules and standards.
- (c) An application shall not be considered filed until all requested information is furnished by the applicant, and the Department notifies the applicant in writing that the application is complete and ready for processing.
- (d) The application shall be filed within two years of substantial completion of construction of the facility. Failure to file a timely application shall make the facility ineligible for tax credit certification.

- (e) The Commission may grant an extension of time to file an application if circumstances beyond the control of the applicant would make a timely filing unreasonable.
 - (f) An extension shall only be considered if applied for within two years of substantial completion of construction of the facility. An extension may be granted for no more than one year. Only one extension may be granted.
 - (g) An application may be withdrawn and resubmitted by applicant at any time within two years of substantial completion of construction of the facility without paying an additional processing fee, unless the cost of the facility has increased. An additional processing fee shall be calculated by subtracting the cost of the facility on the original application from the cost of the facility on the resubmitted application and multiplying the remainder by one-half of one percent.
 - (h) If the Department determines the application is incomplete for processing and applicant fails to submit requested information within 180 days of the date when the Department requested the information, the application will be rejected, unless applicant requests in writing additional time to submit requested information.
- (2) Commission Action
- (a) Notice of the Department's recommended action on the application shall be mailed at least seven days before the Commission meeting where the application will be considered unless the applicant waives the notice requirement in writing. [The Commission shall act on an application for certification before the 120th day after the filing of a complete application.] The Commission may consider and act upon an application at any of its regular or special meetings. The matter shall be conducted as an informal public informational hearing, not a contested case hearing, unless ordered otherwise by the Commission.
 - (b) Certification
 - (A) If the Commission determines that the facility is eligible, it shall make appropriate findings and certify the actual cost of the facility and the portion of the actual cost properly allocable to pollution control, [resource] material recovery or recycling as set forth in ORS 468.190. Each certificate shall bear a separate serial number for each such facility.
 - (B) No determination of the proportion of the actual cost of the facility to be certified shall be made until receipt of the application.
 - (C) If two or more facilities constitute an operational unit, the commission may certify such facilities under one certificate.
 - (D) A certificate is effective for purposes of tax relief in accordance with ORS 307.405, 316.097 and 317.116 if erection, construction or installation of the facility was [begun] completed before December 31, [1988] 1990.

- (E) Certification of a pollution control facility qualifying under ORS 468.165(1) shall be granted for a period of 10 consecutive years. The 10-year period shall begin with the tax year of the person in which the facility is certified under this section. However, if ad valorem tax relief is utilized by a corporation organized under ORS Chapter 61 or 62 the facility shall be exempt from ad valorem taxation, to the extent of the portion allocable, for a period of 20 consecutive years, or 10 years if construction is commenced after June 30, 1989 and completed before December 31, 1990, from the date of its first certification by the Commission.
- (F) Portions of a facility qualifying under ORS 468.165(1)(c) may be certified separately under this section if ownership of the portions is in more than one person. Certification of such portions of a facility shall include certification of the actual cost of the portion of the facility to the person receiving the certification. The actual cost certified for all portions of a facility separately certified under this subsection shall not exceed the total cost of the facility that would have been certified under one certificate. The provisions of ORS 316.097(8) or 317.116 whichever is applicable, shall apply to any sale, exchange or other disposition of a certified portion to a facility.

(c) Rejection

If the Commission rejects an application for certification, or certifies a lesser actual cost of the facility or a lesser portion of the actual cost properly allocable to pollution control, [resource] material recovery or recycling than was claimed in the application for certification, the Commission shall cause written notice of its action, and a concise statement of the findings and reasons therefore, to be sent by registered or certified mail to the applicant [within 120 days after the filing of the application. Failure of the Commission to act constitutes rejection of the application.]

(3) Appeal

If the application is rejected for any reason, or if the applicant is dissatisfied with the certification of actual cost or portion of the actual cost properly allocable to pollution control, material recovery or recycling, the applicant may appeal from the rejection as provided in ORS 468.110. The rejection of the certification is final and conclusive on all parties unless the applicant takes an appeal therefrom as provided in ORS 468.110 before the 30th day after notice was mailed by the Commission.

340-16-025 QUALIFICATION OF FACILITY FOR TAX CREDITS

- (1) "Pollution control facility" or "facility" shall include any land, structure, building, installation, excavation, machinery, equipment or device, or alternative methods for field sanitation and straw utilization and disposal as approved by the Field Burning Advisory Committee and the Department, or any addition to, reconstruction

of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person, which will achieve compliance with Department statutes and rules or Commission orders or permit conditions, where applicable, if:

- (a) The principal purpose of the facility is to comply with a requirement imposed by the Department, the Federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or
 - (b) The sole purpose of the facility is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.
- (2) Such prevention, control or reduction required by this subsection shall be accomplished by:
- (a) The disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468.700;
 - (b) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468.275;
 - (c) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the commission;
 - (d) The use of a [resource] material recovery process which obtains useful material [or energy resources] from material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS [459.410] 466.005, or used oil as defined in ORS 468.850;
- [(e) Subsequent additions to a solid waste facility, made either to an already certified facility or to an operation which would have qualified as a facility but for the fact that it was erected, constructed or installed before January 1, 1973, which will increase the production or recovery of useful materials or energy over the amount being produced or recovered by the original facility whether or not the materials or energy produced or recovered are similar to those of the original facility.]
- (e) [f] The treatment, substantial reduction or elimination of or redesign to treat, substantially reduce or eliminate hazardous waste as defined in ORS [459.410] 466.005; or
 - (f) [g] Approved alternative field burning methods and facilities which shall be limited to:

- (A) Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning;
- (B) Propane flammers or mobile field sanitizers which are alternatives to open field burning and reduce air quality impacts; and
- (C) Drainage tile installations which will result in a reduction of grass seed acreage under production.
- (g) Installation or construction of facilities which will be used to detect, deter, or prevent spills or unauthorized releases.
- (3) "Pollution control facility" or "facility" does not include:
 - (a) Air conditioners;
 - (b) Septic tanks or other facilities for human waste;
 - (c) Property installed, constructed or used for moving sewage to the collecting facilities of a public or quasi-public sewerage system;
 - (d) Any distinct portion of a solid waste, hazardous waste or used oil facility that makes an insignificant contribution to the purpose of utilization of solid waste, hazardous waste or used oil including the following specific items:
 - (A) Office buildings and furnishings;
 - (B) Parking lots and road improvements;
 - (C) Landscaping;
 - (D) External lighting;
 - (E) Company signs;
 - (F) Artwork; and
 - (G) Automobiles.
 - (e) Facilities not directly related to the operation of the industry or enterprise seeking the tax credit;
 - (f) Replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued under ORS 468.170, except:
 - (A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement cost of the original facility due to a requirement imposed by the department, the federal Environmental Protection Agency or a regional air pollution authority, then the facility may be eligible for tax credit certification up to an amount equal to the difference between the cost of the new facility and the like-for-like replacement cost of the original facility; or

(B) If a facility is replaced or reconstructed before the end of its useful life then the facility may be eligible for the remainder of the tax credit certified to the original facility.

(g) Property or facilities installed, constructed or used for cleanup of emergency spills or unauthorized releases. This includes any facility installed, constructed or used for cleanup after a spill or unauthorized release has occurred.

(4) Any person may apply to the commission for certification under ORS 468.170 of a pollution control facility or portion thereof erected, constructed or installed by the person in Oregon if:

(a) The air or water pollution control facility was erected, constructed or installed on or after January 1, 1967.

(b) The noise pollution control facility was erected, constructed or installed on or after January 1, 1977.

(c) The solid waste facility was under construction on or after January 1, 1973, or the hazardous waste, used oil, [resource] material recovery, or recycling facility was under construction on or after October 3, 1979, and if:

(A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155(1);

(B) The facility will utilize material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS [459.410] 466.005 or used oil as defined in ORS 468.850:

(i) By [burning], mechanical processing or chemical processing; or

(ii) Through the production, processing, presegregation, or use of:

[(I) Materials for their heat content or other forms of energy of or from the material; or]

I [(II)] Materials which have useful chemical or physical properties and which may be used for the same or other purposes; or

II [(III)] Materials which may be used in the same kind of application as its prior use without change in identity;

(C) The end product of the utilization is [a usable source of power or other] an item of real economic value;

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

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

- (d) The hazardous waste control facility was erected, constructed or installed on or after January 1, 1984 and if:
 - (A) The facility's principal or sole purpose conforms to the requirements of ORS 468.155(1) and
 - (B) The facility is designed to treat, substantially reduce or eliminate hazardous waste as defined in ORS [459.410] 466.005.
- (5) The Commission shall certify a pollution control, solid waste, hazardous waste or used oil facility or portion thereof, for which an application has been made under ORS 468.165, if the Commission finds that the facility:
 - (A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165(1) and 468.175;
 - (B) Is designed for, and is being operated or will operate in accordance with the requirements of ORS 468.155; and
 - (C) Is necessary to satisfy the intents and purposes of and is in accordance with the applicable Department statutes, rules and standards.

340-16-030 DETERMINATION OF PERCENTAGE OF CERTIFIED FACILITY COST ALLOCABLE TO POLLUTION CONTROL

- (1) Definitions
 - (a) "Annual operating expenses" means the estimated costs of operating the claimed facility including labor, utilities, property taxes, insurance, and other cash expenses, less any savings in expenses attributable to installation of the claimed facility. Depreciation, interest expenses, and state and federal taxes are not included.
 - (b) "Average annual cash flow" means the estimated average annual cash flow from the claimed facility for the first five full years of operation calculated as follows:
 - (A) Calculate the annual cash flow for each of the first five full years of operation by subtracting the annual operating expenses from the gross annual income for each year and
 - (B) Sum the five annual cash flows and divide the total by five. Where the useful life of the claimed facility is less than five years, sum the annual cash flows for the useful life of the facility and divide by the useful life.
 - (c) "Claimed facility cost" means the actual cost of the claimed facility minus the salvage value of any facilities removed from service.

- (d) "Gross annual income" means the estimated total annual income from the claimed facility derived from sale or reuse of recovered materials or energy or any other means.
 - (e) "Salvage value" means the value of a facility at the end of its useful life minus what it costs to remove it from service. Salvage value can never be less than zero.
- (2) In establishing the portion of costs properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil for facilities qualifying for certification under ORS 468.170, the Commission shall consider the following factors[, if applicable] and make appropriate findings regarding their applicability:
- (a) The extent to which the facility is used to recover and convert waste products into a salable or usable commodity;
 - (b) The estimated annual percent return on the investment in the facility;
 - (c) The alternative methods, equipment and costs for achieving the same pollution control objective;
 - (d) Related savings or increase in costs which occur or may occur as a result of the installation of the facility; or
 - (e) Other factors which are relevant in establishing the portion of the actual cost of the facility properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.
- [(3) For facilities that have received preliminary certification and on which construction has been completed before January 1, 1984, the portion of actual costs properly allocable shall be:
- (a) Eighty percent or more.
 - (b) Sixty percent or more but less than 80 percent.
 - (c) Forty percent or more but less than 60 percent.
 - (d) Twenty percent or more but less than 40 percent.
 - (e) Less than twenty percent.]
- 3 [(4)] [For facilities on which construction has been completed after December 31, 1983,] The portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent. If zero percent, the Commission shall issue an order denying certification.

4 [(5)] In considering the factors listed in 340-16-030, [to establish the portion of costs allocable to pollution control, the Commission will use the factor, or combination of factors, that results in the smallest portion of costs allocable.] the Commission may determine in its findings that one or more factors are more important than others and may assign different weights to the factors when determining the portion of costs properly allocable to pollution control.

5 [(6)] When considering the estimated annual percent return on investment in the facility, 340-16-030(2)(b), [is used to establish the portion of costs allocable to pollution control,] the following steps will be used:

- (a) Determine the claimed facility cost, average annual cash flow and useful life of the claimed facility.
- (b) Determine the return on investment factor by dividing the claimed facility cost by the average annual cash flow.
- (c) Determine the annual percent return on investment by using Table 1. At the top of Table 1, find the number equal to the useful life of the claimed facility. In the column under this useful life number, find the number closest to the return on investment factor. Follow this row to the left until reaching the first column. The number in the first column is the annual percent return on investment for the claimed facility. For a useful life greater than 30 years, or percent return on investment greater than 25 percent, Table 1 can be extended by utilizing the following equation:

$$I_R = \frac{1-(1+i)^{-n}}{i}$$

Where: I_R is the return on investment factor.
 i is the annual percent return on investment.
 n is the useful life of the claimed facility.

- (d) Determine the reference annual percent return on investment from Table 2. Select the reference percent return from Table 2 that corresponds with the year construction was completed on the claimed facility. For each future calendar year not shown in Table 2, the reference percent return shall be the five-year average of the rate of return before taxes on stockholders' equity for all United States manufacturing corporations for the five years prior to the calendar year of interest.

- (e) Determine the portion of actual costs properly allocable to pollution control from the following equation:

$$P_A = \frac{RROI - ROI}{RROI} \times 100\%$$

Where: P_A is the portion of actual costs properly allocable to pollution control in percent, rounded off to the nearest whole number.
 ROI is the annual percent return on investment from Table 1.
 $RROI$ is the reference annual percent return on investment from Table 2.

If ROI is greater than or equal to $RROI$, then the portion of actual costs properly allocable to pollution control shall be zero percent.

340-16-035 PROCEDURE TO REVOKE CERTIFICATION

- (1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the Commission may order the revocation of the final tax credit certification if it finds that:
 - (a) The certification was obtained by fraud or misrepresentation or
 - (b) The holder of the certificate has failed substantially to operate the facility for the purpose of, and to the extent necessary for, preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or recycling or disposing of used oil as specified in such certificate, or has failed to operate the facility in compliance with Department or Commission statutes, rules, orders or permit conditions where applicable.
- (2) As soon as the order of revocation under this section has become final, the Commission shall notify the Department of Revenue and the county assessor of the county in which the facility is located of such order.
- (3) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax relief provided to the holder of such certificate by virtue of such certificate shall be forfeited and the Department of Revenue or the proper county officers shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder under any provision of ORS 307.405, 316.097 and 317.116.
- (4) Except as provided in subsection (5) of this section, if the certification of a pollution control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further relief provided under ORS 307.405, 316.097 or 317.116 in connection with such facility,

as the case may be, from and after the date that the order of revocation becomes final.

- (5) Once a determination has been made under subsection (1) of this section, the commission may revoke tax credits held for any facility or piece of equipment which is for the purpose of preventing, controlling, reducing, or eliminating pollution to the same media and which is at a location within or adjacent to the property on which the non-complying facility is located.
- (6) Upon notification by the certificate holder that the facility has been inspected by DEQ and found to be in compliance, the commission may reinstate any revoked tax credit certification if the commission finds the non-complying facility has been brought into compliance.
- (7) If the commission reinstates certification, the commission shall notify the Department of Revenue or the county assessor of the county in which the facility is located that the tax credit certification is reinstated for the remaining period of the tax credit, less the period of revocation. The period of revocation would be from the date the Commission revokes the certificate to the date the Commission reinstates the certificate.
- (8) [5] The [Department] commission may withhold revocation of a certificate when operation of a facility ceases if the certificate holder indicates in writing that the facility will be returned to operation within five years time. In the event that the facility is not returned to operation as indicated, the [Department] commission shall revoke the certificate.

340-16-040 PROCEDURES FOR TRANSFER OF A TAX CREDIT CERTIFICATE

To transfer a tax credit certificate from one holder to another, the Commission shall revoke the certificate and grant a new one to the new holder for the balance of the available tax credit following the procedure set forth in ORS 307.405, 316.097, and 317.116.

340-16-045 FEES FOR FINAL TAX CREDIT CERTIFICATION

- (1) An application processing fee of one-half of one percent of the cost claimed in the application of the pollution control facility to a maximum of \$5,000 shall be paid with each application. However, if the application processing fee is less than \$50, no application processing fee shall be charged. A non-refundable filing fee of \$50 shall be paid with each application. No application is complete until the filing fee and processing fee are submitted. An amount equal to the filing fee and processing fee shall be submitted as a required part of any application for a pollution control facility tax credit.

- (2) Upon the Department's receipt of an application, the filing fee becomes non-refundable.
- (3) The application processing fee shall be refunded in whole if the application is rejected.
- (4) The fees shall not be considered by the Environmental Quality Commission as part of the cost of the facility to be certified.
- (5) All fees shall be made payable to the Department of Environmental Quality.

340-16-050 TAXPAYERS RECEIVING TAX CREDIT

- (1) A person receiving a certificate under this section may take tax relief only under ORS 316.097 or 317.116, depending upon the tax status of the person's trade or business except if the taxpayer is a corporation organized under ORS Chapter 61 or 62, or any predecessor to ORS Chapter 62 relating to incorporation of cooperative associations, or is a subsequent transferee of such a corporation, the tax relief may be taken only under ORS 307.405.
- (2) If the person receiving the certificate is an electing small business corporation as defined in section 1361 of the Internal Revenue Code, each shareholder shall be entitled to take tax credit relief as provided in ORS 316.097, based on that shareholder's pro rata share of the certified cost of the facility.
- (3) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 316.097, based on that partner's pro rata share of the certified cost of the facility.
- (4) Upon any sale, exchange or other disposition of a facility written notice must be provided to the Department of Environmental Quality by the company, corporation or individual for whom the tax credit certificate has been issued. Upon request, the taxpayer shall provide a copy of the contract or other evidence of disposition of the property to the Department of Environmental Quality.
- (5) The company, corporation or individual claiming the tax credit for a leased facility must provide a copy of a written agreement between the lessor and lessee designating the party to receive the tax credit and a copy of the complete and current lease agreement for the facility.
- (6) The taxpayer claiming the tax credit for a facility with more than one owner shall provide a copy of a written agreement between the owners designating the party or parties to receive the tax credit certificate.

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- (4) The fees shall not be considered by the Environmental Quality Commission as part of the cost of the facility to be certified.
- (5) All fees shall be made payable to the Department of Environmental Quality.

340-16-050 TAXPAYERS RECEIVING TAX CREDIT

- (1) A person receiving a certificate under this section may take tax relief only under ORS 316.097 or 317.116, depending upon the tax status of the person's trade or business except if the taxpayer is a corporation organized under ORS Chapter 61 or 62, or any predecessor to ORS Chapter 62 relating to incorporation of cooperative associations, or is a subsequent transferee of such a corporation, the tax relief may be taken only under ORS 307.405.
- (2) If the person receiving the certificate is an electing small business corporation as defined in section 1361 of the Internal Revenue Code, each shareholder shall be entitled to take tax credit relief as provided in ORS 316.097, based on that shareholder's pro rata share of the certified cost of the facility.
- (3) If the person receiving the certificate is a partnership, each partner shall be entitled to take tax credit relief as provided in ORS 316.097, based on that partner's pro rata share of the certified cost of the facility.
- (4) Upon any sale, exchange or other disposition of a facility written notice must be provided to the Department of Environmental Quality by the company, corporation or individual for whom the tax credit certificate has been issued. Upon request, the taxpayer shall provide a copy of the contract or other evidence of disposition of the property to the Department of Environmental Quality.
- (5) The company, corporation or individual claiming the tax credit for a leased facility must provide a copy of a written agreement between the lessor and lessee designating the party to receive the tax credit and a copy of the complete and current lease agreement for the facility.
- (6) The taxpayer claiming the tax credit for a facility with more than one owner shall provide a copy of a written agreement between the owners designating the party or parties to receive the tax credit certificate.

MD1560.C

B-Engrossed House Bill 2023

Ordered by the House June 4
Including House Amendments dated May 14 and June 4

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Hazardous Materials)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Allows pollution control facility tax credit on facility if erection, construction or installation was completed before December 31, 1990. Extends tax credit of 50 percent of certified cost of facility through June 30, 1989. Extends tax credit for facilities commenced after June 30, 1989, and completed before December 1, 1990, at 25 percent of certified cost. Clarifies that yearly tax credit is still one-half of certified cost multiplied by percentage allocable to pollution and divided by 10 years for facilities started before July 1, 1989. Clarifies that only owner or lessee, and not both, can claim tax credit. Disallows credits for property installed or used for clean up of emergency spills or unauthorized releases. Authorizes reinstatement of revoked tax credit if facility is brought into compliance.

A BILL FOR AN ACT

1
2 Relating to pollution control tax credits; amending ORS 307.405, 318.097, 317.116, 468.155, 468.170
3 and 468.185.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 307.405 is amended to read:

6 307.405. (1) A pollution control facility or facilities which have been constructed in accordance
7 with the requirements of ORS 468.165 (1), and have been certified by the Environmental Quality
8 Commission pursuant to ORS 468.170 are exempt to the extent of the highest percentage figure
9 certified by the Environmental Quality Commission as the portion of the actual cost properly
10 allocable to the prevention, control or reduction of pollution. The exemption shall be allowed only
11 if the taxpayer is a corporation organized under ORS chapter 61 or 62, or any predecessor to ORS
12 chapter 62 relating to incorporation of cooperative associations, or is a subsequent transferee of
13 such a corporation. If the subsequent transferee is organized under other than ORS chapter 61 or
14 62, the exemption shall only be allowed if the transfer occurs after the expiration of five years from
15 the date of original certification by the commission.

16 (2) To qualify for the ad valorem tax relief:

17 (a) The pollution control facility must be erected, constructed or installed in connection with
18 the trade or business conducted by the taxpayer on Oregon property owned or leased by said tax-
19 payer.

20 (b) The taxpayer must be the owner of the trade or business that utilizes Oregon property re-
21 quiring a pollution control facility to prevent or minimize pollution or a person who, as a lessee
22 under a written lease or pursuant to a written agreement, conducts the trade or business that op-
23 erates or utilizes such property and who by the terms of such lease or agreement is obliged to pay
24 the ad valorem taxes on such property. As used in this subsection, "owner" includes a contract

NOTE: Matter in bold face in an amended section is new; matter [italic and bracketed] is existing law to be omitted.

1 purchaser.

2 (3) The ad valorem exemption of a facility shall expire, in any event: []

3 (a) Twenty [20] years from the date of its first certification for any owner or lessee by the
4 Environmental Quality Commission; or

5 (b) For a facility whose erection, construction or installation is commenced after June
6 30, 1989, and completed before December 31, 1990, 10 years from the date of its first certifi-
7 cation for any owner or lessee by the Environmental Quality Commission.

8 (4) Upon any sale, exchange, or other disposition of a facility, notice thereof shall be given to
9 the Environmental Quality Commission who shall revoke the certification covering such facility as
10 of the date of such disposition. The transferee may apply for a new certificate under ORS 468.170,
11 but the number of years of ad valorem tax exemption that may be claimed by the transferee is the
12 remainder of the exemption period specified in subsection (3) of this section.

13 (5) If the facility also functions to prevent pollution from operations conducted on other property
14 owned or leased by the taxpayer the Environmental Quality Commission shall state in its certifi-
15 cation of the facility the percentage of the facility used to prevent pollution from such qualifying
16 trade or business conducted on such qualifying property. The exemption from ad valorem taxes un-
17 der this section shall be limited to such percentage of the value of the facility.

18 **SECTION 2. ORS 316.097 is amended to read:**

19 316.097. (1) A credit against taxes imposed by this chapter for a pollution control facility or
20 facilities certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (4)
21 of this section.

22 (2) For a facility certified under ORS 468.170, the maximum credit allowed in any one tax year
23 shall be the lesser of the tax liability of the taxpayer or either of the following:

24 (a) For a facility whose erection, construction or installation is commenced before July
25 1, 1989, and completed before December 31, 1990, one-half of the certified cost of the facility
26 multiplied by the certified percentage allocable to pollution control, divided by the number
27 of years of the facility's useful life. The number of years of the facility's useful life used in
28 this calculation shall be the remaining number of years of useful life at the time the facility
29 is certified but not less than one year or more than 10 years.

30 (b) For a facility whose erection, construction or installation is commenced after June
31 30, 1989, and completed before December 31, 1990, one-quarter of the certified cost of the
32 facility multiplied by the certified percentage allocable to pollution control, divided by the number
33 of years of the facility's useful life. The number of years of the facility's useful life used in this
34 calculation shall be the remaining number of years of useful life at the time the facility is certified
35 but not less than one year or more than 10 years.

36 (3) To qualify for the credit the pollution control facility must be erected, constructed or in-
37 stalled in accordance with the provisions of ORS 468.165 (1).

38 (4)(a) The taxpayer who is allowed the credit must be:

39 (A) The owner of the trade or business that utilizes Oregon property requiring a pollution con-
40 trol facility to prevent or minimize pollution;

41 (B) A person who, as a lessee or pursuant to an agreement, conducts the trade or business that
42 operates or utilizes such property; or

43 (C) A person who, as an owner[,] or lessee [or pursuant to an agreement,] owns[,] or leases [or
44 has a beneficial interest in] a pollution control facility used for resource recovery as defined in ORS

1 purchaser.

2 (3) The ad valorem exemption of a facility shall expire, in any event: []

3 (a) Twenty [20] years from the date of its first certification for any owner or lessee by the
4 Environmental Quality Commission; or

5 (b) For a facility whose erection, construction or installation is commenced after June
6 30, 1989, and completed before December 31, 1990, 10 years from the date of its first certifi-
7 cation for any owner or lessee by the Environmental Quality Commission.

8 (4) Upon any sale, exchange, or other disposition of a facility, notice thereof shall be given to
9 the Environmental Quality Commission who shall revoke the certification covering such facility as
10 of the date of such disposition. The transferee may apply for a new certificate under ORS 468.170,
11 but the number of years of ad valorem tax exemption that may be claimed by the transferee is the
12 remainder of the exemption period specified in subsection (3) of this section.

13 (5) If the facility also functions to prevent pollution from operations conducted on other property
14 owned or leased by the taxpayer the Environmental Quality Commission shall state in its certifi-
15 cation of the facility the percentage of the facility used to prevent pollution from such qualifying
16 trade or business conducted on such qualifying property. The exemption from ad valorem taxes un-
17 der this section shall be limited to such percentage of the value of the facility.

18 SECTION 2. ORS 316.097 is amended to read:

19 316.097. (1) A credit against taxes imposed by this chapter for a pollution control facility or
20 facilities certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (4)
21 of this section.

22 (2) For a facility certified under ORS 468.170, the maximum credit allowed in any one tax year
23 shall be the lesser of the tax liability of the taxpayer or either of the following:

24 (a) For a facility whose erection, construction or installation is commenced before July
25 1, 1989, and completed before December 31, 1990, one-half of the certified cost of the facility
26 multiplied by the certified percentage allocable to pollution control, divided by the number
27 of years of the facility's useful life. The number of years of the facility's useful life used in
28 this calculation shall be the remaining number of years of useful life at the time the facility
29 is certified but not less than one year or more than 10 years.

30 (b) For a facility whose erection, construction or installation is commenced after June
31 30, 1989, and completed before December 31, 1990, one-quarter of the certified cost of the
32 facility multiplied by the certified percentage allocable to pollution control, divided by the number
33 of years of the facility's useful life. The number of years of the facility's useful life used in this
34 calculation shall be the remaining number of years of useful life at the time the facility is certified
35 but not less than one year or more than 10 years.

36 (3) To qualify for the credit the pollution control facility must be erected, constructed or in-
37 stalled in accordance with the provisions of ORS 468.165 (1).

38 (4)(a) The taxpayer who is allowed the credit must be:

39 (A) The owner of the trade or business that utilizes Oregon property requiring a pollution con-
40 trol facility to prevent or minimize pollution;

41 (B) A person who, as a lessee or pursuant to an agreement, conducts the trade or business that
42 operates or utilizes such property; or

43 (C) A person who, as an owner[,] or lessee [or pursuant to an agreement,] owns[,] or leases [or
44 has a beneficial interest in] a pollution control facility used for resource recovery as defined in ORS

1 459.005. Such person may, but need not, operate such facility or conduct a trade or business that
2 utilizes property requiring such a facility. If more than one person has an interest under this sub-
3 paragraph in a resource recovery facility, **only one may claim the credit allowed under this**
4 **section.** *[and without regard to ORS 468.170 (9), one or more persons receive a certificate, such person*
5 *or persons may allocate all or any part of the certified cost of such facility among any persons and*
6 *their successors or assigns having an interest under this subparagraph. Such allocation shall be evi-*
7 *denced by a written statement signed by the person or persons receiving the certificate and designating*
8 *the persons to whom the certified costs have been allocated and the amount of certified cost allocated*
9 *to each]* **The person claiming the credit as between an owner and lessee under this subpara-**
10 **graph shall be designated in a written statement signed by both the lessor and lessee of the**
11 **facility; this statement shall be filed with the Department of Revenue not later than the final day**
12 **of the first tax year for which a tax credit is claimed.** *[pursuant to such agreement. In no event shall*
13 *the aggregate certified costs allocated between or among more than one person exceed the amount of*
14 *the total certified cost of the facility.]* As used in this paragraph, "owner" includes a contract pur-
15 chaser; and

16 (b) The facility must be owned or leased during the tax year by the taxpayer claiming the
17 credit, *except as otherwise provided in subparagraph (C) of paragraph (a) of this subsection,* and
18 must have been in use and operation during the tax year for which the credit is claimed.

19 (5) Regardless of when the facility is erected, constructed or installed, a credit under this sec-
20 tion may be claimed by a taxpayer:

21 (a) For a facility qualifying under ORS 468.165 (1)(a) or (b), only in those tax years which begin
22 on or after January 1, 1967.

23 (b) For a facility qualifying under ORS 468.165 (1)(c), in those tax years which begin on or after
24 January 1, 1973.

25 (c) For a facility qualifying under ORS 468.165 (1)(d), in those tax years which begin on or after
26 January 1, 1984.

27 (6) For a facility certified under ORS 468.170, the maximum total credit allowable shall not ex-
28 ceed:

29 (a) One-half of the certified cost of the facility multiplied by the certified percentage
30 allocable to pollution control; or

31 (b) For a facility whose erection, construction or installation is commenced after June
32 30, 1989, and completed before December 31, 1990, one-quarter of the certified cost of the
33 facility multiplied by the certified percentage allocable to pollution control.

34 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
35 duction for the facility to which the taxpayer otherwise may be entitled under this chapter for such
36 year.

37 (8) Upon any sale, exchange, or other disposition of a facility, notice thereof shall be given to
38 the Environmental Quality Commission who shall revoke the certification covering such facility as
39 of the date of such disposition. The transferee may apply for a new certificate under ORS 468.170,
40 but the tax credit available to such transferee shall be limited to the amount of credit not claimed
41 by the transferor. The sale, exchange or other disposition of shares in an electing small business
42 corporation as defined in section [1371] 1361 of the Internal Revenue Code or of a partner's interest
43 in a partnership shall not be deemed a sale, exchange or other disposition of a facility for purposes
44 of this subsection.

1 (9) Any tax credit otherwise allowable under this section which is not used by the taxpayer in
2 a particular year may be carried forward and offset against the taxpayer's tax liability for the next
3 succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried
4 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
5 succeeding tax year may be carried forward and used in the third succeeding tax year, but may not
6 be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax
7 year beyond the years specified in ORS 468.170.

8 (10) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased
9 by any tax credits allowed under this section.

10 (11) If the taxpayer is a shareholder of an electing small business corporation, the credit shall
11 be computed using the shareholder's pro rata share of the corporation's certified cost of the facility.
12 In all other respects, the allowance and effect of the tax credit shall apply to the corporation as
13 otherwise provided by law.

14 **SECTION 3.** ORS 317.116 is amended to read:

15 317.116. (1) A credit against taxes imposed by this chapter for a pollution control facility or
16 facilities certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (4)
17 of this section.

18 (2) For a facility certified under ORS 468.170, the maximum credit allowed in any one taxable
19 year shall be the lesser of the tax liability of the taxpayer or either of the following:

20 (a) For a facility whose erection, construction or installation is commenced before July
21 1, 1989, and completed before December 31, 1990, one-half of the certified cost of the facility
22 multiplied by the certified percentage allocable to pollution control, divided by the number
23 of years of the facility's useful life. The number of years of the facility's useful life used in
24 this calculation shall be the remaining number of years of useful life at the time the facility
25 is certified but not less than one year or more than 10 years.

26 (b) For a facility whose erection, construction or installation is commenced after June
27 30, 1989, and completed before December 31, 1990, one-quarter of the certified cost of the
28 facility multiplied by the certified percentage allocable to pollution control, divided by the number
29 of years of the facility's useful life. The number of years of the facility's useful life used in this
30 calculation shall be the remaining number of years of useful life at the time the facility is certified,
31 but not less than one year or more than 10 years.

32 (3) To qualify for the credit the pollution control facility must be erected, constructed or in-
33 stalled in accordance with the provisions of ORS 468.165 (1).

34 (4)(a) The taxpayer who is allowed the credit must be:

35 (A) The owner of the trade or business that utilizes Oregon property requiring a pollution con-
36 trol facility to prevent or minimize pollution;

37 (B) A person who, as a lessee or pursuant to an agreement, conducts the trade or business that
38 operates or utilizes such property; or

39 (C) A person who, as an owner[,] or lessee [or pursuant to an agreement,] owns[,] or leases [or
40 has a beneficial interest in] a pollution control facility used for resource recovery as defined in ORS
41 459.005. Such person may, but need not, operate such facility or conduct a trade or business that
42 utilizes property requiring such a facility. If more than one person has an interest under this sub-
43 paragraph in a resource recovery facility, only one may claim the credit allowed under this
44 section. [and without regard to ORS 468.170 (9), one or more persons receive a certificate, such person

1 (9) Any tax credit otherwise allowable under this section which is not used by the taxpayer in
2 a particular year may be carried forward and offset against the taxpayer's tax liability for the next
3 succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried
4 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
5 succeeding tax year may be carried forward and used in the third succeeding tax year, but may not
6 be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax
7 year beyond the years specified in ORS 468.170.

8 (10) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased
9 by any tax credits allowed under this section.

10 (11) If the taxpayer is a shareholder of an electing small business corporation, the credit shall
11 be computed using the shareholder's pro rata share of the corporation's certified cost of the facility.
12 In all other respects, the allowance and effect of the tax credit shall apply to the corporation as
13 otherwise provided by law.

14 **SECTION 3.** ORS 317.116 is amended to read:

15 317.116. (1) A credit against taxes imposed by this chapter for a pollution control facility or
16 facilities certified under ORS 468.170 shall be allowed if the taxpayer qualifies under subsection (4)
17 of this section.

18 (2) For a facility certified under ORS 468.170, the maximum credit allowed in any one taxable
19 year shall be the lesser of the tax liability of the taxpayer or either of the following:

20 (a) For a facility whose erection, construction or installation is commenced before July
21 1, 1989, and completed before December 31, 1990, one-half of the certified cost of the facility
22 multiplied by the certified percentage allocable to pollution control, divided by the number
23 of years of the facility's useful life. The number of years of the facility's useful life used in
24 this calculation shall be the remaining number of years of useful life at the time the facility
25 is certified but not less than one year or more than 10 years.

26 (b) For a facility whose erection, construction or installation is commenced after June
27 30, 1989, and completed before December 31, 1990, one-quarter of the certified cost of the
28 facility multiplied by the certified percentage allocable to pollution control, divided by the number
29 of years of the facility's useful life. The number of years of the facility's useful life used in this
30 calculation shall be the remaining number of years of useful life at the time the facility is certified,
31 but not less than one year or more than 10 years.

32 (3) To qualify for the credit the pollution control facility must be erected, constructed or in-
33 stalled in accordance with the provisions of ORS 468.165 (1).

34 (4)(a) The taxpayer who is allowed the credit must be:

35 (A) The owner of the trade or business that utilizes Oregon property requiring a pollution con-
36 trol facility to prevent or minimize pollution;

37 (B) A person who, as a lessee or pursuant to an agreement, conducts the trade or business that
38 operates or utilizes such property; or

39 (C) A person who, as an owner[,] or lessee [or pursuant to an agreement,] owns[,] or leases [or
40 has a beneficial interest in] a pollution control facility used for resource recovery as defined in ORS
41 459.005. Such person may, but need not, operate such facility or conduct a trade or business that
42 utilizes property requiring such a facility. If more than one person has an interest under this sub-
43 paragraph in a resource recovery facility, only one may claim the credit allowed under this
44 section. [and without regard to ORS 468.170 (9), one or more persons receive a certificate, such person

1 or persons may allocate all or any part of the certified cost of such facility among any persons and
2 their successors or assigns having an interest under this subparagraph. Such allocation shall be evi-
3 denced by a written statement signed by the person or persons receiving certification and designating
4 the persons to whom the certified costs have been allocated and the amount of certified cost allocated
5 to each. The person claiming the credit as between an owner and lessee under this subpara-
6 graph shall be designated in a written statement signed by both the lessor and lessee of the
7 facility; this statement shall be filed with the Department of Revenue not later than the final day
8 of the first tax year for which a tax credit is claimed. *[pursuant to such agreement. In no event shall*
9 *the aggregate certified costs allocated between or among more than one person exceed the amount of*
10 *the total certified cost of the facility.]* As used in this paragraph, "owner" includes a contract pur-
11 chaser; and

12 (b) The facility must be owned or leased during the tax year by the taxpayer claiming the credit
13 *[except as provided in subparagraph (C) of paragraph (a) of this subsection,]* and must have been in
14 use and operation during the tax year for which the credit is claimed.

15 (5) Regardless of when the facility is erected, constructed or installed, a credit under this sec-
16 tion may be claimed by a taxpayer:

17 (a) For a facility qualifying under ORS 468.165 (1)(a) or (b), only in those tax years which begin
18 on or after January 1, 1967.

19 (b) For a facility qualifying under ORS 468.165 (1)(c), only in those tax years which begin on or
20 after January 1, 1973.

21 (c) For a facility qualifying under ORS 468.165 (1)(d), in those tax years which begin on or after
22 January 1, 1984.

23 (6) For a facility certified under ORS 468.170, the maximum total credit allowable shall not ex-
24 ceed:

25 (a) One-half of the certified cost of the facility multiplied by the certified percentage
26 allocable to pollution control; or

27 (b) For a facility whose erection, construction or installation is commenced after June
28 30, 1989, and completed before December 31, 1990, one-quarter of the certified cost of the
29 facility multiplied by the certified percentage allocable to pollution control.

30 (7) The credit provided by this section is not in lieu of any depreciation or amortization de-
31 duction for the facility to which the taxpayer otherwise may be entitled under this chapter for such
32 year.

33 (8) Upon any sale, exchange, or other disposition of facility, notice thereof shall be given to the
34 Environmental Quality Commission who shall revoke the certification covering such facility as of
35 the date of such disposition. The transferee may apply for a new certificate under ORS 468.170, but
36 the tax credit available to such transferee shall be limited to the amount of credit not claimed by
37 the transferor. The sale, exchange or other disposition of a partner's interest in a partnership shall
38 not be deemed a sale, exchange or other disposition of a facility for purposes of this subsection.

39 (9) Any tax credit otherwise allowable under this section which is not used by the taxpayer in
40 a particular year may be carried forward and offset against the taxpayer's tax liability for the next
41 succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried
42 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
43 succeeding tax year may be carried forward and used in the third succeeding tax year, but may not
44 be carried forward for any tax year thereafter. Credits may be carried forward to and used in a tax

1 year beyond the years specified in ORS 468.170.

2 (10) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased
3 by any tax credits allowed under this section.

4 SECTION 4. ORS 468.155 is amended to read:

5 468.155. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pol-
6 lution control facility" or "facility" means any land, structure, building, installation, excavation,
7 machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or
8 an existing structure, building, installation, excavation, machinery, equipment or device reasonably
9 used, erected, constructed or installed by any person if:

10 (A) The principal purpose of such use, erection, construction or installation is to comply with
11 a requirement imposed by the department, the federal Environmental Protection Agency or regional
12 air pollution authority to prevent, control or reduce air, water or noise pollution or solid or haz-
13 ardous waste or to recycle or provide for the appropriate disposal of used oil; or

14 (B) The sole purpose of such use, erection, construction or installation is to prevent, control or
15 reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to re-
16 cycle or provide for the appropriate disposal of used oil.

17 (b) Such prevention, control or reduction required by this subsection shall be accomplished by:

18 (A) The disposal or elimination of or redesign to eliminate industrial waste and the use of
19 treatment works for industrial waste as defined in ORS 468.700;

20 (B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or
21 air contamination sources and the use of air cleaning devices as defined in ORS 468.275;

22 (C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise
23 emission sources as defined by rule of the commission;

24 (D) The use of a [resource] material recovery process which obtains useful material [or energy
25 resources] from material that would otherwise be solid waste as defined in ORS 459.005, hazardous
26 waste as defined in ORS 466.005, or used oil as defined in ORS 468.850. *For the purposes of ORS*
27 *468.155 to 468.190, "solid waste facility" shall also include subsequent additions, made either to an*
28 *already certified facility or to an operation which would have qualified as a facility but for the fact that*
29 *it was erected, constructed or installed before January 1, 1973, which will increase the production or*
30 *recovery of useful materials or energy over the amount being produced or recovered by the original*
31 *facility whether or not the materials or energy produced or recovered are similar to those of the ori-*
32 *ginal facility]; or*

33 (E) The treatment, substantial reduction or elimination of or redesign to treat, substantially re-
34 duce or eliminate hazardous waste as defined in ORS 466.005.

35 (2) "Pollution control facility" or "facility" does not include:

36 (a) Air conditioners;

37 (b) Septic tanks or other facilities for human waste;

38 (c) Property installed, constructed or used for moving sewage to the collecting facilities of a
39 public or quasi-public sewerage system;

40 (d) Any distinct portion of a solid waste, hazardous waste or used oil facility that makes an in-
41 significant contribution to the purpose of utilization of solid waste, hazardous waste or used oil in-
42 cluding the following specific items:

43 (A) Office buildings and furnishings;

44 (B) Parking lots and road improvements;

1 year beyond the years specified in ORS 468.170.

2 (10) The taxpayer's adjusted basis for determining gain or loss shall not be further decreased
3 by any tax credits allowed under this section.

4 SECTION 4. ORS 468.155 is amended to read:

5 468.155. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pol-
6 lution control facility" or "facility" means any land, structure, building, installation, excavation,
7 machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or
8 an existing structure, building, installation, excavation, machinery, equipment or device reasonably
9 used, erected, constructed or installed by any person if:

10 (A) The principal purpose of such use, erection, construction or installation is to comply with
11 a requirement imposed by the department, the federal Environmental Protection Agency or regional
12 air pollution authority to prevent, control or reduce air, water or noise pollution or solid or haz-
13 ardous waste or to recycle or provide for the appropriate disposal of used oil; or

14 (B) The sole purpose of such use, erection, construction or installation is to prevent, control or
15 reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to re-
16 cycle or provide for the appropriate disposal of used oil.

17 (b) Such prevention, control or reduction required by this subsection shall be accomplished by:

18 (A) The disposal or elimination of or redesign to eliminate industrial waste and the use of
19 treatment works for industrial waste as defined in ORS 468.700;

20 (B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or
21 air contamination sources and the use of air cleaning devices as defined in ORS 468.275;

22 (C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise
23 emission sources as defined by rule of the commission;

24 (D) The use of a [resource] material recovery process which obtains useful material [or energy
25 resources] from material that would otherwise be solid waste as defined in ORS 459.005, hazardous
26 waste as defined in ORS 466.005, or used oil as defined in ORS 468.850. For the purposes of ORS
27 468.155 to 468.190, "solid waste facility" shall also include subsequent additions, made either to an
28 already certified facility or to an operation which would have qualified as a facility but for the fact that
29 it was erected, constructed or installed before January 1, 1973, which will increase the production or
30 recovery of useful materials or energy over the amount being produced or recovered by the original
31 facility whether or not the materials or energy produced or recovered are similar to those of the ori-
32 ginal facility]; or

33 (E) The treatment, substantial reduction or elimination of or redesign to treat, substantially re-
34 duce or eliminate hazardous waste as defined in ORS 466.005.

35 (2) "Pollution control facility" or "facility" does not include:

36 (a) Air conditioners;

37 (b) Septic tanks or other facilities for human waste;

38 (c) Property installed, constructed or used for moving sewage to the collecting facilities of a
39 public or quasi-public sewerage system;

40 (d) Any distinct portion of a solid waste, hazardous waste or used oil facility that makes an in-
41 significant contribution to the purpose of utilization of solid waste, hazardous waste or used oil in-
42 cluding the following specific items:

43 (A) Office buildings and furnishings;

44 (B) Parking lots and road improvements;

- 1 (C) Landscaping;
- 2 (D) External lighting;
- 3 (E) Company signs;
- 4 (F) Artwork; and
- 5 (G) Automobiles; *[or]*

6 (e) Replacement or reconstruction of all or a part of any facility for which a pollution control
7 facility certificate has previously been issued under ORS 468.170, except:

8 (A) If the cost to replace or reconstruct the facility is greater than the like-for-like replacement
9 cost of the original facility due to a requirement imposed by the department, the federal Environ-
10 mental Protection Agency or a regional air pollution authority, then the facility may be eligible for
11 tax credit certification up to an amount equal to the difference between the cost of the new facility
12 and the like-for-like replacement cost of the original facility; or

13 (B) If a facility is replaced or reconstructed before the end of its useful life then the facility
14 may be eligible for the remainder of the tax credit certified to the original facility; or *[.]*

15 (F) **Property installed, constructed or used for clean up of emergency spills or unauthor-**
16 **ized releases, as defined by the commission.**

17 **SECTION 5. ORS 468.170 is amended to read:**

18 468.170. (1) The commission shall act on an application for certification before the 120th day
19 after the filing of the application under ORS 468.165. The action of the commission shall include
20 certification of the actual cost of the facility and the portion of the actual cost properly allocable
21 to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste
22 or to recycling or properly disposing of used oil as set forth in ORS 468.190 (2). Each certificate
23 shall bear a separate serial number for each such facility.

24 (2) If the commission rejects an application for certification, or certifies a lesser actual cost of
25 the facility or a lesser portion of the actual cost properly allocable to the prevention, control or
26 reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly
27 disposing of used oil than was claimed in the application for certification, the commission shall
28 cause written notice of its action, and a concise statement of the findings and reasons therefor, to
29 be sent by registered or certified mail to the applicant before the 120th day after the filing of the
30 application. *[Failure of the commission to act constitutes rejection of the application.]*

31 (3) If the application is rejected for any reason, including the information furnished by the ap-
32 plicant as to the cost of the facility, or if the applicant is dissatisfied with the certification of actual
33 cost or portion of the actual cost properly allocable to prevention, control or reduction of air, water
34 or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil the
35 applicant may appeal from the rejection as provided in ORS 468.110. The rejection or the certifi-
36 cation is final and conclusive on all parties unless the applicant takes an appeal therefrom as pro-
37 vided in ORS 468.110 before the 30th day after notice was mailed by the commission.

38 (4)(a) The commission shall certify a pollution control, solid waste, hazardous waste or used oil
39 facility or portion thereof, for which an application has been made under ORS 468.165, if the com-
40 mission finds that the facility:

41 (A) Was erected, constructed or installed in accordance with the requirements of ORS 468.165
42 (1) and 468.175;

43 (B) Is designed for, and is being operated or will operate in accordance with the requirements
44 of ORS 468.155 (1) and (2); and

1 (C) Is necessary to satisfy the intents and purposes of ORS 454.010 to 454.040, 454.205 to 454.255,
2 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapters 459 and 467 and this chapter
3 and rules thereunder.

4 (b) No determination of the proportion of the actual cost of the facility to be certified shall be
5 made until receipt of the application.

6 (c) If one or more facilities constitute an operational unit, the commission may certify such fa-
7 cilities under one certificate. A certificate under this section is effective for purposes of tax relief
8 in accordance with ORS 307.405, 316.097 and 317.072 if erection, construction or installation of the
9 facility was *(begun)* completed before December 31, ~~[1988]~~ 1990.

10 (5) A person receiving a certificate under this section may take tax relief only under ORS
11 316.097 or 317.116, depending upon the tax status of the person's trade or business except if the
12 taxpayer is a corporation organized under ORS chapter 61 or 62, or any predecessor to ORS chapter
13 62 relating to incorporation of cooperative associations, or is a subsequent transferee of such a
14 corporation, the tax relief may be taken only under ORS 307.405.

15 (6) If the person receiving the certificate is an electing small business corporation as defined in
16 section 1371 of the Internal Revenue Code, each shareholder shall be entitled to take tax credit re-
17 lief as provided in ORS 316.097, based on that shareholder's pro rata share of the certified cost of
18 the facility.

19 (7) If the person receiving the certificate is a partnership, each partner shall be entitled to take
20 tax credit relief as provided in ORS 316.097, based on that partner's pro rata share of the certified
21 cost of the facility.

22 (8) Certification under this section of a pollution control facility qualifying under ORS 468.165
23 (1) shall be granted for a period of 10 consecutive years which 10-year period shall begin with the
24 tax year of the person in which the facility is certified under this section, except that if ad valorem
25 tax relief is utilized by a corporation organized under ORS chapter 61 or 62 the facility shall be
26 exempt from ad valorem taxation for a period of 20 consecutive years, or 10 years if construction
27 is commenced after June 30, 1989, and completed before December 31, 1990, from the date of
28 its first certification by the commission.

29 (9) Portions of a facility qualifying under ORS 468.165 (1)(c) may be certified separately under
30 this section if ownership of the portions is in more than one person. Certification of such portions
31 of a facility shall include certification of the actual cost of the portion of the facility to the person
32 receiving the certification. The actual cost certified for all portions of a facility separately certified
33 under this subsection shall not exceed the total cost of the facility that would have been certified
34 under one certificate. The provisions of ORS 316.097 (8) or 317.116 (8), whichever is applicable, shall
35 apply to any sale, exchange or other disposition of a certified portion of a facility.

36 **SECTION 6.** ORS 468.185 is amended to read:

37 468.185. (1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the
38 commission may order the revocation of the certification issued under ORS 468.170 of any pollution
39 control or solid waste, hazardous wastes or used oil facility, if it finds that:

40 (a) The certification was obtained by fraud or misrepresentation; or

41 (b) The holder of the certificate has failed substantially to operate the facility for the purpose
42 of, and to the extent necessary for, preventing, controlling or reducing air, water or noise pollution
43 or solid waste, hazardous wastes or used oil as specified in such certificate.

44 (2) As soon as the order of revocation under this section has become final, the commission shall

1 (C) Is necessary to satisfy the intents and purposes of ORS 454.010 to 454.040, 454.205 to 454.255,
2 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapters 459 and 467 and this chapter
3 and rules thereunder.

4 (b) No determination of the proportion of the actual cost of the facility to be certified shall be
5 made until receipt of the application.

6 (c) If one or more facilities constitute an operational unit, the commission may certify such fa-
7 cilities under one certificate. A certificate under this section is effective for purposes of tax relief
8 in accordance with ORS 307.405, 316.097 and 317.072 if erection, construction or installation of the
9 facility was [begun] completed before December 31, [1988] 1990.

10 (5) A person receiving a certificate under this section may take tax relief only under ORS
11 316.097 or 317.116, depending upon the tax status of the person's trade or business except if the
12 taxpayer is a corporation organized under ORS chapter 61 or 62, or any predecessor to ORS chapter
13 62 relating to incorporation of cooperative associations, or is a subsequent transferee of such a
14 corporation, the tax relief may be taken only under ORS 307.405.

15 (6) If the person receiving the certificate is an electing small business corporation as defined in
16 section 1371 of the Internal Revenue Code, each shareholder shall be entitled to take tax credit re-
17 lief as provided in ORS 316.097, based on that shareholder's pro rata share of the certified cost of
18 the facility.

19 (7) If the person receiving the certificate is a partnership, each partner shall be entitled to take
20 tax credit relief as provided in ORS 316.097, based on that partner's pro rata share of the certified
21 cost of the facility.

22 (8) Certification under this section of a pollution control facility qualifying under ORS 468.165
23 (1) shall be granted for a period of 10 consecutive years which 10-year period shall begin with the
24 tax year of the person in which the facility is certified under this section, except that if ad valorem
25 tax relief is utilized by a corporation organized under ORS chapter 61 or 62 the facility shall be
26 exempt from ad valorem taxation for a period of 20 consecutive years, or 10 years if construction
27 is commenced after June 30, 1989, and completed before December 31, 1990, from the date of
28 its first certification by the commission.

29 (9) Portions of a facility qualifying under ORS 468.165 (1)(c) may be certified separately under
30 this section if ownership of the portions is in more than one person. Certification of such portions
31 of a facility shall include certification of the actual cost of the portion of the facility to the person
32 receiving the certification. The actual cost certified for all portions of a facility separately certified
33 under this subsection shall not exceed the total cost of the facility that would have been certified
34 under one certificate. The provisions of ORS 316.097 (8) or 317.116 (8), whichever is applicable, shall
35 apply to any sale, exchange or other disposition of a certified portion of a facility.

36 **SECTION 6. ORS 468.185 is amended to read:**

37 468.185. (1) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the
38 commission may order the revocation of the certification issued under ORS 468.170 of any pollution
39 control or solid waste, hazardous wastes or used oil facility, if it finds that:

40 (a) The certification was obtained by fraud or misrepresentation; or

41 (b) The holder of the certificate has failed substantially to operate the facility for the purpose
42 of, and to the extent necessary for, preventing, controlling or reducing air, water or noise pollution
43 or solid waste, hazardous wastes or used oil as specified in such certificate.

44 (2) As soon as the order of revocation under this section has become final, the commission shall

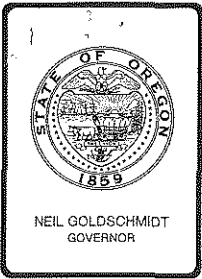
1 notify the Department of Revenue and the county assessor of the county in which the facility is lo-
2 cated of such order.

3 (3) If the certification of a pollution control or solid waste, hazardous wastes or used oil facility
4 is ordered revoked pursuant to paragraph (a) of subsection (1) of this section, all prior tax relief
5 provided to the holder of such certificate by virtue of such certificate shall be forfeited and the
6 Department of Revenue or the proper county officers shall proceed to collect those taxes not paid
7 by the certificate holder as a result of the tax relief provided to the holder under any provision of
8 ORS 307.405, 316.097 and 317.116.

9 (4) **Except as provided in subsection (5) of this section**, if the certification of a pollution
10 control or solid waste, hazardous wastes or used oil facility is ordered revoked pursuant to para-
11 graph (b) of subsection (1) of this section, the certificate holder shall be denied any further relief
12 provided under ORS 307.405, 316.097 or 317.116 in connection with such facility, as the case may
13 be, from and after the date that the order of revocation becomes final.

14 (5) **The commission may reinstate a tax credit certification revoked under paragraph (b)**
15 **of subsection (1) of this section if the commission finds the facility has been brought into**
16 **compliance. If the commission reinstates certification under this subsection, the commis-**
17 **sion shall notify the Department of Revenue or the county assessor of the county in which**
18 **the facility is located that the tax credit certification is reinstated for the remaining period**
19 **of the tax credit, less the period of revocation as determined by the commission.**

20



Attachment VI
Agenda Item No.
December 11, 1987
EQC Meeting

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission DATE: November 11, 1987
From: Maggie Conley, Hearing Officer
Subject: Report from the Hearing held November 2, 1987

Proposed Pollution Control Tax Credit Rules

Summary of Proceedings

One person attended the hearing, which was held at 3 p.m. in Portland, 811 SW Sixth, in the DEQ 4th floor conference room. Maggie Conley, Intergovernmental Coordinator for DEQ presided. Also attending from DEQ was Bob Brown from the Hazardous and Solid Waste Division.

No one provided oral testimony at the hearing. Three written comments were received.

Summary of Testimony

Jean Meddaugh, representing the Oregon Environmental Council, presented written testimony supporting the definition of the term "material recovery" (OAR 340-16-010) and requesting the addition to the rules of a requirement for the EQC to make findings when certifying tax credits.

Bob Hall representing PGE, submitted written testimony requesting an addition to the rule which would allow property used in the cleanup of spills or unauthorized releases to be eligible if the spill or unauthorized release was due to an activity operating in conformance with an EPA requirement.

James Brown, an attorney representing Omark Industries supported the definition of "property installed, constructed or used for cleanup of emergency spills or unauthorized releases."

MC:y
MY6334
229-6408
November 10, 1987

704



November 3, 1987

Maggie Conley
Department of Environmental Quality
811 SW Sixth Ave
Portland OR 97204

Dear Ms. Conley:

Portland General Electric has reviewed DEQ's proposed amendments to the pollution control tax credit rules (OAR340-16-010 through 340-16-050). We generally agree with the direction of the proposed rule but would like to offer one minor suggestion; that being in section 340-16-010, definitions, sub 10: In the second sentence of sub 10 after the word "DEQ permit" add ", or in conformance with an EPA requirement," and then continue with the sentence as proposed.

The intent of this amendment would be to include activities undertaken to satisfy federal requirements as well as operation in compliance with a DEQ permit.

We thank you very much for your assistance on this matter, and we will be glad to assist in any way possible.

Sincerely,



Robert E. Hall
REH:jc

gov.1141

BOGLE & GATES

Attachment VII
Agenda Item No.
December 11, 1987 EQC Meeting

LAW OFFICES

1600 Willamette Center
121 S.W. Salmon
Portland, OR 97204

Seattle
Anchorage
Bellevue
Tacoma
Washington, D.C.
Yakima

JAMES C. BROWN

(503) 222-1515
Fax: (503) 227-2207

November 9, 1987

Christie Nuttall
Department of Environmental Quality
Management Services Division
811 S.W. Sixth Avenue
Portland, Oregon 97204

BY MESSENGER

Re: Amendment to Pollution Control Tax Credit Rules

Dear Ms. Nuttall:

Let me first of all take this opportunity to thank the DEQ for extending the written comment date on the proposed changes to the pollution control tax credit rules from November 2 to November 9, 1987. This extension gave Bogle & Gates the necessary time to adequately review these changes, on behalf of our clients.

Bogle & Gates supports the changes as written and especially commends the DEQ for the manner in which it has crafted the definition of the clause, "Property installed, constructed or used for clean-up of emergency spills or unauthorized releases," OAR 340-16-010(10). We support the DEQ in continuing to allow pollution control tax credits for remediation efforts used to detect, deter or prevent future spills, as well as spill clean-up equipment for a spill or unauthorized release from a DEQ permitted activity or a pollution control activity not subject to a DEQ permit.

If Bogle & Gates can be of any further assistance to the Department in this matter, please call.

Sincerely,

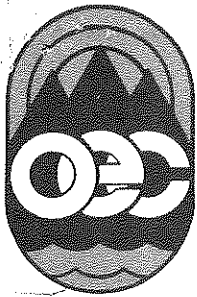
BOGLE & GATES



James C. Brown

JCB/vp

cc: Maggie Connally, DEQ



OREGON ENVIRONMENTAL COUNCIL

2637 S.W. Water Avenue • Portland, Oregon 97201 • (503) 222-1963

COMMENTS SUBMITTED BY THE OREGON ENVIRONMENTAL COUNCIL

ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S PROPOSED AMENDMENTS TO CHAPTER 340, DIVISION 16 POLLUTION CONTROL TAX CREDIT RULES

OAR 340-16-010 (7)

This definition adequately addresses the Oregon Environmental Council's concern over tax credits being given for processes which simply result in cross-media shifts of pollution.

We support this amendment.

OAR 340-16-020 (2) (b)

As with 340-16-020 (2) (c), "a concise statement of the findings and reasons therefore" should be required for certification as it is for rejection.

OAR 340-16-030 (2)&(4)

Requiring the commission to consider all five factors in order to determine percent allocable is wise, and we appreciate the need for a case-by-case determination on weighing the factors. We feel strongly, however, that a "concise statement of the findings and reasons therefore" should also be required in support of each case-by-case determination.

OAR 340-16-035 (6)

Although we question the logic of the staff report (Item D, Oct. 9, 1987 EQC Meeting) that "with the ability to reinstate revoked tax credits, it will be more likely that the Department will recommend revocation of tax credits as an enforcement tool," we do approve offering reinstatement as an incentive for compliance, assuming that DEQ staff have enforced the law and revoked the credits for noncompliance in the first place.

Beyond these specific comments we find the proposed amendments acceptable and support their adoption by the Commission.

Comments respectfully submitted by:

Jean C. Meddaugh
Jean C. Meddaugh
Associate Director

OFFICERS

Gil Sharp
PRESIDENT
Allen Johnson
VICE PRESIDENT

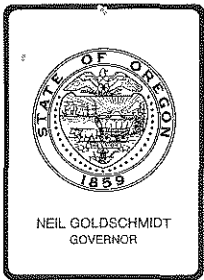
Ellen Lowe
SECRETARY
Allen Shelby
TREASURER

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Ethan Seltzer
Corinne Sherfon
Paul Wilson

EXECUTIVE DIRECTOR

John A. Charles



Environmental Quality Commission

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

MEMORANDUM

TO: Environmental Quality Commission DATE: November 24, 1987

FROM: Director

SUBJECT: Agenda Item J, December 4, 1987, EQC Meeting

Proposed Adoption of Amendments to the State Implementation Plan OAR 340-20-047: Redesignation of the Salem Area to Attainment for Ozone.

Background

Based on measured violations of the ambient air quality standard in 1977 and 1978, the Environmental Quality Commission (Commission) designated the Salem area as non-attainment for ozone. In June 1979, the Commission adopted an ozone control strategy for the Salem Non-attainment Area. The Environmental Protection Agency (EPA) approved this strategy in June, 1980. In September 1980, the Commission adopted a revised strategy which was approved by the EPA in April 1982.

Since 1977, ambient ozone levels in the Salem area have improved significantly. No exceedances of the 0.12 ppm standard have been recorded since 1981, and the Department of Environmental Quality (Department) projects compliance through the year 2000 even with possible growth of 1000 tons/year of volatile organic compounds. This data demonstrates that it is appropriate for the Commission to redesignate the Salem area as in attainment for ozone.

At its August 28, 1987, meeting, the Commission authorized a public hearing on the proposed redesignation of the Salem area as in attainment for ozone. The request for authorization to hold a public hearing on this issue contains additional information supporting the redesignation action and is attached to this memorandum (Attachment A).

On August 1, 1987, the Department issued a public hearing notice of the proposed redesignation of the Salem area. This public notice, including a Statement of Need describing the Commission's legal authority is attached (Attachment B). On September 10, 1987, the Statesman Journal and the Oregonian published notices concerning the proposed redesignation. On September 15, 1987, a notice of hearing was published in the Secretary of States' Bulletin. The Department held a public hearing, as scheduled, on October 16, 1987, but no one attended and no comments were received.

Alternatives and Evaluation

There appear to be at least two alternatives regarding the ozone attainment status of the Salem area. These two alternatives are:

1. The Commission could retain the ozone nonattainment status for the Salem area and the Department could continue to administer the new source review program under the existing rules. This requires major new or modified sources to install equipment capable of meeting the lowest achievable emission rate (LAER).
2. The Commission could redesignate the Salem area as in attainment for ozone and the Department could administer the new source review program within the available airshed capacity. Major new or modified sources would be required to install best available control technology (BACT) which is slightly less stringent than LAER.

The first alternative could be challenged by the public, local government or industry since several consecutive years of ozone monitoring indicate compliance with the ozone standard in the Salem area. Only three years of compliance with the standard are required for redesignation.

Redesignation of the Salem area, as outlined in the second alternative, would make it easier and less expensive for industries with significant VOC emissions to locate or expand in the Salem area. New or expanded industries would be required to provide for best available control technology (BACT) rather than the more stringent lowest achievable emission rate (LAER).

BACT requires the maximum practical control of emissions, taking into account energy and economic factors. BACT must always be at least as stringent as the New Source Performance Standards (NSPS) identified by EPA and the Department. LAER is more stringent than BACT or NSPS and is defined as the lowest emission rate allowed or achieved anywhere, without regard to cost or energy use.

The Department recommended the second alternative in the proposal that went to public hearing. Under this alternative, the Department recommended that the Commission revise the State Implementation Plan, replacing the existing Salem ozone attainment strategy with a new ozone maintenance strategy. This is similar to the action taken by the Commission on the Medford ozone strategy in January 1985 and approved by EPA in June 1986. The proposed revision is included as Attachment C. This alternative would allow the Department to review new or expanding VOC sources and insure that proposed VOC increases would not exceed the airshed capacity.

The proposed rule appears to affect land use and appears to be consistent with the Statewide Planning Goals. The Coos-Curry Council of Governments determined that the proposed redesignation of Salem had no impact on its area. The Lane Council of Governments likewise made no comments. The State Intergovernmental Relations Division Clearinghouse found that the redesignation caused no significant conflicts with plans, policies or programs of state or local governments. The Department received no other correspondence or comments. The Department has made no changes in the draft rule.

Summation

1. The Salem area is currently designated as an ozone nonattainment area.
2. The current Salem ozone strategy was adopted by the Commission in September 1980 and approved by EPA in April 1982.
3. Regular measurements of the ambient ozone levels in the Salem area indicate consistent attainment of standards since 1979. Based on this data, the Department initiated a rulemaking procedure to redesignate the Salem area as in attainment for ozone.

4. On August 28, 1987, the Commission authorized a public hearing on the proposed rule. On September 10th, and 15th, 1987, public notice of the hearing was published in local newspapers and the Secretary of States' Bulletin, respectively.
5. No persons appeared at the public hearing on October 16, 1987, and the Department received no comments favoring or opposing the proposed rule.
6. No conflicts or problems with the proposed rule were identified through the A-95 intergovernmental review process.
7. The current designation of the Salem area as in non-attainment for ozone imposes unnecessarily stringent restrictions upon new industries and small businesses emitting significant amounts of volatile organic compounds (VOC).
8. The implementation of an ozone maintenance strategy would allow the Department to review new and expanding VOC sources and insure that these sources would not exceed the airshed capacity. About 1000 tons/year of VOC increases could be accommodated and should be adequate to address growth through the year 2000.

Director's Recommendation

Based on the Summation, it is recommended that the Commission adopt the proposed amendment to the State Implementation Plan which redesignates the Salem area as in attainment for ozone, and replaces the Salem ozone attainment strategy with an ozone maintenance strategy, OAR 340-20-047 (Section 4.5 of the State Implementation Plan).

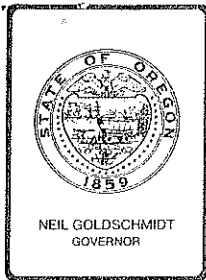


Fred Hansen

Attachments:

- A. Request for Authorization to Hold a Public Hearing
- B. Public Notice and Statement of Need for Rulemaking
- C. Draft Rule Amendment OAR 340-20-047 (SIP Section 4.5)

Sarah Armitage:
503-229-5581
November 24, 1987
AD1731



Attachment A
Agenda Item J
December 4, 1987
EQC Meeting

Environmental Quality Commission

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

MEMORANDUM

To: Environmental Quality Commission
From: Fred Hansen, Director
Subject: Agenda Item No. E, August 28, 1987, EQC Meeting

Request for Authorization to Hold a Public Hearing on Proposed Redesignation of the Salem area to Attainment for Ozone, and Proposed Revision of the State Implementation Plan.

BACKGROUND

The Clean Air Act of 1977 required States to submit plans to demonstrate how they will attain and maintain compliance with national ambient air standards for those areas designated as "nonattainment". The Salem area was designated nonattainment for ozone in June 1979 based on measured violations of the ambient air quality standard for ozone in 1977 and 1978.

The Environmental Quality Commission adopted an ozone control strategy for the Salem Nonattainment Area in June 1979. This strategy was approved by the Environmental Protection Agency (EPA) in June 1980. A revised strategy was adopted by the Commission in September 1980 and approved by EPA in April 1982.

Ambient ozone levels in the Salem area have improved significantly since 1977. No exceedances of the standard have been recorded since 1981. Compliance is also projected for future years. It therefore appears appropriate to redesignate the Salem area as attainment for ozone.

Authority for the Commission to Act

ORS Chapter 468.020 gives the Commission authority to adopt necessary rules and standards; ORS 463.305 authorizes the Commission to prepare and develop a comprehensive plan for air pollution control.

ALTERNATIVES AND EVALUATION

Ozone can be both protection and pollution in our environment. In the stratosphere, ozone protects the earth from the harmful effects of ultraviolet radiation. At ground level, ozone is an air pollutant with undesirable effects on people, plants, and materials. It is the ground level ozone that is addressed by the Salem ozone control strategy.

Ozone is a highly reactive compound of oxygen and the main component of photochemical oxidants or smog. In high concentrations it can cause difficulty in breathing, chest pain, chest and nasal congestion, coughing, eye irritation, nausea, and/or headaches. Ozone can reduce plant growth and crop yield. It can affect a variety of materials, resulting in fading of paint and fabric and accelerated aging and cracking of synthetic rubbers and similar materials.

Ozone is formed by photochemical reactions in the atmosphere between hydrocarbons or volatile organic compounds (VOC) and nitrogen oxides (NO_x) in the presence of direct sunlight and warm temperatures. The highest concentrations of ozone generally occur downwind of urban areas. The Salem ozone data has been collected near Turner, about eight miles south of Salem.

Reducing VOC emissions is the accepted method of controlling ground level ozone concentrations. The major sources of VOC emissions are motor vehicles, gasoline transport/storage/marketing, and industrial coating and degreasing operations.

VOC Emission Trend

VOC emissions from stationary and mobile sources in the Salem area have decreased substantially since the 1977 base year used for strategy development. VOC emission inventories are summarized in Table 1.

Table 1. Salem Nonattainment Area Volatile Organic Compound Emission Inventories.

Source Category	Volatile Organic Compounds Emissions(Tons/Year)						
	1977	1980	1981	1982	1983	1984	1985
Stationary Sources	1924	2026	2030	1711	1637	1671	1686
Mobile Sources	6080	5115	4806	4652	4364	4217	4016
Total	8004	7141	6836	6363	6001	5888	5702

Highway motor vehicle VOC emissions have steadily decreased each year due to the Federal Motor Vehicle Emission Control Program (federal new car program). Highway motor vehicle emissions are expected to continue to decrease for the next several years.

6

Stationary source emissions of VOC in the Salem area have decreased by more than 28% during the 1977-85 period. The stationary source VOC emission reductions are primarily due to lower petroleum marketing and storage emissions as a result of DEQ regulations for bulk storage plants and service stations. These regulations require recycle or capture of gasoline vapors during storage and transport.

Ambient Ozone Trend

Ambient ozone levels in the Salem area are summarized in Table 2. No exceedances of the 0.12 ppm one-hour average ozone standard have been recorded in the Salem area since 1981. Because up to one exceedance per year is allowed by the standard, Salem ambient ozone levels have been in compliance with the standard since 1979.

Table 2. Summary of Ambient Ozone Levels in the Salem Area from 1979 to 1986.

Year	Ozone Levels (ppm, hourly average)		Number of Days Over 0.12 ppm
	Maximum	Second High	
1979	0.14	0.11	1
1980	0.09	0.08	0
1981	0.13	0.12	1
1982	0.08	0.08	0
1983	0.11	0.11	0
1984	0.11	0.10	0
1985	0.12	0.11	0
1986	0.11	0.10	0

VOC Airshed Capacity

The Salem area is considered a rural ozone nonattainment area. This means that ozone levels in Salem are the result of not only local VOC emissions but also upwind VOC emissions (in this case from the Portland area). The Salem and Portland ozone control strategies have reduced VOC emissions below the level required for attainment for the ozone standard.

Salem has been in attainment with the ozone standard since 1979. Since that time both Portland and Salem area VOC emissions have continued to decline. The Portland ozone strategy adopted by the Commission in January, 1986 indicates that Portland-Vancouver VOC emissions will be kept about 20% below 1980 levels in order to meet the ozone standard in the Portland area. Salem area VOC emissions in 1980 (about 7000 tons) thus provide a conservative estimate of the total annual Salem airshed capacity for VOC. Because the current VOC emission rate is somewhat below 6000 tons/year, a growth cushion of more than 1000 tons/year can be identified for new or expanding VOC sources in the Salem area. This growth cushion is expected to increase each year as highway vehicle emissions continue to decrease.

The Salem VOC airshed capacity should be adequate for normal growth and development through at least the year 2000. Most new VOC sources emit less than 40 tons/year. It is very unusual for a new VOC source to emit more than 200 tons/year. Only seven existing VOC sources in Oregon emit more than 1000 tons/year (paper coating plants or resin manufacturers in all cases).

Redesignation Alternatives

There appear to be at least two alternatives regarding the ozone attainment status of the Salem area. These two alternatives are:

1. The Commission could retain the ozone nonattainment status for the Salem area and the Department could continue to administer the new source review program under the existing rules. This requires major new or modified sources to install equipment capable of meeting the lowest achievable emission rate (LAER).
2. The Commission could redesignate the Salem area as attainment for ozone and the Department could administer the new source review program within the available airshed capacity. Major new or modified sources would be required to install best available control technology (BACT).

The first alternative could be challenged by the public, local government or industry since several consecutive years of ozone monitoring indicate compliance with the ozone standard in the Salem area. Only three years of compliance with the standard are required for redesignation.

Redesignation of the Salem area, as outlined in the second alternative, would make it easier and less expensive for industries with significant VOC emissions to locate or expand in the Salem area. New or expanded industries would be required to provide for best available control technology (BACT) rather than the more stringent lowest achievable emission rate (LAER).

BACT requires the maximum practical control of emissions, taking into account energy and economic factors. BACT must always be at least as stringent as the New Source Performance Standards (NSPS) identified by EPA and the Department. LAER is more stringent than BACT or NSPS and is defined as the lowest emission rate allowed or achieved anywhere, without regard to cost or energy use.

The Department recommends the second alternative. Under this alternative, the Department recommends that the Commission revise the State Implementation Plan, replacing the existing Salem ozone attainment strategy with a new ozone maintenance strategy. This is similar to the action taken by the Commission on the Medford ozone strategy in January 1985 and

approved by EPA in June 1986. The proposed revision is included as Attachment 2. This alternative would allow the Department to review new or expanding VOC sources and insure that proposed VOC increases would not exceed the airshed capacity.

SUMMATION

1. The Salem area is currently designated as an ozone nonattainment area.
2. The current Salem ozone strategy was adopted by the Commission in September 1980 and approved by EPA in April 1982.
3. No exceedances of the 0.12 ppm one-hour average ozone standard have been recorded in the Salem area since 1981. Because up to one exceedance per year is allowed by the standard, Salem ambient ozone levels have been in compliance with the standard since 1979.
4. The Department has reviewed the ambient ozone data and VOC emission trends in the Salem and upwind Portland areas and concluded that Salem ozone levels should remain well below the ozone standard if Portland VOC emissions remain below 1980 levels (as projected in the Portland ozone strategy) and Salem VOC emissions do not exceed 7000 tons per year (approximate 1980 emission inventory).
5. It appears appropriate to redesignate the Salem area as attainment for ozone.
6. The Department has prepared a proposed ozone maintenance strategy for the Salem area which should insure the maintenance of the ozone standard in future years.

DIRECTOR'S RECOMMENDATION

Based on the Summation, it is recommended that the Commission authorize a public hearing to take testimony on:

1. The proposed redesignation of the Salem area as attainment for ozone; and
2. The proposed replacement of the Salem ozone attainment strategy (Section 4.5 of the State Implementation Plan) with an ozone maintenance strategy as a revision to the State Implementation Plan.



Fred Hansen

EQC Agenda Item E
August 28, 1987
Page 6

- Attachments:
1. Draft Public Hearing Notice.
 2. Draft Statements of Need for Rulemaking, Fiscal and Economic Impact, and Land Use Consistency.
 3. Proposed Salem Ozone Maintenance Strategy as a Revision to the State Implementation Plan.

Merlyn Hough:CDJ
AD1176
229-6446
August 11, 1987

17

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON . . .

**Proposed Redesignation of the Salem Area as Attainment for Ozone and
Revision of the State Clean Air Act Implementation Plan**

Date Prepared: August 1, 1987
Hearing Date: October 16, 1987
Comments Due: October 21, 1987

**WHO IS
AFFECTED:**

Residents, industries, and local governments of the Salem area.

**WHAT IS
PROPOSED:**

The Department of Environmental Quality is proposing to amend OAR 340-20-047, the Oregon Clean Air Act State Implementation Plan, by revising the ozone control strategy for the Salem Ozone Nonattainment Area, and redesignating the area as attainment for ozone.

**WHAT ARE THE
HIGHLIGHTS:**

Major elements of the rule change include:

- o Redesignating the Salem area as being in compliance with the State and Federal ambient air standards for ozone.
- o Revising the ozone strategy from an "attainment strategy" to a "maintenance strategy".
- o Recognizing a 7000 ton per year airshed capacity for Volatile Organic Compounds in the Salem area.

**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 Merlyn Hough at 229-6446 (call toll-free, 1-800-452-4011).

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

11:00 A.M.
October 16, 1987
DEQ Willamette Valley Region
895 Summer St. NE
Salem, OR 97310

Oral and written comments will be accepted at the public hearing. Written comments may be sent to the DEQ Air Quality Division, 811 SW 6th Ave., Portland, OR 97204, but must be received by no later than October 21, 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.

**WHAT IS THE
NEXT STEP:**

After public hearing the Environmental Quality Commission may adopt rule amendments identical to the proposed amendments, adopt modified rule amendments on the same subject matter, or decline to act. The adopted rules will be submitted to the U. S. Environmental Protection Agency as part of the State Clean Air Act Implementation Plan. The Commission's deliberation should come in December 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.

AA3978

RULEMAKING STATEMENTS

for

Proposed Redesignation of the Salem Area as Attainment for Ozone and Revision of the State Clean Air Implementation Plan

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

STATEMENT OF NEED:

Legal Authority

This proposal amends OAR 340-20-047. It is proposed under authority of ORS Chapter 468, including Section 305 which authorizes the Environmental Quality Commission to adopt a general comprehensive plan for air pollution control.

Need for the Rule

The Salem Area is currently designated as a nonattainment area for ozone based on violations of the ambient air ozone standard in 1977, and 1978. The area has been in continuous compliance with the ozone standard since 1979 and is expected to remain in compliance in future years.

Principal Documents Relied Upon

Clean Air Act as Amended (PL 95-95) August 1977.
EPA Control Technology Guidelines.
DEQ Updated Emission Inventories.
DEQ Ambient Monitoring Data for Ozone and Precursors.
EPA Users Manual for Kinetic Model and Ozone Isopleth Plotting Package.
EPA Guideline for Use of City-Specific EKMA in Preparing Ozone SIPs.

FISCAL AND ECONOMIC IMPACT STATEMENT:

The proposed rule change would affect industries locating or expanding in the Salem area. The proposed redesignation as an ozone attainment area would make it easier and less expensive for industries and small businesses with significant VOC emissions to locate or expand in the Salem area.

LAND USE CONSISTENCY STATEMENT:

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

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

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

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

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

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

AA3979

4.5.0 SALEM AREA MAINTENANCE PLAN FOR OZONE

4.5.0.1 Introduction

Salem was designated as a nonattainment area for ozone in June 1979 based on measured exceedances of the ozone standard in 1977 and 1978. The Environmental Quality Commission adopted an ozone control strategy for Salem in June 1979. This strategy was approved by the Environmental Protection Agency (EPA) in June 1980. A revised strategy based on EPA rural ozone policy was adopted by the Commission in September 1980 and approved by EPA in April 1982.

Ambient ozone levels in the Salem area have improved significantly since 1977. The Salem area has been in continuous compliance with the ambient ozone standard since 1979.

The Salem ozone strategy has been revised from an attainment strategy to a maintenance strategy. The maintenance strategy is designed to ensure that compliance with the ozone standard is maintained in the Salem area in future years.

4.5.0.2 Summary

Ozone is a colorless and potentially toxic gas associated with photochemical smog. It is formed by photochemical reactions in the atmosphere between oxides of nitrogen and volatile organic compounds (VOC) in the presence of direct sunlight and warm temperatures. Reducing VOC emissions is the accepted method of lowering ozone levels.

VOC emissions from stationary and mobile sources in the Salem area has decreased substantially since the 1977 base year. These VOC emission decreases have been primarily due to the following measures:

1. Highway motor vehicle VOC emissions have decreased each year due to the Federal Motor Vehicle Emission Control Program (federal new car program).
2. Stationary source VOC emissions decreased substantially from 1977 to 1985 due to new VOC control requirements for several industrial and commercial source categories.

Future VOC emission increases will be controlled as a result of the new source review (NSR) and plant site emission limit (PSEL) rules. The Salem ozone strategy has an estimated 7000 tons per year VOC Airshed Capacity. This provides significant room for new or expanding VOC Sources in the Salem area because VOC emissions have been less than 6000 tons per year during 1984-86 and continue to decrease due to the federal new car program.

4.5.1 AMBIENT AIR QUALITY

4.5.1.1 Identification of Study Area

The Salem city limits were designated a Nonattainment Area for ozone in March, 1978. The original Nonattainment Area was expanded by the Mid-Willamette Valley Council of Governments to include the area within the Salem Area Transportation Study boundary. A description of the SATS boundary is contained in the appendix to the Oregon State Implementation Plan.

4.5.1.2 Ambient Monitoring Data

The Salem area ozone monitor is located downwind of the city at Cascade Jr. High in Turner. Since 1982, the monitor has operated during the summer ozone season only.

Ambient ozone levels in the Salem area are summarized in Table 4.5-1. The Salem area has been in continuous compliance with the 235 microgram per cubic meter (0.12 ppm) ozone standard since 1979.

Table 4.5-1 Summary of Ambient Ozone Levels in Salem From 1979 to 1986.

Year	Ozone Levels (ppm hourly average)		Number of Days Over 0.12 ppm
	Maximum	Second Highest	
1979	0.14	0.11	1
1980	0.09	0.18	0
1981	0.13	0.12	1
1982	0.08	0.08	0
1983	0.11	0.11	0
1984	0.11	0.10	0
1985	0.12	0.11	0
1986	0.11	0.10	0

4.5.2 EMISSION INVENTORY

Annual VOC emission inventories are summarized in Table 4.5-2. The highway emissions are based on EPA Mobile 3 emission factors and the point source emissions are based on specific industrial production/emission information for each year.

Table 4.5-2. Salem Volatile Organic Compound Emission Inventories

Source Category	Volatile Organic Compounds Emissions (Tons Per Year)						
	1977	1980	1981	1982	1983	1984	1985
Stationary Sources	1924	2026	2030	1711	1637	1671	1686
Mobile Sources	6080	5115	4806	4652	4369	4217	4016
Total	8004	7141	6836	6363	6001	5888	5702

Highway motor vehicle VOC emissions have decreased substantially since 1977 due to the Federal Motor Vehicle Emission Control Program (federal new car program). Highway motor vehicle VOC emissions are expected to continue to decrease for the next several years.

Stationary source VOC emissions in the Salem area have decreased by more than 28% during the 1977-1985 period. The VOC emission reductions are primarily due to lower petroleum marketing and storage emissions as a result of DEQ regulations for bulk storage plants and service stations.

4.5.3 CONTROL STRATEGY

4.5.3.1 VOC Control Measures

The primary control measure for the reduction of transportation VOC emissions in the Salem area has been the federal new car program.

Industrial and commercial VOC emissions have been reduced as a result of VOC rules adopted by the Environmental Quality Commission in December 1978 with subsequent revisions. These VOC rules affect gasoline marketing up to the service station underground tanks, prohibit the use of cutback asphalt; control paper coating operations, small degreasers and cold cleaners; and affect roof coating contractors. The level of control required is consistent with Reasonably Available Control Technology (RACT) as defined by EPA in its Control Technology Guideline documents. The industrial and commercial VOC rules are summarized in Table 4.5-3.

Table 4.5-3. Summary of Industrial and Commercial VOC Control Rules.

<u>Rule (OAR)</u>	<u>Source Category</u>	<u>Compliance Date</u>
340-22-180	Degreasers	04/01/80
340-22-110	Service Station Loading (Stage I)	04/01/81
340-22-120	Gasoline Delivery Trucks	04/01/81
340-22-130	Bulk Gasoline Terminals	07/31/81
340-22-120	Gasoline Bulk Plants	07/31/81
340-22-220	Dry Cleaners (Perchloroethylene)	01/01/82
340-22-170	Paper and Can Coating	12/31/82
340-22-170	Metal Coating	12/31/82
340-22-140	Cutback Asphalt	04/01/79
340-22-160	Liquid Storage, Second Seals	12/31/81
340-22-210	Printing, Flexographic	07/01/82
340-22-200	Flatwood Coating	12/31/82

4.5.3.2 New Source Review

The new source review rules are contained in Oregon Administrative Rules (OAR) 340-20-220 to 275. The new source review rules require major new or modified VOC point sources locating in an attainment area to:

1. Provide best available control technology;
2. Demonstrate that the source would not cause violations of any PSD air quality increments or any state or federal ambient air quality standards; and
3. Demonstrate that the source would not impact a designated nonattainment area greater than the significant air quality impact levels.

New or modified VOC sources which would emit 40 tons or more of VOC per year are considered major sources and are subject to the new source review rules.

4.5.3.3 Plant Site Emission Limits

Plant site emission limits rules are contained in OAR 340-20-300 to 320. These rules establish a baseline allowable emission rate for existing VOC point sources. These rules do not allow significant growth of stationary source emissions unless a growth margin is available or an offset can be obtained.

4.5.3.4 VOC Airshed Capacity

Salem area is considered a rural ozone nonattainment area. This means that ozone levels in Salem are the result of not only local VOC emissions but also upwind VOC emissions (in this case from the Portland area). The Salem and Portland ozone control strategies have reduced VOC emissions below the level required for attainment for the ozone standard.

Salem has been in attainment with the ozone standard since 1979. Since that time both Portland and Salem area VOC emissions have continued to decline. The Portland ozone strategy adopted by the Commission in January 1986 indicates that Portland-Vancouver emissions will be kept about 20% below 1980 levels in order to meet the ozone standard in the Portland area. Salem area VOC emissions in 1980 (about 7000 tons) thus provide a conservative estimate of the total annual Salem airshed capacity for VOC. Because the current VOC emission rate is somewhat below 6000 tons/year, a growth cushion of more than 1000 tons/year can be identified for new or expanding VOC sources in the Salem area. This should provide for normal growth and development through at least the year 2000.

The actual VOC airshed capacity may be considerably larger than 7000 tons/year. The Department will reassess the airshed capacity in future years if the VOC emission inventory approaches 7000 tons/year or if ozone concentrations approach the ambient standard.

4.5.4 RULES AND REGULATIONS

The Oregon Revised Statutes (ORS) Chapter 468 authorizes the Oregon Environmental Quality Commission to adopt programs necessary to meet and maintain state and federal ambient air quality standard. The mechanisms for implementing these programs are the Oregon Administrative Rules (OAR). Pertinent rules were discussed previously and are summarized in Table 4.5-5.

Table 4.5-5. Summary of Rules Pertinent to the Salem Ozone Control Strategy.

Rule (OAR)	Subject
340-20-220 to 275	New Source Review
340-20-300 to 320	Plant Site Emission Limits
340-22-100 to 220	General VOC Emission Standards

4.5.5 PROGRESS MONITORING

The Salem area is expected to remain in compliance with the ambient ozone standard in future years. DEQ will review ambient ozone data on a quarterly basis and VOC emission inventories on an annual basis to ensure that compliance with the ambient ozone standard is maintained.

4.5.6 PUBLIC NOTICE AND HEARING

A public hearing on the Salem ozone maintenance strategy was held in Salem in October 1987. The public hearing notice was issued 30 days prior to the hearing.

The public hearing notice was distributed for local and state agency review by the A-95 State Clearinghouse 60 days prior to the adoption of the Salem ozone maintenance strategy.